

Sections 45 to 50

EXPERT OPINION

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- ✘ Expert's Opinion and its admissibility & relevancy:
- ✘ Sec. 45 to Sec.51 Provide relevancy of opinion of third persons, which is commonly called as expert's opinion.
- ✘ These provisions are exceptional in nature to the general rule that evidence is to be given of the facts only which are within the knowledge of a witness.
- ✘ The exception is based on the principle that the court can't form opinion on the matters, which are technically complicated and professionally sophisticated, without assistance of the persons who have acquired special knowledge and skill on those matters.

CONDITIONS FOR ADMITTING AN EXPERT OPINION ARE FOLLOWING:-

**That the dispute can't be resolved
without expert opinion and**

**That the witness expressing
the opinion is really an expert.**

WHO IS AN EXPERT?

- ✘ The definition of an expert may be referred from the provision of Sec.45 of Indian Evidence Act that an 'Expert' means a person who has special knowledge, skill or experience in any of the following---

- 1) foreign law,
- 2) science
- 3) art
- 4) handwriting or
- 5) finger impression

and such knowledge has been gathered by him—

- a) by practice,
 - b) observation or
 - c) proper studies.
- ✘ d) skilled
 - ✘ e) experience

- ✘ For example, medical officer, chemical analyst, explosive expert, ballistic expert, fingerprint expert etc.
- ✘ An expert witness is one who has devoted time and study to a special branch of learning and thus he is specially skilled on those points on which he is asked to state his opinion. His evidence on such points is admissible to enable the court to come to a satisfactory conclusion.
- ✘ **Duty of the expert:-**
 - a) An expert is not a witness of fact.
 - b) His evidence is of advisory character.
 - c) An expert deposes and does not decide.
 - d) An expert witness is to furnish the judge necessary scientific criteria for testing the accuracy of the conclusion so as to enable the judge to form his independent judgment by application of the criteria to the facts proved by the evidence.

VALUE OF EXPERT OPINION:-

- ✘ The Expert evidence has two aspects ---
 - a) Data evidence [it can't be rejected if it is inconsistent to oral evidence]
 - b) Opinion evidence [it is only an inference drawn from the data and it would not get precedence over the direct eye-witness testimony unless the inconsistency between the two is so great as to falsify the oral evidence] -- [Arshad v. State of A.P. 1996 CrLJ 2893 (para34) (AP)]

Expert evidence is opinion evidence and it can't take the place of substantive evidence. It is a rule of procedure that expert evidence must be corroborated either by clear direct evidence or by circumstantial evidence.

It is not safe to rely upon this type of evidence without seeking independent and reliable corroboration -

DIFFERENCE BETWEEN EVIDENCE OF AN EXPERT AND EVIDENCE OF AN ORDINARY WITNESS

Expert Evidence and ordinary witness

- ✘ 1. Expert gives his opinion regarding handwriting, finger impression, nature of injury etc.
- 2. It is advisory in character.
- 3. Court can't pass an order of conviction on the basis of expert opinion, as because it is not conclusive.
- 4. Expert gives his opinion on the basis of his experience, special knowledge or skill in the field
- ✘ .1. An ordinary witness states the fact relating to the incident.
- 2. Witness states the facts. Opinion of a witness is not admissible.
- 3. Court may pass an order of conviction on the basis of evidence of ocular witness (eye witness).
- 4. A witness gives actual facts connected with the incident what he had seen or heard or perceived.

THE FOLLOWING KINDS OF EXPERT OPINION MAY BE RELEVANT:-

× 1) Foreign law:-

Foreign law can be proved -

- a) by the evidence of a person specially skilled in it and
- b) by direct reference to the books printed or published under the authority of the foreign government.

2) Science or art:-

The Science or art includes all subjects on which a course of special study or experience is necessary to the formation of an opinion.

“Science” or “art” is not limited to higher science or fine art, but it has its original sense of handicraft, trade, profession and skill in work which has been carried beyond the sphere of the common pursuits of life into that of the artistic and scientific action.

The following matters are included in the ‘science’ and art and the expert opinion of these matters are relevant:-

✘ **Medical opinion:-**

The value of Medical evidence is only corroborative. A doctor acquires special knowledge of medicine and surgery and as such he is an expert. Opinions of a medical officer, physician or surgeon may be admitted in evidence to show--

- a) Physical condition of the a person,
- b) Age of a person
- c) Cause of death of a person
- d) Nature and effect of the disease or injuries on body or mind
- e) Manner or instrument by which such injuries was caused
- f) Time at which the injury or wounds have been caused.
- g) Whether the injury or wounds are fatal in nature
- h) Cause, symptoms and peculiarities of the disease and whether it is likely to cause death
- i) Probable future consequences of an injury etc.

✘ When there is a conflict between the medical evidence and ocular evidence, oral evidence of an eye witness has to get primacy as medical evidence is basically opinionative. Where the direct evidence is not supported by the expert evidence, the evidence is wanting in the most material part of the prosecution case and therefore, it would be difficult to convict the accused on the basis of such evidence. If the evidence of the prosecution witnesses is totally inconsistent with medical evidence, it is the most fundamental defect in the prosecution case and unless this inconsistency is reasonably explained, it is sufficient to discredit the evidence as well as the entire case

✘ 3) Handwriting:-

• Like other expert opinion, the opinion of handwriting expert is advisory in nature. The expert can compare disputed handwriting with the admitted handwriting and give his opinion whether one person is the author of both the handwriting.

• The court shall exercise great care and caution at the time of determining the genuineness of handwriting. A handwriting expert can certify only probability and 100% certainty. On the question of the handwriting of a person, the opinion of a handwriting expert is relevant, but it is not conclusive and handwriting of a person can be proved by other means also.

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• The following are the different modes of proving handwriting:-

i) A person who wrote the document can prove it. (Sec.47)

ii) A person who saw someone writing or signing a document can prove it (Sec.47)

iii) A person who is acquainted with the handwriting by receiving the documents purported to have been written by the party in reply to his communication or in ordinary course of business, can prove the documents (Sec.47)

iv) The court can form opinion by comparing disputed handwriting with the admitted handwriting. (Sec.73)

v) The person against whom the document is tendered can admit the handwriting. (Sec.21)

vi) The expert can compare disputed handwriting with admitted handwriting and thereby prove or disprove whether the documents were written by the same or different persons. (Sec.45)

✘ 4) **Fingerprint expert:-**

Expert opinion on fingerprints has the same value as the opinion of any other expert. The court will not take opinion of fingerprint expert as conclusive proof but must examine his evidence in the light of surrounding circumstances in order to satisfy itself about the guilt of the accused in a criminal case.

5) **Ballistic expert:-**

A ballistic expert may trace a bullet or cartridge to a particular weapon from which it was discharged. Forensic ballistics may also furnish opinion about the distance from which a shot was fired and the time when the weapon was last used.

6) **Evidence of tracking dogs:-**

Trained dogs are used for detection of crime. The trainer of tracking dogs can give evidence about the behavior of the dog. The evidence of the tracker dog is also relevant U/s-45.

45. OPINIONS OF EXPERTS –

- ✘ When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger-impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions, are relevant facts. Such person called experts.
- ✘ Illustrations
- ✘ (a) The question is, whether the death of A was caused by poison. The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

45A OPINION OF EXAMINER OF ELECTRONIC RECORD

- ✘ When court has to form an opinion on any matter relating to any information transmitted or stored in computer resource or any other electronic or digital form, the opinion of examiner of electronic evidence is relevant
- ✘ Section 47 A -- opinion as to electronic signature when relevant -- opinion of certifying authority relevant

46. FACTS BEARING UPON OPINIONS OF EXPERTS –

Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinion of experts when such opinions are relevant.

- ✘ Illustrations
- ✘ (a) The question is, whether A was poisoned by a certain poison.
- ✘ The fact that other persons who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

47. OPINIONS AS TO HANDWRITING, WHEN RELEVANT –

When the Court has to form an opinion as to the person by whom document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

- ✘ Explanation – A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received document purporting to be written by that person in answer to documents written by himself to under his authority and addressed to that person, or when in the ordinary course of business document purporting to be written by that person have been habitually submitted to him.

- ✘ Illustrations
- ✘ The question is whether a given letter is in the handwriting of A, a merchant in London. B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. G is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted thee letters purporting to be written by A for the purpose advising with him thereon. The opinions of B,C and D on the question, whether the letter is in the handwriting of A, are relevant though neither B, C or D ever saw A, write.

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- ✘ 47A. Opinion as to digital signature when relevant –
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 - ✘ 147A. Opinion as to digital signature when relevant.—When the Court has to form an opinion as to the digital signature of any person, the opinion of the Certifying Authority which has issued the Digital Signature Certificate is a relevant fact.

48. OPINION AS TO EXISTENCE OF RIGHT OR CUSTOM WHEN RELEVANT -

When the Court has to form an opinion as to existence of any general custom or right, the opinions as to the existence of such custom or rights, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation - The expression “general custom or right” includes customs or right common

Illustrations

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

49. OPINION AS TO USAGE'S, TENANTS, ETC., WHEN RELEVANT -

When the Court has to form an opinion as to -

- the usage's and tenants of any body of men or family,
- the constitution and government of any religious or charitable foundation, or
- the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

50. OPINION ON RELATIONSHIP, WHEN RELEVANT

- ✘ When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:
- ✘ Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860).
- ✘ Illustrations
- ✘ (a) The question is, whether A and B were married. The fact that they were usually received and treated by their friends as husband and wife, is relevant.
- ✘ (b) The question is, whether A was the legitimate son of B. Fact that A was always treated as such by members of the family, is relevant.