

The Legal Procedures and Medico Legal System in India

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Abstract

This article explains the legal procedures and Indian medico legal system being followed in India. Medico legal is the term, which incorporates the basics of two sister professions i.e., medicine and law. Everybody talks about the law but few, aside from lawyers, judges, and law teachers, have more than the vaguest notion of what constitutes law. Those lawyers, who do not constantly deal with medical issues in their legal practice, know extraordinarily little about the medical profession and its problems; physicians frequently comprehend too little about the law and how it affects them in the practice of their profession. Medico legal experts can provide a link between these two professions for their smooth and effective functioning in a scientific manner. This article includes various legal procedures being followed in India and structure of Indian medico legal system. The legal procedures include descriptions of inquest, the criminal courts, court room procedures etc. This article also contains the details of medico legal cases along with procedures to be followed while dealing with such cases.

Keywords: Legal procedures • Inquest • Criminal courts • Law • Justice

Introduction

This article explains the legal procedures and Indian medico legal system being followed in India. Medico legal is the term, which incorporates the basics of two sister professions i.e., Medicine and Law [1]. Everybody talks about the law but few, aside from lawyers, judges, and law teachers, have more than the vaguest notion of what constitutes law. Those lawyers, who do not constantly deal with medical issues in their legal practice, know little about the medical profession and its problems; physicians frequently comprehend too little about the law and how it affects them in the practice of their profession. Medico legal experts can provide a link between these two professions for their smooth and effective functioning in a scientific manner [2,3]. The physician meets the law at every turn [4]. He confronts it when, as the treating doctor, he is subpoenaed as a witness in a personal injury lawsuit; he meets it when his aid is sought as an expert in connection with a claim that another member of his profession has been negligent and when he is faced in his office or clinic by a narcotic addict, a man with a gunshot wound, or a young couple seeking a blood test. He is face-to-face with the law when he is required to render an aggravating array of governmental reports or to preserve physical evidence for the benefit of a law enforcement agency. The physician, in fact, finds a great deal of the law intensely irritating, often because he is not clear as to its purpose [5].

Literature Review

Indian legal system

Dependent upon Indian Penal Code, Criminal Procedure Code, and Indian Evidence Act.

Indian penal code: It deals with the rights and duties, defines offences,

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and describes the punishments for different offences and the type of courts authorized to try distinct types of offences. It was enacted in 1860 and contains 23 chapters and 511 sections.

Criminal procedure code: Deals with the procedures of investigations and structure of criminal courts. It was revised in 1974 and contains 37 chapters and 484 sections.

Indian evidence act: Enacted in 1871, Provides rules of collection, preservation, and use of distinct categories of evidence.

Inquest

Inquest means enquiry or investigations into the cause of death, especially when it is sudden, suspicious, and unnatural death. Enquiry means every enquiry, other than a trial, conducted by a Magistrate or Court. Investigation includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate.

Types

Magistrate's inquest

Coroner's inquest

Police inquest

Medical examiner's system

Magistrate inquest: Usually held by an Executive Magistrate (District Magistrate, Collector, Sub-divisional Magistrate, Tahsildar, or any other Magistrate specially empowered by the State Govt. Vide Section 174 Cr.P.C, Sub Section of 176 Cr.P.C. He may hold the inquest in place of or in addition to police inquest. He may order for exhumation or re-examination of the body. This inquest is usually held in cases of death in police lock-up or death in police custody and while under police interrogation, Death in police firing, Death in judicial custody, exhumation of dead body for medico legal investigations, unnatural death of spouse within 7 years of her marriage, death in a psychiatric hospital, Death in a prison, borstal, and reformatories.

Coroner's inquest: The coroner was the specially appointed State Govt. Officer entrusted with the duty of enquiring into causes of sudden, suspicious, and unnatural deaths. This type of inquest held by the coroner and at present this type of inquest is not prevalent anywhere in India. This system was prevalent in Kolkata and Mumbai. Coroner's system was introduced in England, where coroner was designated as guardian of the plea of the crown (Table 1).

Police inquest: When sudden, suspicious, and unnatural deaths are

reported to the police station, under direction of the officer-in-charge, ordinarily a sub inspector or assistant sub inspector of police under section 174 Cr.P.C informs the respective magistrate about it. He then himself proceeds to the place of crime, holds and enquiry with the help of two or more witnesses or respectable persons of the locality who know about the fact, on the spot (Table 2).

Medical examiner's system: Held in some states of United States of America, UK etc. Medical practitioners having experience and training in legal medicine, especially forensic pathology are only appointed for the post of Medical Examiner. In this system, the medical examiner must visit the scene of crime and after Postmortem examination after the inquest, sends his report to District Attorney for further actions. This system is far better than coroners, but Medical Examiners cannot order for arrest of any person or exercise any judicial function like a Coroner.

Courts-criminal courts in India

Supreme Court of India: Highest judicial tribunal in the country. It is the court of record and can punish for its contempt.

High Court: Highest court in state. Chief justice of the high court is appointed by the President of India in consultation with Chief Justice of India and Governor of the State.

Session Court: At every district headquarters for that district. Death sentence passed by such courts need to be confirmed by High Court (Tables 3 and 4).

The criminal courts in India

- Supreme Court (The court of final appeal)
- High Court
- Principal Session Court
- Additional Session Courts
- Assistant Sessions Court
- Chief Judicial Magistrate/Chief Metropolitan Magistrate

Judicial First-Class Magistrate

Judicial Second-Class Magistrate

Supreme court of India: Highest judicial tribunal in the country. It is the court of record and can punish for its contempt.

High court: Highest court in State. Chief justice of the high court is appointed by the President of India in consultation with Chief Justice of India and Governor of the State.

Session court: At every district headquarters for that district. Death sentence passed by such courts need to be confirmed by high court.

The summon: Summon is delivered to the witness through a police officer, an officer from the court or by any other person. If the witness is a government servant, the summons can be sent to the head of the office in duplicate and the head in turn serves it to the concerned person. After hearing from the witness if the court thinks that there was no proper reason for not attending the court, a boilable/non-boilable warrant may be issued to procure his attendance in the court. If a witness receives two summonses on the same date from the same type of court, he will attend the court from which he received the summon first and will inform the other court.

Conduct money: Certain amount of money is paid to the witness towards his expenses for attending the court, which is called conduct money. This amount is paid to the witness while serving the summons. However, in criminal cases no conduct money is paid but the witness must attend the Court in the interest of the state or in the interest of justice.

Court procedures examination-in-chief (Sec. 137 I.E.A): It is also known as direct examination. In criminal cases, the state becomes a party, so the burden of proof is always on the prosecution. It is always presumed that the accused is innocent unless otherwise proved. The medical witness is usually asked questions as to when he first saw the body and time of conduction of the post-mortem examination etc. The question pertaining to description of the injuries, duration of injuries and about the weapon of offence is also asked during examination-in-chief.

Cross examination (Sec. 137 I.E.A): Defense lawyer will do cross

Table 1. Differences between magistrate and coroner's inquest.

Magistrate Inquest	Coroner's Inquest
Guided by Cr.P.C. and IPC, it is a court of Trial	Guided by Coroner's Act 1871, Court of enquiry
Presided by 1 st or 2 nd class Magistrate	By Coroner
Trial ends either in conviction or acquittal of accused as per law	No conviction even if enquiry revealed guilt
Accused or his counsel must be present in the trial court to defend	Accused need not had to be present or represented by counsel in this court of enquiry
Does not examine the dead body and hold inquest	Examines dead body and held inquest

Table 2. Differences between coroner's and police inquest.

Coroner's Inquest	Police Inquest
It was superior to Police inquest	Held by ASI or Head Constable with no proper legal qualifications
Held in Kolkata, Mumbai only when it was prevalent	Held all over India
Can issue arrest warrant, if found guilty on enquiry	No power to arrest any person without warrant except in cognizable offence
Did not work under supervision of any magistrate	Police officer will work under supervisory control of respective magistrate
Could order for exhumation	No police officer has any such power
Could ask any authorized medical officer to hold postmortem examination and give evidence in the inquest	No police officer has any such power

Table 3. Different types of Session Courts.

District Session Judge's Court	Additional District Session Judge's Court	Assistant District Session Judge's Court
Can try any offence and pass any sentence authorized by law including death sentence which need to be confirmed by High Court	Same as District Session Court	Imprisonment not exceeding 10 years, fine any amount

Table 4. Different types of Magistrates with their powers.

Chief Judicial Magistrate/ Chief Metropolitan Magistrate	Judicial Magistrate of 1 st Class/ Metropolitan Magistrate	Judicial Magistrate of 2 nd Class
Imprisonment up to 7 years	Imprisonment up to 3 years	Imprisonment up to 1 years
Unlimited Fine	Ten thousand rupees	Five thousand rupees

examination. During this time, the court observes whether a particular question should be answered or not. The court has power to disallow a question if it is intended to insult or harass the witness but if it is relevant to the case the Court cannot disallow. There is no time limit for cross-examination.

Re-examination (Sec. 137 I.E.A): The main aim of re-examination is to clarify the points raised in cross examination and correct the mistakes done. However, the lawyer should not bring any new points during the examination that has not been raised in the examination-in-chief.

Hostile witness: Whose testimony on direct examination appears to be contrary to the party who called the witness. During direct examination, if the party who called the witness finds that their testimony is antagonistic or contrary to the legal position of their client, the lawyer of that party may request that the judge declare the witness hostile [6]. If the request is granted, they may proceed to ask the witness leading questions.

Perjury: Willfully giving false evidence under oath. The witness is liable to be prosecuted for perjury under section 193 IPC with imprisonment up to seven years and fine.

Giving false evidence (section 191 I.P.C): Any person, who is legally bound either by an oath or by any express provision of law to state the truth, gives false statement.

Medical evidence (section 3 I.E.A): All statements, which the Court permits or requires to be made before it by the witness, in relation to matters of fact under inquiry are called oral evidence. Documents produced for the inspection by the Court are called documentary evidence.

Types of evidence: Oral evidence

Direct evidence: The evidence must confirm to the matters in question e.g., a medical prescription that resulted in the ill effects to the patient.

Indirect evidence (Circumstantial): At times, the other surrounding facts are taken into consideration that is consistent with the direct evidence for example 'A' committed murder of 'B' with knife at a particular place, date, and time. Here 'C' will depose that he saw 'A' on that day, date, and time with a knife in hand just before the murder. This evidence of 'C' has a bearing to the fact.

Hearsay evidence: Here the persons other than the witness give the statement. For example, during the trial 'A' told that 'B' had told him that he has seen 'C' while committing the crime. Here 'B' can give the direct evidence as he has seen 'C' committing the crime. However, the evidence of 'A' will be hearsay evidence.

Res gestae (Latin term means things done): The witness, who has experienced an event firsthand and can therefore directly testify about what happened [7]. Res gestae accounts for a spontaneous declaration made by a person promptly after an event. An exception to the rule against hearsay evidence based on the belief that because certain statements are made spontaneously, and without deliberation during an event, they leave little room for misunderstanding upon hearing by someone else and thus the courts believe that such statements carry a high degree of credibility.

Documentary evidence

Medical certificates: Medical certificates are regarded as the simplest form of documentary evidence. They are issued by a registered medical practitioner in respect of ill health, age, and mental condition etc.

Death certificate: Before issuing death certificate the doctor must inspect the body and satisfy that the person is dead. He is legally bound to issue the certificate indicating the cause of death if he has attended the patient during his last illness.

Medico legal report: These are the legal documents prepared by the doctor at the request of investigating officers usually in criminal cases like injury cases, sexual offences, murder, and poisoning cases. These reports are made in both living and dead individuals.

Dying declaration: Section 32 I.E.A. "a statement written, or verbal of relevant facts made by a person who is dead or who cannot be found, or who has become incapable of giving evidence or whose attendance cannot be procured, without an amount of delay or expenses which under the circumstances of the case appears to the Court unreasonable".

Consent

Section 13 of Indian Contract Act defines that two or more persons are said to consent when they agree upon the same thing in the same sense.

Types

According to the information provided to the patient by the doctor:

Informed

Uninformed

Uninformed consent is illegal unless it falls within the concept of therapeutic privilege.

Informed consent means consent for any procedure or treatment after fully informing about his condition.

Components of informed consent

Disclosure: Full disclosure of information which is material to a decision.

Comprehension: Complete understanding of information disclosed.

Absence of outside control

Competence: The person should be competent to give consent.

Actual consent: It should be in writing with signature of the patient and two independent witnesses.

According to the patient communicates to the doctor

Implied.

Express (i) Oral, (ii) Written

Implied consent: This type of consent is specifically stated by the patient and is seen in routine medical practice and is quite adequate. In these situations, consent is implied in the sense that patient has come to physician with a physical condition or ailment for examination and treatment. When a patient holds out his arm for an injection it is implied consent. If the procedure is simple and the risk is negligible implied consent is enough but if there is the slightest fear of complication, the doctor should seek express consent.

Express consent: May be written or verbal, and should be obtained for any procedure beyond the routine physical examination, like operation, blood transfusion etc. The nature and consequences of the procedure should be explained before obtaining consent.

In informed consent, the doctor informs the patient about his/her condition or disease, nature of the proposed treatment, availability of any alternative procedure, the possible risks and benefits of the procedure and the percentage of chances of success and failure.

The patient should be explained in a simple language that he can understand fully and give consent in the presence of third party who acts as a witness. Once the consent is obtained any untoward reaction or harm cause to the patient cannot lead to charge of negligence for the doctor.

Blanket consent: Consent taken for any or every diagnostic or therapeutic procedures that might have to be taken in future. This type of consent is invalid.

Proxy/surrogate consent: Consent given by a relative, next to kin or friend in cases where the patient himself cannot give like in case of consent taken for a person of unsound mind.

Exceptions to the informed consent

Emergency (Section 92 I.P.C.): In an emergency condition it is usually assumed that the patient will give consent. In these cases, the consent is taken as implied.

Therapeutic privilege: In this category the physician can be excused of obtaining informed consent when disclosure of information could have a detrimental effect on the patient.

Informed refusal: The doctor has a duty to inform the patient that he has a right to refuse the treatment or investigations to be undertaken. After listening to the doctor, the patient can refuse to consent for the proposed investigation/treatment.

The consent should be full, free, voluntary, clear, informed, and direct. There should be no undue influence, fraud, and misrepresentation of the facts, compulsion and threat of physical injury, death, or other consequences. The doctor should inform the patient that he has the right to refuse to submit himself to the examination and that the results may go against him /her.

Medico legal case

In medical practice, most of the doctors would come across which at the time or subsequently, would be called a medico legal case (MLC) [8]. An MLC is a case of injury/illness where the attending doctor, after eliciting history and examining the patient, thinks that some investigation by law enforcement agencies is essential to establish and fix responsibility for the case in accordance with the law of the land.

It can also be defined as a case of injury or ailment, etc., in which investigations by the law-enforcing agencies are essential to fix the responsibility regarding the causation of the said injury or ailment [2]. Cases that are to be treated as medico legal are:

All cases of injuries and burns-the circumstances of which suggest commission of an offense by somebody (irrespective of suspicion of foul play).

All vehicular, factory, or other unnatural accident cases specially when there is a likelihood of patient's death or grievous hurt [9].

Cases of suspected or evident sexual assault.

Cases of suspected or evident criminal abortion.

Cases of unconsciousness where its cause is not natural or not clear.

All cases of suspected or evident poisoning or intoxication.

Cases referred from court or otherwise for age estimation.

Cases brought dead with improper history creating suspicion of an offense.

Cases of suspected self-infliction of injuries or attempted suicide.

A medico legal register should be maintained in the emergency department of every hospital and details of all MLCs should be entered in this register [10]. This should include the time, date, and place of examination and the name of the examining doctor. A case may be registered as an MLC even if it is brought several days after the incident [11]. Police should be informed upon the discharge or death of such a case in the hospital. No female patient should be examined unless a female attendant is present and consultation with colleagues is always encouraged. Similarly, in the suspected poisoning cases, doctors must assist in finding out the manner of poisoning. Any suspected materials, articles of food, excreta, gastric lavage samples, etc., should be preserved and handed over to the investigating agencies [10].

Discussion and Conclusion

The legal procedures include descriptions of inquest, the criminal courts, court room procedures etc. Every suspicious death in India is investigated, with one of the objectives being determining the manner of death. The autopsy is an integral part of the death investigation [12]. Death investigations are accomplished in the form of inquests, which are conducted and directed by the police or, in some cases, by a magistrate. The police and the autopsy physician generally share their findings before opinions are reached, and the courts rely on autopsy physician testimony. In general, the autopsy physician opines only on the cause of death [12]. In the Indian legal and medico legal systems, manner of death is determined by the police. Unlike in the United States, where the certifier of death must record a manner of death on the death certificate, in India the manner of death is largely a legal (rather than medical) determination. In any of the medico-legal cases, it is the legal duty of the treating doctor to report it to the nearest police station immediately after completing primary lifesaving medical care. This is in accordance with Section 39 of Criminal Procedure Code of India. The idea

is to initiate the legal proceeding at the earliest is so that maximum evidence can be collected by the police officer. Quick action by the police also helps to avoid the destruction of evidence by the treating physician.

The Indian judicial system is managed and administrated by officers. Judges of Subordinate Judiciaries are appointed by the governor on recommendation by the High Court. Judges of the High Courts and Supreme Court are appointed by the President of India on the recommendation of a collegium. The judicial system is structured in three levels with subsidiary parts.13 The Supreme Court, also known as the Apex Court, is the top court and the ultimate appellate court in India. The Chief Justice of India leads that court. High Courts are the top judicial bodies in individual states, controlled and managed by state Chief Justices [13].

What every doctor should remember is that their service and knowledge may be required for the administration of law and justice [10]. Hence, their assistance may be sought by police and law in various circumstances and situations. A doctor may be summoned in the court of law, and he is bound to answer all questions posed to him. He must take care of medico legal aspects while discharging his duties as a caregiver or a lifesaver. Nevertheless, while attending to an emergency, the doctor should understand that his priority is to save the life of the patient. He should do everything possible to resuscitate the patient and ensure that he is out of danger. The doctor should record a proper history and analyze the injuries to find out whether it should be classified as a medico legal case or not. If it is an MLC, he should inform the nearest police station.

The element of consent is one of the critical issues in medical treatment. The patient has a legal right to autonomy and self-determination enshrined within Article 21 of the Indian Constitution [14]. He can refuse treatment except in an emergency where the doctor need not get consent for treatment. The consent obtained should be legally valid. A doctor who treats without valid consent will be liable under the tort and criminal laws. The law presumes the doctor to be in a dominating position, hence the consent should be obtained after providing all the necessary information.

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