Review Article

Journal of Forensic Chemistry and Toxicology
Volume 5 Number 1, January - June 2019
DOI: http://dx.doi.org/10.21088/jfct.2454.9363.5119.8

# Medical and Legal Interpretation of Injury report: A Physician's Dilemma

**T. Millo**

**Author Affiliation:** Professor, Dept. of Forensic Medicine and Toxicology, All India Institute of Medical Sciences, New Delhi- 110 029, India.

**Corresponding Author: T. Millo**, Professor, Dept. of Forensic Medicine and Toxicology, All India Institute of Medical Sciences, New Delhi 110 029, India.

**E-mail:** tabinmillo2003@rediffmail.com

**Received on** 02.05.2019, **Accepted on** 08.06.2019

**Abstract**

In India a registered medical graduate having MBBS degree is legally authorized to treat a medicolegal case and prepare the injury report. He is also required to opine about the nature of injury, possible weapon of offence and manner of injury to assist the crime investigation. Forensic Medicine is taught in the MBBS curriculum, but the studentsgenerally don't get enough practical exposure to deal with medicolegal cases of injury reporting and opining. Most of them learn while on service when situation compel them to handle medicolegal cases and are summoned by the court of law to depose the medical evidence. It has to be realized that medical evidence is animportant corroborative evidence for guiding the investigation and the court of law. It needs to be dealtin a prudent way, scientifically and professionally. This article is an attempt to address the dilemma faced by the physicians, dealing with medicolegal cases of injury reporting and giving expert opiningand evidence in the court of law for the deliverance of justice in the state legal system.

**Keywords:** Medico-legal; Hurt; Grievous hurt; 320 IPC; permanent privation etc.

**How to cite this article:**
T. Millo. Medical and Legal Interpretation of Injury report: A Physician's Dilemma. J Forensic Chemistry Toxicol. 2019;5(1):42-51.

## Introduction

### *Legal definition of hurt and interpretation*

The word hurt generally means to cause bodily injury or pain to another person [6]. The legal definition of hurt is mentioned in Section 319 IPC. Hurt is defined asbodily pain, disease or infirmity caused to any person [1].

Based on this definition, the essential ingredients of hurt are: 1) Bodily pain, disease or infirmity must be caused. 2) It should be caused due to a voluntary act of the accused.

All bodily hurts, not only those which are serious but also those which are slight, are within the provisions inserted under this division. It covers all harm, except those which no person of ordinary sense or temper would complain of. The phrase causing bodily pain must be understood to mean the imparting of pain directly to the body, by the sense of touch, as by the use of force. In essence, the law requires the force or the threat of force must be physical harm in order to convert to an offence. So hurt requires physical harm. The hurt is generally not taken for mental agony, pain or mental injury.

But again there is nothing in the definition of hurt to suggest that hurt should be caused by

direct physical contact between the accused and his victim. A physical contact may not be necessary as in case of poisoning. The administration of drug is likely to cause hurt by causing bodily pain and infirmity. Where the direct result of an act is the causing of bodily pain, it is hurt whatever be the means employed to cause it.

A person communicating a particular disease to another would be guilty of hurt. The difference between the act and onset of disease should be small enough, so act and disease could be connected together.

Infirmity means the inability of an organ to perform its normal function which may either be temporary or permanent.Some judgment has mentioned that where serious mental derangement is caused by some voluntary act, a hurt is caused, even though there is no direct physical contact. So mental derangement and nervous shock may also be included in hurt under infirmity. It is also called mental or psychic injury as per medical literature. But mental injury orpsychic injury is difficult to prove in the court of law.

The law does not mention the word simple hurt anywhere, but simple hurt is understood to be hurt, which are not Grievous. Generally a simple hurt is one which is neither extensive nor serious and which heals rapidly without leaving any permanent deformity or disfiguration.

The authors of the IPC code observed that it would be difficult to precisely define or draw a line between those bodily hurts which are serious or grievous and those which are slight or simple, but it was important to draw a line even if it is not perfect so as to punish the cases which are clearly more than simple hurt.And only hurts described in section 320 IPC was considered serious enough to be called grievous hurt.

Under the doctrine of stare decisis, a lower court must honor findings of law made by a higher court. It is good for the doctors to be aware of the latest judgements made by a higher courtrelated to 320 IPC for knowledge and guidiance.

In day today medical practice it is observed that it has become very common to use the word injury synonymous with hurt. It is also observed that the law does not clearly differentiate between hurt and injury. The legal definition of injury is mentioned in section 44 IPC. The word injury is defined as any harm whatever illegally caused to any person, in body, mind, reputation or property. It has two components, firstly injury is an act contrary to law (illegal), secondly, injury includes body, mind, reputation, and property. Therefore it has a wider meaning than the term hurt as it also includes illegal damage to reputation or property of other. In other words, all hurts are injuries, but all injuries are not hurt. And also it is observed that the word assault is invariably used by doctors in the brief history part of the MLC injury report. Section 351 of IPC defines assault as – whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault. That means assault is an offer or threat or attempt to apply force on body of another in a hostile manner. It may be a simple assault or an intention to murder.

The medical fraternity has also been using the term wound conveniently to indicate the physical injury or hurt. Wound by medical definition is any break in the continuity of body structures caused by violence, trauma or surgery to tissues [5].

**320 IPC and interpretations**

Grievous hurt has been enumerated in Section 320 IPC. Eight kinds of hurt have been designated as grievous as per this section. There is no definition of grievous hurt mentioned in the section but the hurt which has been designated as grievous in the section would be considered grievous and all other would be simple. Hurts as per provision of the penal code are hurt and grievous hurt, but in practice hurts are simple, grievous or dangerous hurt.The following kinds of hurt are designated as grievous under Section320 IPC:

1. Emasculation.
2. Permanent privation of sight of either eye.
3. Permanent privation of hearing of either ear.
4. Privation of any member or joint.
5. Destruction or permanent impairment of the powers of any member or joint.
6. Permanent disfiguration of the head or face.
7. Fracture or dislocation of a bone or tooth.
8. Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain or unable to follow his ordinary pursuit.

Thus, to make out the offence of causing grievous hurt as per law, there must be some specific hurt, voluntarily inflicted, and should come within any of the eight kinds enumerated in this Section.

*1. Emasculation*

This clause is applicable only to males, they being the victim of the said offence. Emasculation means depriving a male of his masculine vigor or power, i.e., to render man impotent. The masculine power of male pertains to the ability of male to perform sexual act or intercourse which involves erection, penetration and ejaculation. Therefore, emasculation is to cause the male unable to perform normal sexual intercourse. The emasculation caused must be permanent. Some examples of emasculation are cutting of penis, trauma to lumbar vertebrae of $2^{nd}$ – $4^{th}$ region, causing damage to nerves responsible for erection. In patients with spinal cord injury, the degree of erectile dysfunction depends on the completeness and level of the lesion. Patients with incomplete lesions or injuries to the upper part of the spinal cord are more likely to retain erectile capabilities than those with complete lesions or injuries to the lower part. Although 75% of patients with spinal cord injuries have some erectile capability, only 25% have erections sufficient for penetration [2]. This clause does not speak about the sterility. A person may be sterile but retain masculine power or he may lack masculine power but not be sterile.

Castration is the excision of the gonads (testicles or ovaries) or destruction or inactivation of the gonads by chemical or medications. Castration will not be a grievous hurt under clause 1 as the masculine power remains after castration also. It will be grievous hurt under clause 4, as testis or ovary is a member of the body part. Even cutting of penis in male or clitoris in female will be a grievous hurt under clause 4 legal definition of grievous hurt. Testosterone is an anabolic steroid hormone secreted by the Leydig cells of the testes. It acts to increase libido, but their exact role in erectile function remains unclear. Individuals with castrate levels of testosterone can achieve erections from visual or sexual stimuli. Nonetheless, normal levels of testosterone appear to be important for erectile function, particularly in older males. Testosterone is required in adult males for maintenance and normal function of the primary sex organs [3]. Masculine, virile and potent are the common synonymous words used with similar meaning in the textbooks.

*2. Permanent privation of the sight of either eye*

Permanent privation of the sight of either eye means permanent loss or deprivationof sight or use of one or both eyes. The loss may be partial or complete. The test of gravity is the permanency of the injury. It is worth mentioning that permanent does not mean that, it should be incurable. The injury may be correctible by operation or surgical intervention, but law does not take into account operative interference. For example an injury on the eye may cause corneal opacity and affect the field of vision. But the corneal opacity may be curable by surgical procedurecalled corneoplasty. But since the corneal opacity caused by scarring in corneadue to injury to eye is permanent by itself it will be a grievous injury. The chance of its cure by corneoplasty does not minimize its gravity. The patient needs to be examined by ophthalmologist and the findings taken into account for opining the nature of injury. Other examples of grievous injury to eye can be injury leading to reduction of vision, retinal detachment, lose of eye sight due to adulterated alcohol (mixed with methyl alcohol), gouging of eye etc. These injuries may also fall under Section 320 (f).

*3. Permanent privation of the hearing of either ear.*

Permanent privation of the hearing of either ear means permanent loss or deprivation of hearing or use of one or both ears. The loss may be partial or complete. The test of gravity is the permanency of the injury. Again it is worth mentioning that permanent does not mean that, it should be incurable. The injury may be correctible by operation or surgical intervention, but law does not take into account operative interference. The loss of hearing due to ear drum perforation may be corrected by tympanoplasty, but does not minimize its gravity. The patient needs to be examined by ENT specialist and the findings taken into account for opining the nature of injury. The doctor may have to examine the patient for second time after the normal time of healing process and repeat the audiometric test. Some examples of grievous injury to ear are rupture of tympanic membrane due to slap over the ear or poking by stick while attempting to clean ear by local cleaners or quacks, pouring hot liquid into the ear, injury affecting the auditory nerve etc.Even if there is partial permanent loss of hearing it will be a grievous hurt.

*4. Privation of any member or joint.*

Section 320 IPC does not define what is member or joint in the body. As per medical dictionary the term member means anorgan or limb.And an organ is defined as any part of the body having a distinct function. But Section 2(h) of The Human Organ Transplant Act, 1994 defines human organ as any part of a human body consisting of a

structured arrangement of tissues, which if wholly removed, cannot be replicated by the body. The medical dictionary defines joint as the point of juncture between two bones. It is usually formed of fibrous connective tissue and cartilage. So we can make important derivation from these medical definitions for legal interpretation. Some examples of organs are eyes, ears, nose, mouth, fingers, hand, feet, genitals etc, and include all parts of the body having distinct function. Some parts like nail, hair, blood, body fluids etc cannot be called members/ organs as it can replicate or regenerate as per definition of organ in THOA, 1994. Therefore the term member is generally used to mean an organ or a limb.

The permanent privation of any member or joint implies that the injury has caused the permanent loss of the organ or joint depriving the normal function of the organ or joint of the body. Examples are Amputation of leg or fingers, chopping of nose, gouging of eyes etc.

*5. Destruction or permanent impairing of the powers of any member or joint.*

This clause differs from clause 4 in the sense that there is destruction or permanent impairing of any member or joint and not privation. The privation is depriving the person of the organ with its function like amputation of limbs, removal one kidney, chopping of the penis, ear, nose etc. The destruction or permanent impairing of powers of any organ is to damage the organ in a way that it permanently impairs its function even though it remains part of the body, like crushed finger or toe, incised injury to hand causing severing of nerves leading to loss of function of fingers or hand etc.

*6. Permanent disfiguration of the head or face.*

As per The Indian Penal Code book by Ratanlal and Dhirajlal - Disfiguration means a change of configuration and personal appearance of the individual by some external injury which detracts from a person's personal appearance. It may not weaken him or her. Some examples are, cutting of nostrils or ears, gauzing of the eyes, deep scars on the face etc. In simple terms it is spoiling the appearance of the person. As per law disfiguration of head and face part is enough to label as grievous injury. It does not differentiate it or discriminate it on the basis of the gravity or the effect of disfiguration on the person's personal life, livelihood, career or profession, age, sex etc. However there are judgments of different courts considering these factors, probably for compensations. But the medical officer should not consider these factors while opining about the nature of the injury and it is only court's discretion to decide whether to take these factors into consideration. Scar on the face of an actress, or young unmarried girl or an old women or laborer are grievous in nature as per law. Generally the superficial injuries like abrasions heal without scar and are simple but the deep injuries like laceration heal with scar and are grievous. Some common causes of grievous injury in India are throwing acid on the face (vitriolage), causing burn by throwing kerosene, cutting of the nose or ear as punishment etc. The surgeons may cause bad scar on the face. He has to explain it to the patient before the surgery while taking consent to avoid litigations.

*7. Fracture or dislocation of a bone or tooth.*

There is no legal definition of fracture mentioned in the penal code. As per medical definition, fracture is a break of a bone. Dislocation is the displacement of a bone from its normal position in a joint. The fracture or dislocation of a bone may not cause permanent disability as it can rejoin or set right by treatment. But the injury is labeled as grievous under this section probably due to the intense pain and suffering caused to the person, leading to severe sudden disability, though it may be temporary or cured later. Clinically the fracture type may be hairline fracture, greenstick fracture, incomplete fracture etc. All of them will be grievous. It is not necessary that a bone should be cut through and through or the crack must extend from the outer table to the inner table or there should be displacement of any fragment of the bone. If there is a break by cutting or splintering of the bone or there is a rupture or fissure in it, would amount to a fracture within this clause. On the other hand just a superficial scratch or cut which does not go across the bone surface cannot be called a fracture or grievous. What we have to see is whether the cuts in the bones noticed in the injury report are only superficial or do they effecta break in them. In all these situations the doctor has to opine prudently based on the clinical examination and X-ray report of the bone injury and consult medico-legal expert if needed. We need to interpret medically based on scientific evidence of break of bone. The medical opinion will help the court to decide the case based on the interpretation of law and their wisdom.

In case of fracture or dislocation of a tooth, the examination of a doctor or dentist is very important to determine the grievousness of the injury by any

offence. The doctor need to examine the condition of the oral hygiene, tooth, gum, any disease conditions and associated external injury over the corresponding facial area for corroboration. Before giving opinion the doctor has to rule out that there was no diseased and dislocated tooth already present in the cavity. Generally there will be signs of injury like fresh bleeding from gums with tear, loose tooth and also corresponding external or internal injury over the lips. The X-ray of the oral cavity will be helpful to interpret the findings. The opinions should be based on scientific facts without bias. While preparing report avoid using short forms or abbrevationsand write proper simple sentence. For example, I remember a case where the dentist had written – loss of tooth with corresponding dental chart diagram showing which tooth is missing. Somebody had manipulated it as –' no loss of tooth' by just adding 'no' infront of loss of tooth. If he had written the sentence – there is loss of tooth it could have been not easy to manipulate it.

*8. Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain or unable to follow his ordinary pursuits.*

This section has three components: a. Any hurt which endangers life or b. Any hurt which causes the sufferer to be during the space of twenty days in severe bodily pain orc. Any hurt which causes the sufferer to be unable to follow his ordinary pursuits for twenty days.

Any injury which qualifies for any of these three components is a grievous hurt as per this section.

*a. Any hurt which endangers life*

The clause - hurt which endangers life, is not elaborated in this section and is left to the opinion of the doctor and the interpretation of the court as per their wisdom. It can be explained that any injury which can be fatal or cause death will qualify this component. Here, there is a significant probability of the victim ending in death in its natural course, which means that the injury has put the life of the injured in danger. The endangerment may be for a short period only and the patient might have recovered after the medical intervention, yet it would qualify for this clause to be called grievous hurt. The injuries endangering life are those which cause imminent danger to life, either by involvement of important organs and structures or extensive area of the body [9]. If no surgical aid is available, such injuries may prove fatal. Many a times the doctors document the injury as dangerous injuryin the injury report which is synonymous with injury which endangers life. The word dangerous injury is not mentioned in the clause of 320 IPC, but when the doctor has used this word in the report he has to clarify in the court of law that his opinion meant or is consistent with first part of 320 IPC. It should not be interpreted in a different way because the exact word was not used if the meaning or interpretation is the same as injury endangering life. This matter was clarified in court judgments also.

In Atma Singh Vs State of Punjab, 1980, it was decreed that an injury which can put life in immediate danger of death would be an injury which can be termed as dangerous to life and therefore when a doctor describes an injury as dangerous to life, he means an injury as dangerous to life in term of clause of Sec. 320 IPC. Wherever a doctor describes an injury as dangerous to life and the nature of the injuries is such which could merit such a conclusion, then such an injury has to be treated as grievous hurt as per clause 8 of Sec. 320 IPC.

In Madan Lal Vs State of Himachal Pradesh, the court held thatdanger to life from an injury should be imminent to constitute it as a dangerous one.

Common example of injuries which endangers life:

1. Penetrating injury to the body cavities like peritoneal cavity, chest, skull etc.

2. Head injuries showing signs of intracranial compression.

3. Extensive Burn.

4. Bleeding due to injury to large vessels, liver, spleen, multiple bruise etc.

5. Fracture of skull.

Injuries inflicted on the vital parts of the body are generally dangerous, endangering the life of the person. The question whether a given injury is dangerous to life is relevant, but what is more relevant is how far it had placed the victim in danger of his life. A simple hurt cannot be designated as grievous simply because it was on a vital part of the body, unless the dimensions or the nature of the injury or its effects are such that (in the opinion of the doctor) it actually endangers life [8]. For the court to determine whether the hurt caused is grievous, the extent of the hurt and the intention of the offender are taken into account. The medical officer, must confine himself to only opining whether a given hurt is grievous or otherwise, as per the eight clauses of Section 320 IPC.

*b. Any hurt which causes the sufferer to be during the space of twenty days in severe bodily pain.*

As per this clause the person should be in severe bodily pain for 20 days. How much pain is severe is not defined in this clause. Pain is a subjective experience and will vary from person to person. Severe pain for one person may be bearable pain for the other and it is difficult to assess. Some injuries are more painful than the others depending upon the system or organ involvedand location of the injury. A burn may affect a lesser area but be very painful if it is a third degree burn. In this cases opinion of the doctor is necessary and important. It is generally agreed that technically 20 days need not be continuous. It can be with short pain free gap. The person may be in pain for two weeks followed by 3 pain free days and then again at pain for one week.

*c. Any hurt which causes the sufferer to be unable to follow his ordinary pursuits for twenty days.*

Again as per this clause the sufferer has to be unable to follow his ordinary pursuits for twenty days. What is ordinary pursuit is not defined in this clause. But it is more easier to prove than severe pain clause as it is more objective in nature. It is generally understood that ordinary pursuits are those daily routine activities which are necessary for day today survival of every human being. It may be brushing teeth, shaving, going to toilet, taking bath, taking food, wearing clothes etc. But mere remaining in the hospital for 20 days or more cannot be itself equated with patient remaining unable to follow his ordinary pursuits without any evidence to that effect.

Punishment for voluntarily causing hurt as defined in section 323 IPC is imprisonment of either description up to 1 year and a fine up to 1000 rupees, while punishment for voluntarily causing grievous hurt is imprisonment up to 7 years as well as fine.

**Relevant amendments under criminal law ordinance, 2013**

A recent amendment was made in 326 IPC, which has brought new insight into grievous hurt in relation to acid attack.

*Section 326 A:* Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life and with fine which may extend to ten lakh rupees, provided that any fine imposed under this section shall be given to the person on whom acid was thrown or to whom acid was administered.

*Section 326 B:* Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfiguration or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

For the purposes of section 326 A and B, acid includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability. Permanent or partial damage includes deformity, or maiming, or burning, or disfiguring, or disability of any part or parts of the body of a person. And for the purpose of this section, permanent or partial damage or deformity shall not be required to be irreversible.

So, after this amendment, following changes can be derived. Earlier only permanent disfiguration of face was alone considered as grievous hurt, but now even disfiguration of any part of the body by throwing or administering acid is considered as grievous hurt. Even temporary or permanent disability due to throwing or administering of an acid is covered under grievous hurt. Moreover, the damage or deformity shall not be required to be irreversible. The punishment was enhanced and may extend to imprisonment of life and a fine which may extend to ten lakh rupees. Under section 326 A and b, even attempt to throw or administer acid on any person is punishable. The offences under Section 326 A and 326 B are cognizable and non bailable.

**Other legal IPC Sections pertaining to injuries**

Section 319 to 338 of IPC deals with the legal aspects of hurt in various forms which is beyond the scope of this article to discuss in detail.

**Medicolegal duties ofmedical officer**

The medical practitioner has the duty to examine the injury, document it carefully and treat the

patient. He should be careful in recording the injury report. First of all he should write the general information of the injured person like name, age, sex, address, exact time of the examination, Viz., hour, date, month and year and two marks of identification to enable him to recognize the injured person in the court. The name and belt number of the accompanying police person should be noted. He should also record the consent of the injured person for being examined by the medical officer and then proceed with examination proper. Proper preparation of MLC report in injury case is very important. The detailed guideline to prepare MLC report may be beyond the scope of this article. But the doctor is expected to document the following facts of the injury namely type of injury, location, dimensions or size (length, breadth, depth and shape if appreciable), by what weapon inflicted (sharp or blunt object), approximate age or duration of injury and nature of injury, grievous or simple. Regarding the nature of injury, it is not mandatory to opine it on the spot or the same day. If there is a need to observe the patient for some time or some investigation needs to be done or report of other specialty is essential then you can opine it after the required things are done. When asked for expert opinion on the nature of injury by police or court, he has to opine whether the injury is grievous or otherwise as per the eight legal clauses of Sec. 320 IPC. Many a times the medical practitioners are not confident or clear about the grievous injury section due to in experience in dealing such cases. In such situation, it is prudent to consult with the Forensic Medicine specialist or medico-legal experts to give correct opinion based on the medical facts. We should know that it is a piece of corroborative evidence for crime investigator and the court. The opinion should be scientific and consistent. However it may be revised or amended in later stage if needed, based upon the available new scientific factsand circumstance of the case. The medical opinion guides the investigator and the court to decide the case appropriately as per law. Therefore the medical opinion is very important and has significant role for legal system to administer justice. However the expert opinion or medical evidence of the medical officer is not final and indispensable for conviction. It is an important corroborative evidence for the investigating officer and guides the court for deciding the case. In the Judgement (Hadia Mia, 1988 Cr LJ 1459 (Gau)) the court said, medical evidence is of importance though it is not conclusive and the judgment must be of court. The final opinion on the nature of injury is left to the discretion of the court. The court can reverse the doctor's opinion also.

If an opinion regarding the nature of injury cannot be formed at the time of the examination, as in the case of a head injury where symptoms are obscure, the injured person must either be re-examined after 24-48 hours or admitted under observation until a definite opinion can be formed. A forensic doctor also should know about the legal definition of dangerous weapons or means. Many a times the investigating officer would be seeking for the expert medical opinion on the recovered weapon of offence and the injury findings for corroboration. As per section 324 and 326 IPC, dangerous weapons or means include any instrument for shooting, stabbing or cutting, or any instrument, which used as a weapon of offence, is likely to cause death; fire or any heated substance, poison or any corrosive substance; explosive substance or any substance which is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal. The medical officer can opine whether the alleged weapon of offence is dangerous weapon or mean. However the court will finally decide whether the assailant was armed with dangerous weapon or not, depending upon the circumstances of the case and expert medical opinion.

The medical testimony of doctor in the court of law is very important. We should be honest, scientific and consistent in our opinion. Sometimes the court may ask the doctor to dictate his whole findings in the report completely, especially in handwritten reports for clarity. As a medical person we have to guide the public prosecutor and the court in recording the right and relevant findings, even though it may be a negative finding. When evidence is read to be recorded in the court of trial, we have to highlight the important relevant findings of the report pertinent to the case. Sometimes one paragraph or even one part of the paragraph may be all that is necessary to substantiate the point you are making, e.g., mentioning the cause of death in case of road traffic accident, instead of dictating the whole report, which is time consuming. Evidence must be documented in the words of the author, i.e., doctor who prepared it. But if the court feels that the whole document has to be dictated as it is, we should do it respectfully, even though it may be time taking. Now a days the court admits most of the computer typed reports asit is, without dictating again, unlike the hand written reports where the handwriting has to be recognized and dictated for clarity of the court.

*Misinterpretation of injuries and wrong opining*

The wrong interpretation of injury and opinion can lead to serious injustice in the legal system.

It is not uncommon to come across a bad report or opinion of a doctor. There are various reasons for it. As per my 20 years of experience in the medicolegal service, I observed that the most common cause is the inadequate medicolegal training and exposure of the medical students during the MBBS course. It is well known that about 70% cases coming to the emergency department are medicolegal cases. In India a MBBS graduate is legally qualified to see all medicolegal cases and also authorized to conduct Medicolegal postmortem and give expertopinion in the case. He is also summoned in the court of law to give evidence as a medical expert. Quiet often it is seen that it is forced upon the government doctor posted in various hospitals of the sate to perform the medicolegal duty in spite of their in competency. These leads to compromise on the quality of medicolegal work and affect the crime investigation and justice system. Secondly there is inadequate qualified forensic expert (MD/DNB, Forensic Medicine) to guide the doctors and help them in dealing with the medicolegal cases. We have seen numerous cases where the investigation has been jeopardized due to bad or wrong medical reports, either due to ignorance or carelessness. The opinion had to be revised and rectified to come to a logical conclusion. When it comes to the higher referral centre for opinion it is good to speak to the first treating doctor who prepared the report and if possible make him part of the medical board. In doing so there will be a transparent and direct discussion leading to a logical and scientific opinion. The ignorant doctor should not be made a victim or scapegoat. In my experience, most of the mistakes were due to ignorance of the doctor without any malafide intention or motive and very rarely due to pressure from higher sources. As per my experience it is observed that the doctors are taught that they should stand by their opinion at any cost and not change or revise, otherwise they will be blamed. It is not so. The unintentional mistakes can be rectified by discussion with the experts in the larger board of experts and opinion rectified and revised in a scientific way and as per legal procedure for logical conclusion and justice in the case.

It isessential that all the medical officers posted in the emergency should attend an orientation program regarding handling of medicolegal cases before they are posted. Many a times the court has frequently summoned the medical superintendent of the hospital for explanation for lack of clarity and quality medical reports of the doctors handling medicolegal cases. I have deposed many such summons to medical superintendent of AIIMS, New Delhi in relation to bad medicolegal report of the emergency doctors. They should work under the supervision of medicolegal expertor senior consultant with medicolegal experience to provide quality medicolegal reports and to avoid mistakes and embarrassment to the institute.

**Investigating officer**

All injury case becomes a medico-legal case. A person may show himself or be brought by police for medical examination and treatment. In both situation the medical officertreats the patient and prepares the medicolegal reports. If the person comes by himself the doctor informs about the case to the nearest concerned police station. In big hospitals there is police post adjacent to the emergency and the information is passed on to the police on duty which subsequently conveys to the concerned police station. The medicolegal report is collected by the police for inquiry and investigation. If the opinion about the nature of injury is not mentioned, he will approach the concerned doctor for the same. He may also enquire about the likely weapon of offence. The investigating officer seeks expert opinion from the treating doctor to corroborate their investigation findings about the nature and manner of the injury to take the legal course of action as per law of the land.The nature of injury may be simple or grievous and the manner of injury may be accidental, self inflicted or homicidal. The medical officer must confine himself to only opining whether a given hurt is grievous or otherwise as per the eight clauses of Section 320 IPC and not make extra comments on the intention or knowledge part of the offender. The police officer takes the guidance of medical evidence, apart from the circumstantial evidence to charge sheet the accused in appropriate section of IPC. It is essential that the police also should provide the correct and relevant brief history of the case to the treating doctor, which will help in the treatment and preparation of good medicolegal report.

**Judiciary System**

The judge decides about the nature of injury based on the medical findings and the investigation reports. To determine whether the hurt is grievous or not, the court generally takes into account the extent of the hurt and the intention of the offender. Further it has to be proved that the offender intended to cause or had the knowledge that his act was likely to cause grievous hurt. Intention to cause grievous hurt is inferable from the circumstances of the case and the nature of injury caused. He can

summon the doctor to depose the medical injury report in the court of lawand admit the report as a corroborative evidence in the case. The defense lawyer can cross examine the findings. And also the public prosecutor or Judge may also ask queries to clarify any doubts on the report.

**Important Court Judgments in relation to hurt and 320 IPC**

1. Injury report does not prove injuries. Doctor must be produced and he must state all the injuries (Bawasala Mad. 1953 Cr. LJ, Kutch).

2. The medicolegal report can be admissible in evidence U/S 32(2) Evidence Act, if the doctor is dead or not available. The compounder or other person present at the time of examination and who can identify the writing of the doctor should be produced.

3. The expert must give his reasons. It is not, however, necessary, that he should give reasons at length in support of his opinion. It is sufficient if he gives reasons briefly. The expert should also give his qualifications ( Prem Shankar Misra, 1957 Cr. LJ 108 All).

4. It is the duty of the prosecution, and no less of the court, to see that the alleged weapon of the offence, if available, is shown to the medical witness and his opinion invited as to whether all or any of the injuries on the victim could be caused with that weapon. Failure to do so may sometimes,cause aberration the course of justice. (Ishwar Singh Vs State of Uttar Pradesh, AIR 1976 SC 2423).

5. When there is conflict between the two Doctors, the opinion which supports direct evidence, be accepted (Piara Singh Vs State of Punjab, AIR 1977 SC 2274).

6. It was held in Atma Ram Vs The State of Punjab (D.B) 1882 (2) CLR 496, that the court is not absolved of the responsibility, while deciding a criminal case to form its own conclusion regarding the nature of the injury, expert's opinion not withstanding. The court has to see the nature and dimension of the injury, its location and the damage that it has caused. Even when an injury is described as to be one which endangers the life, the court has to apply its own mind and form its own opinion in regard to the nature of injury, having regard to the factors that should weigh with the court, already mentioned. It was also held that wherever a doctor describes an injury as 'dangerous to life' and the nature of the injuries is such which could merit such a conclusion, then such an injury has to be treated as 'grievous hurt' of the description mentioned in first portion clause (8) of section 320 IPC. In this case Injury inflicted by accused was opined by the doctor, as dangerous to life was declared grievous in nature. It was held that the injury which 'endangered life' must be held to be of grievous nature. It was held that the expression 'dangerous' is an adjective and the expression 'endanger' is verb. An injury which can put life in immediate danger of death would be an injury which can be termed as 'dangerous to life' and, therefore, when a doctor describes an injury as 'dangerous to life', he means an injury which endangers life in terms of clause (8) of section 320 IPC, for, it describes the injury 'dangerous to life' only for the purpose pf the said clause. He instead of using the expression that this was an injury which 'endangered life' described it that the injury was 'dangerous to life',meaning both the times the same thing.

7. It is not the duty of the doctor to enquire from the injured patient about the actual assailants and the inquiry would be confined as to how he received the injuries and the weapon used etc. (P. BabuVs State of A.P, 1994 SCC Cr. 424).

8. In Case, Raj Singh Vs State of Punjab, 1992, Suppl 15 CCR: 519, the High Court observed that [10]:

a. On a bare perusal of the injury, it left no doubt that the doctor had failed to mention the extent of the cut to the bone of the left shoulder, what to say as to stating as to which portion of the bonewas cut.

b. The injury was not subjected to X-ray examination for ascertaining the extent of the cut to the bone under this injury. Under these circumstances it cannot be said by any stretch of imagination that the bone was fractured or dislocated as provided under the clause seventhly to section 320 IPC.

c. The trial court had found this injury to be grievous in nature that it had endangered the life of the injured. In this regard it is noteworthy that injury was with sharp edged weapon on a nonvital part of the body like shoulder without extensive damage to the underlying bone, cannot be said by any stretch of imagination having endangered the life of the injured.

d. Under these circumstances the findings of the trial court regarding the injury being grievous in nature is not sustainable. On the other hand, the accused is guilty of the offence punishable under section 324 IPC.

9. In the case, Sreenivas Vs State of Kerala [10], (KER) 2006(3) AICLR:408, when the expert used the expression"Maxilla cut", the court was of the

opinion that it had to be understood reasonably. The expert did no say that there was a "cut on the maxilla", instead what was specifically stated was that the "maxilla was cut". The court expressed anguish against the manner in which the expert had tendered the evidence. If the medical expert is not experienced and does not tender the evidence on that aspect voluntarily, the prosecutor must lead evidence on that specific aspect. Even if an inexperienced prosecutor omits to lead to relevant evidence the court must seek clarification to elicit relevant evidence.

10. In the case, Lakhvirsingh Vs State of Punjab, 2004, RCR:829, an injury was described as "an incised wound 8cmx3cm with cut on the underlying radius bone measuring 3cmx1cm on posterior lateral aspect of the right forearm just above the right wrist joint. The wound was profusely bleeding". The injury was not considered as grievous under the clause seventhly to section 320 IPC as there was no fracture or dislocation of the bone in this case. The doctor had declared the injury grievous only on the basis of clinical examinations. The high court set aside the findings recorded by the learned trial court and lower appellate court that the injury was grievous. The court also observed that before declaring the injury as grievous, it must be seen whether the cut in the bone,as per the medical report, is superficial or it dislocates the bone or there is a fracture.

11. In case State of Punjab Vs Manga Singh, (P&H) 1992, (2) RCR:144, injury was caused by gandasi cutting the bones; but no X-ray was done to prove the nature of the injury. In medicolegal report it was mentioned that the underlying bone was cut along the direction of the wound. The injury was declared grievous without X-ray examination. The division bench held that the opinion declaring the injury grievous based on mere visual observation fell through and was ignored by the trial court.

## Conclusion

It is the duty of the medical officer to know the law correctly and apply them in their strict sense while giving expert medical opinion. The medical expert witness is expected to put before the court all scientific materials and facts which led him to the conclusion. He also should enlighten the court on the technical/scientific aspects of the case by explaining the terms of science in simplified words, so that the court although not an expert in the field may form its own judgement on those material facts after giving dueregards to the experts opinion. Medical evidence is an important corroborative evidence in the court of law. Once the expert opinion is accepted by the court it is not the opinion of the doctor but of the court. The investigating officer has to thoroughly investigate the case and collect all the available scientific and circumstantial evidences to assist in the logical conclusion in the case. It is finally the judiciary which will interpret the law and apply according to the fact and circumstances of each case and deliver the justice.

## References


1. R.P Kathua Law of crimes and criminology. 5th Edition, 2018, Vinodh Publications (P) Ltd., Delhi.
2. Harrison's Principle of Internal Medicine. 17thEdn., 2008, pp 296-97, Mc Graw Hill Medical, New Delhi.
3. Guyton and Hall. Pocket Companion to Textbook of Medical Physiology. Ist Edn. 1998.p.691, Harcourt Brace and company Asia PTE Ltd.
4. Anil Aggarwal. Textbook of Forensic Medicine and Toxicology. 1st Edn., 2014, Avichal publishing company, New Delhi.
5. Taber's Cyclopedic Medical Dictionary. 19th Edn., 1997, F.A Davis company, Philadelphia.
6. Pocket Oxford English Dictionary. 10th Edn., 2005, Oxford University Press, New Delhi.
7. Dasari Harish. Section 320 IPC- An Appraisal. Anil Aggarwal Internet Journal of Forensic Medicine and Toxicology.
8. Aggarwal KK. Medicolegal Cases in Injury patients and Indian Law. Indian Journal of clinical practice 2013;24(7):684-86.
9. Atal DK, Naik SK, Das S. Hurt and Grievous Hurt in Indian Context. J Indian Acad Forensic Med. 2013;35(2):160-64.
10. OP Aggarwal, AD Aggarwal, Hardeep Singh. Bone cut: Simple or Grievous or Dangerous?. JIAFM; 2006;28(3):108-09.