A TEXTBOOK OF

MEDICAL JURISPRUDENCE AND TOXICOLOGY

BY

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PREFACE TO THE SIXTH EDITION

The appreciation of this work has continued to be such as to necessitate the publication of a new edition within the space of three years. In the preparation of this edition, as before, alterations and additions have been made throughout and new cases have been introduced with a view to illustrate important and interesting medico-legal points. New sections on Pyrogallic Acid (Pyrogallol), Paraldehyde, Trional, Tetronal, Sulphanilamide and War Gases have been inserted, and nineteen new illustrations and two more plates have also been added.

It is my pleasant duty to acknowledge gratefully my indebtedness to Rai Bahadur Dr. K. N. Bagchi, B.Sc., M.B. (Cal.), D.T.M. (Cal. and L'Pool), F.I.C. (London), Chemical Examiner to the Government of Bengal, for kindly revising and rewriting the Chapter on Examination of Blood and Seminal Stains, etc., and for supplying me with a micro-photograph of *ganja* hairs, which is reproduced as Fig. 151. I also express my gratitude to Major S. D. S. Greval, B.Sc., M.D., Ch.B., D.P.H., I.M.S., Imperial Serologist with the Government of India, for his valuable suggestions and his permission to allow Rai Bahadur Dr. K. N. Bagchi to use table No. III published on page 1048 of *the Indian Journal of Medical Research,* April, 1939, and to make use of his notes from the annual reports of his department and to Dr. Gaya Parshad, M.D., of the Prince of Wales Medical College, Patna, for his valuable assistance in connection with the section of Blood Grouping Test.

I wish to offer my sincere thanks to the author, the editor and the publishers of the *Indian Journal of Medical Research* for their kind permission to publish Plate II from their Journal of April, 1939, and particularly to the publishers for a loan of the block for the same plate. I also desire to tender my cordial thanks to Dr. H. S. Mehta, M.B., M.S., F.C.P.S., Professor of Medical Jurisprudence, Grant Medical College, Bombay, for the photographs which are reproduced as Figs. 22, 23, 37, 41, 110, 116, 126, 131 and 132, to Dr. P. V. Gharpure, M.D. (Bombay), D.T.M. & H. (Eng.), Professor of Pathology, Grant Medical College, Bombay, for permission to take photographs of the specimens from the Pathological Museum which are reproduced as Figs. 127, 128 and 158, to Dr. G. B. Sahay, B.Sc., M.B., D.T.M., Lecturer of Forensic Medicine, Prince of Wales Medical College, Patna, for many helpful suggestions and the photographs which are reproduced as Figs. 32 and 52, to the Superintendent of Police, Ahmedabad District, for a photograph which is reproduced as Fig. 88 and to Mr. Harihar Lal Merh of the School of Arts and Crafts, Lucknow, for his kindness in drawing the sketches of Figs. 152 and 153.

I regret very much the inconvenience caused to my readers, especially medical students, owing to the delay in the publication of this edition on account of war exigencies. I am thankful to my publishers in helping me to obtain the requisite printing paper. Lastly, I should like to express my warm appreciation of the splendid co-operation, helpfulness and unfailing courtesy of Mr. V. V. Bambardekar, Manager, India Printing Works.

BOMBAY,
February, 1940.

J. P. MODI.

PREFACE TO THE FIRST EDITION

In accordance with the wishes of the Principal of the Agra Medical School and the Examiner in Medical Jurisprudence, this book has been written chiefly as a text-book for students reading in medical schools and colleges; but in the hope that it may also prove useful to medical and legal practitioners I have tried to incorporate my practical experience as a medical jurist for about fifteen years and as a lecturer in this subject in the Agra Medical School for eleven years and since then in the Lucknow Medical College. I have also given in the form of appendices copies of Government orders in relation to medico-legal work, and certain sections of the Indian Evidence Act, Criminal Procedure Code, Indian Penal Code, Lunacy Act, Poisons Act, etc., which have a direct bearing on legal medicine.

The students of medical schools and colleges while reading for their examinations may conveniently omit the text printed in smaller type which, not being included in their course, is meant only for practitioners.

I must admit my responsibility for the opinions expressed in the text, though in the preparation of this book I have freely consulted various text-books and periodicals, to the authors of which I acknowledge my grateful thanks.

I have also to express sincere thanks to Dr. E. H. Hankin, M.A., Sc.D., Chemical Examiner and Bacteriologist to the Government of United Provinces, for his kindness in revising certain parts of the manuscript and for much valuable assistance and suggestions, especially in the section on Toxicology and to Lieutenant-Colonel E. J. O'Meara, O.B.E., F.R.C.S., I.M.S., Principal, Agra Medical School, who has rendered every assistance to facilitate the completion of the book.

In conclusion I further desire to acknowledge my great indebtedness to Mr. H. M. Rogers of Messrs. Butterworth's for assisting me in reading the proofs.

LUCKNOW,
1920.

J. P. MODI.

MEDICAL JURISPRUDENCE AND TOXICOLOGY

SECTION I

MEDICAL JURISPRUDENCE

CHAPTER I

LEGAL PROCEDURE IN CRIMINAL COURTS

Definition.—Medical Jurisprudence, Forensic Medicine, Legal Medicine and Judicial Medicine are all synonymous terms used to denote that branch of state medicine which treats of the application of the principles and knowledge of medicine to the purposes of law, both civil and criminal. It does not include sanitation, hygiene or public health; both this and medical jurisprudence being distinct branches of state medicine. Medical jurisprudence proper, as distinguished from hygiene, embraces all questions which affect the civil or social rights of individuals and injuries to the person and bring the medical man into contact with the law; while Toxicology deals with the diagnosis, symptoms and treatment of poisons, and the methods of detecting them.

In his professional career the medical man will have frequently to give evidence as a medical jurist in a Court of law to prove the innocence or guilt of his fellow subjects, or to authenticate or disprove a criminal charge of assault, rape or murder brought against an individual. He must remember that as a medical jurist, his responsibility is very great, for very often he will find that his is the only reliable evidence on which depends the liberty or life of a fellow-being. He has, therefore, to acquire the habit of making a careful note of all the facts observed by him, and to learn to draw conclusions correctly and logically after considering in detail the pros and cons of the case, instead of forming hasty judgments.

It is very essential that a medical jurist must have a fair knowledge of all the branches of medical and ancillary sciences taught to a medical student in the course of his studies, inasmuch as he is often required to invoke the aid of these subjects in the elucidation of various problems of medico-legal interest in the Courts of law. He must also be well acquainted with the Government orders, statutes and acts affecting his privileges and obligations in medical practice, and some of the sections of Indian Evidence Act, Criminal Procedure Code and Indian Penal Code relating to the various offences, in the investigation of which his assistance is generally requisitioned.

It has been repeatedly remarked by judges that members of the medical profession are not very careful in drawing up medico-legal reports and consequently cut a very poor figure as expert witnesses, but the experience of medico-legal work in India leads one to believe that this carelessness complained of by the judges is not due to any wilful negligence on the part of medical men, but to want of sufficient data supplied by the Police, and also to their want of practical knowledge of legal procedure in criminal Courts owing to lack of opportunities afforded to students to be present in Courts, when any cases of medico-legal interest are being tried. Again, in Medical Schools and Colleges great stress is laid on the theoretical teaching of this subject, but its practical side is altogether neglected. Medical Jurisprudence is a practical subject, and the class lectures should be illustrated with practical examples, as far as possible, while the students ought to get ample opportunities to examine cases of injury and poisoning, and to witness medico-legal post-mortem examinations.

To obviate this difficulty it is necessary to give first a brief account of the procedure adopted in a legal inquiry and of the criminal Courts of India, before the subject proper is treated.

LEGAL PROCEDURE AT AN INQUEST

Coroner's Inquest.—In the Presidency towns of Calcutta and Bombay, the Coroner with the help of a jury holds inquests or inquiries in cases of sudden, unnatural or suspicious deaths, or in cases of deaths occurring in a jail within the jurisdiction of his Court. The Coroner is authorised to order the post-mortem examination of a body to be made by any medical man, usually the Police Surgeon, whom he summons to his Court to give evidence at the inquest. At such an inquest or inquiry he summons witnesses, takes their evidence on oath, receives evidence on behalf of the accused and then with the help of the jury finds a verdict as to the cause of death. If he finds a verdict of foul play against the accused person, he issues his warrant for the apprehension of such accused person and sends him forthwith to the Magistrate empowered to commit him for trial. Where there is enough evidence of foul play, but the perpetrator of the crime is not identified, the Coroner's jury returns an open verdict against some person or persons unknown, and the matter is held in abeyance, until further inquiry throws more light on the perpetration of the crime.

Police Inquest.—In Mofussil towns, an officer[1] usually of the rank of a Sub-Inspector of Police in charge of a police-station, on receiving information of the accidental or unnatural death of any person, informs immediately the nearest Magistrate of the same, and proceeds to the place where the body of the deceased person is lying and there, in the presence of two or more respectable inhabitants of the neighbourhood, makes an investigation and draws up a report of the apparent cause of death as judged from the appearance and surroundings of the body, describing such wounds, fractures, bruises and other marks of injuries as may be found on the body, and stating in what manner or by what weapon or instrument

1. Vide *Appendix VI, Sec.* 174, *Cr. P. C. In the Presidencies of Madras and Bombay investigations may be made by the head of the village. In the United Provinces of Agra and Oudh head constables specially selected by the Superintendent of Police are empowered by the Local Government to hold inquiries.*

(if any) such marks appear to have been inflicted. The report is then signed by the investigating police officer and by the persons present at the inquest. In a case of suspected foul play or doubt regarding the cause of death, the police officer forwards the dead body for post-mortem examination to the Civil Surgeon of the district or other qualified medical man authorised to hold such examination, furnishing him with the descriptive roll and as full particulars as possible to enable him to find out the probable cause of death, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless. In order to shirk responsibility the investigating officer is apt to send all dead bodies irrespective of the cause and manner of death to the Civil Surgeon for post-mortem examination. The Civil Surgeon, immediately after holding the post-mortem examination, has to give a statement as to the cause of death in police form No. 289 to the constable accompanying the dead body for communication to the investigating officer, and to send the full report in police form No. 33 (*Vide* Appendix IV) later on to the Superintendent of Police, who forwards it to the Sub-Divisional Officer or Magistrate concerned.

In cases of rape and other cognizable offences the individual is sent by the Sub-Inspector of Police to the Civil Surgeon for medical examination along with his statement recorded in the vernacular. In cases of assault or other non-cognizable crime the injured person may go direct to the Civil Surgeon with the permission of the police officer, if he thinks it necessary, or he may file an affidavit in the Court of a Magistrate who will send him to the Civil Surgeon with a forwarding letter, which the latter officer has to fill up (*Vide* Appendix IV).

DIFFICULTIES IN THE DETECTION OF CRIME

The Civil Surgeon or the Medical Officer, who is always ready to assist the course of justice, finds it, at times, very difficult to arrive at correct conclusions in medico-legal cases for the following reasons :—

(1) The investigating police officer, on hearing of an incident, may not proceed at once to the place of occurrence, being already engaged in investigating another case or for some other reason ; consequently valuable time is lost in obtaining a clue to the crime. As an instance of the dilatory habits of the police I may cite below one of many similar cases.

A Hindu female, about 45 years old, of P. S. Mandiaon, Lucknow District, died in the King George's Hospital at 4 p.m. on the 20th September, 1921. The police were informed immediately of her death, and yet the necessary papers for post-mortem examination were handed over to me at 9 a.m. on the 22nd September, 1921. The result of this unnecessary delay was that the cause of death could not be ascertained owing to decomposition of the body.

(2) The police officer, even if he reaches the place in time, may not touch the dead body and scrutinise it for any marks of violence or identification on account of caste prejudices or some such scruples, but may depend on the illiterate villagers present at the inquest, who may have some motive in concealing the real facts. To illustrate these remarks I cite the following four cases :—

1. In February, 1917, the body of a Mahomedan woman was taken out of a well in Akbar's palace at Fatehpur Sikri, and was sent to the Agra Medical School

Mortuary for post-mortem examination with a police report that she was young, had thirty-two teeth, and her hair was dark; while at the autopsy it was found that the woman was more than 60 years old, had no teeth, all the alveoli had been absorbed, and the plait of the hair of the head that was lying loose owing to decomposition was mostly of a silvery white colour.

2. In a case of double murder which occurred in Chowk, Lucknow, on or about the 10th August, 1923, the age of one of the victims was put down to be 54 years by the police officer holding the inquest, but on inspection on the 12th August, the age was ascertained to be only 14 years, and the age of the other victim who happened to be the mother of the girl (first victim) was forty years.

3. On the 26th August, 1923, a body was removed from a well situated within the jurisdiction of Police Station, Chowk, Lucknow. It was sent to the Medical College Mortuary for post-mortem examination with a report that it was the body of an unkonwn *woman*. At the autopsy it was found to be the body of a tall and well-built *male*. The body was in an advanced state of decomposition but the penis and scrotum were easily recognisable.

4. On the 10th July, 1924, a headless body was found floating in *Nahair* (canal) Ghyasudin Haidar within the jurisdiction of Police Station, Hazaratganj, Lucknow. The body was taken out and forwarded to me for examination with a report that the body was that of a *woman*. On examination I found that the body was that of a Hindu male, as the penis which was distended owing to decomposition was not circumcised.

(3) The report supplied by the police officer is very often quite meagre, as, for want of powers of observation and habits of accuracy, he rushes through an inquest, and omits to note many points, which would, otherwise, help to prove the manner of death, or, for want of the most elementary knowledge of medical jurisprudence, though the subject is taught in police training schools, he mistakes the marks of post-mortem staining for those of violence and describes injuries where there are none or omits to mention them when they are present, and thus unwittingly misleads the medical officer, especially if the body happens to be highly decomposed.

The following cases from my note book would be quite sufficient to substantiate the above remarks:—

1. In October, 1919, the body of a Hindu girl, aged 10 years, was forwarded from Police Station, Kakori, with the station officer's report that the deceased was found with *a wound* at the back of the neck. On examination *eleven incised wounds* were found on the right mandible, chin, and the right side and back of the neck cutting into the third, fourth and fifth cervical vertebræ and the spinal cord. There was also an incised wound along the front of the left thumb.

2. In October, 1921, the body of a Hindu boy, about 12 years old, was brought from Police Station, Goshaingunj, Lucknow District, with a report that the deceased was said to have been beaten with a *lathi* which resulted in his death and that there were *four* marks of injuries on his body. The post-mortem examination was held twenty hours after death when only *one* bruise, ¾" x ½", was found on the lower part of the right shoulder-blade, and death was due to asthenia from chronic malaria.

3. On the 1st August, 1922, a post-mortem examination was held on the body of Budhu, aged 40 years, brought from Police Station, Malihabad, Lucknow District, with a report that the deceased died from five injuries inflicted on the body, *viz.*, one on the right temple, one on the left shoulder, and three on the right side of the back. No external injury could, however, be detected except an abrasion, ½" x ¼" above the left cheek bone. On opening the abdomen the spleen which was enlarged was found ruptured.

4. The body of a Mahomedan male, 48 years old, was forwarded for post-mortem examination on the 18th March, 1923, with a report that the deceased had been killed by dacoits on the night of the 17th March and that there were several bruises on the face, neck and other parts of the body. On examination, no injury was found anywhere on the body except a slight laceration across the left upper eyelid and a small abrasion across the left side of the neck. The stomach and intestines, on the contrary, revealed the signs of irritant poisoning.

5. On the 26th February, 1927, the body of one Kashi Parshad *alias* Kashidin, aged 22 years, was forwarded to the King George's Medical College Mortuary for post-mortem examination with a police report that "after turning the body on all sides the deceased was found to have been shot in the head, and that there was an abrasion on the right arm." On examination I found no gun-shot wound on the head, but detected two contused wounds on the head, and nine contusions, varying from two and a half to four inches by one inch, and five abrasions, varying from one-fourth to half an inch by one-fourth inch, on several parts of the body. There was also an extensive fracture of the vault of the skull and a laceration of the brain.

6. On the 14th March, 1928, the body of one Raja Ram was sent to me for post-mortem examination from Police Station, Alam Bag, Lucknow, with a report that "the left jaw was cut, the left testicle was pierced with some sharp pointed thing and there were bruises round the loin and all over the chest and legs." On examination none of these injuries were found on any of the parts mentioned above. But death was found to be due to strangulation caused by a cord twisted twice round the neck.

(4) The police officer is not to blame in all cases, as he sometimes finds it very difficult to furnish the medical officer with really trustworthy information for his guidance inasmuch as, owing to the unwillingness of the relatives and neighbours to appear before a Magistrate, and give evidence on oath, or, owing to a false notion about the honour of the parties concerned, no one comes forward to volunteer a statement, even if he was present when the crime was committed.

(5) A lot of crime goes undetected owing to the prevailing custom of cremation or burial of bodies soon after death, and that too without any medical certificate. Besides, owing to tanks, lakes, canals, rivers, wells and jungles situated on the outskirts of villages, there is great facility for concealing dead bodies, which are likely to be eaten by dogs, jackals and birds of prey to an extent which will render them difficult of recognition. In October, 1918, I saw the body of a Brahmin male, whose ears had been so nicely gnawed through by rats that they appeared to have been cut away by a knife, unless examined very carefully.

(6) Owing to the climatic conditions in India decomposition of bodies takes place much more rapidly than in Western countries, and this is a frequent occurrence in the hot and rainy seasons owing to the fact that a body has to be carried for long distances in a *dooly* either in a bullock cart or on the heads of *Chamars* before it can be taken to the *sadr* station for autopsy; for, in most districts the Civil Surgeon is the only officer authorised to hold medico-legal post-mortem examinations. As a precaution against decomposition, the police in the United Provinces of Agra and Oudh[1] were instructed to protect the body either by wood-charcoal and ferrous sulphate (*kasis*), phenyle and mustard oil or carbolic dust, but this process does not, in any way, retard putrefaction. On the contrary, it helps to disfigure the external wounds so much that in some

1. Vide *Appendix I, Police Regulations, Sec.* 121.

cases it may be difficult to differentiate their varieties. Hence on my representation to the Inspector-General of Civil Hospitals, U. P., these instructions have been cancelled, and the police are now required to forward the body in a shell in the state in which it was found.[1]

A medical officer must never hesitate to hold a post-mortem examination of a body on the ground of advanced decomposition, although it is, at times, very trying and disgusting to do so. It is very essential to make as thorough an examination as practicable in order to find some clue to the cause and manner of death, especially in a case where there is suspicion of foul play.

On account of districts being spread over a large area, it is impossible to avoid such difficulties. Hence it appears to be desirable for members of the Provincial Subordinate Medical Service in charge of branch dispensaries to be authorised to hold post-mortem examinations, and I do not see any reason why these officers should be debarred from holding autopsies, seeing that they have to go through a four years' course in a recognised medical school and have to pass three stiff examinations before they are qualified to practise in medicine and surgery.

(7) To fabricate a false charge against an enemy it is usual for one party to kill a relation, probably a child or old person, and then to accuse the opposite party of murder. Even on the occurrence of a natural death in the family the relatives make a false report to implicate their enemies, and attribute the death to some previous quarrel or fight that had taken place between the two parties. Sometimes, someone disappears from the scene and after a time a decomposed body found lying on the outskirts of a village or dug up from a grave is claimed as the body of the absconding person, and a false charge of murder is laid at the door of an unwary enemy who, though innocent, not infrequently makes a confession of guilt, possibly to avoid police torture, or when, for other reasons, he finds it difficult to escape the net of conspiracy spread around him.

Illustrative cases.—In the District of Hardoi, a lad, named Chitowri, was missing. About a dozen persons claiming to be eye-witnesses swore before the police that they had seen the boy being strangled by his brother-in-law and other accomplices and thrown into a river. The principal complainant, Ramlal, Chitowri's brother, fainted at the police station while he was describing his brother's alleged murder. The police searched the river and instituted a murder case, and the Magistrate issued warrants for the arrest of the accused. The bottom was knocked out of the case, however, on the accidental discovery by the police of the "dead" lad very much alive in a friend's house, several miles from the village. Ramlal and others were prosecuted for making false complaints to mislead the police.—*The Times of India, July* 15, 1937.

2. A priest suddenly disappeared from his village, and police inquiries led to the arrest of two men, one of whom was the priest's nephew and the other a teacher in the village school. They were charged with murder in the Court of the Dewan of Dharamjaigarh State in Bilaspur District, Central Provinces. The police produced charred bones, believed to be those of the missing priest, who, they alleged, had been taken to the jungle and murdered by the accused with an axe. Prosecution witnesses were called to support the police story and the accused were committed to the Sessions. While they were awaiting judgment, however, the missing priest wrote to the Dewan informing him that he was returning from a pilgrimage he had

1. Vide *G. O.* 4451|*V—VIII—9 dated the 23rd August,* 1924, P. D., *to the Inspector-General of Police, U. P.*

undertaken. Subsequently the priest himself appeared before the Court, and the accused were acquitted. The police sub-inspector who investigated the case and the school teacher who deposed that the axe had actually been taken from him for the murder had been arrested and prosecuted.—*Times of India, Nov.* 23, 1935.

3. One Harbans, son of Tarif Jat of village Dabathua in Meerut district, was sentenced to death under section 302, I.P.C., for having caused the deaths of his two daughters, aged seven years and two years respectively with a *gandasa* for the purpose of implicating his father and two brothers in the crime.

The prosecution story was that Tarif had partitioned his lands amongst his sons, whereafter Harbans accused and his brother Des Raj began to live jointly. On January 19, 1937, a dispute arose between Harbans accused and his father with regard to the payment of canal dues. There was mutual abuse between the two and Harbans knocked down his father who was rescued by his other sons. The accused received a few *lathi* blows from the rescuers. Upon this Harbans became furious and left the place saying that he would get them hanged. Reaching his house he chained the outer door from inside and catching hold of his elder daughter struck her with a *gandasa* which caused her immediate death. Harbans then snatched the younger daughter from the lap of her mother and killed her also with the *gandasa.* Shortly after this the accused went to the police station and reported that his father and his brothers had killed his two daughters. Just as the writing of this report was completed the *chaukidar* of the village arrived and reported that it was generally rumoured that Harbans had himself killed his daughters with a *gandasa* and had come to report. As Tarif could not dare go to the police station lest Harbans should assault him he went straight to the Superintendent of Police and reported the whole incident. The station officer of Police Station Sardhana after making investigation challaned Harbans under section 302, I. P. C.—*The Leader, Sept.* 5, 1937.

4. In a murder trial of accused Pitai *alias* Pitambar and Chhidu for causing the murder of one Mt. Pemo of village Ladhera, District Badaun, the following facts were narrated :—

Mt. Pemo, whose husband died about ten or eleven years ago, used to live in her house with her son, Udho, and his wife, Mt. Reoti. The accused Chhidu was in her service, and used to work at her house. She was suspected of carrying on an illicit intrigue with Chhidu by her husband's brother's son, Govind, Girdhari and others. A few days before her death Girdhari, Hetu, Gangi and others went into her house, and threatened to kill her if she did not sever her connections with Chhidu. At about midday on the 14th April, 1927, she went to the *thana* (Police Station) and made a report against them at the instance of Pitai accused under Section 506, I. P. C. Pitai, accused, whose relations with Girdhari, Hetu and others were highly strained, entered into a conspiracy with the accused Chhidu and formed a plan of making a mark of injury with some sharp-edged instrument on the neck of Mt. Pemo with the object of implicating them in a criminal case. In pursuance of this plan they went into the house of Mt. Pemo at about midnight of the 16th April, 1927, and obtained her consent to their making a mark or injury on her neck with a *gandasa.* Pitai put his *gandasa* on her neck and pressed it with his hands, while Chhidu accused stood close at hand. The *gandasa* went deep into the neck and cut her windpipe and gullet, which resulted in her instantaneous death. Both the accused then left the scene and went back to their houses. Early on the next morning Pitai went to her son, Udho, who was on his threshing floor and told him that his mother was killed by Girdhari, Govind, Hetu and Chunilal and asked him to go to the *thana* and make a report. He was prevailed upon by him to go straight to the *thana* with the village Chowkidar, without even seeing his mother. Being an immature boy of 15 years he fell an easy victim to his persuasions and departed for the *thana* direct from the threshing floor and made a report against the five persons mentioned above. The Sub-Inspector of Police in charge of the *thana* investigated the case and came to the conclusion that Mt. Pemo was murdered by both the accused, and sent them up for trial as a result of investigations. Both were convicted of murder under Section 302, I. P. C., and sentenced to death.—*K. E.* v. *Pitai and Chhidu, Allahabad High Court, Criminal Appeal, No.* 671 *of* 1927.

5. During a quarrel over a young widow one Lachman Ahir and his father, Umedi were beaten with *lathis* and admitted into the hospital at Gunnaur in the District of Badaun. The father and the son were provided with only one bed, there

being no more beds available in the hospital. In order to implicate his enemies and make them responsible for his father's death Lachman got up at night and murdered his father by strangulation.—*Leader, April* 18, 1930.

6. In a village of Daheli Kalan in Etah District one Ram Lal Lodh kept a Brahmin woman as his mistress. This displeased the Brahmins of the village very much. So from time to time there used to be quarrels between the Brahmins and Ram Lal and his brothers, Dina and Nek Ram. On the 28th February, 1929, Dina was drawing water from a well to irrigate his field. His mother, Mt. Bishmia, was directing water in the field. Nek Ram, Ram Lal and Musammat Chameli, the Brahmin woman, were also at the well. In the evening Lala Ram, Sham Lal and some other Brahmins went to the well with *lathis* (clubs) in their hands. Dina thinking that the Brahmins would kill him called his mother and killed her by inflicting wounds on her neck with a *gandasa* (chopper). He then began to cry that Jwala, Lala Ram and other Brahmins had killed her. Dina was, however, sent up for trial on a charge under Section 302, I. P. C. for having committed the murder of his mother, and was found guilty and sentenced to be hanged by the neck till dead.—*King-Emperor* v. *Dina, Allahabad High Court, Cr. Appeal, No.* 527 *of* 1929.

7. One Fauz Khan and his uncle, Roshan Khan owned a field in Dasauli village, which had been under mortgage for nearly twenty or twenty-two years and the mortgage was not redeemed. Roshan Khan was in pecuniary embarrassments in other ways and had many debts to pay. His nephew, Fauz Khan, asked him not to execute any fresh documents to consolidate his debts and advised him upon a new way of paying off all old debts. He asked his uncle to accompany him to their mortgaged field and receive from him two or three severe *lathi* blows so that he could bring a false charge of assault against his creditors to whom he was heavily indebted. Thus, by the threat of a criminal prosecution he could coerce them to hand back the securities relating to his loans and also make them pay him a sum of money by way of compensation. Strangely enough, Roshan Khan fell in with the suggestion and accompanied his nephew to their jointly mortgaged field. The latter then made a determined assault upon his uncle and caused him a number of injuries which soon resulted in death. The plot was, however, found out during the police investigation and Fauz Khan was sentenced to death under Section 302, I. P. C.—*Leader, Dec.* 17, 1930, *p.* 6.

8. One Karim Bux killed by throttling his daughter, Must. Subratan, aged 10 years, on the night between the 16th and 17th March, 1931, placed the corpse near the house of Mangat and brought a false charge of murder against Mangat and Sujan, who were his enemies. He also inflicted two parallel abrasions within the vulvar orifice to the left of the hymen so as to lead to a suspicion of rape. Karim Bux was subsequently convicted of the offence of the murder of his daughter under section 302, I.P.C., and sentenced to death.—*King-Emperor* v. *Karim* or *Karim Bux, Allahabad High Court, Criminal Appeal, No.* 69 *of* 1931.

9. One Imrati, 50 years old, resident of Police Station Mandiaon, District Lucknow, died on the 5th January, 1932, and a report was made at the police station that the deceased was beaten with shoes, kicks and fists during a quarrel seven days before death, and had received three or four marks of external injury on his back, one injury on the head towards the back, and also internal injuries, from the effects of which death occurred. At the post-mortem examination held on the next day, I found no marks of injury on the back or the head or on any other part of the body, but found both the lungs to be pneumonic. Hence I gave my opinion that the death was due to pneumonia and not due to any injuries.

10. On April 4, 1935, the house of Mangal Chunilal in the village of Ratanpur was burgled. Cash and ornaments were stolen. The police patel sent information to the nearest police station. The police sub-inspector at Godhra was communicated with. As he was busy with the investigation of another case, he sent Narsing Chandrasing, one of his constables, for inquiry. The constable reached Ratanpur on the night of April 5. Next morning, he sent for five villagers from Ankadia on suspicion that they were concerned in the burglary. On their arrival they were questioned and, on their denying knowledge of the burglary, they were made to stand in a courtyard with their legs stretched apart. They were asked to bend down, and pebbles were placed on their necks and backs. Those who dropped the pebbles

were severely belaboured with sticks. Two of them were hung from rafters in a room, their legs being tied with ropes. Various other forms of torture were alleged to have been practised on them. The "stinging nettle" was used on Batha Natha, one of the victims. The torture extended over a period of thirty-six hours. They were ultimately set free. When the police had left the village, those who had received injuries went to Godhra for medical treatment. Batha was admitted to the Civil Hospital, as it was found that one of his palms had been crushed under the legs of a cot. The other victims made a petition to the District Superintendent of Police.

The Additional District Superintendent personally conducted the inquiry and arrested Narsing Chandrasing and six others on charges of torture, wrongful confinement and abetment. They were tried by the Sessions Judge, Broach and Panch Mahals, who sentenced Narsing constable to three years' rigorous imprisonment for causing grievous hurt to Batha with a view to extorting a confession, and to one year's rigorous imprisonment for wrongful confinement, the sentences to run concurrently. Virsing, assistant to the police patel was bound over in the sum of Rs. 200 for a year. The other five accused were found not guilty and were acquitted.

Narsing filed an appeal in the High Court of Bombay against his conviction and sentence, but their lordships upheld the conviction and sentence.—*Times of India, March* 5, 1936.

CRIMINAL COURTS AND THEIR POWERS

There are three kinds of courts for the trial of offenders in British India. These are the High Courts, the Courts of Session and the Courts presided over by Magistrates. There are three classes of Magistrates, the first, the second, and the third. There is also the class of the Presidency Magistrates, who are appointed for Presidency towns. First Class Magistrates commit their cases to the Courts of Session and Presidency Magistrates direct to the High Courts. From the class of the Magistrates of first class a Magistrate is appointed to the charge of a district and is called the District Magistrate. A Magistrate of the first or second class when placed in charge of a sub-division is known as the Sub-Divisional Magistrate.

The High Courts are the highest tribunals in the country, and are constituted by Parliamentary Statutes. They are established at Allahabad, Bombay, Calcutta, Lahore, Madras, Patna and Nagpur, while the Chief Court is the highest Court in Oudh, and the Judicial Commissioner's Courts in Sind and North West Frontier Province. These Courts may try any offence and pass any sentence authorised by law.

In these Courts cases are tried before a Judge and a common jury of nine persons. A common jury is composed of persons whose names appear in the general list of those liable to serve as jurors. Medical men are, as a rule, exempted from serving on a jury (*Vide* Appendix VI, Cr. P. C., Section 320). A special jury is composed of persons taken from a special list of jurors prescribed by the High Court. A special jury is empannelled in trials pertaining to offences punishable with death and in any other cases directed by a Judge of the High Court. The verdict of the jury is to be delivered through their foreman to be chosen by the jurors themselves, in the first instance. The unanimous verdict of the jury is to prevail in the High Court, but if the jury are not unanimous and the Judge disagrees with the verdict of the majority he may discharge the jury and order a new trial. The accused person has the right to challenge the jurors individually as they are called.

The Courts of Session are invested with jurisdiction over all kinds of offences. But they can only try cases which have been committed to them by a Magistrate. They may pass any sentence authorised by law, but a sentence of death passed by a Court of Session must be confirmed by the High Court before it can be carried out. An Assistant Sessions Judge may pass any sentence authorised by law, except a sentence of death or of transportation or imprisonment for a term exceeding seven years. The trials before these Courts are ordinarily conducted by the presiding Judge with the assistance of three or four assessors, but the Local Government may, with the previous sanction of the Governor-General-in-Council, by order in the Official Gazette, direct the trial of all offences or of any particular class of offences before any Court of Session in any district to be by jury.[1] In trials by jury before the Court of Session the jury shall be composed of not less than five or more than nine men. In cases where an accused person is charged with an offence that is punishable with death the number of the jury shall, as far as possible, be at the full strength and in no case less than seven.

The Sessions Judge is not bound to accept the opinion of the assessors. If he happens to differ from their opinion, he can pass a sentence without referring the fact to the High Court to which he is subordinate, but if he disagrees with the verdict of the jury, whether it be in favour of the prisoner or against him, he can only submit the record to the High Court which may, on submission being made, pass any order which it deems proper to pass.

The procedure at the trial of an European or Indian British subject is prescribed under Chapter XXXIII of the Code of Criminal Procedure which has been completely recast and remodelled by Act XII of 1923. The provisions of this chapter are only applicable to those cases where the person aggrieved and the person accused, or any of them, are respectively European and Indian British subjects, or where it is deemed expedient owing to the connection with the case of both an European and an Indian British subject that the ordinary mode of trial should be departed from. In such cases the accused is committed to the Court of Session to take his trial in respect of offences, punishable with imprisonment for a term exceeding six months. In petty cases the trial is to take place before a Bench of two Magistrates, one of whom shall be an European and the other an Indian. In the case of disagreement between the members of the special bench the file is to be laid before the Sessions Judge who may pass such order in the case as he considers proper.

The sentences authorised by law are—

(i) death,
(ii) transportation,
(iii) imprisonment (including solitary confinement),
(iv) fine, and
(v) whipping.

Of these, a Magistrate of the first class may pass a sentence of imprisonment not exceeding two years. He is also empowered to direct

1. Vide *Appendix VI, Cr. P. C., Sec.* 269.

that a certain portion of the sentence shall be served out in solitary confinement within the limits laid down by the Indian Penal Code. The power to inflict the punishment of whipping is also vested in a Magistrate of the first class. The term of imprisonment which a second class Magistrate may award is six months, but a Magistrate of the third class cannot pass a sentence of imprisonment exceeding one month. All classes of Magistrates are also authorised to pass a sentence of fine, but a Magistrate of the first class cannot pass a sentence of fine exceeding one thousand rupees, a Magistrate of the second class, one exceeding two hundred rupees, and a Magistrate of the third class, exceeding rupees fifty. Magistrates of the second and the third class are not empowered to pass a sentence of whipping. As regards solitary confinement a Magistrate of the third class is not, but a Magistrate of the second class is, authorised to order that a portion of the sentence of imprisonment should be of the description known as solitary confinement. Twice the amount of imprisonment which a Magistrate is authorised to award may be inflicted by him when passing a sentence for two or more offences at one trial. Of course, the Court of any Magistrate may pass any lawful sentence combining any of the sentences which it is authorised by law to pass.[1]

In the Punjab, Sind, the Central Provinces, Coorg, and Assam and in Oudh and some other parts of the country the Local Government may also confer on certain Magistrates of the first class the powers resembling those of an Assistant Sessions Judge. Such Magistrates can pass any sentence except that of death and of transportation or imprisonment in excess of seven years.

Subpoena.—A subpœna is a document compelling the attendance of a witness in a Court of law under a penalty. When it is served on a witness to give evidence and produce documents before a Court, he must do so punctually. Non-compliance in a civil case may render him liable to an action for damages, and in a criminal case, to fine or imprisonment, unless some reasonable excuse is forthcoming.

In civil cases it is customary to offer a fee, termed *conduct money,* on serving a subpœna. If this is not done, the medical man may ignore the subpœna, if he so desires. In a case where a medical man considers the fee offered at the time of the service of a subpœna less than what he is entitled to, he must ask to have his proper fee paid before being sworn to give evidence, and the presiding Judge will decide the fee to be paid in the circumstances. It is possible that the fee allowed by the Judge may be much less than what he expected. Hence, in order to avoid disappointment, the medical man will be well advised to make sure of his adequate remuneration before giving a report on a case which will eventually lead to litigation, unless it happens to be a case where he is bound in duty to give evidence. It should, however, be remembered that no unreasonable difficulty in the matter of payment of fees should be raised in cases tried in civil Courts under the Workmen's Compensation Act, 1923 as modified up to the first August, 1938.

1. See *Appendix VI for different sections of Cr. P. Code.*

In criminal cases no fee is tendered at the time of serving a subpœna ; the independent medical practitioner may demand a fee at the time of giving professional evidence before taking the oath, but he should not insist on its payment if the presiding officer of the Court is not willing to sanction the sum demanded by him. He must give evidence, or he may find himself in the inconvenient position of being charged with contempt of court. In the case[1] of *K. E.* v. *Ram Narain Sharma* it was held that " in a warrant case ordinarily it is the Government that may pay the expenses of the witnesses both for the crown and the defence and, therefore, it is the duty of the Magistrate to fix the fees of the witnesses. He cannot leave to the parties to negotiate with the witnesses and fix the fees, even in the case of experts. If an expert witness on payment of a reasonable fee fixed by the Magistrate declines to give evidence the Magistrate can compel him to do so." The Government have not laid down a definite scale of fees payable to medical practitioners for attending to give professional evidence in criminal prosecutions, although in framing the rules under Section 544, Criminal Procedure Code, for the payment of the expenses to the witnesses attending before any criminal Court, they have laid down that " witnesses following any profession, such as medicine or law, shall receive a special allowance according to circumstances and custom."[2] It[3] is customary to pay the usual fee of sixteen rupees to a Civil Surgeon and ten rupees to a member of the Provincial Medical Service in charge of a dispensary for giving evidence in a Magistrate's Court as expert witnesses in summons cases under Section 244 (3) of the Criminal Procedure Code[4] and for the defence in warrant cases under Section 257 (2) of the Criminal Procedure Code.[4] When summoned to give evidence in warrant cases medical officers in Government service are not entitled to their fees as experts, but are usually paid two rupees as travelling expenses if they are employed in the town where the Court is held.

When summoned on the same day to attend at two Courts, civil and criminal, the medical witness should attend at the criminal Court, and inform the civil Court of his inability to do so on account of his presence in the criminal Court, which has the preference over it. If summoned to two Courts, both civil or criminal, the witness should first attend at the higher Court. If, however, both Courts happen to be of the same status, he should go to the Court from where he received the summons first, and inform the other Court of the fact, or should attend there after he has done with the first Court.

Oath.—On being called into the witness-box the witness has to take the oath before he gives his evidence. It may be noted here that the medical witness, if he happens to be a gazetted officer, has not to stand in the witness-box, but is usually offered a chair on the dais by the side of the presiding officer. As a rule he is shown special consideration, as the nature of his duties is such that he is not kept in attendance in the

1. *Criminal Law Jour., Nov.*, 1932, *p.* 761 ; *also* vide 38 *Crim. Law Jour.*, 1937, *p.* 133 (*Lahore High Court Crim. Rev. Pet. No.* 521 *of* 1936, *K. E.* v. *Purshotam Das*).

2. Vide *Appendix II, Section* 107.

3. Vide *Appendix II, Sec.* 107, 4 (c).

4. Vide *Appendix VI.*

Court longer than necessary, and his evidence is often interposed out of its turn, so that he is released at the earliest moment.

A Christian in taking the oath has to kiss the "book", but this is not right from a hygienic point of view and he would be well advised to insist on taking it after the Scotch form, raising his right hand above his head and saying in a firm and loud tone:—"I swear by Almighty God, as I shall answer to God at the great Day of Judgment, that I will tell the truth, the whole truth, and nothing but the truth." A non-Christian in taking the oath has to repeat, while standing, "the evidence which I shall give to the Court shall be the truth, the whole truth, and nothing but the truth. So help me God." If a witness wishes to give his evidence on solemn affirmation, he has to say "I solemnly affirm that the evidence which I shall give to the Court shall be the truth, the whole truth, and nothing but the truth."

In whatever form the oath is taken it renders the witness liable to be prosecuted for perjury under Section 193 of the Indian Penal Code,[1] if he fails to state what he knows or believes to be true. His evidence is then recorded in the following manner:—

(1) Examination-in-chief, (2) Cross-examination, (3) Re-examination, (4) Questions put by the Judge, juror, or assessor.

(1) **Examination-in-chief.**—This is the first examination of a witness by the party who calls him. In Government prosecution cases the prosecuting inspector, as a rule, first examines the witness to elicit the principal facts concerning the case. If the witness is summoned by a private party, he is at first examined by the pleader of that party. In this part of the examination leading questions,[2] *i.e.*, questions which suggest their answers, are not allowed except in those cases in which the Judge is satisfied that a witness is hostile, and tries to conceal the true facts. "Did you see X striking Y with a stick on a certain afternoon" is a leading question, as that suggests the answer "yes". It cannot, therefore, be put to the witness. The proper forms of the question in a case of an assault are:—"When did this incident occur? Where were you at the time? What did you notice? and so on." In that case the witness will narrate the whole incident of X striking Y as he saw it.

(2) **Cross-examination.**—This is held by the counsel for the accused who tries to elicit facts, or demonstrate the possibility of theories, not necessarily inconsistent with the evidence the witness has given, but helpful to his own case. In this examination leading questions are permissible, and the witness should be very cautious in answering them. He should not attempt to answer the questions, unless he clearly and completely understands them, as the cross-examiner often tries every possible means to weaken his evidence, thereby showing to the Court that the evidence in question is conflicting and worth nothing.

In some instances cross-examination acts as a double-edged sword, which cuts both ways, *i.e.*, it may damage the defence as much as, nay, sometimes more than, the prosecution, specially if the counsel is not

1. Vide *Appendix VII.*
2. Vide *Appendix V, Sec.* 141, *Indian Evidence Act.*

familiar with medical science, and the witness happens to be well up in his subject, and at the same time honest and straight-forward.

There is no time limit to the cross-examination. It may last for hours or even days, although the presiding officer can always disallow irrelevant questions and cut short the cross-examination. On one occasion I was cross-examined for six days (the examination lasting two hours every afternoon) in a civil case for the recovery of professional fees against a barrister who raised an issue of malpractice. In the end the case was compromised and the barrister had to pay full fees including expenses. On another occasion I was cross-examined for six hours in a case of murder. At last when the defence pleader could not shake me in my statement, he appealingly asked if there was anything in favour of his clients. I replied that I would have informed the Magistrate long time ago if there was anything in their favour, as I was there to assist the administration of justice.

(3) **Re-examination.**—The prosecuting inspector or the counsel, who conducts the examination-in-chief, has the right of re-examining the witness to explain away any discrepancies, that may have occurred during cross-examination; but the witness should not introduce any new subject without the consent of the Judge or the opposing counsel, lest he should be liable to cross-examination on the new point thus introduced.

(4) **Questions put by the Judge, Juror, or Assessor.**—The Judge, juror or assessor may question the witness at any stage to clear up doubtful points.

MEDICAL EVIDENCE

Medical evidence given before a Court of law is of two forms, *viz.*, (1) documentary and (2) oral or parole.

(1) **Documentary Evidence.**—This includes

(a) Medical Certificates.

(b) Medico-legal Reports.

(c) Dying Declarations.

(a) **Medical Certificates.**—These are the simplest forms of documentary evidence, and generally refer to ill-health, unsoundness of mind, death, etc. These certificates should not be given lightly or carelessly, but with a due sense of responsibility for the opinion expressed in them. They are not accepted in a Court of law unless they are granted by a medical practitioner registered under the Provincial Medical Council Act.

In giving a certificate of ill-health a medical man should mention the exact nature of the illness, and preferably should take, at the bottom of the certificate, the thumb-mark impression or signature of the individual to whom it refers.

A medical man should remember that, on the occurrence of the death of a person whom he has been attending during his last illness, he is legally bound to give a certificate stating, " to the best of his knowledge and belief," the cause of death, for which he is not allowed to charge

a fee. The granting of such a certificate is not to be delayed, even if the fee for attending the patient during his lifetime is not paid. The medical man may, subsequently, sue the legal heirs of the deceased for his dues if he so desires. However, he must decline to give a certificate, if he is not sure of the cause of death, or if he has the least suspicion of foul play. In such a case the proper course for him is to report at once to the police authorities, before the body is removed for cremation or burial.

Civil Surgeons and superior medical officers are, sometimes, called upon to countersign death certificates, but they should not do so without inspecting the body. From the non-observance of such a precaution it has, sometimes, happened that a medical officer has been placed in an awkward position in a Court of law.

(b) **Medico-legal Reports.**—These are the documents prepared by the medical officer in obedience to a demand by an authorised police officer or a Magistrate, and are referred to chiefly in criminal cases relating to assault, rape, murder, poisoning, etc. These reports consist of two parts, *viz.*, the facts observed on examination, and the opinion or the inference drawn from the facts.

In order that they may be admitted as exhibits in evidence, these reports should be written up by the medical officer at the time the examination is made or immediately afterwards. They form the chief documents in judicial inquiries, and are likely to pass from the lower to the higher Courts, as well as to be placed in the hands of pleaders ; hence the utmost care should be used in preparing them. No exaggerated terms, superlatives, or epithets expressing one's feelings should be used. For instance, one should never say that " extensive damage to the skull and brain was the result of a particularly brutal, murderous assault," or " the deceased was evidently subjected to a particularly murderous attack in which throttling was also indulged in."

After noting the facts, the opinion should be expressed briefly and to the point. The medical officer must remember that he should always base his opinion on the facts observed by himself. He should not be biased by the statements of others. In drawing conclusions in medico-legal reports he should not depend upon information derived from any other source. However, if his opinion tallies with the information supplied, he should say so in his report.

An injury case should be kept under observation, and the fact notified to the police, if it is not possible to form an opinion immediately after examining it ; a hasty opinion should not be formed, even if pressed by the police.[1]

Articles of clothing, weapons, etc., sent for medical examination should be described with full particulars to facilitate their identification later on in Court. They should be labelled with the differentiating numbers or marks, and returned to the Superintendent of Police or Magistrate in a sealed cover, one's private seal being used ; the signature of the person, usually the police constable, receiving them should be taken. Those articles, which are likely to be sent to the Chemical

1. Vide *Appendix I.*

Examiner, should be kept under lock and key in the custody of the medical officer.

(c) **Dying Declarations.**—A dying declaration is a statement, verbal or written, made by a person since deceased, relating to the cause of his or her death or any of the circumstances of the transaction resulting in death. The medical officer in charge of a hospital or dispensary should at once send for a stipendiary or honorary Magistrate to record the dying declaration of a person, who is likely to die from the effects of criminal violence or other criminal cause.[1] If, in his opinion, there is no time to call a Magistrate, the medical officer should himself record the declaration. It should be recorded in full detail in the vernacular in the identical words of the declarant, in the form of question and answer, and in the presence of respectable witnesses. The accused or his pleader, if present, should be allowed to put questions to the declarant. The declaration should then be read over to the declarant, who should affix his or her signature or mark to it. When concluded, it should be signed by the medical officer recording it, who should also obtain signatures of respectable witnesses. If the declarant becomes unconscious, while the statement is being recorded, the medical officer writing it must record as much information as he has obtained and sign it, and obtain the signatures of the witnesses. If the statement is written by the declarant himself, it should be signed and attested by respectable witnesses. The declaration should then be forwarded in a sealed envelope direct to the District Magistrate or Sub-Divisional Officer concerned. If it can be avoided, the police officer who is engaged in the investigation of the case should not be allowed to be present, when the dying declaration is recorded. No undue influence should also be brought to bear on the declarant, who should be permitted to give his statement without any outside prompting or assistance.

It should be noted that the Calcutta High Court has ruled that in a case where a dying person is unable to speak and can only make signs in answer to questions put to him, the questions and signs put together might properly be regarded as a "verbal statement" made by a person as to the cause of his death within the meaning of Section 32 of the Indian Evidence Act, and are, therefore, admissible in evidence.[2] But statements of witnesses as to what interpretations they put upon the signs made by the declarant are not admissible.[3]

Under the Evidence Act of India, a dying declaration is admissible in Court as evidence whether the person who made it was or was not, at the time when it was made, under expectation of death, but it is essential that the declarant must be in a sound state of mind at the time of making the declaration.[4] It is, therefore, the duty of a medical attendant to certify that his patient is in a fit mental condition to make a statement before it is recorded. A dying declaration is admissible in all criminal and civil cases, where the cause of death is under enquiry.

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1. *For full details of the procedure* vide *Appendix I, Dying declarations.*

2. *Criminal Reference, No. 49 of* 1921; *Criminal Law Journal, May,* 1924, *Vol. XXV, p.* 529.

3. 38, *Criminal Law Jour.*, 1937, *p.* 281 (*Chandara Sekera alias Alisandiri, Privy Council Appeal from Supreme Court of the Island of Ceylon, Nov.* 12, 1936).

4. Vide *Appendix V, Sec.* 32 (1), *Indian Evidence Act.*