

# Expert witnesses under the Indian Evidence Act, 1872

## Introduction

Generally, when a person is summoned to court for giving testimony as a witness, he is expected to state only facts and not to give any opinion. It is the job of the court to form an opinion in the case. Moreover, if a person is asked to give his testimony then it is expected that the person must be factually related to the case not merely a third party.

But there is an exception to this rule. The experts are considered as witnesses although they are not actually related to the case. The court requires these experts to give an opinion regarding the case to help the court in having a wider perspective to give justice. The rationale behind the same is that it is not practical to expect the Judges to have adequate knowledge of medical issues [1]. The statutes regarding the experts' opinion are discussed in [The Indian Evidence Act, 1872](#).

## Who is an expert?

The court cannot form a correct judgement without the help of a person with special skills or experience in a particular subject. When the court needs an opinion in a subject which requires special assistance, the court calls an expert, a specially skilled person. The opinion given by a third person is considered as relevant facts if the person testifying is an expert.

For example, the court was confused that a letter has been written by person 'X' or not. The court calls a handwriting expert to find out the same. This person will be known as an expert and the opinion which he gives in the case is relevant.

Expert is defined under section 45 of [The Indian Evidence Act, 1872](#). The court needs an expert to form an opinion upon:

- Foreign law
- Science & Art
- Identity of Handwriting
- Identity of finger impression
- Electronic evidence

Only in the expertise in the above-said fields, a person's opinion is considered to be an expert opinion. If a field not mentioned above requires an opinion, it is not considered as an expert opinion. There have been cases such as: [2]

- The disposition or temper of animals
- Colour, weight or scale of similar facts
- Age of a person
- If a man or women were intimate
- If a person was intoxicated or not

If an expert is giving an opinion, it is considered as a relevant fact for the case. An expert has devoted his time in learning a special branch of expertise and thus is specially skilled in the subject. It can include:

- Superior knowledge, and
- Practical experience

The court of law, before admitting any of the opinion made by an expert, needs to ensure that the person is an expert under the law. If it is found that the person is not an expert, his opinion is discarded by the court. For checking that the witness is an expert, he must be examined and cross-examined [3]. A person becomes an expert by:

- Practice,
- Observation, or
- Experience

In the case of *Ramesh Chandra Agrawal vs Regency Hospital Ltd. & Ors.*, [4] the court stated that the first and foremost requirement for expert evidence to be admissible is that it is necessary to hear the expert evidence. **The test is that the matter is outside the knowledge and experience of the layman.** People who can be termed as an expert are explained in detail below.

## Handwriting expert's opinion (Section 47)

When the court has an opinion that who has written or signed a document the court will consider the opinion of a person who is acquainted with the handwriting. That person will give an opinion that particular handwriting is written or not written by that particular person or not.

The handwriting of a person may be proved in the following ways:

- A person who is an expert in this field
- A person who has actually seen someone writing, or
- A person who has received any document which is written by the person whose handwriting is in question or under the authority of such person and is addressed to that person

- A person who regularly receives letters or papers which are written by that person
- A person who is acquainted with the signatures or writing of that person
- A certifying authority who has issued a digital signature certificate when the court has formed an opinion as to the digital signature of a person. This is mentioned under section 47-A of the act.
- The evidence of the writer himself. This is mentioned in section 60 of the act.
- If another person admits that the documents were written by him. This is mentioned in section 21 of the act.
- A person who has seen the person writing or signing. This is mentioned under section 60 of the act.
- When the court himself compares the document in question with any other document which is proved genuine in the court. This is mentioned in section 73.
- The court may ask the person to write something for the court to compare it with the document in question.

For example, Ms. Pinky claims in the court that she has not signed any document for sale of her property. To match her signatures with the one on papers, the court calls Mr. Raju who is the personal assistant of Ms. Pinky. Mr. Raju's job is to get all the official documents of the company to be signed by Ms. Pinky. Mr. Raju gives a testimony that the papers were signed by Ms. Pinky only. Here, Mr. Raju will be termed as an expert under the meaning of s. 47 as he has seen Ms. Pinky signing the documents and regularly receives such papers.

However, there have been several instances where the courts have been discouraged to decide cases of matching of signatures without evidence and merely on inspection. The court needs to work with the utmost care and caution in determining the authenticity of the documents.

## Opinion for Electronic evidence (Section 45A):

When a piece of information is transmitted or stored in a computer system and the court needs assistance or opinion for the same in any case; they refer an examiner of electronic evidence. This examiner of electronic evidence is known as the expert in such cases.

For this section, electronic evidence includes any information transmitted or stored in any computer resource or any other electronic or digital form for which the opinion of electronic evidence examiner is required as per section 79A of the Information Technology Act, 2000.

## Opinion for foreign law (Section 38 r/w Section 45)

When there is a law prevailing in any foreign country which needs to be considered for giving judgement in any case, the court needs an expert who is well versed with that law.

Otherwise, the court can take opinion from a law-book which contains the answer regarding any foreign law. These books must be printed or published under the authority of the government of that country. Other reports of the ruling of the courts can also be taken as relevant which are given in such books of foreign law.

Foreign law in India is always considered as a question of fact [5]. There have been cases where the court has interpreted personal laws as Indian laws and thus are the laws of the land [6]. Therefore, the court does not require a person to interpret the law as the courts can do that task on their own.

## Opinion for fingerprint

Generally, finger impression expert's opinion is given more value because: [7]

- The fingerprints of any person remain the same from their birth till death, and
- No two individuals' are ever found to have the same finger impressions

Footprint studies are gaining importance nowadays but the courts have been reluctant to accept that as a piece of evidence. A person, who is a fingerprint expert, is called to match two or more fingerprints, than the opinion of such an expert is relevant and admissible in the court.

## Opinion for Science or Art

The words 'Science and Art' are to be broadly constructed. The term 'science' is not limited to higher sciences and the term 'art' is not limited to fine arts, but having its original senses of handicraft, trade, profession and skill in work.

To construe that if any expertise comes under the head of 'art' or 'science'; the following tests can be applied [8]:

- Is the subject matter of the injury such that inexperienced people are not capable of forming a correct judgement without the assistance of experts?
- Is the character of a science or art as such that it requires a course or a study to obtain a competent knowledge or skill.

Science and Art signify the activities which include the fields which require special knowledge or expertise form an opinion. Before designating that a person is an expert, it needs to be checked that the field or the matter on which we are seeking the opinion should not be something which can be easily understood by layman or court without any special knowledge or skill.

The scientific question involved is assumed to be not within the court's knowledge. Thus cases, where the science involved, is highly specialized and perhaps even esoteric, the central role of an expert cannot be disputed [9].

Every science has its own technical terms, which are so much Greek or Hebrew to the average jurymen. What would the Ordinary man make of this answer to a question whether a certain dose of a prescription containing chloral would have been dangerous! [10]

There can be various categories which can be treated under art and science. Some of them are discussed below for better understanding.

## Opinion of Medical Expert

In many cases, the opinion of medical experts is required. Especially in criminal cases, the medical examination of accused and victim is necessary. When in a case, the court requires some opinion which involves medical technicalities, they ask medical officers.

Opinions of a medical officer can be used to prove: [11]

1. The Physical condition of the person,
2. Age of a person
3. Cause of death of a person
4. Nature and effect of the disease or injuries on body or mind
5. Manner or instrument by which such injuries were caused
6. Time at which the injury or wounds have been caused.
7. Whether the injury or wounds are fatal in nature
8. Cause, symptoms and peculiarities of the disease and whether it is likely to cause death
9. Probable future consequences of an injury etc.

Say in a rape case, the medical report of the victim and accused are of great importance. If the medical officer says that he thinks that act was not consensual referring to the injuries on the body of the victim and the nail scratches on the body of the accused, this opinion carries a lot of importance.

But the problem with these experts is that they are always called by one party only who has evidenced in their favour. This is the reason that the court is reluctant to rely completely upon the views and opinions of the expert though they consider the same while imparting their judgement.

In other cases, if the court finds that the expert's opinion is in contradiction with the opinion of an eye-witness then for obvious reasons, the normal witness's opinion is given preference over the expert's

opinion. This is because the expert's statement is just opinionative whereas the other witness's statement is based upon the facts of the case.

## Opinion of Ballistic Expert

Ballistic experts, also known as firearms expert are people who are experts in the study of projectiles and firearms. Their help is taken in cases say where guns are involved.

A ballistics 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. [12]

It must be noted that the opinion of the ballistics expert can be taken into consideration only when he himself has given the report. In the case where the expert gives opinion only by looking at the picture of the wound, the court denied relying upon such opinion. [13]

## Evidence of Tracking Dog

Trained dogs are used for the detection of crime. The trainer of tracking dogs can give evidence about the behaviour of the dog. The evidence of the tracker dog is also relevant u/s 45. [14]

**Moreover, Sec.293 Cr.P.C. provides a list of some Govt. Scientific Experts as following:-**

- Any Chemical Examiner / Asstt. Chemical examiner to the Govt.
- The Chief Controller of explosives
- The Director of the Fingerprint Bureau
- The Director of Haffkein Institute, Bombay
- The Director, Dy. Director or Asstt. Director of the Central and State Forensic Science Laboratory.
- The Serologist to the Govt.
- Any other Govt. Scientific Experts specified by notification of the Central Govt.

## What is the Evidentiary Value of an Expert Opinion

The data given by the expert are relevant and admissible. If any oral evidence contradicts the data/report; it will not make the data evidence obsolete. But, as per *section 46*, in case any fact is in

contradiction to the opinion of the expert, that fact becomes relevant. If the opinion of the expert is relevant, the contradictory fact becomes relevant even though it was not relevant as such. The value of expert opinion depends upon the facts on which he is based and the competency of such expert in forming a reliable opinion.

However, the personal appearance of the expert in the court can be excused unless the court expressly asks him to appear in person. In such a case, where the expert is excused, he can send any responsible officer who is well versed with the facts of the case and the report and can address the court with the same.

If a judge relies upon the opinion of the expert only and not on the facts and the testimony of ordinary witnesses to give judgement then is the weakness of the case. This is because even if a person is an expert in his field, he cannot be termed as a direct witness and cannot give a statement on the facts of the case. He is just giving an opinion as per the evidences given to him and cannot draw a conclusion regarding the guilt of the accused in all the cases.

The evidence given by the expert is just an opinion and is not a fact-based testimony and thus are given slight value. This is the reason that eye-witnesses or other factual witnesses are given a priority over the expert's opinion. This is because opinion evidence cannot supersede substantive evidence. No expert can claim that he could be absolutely sure that his opinion was correct, expert depends to a great extent upon the materials put before him and the nature of the question put to him. [15]

However, the evidentiary value of an expert's opinion depends upon the facts and circumstances. For example, if there is a dispute as to who is the biological parent of a child, the DNA report of the Medical expert is of great importance. If the expert says that the DNA of the child or parents matches, then it is a relevant fact in deciding the case.

But in case if a handwriting expert says that the signatures matches or not matches with the person; this fact does not hold much value because there can be a possibility that the person has practiced a lot to copy the signature. But on the other hand, DNA cannot be copied or changed.

Privy council once observed that 'there cannot be any more unsatisfactory evidence than that of an expert.' In the case of *Emperor v. Kudrat* [16], the court held that when the expert is giving an opinion upon the age by observing only the height, weight and tooth; it cannot be relied upon.

The court must be satisfied that the accused is guilty. The court cannot hold him guilty mere because an expert has said that in his opinion, the person is guilty. The court needs to look into the evidence along with the opinion of the expert before giving any judgement or order.

## Difference between the testimony of an expert and an ordinary witness

<b>Basis of Distinction</b>	<b>Expert Witness</b>	<b>Ordinary Witness</b>
<b>Reasoning of Statement</b>	The statement of the expert witness is not confined to what has taken place. He can additionally give his personal opinion with respect to the case. For example, a doctor may not have attended the victim but he can still give his opinion as to the cause of death of the victim and the after-effects of certain poison.	The statement of an ordinary witness is based upon facts. He is not allowed to give any opinion, inferences or conclusions regarding the case because it is the job of the court.
<b>Reference to past experiences</b>	An expert can refer to and rely upon the experiments conducted by him in absence of the other party.	An ordinary witness has no such right where he can refer to any past experience to support his statement.
<b>Refreshing the memory</b>	An expert can refer to well-known books, can quote passages from the same as a reference for refreshing his memory.	An ordinary witness cannot has a reliance upon any such books because his statement is based upon facts and not technical knowledge.
<b>Stating facts other than the case</b>	The experts can state facts of other cases which are similar to the present case in order to support their opinion.	The layman is giving statement based upon facts and thus cannot rely upon other judgements as the court deals with different cases differently depending upon the facts and circumstances of the case.
<b>Qualification to be a witness [17]</b>	<p>A person is known to be a witness by its knowledge, experience, skill, training and education.</p> <p>The following points can be noted to find an expert:</p> <p>(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;</p> <p>(b) the testimony is based on sufficient facts or data;</p>	<p>An ordinary witness does not require any specialized skill or knowledge to give the statement.</p> <p>A person can be testified as an ordinary witness in the following cases:</p> <p>(a) rationally based on the witness's perception;</p> <p>(b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and</p>



	<p>(c) the testimony is the product of reliable principles and methods; and</p> <p>(d) the expert has reliably applied the principles and methods to the facts of the case.</p>	(c) not based on scientific, technical, or other specialized knowledge
<b>Personal Knowledge</b>	Experts may use their knowledge or skill to draw conclusions	Lay witnesses can only base their opinions on information they personally observed.
<b>When can a witness testify</b>	Expert witnesses can give testimony even when there is no sufficient evidence to support a finding. The Immoral Traffic (Suppression) Act was passed in 1956	Lay witnesses are constrained by relying on information they have gained through personal knowledge and rationally based perception. It is thus required that a witness may only testify if the evidence is sufficient to support a finding that the witness has personal knowledge of the matter.
<b>Personal Observations</b>	Expert witnesses are not required to be at the crime scene or witness the crime. They are not even expected to have knowledge about the facts of the case.	Lay witnesses may testify to their perception of the incident if obtained through earlier personal observations. Lay witnesses can offer opinions relating to degrees of light, sound, weight and distance as well as a person's appearance, identity, or manner of conduct.
<b>Hypothetical Situations</b>	Expert witnesses are expected to answer hypothetical situations and can also refer to past cases or medical situations to answer the questions.	Ordinary witnesses are not expected to give answers to hypothetical situations. They are just supposed to give the facts they already know.
<b>Disclosure Rules</b>	Expert witnesses must disclose to the opposing party a report previewing the expert's proposed testimony. The report must be sufficiently detailed and contain "all opinions the witness will express and the basis and reasons for them".	There is no such obligation upon the ordinary witnesses.
<b>Judicial Scrutiny</b>	Expert's opinion goes through high-end judicial scrutiny and is less reliable since they are based upon opinion and not facts. They are	The statement of an ordinary witness is considered more reliable as compared to that of an expert. This is because the testimony of a layman is based upon facts. If in any case, his statement contradicts

	just the perspective of the expert and he needs to establish the reliability of his testimony.	with the opinion of the expert; his statement will be given an upper hand than the expert.
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## Conclusion

Unlike an ordinary witness, expert witnesses have a separate standing as a witness in a court. It is interesting to note that an expert's report cannot be questioned in the court. The report is questioned when the ability and knowledge of the expert to make that report is in question. The experts are judged with a different eye by the court since they are just giving an opinion and are not aware of the facts of the case. But still, an expert's opinion matters as the court has no knowledge of that particular field of expertise and they will not be able to impart justice without seeing the other side of the coin.