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UNDERGRADUATE SECTION

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INTRODUCTION TO FORENSIC MEDICINE AND LEGAL PROCEDURES PREVALENT IN INDIA - PART II
(PART I) (PART II)

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Continued from PART I

Courts in India

Most doctors during their professional life would be required to attend courts of law off and on. Most of the times, they would be called as expert medical witnesses. A doctor who does not know about the various types of courts in India, and various rules, regulations, and procedures followed in the courts may commit serious (although unintentional) errors and mistakes during interaction with courts and court officials. To avoid unnecessary embarrassment, it is expedient to the doctor to know something about the various types of courts in India and the various procedures followed there.

1. Criminal courts in India:- Various types of criminal courts in India, in order of their powers are as follows:-

1.Supreme court

2.High courts

3.Sessions courts, which can be:-

1.District and Sessions Courts, presided over by the District and Sessions Judge

2.Additional District and Sessions Courts, presided over by the Additional District and Sessions Judge, and

3.Assistant Sessions Court, presided over by the Assistant District and Sessions Judge

4.Magistrate's courts presided over by:-

1.Chief Judicial magistrate. In any metropolitan area (cities with more than one million population), these are designated as Chief Metropolitan Magistrates

2.Judicial Magistrates of the first class. In any metropolitan area, these are designated as Metropolitan Magistrates

3.Judicial Magistrates of the second class, and

4.Executive Magistrates

2.Criminal courts (description)

1.Supreme court:-It is the apex court of the country, and is located in New Delhi. It supervises all lower courts. Parties dissatisfied with decisions in various high courts may go for an appeal in the Supreme court. The law declared by it is binding on all the lower courts in India (Article 141 of the Constitution of India). It has jurisdiction over all kinds of criminal offenses, and it can pass any sentence authorized by law, including the death sentence.

2.High Court:-It is the apex court of the state. Each state has one High Court, which is usually located in the capital. Parties dissatisfied with decisions in Sessions Courts may go for an appeal in the High Court. Just like the Supreme Court, it also has jurisdiction over all kinds of

criminal offenses and it can likewise pass any sentence authorized by law, including the death sentence. This power to the High Court has been conferred upon it by section 28(1) of the Cr.P.C. (Criminal Procedure Code).

3.The Sessions Court:- This is also known as the Court of Sessions (from Latin *sedere*, sit; thus the word signifies the sitting together of a court). There are several Sessions Courts in any given state, one Sessions Court being for each district. They are usually located at the District Headquarters. It is therefore also known as the District & Sessions Court. In addition to the Sessions Court, one or more Additional Sessions Courts may be there in a district, when felt necessary. The site of Additional Sessions Courts is fixed by the State Government, in consultation with the High Court. Both the District & Sessions Court and Additional District & Sessions Court have jurisdiction over all kinds of criminal offenses, but they can only try cases which have been committed to them by a Magistrate. Both the District & Sessions Judge, and Additional District & Sessions Judge have equal powers. They may pass any sentence authorized by law including a death sentence (sec 28(2) Cr.P.C.), but the death sentence can not be executed until it is confirmed by a High Court (sec 366 Cr.P.C.). If necessity demands, there may be Assistant Sessions Courts too. An Assistant Sessions Judge can pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years (sec 28(3) Cr.P.C.).

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4.Magistrate's courts:-These are presided over by magistrates. There are two kinds of magistrates, namely Judicial Magistrates (including Metropolitan Magistrates in Metropolitan areas) and Executive Magistrates. Judicial Magistrates can be of two classes, first class and second class. Executive Magistrates are appointed by the State Government and are usually officers of the Revenue Department such as District Collector, Sub-collector, or a Tehsildar. There duties are of an executive nature. They usually do not grant any punishment.

1.District level:-In every district, there is one Chief Judicial Magistrate with jurisdiction over the whole district (sec 12(1) Cr.P.C.). In addition, if the High Court so desires, it may appoint an Additional Chief Judicial Magistrate who would have all the powers of a Chief Judicial Magistrate (sec 12(2) Cr.P.C.). A district has several sub-divisions, and the High Court may appoint a Sub-divisional Judicial Magistrate who will be in-charge of the sub-divisions (sec 12(3)(a) Cr.P.C.). Chief Judicial Magistrate, Additional Chief Judicial Magistrate, and sub-divisional Judicial Magistrate are all magistrates of the first class. Junior to them are several Judicial Magistrates of the first class and second class.

A Chief Judicial Magistrate may pass a sentence of imprisonment up to 7 years, and of fine (sec 29(1) Cr.P.C.). A first class Judicial Magistrate can pass a sentence of 3 years' imprisonment and a fine of 5,000 Rs (Indian Rupees) (sec 29(2) Cr.P.C.). A second class Judicial Magistrate can pass a sentence of 1 years' imprisonment and a fine of 1,000 Rs (Indian Rupees) (sec 29(3) Cr.P.C.).

2.Metropolitan area:-If the area is a metropolitan city, having a population of more than 1 million, there would be a Chief Metropolitan Magistrate of that metropolitan area (sec 17(1) Cr.P.C.). He would be equivalent to Chief Judicial Magistrate in all respects. In addition, the High court may appoint an Additional Chief Metropolitan Magistrate (sec 17(2) Cr.P.C.), who would have all the powers of the Chief Metropolitan Magistrate. In metropolitan areas, there is no equivalent of a sub-divisional Judicial Magistrate. Junior to these officers are several Metropolitan Magistrates. Metropolitan Magistrates are equivalent to First Class Judicial Magistrates. *There is no such title as a 2nd Class Metropolitan Magistrate*. A Chief Metropolitan Magistrate has the same powers as that of a Chief Judicial Magistrate (sec 29(4) Cr.P.C.). Thus he can pass a sentence of imprisonment up to 7 years and of fine. A metropolitan Magistrate has the same powers as the Judicial Magistrate of the First Class (sec 29(4) Cr.P.C.). Thus he can pass a sentence of 3 years' imprisonment and a fine of 5,000 Rs (Indian Rupees).

It would now be useful to have a bird's eye view of all the judiciary and their powers.

Criminal Courts in India and their powers

Level	***Courts***
National	**Supreme Court**
State	**High Court**
District **(Courts of Sessions Judges)**	**District & Sessions Judge**
	Additional District & Sessions Judge
	Assistant District & Sessions Judge
District **(Magistrates' courts)**	**Chief Judicial Magistrate**
	Additional Chief Judicial Magistrate
	Judicial Magistrate of the first class
	Judicial Magistrate of the second class
Subdivision	**Sub-divisional Judicial Magistrate**

The above table should help crystallize the concept of criminal courts in India. In addition to above, it is useful to remember that there are Metropolitan Magistrates in metropolitan areas (population exceeding one million). They are equivalent to Magistrates' courts of the district level.

Criminal courts and Magistrates in Metropolitan areas

Magistrate	*equivalent to*
Chief Metropolitan Magistrate	Chief Judicial Magistrate
Additional Chief Metropolitan Magistrate	Chief Judicial Magistrate
Metropolitan Magistrates	Judicial Magistrate of the First Class

5.Special Magistrates:-These could be either Metropolitan, Judicial or Executive, and are appointed for special purposes, such as to try cases of rioting or of mass tragedies, such as Bhopal Gas Tragedy. These magistrates are appointed because regular magistrates would not be able to cope up with the extra work. Generally the work of these magistrates is time-bound, i.e. they have to complete the enquiry and punishment within a prescribed period.

6.Juvenile Magistrates:- These are usually ladies, and they preside over the Juvenile courts. These courts try Juvenile offenders who are children below 16 years of age, and are accused of having committed some crime. These children are tried under the Children Act 1960, which provides special concessions to children.

3.Punishment authorized by law:-Section 53 of the Indian Penal Code lists the various punishments authorized by law. During British times there were some more types of punishments which have now been banned. These are transportation for life (*Kala Pani*), and caning. The punishments now authorized by law are:-

1.Death sentence (It is given for rarest of rarest crimes)

2.Imprisonment for life

3.Rigorous or simple imprisonment for any period

4.Forfeiture of property

5.fine (any amount)

4.Offenses:-Offenses may be cognizable and Non-cognizable. All cognizable and non-cognizable Offenses are listed in schedule 1 of the Criminal Procedure Code (Schedules in legal statutes are something like appendices in a book. Just like a book gives some extra information as appendix one, appendix two and so on, various legal statues give additional information as schedule one, schedule two and so on). A cognizable offense is that in which a

police officer can arrest a person without an arrest warrant from a competent authority such as the magistrate (sec 2(c) Cr.P.C.). For a non-cognizable offense he would have to get an arrest warrant from the magistrate.

5.Subpoena:-(From Latin *sub*, under; and *poena*, pain or penalty. Thus the term literally means "under threat of penalty") This is a document issued by the court directing a person to appear before it as a witness, on a particular day and time.

Subpoena can be of two types:

(i) *Subpoena ad testificandum*: It compels a witness to attend and give evidence

(ii) *Subpoena duces tecum*: It compels a witness to give evidence and also bring with him certain documents in his possession (usually the post-mortem or the medicolegal report) specified in the *subpoena*.

If the witness fails to turn up, without a just cause, the court may impose a fine upon him or may even order for his imprisonment (hence the term "under threat of penalty"). The subpoena is a Latin term which is more commonly known by the English term summons. It is signed by the presiding officer of the court, and is usually served upon the witness by some official of the court. The summons are issued in duplicate. The witness retains one copy, and returns the other to the court after duly acknowledging that the summon has been received (one copy is reproduced in the appendices section). Normally a court requires all witnesses to be present in the court at 10 am sharp, but courts are generally quite lenient and considerate with doctors, and may allow them to come at a later time. In case the doctor desires to come late (he might be busy with his patients in the morning), it is advisable to write on the duplicate copy (which is returned to the court), that the doctor would be reaching at, say, 2 pm. However this is not the right of a doctor. Normally doctors who attend courts regularly (such as forensic pathologists or casualty medical officers) develop some kind of *rapport* with the courts and they (the courts) understand the exigencies of such doctors and grant this liberty to them. If a doctor who is new to the court adopts this method, he is likely to land in trouble.

Generally the summon specifies what article(s), the witness has to bring with him. A medical witness might have to take with him the original copy of the post-mortem report, age report or any other such medico-legal report which he might have prepared in the course of his profession. A radiologist might have to take X-ray plates to the court.

If a doctor can not come because of illness, he should arrange for a medical certificate to be sent to the court in time, so that the court may issue the next date for appearance to him. If he is busy in some other important work, as emergency medical service for which no doctor is available, he should inform the court accordingly, and the court would issue some other date to him. But under no circumstances should he avoid the court without giving a valid reason. Failure to obey summons without a just cause renders the witness liable to punishment. In a civil case, he may be liable to pay damages, and in a criminal case he is liable to fine and even imprisonment.

Doctors who are engaged in a fairly good amount of medico-legal work may get more than one summon (from different courts) to appear before them at the same date and time. This could be quite a confusing situation. The rule to follow in such situations is quite clear. The criminal court gets precedence over a civil court. Thus if the witness receives two summons, one from the civil and the other from the criminal court, he should attend the criminal court and inform the civil court accordingly, requesting it to allot some other date to him. In case both summons are from a criminal court, the doctor should attend the higher court first, and inform the lower court accordingly. The hierarchy of courts given above would help the doctor in deciding which court is to be given precedence. If both summons are from the criminal (or civil) courts of the same status, then he should attend the court from where he received the summons first, and inform the other court accordingly.

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6.Conduct money:-A witness is paid some amount to cover his traveling and other incidental expenses. This is known as the conduct money. In a civil case, the conduct money is paid by the party who calls him, and the money is paid at the time of the service of summons. If the doctor thinks the money is insufficient, even then he should not ignore the summons. He should attend the court, and before giving the evidence inform the magistrate, that the conduct money that has been paid to him by the party is insufficient. The magistrate would decide about the right quantum of money. In a criminal case, the money is not paid at the time of summons, but after attending and giving the evidence. If the doctor is a government servant, some courts only give a certificate to the effect, that the doctor had attended the court and was paid nothing by the court. On showing this certificate the doctor would get reimbursement of his traveling and other incidental expenses from his institute.

7.Recording of evidence:-It is very important for the doctor to know the procedure of recording of evidence, otherwise he might find himself fumbling before the court. The recording of evidence is given in detail in section 137 of the Indian Evidence Act, 1872 (IEA).

1.Oath:-The first step in recording of evidence is the oath. The witness is required to say in the name of God, that he would say the truth, the whole truth, and nothing but the truth. It is the duty of the court to administer the oath to the witness. Normally the oath is administered according to the religion of the witness. While taking the oath, normally, a Christian holds the Bible, a Hindu, the Gita, and a Muslim, the Koran. If a witness does not believe in God, he must make a solemn affirmation (SA). This means that he makes a serious declaration that he would speak the truth. He is also not required to touch any Holy Book. Normally a doctor is asked to proceed on SA only. Oath is not merely a formality. It has a definite legal connotation. *After taking an oath, a witness becomes legally bound to speak the truth and nothing but the truth.* Section 191 of the IPC says that if a person who is legally bound by oath to speak the truth, does not speak the truth, he would be deemed to have given false evidence. Section 193 of the IPC then prescribes the punishment for giving false evidence

which is imprisonment up to seven years and also fine. Giving false evidence while under oath is known as perjury.

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2.Examination-in-Chief (Direct examination):-This is the first stage of examination proper. The Examination-in-Chief is done by the party who has called the witness. This stage of examination is basically meant to bring out the facts of the case before the court. In connection with recording of evidence, it is very important to know the meaning of a leading question. A leading question has been defined in section 141 of the IEA. *Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question*. An example from daily life would clarify the concept of a leading question. Suppose A and B are friends. A third person C comes to A (when he is standing alone), and asks him for Rs (Indian Rupees) 1,000 as loan. A does not want to give loan to him and says falsely that he does not have any money as only the other day he had lent Rs (Indian Rupees) 5,000 to his friend B, and now he is short of money himself. Suddenly they see B coming towards them, and to convince C, A asks B, "Didn't I give you Rs (Indian Rupees) 5,000 yesterday?". This is a leading question, because the question itself would lead B to its answer. B would understand that there is something black at the bottom, and to help A he would say yes. Instead if C would have asked him," What did A give you yesterday?" (which is not a leading question), B wouldn't know what he has to answer. There would be no way before him except to tell the truth. If A did not give him anything, he would say that A did not give him anything. Even if he suspected that something mysterious was going on, and he wanted to help A, still he would not be able to do so, as he just does not know what answer would help A.

Thus a leading question may also be defined as a question which leads the witness to its own answer. One can find out whether a particular question is a leading question or not in a very easy way. Just see whether a question can be replied in "yes" or "no" or not. If the question can be replied in "yes" or "no", it is a leading question. If it can not be, it is not. For instance, the question," Are you 21 years old?", is a leading question, because it can be answered in yes or no. But the question," What is your age?", is not a leading question, because it can not be answered in yes or no. One has to give a definite answer to this question.

***Leading questions are not allowed in Examination-in-Chief*, except when the witness has turned hostile. This is so, because the Examination-in-Chief is done by the party who has called the witness. In other words, he is its own witness, and they might be working in collusion. If leading questions are asked from the witness, he would keep guessing what the lawyer wants from him, and keep towing his line. Suppose the lawyer asks," When you looked down from your window, didn't you see the accused rushing towards the victim with a dagger?" The witness would at once guess that an affirmative answer is required from him, and he would confidently say yes. Instead if the lawyer asks him," When you looked down from your window, what did you see?", the witness would have to think, and describe exactly what he saw.**

If despite all this, a leading question is asked from the witness, the other party can at once raise objection, and the presiding officer of the court (the magistrate or the judge) would caution the lawyer conducting the Examination-in-Chief. As the witness answers, a typist keeps typing his answers. Sometimes a magistrate himself records answers of the witness in his own writing.

3.Cross-examination:-After the Examination-in-Chief is over, the other lawyer comes over and starts the cross-examination of the witness. Cross-examination is the soul of the evidence. It is also the most tiring experience, as it can run into hours. Leading questions are allowed in cross-examination. The object of cross-examination is to show to the court that the witness is not trustworthy, and his statements are inconsistent. Leading questions help very much in this regard. Thus the witness must be careful what he says. As the questions can easily be answered in "yes" or "no", sometimes just to avoid trouble, and to extricate himself from the clutches of the lawyer (and to go home early perhaps), the witness may go on saying yes or no blindly, without giving much thought to what was being asked. This might land him in trouble as he might end up contradicting himself, which is what the lawyer wanted in the first place. During this stage, questions in an obscure language, (such as in double or even triple negatives) may be asked, and a witness must be careful about questions asked in such obscure language. For instance, a witness may be asked," Don't you think there is nothing in your post-mortem report to suggest that this dagger could not have produced the fatal wound?" This is a leading question framed in a very tricky language. It includes too many negative assertions, and a blind yes or no on the part of the witness may mean something which the witness never intended to say. If the witness thinks the question is asked in a tricky or obscure language, he should request the lawyer to put the question in unambiguous terms. If the lawyer insists on asking the question in the same language, the witness may request the presiding officer to direct the lawyer to ask questions in a more straightforward language.

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Cross-examination brings out the truth from the witness also. A witness who is willfully speaking lies will invariably end up contradicting himself, if questions were put through to him cleverly. If a clever lawyer is conducting the cross-examination, and if the witness spoke falsely in the Examination-in-Chief, he (the lawyer) could easily show in his cross-examination that the witness spoke falsely.

Sometimes the questions may be indecent or scandalous. These questions can be disallowed by the court (section 151 IEA). Sometimes, the lawyer would want to unnerve the witness by asking insulting or annoying questions. For instance he might ask," Didn't you pass your surgery examination in three attempts?", or "How many marks you got in your ENT examination?" or "Since how long have you not seen a patient of Diphtheria?". These questions may unnerve even a sincere witness. These questions are not admissible (section

152 IEA). The witness should at once object to the court that they are irrelevant questions, and the court would disallow such questions.

If the witness is well-informed, honest, and truthful, cross examination can often act as a double edged sword. The lawyer in his anxiety to discredit the witness, ask him questions which may go against his client. If the expert witness (the doctor) develops a good reputation in courts by preparing his cases well, the lawyers are often reluctant to grill him unnecessarily, as aimless questioning may sometimes go against them.

Cross-examination is not a necessary stage of the recording of the evidence. Expert medical witnesses are often clear and coherent and straightforward during the stage of Examination-in-Chief itself, so they are not cross-examined very much. Most of the time no questions are asked by them by the other lawyer. If no questions are asked by the other lawyer, the recording of evidence ends here. The typist types the heading "Cross examination", and then types beneath it "Nil, opportunity given", which means that no cross examination was done, despite having been given the opportunity to do so.

4.Re-examination:-The third stage is the re-examination, during which the first lawyer again begins asking the questions from the witness. Leading questions are not allowed in this stage too. The idea of re-examination is to clarify certain facts which were brought in by cross examination. If a new fact is brought in during the stage of re-examination, the other lawyer gets the right to cross-examine the witness again on the new point brought forward, otherwise, the recording of evidence goes on to the next stage.

5.Questions asked by the Judge:-If the presiding officer thinks that some point has not been properly elucidated during the examination of the witness, by either of the lawyers, he may ask questions from the witness himself. After this the recording of the witness ends.

Sometimes the cross-examination may go on so long, that a next date may have to be allotted to the witness. In that case the witness would have to come again on the next date. This is however a rare occurrence.

All the time the witness is speaking, the typist goes on typing whatever he says. After the recording of evidence is over, the typist types ROAC (Read Over And Corrected) below the typed statement, and the witness must sign over this. The witness must read the whole typewritten statement carefully and correct any mistakes manually. Not infrequently, there are several mistakes in the typing, as many medical terms are spoken during the recording, and the typist may have typed them wrongly. "Trachea" may become "treacherous", "clavicle" may become "clay vehicle", and "vas defrens", "vast difference"! If the witness signs the paper without reading, his statement may be misconstrued just for those typing mistakes. Only after he has read his statement thoroughly and corrected all the mistakes, should he sign under the heading ROAC. For this reason, and also to be always more comprehensible to the court, the expert medical witness should avoid speaking technical language in the court. Wherever a commonly understood word can do the job, it should be used instead of the technical word. The trachea should be referred to as windpipe, sternum as breast bone, clavicle as collar bone and so on.

After this, the witness would request the court to give him the conduct money. A T.A. bill would be made by a court official and signed by the presiding officer. The witness would take that T.A. bill to the cashier of the court who would reimburse him the money mentioned in the bill.

8.Medical Evidence:-Evidence means all legal means, which help to prove or disprove any matter before the court. Medical evidence means the evidence given or produced by a medical man.

1.Types of Medical evidence:-Medical evidence is of two types:-

1.Documentary evidence, and

2.Oral evidence

2.Description:-

1.Documentary evidence:- This means that the evidence given is in the form of some papers or documents. Such evidence may be

*1.*Medical certificate:-This is the simplest form of documentary evidence. It includes certificates such as sickness certificate, certificate of pregnancy, vaccination certificate, death certificate and so on. It is given to a patient when he or she requests the medical officer to do so. For instance, if a woman has been found pregnant by a doctor, he may be requested by the woman to give her a certificate to that effect. She might need it to produce it in her office to get maternity leave or may be some advance. The doctor may be called in court to verify on oath that what he had written in the certificate was correct. He may be cross questioned on that too.

*2.*Medico-legal reports:-This is a document prepared by a medical man in response to a request from some investigating authority, either a police officer or a magistrate. Medico-legal reports are usually made in criminal cases, and are meant for the guidance of the investigating authority. Most commonly the doctors would find themselves making injury reports in the casualty, which is a kind of medico-legal report (MLR). Other kinds of MLR are post-mortem reports, age reports, certificate of mental illness, certificate of drunkenness, certificates relating to impotency, sexual assault and so on. The basic difference between medical certificates and the MLR is that the former is made on the request of the patient, while the latter is made on the request of the investigating authority.

Medicolegal reports are later produced in the courts, and the medical witness would be cross questioned on that. The opposing counsel gets a copy of it, who has all the time in the world to study it, and find various mistakes and loopholes in it. If the MLR is not made carefully, the opposing counsel can annihilate the evidence completely by magnifying even the slightest of mistakes. Thus the doctor is well advised to take due care while preparing them. He should put the date, time, and place of examination, and the name of the individuals if any, who identified the person or body examined. In case of an MLR relating to a live individual, he should record two identification marks in the MLR. Later on he may be asked in the court to identify the individual. If he has put two identification marks in the MLR, he can refer to them and may easily do so.

*3.*Dying declaration:-It is a statement, verbal or written made by a person since deceased, narrating the cause of his condition, or the circumstances leading to that condition. *It is admissible in all criminal and civil cases where the cause of death is under enquiry*. A bride who has been burnt by her in-laws frequently gives statements regarding the cause of her condition, in the hospital, and if she dies later on, these statements are produced in the court as dying declaration, and are considered relevant by the court. It is commonly believed that dying declarations are considered relevant because a dying person never speaks a lie. This is not correct. According to section 32(1) of the IEA, such statements are relevant whether or not the person making them was under expectation of death. The reason why they are relevant is that they were made by a person who can not be called to the court now, and so whatever he has already said has to be relied upon. If the victim survives, the dying declaration (which strictly speaking no more remains a "dying declaration") ceases to have any value. In that case the victim would be called in the court and would have to face the cross questioning of the opposing counsel.

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Police officers would frequently come to the hospital to record the dying declaration of the person. The doctor should allow them only after he thinks that the patient is in a sound state of mind (*compos mentis*) and can comprehend the questions well. The patient should not be delirious or disoriented in time, space, or person, or unable to understand the questions in any other way. The doctor should see that the patient is not in undue agony. He can ask the patient how he is feeling. To test his orientation in time, space and person, he should ask standard questions, like "where are you at present?", "what time of the day is it, i.e. whether it is night, day, evening or noon?", and "who is standing by your bedside?", and so on. If after such examination, the doctor thinks that the patient is in a fit state of mind to answer the questions (which may be quite grueling at times), he should allow the police officer to ask the questions, otherwise he should gently ask him to leave the patient's room.

If the patient is fit to make the statement, the doctor should be present during the recording of the statement, to ensure that the patient is not being unduly taxed, and to ensure that he retains his mental faculties. The police officer or the magistrate (as the case may be) writes the statement on a piece of paper. He then reads over the statement to the person, who affirms that it is correct. If he points out some mistake, it has to be corrected. After the patient affirms that the statement is correct, he should be asked sign the statement, or put his left thumb impression over it. It should also be signed by witnesses. Finally the doctor should put his signature over it. The signature by the doctor signifies that the patient was *compos mentis* while the statement was being recorded.

In many western countries, including UK, there is a provision for the court to be brought to the dying man. *The dictum is that if the person can not go to the court, the court must go to the person*. In such cases, the magistrate comes to the bedside, in addition to the accused and his lawyer. The magistrate asks the dying person, what really happened and the person may implicate some person(s) for his condition which might lead to his death. Now the implicated person(s) or their lawyer may cross-examine the dying person, on whatever he has said. This procedure of examination is called Dying Deposition. Since in this type of evidence, the accused gets the advantage of cross-examining the witness, it has great evidentiary value. For the same reason, unlike the dying declaration, the dying deposition retains great value, even if the victim survives. In India, there is no provision for dying deposition to be recorded. The following table gives important differences between dying declaration and dying deposition.

S.No.	*Dying declaration*
1	It can be recorded by a police officer, a magistrate, or a doctor
2	No oath is administered
3	The accused and his lawyer need not be present. In fact, if they want to be present, the officer or magistrate recording the dying declaration would not allow them inside the pa room
4	No cross examination
5	It is merely the recording of a statement
6	Looses its value when the victim survives
7	Has got less value than dying deposition

8	**Followed in India**

2.Oral Evidence:-This includes all oral statements made in the court. *Oral evidence has got a greater value than documentary evidence, because the person giving such evidence can be cross examined*. By now, it must be becoming clear that in the recording of all types of evidence, cross examination has got a great value. Wherever the evidence has been grilled by cross examination, it comes to acquire great importance. Cross examination is like a *purifying fire*. It sifts the right from the wrong. Wrong statements can not hold sway before cross examination. The oral evidence can be:-

*1.*Direct:- Direct evidence refers to the evidence given by a person who actually saw or heard something. For instance, let us imagine that A saw B killing a person C. Later on A tells his friend D that he has seen B killing C. Now both A and D know that B has killed C. But A is the one who actually saw the deed, so if he gives evidence in the court, his evidence is direct. On the other hand if D is called to the court and he says that B killed C, it is an indirect type of evidence or hearsay because he never saw anything. He is merely repeating what A told him. He can not stand cross-examination by the opposing counsel. Section 60 of the IEA states, that wherever possible, oral evidence should be direct.

*2.*Indirect:-As stated above, it is a type of evidence given by a person who did not perceive it himself, but merely heard it from someone else. It has no value in a court of law.

It is important to realize that *all documentary evidence must be supplemented and corroborated by oral evidence*. Let us take the example of an autopsy report. It is a type of documentary evidence, as we have already seen. But it would not be accepted in court as such. The doctor would have to come to the court and face cross-examination. However there are certain instances, when it is either not possible to call the person concerned (say the person has died, or is a paralyzed individual) or is not considered necessary (say when a person has migrated to a foreign country, or when he is an expert who has given his opinion in a book or research article). In all such cases documentary evidence produced by such individuals is admitted as evidence without calling them for oral evidence. These exceptions are:-

1.Dying declaration:-It is a documentary evidence. Since the person who made this declaration has died, he can not come to the court for oral evidence

2.Opinion of an expert:-If an expert has opined upon something in some treatise, and he is now dead, his documentary evidence would have to be admitted.

3.Deposition of a medical witness in a lower court:-When a witness has given his evidence in a court of law, his evidence will be admissible in a higher court, without him being physically present there (sec 291 Cr.P.C.).

4.Reports of certain Government scientific experts:-Reports of the following officers are admitted in the court as such.

1.Reports of Chemical examiner (documentary evidence) are admitted as such. They do not need to come to the court (section 293(1) Cr.P.C.)

2.Reports of Chief Inspector of Explosives

3.Reports of Director, Haffkine Institute, Bombay

4.Reports of Director Fingerprint Bureau

5.Reports of Director Central Forensic Science Laboratory, or State Forensic Science Laboratory

6.Reports of serologist to the Government

5.Public records:-Records of births and deaths, marriage certificates etc are admissible as such.

6.Hospital records:-Routine entries such as date of admission and discharge of the patient, treatment given may be admitted as such without the concerned doctor to appear before the court.

9.Types of witnesses:- Witnesses are of two types:-

1. Common witnesses:- These are also known as ordinary witnesses or lay witnesses. These are the common people who saw a crime being committed. For instance a cobbler might have seen a crook taking out a dagger from his pocket and stabbing someone. When he gives evidence to this effect, he is known as a common witness.

2. Expert witness:-He is also known as a skilled witness. He is an expert is some branch of art or science, and can draw useful inferences from the observations made by him and others. *Under section 45 IEA, an expert witness is a person especially skilled in foreign law, science or art*. A forensic pathologist is an expert witness. He can look at the dead body and say when he must have died. Or he may look at the wounds on the body and opine how they must have been produced. An expert witness can volunteer a statement if he thinks that miscarriage of justice is being done, and his statements and opinions are being misconstrued. This means that he can say additional things, and clarify his point of view further even if not asked for. A common witness is not allowed to volunteer a statement. Other examples of expert witnesses are chemical examiner, ballistic expert, handwriting expert etc.

3. Hostile witness:-Both common and expert witness may turn hostile. Hostile witnesses are those who have some ulterior motive in concealing part of the truth or the whole truth. Usually these are the witnesses which were completely honest in the beginning but were later "bought" over by the other party. They may also have been threatened by the other party with dire consequences. If a witness has turned hostile, his earlier testimony is also rejected.

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