
THE ADMISSIBILITY AND WEIGHT OF EXPERT OPINION UNDER THE INDIAN EVIDENCE ACT: A LEGAL PERSPECTIVE

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INTRODUCTION

The expert opinion as evidence in Indian law is considered as weak evidence, comprehensive in nature¹, which includes lacuna in law. The experts opinion is accepted based on it's principle of necessity.² If that statement or matter is related to any special field then the court may take the witness testimony of such expert and decide whether such statement is admissible or not for such case. There is no rule or any obligation that if any case deals with the nature of technicality or any special field then it mandatory for the requirement of an experts opinion, it differs from case-to-case and discretion of the judges to seek advisory. If the it's related to the facts of the case and admissible then such experts opinion is considered as the delegation of judicial function³ and if not admissible then court may not accept such opinion and state its discretion. In some cases, the court will not consider such person as expert in such field, where it rejects such opinion on this reasoning.

The Experts Opinion has a wider scope to understand the clear meaning. The exception of this rule is that the experts are considered to be witness and their opinion in not binding. The role of the judge is to find the correct interpretation of the witness statement and decide the case. A witness testimony is based on the facts heard, seen and perceived⁴. The general rule is Witness cannot be testified on the opinion at his conclusion and the best evidence rule says that it is one collected through direct source⁵. However, while witness testimony of an expert it is based on the opinion formed from the special knowledge and not on the basis of facts which are in favour of either of the party. The opinion of the expert is not conclusive in nature. And the opinion

¹ Sadhana.S, K. Roja, A Study on the Admissibility of expert evidence in Indian Evidence Act, International Journal of Pure and Applied Mathematics, Volume 120 No. 5 2018.

² Government of Virgin Islands v. Knight, 989 F 2d 619 (3rd Cir 1993).

³ Déirdre Dwyer, The Judicial Assessment of Expert Evidence, Cambridge University Press, (2008).

⁴ Indian Evidence Act, 1872 (Act 1 of 1872), s. 60.

⁵ Gursehaj Singh, Evidentiary Value of Expert Opinion under the Indian Evidence Act: A Critical Analysis of Section 45, International Journal of Legal Science and Innovation, volume 2 Issue 1, published in 2020.

must be orally given and a report or certificate is not evidence⁶. The expert must be an independent person who have no connection or relation with either of the parties and if so then court will not accept such opinion. The importance of experts opinion is to save the time of judge and deliver fair judgement to protect & promote the justice.

MEANING & EVOLUTION

The meaning of expert opinion under evidence law, stated as, whenever court needs any interpretation of foreign law, science, art or handwriting (Finger Impression)⁷ then it refers to the opinion of the person, who is expert in that field, such opinion is known as expert opinion under the *section 45⁸ of the Indian Evidence Act, 1872* and the same is stated under the *section – 39⁹ of the Bharatiya Sakshya Adhiniyam, 2023*. It's up to the discretion of the court to consider such expert's opinion or not. The ambiguity on who's an expert is clarified under *section 45 of the Indian Evidence Act, 1872*, such as expert is considered as a "person who is skilled". This term signifies that the person has a knowledge along with experience can be testified before the court of law. The black law dictionary stated the meaning as "A person who, through education or experience, had developed skill or knowledge in a particular subject, so that he or she may form an opinion that will assist the fact-finder"¹⁰. Many scholars and jurist from all over the world gave definition such as, a well-known jurist called Lawson defined "expert", as a person has special knowledge and skill in a particular calling which is related to the enquiry¹¹.

The evolution of experts opinion was occurred in English law, in case of *Folkes vs. Chadd*¹², where Lord Mansfield approved the evidence of an experts opinion as witness on the facts of the case, who were a special jury, act as an special advisory to the court.¹³ In case of *Bal Krishna Das Agrawal v Radha Devi and Others*¹⁴, the court observed that an expert, a person who developed ability to convey an opinion from training and experience¹⁵, where an ordinary

⁶ Perumal Mudaliar vs. South Indian Railway co. Ltd, 1937 Mad 764.

⁷ Ins. by Act 5 of 1899, s. 3 for discussion in Council as to whether "finger impressions" include "thumb impressions" see Gazette of India, 1898, pt.VI, p. 24.

⁸ Indian Evidence Act, 1872 (Act 1 of 1872), s. 45.

⁹ Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023), s. 39.

¹⁰ The Black's Law Dictionary 9th Edition

¹¹ Lawson, 2nd Edn, The Law of Evidence, Universal Law Publishers.

¹² Folkes v Chadd [1782] KB Doug 3.

¹³ Christopher M. Milroy, 'A Brief History of the Expert Witness' (2017) 7(4) Acad Forensic Pathol <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6474433/> last visited on 20 february 2025.

¹⁴ Bal Krishna Das Agrawal v Radha Devi & Ors (1989) AI 133.

¹⁵ Isha Anand, Admissibility of Expert opinion in court of law, Jus Corpus Law Journal, published in 2022.

witness does hold such quality. The qualification of the person to be expert in such field or department includes education, experience and knowledge in such field or department. However, such qualification doesn't amount for the acceptance such opinion of experts. In case of *MS Reddy vs. State of Inspector of Police, ACB, Nellore*¹⁶, the court held that the engineer working in the department of Irrigation, where fraud committed on larger scale and who assisted the investigation agency cannot be said as "**EXPERT**" because he acquired that special knowledge during the service.¹⁷ The subject matter in expert opinion are science, art, foreign law, hand writing or finger impression and other then these are not admissible in 1954. However, law was evolved with the technological development as scient and art has a wider scope of subjects which includes trade, ballistics and etc.

ADMISSIBILITY & EVIDENTIARY VALUE

The experts opinion plays an advisory role, which cannot act as an conclusive proof. However, can act as corroborative evidence. Judges do not have vast knowledge in some specific areas like science, technology, art and etc so, they are not expected to give any decision independently. In most of the cases judges ask for the experts opinion and decide further. The evidence in any case is given on related to facts, facts in issue and of no others.¹⁸ The word admissibility means to agree or accept, it has to be related to the facts of the case then it's admissible as evidence. Two conditions must be satisfied by the court to accept the experts opinion. Firstly, the issue cannot be solved without an experts opinion and secondly, the person giving opinion must be an expert. The court cannot convict on solely based on the experts opinion and the experts opinion must be corroborated with an independent evidence for the conviction. After the admissibility of the experts opinion by the court then it will be considered as the declaration of Court. Mostly in Indian cases, the experts opinion becomes relevant in the absence of the direct evidence. However, it is not substantial and decisive evidence. The expert's oral opinion is considered when it includes the data and material and in documentary must accompany the data and should be cross-examined¹⁹. So, that it cannot cause inaccurate justice in such case.²⁰ The government scientific experts report is admissible even if not cross-

¹⁶ MS Reddy vs. State Inspector of Police, AC.B, Nellore, 1993 Cr LJ 558 (AP).

¹⁷ Ratanlal & Dhirajlal, The Law of Evidence, Twenty seven edition, LexisNexis, published in 2019.

¹⁸ Indian Evidence Act, 1872 (Act 1 of 1872), s. 5.

¹⁹ *Supra* note 14 at 2.

²⁰ Ajay and Sahil Kumar Purvey, Examination Of Expert' Opinion: Relevancy, Admissibility, And The Framework, available at : <https://www.mondaq.com/india/trials-amp-appeals-amp-compensation/1258928/examination-of-expert-opinion-relevancy-admissibility-and-the->

examined. The supreme court has laid some conditions in case of ***Ramesh Chandra Agarwal v. Regency Hospital Ltd***²¹, for the admissibility of expert evidence, which are the following:

- Experts must be hears unless section 293 of CrPC²² applies in the matter of expert evidence.
- The expert's specialisation must be recognised.
- On the basis of reliable principles, the evidence is admissible.
- Expert must be qualified by education or experience or knowledge.²³

In a landmark case of *Selvi v. State of Karnataka*²⁴, the question was raised on the scientific techniques, namely narcoanalysis, polygraph examination and the Brain Electrical Activation Profile (BEAP) test as a part of investigation, where accused, suspect or witness are subjected to involuntarily test. The court ruled that the self-incriminatory information given by the accused can be considered admissible unless there is no compulsion. If there is any compulsion to gain evidence or self-incriminatory information from the accused through these tests involuntarily then it's violation of personal liberty under article 21²⁵ of the Indian Constitution, includes right against self-incrimination under article 20(3)²⁶ of the Indian Constitution. The objective of article 20(3)²⁷ of the Indian Constitution is to protect the conveyance of personal knowledge that is relevant to the facts in issue through compulsion. Even if the person has given consent for such test, then it is not considered as conclusive evidence, it has to be corroborated to convict the person²⁸.

The medical expert evidence will override the eye-witness in some circumstances, such as when a person directly watches an accident of another person then he will see only physical

framework#:~:text=The%20expert's%20opinion%20is%20merely,expert's%20opinion%20or%20vice%20versa.
(last visited on February 22, 2025).

²¹ Ramesh Chandra Agarwal v. Regency Hospital Ltd, AIR 2010 SC 806: (2009) 9 SCC 709.

²² THE CODE OF CRIMINAL PROCEDURE, 1973 (ACT NO. 2 OF 1974), s. 293.

²³ Poulomi Bhadra and Kanika Aggarwal, *Judicial Gatekeeping of Scientific Evidence and Experts in Criminal Adjudications*, Vol. XXXVI, Delhi Law Review.

²⁴ MANU/SC/0325/2010.

²⁵ The Constitution of India, art. 21.

²⁶ The Constitution of India, art. 20(3).

²⁷ *Supra* note 26 at 4.

²⁸ Dr. Sambeeta Dabral, Evidentiary Value of Expert's Opinion In Criminal Trials In India - A Study Through Supreme Court Judgements, Volume IV Issue III, Indian Journal of Law and Legal Research

injury. However, after the medical check-up, the report showed another internal injury²⁹. This was proved in case of *Golappa Avana Naik v. State*³⁰. There are some expert opinions, which are considered as the conclusive evidence, such as:

- DNA (Deoxyribonucleic Analysis)
- Finger print

To check the correctness of the expert's opinion the court, must testify the reasoning given by the expert. The opposite party must conduct the cross-examination of such expert to know whether it's an opinion formed scientifically or from specialised field, otherwise the expert is in favour of any party or being corrupted. Likewise, the accountability of such evidence is found to provide fair and sufficient justice in the case by the court.³¹

CONCLUSION

Expert opinion plays a vital role in assisting court to understand the fact in issue and facts properly to give a justice. They are considered as the witness of court and not neither of the parties. It is truly challenging and risky to the judicial system to consider such admissibility without any advanced knowledge. However, it's not binding on the court. The amendments or changes required for such provision in law is to find the crystal-clear meaning of the "expert opinion" where doesn't specify any qualifications and ambiguity in definition has to be cleared by the legislature. Mostly, the judges will opt for expert opinion, whereas, the parties can also present such evidence before court. Unless it is discovered to be biased in nature. There has to a law on production of expert evidence, a procedure established by law to make it vast conclusive. Witness are not protected in most of the case, due to which there is a miscarriage of justice for which essential steps to be taken even their role is limited.

²⁹ Supra note 1 at 1.

³⁰ Cr. App. No. 16 of 1967.

³¹ Saumya Raj, Value of Expert Evidence Through The Prism Of Indian Evidence Act, Vol. IV Issue I, Vishwakarma University Law Journal, Published in 2024.