

A BREIF ANALYSIS TO MEDICAL JURISPRUENCE IN DEATH INVESTIGATION ON POST-MORTEM IN INDIA

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The definition of death according to Black's Law Dictionary is the cessation of life; the ceasing to exist. According to physician's definition, "it is an total stoppage of circulation of the blood and consequent there upon, a cessation of the animal and vital function".

ABSTRACT

Medical law consists of two parts namely the application of the Medical Knowledge to Law and the application of Knowledge of Law to medicine. The former is termed as Forensic Medicine the latter is concerned with its legal rights, powers, privileges, duties and obligations of medical practice. Every hospital should have a copy of the book "MEDICAL LAW AND ETHICS IN INDIA" by Dr. H. Mehta, M.S, E.C.P.S, Bombay. It contains information on various aspects of medical ethics and etiquettes, Disciplinary councils, rights and the duties of medical practitioners, medical negligence .

Every state has a Medical-Legal Death Investigation system in its place. It may be available according to state-wise, regional or country based. Some states have Medical Examiner systems where physicians usually are appointed as Medical Examiners to oversee death investigation. Forensic Pathologists, who are specially trained in the area of Death investigation and medical legal autopsies, may serve as Medical Examiners or Coroners or work under this public officials providing their expertise. Each state determines the death of a person which is required to be reported to the Medical Examiner or Coroner who then determines the extent of their investigation. An investigation may end after a phone call or proceed to a scene investigation, Physical Examination of the person and possibly an autopsy. ¹The Medical-Legal Autopsy is a specialized examination that intergrates personal, social and medical history, scene investigation, external examination including clothing , internal examination of tissues,

¹ <https://www.yumpu.com/en/document/view/36484067/medical-legal-death-investigation-and-autopsy-clark-county>

microscopic evaluation as well as toxicological, laboratory and evidentiary data. The Medical Examiner or coroner is the official responsible for determining the cause and manner of death of people whose death are the result of injury or outside agents or who died suddenly , unexpectedly or under any questionable circumstances.

LEGAL STATUS OF A DECEASED PERSON

The personality of a human being may be said to commence existence on birth and cease to exist at the time of death. The dead are not considered as person in the eyes of law where rights and liabilities are not arised. The legal personality comes to an end at their death and they are destitute of the rights and liabilities.²They have no rights because they have no interests. Yet, although all the rights of a human being perish with him, the law conferring rights upon the dead, does in some degree recognise and takes into account his desires and interests. There are three things in respect of which the anxieties of living men extend beyond the period of their deaths and which law takes notice of. With the respect to a person's body : Law deems that a living man is interested in the treatment to be awarded to his own dead body. Law secures his desire through criminal law which makes it an offence to violate the grave. Many years after the death the wishes continue to regulate and determine the disposition and enjoyment which the deceased person owned while living. Its an mythological fact "Death is an irreversible cessation of life and is classified as somatic and molecular".

STATUTORY DEFINITION OF DEATH

³Section 2 (b) of The Registration of Birth and Deaths Act, 1969 defines death as "permanent disappearance of all evidence of life at any time after live birth has taken place". The transplantation of Human organs and Tissues Act, 1994 defines through section 2 (e) a deceased person as "a person in whom permanent disappearance of all evidence of life occurs by reason of ⁴brain-stem death or in a cardio-pulmonary sense, at any time after live birth takes place and defines ⁵under section 2 (d) brain-stem death as the "stage at which all functions of the brain-

² https://books.google.co.in/books?id=i2gaAAAAYAAJ&redir_esc=y

³ https://books.google.co.in/books?id=zAwlKX_zNwC&redir_esc=y

⁴ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5455024/>

⁵ https://books.google.co.in/books?id=QkKrDwAAQBAJ&redir_esc=y

stem have been permanently and irreversibly ceased and is so certified under sub-section (6) of section 3 of the Act.

INTRODUCTION

The post-mortem examination report provides details of all the medical examinations carried out in most of the cases, it states the cause of death. A nearest relative, or solicitor acting on their behalf may request a copy of the report. The Procurator Fiscal will arrange for a copy of the report to be made available as soon as possible. Occasionally the report may not be available until the investigation and any criminal proceedings have been completed. Post-mortem examinations and other medico-legal work form a very important part of the duties of Medical Officers working in different Government Hospitals and other institutions such as dispensaries, primary health centers. Since this work is an effective link in the dispensation of justice, it goes without saying that careful attention and promptness is quite essential in dealing with it. The Medical Officer must send the detailed post-mortem report to the police authorities within 24 hours. At the time of performances of post-mortem examination, the original post-mortem report should be completed by the medical officer in his/her own handwriting at the post-mortem examination room itself. The other copies can be typed but the original should be kept by the Medical Officer with himself and the typed copy duly signed should be sent to the respective police station. Additionally one certified copy has to be sent to the Civil Surgeon of the district. The original work of copy may have to be produced in the Court of law. Any erasures, additions and alterations should be avoided as far as possible but if there are any they should be initiated. The original post-mortem report must be full but not the sketchy one.

Considering the injuries and fractures sustained by the victim, which are as dangerous as to cause death of a person, it is not necessary for the Doctor to give ⁶a specific report to the effect that the injuries were sufficient in ordinary course to cause death. In fact and the circumstances, it can be said that the appellants in pursuit of their common intention caused injuries on victim which resulted to death. ⁷Therefore, the stand taken by the appellants that they should not be

⁶ <http://freelegalconsultancy.blogspot.com/2014/07/doctors-opinion-about-injuries-cause-of.html>

⁷ http://14.139.60.114:8080/jspui/bitstream/123456789/9109/3/013_Criminal%20Law%20%28417-452%29.pdf

dealt with sections under 302/34 of The Indian Penal Code, 1860 cannot be accepted. Death is determined by the entire and permanent cessation of circulation and respiration.⁸ Ordinarily, these signs are considered sufficient to determine that death has actually taken place, but these alone should not be relied on, as absolute signs to avoid premature burial or cremation.

IMPORTANCE OF DEATH SCENE INVESTIGATION BEFORE POST-MORTEM EXAMINATION

⁹Medical expertise begins by examining the body and gathering evidence at the scene. ¹⁰The next step is history, physical examination, laboratory tests, and diagnosis. Providing objective evidence for the justice system and determining the timing, cause, and manner of death are the main objectives. Cooperation between law and medicine was resolute in 3000 B.C. in Egyptian culture. British coroner system was established at the top of the 12TH century. The medicine specialist to participate within the examination of the place of death. The medicine specialist can inform the investigating authority about the character of the death, whether the circumstances are in step with a natural death, or interpreting the quantity of blood loss from a human as being because of natural disease instead of injury. Not participating in death scene investigation is taken into account to be one of the foremost important mistakes in medicine. The pathologists performing autopsies in the hospital who does not have time to attend death scenes or aren't trained in attending death scene.

ROLE OF THE FORENSIC PATHOLOGIST

¹¹The role of Forensic Pathologists is to help coroners, police and courts to resolve critical medical issues, including causes of death, the circumstances within which deaths occurred, how injuries may have been caused and therefore the identity of the deceased. The Forensic Pathologist is assisted during this role by forensic technicians, medical specialists. Forensic pathology is that the part of medical specialty coping with examination of deceased persons, and

⁸ <https://indiankanoon.org/doc/15080467/>

⁹ <https://www.intechopen.com/books/post-mortem-examination-and-autopsy-current-issues-from-death-to-laboratory-analysis/introductory-chapter-an-overview-of-post-mortem-examination-and-autopsy>

¹⁰ <https://www.intechopen.com/books/post-mortem-examination-and-autopsy-current-issues-from-death-to-laboratory-analysis/introductory-chapter-an-overview-of-post-mortem-examination-and-autopsy/>

¹¹ https://www.researchgate.net/publication/299484919_Forensic_Autopsy_and_the_Role_of_the_Forensic_Pathologist

this is often the main target of the current chapter within the following, some general principles of the add forensic medicine are presented.¹² Although the legislation regarding forensic medicine differs between countries, a standard principle is that within the investigation of a possible or suspected criminal death, a forensic pathologist is engaged through a proper request from the police or the prosecutor. The task of the forensic pathologist is then to help within the investigation as a health worker. This expert role continues throughout the method, including the court proceedings for the asking of the court and/or one among the parties. The task is to function as a health worker for justice, not primarily to support one among the parties within the trial. Hence, the role of the forensic pathologist within the reference to the examined person is clearly completely different from the role of the clinical doctor in his/her reference to¹³the patient, where the physician often becomes an advocate for the patient.¹⁴The most vital role of the forensic pathologist is to practise and to mediate a scientific approach to the medical issues raised in a very legal context involving death.

WHAT HAPPENS DURING A POST MORTEM?

¹⁵Pathologists perform post-mortem examinations to standards set by the Royal College of Pathologists. These standards include finishing up the post mortem in an exceedingly respectful manner and with regard for the emotions of the bereaved relatives. Most post mortems are allotted by pathologists who concentrate on histopathology, which is that the laboratory study of disease and of diseased tissue. Pathologists are helped by anatomic pathology technologists, who have had specialist training to help pathologists. Post mortems are usually allotted within the hospital mortuary in an exceedingly special post-mortem examination room, which could be almost like an operating room. In certain circumstances, they will be allotted within the local public mortuary, or in an exceedingly regional centre for specialist post mortems. The body are going to be moved respectfully from the place where the person died to the place where the examination is to be allotted. A long incision is formed down the front of the body to enable the

¹² <https://www.sciencedirect.com/topics/medicine-and-dentistry/forensic-medicine>

¹³ <https://books.google.co.uk/books?id=fedDBAAAQBAJ>

¹⁴ https://www.researchgate.net/publication/323182472_Introductory_Chapter_An_Overview_of_Post-Mortem_Examination_and_Autopsy

¹⁵ <https://www.rcpath.org/discover-pathology/what-is-pathology/information-about-post-mortems-for-friends-and-relatives-/what-happens-during-a-post-mortem.html>

interior organs to be removed and examined. One incision across the rear of the top allows the highest of the skull to be removed in order that the brain were often examined. Organs are examined carefully with the optic and dissected to seem for any abnormalities like blood clots or tumours. If further information is required, postage-stamp-sized pieces of tissue could also be retained for examination under the microscope or samples of body fluids taken for analysis within the laboratory. After being examined, the organs are returned to the body. Material is rarely retained without explicit consent from the coroner or next of kin.¹⁶ The coroner might instruct the pathologist to perform further analysis on blood or a tissue sample; if this can be the case the family are going to be informed. If the pathologist wants to stay tissue for research or teaching, they will only do so with written consent from the subsequent of kin. Post-mortem facilities are regularly inspected to make sure that they work to the high standards commenced by the Human Tissue Authority.

CAUSE OF DEATH

The medical officer must do the utmost to arrive at the cause of death or problem cause of death. For this the medical officer must take into consideration all the findings.¹⁷ The cause of death is to be based only on the basis of findings and not on extraneous factors.

A certificate of death should be handed to the police constable who is the in-charge of the body immediately after the post-mortem examination.

DEATH TO BE INVESTIGATED

The officer of the post-mortem examination shall investigate all human deaths providing such death in the opinion of the Chief Examiner arose from the following certain cases-

- a. ¹⁸Violent deaths, whether apparently homicidal, suicide or accidental including but not limited to deaths due to thermal, chemical, electrical or radiational injury, and deaths due to criminal abortion, whether apparently self-induced or not;
- b. ¹⁹Sudden deaths not caused by readily recognizable disease;

¹⁶ <https://www.rcpath.org/discover-pathology/what-is-pathology/information-about-post-mortems-for-friends-and-relatives-/what-happens-during-a-post-mortem.html>

¹⁷ https://www.academia.edu/41853467/POST_MOTERM_EXAMINATION_Medical_Jurisprudence

¹⁸ <https://www.revisor.mn.gov/statutes/2018/cite/390.32>

- c. ²⁰Deaths under suspicious circumstances;
- d. ²¹Deaths of person whose bodies are to be cremated, dissected, buried at sea, or otherwise disposed of so as to be thereafter unavailable for examination.

²²It is advisable to write one or two identification marks of the party examined. Medical Officers must be aware that whenever they are called in the Court of Law to give evidence they are always asked the question whether they remembered any identification mark which has been given to examined by a particular party. Identification marks, thus have a legal significance as actual verification can be done in the Court.

In cases of homicidal, where the body is found, the identity of the body with the person said to be deceased must be fully established before the Magistrate trying or inquiring into the case. ²³In such cases, where there has been a post-mortem examination, evidence must be recorded by the ²⁴Magistrate to prove the custody of the body of the deceased after death, and its delivery for the purpose if post-mortem examination to the Medical Officer.

A good watch should be kept on the dead bodies in the post-mortem room. If the case is medico-legal case, the respective station Police should take adequate precaution .

POST-MORTEM ROOMS

This term is generally refers to both Mortuary Room or Post-mortem Room. However the object of these two differs from each other. After the death of a patient or when a dead body is received it is sent to a place called as Mortuary Room. It is the proper place to keep the body preventing it from getting disposed. The other part being Autopsy Room or Post-mortem Room where the Actual Autopsy is performed.

RECORDS AS EVIDENCE IN THE COURT OF LAW

The Office of the Post-Mortem Examinations shall be keep full and complete records, properly indexed, stating the name, if known, of every person whose death is been investigated, the place

¹⁹ <https://books.google.co.uk/books?id=QJl0jqUmKS4C>

²⁰ <https://books.google.co.uk/books?id=QJl0jqUmKS4C>

²¹ https://books.google.co.in/books?id=1zDtCIMYKDsC&redir_esc=y

²² <https://www.slideshare.net/eastzonemedicolegal/what-is-medico-legal>

²³ http://delhihighcourt.nic.in/writereaddata/upload/CourtRules/CourtRuleFile_WAP7CR9Z.PDF

²⁴ https://books.google.co.in/books?id=KVtiNKHbNM8C&redir_esc=y

where the body was found, the date, cause and manner of death and all the relevant information concerning the death of the deceased person. ²⁵The records of the Office of Post-mortem Examination or transcripts thereof certified by the Chief Medical Examiner, are admissible in evidence in any Court of this Territory, except the ²⁶statements by witnesses or other persons and conclusions upon extraneous matters are not hereby made admissible. ²⁷The person preparing a report or record given in evidence hereunder may be subpoenaed as a witness in any civil or criminal case.

ANALYSIS

What happens in the Post-mortem Examination?

The pathologist examine all the internal organs and take samples of tissues and fluid (such as blood) for later inspection in detail. The organs are then returned to the body (although they cannot be returned in their original position). The samples of the tissues taken for testing are usually kept as part of the persons medical records in case they are needed to answer further queries about the cause of death or regarding illness of other family members in the future.

What is Post-mortem examination ?

A Post-mortem is an examination of a body after death to know the actual cause of death. Sometime it is also called as Autopsy. They are usually carried out by pathologists-doctors who specialise in the diagnosis of disease. It is the final step in the investigation of person's illness or their cause of death.

When a Post-Mortem is done ?

A Post-mortem is usually carried out within 2-3 working days because during these days the actual cause of death can be identified . Likely after 2-3 days the body starts disposing off. It is very much necessary to take the examination as earliest as possible. After the Post-Mortem the

²⁵ <https://name.memberclicks.net/assets/docs/b12bad44-5ae2-4e99-b513-39190b12a456.pdf>

²⁶ <https://books.google.co.uk/books?id=1zDtCIMYKDsC>

²⁷ https://books.google.co.in/books?id=1zDtCIMYKDsC&redir_esc=y

body is placed in the Mortuary Room, because of religion the funeral takes place accordingly within the next 24 hours.

Who decides that the Post-mortem should take place ?

According to law a coroner can order when post-mortem examination to be done.²⁸ There are three main reasons why a death is referred to the coroner :

1. A death has been sudden or unexpected;
2. A person has been ill but the doctor confirming the death is not certain why it happened at the particular time;
3. A death has been the result of an accident or unusual circumstances (including deaths following a medical procedure).

²⁸ <https://www.bibs.org.uk/help-for-parents/bereavement-support/>

Books- [LEGAL MEDICAL DEATH INVESTIGATION by Nayan Joshi \(Advocate\)](#)