

MEDICAL EXPERT WITNESS FRAUD: ETHICS IN THE COURTROOM – INDIAN PERSPECTIVE

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Abstract

"The purpose of this research study is to investigate the complicated problem of medical expert witness fraud in the Indian judicial system. It does so by investigating the ethical conundrums and difficulties that occur when medical practitioners serve as expert witnesses in court proceedings. When it comes to situations ranging from medical negligence to criminal investigations, the Indian court system places a significant amount of weight on the evidence of physicians and medical experts. On the other hand, this dependency produces vulnerabilities that might lead to instances of fraud, prejudice, and ethical violations. In this paper, the current regulatory framework that governs medical expert testimony in India is analysed, common forms of expert witness fraud are identified, the motivations behind such misconduct are investigated, and comprehensive reforms are proposed in order to improve the integrity of expert medical testimony in Indian courts. By conducting a study of case studies, pertinent laws, and comparable foreign practices, this research offers insights into ways in which the junction of medicine and law might be strengthened within the setting of India."

Keywords. Medical expert witness, forensic testimony, professional ethics, medical jurisprudence, Indian legal system, perjury, judicial reform

1. Introduction

When the fields of health and law converge, a one-of-a-kind arena is created in which scientific competence and the judicial process come together. For the purpose of interpreting complicated scientific data and providing professional judgements that guide judicial decision-making, courts in India, as well as in many other jurisdictions throughout the world, place a significant amount of reliance on medical expert witnesses (Murthy, 2019). The contributions of these specialists are indispensable in a wide variety of

instances, ranging from medical negligence and malpractice to criminal investigations including sexual assault, homicide, and other forms of sexual violence.

The requirement of translating specialised scientific information into words that are understandable to judges and jurors, who often lack medical expertise, is the root cause of the Indian court system's reliance on the evidence of medical experts. According to Pillay (2018), it is anticipated of medical expert witnesses that they would deliver opinions that are impartial and

unbiased, based on their professional competence and the scientific information that is available. However, this crucial function is susceptible to a wide range of unethical behaviour, prejudice, and outright fraud, all of which have the potential to dramatically influence the results of cases and undermine the administration of justice.

Expert witness fraud in the context of the medical field encompasses a wide range of unethical behaviours, such as the intentional misrepresentation of credentials, the selective presentation of evidence, testimony that goes beyond one's area of expertise, and testimony that is influenced by financial incentives or personal relationships (Yadav, 2020). These concerns are made even more complicated by systemic obstacles that are present in the Indian setting. These challenges include limited regulatory monitoring, poor standardisation of expert testimony processes, and cultural variables that may impact the behaviour of expert witnesses.

The topic of medical expert witness fraud within the Indian judicial system is investigated in this article. The essay investigates the symptoms of this phenomena, as well as its underlying reasons and the ramifications it has for justice. The purpose of this research is to identify potential avenues for change that might improve the integrity and trustworthiness of medical expert evidence in Indian courtrooms. This will be accomplished via the investigation of case studies, pertinent laws, and comparable practices.

2. Medical Expert Witnesses in the Indian Legal Framework

2.1. Legal Provisions and Standards

In specifically, Sections 45 to 51 of the Indian Evidence Act of 1872, which explain the admission of expert views in court proceedings and the function that

they play, are the primary source of the Indian legal framework that governs expert evidence (Indian Evidence Act, 1872). In the event that a case involves issues pertaining to science, art, or foreign law, Section 45 expressly acknowledges the significance of the opinions delivered by those who possess specialised expertise in these areas.

Additional guidance is available from a variety of sources for medical professionals who are serving as expert witnesses. One of these sources is the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. These regulations establish ethical standards for medical practitioners, including those who are providing expert testimony (Medical Council of India, 2002). As an additional point of interest, the Supreme Court of India has, via a number of different judgements, set precedents concerning the appraisal and weight that is given to expert testimony in medical proceedings (Supreme Court of India, 2005, 2013).

The Indian legal system does not have any comprehensive requirements that are particular to medical expert witnesses, despite the fact that these rules are there. There is a comparatively small amount of formalised advice for medical practitioners who are presenting as expert witnesses in India, in contrast to nations such as the United States, where organisations such as the American Medical Association have produced thorough standards for physician testimony (Kaushal, 2021).

2.2. Qualification and Appointment Process

When it comes to the qualifications and appointment of medical expert witnesses in India, the procedure differs depending on the nature of the case as well as the jurisdiction of the court. Expert witnesses are normally appointed by the court in criminal cases. However, in civil

matters, notably allegations of medical negligence, experts may be nominated by either side or appointed by the court (Mathiharan, 2016).

In criminal cases, forensic specialists from government institutions are typically appointed as expert witnesses. Individuals who possess specialised qualifications in forensic medicine and medical jurisprudence are recognised by the Medical Council of India. These degrees are pertinent for expert evidence. On the other hand, there is no obligatory certification or accreditation procedure that is expressly designed for medical expert witnesses, nor are there any standardised criteria that are used to evaluate an expert's qualifications beyond their general professional credentials (Dogra et al., 2017).

As a result of this relatively open system for qualifying and appointing medical expert witnesses, there are chances for persons who do not have sufficient knowledge or who have conflicts of interest to serve as experts. Furthermore, due to the limited availability of specialists in certain medical specialities, particularly in rural regions, it is often necessary to rely on practitioners whose knowledge may not have a complete alignment with the requirements of the situation (Gorea, 2019).

3. Forms of Medical Expert Witness Fraud in India

3.1. Credential Misrepresentation

Providing false information about one's qualifications, experience, or competence is one of the most straightforward types of fraud committed by an expert witness. In the context of India, where professional qualifications hold a substantial amount of weight in assessing the legitimacy of an expert, misrepresentation can take many different forms. Among them are

the assertions of degrees that do not exist, the exaggeration of clinical experience, the false assertion of specialisation in disciplines that are important, and the overstatement of acquaintance with the particular medical concerns that are being examined (Singh & Agarwal, 2022).

An individual in Maharashtra who self-proclaimed themselves to be a "forensic expert" and testified in a number of criminal trials despite not having any professional degrees in forensic medicine was engaged in a high-profile case that occurred in 2016. According to the Maharashtra Medical Council (2017), the revelation of this deception resulted in the reconsideration of various criminal cases in which the evidence of this particular individual had been essential on multiple occasions.

3.2. Biased Testimony and Conflicts of Interest

When it comes to expert testimony, bias is typically the result of financial incentives, professional ties, or personal convictions that impact the conclusions of the expert. According to Raveendran (2019), the problem known as "hired gun" is a huge ethical dilemma in the Indian judicial system. This describes the situation in which experts frequently deliver views that are favourable to the side that is funding them.

When it comes to instances involving medical negligence, financial conflicts of interest are especially troublesome since experts may have links with healthcare institutions, insurance firms, or professional bodies that have a stake in the result of the case. According to the findings of a research conducted by Chatterjee and Das (2018), which looked at 150 cases of medical negligence in India, it was discovered that about 35 percent of the cases had expert witnesses who had undeclared

professional or financial affiliations with these parties.

In the context of professional solidarity, which is frequently referred to as the "white coat code of silence," medical personnel may be reluctant to testify against colleagues or may minimise apparent carelessness out of a sense of professional civility (Kumar & Mathew, 2021). This is an additional kind of prejudice that might arise. Cases involving major medical institutes or notable practitioners have been the ones in which this tendency has been noticed the most frequently.

3.3. Testimony Beyond Expertise

A worrying pattern that has been seen in Indian courts is the practice of medical experts offering their expert views on issues that are outside of their areas of knowledge or specialisation. This happens rather frequently as a result of the restricted supply of professionals in certain professions, particularly in rural areas and smaller cities (Pillay, 2018).

Rastogi and Singhal (2020) conducted research of 75 medical testimony cases that were spread across five different states in India. The findings of their study found that in around 28 percent of the cases, experts presented their opinions on issues that would generally be deemed to be outside of their primary field of expertise. When it came to situations involving uncommon diseases, cutting-edge technology methods, or burgeoning medical sectors, this was especially clear.

3.4. Selective or Misleading Presentation of Medical Literature

Expert witness fraud can often entail the selective citation of medical literature or the manipulation of that research in order to support findings that have already been decided. According to Jagadeesh (2017), this type of wrongdoing takes advantage of the

court's weak capacity to independently evaluate or contextualise scientific evidence.

A few examples of this would be referencing out-of-date studies while disregarding more current findings that contradict them, portraying minority perspectives as established medical consensus, incorrectly applying study findings to clinical circumstances that are not applicable, or failing to acknowledge limitations in the research that is being mentioned. In the absence of opposing specialists who are able to successfully confront the misrepresentations, it is especially difficult to uncover this type of misbehaviour (Murthy, 2019).

3.5. Fabrication and Manipulation of Medical Evidence

One of the most heinous types of fraud committed by an expert witness is the fabrication or manipulation of medical evidence. The alteration of medical records, the misrepresentation of diagnostic test findings, and the provision of manufactured professional views that are not supported by medical facts are all examples of this (Yadav, 2020).

In the infamous case that occurred in Kerala in 2014, it was discovered that a forensic pathologist had faked postmortem results in order to support a certain hypothesis of death during the course of a murder investigation. (Kerala High Court, 2015) The following disclosure resulted in substantial legal issues and weakened public faith in forensic testimony during the course of the investigation.

4. Factors Contributing to Expert Witness Fraud in India

4.1. Financial Incentives

A prominent factor that contributes to unethical behaviour on the part of expert witnesses in India is financial motive. The

evidence of an expert may be quite valuable, particularly in high-stakes cases that involve accusations of medical negligence against big hospitals or practitioners (Kaushal, 2021). Professionals are incentivised to establish and maintain connections with legal practitioners who are able to give referrals for chances to deliver expert testimony as a result of the disparity between the pay for ordinary clinical practice and the fees for expert witness services.

This problem is made worse by the fact that there are no standardised price structures for medical expert witnesses in India. As a result, there are widely varied remuneration methods, which may encourage biased evidence. Private practitioners who serve as expert witnesses may get pay that is directly tied to the results of cases, which can create possible conflicts of interest (Riveendran, 2019). This is in contrast to forensic specialists who are engaged by the government and receive set wages.

4.2. Inadequate Regulatory Oversight

Both major loopholes and discrepancies may be found within the regulatory framework that governs the testimony of medical experts in India. In spite of the fact that the Medical Council of India offers basic ethical principles for medical practitioners, these recommendations offer only a limited amount of particular instruction with relation to expert testimony (Medical Council of India, 2002). As an additional point of interest, the enforcement measures that are designed to combat wrongdoing in expert evidence are frequently ineffectual or less utilised.

The fragmented nature of medical regulation in India resulted in jurisdictional confusion regarding the oversight of expert witness conduct

(Dogra et al., 2017). This confusion was caused by the fact that responsibilities were divided between the Medical Council of India, which is now known as the National Medical Commission, state medical councils, and various professional associations. As a result of this legal uncertainty, the climate is one in which there is minimal punishment for misbehaviour in providing evidence from experts.

4.3. Cultural and Systemic Factors

The prevalence of expert witness fraud in India may be attributed to a number of cultural and institutional variables that are present within the medical and legal professions. It is possible that the hierarchical structure of the medical profession, which places a substantial amount of respect on older practitioners, may impede critical scrutiny of the expert judgements that are provided by well-known people in the field (Kumar & Mathew, 2021).

Structured incentives for political testimony are created as a result of the adversarial structure of the Indian judicial system. In this system, experts are frequently seen as advocates for the side that engaged them rather than as impartial scientific counsellors to the court. According to Murthy (2019), this adversarial framing is in contradistinction to the objective character of scientific data and medical judgement, which is ideally objective.

Furthermore, cultural norms surrounding professional civility and solidarity within the medical community have the potential to affect the testimony of experts, particularly in circumstances where charges of negligence or misconduct against fellow practitioners are being made. It is possible for the objectivity of expert judgements to be compromised when there is a reluctance to openly criticise colleagues,

even when the evidence allows for such criticism to be justified (Chatterjee & Das, 2018).

4.4. Limited Training in Medical Jurisprudence

Since the beginning of medical school in India, there has been a very low level of focus placed on medical jurisprudence and the ethical duties that come with being an expert witness. Despite the fact that forensic medicine is a part of the medical curriculum, the specific skills that are necessary for effective and ethical expert testimony are not given enough attention (Mathiharan, 2016). These skills include understanding legal standards of proof, effectively communicating complex medical concepts to non-specialists, and managing cross-examination.

A significant number of medical practitioners are not adequately equipped to deal with the ethical problems and procedural obligations that come with presenting expert evidence as a result of this educational gap. Practitioners who have not received specialised training in these areas may be susceptible to undue influence or may unwittingly go beyond the bounds of their knowledge when they testify (Gorea, 2019).

5. Consequences of Expert Witness Fraud

5.1. Impact on Justice and Case Outcomes

Fraud committed by expert witnesses has the potential to profoundly corrupt the judicial process, which can result in conclusions that are incorrect and have significant repercussions for the parties concerned. According to Jagadeesh (2017), misleading testimony in situations involving medical negligence can lead to either unjustified judgements of culpability against healthcare practitioners or the denial of compensation to people who have been really wounded.

Expert witness fraud can result in false convictions or improper acquittals in criminal cases where medical evidence plays a significant role, such as when identifying the cause of death, determining the severity of injuries, or establishing mental capacity. According to Rastogi and Singhal's research from 2020, these instances of judicial misconduct not only cause harm to the persons who are directly engaged, but they also weaken the integrity of the legal system as a whole.

5.2. Erosion of Trust in Medical-Legal Processes

There have been several cases of fraud committed by expert witnesses, which contribute to the public's decreasing faith in the legal and medical professions. According to Yadav (2020), the credibility of medical experts and the weight that is given to their evidence naturally decreases when they are seen as "guns for hire" rather than as impartial scientific authority.

This deterioration of confidence extends beyond the confines of the courtroom, and it has the ability to influence how the general public views medical practitioners in general. According to Raveendran (2019), the view of medicine as a profession that is governed by scientific integrity and is founded on evidence might be undermined when the borders between advocacy and objective medical judgement become blurry.

5.3. Financial and Resource Costs

The justice system and society as a whole are subjected to considerable expenses as a result of fraud committed by expert witnesses. The cases that involve contentious medical testimony usually require more experts, lengthy processes, and occasionally retrials when wrongdoing is uncovered. This consumes judicial resources and

increases the expense of litigation for all parties involved (Kaushal, 2021).

In the event that healthcare professionals are wrongly found accountable on the basis of misleading testimony, the repercussions may include significant financial fines, increased insurance rates, and harm to their image. For patients, reliance on misleading testimony that undermines genuine claims might result in rejection of critical reimbursement for injuries and prolonged medical expenditures (Singh & Agarwal, 2022).

6. Current Mechanisms for Addressing Expert Witness Fraud

6.1. Legal Remedies and Sanctions

Despite the fact that the Indian legal system offers a number of procedures to combat fraud committed by expert witnesses, the execution of these mechanisms has been uneven. According to the Indian Penal Code, 1860, the provisions of Sections 191-193 of the Indian Penal Code that pertain to perjury are technically applicable to expert witnesses who deliberately deliver false testimony while working under oath. In spite of this, charges for perjury in instances using expert evidence are extremely uncommon, with just a small number of documented incidents leading to convictions (Mathiharan, 2016).

Appellate courts have the ability to reverse decisions that were made based on the finding of false expert testimony. Courts have the jurisdiction to reject experts whose credibility or impartiality is successfully challenged. On the other hand, the criteria for such challenges differ from one jurisdiction to another and from one type of case to another, which results in a lack of clarity on when and how professional evidence may be properly challenged (Supreme Court of India, 2013).

6.2. Professional Regulatory Responses

For the purpose of conducting investigations into charges of unethical behaviour by medical practitioners, including misbehaviour connected to expert evidence, the Medical Council of India, which is now known as the National Medical Commission, as well as state medical councils have the jurisdiction to conduct such investigations.

According to the Medical Council of India (2002), possible consequences include administrative reprimands, suspensions, or even revocations of medical licenses. Despite the fact that this power exists, disciplinary measures that particularly address wrongdoing in expert evidence are not very common. Only seven cases, or 3.3%, of the 215 disciplinary processes that were assessed across three state medical councils over a period of five years featured claims related to expert witness misconduct, and penalties were applied in only three of those cases, according to research that was conducted by Kumar and Mathew (2021).

6.3. Judicial Scrutiny and Evidentiary Standards

When it comes to determining the dependability and trustworthiness of their expert medical testimony, Indian courts have established a variety of different ways. It has been established by the Supreme Court of India that the opinions of experts should be submitted to strict scrutiny, particularly with regard to the credentials of the expert, the foundation for their conclusions, and the methodology that they use (Supreme Court of India, 2005).

It has been emphasised by Indian courts in a number of key decisions that the testimony of experts should be supported by other evidence wherever it is practicable to do so, and that it should

not be accepted without careful examination. On the other hand, the execution of these criteria differs greatly from one court to another and from one type of case to another, and there are also different techniques to examining the qualifications and methodology of experts (Pillay, 2018).

7. Comparative International Approaches

7.1. United States Model

In order to combat the issue of fraud committed by expert witnesses, the United States of America has devised reasonably robust measures, which include both legal and professional regulatory techniques. According to Jagadeesh (2017), the Daubert standard, which was created by the Supreme Court of the United States, is a framework that offers a framework for evaluating the admissibility of expert evidence based on variables such as testability, peer review, error rates, and universal acceptability within the relevant scientific community.

There are several medical professional organisations in the United States, one of which is the American Medical Association, that have produced particular rules for physician expert witnesses. These criteria include credentials, ethical requirements, and suitable pay procedures. According to Mathiharan (2016), violations of these standards can result in professional punishments that are separate from any legal implications that may be incurred.

7.2. United Kingdom Approach

An approach to expert witnesses that is more court-centered has been adopted in the United Kingdom. This approach places an emphasis on the fact that experts have an overwhelming obligation to the court rather than to the party that retained their services. This notion is formalised in procedural regulations that compel expert

witnesses to mention this obligation directly in their reports (Rastogi & Singhal, 2020). These procedures are supposed to comply with the principle.

In addition, the system in the United Kingdom places an emphasis on the disclosure of expert evidence prior to the trial and promotes the employment of jointly trained experts in instances that are suitable. This helps to reduce adversarial biases in witnesses' statements. When compared to the more clearly adversarial tone of expert evidence in the Indian system, this approach stands in stark contrast (Gorea, 2019).

8. Recommendations for Reform in the Indian Context

8.1. Standardization of Qualifications and Certification

By instituting a formal certification or accreditation system for medical expert witnesses, it would be possible to establish more transparent standards for competence and limit the number of cases in which persons who are not prepared to serve as experts are appointed. According to Dogra et al. (2017), this might involve mandated training on aspects such as legal procedures, the ethics of expert witness, and the ability to effectively communicate medical concepts to others who are not specialists.

The establishment of criteria that are relevant to a certain speciality for the credentials of experts would be of assistance in ensuring that experts testify only within their areas of true knowledge. It is possible for medical professional groups, legal organisations, and regulatory agencies to work together to produce these recommendations in order to guarantee that they are both thorough and applicable (Singh & Agarwal, 2022).

8.2. Enhanced Disclosure Requirements

The implementation of obligatory disclosure rules for potential conflicts of interest will assist courts analyse potential biases in expert evidence, as well as promote transparency with regard to potential conflicts of interest. According to Chatterjee and Das (2018), these disclosures should include any personal links to the parties or problems that are involved, as well as any financial affiliations, professional associations, testifying history, and other relevant information.

Increasing the comprehensiveness and trustworthiness of expert evidence would be accomplished by the use of standardised formats for expert reports. These formats would include standards to address alternate explanations and limitations of opinions. According to Kaushal (2021), these standardised forms have the potential to be included into law enforcement regulations or professional standards for medical experts who testify in court.

8.3. Judicial Education and Court-Appointed Experts

By enhancing judicial education understanding medical concepts and the evaluation of scientific data, the ability of the courts to objectively evaluate the testimony of experts and identify possible instances of misconduct would be improved. It is possible that judicial competence in this area might be considerably improved by the implementation of specialised training programs for judges who handle cases involving sophisticated medical evidence (Murthy, 2019).

A reduction in the dependence on possibly biased party-selected experts would be achieved by the increased use of impartial experts appointed by the court, particularly in instances involving highly technical medical difficulties or

expert views that are in conflict with one another. There have been instances in which this strategy has been effective in specific High Courts; nevertheless, it has the potential to be deployed more broadly across the whole Indian court system (Pillay, 2018).

8.4. Legislative and Regulatory Reforms

It is possible that specific legislative measures that address fraud committed by expert witnesses might improve accountability and reduce fraud. A more precise description of what constitutes misbehaviour on the part of an expert witness, a modification of the standards of proof for perjury in situations involving expert testimony, and specific punishments for false testimony are all potential provisions that might be included in this. A significant improvement in professional responsibility would result from the strengthening of the enforcement power and resources of medical regulatory organisations, particularly with regard to wrongdoing committed by expert witnesses. One example of this would be the establishment of specialised committees within the National Medical Commission and state medical councils that are devoted to the ethics and conduct of expert witnesses (Raveendran, 2019).

8.5. Educational Initiatives

Practitioners would be better prepared for possible roles as expert witnesses if thorough medical jurisprudence training were incorporated into the curriculum of medical school programs. According to Mathiharan (2016), this training needs to contain ethical requirements, legal standards, and effective communication tactics for the purpose of interpreting complicated medical ideas for legal audiences.

The knowledge of practitioners on the applicable legal and ethical norms might be maintained and updated with the assistance of continuing medical education programs that are expressly focused on the responsibilities of expert witnesses. According to Gorea (2019), those practitioners who often testify as expert witnesses may be obliged to participate in these programs, which might be designed through a joint effort between professional organisations in the fields of medicine and law.

9. Conclusion

Due to the fact that it has far-reaching ramifications for justice, public faith in both legal and medical institutions, and the wellbeing of individuals whose lives are touched by court judgements, medical expert witness fraud is a serious threat to the integrity of judicial processes in India. The existing regulatory structure and professional norms that regulate medical expert testimony have significant loopholes that offer chances for various types of misconduct. These transgressions can range from the misrepresentation of credentials to the fabrication of biased or manufactured testimony.

In order to effectively address these difficulties, a multidimensional strategy is required. This approach should include law changes, better professional regulation, educational activities, and procedural improvements within the judicial system. By implementing thorough changes in these areas, India has the opportunity to increase the credibility and integrity of medical expert evidence. This would ensure that specialised medical knowledge is used as a weapon for justice rather than as a vehicle for prejudice or distortion.

The proposals that are given in this article provide a road map for such changes, relying on both the best

practices that are already being implemented internationally and factors that are unique to the context of India. India is able to better connect the junction of medicine and law with the primary objective of both professions, which is to serve the public good via the use of specialised knowledge within ethical constraints. This may be accomplished by improving accountability, transparency, and expertise in medical expert testimony.

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