
JUDICIAL USE OF EXPERT MEDICAL OPINIONS: A STUDY OF SRI LANKAN LAW

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ABSTRACT

Expert opinions are integral to judicial decision-making when specialized knowledge or expertise is required to address issues beyond the court's ordinary understanding, as provided under Section 46 of the Evidence Ordinance No. 14 of 1895. In Sri Lanka, the role of medical experts has been particularly significant in shaping the outcomes of cases involving complex issues such as medical negligence, personal injury, homicides, paternity disputes, disability claims, insurance claims, and assessments of mental capacity. Courts rely heavily on such expert opinions to provide clarity and authoritative guidance in areas requiring technical proficiency and scientific insight. This study, through a qualitative analysis of decided case law, explores the extent to which courts have relied on the evidence of medical professionals in determining case outcomes. The findings highlight that courts have consistently given considerable weight to the opinions of medical experts when such opinions are rooted in specialized knowledge and relevant experience. Judges have underscored the necessity for the expert to possess specific expertise in the field directly relevant to the case, often emphasizing the importance of precise qualifications and experience. However, courts have also shown a discernible inclination to dismiss generalized or irrelevant opinions from medical professionals who lack specialized knowledge in the specific area of inquiry. This approach demonstrates the judiciary's critical evaluation of expert testimony, ensuring that only domain-specific expertise is accepted to inform judicial determinations, thereby maintaining the integrity and reliability of court proceedings.

Keywords: Court Proceedings, Expert Opinions, Law of Evidence

“No one will deny that the law should in some way effectively use expert knowledge whenever it will aid in settling disputes. The only question is as to how it can do so best.”¹

– Justice. Learned Hand

I. Introduction

In the legal realm ‘Evidence’ means information which may be used to prove the existence of a fact in issue or a collateral fact or to disprove a fact in issue or collateral fact.² Among other types of evidence, expert evidence is a fascinating area that combines traditional evidentiary questions with new and complex scientific problems.³ The court has often in the course of an inquiry to be informed on some matter, which is material to the decision, and which involves knowledge of a special, technical or scientific character. This information can only be provided by a person who has expertise in that subject area. Hence, expert evidence plays a pivotal role in legal proceedings by filling the gap between complex, specialized knowledge and judicial decision-making. Courts frequently encounter cases involving technical or scientific issues that exceed the scope of ordinary knowledge. In such instances, expert testimony provides the necessary clarity and insight, enabling judges and juries to make informed decisions.

When we discuss about the expert witness, medical experts play an important role in the legal proceedings, offering their medical expertise to explain facts and provide authoritative opinions in cases involving medico-legal issues. The judiciary relies on the medical expert for impartial, scientifically based analyses that guarantee that the medical facts are presented and interpreted correctly. This, however, means that the medical expert needs to have specific knowledge relevant to the particular case and to provide opinions with a view to the highest standard of professional ethics. Reciprocally, the courts have critically appraised the qualifications and expertise of the medical witness for admitting his or her testimony as well as considering its standards of reliability and relevance. Thus, serving as a bridge between the disciplines of medicine and the laws, medical experts contribute much towards the pursuit of justice.

II. Overview of Expert Evidence in Sri Lankan Law

According to the provisions of the Evidence Ordinance, in some circumstances opinions of a

¹ Learned Hand, Historical and Practical Considerations Regarding Expert Testimony (1901) 15 Harvard Law Review 40 (reprinted from the Albany Medical Analysis, November 1900)

² Nicola Monaghan, Law of Evidence (Cambridge University Press 2015) 2

³ Fredric Lederer, 'Scientific Evidence - An Introduction' [1984] 25(4) William & Mary Law Review 523

third party might be admitted as evidence by the court.⁴ Accordingly, the opinions of experts are admissible as evidence to the extent that they are relevant to a fact in issue. Then the question is who is an ‘expert’?

Under section 45 of the Evidence Ordinance No. 14 of 1895,

“When the Court has to form an opinion as to foreign law, or of science, or art, or as to identity or genuineness of handwriting or finger impressions, palm impressions or foot impressions, the opinions upon that point of persons specially skilled in such foreign law, science, or art, or in questions as to identity or genuineness of handwriting or finger impressions, palm impressions or foot impressions, are relevant. Such persons are called experts.”⁵

According to Coomaraswamy, Experts are persons who on account of special studies or experience are conversant with matters of science and/or professional skill which are beyond the range of the court.⁶ He further describes the term ‘expert’ seems to imply both superior knowledge and practical experience in the profession.⁷ In the *U. S Shipping Board vs. St. Albans* (1931)⁸ case, the Privy Council has stated that the witness must have made a special study of the subject or acquired a special knowledge and experience in that.

From the above definitions it is clear that an expert is not an ordinary witness. Hence, when an expert has been called to give testimony before the court, the witness should produce his or her qualifications and experience in order to establish to the satisfaction of the court that he or she is a person who is especially skilled in the science in which he is called to give his or her opinion.⁹ Thus, there are clear differences between experts and ordinary witness. As stated by Coomaraswamy, (a) an expert’s evidence is not confined to what actually took place, as in the case of other witness, but he or she can give his or her opinion on fact; (b) the expert can speak to experiments made by him or her behind the back of the other party, in order to give the grounds of his opinion under Section 51 of the evidence ordinance;¹⁰ (c) the expert can cite scholarly literature of accredited authority in support of his or her opinions and may refresh the

⁴ See sec. 45 – 51 of the Evidence Ordinance No. 14 of 1895

⁵ *ibid*, sec. 45

⁶ E.R.S.R. Coomaraswamy, *The Law of Evidence: With Special Reference to the Law of Sri Lanka*) Volume 1 (Stamferd lake Publishers 1989) 589

⁷ *ibid*, 590

⁸ (1931), P.C 189

⁹ Coomaraswamy (n.6), 591

¹⁰ sec. 51 of the Evidence Ordinance No. 14 of 1895 - Whenever the opinion of any living Person is relevant the grounds on which such opinion is based are relevant

memory by reference to them under Section 159(4) of the evidence ordinance;¹¹ and (d) the expert may state facts relating to other cases bearing similarity to the cases under inquiry in order to support his or her opinion.¹²

III. The Obligation and Role of Doctors as Expert Witnesses

The obligation of doctors as expert witnesses is very crucial in disclosing justice in a matter arising before the court. Doctors should give testimony freely, honestly, objectively and provide their opinion only with respect to expertise alone. Doctors also have an obligation to protect the privacy of all the evidence he had.¹³ According to the 'Ethical Guidelines for Doctors Acting as Medical Witnesses' prepared by Australian Medical Association (AMA), when providing expert evidence, a doctor's overriding duty is to assist the court impartially. This means that doctors should be honest and objective when providing evidence or an opinion.¹⁴

According to Justice Sir Peter Cresswell in *National Justice Cia Naviera SA vs. Prudential Assurance Co. Ltd (The Ikarian Reefer)* [1993] case¹⁵, the court expects all expert witnesses including medical practitioners to fulfill the following duties and responsibilities as expert witnesses before the court.

- a) Expert evidence presented to the Court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation.
- b) An expert witness should provide independent assistance to the Court by way of objective unbiased opinion in relation to matters within his expertise.
- c) An expert witness should state the facts or assumption upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion.
- d) An expert witness should make it clear when a particular question or issue falls outside his expertise.

¹¹ sec. 159(4) of the Evidence Ordinance No. 14 of 1895 - An expert may refresh his memory by reference to professional treatises

¹² Coomaraswamy (n.6), 592

¹³ Hatta Muhammad and others, 'Role of the Doctor as Expert Witness in Medical Malpractice Cases' [2015], Proceedings of the 1st Al-Muslim International Conference on Science, Technology and Society 369

¹⁴ Australian Medical Association, Ethical Guidelines for Doctors Acting as Medical Witnesses 2011, 3.2

¹⁵ 2 Lloyd's Rep 68 Commercial Court; 1 Lloyd's Rep 455, CA

- e) If an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one.

Generally, the role of the medical witness can be divided into two categories, as witness of fact (the treating doctor) or as a witness of opinion (the independent expert witness). Under the role of the witness of fact, a doctor may be asked to present medical evidence as the treating doctor in a particular case where the treating doctor is a witness of fact, providing factual information obtained through treating a particular individual. In other hand as the witness of opinion a doctor may also be asked to present medical evidence in the role of an independent expert witness. The expert witness serves as a witness of opinion, asked to provide an independent opinion based on the facts of the particular case. If facts are in dispute, which is not uncommon, the expert witness will be asked to assume certain facts. The opinion of a particular expert witness is sought based on his or her experience and expertise as relevant to the particular case.¹⁶

When it comes to qualifications of a medical practitioner as an expert witness, there are many levels of qualifications for medical professionals who perform as expert medical witnesses in courts. Some perform as forensic pathologists with postgraduate training in Forensic Medicine, some perform medico legal work as part of their day-to-day duties with purely undergraduate knowledge in Forensic Medicine and others perform medico legal duties as incidental services during the course of a routine clinical practice.¹⁷ These levels of qualifications of medical practitioners are very important to establish the credibility and admissibility of his/her testimony regarding the facts in issue. Thus, courts are always very concerned about the level of qualifications of medical witnesses. It means that the court must be satisfied with the qualification level of the medical witnesses to admit the given testimony in a particular case.

In *R vs. Pinhamy* (1955)¹⁸ case, Basnayake C.J stated that,

“When an expert is called to give evidence, the side calling the witness should elicit from him his qualifications and experience in order to establish to the satisfaction of the court that he is a person who is especially skilled in the science in which he is called

¹⁶ Australian Medical Association (n13), 1.3

¹⁷ Deepthi. H Edussuriya and others, 'Perceptions of judiciary on competencies needed by medical officers to provide expert evidence in Sri Lanka' [2012] 6(2) South-East Asian Journal of Medical Education <DOI: 10.4038/seajme.v6i2.162> accessed 15 December 2024

¹⁸ (1955) 57 NLR 169

to give expert testimony. Thus, the mere reference to a person as the Judicial Medical Officer is insufficient, except in regard to matters which fall within the functions of a medical practitioner.”¹⁹

Accordingly, the contribution of doctors as expert witnesses, grounded in honesty, objectivity, and adherence to ethical guidelines, underscore their duty to assist the court impartially. Regardless of their specific qualifications or the context of their involvement, medical practitioners acting as expert witnesses must maintain the highest standards of professionalism and ethical integrity, reinforcing their critical role in bridging the realms of law and medicine.

IV. Challenges Faced by Doctors in Providing Expert Evidence

The Court generally considers a Medical Officer with a graduate degree in medicine and surgery (*Bachelor of Medicine & Bachelor of Surgery - MBBS*) or its equivalent qualification as a medical expert. However, this is limited to giving opinions as regards ordinary matters. In certain situations, the court may hold that a medical officer is not an expert. Given below are two examples.

- (a) An inexperienced medical officer doing a complicated autopsy and giving opinions thereon.
- (b) Medical Officer expressing opinions in special areas such as ballistics, explosions, surgical procedures, serology etc.²⁰

In the *Queen vs. Kularathne* (1968)²¹ case the court stated:

“Witnesses like doctors usually preface their evidence with a list of their qualifications and experiences and there is the danger that a jury would look upon anything said by them as based on expert knowledge. Such a witness should not be permitted to express an opinion on any matter in a field where he has no expert knowledge, and if such an opinion has been expressed before it is found that it is outside his sphere of specialized knowledge, then we think that a trial judge should give a clear direction to the jury to categorically disregard that opinion altogether.”²²

Accordingly, the evidence presented by medical experts should be limited strictly to their scope of expertise. This limitation ensures that their testimony remains credible, accurate, and

¹⁹ *ibid*, 171

²⁰ UCP Perera, 'Medical expert witness: persistent challenge unexplored' [2007] 12(1) Galle Medical Journal 53

²¹ (1968) 71 NLR 529

²² *ibid*. 542

relevant to the case before the court. Medical experts are uniquely qualified to provide their testimonies on specific medical contexts. However, extending their testimony beyond their expertise into legal, technical, or other non-medical domains undermines the accuracy and credibility of their evidence and may lead misinterpretation of facts. Hence, the medical witnesses always should be vigilant to know their boundaries of testimony. Although medical evidence provides invaluable insights into medico-legal contexts, it is imperative that medical experts remain within the bounds of their expertise to maintain credibility and prevent misinterpretation of facts in issue.

Balancing medical ethics with legal obligations is one of the major challenges faced by medical experts. The ethical principles that guide medical practitioners in their relationships with patients continue to guide them when they assume the duty of medical expert witness, but with a nonclinical spare. Physicians in the role of medical expert witness must consider a number of ethical appeals to reach an ethically justifiable course of action. These appeals can be divided into the following broad categories: (1) consequences for the parties concerned; (2) established legal, ethical, and professional standards; (3) respect for the rights of all parties; (4) professional virtues; and (5) fiduciary duties and special professional obligations, such as beneficence and nonmaleficence.²³ Limited Training in Legal Processes is another challenge for medical witnesses.

Medical education typically focuses on clinical skills and patient care, leaving little space for legal and forensic training. Hence, many doctors are unfamiliar with legal terminology, procedures, and evidentiary standards, making it difficult to navigate the courtroom environment effectively.

V. Critical Analysis of Current Practices

The general rule is that witnesses should only testify in relation to matters within their knowledge, and evidence of opinion or belief is inadmissible. However, exceptions have been made by the common law tradition in relation to expert evidence including medical testimonies.

Under section 46 of the Evidence Ordinance No. 14 of 1895,

“Facts not otherwise relevant are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.”²⁴

²³ Joseph S. Kass and Rachel V. Rose, Ethical Challenges for the Medical Expert Witness, *AMA J Ethics*. 2016;18(3):201-208. <doi:10.1001/journalofethics.2016.18.3.ecas1-1603> accessed 20 December 2024

²⁴ See sec. 46 of the Evidence Ordinance No. 14 of 1895

Accordingly, medical evidence as expert evidence can be admissible under the law of evidence only if it is relevant to the case. However, Coomaraswamy states that, the opinions of medical witnesses are useful, but cannot be conclusive.²⁵ The medical officer being an expert witness, his/her testimony has to be assigned great importance. However, there is no irrebuttable presumption that a medical officer is always a witness of truth, his/her testimony has to be evaluated and appreciated like the testimony of any other ordinary witness. Therefore, medical evidence can always be criticized in court.²⁶

Hence, in current practice, judges and juries always carefully examine the validity of evidence presented by medical witnesses. In *Chimanbhai Ukabhai vs. State of Gujarat* (1983) case, the Supreme Court of India stated that, 'ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more.'²⁷ Courts have therefore developed certain tests to admit of medical evidence in a case. For an example, in *Nagendra Bala Mitra vs. Sunil Chanra Roy* (1960) case, the Indian Supreme court considered the following steps to admit medical evidence in a case relative to causing injuries.

- a. If the evidence of the medical expert is that the injury seen by him on the body of the deceased could have been caused in the manner and by the weapon described by the eyewitness, his evidence lends assurance to the evidence of eyewitness and makes it safe to act upon it, provided that such witness is otherwise found to be reliable.
- b. If the expert says that the injury examined by him could not have been caused in the manner or by the weapon stated by the witness, the medical evidence throws a grave doubt on the evidence of the witness, and ordinarily the former should be relied upon, even though the latter may not suffer from any other infirmity.
- c. If the court finds for any reason that the direct evidence is unreliable, the medical witness ceases to be of any use in the case and cannot be of any use to be prosecution, even though the doctor might have said that the injury could have been caused as described by eye witness, because the question of corroborative support from medical evidence can arise only when the direct evidence is first found to be otherwise reliable and not till then.²⁸

²⁵ Coomaraswamy (n.6),611

²⁶ M.L. Singhal, Medical Evidence and Its Use in Trial of Cases, J.T.R.I. JOURNAL, Issue 3, (September 1995) 8

²⁷ (1983) AIR 1983 SC 484: 1983 Cr. L. 822

²⁸ (1960) AIR SC 706: Cr.L.J 1020

Thus, medical evidence plays a supportive role in corroborating direct evidence. Accordingly, medical evidence is counted as circumstantial evidence which does not directly prove or disprove a fact in issue. This circumstantial evidence is evidence of a relevant fact from which the existence or nonexistence of a fact in issue can be inferred.²⁹

According to the English common Law, in a jury trial, though jury is not bound by what the medical witness says, the jury must act on evidence and if there is nothing before them, which throw doubt on medical evidence, the jury must in those circumstances accept the medical evidence. This rule has been accepted in many English judgments.³⁰ However, if there is a doubt in medical evidence the judge should not invite the jury on matters involving medical knowledge to come to a conclusion for themselves, to which the medical expert could not point the way either with certainty.³¹

Although medical evidence contains inherent characteristics of circumstantial evidence, sole medical evidence can be the most important piece of evidence over other evidence in certain circumstances. For an example, it is essential to conduct a medico-legal examination to decide whether cause of death of a person was a result of a natural cause, suicide or homicide. In such circumstances the autopsy report is considered as medical evidence. The ultimate objective of this examination is to determine facts which may be used as substantive evidence to prove or disprove circumstances or conditions indicating legal responsibility.³²

However, it is a well-established rule that medical expert's opinion is not always final and binding. Therefore, if direct evidence of the witnesses to the occurrence is satisfactory and reliable, it cannot be rejected on hypothetical medical evidence.³³

VI. Recommendations for Improvement

As discussed earlier, medical education generally focuses on clinical skills but does not focus much on legal and forensic matters. Hence, most medical practitioners have insufficient knowledge in forensic and medico-legal issues. This may obstruct perusing justice. To avoid this, interdisciplinary and specialized training modules should be introduced into the medical curriculum.

²⁹ Nicola Monaghan (n.2),5

³⁰ *R vs. Baliey* (1961) 66 Cr A R 31; *R vs. Mathson* (1958) 42 Cr A R 145; *R vs. Byren* (1960) 44 Cr A R 246

³¹ Coomaraswamy (n.6),614

³² Garcon Weiss, Autopsy Evidence, 11 Clev.-Marshall L. Rev. (1962) 279

³³ M.L. Singhal (n.26)

In other hand, by introducing uniform guidelines for medico-legal practice can standardize the admissibility and evaluation of expert medical evidence, reducing inconsistencies across jurisdictions. Accordingly, many countries have now introduced accepted general guidelines to educate doctors about judicial practices. For example, National Health and Medical Research Council (NHMRC) Australia ³⁴, has developed guidelines to educate medical practitioners in the matters of their medico-legal practice. The medico-legal handbook for physicians in Canada³⁵ is also an attempt taken by Canadian Medical Protective Association (CMPA) to enhance the knowledge of medical practitioners on medico-legal aspect. Such general guidelines help medical professionals to perform their medico-legal duties smoothly while avoiding possible errors. Also, these guidelines help to ensure ethical standards and accountability in medico-legal practices.

Encouraging collaboration between the medical and legal professions is another avenue to develop the quality of medico-legal practices and dissemination of knowledge. Accordingly, organizing, interdisciplinary forums such as foster regular workshops, conferences, and seminars that bring together medical and legal professionals to discuss challenges and best practices in the intersection of their fields will help to enhance the interdisciplinary knowledge of both sides.

In conclusion, it is important to address the gaps in medical practitioners' knowledge of forensic and medico-legal issues to ensure justice and maintaining ethical standards in medico-legal practices. Hence, the above discussed measures collectively contribute to the development of a strong medico-legal framework that upholds ethical standards while enabling medical professionals to effectively fulfill their roles in the justice system.

VII. Conclusion

Expert evidence, especially from medical expertise, is an indispensable element in the judicial process, serving as a bridge between complex scientific knowledge and legal determinations. In Sri Lanka, the judiciary has identified the vital role of medical experts in ensuring the accurate interpretation of medical related issues such as medical negligence, injuries, homicides, paternity disputes, disability claims, insurance claims, and assessments of mental capacity. This study emphasized the importance of maintaining high standards of qualification,

³⁴ <<https://www.nhmrc.gov.au/guidelines>> accessed 30 December 2024

³⁵ <<https://www.cmpa-acpm.ca/en/advice-publications/handbooks/medical-legal-handbook-for-physicians-in-canada>> accessed 30 December 2024

ethics, and relevance in admitting expert medical testimony, as explained under Evidence Ordinance No. 14 of 1895.

Although medical evidence plays an important role in the judicial process, this evidence is subjected to certain limitations as circumstantial evidence. Also, medical evidence is challenged in various ways in the courtroom due to insufficient legal knowledge and lack of legal training of the medical experts. Hence, integrating forensic and legal education into medical training, standardizing guidelines for medico-legal practices, and fostering interdisciplinary collaboration can significantly enhance the efficacy and reliability of expert evidence in the justice system.

Eventually, the credibility and utility of expert testimony depend not only on the expert's specialized knowledge but also on their adherence to ethical standards and their ability to effectively communicate complex information to the court. By addressing existing gaps and implementing recommended measures, the legal system can strengthen the integration of medical expertise, ensuring a more robust, fair, and just resolution of cases involving medico-legal issues.