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FOR THE WORK SHOP –II

TO BE HELD ON 16.12.2023 ON THE TOPIC OF

" RELEVANCY AND ADMISSIBILITY OF

- ❖DYING DECLARATIONS
- ❖EXPERT OPINION
- ❖CIVIL COURTS JUDGMENTS IN CRIMINAL CASES AND VICE VERSA.

RELEVANCY AND ADMISSIBILITY OF DYING DECLARATIONS:

Introduction:

1. Dying declaration is based on the maxim "Nemo moriturus praesumitur mentire". It means a man will not meet his maker with a lie in his mouth. The statements made by a person as to the cause of his death or as to circumstances of the transaction resulting in his death is called a dying declaration. Indian law recognizes the fact that 'a dying man seldomlies.' Or 'truth sits upon the lips of a dying man.' Section 32(1) of the Indian Evidence Act, 1872 explore the concept of dying declaration.

Object:

2. The object of giving admissibility to the dying declaration is to preserve the valuable evidence of the dying person. If a person is mentally sound and aware that he/she is about to die, he/she can make declaration about cause of his/her death. This statement will be accepted as evidence in court of law and the declaration can be made orally, in writing or through gestures also.

3. **Evidenciary value of dying declaration**:

1. One of the fundamental principles of the law of evidence is that facts should be proven through direct evidence. According to Section 60 of the Evidence Act, oral evidence must always be direct and hearsay evidence is considered unreliable and therefore inadmissible.

2. However, an exception is made for a dying declaration which is a statement made by a person just before death, explaining the circumstances of the death of said person. This exception is based on the principle of "nemo mariturus presumuntur mentri," which means that a person about to die is presumed to speak the truth. Courts consider identification through a dying declaration as relevant and significant in ensuring justice is served. Hence, the dying declaration holds evidentiary value.

3. This principle is specifically mentioned in Section 32 of the Indian Evidence Act. According to this section, statements made by a person regarding the cause of their death or any circumstances related to the incident that led to their death are considered relevant and admissible as evidence. In fact, a dying declaration can be the sole basis for conviction in certain cases.

4. Section 32 of the Indian Evidence Act, 1872, deals with dying declaration and Rule 33 of Criminal rules of Practice and circular orders of Andhra

Pradesh deals with procedure to be followed while recording dying declaration.

"**32. Cases in which statement of relevant facts by the person who is dead or cannot be found etc. is relevant:-**

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the court unreasonable, are themselves relevant facts in the following cases:

(1)when it relates to cause of death-When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question."

<u>The procedure to be followed while recording Dying Declaration</u>

4. As per Rule 33 of Criminal Rules of Practice and Circular orders of Andhra Pradesh:

(1) While recording a Dying Declaration, the Magistrate shall keep in view the fact that the object of such declaration is to get from the declarant the cause of death or the circumstances of the transaction which resulted in death.

(2) Before taking down the declaration, the Magistrate shall disclose his identity and also ask the declarant whether he is mentally capable of making a declaration. He should also put simple questions to elicit answer from the declarant with a view to knowing his state of mind and should record the questions and answers signs and gestures together with his own conclusion in the matter. He should also obtain whenever possible a certificate from the Medical Officer as to the mental condition of the declarant.

(3) The declaration should be taken down in the words of the declarant as for as possible. The Magistrate should try to obtain from the declarant particulars necessary for identification of the accused. Every question put to the declarant and every answer or sign or gesture made by him in reply shall be recorded.

(4) After the statement is recorded, it shall be read over to the declarant and his signature obtained thereon, if possible, and then the Magistrate shall sign the statement.

When dying declaring will be admissible in evidence

5. Dying declaration will be admissible in evidence only when the person making the statement dies and the cause of the person's death comes into question. If the person who has made a dying declaration survives, such a statement will not come within the purview of Section 32(1) of the Evidence Act. Dying declaration is an exception to the general rule of excluding the hearsay evidence. The burden of proving the dying declaration is always on the prosecution. Since an accused can be convicted solely on the basis of dying declaration, the court is expected to carefully scrutinize the same. Three essential ingredients will have to be proved to the satisfaction of the court and they are:-

(i) the declarant should have been in actual danger of death at the time when he made the statement;

(ii) he should have had full apprehension of his danger and

(iii) death should have ensued.

6. The Dying Declaration should inspire the confidence of the court about the truthfulness of such a declaration. If the court, after careful evaluation of the entire evidence, feels that the same was the result of either tutoring, prompting or product of imagination, the Declaration will not be accepted. If the contents of the very Dying Declaration contradicts the core of the prosecution case, the declaration will not be the basis for conviction. Normally, a Dying Declaration should be recorded in the words of the declarant, but the same cannot be rejected merely because the exact words used by the declarant are not reproduced.

7. In the leading case of **PAKALA NARAYANA SWAMI .v. EMPEROR (AIR 1939 PRIVY COUCIL p.47)**, The expression 'circumstances of the transaction which resulted in his death' has been eloquently explained. As per the facts of the said case, the deceased had left his house to go to Behrampur. While leaving his house, he told his wife that he was going to Pakala Narayana Swamy's house in Behrampur to demand him to pay back the amount given by him. Later on his dead body was found in a trunk and his body had been cut into pieces. The question before the Privy Council was as to whether such a statement made by the deceased to his wife would really come within the purview of Section 32(1) of the Evidence Act. In fact, it was held by the Privy Council that the statement made by the deceased to his wife

just prior to leaving his house to go to Behrampur was a statement and one of the circumstances of the transaction which resulted in the death of the man.

Whether medical certificate is essential to accept the dying declaration?

8. Normally the court looks to the medical opinion about the fit condition of the declarant at the time of making the statement. In the Constitution Bench judgment of the Hon'ble Apex court in the case of **LAXMA .v. STATE OF MAHARASHTRA reported in AIR 2002 SC 2973**, it is explained that medical certification is not a sine qua non for accepting the Dying Declaration.

FORMS OF DYING DECLARATION

9. There is no particular form of dying declaration. A dying declaration may be in the following forms:

• Written form;

• Verbal form;

• Gestures and Signs form;

• A dying declaration may be in the form of narrations. It is preferred that it should be written in the vernacular which the patient understands and speaks.

10. **Question and Answer Form**

• The best form of dying declaration is in the form of questions and answers. However, whenever a dying declaration is being recorded in the form of questions and answers, precaution should be taken that exactly what questions are asked and what answers are given by the patient should be written.

• Where the dying declaration was not recorded in question and answer form, it was held that it could not be discarded for that reason alone. A statement recorded in the narrative may be more natural because it may give the version of the incident as perceived by the victim.

11. **Gestures & Signs Form**

• Where a person is not capable of speaking or writing he can make a gesture in the form of yes or no, by nodding and even such type of dying declaration is valid.

<u>NIRBHAYA CASE</u>: (**Mukesh and another vs. State (NCT of Delhi) reported in 2017 6 SCC 1**)

12. I have gone through most famous and important Judgment of Nirbhaya Case, where in Hon'ble Apex court Elaborately, discussed about the importance of the Dying declaration. The Hon'ble Supreme court found that there are 3 sets of Dying declarations, recorded by different persons out of which one declaration was recorded through gestures. The bench headed by Hon'ble CJ Deepak Mishra said that trial court, High court and apex court elaborately considered the dying declarations during the trail of the case. All the 3 dying declarations were given to 3 different persons, first declaration was recorded by doctor when she was admitted to hospital on the night of 16th December 2012. The second declaration was given to Sub Divisional Magistrate on 21st wherein she gave exact detail of the crime and the last one was recorded by Metropolitan Magistrate on December 25th, which was mostly through gestures, which is also admissible in evidence. The convicts, had challenged the validity of the dying declaration and claimed that there were discrepancies in the statement. With regard to the second declaration, the counsel appearing for the convicts submitted that in the police diary there was no mention of it. But, the bench said that as far as the third dying declaration is concerned, the court has already held that the dying declaration made through signs, gestures or by nods are admissible as evidence.

Language Of Dying Declaration

13. Where the deceased made the statement in Kannada and Urdu languages, it was held that the statement could not be discarded on that ground alone, or on the ground that it was recorded only in Kannada. Where the statement was in Telugu and the doctor recorded it in English but the precaution of explaining the statement to the injured person by another doctor was taken, the statement was held to be a valid dying declaration.

In Ramesh Gyanoba Kamble Vs. State of Maharashtra reported in 2011 ALL MR (Cri) 3536 (F.B.) the Court observed that "Plea that recorder of dying declaration should repeat words spoken by deceased as to cause of his death or circumstances relating in his death is not tenable."

Oral Dying Declaration

14. The Hon'ble Apex Court emphasized the need for corroboration of such declaration particularly in a case of this kind where the oral statement was made by the injured person to his mother and she being an interested witness. Such declaration has to be considered with care and caution. A statement made orally by the person who was struck down with a stick blow on head and which was narrated by the witness who lodged the F.I.R. as a part of the F.I.R. was accepted as a reliable statement for the purpose of Section 32.

Incomplete Dying Declaration

15. Where deceased fails to complete the main sentence (as for instance, the genesis or motive for the crime) a dying declaration would be unreliable. However, if the deceased has narrated a full story, but fails to answer the last formal question as to what more he wanted to say, the declaration can be relied upon.

DOCTOR'S STATEMENT

16. In the case of a bride burning, the doctor to whom the deceased was taken for treatment deposed that soon after her admission, she said that her husband had poured kerosene on her clothes and set her ablaze. The doctor made a note of it in the case papers. The testimony of the doctor became supported by the contemporaneous record. The Court said that the doctor had no reason to falsely depose against the accused or prepare false case papers.

17. **SCOPE OF DYING DECLARATION**

• It is a statement written or oral of a person who is dead, with respect to the cause of his death or the circumstances resulting in his death. The statement is relevant in any judicial proceedings where the cause of death of that person is in issue. The second part of section 32 (1) makes it abundantly clear that the statement is admissible in civil as well as criminal proceedings and it is not necessary that the person making the statement should be apprehending death at the time of making the statement. Thus, it may be noted that, the Indian law as to admissibility of dying declaration makes a departure from the English law inasmuch as it is not limited to the cases of homicide and the restriction of expectation of death has not been recognized. Thus, the basis

which has been considered to have taken the place of Oath and ensuring the truthfulness of the statement has not been made a condition for its admissibility.

- The court is under an obligation to closely scrutinize all the pros and cons of the circumstances while valuating a dying declaration since it is not a statement made on oath and is not tested on the touch stone of cross-examination.
- In **Ram Nath v. State of Madhya Pradesh (AIR 1953 SC 420)**, Hon'ble Supreme Court held that: It is settled law that it is not safe to convict an accused person merely on the evidence of a dying declaration without further corroboration because such a statement is not made on oath and is not subject to cross-examination and because the maker of it might be mentally or physically in a state of compassion and might be drawing upon his imagination while he was making the declaration. Thus, the Supreme Court has laid a stress, as a safeguard, on corroboration of the dying declaration before it is acted upon.
- But Later in **Khushal Rao v. State of Bombay (1958 SCR 552)**, Hon'ble Apex Court held this observation to be in the nature of obiter dicta and observed that, "It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of the conviction unless it is corroborated."

Following are the principles laid down in the said judgment:

(i) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated,

(ii) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made,

(iii) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence,

(iv) that a dying declaration stands on the same footing as another piece of evidence has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence,

(v) that a dying declaration which has been recorded by a competent magistrate in the proper manner that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon the oral testimony which may suffer from all the infirmities of human memory and human character, and

(vi) that in order to test the reliability of a dying declaration the court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night, whether the capacity of the man to remember the facts stated had not been impaired at the time he was making the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it, and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.'

- Thereafter, in **Harbans Singh V. State of Punjab (1962 Workshop Core Paper On Dying Declaration 7 AIR 439)**, Hon'ble Supreme Court held that, "It is neither a rule of law nor of prudence that a dying declaration requires corroboration by other evidence before a conviction can be based thereon."
- Thenceforth, Further in **State of U. P. v. Ram Sagar Yadav (1985 AIR 416)** Hon'ble Supreme Court observed that, "The primary effort of the court is to find out whether the dying declaration is true. If it is true, no question of corroboration arises. It is only if the circumstances surrounding the dying declaration are not clear or convincing, then the court may for its assurance, look for corroboration to the dying declaration.

18. Dying Declaration should not be discarded merely because it did not give precise description of all the weapons used to commit the offence and about the manner in which injuries were caused. Dying declaration cannot be rejected merely because the declarant did not die instantly or immediately and he lingered on for some days. The declarant need not necessarily be in the imminent danger of death.

19. Declaration given to a police officer is not hit by Section 162(2) of Cr.P.C. If the statement of a victim is recorded by the police as a first information and if there is a declaration, it is safe to rely on the declaration.

20. Though, law as it stood earlier was that the declaration be recorded in the form of question and answer, but in the case of **SATISHCHADRA .v. STATE OF MADHYA PRADESH ([2014] 6 SCC p.723)**,it is observed by the Hon'ble apex court that the declaration cannot be rejected on that ground alone if the declaration is otherwise acceptable and meets the requirement of Section 32(1) of the Evidence Act. A Magistrate is expected to record the

statement in the absence of the police. Steps must be taken to see that no interested persons remain there while recording the declaration.

21. In so far as proof of oral dying declaration is concerned, the court should, as a matter of prudence, look for corroboration in order to know whether such a declaration was truthful. Following broad principles have been laid down by the Hon'ble Apex Court in the case of **ATBIR .v. GOVT. (CT OF DELHI) reported in [2010] 9 SCC 1** in paragraph 22which are extracted below:

(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.
(ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.
(iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.
(iv)It cannot be laid down as an absolute rule of law that the dying declaration cannot be the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.
(v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.
(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.
(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.
(viii) Even if it is a brief statement, it is not to be discarded.
(ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.
(x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.'

22. The magistrate recording the statement should obtain the signature/thumb impression of the declarant on the declaration. If it is not possible, there must be an explanation to that effect in the declaration itself. If all the fingers of the declarant are seriously burnt, it will not be possible to obtain thumb impression/signature. The magistrate should neither cross-examine the declarant nor put any leading questions to the declarant. As far as possible, the declaration should be in the form of question and answer and preferably the words used by the declarant should be written. The recorded declaration should be sent to the concerned court through a special messenger in a cover and the same should not be handed over to the police.

23. A copy of the declaration may be given to the police for further investigation. As far as possible, the magistrate may obtain a certificate from the doctor about the fitness of the declarant to give a statement. Though a Dying Declaration is entitled to great weight, one cannot forget that the accused has no power to cross-examine the declarant to elicit the truth. Hence the court should be satisfied about the truthfulness of such a declaration and the same being not tutored in any manner. Section 32(1) of the Evidence Act does not prescribe any statutory guideline in the matter of recording dying declaration, and considering the same while appreciating the evidence. But the Hon'ble apex court, in several leading decisions, while considering the facts of each case, has laid down some broad guidelines and thus they have become binding precedents under Article 141 of the Constitution of India. While evaluating the evidence, especially in criminal cases, the court is expected to keep in mind the novel observation made by the apex court in the case of **STATE OF U.P. .v. KRISHAGOPAL (AIR 1988 SC p.2154 –paragraph 13)**. The relevant observation is as follows:

'……There is an unmistakable subjective element in the evaluation of the degree of probability and quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and ultimately on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice.'

24. **WHO MAY RECORD DYING DECLARATION**?

• Keeping in mind the deteriorating condition of the declarant, it can be recorded by anybody e.g. public servant like doctor or any other person.

• It cannot be said that a dying declaration recorded by a police officer is always invalid.

• If any dying declaration is not recorded by the competent Magistrate, it is better that signatures of the witnesses are taken who are present at the time of recording it.

25. In state of **Madhya Pradesh vs. Dal Singh, and others criminal appeal no. 2303 of 2009** dated 21st May 2013 the Hon'ble apex court held that the law on the issue can be summarized to the effect that law does not provide who can record a dying declaration, nor is there any prescribed form, format, or procedure for the same. The person who records a dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making such a statement. Moreover the requirement of a certificate provided by a doctor in respect of such state of deceased, is not essential in every case.

26. **CONDITION PRECEDENTS FOR ADMISSIBILITY OF DYING DECLARATION**:

• The declarant who gave dying declaration should die.

• The dying declaration must be complete.

• It must be voluntary and uninfluenced.

• The cause of death must be explained by the declarant or at least the circumstances which resulted in his death must be explained.

• The declarant who makes dying declaration, must be conscious and coherent.

• The declarant must be of sound state in mind.

• The cause of death of declarant must be in question.

EVIDENTIAL VALUE OF DYING DECLARATION

27. Evidential value of a dying declaration depends upon the case to case and fact to fact. In **K. R. Reddy v. Public Prosecutor [1976 (3) SCC 618]** evidentiary value of dying declaration was observed as under:-

➢ The dying declaration is undoubtedly admissible under section 32 and not being statement on oath so that its truth could be tested by cross-examination.

➢ The court has to apply the scrutiny and the closest circumspection of the statement before acting upon it.

➢ Great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to connect a case as to implicate an innocent person, yet the court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of his imagination.

➢ The court must be satisfied that the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify his assailants and that he was making the statement without any influence or rancor.

➢ Once the court is satisfied that the dying declaration is true and voluntary, it can be sufficient to record the conviction even without further corroboration.

28. The Hon'ble Three Judges Bench of Hon'ble Apex Court laid down the following principles in **Panneerselvam v. State of Tamil Nadu -[2008) 17 SCC 190**] by referring several previous Judgments of Hon'ble Supreme Court in which several aspects were considered as under:

The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in Smt. Paniben v. State of Gujarat (AIR 1992 SC 1817):

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [See Munnu Raja & Anr. v. The State of Madhya Pradesh (1976) 2 SCR 764)]

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. [See State of Uttar Pradesh v. Ram Sagar Yadav and Ors. (AIR 1985 SC 416) and Ramavati Devi v. State of Bihar (AIR 1983 SC 164)]

(iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the

assailants and was in a fit state to make the declaration. [See K. Ramachandra Reddy and Anr. v. The Public Prosecutor (AIR 1976 SC 1994)]

(iv) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence. [See Rasheed Beg v. State of Madhya Pradesh (1974 (4) SCC 264)]

(v) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected. [See Kaka Singh v State of M.P. (AIR 1982 SC 1021)]

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. [See Ram Manorath and Ors. v. State of U.P. (1981 (2) SCC 654)

(vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. [See State of Maharashtra v. Krishnamurthi Laxmipati Naidu (AIR 1981 SC 617)]

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. [See Surajdeo Oza and Ors. v. State of Bihar (AIR 1979 SC 1505).

(ix) Normally the Court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [See Nanahau Ram and Anr. v. State of Madhya Pradesh (AIR 1988 SC 912)].

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. [See State of U.P. v. Madan Mohan and Ors. (AIR 1989 SC 1519)].

(xi) Where there is more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declarations could be held to be trustworthy and reliable, it has to be accepted. [See Mohanlal Gangaram Gehani v.State of Maharashtra (AIR 1982 SC 839)]

29. In **Laxman Vs. State of Maharashtra reported in AIR 2002 SC 2973** the Honorable supreme court observed that "the justice theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this specie of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross examination are dispensed with. Since the accused has no power of cross-examination, the court insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a magistrate is absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be

attached to such statement necessarily depends on the facts and circumstances of each particular case.

30. In **Sham Shankar Kankaria v. State of Maharashtra –(2006) 13 SCC 165)**: Hon'ble Apex Court held that,

The situation in which a person is on death bed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. If dying declaration is excluded it will result in miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

31. In **State v. Maregowda (2002 (1) RCR (Criminal) 376 (Karnataka) (DB)**:It is held that "A suicide note written found in the clothes of the deceased is in the nature of dying declaration and is admissible in evidence."

32. In **Gulam Hussain Vs State of Delhi** (Decided By Hon'ble Supreme Court on 4.8.2000): Held that, the submission that dying declaration cannot be accepted as recorded by I.O. has no substance because at the time of recording the statement PW 22 Balwan Singh did not possess the capacity of an investigating officer as the investigation had not commenced by then. Therefore, statement to PW 22 Balwan Singh is treated as a dying declaration.

33. In **Surajdeo Ojha v. State of Bihar (1980 Supp SCC 769)** It is ruled that, Merely because a dying declaration is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth.

34. In **Nand Kumar v. state of Maharastra (1987 (3) BomCR 139)**:It is ruled that, It is perfectly permissible to reject a part of dying declaration if it is found to be untrue and if it can be separated.

EXCEPTIONS TO DYING DECLARATION

35. The exceptions of 'Dying declaration' stipulate, where the statements made by dying persons are not admissible:

• ***If the cause of death of the deceased is not in question***: If the deceased made statement before his death anything except the cause of his death, that declaration is not admissible in evidence.

• ***If the declarer is not a competent witness***:Declarer must be competent witness. A dying declaration of a child is inadmissible. In Amar singh v. State of Madhya Pradesh,1996 Cr LJ (MP) 1582, it is held that without proof of mental or physical fitness, the dying declaration is not reliable.

• ***Inconsistent declaration***: Inconsistent dying declaration has no evidential value.

• ***Doubtful features***:In Ramilaben v. State of Gujarat (AIR 2002 SC 2996): Injured died 7-8 hours after incident, four dying declarations recorded but none carried medical certificate. There were other doubtful features too, so it is not acted upon.

• ***Influenced declaration***:It must be noted that dying declaration should not be under influence of anyone.

• ***Untrue declaration***: It is perfectly permissible to reject a part of dying declaration if it is found to be untrue and if it can be separated.

• ***Incomplete declaration***:Incomplete declarations are not admissible.

• ***If statement relates to death of another person***:If statement made by deceased does not relate to his death, but to the death of another person, it is not relevant.

• ***Contradictory statements***:If a declarant made more than one dying declarations and all are contradictory, then those all declarations lose their value.

• ***Unsound person***: The statement of unsound mind cannot be relied upon..

• ***If dying declaration is not according to prosecution***: If dying declaration is inconsistent with the case of prosecution it is not admissible.

CONCLUSION

36. While recording dying declaration we should keep in mind that it is a valuable piece of evidence and as such we have to take much care and precautions since conviction can be based on it without corroboration if it is true and voluntary.

RELEVANCY AND ADMISSIBILITY OF EXPERT OPINION

Introduction:

1. Every Judicial proceeding has a purpose to ascertain some right or liability. If the proceeding is criminal, the object is to ascertain the liability to punish the accused person. If the proceeding is Civil, the object is to ascertain some right of property or of status or the right of one party and the liability of other in the form of relief. In order to decide such right or liability, there must be facts before the court.

2. It is the fundamental principle of law of evidence that witnesses should State facts which are within their knowledge and forming of an opinion on any matter under enquiry within the domain of the court. However, there are situations when the Court is not in a position to form its judgment on certain issues without the aid of persons who have acquired special skill or experience or knowledge in certain areas which are beyond the common experiences of men. When such type of situation arises, the rule is relaxed and conclusions drawn from a set of facts by specially skilled persons are admitted in evidence under the provisions of Indian Evidence Act.

I: REFERENCE OF DOCUMENTS TO EXPERTS FOR OPINION

3. Lets' have a look on the relevant provisions of law enlightening the said aspects .

Sections 45 to 51 speaks about the opinion of expert .

Section 45 Opinions of Experts : It makes the opinion of persons specially skilled in some science, art or foreign law, identity of handwriting and finger impressions relevant.

Section 45A : Opinion of Examiner of electronic evidence: When in a proceeding, the court has to form an opinion on any 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 the Information Technology Act, 2000 is relevant fact.

Sections 46 Facts bearing upon opinions of Experts: Sec.46 lays down in a round about way that the statement of an expert may be corroborate or

contradicted by other evidence. **In AIR 1954 SC 28 Sunderlal Vs. State of M.P.** it is held that the opinion of renowned authors may be used to support the testimony of an expert. But, when any standard treatise is intended to be used to contradict an expert, the attention of the expert must be drawn to the particular passage by which he is intended to be contradicted. **In Bapu Rao vs. State of Maharashtra reported in 2003 Crl.J 2181** it is held that where the hand writing expert was not examined, no value or weightage can be given to his opinion.

Sections 47 explains that Opinions as to handwritings when relevant :

Section 47A Opinion as to Digital Signature when relevant : As it is already laid down, provision under section 45A to consider opinion given by an examiner of electronic evidence regarding any information transmitted or stored in any computer resource or any other electronic or digital form is also relevant fact. Court may rely up on the opinion of an examiner who has given in the manner prescribed under Section 79A of Information Technology Act.

• Further, when the court has to form an opinion as to the electronic signature of any person, the opinion of the certifying Authority which has issued the electronic Signature Certificate is also relevant U/S 47A of Evidence Act.

• When in a proceeding, the court has to form an opinion on any 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 the Information Technology Act, 2000 is a relevant fact.

Section 48 Opinion as to right or custom, When relevant: Sec. 48 lays down when a court has to decide has to existence of any general custom or general right the opinion of the persons, who would have known the custom if it existed becomes relevant.

Section 49 Opinion as to usages, tenets, etc when relevant: Sec. 49 lays down that the opinion of the persons having special means of knowledge is relevant to prove one usage and tenets of any body of men or family. 2) The constitution and Government of any religious or charitable foundation. 3) Meaning of words or terms used in particular district or by particular classes of people.

Section 50 Opinion on relationship when relevant: Sec. 50 lays down the opinion of alive is relevant. The person having special meaning of knowledge

has to appear before the court and state under sec. 50 the opinion of the person expressed by conduct his statement is relevant.

Section 51 Grounds of Opinion when relevant: Sec. 51 lays down that every opinion of an expert is expected with reasons and his opinion shall be clearly based upon what he noticed and what he based his opinion. **In Ramesh Chandra Agarwal Vs Regency Hospital Limited reported in AIR 2010 SC 806** it is held that, Mere assertion without mentioning the data or basis is not the evidence, even if it comes from expert . Where the experts give no real data in support of their opinion, the evidence even though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value.

Now Question arises who is an Expert ?

4. An Expert is one who has acquired special knowledge , skill or experience in any science , art , trade or profession such knowledge may have been acquired by practice, observation or careful studies.

5. From the moment an expert witness is introduced in the court as a witness, he becomes an object of intense interest and according to Lord Russell in ***Rex* v. *Silverlock* (1894) 2 QB 766**, the following questions should invade the mind of the Judge:

(*a*) Is he peritus(an expert) ?

(*b*) Is he skilled?

(*c*) Has he adequate knowledge?

Leonard Caplain in **Caplain, L, (1979),*The Medicolegal Journal*,Vol. 47, Part 4, p. 124-137**, has outlined four qualities of an expert witness described below:

1.***Expertise.—*** It may appear to be absurd to say that an expert witness lacks expertise but it is not so. A medical expert witness holding a recognized medical degree may technically be a qualified expert witness but he may lack expertise in the absence of a thorough grounding in post-mortem work. The question of expertise may be decided on the basis of an enquiry into the academic qualifications, professional training, experience of work in the relevant branch of the subject, facilities at the command of the expert to do the work and application of those means in the work.

2.***Clarity.***—This is something which the expert witness must express through the medium of simple language avoiding jargon. A man of true science having a clear understanding of the subject used, but a few hard words whereas the less knowledgeable persons try to impress through the medium of harsh words. The expert witness should be able to express himself through simple language which could be followed even by a layman. In order to make things simpler, he should be able to explain through charts, photographs and sketches and make his evidence demonstrative.

3.***Relevancy.***—There should be relevancy in the conclusion of the expert's report and the findings should not be based on mere assumption or premise but on relevant data. The data could be his own or from the published work of accredited authors. He should be cautious and conservative and should know where not to commit.

4.***Reliability.***—The expert should not only be reliable but appear to be so and that he should satisfy himself against any bias.

(*i*)***System of Cross examination.—***An attorney is supposed to know less than the witness but in Court room environment he is in a position to put up an air of superior knowledge. At times, the witness loses his balance of mind and gets trapped in the net spread for him.

(ii) ***Expert being presented by parties***.—Many a time, an expert is introduced in the Court by the party who pays for it. This results in an unconscious bias that the expert witnesses have the tendency to side with the party hiring him. **Lord Jessel *Abinger* v.*Asthoa, L.R.*,17 Equity, the Master of Rolls,** expressed the following in this context in rather unduly harsh words:

"In matters of opinion, I very much distrust expert evidence. Although the evidence is given on oath, the person knows that he cannot be indicted for perjury. But this is not all. Expert evidence of this type is the evidence of persons who sometimes live by their business but in all cases are remunerated for their evidence. It is but natural that his mind should be biased in favour of the person employing him and accordingly we find such bias."

Text of the report.—The report or the opinion is yet the third source of bias.

What is the Necessity of Referring the documents to Expert Opinion ?

6. As a general rule, the opinion of a judge only plays a part and is thus relevant in the decision of a case, and thus, the opinion of any person other

than the judge about any issue or relevant fact is irrelevant in deciding the case. The reason behind such a rule is that if such opinion is made relevant, then that person would be invested with the character of a judge. Thus, Section 45 is thus an exception to this general rule, as it permits the experts opinion to be relevant in deciding the case. The reason behind this is that the Judge cannot be expected to be an expert in all the fields-especially where the subject matters involves technical knowledge as he is not capable of drawing an inference from the facts which are highly technical. In these circumstances, he needs the help of an expert- who is supposed to have superior knowledge or experience in relation to the subject matter.

7. A fact is something cognizable by the senses such as sight or hearing, whereas opinion involves a mental operation. Under Section 3, the opinion of a person will be a fact too. U/s 60 oral evidence in all cases must be direct if inter-alia it refers to an opinion or to grounds on which that opinion is held. It must be the evidence of the persons who hold the opinion on those grounds. A distinction must be drawn, however, between the cases where an opinion may be admissible u/s 6 to 11 of Evidence Act as forming a link in the chain of relevant facts to be proved and between cases where opinions are admissible under sections 45 to 51. The former evidence is given by the non-expert or the unskilled witness while the latter is given by the expert witness. Thus, in matters of calling for special knowledge or experience or skill, opinions of expert witnesses is relevant under sections 45 to 51 of Indian Evidence Act.

8. **In (1992)3 SCC 700 State of Maharashtra v/s Suchdeo Singh and another case :***The Hon'ble Supreme Court held that the above three cognate modes of proof involve a process of comparison to be made by handwriting expert or by person familiar with the hand-writing of the person concerned or by the court*

1.By the evidence of a handwriting expert .

2.By the evidence of a witness acquainted with the handwriting of the person, who is said to have written the writing is disputed and held that, held that before a court can act regarding the opinion of handwriting expert following to content must be proved beyond reasonable doubt. *1. The genuineness of the specimen of the admitted handwriting of the concerned accused and, 2. That the handwriting expert as a competent, reliable and dependable witness whose evidence inspires confidence.*

3. The opinion formed by the court on comparison made by itself.(Section 73 of the Act)

9. **In Venkata Sai Anurag and another Vs Government of India , represented by its Secretary , Ministry of Human Resource Development , New Delhi and others reported in 2014(1) ALT 758** it is held that, court does not possess the expertise to judge the correctness or otherwise of the opinions of subject experts in academic matters and cannot , therefore sit in judgment over such opinions.

Why documents can be sent for Expert Opinion , What Documents can be referred to the Expert for Opinion and What Stage they can send ?

Nature of documents that can be sent for Expert Opinion :

In Velaga Sivarama Krishna v. Velaga Veerabhadra Rao's case 2009 (1) ALT 379,the Hon'ble Apex Court held that in paragraphs 7 and 8 as under;

10. "Whenever a party disputes the signature on a particular document, two remedies are open to him, either to request the Court to compare the signatures (or) to file an application to send the document to the expert for comparison.

11. When the petitioner opted to file an application to send the document to the handwriting expert, no prejudice will be caused to either party. When he is asserting that the signature is that of the said party, even though there is a gap between the disputed signatures and admitted signatures, a science has been developed to compare such signatures also by taking into consideration the direction of the strokes, the speed of writing, the pattern of writing etc., therefore, it cannot be said that no useful purpose will be served by sending the document to the expert.

12. After comparison, if the similarities of the disputed signature and the admitted signatures are very negligible, then the Court can formulate its opinion with the assistance of the expert's report and by comparing the signatures whether the report has to be accepted or not. But, if the opportunity is denied to the defendant and if the

matter is carried to the appellate Court, there is every likelihood of commenting that he did not avail the opportunity of filing an application for sending the document for handwriting expert's opinion, if he is so sure that the disputed signature does not belong to him.

13. In view of the circumstances, the Hon'ble Court is of view that it is essential to send the document to the expert for comparison at the request of the party in the interests of justice, which cannot cause any amount of prejudice to the plaintiffs in the said suit, therefore, the order of the lower Court is liable to be set aside".

14. **In Kati Maheswara Rao vs Uppati Lalitha And Others on 1 March, 2018** the Hon'ble High Court of Andhra Pradesh held that there is no bar to take the opinion of second expert without setting aside the earlier report by referring the earlier Judgment of Hon'ble Division Bench in a case between N.Ramesh Babu vs. M.Sridhar.

15. Further his lordship held that when a signature on a document is denied and such document though a carbon copy can be looked into by sending the same for expert opinion. Their lordship held in para No.12 that not only the original document can be sent for expert examination, photograph copies may also send for examination of handwriting expert.

16. Even in spite of availability of expert evidence, the Court can also compare the signatures under *Section 73 of Indian Evidence Act* and opinion of expert is only a guiding factor and it is for the Court below to examine the entire evidence on record including the evidence of the handwriting expert and come to a just conclusion.

DOCUMENTS:

17. A mans writing seems to be part of his very flush and bounce, he cannot discard it at will. Documents play an important role in human life. We daily write and sign a number of documents. It may be a personal letter, a receipt, a cheque, or an order effecting lifes of many individuals. If he stop writing or accepting the documents, the work of modern society may be adversely affected.

18. The art are Craft of forgery is not difficult. A little patience good penmanship, sufficient practice, intelligence and courage to face the consequences are the only requirements. On the other hand, the detection of forgery is comparatively forward difficult. It may be possible to detect a fraudulent document, but the identification of its author is difficult.

For example initials are easily imitated with little chance of deduction of the forgery. Erasure, small additions or alterations like wise, seldom permit the identification of the culprit. Signatures of illiterate or semi literates or easy to imitate. If the forgerer has written after practice, there is little chance of it identification as author.

19. A document is a material having a symbol or writing on it. Which conveys some meaning to one or more persons. It may be a stone, a wall, a wooden peace, a glass , a metal sheet, a skin, a piece of cloth, a a parchment (the skin of sheep, goats etc., prepared for use as a material on which to write) or a paper. The following are the some documents which we usually refer for scientific analysis.

Letters: A questioned document may be pseudonymous or an anonymous communication. It may be a threatening or a suicide letter. It some time may contain secret or code writing.

Financial documents: A question document may be money receipt, a money order form, a cheque, a pronote, a currency note, a payment order, an account book, a bill or a tender.

Orders: A question document may be an order relating an appointment, transfer, training, promotion, demotion, increment allowances or leave. It may be a permit or license for purchase,s ale, or possession of some articles. It may be a pass port for travel's abroad or it may be a certificate, a degree or a diploma.

Records: Records are frequently falsified and they become questioned documents. It may be a office, production, sale or purchase record. It may relate to consumption, stores, confidential inquiry or some reports.

Tickets: All sorts of tickets are forged like bus tickets, Rail tickets, Lottery tickets, the excise stamps, and horse raise betting tickets are some of them.

Examination papers: Degrees or diplomas are of great value to secure employment, promotion and confirmation. The answer books, therefore, some times replaced. Complete paper or some questions are done by some person,

other than the real examinee and passed on to the examiner. Some times, the real examinee is impersonated and a substitute appears for the examination.

Wills: A will is a document a person executes to allocate his wealth and prosperity to the persons of his choice. Will are often disputed. The legal heirs who do not benefit question their validity. Some wills are fraudulently prepared. If the deceased literate, signatures are obtained by decease or threat on a blank paper. If he is semi literate signatures are obtained under some pretext. Wills are prepared even after the death on a paper which the signatures are already available. But more frequently signatures are forged in such cases. If the person is illiterate his thumb impression is impressed on the will even after his death.

Posters: Some people publish objectionable posters and distribute them. The posters may tent to increase communal hatred, illegally propagate against the Government Policy or willfully individual, such posters do not carry the name of the printer,the publisher or the author.

Books: Books contain pornography or pirated editions of books violating copy rights or questioned documents. It is possible identifying the printing press where they are printed.

Burnt or damaged documents: Burnt documents are found in cases of Arson, in accidental fires or in cases where the culprit pears incrimination on the discovery of some offending documents. He destroys them by fire. Destruction of currency notes, financial documents, records, note books, diaries and some other type of documents may have been attempted.

Hand writing: Identification of hand writing is most important branch of document forensics. The following types of identification are require.

Signatures: To ascertain whether the signatures are genuine or forged or in the hand of suspect, or in the hand of victim, whether signatures are transplanted or traced or disguised. The document written and signed by one person is called a holograph and in respect of hand writing we often encounter with anonymous letters, altercations, figures and marks, writing material i.e., the material which is used for writing document such as paper, pen pencil, blotting paper or carbon paper or erasers will be useful in evaluating the proof.

Stage of Case :

20. **In Janachaitanya Housing Limited Vs. Divya Financiers reported in AIR 2008 AP 163:** Wherein, it was observed that "no time could be fixed

for filing applications under Section 45 of the Indian Evidence Act for sending the disputed signature or writings to the handwriting expert for comparison and opinion and same shall be left open to the discretion of the Court; for exercising such discretion when exigencies so demand, depending upon the facts and circumstances of each case"referring to the said judgment in **Jalagadugula Eswara Rao Vs Davala Surya Rao(referred in Kati Maheswar case -stated supra) at Para No 10 and 11** it is held that, Court can send disputed documents at any stage of the suit at discretion of the court and basing on the lis between the parties .When a document is said to be forged and when a party has specifically denied the signature or the thumb impression on that particular document, such party should certainly have an opportunity to send the document to the handwriting expert for comparison of the disputed signatures or the thumb impression with admitted signatures or the thumb impressions. Of course, the evidence of the expert is also not conclusive. The Court has to examine the entire evidence on record, probabilities of the case including the evidence of the handwriting expert and on critical analysis, it should come to a conclusion. But at the stage of trial of a case, the trial Court must give reasonable opportunity to the parties to adduce evidence. Of course, where the parties are not diligent or intending to protract the litigation, the Court may pass conditional order imposing suitable conditions.

21. In **S. Harshavardhan Reddy Vs Vemula Ram Reddy reported in 2015 (1) ALT 306** held that, When defendant denied execution of a certain document relied by Plaintiff -refusal to send the document for comparison after trial cannot be sustainable.

22. In **Mudireddy Tirupathi Reddy Vs T. Linga Reddy and other reported in 2015(6) ALT 512** When the entire case rests on the genuineness of the disputed document , court ought not to reject the application filed under section 45 of the Act on the alleged ground of delay in filing the said application , availability of other oral evidence and courts power of comparison of disputed signatures or writings under section 73 of the Act.

23. In **Bande Siva Shankara Srinivasa Prasad Vs Ravi Surya Prakash Babu (died) per LR's and others 2016(2) ALT 248(FB) It is held that,**Under Section 45 of the Act Court is not barred from sending the disputed handwriting and signature for comparison to an Expert merely because the

time gap between the admitted and the disputed handwriting/Signature is long -court has discretion in the matter depending upon facts and circumstances of the case.

24. **In Salepalli Narasimha Reddy Vs Yerram Peda Subba reddy reported in 2014 (1) ALT 608** The rule of prudence requires the court to send the admitted and contemporary signatures of the person to the expert to compare the same with his disputed signatures on the document. According to Cambridge Advanced Learner's Dictionary ".Contemporary". means belonging to the same or a stated period in the past. It is needless to say that admitted signatures means the signatures on the documents maintained by any authority in course of its business such as signatures on a passport, income-tax returns, bank passbook or registered sale deed.

25. **Difference between an expert and an ordinary witness:**

- An ordinary witness must depose to what actually took place. An expert evidence on the other hand is not confined to what actually took place , but he can give his opinion on facts. For example Post Mortem report.
- An expert witness can speak to experiments made by behind the back of other party.
- He may cite text books accredited authority in support of their opinion and refresh him memory by reference to him
- He may sated facts relating to other cases bearing similarities to the case under enquiry in order to support his opinion.

II APPRECIATION OF EXPERT OPINION vis – a vis An Evidentiary Value of an Expert :

26. The value of the expert opinion rest on which it is based and his competency for forming a reliable opinion. The evidentiary value of opinion of expert depends on the facts on which it is based and also the validity of the process by which the conclusion is reached . Thus, the idea that is proposed means that the importance of an opinion is decided on the basis of the credibility of the expert and the relevant facts supporting the opinion so that, its accuracy can be cross checked.

27. An expert witness is not wholly reliable. His evidence of an advisory nature regarding evidentiary value of opinion evidence of handwriting expert it has been observed by the Hon'ble Supreme Court in **Murarilal v/s state of**

M.P-reported in AIR 1980 SC 531, that generally it is said that it has hazardous to base a conviction solely on the opinion of an expert. An opinion of experts in general are unrehable but because human judgment is liable to error and one expert may go wrong because of some defect observations, some error of premises or honest mistake or conclusion. It is unfair and inferior type of witness. Again the above view adopted by the Hon'ble Supreme Court in case of **Alamgir v/s state (NCT Delhi) 2003 SCC 21**, that the science of identification of handwriting has attained more or less a state of perfection and the risk of an incorrect opinion is practically non-existent. The court went on further to record that there is no rule of law, nor any rule of prudence which has crystallized in a rule of law that opinion evidence of handwriting expert must never be acted upon, unless substantially corroborated. **In state of A.P. v/s Madige Boosennu** it is held that an expert is not a witness of factor and his evidence is of supplementary or advisory nature. Expert opinion evidence must be examined by following way:1.The scientific criteria that has been applied 2.The reasons given in support of such opinion and 3.The data and materials used.

28. Thus, the expert is required to furnish before the court the necessary scientific criteria for examine or testing and arriving at result so as to enable the judge to from his independent judgment by the application of that situation to given facts. The credibility of an expert witness depends on the reasons and stated in support of conclusion and the tool technique and materials which from the bases of such conclusion.

29. **In Garre Mallikharjuna Rao (Dead) By LRs. & Others Vs. Nalabothu Punniah, (2013) 4 SCC 546** it is held that, courts should be slow in basing their findings on mere handwriting expert's opinion: Where in a suit for specific performance of agreement, the attesting witness had deposed that the executants had put his signatures on the agreement under compulsion without knowing the contents there of and the handwriting expert on the basis of photocopies of admitted document had opined that signatures on agreement did not tally with specimen signatures of the executants and the trial court, on proper appreciation of evidence, dismissed the suit but the High Court in appeal relied upon the untrustworthy, shaky and vague evidence to grant discretionary relief of specific performance in contravention of mandate of

Section 20 of the Specific Relief Act, 1963, it has been held by the Hon'ble Supreme Court that the handwriting expert's opinion u/s 45 & 73 of the Evidence Act is a week evidence and courts should be slow to base their findings solely on such opinion but should apply their own mind and take a decision.

30. In **State of Maharashtra vs. Damu,AIR 2000 SC 1691** it is held that, Opinion of an expert not to be relied on unless examined as witness in court: Unless the expert submitting his opinion is examined as witness in the court, no reliance can be placed on his opinion alone.

31. In **Ramesh Chandra Agarwal vs. Regency Hospital Ltd., reported in 2009 (6) Supreme 535 held that requirements for the admissibility of expert evidence are:**

i) that the expert must be within a recognized field of expertise

ii) that the evidence must be based on reliable principles, and

iii) that the expert must be qualified in that discipline."

Opinion as Handwriting :

32. "The progress of modern **Chirography (** is the study of penmanship and handwriting in all of its aspects).Science makes it all the more possible, as well as desirable, to discriminate between witnesses according to the convincingness of the reasons that may be given by them for their conclusions." The new laws and procedure regarding the introduction and use of genuine writings as standards of comparison, the sensible permission now given to the witness to state the full and definite reasons upon which his opinion is based .

33. The value of document expert testimony is measured by its convincing quality and convincingness must necessarily depend upon certain fundamental factors which in combination produce this desirable effect. **These factors are:** (1) the facts in the case; (2) the witness; (3) the lawyer, and (4) the law in the jurisdiction in which the testimony is given. Testimony to be convincing must be true; it must be in conformity with the facts in the

document and therefore given in support of a correct conclusion.3 The witness must be qualified, honest, and capable of stating the truth in a convincing manner.

34. The fact that disputed documents has been written or signed by a specific person can be proved under section 47 of the evidence act by a person who is acquainted with the handwriting of the person by whom it is supposed to be written or signed under section 73. The court is also empowered to compare the writing, signature or seal ascertain whether a specific disputed signatory writing or seal is that of a person by whom it purports have been made.

35. In **Baru Ram v. Smt. Prasanni, AIR 1959 SC 93 :** it is held that the opinion of a Handwriting Expert is Relevant Under Section 45 of the Evidence Act.

36. In **B. Poornaish v. Union of India, AIR 1967 AP 338** : it is held that the evidence must be given by the expert in the court. Mere report without examining the expert is not relevant.

37. In **State v. Kandhu Caharan Barik, 1983 Cri LJ 133 :** it is held that the science of handwriting expert is not perfect. The opinion of a handwriting expert has to be tested by the acceptability of the reasons given by him an expert deposes and not decides. His duty is to furnish the Judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the Judge to form his independent judgment:.

38. In **Delhi Administration v. Paliram, AIR 1979 SC 14** it is held that **Section 73 of the evidence act** empowers the court conducting trial or inquiry to direct an accused person to give his simples writing to enable the same to be compared by a handwriting expert chosen or approved by the court.

39. In **Lalit popli v. Canara Bank and others, (2003)3 S.C6 583** In the above issues it is also worthy of observation that section 45 and section 73 are complementary to each other and irrespective of an opinion of the handwriting expert the court can compare the admitted writing with the

disputed writing and come on its own conclusion. Such exercise of comparison is permissible under section 73 of the Evidence Act.

40. **In M.K. Usman Koya v. C.S. Santha, AIR 2003 Ker 191 at 193** It is held that comparison of handwriting is an imperfect science and an expert would not be able to state with 100% certainty that a particular signature is that of the person who purportedly signed it. He can only state that there is high probability and this he has done in his report.

41. **In AIR 1994 AP 102 at 114 Vandavasi karthiketa @ krishna Murthy, Vs. S.Kamalamma.** It is held that the science of hand writing was not an exact science unlike science of finger prints. Even experts tend to commit errors giving their opinions on the genuineness of signatures and hand writings. Some time s it would be difficult for an expert to examine even the genuineness of hand writing each having its own individuality. I requires intelligence comparison to differentiate the genuine signature from the forged one. Great caution and care should be exercised especially when the court was not assisted of the evidence of an expert in determining the genuiness of a signature or hand writing. Even while calling, expert that if one cannot get a competent man, it was not better to adduce any expert evidence at all.

Opinion of Finger Prints:-

42. **T**he Scientific Study of Fingerprints is called as **Dactylography .Sir Francis Galton** is father of finger print science, he has proved the finger prints are infallible and definite news of identification.

43. The science of identification of finger prints no doubt, has developed to the state of exactitude but the main thing to be scrutinized by court write appreciating evidence related thereto is whether the experts examination is thorough, complete and scientific. Every individual has got unique and distinct characteristics. There are even structural differences in each and every part of human body. The concept of personal identity is based on this peculiar feature. Fingerprints are commonly used tools to understand the individuality of a person so as to reveal his or her identity.

44. A man's signature is called an unforgettable signature. This head was added to expert evidence's scope in 1899. The study of fingerprints is generally admitted to constitute a science. Its two basic hypotheses are that: ***Firstly, fingerprints of a person remain the same from birth to death; Secondly, there has never yet been found any case where pattern made by one finger exactly resembled the pattern made by any other finger of the same or any other hand.*** The opinion of thumb impression expert is entitled to greater weight-age than that of a handwriting expert.

Features and Significance of Fingerprints

45. Fingerprints are formed by the deposit of the perspiration and fatty matter by the sweat glands in the friction skin of hands, allied with any dirt which happens to be on the finger tips' Wilson R. Harrison, "[1958] Crim. L.R. 591. Fingerprint means the reproduction of the ridge formation on the surface of the outer or nail joint of the finger in whatever manner, whether be reproduced in ink, in blood or by the greasy substance which is emitted by the sweat glands through the outlets. which are situated in the summit or top of the ridges.(V. Mitter, Law of Identification and Discovery).

46. The finger print science is art of Identifying a person by comparing finger prints of the same person which is admitted finger prints and the finger print is reproduction on some smooth surface of the patter or design formed by the ridges on the first end joint of a finger or thumb.

47. The finger print science is based on 3 principles. **Variety** i.e., eye no two finger prints are identical unless they are made by the same finger of the same person. b) **Immutability:** The finger prints will never change by accidental injuries or any other physical ailments of a person formed at 4 months of fetal stage. c) **Persistency:** The finger prints will persist through life of an individual and even after death until decomposition sets in.

48. There are 3 types of finger print i.e., Plain, Rolled and Major prints.

Statutory Recognition of Fingerprint Evidence:

The Indian Evidence Act, 1872 contains provisions wherein fingerprints are considered as a valid piece of evidence. Section 45 of Indian Evidence Act says that when the court has to form an opinion on a point of law which includes

foreign law, science or art, handwriting, finger impression, the opinion of persons skilled in that particular area will be accepted. Originally the term finger impression was not included in the section. The Amendment Act of 1899, added the phrase finger impression. This was the result of the decision of the **Calcutta High Court in R. v. Fakir' ,** wherein it was held that the comparison of thumb impressions must be made by the court itself and that the opinion of an expert was not admissible under Section 45 of Indian Evidence Act.' So this section says that an expert in fingerprint science can be called by the court to form an opinion.

49. The phrase finger impressions were also added to this section by the Amendment Act of 1899. The section contains two parts. The first part of the section provides for the comparison of signature, writing or finger impression purporting to have been written or made by a person with others admitted or proved to the satisfaction of the court to have been written or made by the same person. Even though the section does not specifically say by whom comparison has to be made, by reading Sections 45 and 73, it can be said the comparison is to be done by an expert. The second part of the section empowers the court to direct any person present in the court to give his specimen writing or finger impression for the purpose of enabling the court to compare it with others alleged to have been written or made by him. Section 73 can be said to be an enabling provision under which the court may direct any person present in court to give finger impression. While reading Section 73 in the light of Section 45 of Indian Evidence Act, 1872 it is clear that the court can direct an accused appearing before it to give his finger impression to be compared by the fingerprint expert chosen or approved by the court.

50. **Another provision is Section 9 of the Indian Evidence Act, 1872** also deals with the facts necessary to explain or introduce relevant facts. According to the section there are many incidents, which are not strictly constituted as fact in issue but will be regarded as forming part of it. They may include identity, names, dates, circumstances and relation of parties. Finger impressions are considered as proof of identifying persons. So finger impressions can be taken as a relevant fact when it proves the identity of a person. It has been already established that identity of a combination fixed and typical marks are the strongest evidence of identity of person and such evidence is considered as admissible and also a relevant fact.

51. In regard to this issue Supreme Court held in **Murarilal v/ s State of M.P AIR 1980 SC 531**the risk of an incorrect opinion is practically non-existent. Where the finger prints are clear, the court must verify the evidence of the expert by applying its own mind to similarities and dissimilarities afforded by the finger prints before coming to the conclusion on way or other.

52. ***Fakhruddin Vs. The State of Madhya Pradesh reproted in AIR 1967 SC 1326*** *in the following words :-*

"One such means open to the Court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become an handwriting expert but to verify the premises of the expert in the one case and to appraise the value of the opinion in the other case. This comparison depends on an analaysis of the characteristics in the admitted or proved writings and the findings of the same characteristics in large measure in the disputed writing. In this way the opinion of the deponent whether expert or other is subjected to scrutiny and although relevant to start with becomes probative. Where an expert's opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the Court may accept the fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness."

53. *In* ***Thiruvengada Pillai Vs Navneethammal reported in AIR 2008SC 1541*** *Court is no expert on Fingerprints*

<u>Some Important Case-laws on the topic :</u>

1. In **Kovvuri Kanaka Reddy Vs Nadella Edukondalu @ Venkateshwaralu and anotherreported in 2014(3)ALT 578.** An advocate cross-examining an Expert witness can take the assistance and instructions from another Expert , If Necessary .

2. In **Matta Sri Rama Murthy Vs Arepalli Sri Rama Murthy reported in 2015(3) ALT 266** : It is held that, before exercising powers under section 73 of the Act to form an opinion by comparing the handwriting or signatures of a party , it would be always proper for the court to take assistance of Handwriting expert to be in a better position to form an appropriate opinion.

3. In **Mortha Vimala Vs Gouthu Rajulu and another reported in 2015(1) ALD 436** it is held that, The party who seeks the assistance of Experts opinion as evidence should demonstrate at the earliest point of proceedings as to how the experts-When opinion would help the court to arrive at a just conclusion.

4. In **M. Narsi Reddy Vs Raghu Ram Naidu reported in 2015(2) ALT 529** held that, In absence of admitted Contemporary Signatures of of disputed party it is not safe to send disputed documents to compare with his signatures subscribed on Vakalath filed to contest the suit.

5. In **Koya Laitha Kumari and others Vs Polina Nageshwara rao (died) per LR's reported in 2016(1)ALT42** it is held that, When defendant is accused of purposefully changing the way of affixing his signature , no purpose would be achieved by securing his signature by court now for sending it for comparison with his disputed signature in the suit document.

6. In **Virothi Tirupathi Rao Vs Kota Venu reported in 2016(4) ALT478** it is held that, Unless Expert Opinion /report is based on an application made to a court in accordance of the procedure established by law and under the orders and supervision of court and opinion/report of a Private Expert obtained by a party directly, cannot be part of the record of the court and such an opinion /report privately obtained cannot be received into evidence and the expert who has given the same cannot be permitted to be examined as Witness.

7. In **Koya Lalitha Kumari and others Vs Polina Nageswara rao reported in 2016(1)ALT42** it is held that, the opinion of expert is only intended to enable the court to form its opinion .An expert merely tenders his evidence and does not decide the issue .Expert shall furnish to the court necessary scientific criteria for testing the accuracy of his conclusions to enable the court to form its own and independent judgement by application of such criteria to the facts proved in the case.

8. In **J. Krishna Vs. Maliram Agarwal & Others, AIR 2013 AP 107**it is held that,Judicial Officers are provided training during their basic induction training course and are competent to themselves compare the handwritings/signatures : Comparison of hand writings or signatures is not a science at all much less any scientific approach is involved in making such comparison. It is only an art which has to be acquired by experience. In so far

as judicial officers in State are concerned, they are provided with the subject of introduction to comparison of signatures and hand writing during their basic induction course at the time of their induction into the subordinate judiciary after selection. They are taken to several premier forensic and scientific institutions for practical experience and also are provided with lectures by faculty on the above subject. It is not as if judicial officers undertake the power under Section 73 of the Evidence Act, in a gullible manner. They are provided with basic confidence in undertaking this subject. It cannot be said that lower Court which is Court presided over by senior subordinate judicial officer cannot undertake work of comparison of signatures in exercise of power under Section 73 of Evidence Act, particularly when that Court did not entertain any doubt on this aspect of matter. After all, evidence of a person who claims to be an expert, is not conclusive. An expert's evidence has to be scrutinized and adjudicated again by Court, like any other witness for the party, as to his approach to his conclusion and also reliability of such report. Judicial discretion thus exercised by lower Court in refusing to send disputed documents and admitted document to expert for comparison of signatures, proper.

9. In **AIR 2012 SC 3046 in Dayal Singh and Ors. Vs. State of Uttaranchal,** the Hon'ble Apex Court observed as follows: *"Profitably, reference to the value of an expert in the eye of law can be assimilated as follows: The essential principle governing expert evidence is that the expert is not only to provide reasons to support his opinion but the result should be directly demonstrable. The court is not to surrender its own judgment to that of the expert or delegate its authority to a third party, but should Assess his evidence like any other evidence. If the report of an expert is slipshod, inadequate or cryptic and the information of similarities or dissimilarities is not available in his report and his evidence in the case, then his opinion is of no use. It is required of an expert whether a government expert or private, if he expects, his opinion to be accepted to put before the court the material which induces him to come to his conclusion so that the court though not an expert, may form its own judgment on that material. If the expert in his evidence as a witness does not place the whole lot of similarities or dissimilarities, etc., which influence his mind to lead him to a particular conclusion which he states in the court then he fails in his duty to take the court into confidence. The court is not to believe the ipse dixit of an expert. Indeed the value of the expert evidence consists mainly on the ability of the*

witness by reason of his special training and experience to point out the court such important facts as it otherwise might fail to observe and in so doing the court is enabled to exercise its own view or judgment respecting the cogency of reasons and the consequent value of the conclusions formed thereon. The opinion is required to be presented in a convenient manner and the reasons for a conclusion based on certain visible evidence, properly placed before the Court. In other words the value of expert evidence depends largely on the cogency of reasons on which it is based."

10. In **Lala Ram Vs. Sate of Rajasthan reported in 2003 Crl.J. 1454 at 1458** it is held that opinion should be based on reasons and court has apprecite the reasons to reach the correct conclusion. If the opinion is without any reasons it cannot be held to be conclusive at all. It should be corroborated either by clear or circumstantial evidence. If the opinion is very sound, it may be accepted without corroboration.

11. In **Balwinder Kaur Vs. Bawa Singh reported in AIR 2002 P & H 378,** it is held that where there were cogent reasons for opinion that document was forged given by one expert who was well qualified and had vast experience in the field held that reasons given by another expert were not cogent. Hence, court was entitled to rely upon opinion of expert giving cogent reasons.

12. In **Machindra vs. Sajjan Galpha Rankhamb andOrs.: 2017 (5) SCALE 70 – Expert Opinion – Held–** Expert's opinion should be demonstrative and should be supported by convincing reasons. Court cannot be expected to surrender its own judgment and delegate its authority to a third person, however great. If the report of an expert is slipshod, inadequate or cryptic and information on similarities or dissimilarities is not available in the report of an expert then his opinion is of no value. Such opinions are often of no use to the court and often lead to the breaking of very important links of prosecution evidence which are led for the purpose of prosecution.

Conclusion:

54. Thus, Expert evidence is an opinion made on a conclusion inferred by the application of theory to various facts. In assessing the opinion attention

should be given to each of the steps in the process of reasoning and to the primary facts and also to the theory and conclusion. While considering the aspect of expert evidence the following factors should be taken into account : (1) the experience and competence of the expert witness, (2) adherence to the relevant investigative method and operating techniques and (3) the possibility of error in observation or in recording of the test. Of course ultimately, The admissibility decision is left to the judge as held in a recent ruling **Machindra 's case (stated supra).** While admitting these evidence the court should apply its mind and should also consider other parts of evidence on record.

RELEVANCY AND ADMISSIBILITY OF CIVIL COURTS JUDGMENTS IN CRIMINAL CASES AND VICE VERSA.

1. The law relating to admissibility of Civil Court Judgments in Criminal Cases and Vice versa is governed by the Provisions of Indian Evidence Act.

2. Section 43 of the Indian Evidence Act reads as follows: "43. Judgments, etc., other than those mentioned in Sections 40, 41 and 42, when relevant - Judgments, orders or decrees other than those mentioned in Sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant, under some other provision of this Act." In terms of the aforementioned provision, the judgment in a criminal case shall be admissible provided it is a relevant fact in issue. Its admissibility otherwise is limited.

3. In **M.S. Sheriff & Anr. v. State of Madras & Ors. [AIR 1954 SC 397]**, a Constitution Bench of Hon'ble Apex Court decided the question as to whether a civil suit or a criminal case should be stayed in the event both are pending. It was opined that the criminal matter should be given precedence. In regard to the possibility of conflict in decisions, it was held that the law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. It was held that the only relevant consideration was the likelihood of embarrassment. If a primacy is given to a criminal proceeding, indisputably, the civil suit must be determined on its own keeping in view the evidence which has been brought on record before it and not in terms of the evidence brought in the criminal proceeding.

4. The question came up for consideration before Three Judge Bench of Hon'ble Apex Court in **K.G. Premshanker vs. Inspector of Police and anr. [(2002) 8 SCC 87]**, wherein it was held after elaborate discussion is that (1)

the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of res judicata may apply; (3) in a criminal case, Section 300 Cr.P.C makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein.

5. In a case between **Seth Ramdayal Jat vs. Laxmi Prasad reported in 2009 (5) Scale 527**, the Hon'ble Apex Court held in para No.15 that "A judgment in a criminal case, thus, is admissible for a limited purpose. Relying only on or on the basis thereof, a civil proceeding cannot be determined, but that would not mean that it is not admissible for any purpose whatsoever. Their lordship further held in para No.21 that although the judgment in a criminal case was not relevant in evidence for the purpose of proving his civil liability, his admission in the civil suit was admissible. The question as to whether the explanation offered by him should be accepted or not is a matter which would fall within the realm of appreciation of evidence. The Trial Court had accepted the same. The first appellate court refused to consider the effect thereof in its proper perspective. The appellate court proceeded on the basis that as the judgment of the criminal court was not admissible in evidence, the suit could not have been decreed on the said basis. For the said purpose, the

admission made by the appellant in his deposition as also the effect of charge had not been taken into consideration.

6. The Hon'ble Apex Court in **Kishan Singh (D) through L.Rs. vs. Gurpal Singh & Ors reported in (2010) 8 SCC page 775**, held in para No.19 that the law on the issue stands crystallized to the effect that the findings of fact recorded by the Civil Court do not have any bearing so far as the criminal case is concerned and vice-versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Indian Evidence Act, 1872, dealing with the relevance of previous Judgments in subsequent cases may be taken into consideration.

CONCLUSION:

7. After observing the Judgments of Hon'ble Apex Court, it is crystal clear that the findings of fact recorded by the Civil Court do not have any therein so far as the criminal case is concerned and vice versa since the standard of proof is different in civil and criminal cases.