



Analytical study of expert opinion in Indian Law

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Abstract

It is the best rule of evidence that only direct evidence can be given of any fact in issue or relevant fact whether it is oral evidence or documentary. Direct evidence means if it is the evidence of a witness, it must be given by such person who has direct knowledge of the facts or if it is a document, it should be the original/primary document. Opinion of a person is neither relevant nor admissible in the proceeding. But there is an exception to this rule provided in Indian Evidence Act under section 45 and 45 A. Section 45 and 45 A provide the provision for relevancy of opinion of an expert in the judicial proceedings. These sections provide that when the court has to form an opinion as to the matter of science or art or relating to identification of handwriting or finger impression or electronic signature, the opinion of an expert having special knowledge in that matter/field is relevant. The reason is that the judicial officers are not supposed to be expert or having sufficient knowledge in all the matters. Therefore they are free to take the help of experts in technical matters. The opinion of an expert can be taken in to consideration if the court wishes to it.

Key words: Experts, Opinion, technical knowledge, Skill, identification

1. Introduction

In the judicial proceedings only facts are permitted to be proved with the help of evidence either through the witness or through the document. The witness has to state only the truth about the facts about which he is supposed to have direct knowledge. He can't be allowed to express his opinion in which the facts may have happened. In the same way the documents (primary or secondary) is relevant and admissible in the court and any party can't be allowed to give oral account of the contents of the document. The person who does not have knowledge of the facts can't be allowed to give his opinion because such opinion is called hearsay evidence. But the Indian evidence act itself provided an exception to this rule by incorporating the provision relating to relevancy of expert opinion. Expert though does not have direct knowledge of the facts in issue in the judicial proceedings but his opinion is relevant and may be taken in consideration by the court. Specific law has not been codified relating to expert opinion but provisions relating to

expert/scientific opinion are incorporated under Indian Evidence Act¹, Code of Criminal procedure² and under Code of Civil procedure³. The decision in any case can't be formed solely on the ground of report of an expert however help may be taken from such report.

Who is an Expert:

The term expert may be defined as under.

“A person with a high level of knowledge or skill relating to a particular subject or activity”⁴.

“An individual of recognized knowledge in any particular area confirmed by academic standing and publications is called an expert”⁵.

From the definitions mentioned above it is clear that expert is a person who has special knowledge in any particular area which he earns on the bases of his study, experience. Such person acquires special knowledge in the field of either foreign law or science or art. Courts has to take the help of such experts when court has to form an opinion about any particular fact which otherwise can't be proved. Experts in forensic science or figure print expert of person having special knowledge in medical science or foreign law are included in the category of an expert. Section 45 of Indian Evidence Act provides that the opinions of persons specially skilled in foreign law or art or question on identification of handwriting or figure expression are relevant as expert opinion.

What is an expert opinion

Expert opinion is the inference of a person having special knowledge in any particular field. The person called an expert gives his unbiased conclusion about the fact. As the expert is supposed to have special knowledge in a particular field, he is also supposed to submit accurate and unbiased report on the matter. The conclusion/inference reached by such expert may be treated as expert opinion. However the term expert opinion is defined in Webster's dictionary as follows, “A brief or judgment about something given by an expert on the subject is expert opinion”⁶.

Types of experts

Section 45 of Indian Evidence Act provides that the person having special knowledge in the area of foreign law or science or art, identification of handwriting or figure impression is an expert. But the list of experts is not limited only to those mentioned above. By the advancement of time the list of experts is widened. Different types of experts are as follows.

¹ Section 45, Indian Evidence Act, 1872

² Section 293, Code of Criminal Code

³ Order 26, Rule 10 A, Code of Civil Procedure

⁴ Cambridge dictionary meaning

⁵ Webster's law dictionary

⁶ Webster's Dictionary meaning

Expert of foreign law

The person having specific knowledge about the law implemented outside India and in a particular county is called the expert in foreign law. People residing in India supposed to know the law implemented in India but in the matters of foreign law, court has to take assistance of such person who has specific knowledge in the foreign law. Section 45 of Evidence Act provides that person specially skilled in foreign law is an expert.

Expert of science or art

There are various branches of study in art and science. The person who has gained special knowledge by studying in that particular field is called expert of science or of art. When a person conducts any research in the field of science, he becomes able to draw an opinion about a particular fact on the bases of his research and therefore his opinion becomes relevant. Expert of an art is also specially skilled in particular art and therefore his opinion may also be taken in to consideration.

Expert of identification of Handwriting

Expertise in this field is related to science and art both. The person becoming expert in this field has to study the art by which he identifies the handwriting of a person by comparing it with previously admitted handwriting. The expert identifying the handwriting has to study science also for expressing his opinion on such matter. Unless the person has specialization in both the fields his opinion will not be relevant.

Expert of finger impression

Section 45 of Evidence Act provides that the person having special knowledge in identifying the figure impression is called an expert. This kind of expertise is related to the field of science. Forensic scientists are supposed to be expert in identifying the finger prints because they have special skill in this field and therefore their opinion is relevant.

Medical expert

Medical expert is the person who has possessed a proper degree in medical science. Opinion of a medical expert is relevant as per the provisions of code of criminal procedure. Section 53, 53 A and 54 of Cr. p. c. provides the specific provision for medical examination of the accused person by the registered medical expert and the report submitted by such medical expert is relevant as well as forms part of the police report.

Forensic expert

Although Evidence Act and Cr.p.c. do not provide for such kind of expert, they play an important role in the criminal investigation. When the death of any person is caused by poison or chemical and any conclusion can't be specifically drawn apparently then the help of forensic expert can be taken and opinion of such expert is relevant in the proceedings. Moreover the opinion of a forensic expert can also be relevant in the cases when the cause of death can't

be ascertained. There may seem to be overlapping in medical expert and forensic expert but the area of expertise of forensic experts is wider than the medical experts. The law enforcement agencies usually take the help of forensic experts in technical matters.

Cyber and other experts

Cyber expert is a person who has knowledge and experience in the field of computer. By the advancement of time importance of cyber experts is increased. Section 45 A of Indian evidence act provides that when the court has to form an opinion on the matters which involves transmission of information by computer resources or other electronic form, opinion of the person having knowledge in computer is relevant.

The persons who though do not fall under any of the above mentioned categories but who are expert of their filed on the basis of their work experience and court may take the help of such experts if needed. Those experts are Automobile expert, electrician, research expert, scientific expert in flora and funna, agriculture expert etc.

2. Law relating to expert opinion

There is no exhaustive law which provides the provisions for expert opinion. The provisions relating to expert opinion can be summarized as under.

Under Indian Evidence Act

Provisions relating to expert opinion are provided under section 45 of Indian Evidence Act. In the judicial proceedings the evidence of the party and the witnesses is relevant only. The person who has not seen the occurrence of any crime or who is not the party to any suit or proceedings has no right to give evidence. Therefore the evidence/statement of an expert has made relevant in Indian Evidence Act under the head "*opinion of third persons, when relevant*". Section 45 provides the law relating to relevance of opinion of an expert as follows:

"When court has to form an opinion on any point of foreign law, science or art, or relating to identity of handwriting or finger impression, the opinion on such points of such persons who are specially skilled in that field is relevant and such person is called an expert".

Under Code of Criminal Procedure

Provision relating to use of report of government scientific expert in any inquiry, trial or other proceedings is provided under section 293 of code of criminal procedure as follows:

"When any matter is submitted to any government scientific expert for examination or analysis, the report made and submitted under his hand relating to such examination or analysis may be used in any inquiry, trial or other proceeding".

The section further provides that “When such report is used in any inquiry, trial or other proceeding, the court may also examine such expert on the subject matter of such report”.

Under Code of Civil Procedure

Code of civil procedure under Order 26 Rule 10 A provides that the court may issue a commission for the investigation of such matters which involves the question of scientific investigation. The order 26 Rule 10 A provides as under:

“If any question is arises before the court in any suit involves the scientific investigation, the court may in the interest of justice issue a commission for the investigation of such matter if such matter can’t be investigated in the court”.

Different act and code provide different type of provision relating to relevancy and use of expert opinion. The law relating to expert opinion is neither specific nor exhaustive. The laws are co-related to each other. The explanation of crimes and their punishment is provided in criminal law whereas the procedure for trial of the criminal is provided in code of criminal procedure and the law relating to admissibility and relevancy of the evidence is contained in evidence act. It is the general rule of evidence that all admissible evidence is relevant but all relevant evidence is not admissible. Therefore the opinion of an expert may be relevant only if in the opinion of court it is able to prove the facts in issue before the court.

3. Lacuna in law relating to expert opinion

There are many drawbacks in the law relating to expert opinion. Some may be discussed as under:

1. No specific law

Although provisions are incorporated under Indian Evidence act, Code of Criminal procedure and Code of civil procedure for relevancy and use of opinion of an expert but no specific law is enacted as to the authenticity of opinion of an expert. As earlier mentioned the law is inter-connected and one act is supplemental to other. Sometimes the law provided under one act/code may become contradictory to other which may create hurdle in the way of imparting justice.

2. Not substantive

There is no substantive law relating to expert opinion. Though provisions are incorporated under code of criminal procedure, code of civil procedure and Indian evidence act, the opinion of an expert can’t be admitted in the court without any corroboration. Courts are not bound to take in to consideration the opinion of an expert. As the law relating to admissibility and relevancy of expert opinion is not specifically codified, the opinion of experts is considered less important.

3. Difference in opinion may cause problem

In most of judicial proceedings experts are appointed by the parties and it may also be seen that more than one expert are appointed in one proceeding and they may give different opinions on the subject matter submitted to them for opinion. The difference of opinions may cause delay in the proceeding and may cause harm to the interest of justice.

4. Based upon hearsay evidence

In any inquiry, trial or proceeding before the court evidence of the person who has full knowledge of the facts and circumstances of the case is relevant. It is called direct evidence. Sometimes when the direct evidence is not available, the facts in issue may be proved with the help of establishment of chain of circumstances but the hearsay evidence is not admissible. Expert opinion is a kind of hearsay evidence because the expert has not seen the commission of crime; he is giving his opinion only describing the manner in which the crime may have been committed. Therefore the expert opinion may be relevant can't be sole ground of decision of the court.

5. Not conclusive

The words used in section 45 makes it clear that the court can form an opinion about the existence or non existence of any fact or foreign law, art or science or identification of handwriting etc upon the opinion of an expert. Court may take in to consideration such opinion but such opinion is not conclusive and binding on the court.

6. Experts may also incapable in giving any opinion

The experts express their view on any matter according to the symptoms produced by such subject. Sometimes delay may be caused in submitting the subject matter to the experts and in that case experts are not capable in giving any opinion. For e.g. after laps of considerable time the postmortem report may not disclose the cause of death due to deterioration of the body.

4. Judicial approach on expert opinion

Section 45 of evidence act itself provides that the court can only form its opinion on the technical matters involving the question of science or foreign law or art, identification of handwriting or finger impression but the importance of expert opinion s decided by Hon'ble Apex court through its judgments.

In *State of H. P. vs. Jai La and others*⁷ Hon'ble Supreme Court held that according to the provision of evidence act the opinion of a person who has special knowledge or skill in foreign law, art or science or in the matters of finger impression or handwriting is relevant only. It is therefore necessary that the person must have gained special skill based upon his special study of such subject to become an expert and his evidence shall be relevant.

⁷ AIR 1997 (7) SCC, 280

In the case of *Balkrishan Das vs. Radha Devi*⁸ Allahabad High Court held that if the court is willing to draw a conclusion of the case on the opinion of an expert, it is necessary that the expert must present in the court for his examination. His opinion can't be taken in to consideration unless he has been examined in the court as a witness.

While deciding the evidentiary value of an expert opinion Hon'ble apex court in the case of *Murari Lal vs. State of M.P.*⁹ held that the court is bound to consider the expert opinion and may ask for corroboration but if in any particular case the case has been proved crystal clear by the report of an expert, it would not be justified to reject the opinion of an expert and the court can rest its judgment on the opinion of an expert.

It is therefore decided by the court that although the court can take the help of an expert in technical matters/issue but it would not be safe to consider that opinion without examining the expert and without corroboration.

Conclusion and suggestion

Although the opinion of an expert possesses an important place in the judicial proceedings but the problem with the evidence of an expert is that it is an opinion and deemed as hearsay evidence. Hearsay evidence is neither admissible nor relevant in the judicial proceedings. It is therefore necessary that there should be a separate and specific codified law relating to expert opinion. Today in the cyber era and pandemic time with covid – 19 the picture has been completely changed. Now the courts are in favour of incorporating the e-court system and for that purpose Hon'ble apex court while exercising its original civil jurisdiction suo moto issued guidelines for the same. But after all the efforts of the court the problem regarding the evidentiary value of expert opinion is as it is because the opinion of an expert is still an opinion and comes in the category of hearsay evidence. It is therefore suggested that a specific law relating to expert opinion must be codified and implemented. If the opinion of an expert proves the case beyond all the doubts then the court should not hesitate in pronouncing the judgment based upon the opinion. Experts are specially skilled in the matters in which they are giving their opinion and therefore the opinion may be taken in to consideration but with some guidelines of the apex court.

⁸ AIR, 1989, ALL, H.C., 133

⁹ AIR, 1980 (1) SCC, 704