

## **Introduction:**

Dear friends ,,

A doctor when posted in the Accident and Emergency Department or casualty very often deals with injury cases either come for treatment or those brought by the police. Though injury may be accidental, suicidal, homicidal or self inflicted, when there is allegation or suspicion of assault, the medical officer besides treating the patient, is legally bound to examine and opine regarding injury in the prescribed pro forma i.e. Injury report for the aid of investigating police agency and administration of justice in the court of law. However, as the promptness of police action against the alleged accused person who may also bear some vital evidence to the alleged incidence, lies with the seriousness of injury (nature of injury). Thus medical officer has to opine whether the bodily injuries found on the alleged victim are simple or grievous. Though sec 320 IPC enumerates grievous hurt, medical officer dealing such cases found it difficult in more than one occasion to conclude his/her opinion regarding the nature of injury. The present lecture is an attempt to minimize their dilemma and understand the concepts from the practical point of view.

When a patient of assault is brought to the casualty, it is the duty of medical officer to guide the investigating police officer about the type of hurt whether it is simple or grievous. However, it is ultimately the Court who will decide about this matter after considering all the facts, circumstances of the case and medical opinion. In casualty, it is sometimes difficult task for a medical officer to opine about an injury. Sometimes, the injured person may fake serious disorder to make the simple injury to appear as grievous one. This becomes more difficult when there is lack of knowledge about the concept of hurt and grievous hurt, inability to understand the language of law, difficulty in interpretation and also when there are different opinions given about the same matter by different courts. So, it is required that every medical officer should have sound knowledge about the concept of hurt and grievous hurt. He should make necessary investigations and consult another expert in the field, if required, before giving his final opinion.

Under the doctrine of *stare decisis*, a lower court must honor findings of law made by a higher court. So it is always good for a medical professional to make their opinion on the basis of proper knowledge, and judgments made by a higher court. Moreover, it is important that they should not follow these judgments blindly, because these judgments are based on different facts and circumstances.

## **What is Assault?**

According to Section 351 IPC, 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.

**Explanation:** Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

### **Illustrations:**

a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z, A has committed an assault.

b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

c) A takes up a stick, saying to Z, "I will give you a beating". Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

Therefore the Essential Ingredients of Section 351 IPC are:

- Making any gesture, or any preparation by a person in presence of another
- Intention or knowledge that such gesture or preparation will cause any person present to apprehend that the person making it is about to use criminal force to him.
- It is not every threat that constitutes an assault; there must, in all cases, be the means of carrying the threat into effect.
- Mere preparation to commit a crime is not punishable, yet the preparation with the intention specified in this section amounts to an assault.
- An assault is sometime less than the use of criminal force. However, an assault is included in every criminal force.

In order to constitute assault it is not necessary that there should be some actual hurt caused. Pointing a loaded pistol at another is undoubtedly an assault within the meaning of this section.

### **What is injury?**

The word “injury” denotes any harm whatever illegally caused to any person, in body, mind, reputation and property.

#### **Comments:**

- „Injury“ is an act contrary to law i.e. illegal.
- Legally the term „injury“ includes body, mind, reputation and property. So it is 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.

### **What is Hurt?**

According to Section 319 IPC whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

#### **Comments:**

- Many of the offences which fall under the head of hurt will also fall under the head of assault. But bodily hurt may be caused by many acts which are not assaults. A person, for example, who mixes a deleterious potion and places it on the table of another, may cause serious hurt; but cannot be said to have committed assault.
- „Bodily pain“ covers all harm, except those which no person of ordinary sense or temper would complain of.
- „Infirmity“ is inability of an organ to perform its normal function which may either be temporary or permanent.
- There is no requirement of direct contact between the accused and victim in Section 319 IPC, and so nervous shock and mental derangements are also included.
- Where there is no intention to cause death or knowledge that death is likely to be caused from the harm inflicted, and the death is caused, the accused would be guilty of hurt only if the injury caused was not serious.

□ Hurt can be simple or grievous. Simple hurt are those which are simple in nature and do not fall under the domain of grievous hurt. Grievous hurt is hurt of a more serious nature. It is sometime difficult to draw a line between those bodily hurt which are serious and those which are slight.

### **What is Grievous hurt?**

The following kinds of hurt only are designated as "Grievous":

First- Emasculation

Second- Permanent privation of the sight of either eye,

Third- Permanent privation of the hearing of either ear,

Fourth- Privation of any member or joint,

Fifth- Destruction or permanent impairing of the powers of any member or joint,

Sixth- Permanent disfiguration of the head or face,

Seventh- Fracture or dislocation of a bone or tooth,

Eighth- 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.

**Comments:** "Emasculation" means 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 organ, or by causing injury to testis or to the spinal cord at the level of 2nd to 4th lumbar vertebrae to result in impotence. ,,

Permanent" does not mean that it should be incurable. For instance, loss of sight occurring due to corneal opacity resulting from injury to the cornea may be curable by corneoplasty but being permanent by itself constitutes a grievous hurt and chances of treating by corneoplasty do not lower its gravity. The gravity of injury lies in its permanency because it deprives a person of the use of the organ of sight and also disfigures him. Permanent privation of sight can be caused by gouging out of eyes, poking eyes, chemicals, etc.

Permanent privation of hearing may be caused by a blow on the head or the ear, or by blows which injure the tympanum or auditory nerves or by trusting something or pouring hot liquid into the ear which causes deafness. Even, permanent partial loss of hearing is considered as grievous.

The term “member” means any organ or limb of a subject responsible for performance of a distinct function. It includes eyes, ears, nostrils, mouth, hands, feet, etc.

Disfiguration means doing a man some external injury which cause change in configuration and personal appearance of the subject, but does not weaken him. Age, sex, occupation of the subject is immaterial. However, there are judgments of different courts considering these factors. Moreover, medical officer should not consider these factors while opining about the nature of injury and it is only court who can take these factors into consideration.

Fracture or dislocation of a bone or tooth causes great pain and suffering to the injured person and hence it is considered grievous hurt. For application of this clause it is not necessary that a bone should be fractured through and through or that there should be a displacement of any fragment of bone. Any break or splintering of the bone, rupture or fissure in it would amount to fracture. Although fracture has not been defined in sec 320 IPC, but as per Supreme Court judgment in the case of *Hori Lal and Anr vs. State of U.P. AIR 1970 SC 1969*, incised wound to the bone is to be consider as fracture, hence, grievous hurt. Before giving opinion, it has to be proved that, the tooth was not originally loose and injury caused fracture or dislocation of tooth.

An injury can be said to endanger life if it is in itself that it put the life of the injured in danger. There is thin line between degree of body injury „dangerous to life“ and „likely to cause death“. So, The line separating Grievous Hurt and Culpable Homicide is very thin. In Grievous Hurt, the life is endangered due to injury while in Culpable Homicide; death is likely to be caused. However, acts neither intended nor likely to cause death may amount to grievous hurt even though death is caused.

Moreover, in **Niranjan Singh V State of Madhya Pradesh 2007, AIR 2007 (7) SCR1017, 2007(10 )SCC459** , the Court observed that the term “endangers life” is much stronger than the expression “dangerous to life”.

The mere fact that a man has been in hospital for twenty days is not sufficient; it must be proved that during that time he was unable to follow his ordinary pursuits. A disability for twenty days constitutes grievous hurt; if it constitutes for a smaller period, then the offence is hurt.

“Ordinary pursuits” means acts which are a daily routine in every human being’s day to day life like eating food, taking bath, going to toilet, etc. Where there is no intention to cause neither death nor knowledge that death is likely to be caused from the harm inflicted, and the death is caused, the accused would be guilty of grievous hurt if the injury caused was of serious nature, but not of culpable homicide. A person is responsible for voluntarily causing grievous hurt only when he both causes grievous hurt and intends or having knowledge of causing grievous hurt (Explanation of section 322). [1] It is immaterial while causing one type of grievous hurt he actually causes grievous hurt of another type. (Explanation of Section 322) .

Dangerous injury is a variety of grievous injury. Dangerous injuries are those which cause imminent danger to life, either by involvement of important organs and structures, or extensive area of the body. If no surgical aid is available, such injuries may prove fatal.

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 the symptoms are obscure, the injured person must be either re-examined after 24-48 hours or admitted under observation until a definite opinion can be formed.

Section 321 to 338 IPC describes various types of Hurts and Grievous Hurt depending upon various circumstances in which the offence was committed. However, for Forensic point of view one should know what is “dangerous weapon or means”. The Section 326 IPC enumerates various things which are considered as dangerous weapon or mean. Self inflicted injuries are not covered. However, the opinion regarding whether the injury was self inflicted or not is left to the discretion of court.

**S. 326 IPC: 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 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.

Comments: The essential ingredients to attract Section 326 are:

- (1) voluntarily causing a hurt;
- (2) hurt caused must be a grievous hurt; and
- (3) the grievous hurt must have been caused by dangerous weapons or means.

Whether a particular article can per se cause any serious wound or grievous hurt or injury has to be determined factually.

Medical personnel / Forensic Specialist can opine whether the alleged weapon of offence is "dangerous weapon or mean" or not. However, 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.

**In Prabhu V State of Madhya Pradesh 2008(15 )SCALE228 , 2008(13 ) JT72 14**, the Court held that the expression "any instrument which, used as a weapon of offence, is likely to cause death" has to be gauged taking note of the heading of the Section. What would constitute a 'dangerous weapon' would depend upon the facts of each case and no generalization can be made. The intention of the accused is gathered from the nature of the weapon used, the part of the body chosen for assault and other attending circumstances. Sections 324 and 326 expression "dangerous weapon" is used. In some other more serious offences the expression used is "deadly weapon" (e.g. Sections 397 and 398). The facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or deadly weapon or not.

**In Aniyam Kunju and Others vs. State of Kerala 2004 AIR 2688, 2004(1) SCR 900, 2004 (12) SCC269. 15**, the Court held that Medical evidence is a factor which has to be weighed along with other materials to see whether the prosecution version is reliable, cogent and trustworthy. When the case of the prosecution is supported by an eyewitness who is found to be truthful as well, mere non-explanation of the injuries on the accused persons cannot be a foundation for discarding the prosecution version.

Recently, Supreme Court, in **Gurmukh Singh v. State of Haryana [Criminal appeal 1609 of 2009]** , enumerated the various factors which are required to be taken into consideration before awarding appropriate sentence to the accused.

a) Motive or previous enmity;

b) Whether the incident had taken place on the spur of the moment;

c) The intention/knowledge of the accused while inflicting the blow or injury;

d) Whether the death ensued instantaneously or the victim died after several days;

e) The gravity, dimension and nature of injury;

f) The age and general health condition of the accused; whether the injury was caused without pre- meditation in a sudden fight;

g) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;

h) The criminal background and adverse history of the accused;

i) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;

j) Number of other criminal cases pending against the accused;

k) Incident occurred within the family members or close relations; the conduct and behaviour of the accused after the incident.

l) Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment? The list of circumstances enumerated above is only illustrative. Each case has to be seen from its special perspective. In considered view of Supreme Court, proper and appropriate sentence to the accused is the bounded obligation and duty of the court.

### **Right of Private Defence:**

In **Darshan Singh v State of Punjab [Criminal appeal 1057 of 2002]** , Court observed and held that Right of private defence of person and property is recognized in all free, civilised, democratic societies within certain reasonable limits. The citizens, as a general rule, are neither



expected to run away for safety when faced with grave and imminent danger to their person or property as a result of unlawful aggression, nor are they expected, by use of force, to right the wrong done to them or to punish the wrong doer of commission of offences. When there is real apprehension that the aggressor might cause death or grievous hurt, in that event the right of private defence of the defender could even extend to causing of death. A mere reasonable apprehension is enough to put the right of self-defence into operation, but it is also settled position of law that a right of self-defence is only right to defend oneself and not to retaliate. It is not a right to take revenge.

**In State of Haryana V Sher Singh & Ors AIR 2002 3223, , 2002( 9 )SCC 356 [Criminal appeal 435 of 1994] 18**, Supreme Court held that Section 99, I.P.C. lays down the extent to which the right of private defence is available and "The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence."

Latest Amendment under the Criminal Law Amendment Act, 2013:

“326A: 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. 326B: 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 disfigurement 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.

Explanation 1: For the purposes of section 326A and this section, “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.

Explanation 2: “Permanent or partial damage” includes deformity, or maiming, or burning, or disfiguring, or disabling any part or parts of the body of a person.

Explanation 3: For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.”

So, after the present amendment, following changes took place:

□ Earlier only permanent disfiguration of face is alone considered as grievous hurt. But now even disfiguration of any part of the body by throwing or administering acid is also considered as grievous hurt.

□ After insertion of 326A & 326B, 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 punishments are now enhanced and may extend to imprisonment of life and a fine which may extend to ten lakh rupees.

□ Under section 326B, even attempt to throw or administer acid on any person is punishable. Offences under section 326A and 326B are cognizable and Non-bailable.

Lastly it is the duty of medical personnel to know the law correctly and apply them in their strict sense. It is finally the Judiciary which will interpret the law and apply according to the fact and circumstances of each case.

### **Section 339. Wrongful restraint**

Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has right to proceed, is said wrongfully to restrain that person.

Wrongful restraint means preventing a person from going to a place where he has a right to go.

**In wrongful confinement**, a person is kept within certain limits out of which he wishes to go and has a right to go. In wrongful restraint, a person is prevented from proceeding in some

particular direction though free to go elsewhere. In wrongful confinement, there is restraint from proceeding in all directions beyond a certain area. One may even be wrongfully confined in one's own country where by a threat issued to a person prevents him from leaving the shores of his land.

**Object** – The object of this section is to **protect the freedom of a person** to utilize his right to pass in his. The slightest unlawful obstruction is deemed as wrongful restraint. Physical obstruction is not necessary always. Even by mere words constitute offence under this section. The main ingredient of this section is that when a person obstructs another by causing it to appear to that other that it is impossible difficult or dangerous to proceeds as well as by causing it actually to be impossible, difficult or dangerous for that to proceeds.

### **Ingredients:**

1. **1. An obstruction.**
2. **2. Obstruction prevented complainant from proceeding in any direction.**

### **Obstruction:-**

Obstruction mans physical obstruction, though it may cause by physical force or by the use of menaces or threats. When such obstruction is wrongful it becomes the wrongful restraint. For a wrongful restraint it is necessary that one person must obstruct another voluntarily.

In simple word it means keeping a person out of the place where his wishes to, and has a right to be.

**This offence is completed if one's freedom of movement is suspended by an act of another done voluntarily.**

**Restraint necessarily implies abridgment of the liberty of a person against his will.**

What is requiring under this section is obstruction to free movement of a person, the method used for such obstruction is immaterial. Use of physical force for causing such obstruction is not necessary. Normally a verbal prohibition or **remonstrance** does not amount to obstruction, but in certain circumstances it may be caused by threat or by mere words. **Effect of such word upon the mind of the person obstructed is more important than the method.**

## **Obstruction of personal liberty:**

Personal liberty of a person must be obstructed. A person means a human being, here the question arises whether a child of a tender age who cannot walk of his own legs could also be the subject of restraint was raised in **Mahendra Nath Chakarvarty v. Emperor**. It was held that the section is not confined to only such person who can walk on his own legs or can move by physical means within his own power. It was further said that if only those who can move by physical means within their own power are to be treated as person who wishes to proceed then the position would become absurd in case of paralytic or sick who on account of his sickness cannot move.

Another points that needs our attention here is whether obstruction to vehicle seated with passengers would amount to wrongful restraint or not.

An interesting judgment of our **Bombay High Court in Emperor v. Ramlala** : "Where, therefore a driver of a bus makes his bus stand across a road in such a manner, as to prevent another bus coming from behind to proceed further, he is guilty of an offence under Sec. 341 of the Penal Code of wrongfully restraining the driver and passengers of another bus".

"It is absurd to say that because the driver and the passengers of the other bus could have got down from that bus and walked away in different directions, or even gone in that bus to different destinations, in reverse directions, there was therefore no wrongful restraint" is the judgment of our High Court which is applicable to our busmen who suddenly park the buses across the roads showing their protest on some issues.

Illustrations-

1. I. A was on the roof of a house. B removes the ladder and thereby detains A on the roof.
2. II. A and B were co-ower of a well. A prevented B from taking out water from the well .

## **Section 340. Wrongful confinement.**

Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said "wrongfully to confine" that person.

**Object** – The object of this section is to **protect the freedom of a person** where his personal liberty has totally suspended or abolish, by voluntarily act done by another.

**Ingredients:**

1. **I. Wrongful confinement of person.**
1. **1. Wrongful restraint of a person**
2. **2. Such restraint must prevent that person from proceeding beyond certain limits.**

**Prevent from proceedings:**

Wrongful confinement is a kind of wrongful restraint, in which a person kept within the limits out which he wishes to go, and has right to go.

There must be total restraint of a personal liberty, and not merely a partial restraint to constitute confinement.

For wrongful confinement proof of actual physical obstruction is not essential.

**Circumscribing Limits:**

Wrongful confinement means the notion of restraint within some limits defined by a will or power exterior to our own.

**Moral force:** Detention through the exercise of moral force, without the accomplishment of physical force is sufficient to constitute this section.

**Base**

**Section 339- Restraint**

**Section 340-Confinement**

**Degree of Offense**

Wrongful restraint is not a serious offence, and the degree of this offense is comparatively less than confinement.

Wrongful confinement is a serious offence, and the degree of this offense is comparatively intensive than restraint.

### **Principle element**

Voluntarily wrongful obstruction of a person's personal liberty, where he wishes to, and he has a right to.

Voluntarily wrongfully restrain a person where he wishes to, and he has a right to, within a circumscribing limits.

### **Personal liberty**

It is a partial restraint of the personal liberty of a person. A person is restrained if he is free to move anywhere other than to proceed in a partial direction.

It is an absolute or total restraint or obstruction of a person's liberty.

### **Nature**

Confinement implies wrongful restraint.

Wrongful confinement does not imply vice-versa.

### **Necessity**

No limits or boundaries are required.

Certain circumscribing limits or boundaries are required.

**Conclusion** — persuasion is not obstruction, physical presence, for obstruction is not necessary, reasonable apprehension of force is sufficient, restraint implies will and desire are some of the salient features of such decisions.