

MEDICAL EVIDENCE AND CRIMINAL COURTS IN DELHI, INDIA

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Abstract

Medical evidence is routinely required for administration of justice all over the world. It is a common perception among Indian medical professionals that lot of time and effort is required for expert testimony in the court of law in our country. Thereby, large number of professionals avoids sharing medico legal responsibilities. Hence to investigate this issue the present study was undertaken. It revealed that on average 1 hour and 45 minutes (apart from the journey time) are spent on experts' testimony in Delhi courts. Adjournment of the case was observed amongst 33% of the cases in which the medical professionals were summoned. The present study also discusses the way and means to improve the expert testimony recording to make it more time and cost effective and expert friendly.

Key words: Courts; Medical expert witness

Introduction

Medical evidence helps the courts to draw logical conclusions from the facts presented the evidence presented by medical experts are based on their opinions derived by their specialized skills acquired by study and experience (1). Section 45 of the Indian Evidence Act 1872 lays down that, "when the court has to form an opinion upon a point of foreign law or of science, or art, or also identity of handwriting, or finger prints, the opinions upon that point of persons specially trained in such foreign law, science or art or in question as to identity of handwriting or finger prints are relevant facts, such persons are called experts" (2). Hence, medical experts are routinely involved in the administration of justice particularly in criminal courts. In India, we have adversarial system of justice administration and ordinarily medical evidence is admitted only when the expert gives an oral evidence under oath in the courts of law expect under special circumstances like:

- a) When evidence has already been admitted in a lower court;
- b) Expert opinions expressed in a treatise;
- c) Evidence given in a previous judicial proceeding;
- d) Expert can not be called as witness; and
- e) Hospital records like admission/discharge register, birth/death certificates etc.

In, India, it is a common perception that lot of time and effort is required to record evidence and therefore by enlarge members of the medical profession does not like to involve in medico legal cases³. Some of the possible reasons put forward for this perception are:

- a) Undue time consumption;
- b) Repeated adjournments; and
- c) Lack of work culture in the courts

Hardly, any scientific data is available to support or refute this perception in relation to medical evidence. Therefore, it was planned to undertake a pilot study to analyze the quantum of time and effort put in by medical experts to get the evidence recorded in criminal courts and other issues related to it.

Material & Methods

The author maintained a complete record of consecutive personal court attendance for the period of 2 years i.e. from Oct.2000 to Sept 2002. During the above duration a total of 45 summons were received. The experience of these court appearances was

recorded and analyzed for this report.

Results

On an average, the author was required to appear in court of law once in fortnight. Out of the total 45 summons received, 33 (73.4%) were from sessions courts and 12 (26.6%) from magistrate's courts. The mean lag period between registration of first information report (FIR) and time to appear before court of law to give evidence by a medical witness was 2 years and 5 months. This mean lag period was more than thrice in magistrates' courts (5 years & 7 months) in comparison to session's courts (1year & 8 months). The range of the duration was from with in a year to more than 10 years (Table 1).

Table 1: Lag Period Between Registration of FIR and Summon to Medical Witness

Time Period (Years)	Court	
	Sessions	Magistrate
With in 1	16	01
1-2	05	-
2-3	04	-
3-4	05	04
More than 4	03	07
Total	33	12

The time required for attending courts by medical evidence is on 3 accounts apart from the journey period:

- a) Waiting for his turn to record his evidence;
- b) Recording of evidence; and
- c) Getting the expenses bill made and payment of the same.

On an average 1 hr. and 45 minutes are spent on the above-mentioned procedure, with a range of 30 minutes to 5 hours. It was observed that overall more time is taken in waiting and receiving payment than in actual recording of evidence. Routinely evidence recording does not take more than 30 minutes and rest of time is spent in other activities.

As far as adjournment of the medical evidence recording is concern, it was found that in one-third cases evidence is not recorded at the first instance and the case is adjourned for one reason or other. These adjournments are more frequent (twice) in magistrate's courts (50%), when compared with session's courts (27.3%). The reasons for adjournment/ not recording evidence were:

- 1) Non availability of presiding officer in the court;
- 2) Issue of summon by mistake;
- 3) Work suspended by lawyers;
- 4) Non availability of chemical analysis report;
- 5) Adjournment of the case before arrival of medical witness.

Table 2: Major Reasons for Adjournment in Courts

Reasons	Court	
	Session	Magistrate

Non availability of Presiding officer	03	04
Summon issued	02	02
By mistake		
Case adjourn	02	-
Before arrival		
Work suspended	01	-
By lawyers		
Non availability	01	-
Of CFSL report		
Total	09(out of 33)	06 (out of 12)

Another interesting feature with far reaching consequences was the absence of cross-examination in 43% of evidence recordings of all the testimonies where it was recorded at first instance in magistrate's courts.

Discussion

There is a unanimity that medical evidence plays a crucial role in helping the courts of law to arrive at logical conclusions. Therefore, the expert medical professionals should be encouraged to undertake medico legal work and simultaneously the atmosphere in courts should be congenial to the medical witness. This attains utmost importance looking at the outcome of the case, since if good experts avoid court attendance, less objective professional will fill the gap, ultimately affecting the justice (4). The need to involve more and more professionals in expert testimony has been felt by different organizations. The American College of physician's guidelines for the physician expert witness emphasizes on broad physician participation in providing this much-needed assistance to the legal system. The college believes that more doctors should serve as experts as a component of their professional activities in order to meet the need for medical testimony (5). This objective of greater expert participation can only be achieved by addressing to the apprehensions that ponder the mind of medical professionals.

On investigating on this issue, it was found that by enlarge the conditions in the courtrooms are satisfactory in the capital city of Delhi. However, the same may not be true to the rest of the countryside especially about small cities and districts. The average time consumed medical expert testimony in the city courts is 1 hour and 45 minutes. Nevertheless, it can be curtailed by minimizing the waiting time that could be achieved by calling the expert at prefixed time. To some extent, it has been enforced by the order of High of Delhi in Delhi's courts, whereas the doctors are called at 2.30 PM in the courts instead of the routine time of 10AM. This single step has significantly reduced the waiting time of medical experts in Delhi. But, unfortunately such provision does not exists in other states of the country. Rather the doctors are also summoned at the routine time of 10AM as any other witness, while the court starts functioning sometime latter when the under trials reaches the court from jail. Such customary practices create a negative impact in the mind of the experts and needs to be addressed.

In the present study the incidence of adjournment of evidence recording was observed in one-third of cases. This percentage is quite high looking at its impact on the witness and ultimately the case. It is an issue that not only frustrates the expert but is also an unnecessarily burden to the govt. exchequer. This problem is much more in lower courts and some time Indian courts are prominently projected on this issue in mass media. In order to tackle this problem routine summoning of the doctors should be discouraged as already suggested by the Supreme Court of our country in Pt. Parmanand Kataria v/s Union of India (6). Doctors should be called only if the defense counsel requires cross-examination or object to the admissibility of the documents prepared the doctors otherwise the documents should be admitted as such. This will reduce the quantum of court attendance for doctors to almost half. As it is evident from the results, that cross-examination is conducted in 57% of cases, even when the expert in study appeared in criminal death related cases in the courts. For this even if an amendment to the criminal procedure is needed, the feasibility of that should be examined by the Law Commission/ legislatures of the country. By the time these change takes place, all efforts should be made to record the expert testimony on priority with out wastage of much time. These steps will send strong signals to the medical fraternity and not to avoid medico legal responsibilities that will ultimately help in better administration of justice.

Conclusions

In nutshell, it can be concluded that by enlarge the conditions for the expert medical witness in Delhi courts is satisfactory which is quite in contrast to the apprehensions prevalent in the minds of medical professionals. However, this important aspect of the justice administration can be further improved by the following measures:

- a) Discouraging routine summoning of doctors;
- b) Calling expert witness at pre-scheduled time;
- c) Recording experts' testimony by alternative judicial officer in case of non-availability of the presiding officer the court that summoned him.
- d) Amending provision of criminal procedures to have admissibility of the medical records
- e) Recording of experts' testimony through video-conferencing (7).

Caveat

Due to paucity of data on the issue examined in this report, the comparative figures about other states and countries could not be included in the study. However, it will be interesting if researchers from other states would compare their figures with this data and an overall scenario of the country is reviewed.

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