

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 6

2024

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The Impact of Expert Testimony on Judicial Decision-making in Bangladesh: A Study of The Evidence Act, 1872

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ABSTRACT

In both civil and criminal proceedings, expert witness plays a vital role to establish the fact and claims. Generally, experts are being called to give evidence as a witness in civil case or criminal case. Expert witnesses are those who are skilled on a specific field and when the court need opinion on that particular field to clear the doubts, they are being called to give testimony before the court. Expert witnesses are being called on the basis of the discretion of the court. The expert's opinion must be corroborated by the relevant case's facts and circumstances. The Evidence Act, 1872 does not specify a minimum level of education, training, or experience required to be referred to as an expert. Experts may be called witnesses, but they may not draw conclusions because it is the role of the judge. The main objective of this research is to understand how important the opinions of the expert witness in judicial decision making. After completing this research, the author finds that, the definition of expert witness is very much narrow which need to be broader. And lastly, there should be a mandatory obligation on the calling of expert.

Keywords: Expert witness, Corroborate, Testimony.

I. INTRODUCTION

The general principle of the Law of Evidence says that third party who are not acquainted with the facts and circumstances of the case are not being called before the court to give testimony. The exception of this principle is “Expert Testimony”, a situation in which a subject-specific expert is asked for his or her opinion on a matter that will be significant in resolving the case, even though the expert is not connected with the facts and circumstances of the case and is not a party to the proceeding.²

Now the first question arise in the mind is who is an Expert. The definition can be derived from the statute which is The Evidence Act, 1872. Here under section 45. The statue mainly focused

¹ Author is a law graduate from East West University, Bangladesh.

²Pragya Rakshita, “Expert Evidence: Types, Constitutionality and Evidentiary Value – A Chronological Study” (IPLeders, March 06, 2020) available at <<https://blog.ipleaders.in/expert-evidence-types-constitutionality-evidentiary-value-chronological-study/>> [accessed 26 June 2023]

on the subjects which are foreign law, science, art, hand writing and fingerprint impression. Currently, the Court may also seek the advice of experts on other issues. For instance, the Court consults with specialists in the fields of medicine, chemistry, explosives, fingerprinting, and handwriting when necessary.³ Expert opinion may and is utilized in many types of cases, including those involving murder, rape, accidents, suicide, and theft, to support the prosecution's case. Many details need to be looked out and taken care of in order to properly employ expert opinion.⁴

Expert testimony is predominantly used in all kinds of litigations. In a legal proceeding sometimes the judges or juries need some opinion on various matters to ensure justice, as they have the expertise in legal matters but in many circumstances, they have to face different kinds of problems. But it is really not possible for them to be an expert on many others field. So, when it is necessary for the purpose of ensuring justice, the court often calls upon experts to give their testimony so that it become easier to understand the problems and find out the solutions.

In the complicated landscape of legal procedures, expert testimony plays an essential part in developing judicial decision-making. In the context of Bangladesh, where an extensive variety of matters, from medical malpractice and forensic examination to technical problems, required an extensive incorporation of expert opinions.

The importance of expert testimony becomes more important when considering Bangladesh, a country where having access to justice is essential to a just and equal society. Expert witnesses add particular knowledge and insights to complicated legal matters, giving clarity and detail that may greatly influence the path of justice.

II. THE CONCEPT OF EXPERT TESTIMONY

The presenting of opinions, analyses, or interpretations by people with specialized knowledge, skills, or competence in a topic that is pertinent to a legal case or investigation is referred to as expert testimony.⁵ This type of testimony is presented in courtrooms to assist judges, lawyers, and other decision makers in understanding difficult technical, scientific, or specialized topics that are outside the purview of the general public.⁶ Significant features of the concept of expert testimony include qualification, specialized knowledge, and assistance to the court, foundation

³ *ibid*

⁴ *ibid*

⁵ "What is an expert witness" available at <<https://academyofexperts.org/users-of-experts/what-is-an-expert-witness/>> [accessed on 03 August 2023]

⁶ *ibid*

of evidence, neutrality and objectivity and so on.⁷

III. THE EVOLUTION OF EXPERT TESTIMONY IN BANGLADESHI COURTS

Expert witnesses have been used in courtrooms for many years to guarantee that scientific, technical, or specialized information is presented accurately and objectively to assist judges and jurors in making informed choices.⁸ Initially, Bangladeshi courts relied heavily on lay witnesses and general practitioners' testimonies. Expert evidence was not as formalized as it is now, and judges were frequently required to evaluate the reliability and qualifications of possible experts on a case-by-case basis.⁹ The "Evidence Act, 1872" is the fundamental piece of legislation that governs evidence and expert testimony in Bangladeshi courts. The statute established a framework for expert opinion admissibility and established criteria for the examination and cross-examination of expert witnesses.¹⁰ As technology and scientific developments advanced, so did the necessity for professionals in many specialized disciplines. As a result, areas such as forensic science, medical specialty, engineering, economics, and others became recognized as sources of expert testimony.¹¹ As the complexities of legal issues increased, Bangladeshi courts began to rely more heavily on expert witnesses to provide specialized insights that may assist judges and juries in making well-informed decisions.¹² As a result of this transformation, expert qualifications, methodology, and viewpoints have come under heightened scrutiny.

(A) The Evidence Act, 1872

Opinions of certain witnesses are admitted as an aid to the court in forming its own opinion on any question that requires special education, training, or knowledge to answer, or that can be resolved best by the opinions of persons with special opportunities of observation into the facts under inquiry according to these sections.¹³

Section 45 of the Evidence Act, 1872 says that, when the Court need an opinion on any foreign law or any science field or art field or to identify hand writing or finger impression then the persons who are skilled in that particular field give any opinion are relevant facts and those persons who are giving opinion are called experts.¹⁴ This section provides that the opinions of the expert may considered by the court to form its own opinion. The expert opinion is not

⁷ *ibid*

⁸ Muhammad Nazrul Islam, *Reflection of law of Evidence* (3rd edn, Kamrul Book House 2021) 240

⁹ *ibid*

¹⁰ *ibid*

¹¹ Muhammad Nazrul Islam, *Reflection of law of Evidence* (3rd edn, Kamrul Book House 2021) 241

¹² *ibid*

¹³ Muhammad Nazrul Islam, *Reflection of law of Evidence* (3rd edn, Kamrul Book House 2021) 242

¹⁴ The Evidence Act 1872, s 45

binding upon the court. This is considered as a way to reach to a satisfactory conclusion.¹⁵

Section 46 of the Evidence Act, 1872 describes those facts that are not normally relevant will become so if they are consistent or inconsistent with the expert opinions.¹⁶ If the author passed away or cannot be located, standard treatises or textbooks on the subject may both corroborate and contradict an expert.¹⁷ It ought to be noted, however, that there is no predefined criteria or standard for assessing corroboration or contradiction to expert testimony.¹⁸

Section 47 of the Evidence Act, 1872 says that when the Court has to reach an opinion as to who wrote or signed a document, the view of any person familiar with the handwriting of the person by whom it appears to be written or signed that it was or was not written or signed by that person is a relevant fact.¹⁹

Section 48 of the Evidence Act, 1872 says that When the Court must form an opinion on the existence of any popular custom or right, the opinions of individuals who would be expected to know of its existence if it existed then it will be relevant.²⁰

Section 50 of the Evidence Act, 1872 says that When the Court must establish an opinion about the relationship of one person to another, the conduct, shown by any person who, as a part of the family or otherwise, has special knowledge on the issue, is a relevant fact.²¹ Under this section, not only family member but also strangers may testify. There is a leading case where the opinion of the nephew held relevant.²² The provision states that opinions are not sufficient for establishing a marriage in Divorce Act or prosecutions under sections 494, 495, 497, and 498 of The Penal code, 1860. Something more is needed in particular situations, such as corroboration of the fact established by the opinion under this section.²³

(B) Others Special Laws

The Code of Criminal Procedure, 1898, section 174, 464, 509, 509A, 510, 510A mentioned the opinion of the experts to examine the Accused.

Section 174 of the Code of Criminal Procedure, 1898, says that when there is any doubt about the exact cause of death, or when the police-officer considers it necessary then he shall according to the Government prescribed rules in this regard, forward the body for investigation

¹⁵ *Prafulla Kamal Bhattacharya vs. Ministry of Home Affairs, Govt. of Bangladesh* [1976] 28 DLR 123

¹⁶ The Evidence Act 1872, s 46

¹⁷ Muhammad Nazrul Islam, *Reflection of law of Evidence*, (3rd edn, Kamrul Book House 2021) 249

¹⁸ Muhammad Nazrul Islam, *Reflection of law of Evidence*, (3rd edn, Kamrul Book House 2021) 250

¹⁹ The Evidence Act 1872, s 47

²⁰ The Evidence Act 1872, s 48

²¹ The Evidence Act 1872, s 50

²² *Ajmer Singh vs. Jangir Singh*, [1952] PEPSU 76

²³ K.K. Singh & H.P. Gupta, *The Indian Evidence Act, 1872*, (6th edn, Eastern Book Company 2001) 124

to the nearest Physician, or other qualified medical officer appointed in this behalf by the Government.²⁴

Section 464 of the Code of Criminal Procedure, 1898, says that when a Magistrate conducting an inquiry or a trial has reason to believe that the accused is mentally unfit and thus incapable of defending himself, the Magistrate shall inquire into the fact of such unsoundness, and shall send the accused to be examined by the certified Doctors of that district cause or such other medical officer as the Government directs, and shall afterwards examine such Doctor or other officer as a witness, and shall reduce the examination to writing.²⁵ Sued as evidence in any trial and proceedings. And if Court thinks fit, Court can summon and examine the medical witness as well.²⁶

Section 510 and 510A of this Code describes that the report of the Chemical examiner or any serologist or hand writing expert or fingerprint expert or fire arm expert can be used as evidence in any trial and proceedings. And the Court can also examine them.²⁷

The Arms Act, 1878 section 30A says that if the Court find necessity of the expert opinion in regards arms or ammunition, The Court can take opinion from the arms expert.²⁸

The Acid Control Act, 2002 section 48 says that if there is necessity to find out the kinds of acid, quantity of acid, level of acid then the government can establish chemical laboratory and also appoint a chemical expert. The report of the chemical expert can be used as evidence before the court.²⁹

IV. TYPES OF EXPERT WITNESSES

There are various kinds of experts in various fields. Such as foreign law expert, medical expert, hand writing expert, fingerprint expert, technology expert, chemical expert and so on.

The person who is being called to prove his point must be a practicing lawyer of that particular foreign law or someone who hold the position which requires the knowledge of that foreign law. The person who is mere a citizen of the foreign country is not adequate enough to be a competent witness who know the foreign law.³⁰ The foreign law expert can be called only for the opinions regarding foreign law. Hindu law or Muslim law are not included into the category

²⁴ The Code of Criminal Procedure 1898, s 174

²⁵ The Code of Criminal Procedure 1898, s 464

²⁶ The Code of Criminal Procedure 1898, s 509, s 509A

²⁷ The Code of Criminal Procedure 1898, s 510, s 510A

²⁸ The Arms Act 1878, s 30A

²⁹ The Acid Control Act 2002, s 48

³⁰ Chief Justice M. Monir, *Principles and Digest of the Law of Evidence*, (13th edn,) 604

of foreign law in the context of Indian Sub-Continent.³¹ There is a leading case where it was held that the suit was filed for divorce of a Parsi marriage. On that circumstance, the Court called some Parsi advocates as expert witness on that matter.³²

The term Medical Expert means those persons who has expertise on the medical field such as doctor. It is very specific that who study medicine or who has special experience on that can be called as medical expert. In the court normally the witnesses are required to answer the question related human body. The judges and lawyers are unable to answer these sorts of question. The expert needs to identify that the death was caused by homicide or suicide, nature of the injuries, sanity or soundness of a person and many others forensic issues.³³ The visual evidence of an eyewitness that substantially corroborates the main injuries on the body of the deceased must be acknowledged.³⁴

Handwriting is a very unique characteristic of human. It always varies from one to another. By habit and nature, a person's handwriting follows a specific course and pattern. An individual's identity can be determined by his handwriting.³⁵ As a result, each person's handwriting contains some distinguishing feature that, as a reflex of his neural organization, is essentially not dependent on his own will and automatically pushes the writer to recognize the writing as his own.³⁶ The handwriting expert always need to answer these sort of questions like whether the two handwriting is written by the same person or the different person, whether the writing is written by right hand or left hand, can similar spelling mistakes occur in both the writings etc.³⁷ Whenever the Court need the opinion about the hand writing of a person is authentic or not, the court call the hand writing expert. But the opinion itself is not adequate enough for accepting the guilt of accused.³⁸ The Court is not bound to accept the opinion of the handwriting expert where the Court is satisfied with its own examination of it.³⁹

The knowledge of fingerprints is a science, and the evidence of persons educated with the science is admissible on the same considerations that determine the recognition of this section.⁴⁰ The fingerprint can be proved by the Court by itself by taking the fingerprint and after that compare it with the disputed one, or by the opinion of the expert. Fingerprint verification using

³¹ K.K. Singh & H.P. Gupta, *The Indian Evidence Act, 1872*, (6th edn, Eastern Book Company 2001) 117

³² *Farokh Homi Irani vs. Nargis Farakh Irani* [1963] 15 DLR WP 105

³³ Muhammad Nazrul Islam, *Reflection of law of Evidence*, (3rd edn, Kamrul Book House 2021) 244

³⁴ *Abdul Quddus vs. The State* [1982] 43 DLR AD 234

³⁵ K.K. Singh & H.P. Gupta, *The Indian Evidence Act, 1872*, (6th edn, Eastern Book Company 2001) 118

³⁶ Chief Justice M. Monir, *Principles and Digest of the Law of Evidence*, (13th edn) 614

³⁷ Muhammad Nazrul Islam, *Reflection of law of Evidence*, (3rd edn, Kamrul Book House 2021) 246

³⁸ *Ram Chandra vs. State of U. P.*, [1956] AIR 1957 SC 381

³⁹ *Abdul Matin Chowdhury vs. Chapala Rani Sen* [1984] 37 DLR AD 205

⁴⁰ Chief Justice M. Monir, *Principles and Digest of the Law of Evidence*, (13th edn) 624

only the eyes may be inaccurate to some extent.⁴¹ A competent expert witness is someone who studied finger impressions for five months at a training school and thirteen months in the office of the Inspector General of Police, analyzed two or three lacs of impressions, and himself acquired thousands of impressions.⁴² In a case where the opinion of an expert was accepted as reliable where the expert proved that, he was trained at the C. I. D.'s Finger Print Bureau and had studied all of the fingerprint ridges sent to him in the instant case and compared 18 ridges since it was the number of ridges adequate for matching in the science for conclusively confirming the identity of those two sets of fingerprints.⁴³

A person with extensive training, experience, and competence in the study of history is referred to as a historian expert. The investigation, analysis, interpretation, and contextualization of historical occurrences, eras, and trends are the areas of expertise for historians. To advance a greater comprehension of historical context and its relation to current situations, they may also participate in public discussion, give their knowledge in legal disputes involving historical issues, and provide policymakers with insights.⁴⁴

V. EXPERT TESTIMONY IN CIVIL SUITS

In the civil litigation, the dispute is mainly for properties. And to give solution in these issues we have to go through with lots of documents. Sometimes many forged or fake documents are submitted in the court as evidence.⁴⁵ In this circumstance, the Judges have to verify the authenticity and originality of those documents. For this reason, the experts are being called to verify those documents accurately.⁴⁶ Other than that, to verify the signatures in various documents or thumb impression the expert opinions are taken to solve the dispute. There are many civil suits in Bangladesh where expert opinion is taken to understand critical issues.⁴⁷

⁴¹ Muhammad Nazrul Islam, *Reflection of law of Evidence*, (3rd edn, Kamrul Book House 2021) 248

⁴² Chief Justice M. Monir, *Principles and Digest of the Law of Evidence*, (13th edn) 624

⁴³ Muhammad Nazrul Islam, *Reflection of law of Evidence*, (3rd edn, Kamrul Book House 2021) 248

⁴⁴ Rebecca Gidley, Mathew Turner, "Judicializing History: Mass Crimes Trials and the Historian as expert witness in West Germany, Cambodia and Bangladesh" (2018) available at <<https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=1566&context=gsp>> [accessed on 12 August 2023]

⁴⁵ Sandeep K. Narang, "Expert Witness Participation in Civil and Criminal Proceedings" (American Academy of Pediatrics, March 2017) available at <<https://publications.aap.org/pediatrics/article/139/3/e20164122/53763/Expert-Witness-Participation-in-Civil-and-Criminal>> [accessed 15 August 2023]

⁴⁶ *ibid*

⁴⁷ Sandeep K. Narang, "Expert Witness Participation in Civil and Criminal Proceedings" (American Academy of Pediatrics, March 2017) available at <<https://publications.aap.org/pediatrics/article/139/3/e20164122/53763/Expert-Witness-Participation-in-Civil-and-Criminal>> [accessed 15 August 2023]

The suit **Pranay Kumar Malakar and Ors. Vs. Chowdhury Makhlisur Rahman**⁴⁸ is about specific performance of contract. Here the plaintiff claimed that defendants made a Bainapatra with him. In this suit the handwriting expert and thumb impression expert are being called to verify the signature and thumb impression of the defendants in the Bainapatra. But the Court did not accept the report of the experts and referred the section 45 of the Evidence Act, 1872 it is the discretionary power of the Court to accept the opinion of the expert opinion in the proceedings. The claim of the plaintiff was that the signatures and thumb impression are given by the defendants in the Bainapatra. The Court discarded the expert's report and examine the signature and thumb impression by itself. The judgment was to set aside the suit and no cost was awarded to the plaintiff. Another suit **Anwara Khatun and Ors. Vs. Tofjal Huq and Ors.**⁴⁹ is also the suit of specific performance of the Contract. Here plaintiff claimed that the defendant made a Bainapatra to sell her land and took consideration money through her husband. But the defendant denied all the plaintiff's claim by saying that she neither signed any Binapatra nor took any consideration money from the Plaintiff. And also said that it was a forged Bainapatra. To prove the genuineness of the Bainapatra and the authenticity of the signature on that Bainapatra, expert witness was called in this suit. And the thumb impression expert said that the signature of the Bainapatra is defendants. And the Court gave the judgment on favor of the plaintiff.

The suit titled **Md. Yusuf Ali Vs. Mosammat Moriom Nessa**⁵⁰ is the suit for recovery of title and possession. In this suit the plaintiff claimed that the disputed land is owned by him and defendant fraudulently made a saf kabla deed by her name. to verify the genuineness of the signature on the deed, the finger print expert was called in this suit. And the opinion of the expert was the signature on the deed was made by the plaintiff. Relying on the report of the finger print expert the Court gave order to set aside the suit. Another suit named **Paresh Chandra Shil and Ors. Vs. Kali Bala Shil and Ors.**⁵¹ is the suit for recovery of title. Here the finger print expert was called to verify the genuineness of the saaf kabla deed of the disputed property. The Appellate Court gave the judgment to set aside the lower court's judgment and allowed the appeal. And finally in the suit named **Md. Masud Haider Vs. Md. Golam Ambia**,⁵² the defendant petitioner asked for expert opinion of the handwriting. The Advocate of the plaintiff said that there is no need to call expert witness in this matter and referred section

⁴⁸ *Pranay Kumar Malakar and Ors. Vs. Chowdhury Makhlisur Rahman* [2016] 12 LM AD 81

⁴⁹ *Anwara Khatun and Orsy. Vs. Tofjal Huq and Ors.* [2009] 15 BLC 787

⁵⁰ *Md Yusuf Ali Vs. Mosammat Moriom Nessa* [2019]

⁵¹ *Paresh Chandra Shil and Ors. Vs. Kali Bala Shil and Ors.* [2017] 4 LM (AD) 295

⁵² *Md. Masud Haider Vs. Md. Golam Ambia* [2015]

73 of the Evidence Act, 1872 where it is said that any contested handwriting or signature can be compared in court. On the other hand, the Advocate of the defendant said that, it is risky to rely on the presiding Judge's verification in the case of a disputable handwriting or signature, and the safest way is to acquire an expert's opinion. The Appellate Court then said that, the court will benefit from expert guidance in order to properly resolve the conflict between the parties. The defendant should not be prevented from getting an expert opinion on the claimed signatures related to the main reason because of the plaintiff's grounds.

VI. EXPERT TESTIMONY IN CRIMINAL CASES

For the purpose of imparting specialized expertise, explaining complicated subjects, confirming the accuracy of evidence, and facilitating in the fair and just conclusion of cases, expert witnesses are required in criminal proceedings.⁵³ Their testimony enables us to make sure that the best knowledge is used to guide the legal process. Criminal cases frequently include complicated technical, scientific, or medical issues which are difficult for the standard judge or lawyer to fully understand.⁵⁴ Expert witnesses are able to help the court and judge in understanding the facts and issues at hand since they are knowledgeable and skilled in their particular disciplines.⁵⁵

In the case named **The State and others Vs Md. Nazimuzzaman Yon and others**⁵⁶ the Trial Court gave the capital punishment which is death sentence to the accused. Accused filed an appeal to The Supreme Court of Bangladesh against the judgment of the lower court. The Appellate Court called an expert witness. A forensic expert from the Dhaka Medical College's National Forensic DNA Profiling Laboratory provided an opinion on the murder based on some blood stains and cotton swabs from the two victims. The forensic expert provided two DNA test results as proof. The court took into consideration the expert opinions as well as other evidence and, after considering all of it, dismissed the death reference. In **The State Vs. Tofayel Ahmed**⁵⁷ a medical expert's opinion regarding the harm caused to the deceased bodies and the reason for death was used. He claimed that the wounds were pre-mortem and that the victim's death was caused by homicidal strangulation by ligature that caused violent suffocation. The court based its decision on evidence that supported this opinion. However, in consideration of

⁵³ Sandeep K. Narang, "Expert Witness Participation in Civil and Criminal Proceedings" (American Academy of Pediatrics, March 2017) available at <<https://publications.aap.org/pediatrics/article/139/3/e20164122/53763/Expert-Witness-Participation-in-Civil-and-Criminal>> [accessed 15 August 2023]

⁵⁴ *ibid*

⁵⁵ *ibid*

⁵⁶ *The State and others Vs. Nazimuzzaman Yon and others* [2018]

⁵⁷ *The State Vs. Tofayel Ahmed* [2019] 71 DLR 57

all the forensic evidence, expert opinion, and confessional statement of the accused, the verdict and punishment were sustained and confirmed.

In the case named **Asif Iqbal Vs. State and Ors.**⁵⁸ is about cybercrime. Here the accused made an indecent video of the victim and uploaded it in the internet through fake ID. The DB police arrested the accused and after getting all the evidences the Session Court gave judgment of punishment to the accused. In this case regarding a fake ID, a website, and the handwriting on a deed, an expert in handwriting and an IT specialist were called. Section 57 of the Information and Communication Technology Act of 2006 covers this situation. In this case, the accused appealed in the Supreme Court of Bangladesh. But the Appellate Court dismissed the appeal and the decision of the session court was affirmed and confirmed in accordance with the facts and expert opinion.

The State and others Vs Oyshee Rahman and others⁵⁹ is one of the most leading case in Bangladesh. In this case the accused herself murdered her father and mother both very horrifyingly. The accused was an addicted and her mental condition was not stable when she committed this crime. Here Chemical expert Md. Kaiser Rahman investigated the viscera of the deceased Mahfuzur Rahman and Swapna Rahman (Oyshee Rahman's parents) and declared that no poison was found in either person's blood or viscera, however Bromazepam was discovered. When the coffee residue in the cup was investigated, bromazepam was discovered. This is regarded to be convincing proof that bromazepam was used to render them unconscious in order to commit murder. The Lower Court gave the death sentence to the accused for murdering her parents brutally. The accused appealed to the Supreme Court of Bangladesh for reducing the punishment. The grounds for reducing the punishments are condemned prisoner killed two people without any justification; was experiencing mental instability or another mental condition; also had an ovarian cyst and bronchial asthma; Her maternal uncle and paternal grandmother both have histories of psychiatric illnesses. She had no serious criminal past. promptly two days after the incident, voluntarily turned herself in to the police station. And the court reduced the punishment to life time imprisonment.

In the case of **State Vs. Golam Rabbani**⁶⁰ the accused was convicted for the murder of her wife. Here the accused first tried to say that the victim was died because of the snake bite. And tried to make this case as UD (unnatural Death) case. But in this case expert witness was called. study of the viscera by an expert the fact that the deceased had pesticide poison injected into

⁵⁸ *Asif Iqbal Vs. State and Ors.* [2019] 24 BLC 113

⁵⁹ *The State and others Vs. Oyshee Rahman and others* [2017] 25 BLT (HCD) 503

⁶⁰ *State Vs. Golam Rabbani* [2018] 70 DLR 211

their bodies has come to light as the cause of death. The death was verified by the expert testimony the court used. The accused appealed to the Supreme Court of Bangladesh. But the Appellate Court relied on the expert witness's opinion and dismissed the appeal.

VII. THE CREDIBILITY OF EXPERT WITNESS

An expert witness's credibility is determined by the reasonableness, dependability, and reliability of their testimony and opinions provided during a court case. A credible expert witness is someone whose abilities, area of expertise knowledge, and conduct give the judge, jury, and other legal professionals working on the case reason to believe them. Because an expert witness's ideas and knowledge can have a big impact on how a trial or legal case turns out, credibility is essential.⁶¹

Knowledge is the main justification for calling experts to provide testimony; their knowledge is expected to be above reproach and ensures that their testimony enlightens the panel of judges. The collection of knowledge combines experience, publications, and academic achievements, all of which enhance an expert witness's appearance on paper. But being able to explain things clearly, with a certain amount of confidence, and while being aware of the particulars of the issue is an essential component of knowledge.⁶²

The ability to be trusted is a quality that judges must consider when deciding whether to accept or reject expert testimony. In spite of the fact that each expert presents as a "defense witness" or a "plaintiff witness" rather than a "neutral witness," judges may recognize that experts are inherently biased. However, the degree to which judges trust their testimony depends on a variety of circumstances.⁶³

An effective expert is one who is courteous enough to take the time to explain their expertise in a way that the audience can grasp, in addition to being regarded as a reliable intellect. Expert dynamism, along with a demonstration of their intense passion for and expertise in the field, typically wins the argument.⁶⁴ The relatively broad question of whether an expert is likeable is the final one. Although it is uncommon for an educated, reliable, enthusiastic witness to come

⁶¹ Clint Townson, "What makes your expert witness best witness? Social Science Research highlights the role of credibility and influence" (IMS Consulting & Expert Services, 09 August 2020) available at <<https://www.expertservices.com/insight/best-expert-witness-social-science-research-on-credibility/>> [accessed on 21 August 2023]

⁶² Clint Townson, "What makes your expert witness best witness? Social Science Research highlights the role of credibility and influence" (IMS Consulting & Expert Services, 09 August 2020) available at <<https://www.expertservices.com/insight/best-expert-witness-social-science-research-on-credibility/>> [accessed on 21 August 2023]

⁶³ *ibid*

⁶⁴ *ibid*

across as unacceptable, many lawyers are familiar with at least one expert who has abrasive or even arrogant attitude. It has been discovered that credibility as a whole and trustworthiness perceptions are related to likability.⁶⁵ An expert is considered by judges as someone who offers information in a clear and simple manner that will help them assess the case's merits. The fact that the experts were paid for their opinions is almost always the judges' initial response when we ask them how they felt about the plaintiff or defense expert witnesses. Particularly, those receiving a high flat charge or hourly rate for their time in court are frequently seen as biased. Most lawyers believe that since both parties have hired experts, their opinions will balance one another out. Most of the time, though, it doesn't.⁶⁶

VIII. FACILITATING UNDERSTANDING OF COMPLEX EVIDENCE

First of all, we have to know the definition of complex evidence. Actually, there is no exact or definite definition of it. Because the definition may vary in case to case. But in general sense we can say that, those evidence are complex for which there is necessity of expertise on a specific field. For example, in a murder case post mortem report is very important evidence. But to understand the report we need skills on the forensic field. The judge or the lawyers are not expertise on the forensic field. But it is very much crucial evidence to solve the murder case. So, we can call it is complex evidence. Another example can be given such as, in a case of cheque dishonor the verification of the signature on the cheque is essential. And the judge or lawyers can not verify it by only seeing the signature. Rather they need to call expert witness who is a hand writing expert. And he will verify it by his skills. In this case the verified signature is complex evidence.

Above mentioned two situations we can see the example of complex evidence. Also, from those cases we can see another thing which is to understand these complex evidences we need to call expert witness. For this reason, we can say expert opinion can facilitate to understand the complex evidence. In the case **Sobha Rani Biswas Vs. State**⁶⁷ the conviction of the accused was solely set aside by the report of the expert opinion. The fingerprints were not taken neither in presence of the court nor to the expert. In **Mohammad Ali and others Vs. State**⁶⁸ the explosive substance which was alleged recovery from the accused appellant was not examined by the Chemical expert. And for this reason, the court set aside the conviction of the accused.

⁶⁵ Ibid

⁶⁶ Merrie Jo Pitera, "Improving expert witness credibility in the eyes of the Jury" (JDSUPRA, 03 March 2023) available at <Improving Expert Witness Credibility in the Eyes of the Jury | IMS Consulting & Expert Services – JDSupra> [accessed on 01 July 2023]

⁶⁷ Sobha Rani Biswas Vs. State [1999] 52 DLR 293

⁶⁸ Mohammad Ali and others Vs. State [2000] 1 BLC 164

In **State Vs. Monu Meah**⁶⁹ the defense council tried to prove that the blood of seized articles might be the blood of slaughtered cow. And the prosecution did not call the chemical expert to prove that the blood is not of the slaughtered cow rather it is the blood of human. For this reason, the seized articles which were very important evidence became highly doubtful. In **Anwara Begum Vs. Shah Newaj**⁷⁰ the petitioner could not prove her illness in front of the learned Joint District Judge. The High Court Division in that circumstance, gave the decision that without the medical certificate which was granted by the doctor the petitioner's illness was not admissible in evidence. In **Mozammel Hossain Shamol Vs. Nazma Begum @ Ayesha Khatun**⁷¹ the Court said that in the context of handwriting expert, in the modern world science has been developing very fast and day by day many advance technologies are being introduced. So, it is really necessary for the Court use those advance technologies for detecting the truth. Without using modern equipment, it is really very tough nowadays to identify the authenticity of the handwriting.

After analyzing above mentioned cases, we can easily see that there are various kinds of issues in various cases where the Court have to call the expert for giving their opinion. And with the help of their opinions the Court get the benefit and the proceedings become easier. And to understand the complicated evidence there are no other option than the expert opinion. The judges and the lawyers cannot be the expert in multiple fields and it is very much difficult to understand the scientific or technical or medical or forensic evidence without having the expertise on respective fields. So, we can conclude by saying that expert witness facilitates in understanding complicated evidences.

IX. BRIDGING THE GAP BETWEEN SCIENCE AND THE LAW

Science is a methodical technique that develops and organizes knowledge in the form of universe-related explanations and predictions that can be put to the test. Law, on the other hand, refers to the set of rules and regulations that social institutions have established to control member's behavior and may enforce such behavior by the enforcement of punishments.⁷² Nowadays almost every state enacted various legislations to manage and control the scientific and technological impacts on the society.⁷³ Since the beginning of creation, everything which is invented has positive and negative sides both. So, the invention of science and technology

⁶⁹ State Vs. Monu Meah [2001] 6 BLC 402

⁷⁰ Anwara Begum Vs. Shah Newaj [2003] 8 BLC (AD) 160

⁷¹ Mozammel Hossain Shamol Vs. Nazma Begum @ Ayesha Khatun [2015] 67 DLR 503

⁷² Abanti Bose, "Relation between law, science and technology in modern society" (Ipleaders 03 March 2023) available at <<https://blog.ipleaders.in/relationship-law-science-technology-modern-society/>> [accessed on 02 July 2023]

⁷³ ibid

has also the positive and negative sides. And by using advanced technology, people are doing many illegal activities.⁷⁴ To control illegal activities almost every nation enacts many laws. Science always makes everything easier. In collecting evidence and recording evidence scientific methods are used.

Science has substantive as well as procedural effects on the law. On the substantive side, new scientific evidence and other new methodology can change the pattern of claiming legal remedies and other outcomes such as; Forensic science has opened up new paths in criminal law whole generating a plethora of legal, ethical and social difficulties.⁷⁵ On the procedural side of the legislation, it specifies things like how genetic information may be utilized, how DNA samples should be acquired and preserved, and when convicted offenders are permitted to reopen their cases and other things.⁷⁶ Law aims to limit the effects of science and technology by addressing issues including risks, rewards, and implications for ethics.⁷⁷

Intellectual property is one of the most significant area where technology and laws both are involved. The advancement of science and technology provides many ways to protect an individual's own creation.⁷⁸ On the other hand, law provides safety measures and penalties if someone use or intervene other's intellectual property without his permission. In our country, there are also legislations where is mentioned the punishments of copywrite. By providing researchers and authors with financial incentives that will help them produce new innovations and works, intellectual property protection serves the primary goal of fostering innovation.⁷⁹

Ethics is one of the integrating parts in the field including science and laws. Because when someone innovates anything, whether innovation is ethical for mankind or not it is one of the questions raise in the scientist's mind. Again, when a legislature makes any new law, he must think that the elements and contents of that law is ethical or not. In order to create and implement acceptable legal concepts, lawmakers and courts are largely relied upon by society. The law makes an effort to settle moral disputes in a way that is acceptable to society.⁸⁰

X. ENSURING FAIRNESS IN LEGAL PROCEEDINGS

Expert witnesses are mostly beneficial for a fair trial in the court. To ensure justice and fair trial

⁷⁴ *ibid*

⁷⁵ Abanti Bose, "Relation between law, science and technology in modern society" (IPleaders 03 March 2023) available at <<https://blog.ipleaders.in/relationship-law-science-technology-modern-society/>> [accessed on 02 July 2023]

⁷⁶ *ibid*

⁷⁷ *ibid*

⁷⁸ *ibid*

⁷⁹ *ibid*

⁸⁰ *ibid*

opinion expert has no alternate. For example, in a criminal proceeding if the question arises about the legitimacy of a child, then DNA test will be the most reliable remedy. In this circumstance, without the assistance of the expert justice cannot be served.

In the history of Bangladesh, one of the legendary cases are 1971 Liberation War Crime. Bangladesh established International Criminal Tribunal for the crimes committed in 1971. During the liberation War, many horrifying crimes were committed by the Pakistani Army and some people who are called “Razakar” those who supports Pakistani Army.⁸¹ After so many years, in 2009 after Awami League came into the power, and established (ICT) International Criminal Tribunal.⁸² Till now ICT, convicted and executed six people. During these proceedings, to facilitate the trial and ensure fairness many experts are being called as a historian expert.⁸³ From July 1, 2012, Muntassir Mamoon, a history professor at Dhaka University, provided expert testimony in the case involving former Jamaat-e-Islami leader Ghulam Azam.⁸⁴ Shahriar Kabir, a war crimes expert, testified in the case of Ali Ahsan Mohammad Mojaheed, the secretary general of Jamaat-e-Islami, in August and September 2012.⁸⁵ These experts were being called to know the actual fact of the Liberation War 1971. Not only the facts but also the connection between the accused, regional paramilitary organizations, and the Pakistani army, as well as the influence of political statements in provoking violence.⁸⁶ So we can say that expert opinion in most cases plays a vital role to ensure fairness in the proceedings and assist the court.

XI. CHALLENGES AND POTENTIAL MISUSES OF EXPERT TESTIMONIES

There are many challenges and misuse of expert testimonies in Bangladesh. Because experts frequently possess in-depth knowledge of the subject matter of their testimony. They might not be able to fully explain this knowledge to a layperson, though. In order to achieve this, the expert must be able to communicate in a way that is understandable to non-experts and is neither overly technical nor filled with industry jargon.⁸⁷ When a court accepts an expert witness, it is

⁸¹ Rebecca Gidley, Mathew Turner, “Judicializing History: Mass Crimes Trials and the Historian as expert witness in West Germany, Cambodia and Bangladesh” (2018) available at <<https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=1566&context=gsp>> [accessed on 07 July 2023]

⁸² *ibid*

⁸³ *ibid*

⁸⁴ *ibid*

⁸⁵ *ibid*

⁸⁶ *ibid*

⁸⁷ “The Problems Facing Expert Witness Testimony And How to Avoid Them” available at <<https://www.hgexperts.com/expert-witness-articles/the-problems-facing-expert-witness-testimony-and-how-to-avoid-them>> 43049#:~:text=If%20an%20expert%20provides%20an, enough%20attention%20to%20this%20information.> [Accessed on 17 July 2023]

expected that he or she would provide objective and unbiased opinions, testimony, and evidence in support of the case.⁸⁸ The judge must decide if this bias actually exists and whether the professional is not merely asserting his or her independence. An expert witness may have a biased opinion if they have a prior relationship with the client, defendant, or lawyer.⁸⁹ Any attempt to influence the legal process for private advantage can seriously undermine the integrity of the judicial system. They should try to disclose the actual knowledge without any ambiguity and false statements. But it is not always the actual scenario.⁹⁰

In many cases, we can see that the experts are taking money from the opposite side for biased opinions. Many times, we can also see that, the experts are given the wrong information before the court in their opinion. These practices are very common in our country. Even in many cases, where expert opinion should call to make easy and fair trial, the court does not call the expert witness. One of the very important reasons behind it is political pressure. Government negligence is involved in these sorts of cases and for this reason experts are not being called. In our country the famous incident is Rana Plaza Tragedy. In Bangladesh garments industries are developing rapidly. And most traditional buildings have been converted into factories, and as proven by Rana Plaza, company owners have a habit of constructing additional floors without getting authorization. It was clear from this case that there was a lack of checking and monitoring from the competent authority.⁹¹ In this case, no experts were being called. Here we could call the soil experts who have the knowledge that in which land we can construct high rise buildings. And the land where this incident occurred was accurate for that building or not. Not only this, but we could also call the civil engineers are architectures for the report of the temperament of that particular building. But nothing happened as we expected. Even the structure allegedly had cracks, according to locals, and the problem was even covered by the local media. However, the government did not consider the action that would have prevented thousands of lives from being lost in the catastrophe.⁹²

XII. CONCLUSION

The current legal structure in Bangladesh displays a commitment to protecting the quality and trustworthiness of expert witness, trying to find a balance between allowing experts to help the

⁸⁸ *ibid*

⁸⁹“Disqualifying an Expert Witness Due to Bias” available at< <https://www.hgexperts.com/expert-witness-articles/disqualifying-an-expert-witness-due-to-bias-45754>> [accessed on 21 July 2023]

⁹⁰ *ibid*

⁹¹“Case Study- After Collapses of Rana Plaza” available at<<https://peachyessay.com/sample-essay/case-study-after-collapes-of-rana-plaza/>> [accessed on 01 August 2023]

⁹²“Case Study- After Collapses of Rana Plaza” available at<<https://peachyessay.com/sample-essay/case-study-after-collapes-of-rana-plaza/>> [accessed on 01 August 2023]

court and prohibiting such testimony from being misused for unjust benefits. As Bangladesh moves through its legal landscape, policymakers, legal practitioners, and scholars must work together to modify and enhance existing laws governing expert testimony.

Expert witnesses provide vital information that is used to estimate damages, determine responsibility and help resolve complicated disputes in civil litigation. Similar to this, expert witnesses are crucial in enlightening complex forensic, scientific, and psychological aspects of criminal cases that are frequently out of the reach of the typical layperson.

It is clear that expert testimony may help judges make judgments, ensure fair adjudication, and help judges understand complicated technical and scientific issues. This strategy fits with the larger worldwide trend that acknowledges the value of expert judgment in filling up knowledge gaps within the legal system. But it is our responsibility to use the expert opinion in the legal proceedings properly and without any misuse of it.

The goal of this research paper is to have a better understanding of the concept, application, scope, limitation and significance of the expert witness. After doing this research the author found that:

1. Section 45 of the Evidence Act, 1872 is regarding expert witness is not contemporaneous. This section mainly focused on only sectors which are foreign law, science, art, handwriting and fingerprint. But in the era of advancement, there are many other fields which need to be added under this section.

2. Moreover, the opinion of the expert is not mandatory in the legal proceedings. Because in the section the term is “may” not “shall”. So, it is the discretionary power of the court to call an expert witness. In this way judges can become biased and due to this bias towards one party, opposite party’s rights and claims will not ensure properly. For this reason, in many cases complete justice cannot be ensured properly.

3. The author of this research finds that there is no proper mechanism to check the credibility of the expert’s testimony. Any party of the proceedings can influence the expert and change the opinion according to their favor. So arbitrary practice of expert testimony can be done.

4. In the context of Bangladesh, the law students mainly study subjects related to law only. But as everyone know, Law is very much connected with the practical aspects. So those who study Law also should study other subjects as well as forensic law, law of technology, cyber-crime and many more in depth. When these students become lawyers or judges they will have

at least the basic knowledge regarding these medical and technological fields to ensure proper judgment.

5. The evidentiary value of the expert's opinion is very low in the context of Bangladesh. In many cases where an expert's opinion is really necessary but does not call the expert witness. So, a large number of people face difficulties in the legal proceedings. This seems a shortcoming of the legal system.

Expert testimony is very important to ensure proper justice and enhance the judicial proceedings. As the Evidence Act, 1872 is one of the oldest legislations in our country, there are too many changes necessary. Moreover, expert opinion is an area which is never amended till the legislation was published. Besides, this area is not enlightened properly and so people do not use this as a part of their legal proceedings. In that case, the definition of the expert witness if would be wider, then other expert witnesses can be called before the court. That will accelerate the execution of the fast trial. In conclusion, the court needs to increase the practice of taking opinions of the expert so that justice can be ensured accurately. Lastly, court will then have a wide range of information to avoid any miscarriage of justice.

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