

Very Important : Asked in Mains

OPINIONS OF THIRD PERSONS WHEN RELEVANT

EVIDENTIARY VALUE OF EXPERT EVIDENCE

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OPINION OF THIRD PERSON WHEN RELEVANT?

(Section 45-51)

Most of the times it is the general rule that the opinions of third person or party is irrelevant. **However there are some instances/exceptions when the opinion of third person is taken into consideration.**

When court will take help of expert opinion? (section 45)

When the court has to form an opinion on the point of-

- 1. Foreign Law**
- 2. Science**
- 3. Art**
- 4. Identity of Handwriting**
- 5. Finger Impressions**

Then the opinions upon that point of persons specially skilled in Foreign Law, Science, Art, Identity of Handwriting, Finger Impressions are relevant facts.

Who is an expert?

Expert is one who is specially skilled in a matter. But it is no where essential that expert must hold any degree or particular attainment.

Abdul Rehman v State of Mysore

Whether the professional goldsmith is an expert or not? The court said particular attainment or degree is not mandatorily required. His qualification of being skilled is enough for opinion on any matter.

Aziz Bano v Mohd Ibrahim Hussain

Court said that though Shia Law on marriage is of foreign origin cannot be said to be foreign law because it is the law of the land and in force in India.

When is the opinion of third party relevant?

Section 45A: Opinion of Examiner of electronic evidence

When in a proceeding the court has to form an opinion on any subject matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the examiner of electronic evidence referred to in **Section 79A of IT Act, 2000** is a relevant fact.

Section 46: Facts bearing upon opinions of experts

When the opinion of an expert is relevant, then any fact which either support or contradict his opinion also becomes relevant. It is always open to parties to produce additional evidence like outstanding books, experiments etc.

For Example-

Where madness of a person has been proved by a psychiatrist, then party may give additional evidence that madness is often a hereditary character of the person.

Section 47: When the court has to form an opinion as to the person by whom any document was written or signed then whose opinion is relevant.

Opinion of any person acquainted with the handwriting is relevant. It includes a person-

1. Who has seen that person write.

2. Who has secured (received) documents written by that person (in answer to documents written by himself or under his authority and addressed to that person.)
3. Who has in the ordinary course of business received documents written by that person or such documents are habitually received by him (to whom the letter is habitually submitted)
4. Even court can compare handwriting under **section 73**.
5. It includes opinion of expert under **section 45**.

Fakhruddin v State of MP 1967 SC

Supreme Court held that handwriting may be proved by the evidence of a witness in whose presence the writing was done and this would be direct evidence, and if it is available then any other kind of evidence is rendered unnecessary.

Note: Under **section 73** court will compare handwriting to be proved with handwriting already admitted or proved.

Section 47A: Opinion as to electronic signature when relevant

Regarding electronic signature, opinion of certifying authority which has issued the electronic signature certificate is a relevant fact.

Section 48: Opinion as to existence of right or custom, when relevant

In the case of existence of any general custom or right the opinion of person who would have known if it existed are relevant.

Illustration-

The right of the villagers of a particular village to use the water of a particular well are a general right within this section. The opinion of villagers will be relevant because person who would be likely to know of its existence are relevant.

Section 49: Opinion as to usage, tenets etc when relevant

When the court has to form opinion as to-

1. Usages and tenets of any body of men or family, or
2. Constitution and Government of any religious or charitable foundation.
3. Opinion of person having special means of knowledge.

Section 50: Opinion on relationship, when relevant

When the court has to form an opinion as to relationship of one to another, the opinion, expressed by conduct as to existence of relationship either by-

- a. A family member
- b. Other person

Having special means of knowledge on the subject is a relevant fact. But such opinion shall not be sufficient to prove marriage in proceeding under-

- a. Indian Divorce Act, 1869
- b. In prosecution under **section 494, 495, 497, 498 of IPC.**

Section 51: Grounds of opinion when relevant

The grounds or basis on which an expert makes his opinion are also relevant.

EVIDENTIARY VALUE OF EXPERT EVIDENCE

Supreme Court in *Mobarik Ali v State of Bombay* said that if a witness were permitted to express its opinion and if it is relied then it may amount to delegation of judicial function and that is why the court should exclude it generally.

Further more statements of opinion are not merely superfluous but they may also mislead the court. Judge may rely in opinion too much and then there may be miscarriage of justice. The task if inference is on the court and not on the witness but the above general rule is subject to certain exceptions and reason behind exception is that in many cases of technical nature the opinion of expert does help the court to arrive at a satisfactory conclusion.

Furthermore as it is opinion of skilled person so it does have value. In many cases court does not possess that professional or specialised knowledge.

Though this opinion of expert is necessary but it has certain issues-

1. There is danger of error or deliberate falsehood.

2. After all it is an opinion, and human judgements are fallible. (*Fallible- error prone, open to error*)

3. The expert witness however impartial may be likely to be unconsciously prejudiced. And these factors seriously affects its probative force. (*Probative- having the quality or function of proving or demonstrating something; affording proof or evidence: Sentence Example- It places the probative burden on the defendant.*)

So the reliability of such evidence has to be tested in such way in which any other piece of evidence is tested.

In this context it is the duty of court to call upon expert to explain the reason for its opinion and then to form opinion as to whether or not expert opinion is satisfactory. The court should not surrender its opinion to that of expert.

Expert opinion is an opinion on the basis that opinion court has to form its own opinion but at the same time court has to be cautious as it is only an opinion and not mandatory for court to obey the same.

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CONSTITUTIONAL PROVISIONS ON CENTRE STATE RELATIONS



CONSTITUTIONAL PROVISIONS ON CENTRE- STATE RELATIONS

The Indian nation is said to be **federation** with a unitary bias. **Part XI** of the Indian Constitution that is **article 245** to **263** deals with Centre State relations.

The financial relationship between the Centre and states is covered in **Part XII of the Indian Constitution**.

Article 280 deals with mandate provision for setting up Finance Commission.

Indian Constitution → federal in form but unitary in spirit.

Article 248 : The phrase "**unitary bias**" arises because residuary powers to legislate on the matters not enumerated in the central, state or concurrent list subjects is given to the Centre under article 248.

The Centre was made more powerful as can be recognised from the following points:-

1. Single citizenship

There is no state citizenship. Every Indian has same rights of citizenship, no matter in which state he resides.

2. Centre can change name in boundaries of states

Article 3 give the Central Government the right to change the name and boundaries of states.

3. Single unified judiciary

In India the Supreme Court and High Courts form a single integrated judicial system. To ensure the uniformity of the laws they are placed in the concurrent list.

4. Uniquely in emergencies

Under the Constitution, the President of the Republic has been given emergency powers under **article 352, 356 and 360**.

5. Common all India services

The Constitution has certain special provisions to ensure the uniformity of the administrative standards. These services include IAS, IPS, IES and many others.

6. Inequality of representation in the council of states.

There is bicameralism (*in government, bicameralism is the practice of having two legislative or parliamentary chambers*) in India, but states have not been given equal representation. Here the state with more population will have greater representation than smaller ones.

7. Appointment of governors

The President appoints the Governor and this enables the Union Government to exercise control over the State Administration.

8. The office of Comptroller and Auditor General

The office of CAG comes under central government; But his concern is not only with the accounts and auditing of the union government but also states.

9. Centralised electoral machinery

The body of Election Commission is appointed by the President. He is in charge of conducting elections not only to Parliament but also to state legislature.

10. Financial dependence of states

In a federation, states should be financially self-sufficient to ensure maximum autonomy. But in India, the states depend on the Centre for all development. It is the centre who gives grants to the states.

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LEGAL RIGHTS AND DUTIES

8 CLASSIFICATION OF RIGHTS

THEORIES OF RIGHTS ETC

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CLASSIFICATION OF RIGHTS AND DUTIES

Right means claims, titles, liberties, powers and immunities summed together.

CLASSIFICATION OF RIGHTS

1. Perfect and Imperfect Right

A right which is enforceable by law is a perfect right but a right which is not enforced by law is an imperfect right.

For Example-

Time barred debt.

2. Right in Rem and Right in Personam

Right in Rem → against the whole world.

For Example- Right to go on a public road.

Right in Personam → against an individual.

3. Antecedent Right and Remedial Rights

A substantive law may either be antecedent or remedial.

Antecedent right may either be a right in rem or a right in personam.

For Example-

Purchaser of certain goods has an antecedent right over the goods so purchased. When antecedent right is violated then the role of remedial right begins.

4. Proprietary and Personal Rights

A person proprietary rights constitute his estate, his assets and his property. These rights have some economic or monetary significance and are elements of wealth.

For Example-

Money in a man's pocket or bank or land, houses etc are proprietary rights.

On the other hand the personal rights are elements in a person's well being. They have no monetary value.

For Example-

Right of reputation, personal liberty, freedom from bodily harm etc.

5. Right in re-propria and Right in re-alina

Right in re-propria means right over one's own property.

Right in re-alina means right over the property of someone else.

6. Principal Right and accessory Rights

The existence of principal right is independent of any other right but accessory rights are ancillary to principal right.

7. Vested and Contingent Right

Vested right occurs when all the facts have been completed.

Contingent right occurs when some events is necessary to happen.

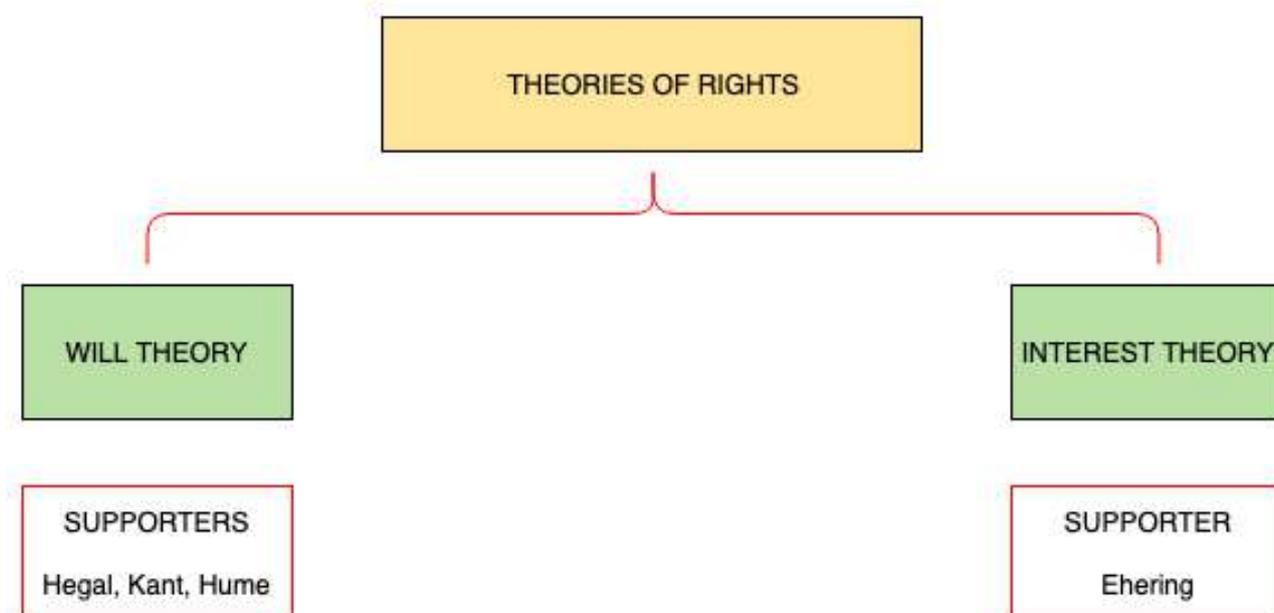
8. Public and Private Rights

The violation of public rights which affects the community as a whole. They are called crimes. Violation of private rights are called civil injuries or tort.

THEORIES OF RIGHTS

1. WILL THEORY

2. INTEREST THEORY



Will Theory - Supporters - Hegel, Kant, Hume.

According to this theory, a right is an inherent element of the human will. The subject matter of right is derived from human will. The theory suggests that it is through a right that a man expresses his will over an object.

Interest Theory- Supporters - German jurist Ehering.

According to this theory, '**A legal right is a legally protected interest**'. Ehering says the basis of legal right is interest and not will. The main object of law is protection of human interest and resolve the conflicts between human interests.

However Salmond criticised this theory of Ehering.

LEGAL RIGHT IS AN INTEREST WHICH IS RECOGNISED AND PROTECTED BY LAW

LEGAL DUTIES

A duty is an obligatory act. It means it is an act the opposite of which would be a wrong. Thus duties and wrongs are generally co-related. The commission of a wrong is the breach of duty and the performance of a duty is avoidance of wrong.

CLASSIFICATION OF LEGAL DUTIES

1. Positive and Negative Duty

Positive Duties → to do an act.

Negative Duties → not to do an act.

2. Primary and Secondary Duty

A duty may be either primary or secondary.

Primary duty is independent. Secondary duty is dependent (but exist for the enforcement of other duties.)

3. Absolute and Relative Duties

Absolute duties are those duties which are owed only to the state; breach of which is generally called a crime and remedy is punishment.

Relative duties are owed to any person; breach of which is a civil injury (tort) and the remedy is compensation.

Austin also supports the view that certain duties are absolute, they do not have a corresponding right.

For Example-

Duty towards God, Duty towards state, Duty towards himself, Duty towards animals.

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ARREST

Arrest and Custody
Arrest without warrant
Medical examination

**SUPREME COURT'S 11 GUIDELINES IN ALL
CASES OF ARREST AND DETENTION**

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ARREST EXPLAINED

(Section 46 of CrPC)

This section prescribes the mode of arrest.

"Arrest in the legal sense under CrPC means taking into custody of another person under authority of law for the purpose of holding and detaining him to answer a criminal charge and preventing the commission of an offence."

The words 'arrest' and 'custody' are not synonyms.

In every arrest there is custody but vice versa is not true.

"According to this section, an arrest of a person consists (except in the case of submission), of the actual seizure or touching of the body of a person with a view to his detention."

In the case of *Birendra Kr Rai v UOI, 1992* Supreme Court held that it is not necessary to handcuff a person but could be completed even by spoken words, if a person submits to the custody.

Section 50 : Arrest without warrant

The provisions of this section are mandatory. Where a person is arrested without any warrant he should be immediately informed to the particulars of the offence and ground of his arrest and where the offence is bailable of his right to be released on bail.

Section 51 : This section makes provision regarding search of the arrested person and making an inventory of the articles found upon him.

Kasturi Lal v State of UP, AIR 1965

It was held that when a person is arrested on suspicion that he was carrying stolen property and the property found on search is seized, such seizure shall be reported to a magistrate.

Mahadev v State of UP

Taking of signature of person searched on the memo of recovery list is not required by this section. And if the

recovery memo is not signed by the accused, then search is not illegal.

Section 53 : This section provides that a medical examination will be done at the request of police officer not below the rank of S.I (Sub Inspector)

Anil A Lokhande v State of Maharashtra 1981

Supreme Court held that if it is necessary for doing justice then police officer or court can exercise such power.

Explanation-

Here examination means-

Examination of blood, blood stains, semen, swabs in case of sexual offences, sputum, hair samples, sweat, finger nail clippings by the use of modern and scientific techniques.

(Swab- an absorbent pad or piece of material used in surgery and medicine for cleaning wounds, applying medication, or taking specimens.

Sputum- a mixture of saliva and mucus coughed up from the respiratory tract)

With the scientific advancements in India, **DNA Profiling** also comes under the ambit of examination under section 53.

Section 53A : **Examination of person accused of rape by medical practitioner** (on request of Police Officer)

On the request of police officer not below the rank of sub inspector, the examination may be conducted by

government medical practitioner but if the government medical practitioner is not on the radius of 16 km from the place where the offence is committed, the examination may be conducted by any medical practitioner. (Read from bare act **section 53A**)

Section 54 : Examination of arrested person by medical practitioner at the request of the arrested person. (As a Right)

This section confers on the arrested person, the right to have his medical examination done.

DJ Vaghela v Kanti Bhai Jetha Bhai

This section protects the arrested person from physical torture and mal treatment in police custody.

Sheela Barse v State of Maharashtra (Important case)

Supreme Court has warned the lower courts not to adopt a casual approach to custodial torture.

Section 57 : This section says that a person detained in custody must be presented before the nearest magistrate within 24 hours of his arrest. The period of 24 hours does not include the time necessary for the journey from the place of arrest to the magistrate.

The purpose of this section is to ensure that accused is presented before a magistrate competent to try with minimum possible delay.

D.K Basu v State of West Bengal AIR 1996

Date of judgement- 18-12-1996

Justice- Kuldeep Singh, A.S Anand

In this case Supreme court issued a list of eleven guidelines in all cases of arrest and detention. These guidelines are as follows:-

- 1.** The police officer who is going to arrest a person should bear accurate, visible and clear identification and name tag with designation. The particulars of all police officers/ constables who handle interrogation of the arrestee must be recorded in the register.
- 2.** The police officer who is going to arrest shall prepare a memo of the arrest and the time of the arrest and such memo will be attested by at-least one witness who may be either the member of the family of the arrestee or a respectable person of the locality from where the arrest is made. The memo will be signed by the arrestee and shall contain the time and date of arrest.
- 3.** A person who has been arrested or detained is entitled to give information to his friend or relative or other person known to him. (within 12 hours)
- 4.** The time, place of arrest, venue of custody must be notified by the police to the friend or relative or known person.

5. The person arrested must be made aware of his right.
6. An entry must be made in the case diary at the place of detention regarding the arrest of the person and also mention the next friend of the arrestee who has been informed of the arrest.
7. The arrestee should, where he requests be also examined at the time of his arrest and major and minor injuries, if present on his body be recorded at that time.
8. The arrestee should be subjected to the medical examination by a trained doctor. ([section 54](#))
9. Copies of all the documents including the memo of arrest should be sent to the magistrate for his record.
10. The arrestee may be permitted to meet his lawyer during the interrogation, not throughout the interrogation.
11. A police control room should be provided at all districts and state head quarter, where information regarding the arrest and place of custody of arrestee shall be communicated by officer arresting within 12 hours of the arrest and it should be displayed on a notice board.

Another important case on police custody is *Nilabati Behra v State of Odisha*.

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VOID & VOIDABLE MARRIAGE

What's the difference?

DIFFERENCE BETWEEN VOID AND VOIDABLE MARRIAGES

VOID MARRIAGES

(Given under [Section 11](#) of [Hindu Marriage Act, 1955](#))

A void marriage is no marriage. **It is a marriage which does not exist from its beginning.**

It is termed as marriage because two person undergo the ceremonies of marriage but due to some incompetency it is void.

For Example-

If a brother and sister perform all the ceremonies of

marriage and **start living as husband and wife**, they will not become husband and wife in the eyes of law even though they have performed the ceremonies of marriage.

GROUND OF VOID MARRIAGE

1. **Bigamy** (it means either party has a spouse living at the time of marriage)
2. When the parties are *sapinda* to each other (refer **Section 3(f) of Hindu Marriage Act, 1955**).
3. When the parties are **within the prohibited degree of relationship** (refer **Section 3(g) of Hindu Marriage Act, 1955**)

Other two cases in which marriage is void.

1. If **proper ceremonies** of marriage have **not** been performed.
2. If a marriage has been **performed in violation** of the requirement of **Section 15 of Hindu Marriage Act**. (*Section 15. Divorced persons when may marry again.*)

VOIDABLE MARRIAGES

(Given under **Section 12 of Hindu Marriage Act, 1955**)

A voidable marriage is **perfectly valid marriage so long it is not avoided**. It can be avoided only on the petition of one of the parties.

If one of the parties dies before the marriage is annulled, then no one can challenge the marriage. **The marriage will remain valid forever.**

GROUND OF VOIDABLE MARRIAGE

1. Marriage **not consummated** due to impotency of respondent.
2. Respondent is **suffering from mental disorder** as to be unfit for marriage and procreation of children.
3. Consent of the petitioner has been **taken by fraud or force**.
4. That the respondent **was pregnant by some other person** other than the petitioner.

Note: The ground is pre marriage **pregnancy of the wife** and **not her unchastity**. (*relating to or engaging in sexual activity, especially of an illicit or extramarital nature*)

Note: The children born out of void and voidable marriages **are legitimate** and in no case status of child can be questioned. (**Section 16 of Hindu Marriage Act**)

“Sapinda Relationship” with reference to any person extends as far as the third generation (inclusive) in the line of assent through the mother, and the fifth (inclusive) in the line of assent through the father, the line being traced upward in each case from the person concerned, who is to be counted as the first generation.

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