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## Research Article

# DOCTORS AS EXPERT WITNESS AND ITS VALUE IN JUSTICE WITH RECENT AMENDMENTS

**Ashok Kumar Rastogi, Amit Patil, Binary Kumar, Nikhil Goel**

Department of Forensic Medicine & Toxicology, All India Institute of Medical Sciences, Patna Bihar

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## INTRODUCTION

In understanding a person who has earned specialized knowledge and skill in that particular field of study called expert witness but according to IEA 1872 When the court has to form an opinion upon a point of foreign law, or of Science or Art, or as to identify of handwriting or finger impressions the opinion upon that point of persons especially skilled in search foreign law, science or art, (or in questions as to identify of handwriting or finger impression, electronic evidence (IT ACT 2000, sec 65A, 65B) are Relevant facts. Such persons are called experts.<sup>(1)</sup>

Witness According to Black's Law Dictionary, "Witness is one who sees, knows or vouches for something or one who gives testimony, under oath or affirmation in person or by oral or written deposition, or by affidavit".<sup>(2)</sup> Medical evidence is considered as expert opinion it dealt with section 45 IEA. Medical evidence is corroborative evidence not substantive evidence. Medical evidence covers both oral and documentary evidence in the form of reports, certificates and depositions made by doctors.<sup>(3)</sup> Domain of medical evidence not restricted to criminal responsibility only it's also useful for the civil cases specially insurance claims. The evidence become essential at both pretrial stage and trial stage.<sup>(4)</sup>

Medical evidence is outside the domain of mathematical arena. There can be no hard and fast rule to judge them. The circumstances of each case determine the weightage to be given to the expert evidence.<sup>(5)</sup> Medical evidence is an opinion evidence which is used to lend corroboration to the evidence of eye witness.<sup>(6)</sup>

## METHOD

Review literature

## DISCUSSION

Dryfus a German army officer was wrongly convicted on the opinion of a handwriting expert. The miscarriage of justice

came to light only year after later when real culprit confessed the crime. It indicates the expert evidence is unreliable and weak evidence.<sup>(7)</sup> Miss calculative error may there but can be always reversible and subjective factor error will be very little. But in observation findings like autopsy finding eg. colour, smell many times vary with observers, may mislead the justice.

The post-mortem report of the doctor is his previous statement based on his examination of the dead body. It is not substantive evidence. The doctor's statement in court is alone the substantive evidence.<sup>(8)</sup> The post mortem report can be used only to corroborate his statement under Section 157, or to refresh his memory under Section 159, or to contradict his statement in the witness-box under Section 145 of the Evidence Act, 1872.<sup>(8)</sup> expert witness is advisory in nature but expert opinion accepted then it is considered as opinion of the court. In case of Prem vs. Daula, it was held that if there is conflict between medical evidence and direct evidence given by eyewitnesses then direct evidence given by eyewitnesses must be preferred if its testimony is undoubted and not the opinion evidence of the medical expert.<sup>(9)</sup>

Corroboration of dying declaration by medical evidence in the case of State of U.P. vs. Ram Sewak it was held that it is rare that description of incident and injury described in the dying declaration gets full corroboration from the medical evidence contained in the injury report or the post-mortem report.<sup>(10)</sup>

## Problems: Solutions

1. Primary report vs. secondary report opinion in conflict?
2. Then Primary report considered in place of secondary.
3. No primary report available.
4. Corban copy will consider as primary document, certified copy of registered document is considered as secondary evidence.
5. Doctor opinion differ with the written book statement.
6. Then Doctor opinion is considerable.
7. Reference taken opinion two books difference.

\*Corresponding author: **Ashok Kumar Rastogi**

Department of Forensic Medicine & Toxicology, All India Institute of Medical Sciences, Patna Bihar.

8. Research based statement is considerable.
9. Two expert opinions differ taken from different higher centre.
10. No value, benefit of doubt in favour of accused.
11. What is Difference between conclusion and opinion.
12. Conclusion crux of observation and Opinion are the view or judgment based on observations.
13. Corban copy of report considered as primary evidence.<sup>(11)</sup> certified copy of registered document admitted as secondary evidence in absence of original.<sup>(12)</sup>

## **CONCLUSION**

- Medical evidence considered as corroborative evidence.
- Expert evidence is little value when two expert opinions contradict.
- Report of doctors is not substantive evidence.
- The doctor's statement in court is alone considered as the substantive evidence.

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