

## APPENDIX

### EXISTING STATUTORY PROVISIONS IN INDIA PERTAINING TO PHYSICAL AND MEDICAL EXAMINATION OF ACCUSED.

#### The Code of Criminal Procedure, 1898

S. 51. *Search of arrested persons*: Whenever a person is arrested by a police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing-apparel, found upon him.

S. 464. *Procedure in case of accused being lunatic*: (1) When a Magistrate holding an enquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the State Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

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#### The Indian Evidence Act, 1872

S. 73. *Comparison of signature, writing or seal with others admitted or proved*: In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare

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1. The provisions mentioned here apply to offences falling under the Indian Penal Code, and offences falling under other laws so long as contrary procedure is not provided by those laws. See S.5(2) of the Criminal Procedure Code. There may be other laws having special penal provisions which require medical and physical examination of the accused. Thus, for instance, S.170-A of the Sea Customs Act, 1878 provides for screening or x'raying the body of the person who is suspected to have secreted goods inside his body.

the words or figures so written with any words or figures alleged to have been written by such person.

This section applies also, with any necessary modifications, to finger-impressions.

#### **The Identification of Prisoners Act, 1920**

S. 4. *Taking of measurements, etc., of non convicted persons:* Any person who has been arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards shall, if so required by a police officer, allow his measurements [including finger impressions and foot-print impressions] to be taken in the prescribed manner.

S. 5. *Power of Magistrate to order a person to be measured or photographed:* If a Magistrate is satisfied that, for the purpose, of any investigation or proceeding under the Code of Criminal Procedure, 1898, it is expedient to direct any person to allow his measurements [including finger impressions and foot-print impressions] or photograph to be taken, he may make an order to that effect, and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken, as the case may be, by a police officer :

Provided that no order shall be made directing any person to be photographed except by a Magistrate of the first class:

Provided further, that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.

#### **The Prisons Act, 1894**

S. 24. *Prisoners to be examined on admission:* (1) Whenever a prisoner is admitted into prison, he shall be searched, and all weapons and prohibited articles shall be taken from him.

(2) Every criminal prisoner shall also, as soon as possible after admission, be examined under the general or special orders of the Medical Officer, who shall enter or cause to be entered in a book, to be kept by the Jailer, a record of the state of the prisoner's health, and of any wounds or marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment, and any observations which the Medical Officer thinks fit to add.

(3) In the case of female prisoners the search and examination shall be carried out by the matron under the general or special orders of the Medical Officer.<sup>2</sup>

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2. It may be noted that section 24 is of limited operation only. It applies when the arrested person has been transferred from the police custody to the prisons. The lapse of time may cause the evidence to disappear, e.g., blood or urine test in case of intoxication. Further, the purpose of medical examination under the Act is only for the benefit of the prisoner's health and not to find out something incriminating. (See the opinion of S.K. Ghose, J. in *Bhondar v. Emperor*, A.I.R. 1931 Cal. 601). If any incriminating evidence is found as incidental to medical examination of the accused done for the benefit of his health, only that may be admissible in evidence.