

MEDICO-LEGAL PRACTICE AND ITS INTERACTION WITH MULTITUDE OF SOCIO-RELIGIOUS RITES IN SRI LANKA

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Introduction

The Sri Lankan community consists of vastly diverse ethnic and religious fractions, mainly Buddhists, Christians, Hindus and Mohammedans that ultimately influences over the medico-legal system of the country. In spite of that the medico-legal procedure is governed by provisions of legal enactments, historically, both the legal and medical communities faced many cross paths with religious rituals in determining time of death, conducting autopsy examinations, retention of tissues, organ transplantation, disposing death bodies, and even during clinical-forensic examinations. Though standards of science is not always compatible with the religious principals, the current judicial systems in many parts of the world, including Islamic jurisdictions demands undoubted medical proof of cause and manner of death in order to exploit wrongdoers. The author himself encountered many conflicting situations while performing medico-legal duties and forensic medical teaching in Sri Lanka and abroad. At times, medico-legal practitioner may have to withstand extreme religiously motivated demands by relatives to compromise standards of the practice, viz: conduct limited autopsy etc. The present paper intends to elaborate some aspects of social and religious influence on practice of forensic medicine in Sri Lanka.

Issues and Discussion

Brain death and transplantation

The determination of time of death is one of the fundamental medico-legal issues for any forensic practitioner. It was not a difficult task in the past and attributed to cessation of all vital functions of the body, until modern methods of life support and medical intervention were introduced, which made it possible to keep some bodily systems "functioning" long after others have ceased.

The concept of brain death has been accepted as a true death by majority legislators, where a brain stem death is in force in the United Kingdom while USA, Continental Europe and South Asian countries¹ adopted the whole brain concept. This scientific definition of brain death² replaced then prevailing sociobiological concept, based on cessation of all the functions of a human body, a

somatic or biological death, as a legal death. In strict biological meaning, the body is constituted of cells, tissues, organs and eleven systems, including three key vital systems which work in close coordination under control of central nerves system in line with a genetic timer. However, the most sacred concepts assume that the soul makes this bio-system a person and a real death occurs when the soul leaves the body. Hence, the concept of brain death especially a brain stem death may not be acceptable to a common religious man who queries why do "brain dead" patients still have a beating heart and often receive ventilator support, intravenous fluids, antibiotics, and other life support measures and even deliver a baby. Consequently, relatives do not view him/her as dead and accept death as occurring when the heart and lungs stop functioning permanently³.

On the other hand, the discovery of an ability of foetal brain tissue to stimulate neural cell growth and division, raises the possibility that patients with extensive brain damage, sufficient to certified death under current standards, may be able to regain some degree of functions. It may be further supported by the fact that histopathological examination of so called dead brains reveals minimal anatomical changes of the cerebral tissues in spite of the clinical certification of death.

The Buddhist concept on human existence consisting of cycle of life, suffering, and death according to law of cause and effect, also the way out of it. Furthermore, a physical death is in no sense, considered being terminating one of the endless cycles described as; the falling away, the passing away, the separation, the disappearance, the mortality of dying, the action of time, the breaking up of the aggregates, the laying down of the body⁴. This Buddhist view of death is congruent with the concept of whole brain death in the current context and therefore, remnants of biological functions including a beating heart have no meaning in a body without soul. This view creates an opportunity for the taking of organs for transplantation, while protecting premature removal of organs.

Hinduism also shares similar views and believes in the rebirth and reincarnation of souls. Death,

therefore, is not a great calamity, but a natural process in the existence of soul as a separate entity⁵. In fact, many concepts of Buddhism are believed to be derived from ancient Hindu theologies. Both Buddhist and Hindu concepts hail organ donation.

For Christians whose lives are guided by the Bible, the fact of death is acknowledged as part of the contemporary human condition, affected by sin⁶. In general Catholic and Protestant theologies do not object to brain death criteria under whole brain concept. According to catholic medical ethics, Pope Pius XII stated that death is determined by medical experts, and it does not fall within the competence of the Church⁷. In the western world, Christian church consistently supports and encourages organ donation. Except for a few extreme religious missions, we have not faced any serious conflicts about brain death and organ donation among Christian community in Sri Lanka.

The concept of brain death has also been recognized and implemented by the scholars of Islam at an international level in their resolution⁸: Resolution of the Council of Islamic Jurisprudence on Resuscitation Apparatus Decision No.(5), D3/07/ 1986. "Wherever you may be death will overtake you, though you remain even in lofty towers."(Quran 4:78)⁹

The Council of Islamic Jurisprudence in its third meeting held in Amman, capital of Jordan from 11 to 16 October 1986, after discussing all relevant aspects of resuscitation apparatus and after hearing detailed explanation from specialist doctors, declared the following:

A person is pronounced legally dead and consequently, all dispositions of the Islamic law in case of death apply, if one of the two following conditions has been established:

There is a total cessation of cardiac and respiratory functions, and doctors have judged that such cessation is irreversible.

There is a total cessation of all brain functions and experienced medical specialists doctors have judged that such cessation is irreversible and that brain cells have started to degrade. In this case, it is permissible to take the person off resuscitation apparatus, even if the heart is still beating.

However, most Islamic religious leaders do not recognize it and expect termination of all signs of life including heart beat as precondition for declaring death.

An organ donation is permitted in Islam, certainly with the juridical safeguards. "An whoever saves a soul it would be as if he had saved all mankind. It should be given as a gift. The sale of an organ is prohibited". [Quran 5:32]¹⁰. It is necessary to have the permission from the donor or a relative to receive the organ. However, according to our observations, srilankan Islamic community is reluctant to donate organs, even for blood donation, probably due to long standing social stereotypes rather teachings of Holy Quran.

Euthanasia

The euthanasia has emerged on the rights of self determination about death and authority over in critically ill patients a though assisting such patient to kill himself is considered to be a crime in many jurisdictions. In Sri Lanka, killing himself is not a crime anymore, though all forms of euthanasia, active or passive, voluntary or involuntary and physician assisted suicide are not incorporated into our legal system.

Buddhist views are not unanimous about euthanasia but generally against involuntary euthanasia and assisted suicides for reasons related to espouse a "sanctity of life" position¹¹.

Christians are mostly against the euthanasia. According to Christianity a life is a gift of the God and therefore no human being has the authority to take the life of any innocent person¹², irrespective of person's wish to die.

The position of Islam is very clear in this context as the Al-Bakara Chapter of the Holy Quran, verse 159, which reads, "Don't throw yourself into death". According to Islamic philosopher Dr Hathout, in general the rules of Sharia are to accept the judgment of God. If a person is terminally ill and we all know that according to the best medical knowledge of the time that death is certain, we want to preserve the dignity of the person by not making him look like he is living when in reality he is not¹³.

Autopsy and disposal of dead bodies

Distinguishing natural from unnatural causes may not always be easy, and what may appear as natural causes may not be so, or vice-versa. An undue errors in this respect have major impact on the deceased's family that results in re-autopsy, exhumation or insurance disputes. Most problems arise because of confusion The confusion usually arises at formulation of the cause of death and the death certificates and therefore, a standard autopsy examination is essential in most apparently natural deaths. Unlike in many western

countries where bodies are stored and autopsies are scheduled, in Sri Lanka, autopsy is performed on the same or very next day with exception of special cases.

Generally Buddhists, Hindus and majority Christians here do not object to autopsy but are always in hurry to take over the deceased's body to follow their well respected religious rituals. Hence, in the circumstances, forensic pathologist is under the social pressure to complete autopsy examination as soon as possible. In fact there is an unseen institutional benefit of early autopsy by reduction of time and cost of storage. Cremation is the most respectful way of disposal of a body for Buddhists and Hindus but criminal law of the country prohibits cremation of a body after coroner's inquest. However, many Coroners and Magistrates have ignored this provision and allowed cremations after obtaining additional certification from forensic pathologist confirming that no further investigations would be necessary in this case.

Many religions such as Judaism and Islam usually discourage the performing of autopsies on their adherents. The common trend among Muslim community in Sri Lanka is to by pass autopsy procedures whenever possible, because they do not appreciate any physical disturbance or disintegration of a corpse. As a result, it has been observed that many maternal and infant deaths are released on apparent causes of death without proper pathological investigations, confronting national interests of the country.

Islamic funeral rites are simple though they are subject to regional interpretation and variation in custom. In all cases, however, sharia calls for burial of the body, preceded by a simple ritual involving bathing and shrouding the body, followed by salah (prayer). Cremation of the body is forbidden. Islam instructs its followers to bury their dead as quickly as possible, preferably within the day of the death¹⁴. Their desire to bury the body within shorter period demands judiciary and pathology services to perform medico-legal functions in hurry or even during night shifts, at times compromising standards.

As Islamic community does not follow embalming practice which results in rapid decomposition of tissues, if subsequent exhumation is necessary in cases of probable criminal doubt, the autopsy would be generally limited to skeletal examinations.

Conclusions

The application of scientific standards of forensic medicine at times clashes with religious rites of the society. The whole brain concept is acceptable to most religions as a point of death where as brain stem death leads to conflict situations. Euthanasia is generally objected by all religions and very unlikely to be permitted in Sri Lanka. The procedures of autopsy and disposal of death body greatly varies according religious believes and case by case approach is within rationale. It is necessary to educate general public, especially their community and religious leaders about value of medico-legal practices in establishing justice, social harmony and health planning and economics.

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