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### EXPERT OPINION IN NDPS\* CASES : A STUDY

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1. The Indian Evidence Act 1872 provides for opinion evidence by experts under Sec. 45 which states thus :—

“When the Court has to form an opinion a point of foreign law, or of science or art or as to identify of hand-writing or finger impression, the opinion upon that of persons specially skilled in such foreign law, science or art or in questions as to identify of hand-writing or finger impression are relevant facts. Such persons are called experts”.

2. The Supreme Court has ruled in *Mobarak Ali's*<sup>1</sup> case, that the witness must confine themselves to the facts and not to state their opinion, as forming of opinion on the basis of evidence given before the Court is a judicial function. This function cannot be delegated to the witnesses. In order to form an opinion in the exercise of judicial function, the Courts take the help of the experts who are specially skilled and possess adequate knowledge based on experience, devoted study and had special training in the field in which they function. However, the opinion of an expert can be contradicted. The law allows an expert being cross-examined by another expert<sup>2</sup>. Further, the law provides that whenever the opinion of any living person is relevant, the grounds on which such opinions are based are also relevant<sup>3</sup>. The Courts often rely on opinion of experts on matters of scientific nature, in order to arrive at proper conclusions or findings.

3. In order to determine the competency of an expert, the Courts take into consideration factors such as qualification, experience, training and study. In cases of conflict of opin-

ion, that which supports direct evidence in the case, is accepted.

4. A Study in relation to the role of experts in NDPS cases, as gleaned from Court decisions, reveal the following:—

(i) Defects and irregularities committed by the prosecution proved fatal in NDPS case;

(ii) The report of analyst regarding weighing of opium at the Govt., opium factory is held admissible in evidence<sup>4</sup>;

(iii) On the basis of tests conducted, the report of the chemical examiner with regard to percentage of narcotic found together with the reasons given by the chemical examiner is admissible in evidence<sup>5</sup>;

(iv) The report of the Forensic Science Laboratory alone can disclose whether the sample is opium or not;

(v) When the FSL<sup>6</sup> report does not relate to the sample seized from the accused, the report will not be considered<sup>7</sup>;

(vi) In cases, where the FSL report was not proved by any independent witness, the report was held not admissible<sup>8</sup>. It is therefore, necessary that FSL report should be proved by independent witness/witnesses;

(vii) The FSL report must specifically state that the ‘drug’ seized is covered by the NDPS Act. In other words, if the article seized is either exempted or not covered by the NDPS Act, the report cannot be acted upon<sup>9</sup>;

1. *Mobarak Ali v. State of Bombay* AIR 1957 SC P. 857

2. See Sec. 46 of the Indian Evidence Act which states, ‘Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinion of experts, where such opinions are relevant.’

3. See Sec. 51 of the Indian Evidence Act.

4. *T. A. Krishnaswamy v. State of Madras* AIR 1966 SC P. 1022

5. *Supra* Note 3.

6. FSL throughout this study refers to Forensic Science Laboratory.

7. *Roop Singh v. State of Rajasthan* (1996) ILR (Raj) P. 87.

8. *Mehmood v. State of M. P.* (1990) 2 EFR 212

9. *Sukvinder Kumar v. State of Punjab* (1993) 2 EFR P. 151.

\*NDPS refers to Narcotic Drugs and Psychotropic Substances Act, 1985, hereinafter referred to as NDPS Act.



(vii) If the FSL report is considered doubtful, Court cannot rely on the report<sup>10</sup>. In other words, the FSL report must be prepared carefully to give rise to its truthfulness and does not give rise to any doubts;

(ix) There should be no tampering of seals of packets sent to FSL and the seals should remain intact, when they reach FSL and this should be sufficiently indicated in the FSL report<sup>11</sup>;

(x) In cases of investigation conducted by an authority without authorization from Central or State Government, and without jurisdiction, the Court held, that the FSL report cannot be acted upon and the trial is vitiated<sup>12</sup>;

(xi) In the absence of evidence to show that the same article seized was sent to FSL, the FSL report was held inadmissible, particularly taking into account long delay in sending the seized article to FSL which was not explained<sup>13</sup>;

(xii) Where sample markings were changed at FSL, the FSL report was not acted upon<sup>14</sup>. It was found that the samples remained not safe as they were tampered within SP's office;

(xiii) Senior Scientific Assistant, who was not covered by Sec. 293 of Criminal Procedure Code, his report was held not proper, when there was no testimony of the maker of the report<sup>15</sup>;

(xiv) It is necessary that FSL report should be marked at the stage of recording of evidence. In other words, it cannot be marked at the stage of final arguments. If it is not marked

at the stage of recording of evidence, it cannot be acted upon, since it denies the opportunity to the accused to rebut the report<sup>16</sup>;

(xv) Unless the report of FSL is supported by reasons, it cannot be acted upon. Further the chemical examiner must be examined in the Court<sup>17</sup>;

(xvi) Smell is not a conclusive test, and therefore, the FSL report that from smell the article detected was opium, cannot be accepted by the Court<sup>18</sup>. It is therefore, mandatory for the FSL should thoroughly examine the drug and conduct the necessary tests as prescribed by the rules, to reach a finding that the substance is 'opium'; and

(xvii) In cases, where the article seized is sent to the Magistrate with a request to send it for chemical examination, the report of FSL was not acted upon as there was no link evidence in the case<sup>19</sup>.

Several decisions of the Court in NDPS cases reveal defects and irregularities either on the part of the investigating agency or on the part of FSL, which rendered the FSL report not to be acted upon or held inadmissible in evidence. It is therefore, necessary to deal with NDPS cases with abundant care and caution and handle them strictly in accordance with the prescribed procedure. It may be necessary to create sufficient number of FSL's in rural areas, where most of the crimes involving forensic science issues arise. It may also be desirable to allow private FSL's to be established, by making a law to this effect on the analogy of the law, which provides for registration of private health care establishments. This will provide suitable employment opportunities to the qualified post-graduate science degree holders (M.Sc) with Forensic Science specification. In the Zonal Police Sta-

10. *Satpal v. State of Rajasthan* (1996) 1 RCD P. 363.

11. *Meena Gopal's case* (1993) Cr. L. J., P. 663; see also the case of *Telu Singh v. State of Rajasthan* (1996) Cr. L. J., P. 105.

12. *Amar Chand v. State* (1991) ILR 669 Rajasthan.

13. *Bhagwam bhai v. State of Gujarat*, (1996) 2 GCD, P. 368.

14. *Bhala Singh v. State of Rajasthan* (1996) ILR Raj. P. 487.

15. *Attar Singh v. State* (1994) 30 DRJ, P. 65 (Delhi)

16. *Sattar Mohd. v. The State* (1989) Cr. LR, P. 45.

17. *Uma Kanth v. State of U. P.* (1993) DC, P. 316 and also Sec. 51 of the Indian Evidence Act.

18. *Prem Shanker v. State of Punjab* (1996) 1 EFR, P. 578.

19. *Ganesh Nayak v. State of Orissa* (1996) 2 CCR, P. 126.



tions, qualified M.Sc Forensic Science post-graduate may be appointed to assist the police officers in dealing with Forensic Science issues. There is an emergent need to have a special subject in LLB Courses on Forensic Science, so that lawyers may be well-equipped with the principles of Forensic Science to handle criminal cases effectively.

### IMMORAL TRAFFICKING

By : D. Srinivasa Patnaik, M. A., B. L., Asst. Public Prosecutor, Parvathipuram

Approximately 2 millions persons are being trafficked every year in the world. The reason for it are so many. Deployment of children in working units, male and female below poverty line especially in bonded labour system are known through our Electronic Media and Press since long ago, sexual exploitation of children and women, transportation of them for this heinous crime have to be checked by every responsible citizen. The recent training programme at A. P. Police Academy organized by the Department or Prosecution with United Nations Organisations, Drugs & Crime, for Police and Prosecutors is a welcoming step in this regard. During this programme in interaction section so many issues have been discussed about the victims, mode of transportation, trapping, prevention by rescuing with rehabilitation.

Basically countries have been divided into 3 types. (1) Origin (2) Transit (3) Destiny. The place from which they can be noticed picked up is ORIGIN, the countries through which they can be transported safely is called TRANSIT points. The countries where this business is in existence or spreading is called destination to curb this trafficking problem, concentration on rehabilitation and location is very much important. Treating victims with "HUMANFACE" will bring confidence and the persons rescued will never be trafficked due to lack of options to lead life in our society. Rs. 31,500/- crores is annual income on trafficking U. N. SOURCES DISCLOSED which point out alarming rate increasing trafficking.

Forced labour detention of servants in rich people houses, child labour will also come

under purview of this Act. Majority of victims trapped from village and tempting due to attractive offers in cine field, modeling and executive jobs. The persons who are gathering people by deception are called "TRAFFICKERS". Now clipping the wings of traffickers is the object to present trafficking. Hence, the Immoral Traffic (Prevention) Act, 1956 notified special police offices and provided stern punishment not less than 7 years and it may be for life. In such case Government should not release such traffickers on their good conduct before serving of the complete sentence, only circle inspectors are notified as special police officers to launch investigation in trafficking cases. The other major drawback in this statute is that a women mediator is compulsory at the time of search under sub (1) of Sec.15 of the Immoral Trafficking Prevention Act. It is difficult to secure them. They would find a bit of difficulty at the time of cross-examination in Courts. Hence Courts shall not allow indecent questions at the time of cross-examination. Hence, woman organizations should come forward and Police have to interact with them in decent manner. In tracing out of these offences a warrant is not necessary. Proposals have also been sent to Parliament to exempt women victims for exoneration as accused in criminal case. They have to be shown as list of witnesses after this proposal is considered. Conducting of interaction under the supervision of Superintendent of Police with Public Prosecutors, Police, Non-Governmental Organisations and Women Organization for every 6 months will help to reduce trafficking.