

MEDICO-LEGAL AUTOPSY BY PANEL OF DOCTORS PRESENT SCENARIO

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ABSTRACT

Medico-legal autopsy to ascertain the cause of death or other factors concerning death in unnatural or suspicious cases is in general conducted by one autopsy surgeon. But situations do arise when services of more than one doctor in the form of panel are taken for conducting autopsies. Except administrative orders for panel formation for autopsy in dowry related or custodial deaths, there are no clearly defined guidelines for constitution of the panel of autopsy surgeons in a large number of cases. Keeping in view the scientific, administrative, medical, legal and academic aspects of such autopsies, there is an urgent need to formulate certain guidelines for constituting such panels for disbursement of justice in a better way in public interest and to counter the probability of harassment and exploitation of the autopsy surgeons later on.

KEY WORDS: Autopsy, Panel of doctors, Bride burning, Custodial death, Human rights, Model Protocol, Prosecutor, Anesthetic death, Torture, Exhumation.

INTRODUCTION

Autopsy implies examination of the dead body with a view to searching primarily for the cause of death. The necessity for this procedure was evident to our ancestors. Records from Roman times narrate the examination of the wounds of Gaius Julius Caesar by the physician Antistius in 44 BC. In 1302, a court in Bologna ordered the examination of one Azzolino, who had died under suspicious circumstances of alleged poisoning [1].

The medico-legal or forensic autopsy is performed on the instructions of the legal authority in circumstances relating to suspicious, sudden, obscure, unnatural, litigious or criminal deaths and the information so derived, to be applied for the legal purpose to assist the course of justice. The manner of death in a particular case whether natural, suicidal, homicidal or accidental and even the cause of death sometimes, is known to the attendants or the relatives of the deceased, or the doctors and the health staff who had attended it as patient and even the investigating authorities. But, the cause of death for legal purpose can only be given by the autopsy surgeon who is entitled to perform the medico-legal autopsies under his privileges as a registered medical practitioner [2] and who can give evidence at any inquest or in any

court of law as an expert. One doctor in general conducts medico-legal autopsy but at times a panel or board of doctors is required to ascertain some facts of death.

The present scenario of the constitution of the panel of doctors for conducting medico-legal autopsy in a particular case of unnatural or suspected death, is discussed keeping in view the legal, administrative, public interest and the academic aspects of the issues concerning such autopsies.

PURPOSE OF MEDICO-LEGAL AUTOPSY

Purpose of postmortem examination [3] in a particular case of unnatural or suspicious death is to find out the following: -

1. To know the exact cause of death.
2. To find out the circumstances of death
3. To find out the postmortem interval.
4. In case of unidentified dead body, to establish identity of the deceased or to help to do so.
5. The period for which the deceased survived after sustaining injuries or exposure to poison.
6. To know the nature or the manner of death, whether natural, suicide or homicide.

7. Type of weapon or the poison used.
8. Whether one or more than one person was / was involved, in case of homicide.
9. Whether any natural disease process contributed in any way, to cause the death.
10. Whether any other offence was related with the death e.g. rape.
11. Is the injury, which has caused death, expected to cause death in ordinary course of nature.
12. Whether the dead body has been displaced from the original place of disposal.
13. To know whether more than one method or weapon were used or if more than one person were involved in the crime.
14. Whether the deceased received any treatment before death.
15. Whether there is anything on or with the dead body which may help identification of the assailant
16. In case of death due to assault, the relative positions of the victim and the assailant /s.

MEDICO-LEGAL AUTOPSY BY PANEL OF DOCTORS

Some situations worth discussion, where constitution of the panel of doctors is mandatory or otherwise becomes necessitated and the views expressed by medical or legal experts include: -

1. Dowry Related Deaths:

The dowry deaths, commonly known as 'bride burning' cases, are a bane of the society. In view of the increasing number of dowry deaths, the Government for examination of such cases has laid down guidelines, and the law in respect thereof has been suitably amended. According to a circular from the Home Ministry, a panel of two doctors is required to carry out the postmortem on the body of a married woman, dying of burns or other suspicious reasons within seven years of her marriage or if her age was less than thirty years at the time of her death. From the crime data in general [4,5], the crime is a by-product of the exploitation of the newly married women by husbands and their relations in connivance with each other and usually no eyewitness will be forthcoming to testify against the guilty in the court.

2. Custodial Deaths:

The National Human Rights Commission which came into being in October, 1993 in terms of Section 2 of the Protection of Human Rights Act. 1993, along with the functions assigned to it, gave highest priority to the issues of custodial deaths and rape. The commission during an exercise noticed that there were many irregularities in conduction of the Post Mortem to the extent that at times it was absolutely not done by the doctor and every custodial death was being reported as a suicide and nowhere even post mortem findings suggested that there have been instances of excesses and torture by the police. [6, 7]

3. Death on the Operation Table:

The so-called anesthetic deaths or the deaths on the operation table can be due to anesthesia or associated with anesthesia and the surgical procedure. The investigation of these deaths by no means is always easy. The dividing line of responsibility between the surgeon and the anesthetist is not well defined. In case of any death in the operating room, the surgical team must inform the Hospital Authorities, who in turn, inform the local police and in case of any obscurity, the surgical team of its own, must insist on an autopsy, for their own safety and defence. In a study of 1089 critical incidents, in majority human error, drug related or airway management was the cause and only in 4 per cent cases the mechanical failure. In another study by Philips (1960) in Baltimore (USA) it was concluded that in deaths under anesthesia faulty management of the anesthetic was the cause in about 50% of cases. [8]

It must, however, be realized that the findings of the autopsy surgeon alone will not be sufficient to explain death and no satisfactory investigation is possible without a free and full discussion between the surgeon, anesthetist and the forensic pathologist as regards the events leading to death because functional problems like vagal inhibition, spasm of the glottis, cardiac arrhythmia, and hypotension leave no trace at autopsy.

4. Factors Affecting Medico-legal Performance:

The medico legal work these days like modern day life is very much complicated. Disputing a scientifically correct but unfavorable report has become a part and parcel of the medico legal culture. Trend to get the medico legal results hurriedly in a desired fashion that too authoritatively, is as common as it is to reject an unfavorable opinion [9]. The medico-social issues related to medico-legal performance include:

- a. Risky: Medico legal work at times is very difficult and risky because there are more probabilities of one's being disputed, criticized and challenged by many on many occasions for many reasons.
- b. Controversy: The medico legal work is highly controversial. Both the aggrieved and the opposite party seem to be keen to interpret the medical observations to their benefit and interests and mismatching of the medico-legal opinions with the desires and expectations of the people is therefore not uncommon with emergence of many types of disagreements and disputes.
- c. Delicate: Medico legal work is very delicate because if an innocent is involved unnecessarily or a crime goes unnoticed due to faulty application of the medical knowledge would mean different to different persons. It will irk all kinds of people including police, judiciary and the departmental peers.
- d. Public outcry: Political workers and social activists are often up in arms in the so called cases of police torture, hospital or dowry related deaths especially when the medical opinion is different and contrary to the populous opinion and the doctor's failure to act in their favor brought a charge that the doctor for his ulterior motives had worked in collision.
- e. Administrative hypocrisy and juggleries: The legal presumption is that the hospital and the district administrators

of health department who are senior to those doing medico legal work by virtue of their age in the department are superior for all practical purposes. This sense of superiority seems to be on the basis of seniority of service and not the specialization and the experience in a particular line. Problems may arise when they either respond inadequately or do not respond in a manner, as they should while giving opinions.

5. Second Autopsy:

Postmortem re-examination or second autopsy of a dead body at times may be required under certain circumstances before cremation or after exhumation. The interpretation of the findings of a second autopsy, performed on a previously autopsied body, is not an easy task for the autopsy surgeon due to various artifacts and alterations resulting from the first autopsy and it is usually demanded or ordered under public cry or political overtones.

6. Referred Cases:

Such cases which are referred from Primary Health Centers to the Civil Hospitals and further to the referral institutions like Medical Colleges should be handled with care

7. Decomposed Dead Bodies:

Decomposed and mutilated bodies are often referred to the forensic pathologists for examination. One of the important tools to determine time since death in these cases is the examination of the entomological evidence or insect infestation on human corpse / remains which can be used to closely determine the time since death [10]. The potential for contributions of entomology to legal investigations has been known for at least 700 years, but only within the last decade or so has entomology been defined as a discrete field of forensic science. Insect evidence collected from and around the body of a victim of untimely death when properly collected, preserved and analyzed by an experienced and appropriately trained forensic entomologist, can provide an accurate estimation of the victim's death and

other valuable information. Examination of bones in such cases many a times reveals important facts about the cases.

CONSTITUTION OF THE BOARD OR PANEL OF DOCTORS

Constitution of the board is the most important determinant of its functions. It is important who constitutes the board, how many and who all are the members of the board.

Varying from case to case and circumstances, the board may be constituted by the SMO of the PHC, Civil Surgeon, head of department of Forensic Medicine, Principal of Medical College, and Medical Superintendent of a hospital. Senior police officials can request for the constitution of the board. Deputy Commissioner and Magistrates can order for the constitution of the board for conducting the postmortem examination.

ETHICAL ISSUES

- It is felt that doubts are raised against doctors for conducting the postmortem examination as there are no standard procedures and guidelines for conduction of postmortem and in spite of the fact that doctors put their best efforts and try to do justice but in the absence of any uniformity in reporting everything becomes suspicious.
- In referred cases it is better to have a board constituted to prevent any future problems.
- Further depending upon the cases the board may contain two or more members as may be deemed fit. Ideally the board should have at least one forensic specialist and the rest of the members of the board should be as per requirements of the cases. Expertise and knowledge of Anthropologists and entomologists is being increasingly utilized in criminal and civil proceedings as members of the autopsy panel or part of forensic laboratories or medico-legal investigation teams. From the medico-legal point of view, the autopsy of anesthetic deaths should be conducted by a panel of doctors including the forensic pathologist or the autopsy surgeon, an anesthetist and a surgeon / clinician. Autopsies of all custodial deaths should be done only by Forensic Pathologists at teaching hospitals of government medical colleges where the departments of forensic medicine are present and the authority conducting the inquest should also arrange for the videographer. On the face of these challenges in the medico-legal controversies that there is no violation of ethical or medico-legal duties or the omission or commission, the constitution of the panel of the doctors for conducting autopsies becomes necessitated to counter the probability of being harassed and exploited by many people for variety of reasons.
- Forensic nursing is recognized as the most contemporary concept in forensic services, only recently introduced in India. This concept brings together resources from forensic science, healthcare and criminal justice in a common concern for the plight of victims of crime, the accused and the families of both. Forensic medical examiners and forensic pathologists can better perform their professional duties in such cases with skilled forensic nurse associates and investigation of crime can receive a fillip, as forensic nurses help law enforcement officers attain a more precise interpretation of the medical aspects of case investigation and preservation of biological evidence. Forensic pathology, traumatology, toxicology, sexual assault cases, criminal abortion, human rights violations, psychiatry, insurance, scene of crime and social nursing, are the fields where the potential roles of forensic nurses have been identified [11].
- Evolving a Model Protocol Standard for videography of autopsies in custodial deaths is a must.
- Whenever a Board is formed, then there should not be any video recording and the members of this board should be from the same institute.
- All the heads of department of teaching hospitals and medical college should not hesitate to render help whenever Forensic Pathologist asks for their opinions on medico-legal issues.
- During autopsy, one person from the members of the autopsy team should be designated as the principal prosecutor who will have the authority to direct the performance of the autopsy and he should take the help of other team members.
- The re-examination requires panel of two or more doctors who should be forensic pathologists in case of unnatural death or one member as

senior specialist of forensic medicine and the other members as specialists of suspected cause of death in case of suspicious deaths. The autopsy should only be conducted in forensic medicine department of a medical college and the panel should be formed on the recommendation of the forensic pathologist acting as chairman of the autopsy team.

- Ideally board should have the odd number of members so that in case of differences a conclusion may be possible.
- Members should study the case impartially and should pay their maximum attention and time to solve the case scientifically irrespective of any influence and pressure usually being exerted at such times. Honesty is the key to such cases.
- Members of the board should try to reach a consensus by discussion but if a board member wants to differ from the opinion of others on scientific basis he should not hesitate to write his opinion. Because this is the crux of the formation of the board.
- One member of the board should be taken from the specialty to which the case under consideration falls.
- It is better to make the first board from the members of the staff in middle rank rather than the highest ranking officers because their services may be needed later on in case of allegations/shortcomings by the first board.

In the eyes of a doctor, all these death cases are like any other unnatural death cases as he gives his opinion on scientific facts observed in any given case. Routinely one doctor handles a murder case, which entitles for the highest punishment by the law of the land, efficiently and by asking two doctors to conduct postmortem examination has the disadvantages also like:

- At some centers like the primary health centers, two doctors may not be available to conduct the postmortems and the bodies have to be shifted to the distant major hospitals due to the non availability of one more doctor, causing unnecessary delay for disposal of the dead body and at the same time causing unnecessary and avoidable overburden to the doctors at the higher centers who are already taxed by busy schedule.

- Delay in conducting autopsy may cause decomposition changes and loss of crucial findings.
- When two doctors are asked to conduct postmortem, it causes unnecessary confusion and also amounts to expressing doubts on the ability of a doctor.
- Majority of the dowry deaths are due to burning or poisoning, where one doctor can arrive at cause of death easily.

CONCLUSION:

Presently, the medico-legal autopsies by panel of doctors including two or more forensic medicine or other specialists, are being conducted either in accordance with administrative instructions, circumstances of the cases, type of deaths, under pressure from public or the apprehensions of the autopsy surgeon being harassed or humiliated. At times the panels are constituted when not required at all thus loading the autopsy surgeons unnecessarily and wasting their valuable time in conducting autopsies or later on in the courts of law during evidence or are constituted in an unscientific manner when the members of the panel are not at all concerned with the circumstance or the suspected cause of death but are included just to please the public mood. There is an urgent need of rethinking and modeling of certain basic principals for the constitution of the medical boards for conducting medico-legal autopsies to serve the scientific, administrative and public interests in a better way.

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