Review Article

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Grievous Hurt Eighth Clause: Medico-Legal Considerations

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Abstract

Grievous hurt as defined in Section 320 Indian Penal Code (IPC) has 8 clauses. Out of these the eighth clause is one, interpretation of which confounds most individuals, doctors and judiciary. A doctor may be tasked with opining whether a hurt is grievous or not based on the eighth clause. A clear understanding of law with application of medical science helps the doctor to opine clearly thereby helping the law enforcers in administration of justice. The lack of proper documentation or clear opinion on the other hand hinders justice and can result in judgements where the medical evidence is not correctly inferred by the judiciary. This article highlights the eighth clause of grievous hurt, its interpretation by courts and the precautions that should be followed by the medical man in interpreting and opining grievous hurt as per eighth clause.

Keywords: Grievous Hurt; Endangering Life; Severe Bodily Pain; Ordinary Pursuits of Life.

Introduction

Grievous hurt as defined in Section 320 Indian Penal Code (IPC)[1] has 8 clauses. Out of these the eighth clause is one, interpretation of which confounds most individuals, doctors and judiciary. The judiciary has in various judgements tried to interpret the clause giving rise to plethora of inferences.

Many a times the doctor is asked opinion regarding a particular injury being grievous hurt or not which may not be covered in the first seven clauses. In such scenarios the doctor is required to have a clear understanding of law and opine objectively so that the opinion furnished by him stands the test of time and the questions of lawyers and courts.

Section 320 IPC. Grievous Hurt [1]

Grievous hurt.—The following kinds of hurt only are designated as "grievous":-

First-Emasculation.

Secondly-Permanent privation of the sight of either eye.

Thirdly-Permanent privation of the hearing of either ear.

Fourthly-Privation of any member or joint.

Fifthly-Destruction or permanent impairing of the powers of any member or joint.

Sixthly-Permanent disfiguration of the head or face.

Seventhly-Fracture or dislocation of a bone or tooth.

Eighthly-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.

The eighth clause of grievous hurt has 3 parts:

1. Any injury that endangers life
2. Causes the sufferer to be during the space of twenty days in severe bodily pain, or
3. Causes the sufferer to be during the space of twenty days, unable to follow his ordinary pursuits.

Though there are three parts to 8th clause much

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overlapping is seen in these sub-clauses as a particular injury may endanger life as well as cause severe bodily pain and unable to follow ordinary pursuits.

Discussion

- *Any Hurt That Endangers Life*

An injury which causes imminent threat to life would be an injury which endangers life. The term "endangers life" is much stronger than an expression dangerous to life. This expression appears to have been designedly used by the Legislature to exclude cases of hurt which however dangerous to life, do not put life in a given case to danger [2].

The court has accepted that throwing of lit matchstick on clothes causing burns is an injury that endangers life or causes the sufferer to be in severe bodily pain for 20 days [3]. In a case where there was left temporo-parietal extradural hemetoma with pericisternal contusion in CT scan of head, and the patient was treated with emergency craniotomy, EDH evacuation done under general anesthesia, it was decided that the medical evidence unequivocally proved that the hurt caused to patient by the accused was one which endangers his life and which causes severe bodily pain and it could be reasonably presumed that he was unable to follow his ordinary pursuits during the period when he was hospitalised [4]. Squeezing of testicles in male is grievous hurt because it endangers life [5].

However in some conditions the court has not accepted certain injuries as endangering life:

a. Injury which penetrates into the abdominal cavity exposing the omentum is not grievous because it does not endanger life [6,7].
b. Stab wound, measuring 4 cm X 2 cm X cavity deep over left lower chest was not considered as dangerous to life because the X-ray did not reveal any fracture [8].
c. Stab wound over left arm 10 cm below shoulder measuring 3 cm x 1 cm bone deep with underlying deltoid muscle partially severed is not grievous hurt [9].
d. Stab wound on the stomach is not grievous hurt when there is no hospital stay of 20 days [10].
e. If the patient presented in casualty five hours after the incident with minor bleeding it could not be said that the injury was endangering life.

This sub-clause is used synonymously with dangerous injury. There should be enough evidence to show that the injury inflicted on the victim can cause threat to life or death. For an injury to be Grievous under this sub-clause, it is necessary that there should be some evidence that the injury has changed the basal body state in such a way that it could have caused death. This evidence should be clearly documented by the examining and treating doctors. The doctors should measure the vitals, record their findings correctly, do investigations where required and opine their opinion. A combined study of all the factors would lead a doctor to opine that the injury is a grievous injury as it endangers life.

- *Causes the Sufferer to be During the Space of Twenty Days in Severe Bodily Pain, or Unable to follow his Ordinary Pursuits.*

1. *Role and Implication of Comma in the Clause*

This clause has been interpreted by the lawyers in such a way where it is said that there is a comma between severe bodily pain or unable to follow ordinary pursuits, which shows that both these clauses are separate clauses with no relation to each other. Hence the duration of twenty days is applicable only for severe bodily pain and not for ordinary pursuits of life thereby meaning that impairment of ordinary pursuits of life even for one day would be grievous hurt. However this proposition has been constantly denied by the Indian judiciary by convention. When the comma is ignored then it follows that in order to make any hurt fall within the ambit of Clause 8, the injured person should be unable to follow his ordinary pursuits during space of 20 days [11].

Severe bodily pain means such a pain lasting for 20 days which prevent a person from doing ordinary pursuits of life.

2. *Time of 20 days – Absolute Requirement of the Section*

According to law, a penal statute must be construed strictly. The mere fact that he remained in the hospital would not be enough to conclude that he was unable to follow his ordinary pursuits during that period. Hence both the ingredients that the victim was in severe bodily pain and unable to follow his ordinary pursuits and that the stay was of 20 days has to be proved for a hurt to be grievous hurt [12].

Even if the individual does not get admitted to hospital, if it can be shown that the injuries were such that they cause severe bodily pain and the person is unable to follow ordinary pursuits then that would be grievous hurt. The law does not say

that the patient must get himself admitted in the hospital [13].

Any hospital admission for a period of less than 20 days would mean that the injured was not in severe bodily pain because the requirement of this clause specifically states a period of 20 days. In a case decided by the Madras high court Stab wound on stomach was found to be not grievous because the hospital stay was less than 20 days [10].

When a victim has been discharged on the last day i.e. 20th day then it cannot be said to be grievous hurt because 20 days means clear 20 days including the 20th day [14].

3. Hospital Stay more than 20 Days without Documentation of Severe Bodily Pain – not Grievous Hurt

Mere admission to the hospital for any number of days (more than 20 days) will not amount to Grievous hurt. It has been held in Queen vs empress that although the patient may have recovered for following ordinary pursuits yet for the sake of permanent recovery or greater ease or comfort be willing to remain as a convalescent in a hospital, especially if he is fed at the public expenses. It was pointed out that mere fact that the sufferer did not attend his duty for the statutory period or that he remained in hospital for that period is no indication of his ability to do so [15].

In a case where the victim accompanied the police to aid in investigation it was decided that he could not be in severe bodily pain [16].

- *Unable to Follow Ordinary Pursuits*

Ordinary pursuits of life are those works that are done by an individual routinely in his day. These pursuits do not include an individual's occupation or profession.

The doctor has to state in his opinion that during hospital stay the patient was not able to follow his ordinary pursuits; only then the injury would be Grievous as per this clause [17].

In Thana and ors though the hospital stay was more than 20 days, after ten to twelve or fifteen days the victim was able to take his meals by himself but needed assistance to go to the lavatory. The necessity for this assistance according to the Doctor was because of his feeling giddiness and vertigo due to severe bodily pains which was due to injuries sustained by the victim. Here it was decided that the victim was unable to follow his ordinary pursuits and the hurt was grievous hurt [18].

- *Importance of Exhibiting Medico-Legal Reports in Court*

It is well settled law that if the doctor is not deposing in the court to exhibit his report then that report will not be acceptable as evidence. There are only certain reports which are exempted from oral evidence as given in sections 292 and 293 CrPC [19].

In Mahesh Chander v/s State, it was decided that since the doctor who made the MLC of the accused was not examined by the court and his signature was not verified his evidence is not admissible as evidence [20].

It is not necessary for the doctor who prepared the report to be examined. For the report to be admissible it only has to be exhibited in the court. A document can be proved by the author of document or anyone else who can identify his signature. It has been held that MLC is an authentic record of injuries and can be safely relied upon by the Courts, even when the doctor is not examined in the Court and the record is proved by any other doctor or record keeper. Any person who alleges that the MLC i.e. the record of injuries produced in the Court was not authentic and there has been tampering with the record, has to show to the Court how tampering has been done. It is not a legal requirement that the doctor who examined the plaintiff alone can answer questions [21].

In case the nature of injury shown in the MLC of the victim is grievous but the doctor concerned who has given the report is not examined in the court then this injury should be taken as simple and not grievous [22,23,24].

- *Opinion of Doctors – Court Considerations*

In a case where a doctor issued a certificate that the injury was grievous hurt but did not support it with hospital documents it was said that the hurt is not grievous. Moreover no X-ray or CT scan was done in the case to show that the laceration on skull led to a fracture and was grievous hurt [25]

It is the duty and responsibility of the doctor to give opinion regarding the nature of injury sustained by the victim in the criminal case and the court cannot substitute its own opinion by usurping the function of medical expert [14,26,27].

In a case where the MLC mentioned that there was a contused lacerated wound 3 cm on the forehead of the victim, but did not mention the nature of weapon not did it mention on record that the complainant faced 20 days of pain, the injury was not considered as grievous [28]

In Gurbax singh, due to assault, the victim suffered from perforation in the ear with loss of hearing as opined by the specialist doctor. However since he did not record that there was a permanent privation of an ear or a member of a joint or that the victim faced 20 days of pain it was decided that the injury was not grievous [29].

An incised wound over parietal region 3" x 1" bone deep held to be not grievous in nature, because the statement or records of doctor did not prove that the said injury would fall in the ambit of the expression 'grievous hurt' as defined in section 320 I.P.C [30].

In another case a victim was examined by four doctors separately and following injuries were found on the body of the victim: Cut injury of right lower eyelid and Cut injury of right cornea with expulsion of iris and vitreous through the wound. The court held that two doctors have stated that the injury sustained by the victim on his right eye is serious and grievous. The evidence of rest two doctors was not specific about the nature injury. There is no evidence from the doctors that the victim has sustained permanent privation of his sight in his right eye [31].

In a case where the clear medical documents, unequivocal testimony of medical officer and the post mortem version, proved that the injured was caused Grievous hurt, The High court of Gujarat convicted the accused under relevant sections of law [32].

Opinion Writing – Doctors Responsibility and considerations

Based on the above judgements and views taken by various courts the doctors should keep the following things in mind while opining Grievous injury in a Medico-Legal case:

- Be objective. The opinion should not be based on the physical appearance of the patient but on the actual injuries sustained.
- The general appearance and vital signs should be recorded in all cases of injuries.
- The injuries should be documented properly and completely including the site, size, colour, duration and nature of injury.
- Any relevant investigation if required should be done and the results documented. For example if a fracture is suspected then X-ray should be done and the result documented. If for any reason an investigation is not done that should also be documented.
- If an opinion cannot be furnished on first examination (e.g. Laceration of face) then the doctor may reserve his opinion and may re-examine the patient after a particular duration.
- An investigating officer can request the physician to comment whether a person was able to follow his ordinary pursuits or not and whether he was in severe bodily pain during the space of 20 days or not. The doctor can opine to the same if he is sure of the nature of injury.
- A doctor should always mention whether the hurt was simple or grievous in a Medico-legal report. It is also advisable that the doctor mentions the reason why he believes that injury to be Grievous.
- The hospital records in Medicolegal cases are to be preserved for 10 yrs or till the case is pending in the court.

Conclusion

Eighth clause is a very difficult clause to understand and interpret. The clause has been interpreted in a variety of methods by different courts of India. These judgements on one hand, act to simplify the understanding of the said clause and on the other hand make the clause equally difficult to understand. Nature of every injury will vary and there is no clear guidelines whether a particular injury can be labelled as grievous hurt or not under eighth clause. In every case the doctor and the court have to test their knowledge. The doctors are an important bridge between crime and justice. The role of doctors in such cases cannot be undermined. It has been noted that in many cases the justice is not served because of incomplete documentation or examination of injuries. However, the courts should also understand that medical science has its limitations and the doctors being medical man cannot to be expected to be legally correct in all situations. The courts have in many cases opined that they should not usurp the function of medical experts. Similarly the doctors cannot also usurp the function of legal personnel.

However, the doctors should always remember that though their prime responsibility is to treat the patients, they have an equally important legal responsibility. They are authority of medicine and should work diligently to help the law enforcers in administration of justice.

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