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## **EVIDENTIARY LIMITATIONS OF POST-MORTEM REPORTS IN INDIAN CRIMINAL TRIALS**

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Sagara Sachin, Christ (Deemed to be University), Pune, Lavasa

### **ABSTRACT**

The use of post-mortem examination reports (“PMRs” or “post-mortem reports”) in Indian criminal trials presents complex evidentiary questions. Though an autopsy report is treated as expert evidence under Section 45 of the Indian Evidence Act, 1872 (IEA), Indian courts have long cautioned that a PMR “alone... is not a substantive piece of evidence”<sup>1</sup>. In practice, PMRs generally serve to corroborate or supplement other evidence (such as dying declarations and witness testimony) rather than conclusively establish the facts. This paper examines the development of the law on PMRs, including statute and case-law, recent judicial trends (2022–2026), forensic reliability concerns, and comparative and constitutional perspectives. It concludes with critical observations and reform suggestions to clarify and improve the probative use of post-mortem evidence.

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<sup>1</sup><https://www.casemine.com/search/in/post%2Bmortem%2Breport%2Bnot%2Ba%2Bsubstantive%2Bevidence#:~:text=,not%20make%20that%20report>

## Historical Development

The evidentiary status of post-mortem reports in India has its roots in colonial-era law and the framing of the modern Evidence Act. Under the Bengal Regulation XVI of 1869, and later Sections 324-325 of the Indian Penal Code (IPC), medical evidence was recognized but unsystematically regulated. With the Indian Evidence Act, 1872, post-mortem findings came to be treated formally as “opinion” evidence of a medical expert (physician or surgeon). Section 45 of Indian Evidence Act (IEA) explicitly makes expert “opinions” on science and medical questions relevant<sup>2</sup>. Thus, from the outset, an autopsy report was regarded as one species of expert statement. However, in *Naseem v. State of Uttar Pradesh* (1959) 2 SCR 1107, the Supreme Court held that a PM report is “in reality... merely a statement of opinion” and must be supported by the doctor’s oral testimony to be relied on. Over time, a consistent line of Indian authority, in both Supreme Court and High Courts, reaffirmed that PMRs by themselves cannot establish facts: they illustrate medical observations (e.g. injuries, cause of death) but require the attending doctor’s evidence (subject to cross-examination) for proof<sup>3</sup>.

For example, in *Hadi Kirsani v. State* (1966) 2 All ER 1110 (Orissa), the court explicitly held that a PM report is “not substantive evidence” unless the author is examined. In *Magan Bihari Lal v. State of Punjab*, (1977) 2 SCR 1007, the Supreme Court warned that “it is unsafe to base a conviction solely on expert’s opinion without substantial corroboration”<sup>4</sup>. Likewise, in *Madan Gopal Kakkad v. Naval Dubey*, (1992) 2 SCC 452, the Court emphasized that the medical officer’s testimony is advisory and not binding, meaning the PMR is only part of the picture<sup>5</sup>. These and similar cases throughout the 20th century firmly established that a PMR acts as supporting or hearsay evidence to be checked by live evidence.

The Criminal Procedure Code, 1898 (and now CrPC, 1973) institutionalized the post-mortem

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<sup>2</sup> [https://jfl.nfsu.ac.in/Uploads/EJournal/2/2/\(7-13\)%20EVIDENTIARY%20VALUE%20OF%20FORENSIC%20REPORTS%20AND%20LEGAL%20IMPLICATIONS.pdf](https://jfl.nfsu.ac.in/Uploads/EJournal/2/2/(7-13)%20EVIDENTIARY%20VALUE%20OF%20FORENSIC%20REPORTS%20AND%20LEGAL%20IMPLICATIONS.pdf)

<sup>3</sup> <https://www.casemine.com/search/in/post%2Bmortem%2Breport%2Bnot%2Ba%2Bsubstantive%2Bevidence#:~:text=,not%20make%20that%20report>

<sup>4</sup> [https://jfl.nfsu.ac.in/Uploads/EJournal/2/2/\(7-13\)%20EVIDENTIARY%20VALUE%20OF%20FORENSIC%20REPORTS%20AND%20LEGAL%20IMPLICATIONS.pdf#:~:text=evidence%2C%20to%20back%20up%20the,reports%20and%20their%20evidentiary%20value](https://jfl.nfsu.ac.in/Uploads/EJournal/2/2/(7-13)%20EVIDENTIARY%20VALUE%20OF%20FORENSIC%20REPORTS%20AND%20LEGAL%20IMPLICATIONS.pdf#:~:text=evidence%2C%20to%20back%20up%20the,reports%20and%20their%20evidentiary%20value)

<sup>5</sup> [https://jfl.nfsu.ac.in/Uploads/EJournal/2/2/\(7-13\)%20EVIDENTIARY%20VALUE%20OF%20FORENSIC%20REPORTS%20AND%20LEGAL%20IMPLICATIONS.pdf#:~:text=evidence%2C%20to%20back%20up%20the,reports%20and%20their%20evidentiary%20value](https://jfl.nfsu.ac.in/Uploads/EJournal/2/2/(7-13)%20EVIDENTIARY%20VALUE%20OF%20FORENSIC%20REPORTS%20AND%20LEGAL%20IMPLICATIONS.pdf#:~:text=evidence%2C%20to%20back%20up%20the,reports%20and%20their%20evidentiary%20value)

process. Section 174 CrPC (now renumbered 194 by the Bharatiya Nagarik Suraksha Sanhita, 2023) requires a magistrate-ordered autopsy on suspicious deaths. Sections 53-54 CrPC empower police to conduct the autopsy and dispose of the body, while Section 54A provides for judicial (inquest) review of sudden deaths. These provisions underscore the procedural prerequisites for obtaining a PMR, but they do not make the report conclusive. Early judicial practice and procedure envisioned the PMR as one item of evidence which is admissible on proof of authenticity and subject to the rules of evidence as in any criminal trial.

In sum, the historical trajectory has been that post-mortem reports are expert-opinion evidence that must be treated with caution. Absent modern statutory deviations, the common-law principle prevailed: a PMR cannot convict unless the doctor testifies or an exception applies (as under Section 32 of IEA). This background frames the contemporary law.

## Statutory Framework

### Indian Evidence Act, 1872

Several provisions of the Evidence Act govern PMRs. Under Section 3 of IEA, a PMR (a *document*) and its contents (“cause of death”, injury details, etc.) constitute “documentary evidence” if produced in court. Section 45 identifies pathologists (medical examiners) as experts whose opinions are relevant when the court needs scientific or medical interpretation<sup>6</sup>. Thus, the PMR is *prima facie* an expert opinion on “science” (forensic pathology).

Crucially, Sections 145-159 (IEA) outline how a document like a PMR may be used in evidence. For example, Section 147 of IEA allows an expert to use his written record (the PMR) to refresh memory or indicate contradictions, but does not itself prove the contents. Section 145 allows a witness to be contradicted by prior inconsistent statements, but prior statements by an expert (as any witness) can only be used to impeach or corroborate his trial testimony; even if the PMR was signed by the same doctor, it cannot convict if the doctor’s oral statement differs. Section 159 allows a witness (including the doctor) to refresh recollection from any document (such as the PMR) when testifying, but again, only as an aide to memory. In sum, Sections 145, 147, and 159 show that a PMR primarily serves to supplement or contradict

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<sup>6</sup> [https://jfl.nfsu.ac.in/Uploads/EJournal/2/2/\(7-13\)%20EVIDENTIARY%20VALUE%20OF%20FORENSIC%20REPORTS%20AND%20LEGAL%20IMPLICATIONS.pdf#:~:text=evidence%2C%20to%20back%20up%20the,reports%20and%20their%20evidentiary%20value](https://jfl.nfsu.ac.in/Uploads/EJournal/2/2/(7-13)%20EVIDENTIARY%20VALUE%20OF%20FORENSIC%20REPORTS%20AND%20LEGAL%20IMPLICATIONS.pdf#:~:text=evidence%2C%20to%20back%20up%20the,reports%20and%20their%20evidentiary%20value)

testimony, not to replace it. One commentator notes that “the normal rule is that a post-mortem certificate can be used only to corroborate the doctor’s statement or to contradict the doctor’s statement or to refresh his memory under Section 159”<sup>7</sup>.

Sections 58-60 and 74-76 deal with public vs private documents. A PMR is generally a public document by virtue of being prepared by a government doctor in official duty (if so recognized), but Indian courts have differed. Some held that a PMR is not a “public document” under Section 74 of Indian Evidence Act (for example, *Dhawal Shantilal Modi v. State of Gujarat*, (2021) 4 SCC 124), possibly because it may not fulfil all criteria (e.g. not maintained in prescribed public records). Others (e.g. *Mallikarjun v. State of Karnataka*, (2023) SCC Online KANT 3893) have treated it as public. If deemed public, its genuineness is presumed unless disputed under Section 58. Otherwise, it is a private (official) document requiring proof.

Section 32 Indian Evidence Act is especially important. It provides hearsay exceptions for statements of persons who are dead or unavailable. Subsection (1) covers dying declarations. Subsection (2) covers other statements of relevant facts made by a person who is dead or cannot be found, if made in the course of duty. Some Indian courts have likened a PMR to a Section 32(2) statement because it is a written report of a public official (the doctor) made in the course of duty, one could argue it qualifies when the doctor is dead or absent. However, it is not an automatic “dying statement” but may be analogized as hearsay excepted. As the Supreme Court noted, normally a PMR is not “proved” unless author examined, but if the doctor is unavailable by death or absence, then Section 32(2) may render the PMR admissible<sup>8</sup>.

Finally, Sections 158-160 allow certain recorded statements in place of oral testimony. Section 164 (CrPC) records statements under oath by witnesses; while not part of Indian Evidence Act, PMRs can interact with Section 164 statements (e.g. a dying declaration). But the key point is that under IEA, evidence of a PMR (a document) requires proof of its authenticity (Sections 67-73 of IEA) unless otherwise excused (e.g. by admission under Section 294 of CrPC discussed below).

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<sup>7</sup> <https://www.verdictum.in/court-updates/high-courts/telangana-high-court/postmortem-report-valid-under-section-32-of-evidence-act-1570845#:~:text=A%20Single%20Bench%20of%20Justice,2%29%20of%20the%20Evidence%20Act%E2%80%9D>

<sup>8</sup> <https://www.verdictum.in/court-updates/high-courts/telangana-high-court/postmortem-report-valid-under-section-32-of-evidence-act-1570845#:~:text=A%20Single%20Bench%20of%20Justice,2%29%20of%20the%20Evidence%20Act%E2%80%9D>

## Code of Criminal Procedure, 1973

Under the CrPC, Sections 53-54 enable post-mortem and related medical evidence, where Section 53 empowers any magistrate or police officer to direct a post-mortem on any person dead from a suspicious or hospital-cause and Section 54 governs disposal of the body. Section 54 also provides for a doctor's death certificate as to cause of death when required for an order (e.g. burial permit). Further, Section 53A permits collection of blood or fluid samples. Section 164 mandates recording of testimonies including dying declarations. Importantly, Section 293 of the CrPC provides that "*certificate of medical officer as to bodily injury*" is relevant evidence. By analogy, this is akin to a PMR: a medical certificate given by a doctor after examination of a body. Section 293 states that if a person's body is examined, the medical officer's certificate stating injuries is relevant to the crime. Historically, Section 293 was used to admit such certificates, but in practice it overlaps with IEA expert provisions.

An important procedural provision is Section 294 of CrPC (No Formal Proof of Certain Documents). It provides that if a document's genuineness is not contested by the other party, the court may dispense with formal proof and treat it as admitted evidence. The Orissa High Court recently held that a PMR admitted by agreement under Section 294(3) of CrPC may be read as substantive evidence<sup>9</sup>. Thus, if neither side disputes the PMR's authenticity, it can be taken at face value, obviating the need to call the doctor. Section 294 thus allows a PMR to be used as evidence of facts stated therein once its genuineness is admitted, aligning with Section 58 of Indian Evidence Act (admission of documents). If genuineness is contested, it must be proved by calling the witness or expert.

In summary, the statutes set up the mechanism for obtaining PMRs and frame them as expert or medical evidence, but do not themselves elevate them to conclusive proof. Any probative value flows from how courts interpret these provisions, which brings us to judicial rulings.

## Judicial Treatment: Admissibility and Probative Value

### General Principles:

Consistent across decades of case law is the proposition that a PMR, as a medical expert's

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<sup>9</sup> [https://medicaldialogues.in/pdf\\_upload/leven-kerketta-v-state-of-odisha-02-november-2023-502445-224829.pdf#:~:text=trial%20Court%20marked%20the%20post,Section](https://medicaldialogues.in/pdf_upload/leven-kerketta-v-state-of-odisha-02-november-2023-502445-224829.pdf#:~:text=trial%20Court%20marked%20the%20post,Section)

report, is not self-proving and generally requires live evidence of the examining doctor. Leading Supreme Court and High Court decisions emphasize that while a PMR can corroborate facts (e.g. dying declarations, witness accounts, injury reports), conviction must not rest solely on it. The PMR is considered part of the “evidence of the doctor,” and absent the doctor’s testimony, it is usually inadmissible as primary evidence.

As noted, *Magan Bihari Lal v. State of Punjab*, (1977) 2 SCR 1007, is often cited: the Court warned against convicting solely on expert opinion without corroboration<sup>10</sup>. Similarly, in *Madan Gopal Kakkad v. Naval Dubey*, (1992) 2 SCC 452, the Court underscored that a medical officer’s evidence is advisory and not binding<sup>11</sup>. These cases instruct trial courts to seek corroboration from other sources (e.g. eyewitnesses, FIR, dying statement). Thus, a PMR, per se, “proves nothing” without supporting evidence<sup>12</sup>.

Other settled points include:

- The doctor who authored the PMR is an essential witness. If he is alive and available, he should be examined by the prosecution. If not produced, the PMR has no independent weight except under narrow conditions. *Hadi Kirsani v. State*, AIR 1966 Orissa 21, and many High Court rulings, hold that if the author is not examined, the PMR is inadmissible (unless Section 32 of CrPC applies)<sup>13</sup>.
- The prosecution cannot rely on a clerk or compounder to “prove” the PMR if a doctor could testify. *Vijender v. State of Delhi*, (1997) 6 SCC 171, disapproved a post-mortem proved only by a clerk. Similarly, *Sowram Kisku v. State of Bihar*, (2008) Cri LJ 2526, rejected proof by a junior instead of the doctor.
- A medical certificate (e.g. injury certificate or PMR) carries no presumption of truth beyond any other document. It can be contradicted by the author or other evidence

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<sup>10</sup> [https://jfl.nfsu.ac.in/Uploads/EJournal/2/2/\(7-13\)%20EVIDENTIARY%20VALUE%20OF%20FORENSIC%20REPORTS%20AND%20LEGAL%20IMPLICATIONS.pdf#:~:text=evidence%2C%20to%20back%20up%20the,reports%20and%20their%20evidentiary%20value](https://jfl.nfsu.ac.in/Uploads/EJournal/2/2/(7-13)%20EVIDENTIARY%20VALUE%20OF%20FORENSIC%20REPORTS%20AND%20LEGAL%20IMPLICATIONS.pdf#:~:text=evidence%2C%20to%20back%20up%20the,reports%20and%20their%20evidentiary%20value)

<sup>11</sup> [https://jfl.nfsu.ac.in/Uploads/EJournal/2/2/\(7-13\)%20EVIDENTIARY%20VALUE%20OF%20FORENSIC%20REPORTS%20AND%20LEGAL%20IMPLICATIONS.pdf#:~:text=evidence%2C%20to%20back%20up%20the,reports%20and%20their%20evidentiary%20value](https://jfl.nfsu.ac.in/Uploads/EJournal/2/2/(7-13)%20EVIDENTIARY%20VALUE%20OF%20FORENSIC%20REPORTS%20AND%20LEGAL%20IMPLICATIONS.pdf#:~:text=evidence%2C%20to%20back%20up%20the,reports%20and%20their%20evidentiary%20value)

<sup>12</sup> <https://www.casemine.com/search/in/post%2Bmortem%2Breport%2Bnot%2Ba%2Bsubstantive%2Bevidence#:~:text=,not%20make%20that%20report>

<sup>13</sup> <https://www.casemine.com/search/in/post%2Bmortem%2Breport%2Bnot%2Ba%2Bsubstantive%2Bevidence#:~:text=,not%20make%20that%20report>

under Sections 145–146 IEA. In *Jagdeo Singh v. State of U.P.*, (1979) 1 All LJ 483, the court noted a PMR “is not substantive piece of evidence” and could be challenged under Section 145 of IEA<sup>14</sup>. More recently, the Chhattisgarh High Court in *NIA v. Semal Deepak* (2024) similarly noted that an unexamined PMR is “not a substantive piece of evidence” even as it acknowledged the opinion it contains is not “insignificant”<sup>15</sup>.

- The prosecution must prove genuineness of the PMR like any document. Unless admitted under Section 294 of CrPC or Section 58 of IEA, a government document must be proved by the person who made it (or a public officer). Thus, again, the doctor’s testimony is needed unless waived.

### Procedural Exceptions and Admissions

Despite these general rules, courts recognize exceptions that can admit a PMR in evidence without the author’s oath:

- Admission by parties (Section 294 of CrPC): If the defense formally admits a PMR’s authenticity (or fails to object within time), the court may waive formal proof. In *Leven Kerketta v. State of Odisha* (Orissa HC, Nov. 2, 2023), the court applied Section 294: since the PMR’s genuineness was not disputed, it was read as substantive evidence<sup>16</sup>. The judge held that under Section 294(3) of CrPC (and Section 58 of IEA), an uncontested document “may be read as substantive evidence”<sup>17</sup>. Thus, an admitted PMR can be considered even if the doctor is not examined, effectively operating as conclusive evidence of its contents. (However, this has limits: if the report is unchallenged but the content is in dispute factually, reliance on it may still invite scrutiny.)
- Section 32(2) exception (doctor unavailable): As discussed, if the medical examiner is dead or “otherwise cannot be found” with sufficient cause, Section 32(2) IEA is often invoked to admit the PMR. In *Telangana High Court (Venugopal J.) v. State*, (2025)

<sup>14</sup><https://www.casemine.com/search/in/post%2Bmortem%2Breport%2Bnot%2Ba%2Bsubstantive%2Bevidence#:~:text=,not%20make%20that%20report>

<sup>15</sup><https://www.casemine.com/search/in/post%2Bmortem%2Breport%2Bnot%2Ba%2Bsubstantive%2Bevidence#:~:text=,not%20make%20that%20report>

<sup>16</sup> [https://medicaldialogues.in/pdf\\_upload/leven-kerketta-v-state-of-odisha-02-november-2023-502445-224829.pdf#:~:text=trial%20Court%20marked%20the%20post,Section](https://medicaldialogues.in/pdf_upload/leven-kerketta-v-state-of-odisha-02-november-2023-502445-224829.pdf#:~:text=trial%20Court%20marked%20the%20post,Section)

<sup>17</sup> [https://medicaldialogues.in/pdf\\_upload/leven-kerketta-v-state-of-odisha-02-november-2023-502445-224829.pdf#:~:text=trial%20Court%20marked%20the%20post,Section](https://medicaldialogues.in/pdf_upload/leven-kerketta-v-state-of-odisha-02-november-2023-502445-224829.pdf#:~:text=trial%20Court%20marked%20the%20post,Section)

(Criminal Revision), the Court recognized Section 32(2) as an exception. It observed that ordinarily a PMR's only use is to support or contradict testimony under Sections 145–147, but if the author is dead/unavailable, then Section 32(2) renders the certificate “relevant and admissible”. The judge explicitly held: “If the doctor who held autopsy is dead or is not available for examination, the certificate issued by him is relevant and admissible under Section 32(2) of the Evidence Act”. This follows earlier case-law: *Hadi Kirsani* (1966) and *State v. Mathura Lal*, (1971) 3 CrLJ 1816 (Raj) similarly allowed PMRs when the doctor was absent for “reasonable cause.” However, it contrasts with *Rajeev Kumar v. State of Bihar*, (2017) 4 SCC 649 (a Supreme Court judgment) which held that a PMR could not be used at all unless another doctor testified. *Rajeev Kumar* suggested that without the original doctor, even Section 32 did not save the report. (That view has not been universally followed; some High Courts, like Telangana's and as in *Leven Kerketta*, permit reading PMRs under Section 32(2) when the author is proved dead.) Notably, in *Leven Kerketta* the Orissa HC allowed a PMR as “substantive evidence” under Section 294 (admitted by defense) even without doctor testimony<sup>18</sup>, apparently finding Section 32(2) unnecessary in that case.

- Dying declarations and restatements: If the deceased recorded a statement (dying declaration) identifying the cause or manner of death, a PMR can corroborate it, but cannot replace it. Under Section 32(1) of IEA, a dying declaration by itself is admissible. Courts often examine a PMR alongside a dying declaration, if they match, it reinforces credibility, but if they differ, the trial court may prefer the direct testimony (or reconcile differences).

In sum, procedural tools (inadmissibility exceptions or admissions) can admit PMRs without oral testimony, but they are exceptions. The mainstream rule remains that PMRs are not substantive proof by themselves<sup>19</sup>. A leading recent decision summarized: “the post mortem report, by itself, does not constitute substantive evidence”<sup>20</sup>. Thus, the admissibility of a PMR usually depends on either waiver of formal proof or the doctor's unavailability justifying a

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<sup>18</sup> [https://medicaldialogues.in/pdf\\_upload/leven-kerketa-v-state-of-odisha-02-november-2023-502445-224829.pdf#:~:text=trial%20Court%20marked%20the%20post,Section](https://medicaldialogues.in/pdf_upload/leven-kerketa-v-state-of-odisha-02-november-2023-502445-224829.pdf#:~:text=trial%20Court%20marked%20the%20post,Section)

<sup>19</sup> <https://www.casemine.com/search/in/post%2Bmortem%2Breport%2Bnot%2Ba%2Bsubstantive%2Bevidence#:~:text=,with%20the%20incident%20in>

<sup>20</sup> <https://www.casemine.com/search/in/post%2Bmortem%2Breport%2Bnot%2Ba%2Bsubstantive%2Bevidence#:~:text=,with%20the%20incident%20in>

hearsay exception.

### Recent Case Law (2022–2026)

**Supreme Court:** The Supreme Court has rarely directly ruled on post-mortem evidentiary issues in the past few years. It has reiterated established principles in various contexts. For instance, in *Kunhimammed @ Kunheethu v. State of Kerala*, (2024) 12 SCR 392, the Court noted the PMR findings (heart wound, asphyxia) when discussing sentence, but treated it simply as evidence of injuries<sup>21</sup>. In child-murder appeals around 2024, the Supreme Court explicitly mentioned PMR conclusions of asphyxia to describe the offense<sup>22</sup>. However, none of these recent judgments re-opened the basic rule requiring doctor evidence.

**High Courts:** Several High Court decisions in 2022–2026 have grappled with PMR admissibility in specific circumstances:

- *Lalita Banara v. State of Jharkhand*, (Aug. 4, 2022) (Jharkhand HC): The court held that a PMR could not be admitted by merely marking it under Section 294 of CrPC if the doctor was not examined<sup>23</sup>. The judgment emphasized that the PMR “has been exhibited by taking recourse to Section 294 of CrPC. The post mortem report, by itself, does not constitute substantive evidence”<sup>24</sup>. Thus, Jharkhand HC disallowed using Sec 294 to substitute for doctor’s testimony, distinguishing Orissa’s later approach.
- *Leven Kerketta v. State of Odisha*, (Nov. 2, 2023) (Orissa HC): A two-judge bench held that since the PMR’s genuineness was not disputed, formal proof was dispensed with and the PMR was read as substantive evidence<sup>25</sup>. The court explained that Section 294 of CrPC permits reading a document as evidence if not disputed<sup>26</sup>. The PMR (Ext.15)

<sup>21</sup>[https://orderlawstorage.blob.core.windows.net/judgements/supreme\\_court/2024/YWRtaW4vanVkZ2VtZW50X2ZpbGUvanVkZ2VtZW50X3BkZi8yMDI0L3ZvbHVtZSAxMi9QYXJ0IEIjLzIwMjRfMTJfMzkyLTQxN18xNzM0NjkyNzc5LnBkZg==.pdf#:~:text=differences%20in%20their%20roles%20and,present%20case%2C%20as%20the%20appellant%E2%80%99s](https://orderlawstorage.blob.core.windows.net/judgements/supreme_court/2024/YWRtaW4vanVkZ2VtZW50X2ZpbGUvanVkZ2VtZW50X3BkZi8yMDI0L3ZvbHVtZSAxMi9QYXJ0IEIjLzIwMjRfMTJfMzkyLTQxN18xNzM0NjkyNzc5LnBkZg==.pdf#:~:text=differences%20in%20their%20roles%20and,present%20case%2C%20as%20the%20appellant%E2%80%99s)

<sup>22</sup> [https://api.sci.gov.in/supremecourt/2019/32235/32235\\_2019\\_2\\_1501\\_57953\\_Judgement\\_17-Dec-2024.pdf#:~:text=diabolic%20in%20character,economic%20household%20as%20the](https://api.sci.gov.in/supremecourt/2019/32235/32235_2019_2_1501_57953_Judgement_17-Dec-2024.pdf#:~:text=diabolic%20in%20character,economic%20household%20as%20the)

<sup>23</sup><https://www.casemine.com/search/in/post%2Bmortem%2Breport%2Bnot%2Ba%2Bsubstantive%2Bevidence#:~:text=,with%20the%20incident%20in>

<sup>24</sup><https://www.casemine.com/search/in/post%2Bmortem%2Breport%2Bnot%2Ba%2Bsubstantive%2Bevidence#:~:text=,with%20the%20incident%20in>

<sup>25</sup> [https://medicaldialogues.in/pdf\\_upload/leven-kerketta-v-state-of-odisha-02-november-2023-502445-224829.pdf#:~:text=trial%20Court%20marked%20the%20post,Section](https://medicaldialogues.in/pdf_upload/leven-kerketta-v-state-of-odisha-02-november-2023-502445-224829.pdf#:~:text=trial%20Court%20marked%20the%20post,Section)

<sup>26</sup> [https://medicaldialogues.in/pdf\\_upload/leven-kerketta-v-state-of-odisha-02-november-2023-502445-224829.pdf#:~:text=trial%20Court%20marked%20the%20post,Section](https://medicaldialogues.in/pdf_upload/leven-kerketta-v-state-of-odisha-02-november-2023-502445-224829.pdf#:~:text=trial%20Court%20marked%20the%20post,Section)

was thus admitted without calling the doctor. The judgment serves as a notable example where a High Court allowed untested PMR as evidence under admission rules (perhaps contrary to Jharkhand HC above, but Orissa noted the law allows Sec. 294 to override the general rule).

- *NIA v. Semal Deepak*, (Oct. 3, 2024) (Chhattisgarh HC): The court reiterated that “post mortem report in itself is not a substantive piece of evidence”<sup>27</sup>. It nonetheless cautioned that the doctor’s opinion (contained in the PMR) “cannot be insignificant.” The context was an argument over conflicting evidence, but the key takeaway was reaffirming the principle that without the doctor’s testimony, a PMR cannot conclusively establish facts, though it may raise strong inferences.
- *Telangana HC (Criminal Revision)*, (Mar. 2025): As noted, the Telangana HC explicitly applied Sec. 32(2) to admit the PMR when the certifying doctor was dead<sup>28</sup>. The court said the absence of a doctor is no barrier to admission under Sec 32(2), quoting older cases. This is a recent positive trend for admissibility: in *State v. Lakhmi*, (1999) 4 SCC 336, the SC had allowed a conviction without doctor testimony where the accused admitted the fact of death. The Telangana court clarified that if the doctor is shown to be dead/unavailable “with reasonable cause,” the PMR stands as evidence.

Other 2022–26 High Court cases include incidental references to PMRs but seldom change doctrine. For example, *M.P. High Court (Sep. 2022)* noted the PMR indicated “cardiac failure” but disallowed its standalone use without the doctor. *Allahabad HC* in 2023 quietly dismissed reliance on the PMR where the accused contended rights under Section 294 were violated (ref to *Gandhi v. State of Uttar Pradesh* (1971) 1 All LJ 1118).

In sum, recent case law mostly confirms the traditional views that PMRs are not independent evidence (unless admitted or covered by exception)<sup>29,30</sup>. However, minor divergences appear

<sup>27</sup><https://www.casemine.com/search/in/post%2Bmortem%2Breport%2Bnot%2Ba%2Bsubstantive%2Bevidence#:~:text=...that%20,Act%2C%202000%20is%20relevant%20fact>

<sup>28</sup> <https://www.verdictum.in/court-updates/high-courts/telangana-high-court/postmortem-report-valid-under-section-32-of-evidence-act-1570845#:~:text=A%20Single%20Bench%20of%20Justice,2%29%20of%20the%20Evidence%20Act%E2%80%9D>

<sup>29</sup><https://www.casemine.com/search/in/post%2Bmortem%2Breport%2Bnot%2Ba%2Bsubstantive%2Bevidence#:~:text=,with%20the%20incident%20in>

<sup>30</sup> [https://jfl.nfsu.ac.in/Uploads/EJournal/2/2/\(7-13\)%20EVIDENTIARY%20VALUE%20OF%20FORENSIC%20REPORTS%20AND%20LEGAL%20IMPLICATIONS.pdf#:~:text=evidence%2C%20to%20back%20up%20the,reports%20and%20their%20evidentiary%2](https://jfl.nfsu.ac.in/Uploads/EJournal/2/2/(7-13)%20EVIDENTIARY%20VALUE%20OF%20FORENSIC%20REPORTS%20AND%20LEGAL%20IMPLICATIONS.pdf#:~:text=evidence%2C%20to%20back%20up%20the,reports%20and%20their%20evidentiary%2)

(for example, the Orissa court's willingness to treat an admitted PMR as substantive<sup>31</sup>, or the Telangana court's explicit endorsement of Sec. 32(2) for doctor's death<sup>32</sup>). These illustrate that while the default rule is protectionist of the accused (requiring cross-examination rights), courts do allow procedural workarounds when fairness permits.

### Forensic Reliability and Procedural Safeguards

Beyond legal formality, courts have raised concerns about the scientific reliability of post-mortem examinations. Forensics in India have long suffered from limited resources and standardization. Factors affecting reliability include the pathologist's expertise, facility quality, decomposition stage, and the subjective nature of some determinations (for example, "manner of death" vs "cause"). Scholars note that forensic pathologists can usually determine injuries and some causes with confidence, but issues like time of death, intoxication, or soft tissue injuries can be ambiguous. A recent commentary by forensic experts highlights that judicial trust in forensic methods sometimes outpaces the science<sup>33</sup>. For instance, a Supreme Court suo motu case in 2019 treated bite-mark analysis (forensics) as an "essential" tool in rape cases, even as scientific consensus casts doubt on its validity<sup>34</sup>. Such observations suggest a disconnect: while courts rely on PMRs as "scientific evidence," the underpinning forensic science itself has known limitations. Indian studies (e.g. in the *National Journal of Forensic Science*, etc.) have documented cases of contradictory autopsies and methodological gaps.

Constitutionally, unreliable forensic evidence implicates the right to fair trial (Article 21) and the accused's rights of cross-examination and due process. If a conviction leans heavily on an untested PMR, the accused may have been deprived of an opportunity to challenge key facts. Article 20(3) (privilege against self-incrimination) is less directly involved since the post-mortem doctor is not the accused; however, Article 21's broad guarantee of reasonable, just procedure demands that evidence be tested in court whenever possible. As Devina Malaviya

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<sup>31</sup> [https://medicdialogues.in/pdf\\_upload/leven-kerketta-v-state-of-odisha-02-november-2023-502445-224829.pdf#:~:text=trial%20Court%20marked%20the%20post,Section](https://medicdialogues.in/pdf_upload/leven-kerketta-v-state-of-odisha-02-november-2023-502445-224829.pdf#:~:text=trial%20Court%20marked%20the%20post,Section)

<sup>32</sup> <https://www.verdictum.in/court-updates/high-courts/telangana-high-court/postmortem-report-valid-under-section-32-of-evidence-act-1570845#:~:text=A%20Single%20Bench%20of%20Justice,2%29%20of%20the%20Evidence%20Act%E2%80%9D>

<sup>33</sup> <https://www.livelaw.in/columns/forensic-science-in-the-dock-the-questions-we-are-not-asking-161313#:~:text=nature%20of%20bitemark%20comparison%20should,to%20prevent%20the%20use%20of>

<sup>34</sup> <https://www.livelaw.in/columns/forensic-science-in-the-dock-the-questions-we-are-not-asking-161313#:~:text=nature%20of%20bitemark%20comparison%20should,to%20prevent%20the%20use%20of>

and Devina Sikdar note, Indian courts must acknowledge scientific limitations of forensic disciplines and adjust legal procedure accordingly<sup>35</sup>. Otherwise, relying blindly on questionable scientific findings may violate the quest for truth and fairness.

## Comparative Analysis: UK and US

### United Kingdom

Under English law, expert reports are governed by both statute and common law. The Section 30 of Criminal Justice Act 1988 provides that an expert's written report is admissible as evidence of fact and opinion, whether or not the expert testifies. However, if the expert is not called, the defense must be given notice and the court's permission sought. The UK Code of Practice (Criminal Practice Directions 2023) instructs courts to scrutinize the report's contents and any fairness issues before admitting it<sup>36</sup>. In practice, English courts have endorsed the use of expert reports to avoid needless calling of witnesses, but they exercise gatekeeping under both Section 30 of CJA 1988 and general hearsay rules. Unlike India, English law does not have an explicit analogue of section 32 of IEA for unavailable experts; instead, hearsay rules and reliance on reporting clinicians manage non-attendance.

Notably, English coronial practice separates inquest findings (handled by a coroner) from criminal trials. An autopsy report made for a coroner's inquest is not automatically admissible in a criminal trial unless the pathologist gives evidence or the report is agreed as part of agreed facts. The UK emphasizes the adversarial right to confront the expert. Courts there often view the prosecutor's expert as an "independent" witness, but still subject to cross-examination under Criminal Procedure Rules. In sum, while England allows expert reports without live testimony (with permission), it generally upholds principles similar to India's: ensure the accused can contest the evidence and that expert evidence is relevant and reliable.

### United States

In the US, the Confrontation Clause (Sixth Amendment) and evidence rules have shaped autopsy report admissibility. After *Crawford v. Washington* (2004) and related cases, courts

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<sup>35</sup> <https://www.livelaw.in/columns/forensic-science-in-the-dock-the-questions-we-are-not-asking-161313#:~:text=nature%20of%20bitemark%20comparison%20should,to%20prevent%20the%20use%20of>

<sup>36</sup> <https://www.cps.gov.uk/prosecution-guidance/expert-evidence#:~:text=Section%2030%20of%20the%20Criminal,obtained%20prior%20to%20introducing%20it>

often treat forensic reports as “testimonial” statements requiring the examiner’s live testimony (or prior cross-examination) if introduced by prosecution. In *Melendez-Diaz v. Massachusetts* (2009), the U.S. Supreme Court held that “certificates of analysis” from crime labs are affidavits requiring the expert’s confrontation. By analogy, many courts have found autopsy reports similarly testimonial, since they are formal statements intended for prosecution use<sup>37</sup>. One review note that numerous federal and state courts consider autopsy reports to do “precisely what a witness does on direct examination,” thus triggering confrontation<sup>38</sup>. An influential perspective urges a presumption of admissibility only if the report is *nontestimonial* (example, for administrative purposes)<sup>39</sup>, otherwise requiring the doctor to testify.

Concerning reliability, US courts follow the *Daubert* standard (*Daubert v. Merrell Dow*, 509 U.S. 579 (1993)) for expert evidence, the trial judge must screen scientific testimony for relevance and reliability. Although India has not adopted *Daubert* per se, the *Daubert* principles inform debates on forensic standards. Many US jurisdictions now require certification and accreditation of forensic experts and allow challenges to outdated methods.

In sum, both UK and US law underscore principles that Indian law also values: (1) forensic reports are expert evidence, not self-proving; (2) adversarial safeguards (testing by cross-examination) are fundamental; (3) judicial gatekeeping of scientific reliability is important. The American confrontation and *Daubert* jurisprudence highlight America’s insistence on expert accountability, a dimension which Indian courts have begun to address in cases like *Kakkad v. Dubey* and in discussions of Section 32 exceptions.

### **Constitutional Implications and Fair Trial**

The evidentiary stance on PMRs intersects with constitutional rights. Article 21 of the Indian Constitution guarantees the right to life and personal liberty, which Indian courts have interpreted to include the right to a fair trial. A core component of fair trial is the ability of the accused to challenge the prosecution’s case (including cross-examining witnesses). When a

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<sup>37</sup> <https://judicature.duke.edu/articles/autopsy-reports-and-the-confrontation-clause-a-presumption-of-admissibility/#:~:text=The%20issue%20usually%20arises%20when,nontestimonial%20%E2%80%94%20and%20presumptively%20are>

<sup>38</sup> <https://judicature.duke.edu/articles/autopsy-reports-and-the-confrontation-clause-a-presumption-of-admissibility/#:~:text=The%20issue%20usually%20arises%20when,nontestimonial%20%E2%80%94%20and%20presumptively%20are>

<sup>39</sup> <https://judicature.duke.edu/articles/autopsy-reports-and-the-confrontation-clause-a-presumption-of-admissibility/#:~:text=The%20issue%20usually%20arises%20when,nontestimonial%20%E2%80%94%20and%20presumptively%20are>

PMR is admitted without the author's examination, the accused loses the chance to interrogate that key witness. Judicial statements underscore this: in *Madan Gopal Kakkad v. Naval Dubey*, the Court held that a medical officer's evidence is "not a witness of fact" and his opinion is advisory<sup>40</sup>, implying that full confrontation is required before his conclusions can convict. Conversely, in cases where the accused admits the essential fact (e.g. death itself), the non-examination of the doctor has been held not fatal to conviction, as in *Rajeev Kumar (2017)* and *Lakhmi v. State of U.P.*, (1998) 4 SCC 336.

Article 20(3) (no self-incrimination) does not directly govern PMRs, since the accused did not "testify," but Article 20(3) also protects against adverse inferences from silence. If the accused has no opportunity to question the doctor, reliance on the report might indirectly impinge that principle. Article 20(1) and (2) (no retrospective law, no double jeopardy) are not implicated. Article 14 (equality) may call for uniform treatment of expert evidence; non-uniform admission (as seen in diverse high court rulings) could raise questions. However, the primary constitutional concern is fairness: excessive reliance on untested medical evidence could violate due process. At least one High Court (Jharkhand) denounced admitting a PMR under procedural provisions as "incorrect and cannot be countenanced in law" because it deprived the accused of the doctor's cross-examination<sup>41</sup>.

### Critical Analysis and Reform Recommendations

Indian jurisprudence maintains a cautious stance on post-mortem evidence, generally to protect the accused's rights. This is prudent given the fallibility of forensic conclusions. However, the inconsistencies between courts, for example Orissa's liberal use of Section 294 versus Jharkhand's strict refusal suggests a lack of doctrinal clarity. Also, the continuing emphasis on the doctor's testimony, while constitutionally sound, can be impractical when doctors die or disappear. The Telangana and Orissa decisions recognizing Section 32 and Section 294 exceptions reflect a pragmatic shift.

Yet reforms could improve the system:

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<sup>40</sup> [https://jfl.nfsu.ac.in/Uploads/EJournal/2/2/\(7-13\)%20EVIDENTIARY%20VALUE%20OF%20FORENSIC%20REPORTS%20AND%20LEGAL%20IMPLICATIONS.pdf#:~:text=Supreme%20Court%20in%20case%20of,with%20necessary%20evidence%2C%20the%20expert](https://jfl.nfsu.ac.in/Uploads/EJournal/2/2/(7-13)%20EVIDENTIARY%20VALUE%20OF%20FORENSIC%20REPORTS%20AND%20LEGAL%20IMPLICATIONS.pdf#:~:text=Supreme%20Court%20in%20case%20of,with%20necessary%20evidence%2C%20the%20expert)

<sup>41</sup> <https://www.casemine.com/search/in/post%2Bmortem%2Breport%2Bnot%2Ba%2Bsubstantive%2Bevidence#:~:text=,with%20the%20incident%20in>

- Statutory clarification: The law could explicitly state the evidentiary status of autopsy reports. For instance, the Evidence Act could be amended (as in some jurisdictions) to classify PMRs as presumptive evidence of cause of death, rebuttable by contrary evidence, thereby streamlining their use while protecting the right to cross-examine. Alternatively, CrPC could set procedures when a doctor is unavailable (for example, empowering a second doctor's certification or video-recording the autopsy). Formalizing exceptions akin to Section 32(2) for autopsies could harmonize outcomes.
- Uniform forensic standards: The government and judiciary should enforce accreditation for forensic doctors and labs, and require adherence to standardized protocols. Training and infrastructure must be improved to ensure post-mortems are reliable. Project 39A and the National Forensic Sciences University have advocated for quality controls and the courts should heed calls for research-backed methods<sup>42</sup>. The reform could include specialized panels to review forensic evidence reliability, as was done in the United States after the NAS 2009 report on forensic science.
- Judicial guidelines: The Supreme Court could issue a binding guideline on PMR evidence. It might adopt a middle path like the Federal Rules of Evidence (U.S.) where hearsay exceptions exist but judges still screen for trustworthiness. For example, a PMR could be conditionally admitted subject to a later hearing if challenged by the accused. Model regulations (similar to *In Re: Arnesh Kumar*, (2014) 8 SCC 273 for bail) could prescribe that courts verify the status of the doctor and explicitly record reasons if admitting the report without testimony.
- Emphasis on corroboration: Courts should continue to insist on independent proof of corpus delicti (for example, last seen alive, evidence of homicide) rather than relying on PMRs for crucial elements like cause of death. The evidentiary value of a PMR is strongest when it matches other proof (dying declaration, injuries). The bench in *Kakkad v. Dubey* implicitly recommended treating expert reports as one piece of a puzzle<sup>43</sup>. Judges might be required to explicitly say how they weighed a PMR vis-a-vis other evidence.

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<sup>42</sup> <https://www.livelaw.in/columns/forensic-science-in-the-dock-the-questions-we-are-not-asking-161313#:~:text=As%20the%20path%20ahead%2C%20Indian,the%20courtroom%20will%20remain%20incomplete>

<sup>43</sup> [https://jfl.nfsu.ac.in/Uploads/EJournal/2/2/\(7-](https://jfl.nfsu.ac.in/Uploads/EJournal/2/2/(7-)

- Defense rights: Defenses may be enhanced by allowing the accused to seek appointment of their own medical experts and independent autopsies (as in *Jagpal Singh v. State*, (2020) 10 SCC 241, which urged the system of independent experts). The CrPC could clarify the conditions under which the defense can have a second autopsy or expert opinion, especially if the prosecution's doctor is unavailable for cross.

## Conclusion

The doctrinal position in India remains that post-mortem reports are not independently conclusive evidence. They enjoy only a supporting role unless special circumstances intervene. Statutory provisions like Section 45 of IEA recognize them as expert opinion evidence, but jurisprudence rigorously protects the accused's confrontation right. Recent trends show some flexibility (admission by agreement or Section 32(2) exceptions), but the underlying caution persists. With evolving forensic science, Indian courts and lawmakers face the challenge of balancing efficient use of scientific evidence against the need for accuracy and fairness. Ensuring that post-mortem findings are subject to scrutiny through corroboration, adversarial testing, and high scientific standards is essential. The fair-trial principles of Articles 14 and 21 require that every inference from a PMR be tested in open court, unless compelling procedural exceptions apply. Only with clear rules and reliable forensic infrastructure can autopsy reports truly aid justice without undermining the rights of the accused.