

Inquest: inquiry / investigation into the cause of death.

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→ Conducted in: • suicide                    • murder                    • killing by animal or machinery

• accidents                    • Death due to torture                    • Occupational diseases

• Suspected medical negligence                    • Unnatural death

• Death due to anaesthesia / operation

Police Inquest: officer-in-charge of a police station conducts the inquest (s. 174, G.P.C.)

→ police officers making the inquest = Investigating Officer (I.O.)

→ officer-in-charge of a police station receives information about death → he gives information about it to the nearest Executive Magistrate empowered to hold inquests → he investigates the scene of death along with ≥ 2 respectable persons (panchayat) → he prepares a report → inquest report (panchanama) is signed by I.O. & panchayat → if no foul play is suspected ⇒ dead body is handed over to the relatives for disposal.

- In case of suspected foul play  $\Rightarrow$  body is sent for postmortem examination to the nearest authorised Government doctor.

→ autopsies can be conducted only with the permission of the State Government.

Magistrate Inquiry: conducted by a District Magistrate (Collector/Deputy Commissioner) or any other Executive Magistrate (especially empowered by the State Government).

→ done in case of:

- i) death in police custody, & while under police interrogation.
- ii) death due to police firing.
- iii) death in prison, reformatories, Borstal school.
- iv) death in a psychiatric hospital.

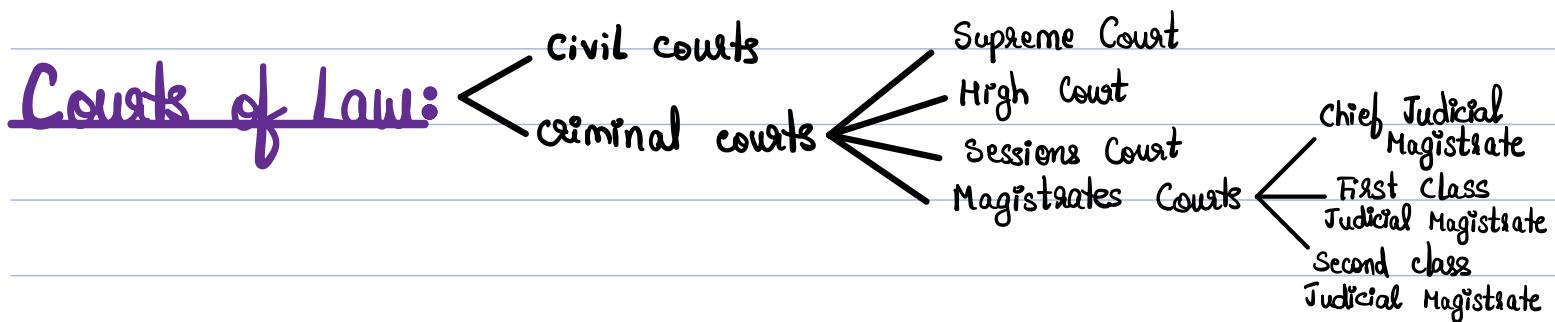
- v) dowry deaths
- vi) exhumation
- vii) any person dies or disappears or rape is alleged to have been committed on any woman (while such person is in the custody of the police or in any other custody authorised by the court).

Medical Examiner's System: a type of inquest conducted in most states of the USA, Japan, Canada, etc. (not in India)

→ a medical practitioner (known as Medical Examiner) is appointed to perform the function of Coroner.

- he has no judicial function of the Coroner
- no authority to order arrest of any person.

→ Superior to Coroner's & police inquest (∴ doctor visits the scene of crime).



Summons/Subpoena: sections 61 to 69 of G.P.C.

→ document compelling the attendance of a witness in a Court of law under penalty, on a particular day, time & place, for the purpose of giving evidence.

→ issued by the Court in writing, signed by the presiding officer of the Court.

>If the witness fails to attend the Court:

- In a civil case: liable to pay damages.
- In a criminal case: sentence of fine or imprisonment or Court may issue bailable / non-bailable warrants to secure the presence of the witness.

Conduct money: fee offered / paid to a witness in civil cases, at the time of serving the summons to meet the expenses for attending the Court.

→ In criminal cases ⇒ no fee is paid to the witness.

Juvenile Courts: based on the principle that children differ mentally from adults.

- for all persons < 18 years of age. (s. 27 CrPC)
- usually presided by a 1st class woman magistrate.

Medical Evidence: all statements which the Court permits or requires to be made before it by witnesses or all documents produced for inspection of the Court.

Types:

1] Documentary: sections 61 to 90 of Indian Evidence Act

i) Medical Certificates: documents prepared by the doctor at the request of the patient & are handed over to the patient.

→ accepted by a court of law only when issued by a qualified registered medical practitioner.

\* Certificate of ill health - identification marks of the patient

- exact nature of illness
- period of expected absence.

\* Death Certificate:

- if doctor has attended a patient during his last illness & the patient dies  
⇒ doctor must issue the certificate without charging any fee.
- death certificate must never be issued without inspecting the dead body.
- if doctor is suspicious about cause of death ⇒ he must inform the police.

→ Issuing false / back date certificates is punishable under s. 197 IPC

• patient using such certificate is punishable under s. 198 IPC.

ii) Medico-legal Reports: documents prepared by the doctor at the request of some investigating authority (police / magistrate / etc.) & are handed over to him.

→ Structure of the report: 3 parts

\* Preliminaries: serial number, name, father's/husband's name, age, sex, address, occupation, 2 identification marks, date & time & place of examination, consent, etc.

\* Body: alleged history by patient / accompanying person, observation, findings, special investigation.

\* Opinion & Subsidiaries: conclusions derived

iii) Dying Declarations: documents prepared on the statements of a person dying as a result of some unlawful act.

→ example of hearsay evidence.

→ before recording the statement, doctor should certify that the declarant is fit to make a statement (compos mentis).

→ anyone can record.

→ can be recorded by: • Executive Magistrate

• Doctor

• Police

→ oath not administered.

2] Oral Evidence: all verbal statements under oath made before the court which it permits.

Dying to Deposition: statement of a dying person on oath, recorded by the magistrate in the presence of the accused or his lawyer, who is allowed to cross-examine the witness.

→ its evidentiary value is more.

→ not held in India.

	Dying declaration	Dying deposition
Recorded by	Anyone (police officer/ magistrate/ doctor)	Always recorded by a judicial magistrate or judge
Oath	Not administered	Must be administered
Presence of accused & lawyer	Not necessary	Necessary
Cross-examination	No	Yes
Nature	Merely the recording of a statement	Full-fledged court procedure (Court by the bedside)
Type of evidence	Documentary	Oral
If victim survives	Loses value	Retains value
Legal value	Less	More
Prevalence in India	Yes	No

Chain of Custody of Evidence: method to verify the actual possession of an object from the time it was first identified until it is offered as evidence in the Court.

Witnesses: a person who gives evidence regarding facts.

[s. 118 to s. 134 of I.E.A]

→ all persons are competent to testify, unless they cannot understand questions put to them because of - disease of body/ mind  
 - extreme young age  
 - extreme old age.

## Types of Witnesses:

I] Common (Ordinary) Witness: person who tenders evidence about the facts observed / perceived by him.

→ no specialized knowledge is required in tendering evidence.

II] Expert Witness: person who is skilled / trained in some scientific / technical subject & is capable of drawing conclusions & opinions from the facts observed by himself, or noticed by others.

III] Hostile Witness: (adverse / unfavourable / unwilling witness) → one who conceals whole / part of the truth & offers adverse testimony against his own party.

## Poisoning: giving willful false / fabricated evidence.

- being legally bound by an oath.
- by an express provision of law to state the truth.
- being bound by law to make a declaration upon any subject.
- makes any statement which is false.
- which he either knows / believes to be false or does not believe to be true.

## Recording Evidence:

→ Sequence: Oath → Examination-in-chief (direct examination) → Cross-examination → Re-examination → Questions by Judge

→ Recording of evidence must be in the presence of accused / his pleader.

I] Oath: promise made in the name of God, that the witness will speak the truth & nothing but the truth.

→ Exceptions:

- Child < 12 years
- Atheist
- When accused is examined as a prosecution witness in a criminal trial

#### II] Examination-in-chief: first examination of witness

- Done by lawyer of the party which calls him
- In criminal cases → the State becomes the prosecution party & starts criminal prosecution as 'State versus A'.
- Objective: to elicit all relevant, convincing medical facts & the conclusions which the doctor has drawn from the facts.
- Leading questions are not allowed.

#### III] Cross-Examination: witness is questioned by the lawyer of the opposite party (lawyer of the accused → defense lawyer).

- Objective:
  - to elicit facts favourable to cross-examining party.
  - to test the accuracy of statements made by the witness
  - to discover who he is & what is his position in life
  - to discredit him, by injuring his character
  - to develop new/old facts

→ leading questions may be asked.

→ if a witness is forced to give an answer admitting any guilt/crime on his part → such answers cannot be used against him in any criminal proceeding (s.132 IEA).

#### IV] Re-examination:

- conducted by lawyer of the party who summoned the witness
- Objective:
  - to add detail to statements that the witness made during cross-examination
  - to clarify ambiguities
  - to correct any mistake.

#### V] Questions by Judge: the judge may ask any questions in any form, at any time.

## Conduct & Duties of the Doctor in the Witness Box:

- 1] Be well prepared with the details of his evidence before entering the box.
- 2] Take all the records & relevant reports that may have to be quoted in the box.
- 3] Do not discuss the case with anyone in the Court, except the lawyer by whom you were asked to testify.
- 4] Be well-dressed & modest.
- 5] Stand-up straight.
- 6] Be relaxed & calm (not frightened & nervous).
- 7] Never attempt to memorise.
- 8] Speak slowly, distinctly & audibly so that the Judge can record your evidence.
- 9] Look people in the eye when you speak (it gives the impression of honesty).
- 10] Speak with assurance. Be confident.
- 11] Use simple language, avoid technical terms.
- 12] Avoid superlatives & exaggerations.
- 13] Do not fumble in referring to case notes, records, etc.
- 14] Address the Judge by his proper title — Sir / Your Honor.
- 15] Avoid difference between your record & your testimony.
- 16] Do not underestimate the medical knowledge of the lawyers.
- 17] Be pleasant, polite & courteous to the lawyer.
- 18] Do not avoid a question. (it is okay to say — I don't know).
- 19] Never become hostile / rude / angry / sarcastic. Do not lose your temper.
- 20] Retain independence of your mind. Be honest, unbiased.
- 21] Listen carefully to the questions.
- 22] Avoid long discussion. Answers should be brief & precise (Yes / No).
- 23] Consider all aspects of the question before answering it.
- 24] When asked to comment upon the competence of a colleague, avoid any insulting remarks.

25] Textbooks of established repute can be produced in evidence.

26] Information should not be volunteered beyond that asked for in the question.