

Expert Opinion under the Indian Evidence Act

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The Indian Evidence Act under Section 45 enumerates the law relating to Opinion of Experts or commonly known as Expert Opinion/Expert evidence. This statutory provision is adhered to when the Court has to form opinion pertaining to:

- -foreign law
 - -science
 - -identity of handwriting
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- -finger impressions

Under Section 45, opinions of experts are relevant on questions of foreign law, science, art, identity, handwriting or finger impressions. Expert testimony is admissible on the principle of necessity. The help of experts is necessary when the question involved is beyond the range of common experience or common knowledge or where the special study of a subject or special training or skill or special experience is called for. No man is omniscient; in fact, perfection is an attribute of divinity only.

As a general rule, the opinion of a judge only plays a part and is thus relevant in the decision of a case, and thus, the opinion of any person other than the judge about any issue or relevant fact is irrelevant in deciding the case. The reason behind such a rule is that if such opinion is made relevant, then that person would be invested with the character of a judge. Thus, Section 45 is thus an exception to this general rule, as it permits the experts opinion to be relevant in deciding the case. The reason behind this is that the Judge cannot be expected to be an expert in all the fields-especially where the subject matters involves technical knowledge as he is not capable of drawing an inference from the facts which are highly technical. In these circumstances, he needs the help of an expert- who is supposed to have superior knowledge or experience in relation to the subject matter.

Section 45, Indian Evidence Act, 1872:

“When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity handwriting or finger impressions, the opinions upon these points of persons especially skilled in such foreign law, science or art or in questions as to identity of handwriting or finger impressions, are relevant facts. Such persons are called experts.”

A fact is something cognizable by the senses such as sight or hearing, whereas opinion involves a mental operation. Under Section 3, the opinion of a person will be a fact too. U/s 60 oral evidence in all cases must be direct if inter alia it refers to an opinion or to grounds on which that opinion is held. It must be the evidence of the persons who hold the opinion on those grounds. A distinction must be drawn, however, between the cases where an opinion may be admissible u/s 6 to 11 as forming a link in the chain of relevant facts to be proved and between cases where opinions are admissible under sections 45-51. The former evidence is given by the non-expert or the unskilled witness while the latter is given by the expert witness. Thus, in matters of calling for special knowledge or experience or skill, opinions of expert witnesses is relevant u/s 45-51.

Prerequisites of an expert evidence

For the sake of consideration of an expert testimony, there are two important conditions that are necessary to be shown:

1. That the subject is such that expert testimony is necessary.
2. That the witness in question is really an expert. must be proved that the witness is competent enough to give the evidence and that the fact to be proved is a point of science or art of which the witness is an expert in, before the opinion of a person can be admitted in evidence

If a witness is not proved to be an expert, his opinion will become irrelevant. It must be proved that the witness is an expert. He must be examined as a witness in the Court and be subject to cross-examination

Who is an expert?

Section 45 defines an expert as a person who is especially skilled in a given field. The test of judging the competency of a person is this: “Is it *peritus*?” Is he skilled? Has he adequate knowledge?

An expert is a person who has special knowledge and skill in a particular calling to which the inquiry relates. An expert witness is one who has devoted time and study to a special branch of learning, thus is especially skilled on those points on which he is asked to state his opinion. His evidence on such points is admissible to enable the tribunal to come to a satisfactory conclusion[. The section does not refer to any particular attainment, standard of study or experience, which would qualify a person to give evidence as an expert. All persons who practice a business or profession which requires them to possess certain knowledge of the matter in hand are experts, so far as expertness is required. It is the duty of the judge to decide whether the skill of any person in the matter on which evidence of his opinion is offered is sufficient to entitle him to be an expert.

Opinion is estimation, a belief or assessment, a view held as probable, what one thinks about a particular question or topic, an assessment short of grounds of proofs, a formal statement of reasons for the judgment, a formal statement of professional advice.

The Supreme Court in the case of *State of Himachal Pradesh Vs. Jai Lal and others* in the following words explained who an expert is and what his functions are.

- An expert witness, is one who has made the subject upon which he speaks a matter of particular study, practice; or observations; and the must have a special knowledge of the subject.
- In order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.
- An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to form his independent

judgment by the application of this criteria to the facts proved by the evidence of the case.

- The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and materials furnished which form the basis of his conclusions.

One of the earliest cases which enumerated on the function of expert was *Titli v. Jones*, wherein it was stated that the real function of the expert is to put before the court all the materials, together with reasons which induce him to come to the conclusion, so that the court, although not an expert, may form its own judgment by its own observation of those materials.’

Difference between an expert and non-expert witness

Like a non expert witness the testimony of an expert witness need not be confined to actual facts and he may give evidence on facts as stated by other witnesses, e.g. a doctor who might not have seen the patient personally can opine as to the cause of his death on facts deposed. He may cite textbooks in support of his opinion or to refresh his memory (S.159); he may speak about experiments made by him in the absence of parties.

The opinion of an expert witness, however, eminent in his field he may be, must not be read as conclusively of the fact which the Court has to try. However, evidence of eminent literary persons as experts can be relied upon.

Expert opinion– evidentiary value

The opinion of an expert must be of corroborative nature to the facts and circumstances of the given case. If the opinion contradicts an unimpeachable eyewitness or documentary evidence, then it will not have an upper hand over direct evidences. The Section does not provide for any specific attainment of knowledge or study or experience for being called an expert. Experts are admissible as witness but, they are not to make conclusion as it is a judicial function.

In *Forest Range Officer v. P.Mohammad Ali* it was held that expert opinion is only the opinion evidence. It does not help the Court in interpretation. The mere opinion of an expert cannot

override the positive evidence of the attesting witness. Expert opinion is not necessarily binding on the Court

In *Murali Lal v. State of Madhya Pradesh*, it was held by the Supreme Court that there is no justification for condemning the opinion evidence of an expert to the same class of evidence as that of an accomplice and insist upon corroboration. The court also stated that it would be a grave injustice to base a conviction solely on the opinion of handwriting expert or any other kind of expert, without substantial corroboration. An expert deposes and not decides. His duty is to furnish the judge with the necessary scientific criteria for testing the accuracy of his conclusion so as to enable the judge to form his own independent judgment by the application of these criteria to the facts proved in evidence

Opinion of Handwriting Expert

U/s 45 of the Indian Evidence Act an expert can depose to the identity of handwriting between the questioned document and the document admitted or proved. A disputed handwriting may be proved either by calling an expert (S.45) or by examining a person acquainted with the handwriting of the person by whom the questioned document is alleged to have been written (S. 47) or a comparison of the two u/s 73.

Finger-impression

A man's signature is called an unforgettable signature. This head was added to expert evidence's scope in 1899. The study of fingerprints is generally admitted to constitute a science. Its two basic hypotheses are that:

Firstly, fingerprints of a person remain the same from birth to death;

Secondly, there has never yet been found any case where pattern made by one finger exactly resembled the pattern made by any other finger of the same or any other hand.

The opinion of thumb impression expert is entitled to greater weight-age than that of a handwriting expert.

Hon'ble Supreme Court in the case titled as **Ramesh Chandra Agarwal v/s Regency Hospital Ltd.** has broadly dealt and interpreted the scenario and held that, an expert is a person who devotes his time and study to a special branch of learning. However, he might have acquired such knowledge by practice, observation or careful study. The expert is not acting as a judge or jury. It was further held that in order to bring the evidence of a witness, as that of an expert, it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject. The real function of the expert is to put before the Court all the materials, together with reasons which induce him to come to the conclusion, so that the Court, although not an expert, may form its own judgment by its own observation of those materials. An expert is not a witness of fact (like other witnesses) and his evidence is really of an advisory character. The duty of the expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria. No expert can claim that he could be absolutely sure that his opinion was correct.

Hon'ble Supreme Court has further laid down in the case titled as **State of Maharashtra v/s Damus/o Gopinath Shinde and others, AIR 2000 SC 1691**, that mere assertion without mentioning the data or basis in support of his opinion is not evidence, even if it comes from an expert. It is held that such evidence though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value without examining the expert as a witness in Court. Therefore, no reliance can be placed on an opinion alone.

In the case titled as **Kabul Singh v/s Gurinder Singh**, opinion of the expert was sought regarding signatures put on a document. However, the expert also gave opinion that certain digits were changed which opinion was not sought for. The Hon'ble High Court of Punjab and Haryana held that such an opinion should be ignored and that expert should have confined himself to the relevant facts.

However, there is a probability to lean the opinion of private experts in favour of the party calling them. In such like cases, when there is a conflict of opinion between the experts, then the Court is competent to form its own opinion with regard to signatures on a document or such like matters.

Another important issue under consideration is that whether the Courts are bound by the opinion given by an expert on a particular fact in a case. Hon'ble Supreme Court has answered this question in the case titled as **Malay Kumar Ganguly v/s Dr. Sukumar Mukherjee**, wherein it has been held that, a Court is not bound by the evidence of the experts which is to a large extent advisory in nature.

The Courts have full powers to derive its own conclusion upon considering the opinion of the experts which may be adduced by both sides, cautiously, and upon taking into consideration the authorities on the point on which he deposes. The opinion could be admitted or denied. Whether such evidence could be admitted or how much weightage should be given thereto, lies within the domain and discretion of the Court. The evidence of an expert should, however, be interpreted like any other evidence. Thus, it can be concluded that the expert opinion in numerous matters relating to identification of thumb impression, handwriting, footprints, fixing paternity, time of death, age of the parties, cause of death, possibility of the weapons used, disease, injury, sanity and insanity of the parties and other question of science or trade has become the need of hour and the person having required skill on that subject (called experts), are allowed to give their opinions in evidence as well as testify to facts/details leading to their opinion. The opinion of an expert having special skill in that particular field is relevant for the point of admissibility before the Court of law. There may be exceptions to this rule, in spite of it when there direct evidence is lacking, then to corroborate the existing evidence, expert opinion is sought

Conclusion:-

From the above analysis it may be submitted that evidence of an expert is not a substantive piece of evidence. The courts do not consider it conclusive. Without independent and reliable corroboration it may have no value in the eye of law. Once the court accepts an opinion of an expert, it ceases to be the opinion of the expert and becomes the opinion of the court.

References

[1] <http://symlaw.ac.in/doc/syed.pdf>

[2] works.bepress.com/krishnaareti/5/

[3] Parat v. Bissessar, ILR 39 Cal 245

[4] Raj Kishore v. State, AIR 1969 Cal 321

[5] Balkrishna Das Agarwal v. Radha Devi, AIR 1989 All 133

[6]“Peritus virtute official” i.e. the holder of some official position which requires and, therefore, presumes a knowledge of that law.

[7] U.S. Shipping Board v. Ship “St. Albans” 1931 PC 189

[8] Lawson on Expert Testimony, 2nd Edn, 229.

[9] Powell, 10th Edn, p. 39.

[10] www.legalserviceindia.com/article/l45-Law-of-Evidence.html

[11] Kamala Kuer v. Ratanlal AIR 1971 All 304

[12] Samaresh Basu v. Amal Mitra 1985 SCC (Cr) 523

[13] Gopeswar v. Biseswar 16 CWN 265 (285)