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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **THE ROLE PLAYED BY MEDICAL JURISPRUDENCE IN DECIDING MURDER, RAPE AND INSANITY.**

AUTHORED BY - RASHMI NARASIMHAN

## **Abstract**

While hearing a criminal case, what is the main focus of the judge? Providing justice to the aggrieved party. But how is Justice served? Is the law the only source that is referred or is there anything more? Justice cannot be ensured by focusing on the law alone. The law needs to be read along with various other sources. Medical Jurisprudence is one of the many sources lawyers quote to defend their counsel. This article focuses on how various textbooks on medical jurisprudence paved the way for justice.

## **Introduction to Medical Jurisprudence**

Medical Jurisprudence is the branch of law that deals with the application of medical science to legal problems. “Medical Jurisprudence, Legal Medicine, or Forensic Medicine, as it is variously termed, is that science which applies the principles and practice of the different branches of medicine to the elucidation of doubtful questions in courts of justice.”<sup>1</sup> Medical jurisprudence connects medical facts and legal issues. Medical jurisprudence is an ancient field but with the constantly evolving technology and changes made in the legal system, it is growing at a rapid pace. In 1532, the “*Constitutio Criminalis Carolina*” or the Caroline Code was formulated, and it ordained that in offenses like child murder, poisoning, wounds, hanging, drowning, procuring abortion, etc., the opinion of medical men must be taken.<sup>2</sup>

When we are discussing Medical Jurisprudence and its role in criminal cases, it is important to consider *Pratap Misra and Ors v. State of Orissa*<sup>3</sup>. The learned judge observed that Medical Jurisprudence is not an exact science and it is difficult for any Doctor to say with “precision and exactitude” as to when an injury has taken place. In this case, the Doctor could not find the exact

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<sup>1</sup> *Ibid*

<sup>2</sup> Elements of Medical Jurisprudence by Theodric Romeyn Beck, William Dunlop

<sup>3</sup> Pratap Misra and ors v. State of Orissa AIR 1977 SC 1307

time in which the appellant may have had sexual intercourse with the prosecutrix. The court need not accept medical books all the time as these books do not have a binding value. In *Sunderlal v. State of Madhya Pradesh*,<sup>4</sup> the High Court disapproved of the approach of judges in relying upon particular passages of medical books without focusing on the Doctor who examined the victims. In the Indian legal system, the value of medical evidence can be determined from case to case. The opinion of a doctor is called an expert opinion and is essential but is not binding.<sup>5</sup>

## **Medical Jurisprudence and Murder:**

Murder is defined in Section 300 of IPC<sup>6</sup>. The Section defines when culpable homicide will amount to murder. When a bodily injury is caused with the knowledge and intention that such an injury is likely to cause death; the injury inflicted will directly result in death; the person causing the injury knows that the injury is imminently dangerous and is likely to cause death; then the person can be held liable for murder under Section 300 of IPC. In *Godabarish Mishra v. Kuntala Mishra & Anr*<sup>7</sup>, the accused Kuntala Mishra was the mother-in-law of Geeta. During the negotiation of marriage, the accused demanded a dowry of Rs. 8000, and a promise to pay the amount at the time of marriage was made by the father of the deceased. But it was not paid and Geeta was subject to harassment and physical assault by the accused and her son. The husband of the deceased did not torture Geeta for the nonpayment. One day, the accused took Geeta to a Maternity Hospital for an operation as she was not having a conception. She was drowsy due to hid sedation and the accused took advantage of it and strangulated her using the string of the petticoat of the deceased. But this was denied by the accused. When this case went to the Court, *Modi's book on Medical Jurisprudence* was taken into account and it was stated that to commit suicide by self-strangulation, a constant level of force must be present till death, and the grip on the neck will become loose. It was contended before Sessions judge that the blood vessels of the artery of the trachea and larynx were not affected. The Supreme Court of India held that the absence of such a force rules out the possibility of the commission of suicide by self-strangulation. In *S.D.Soni v. State of Gujarat*<sup>8</sup> the basic fact is the death of the wife of the appellant. It was believed that the husband harassed his wife for not providing adequate dowry and therefore killed her. The Medical Officer said that "Death occurred due to pancreatic and splenic haemorrhage". The appellants contended that the death was caused because the deceased fell from the cot. To

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<sup>4</sup> Sunderlal v. The State of Madhya Pradesh AIR 1954 SC 28

<sup>5</sup> Evidentiary value of medical evidence in Indian Jurisprudence- Devranjan Singh Shekhawat

<sup>6</sup> Section 300 of the Indian Penal Code, 1860.

<sup>7</sup> Godabarish Mishra v. Kuntala Mishra and ors- Criminal Appeal No. 343 of 1991

<sup>8</sup> S.D. Soni v. State of Gujarat 1991 AIR 917



support his arguments the counsel referred to *Taylor's Principles and Practice of Medical Jurisprudence (Volume 1, 1965 edn. Page 253)*. It highlighted that little violence can rupture the spleen and external injury may not be present. Death due to rupture is rapid but occasionally delayed. The counsel also strengthened his argument by quoting from Parikh's Textbook of Medical Jurisprudence where the author registered that rupture of the spleen may lead to haemorrhage which causes death and that a moderately enlarged spleen will not cause spontaneous death. The counsel then quoted *from Modi's Medical Jurisprudence and Toxicology* where the author expressed that an enlarged spleen from slight violence is common in malaria, kala azaar. But, the counsel for Varsha, the deceased stated that her death was a murder by her in-laws and that she was constantly harassed in her marital home. The appellant in his statement stated that he was not home the day Varsha died, but he was found coming out of his room the day Varsha died. This clearly shows the inconsistency in the evidence. Medical evidence shows that there was external pressure in her pancreas and spleen and the posture of the deceased in the cot shows that there was heavy pressure by some other human agency. As only the appellant was in the room with her, it can be concluded that it could be he who caused her death. In this case, the appellant was convicted and the appeal was dismissed. We can see how the proper application of medical jurisprudence can make or break the case and aid in providing justice. It was the accurate application of medical jurisprudence that helped the prosecution in finding out that the deceased was indeed killed by the appellant and did not commit suicide as contended by the appellant. Though the appellants strengthened their contentions with various jurisprudential facts, this case is a testament to the fact that jurisprudence supports the ultimate truth and not partial truth.

## **Medical Jurisprudence and Rape:**

Section 375 of the IPC<sup>9</sup> defines rape as follows:

“A man is said to commit “rape” if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

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<sup>9</sup> Section 375 of the Indian Penal Code of 1860.

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

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First. —Against her will.

Secondly. —Without her consent.

Thirdly. —With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly. —With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. —With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. —With or without her consent, when she is under eighteen years of age.

Seventhly. —When she is unable to communicate consent.”

The Judiciary performs an important function in the prosecution of offenses involving rape. As per Section 173 (2)<sup>10</sup> of the Criminal Procedure Code, the police after investigation must submit the report to the Court. After receiving the report, the Court may take cognizance of the report. The lower judiciary has control over the police in statutory functions like taking cognizance and granting bail.<sup>11</sup>

In the case, *Ram Kala v. Emperor*<sup>12</sup>, Ram Kala was convicted under Section 376<sup>13</sup> and Section 302<sup>14</sup> of IPC and sentenced to death. Ram Kala was accused of raping a girl and throttling her to death. The evidence against him was not satisfactory and he was acquitted. It was observed by Justice Sinha in the Allahabad High Court that if the medical examiner examined the penis of the accused, it would have been very easy to prove whether he was guilty of the offense or not. The Government Advocate argued that a medical examination conducted after 24 hours is inconclusive because as per *Modi's Medical Jurisprudence*, “the smegma accumulates if no bath is taken for twenty-four hours.” He also brought to attention the words of Lord Williams J., “In criminal cases the onus of proving the general issue never shifts.” The Hon’ble Court in this case held that the

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<sup>10</sup> Section 173 (2) of the Criminal Procedure Code

<sup>11</sup> Role of Police and Judiciary in the Prevention and Control of Rape by Javid Talib and Dinesh Sharma

<sup>12</sup> *Ram Kala v. Emperor*- AIR 1946 All 191

<sup>13</sup> Section 376 of the Indian Penal Code, 1860

<sup>14</sup> Section 302 of the Indian Penal Code, 1860

prosecution must prove the accused guilty with no reasonable doubt and allowed appeal.

In *State v. Sanjeev Kumar @ Kala*<sup>15</sup>, it was alleged that rape was committed on a girl by Kala and Sunil, and the girl was taken to the hospital by the constables. The Doctor stated that the last penetration was on the day the sexual assault was committed and no similar contacts were there before. The accused were arrested. The Learned Counsel for the accused referred to medical jurisprudence to point out the difference between sexual assault and rape. He contended that as per medical jurisprudence, only penetration in the vulva amounts to rape and the medical report does not confirm the same. The medical examination revealed that no injuries were found in the body of the victim and that is not possible in a case involving rape. The Counsel for the victim referred to *Modi's Medical Jurisprudence and Toxicology (12<sup>th</sup> Edition pg. 369)* and stated that even partial penetration within the vulva with or without emission of semen or even an attempt to penetrate is enough to constitute rape. We can understand from this that no injury in the body of the victim is necessary to constitute rape. The counsel highlighted that rape is a crime and not a medical condition and that deciding whether rape is committed or not is a legal decision to make and not a medical one. In *Parikh's Textbook of Medical Jurisprudence and Toxicology*, a similar observation to that of Modi's was found. It stated that even the slightest degree of penetration of the vulva by the penis with or without the emission of semen can constitute rape and the same can happen without producing injury to the genitals. The Hon'ble Court held the accused Kala and Sunil liable u/s 376 (2)(g) IPC.

## **Medical Jurisprudence and Insanity:**

The offenses committed by people of unsound mind are covered under Section 84<sup>16</sup> of IPC. It goes as follows: "Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law." In the case of *Subhan Ali and Anr v. State (NCT of Delhi)*<sup>17</sup> the deceased Shahin allegedly committed suicide when she was four months pregnant. Her father alleged that she was tortured and humiliated for not giving sufficient dowry to such an extent that she had committed suicide. It was argued that the deceased was suffering from bipolar disorder and psychic disorder that influence how the body and mind work and there was a possibility of committing suicide. The deceased was also under treatment at IHBAS (Institute of

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<sup>15</sup> State v. Sanjeev Kumar @ Kala- FIR No. 20/2010

<sup>16</sup> Section 84 of the Indian Penal Code, 1860.

<sup>17</sup> Subhan v. State (NCT of Delhi)- NCT of 133 (2006) DLT 562

Human Behaviour and Allied Sciences) and her medical history showed that there were some doubts about her 'self-injurious behaviour'. She also had very little sleep. The counsel for the accused contended that the prescription given very clearly showed that she was a patient with psychotic disorders and she was showing abnormal behaviour and could not distinguish between right and wrong. It was further contended that the medical condition of the deceased while committing suicide cannot be ignored. The court considered the medical condition and granted bail to the accused.

In the case of *Re: Pappathi Ammal v. Unknown*<sup>18</sup>, the accused Pappathi Ammal was confined inside her house for four weeks as she was suffering from diarrhoea and fever after childbirth. Due to poverty, she had to do all the household work by herself. One night, the landlady heard a splash and woke up the husband of the accused. They found the accused in the well and she stated that her child was in the well. The accused was sued for the murder of her child and for attempting to commit suicide. It was contended that the accused was suffering from Somnambulism which is the unconscious state known as sleepwalking. Going through *Modi's Medical Jurisprudence and Toxicology (12<sup>th</sup> Edition, pg. 399)* it was summarized that while sleepwalking, the mental faculties are partially active and are very concentrated that a person comes up with the most incredible pieces of work that will surprise him/her during waking hours. A somnambulist may commit theft or murder. This medical condition is a very good defence if it can be proved that the accused was indeed not in a normal mind frame when committing the offense. In *R.C. Ray's Outline of Medical Jurisprudence (with special treatment of toxicology and insanity (6<sup>th</sup> Edition, pg. 455))*, it was made clear that when sleepwalking a person sleepwalking may perform activities in a perfectly rational manner and the brain is inactive to other impressions. The Somnambulists can commit homicides and suicides while sleepwalking and they can partially recall the incidents after recovery from Insanity. Their actions are not attached to responsibility. *M.A. Kamath's Medical Jurisprudence (5<sup>th</sup> Edition, pg. 375)* clarifies that a person committing an act when sleepwalking does not imply that the higher or intellectual nerve centers were not fully active at that time. This factor is of medicolegal importance because the actions of the person can result in a criminal inquiry. But this case takes a huge U-turn from Somnambulism to Lactational insanity. Sydney Smith and Fiddies in *Forensic Medicine (10<sup>th</sup> Edition, pg. 391)* state the following: "Lactational insanity comprises all cases which occur from six weeks after confinement. It occurs most frequently in cases in which lactation has been unduly prolonged, and is usually of a depressed deconfusional type with ideas of unworthiness and delusions affecting the husband and child.

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<sup>18</sup> Re: Pappathi Ammal v. Unknown- AIR 1959 Mad 239

Suicide or infanticide may occur as a result of these conditions.” Therefore, the Hon’ble Court in this case held that the accused must be convicted but reduced the sentence to a period of six months because there is no expert examination or evidence related to medical knowledge in this case and the Court cannot guess Lactational Insanity.

### **Conclusion:**

Though the books on Medical Jurisprudence quoted in the Court of Law do not have a binding value, their usage is inevitable. Any branch of Jurisprudence is inseparable from the law and they coexist happily. When the law focuses on justice, jurisprudence focuses on the truth and where there is no truth, justice cannot exist. Throughout this article, we can very clearly see that Medical Jurisprudence along with other evidence can ensure justice to the deserving party.