

## FORENSIC EXAMINATION OF SIMPLE HURT AND GRIEVOUS HURT: A SPURIOUS DISTINCTION

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### Abstract

In a criminal trial for the offences against the human body, opinion of an expert of forensic medicine becomes necessary in order to ascertain the nature of the injuries, duration of the injury, weapons *etc.*, which have been probably used to cause the injury. The medico legal work has a great contribution in the administration of criminal justice. An injury report (wound certificate, medico legal certificate, and medico legal case (MLC) is a document prepared by the doctor in all medico legal cases. A medico legal report needs to be prepared in duplicate, with utmost care providing all necessary details. While making injury report, it is necessary to mention against every injury whether it is simple or grievous in nature but if the nature of injury cannot be immediately ascertained and some investigations are required then in that situation the patient should be kept under observation and entry to this effect should be made in the relevant column of the medico legal report. However, it is not always possible to state precisely whether the nature of injury is simple or grievous. The purpose of the present review paper is to identify the pitfalls to the medico legal experts in identifying the nature of injuries.

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### I. Introduction

ACCORDING TO Black's Law Dictionary, use of the term hurt in a phrase "hurt or annoyance of another" is not limited to only physical injuries<sup>1</sup> but also includes mental injuries.<sup>2</sup> Section 319 Indian Penal Code (IPC) pertains to causing bodily pain, disease or infirmity to any person

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<sup>1</sup>Indian Penal Code, 1860, s.44 reads: "Injury" The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

<sup>2</sup>*Jashan mal Jhamatmal v. Brahmanand Sarupanand* , AIR 1944 Sind 21 "infirmity denotes an unsound or unhealthy state of body or mind and clearly a state of temporary mental impairment or hysteria or terror would constitute infirmity, within the meaning of that expression in section 319 IPC."

and is said to cause hurt.<sup>3</sup> Under section 320 of the IPC the following kinds of hurt have been classified as grievous hurt.

- i. Emasculation.
- ii. Permanent privation of the sight of either eye.
- iii. Permanent privation of the hearing of either ear.
- iv. Privation of any member or joint.
- v. Destruction or permanent impairing of the powers of any member or joint.
- vi. Permanent disfiguration of the head or face.
- vii. Fracture or dislocation of a bone or tooth.
- viii. Any hurt which endangers life or which causes sufferering during the space of twenty days in severe bodily pain, or makes him unable to follow his ordinary pursuits.

Section 320 of IPC is a penal provision. It is required to be interpreted strictly. So no other injury can be read as grievous hurt on the grounds of similarity or analogy, similarity of consequences or effect. All other offences which do not fall within the purview of section 320 of the IPC are simple hurt under the laws of the land. The study is limited to the voluntary causing of simple hurt and grievous hurt.<sup>4</sup>

## II. Statutory Provisions relating to Simple and Grievous Hurt

Section 324 speaks of causing hurt by dangerous weapons. Here it is important to note that the provision is applicable where simple hurt is caused by dangerous weapons<sup>5</sup> and constitutes a class of offence different from grievous hurt. Section 325 IPC provides punishment for injuries of higher intensity which has been considered as grievous hurt. Section 326 contemplates

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<sup>3</sup> See *R v. Chan Fook* [1994] 1 WLR 689 “The body of the victim includes all parts of his body, including his organs, his nervous system and his brain. Bodily injury therefore may include injury to any of those parts of his body responsible for his mental and other faculties”. The phrase “actual bodily harm” is capable of include psychiatric injury. But it does not include mere emotions such as fear or distress nor panic nor does it include, as such, states of mind that are not themselves evidence of some identifiable clinical condition”.

<sup>4</sup> IPC, 1860, s. 321 reads: Voluntarily causing hurt.—whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said “voluntarily to cause hurt.”

<sup>5</sup>*Id.*, s. 324 reads: Voluntarily causing hurt by dangerous weapons or means.—Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

criminal liability for causing injuries which are likely to cause death *i.e.*, causing grievous hurt by dangerous weapons.<sup>6</sup> Injection has not been considered to be a weapon. So it is needless to examine whether injection can be considered to be a deadly weapon.<sup>7</sup> Section 326A speaks of causing grievous hurt by throwing or administering acid and provides punishment of not less than 10 years which can extend to life imprisonment. The heading of the section 326A read with the punishment indicates that it is a case of causing grievous hurt by deadly weapon. Logically acid can not only be construed to be a weapon but also a deadly weapon.

### III. Simple and Grievous Hurt: A Distinction

The distinction between simple and grievous hurt is not always easy to determine. The framers of IPC have stated “we propose to designate all pain disease and infirmity.... ..“we have found it very difficult to draw a line between those bodily hurts which are serious and those which are slight. To draw such a line with perfect accuracy is indeed absolutely impossible: but it is far better that such a line should be drawn, though rudely than that offences: some of which approach in enormity to murder while others are little more than frolics which a good natured man would hardly resent, should be classed together.”<sup>8</sup> The punishment provided for causing simple and grievous hurt is respectively one year<sup>9</sup> and three years.<sup>10</sup> The nature of simple hurt is qualitatively different from the grievous hurt, the difference between the two kinds of injury is real and substantial. The distinction needs to be appreciated by the criminal courts for the administration of justice.

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<sup>6</sup> *Id.*, s. 326. Voluntarily causing grievous hurt by dangerous weapons or means—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

<sup>7</sup> *Gurmeet RamRahim v. Central Bureau of Investigation* CRM-M No.45571 of 2018 in the High Court of Punjab and Haryana at Chandigarh.

<sup>8</sup> Ratanlal and Dhirajlal, *The Indian Penal Code 600*, (Wadhwa & Company, Nagpur, 30<sup>th</sup> edn.)

<sup>9</sup> *Supra* note 5, s. 323.

<sup>10</sup> *Id.*, s. 325 “Punishment for Voluntarily causing Grievous hurt” Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

On various occasions the courts have been confronted with the difficulty in identifying an injury to bone as fracture. In *Po Yi Maung v. Ma E Tin*<sup>11</sup> the court opined “It is sometimes thought that the meaning of the word fracture would imply that there should be a break in the bone and that in the case of a skull bone it is not merely sufficient that there is a crack but that the crack must extend from the outer surface of the skull to the inner surface.” In *Mutukdhar Singh v. Emperor*<sup>12</sup> where evidence was merely that a bone was cut but there was nothing whatsoever to indicate the extent of the scratch on the surface of the bone. The court did not consider it grievous hurt. Later in *Abdul Salam v. State of Maharashtra*<sup>13</sup> the court stated “In our view, both these assumptions are misleading. It is not necessary that a bone should be cut through and through or that the crack must extend from the outer to the inner surface or that 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, it would amount to a fracture within the meaning of clause 7 of section 320.” It is also difficult to identify the hurt which endangers life. In *Ramla v. State*<sup>14</sup> the High Court of Rajasthan observed “It may be pointed out that the perusal of the very definition given above shows that an injury may be called grievous only if it “endangers life”..... a simple injury cannot be called grievous simply because it happens to be caused on a vital part of the body, unless the nature and dimensions of the injury or its effect are such that in the opinion of the doctor it actually endangers the life of the victim.” Thus the litmus test to determine whether an injury is grievous hurt is whether in any way the injuries threaten the life. Thus injuries caused to vital part are not grievous if they are not life threatening, though injuries on vital parts are usually life threatening but it is not a thumb rule that injuries on vital parts are life threatening. The court “refused to accept the opinion of the medical witness to the effect that an incised wound over parietal region 3" x 1" bone deep was grievous in nature.”<sup>15</sup> The nature of injuries which can validly be considered to be dangerous to life cannot be very precise. It has been found that “while there may be cases which can be easily placed either in the category of injury dangerous to life or in the other category, there may be marginal and borderline cases where it may be very difficult to categorise the injuries as dangerous to life or not and in such cases the medical experts may also differ.”<sup>16</sup>

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<sup>11</sup> AIR1937 Rang 253.

<sup>12</sup> AIR 1942 Pat. 376.

<sup>13</sup> 2006 ALL MR (Cri) 3148.

<sup>14</sup> 1963Cri.L.J 387( Raj) .

<sup>15</sup> *Shyamrao Vishnu Patil v. State Of Maharashtra*, 1998 Cri LJ 3446(Bom).

<sup>16</sup> Harish Dasari, K.H Chavli, et.al. “Dangerous injury or injury dangerous to life or grievous hurt endangering life: A dilemma” 39 *J. Indian Acad. Forensic Med* 111-122 (2017).

The distinction between simple and grievous injury may not be always simple and at times it becomes very difficult to identify whether the injury is simple or grievous and reporting of the offence as simple or grievous is erroneous. An injury which may be simple in nature in the opinion of a medical professional may be a grievous hurt in terms of section 320 IPC.<sup>17</sup> The Supreme Court in the case of *Mathai v. State of Kerala*<sup>18</sup> has rightly observed “Hurts which are not like those hurts which are mentioned in the first seven clauses, are obviously distinguished from a simple hurt, may nevertheless be more serious. Thus a wound may cause intense pain, prolonged disease or lasting injury to the victim, although it does not fall within any of the first seven clauses”.

#### IV. Analysis of essential elements of Grievous Hurt

##### Emasculation

It means depriving a male of masculine vigour.<sup>19</sup> In common parlance it can be understood to mean depriving a male of his male role or identity.<sup>20</sup> It adversely affects the sexual capacity. Dictionary meaning of “emasculatation” is depriving a male of masculine vigor. So, this clause is not applicable to female victims. This could be done by “castration, by cutting the male sexual organs, or by causing injury to the testis or to the spinal cord at the level of 2nd to 4th lumbar vertebrae”.<sup>21</sup> Impotence refers to taking away penetrating power during intercourse. Trauma to lumbar region 2-4 LV -damage to nerves responsible for erection may cause impotence. If the male retains penetrating power, accused will not be responsible for causing emasculation. Similarly cutting of a permanently flaccid penis as in case of lumbosacral injury is not emasculation.<sup>22</sup> “Permanent” does not mean that it should be incurable.<sup>23</sup> Criminal statutes require strict interpretation of the essential ingredients of the offence. Clause one requires that the injury has resulted in loss of masculine power which may or may not have

<sup>17</sup> *C. A rockiyasamy v. The State of Tamil Nadu* Cr.\.A(MD)No .526of 2006 in the High Court of Madras.

<sup>18</sup> Appeal (crl.) 89 of 2005 in the Supreme Court of India.

<sup>19</sup>Roshni Duhan “Forensic Medicine and Indian Criminal Laws: A Study Of Relevancy With Legal Provisions” 4 *IJMS* 1-5 (2016).

<sup>20</sup> Available at: <https://www.lexico.com/en/definition/emasculat> (last visited on May 20, 2020).

<sup>21</sup> Reddy K S Narayan and Murty O.P *The Essentials of Forensic Medicine and Toxicology* 292(Jaypee Brothers New Delhi 2014).

<sup>22</sup> Anil Agarwal, *Forensic Medicine and Toxicology* 150 (Avichal Publishing Company, New Delhi, 2016).

<sup>23</sup> *Supra* note 8.

resulted due to an injury caused to the aforementioned segments. Where the victim is impotent before sustaining injury which is likely to cause impotence needs to be ruled out before holding the accused guilty of grievous hurt except in the cases where injuries which are subject to physical verification for example amputation or cutting of penis or testes the determination of emasculation is difficult and prone to mistake. However the things would have been different if the clause I would have been phrased as “the injuries which are likely to cause emasculation or “the injuries which are sufficient in the ordinary course of nature to cause emasculation.” The existing terminology (emasculation) complicates the issue of determination of nature of injury. There is a possibility that injuries which can be validly reported as grievous hurt are actually reported as simple hurt in the injury report and vice versa. However, the effect on sexual capacity of an individual due to emasculation will depend upon the age of emasculation.<sup>24</sup> The determination of age may not be very accurate due to the varying demographic conditions of India.

### **Permanent privation of the sight of either eye/ear**

The Oxford dictionary defines privation “as loss of basic things that people need for living”<sup>25</sup> Lexico has defined privation as “loss or absence of a quality or attribute that is normally present.”<sup>26</sup> Privation of eye sight can be caused by gouging out the eye, poking eyes, pouring chemicals *etc.*<sup>27</sup> In medico legal cases “injury to eye is common and is frequently inflicted by fist or hand.”<sup>28</sup> A significant injury to eye resulting in permanent privation of eye sight has been termed as a grievous injury.<sup>29</sup> Temporary privation of sight does not amount to grievous hurt.<sup>30</sup> The victim must be permanently deprived of one or both eye sight or hearing. Permanent loss of eye sight does not mean that it should be incurable for example loss of sight occurring due to corneal opacity resulting from injury to the cornea may be curable by corneoplasty.<sup>31</sup> So privation of sight of eye is not limited to cases where there is a complete loss of sight of

<sup>24</sup> “Castration after puberty, turning men into eunuchs, diminishes or completely eliminates the sex” *available at*:<https://www.psychologytoday.com/us/blog/how-we-do-it/201607/unmanned-unnatural-history-human-castration>(visited on May, 2020).

<sup>25</sup> Oxford Advanced Learners Dictionary at 212 (2004).

<sup>26</sup> *Available at* :<https://www.lexico.com/en/definition/privation> (last visited on May 12, 2020).

<sup>27</sup> *Available at* : <https://epgp.inflibnet.ac.in/Home/ViewSubject?catid=16> ( last visited on May 13, 2020).

<sup>28</sup> Arooj Amjad, Shaheer, Muhammad *et.al.*, “Etiology of Ophthalmic Medicolegal Cases Presenting To Tertiary Care Hospital” 26 *TPMJ* 1192-1196 (2019).

<sup>29</sup> Tripathy K Chawla *et.al.*, “Clinical profile of medico legal cases presenting to the eye casualty in a tertiary care center in India”64 *IJO* 422-6,(2016).

<sup>30</sup> S.S Das, *The Indian Penal Code* 497 (University Book House Jaipur, 2018).

<sup>31</sup> *Supra* note18.

eye. It is sufficient if there is loss of quality or attribute of eye. The clause is silent about the extent of loss of quality or attribute. Meaning thereby that if before the injury, the vision was 6/6 and due to the injury it deteriorates to 6/12, it would be a case of grievous hurt. But it is difficult for the doctor to determine the extent of loss of quality or attribute unless the status of the quality of eye sight before the injury is available with the medico legal expert, which is a rare possibility. So there is a possibility of reporting the cases as simple hurt which could have been reported as grievous hurt and *vice versa*. The law is silent on the extent of loss of quality or attribute of sight of the eye.

However, any ocular injury can be categorized in three groups namely:<sup>32</sup>

- i. Simple eye injuries,
- ii. Grievous eye injuries
- iii. Eye injuries those are dangerous to life for all medico legal purposes.

There must be an element of permanence as regards the privation of eyes in order to come within the purview of grievous hurt “All injuries that cause privation of any part of the eyes (with exception, the eye lashes) and joints for example dislocation of lens and breaking of zonules and stripping away of lid or small part of it are grievous if there is an element of permanence. Injuries that cause residual defect after healing, *i.e.*, ptosis, entropion and squint etc even if the vision is normal (6/6) & amounts to grievous injury are grievous in nature.<sup>33</sup> Medico legal cases may present at varying time intervals after the injury is inflicted. Patient may come days or weeks after the injury.<sup>34</sup> In some cases, patients may try to feign injuries which may mislead the doctor to a wrong conclusion.<sup>35</sup> Sufficient history and thorough examination is necessary to ascertain the correct estimation of injuries and any erroneous reporting about the nature of injury. The doctor should give his opinion after complete healing which may take six weeks or six months or more on an average, only then it can be judged whether the disability or disfigurement is permanent or not because anatomical healing usually never correlates with physiological healing.<sup>36</sup> The medical witness in his report must clearly indicate that the victim has suffered permanent privation of vision if he is giving his opinion

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<sup>32</sup> Available at :<http://medind.nic.in/jal/t08/i4/jalt08i4p227.pdf> (visited on June 12, 2020).

<sup>33</sup> *Ibid.*

<sup>34</sup> Doesjka van den Bos, Sitya Zomer *et al.*, “Dare to date: Age estimation of subdural hematomas, literature and case analysis” *Int J Legal Med.* 128,631-40(2014).

<sup>35</sup> S Alerhand “Inner conflicts from a resident medicolegal consulting case” 23 *Acad Emerg Med* 1296-97(2016).

<sup>36</sup> Available at: <http://medind.nic.in/jal/t08/i4/jalt08i4p227.pdf> (visited on June 12,2020)

about grievous hurt. The indispensable features of documentation include the VA, intraocular pressure and a drawing of the wounds.<sup>37</sup>

Permanent deprivations of the sense of hearing has been kept under the category of grievous hurt. “Such injuries may be caused by a blow on the head or the ear or by blows which injure the tympanum or auditory nerves or by thrusting something or poring hot liquid into the ear or by a blast which causes deafness.”<sup>38</sup> Under the provisions of clause III of section 320 of IPC, the extent of loss of quality or attribute is essential for the determination of the nature of injury whether it is simple or grievous. Unless the status of hearing capacity of the victim before the injury is accessible to the doctor who examines the victim, it may not be possible for the doctor to evaluate the extent of loss of quality or attribute of the hearing of the ear. So there is a reasonable possibility of error in the evaluation of effect of injury and improper reporting of the nature of injury.

Head injuries at times may not be considered necessary for surgical intervention but after a significant interval of time, may result in loss of eye sight or privation of hearing. So there is a possibility of medico legal reporting of injury as simple hurt instead of grievous hurt. It is advisable for the doctor to wait for a significant period of time to report the nature of the injury.

### **Privation of any member or joint**

The term “member” used in section 320 means “an organ or a limb, being part of a man capable of performing a distinct function or any part of the body which has a separate morphological and functional identity. As such, it includes the eyes, ears, nose, mouth, hands, feet and, in fact, all distinct parts of the human body designed to perform a distinct function.”<sup>39</sup> A joint, also called an articulation, it is a place where adjacent bones or bone and cartilage come together (articulate with each other) to form a connection.<sup>40</sup> Privation means an act or instance of depriving. The privation of a member of a joint means injuring in any way or depriving a person

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<sup>37</sup> S Das, M. Sharma “Analysis of medico-legal cases registered at eye casualty in Fakhruddin Ali Ahmed Medical College and Hospital” 6 *J. Evolution Med. Dent. Sci.* 6717-6721(2017).

<sup>38</sup> *Supra* note 26.

<sup>39</sup> *Supra* note.17.

<sup>40</sup> Available at :<https://opentextbc.ca/anatomyandphysiology/chapter/9-1-classification-of-joints/>(visited on May 8, 2020).

of the functions of a member or a joint against his or her will.<sup>41</sup> If due to an injury, any joint becomes stiff to the extent that the normal function of the joint is not possible, it is a grievous hurt.<sup>42</sup> It is not necessary for grievous hurt that the privation should be of permanent nature. It is pertinent to mention that the privation of eye sight or hearing in order to be considered grievous hurt under clause II or clause III of section 320 must be permanent whereas privation of any member or joint in order to be a grievous hurt under clause III need not be permanent, even temporary privation of any member or joint amounts to grievous hurt. Under clause IV privation of member or joint whether temporary or permanent will amount to grievous hurt. However under section 120 IPC, eyes and ear can also be construed as a member under clause IV. Thus it can be inferred that even temporary privation of eyesight or hearing can be legally considered to be a grievous hurt. It amounts to a contradiction between clause II and III. The probable reason for requiring the privation of eye sight under clause II and privation of hearing under clause III to be of permanent nature but privation of member or joint under clause IV of temporary or permanent nature to be considered as grievous hurt is intense pain which the victim suffers in case of privation of member or joint.

### **Fracture or dislocation of a bone or teeth**

The word fracture has not been defined under the IPC. The Oxford dictionary has defined it to mean the breaking or cracking of the bone. Fracture generally means breaking of the bone. However, it is not always necessary that all fracture should involve breaking of the bone. Even crack in a bone caused due to an injury can be considered to be a fracture. In the case of *Hori Lal v. State of Uttar Pradesh*<sup>43</sup> bone deep incised wound which resulted in cutting the bone was considered as a fracture. In *Mokkasamy v. Unknown*<sup>44</sup> the court observed “where the evidence is merely that a bone has been cut and there is nothing whatever to indicate the extent of the cut, whether deep or a mere scratch upon the surface, it is impossible to infer from that evidence alone that grievous hurt has been caused within the meaning of the definition in section 320 of Indian Penal Code. A scratch or a cut which does not go across the bone cannot be said to be a fracture of a bone within the meaning of Section 320 ”.<sup>45</sup> A crack of the skull

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<sup>41</sup> IPC s. 44 reads: defines “Injury. The word “injury” denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

<sup>42</sup> Reddy K.S Narayan and Murty O.P, *The Essentials of Forensic Medicine & Toxicology* 293 (Jaypee Brothers, New Delhi, 2014).

<sup>43</sup> 2SCR 237(1970).

<sup>44</sup> 1965 CriLJ 48(Madras).

<sup>45</sup> *Ibid.*

bone which extends from the outer surface of the skull to the inner surface is a fracture.<sup>46</sup> However both outer and the inner tables of the skull bone may be considered to be bones by themselves and fracture of outer or the inner table by itself can be regarded as fracture of a bone within the meaning of Section 320. If outer and inner table are considered as bone, a crack even if it does not involve both the tables of the skull bone may amount to a fracture of a bone. “A fissured fracture of the outer table of the skull bone will bring the case within the definition of a grievous hurt.”<sup>47</sup> If cracks are also considered as fracture, which are generally not considered serious in themselves, then the law should spell out the nature of cracks to be considered as fracture within the terms of section 320.

Dislocation of bone is a medical emergency<sup>48</sup> and comes within the purview of grievous hurt. According to United States Medicine Library dislocation means separation of bones from the joint where they meet.<sup>49</sup> A dislocation of a joint will also amount to grievous hurt. It is important to point out that if dislocation is treated in time, it may not result in permanent injury. Sometimes small dislocations are missed while making medico legal examinations. At times, the attending doctor determines the nature of injury simple or grievous clinically without doing X-ray.<sup>50</sup> Though some dislocations can be identified by clinical examination but X-ray has been considered to be a proper choice of modality of diagnosis of dislocation of bone. There are some injuries which are subtle and difficult to detect by radiographic image.<sup>51</sup> For instance posterior shoulder dislocation on a standard anteroposterior (AP) view is subtle and may go undetected in up to 50 percent of cases.<sup>52</sup> If X-ray of bone is not taken from the proper view, the radiologist can miss the diagnosis of dislocation as a normal anatomical status. When initial X-rays are normal but injury is suspected then further assessment should be made. Computer-aided detection can minimise the likelihood of missing some radiologic abnormalities.<sup>53</sup>

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<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> Available at: <https://medlineplus.gov/ency/article/000014.htm> (visited on May 9, 2020).

<sup>49</sup> *Ibid.*

<sup>50</sup> *Mutukdhar Singh v. Emperor* AIR 1942 Patna 376, *State of Punjab v. Iqbal Singh*, available at: <https://indiankanoon.org/doc/30413468/> (visited on July 19,2020).

<sup>51</sup> “The radiographic diagnosis of most fractures and dislocations poses little difficulty to radiologists: however, occasionally these injuries are quite subtle or even impossible to detect on radiographs.”

Antonio Pinto *et.al.*, “Traumatic fractures in adults: missed diagnosis on plain radiographs in the Emergency Department” 89 *Acta Biomed* 111–123 (2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6179080/> visited on July 19,2020).

<sup>52</sup> DM Gor “The trough line sign” *Radiology*; 224,485( 2002).

<sup>53</sup> Adrian P. Brady “Error and discrepancy in radiology: inevitable or avoidable?” *Insights imaging* 8, 171–182 (2017). Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5265198/> (visited on July 19,2020)

Artificial knee replacements, joint replacement of hips have become common these days.<sup>54</sup> It is a surgical process where the affected bone or cartilages or both are replaced by prosthetic components made of metal, plastic, or ceramic.<sup>55</sup> If an injury impairs the functioning of an artificial implant, what will be the nature of the injury simple or grievous? The answer will depend upon the fact whether such impairment of artificial implant is fracture or dislocation *i.e.*, the nature and consequences of the injury to such artificial implant. The law is silent on the issue as regards the nature of injury to that part. A fracture cannot be caused to artificial implants made of prosthetic components but dislocation can be caused to these artificial implants under certain circumstances. But whether it can be medically considered to be a dislocation will depend upon whether such artificial implants can be considered to be an integral part of such impaired body part, knee or joint or hips. The Oxford dictionary says that an integral part is necessary to complete the whole. In this sense the word essential is a near synonym.<sup>56</sup> Here it is important to mention that implant is an essential component for the proper functioning of the body part where the implant has been made. So the implant can be considered to be an integral part of the human body.<sup>57</sup> However if the injury to that (artificial joint or member) part is caused and the victim is confined to a hospital and evidence is there on record to the effect that he was “unable to follow his ordinary pursuits for at least twenty days” the injury will qualify for grievous hurt.

### **Dangerous injuries, severe bodily pain and inability to follow normal pursuits**

Under clause VIII three different types of hurt have been included:<sup>58</sup>

- i. Any hurt which endangers life.
- ii. Any hurt which causes the victim to be in severe bodily pain for a period of twenty days.
- iii. Any hurt which prevents the victim from following his ordinary pursuits for a period of twenty days.

The three clauses are independent of one another and the injuries mentioned in clause VIII will fall within the purview of grievous hurt.<sup>59</sup>

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<sup>54</sup>The procedure is performed in a hospital where through surgery, the damaged cartilage and bone is removed from joint and replaced with prosthetic components made of metal, plastic, or ceramic.

<sup>55</sup>Available at: <https://orthoinfo.aaos.org/en/treatment/total-joint-replacement>. (last visited on July 8, 2020).

<sup>56</sup> Oxford Advanced Learner’s Dictionary 7<sup>th</sup>edn., 807 (2005).

<sup>57</sup>*Supra* note 40.

<sup>58</sup> *Abdul Sajid Abdul Sadiq v. State of Maharashtra* 2003 (4) MhLj 306.

<sup>59</sup> *Supra* note 37.

### **Injuries which endangers human life**

An injury caused on vital part of the body cannot be called grievous hurt unless the nature and dimensions of the injury or its effects are such that the doctor is of the opinion that it actually endangers the life of the victim. If the life of the person is not endangered, it is not a case of grievous hurt. Indian penal code has nowhere defined the injuries which endanger human life. The term “endangers life” is more serious than the expression “dangerous to life”.<sup>60</sup> Any injury can be said to endanger life if the injury is sufficient in itself to endanger life. Any injury in order to endanger life should be imminent. Modi in his book on medical jurisprudence<sup>61</sup> states “danger to life should be imminent before the injuries are designated 'dangerous to life', such injuries are extensive, and implicate important structures to organs, so that they may prove fatal in the absence of surgical aid. For instance, a compound fracture of the skull, a wound of a 'large artery' or rupture of some internal organ, such as the spleen, should be considered dangerous to life”. But the injuries which prove fatal remotely by inter current diseases, such as tetanus, erysipelas, *etc.* should not be considered as dangerous. Dangerous injuries are those injuries which require surgical intervention. If no surgical aid is available it is sufficient to cause death in the ordinary course of nature. Whether it is sufficient to cause death in the ordinary course of nature is a matter to be inferred from the proved facts about the nature of the injury.<sup>62</sup> If an injury is inflicted on a vital part of the body but no vital organ of the body is injured then it cannot be considered to be grievous hurt under clause VIII. The fact cannot be legally decided per se. In fact this is a matter of medical determination whether an injury endangers life or not and would depend upon attending circumstances. Any injury whether it endangers life will normally depend on the weapon used to cause the injury or the part of human body where the injury has been caused or the manner of causing injuries. Dasari Harish and Chavali, have stated in their study<sup>63</sup> that it is true that injuries inflicted on vital parts of the body, such as the head, chest, or the abdomen, tend to endanger life, and are therefore dangerous, but they will not fall under this clause unless they are of such serious nature as to make the victim waver between life and death.” It is important to point out “Where injury was caused on the abdomen with a sharp edged weapon and the doctor had stated that the injury

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<sup>60</sup>*Niranjan Singh v. State Of Madhya Pradesh* Appeal (crl.) 487 of 2001 in the Supreme Court of India.

<sup>61</sup>Rai Bahadur Jaising P. Modi, *A Textbook of Medical Jurisprudence and Toxicology* (Butterworth-Heinemann, 6<sup>th</sup>edn. 2013).

<sup>62</sup>*Virsa Singh v. The State of Punjab* AIR 1958 S.C 465.

<sup>63</sup>*Supra* note 48.

had penetrated the abdominal cavity but had not involved any vital organs/ important structures, but had just touched the stomach, it was held that the accused had caused only simple hurt.”<sup>64</sup>

The concept of injury dangerous to life is not very precise so it is not enough if the medical witness makes simple statement that the injury in a particular part is dangerous to life.<sup>65</sup> The medico- legal expert should clearly mention in his report that the injuries are life threatening. Where the medico- legal expert in his report records that the general condition of the patient is very bad but the medical certificate omits that the Injuries are in fact dangerous to life, it fails to provide the proper guidance to the court.<sup>66</sup> The report lacks the valuable guidance to the court. The doctor should place all relevant informations, “the nature, extent of injury, the kind of weapon used, the part of body struck, whether the injury caused hemorrhage or shock, affected important structures or organs or that the injury was very extensive otherwise caused imminent danger and should also state the various grounds on which he considers the injury to be dangerous one.”<sup>67</sup>

The injury should be of such a nature that the victim is compelled to suffer severe bodily pain or is unable to follow normal pursuits for at least 20 days. However “mere remaining in the hospital for 20 days or more cannot be itself equated with the patient remaining unable to follow his ordinary pursuits for twenty days.”<sup>68</sup> Whether the victim suffered severe bodily pain cannot be objectively determined with accuracy. So it is probable that injury is erroneously reported as simple or grievous hurt. Here it is relevant to point out that the phrase “ordinary pursuit” is very vague and can have different interpretations. It can mean every day routine of the victim like eating, bathing using toilets on his own without taking assistance from others. It can also be interpreted to mean that the victim could not pursue his profession or avocation which he could follow before the injury. However it has been established that ordinary pursuits pertain to daily acts like eating, bathing or using toilets *etc.*<sup>69</sup> In the case of *Yoganathan v. PP*<sup>70</sup> of Singapore, the court was of the view that the test involves consideration of the particular

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<sup>64</sup>*Jagdish Chand v. State of HP*, 1992 Cr.LJ 3076 (HP).

<sup>65</sup> *Ibid.*

<sup>66</sup>*Neelam Bahal v. State of Uttarakhand* Criminal Appeal 1012 of 2009 in the Supreme Court of India.

<sup>67</sup> *Ganga Ram v. State* 1968 CriLJ 134(Rajasthan).

<sup>68</sup> *Khair Din v. Emperor* AIR 1931 Lah 280.

<sup>69</sup> Reddy K.S Narayan and Murty O.P, *The Essentials of Forensic Medicine & Toxicology* 294 (Jaypee Brothers, New Delhi 2014).

<sup>70</sup> [1994] 4 SLR 264.

victim, including the ability to work in his normal profession. But in terms of section 320 it can be logically concluded that if the victim can follow his ordinary pursuits but unable to carry out his profession or avocation, for the reason of injury, it will not amount to grievous hurt.<sup>71</sup> It seems that the clause has been poorly drafted and fails to take into account the situation where injury changes the quality of life but will not come within the purview of grievous hurt for example where the injury results in loss of memory or occurrence of periodic convulsions.

### **Permanent disfiguration of the head or face**

Under the sixth clause, permanent disfiguration of the head or face amounts to grievous hurt. The word “disfigure” means to cause a person some external injury.<sup>72</sup> It means damaging the figure, or changing to worse form, or reducing the beauty, or deforming. Though the injury may not affect the efficiency or functioning of the part of the face or head whether temporarily or permanently but if the face or head is deformed or cosmetic effect is caused to the disadvantage of the victim, it will amount to grievous hurt within the provisions of section 320 of Indian penal Code. The examples in this context may be, cutting off nose or nostrils, tearing of ears, cut inflicted by a sharp object on the cheeks or face are all grievous hurts under this section. The disfiguration must, however, be permanent and not temporary. The clause talks about disfigurement of face or head but has failed to contemplate the disfigurement of other exposed body part for example chest, neck or back of a person may be more devastating than the disfigurement of the face or head of the person from the cosmetic point of view.

## **V. Professional duties of Medico-Legal Expert**

Whether the injuries are simple in nature or grievous is required to be decided on the basis of injury at the time of infliction rather than the nature of injuries after medical intervention. The cardinal principle to decide whether the injury is simple or grievous is if the injury is left untreated whether it would result in the consequences contemplated under section 320 IPC.

In certain circumstances weapons allegedly used to commit offence are recovered and sent by the investigating officer to the medico- legal expert. The expert should properly examine the

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<sup>71</sup> *Supra* note 69.

<sup>72</sup> *Gangaram v. State of Rajasthan* WLN 356(1983).

said weapon for blood stains or remains of the body on the weapon used in the commission of the crime. In certain conditions, examination of the injury and the clothing attached to the weapon helps the attending medico legal expert to form an opinion about stab or incised wound without any difficulty. As regards duration of injuries are concerned, opinion is required to be based on the state of the healing of injuries. It is of the interest of the court to know the opinion of the medico legal expert on the history and the nature of injuries.<sup>73</sup> The injuries confronted by the medico -legal experts may vary from abrasions, contusions, lacerations, stab wounds, electric shock, firearm, or ligatures, etc. it may be combination of one or more injuries referred above.<sup>74</sup>The patient may have survived the injuries or may have succumbed to the injuries.

The medico legal expert must clearly indicate in his report that the injured man was in severe bodily pain or unable to follow his ordinary pursuits. It is pertinent to mention that a victim may on his volition choose to remain in the hospital for various reasons though staying in the hospital is not essential. The medico legal expert while issuing a report that the victim was not able to pursue his ordinary pursuits for at least twenty days should not be misguided under such circumstances.<sup>75</sup> He should be upright, honest and professional in preparing medico legal reports.<sup>76</sup> He should not misuse his position. <sup>77</sup>

## VI. Role of Medical witness in the administration of Criminal Justice

Medical witnesses play a very important role in the administration of criminal justice. Their role becomes more important where there is no witness, where the witness is not willing to adduce evidence or where the evidence given by the witness is considered unreliable. Under the provisions of section 45 of Indian evidence Act, criminal courts are entitled to take the opinion of experts where they have to form an opinion about a point of foreign law or science or Art or finger impressions. The opinion of persons especially skilled in such matters are

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<sup>73</sup> Gautam Biswas, *Review of Forensic Medicine and Toxicology (Including Clinical & Pathological Aspects)* (Medical Publishers Pvt. Ltd. New Delhi, 2019).

<sup>74</sup> K.K Agrawal, "Medico legal Cases in Injury Patients and Indian Law", *Medilaw*, available at: <http://medind.nic.in/iaa/t13/i12/iaat13i12p684.pdf>(visited on May 12, 2020).

<sup>75</sup> *P.K Ghos v. State*, CrI. Rev. P. No.361 of 2003.

<sup>76</sup> Scandals have been reported against some doctors of issuing fabricated medico-legal report. Available at: <https://timesofindia.indiatimes.com/india/Fake-medico-legal-reports-Ask-complainants-to-contact-civil-surgeons-govt-told/articleshow/11140273.cms>.(visited on May 1, 2020).

<sup>77</sup> *Ram Kumar v. State of Haryana*, Punjab-Haryana High Court CRR No.4224 of 2014. There were specific and positive allegations against the petitioner of having misused his position as a medical practitioner for consideration.

relevant facts and such persons are called as experts. An expert is a person having experience on the basis of which he or she gives an opinion on a fact in issue within his or her expertise.<sup>78</sup> The defense lawyer may try to attack on the professional competence of such witnesses. The role of medical witness is of guiding the court. The court is not always bound to accept it. The Supreme Court of India has held that, “A medical witness called as an expert and the evidence given by the medical officer is really of an advisory character based on the symptoms found on examination. The expert witness is expected to put before the court all materials inclusive of the facts which induced him to come to the conclusion and enlighten the court on the technical aspects of the case by explaining the terms of science so that the court although not an expert, may form its own judgments on these materials after giving due regard to the expert’s opinion because once the expert’s opinion is accepted it is not the opinion of the medical officer but that of the Court”<sup>79</sup> If the opinion of the medical witness is not convincing the court may refuse to accept it.<sup>80</sup>

## VII. Conclusion and Suggestions

The principles of statutory interpretation require that the words and expressions used in an Act should be considered in the light of contemporary knowledge. Bodily disease or infirmity is not just limited to skin, flesh or bones but extends to all the organs of human body like brain and nervous system. Injury can also be psychological or psychiatric. It seems that the framers of the IPC could not conceive psychological and psychiatric injuries at the time of drafting the IPC. Thus hurt can be physical or mental but section 320 is silent on the issue of mental or psychological injuries. Sections 320 in general and clauses VI and VIII in particular have been poorly drafted. Under clause V disfigurement is subjective and is liable to different interpretations. Disfigurement is confined to face or head but ignores the disfigurement of other exposed body parts which has aesthetic value for people. Clause VIII uses a phrase “any hurt which causes the sufferer in severe bodily pain or unable to follow his ordinary pursuits during the space of twenty days.” Severe bodily pain is again very subjective and cannot be medically determined and is largely dependent upon the version and external manifestations of the victim. Difficulty in following ordinary pursuit is limited to daily needs but fails to take into account

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<sup>78</sup> Available at: [https://shodhganga.inflibnet.ac.in/bitstream/10603/6648/9/09\\_chapter%201.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/6648/9/09_chapter%201.pdf) (last visited on May 6, 2020).

<sup>79</sup> SCR 921(1992).

<sup>80</sup> *Milkiyat Singh v. State of Rajasthan* AIR 1981 SC 1579.

the difficulty in following profession or avocation which adversely affects the quality of life of the victim. These clauses require rephrasing so that the injuries can be objectively identified as grievous hurt with sufficient accuracy.

Grievous hurt caused by dislocations, the cure of which does not require medical expertise or intervention requires different treatment under the penal code. So all kinds of dislocation of bones should not be kept within the purview of grievous hurt. Clubbing the injuries which are qualitatively different in nature in the category of grievous hurt lacks rationality. For example certain kinds of dislocation of bone for example (shoulder, knees, *etc.*) or minor (toes, fingers, *etc.*) can be brought to their original position without leaving any permanent mark. Treatment for joint dislocation is usually by closed reduction (non surgical) by skilled manipulation to return the bones or a joint to their normal position. At times this situation provides an opportunity to medico legal experts of misusing their position.

If the injuries involve fracture or dislocation X- ray of injured part should be taken from different views depending upon the joint or part being investigated. Plain films are generally sufficient in making a joint dislocation diagnosis. However, cross-sectional imaging, CT and digital detection can be more useful in examining such aberrations.

In the case of dislocation of teeth greater amount of care is required at the end of the medico legal expert and he/ she is expected to take into consideration attending circumstances before forming any opinion about the nature of injury for example in dislocation of teeth deceased conditions of teeth, level of oral hygiene, age of the victim *etc* should also be taken into account.

The medical witness guides the court to determine the nature of injuries. As the decision of the court regarding the nature of injury is dependent upon the medico legal report. The report should contain all material particulars for instance the nature, size, and duration of injuries, whether the injury is simple or grievous. So the medico legal expert should also record the grounds on which he considers the injury simple or grievous.

Various clauses of section 320 contemplate injuries to different parts of the body which are different in nature and cause different impact on the body. Seriousness of the injuries is dependent on the nature and impact it causes on the body. Providing same punishment for

different kinds of grievous hurt irrespective of their seriousness is miscarriage of justice. Section 326 of Indian penal code has been inserted by Criminal Law Amendment Act of 2013 and provides a punishment which is qualitatively very different from the punishment provided for grievous hurt. Section 326 fulfills all the ingredients of grievous hurt and thus the injuries caused by administering acid, throwing acid can be validly called as grievous hurt. In fact it is one of the gravest forms of grievous hurt. Section 326 A by providing a punishment different from the punishment provided for grievous hurt under section 320 IPC indicates the possibility of providing distinction as regards punishment between different kinds of grievous hurt depending upon the nature of the grievous hurt. The hurt which causes intense pain, endangers life or significantly affects the quality of life should receive differential treatment as regards the punishment from other kinds of hurt enumerated under section 320 of IPC.