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Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

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Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE ROLE OF EXPERT WITNESSES IN STATUTORY INTERPRETATION CASES

AUTHORED BY - RUCHIR SALUJA

INTRODUCTION

Often times during legal proceedings there are situations where the judge might not have the complex and technical knowledge to comprehend a few facts or the entire premise of the facts, this is where someone with the required knowledge and skills is needed to interpret the facts for the court and aid in specialized areas, these are called as expert witnesses¹. An expert witness, as the name suggests is one distinguished individual holding technical and complex understanding of one or more specialized fields, with which the judge is not too familiar with². These witnesses are called upon by the court to provide their knowledge and expertise of the field to assist the court with its proceedings, these complexities are bound to arise as a judge is not assumed to be a technical know – how in every possible filed where an issue may arise³.

Each party considering the case, selects an expert witness of their own choice and they are provided with some consideration for the same⁴. The court makes sure the “experts” are actually distinguished in their fields, which is evident by observing their contributions in the case, relevant pointers and actual problem – solving skills regarding complexities⁵. Based on these the court also decides whether one is qualified for the position or not⁶.

INTERPRETAION OF STATUTES

The most crucial and key basis of the judiciary is interpretation, the court interprets the legislation during its proceedings, this interpretation of legislation is termed as statutory interpretation⁷. The legislative makes the legislation and the judiciary interprets it, often times

¹ Robinson J, ‘Expert Witness’ (Legal Information Institute)
https://www.law.cornell.edu/wex/expert_witness#:~:text=An%20expert%20witness%20is%20a,complex%20technical%20or%20scientific%20issues. accessed 12 September 2024.

² Robinson J, ‘Expert Witness’ (accessed Sept. 12, 2024)

³ Robinson J, ‘Expert Witness’ (accessed Sept. 12, 2024)

⁴ Robinson J, ‘Expert Witness’ (accessed Sept. 12, 2024)

⁵ Robinson J, ‘Expert Witness’ (accessed Sept. 12, 2024).

⁶ Robinson J, ‘Expert Witness’ (accessed Sept. 12, 2024)

⁷ Wex Definitions Team, ‘Statutory Interpretation’ (Legal Information Institute)

in India and other countries the legislation has a considerable amount of ambiguity with it, which must be solved by the judiciary⁸. To find the true meaning or the intent behind the framework of a particular legislation, the judges use various methods, which are – Purposivism and Textualism⁹.

Purposivism

This theory of interpretation argues that the judges must interpret the legislation keeping in the mind the actual intent and the purpose that the lawmakers or the legislative had while framing the law¹⁰, the courts must try to stay in tune with the intention of the legislative behind the law and not merely read the legislation as ordinary text¹¹.

Two of the most influential purposivist writers were in 1950s, **Henry Hart and Albert Sacks**¹², they argued to the courts that they must presume the duty of the legislative and consider them as reasonable people trying to achieve a reasonable goal¹³. The basis of this argument was since the Constitution gives power to the Congress to make laws the courts need to always consider the same while interpretation of any statute¹⁴.

This also protects the identity of the legislative as this is its duty conferred upon it by the Constitution and thus¹⁵, it is important for the courts to observe as to how and with what intent does the Congress frames its laws¹⁶.

Every theory has its fair share of criticisms and the critics of Purposivism argue that the same intention behind the making of the legislation is rare, it is not possible for the judges to have the same intention as the Legislature because of the circumstances of issues it deals with¹⁷, the judges are not suited with the complexities the legislature goes through while finalising or

https://www.law.cornell.edu/wex/statutory_interpretation accessed 12 September 2024.

⁸ Wex Definitions Team, 'Statutory Interpretation' (accessed Sept. 12, 2024).

⁹ Wex Definitions Team, 'Statutory Interpretation' (accessed Sept. 12, 2024).

¹⁰ United States Congress, Congressional Research Service, Statutory Interpretation. R45153, Congressional Research Service, 2023

<https://crsreports.congress.gov/product/pdf/R/R45153/2#:~:text=The%20two%20main%20theories%20of,this%20ideal%20of%20legislative%20supremacy>. accessed 12 September, 2024.

¹¹ Congressional Research Service, Statutory Interpretation (accessed Sept. 12th 2024).

¹² Congressional Research Service, Statutory Interpretation (accessed Sept. 12th 2024).

¹³ Congressional Research Service, Statutory Interpretation (accessed Sept. 12th 2024).

¹⁴ Congressional Research Service, Statutory Interpretation (accessed Sept. 12th 2024).

¹⁵ Congressional Research Service, Statutory Interpretation (accessed Sept. 12th 2024).

¹⁶ Congressional Research Service, Statutory Interpretation (accessed Sept. 12th 2024).

¹⁷ Congressional Research Service, Statutory Interpretation (accessed Sept. 12th 2024).

making a bill, and the legislative history is often contradictory, which can cause confusion in the clarification of law¹⁸.

Textualism

These argue that the judges must interpret the words of the legislation as a mere member of the legislature¹⁹, believing that such meaning is how one would reasonably derive it from the language of the legislation as prescribed to them in the legal rules²⁰.

But the modern times, have textualists as people who argue that the legislation should be read and interpreted by the judges in the same manner as of a well – informed ordinary person²¹, therefore they contend that the law is what is written, and must be interpreted in such a manner²². Judge Frank Easterbrook, stated that the statutes are not words of private language but public documents which are negotiated and approved by many different individuals²³, it focuses on the final wording because that is the final product by the legislature that emerged from the power to enact laws²⁴.

Similarly, textualism has its critics which argue that, this way of interpretation is very rigid and takes away the power of the courts to interpret the law, as the mere understanding of each word can't be justified as its correct interpretation²⁵.

One other theory of interpretation is called as **Originalism**²⁶, which stated that the judges should try to interpret the legislation keeping in mind the original intent as to when the legislation was being drafted and not the final purpose the legislature wanted to achieve by the same²⁷.

¹⁸ Congressional Research Service, Statutory Interpretation (accessed Sept. 12th 2024).

¹⁹ Congressional Research Service, Statutory Interpretation (accessed Sept. 12th 2024).

²⁰ Congressional Research Service, Statutory Interpretation (accessed Sept. 12th 2024).

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²⁶ Wex Definitions Team, 'Originalism'(Legal Information Institute)
<https://www.law.cornell.edu/wex/originalism> accessed 12 September, 2024.

²⁷ Wex Definitions Team, 'Originalism' (accessed Sept. 12, 2024).

EXPERT EVIDENCE AS AN AID TO INTERPRETATION²⁸

After going through these concepts, we can make the relation of role of expert witnesses in statutory interpretation cases, which is that in some cases when the facts might be technical or complex for the judges, an expert can aid the court in understanding the facts and the courts can effectively proceed with the interpretation without having any dissatisfaction²⁹. A judgement where the role of an “expert” was explained by the court will be discussed to further understand these concepts together.

In **Bal Krishna Das Agarwal v. Radha Devi**³⁰ an “expert” was said to be, as a person who has developed the ability to convey or make an opinion because of his/her knowledge and competence in the particular field³¹, this is a feature which an ordinary witness does not possess and the expert’s testimony is founded on knowledge and experience³². According to **Section 45³³ of the Evidence Act**, it is important that before a person may be referred to as an expert, there must be a proof of his competence in the field he is giving his opinion in and also for the specific insight he will deliver to the court, he must have had an in – depth research on the topic and must have some significant insight in it³⁴.

Under the Evidence Act now **Bhartiya Sakshya Adhiniyam, 2023, Section 39³⁵** talks about the opinion of experts - (1) When the Court has to form an opinion upon a point of foreign law or of science or art, or any other field, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or any other field, or in questions as to identity of handwriting or finger impressions are relevant facts and such persons are called experts³⁶.

ROLE OF AN EXPERT IN COMPLEX CASES

A good judgement relating to when the court requires an expert witness to proceed with its interpretation is given here –

²⁸ Robinson J, ‘Expert Witness’ (accessed Sept. 12, 2024).

²⁹ Robinson J, ‘Expert Witness’ (accessed Sept. 12, 2024).

³⁰ *Bal Krishna Das Agarwal v. Radha Devi*, AIR ALL 133(1989).

³¹ *Bal Krishna Das Agarwal v. Radha Devi*, AIR ALL 133(1989).

³² *Bal Krishna Das Agarwal v. Radha Devi*, AIR ALL 133(1989).

³³ The Indian Evidence Act, 1872, §45.

³⁴ The Indian Evidence Act, 1872, §45.

³⁵ *Bhartiya Sakshya Adhiniyam, 2023, §39.*

³⁶ *Bhartiya Sakshya Adhiniyam, 2023, §39.*

Aabid Khan v. Dinesh and Others³⁷

In this case the claimant had sustained serious injuries in his left rib, to be more precise he had a compound fracture in his left rib³⁸, the doctor who had examined the claimant had claimed that the entire damage to his body would make the compensation be around 17% and was also said in the cross – examination, but the Tribunal court computed the total compensation at 10%, they did not deliver a reasonable reason for this decision and thus³⁹, this was challenged in the appeal, that the court cannot ignore the fact of an “expert” and cannot change the decided compensation from 17% to 10%, they contended this to be a flaw by the Tribunal⁴⁰.

Here the expert opinion is very crucial as the final compensation must be decided with due caution and evidence for the same, as the claimant didn't earn very good⁴¹.

This is a good judgement to analyse how expert witnesses have a crucial role in the statutory interpretation cases, because an expert's opinion is very strong and crucial to carry forward the proceedings.

In **Sri Chand Batra v. State of U.P.**⁴², in this case the Excise Inspector was assigned as the expert witness because of his knowledge and experience in the particular field⁴³, he had 21 years of experience and had tested lakhs of different samples, and it was deemed admissible under Section 45 of the Act⁴⁴, the opinion was allowed by the court because of his high involvement in this field⁴⁵.

While the smelling test and other circumstances were being observed by the court the participation of the expert witness was very important in determining if or not the recovered liquor was illicit liquor⁴⁶. His expertise made him capable to assess the nature of the liquid, based on the colour, smell, taste, and physical properties⁴⁷.

³⁷ *Aabid Khan v. Dinesh and Others*, SC 521(2024).

³⁸ *Aabid Khan v. Dinesh and Others*, SC 521(2024).

³⁹ *Aabid Khan v. Dinesh and Others*, SC 521(2024).

⁴⁰ *Aabid Khan v. Dinesh and Others*, SC 521(2024).

⁴¹ *Aabid Khan v. Dinesh and Others*, SC 521(2024).

⁴² *Sri Chand Batra v. State of U.P.*, 4 SCC 247(1974).

⁴³ *Sri Chand Batra v. State of U.P.*, 4 SCC 247(1974).

⁴⁴ The Indian Evidence Act, 1872, §45.

⁴⁵ *Sri Chand Batra v. State of U.P.*, 4 SCC 247(1974).

⁴⁶ *Sri Chand Batra v. State of U.P.*, 4 SCC 247(1974).

⁴⁷ *Sri Chand Batra v. State of U.P.*, 4 SCC 247(1974).

The liquor in this particular case was a very uncommon illicit liquor which is not something the judges are equipped with⁴⁸, the knowledge in particular and therefore, it was important to have an expert for the same⁴⁹. The appellant had challenged the admissibility in the court but the High Court upheld the admissibility because of the relevance in his testimony and his training and experience in the field⁵⁰. This case shows the importance and the credibility that an expert's opinion holds in the court of law⁵¹.

Without the presence of an expert in this case, **the interpretation for the same would be a task for the judges**, as they are not assumed to be familiar with every field⁵².

An example – in a medical negligence case, an expert doctor in the same specialization is called upon to aid in the procedure of a safe treatment, through which the liability of the accused is decided upon and it interprets the statutory provisions for the judges to proceed with the same.

SUGGESTIONS

A PERSONAL ANALYSIS OF EXPERT WITNESSES IN STATUTORY INTERPRETATION

After researching on the role of expert witnesses, one may infer that with the aid of an expert by the judiciary, it creates a significant and possible potential of bias by the judge. A judge in this case is not a specialist in the field and the major contributions made by the experts in their fields might make the judge prone to accept or believe the arguments made by the expert, as this is something which comes from a reputable and reliable source.

A judgement where the same was contested by one of the parties will be discussed now, to take the discussion further as to how an expert witness might be a bane for the **independence of judiciary**⁵³.

Natasha Singh v. CBI⁵⁴, in this case the piece of evidence against the petitioner was a forensic report of a handwriting expert, who had claimed that the writing matched the forged documents

⁴⁸ *Sri Chand Batra v. State of U.P.*, 4 SCC 247(1974).

⁴⁹ *Sri Chand Batra v. State of U.P.*, 4 SCC 247(1974).

⁵⁰ *Sri Chand Batra v. State of U.P.*, 4 SCC 247(1974).

⁵¹ *Sri Chand Batra v. State of U.P.*, 4 SCC 247(1974).

⁵² *Sri Chand Batra v. State of U.P.*, 4 SCC 247(1974).

⁵³ *SP Gupta v. Union of India*, Supp (1) SCC 87(1981).

⁵⁴ *Natasha Singh v. CBI*, 5 SCC 741(2013).

and upon which the trial court had convicted him⁵⁵. The petitioner argued that the expert had some bias as he was being paid by the accused, and his testimony was easily relied onto by the court⁵⁶.

The petitioner had accused the expert for being biased in favour of the prosecution and the testimony is not reliable⁵⁷, the petitioner in the appeal contends that the bias shown by the expert in this case violated the principles of a due and fair trial⁵⁸. This was then taken up by the court to examine whether or not the reliance on one expert's testimony leads to a legal error and in the due process of the trial⁵⁹.

The court rejected the plea, as the petitioner had ample time to cross examine the expert and it was not right to accuse an expert in the appeal⁶⁰. But the court also stated facts relating to the role of expert witnesses in the court of law⁶¹.

The court stated that the role of these experts in such cases is only "advisory" in nature, and it's the judge's final decision which is leads the case⁶². The expert presents its findings and its knowledge to such complex areas but, he is not the judge⁶³. It Is the duty of the judge to frame its own decision without relying on the opinion of the expert⁶⁴.

Although the court did not find any role of bias in this case, the need to state the facts shows the high possibility of a judge getting influenced or prone to the opinion or finding presented by the experts in any such case⁶⁵.

The case shows us that there is a significant need of experts in some complex factual questions or technical cases, where the judge is not familiar with the day-to-day activities of the same, but at the same time this aid is only advisory in nature for the courts⁶⁶. This provision protects

⁵⁵ *Natasha Singh v. CBI*, 5 SCC 741(2013).

⁵⁶ *Natasha Singh v. CBI*, 5 SCC 741(2013).

⁵⁷ *Natasha Singh v. CBI*, 5 SCC 741(2013).

⁵⁸ *Natasha Singh v. CBI*, 5 SCC 741(2013).

⁵⁹ *Natasha Singh v. CBI*, 5 SCC 741(2013).

⁶⁰ *Natasha Singh v. CBI*, 5 SCC 741(2013).

⁶¹ *Natasha Singh v. CBI*, 5 SCC 741(2013).

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⁶³ *Natasha Singh v. CBI*, 5 SCC 741(2013).

⁶⁴ *Natasha Singh v. CBI*, 5 SCC 741(2013).

⁶⁵ *Natasha Singh v. CBI*, 5 SCC 741(2013).

⁶⁶ *Natasha Singh v. CBI*, 5 SCC 741(2013).

the independence of judiciary as well as the opportunity to ensure a free and fair trial.

CONCLUSION

The role of an expert witness in the interpretation of statutes is essential as, there are many cases in which the judge may not be familiar with the intricacies of the particular field and might require an expert's opinion, this opinion aids the judge in making a fair decision after being informed of the complexities, but this aid is only in an advisory nature. The judge is not bound by the opinion delivered by the expert, it is still the judge's final decision that is given some clarity by the expert.

This paper discussed many cases regarding the importance of the expert in a particular case to proceed with the interpretation of the statute by the court, it also discusses a case where this role was accused for bias and partiality, which further gave path to the possibility of the judiciary being influenced by the expert's opinion and the reliance on this opinion.

There are also cases where the court cannot interpret the facts or the case without an expert as, that might be the most crucial aspect of the case, therefore, the role of an expert witness holds a lot of significance but at the same time, it is not the judge and only an advisory body. Although there may exist a legal issue in the role of expert witnesses, the Courts have always held that the final decision is up to the judge and there must be less reliance on having an expert's opinion in every case, this protects the independence of judiciary and increases the presumption of a fair and free procedure by the law.

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