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## Balancing Expertise and Fairness: The Use of Expert Opinions in Modern Legal Systems

Sindhu Panambur<sup>a</sup>

<sup>a</sup>Symbiosis Law School, Pune, India

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*Expert evidence plays a crucial role in the legal system, providing specialised knowledge to assist judges and juries in understanding complex issues outside ordinary experience. This evidence, typically presented by individuals with advanced qualifications or extensive experience in specific fields, illuminates facts pertinent to a case, facilitating informed decision-making. The use of expert witnesses spans various domains, including medicine, engineering, finance, and forensic science, each contributing unique insights that can significantly influence the outcomes of legal proceedings. The admissibility of expert evidence is governed by legal standards, which vary across jurisdictions but generally emphasise the need for reliability, relevance, and the expert's qualifications. Despite its potential benefits, expert evidence raises concerns about biases, the commodification of expertise, and the disparity in the accessibility of expert resources. Emerging technologies are also reshaping the landscape of expert evidence. While these innovations promise to enhance the accuracy and efficiency of expert analyses, they also introduce new challenges regarding the interpretation of algorithms and the transparency of methodologies. Expert evidence is a critical component of the legal process, bridging the gap between specialised knowledge and legal standards. Its effective utilisation hinges on carefully considering admissibility criteria, managing biases, and integrating new technologies.*

**Keywords:** *evidence, expert opinion, evidentiary value, fairness, reliability*

## INTRODUCTION

The judiciary aspires to reach comprehensive, unambiguous, just and fair conclusions in a matter with the help of pieces of evidence before it<sup>1</sup>. Hence, evidence plays a crucial role in every judicial proceeding. However, more often than not, the judiciary cannot assess specific evidence, which could be due to the technical nature of the evidence. The technicality of the evidence makes it difficult for the judiciary to understand. This is when the expert evidence is employed.

Initially, the courts limited the assistance of experts in fields like medicine, engineering, and stockbrokers. However, the need for expert opinion increased with the constant development of science and technology. Hence, the judiciary seeks the expert's opinion whenever the courts or tribunals must form an opinion on technical issues related to foreign laws, science or art. The expert opinion helps the judiciary to form an unbiased opinion<sup>2</sup>. The expert opinion has advisory power; hence, it is not binding on the court<sup>3</sup>. Expert opinion, however, cannot be used for conclusive proof; it merely acts as corroborative evidence. However, any irrelevant fact may become relevant if consistent with the expert opinion<sup>4</sup>.

The legal system faces challenges regarding the admissibility and reliability of expert evidence. While admitting scientific evidence, the courts face difficulty choosing the veracity of the scientific explanation that the expert witness tenders. Hence, the experts are called to the court to be examined. It is also observed that an expert's opinion cannot be considered more reliable than the ocular evidence. Hence, the courts do not base their decision only on expert evidence unless it is corroborated by independent evidence. Through this paper, the author attempts to conceptualise the concept of expert evidence through laws relating to expert opinion and the evidentiary value of expert opinion in trials by thoroughly studying Apex Court judgments.

## RESEARCH QUESTIONS

1. How does the admissibility of expert testimony influence the outcome of judicial proceedings?

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<sup>1</sup> The Arbitration and Conciliation Act of 1996, s 26

<sup>2</sup> The Bharatiya Sakshya Adhiniyam of 2023, s 39(1)

<sup>3</sup> *Malay Kumar Ganguly v Dr. Sukumar Mukherjee* (2009) 9 SCC 221

<sup>4</sup> The Bharatiya Sakshya Adhiniyam of 2023, s 40

2. What potential biases are associated with expert testimony, and how can they be mitigated in judicial proceedings?
3. How does the quality of expert evidence affect the fairness of trials?
4. What role do expert witnesses play in complex or technical cases, and how does this impact judicial decision-making?

## **RESEARCH OBJECTIVES**

1. To identify and evaluate the criteria used by courts to assess the credibility and reliability of expert witnesses
2. To investigate potential biases in expert testimony and propose methods for mitigating these biases in judicial proceedings
3. To assess the relationship between the quality of expert evidence and the perceived fairness of trials
4. To evaluate the role of expert witnesses in complex or technical cases and their effect on judicial decision-making processes.

## **LEGAL FRAMEWORK AND JUDICIAL PRONOUNCEMENT**

As per Phipson, the fundamental rule of the law of evidence is that only the most substantial evidence should be presented in court. The best evidence rule is the name of this principle. “Best evidence” refers to data gathered directly from a source. Second-hand and derivative evidence are prohibited. Witnesses’ opinions, deductions, beliefs, and simple hypotheses are typically not admissible in court. The term “expert evidence” is the exception. Based on the necessity principle, expert testimony is admissible. When a question requires more than the average person’s knowledge or experience, or when specialised knowledge, skill, or experience is required, the assistance of specialists is required<sup>5</sup>. According to the ruling in *Khushboo Enterprises v Forest Range Officer*<sup>6</sup>, it was held that “under Indian evidence’ expert evidence’ is

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<sup>5</sup> Sarvesh Kumar Shahi and Sidhartha Sekhar Dash, ‘Expert Opinion: Relevancy and Admissibility under the Indian Law of Evidence’ (2020) 6(12) International Journal of Advanced Research in Management, Architecture, Technology and Engineering <<https://zenodo.org/records/4401902>> accessed 18 September 2024

<sup>6</sup> *Forest Range Officer v P. Mohammed* (1993) 3 Supp SCC 627

‘opinion evidence’ and as a general rule, the opinion of a witness on a question of fact or law is irrelevant”. The opinion of witnesses possessing peculiar skills (as of experts) is an exception to this rule.

Lord Mansfield first allowed the use of expert opinion. The case of *Folkes v Chadd*<sup>7</sup> was the first in English law to introduce the concept of expert witness testimony. The case involved a dispute over the silting of Wells Harbor in Norfolk, and the court allowed civil engineer John Smeaton to provide scientific reasoning for proposed legislation. The court ruled that expert opinions are admissible if the witness has substantial knowledge, relevant experience, and knowledge of the facts. The court also ruled that expert opinions must be relevant, reliable, impartial, and unknown to the judge or jury. The court’s decision is often cited as the basis for modern rules on expert testimony. Lord Mansfield, who ruled the case, was likely trying to clarify the legal status of a new type of expert, the proto-scientist, who presented knowledge claims in court whose legal status was still being determined.

In India, Section 39 of the Bharatiya Sakshya Adhinyam<sup>8</sup> permits the presentation of official books and reports on foreign law as proof. An expert may clarify the law of a foreign nation, but if it is outlined in that country’s code, it becomes the court’s duty to interpret the law harmoniously. Therefore, foreign law becomes a factual issue that is to be established. The Supreme Court, in the case of *Hari Shankar Jain v Sonia Gandhi*,<sup>9</sup> stated that in Section 57 of the Indian Evidence Act<sup>10</sup> (Section 52 of the Bharatiya Sakshya Adhinyam<sup>11</sup>), the court shall take judicial notice of, among other things, all laws in force in the territory of India. Foreign laws are not included therein. Sections 39<sup>12</sup> and 83<sup>13</sup> of the Bharatiya Sakshya Adhinyam permit proof to be tendered and the opinion of experts to be adduced in evidence as proof of a point of foreign law.

The courts have also observed that scientific hypothesis will present the scientific evidence. Contrary to oral evidence, where witness statements are vital in scientific evidence, the nature is

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<sup>7</sup> *Folkes v Chadd* [1782] 3 Douglas KB 157

<sup>8</sup> The Bharatiya Sakshya Adhinyam of 2023, s 39

<sup>9</sup> *Hari Shanker Jain v Sonia Gandhi* (2001) 8 SCC 233

<sup>10</sup> The Indian Evidence Act of 1872, s 57

<sup>11</sup> The Bharatiya Sakshya Adhinyam of 2023, s 52

<sup>12</sup> The Bharatiya Sakshya Adhinyam of 2023, s 39

<sup>13</sup> The Bharatiya Sakshya Adhinyam of 2023, s 83

demonstrative. Here, there is always a possibility of drawing comparisons<sup>14</sup>. Here, the experts use scientific knowledge to guide the court to go closer towards justice. In criminal, paternity, environmental, and medico-legal cases, the verdicts mostly rely on scientific evidence, the veracity of which may be subject to debate<sup>15</sup>.

The concept of “medical evidence” refers generically to the facts provided by the doctor, whether in the post-mortem report, injury report, or oral testimony, in addition to the opinion provided by the doctor in light of the information submitted<sup>16</sup>. However, the medical opinion serves as an advisor and does not support or refute the prosecution’s case<sup>17</sup>. Medical evidence is crucial in criminal matters. In the case of *Patangi Balarama Venkata Ganesh v State of Andhra Pradesh*<sup>18</sup>, the DNA report, through the medical expert, helped to discover that the appellant’s blood group and the blood group discovered on the pink shirt he was wearing were alike. The expert did not use the phrase “identical”; hence, the court did not record the conviction solely based on the testimony of DNA specialists.

Through cases like this, these courts, especially the Supreme Court of India, evidently used the expert’s opinion in adjudicating the matters. Expert opinion guides the judiciary in understanding the case at hand better. An individual cannot know all the knowledge in the world. Hence, an expert acts as a guide to the court in reaching the destination of justice. However, it is pertinent to note that the judiciary does not always consider the expert’s opinion. Hence, utilising the adversary system allows the opposite party to cross-examine and rebut while determining the relevance of the expert opinion in the case.

## **CRITICAL ANALYSIS OF THE PROBLEMS**

Experts act as consultants to the legal system. The legal system takes the help of the experts whenever necessary to help the law achieve its ends. For instance, in a case of culpable homicide, forensic evidence would play a vital part in the investigation. They are used in a trial to establish

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<sup>14</sup> *Pritam Singh v State of Punjab* (1955) SCC OnLine SC 20

<sup>15</sup> Isha Anand, ‘Admissibility of Expert opinion in the Court of Law’ (2022) 3(2) Jus Corpus Law Journal <<https://www.juscorpus.com/wp-content/uploads/2022/12/52.-Isha-Anand.pdf>> accessed 18 September 2024

<sup>16</sup> *Bastiram v State of Rajasthan* (2014) 5 SCC 398

<sup>17</sup> *Anant Chintaman Lagu v State of Bombay* (1959) SCC OnLine SC 21

<sup>18</sup> *Pantangi Balarama Venkata Ganesh v State of A.P.* (2009) 14 SCC 607

guilt. Therefore, there is a general acceptance of the scientific evidence and expert opinion in the Indian Court.

The judges use their prudent minds to analyse the statements given by the experts and then observe if the expert opinion is relevant to the other evidence. The court, however, must corroborate which is the primary evidence depending on the facts and circumstances of the case at hand. Hence, the mere statement of the expert would have no impact on the judge's decision-making as a prudent judge would have to consider all the evidence gathered along with the expert's evidence.<sup>19</sup>

It has also been found that occasionally relying solely on expert opinion yields hazardous results. The hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert is not because experts, in general, are unreliable witnesses, the quality of credibility or incredibility being one which an expert shares with all other witnesses, but because all human judgment is fallible. An expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion. The more developed and perfect a science, the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of fingerprint identification has attained near perfection, and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of handwriting identification is not perfect, and the risk is, therefore, higher<sup>20</sup>.

Over-dependence on opinion evidence, even if the witness is an expert in the field, to challenge the direct testimony by an eyewitness is not safe modus adoptable in criminal cases<sup>21</sup>. It has now become unquestionable that medical evidence can be used to repel the testimony of eyewitnesses only if it is so conclusive as to rule out even the possibility of the eyewitness's version being accurate. A doctor is usually confronted with questions regarding different possibilities or probabilities of causing those injuries or post-mortem features, which they notice in the medical report. They may express their views one way or the other, depending on how the question was asked. However, the answers given by the witness to such questions need not become the last word on such possibilities. After all, they only give their opinion regarding such questions.

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<sup>19</sup> *Guntaka Hussenaiah v Buseti Yerraiah* (1954) SCC OnLine AP 19

<sup>20</sup> Anand (n 15)

<sup>21</sup> *The Forest Range Officer and others v P. Mohammed Ali and others* (1994) 3 SCR 497

However, discarding the testimony of an eyewitness simply on the strength of such an opinion expressed by the medical witness is not conducive to the administration of criminal justice<sup>22</sup>.

Where the eyewitnesses' account is credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Bentham says, "Witnesses are the eyes and ears of justice". Eyewitnesses' accounts would require a careful, independent assessment and evaluation for their credibility, which should not be adversely prejudged, making any other evidence, including the medical evidence, the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts; the 'credit' of the witnesses; their performance in the witness box; their power of observation among many others. Then, the probative value of such evidence becomes eligible to be put into the scales for accumulative evaluation<sup>23</sup>.

## **CONCLUSION AND SUGGESTIONS**

Pieces of evidence either make or break the case. It is imperative for the council to thoroughly know the facts to know if all the evidence is gathered to prove their side of the story. In an adversarial system like that of India, both parties are given a chance to prove their side of the case. However, it is pertinent to note that the procedural law requires the parties to submit the evidence as the court may not entertain subsequent discovery of evidence.

The rationale could be that such subsequent discoveries might not be reliable. Hence, the courts mostly encourage the parties to build the case around primary pieces of evidence. Expert opinion is a part of secondary evidence. Hence, it is a requisite for the judiciary to read expert opinions and other primary evidence.

A most important aspect of expert evidence is that the Court must correctly interpret it. The lawyers must understand the logic of inference laid down by the expert or scientist, which may involve a specific science. However, the inference drawn by the result is not always confined to science. The inference drawn is a matter of logic and can be deduced by everyone involved in the

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<sup>22</sup> *Ram Swaroop v State of Rajasthan* (2008) 13 SCC 515

<sup>23</sup> *State of U.P. v Hari Chand* (2009) 13 SCC 542

legal process. An expert must give evidence to express its value clearly, and the court can corroborate or connect it with other evidence involved in the case<sup>24</sup>.

Therefore, Expert opinion is significant in criminal justice, but it is more corroborative than conclusive. The Court may only request an expert's opinion when it believes that a matter has arisen that cannot be resolved without the assistance of an expert. A person must possess the necessary training, experience, or practice to pass for an expert. India's law on expert opinion is not all-inclusive. Because of this, the expert's opinion is viewed as having minimal support. Only expertise and experience have been given precedence. Finally, considering the expert's opinion rests with the court, which handles the case.

Experts' opinions are relevant on any fields or subjects included in section 39 of the Bharatiya Sakshya Adhinyam<sup>25</sup>, which includes foreign law, science or art, or identity of handwriting or fingerprints. An expert is any person possessing peculiar or specialised knowledge. The expert opinion is just taken to aid the Court in making decisions, and it is not binding on the Court. The opinion of an expert should not overshadow the testimony of the witness. It is up to the Court, if it thinks fit and reasonable, to accept the expert's opinion, and it may also reject it if it finds it unreasonable and not convincing<sup>26</sup>.

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<sup>24</sup> B W Robertson, *Interpreting Evidence - Evaluating Forensic Science in the Courtroom* (2nd end, John Wiley & Sons Inc 2016)

<sup>25</sup> The Bharatiya Sakshya Adhinyam of 2023, s 39

<sup>26</sup> Anand (n 15)