

WHERE IS THE LEGAL CONCEPT OF “INJURIES LIKELY TO CAUSE DEATH” FOUND IN SRILANKAN “MEDICO-LEGAL CLASSIFICATION OF INJURIES”

Senanayake S.M.H.M.K.

Judicial Medical Officer, Teaching Hospital, Anuradapura, Sri Lanka

ABSTRACT

Forensic medical practitioners (FMP) recognize different types of injuries according to severity as non-grievous, grievous endangering life, fatal in ordinary cause of nature and necessarily fatal.

Legal concepts about severity of injuries are found in following sections of Penal Code of Sri Lanka-Non grievous hurt in Section 310, Grievous hurt in Section 311. , Fatal in the ordinary cause of nature in Section 294-(third)., Necessarily fatal in Section 294 (fourth).

“Injuries likely to cause death” is an important legal concept applied for the judgment of offences against human life. But FMP do not recognize, academically discuss or research this topic because it is not directly mentioned in medicolegal examination form or medicolegal report as a category of medico-legal classification of injuries.

This concept seems to be included in the category of “endangering life” under limb ‘h’ of grievous hurt and need careful consideration for correct recognition by doctors, police and judiciary.

“Endangering life” category includes existing clinical conditions which may cause death such as-

1. Already developed rare fatal complication
2. Injuries which has significant possibility of death 40- 50%.

3. Injuries which has a probability of death (more than 50% chance of death or injuries likely to cause death).

Till legal amendments are done to in cooperate “injury likely to cause death” in to medico-legal examination form and medico-legal report, forensic medicine practitioners should be informed to explain the basis for categorizing the injury under “endangering life” as one of above three reasons.

Full paper

Introduction- “injuries likely to cause death” is an important legal concept applied for the judgment of offences against human life. But Sri Lankan forensic medicine practitioners do not discuss this topic because it is not mentioned in any category of medico-legal classification of injuries of Sri Lanka. This concept appears to be included in the category of “endangering life” and need careful consideration for correct recognition by doctors, police and judiciary.

Medico-legal classification of injuries

At the end of the medicolegal examinations Forensic Medical Practitioner (FMP) is supposed to classify injuries according to severity under the headings of Non grievous hurt, Grievous hurt, Endangering Life and Fatal in the Ordinary Cause of Nature.

Doctors do not classify injuries under the section of “Injuries Likely to Cause Death” (ILCD), since they are not expected to do so.

Therefore there have not been any medico-legal academic discussions and significant scientific development regarding this category.

When we scrutinize the entire medicolegal classification of injuries, the group named “Injuries likely to cause death” is not found in anywhere but seems to be included in the “Endangering Life” section.

Medico-legal classification of injuries of Sri Lanka includes following categories.

1. Non grievous injuries- Section 310 of Chapter XVI of penal code¹ defines Hurt as “who ever causes bodily pain, diseases or infirmity to any person is said to cause Hurt”. Section 311 of penal code defines “grievous hurt”. Any hurt does not fall within the definition of grievous hurt is considered a non-grievous hurt.
2. Grievous hurt- Section 311 of Chapter XVI of penal code defines “Grievous Hurt”. It has nine limbs.
 - (a) Emasculation
 - (b) Permanent privation or impairment of the sight of either eye
 - (c) Permanent privation or impairment of hearing of either ear
 - (d) Privation of any member or Joint
 - (e) Destruction of permanent impairment of the powers of any member or joint
 - (f) Permanent disfiguration of head or face.
 - (g) Cut or fracture of bone, cartilage or tooth or dislocation or subluxations of bone, joint or tooth.
 - (h) Any injury which endangers life or inconsequence of which an operation involving the opening of the thoracic, abdominal or cranial cavity is performed.
 - (I) Any injury which causes the sufferer to be in severe bodily pain or unable to follow his ordinary pursuits, for a period of twenty days either because of the injury or any operation necessitated by the injury.

3. Fatal in the ordinary cause of nature (FIOCN)- (Section 294- third)
4. Necessarily fatal- (Section 294-fourth)

Legal concept of severity of injuries

Legal concept about severity of injuries contains several groups including one group named “injuries likely to cause death”.

Culpable homicide is defined in the Section 293 of the penal code as “ the causing of death by doing an act with the intention of causing death or with the intention of causing such bodily *injuries as is likely to cause death* or with the knowledge that the doer is likely by such act to cause death”. Here the word “likely” means probable. When the chances of a thing are greater than its not happening we say that the thing will “probably” happen. That means the chances are more than 50%². Medicolegal classification of injuries does not have this category.

Section 294 of the Penal code states that “culpable homicide is Murder”

Firstly- if the act by which the death is caused is done with the intention of causing death.

Secondly- if it is done with the intention of causing such bodily injury as the offender knows to be *likely to cause the death* of the person.

Thirdly- if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary cause of nature to cause death.

Fourthly- if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and commits such act.

Comparison

Penal code section 294 states about –“bodily injury sufficient in the ordinary cause of nature to cause death”. Medico-legal classification of injuries include the same concept as “injury fatal in the ordinary cause of Nature”.

Penal code section 294 states about “Injury so imminently dangerous that it must in all probability cause death” Medico-legal classification of injuries include the same concept as “injury necessarily fatal”.

Penal code sections 293 and 294 state “injuries likely to cause death”. But medico-legal classification of injuries does not have similar concept.

When carefully scrutinizing the medico-legal classification of injuries, it is apparent that “injuries likely to cause death” is not mentioned in any section. But under “Grievous Hurt” limb- (h) first part “ any injury which endangers life” appears to deal with this legal concept. No other groups of medico-legal classification of injuries appear to deal with this legal concept.

What is meant by “injury endangering life” in medico-legal classification of injuries?

An injury is said to endanger life, when there is an existing threat to life by way of injury, organ damage, consequences like bleeding, shock or developing of complications like tetanus, septicemia, meningitis. In other words there is a fatal risk due to the injury/ damage or due to a complication that patient actually developed. Fatal threat to the life must be an existing threat/ real threat and not a potential threat/ suspecting threat³.The existing threat may result in death.

There should be a significant probability of death. When the probability is very small like 5% -10% it is not considered as endangering life because it is only a possibility. If the “patient may die”, it means there is a significant probability around 50%. When

the probability is 25 % to 80% those injuries can be classified as “endangering life” conditions. Traditionally when the probability is more than 80% they are classified as FIOC because doctors can predict that death will result if treatment is not given.

Different ways of injuries exhibit “existing threat to life”

FMPs recognize “existing threat to life” in various clinical situations such as vital organ damage, development of common complications and development of rare complications.

Organ damage

1. Damage to internal organs such as;
 - A- Concussion of brain (transient loss of consciousness) following head injury – there is a risk of death due to asphyxia due to tongue fall backwards or aspiration of vomitus.
 - B- Myocardial contusion- there is a risk of cardiac arrhythmia and sudden death.
 - C- Small haemothorax or small pneumothorax requiring no surgical treatments but need conservative management such as close monitoring or keep under medical observations – there is a risk of developing these lesions further and causing respiratory difficulty.
 - D- Damage to medium sized blood vessels like those below elbow and below knee- there is a risk of bleeding and developing shock. (When 10 blood vessels above elbow and above knee are damaged there is rapid bleeding and a very high chance of death due to hemorrhagic shock. Therefore those injuries will be classified as “Fatal in Ordinary Cause of Nature”).

Direct consequences of injuries

2. Due to hemorrhage and shock– Shock indicates low blood supply to body tissues. Clinically, a state of reversible shock with pulse over 100, systolic blood pressure below 100mmHg, sweating and cold, clammy extremities is classified as endangering life.
3. Acute renal failure following blunt trauma to skin- after multiple contusions when acute renal failure (low urine output) is developed there is a significant chance of death.

Rare complications

4. Rare complications arising as a direct result of injury as severe infection (meningitis, peritonitis, tetanus).
5. Rare fat embolism after fractures and soft tissue damage.⁴
6. Rare pulmonary embolism after long bone fractures or immobilization for a long time due to injury.

Commencement of a common fatal complications after trauma but do not progress and do not require treatment.

- 7- After trauma if a fatal complication starts, careful supervision will be necessary for prompt intervention. But the fatal complication naturally stops without progressing. During the initial period life is in danger. Ex- small extradural hemorrhage develops after trauma to head managed conservatively with only close observation, no surgical treatment is required.

According to the medico-legal concept the threat to life must be an existing threat and not a potential threat. When there is a small abrasion it is not argued that the patient has a possibility of developing tetanus in future

and there is a threat to life. Possibility of tetanus is not an existing threat. It is a rare complication, only a potential threat. But when patient actually develops tetanus after a small abrasion, it can be classified as endangering life because now there is an existing threat.

According to medico-legal concept, the existing threat should be a significant threat, but should not be a very severe threat. Injury only “may result in death” and not “will result in death”³.

According to above medico-legal explanation, “endangering life” concept includes -Injuries may cause death (with a significant probability) by the direct consequences according to the usual course of nature and already developed rare complications outside of usual course of nature (extra ordinary complications). Significant probability may be around 50%. Less than 50% (20-49%) or more than 50% (51-80%) can be considered as “injuries likely to cause death”.

Example – 01

A cut artery below elbow level may cause bleeding to death. There is a probability of death. Due to spasms of walls of blood vessels medically we can expect spontaneous stoppage of bleeding and cannot expect death as a consequence of ordinary course of nature. Therefore cut injury of artery at below elbow is medico-legally classified as “endangering life”.

Example – 02

A small hemothorax in a patient needs continuous medical supervision for surgical intervention if the condition worsens. But no urgent surgical treatment will be provided at the beginning. If a small hemothorax does not enlarge and it is managed without any surgical treatment and only with medical observation, it will be medico-legally classified as “endangering life”. Because

there was an existing danger to the life necessitated medical observation to monitor the progression.

Example – 03

A scratch of the hand may lead to the development of tetanus. Tetanus is a fatal illness. Now there is an existing danger to life. But tetanus is not a usual complication in the ordinary course of nature of a scratch of the hand. The ordinary course of the scratch of the hand is healing within few days. Tetanus is a rare complication, an unusual complication and an extraordinary consequence of an abrasion. If, by any chance, tetanus develops, then the scratch of the hand will be medico-legally classified as “endangering life”. The probability of developing tetanus from a scratch is extremely low (less than 1%)⁵.

When considering the above three examples of “endangering life” situations, number two and three will be punished under law of grievous hurt. Because both original injuries had only the possibility of death, very low chance of death and they are not injuries “likely to cause death”. But example one has a probability of death. Significant chance of death around 50%. It is an injury likely to cause death. Therefore it can be punished under sections 294 and 294.

Defense counsels will argue that all three injuries amount to grievous hurt because “they were medico-legally classified as endangering life” and “endangering life is the limb-H of the grievous hurt”. That argument arises because there is no recognized portion of medico-legal classification similar to the concept of “injuries likely to cause death”.

Problems in the present medico-legal practice

A- In real practice, forensic medical practitioners recognize following all injury groups as “endangering life” situations.

1. Injury with a *probability* for death. Significant chance around 50%. It is equal for “injuries likely to cause death” - cut below elbow).
2. Injury with a *possibility* of death. Less than 20% chance of death. Though some medico-legal practitioners may consider that the injury may result in death, it is not an injury “likely to cause death”. Eg- small hemothorax which does not enlarge.
3. Injury that is initially considered as simple hurt but then develops a rare fatal complication. Because there is an existing danger to life due to already developed complication, the injury is classified under “endangering life”. Eg- small scratch gives rise to tetanus.

Therefore “injuries likely to cause death” are also categorized under “endangering life” group with other injuries, which belong only to grievous hurt. Whenever a medicolegal examination form mentions about “endangering life” magistrate court will summon the doctor for a detailed Medicolegal report⁶ (MLR) and decide whether the injury belongs to “grievous hurt” or “injury likely to cause death”. For this stage medicolegal knowledge of forensic medicine practitioner is not utilized.

B- Some doctors do not mark “endangering life” cage in medico-legal report, but mark only “grievous hurt” cage. Their argument is “endangering life” is one limb of grievous hurt and it is not necessary to mark both cages. Then the police do not know whether the injury is a serious injury. If the FMP marks both grievous hurt and endangering life cages, then magistrate courts will summon the doctor for detailed MLR and decide the appropriate legal section to proceed.

- C- Most importantly, the concept of “injury likely to cause death” is not academically discussed among doctors. Therefore no research has been conducted on this topic.
- D- No research has been done and less attention has been paid for the concept of “probability of death” in relation to injuries in Sri Lanka⁷.
- E- When evidence is lead in court trials forensic medicine practitioners face difficulties about explaining the “probability of death” and “injuries likely to cause death” in relation to the individual case because there is no prior preparation.
- F- When the FMP marks “endangering life” case, during the court trail the defense counsel will invariably ask whether this injury belongs to grievous hurt because endangering life is only one limb of grievous hurt. The FMP who knows that “endangering life” section includes different types of injuries explained above can clearly separate injuries classified as endangering life but only amount in to grievous hurt and injuries classified as endangering life but amount in to “likely to cause death”.

CONCLUSIONS

“Injuries likely to cause” death is an important legal concept. Since it does not in the Sri Lankan medico-legal classification it should be included in medicolegal examination form and medicolegal report. The Sri Lankan medico-legal classification needs a separate section named “Injuries likely to cause death”.

“Injuries likely to cause death” are classified under “endangering life” with other injury groups such as “injuries developed rare fatal complications”. Till legal amendments are done to in cooperate “injury likely to cause death” in to medico-legal forms, forensic

medical practitioners should be informed to write details in the remarks column about the reason for categorizing the injury under “endangering life”. If the injury has a probability of death, it should be mentioned in the remarks column. Then at magistrate court level injuries categorized as “endangering life” can be easily separated in to “grievous” or “injuries likely to cause death”.

Case studies and more researches should be conducted about the “probability of death” and “injuries likely to cause death” in Sri Lankan context. Then forensic medicine practitioners will be more prepared about these two concepts to help courts.

REFERENCES

1. Penal code of Sri Lanka
2. Ananda Grero C. “Culpable homicide proof and defences”.1998 first edition, Singha Printers, Telijjawila
3. de Alwis L.B.L. “Lecture notes in Forensic Medicine.” Volume 01. 2007 first edition . Primal Printers .pp-29-30
4. Sarah maître.” Causes, Clinical manifestations and treatments of fat embolism” AMA Journal of Ethics. September 2006, Vol 8, No 9 : 590-592.
5. Rhee P at all. “Tetanus and trauma: a review and recommendation” Journal of Trauma. 2005 may; 58 95) 1082-8.
6. Edirisingha PAS at all.” Justice delayed-Justice denied”Medicolegal journal of Sri Lanka; Vol 1, NO 1, April 2011,20-26.
7. Perera J at all,’ Probability of death. A gestimate or an estimate?” 11th annual academic sessions of College of forensic pathologists of Sri Lanka 2013.