



E20 Attending Court Summons By Doctors — A Burden or Necessity

T.D. Dogra, MD*, and Sanjeev Lalwani, MD, AIIMS, Forensic Medicine, AIIMS New Delhi, FTA-201 AV Nagar, New Delhi, Delhi, Delhi 110016, INDIA

After attending this presentation, attendees will learn about the Indian system of court summons in medicolegal cases.

This presentation will impact the forensic community and/or humanity by demonstrating how Indian system of Court summons to expert witnesses compares with that of other developed countries in an effort to improve the system in India.

Subpoena or summons is a writ compelling the attendance of a witness in a court of law, at a specified place and time and for a specified purpose under penalty. In subpoena *duces tecum*, the witness is summoned only to submit a document. Under Criminal Procedure Code, 1973 of India, the witness can be called in the court of law by prosecution, defense and by the court itself. Section 45 of Indian Evidence Act (1872) defines expert witness as “a person who has been trained or is skilled in technical or scientific subject and capable of drawing opinions and conclusions from the facts observed by himself or noticed by others.”

Medical evidence is in two forms, documentary and oral. Documentary evidence includes all documents produced for the inspection of the court (Indian Evidence Act 1872) such as *medical certificates* (illness, insanity and death), *medico legal reports* (assault, poisoning, accidents, rape and examination of exhibits), *postmortem reports* in cases of unnatural death and *dying declaration*.

Under section 293 CrPC the ballistic expert, fingerprint expert and handwriting experts are exempted to be summoned by the court of law, as their report is admissible as such; however, they can be summoned on the request of defense counsel. The opinion sent by the doctor in writing cannot prove itself. It is essential that the medical expert should step into witness box for oral evidence; otherwise opinion expressed by him in a communication to one of the parties could not be treated as evidence under the Indian Evidence Act. Therefore, summonses are issued by the court of law and served to doctors for expert evidence. This results in receipt of large number of court summonses to the doctors dealing with medico-legal work.

Offenses having punishment up to seven years are dealt in Magistrate's Court and offenses having punishment more than seven years, life imprisonment and capital punishment are dealt in Session's court. High court deals with appeal cases.

The department receives about 1624 summonses per year from various criminal and civil courts, motor accident tribunals pertaining to offenses against body, road traffic accidents, sexual offenses, attempt to murder, culpable homicide, and juvenile justice board. In addition summonses are received from army courts (Court-Martial), vigilance inquiries, departmental inquiry, and inquiry commissions set by the government.

In 384 (23.64%) of cases summonses were received after the gap of 7-9 years of preparation of documents. On average 3-4 hours are spent to attend the court within the city and deposing the evidence while in case of out station court, it shall depend upon the distance and manner of transport available. In many cases doctor has to appear repeatedly on demand of defense counsel for cross-examination. The maximum summonses (842, 51.85%) are received from the magistrate's court followed by session court (722, 44.46%) and juvenile justice board (60 (3.69%). 910(56.03%) summonses were related to clinical cases and 714(43.97%) to postmortem reports.

Many of the doctors take these summonses as a burden as they causes loss of time and unwelcome cross examination by the defense counsel, which may last , in some cases, for hours to days. In the author's opinion this system is beneficial, as the medical evidence is

thoroughly examined by the prosecution and cross-examined by the defense counsel eliminating the chances of error. Further, due to apprehension of appearance in a court of law, the doctors prepare medico-legal reports carefully and the records are kept properly.

Summon, Medicolegal, Expert Witness