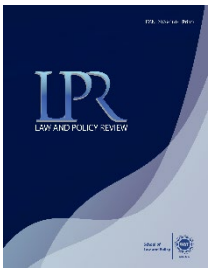
Law and Policy Review (LPR)
Volume 1 Issue 2, Fall 2022
ISSN$_{(P)}$: 2076-5614
Homepage: https://journals.umt.edu.pk/index.php/lpr

Article QR



Title: **Expert Opinion under Pakistani Legal System: An Analytical Study of its Evidential Value**

Author (s): Shahbaz Ahamd Cheema, Samee Ozair Khan

Affiliation (s): University of the Punjab, Lahore, Pakistan

DOI: https://doi.org/10.5349/lpr.12.02

History: Received: September 19, 2022, Revised: October 31, 2022, Accepted: November 29, 2022, Published: December 30, 2022

Citation: Cheema, S. A., & Khan, S. O. (2022). Expert opinion under Pakistani legal system: An analytical study of its evidential value. *Law and Policy Review*, *1*(2), 17–35. https://doi.org/10.5349/lpr.12.02

Copyright: © The Authors

Licensing: This article is open access and is distributed under the terms of Creative Commons Attribution 4.0 International License

Conflict of Interest: Author(s) declared no conflict of interest

A publication of
School of Law and Policy
University of Management and Technology, Lahore, Pakistan

Expert Opinion under the Pakistani Legal System: An Analytical Study of its Evidential Value

Shahbaz Ahmad Cheema* and Samee Ozair Khan

University Law College, University of the Punjab, Pakistan

Abstract

The current paper analyzes the scope and evidential value of expert opinion/evidence under the Pakistani legal system. The analysis is based on the case law decided by the superior judiciary with reference to some categories of expert evidence including medical evidence, handwriting expert's opinion, ossification test, and the opinion of ballistic and explosive experts. The concept of the admissibility of expert opinion was legislatively introduced in the Indian subcontinent by the British colonial government. This legal framework was inherited by both India and Pakistan at the eve of partition in 1947. In addition to this default legal system, some new legal provisions were enacted in the *Qanun-e-Shahadat* Order 1984 and the Anti-Terrorism Act 1997 to augment the value of those proofs that are based on technology and modern devices. Over the years, scientific and technological advancements in some categories of expert evidence have brought substantial precision and accuracy that is likely to have encouraging consequences for the value of such expert opinions. In short, evidential value of any opinion evidence hinges upon the nature of the evidence, as well as the scientific sophistication and technological precision of the concerned expert in that field, with reference to the particular circumstances of each case.

Keywords: ballistic expert, expert opinion, forensic evidence, handwriting expert, medical evidence, ossification test

Introduction

British colonial authorities, initially as East India Company and then as government proper, introduced the common law system in the Indian subcontinent, progressively. In the beginning, the system was dualistic, comprising two different hierarchies of courts as well as two systems of laws (Sarathi, 1972). Presidency towns were governed under the English legal and judicial system. In the rest of the Indian subcontinent, Islamic law

* Corresponding Author: shahbaz.law@pu.edu.pk

remained applicable, at least in theory. However, in practice, the situation was chaotic and confused. This state of affairs was systematically rectified by the codification of laws in various domains including multiple legislative instruments pertaining to the law of evidence (Sarathi, 1972). The most refined law of evidence was introduced in 1872 known as the Indian Evidence Act (IEA). It remained applicable in Pakistan till 1984 when it was replaced by the *Qanun-e-Shahadat* Order (QSO). The former law was prepared by Sir James Fitzjames Stephen (1872). IEA still applies in India and some other common law countries including Bangladesh, Malaysia, and Singapore with some modifications and amendments (Sarkar, 2016).

According to Sarkar (2016), IEA was substantially founded and drawn from the English law of evidence. James Stephen (1872) stated, "[the IEA] is little more than an attempt to reduce the English law of evidence to the form of express propositions arranged in their natural order, with some modifications rendered necessary by the peculiar circumstances of India".

The replacement of IEA by QSO in 1984 was aimed at the Islamization of laws by President General Muhammad Zia ul Haq (Kennedy, 1990). In addition to the structural rearrangement of IEA some new provisions were included, such as articles 44, 153A, 163, 164, 165, and 166, while some others were amended, for instance, articles 3, 17, and 128. Legal provisions dealing with the competency of witnesses and their privileges, that is, articles 3-17 were brought to the beginning of QSO from their original location in IEA, that is, sections 118-134. There are 166 articles in QSO, out of those only six are new additions. Some newly introduced and amended provisions attempted to graft the perspective of Islamic law on the common law framework on which the IEA was founded, such as competency and number of witnesses in *Hudud* and *Qisas* and the administration of oath. However, numerous provisions and major principles of IEA were left untouched. As a whole, the amendments and structural rearrangement do not cause much disturbance to the chain of precedents developed under the parent legislation.

As far as the admissibility and value of expert opinion is concerned, QSO has substantially kept intact the framework of common law. Evidence should be based on facts and what is not fact cannot constitute evidence (Ali & Woodroffe, 1907). "A witness must only speak facts: his mere personal opinion is not evidence" (Powell et al., 1868). An opinion is an inference from facts and hence, it is distinguishable from the fact proper. What has

been observed by the sensory faculties of a witness is termed as fact under article 2(d) of QSO. An opinion is something more than the product of sensory faculties. Furthermore, opinion formation is the main assignment of judicial officers and no judicial officer is expected to abdicate/delegate it to someone else, despite the latter's expertise in the subject (Sarkar, 2016). However, judicial officers are not expected to possess the requisite level of knowledge in all fields which necessitates the admissibility of opinion evidence. Scientific information or knowledge outside the experience/domain of judicial officers cannot be properly apprehended without expert assistance (Glover & Murphy, 2013). Hence, the admissibility of expert evidence is based on necessity (Sarkar, 2016). In this background, it may be said that judicial officers, who acted earlier as triers/assessors of law and facts, have now become 'triers of science' (Beecher-Monas, 2007).

Legal Provisions

QSO allows the relevancy of opinion evidence under articles 59 to 65 (both included). This framework is borrowed from sections 45 to 51 of IEA. Under QSO, two sorts of opinions, expert and non-expert, have been declared relevant. The necessity of the first seems plausible. As far as the opinion of non-expert is concerned, it is entertained in specific circumstances, such as opinions related to relationship and on matters of public importance. These opinions were admissible under common law (Glover & Murphy, 2013). IEA followed suit and reproduced them. The same are retained in QSO. The current paper confines itself to expert opinion and does not debate the opinion of non-expert.

The main provision dealing with expert opinion is article 59. It identifies six different areas in which opinion evidence can be entertained by the court. They are foreign law, science, art, identity of handwriting, finger impression, and electronic documentations and online security systems. At the time of the enactment of IEA, the first four areas were specified in the law and finger impression was incorporated in 1899 (Ali & Woodroffe, 1907). In 2002, the Electronic Transactions Ordinance incorporated the last subject for expert opinion. Keeping in view the liberal and progressive manner in which the word 'science' has been construed by the courts, the later amendments could have been read into the law without their specific incorporation (Sarkar, 2016). In any case, the merit of the above amendments is to foreclose any possibility of confusion. Articles 60 and 65

underline that an unsubstantiated opinion does not carry much significance and hence, all opinions should be supported by facts and grounds.

Article 164 of QSO is a new provision. It pertains to the production of evidence made available due to modern devices and techniques. Articles 59 and 164 of QSO are overlapping. However, considering the scheme of QSO, it may be contended that the latter article does not fall among those provisions that deal with the relevancy of facts. Hence, it could carry more impact in terms of evidential value than a simple declaration of the relevancy of such evidence.

In 2014, an amendment was introduced in the Anti-Terrorism Act 1997 (ATA) (2014) with an object to give more salience and value to the evidence based on modern devices and technologies. Section 27B of the said Act states that notwithstanding anything in any law including QSO

> a person accused of an offence under this Act may be convicted on the basis of electronic or forensic evidence or such other evidence that may have become available because of modern devices or techniques referred to in Article 164 of the QSO provided that the court is fully satisfied as to the genuineness of such evidence.

So, at least in the offences punishable under the said Act, the evidence based on science and technology could be used as the sole basis for the conviction of an accused. However, in light of QSO and particularly the jurisprudence that evolved under article 59, it is an established proposition that expert opinion is in general a confirmatory and corroboratory piece of evidence. A question arises at this juncture that if a piece of evidence could have more implications in the most heinous offences, why the same sort of treatment is not accorded to it in relatively less gruesome crimes? Due to the absence of any explicit prohibition in QSO on this issue, it is asserted that the evidence based on modern devices and technologies should be accorded more value in all sorts of offences, unless the circumstances of a case suggests otherwise.

Evidentiary Value of Expert Opinion

Under the legal framework for expert evidence in Pakistan, there are two important points to start with. The first is that expert evidence has been declared as relevant. Hence, it is admissible in the courts. The second is that expert evidence does not amount to a conclusive proof and its value is dependent on a number of factors. The courts assess the value of expert

opinion in the context of specific facts and the circumstances of each particular case (Ranchhoddas & Thakore, 1949). It is entirely within the exclusive province of a tribunal of fact to decide the weight of an expert opinion (Keane & Mckeown, 2016). Sarkar (2016) stated, "the expert evidence is only good if it appeals to the judicial lines; appreciation of that evidence can only be the work of the court." It is unsafe to convict while relying exclusively on expert evidence without substantial corroboration (Sarkar, 2016).

There are some major factors that determine the value of expert evidence. The first relates to the qualification of an expert. The second is the nature of the subject to which such evidence pertains. Different fields of knowledge may supply varying levels of potency and strength to evidence on the basis of technological sophistication and accuracy. The third pertains to the scope of a particular kind of expert opinion. The fourth is the synchronization of expert evidence with other pieces of evidence in a case. This is a moot question in all cases as how far expert evidence is confirmed by the rest of the evidence or vice versa.

An expert should possess expertise. In other words, the particular expert must be skilled in the areas mentioned under article 59. In what manner one's expertise in the field is to be ascertained is the real question before the courts. It needs to be determined whether a professional degree is a pre-requisite or practical training without a professional degree would qualify someone as an expert. The courts take into account both aspects. How long an alleged expert has been working in his field? Is he working independently or still holding a position of an apprentice? Irrespective of holding a degree, whether he has applied and tested his knowledge by undergoing practical training in the field or not? All these considerations are pertinent for ascertaining a proposed expert's competence (Ranchhoddas & Thakore, 1949; Sarkar, 2016). Furthermore, adverse party may raise questions on his competence and opinion during cross-examination. The credence and value of an expert's opinion is gauged by independence, objectivity, and a balanced approach towards scientific discourse (Glover & Murphy, 2013).

Sometimes, the field in which opinion evidence is adduced provides guidance for ascertaining the value of such evidence. For instance, the opinion of a handwriting expert is generally not considered of great value. It is common observation that people's handwriting changes with the

passage of time. The same person may write differently, intentionally or unintentionally, in various mood conditions (Sarkar, 2016). On the other hand, evidence made available due to advancements in science and technology, such as evidence based on DNA, may not have such inherent swings and is likely to generate more confidence (Sarkar, 2016).

The scope of an expert opinion is another important dimension to measure its value. For instance, medical evidence assists us in determining the nature and kinds of injuries along with the duration elapsed since their occurrence till physical examination, without giving any idea about the person involved in causing the same. On the other hand, DNA may establish the identity of a person beyond doubt (Cheema, 2016). Explosive and ballistic experts help us to compare firearm empties with the alleged weapon of offence. The opinion of handwriting experts may extend some assistance in comparing the alleged signature/writing with that of the proved signature/writing. Therefore, it is always advisable to draw those inferences which could justifiably be inferred from any particular kind of expert opinion.

A case may have plenty of other evidence, such as direct, circumstantial, and documentary evidence in addition to expert evidence. In this background, the court has to arrive at conclusions or draw inferences by analyzing the evidence in totality. It needs to establish how far an expert opinion is in line with other evidence and if they are not suggesting the same inferences then what sort of differences they are implying. If differences are minor, they may not have a noteworthy impact on the outcome of a case. However, if the differences are major and go to the very root of the controversy, such situation should alert the court.

There is a built-in bias in the system of legal evidence in Pakistan that favors direct evidence over opinion evidence. This is so because in direct evidence a witness reproduces facts, whereas in opinion evidence inferences are drawn from facts by an expert. If a court is satisfied as to the veracity and authenticity of facts narrated by a witness, no evidence can compete with it. A judge drawing conclusions and inferences from such facts is more likely to be mindful of all judicial cautions. On the other hand, opinion formation by an expert is made on the basis of facts brought into his knowledge. Sometimes partial, incomplete, or faulty disclosure of facts to an expert may lead to erroneous conclusions.

The remaining part of the paper discusses various kinds of expert opinions with the objective to appreciate the evidential value of such opinions based on case law analysis. The following analysis makes the readers comprehend how expert evidence is evaluated by the courts along with other pieces of evidence.

Medical Opinion/Evidence

Medical evidence is a confirmatory kind of evidence and it possesses an inherent limitation that it cannot identify an accused (Dildar Hussain v. Muhammad Afzaal, 2004). The Supreme Court in Abdur Rehman v. State (1998) observed that medical evidence corroborates or supports substantive or circumstantial evidence and it cannot independently become a basis for conviction. The value of medical evidence depends upon the grounds or the cogency of reasoning presented in the opinion/report. The court can even ignore medical opinion if it lacks satisfactory explanation or justification. Furthermore, the court may place reliance on an ocular version or other circumstantial evidence found to be reasonably convincing. This approach is in line with Sarkar (2016). He said that if there is a conflict between medical evidence and ocular testimony, the latter should be preferred unless it belied fundamental facts.

The offence of murder was committed by a deadly weapon and witnessed by reliable witnesses in Sikandar v. State (2006). Before the Supreme Court, one of the main objections of the petitioner was the non-procurement of the post-mortem report of the deceased. It was argued that in the absence of the post-mortem report, the real cause of death could not be ascertained. The court responded that this objection could be raised in those cases where the real cause of death remained indeterminate. However, in the case in hand where the offence was committed with a deadly weapon, such an argument did not possess any merit. The court further explained that medical evidence was not a substitute of direct evidence. It was only a source of corroboration with respect to the nature and seat of injury, kind of weapon used, and duration between injury and death. It might confirm the ocular account to a limited extent but it could not identify an accused and connect him with the commission of offence. If a homicidal death is proved by the direct evidence of most natural and independent witnesses, non-availability of medical evidence would not be of any consequence.

The Supreme Court in Zahoor Ahmad v. State (2017) found that medical evidence confirmed the ocular account pertaining to the injuries caused to the deceased, time period between the injuries and the victim's death, and between the death and the post mortem of the deceased's body.

In Khizar Hayat v. State (2011), some firearm injuries on various parts of the head of the deceased victim were found. The accused pointed out that medical evidence was contradictory with ocular evidence about the locus of injuries on the deceased's head. The court observed that head is not a stagnant/fixed part of the body and the deceased might have been revolving his head during the scuffle to protect it. Therefore, causing injuries on different parts of the deceased's head could not be treated as contradiction in ocular and medical evidences.

Major contradictions in medical and other evidences may have a significant impact on the outcome of cases. In Usman v. State (2017), one of the witnesses said that the accused caused only one injury to the deceased. However, the post-mortem report revealed that there were eight injuries on the victim's body. This contradiction, along with other discrepancies, led to the acquittal of accused by the Supreme Court. In Shazia Parveen v. State (2014), medical evidence and chemical examiner's evidence caused serious doubts about the story articulated by the prosecution. The time of death mentioned by eye witnesses and the one ascertained through the post-mortem report were not similar. According to the prosecution's story, poison was administered by the accused-wife to the deceased-husband before causing the latter's death. Although, no traces of poison were detected by the chemical examiner in the deceased's body. Consequently, the accused was extended the benefit of doubt and her conviction was set aside.

In Haleem v. State (2017), according to the eye witnesses, the assailants fired the shot from a distance of about 22 feet. However, blackening and burning around the margin of wound indicated that the shot was fired from a very close range. According to the doctor, the shot was fired from within the three feet of the victim. Such inconsistency of the ocular account with medical evidence caused doubts about the presence of the witnesses at the spot. Consequently, their evidence was discarded.

In Muhammad Saleem v. Shabbir Ahmad (2016), the Supreme Court observed that when the alleged incident of murder was not witnessed by

anyone, medical evidence alone may not have much consequence. Since such evidence could only guide about the nature, seat, and time of injury, without pointing out as to who had committed it. Additionally, in this case, the weapon allegedly used in the crime was recovered from a place which was open and accessible to all. The court categorically noted that it was unsafe to draw any conclusion from such recovery. Since no body witnessed the murder, mere recovery of an alleged weapon of offence matching with a crime-empty was not convincing enough to connect the accused with the murder.

In Malu v. Ali Bakhsh (2013), a single firearm injury with a deadly weapon, Kalashnikov was caused on the left thigh of the victim by the accused. The former died of excessive bleeding from that injury. The victim in the case could not be provided medical treatment timely because the nearest health center was located at a distance of 50 kilometers. The trial court convicted the accused under section 302(b) of the Pakistan Penal Code. Thereafter, the high court converted it under Section 316, considering the fact of single bullet injury and excessive bleeding. Finally, the Supreme Court converted the accused's conviction to section 302(b) again, taking into account the language of section 300 that the injury was in all probabilities likely to cause the death of the victim.

In Zeeshan v. State (2017), the assailant/appellant and the deceased victim were jointly engaged in animal slaughtering on *Eid ul Zuha* and they quarreled over their respective shares in the generated income. The appellant hit the deceased with a wooden stick on his head once and that single injury caused his death after three days of the incident. The appellant argued that since death did not occur instantaneously nor on the same day, hence he should not be held responsible for the murder. Instead, he should be awarded a lighter sentence considering the nature of the injury caused by him. The court observed that since the victim's death was directly linked to the single head injury based on medical evidence and post-mortem report, the accused could not be exonerated from the responsibility of causing intentional murder. However, taking into account the peculiar circumstances of the case, his conviction was converted to section 302(c) from section 302(b) of the Pakistan Penal Code.

Ballistic Expert's Opinion

Ballistic experts investigate and provide guidance as to whether a given shot was fired from a particular weapon, the distance from which the shot was fired, and the approximate time when that weapon was last used (Sarkar, 2016). The value of the opinion of ballistic experts depends on the peculiar circumstances of each case. The cases illustrated in this section give an idea as to how the courts assess and accord weight to such opinion evidence.

As soon as a firearm empties or a weapon of offence is recovered, it should be sent for forensic analysis. Any delay in this regard could have adverse consequences for the prosecution's case. The Supreme Court observed that empties collected from the crime scene should be dispatched as early as possible to a forensic science laboratory (Mushtaq v. State, 2008). Such empties should not be retained till the recovery of the weapon of offence from the accused and for sending them both -empties and weapon- together for analysis. The court noted that if the last mentioned course was adopted, it would cast serious questions about the value of the forensic report. In Ali Sher v. State (2008), the crime empties allegedly found at the place of occurrence were retained in police station and were sent to the forensic science laboratory along with the crime weapons 12 days after the recovery. The court observed that such unexplained delay destroyed the evidential value of these pieces of evidence and the recoveries could not offer any corroboration to the ocular testimony.

In Muhammad Ijaz v. Muhammad Amir (2008), the firearm empties recovered from the spot were collected and sent to the forensic science laboratory before the recovery of the weapon was affected. After the recovery of the gun, it was also sent for forensic analysis. The report of the laboratory confirmed that the empties matched with the gun. Resultantly, the report was held to have corroborated the prosecution evidence including dying declaration.

The Supreme Court treated the alleged recovery of the weapon of an offence from the accused as a mitigating factor for reducing the punishment in Zahoor Ahmad v. State (2017) because the weapon was not sent for analysis to the forensic science laboratory.

If an offence is proved as per the required standard by reliable evidence, the delay in dispatching the empties and weapon may not have much

consequence. In Muhammad Aslam v. State (2012), eye witnesses were the residents of the same locality in which the crime was committed. The evidence they provided stood the test of cross-examination and was found to be confidence inspiring. A specific role was assigned to the accused and he also admitted the motive for the commission of offence. In such circumstances, delayed dispatching of empties and weapon to the forensic science laboratory could not offset the reliable ocular evidence.

In Yasir Ali v. State (2017), an alleged weapon of offence (pistol, 30 bore) was recovered from the accused and then sent for analysis to the forensic science laboratory. The report showed that it matched with the fire empty recovered by the investigating officer from the place of occurrence. Nonetheless, it was interesting to note that no firearm injury was found on the deceased's body who was murdered with a blunt and sharp edged weapon. In this situation, the recovery of weapon could not lend any benefit to the prosecution version, the court noted.

Ossification Test

Ossification test is conducted by radiologists for determining age on the basis of bone examination. This test can only give an approximate age which may be at variance up to two years on both sides (Sarkar, 2016). Furthermore, it should not be preferred over the positive evidence of birth register and school admission certificate, nor it should offset consistent and convincing oral evidence (Sarkar, 2016).

According to Lahore High Court, age determined through the ossification test may be different from the accurate age within the range of 6 months to 1 year on either side (Aman Ullah v. State, 2013). In another case titled Muhammad Basit v. State (2016), the same high court opined that there is a margin of error of two years on both sides. In Muhammad Faizan Riffat Ullah Khan v. State (2016), Islamabad High Court noted that ossification test is like a guess forming opinion after the examination of the X-rays of wrist joints that could hardly be at variance of one year.

In Muhammad Akram v. Muhammad Haleem (2004), the trial court concluded (without an ossification test) that the accused was below 18 years of age at the time of incident and decided to conduct his trial by a juvenile court. The Supreme Court, considering the absence of ossification test, remanded the case to the trial court for the re-determination of the age of

the accused in the interest of justice and the avoidance of complications in the future.

Mere non-conducting of the ossification test does not cause much significance if the age of an accused is satisfactorily verified from another reliable piece of evidence. In Muhammad Ilyas v. State (2017), ossification test was not conducted. However, an authentic record about the age of a juvenile in the form of a secondary school certificate examination and the school leaving certificate was available. Such documents are kept in official custody and presumed to be properly maintained unless some specific doubt is caused about their accurate maintenance. Since nothing was pointed out against the accurate maintenance of the documents, the court held that non-conducting of ossification test was immaterial. Similarly, in Ghulam Abbas v. State (2014), the entries about the age of the accused were the same in 'Form Bay' maintained by NADRA and in the school register. These entries were made prior in time to the alleged commission of offence. Hence, they carried substantial evidential value. It was further held by the court that the necessity of ossification test would have arisen in the absence of authentic documentary evidence.

In the record of the Board of Intermediate and Secondary Education Lahore, the plaintiff's age was written five years more than his actual age. He applied for its correction. On the request of the Board, ossification test was conducted that confirmed the contention of the plaintiff. Consequently, the court directed the Board for the correction of the plaintiff's age (BISE, Lahore v. Akbar Ali, 2017).

In Qadir Yar v. ASJ (2011), a medical board comprising five senior doctors was constituted to determine the age of the accused on the application presented by the complainant. The board found him to be of 23 years of age. Consequently, his trial was directed to be conducted by a regular court and not by a juvenile court. This order was challenged by the accused in the High Court. The court dismissed the petition and observed that in the absence of any reliable documentary evidence, ossification test executed by highly technical and advanced equipment was the best method for the discovery of age.

Handwriting and Thumb Impressions

In Umeed Ali Khan v. Dr. Sultana Ibrahim (2007), the Supreme Court had an occasion to express its views regarding the significance of the

opinion of the handwriting expert. In this case, a property transaction was in dispute between the concerned parties. The appellant asserted before the apex court that the opinion of handwriting expert about the alleged signature of Sultana Ibrahim on the receipt should have been given proper weight, which unfortunately was not done by the court below. It was pointed out that the handwriting expert confirmed that the alleged signature matched with that of Sultana Ibrahim but his opinion was not believed and the case was decided against him. While maintaining the impugned decision, the Supreme Court observed that the opinion of handwriting expert comprises the weakest kind of evidence among various expert opinions. It is only confirmatory evidence that could not be preferred over other confidence inspiring and credible evidences. The court cautioned that it is always risky to contest the findings of genuineness or otherwise on the basis of the opinion of a handwriting expert, exclusively.

In Saadat Sultan v. Muhammad Zahur Khan (2006), the plaintiff filed a suit for the cancellation of a sale mutation in favor of the defendant. He produced a handwriting expert who stated that the alleged signature on the mutation did not correspond with the signature of the deceased owner, that is, the alleged seller. On the other hand, the defendant produced witnesses who were found to be trustworthy by the courts below and they concurrently dismissed the suit of the plaintiff. While refusing to interfere in this decision, the Supreme Court said that the opinion of handwriting expert comprises a very weak type of evidence that could only confirm or explain direct or circumstantial evidence. By its very nature, it could not assume precedence over other confidence inspiring and independent evidences.

In Abdul Rasheed v. Syed Fazal Ali Shah (2016), a suit for recovery on the basis of a cheque was decreed against the defendant. Eventually, the defendant filed a petition for leave before the Supreme Court and one of the important questions was about the admissibility and probative value of the statement of bank officials about the signature in dispute. They had stated as experts that the signatures on the cheque did not belong to the defendant. The court observed that the statement of bank officials was not relevant because they were not handwriting experts capable of establishing or refuting the disputed signature of the defendant. It is submitted that even if bank officials are not treated as experts, their evidence may be held relevant under article 61 of the QSO in appropriate circumstances.

In Muhammad Ishaque Qureshi v. Sajid Ali Khan (2016), a suit for specific performance was dismissed under Order 7 Rule 11 of Civil Procedure Code by the civil court on the basis of the opinion of a handwriting expert without framing issues and recording of evidence. When the matter arrived before the Supreme Court, it observed that the opinion of the handwriting expert was one piece of evidence that could not be extended such enormous value as to circumvent the regular process of civil proceedings. While remanding the case to the civil court, the apex court directed it to follow the regular civil procedure and treat the expert opinion as one piece of evidence amongst other evidence and dispose the case on merit. In another case titled MCB v. Amir Hussain (1996), it was earlier observed by the Supreme Court that the opinion of the handwriting expert is not a legal necessity to be procured in every case. The courts may compare handwriting themselves as contemplated by article 84 of the QSO.

In a case titled Syed Sharif Ul Hassan v. Hafiz Muhammad Amin (2012), a suit for specific performance was decreed on the basis of an agreement to sell, allegedly signed by *pardanashin* ladies, in favor of the plaintiff/respondents. The defendant/appellants argued that the identity of the *pardanashin* ladies was not established and their alleged thumb impressions were not verified by the finger print expert. The apex court found that the evidence on both sides was inconclusive and remanded the case to the trial court for securing the opinion of the finger print expert and directed it to decide afresh in the light of the totality of available evidence.

The analysis in this section demonstrates that the value of the handwriting expert like other experts is largely measured in the context of the totality of evidence/facts in a case. It is generally a weak kind of evidence, although it may assume significance because of the peculiarity of the circumstances of a particular case and force an appellate tribunal to get the case retried de novo.

Conclusion

There is an intriguing paradox pertaining to expert opinion. It is not fact as such and, in principle, it is inadmissible under common law. However, judicial officers are not masters of all fields of knowledge and they remain in need of expert assistance on numerous matters including science and technology. Furthermore, judicial officers are not supposed to delegate their main judicial function of opinion formation or drawing conclusion based on

the ultimate facts of a case. They should not repose outright and blind confidence in expert opinion. Such opinion ought to be assessed along with other evidence available in any particular case. Paradoxically, the responsibility of evaluating expert opinion is assigned to those judicial officers whose lack of knowledge originally necessitated the procurement of expert evidence. Despite such an irony of the legal framework, it has been working satisfactorily because it has devised numerous signposts and guidelines for the evaluation of expert opinion.

Pakistani legal system, following the common law paradigm, confines itself to stating that expert opinion is relevant and admissible in specific areas and does not spell out the evidential value of each and every kind of such evidence. The latter domain is left for the courts to work out and they have underlined some considerations for this purpose. Sometimes, the expertise of an expert does have a substantial impact on the outcome of a case. On others, non-objective and imbalanced manner of approaching the subject on which the expert opinion is rendered may deprive such opinion of reliability. Sometimes, the domain in which the expert opinion is offered might have attained technological sophistication to render an additional value to the opinion. Conversely, rudimentary nature and guess work type technique for formulating an opinion is not likely to impress upon a judicial mind. Moreover, an opinion may have more to offer when its scope is properly delineated and its repercussions are kept within well-defined parameters.

In a nutshell, numerous factors are taken into consideration to determine the evidential weight of different kinds of expert opinions, from the skillfulness of an expert to the implications of an opinion. Since judicial officers oversee all available pieces of evidence along with the expert opinion, they are better positioned to assess how far the latter is in conformity (or not) with the conclusions and inferences drawn from the former. Furthermore, which one of them is more convincing and reliable. In line with article 164 of QSO and section 27B of ATA, it is submitted that the evidence obtained through scientific technology and modern devices should be accorded greater evidential value than the general judicial approach of considering all sorts of expert opinions as either confirmatory or corroboratory evidence.

References

Abdul Rasheed v. Syed Fazal Ali Shah. ___ (2016 SCMR 2163).

Abdur Rehman v. State. ___ (1998 SCMR 1778).

Ali Sher v. State. ___ (2008 SCMR 707).

Ali, S. A., & Woodroffe, J. G. (1898). *The Law of evidence applicable to British India*. Spink & Company

Aman Ullah v. State. ___ (2013 PCrLJ 1440 [Lahore]).

Beecher-Monas, E. (2007). *Evaluating scientific evidence: An interdisciplinary framework for intellectual due process*. Cambridge University Press

Board of Intermediate & Secondary Education (BISE) Lahore v. Akbar Ali. ___ (2017 YLR 1485 [Lahore]).

Cheema, S. A. (2016). DNA evidence in Pakistani courts: An analysis. *LUMS LJ*, *3*(1), 1–15.

Dildar Hussain v. Muhammad Afzaal alias Chala. ___ (PLD 2004 SC 663).

Ghulam Abbas v. State. ___ (2014 PCrLJ 858 [Peshawar]).

Glover, R., & Murphy, P. (2013). *Murphy on evidence*. (13th ed.). Oxford University Press.

Haleem v. State. ___ (2017 SCMR 709). https://www.capitaldefencemanualpk.com/case/haleem-v-state-2017-scmr-709/

Keane, A., & Mckeown, P. (2022). *The modern law of evidence*. Oxford University Press

Kennedy, C. H. (1990). Islamization and legal reform in Pakistan, 1979-1989. *Pacific affairs*, *63*(1), 62–77. https://doi.org/10.2307/2759814

Khizar Hayat v. State. ___ (2012 SCMR 429). https://caselaw.shc.gov.pk/caselaw/view-file/NzU5MThjZm1zLWRjODM=

Malu v. Ali Bakhsh. ___ (2013 SCMR 771).

Mst. Saadat Sultan v. Muhammad Zahur Khan. ___ (2006 SCMR 193).

Mst. Shazia Parveen v. State. ___ (SCMR 1197, 2014).

Muhammad Akram v. Muhammad Haleem. ___ (2004 SCMR 218).

Muhammad Aslam v. State. ___ (2012 SCMR 593).

Muhammad Basit v. State. ___ (2016 PCrLJ 1745 [Lahore]).

Muhammad Faizan Riffat Ullah Khan v. State. ___ (2016 PCrLJ 638 [Islamabad]).

Muhammad Ijaz v. Muhammad Amir. ___ (2008 SCMR 819).

Muhammad Ilyas v. State. ___ (2017 YLRN 71 [Lahore]). https://www.supremecourt.gov.pk/downloads_judgements/c.a._1113_2017.pdf

Muhammad Ishaque Qureshi v. Sajid Ali Khan. ___ (2016 SCMR 192).

Muhammad Saleem v. Shabbir Ahmad. ___ (2016 SCMR 1605).

Mushtaq v. State. ___ (PLD 2008 SC 01).

Muslim Commercial Bank Ltd (MCB) v. Amir Hussain. ___ (1996 SCMR 464).

Powell, E., Cutler, J & Griffin, E. F. (1868). *Principles & practice of the law of* evidence (3rd ed.). Butterworths.

Qadir Yar alias Soni v. ASJ. ___ (2011 PCrLJ 920 [Lahore]).

Ranchhoddas, R., & Thakore, D.K. (1949). *The law of evidence*. (11th ed.). The Bombay Law Reporter Office.

Sarathi, V. P. (1972). Historical background of the Indian Evidence Act, 1872. *Journal of the Indian Law Institute*, (Special Issue), 1-25. https://www.jstor.org/stable/43950171

Sarkar, S. C., (2016). *Law of evidence* (Malaysian Edition). LexisNexis.

Sikandar v. State. ___ (2006 SCMR 1786). https://www.supremecourt.gov.pk/downloads_judgements/j.p._147_2016.pdf

Sqn. Ldr. (R) Umeed Ali Khan v. Dr. (Mrs.) Sultana Ibrahim. ___ (2007 SCMR 1602).

Stephen, J. F. (1872). *The Indian Evidence Act (I. of 1872): With an introduction on the principles of judicial evidence*. Macmillan and Company.

Syed Sharif Ul Hassan v. Hafiz Muhammad Amin. ___ (2012 SCMR 1258).

The Anti-Terrorism (Amendment) Act 2014 (Act No. VI of 2014). http://www.na.gov.pk/uploads/documents/1403676271_414.pdf

Usman alias Kaloo v. State. ___ (2017 SCMR 622).

Yasir Ali v. State. ___ (PLD 2017 Lahore 737).

Zahoor Ahmad v. State. ___ (2017 SCMR 1662).

Zeeshan @ Shani v. State. ___ (PLD 2017 SC 165).