

- **Indian Penal Code (IPC) 1860:** It is a comprehensive code that deals with substantive criminal law of India. It defines various offences and prescribes code for punishment in the court of law.<sup>1</sup>
  - **Criminal Procedure Code (CrPC) 1973:** It deals with procedures of investigation and the mechanism for punishment of offences against the substantive criminal law.
  - **Indian Evidence Act (IEA) 1872:** It relates to evidence on which the court come to conclusion regarding facts of the case. It is common to both the criminal and civil procedure.
- iii. Death from accident, poisoning, drug mishap or machinery.
  - iv. Unexplained death or death from burns or fall from height.
  - v. Death under anesthesia or on operation table or from postoperative shock.
  - vi. Death due to medical negligence or within 24 h of admission in a hospital.
  - vii. Death of a convict in jail, police custody, mental hospital or correctional school.
  - viii. Dowry deaths (in India).
  - ix. Death due to any industrial disease (not held in India).

## Inquest

**Definition:** An inquest (Latin *quaesitus*: to seek) is an inquiry or investigation into the cause of death where death is apparently not due to natural causes.

It is done in cases of:

- i. Sudden death.
- ii. Suicide, homicide and infanticide.

## Types of Inquest

Two types of inquests are held in India: (Diff. 3.1)

- i. Police inquest (most common)
- ii. Magistrate inquest

**Other types of inquests** (not held in India):

- i. Coroner's inquest
- ii. Medical examiner system
- iii. Procurator fiscal

**Differentiation 3.1: Magistrate and police inquest**

S.No.	Feature	Magistrate inquest	Police inquest
1.	Investigating officer	Inquest conducted by DM, SDM, and Magistrate who is qualified and experienced	Conducted by police officer who is not qualified in law or medicine
2.	Informing magistrate	Need not inform anyone	Needs to inform the magistrate of the area
3.	Types of cases handled	Can hold inquest in all cases of suspicious deaths	Cannot hold inquest in cases of death in custody, jail, police firing or dowry deaths
4.	Witnesses	Police helps the magistrate. Does not require signature of the witnesses	<i>Panchas</i> help, who are chosen at random to sign the report
5.	Warrant for arrest	Can issue arrest warrant of the accused	Cannot issue warrant, but can arrest an accused in cognizable offence
6.	Exhumation	Can order a body to be exhumed	Cannot order
7.	Autopsy	Does not send dead bodies for autopsy indiscriminately	Sends dead bodies for autopsy indiscriminately
8.	Analysis of viscera	Can order chemical analysis of viscera	Cannot order
9.	Quality of investigation	Superior to police inquest	Inferior to magistrate inquest

## Police Inquest

- The provision for holding of inquest is outline in **Sec. 174 CrPC**.
- Police inquest is held by a police officer (known as the Investigation Officer—IO) not below the rank of senior head constable in all cases of unnatural deaths with the exceptions mentioned under Magistrate inquest.
- An inquest is a fact finding inquiry, to establish reliable answers to four important questions. The *first* relates to the identity of the deceased, the *second* to the place of his death, the *third* to the time of death and the *fourth* question is related to his apparent cause of death (whether accidental, suicidal and homicidal or caused by animal).<sup>2</sup>
- The rules of procedure forbid any expression of opinion on any other matter.
- It is not the requirement of law to mention the name of the accused, the weapon carried by them and who were the witnesses of the assault in the inquest report.
- Even if there is some discrepancy between the inquest report and the postmortem report, the list of injuries mentioned in the inquest report cannot prevail over the details of the postmortem report.

### Procedure

- Police officer, on receipt of information of death, gives intimation to the nearest Executive Magistrate empowered to hold inquests.<sup>3</sup>
- He then proceeds to the place of occurrence and holds an inquiry into the matter, in the presence of two or more respectable inhabitants of the locality (witnesses). The witnesses are called *panchas*.
- The inquest report so prepared is known as *panchnama*.
- If no foul play is suspected, the dead body is handed over to the relatives for disposal.
- In suspicious cases, the body is sent for postmortem examination to the nearest authorized doctor with a requisition and a copy of the inquest.
- The report is then forwarded to the District Magistrate or sub-divisional magistrate (SDM).

The police officer may summon persons who appear to know the facts of the case and the person is bound to attend and answer questions put to him (Sec. 175 CrPC). Refusal to answer questions is punishable under **Sec. 179 IPC** for a term of upto 6 months and/or fine of ₹ 1000.

## Magistrate Inquest

Inquest is conducted by District Magistrate, Judicial Magistrate, SDM or any Executive Magistrate empowered by State Government, such as the Sub-Collector or Tehsildar.<sup>4</sup>

- **Sec. 176 CrPC** deals with inquiry by Magistrate into cause of death.<sup>5,6</sup>
- It is practiced all over India.
- It is not held routinely, but only when especially indicated.

### Indications for Magistrate inquest<sup>7</sup>

- i. Deaths due to police firing.
- ii. Disappearance or death of a person in police custody or during police interrogation.<sup>8</sup>
- iii. Death of a convict in jail.
- iv. Exhumation cases (where the body is dug out of a grave).
- v. Rape alleged to have been committed on any woman in the custody of the police.
- vi. Dowry deaths (suicide/death of a woman within 7 years of marriage).<sup>9</sup>
- vii. Admission of a mentally ill person in a psychiatric hospital under certain provisions of Mental Health Act, 1987.

In addition to the above, the magistrate reserves the right to hold an inquest in any other case of death which he deems fit.

The Judicial Magistrate or the Metropolitan Magistrate holding the inquest should forward the body for examination by the Civil Surgeon or any other doctor appointed by the State Government within 24 h of the death of a person.

**Purpose:** The main intention behind the magistrate inquest is to ensure that:

- No person is unjustly deprived of his liberty and his rights as citizen.
- No person, who is deprived of his liberty, can die as a result of neglect or brutality of the people who are in-charge of him.
- In case of a person who is already buried, there is no doubt with regards to identity, cause of death or manner of death.
- The death is not a 'dowry death'.

### Coroner's Inquest (Diff. 3.2)

- **Coroner** is usually an advocate, attorney or 1st class Magistrate with 5 years experience or a Metropolitan Magistrate.
- He used to be appointed by state government to inquire into causes of unnatural or suspicious deaths.

**Open verdict** means an announcement of the commission of crime without naming the criminal (when the perpetrator of crime is not identified).

In India, the coroner system was introduced by the British in 1902 in the 'Presidency Towns' of Kolkata and Mumbai. Later on, the system was removed from Kolkata, and still later from Mumbai (since 26th July 1999).

**Differentiation 3.2: Coroner's and Magistrate's court**

S.No.	Feature	Coroner's court	Magistrate's court
1.	Type of court	Court of inquiry	Court of trial
2.	Accused	Need not be present during trial	Should be present during the trial
3.	Punishment	No power to impose fine/punish	Can impose fine and punishment
4.	Contempt of court	Can punish a person for contempt, if committed within the premises of his court	Can punish whether offence is committed within or outside the premises of court
5.	Status in India	Not followed	Followed

**Medical Examiner System**

- This type of inquest is conducted in most of the states of US. A medical man (Board Certified or Board eligible forensic pathologist) is appointed to hold an inquest.
- He/she visits the scene of crime/accident to gather first hand evidence and interview people to obtain as much information as possible regarding circumstances of death.
- He/she performs autopsy and correlates autopsy findings with evidence and determines the cause and manner of death.
- The system is superior to other inquest where non-medical men/coroner conducts the inquiry.
- But the medical examiner does not have any judicial powers, e.g. he cannot examine the witness under oath and cannot authorize the arrest of any person.

**Procurator fiscal** is a public prosecutor in Scotland and has powers in the investigation of criminal matters. Amongst his roles is the investigation of sudden, unexplained or suspicious deaths including fatal accidents. He can request an autopsy to be performed by a forensic pathologist and presents cases for the prosecution in the Courts.

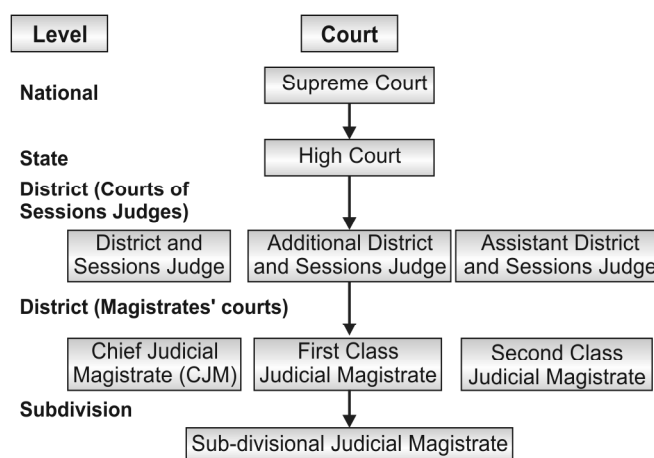
**Courts of Law**

Two types:

- Civil
- Criminal.

Criminal courts in India are of four types (Flow chart 3.1):

1. **Supreme Court** is the highest judicial tribunal and the highest court of appeal; located in New Delhi. It has the power of supervision over all courts in India. The law declared by it is binding on all courts.
2. **High Court** is usually located in the capital of every State and is the highest court in the state. Judges in a High Court are appointed by the President of India in consultation with the Chief Justice of India and the governor of the state.<sup>10</sup> It deals with Appeals from lower courts and writ petitions in terms of Article 226 of the Constitution.<sup>11</sup> It may try any offence and pass any sentence authorized by law (Sec 28 CrPC).

**Flow chart 3.1: Criminal courts in India**

3. **Sessions Court** is usually located at the district headquarters and is therefore also known as *District Session Court* and presided over by a 'District and Sessions Judge'.

- He is known as a District Judge when he presides over a civil case and a Sessions Judge when he presides over a criminal case. The district judge is also called 'Metropolitan Session Judge' when he is presiding over a 'Metropolitan area'.
- Appointment of district Judge is done either by the state Government in consultation with the High court or by way of elevation of judges from courts subordinate to district courts.
- It can try cases which have been committed to it by a Magistrate.
- It can pass any sentence authorized by law including death sentence which is subject to confirmation by the High Court (Sec. 28 CrPC).

**Assistant Session Court** can pass any sentence authorized by law except a death sentence or imprisonment for a term exceeding 10 years.

4. **Magistrates' Courts** are of three types:
  - Chief Judicial Magistrate
  - First Class Judicial Magistrate
  - Second Class Judicial Magistrate.

- In metropolitan cities with more than one million population, the Chief Judicial Magistrate and First Class Judicial Magistrate are designated as Chief Metropolitan Magistrate and Metropolitan Magistrate respectively.
- The High Court appoints the Judicial Magistrate of first class to the Chief Judicial Magistrate (Sec. 12 CrPC).<sup>12</sup>
- Powers of Magistrate court is given in Table 3.1 (Sec. 29 CrPC). Higher court can enhance the sentence awarded by it.

**Special Magistrates:** They could be either Metropolitan Judicial or Executive Magistrates and may be appointed for a special purpose, e.g. to try cases of rioting.

- Under the **Juvenile Justice Act, 2000**, a Board to try juvenile offenders should consist of a Judicial Magistrate of first class (or Metropolitan Magistrate) and two social workers, out of whom at least one should be a woman.<sup>15</sup> They will form a Bench and have the powers of Judicial Magistrate of the first class, and the Magistrate on the Board is designated as the principal Magistrate.
- As per the Act, 'juvenile' or 'child' means a person who has not completed 18th year of age.<sup>16</sup>
- If the juvenile is found guilty of serious offence, he/she is not given life imprisonment or committed to prison, but sent to reformatory school (formerly called as Borstal) or special home for rehabilitation.

Under the **Code of Criminal Procedure (CrPC)**, offences are classified as:

- **Bailable offences** are those in which bail can be granted by the law. The court cannot refuse bail and the police have no right to keep the person in custody. For example, causing death by rash or negligent act (Sec. 304A IPC), causing miscarriage (Sec. 312 IPC), voluntarily causing hurt (Sec. 323 IPC) and grievous hurt (Sec. 325 IPC).
- **Non-bailable offences** are those in which bail cannot be granted. These are the serious offences and the decision is taken by a Judicial Magistrate only. The police must produce the accused before the Judge within 24 h of arrest. At that time, the accused has a right to apply for bail himself or through his lawyer. E.g. cases of murder (Sec. 302 IPC), attempt to murder (Sec. 307 IPC), dowry death (Sec. 304B IPC), causing

miscarriage without woman's consent (Sec. 313 IPC) or voluntarily causing grievous hurt by dangerous weapons (Sec. 326 IPC).

- **Warrant case** is related to an offence punishable with death, life imprisonment or imprisonment for  $\geq 2$  years; e.g. murder, dowry deaths, attempt to murder cases.<sup>17</sup>
- Cases other than warrant cases are **summons cases**; e.g. cases of attempt to suicide or voluntarily causing hurt.
- **Cognizable offence:** It is an offence in which a police officer can arrest a person without warrant from the Magistrate, e.g. rape, murder, dowry death or attempt to murder.
- **Non-cognizable offence** is an offence in which the police officer cannot arrest without a warrant from the Magistrate, e.g. causing miscarriage, voluntarily causing hurt or intercourse by a man with his wife during separation (376A IPC).

#### *Sentences authorized by law*

- i. Death (hanged by neck till death)
- ii. Imprisonment for life
- iii. Imprisonment—rigorous, simple or solitary
- iv. Forfeiture of property
- v. Monetary fine
- vi. Treatment, training and rehabilitation of juvenile offenders

### Capital Punishment

- **Capital punishment** (Latin *capitalis*: regarding head) or death penalty is the killing of a person by judicial process as a punishment for an offence.
- Various methods of carrying out death sentence are: Hanging, electrocution, shooting, cyanide poisoning, lethal injection, garroting and guillotine.
- The power of amnesty for capital punishment in India is vested with the President of India.

- Most democratic countries have abolished the death penalty, including Canada, Australia, New Zealand, almost all of Europe and much of Latin America. Among western countries, the first to abolish capital punishment was Portugal.
- Lethal injection is now virtually the universal method of execution in US.

**Table 3.1: Powers of Magistrate**

Magistrate	Period of Imprisonment	Amount of fine
Chief Judicial/Chief Metropolitan <sup>13</sup>	Upto 7 years	Without limit but as per law
1st Class Judicial/Metropolitan <sup>14</sup>	Upto 3 years	Upto ₹ 10,000
2nd Class Judicial	Upto 1 year	Upto ₹ 5,000

**Guillotine:** Device used for carrying out executions by decapitation. It consists of a tall upright frame from which a heavy blade is suspended. The blade is raised with a rope and then allowed to drop, severing the victim's head from their body. The device was used for execution in France and, more particularly, during the French Revolution.

### Subpoena or Summons<sup>18</sup>

**Definition:** *Subpoena* (Latin, under punishment) is a document compelling the attendance of a witness in a court of law, under penalty, on a particular day, time and place for the purpose of giving evidence.

- **Sec. 61-69 CrPC** deals with summons.
- It is issued by the court in writing, in duplicate and signed by the presiding officer of the court and bears the seal of the court (Sec. 61 CrPC).
- It is served on the witness by a police officer, by an officer of the court or any other public servant.
- The witness retains one copy (original) and returns the other one duly signed by him on the back, in acknowledgement of its receipt (Sec. 62 CrPC).
- Summon must be obeyed and if the witness fails to attend the court, then:
  - i. In civil cases, he will be liable to pay damages.
  - ii. In criminal cases, the court may issue notice under **Sec. 350 CrPC** and after hearing the witness, if it finds that the witness neglected to attend the court without justification, may sentence him to imprisonment and/or fine, or the court may issue bailable or non-bailable warrant to secure the presence of witness (Sec. 172-174 IPC and Sec. 87 CrPC).
- It may also require the witness to bring with him any books, documents or other things under his control, which he is bound by law to produce in evidence.
- The witness may be excused from attending the court, if he has valid and urgent reason.
- If a witness is summoned by two courts on the same day, one criminal and other civil, he should attend the criminal court (criminal courts have priority over civil courts).
- Higher court has priority over the lower. If summoned to two courts on the same day, either civil or criminal, he must first attend the higher court.
- If a witness receives two summons on the same date from the same type of court, he should attend the court from which he received the summon first and inform the other court.

- In ancient Persian law, if one failed to answer the summons of the King, the punishment was death.
- Subpoena can be of two types:
  - i. *Subpoena duces tecum*: Person is required to bring certain documents or other evidence to the court (usually the postmortem or the medico-legal report) specified in the subpoena.<sup>19</sup>
  - ii. *Subpoena ad testificandum*: Requires the individual to testify before the court.

### Conduct Money

**Definition:** It is the fee offered or paid to a witness in civil cases, at the time of serving the summons to meet the expenses towards attending the court.<sup>20</sup>

- If fee is not paid or if he feels that the amount is less, the doctor can bring this fact to the notice of the judge before giving evidence in the court. The judge will decide the amount to be paid.
- In criminal cases, no fee is paid to the witness at the time of serving the summons. He must attend the court and give evidence because of the interest of the State in securing justice; otherwise he will be charged with contempt of court. However, conveyance charges and daily allowance are paid according to the government rules.

### Medical Evidence

It is defined as legal means to prove or disprove any medico-legal issue in question. It is of two types:

- i. Documentary
- ii. Oral.

#### Documentary Evidence

**Definition:** It comprises of all documents, written or printed, to be produced before the court for inspection during the course of trial. It includes:

##### i. Medical certificates

- Issued by a qualified registered medical practitioner (RMP) in relation to ill health, death, insanity, age or sex.
- No fee is to be charged for issuing death certificates. Death certificate should not be issued without inspecting the body, and if the doctor is not sure of the cause of death, the matter should be reported to the police.
- Issuing or signing a false certificate is equivalent to giving false evidence (**Sec. 197 IPC**) and punished

with imprisonment of upto 7 years and fine (**Sec. 193 IPC**).<sup>21</sup>

## ii. Medico-legal reports

- Reports prepared by a doctor at the request of the investigating officer for his guidance usually in criminal cases, e.g. injury, postmortem, rape, pregnancy, abortion or delivery.
- It may be prepared even when there is a requisition from the person himself or the magistrate.
- Postmortem reports are made only when there is a requisition from the police officer or magistrate.
- Reports are *not* admitted as evidence, unless the doctor attends the court and testifies to the facts under oath.
- Report should show competence, lack of bias and offer concrete professional advice. The doctor should avoid technical terms as far as possible.

## iii. Dying declaration<sup>22</sup>

**Definition:** It is a written or oral statement of a person, who is dying as a result of some unlawful act, relating to the material facts of the cause of death or the circumstances surrounding it.

The dying declaration has been incorporated in **Sec. 32 IEA**.<sup>23</sup> It must have corroborative evidence to support it before it can be accepted (**Sec. 157 IEA**).

### Procedure and features of dying declaration

- The doctor should certify that the person is conscious and his mental faculties are normal [*compos mentis* (Latin, *compos*: having mastery, *mentis*: mind)].
- Oath is not administered because of the belief that a dying person tells the truth.
- *No leading questions* are asked.
- Ideally, a Magistrate should be called to record the declaration.
- When death is imminent, the statement may be recorded, in the presence of two witnesses, by the doctor or the police officer without losing time in waiting for the Magistrate.
- The declaration can be made to a police officer, public servant, village headman or a private person, but its evidential value will be less.
- Statement of the declarant should be recorded in the form of a simple narrative, without any alteration or phrases.
- While recording the statement, if the declarant becomes unconscious, the person recording it must record as much information as he has obtained and sign it himself.
- Fitness of the declarant to make statement is certified by the Magistrate or other officer concerned, at the conclusion of the statement.
- Declaration is sent to the Magistrate in a sealed cover.
- If the declarant survives, the declaration is not admitted, but has *corroborative value*, and the person is called to give oral evidence.<sup>24</sup>

**Dying deposition:** The Magistrate records the evidence after administering oath in presence of the accused or his lawyer.<sup>25</sup> There is no provision of dying deposition in IEA, so it is not followed in India (Diff. 3.3).

iv. **Miscellaneous:** Expert opinion from books, deposition in previous judicial proceedings, etc.

- *Difference in dying declaration between Indian and British law:* In UK, it requires that the declarant should be under the expectation of immediate death and is restricted in cases of homicide only. But there is no such requirement in Indian law.
- *Dying declaration made in a state of shock:* Shock usually appears immediately after receiving the injuries, but it may supervene after some time, if the individual at the time of receiving the injuries was in a state of great excitement and mental preoccupation. Shock may be produced from exhaustion resulting from several injuries combined, though each one of them separately may be very slight. After receiving mortal injuries involving a vital organ, a very guarded reply is required to be given by a medical witness as to whether a person is capable of speaking, walking or performing any other volitional act which would involve a bodily or mental power for some time after receiving the fatal injury.
- Recently, the Supreme Court acquitted two persons sentenced to life imprisonment, observing that the victim's 'dying declaration' was unreliable (recorded by an assistant sub-inspector) and the prosecution could not produce any evidence against them. It also asked lower courts to ensure the veracity of a dying declaration, which should be free from tutoring, to inspire full confidence about its correctness for convicting an accused.

## Oral Evidence

- It includes all statements which the court permits or which are required to be made before it by a witness, in relation to matters of fact under inquiry (Sec. 3 IEA).
- It must be direct—it must be evidence of an eyewitness (Sec. 60 IEA).
- Oral evidence is more important than documentary evidence, as it permits cross-examination.
- Documentary evidence is accepted by the court only on oral testimony by the person concerned.

### Exceptions to oral evidence

- Dying declaration:* Accepted in court as legal evidence in event of victim's death (Sec. 32 IEA).
- Expert opinions expressed in a treatise:* Expert opinions printed in books are accepted as evidence without oral evidence of the author (Sec. 60 IEA).
- Deposition of a medical witness taken in lower court:* Accepted as evidence in a higher court when it has been recorded and attested by a magistrate in presence of the accused who had an opportunity to cross-examine the witness (Sec. 291 CrPC).

**Differentiation 3.3: Dying declaration and dying deposition**

S.No.	Feature	Dying declaration	Dying deposition
1.	Statement	Recorded by a magistrate/doctor/village headman/police	Always recorded by a Magistrate
2.	Oath	Not required	Must
3.	Accused or his counsel	Not present	Always present
4.	Cross-examination	Not done	Done
5.	Legal value	Comparatively less	Much more
6.	Admissibility, if declarant survives	Not admitted, but has corroborative value	Fully admitted
7.	Role of doctor	<ul style="list-style-type: none"> <li>Assess compos mentis</li> <li>To record the statement in absence of Magistrate, but in presence of witnesses</li> </ul>	<ul style="list-style-type: none"> <li>Assess compos mentis</li> <li>Statement always recorded by the Magistrate</li> </ul>
8.	Status in India	Followed	Not followed

iv. *Report of certain government scientific experts:* Admitted as evidence without their oral examination, e.g. reports of Chemical Examiner, Director of Fingerprint Bureau, Haffkine Institute or CFSL (Sec. 293 CrPC).

v. *Evidence given by a witness in a previous judicial proceeding:* Admitted in a subsequent judicial proceeding when the witness is dead or cannot be found or is incapable of giving evidence or cannot be called without unreasonable delay or expense to the court (Sec. 33 IEA).

vi. *Public records:* Birth and death certificates, and certificates of marriage.

vii. *Hospital records:* Routine entries, such as date of admission, discharge, pulse, temperature, etc. are admissible without oral evidence.

- **Circumstantial evidence or indirect evidence** is the evidence consisting of collateral facts from which an inference may be drawn and are consistent with the direct evidence, such as finding blood on the clothes of the accused.
- **Hearsay evidence:** Any evidence that is offered by a witness of which he/she does not have direct knowledge but his/her testimony is based on what others have said. For example, Anil heard from Sunil about an accident that Sunil witnessed but that he had not, and Anil repeated in court Sunil's story as evidence of the accident.

**Res gestae** describes a common-law doctrine governing testimony. Under the hearsay rule, a court normally refuses to admit as evidence statements that a witness says he or she heard another person say. The doctrine of res gestae provided an exception to this rule.

**Types of Witness**

**Definition:** A witness is a person who gives sworn testimony (evidence) in a court of law as regards facts and/or inferences that can be drawn from these.

**Types:** (Diff. 3.4)

- Common, ordinary or lay witness
- Expert or skilled witness.

**Expert witness** is a person who has been trained or skilled in technical or scientific subject. He can volunteer a statement, if he feels that justice is likely to be miscarried owing to the court having failed to elicit an important point.<sup>26</sup> **Sec. 45 IEA** deals with opinion of experts.

A doctor can testify both as ordinary as well as expert witness. When he describes the dimensions of an injury, e.g. stab wound, he acts like an ordinary witness (fact witness), but when opines the cause of death as hemorrhage due to antemortem injury to the femoral artery, he is an expert witness.

**Hostile witness** is a person who willfully or with motive (bribe/intimidation) conceals part of the truth or tells a lie or gives completely false evidence in a court.<sup>27,28</sup>

- It is contradictory to the statement the witness made in the previous deposition (e.g. statement recorded by the police).
- Any of the above two witnesses can be declared hostile witness.

• A witness who has seen the event first-hand is known as an eyewitness.

• **Testimony** (Latin *testimonium*: from testis): In law and in religion and are consistent with the direct evidence, testimony is a solemn attestation as to the truth of a matter.

**Differentiation 3.4: Common and expert witness**

S.No.	Feature	Common witness	Expert witness
1.	Definition	Gives evidence about the facts observed or perceived by him	Person especially skilled in foreign law, science or art
2.	Volunteering a statement	Not allowed	Can volunteer
3.	Drawing inference from observations	Not allowed	Can draw
4.	Expressing opinion on observations made by others	Not allowed	Can express
5.	Responsibility	Less	Highly responsible
6.	Punishment on giving false evidence	Less punishment	Severely punished in some countries
7.	Conduct money	Cannot claim	Can claim
8.	Examples	Any person	Handwriting or fingerprint expert, doctor, chemical examiner

- The Supreme Court has defined a **hostile witness** as 'one who is not desirous of telling the truth at the instance of the party calling him' and an **unfavorable witness** is 'one called by a party to prove a particular fact, who fails to prove such a fact or proves an opposite fact' (Sat Pal vs Delhi Administration).
- The Black's Law Dictionary defined **hostile witness** as 'a witness who is biased against the examining party or who is unwilling to testify'.

**Recording of Evidence****Testifying**

A deposition is testimony of a witness. The words spoken by the witness are treated as courtroom testimony and the proceeding is conducted in accordance with the applicable court rules. Sec. 118 IEA states about the person who may testify as witness in court of law.

**Presentation of Evidence**

After receiving subpoena, the expert witness must appear before the court at the appointed time with the relevant documents. The evidence is probed for areas of uncertainty, inconsistency or any factors which may make the evidence appear unreliable. Evidence is presented in a systematic order (Sec. 138 IEA):

- Oath (Sec. 51 IPC)
- Examination-in-chief (Sec. 137 IEA)
- Cross-examination (Sec. 141-146 IEA)
- Re-examination (Sec. 137-138 IEA)
- Court questions (Sec. 165 IEA, Sec. 311 CrPC).

**Oath**

It is compulsory for the witness to take an oath in the witness box before he gives his evidence. He is required

to swear by Almighty God that he will tell the truth, the whole truth and nothing but the truth. If the witness is an atheist, he makes a solemn affirmation in same terms, instead of swearing by God.

**Perjury:** A witness who after taking oath or making a solemn affirmation, willfully makes a false statement which he knows or believes to be the false (Sec. 191 IPC and Sec. 344 CrPC) is liable to be prosecuted for perjury under **Sec. 193 IPC** with imprisonment upto 7 years and fine.

- In US, punishment for perjury is imprisonment upto 5 years, while in UK it is upto 7 years.
- In some countries, such as France, Italy and Germany, suspect's evidence is not taken under oath or affirmation and thus cannot commit perjury, regardless of what they say during their trial.

**Examination-in-chief (Direct Examination)**

- It is the examination of a witness by the party who calls him.
- In criminal cases, the public prosecutor commences this examination.
- *Objectives* are to place before the court all the facts that bear on the case and if the witness is an expert, his interpretation of these facts.
- *No leading questions are allowed* except in those cases in which the judge is satisfied that a witness is hostile.<sup>29</sup>

**Leading question:** Any question suggesting the answer which the person putting it wished or expects to receive (Sec. 141 IEA). It includes a material fact and admits of a conclusive answer by a simple 'Yes' or 'No'. For example, "Was the length of the knife 15 cm?" Instead



the question should be "What was the length of the knife?"

Leading questions must not be asked, if objected to by the adverse party, in an examination-in-chief or in re-examination, except with the permission of the court (Sec. 142 IEA).<sup>29,30</sup>

### Cross-examination

It is the examination of a witness by the adverse party (defense lawyer).

*Objectives are:*

- i. To elicit facts favorable to his case
- ii. To test the accuracy of the statements made by the witness
- iii. To modify or explain what has been said
- iv. To develop new or old facts
- v. To discredit the witness
- vi. To remove any overemphasis which may have been given to any of fact in direct examination
- The lawyer tries to weaken the evidence of the witness by showing that his details are inaccurate, conflicting, contradictory and untrustworthy.
- *Leading questions are allowed* (Sec. 143 IEA).
- Cross-examination has no time limit, may last for hours or even days.
- The court has the power to disallow questions which are indecent or scandalous (Sec. 151 IEA) or intended to insult or annoy or offensive in form (Sec. 152 IEA).

During cross-examination, if any question is not understood, the witness should ask the lawyer to explain it better. Moreover, he should not volunteer any unrelated information.

### Re-examination (Re-direct Examination)

It is the examination of a witness subsequent to the cross-examination by the party who called him.

*Objectives are:*

- i. To clear any doubts that may have arisen during cross-examination.
- ii. To explain some matter in its proper perspective, so that under emphasis or possible misinterpretation may be avoided.

Leading questions are not allowed. Opposing lawyer has the right of re-cross-examination on any new point which has been raised.

### Court Questions/Questions by the Judge

Judge may ask any question to the witness at any stage of the trial to clear any doubtful points.<sup>31</sup>

The deposition of the witness is handed over to him. The witness after carefully going through it, is required

to sign at the bottom of each page and on the last page immediately below the last paragraph, and to initial any corrections (Sec. 278 CrPC). The witness should not leave the court without the permission of the judge.

### Conduct and Duties of a Doctor in the Witness Box

When summons is served, he must attend the court punctually. As a rule, his evidence is taken at the appointed time.

- i. Take all records and relevant reports that may have to be quoted in the box.
- ii. Be well dressed and modest.
- iii. Do not discuss the case with anyone in the court except the lawyer by whom you were asked to testify.
- iv. Stand up straight, be relaxed, calm and not be frightened or nervous. Look people in the eye when you speak, for it gives the impression of honesty.
- v. Never attempt to memorize. The law allows refreshing your memory from copies of reports.
- vi. Speak slowly, distinctly and audibly so that the typist can record your evidence.
- vii. Use simple language, avoiding technical terms to the best of your ability.
- viii. Address the Judge by his proper title such as 'Sir' or 'Your honor.'
- ix. Be polite, pleasant and courteous to the lawyer. Do not underestimate the medical knowledge of the lawyers.
- x. Do not evade a question. Say 'I don't know' if it is so, for no one can be expected to know everything.
- xi. Do not lose your temper. An angry witness is often a poor witness.
- xii. Retain independence of your mind. A biased expert is a useless expert.
- xiii. Listen carefully to the questions. Do not hesitate to ask the questions to be repeated, if you do not understand it. Avoid long discussions.
- xiv. If you believe the question is unfair, look at your lawyer before answering. If he fails to object, turn to Judge and ask whether you should answer the question.
- xv. Do not over emphasize replies to questions from cross-examining lawyers.
- xvi. Watch for double questions. The answer to each part of the question may be different.
- xvii. When asked to comment upon the competence of a colleague, avoid any insulting remarks. If you do not wish to make any statement, say that you have 'no opinion' or 'no comments'.

- xviii. Say 'In my opinion....', do not use phrase such as 'I think...' or 'I imagine...' Be prepared to give reasons for your opinion, if asked.
- xix. Do not be drawn outside your particular field of competence. Avoid speaking on a subject in which you have little or no practical experience.
- xx. Do not refuse to answer any question—a medical witness has no professional privilege.
- xxi. Do not volunteer any information beyond that asked for in the question; limit your answer to your expertise in the field.

## MULTIPLE CHOICE QUESTIONS

1. **IPC is:** TN 05  
 A. Procedure for investigation  
 B. Code for punishment  
 C. Both A & B  
 D. None
2. **Police inquest is done:** TN 05  
 A. By the collector  
 B. To find the cause of death  
 C. To hang the person who committed murder  
 D. None of the above
3. **Before conducting the inquest, police should inform:** Manipal 10  
 A. Director general police  
 B. Sessions judge  
 C. Executive magistrate  
 D. Senior police officer
4. **Magistrate's inquest is conducted by:** Manipal 06  
 A. District magistrate  
 B. Executive magistrate  
 C. Sub-divisional magistrate  
 D. Any of the above
5. **A married woman died in unnatural conditions within 5 years of her marriage. Her parents complained of frequent demand of dowry. Her autopsy will be conducted under which section:** AI 10; Punjab 10  
 A. Sec. 174 CrPC      B. Sec. 176 CrPC  
 C. Sec. 302 IPC      D. Sec. 304B IPC
6. **Sec. 176 CrPC is related to:** MP 10  
 A. Coroner inquest      B. Summons  
 C. Police inquest      D. Magistrate inquest
7. **In India, Magistrate inquest is done in all of the following cases, except:** AI 05; TN 05  
 A. Police firing      B. Dowry death  
 C. Custodial death      D. Murder
8. **In case of death in prison, inquest is held by:** Delhi 03; TN 08; Maharashtra 11  
 A. Magistrate      B. Panchayat officers  
 C. Police superintendent      D. District attorney
9. **A lady died due to unnatural death within seven years of her marriage. The inquest in this case will be done by:** AIIMS 04; DNB 09; FMGE 09  
 A. Forensic medicine expert  
 B. Deputy superintendent of police  
 C. Sub-divisional magistrate  
 D. Coroner
10. **Consider the following statements:** UPSC 09  
 1. In India, every State has its own high court.  
 2. In India, the judges of the high court are appointed by the Governor of the State concerned.  
**Which of the statements given above is/are correct?**  
 A. 1 only      B. 2 only  
 C. Both 1 and 2      D. Neither 1 nor 2
11. **Example of Court of Appeal:** Manipal 11  
 A. Sessions court      B. Magistrate's court  
 C. Coroner's court      D. High court
12. **First class Judicial Magistrate is appointed by:** MP 07  
 A. Governor  
 B. Chief Justice of High Court  
 C. Chief Minister of the State  
 D. Chief Justice of Supreme Court
13. **Chief Judicial Magistrate can give sentence a guilty for imprisonment upto:** DNB 09  
 A. 3 years      B. 5 years  
 C. 7 years      D. Life imprisonment
14. **Powers of a 1st class Magistrate:** PGI 06; AP 10; Jharkhand 11  
 A. Fine upto ` 10,000 and 3 years imprisonment  
 B. Fine upto ` 10,000 and 5 years imprisonment  
 C. Fine upto ` 3000 and 5 years imprisonment  
 D. Unlimited fine and 7 years imprisonment
15. **'Juvenile court' is presided over by:** DNB 08  
 A. I class woman magistrate  
 B. II class woman magistrate  
 C. II class male magistrate  
 D. None of the above
16. **Juvenile court deals with cases of children upto the age of:** Maharashtra 09; DNB 09; FMGE 10  
 A. 15 years      B. 16 years  
 C. 18 years      D. 21 years
17. **Warrant cases are punishable with imprisonment upto:** DNB 09  
 A. More than 1 year      B. More than 2 years  
 C. Less than 1 year      D. Less than 2 years

- |       |       |       |       |       |       |       |      |      |       |
|-------|-------|-------|-------|-------|-------|-------|------|------|-------|
| 1. B  | 2. B  | 3. C  | 4. D  | 5. B  | 6. D  | 7. D  | 8. A | 9. C | 10. D |
| 11. D | 12. B | 13. C | 14. A | 15. A | 16. C | 17. B |      |      |       |

18. Subpoena is also called: *Manipal 06*  
 A. Summons B. Panchnama  
 C. Requisition D. Inquest papers
19. Duces tecum is: *WB 08*  
 A. Summon B. Panchnama  
 C. Conduct money D. Hostile witness
20. Conduct money is fee given to a: *AP 07*  
 A. Witness in civil court  
 B. Witness in criminal court  
 C. Doctor for good behavior in court  
 D. Witness for good conduct
21. When a doctor issues a false medical certificate, then he is liable under: *AIIMS 11; Bihar 11*  
 A. Sec. 197 IPC B. Sec. 87 IPC  
 C. Sec. 304A IPC D. Sec. 338 IPC
22. Dying declaration is a: *Manipal 10*  
 A. Circumstantial evidence  
 B. Oral evidence  
 C. Documentary evidence  
 D. Hearsay evidence
23. Dying declaration comes under: *DNB 09*  
 A. Sec. 30 CrPC B. Sec. 32 CrPC  
 C. Sec. 32 IPC D. Sec. 61 CrPC
24. If a patient survives after having given dying declaration, then it stands as: *JIPMER 04; UP 09*  
 A. No value  
 B. Valid for 48 hours  
 C. Corroborative evidence  
 D. None
25. Dying deposition is done by: *UP 05*  
 A. Doctor  
 B. Magistrate  
 C. Police  
 D. All
26. Volunteering a statement can be done by: *Punjab 07*  
 A. Eyewitness  
 B. Medical witness  
 C. Hostile witness  
 D. IO
27. Hostile witness is one who: *Maharashtra 08*  
 A. Threatens the judge  
 B. Threatens the prosecutor  
 C. Refuses to answer  
 D. Willfully gives false evidence
28. A witness, who after taking oath, willfully makes a statement which he knows or believes to be false is guilty of crime under section: *AI 03, UP 05; AIIMS 11*  
 A. 190 IPC B. 191 IPC  
 C. 192 IPC D. 193 IPC
29. Leading questions are NOT permitted in: *Delhi 08*  
 A. Cross-examination  
 B. Examination-in-chief  
 C. Questions by the Judge  
 D. Re-examination
30. Sec. 142 IEA is related to: *BHU 08*  
 A. Cross-questioning  
 B. When leading question can be asked  
 C. When leading question cannot be asked  
 D. Objective evidence
31. Judge can ask questions: *Punjab 07*  
 A. During cross-examination  
 B. Examination-in-chief  
 C. Any time during trial  
 D. Re-examination