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Legal Medicine In Post Independent India

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ABSTRACT

India has celebrated golden jubilee of its independence last year. Presently, it occupies the status of the second largest populated country in the world. It has democratic, federal and cosmopolitan character. The legal medicine in the post independent India was inherited from English medicolegal system. During the last 50 years, there is a visible change in the legal medicine in the country due to rapid urbanization, increased level of education and entrance into the era of specialization in field of medicine. The change has become much more obvious in last decade due to enactment of various laws directly affecting medical profession. The basic frame work, expertise and teaching is existing in the country but in spite of these positive inputs, there are some shortcomings also. An over view of the legal medicine in this country is presented here to enable a better understanding of the changes that has already occurred and are still needed to continue in future for the proper growth of the specialty.

Keywords: Legal medicine, India, Forensic medicine, Medicolegal system

1. INTRODUCTION

India, the seventh largest country of the World in landmass, the second largest population in the world (~1000 millions) is having a cosmopolitan character consisting mainly of Hindu, Muslims, Sikhs and Christian with diversified caste system in the society became an independent, democratic, republic on August 15, 1947 and is presently consisting of 25 states and 7 union territories. More than 2/3rd population is engaged in agriculture and lives in villages, while majority of the city population works in trade and industry. The government is made by people, elected through the votes by the house of members of parliament and runs on federal, secular and democratic principles. The Constitution has provided two levels of governments one at centre the Union of Central Government and other at the state level called State Government. Geographically

it is surrounded by different countries on the east, north and west, while on the south has 3 huge water bodies namely: Bay of Bengal, Arabian sea and Indian Ocean. The land is not same everywhere and is divided into 5 regions: 1. The northern Mountain Wall; 2. The Northern Plain; 3. The Great Indian Desert; 4. The Southern Plateaus; and 5. The coastal plains and Islands.

The East India company which was established by the British in 16th century AD for trade purposes caused the entire Indian subcontinent to come under British rule after the downfall of Mugal empire.

As the British rule India for more than 3 centuries, the legal, medical and medicolegal systems of Britain prevailed in pre-independent India. At the time of independence in 1947 there were only 30 medical colleges in existence[1]. The number has now reached to 145[2]. More than 14 thousand graduate are passing MBBS (Bachelor of Medicine and Bachelor of Surgery) every year and more than 6 thousand postgraduates a re being trained every year in different disciplines of medicine.

The Medical education in the initial phase of independent India was purely governmental, but now there is a shift and large number of teaching medical institutions have been established in private sector also. National Academy of Medical Sciences (NAMS) an autonomous body under Ministry of Health also provides MNAMS (Member National Academy of Medical Sciences) in different disciplines which is taken as equivalent to postgraduate degree. The custodial of medical education in the country is Medical Council of India (MCI), an autonomous institution which monitors and regulate the standard of medical education apart from several other functions. Any institution wishing to impart medical education in the country has to obtain recognition from it. Only those doctors who possess the degrees recognized by MCI are registered with MCI or State Medical Councils (an organization similar to MCI, but functioning within the state only). Any doctor who wishes to practice medicine must be registered with either MCI or any of the state medical council.

2. TEACHING AND TRAINING OF LEGAL MEDICINE

The Legal Medicine in India is popularly known as Forensic Medicine. Although, in few state it is called with the name of Medical jurisprudence or State medicine. Medical colleges in the country have separate Forensic Medicine department. Toxicology is an integral part of the forensic medicine department in most of the places. The subject of Forensic Medicine is taught during the 2nd professional (3rd and 4th years) of 5 ½ years MBBS course.

The teaching is for 100 hours including theory, (consisting of whole range of legal medicine covering medical ethics, forensic pathology, clinical forensic medicine and physicians relation with the state) practical (consisting of clinical forensic medicine) and autopsy demonstrations[3]. The departments either have their own mortuaries or are attached to the district mortuaries for autopsy related work and teaching. The students read the books written by local authors during the course and also refers to books published in Europe and America. The faculty members spent about 25% - 100% time in teaching and training during the 18 months stay in 2nd professional varying from institution to institution. The student is examined by terminal examination held after every 6 months and final examination at the end of the professional, which consists of theoretical, practical and oral examination. External examiners from other states/universities are appointed for final examination. It is a must for every student to pass (obtain min. 50% marks) in the subject to move into next professional. There is also 15 days optional internship after completion of MBBS in order to acquire practical skill in the subject at a teaching hospital. The post-graduation is provided in

two forms a) M.D. (Doctor of Medicine in Forensic Medicine) and b) D.F.M. (Diploma in Forensic Medicine). Both degree and diploma courses are full time in which degree course is of 3 years duration and diploma of 2 years duration. Both the degree and diploma courses are available in large number of medical college. The admission to these courses is based on the performance in competitive examination held every year for all medical post-graduations organized in each state for medical colleges under them and at all India level for certain postgraduate institutes like All India Institute of Medical Sciences at New Delhi and P.G.I. Chandigarh etc.

During the post-graduation a student is required to study different branches of Forensic Medicine and Toxicology like thanatology, histopathology, clinical forensic medicine autopsy procedures and techniques, legal systems, ethics etc. He also has to watch/assist in the autopsies and even perform them and write reports under the supervision of faculty members. They are also required to participate in undergraduate teaching and attend courts. A postgraduate student also works on some project related to the subject and write the thesis before final year of the degree course. No thesis is required for diploma course. Postgraduate teaching is provided in the form of seminars, journal clubs, discussions and actual work experience in the department and mortuary. Formal lectures are generally not provided at majority of the places. After completion of the course, the candidate is examined by theory papers, practical and oral examination. On successful passing of the examination, the degree/diploma is awarded to the enrolled candidate, who then becomes eligible to be called as specialist in the subject and can apply for a specialist post in teaching/non-teaching cadre in medical college/hospitals and other institutions. No further government certification is required for such specialists, however any registered doctor can perform medicolegal work and autopsy and not necessarily to be a specialist. There are different nomenclatures used to designate the teaching staff i.e. Professor, Associate Professor and Asst. Professor or Professor, Reader and Lecturer, which are retained on permanent basis in the departments. Apart from these permanent post, few tenure posts known as Sr. demonstrators/tutor/ Sr. Resident are also available for a maximum 3 year duration, depending upon the workload of the department. It is compulsory to have a postgraduate degree/diploma in order to get appointment on a teaching post. The staff members of the medical colleges are paid fixed salaries and there is no fee per case payable by the authorities, except in a few states where a nominal incentive per autopsy/medicolegal case is paid in cash. The facilities of the institutes are confined to the police and courts and are not available to legal representatives of other parties in the legal action. Most of the staff in medical colleges have acquired their entire experience and qualification in India only. At national level there is an Indian Academy of Forensic Medicine established in 1972, which is purely a non governmental organization and holds annual conference and other scientific programme, but do not negotiates with the government for salary structure and other benefits. It is not mandatory to apply for membership of the academy by every specialist. However, most of them are member of this organization and present strength is ~400. The academy publishes a journal by the name of Journal of Indian Academy of Forensic Medicine and also awards fellowships in the field. There are two other abstracted journal available in the specialty by the name of Journal of Forensic Medicine and Toxicology published from All India Institute of Medical Science, New Delhi and Indian Journal of Criminology and criminalistics published by National Institute of Criminology and Forensic Science, New Delhi. Few other journal are also published at local levels, but there circulation is very low.

There is shortage of specialists in most of the medical colleges as post-graduation in the Forensic Medicine is not very popular in the country. The working conditions in the mortuaries is also no

congenial for the doctors and acts as deterrent to take up this specialty. There is no permanent Medicolegal/Forensic Council/Committee like is certain European countries. However, In the very first decade of independence in 1954 a Central Medicolegal Advisory Committee was constituted by Ministry of Health to advice on medicolegal matters with a view to upgrade the services by application of new and modern techniques and to advise the central and State governments on matters pertaining to medicolegal work. This was followed by another committee this time appointed by Ministry of Home to pursue the same matters. Two important observations made by this committee were:

(a) Medicolegal practice is more concerned with the Home and Law departments than the Health department; and (b) Medicolegal practice throughout the country is in a deplorable condition for the following reasons:

1. shortage of trained personnel in the profession;

2. absence of facilities like transport, cold storage, mortuary, instruments etc.,

3. absence of any initiative for the practitioner to take an interest in the so called dirty work;

4. lack of literature, standards and research on the subject with an Indian bias.

The committee further stated that such a deficiency is not fair for a trial and recommended the establishment of a state medicolegal institute in each state[4]. It is pertinent to maintain that the situation has not altered much even after 40 years and the majority of the states have not implemented the recommendations of these committees. While, the Central Medicolegal Advisory Committee was abolished in 1968 itself as a measure of economy[5].

3. THE MEDICOLEGAL PROCEDURES

The Indian Penal Code came in existence in the year 1860 and code of criminal procedure (Cr. P.C.) in 1861, both the code are still in existence although they are modified and amended time to time depending upon the country's requirements. As per the laws existing there are 3 types of inquests (Legal investigation into the cause and manners of death) carried out in the country: 1. Coroner's inquest; 2. Police inquest; and 3. Magistrate's inquest.

The inquest is carried out in cases of: (a) Sudden unexpected death; (b) Cases of homicide, suicide and accidents; (c) Infanticide; (d) Poisoning death; (e) Anaesthetic and medical negligence deaths; (f) Death in mental hospital, Remand home, jail or any place of detention; and (g) Any death occurring in mysterious circumstances.

Coroner's Inquest

Initially it started in the year 1871 in the presidency towns of Bombay and Calcutta. Currently Coroner's inquest is held nowhere in the country.

In rest of India, the police magistrate inquest is carried out.

Police Inquest

The police system of crime investigation in India was introduced in 1861 in which police investigates all types of sudden unexpected and unnatural deaths except the deaths specified in magistrate inquest. This is the most prevalent method of death investigation in the country and strongly deserves review, looking at the lacunas of the system.

Magistrate Inquest

The magistrate inquest is carried out under special circumstances, where death has occurred under any of the following circumstance: (a) police firing; (b) police custody; (c) in a prison, remand home or any other place of detention not certified by doctor or unnatural in nature, and (d) dowry deaths.

Here, the inquiry officer is a subdivisional magistrate/district magistrate/ special executive magistrate, who is a civil servant empowered by the state government to carry out the inquest. this type of inquest is also present throughout the country except the city of Mumbai. After the inquest proceedings are complete, the body is sent to the authorized mortuary for postmortem examination in all cases of homicide, accidents, unnatural sudden deaths, death in suspicious circumstances, deaths in police custody, jail or remand home, police firing and encounters, dowry deaths and even in cases of suicides. Certification of death can be made by any doctor whether or not he was in attendance upon the deceased during life if he is satisfied about the illness. A doctor is not legally bound to see the body after death in order to issue a certificate, unless the patient was under his treatment before. The autopsies are performed on direction by police/magistrate coroner and the doctor can not decide himself whether an autopsy is to be performed or not. Generally, more than 90% inquest leads to autopsy. However, in few cases the postmortem may be waived off by competent authorities like subdivisional magistrate or Asstt. commissioners of police. Autopsies are conducted at government authorized mortuary usually situated at district head quarters. The medial officers attached to the district hospital are posted to conduct postmortems. At some places autopsies are also conducted at medical college mortuary by the department of Forensic Medicine. The autopsies are full, and there is no provision of partial autopsy. A second autopsy can be ordered if police/relatives are not satisfied with the first. Majority of the Forensic Medicine department in medical colleges provide service facilities in forensic pathology and clinical forensic medicine only. While, the services in toxicology, serology, and pure criminalistics are largely provided by state forensic science laboratories working under home/police department, which can be utilized only through police or court and not directly by legal medicine experts or public.

4.BASIC STRUCTURE OF SERVICES

Level	Administrative/Legal Unit	Medical
Village	Pradhan/Head village man	Village Health worker (subcentre)
Tehsil	Subdivisional Magistrate/Tehsildar/ SDM court	Primary Health centre (PHC)
District	District magistrate/ District courts	District hospital/ upgraded PHC
Commissionary	Commissioner division/ Commissionary	Big Hospital/ Medial college
State	State Govt./High Court (At state capital)	State institutes (some states only)
Union	Union Govt./ Supreme court (At country's capital, N. Delhi)	

Basic unit of health and civil administration is at the level of village. The basic community level justice is administered by the lower level courts called Tehsildar's court, which takes case of the

civil matters, while the criminal courts are managed by magistrates. Both tehsildars and magistrates are full time government servants appointed through competitive examination. Each magistrate has a allocated area/police stations under his jurisdiction decided by the sessions/district court. The magistrates and judges work without jury and adheres to adversarial system of law. Both prosecutors, presiding officers and defence lawyers hardly get any training and refresher courses in medical and scientific field. District and session courts working at level of district entertains appeals against the tehsil courts judgments and also have trials for serious crimes like rape, murder, dowry death etc. occurring in their area. The district and sessions courts can award any punishment under the law but a death sentence is required to be approved by respective state high court before execution. The high courts are usually situated in state capitals and are the highest tribunals in an Indian state. They can try any offence and pass any sentence authorized by law. The Supreme court is the highest court of land dealing with all types of cases. The judgments of the Supreme court are binding on all subordinate courts in the country.

The prosecution is carried out by the prosecution branch of the state in association with police. The prosecution branch consists of chief public prosecutor and his assistants, who are law graduates appointed full time by the governments. In few special cases, leading advocates are also appointed as public prosecutors if need arises. A Forensic Medicine expert and other medical officers, who have dealt with the case are invariably required to testify before the trial courts, where opportunity to cross examine them is given to defence lawyers. There is no arrangement in existence at present by which an accused can call on an expert medical or scientific witness in his defence. No defence autopsies are carried out. Majority of the medicolegal input is for criminal courts only.

5. STRENGTH AND SHORT COMINGS OF PRESENTS SCENARIO

The present scenario of Forensic Medicine in India imbibes strength along with short comings. The positive aspect are: (a) compulsory teaching, training and evaluation during medical graduation before qualifying as a medical practitioner, (b) large number of medicolegal autopsies (one per thousand per year) more than 10,000/year in Delhi alone, (c) existence of basic framework for medicolegal expertise and teaching, (d) independency both administrative and financial from police and legal department;(e) sufficient seats for post-graduation in the specialty with formal training and evaluation leading to award of degree; (f) provision of subsequent autopsy/ reexamination in medicolegal cases; (g) existence of academy and association in the specialty. Inspite of the above strengths of the system, shortcoming are also numerous, such as: (a) police/ magistrate inquest; (b) shortage of manpower, equipment and other infrastructure in majority of mortuaries; (c) dominance of generalists in medicolegal work; (d) noninvolvement of private sector in the field; (e) no provision of defence autopsy; (f) lack of incentive for medicolegal work; (g) almost compulsory personal testification of medical evidence in the court of Law; (h) wastage of lot of time and some time unnecessary cross examination in courts; (i) lack of serology, toxicology and other ancillary facilities in majority departments; (j) lack of uniformity in reporting of examination and opinion in medicolegal cases; (k) absence of medicolegal council/committee for control; (l) absence of centre of excellence of the specialty in the country; (m) nonavailability of specialty to the legal representatives of accused and litigants of civil legal actions; (n) provision of only full autopsy (o) virtual absence of in-service training for medico-legal work to general practitioners.

6. FUTURE OUTLOOK

The increased level of education, awareness about legal rights and enactment of Consumer Protection Act[9] (which also includes medical profession along with other services and provides compensation in case of negligence) has lead to an exponential rise in litigation against medical profession in the country. The MCI has also started taking strong action against the medical institutions not having enough and permanent teaching staff. All these factors have shown a positive effect on the status of legal medicine in part few years and now a good number of postgraduates are being attracted to this specialty. It is expected that it will help in increasing the quality and quantity of the practice of legal medicine in future for which basic framework, expertise and teaching is already in existence. Further, a good international exchange has also started taking place. But, the full impact of the changing scenario can only be seen once the change is brought in the death investigation system in the country from police inquest to medical examiner system. Time and again a strong case is made for adoption of medical examiner system of inquest, wherein the forensic pathologist plays the pivotal role and leads the unnatural death investigation team[6]. The coroner system has failed to deliver the goods not only in developing countries but also in developed countries[6,7]. A model system as suggested by Bernard Knight (1988) can become a guiding factor in this regard[8]. It is hoped by majority of legal medicine experts in the country that adoption of medical examiner system can go a long way in strengthening the legal medicine in the country but presently there is no move in this direction. But, still considering the overall scenario majority of legal medicine experts in the country are hopeful of a better future of the specialty in the time to come.

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