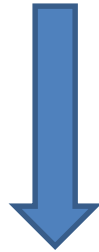


Legal Procedure

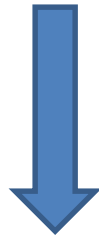
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Introduction

Forensis (L)



Forensic



Forum/Public meeting place

Forensic or Legal Medicine

- Forensic medicine is the application of medical knowledge for the purposes of law and administration of justice.

or

Forensic or Legal Medicine deals with the application of medical knowledge to aid in the administration of justice.

- Father of Forensic Medicine is “Paolo Zacchia”

Medical Jurisprudence.

Juris = law; prudentia = knowledge

- Medical jurisprudence is the study of legal principles that guide medical personnel
- It deals with legal responsibilities of the doctor patient relationship such as, medical negligence cases, consent, rights and duties of doctors, infamous conduct, medical ethics etc.

Medical Ethics

- Medical ethics deals with the moral principles guiding medical men in their dealings with their patients and the state

Two major areas of concern –

- Legal issues
- Ethical issues

Medical Etiquette

- Medical etiquette deals with the conventional laws of the courtesy observed between members of the medical profession.
- Not punishable under law

Offence

- According to IPC – the word “Offence” denotes a thing made punishable by the IPC [S.40, IPC].
- According to CrPC – Offence means any act or omission made punishable by any law for the time being in force [S.2(n), CrPC].
- Warrant case – All offences punishable with death, imprisonment of life, or for a term exceeding 2 years are tried as warrant case.
- Summon case – offence punishable with less than 2 years of imprisonment.

Offence may be classified in 3 ways.

- Whether police can arrest without warrant or not –
 - a) cognizable – police can arrest without warrant
 - b) non-cognizable – police cannot arrest without warrant
- whether compromising is allowed between the victim and offender -
 - a) compoundable – compromised by the parties to the dispute
 - b) Non compoundable – compromise is not allowed legally
- Whether IO can grant bail or not
 - a) Bailable – IO can grant bail
 - b) Non Bailable – bail can be granted by magistrate

Cognizable offence

- Any offence for which the police officer may arrest the accused without a warrant
- waging war against govt., counterfeiting Indian currency, adulteration of food, destroying, damaging or defiling place of worship, theft, robbery, murder, kidnapping, rape, attempting suicide, causing grievous hurt, dowry death, rioting

Non cognizable offence

- Any offence for which the police officer cannot arrest the accused without a warrant
- E.g. Bribery, defamation, perjury, causing simple hurt, buying/ selling person for slavery

Bailable & Non bailable offences

- Bailable offence

attempting suicide, sale of obscene books,
bribery, rioting

- Non bailable offences:

adulteration of food, murder, dowry death,
counterfeiting Indian currency, destroying,
damaging or defiling place of worship

Chain of custody

- Chain of custody refers to chronological documentation of the actual possession of a piece of evidence from the time it was first identified until it is offered as piece of evidence in court.
- Each evidentiary material must show a proper documentation of seizure, custody, control, transfer, analysis, and final disposition of evidence, both physical and electronic.
- It insures that at any stage true evidence is not lost and false evidence is not introduced.

Stages of Criminal Trial

- Registration of FIR
- Commencement of Investigation
- Production of accused before court
- Bail hearing before appropriate court
- After completion of investigation-
 - a) if prima facia case is made out, Charge sheet is filled in court by public prosecutor
 - b) If prima facia charge is not made out, final report filled in court

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- Decision by court on charge sheet and final report after hearing public prosecutor and defence counsel
- Court can reject charge sheet – accused is discharge
- Court can accept charge sheet – frame the charges – post the case for trial
- Court can accept final report – case is closed – accused is discharge
- Court can reject final report – direct the police for further investigation or direct that the case be posted for trial
- Trial [different for warrant and summon cases]
- Judgement

INQUEST

COURTS

EVIDENCE

INQUEST

It is defined as an inquiry into the cause of death which is clearly not due to natural causes.

- Suicide
- Murder
- Killing by an animal or machinery
- Accidents
- Any suspicious death

Types of inquests

1. Police inquest
2. Magistrate inquest
 - Executive Magistrates inquest
 - Judicial Magistrate inquest
1. Coroner's inquest
2. Procurator Fiscal System
3. Medical examiner system

Police Inquest

- Inquiry should be held by police in all unnatural or suspicious death u/s 174, CrPC.
- Information receive to PS
- The Police officer making the preliminary inquiry is called the “ Investigating officer (IO)”.
- Information to nearest area magistrate.
- He holds inquiry in presence of two or more respectable person of the locality (Panchas)
- He prepares a report as judged by him and Panchas with signatures (Panchanama/Inquest report)
- If no foul play is suspected, he can hand over the body for disposal to relatives
- In case he suspects the doubt about the cause of death, he can order for autopsy
- In both the cases, inquest report is forwarded to DM or SDM

Magistrate Inquest

Executive Magistrate Inquest

- u/s 176(1), CrPC
- Conducted by Executive magistrate i.e. DM, SDM,ADM or any officer empowered by government
- In case of dowry death, any suspicious condition within 7 yrs of marriage of a woman, Exhumation
- Statement made by witness is valuable and admissible in court
- Can order for Exhumation
- Can order for examination of viscera

Judicial Magistrate Inquest

- u/s176(1A), CrPC
- Conducted by judicial magistrate
- Custodial death
- Statement made by witness is valuable and admissible in court
- Can order for Exhumation
- Can order for examination of viscera

CORONER

- Usually an advocate
- Attorney or Pleader
- First Class Magistrate with 5yrs experience
- Metropolitan Magistrate
- Medical Person
- Coroners inquest is currently held Australia, Canada and some states of USA
- The coroner is called Procurator Fiscal in Scotland.

Coroner Inquest

- Empowered to inquire into the causes of all unnatural or suspicious deaths.
- Power to commit suspected person or accused to stand a trial before a magistrate
- He can view a body to decide whether or not an autopsy is required
- He can order the exhumation of a body for identification or for M.L. examination
- He is authorized to order any qualified R.M.P. to do postmortem examination and summon him as an expert witness to his court.
- He can grant conduct money
- He is empowered to appoint an in-charge coroner during his absence.
- It has no power to impose fines or sentence.

Medical Examiner's system

- An official who is both legally and medically qualified conduct the inquest as well as post-mortem examination
- Prevalent in the USA
- Superior to all other types of inquest

Courts of Law :

1. Supreme Court
2. High Courts
3. Session Courts
4. Magistrates Courts
 - Chief judicial Magistrate
 - Judicial Magistrate of First Class
 - Judicial Magistrate of second Class
 - Executive Magistrate

| S.No. | Court | Imprisonment | Fine |
|--------------|---------------------------------------|--|-------------|
| 1. | Supreme Court | Any period, Capital punishment | Any amount |
| 2. | High court | Any period, Capital punishment | Any amount |
| 3. | District and Session judge | Any period, Capital punishment (confirmation of high court is necessary) | Any amount |
| 4 | Additional District and Session Judge | Same as above | Any amount |
| 5. | Assistant Session Judge | 10 years | Any amount |
| 6. | CJM(CMM) | 7 years | Any amount |
| 7 | 1 st Class JM (MM) | 3 years | Rs. 10000 |
| 8. | 2 nd Class JM | 1 year | Rs. 5000 |

Proceedings in Court:

- Subpoena [summons]
- Oath of Affirmation
- Recording of evidence / Proof
- Decision of Judge / Court
- Execution of Court orders

“Subpoena / Summons”

- It is a document commanding the attendance of a witness in a court of law under a penalty on a particular day, time, place (if not obeyed)
- It is issued by the court in writing, and signed by the presiding magistrate
- Specific date & time
- It is served by a police officer or an officer of the court
- It is sent in duplicate
- A summons must be implicitly obeyed, unless there are valid and urgent reasons
- If the summoned witness fails to attend the court, he is punished for guilty of contempt of court

Types of summons

- Nature of court which issues
 - a. Criminal court
 - b. Civil court
- Whether a document is required to produce
 - a. Subpoena ad testificandum – compels a witness to attend and give evidence
 - b. Subpoena duces tecum – compels a witness to give evidence and bring all the relevant documents and other things under his control.

Case on the same day ?

- Higher court gets preference over lower courts
- Criminal courts have precedence over civil court
- The court which served the summons first receives preference

Conduct money

- In civil cases- a fee is tendered, to cover the expenses of the witness to attend court, at the time when the summons is served
- Paid by the party that has called the witness
- In criminal cases no conduct money paid with summon, but court has made provision to pay reasonable expenses to witness

“ Witness”

A witness is a person who gives a statement or testimony under oath or solemn affirmation in the court of law

- Common witness – any person
- Expert witness - chemical examiner
finger print expert
ballistic expert
forensic expert
doctor

EVIDENCE

Evidence means any statement in relation to a matter or fact under inquiry or a document or something for the inspection of the court.

- Oral Evidence - It is the evidence of a person who says he saw, heard or perceived it in other words actual witness.
- Documentary evidence - Any documents produced for the inspection of the court, in relation to matter of fact under inquiry.

Evidence

- Oral evidence -
 - I. direct evidence
 - II. indirect evidence
 - a) circumstantial evidence
 - b) Hearsay evidence
- Documentary –
 - I. medical certificates
 - II. medico legal reports
 - III. dying declaration / deposition

Primary Evidence

When documents are produced in the form of evidence is called primary evidence.

Secondary Evidence

When certified copy, photocopy or counterparts of original documents produced in the court called secondary evidence.

An 'Oath'

It is a declaration required by law, to be made before the court, by the witness.

He swears in the name of God, that he will tell the truth, the whole truth, and nothing but the truth.

If the witness has religious scruples against swearing, he will be permitted to make a solemn affirmation.

Once a witness is thus sworn, if he does not speak the truth, he is liable to be prosecuted for the guilty of the crime, called,

“ Perjury”

“ Willful utterance of falsehood”

Section 193 I.P.C.

Recording of Evidence - Pleading

- Examination-in-chief
- Cross-examination
- Re-examination
- Question by Judge

Examination-in-chief

- Examination is done by the counsel side, which has summoned him.
- The object of the examination-in-chief is to present all relevant facts of the case before the court.
- If witness is expert he may be asked to elicit his inference or interpretations from the facts.

- No leading questions are allowed.
(leading question is one that suggest its own answer)
- Leading question can be asked when witness become ' hostile'.

“Hostile witness is that witness who gives evidence in the court of law under oath, against the interest of the party who cites him as witness.

Common witness/ An expert witness.

Cross Examination:

- * Followed by examination-in-chief
- * Examined by counsel for opposite party
- * To bring out inaccuracies and contradictions in his statements.
- * To extract any facts which may be favorable to his Client
- * Leading questions are allowed.

Re-examination:

- * After cross- examination, the witness can be examined by the counsel who called him.
- * To remove any doubts that may have arisen during cross examination
- * Leading questions are not allowed.

Court Question:

- * Presiding officer may /can ask question to witness at any stage.
- * He can call witness again for his evidence, if needed by the court, related to the same case.

Warrant

- Written order- sign & seal of presiding officer of court
- Bears name & designation of person who is to execute it
- Indicates name & add of accused
- Must state the offence, he is accused of
- Should indicate date of issue

Common legal terms

- Accused- accused/ alleged to have committed crime
- Acquittal-accused not guilty
- Affidavit- voluntary written statement of facts under oath before an officer of the court / notary public
- Appeal- complaint made to superior court
- Appellant- person who makes appeal
- Assailant- one who has committed an assault

Common legal terms

- Civil case- dispute between 2 private parties (wealth, property etc)
- Criminal case- case between govt. and a private party concerning matters of public interest & safety (assault, robbery, murder, rape)
- Contempt of court- intentional insult or interruption to a court during judicial proceeding
- Conviction- accused proved guilty in court of law
- Culpability- being at fault, deserving punishment

Common legal terms

- Bail-security on behalf of accused person, on giving which, he is released from custody, pending investigation/ court trial
- Warrant case- relating to an offence punishable with death, life imprisonment or imprisonment exceeding 2 yrs
- Summons case- relating to an offence, for which the punishment is less than 2yrs imprisonment

Common legal terms

- Damage- injury suffered by a party as a result of action of another
- Damages- compensation payable to a victim, as decided by the court
- Defendant- party against whom a complaint has been filed (accused)
- Defence counsel- legal practitioner who acts on behalf of accused
- Public prosecutor- lawyer appointed by govt. for conducting prosecution on behalf of the state

Common legal terms

- Search warrant- written authority issued by magistrate to police officer, for search of any general / specified thing/ document
- Trial- legal process in accordance with the law, to determine guilt / innocence
- Verdict- formal decision or finding made by a judge / jury at the end of a trial.

Sources and suggested reading:

- Textbook of Forensic Medicine and Toxicology, Anil Aggrawal, APC publication
- Review of Forensic Medicine and Toxicology, Gautam Biswas, JAYPEE publication
- The Essentials of Forensic Medicine and Toxicology, Dr. K S Narayan Reddy and Dr. O P Murthy, The Health Science Publisher
- Textbook of Forensic Medicine and Toxicology, P C Dikshit, PEEPEE publications
- Research papers



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