

LEGAL PROCEDURE

**DR KARTIK PRAJAPATI
MD FM**

SYNONYMS

- Forensic Medicine (U.K.)

Forensic medicine = the medicine of forum or law courts (Forum = Roman law court)

- Legal Medicine (U.S.A.)

Legal medicine = the branch of medicine that deals with the law

- Medical Jurisprudence (India)

Medical Jurisprudence (Jurisprudence = laws)

FORENSIC MEDICINE

- Forensic medicine is a branch of medicine which deals with application of medical knowledge in administration of law and justice
- Forensic medicine is a branch of medicine where the principles and knowledge of medicine is used for purposes of the law, both civil and criminal.

BRANCHES OF FORENSIC MEDICINE

- Forensic Pathology
- Clinical Forensic Medicine
- Forensic Psychiatric
- Forensic Toxicology
- Forensic Thanatology
- Forensic Anthropology
- Forensic Entomology
- Forensic Serology

ROLE OF FORENSIC MEDICINE

- To prove a point of law
- Used as a piece of circumstantial evidence
- To check the correctness or relevancy of the statement of a witness
- To help in differentiating Accident, Suicide and Homicide
- Personal identification of unknown cases
- To aid law enforcement force

LEGAL PROCEDURE

- Indian penal code (IPC)
- Criminal procedure code(Cr.PC)
- Indian evidence act(IEA)

INQUEST

- An inquest is an inquire or investigation into cause of death where death occurs in cases of sudden, suspicious or unnatural conditions.
- Types:
 1. Police inquest
 2. Magistrate's inquest

TYPES OF INQUEST

POLICE INQUEST

- Inquest By Police. S-174 Cr PC
- Police officer above rank of constable
- Prior inform to area magistrate
- Cannot hold inquest all cases

MAGISTRATE'S INQUEST

- Inquest by Magistrate s-176 Cr PC
- Executive, DM, SDM
- Not inform
- Power to hold all cases specially ...
 1. Custodial death.
 2. Death of a woman within 7 years of marriage.
(Dowry death)
 3. Death in police action.
 4. Death in psychiatry hospital
 5. Exhumation

TYPES OF INQUEST

POLICE INQUEST

- Cannot issue warrant except cognizable offence
- cannot exhumed body
- Inferior to magistrate`s inquest

MAGISTRATE'S INQUEST

- Can issue arrest warrant
- Can issue exhumation order
- Superior to police inquest

Report of investigation under Section 174 CrPC on the body of a person found dead at AM/PM
on the day of(month) (year)

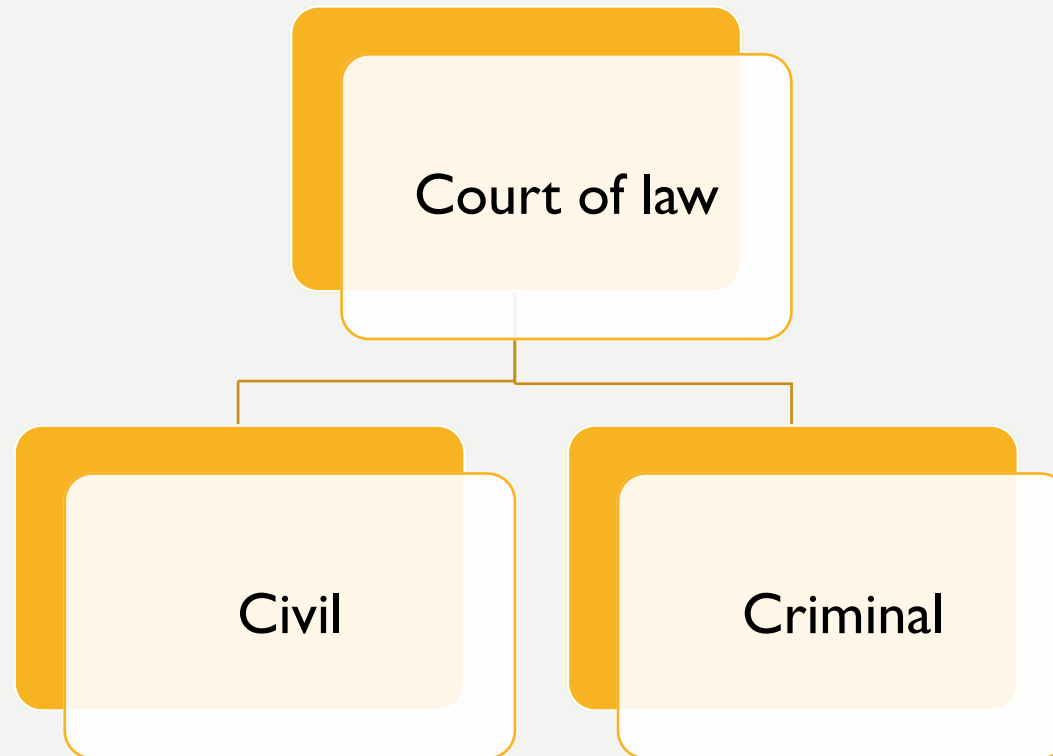
1. Name, occupation and residence of persons composing the panchayat:
2. Name of the deceased, sex, age, occupation, father's name and residence:
3. By whom first found dead, when, and where?:
4. By whom last seen alive, where and when, and in whose company, and whether he carried any valuable property with him:
5. Height, colour and descriptive marks:
6. Married or single:
7. State of corpse, its posture and exact state of limbs, eyes, mouth, etc.:
8. If any wounds, particulars thereof, and list of all property found on the corpse:
9. Minute description of exact spot:
 - a. Where corpse was found & if in water, depth thereof:
 - b. When body is found in a well, information on the following points should be given:
 - i. Is the well a public or private property?
 - ii. If the latter, to whom does it belong?
 - iii. Is it near a public road or pathway?
 - iv. Does it have a parapet wall and float?
10. By which relative, body is recognized, and their statement given in short (blood relatives, such as parents, brothers, sisters always to be examined, if there are any):
11. Abstract of evidence of other persons examined:
12. Apparent cause of death:
13. If by violence, apparently, by what weapon:
 - a. If any person is suspected, who and why?
 - b. Was the deceased insured in any company?
14. If corpse is not sent for medical examination, why?
15. If corpse is sent, for what purpose and by whose order, and No. of Constable who went with it. (the date and hour when the body is sent should also be given here)
16. By whose order, corpse was buried or burnt?
17. Opinion of the panchayatdars as to cause and manner of death:
18. Signatures of such of the panchayatdars who concur with the above opinion:
19. Station house officer's signature:
20. If name and residence of deceased is unknown, state what steps have been taken to
 - a. Ascertain the same, and secure identification.
 - b. Have fingerprints of the deceased been taken and sent to the Fingerprint Bureau concerned?
21. Was the body warm or cold when first found?
22. Any reason to suspect foul play?
23. Duration of investigation:

Investigation commenced at Investigation closed at

Signatures of witnesses

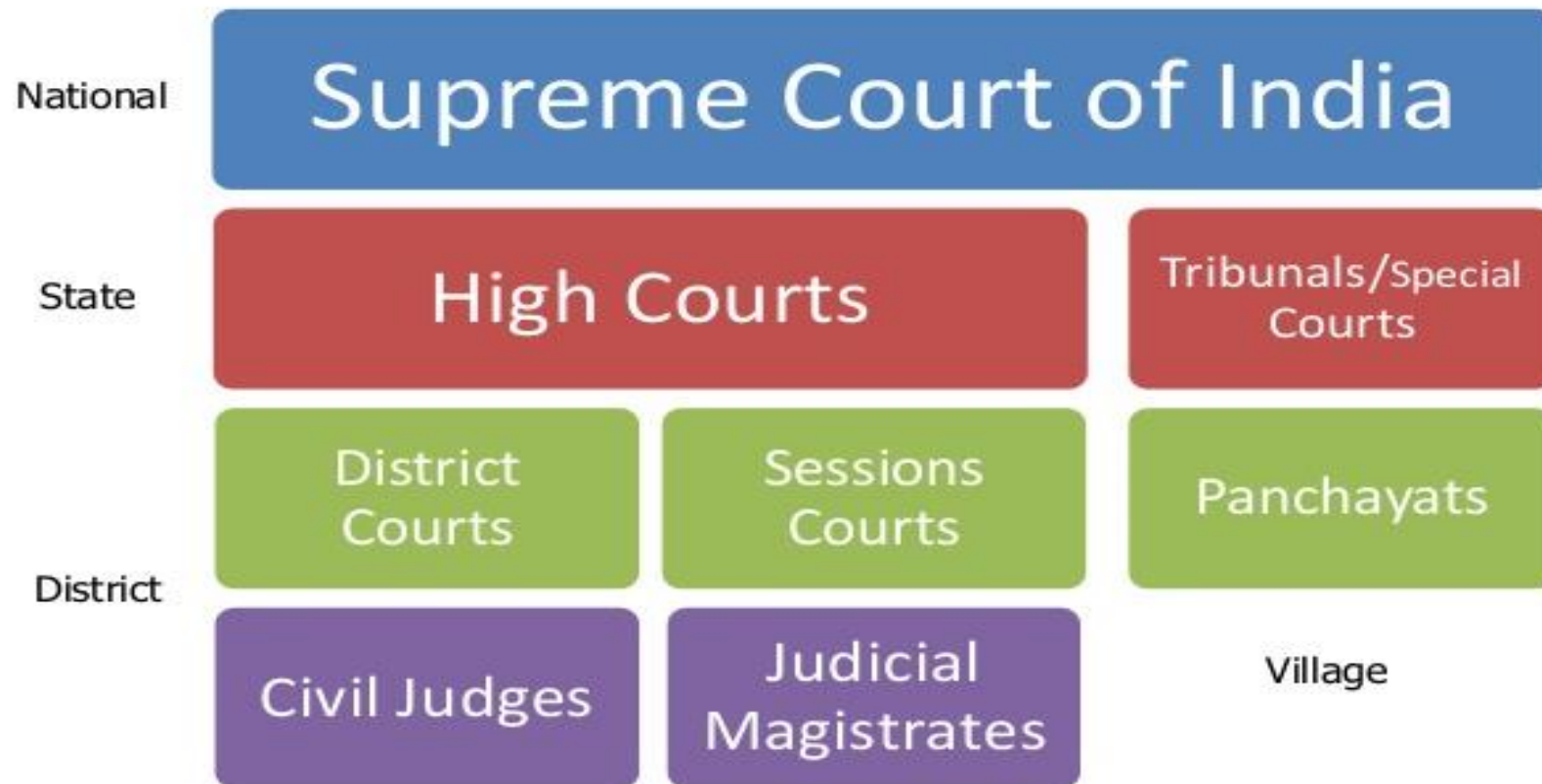
Signature of the Investigating Officer.....

COURT OF LAW

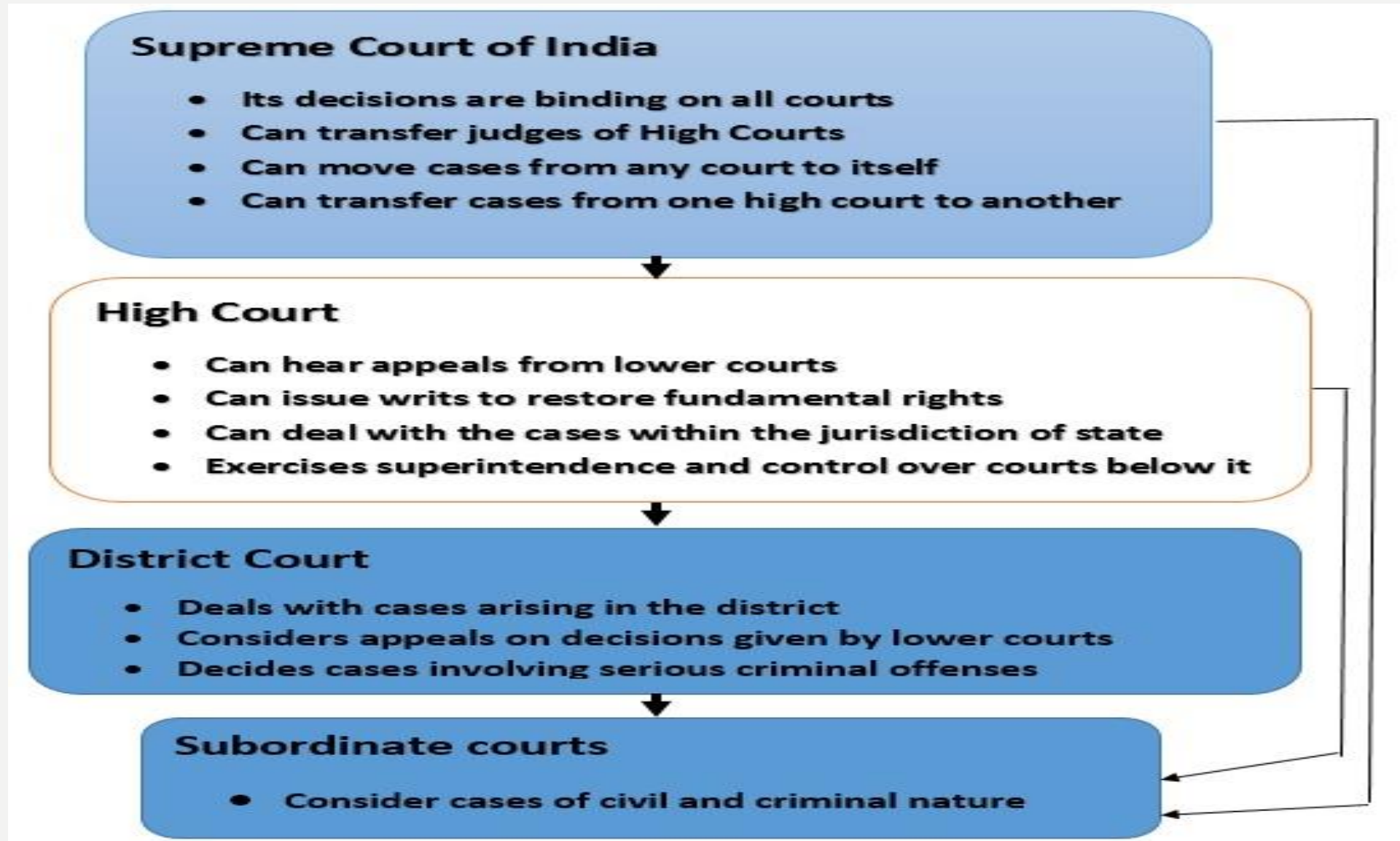


COURT OF LAW

Hierarchy of Courts...



COURT OF LAW



COURT OF LAW

Penal Powers of Various courts in India

High Court	any Sentence Authorized by Law
Sessions Judge or Additional Sessions Judge	any Sentence Authorized by Law but Death Sentence with the confirmation of High Court
Assistant Sessions Judge	any Sentence Authorized by Law except Death Sentence or Imprisonment for life or Imprisonment for a Term exceeding 10 years
Chief Judicial Magistrate or Chief Metropolitan Magistrate	any Sentence Authorized by Law except Death Sentence or Imprisonment for life or Imprisonment for a Term exceeding 7 years
Judicial Magistrate First Class	can pass Imprisonment for a term not Exceeding 3 years or Fine not exceeding five thousand rupees or both.
Judicial Magistrate Second Class	can pass Imprisonment for a term not Exceeding 1 year or Fine not exceeding one thousand rupees or both.

OFFENCES

DIFFERENCE BETWEEN COGNIZABLE AND NON COGNIZABLE OFFENCES

<u>GROUND</u>	<u>COGNIZABLE OFFENCES</u>	<u>NON COGNIZABLE OFFENCES</u>
Arrest	a police officer may arrest without warrant for such offences	a police officer has no authority to arrest without warrant for such offences
Nature of Crime	Serious	Not much serious
FIR registered	FIR can be registered without magistrate's permission	FIR cannot be registered without magistrate's permission
Examples	<ul style="list-style-type: none"> • Murder, • Rape, • Dowry Death, 	<ul style="list-style-type: none"> • Assault, • Cheating, • Forgery,

PUNISHMENT

- Sentences authorized by the law
 1. Death (Capital punishment)
 2. Imprisonment for life
 3. Imprisonment for life –rigorous/simple
 4. Forfeiture of property
 5. Monetary fine
 6. Treatment, training and rehabilitation of juvenile

SUBPOENA/ SUMMONS

Defination :

under section 204(1) (a) of Cr.P.C, 1973

“ It is the document compelling the attendance of the witness in the Court of law under penalty, on a particular day, time and place, for the purpose of giving evidence ”

It is issued by the Court in writing, in duplicate (two copies) signed by the presiding officer of the Court and bears the seal of the Court.

This summons in two copies is handed over to the police officer by the Court. The police officer thereby serves one copy of the summon to the witness and on other copy he takes the sign of the person for which the summons has been issued.

SUBPOENA/ SUMMONS

- Descriptions of the details mentioned in the summons
 - Name of the Court and its address -
Fast Track Court, Sessions Court, Civil Court, District Court, etc.
 - Name of the Judge under which the case is being prosecuted.
 - Name of the person for whom the summons is issued.
 - Name of the police station under which the investigation is going on.
Case Number - Sessions case No.37/09
 - Name of the accused who had committed the crime
 - Description of the I.P.C. that had been charged on the accused.
I.P.C. 302 – which is related to murder I.P.C. 376 – related to rape.

SUBPOENA/ SUMMONS

- If the witness is having the valid reason then he is excused from attending the summons in the Court.
- Ideally the witness is excused maximum of two times from attending the summons if he is having valid reason.
- Repeated failure to attending the summons more than two time may without proper justifiable reason may attempt the Court to issue bailable or nonbailable warrants to secure the presence of the witness.
- In civil case, the witness is liable to pay the damages.
- In case of criminal cases, the Court may issue the notice and after hearing the witness, if it finds that the witness neglected to attended the Court without any justification, may sentence him to a fine or the Court may issue bailable of nonbailable wrrants to secure the presence of the witness.
- Criminal Courts are having priorities over Civil Courts.
- If the witness is summoned by the two courts on the same day then in that case Criminal Courts are given priorities over Civil Courts.

CONDUCT MONEY

“ It is the fee offered or paid to a witness in the civil cases, at the time of serving the summons to meet the expenses towards attending the Court. ”

In criminal cases, no fee is paid to the witness at the time of serving the summons. He must attend the Court and give the evidence because of the interest of the state in securing the justice, otherwise he will be charged with contempt of Court.

WITNESS

- A witness is a person who gives sworn testimony in court of law as regards facts and/or inference that can be drawn from these.
- Types of witness:
 - I. Common witness
 - II. Expert witness
 - III. Hostile witness

EXPERT WITNESS VS COMMON WITNESS

No	Features	Common witness	Expert witness
1	Definition	Gives evidences about the facts observed /perceived by him (IEA- 118 sec)	Person especially skilled in foreign law, science or art (IEA- 45 sec)
2	Volunteering a statement	Not allowed	Can volunteer
3	Drawing inference from observations	Not allowed	Can draw
4	Expressing opinion on observations	Not allowed	Can express
5	Responsibility	less	Highly responsible
6	Punishment for false evidence	Less punishment	Severely punished in some countries
7	Conduct money	Cannot claim	Can claim

Hostile witness

Hostile witness: Is the person who is assumed to have an interest or motive for concealing the truth or part of it or for giving completely false evidence. The lawyer of calling party can declare a witness as hostile witness during examination in chief. A common or expert witness may be declared as hostile witness.

Medico legal importance of hostile witness:

- Imprisonment extending upto 7 years (under oath inside the court)
- Imprisonment extending upto 3 years (other than under oath inside the court)

Perjury

Perjury: It means willful giving of false evidence by a witness under oath or a failure to state what he knows or believes to be truth. It is punishable & the witness is liable to be prosecuted.

Medicolegal importance :

Imprisonment for perjury may extend upto 7 years.

Difference between hostile witness & perjury

Traits	Hostile witness	Perjury
Definnition	Is the person who is assumed to have an interest or motive for concealing the truth or part of it or for giving completely false evidence	It means willful giving of false evidence by a witness under oath or a failure to state what he knows or believes to be truth.
Evidence	Evidence may be concealed partly or completely or evidence may be completely false	Evidence is false
Oath	May or may not be under oath	Given under oath
Punishment	Under oath: upto 7 years Other than under oath: upto 3 years	upto 7 years

EVIDENCE

- Means all information which the court permits, which is helpful in relation to matters of fact under inquiry.
- Types :
 1. Oral
 2. Documentary

TYPES OF EVIDENCE



DOCUMENTARY EVIDENCE

1. Medical Certificates

- i. Health
- ii. Insanity
- iii. Age certificate
- iv. Death certificate
- v. Pensioned disability

2. Medico legal reports

- i. Assault
- ii. Rape
- iii. Murder
- iv. Injury report
- v. Postmortem report

DOCUMENTARY EVIDENCE

- Dying Declaration :

“ written or oral statement of a person, who is dying as a result of some unlawful act, relating to material facts of cause of his/her death or bearing on circumstances”

- Executive magistrate recorded statement.
- Compos mentis – mental faculties are normal.

DYING DECLARATION :

Statement can also be recorded by – Magistrate, doctor, or police officer with presence of two witness

Oath is not needed.

Statement

1. Own words without alteration of terms or phrase
2. Leading questions should not be put
3. No influence, outside prompting, assistance
4. Question may be asked if point is not clear.
5. Should be read over to declarant.
6. Statement must be fact not opinion.
7. If declarant becomes unconscious
8. Verbal statement
9. Signature – doctor, witness, declarant.

DYING DECLARATION

- Admissibility
 1. Declaration – is against all involved in crime
 2. Declarant is in sound state of mind – evidence
 3. Declaration is sent to magistrate.
 4. Accepted as evidence in - civil and criminal case.
 5. Declarant survives – its not admitted but has corroborative value.

DYING DEPOSITION

- On oath
- Recorded by magistrate
- Presence of lawyer - Cross examine the witness
- Not followed in India

Difference between dying declaration & dying deposition

Points	Dying declaration	Dying deposition
Recorded by	Magistrate or a Doctor	Always by a Magistrate
Oath	Is not necessary	Is necessary
Presence of accused or his lawyer	Is not necessary	Is necessary
Cross examination	No opportunity of cross-examination	Has opportunity of cross-examination
Value	Inferior to dying deposition	Superior to dying declaration
Value if patient survives	No value	Has value
Need of security	Closely scrutinized	No need of scrutiny as the magistrate & lawyers of accused is present

COURT PROCEDURE

1. Oath
2. Examination –in- chief
3. Cross examination
4. Re-examination

OATH

- “I do **swear** in the name of God/solemnly affirm that what I shall state shall be the truth, the whole truth and nothing but the truth”.
- There is no mention of the Gita, the Quran or any religious quote anywhere in **Indian law**
- Children below the age of 12, need not take any such **oath**.

EXAMINATION –IN- CHIEF

- The direct **examination** or **examination-in-chief** is one stage in the **process** of adducing **evidence** from witnesses in a **court of law**.
- Direct **examination** is the questioning of a witness by the party who called him or her, in a trial. ...
- In direct **examination**, one is generally prohibited from asking leading questions.

LEADING QUESTION

- Means one which itself suggests the answer.
- Example :

Doctor , was not the injury caused by a sharp weapon ?

Doctor by what weapon has this injury been caused?

CROSS EXAMINATION

Followed by examination-in-chief

- * Examined by counsel for opposite party
- * To bring out inaccuracies and contradictions in his statements.
- * To extract any facts which may be favorable to his Client
- * Leading questions are allowed.
- * Cross examination need not be confined to the statements;
 - = Qualification
 - = Experience
 - = Professional knowledge
 - = Character
- * No time limit for cross examination

RE-EXAMINATION

- After cross- examination, the witness can be examined by the counsel who called him.
- To remove any doubts that may have arisen during cross examination
- Leading questions are not allowed

COURT QUESTION:

- Presiding officer may /can ask question to witness at any stage.
- He can call witness again for his evidence, if needed by the court, related to the same case.