

Lal Bahadur Shastri National Academy of Administration

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July, 2007

Evidentiary Value of Expert Opinion Under Indian Evidence Act

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EVIDENTIARY VALUE OF EXPERT OPINION UNDER INDIAN EVIDENCE ACT

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Introduction:

Law of evidence allows a person –who is a witness to state the facts related to either to a fact in issue or to relevant fact, but not his inference. It applies to both criminal law and civil law. The opinion of any person other than the judge by whom the fact has to be decided as to the existence of the facts in issue or relevant facts are as a rule, irrelevant to the decision of the cases to which they relate for the most obvious reasons- for this would invest the person whose opinion was proved with the character of a judge¹. The rule however, is not without its exceptions. “If matters arise in our law which concern other sciences or faculties, we commonly apply for the aid of that science or faculty which it concerns”.² The expert witness is, thus, an exception to the exclusionary rule and is permitted to give opinion evidence. The Judge is not expected to be an expert in all the fields-especially where the subject matters involves technical knowledge. He is not capable of drawing inference from the facts which are highly technical. In these circumstances he needs the help of an expert- who is supposed to have superior knowledge or experience in relation to the subject matter. This qualification makes the latter’s evidence admissible in that particular case though he is no way related to the case. Because an expert has an advantage of a particular knowledge vis-à-vis a judge who is not equipped with the technical knowledge and hence not capable of drawing an inference from the facts presented before him.

Who is an expert?

An expert is a person who devotes his time and study to a special branch of learning. The Supreme Court of United State of America defined an expert as a person who possesses knowledge and experience not possessed by mankind in general. The Courts in India in their judgments described an expert as a person who has acquired special knowledge, skill or experience in any art, trade or profession. Such knowledge need not be imparted by any University. He might have acquired such knowledge by practice, observation or careful study. The expert operates in a field beyond the range of common knowledge. When the Court has to form an

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¹ <http://symlaw.ac.in/doc/syed.pdf>

² Buckley v Rice Thomas (1554) <http://www.ewi.org.uk>

opinion upon a point of foreign law, or of science or art, or as to identity of handwriting (or finger impressions)³, the opinions upon that point of persons especially skilled in such foreign law, science or art (or in questions as to identity of handwriting)⁴ (or finger impressions)⁵ are relevant facts⁶. Such persons are called experts. To sum up an expert is one who is skilled in any particular art, trade or profession being possessed of peculiar knowledge concerning the same⁷.

Expert as a witness:

The phrase expert testimony is not applicable to all species of opinion evidence. A witness is not giving expert testimony who without any special knowledge simply testifies as to the impressions produced in his mind. Question of common knowledge such as whether the hammering of the steel plates with hammers weighing 10 kg cause noise or not does not need an expert. Expert evidence is often sought in the matters of handwriting, age, on weather, general conduct of a business etc. A person having special knowledge of the value of land by experience though not by any profession can be treated as an expert⁸. All these years the Courts in India have been accepting the testimony of a goldsmith about the metal being gold and the extent of its purity though the test is very crude carried out by rubbing the metal on the touch stone⁹. Now as the technology has been invented to test the purity of gold- the evidence by goldsmiths might become redundant.

The Cases in which Expert Evidence can be Admitted:

The Supreme Court of New Hampstead has classified the cases under three heads and declared that experts may give opinions on the following:

1. Questions of science, skill or trade or other subjects.
2. When the subject matter of enquiry is of such a nature that inexperienced persons are not likely to form a correct judgment over it without assistance.
3. When the subject matter of investigation so far as it partakes of the nature of a science as to mean a course of previous habit or a study in the attainment of knowledge of it¹⁰.

³ Inserted by the Indian Evidence (Amendment) Act, 1899. S.3 See Gazette of India 1898 for further details.

⁴ Inserted by the Indian Evidence (Amendment) Act, 1899. S.4

⁵ Gazette of India 1898 has an elaborate discussion as to whether finger impression include thumb-impressions at p.24

⁶ Indian Evidence Act, 1872 S.45

⁷ Punjab Singh vs. State: 1974 Kashmir Law Journal: P.404

⁸ Collector Jabalpur vs. Nawab Ahmed: AIR 1971 M.P. 32

⁹ Assistant Collector, Customs vs. Pratap Rao: 1972 Criminal Law Journal p. 1135

¹⁰ <http://symlaw.ac.in/doc/syed.pdf>

Expert Evidence in Indian Evidence Act:

Expert evidence is covered under Ss.45-51 of Indian Evidence Act. S.45 of the Act allows that when the subject matter of enquiry partakes of science or art as to require the course of previous habit or study and in regard to which inexperienced persons are unlikely to form correct judgment. Therefore the opinion of persons having special knowledge of the subject – matter of the enquiry and described as experts is made relevant. However, whether a particular person is a competent witness or not is to be proved in the Court of Law before his testimony is admitted. The competency of an expert is a preliminary question before the Judge. An expert need not be a paid professional expert who makes living by giving such evidence, but he must have devoted sufficient time and study to the subject so that he can make his evidence trustworthy.

Subject Matters of Expert Evidence: The subjects of expert testimony mentioned by the section are foreign law, science, art and the identity of handwriting or finger –impressions. Expert on any other subject is not admissible.¹¹ This was the position in 1954. No more it is the law. Law related to expert evidence has developed in a piece meal method growing hand by hand with the development of technology in every field. The word science or art if interpreted in a narrow sense, would exclude matters upon which expert testimony is admissible such as matters related to trade, handicrafts, ballistics and many more. Every business or employment which has a particular class devoted to its pursuit is an art or trade.¹² When the question of foreign law is raised the evidence of professional lawyer or the holder of an official situation which requires and therefore implies legal knowledge or a teacher of law is admissible. As far as science and art concerned they are to be broadly construed so as to include all subjects on which a course of special study or experience is necessary to the formation of an opinion and embrace also the opinion of an expert in footprint as well¹³. The opinion of the medical men are admissible upon questions within their own province such as insanity, the causes of diseases the nature of the injuries, the weapons which might have been used to cause such injuries the cause of death, the weapons might have been used in causing the death, medicines, poisons, the conditions of gestation, effects of hospitals upon the health of the neighborhood etc., Other expert evidence includes those of naturalists as to the ability of fish to overcome obstacles in a river: those of chemists as to the value of a particular kind of guano as a fertilizer: the safety of a non-explosive camphene and fluid lamp: the constituent part of

¹¹ Harkchand vs. State: AIR 1954 M.B

¹² Taylor: Evidence: p.1417

¹³ Vasudev Gir vs. State: AIR 1959 Pat.534

a certain chemical compound; the effects of a particular poison: fermentation of a liquor; those of geologists as to the existence of a coal seams: those of botanists as to the effects of working coke ovens upon trees in the neighborhood: those of persons of specially skilled in insurance matters, such as the opinion of an insurance agent and examiner that a partition in a room increased the risk in a fire policy: and so with other branches of science.¹⁴

In the field of art the opinion of artists are admissible as to the genuineness or value of a work of art: the opinion of a photographer as to the good execution of a photograph, the opinions of engineers regarding constructions, erection of dams etc., are admissible. The list is only illustrative. It is not exhaustive. However, it depends on the discretion of the judge to accept or reject such evidence.

S.47 of the Indian Evidence Act exclusively deals with the opinion as to the handwriting¹⁵. The explanation further elaborates the circumstances under which a person is said to have known the disputed handwriting.¹⁶ Under this section a person who is deposing the evidence need not be a handwriting expert. Indeed the knowledge the general character of any person's writing which a witness has acquired incidentally and unintentionally, under no circumstance of bias or suspicion, is far more satisfactory than the most elaborate comparison of even an experienced person. One can get acquainted with others handwriting in many ways. The former might have seen the latter writing a particular handwriting. He might be receiving letter from the latter regularly. A superior officer might have seen his subordinate's writing on several occasions and vice versa. But, the evidence given by a person who has insufficient familiarity should be discarded¹⁷. Indian Evidence Act insists that documents either be proved by primary evidence or by secondary evidence. ¹⁸ S.67

¹⁴ Law of Evidence: Woodroffe & Amir Ali: 14th Edition (1979) p.1301

¹⁵ When the Court has to form an opinion as to the person by whom any 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.

¹⁶ 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 documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

¹⁷ Devi Prasad vs. State: 1967 Cr.L.J. p. 64

¹⁸ S.67: The contents of documents may be proved either by primary or by secondary evidence.

of the Indian Evidence Act prescribes the mode of proving the signature in a document.¹⁹ However, the opinion as to handwriting is admissible only if the condition laid down in S. 47 is fulfilled, that is the witness is established to have been acquainted with the writing of the particular person in one of the modes enumerated in this section.²⁰ However, the opinion of an expert is relevant when the Court has to form an opinion on a point of science or art. At times expert opinion differs on proven or admitted facts. But when the facts are not admitted the Court will have first to come to a conclusion on the evidence as to what facts have been proved and then to apply to such facts the various expert opinions which have been offered. The opinion of an expert in handwriting should be received with great caution and should not be relied on unless corroborated.²¹ But no such corroboration is need in the case of finger prints. Of course, an expert can always refresh him memory by referring to the text books. A doctor can refer to medical books, a valuer to the price lists, a foreign lawyer to legal codes, texts and other journals.

At one time expert evidence is limited to medical doctors, engineers, architects, stockbrokers etc. Now the science and technology have reached to such heights no more the expert evidence is confined to the above mentioned but also to the scientists in each field. As far as criminal law is concerned ballistic experts, forensic experts, scientists who decide the legitimacy by DNA tests, chemical examiners, psychiatrists, radiologists and even track-dogs are playing a vital role in investigation of crimes and their evidence is admissible in the court of law.

Scientific evidence is evidence which serves to either support or counter a scientific theorem or hypothesis. Such evidence is expected to be empirical and properly documented in accordance with scientific method such as is applicable to the particular field of inquiry. Standards for evidence may vary according to whether the field of inquiry is among the natural sciences or social sciences²². Scientific evidence is demonstrative evidence. Unlike oral testimony which depends on the deposition of a witness, scientific evidence is obtained by using the scientific method. Scientific evidence which is admitted in the trial must not only be relevant but also trustworthy. An expert

¹⁹If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his hand writing.

²⁰ *Rahim Khan vs. Khurshid Ahmed*: AIR 1975 SC 290

²¹ *Punjab National Bank Ltd. Vs. Mercantile Bank of India Ltd.* 8 IC 93 (Bom)

²² http://en.wikipedia.org/wiki/Scientific_evidence

witness is called to testify about the reliability of the scientific evidence sought to be introduced at trial.²³

Foot Prints: Footprint identification is reliable. Our bare feet contain friction ridge patterns which are unique to each individual. Hence, the finger prints and footprints found at the scene of offence can be used to help identify the offender. They can be used for identifying the victim as well. The validity of the scientific method used for fingerprinting and foot printing is accepted by the Courts. In *Pritam Singh vs. State of Punjab*²⁴ disputed footprints in blood near a dead body and going towards the bathroom, were compared with those of the accused taken in printer's ink. The expert gave evidence giving points of nine similarities in respect of the right foot and ten in respect of the left foot: and three dissimilarities only in each case and explained the dissimilarities with reference to the different densities of blood and ink. It was held that the comparison stood the test well and under the circumstances these foot impressions in blood near the place of the incident, were proved to be those of the accused.

Deoxyribonucleic Analysis (DNA)

Each person's genetic makeup contains DNA. This differs from individual to individual. DNA can be obtained through blood, saliva, semen, or hair. This helps in identifying a person. If a drop of blood or a strand of hair is found at a crime scene, it can be compared to a person's known DNA to see if there is a match, thereby linking the person to the crime. An expert witness can give an opinion about the likelihood that the blood that was found at the crime scene came from the individual whose sample was compared. DNA analysis is also used to establish paternity. Experts believe that the ability to link the culprit to the crime scene through his DNA prints is unquestionable as unlike conventional fingerprints that can be surgically altered, DNA is found in every tissue and no known chemical intervention can change it.²⁵

Tracker Dog: In India we have yet to accept the evidence of tracker dog as a substantive piece of evidence. The Supreme Court of India opined that even the evidence of dog-tracking, if admissible

²³ <http://www.belnicklaw.com/article.jsp?practArea=19&articleIndex=4>

²⁴ AIR 1956 SC 415

²⁵ <http://www.rediff.com/news/2006/jan/04dna.htm>

also does not have much weight in the present state of scientific knowledge.²⁶ The same was reiterated in another case²⁷ where it was held that evidence of tracker dog was of little importance. No adverse inference could be drawn against the prosecution on the ground tracker was not examined by the prosecutor. However, it was observed that in construing the words science or art a static view can no longer be tenable since expert testimony on subjects like telephony, psychiatry, identification of foot marks and tracker evidence is now admitted²⁸. As recently as in 1993 the Court held that tracker dog's evidence must be scrutinized and its reliability is as good or as bad as any other piece of evidence.²⁹

Lie Detector: Generally Courts refuse to admit the results of a polygraph test as evidence. Polygraph measures a person's unconscious physiological responses, such as breathing, heart rate, and galvanic skin response while the person is being questioned. The underlying theory is that stress occurs when a person lies and that this stress is measured by changes in the person's physiological responses. There is a concern that an individual can conceal stress when he or she is lying. Polygraph tests are also considered unreliable because it is not possible to tell whether the stress that is measured during the test is caused by the test itself or by a lie³⁰.

Ballistic Expert Evidence: Ballistics is the science that deals with the motion, behavior, and effects of projectiles, especially bullets, gravity bombs, rockets, or the like; the science or art of designing and hurling projectiles so as to achieve a desired performance³¹. Where the opinion is given by the Expert of Ballistics who after conducting all the tests deposes in the Court of law, there is no reason to distrust his opinion. It can be accepted.³² That does not mean in spite of having direct evidence, one should call for the opinion of the expert. In every case where a firearm is alleged to have been used by an accused person, in addition to the direct evidence, prosecution must lead the evidence of a ballistic expert, however good the direct evidence may be and though, on the record, there may be no reason to doubt the said direct evidence³³.

26. Abdul Razak Murtaza Dafadar vs. State of Maharashtra: AIR 1970 SC 283

27 Ramla vs. State: (1963) 1Cr.L.J 387

28 Chhat Ram Vs. State of Haryana: ILR (1975) 1 Punjab 327

29 Babu Magbul Shaik vs. State of Maharashtra: 1993 Cr.L.J. 2808 (Bom)

30 <http://www.belnicklaw.com/article.jsp?practArea=19&articleIndex=4>

31 <http://en.wikipedia.org/wiki/Ballistics>

32 Surat Sing vs. State: 1995 Cr.L.J. 3189

33 Kartik Harijan Vs. State of Orissa: 1995 CrL.J. 2019

Medical Expert: As far as medical experts are concerned the Courts in India have different opinions. In certain cases they have accepted the evidence. The husband alleged his wife was pregnant at the time of marriage. The doctor who was an expert in mid-wifery had deposed the contention to be true. Though he was not gynecologist, the Court accepted his evidence.³⁴ But, again the Court held in other cases medical evidence is hardly conclusive and decisive, because it is primarily an evidence of opinion. The Court has to consider not merely medical evidence but also the other evidence and circumstances appearing on the point. ³⁵ But as far as post mortem reports are concerned sufficient weightage is given to the doctors' deposition who had conducted the post-mortem. When the post mortem report is more favourable to the accused and there are discrepancies between the medical evidence and the inquest report, the benefit of discrepancies should be given to the accused by accepting the post-mortem report instead of inquest report.³⁶ Where the report of the serologist stated that the blood on the two items of clothes was human blood and the items belonged to the accused, they connect him with crime.³⁷ Regarding injuries and time of death the evidence of the experts is accepted depending on the other circumstances. Regarding age positive evidence furnished by birth register, by members of the family, with regard to the age, will have preference over the opinion of the doctors: but, if the evidence is wholly unsatisfactory, and if the ossification test in the case is complete, such test can be accepted as a surer ground for determination of age.³⁸ As far as paternity is concerned now it has become very usual to direct the use of blood tests. Blood groups according to the scientists have a causative relation between the trait of the progenitor and that of the progeny. In other words the blood compositor of child may be of some evidence as to the child's paternity. The blood group tests are useful only to exclude the possibility that a man is the father. Sophisticated blood tests are now being adopted which are so advanced as capable of providing a very high or low probability of paternity. Tests made of the DNA can provide what can practically be regarded as certainty in paternity cases. ³⁹

³⁴ Baldev Raj Miglani vs. Urmila: AIR 1979 SC 879

³⁵ Mani Ram vs. State of Rajasthan: AIR 1993 SC 2453

³⁶ Maula Bux vs. State of Rajasthan: (1983) 1SCC 379

³⁷ Boddu Murali vs. State: 1993 Cr.L.J. 2077

³⁸ SK Belal vs. State of Orissa: 1994 Cr.L.J.467 (Ori)

³⁹ Ratan Lal & Dhiraj Lal: The Law of Evidence: 20th Ed: (Wadhwa and Company) P.960

The expert opinion is not confined to handwriting alone. The opinions in relation to customs are also admissible according to S. 48 of Indian Evidence Act.⁴⁰ Section 13⁴¹ and S.32 (4) also mentions about custom.⁴²S.13 deals with all rights and customs, public, general and private and refers to specific facts which may be given in evidence. The latter is a hearsay evidence where a secondhand opinion can be admissible in the Court of law where the person who opined cannot be brought before the Court (because of death or inability) upon the question of the existence of any public right or custom or matter of public or general interest made ante litem motam. But S.48 deals with the evidence of a living witness, who stood before the Court sworn to depose and subject to cross examination. Not only custom under this section opinion regarding usage is also admissible. The only condition Courts insist is that while deposing about custom it is to be established by unambiguous evidence. S.49⁴³ is about the opinions regarding tenets and S.50 ⁴⁴is about the opinion on relationships. S.32 (5) of Indian Evidence Act⁴⁵ also is about the admissibility of

⁴⁰ When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of any general custom, right, the opinions, as to the existence of such custom or right, of person who would be likely to know of its existence if it existed, are relevant.

⁴¹ Facts relevant when right or custom is in question - Where the question is as to existence of any right or custom, the following facts are relevant:(a) any transaction by which the right or custom in question was created, claimed modified, recognized, asserted or denied, or which was inconsistent with its existence; (b) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted, or departed from.

⁴² Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases -opinion as to public right or custom, or matters of general interest - When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest of the existence of which if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

⁴³When the Court has to form an opinion as to the usage's and tenets 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.

⁴⁴ 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, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject is a relevant fact.

⁴⁵ Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts when they related relates to existence of relationship - When the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by

opinions in relation to relationships. The Apex Court in several cases made it clear that relationship proved under any other provision other than these provisions is inadmissible. But, there is a basic difference between these two provisions. Section 32 (5) relates to statements of deceased persons only where as S.50 takes into consideration the opinion of living persons also. The essential features of S.50 are there must be a case where the Court has form an opinion as to the relationship of one person to another, in such a case the opinion is formed by conduct as to the existence of such relationship, he must have been a member of the family or otherwise has special means of knowledge on the particular subject of relationship. This section does not make evidence of mere general reputation admissible as proof of relationship.⁴⁶ The gathering of special means of knowledge is not confined only to the members of the family but has been given a wide connotation by the expression "otherwise". Special means of knowledge must however be proved independent of the opinion expressed by conduct⁴⁷. The language of S.50 leaves no room for doubt that opinion expressed by conduct of a person who as a member of the family or otherwise, has a special means of knowledge as to the relationship of one person to another about which the Court has to form an opinion is relevant irrespective of the fact whether the person is himself called as a witness or not⁴⁸.

However, the proviso to S.50⁴⁹ cannot however be applied to ordinary civil cases where the facts of marriage or of divorce are in dispute. The Act had adopted the requirements of the prudent man as an appropriate concrete standard by which to measure proof. Because, in civil cases mere preponderance of probability is sufficient. In criminal cases the guilt is to be proved beyond all reasonable doubt. From the proviso it appears that evidence which is considered sufficient for one purpose is not considered sufficient for another. In proceedings founded on charge of adultery, strict of the marriage is always necessary.⁵⁰ In case the Court wants to convict under. S.498 of the Indian Penal Code the prosecution has to prove that the complainant and the woman, in respect of whom the charge was made, lived together as man and wife. It is necessary that the fact

blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

⁴⁶ Shankar vs. Vijay: AIR 1968 All58

⁴⁷ Ulla Dei Vs. Malli Bewa: ILR (1967) Cut.430

⁴⁸ Gosain vs. Dulhina AIR 1968 Pat.48

⁴⁹ Such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act (IV of 1869), or in prosecutions under Sections 494, 495, 497 or 498 of the Indian Penal Code (XIV of 1860).

⁵⁰ Per Wilson and TottenhamJJ: in their reference of the cases to the Full Bench in Queen vs. G.R. Smith, 4 W.R (Cr.Rule)31: referred by Field : Commentary on Law of Evidence: Vol.III: 12th Ed: (Delhi Law House) p.2679

constituting a valid marriage should be proved in accordance with S.60 the Indian Evidence Act.⁵¹ In view of the provision to S.50 a number of authorities have laid down that for prosecution under S.494, 497 and 498 of IPC marriage must be strictly proved as a fact and no presumption can be drawn by the Courts.

As the opinions of certain persons are relevant in the same way the ground on which such an opinion is formed also becomes relevant. This principle is envisaged in S. 51 of the Indian Evidence Act.⁵² The mere opinions of the witnesses are entitled to little or no regard unless they are supported by good reasons, founded on facts, which warrant them the opinion of the jury. If the reasons are frivolous or inconclusive, the opinions of the witnesses are worth nothing⁵³. The opinion of an expert witness is admissible in evidence not only when it rests on the personal observation and inquiry but also when it is founded on the cases as proved by other witness at the trial.

Opinion as to the character: In civil cases evidence of the character of any party to the suit, to prove the probability or improbability of any conduct imputed to him is irrelevant⁵⁴. The general exclusion of character evidence is based on grounds of public policy and fairness. The general rule is that the evidence as to the character of a person is irrelevant in a civil case. The Evidence of character relates either to character of witness or to character of parties. Character of a witness affects his credit and is always material, as it helps the Court to come to the conclusion whether his

⁵¹ Oral evidence must, in all cases, whatever, be direct; that is to say; If it refers to a fact which could be seen, it must be the evidence of a witness who says he heard it; If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it; If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner; If it refers to an opinions or to the grounds in which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds - Provided that the opinion of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise if the author is dead or cannot be found or has become incapable of giving evidence or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable. Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

⁵² Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

⁵³ Supra 31 at p.2680

⁵⁴ S.52. In civil cases character to prove conduct imputed irrelevant - In civil cases, the fact that the character of any person concerned is such as to render probable or improbably any conduct imputed to him, is irrelevant except in so far as such character appears from facts otherwise relevant.

evidence should be treated as trustworthy. Questions touching the character of a witness are allowed to be put to a witness who comes to give evidence in a case⁵⁵.

This is not the same with criminal cases.⁵⁶ However, good character is not a defence, for –one would then be convicted, as everyone starts with a good character. The defendant is, however, entitled to rely on the fact that he is of previous good character as making it less likely that he would have committed the offence. If there is any room for doubt, his good character may be thrown in the scales in his favor⁵⁷. S.54 envisages that previous bad character is not relevant except in reply.⁵⁸ Under S.55 the character affects the damages. ⁵⁹ However, the opinion regarding the character would not come under expert opinion.

To sum up it is chiefly on question of science or trade (where there often is a difficulty, and occasionally, an impossibility, of obtaining more direct and positive evidence) that person of peculiar skill on the subject (sometimes called experts), are allowed to give their opinions in evidence as well as testify to facts. Thus the opinions of medical men are constantly admitted in matters related to time of death, age of the parties, cause of death, possibility of the weapons used, disease, injury, sanity and insanity of the parties so on and so forth. Now a day the DNA test is often used in fixing the paternity of the child in family law related cases such as maintenance and legitimacy of the child. It is in short, a general rule the opinion of a person who has special skill in that particular field shall be admissible in the Court of law. There may exceptions to this rule, in spite of it when there is dearth of direct evidence and in certain cases to corroborate the already existing evidence the expert opinion is sought.

⁵⁵ Ratan Lal & Dhiraj Lal: The Law of Evidence: 20th Ed: (Wadhwa and Company) P.587

⁵⁶ S.53 In criminal proceedings, the fact that the person accuses is of good character, is relevant.

⁵⁷ Supra note 36 at p.589

⁵⁸ S.54. Previous bad character not relevant except in reply - In criminal proceedings the fact that the accused person had a bad character is irrelevant, unless evidence has been given that he has a character in which case it becomes relevant.

⁵⁹ S.55. Character as affecting damages - In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive is relevant.