



LAW OPINION

IMPORTANCE OF AUTOPSY REPORT in the administration of criminal justice

The examination should be conducted in daylight, as far as possible. It should also be as thorough and complete as circumstances permit. The three great cavities and the organs contained in them should all be carefully examined, though the apparent cause of death has been found in one of them – just to avoid unnecessary, and sometimes unpleasant, cross-questions.

JUSTICE (RETD) MOYENUL ISLAM CHOWDHURY

According to Modi's "Medical Jurisprudence and Toxicology" (12th ed.), the object of the post-mortem examination of a body is to establish its identity when not known, and to ascertain the time since death and the cause of death; natural or unnatural, homicidal, suicidal or accidental. Additionally, the question of live birth and viability has to be determined in case of the body of a newly-born infant.

Before commencing the examination, the medical officer should carefully read the inquest report on the appearance and situation of the body when it was first discovered, and the cause of death as far as could have been ascertained. This precaution is necessary, specially in the case of a decomposed body, so as to enable him/her to examine particularly the organ or the part of the body most suspected for the evidence of death.

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Ordinarily, a dead body is sent to the morgue; but in exceptional cases, the medical officer may be taken to the place where the dead body is lying. In that case, he/she should note the place and nature of the soil where he/she found the dead body, and also its position specially as regards the hands and feet and the state of the clothes, if any. In the case of death from violence, he/she should note the position of the body in reference to surrounding objects, such as sharp stones and the like, and also whether any blood stains were visible on such object or anywhere near the corpse, and whether any weapons were lying near it. The ground in the vicinity should be carefully searched for the presence of footprints and evidence of any struggle. In the case of suspected death from poisoning, the medical officer should note whether any appearance as of vomited matter, etc. was present in the neighbourhood of the body.

The medical officer holding a post-mortem examination should note the time of the arrival of the body at the morgue, the date and hour of the post-mortem examination and the name of the place where it was held. Necessary papers authorising the medical officer to hold an autopsy are frequently brought by the police long after the body has arrived. This dilatory method on the part of the police has occasionally led to the decomposition of body in the post-mortem room. It is,

therefore, safer to note the exact time of delivery of these papers.

After completing the post-mortem examination, the medical officer should form an opinion as to the cause and manner of death, based on the appearances observed by him/her and should immediately give in the vernacular the abstract of his/her opinion to the police constable accompanying the body for communication to the investigating officer. If he/she has based his/her opinion on the post-mortem appearances, as well as on the statement of the police, he/she should mention the fact in the report. The report should be forwarded to the Superintendent of Police as soon as possible, but not later than two days.

In our country, in almost all cases, the post-mortem examinations are carried out by male doctors only. Lately, people have raised their voice against the practice of holding autopsy of a deceased female by a male doctor. In order to ward off unnecessary controversies, the Government may look into the matter and make provisions for holding of post-mortem examinations of deceased females by female doctors only.

Some medical officers labour under a mistaken belief that they should never be definite in their opinion as to the actual cause of death, and should, therefore, qualify their opinion by using the word, "probably". Modi's advice to medical officers is that they must never hesitate to give a definitive opinion whenever they can reasonably do so. But in those cases, where they are unable to find any cause of death, they must mention in the reports that they cannot come to any definitive conclusion. In such cases, it is advisable as a precautionary measure to preserve the necessary viscera for chemical analysis and pieces of brain, lungs, liver, spleen, etc. for microscopic and bacteriological examinations.

It is admitted on all hands that undue delay is often made in preparation of the

autopsy report of the deceased, thereby hampering the quick investigation of the case. It is often seen that after the doctor concerned has prepared the autopsy report, he/she transmits the same to the Civil Surgeon or other senior Medical Officer for his/her counter signature and the countersigning Medical Officer also takes some time in putting the signature on the report and in the process, a good deal of time is consumed. In my opinion, the counter-signature of the Superior Medical Officer is wholly unwarranted in view of the fact that the sole responsibility of holding the post-mortem examination lies with the doctor concerned. Thus, all quarters ought to give a serious thought to it.

So far as we know, there is only one Government Chemical Laboratory at Mohakhali, Dhaka for the purpose of chemical examination of the viscera of the deceased. Our experience shows that once the viscera is sent to the chemical examiner at Mohakhali for chemical analysis and opinion, the Investigating Officer does not receive the report from Mohakhali, albeit several months or even a year have elapsed by this time. This being the scenario, the doctor holding the autopsy cannot give his/her final opinion as to the cause of death of the deceased expeditiously. All-out efforts should be made to remove this snag.

In the course of the trial of a case, if it is seen that injuries found by the doctor during autopsy do not tally with those allegedly sustained by the deceased testified to by the witnesses, the accused will get the benefit of doubt resulting his acquittal. Therefore, the doctor holding the post-mortem examination should be on his/her guard in making the report truly, objectively and free from any extraneous influence.

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Where the dead bodies are traced out and post-mortem examinations are held thereon, the importance of post-mortem examination reports cannot be shrugged off in the least. In the administration of criminal justice specially in cases involving murders and culpable homicides, autopsy reports are corroborative pieces of evidence acting as an aid to the trial Court Judges in coming to correct decisions.

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RIGHTS WATCH

Against the retention of death penalty

MAHBUBUR NAZMI AND MUBINUL MULK

In the past, almost all countries practised the execution of the death penalty. As much as the idea of human rights, the rule of law and democratic governance has flourished, punishment's theoretical and practical aspects have also changed remarkably. At present, 108 countries worldwide have banned the death penalty provisions. Every State in Europe except one has already abolished the death sentence. There are 36 countries where the death penalty is still permissible; however, they do not apply it in principle. According to the Cornell Center on the Death Penalty Worldwide, almost 48 countries have been refraining from executing the death sentence for the last decade. The Office of the UN High Commissioner for Human Rights (OHCHR) affirms that more than 150 Member States of the United Nations with various legal systems, cultures, and religious backgrounds, have either abolished the death penalty or do not practice it.

About 55 nations upholding and enforcing the death penalty are predominantly non-secular and non-democratic. In 2019, only 20 countries carried out some 657 death executions, with the highest number in China, Iran, Saudi Arabia, Iraq, and Egypt. From 1990 to 2019, 10 countries executed the death sentence of 149 juvenile offenders; of those, only Iran executed 99, Saudi Arabia executed 184 individuals in 2019; more than half were foreigners. At least 26,604 people were known to be under death sentence worldwide at the end of 2019. In 2020, amongst the 483 persons, who were executed, 16 were women based in Egypt, Iran, Oman, and Saudi Arabia.

According to Amnesty International, nearly 1800 were death-row prisoners in Bangladesh at the end of 2019, whereas more than 220 people were sentenced with the death penalty in 2019. *Living Under Sentence of Death*, an empirical study recently conducted by the Law Department, University of Dhaka, provides that at least 101 people had been executed in the country since 1991. It appears that 11 executions occurred between 1991 and 2000 compared with 57 between 2001 and 2010, and at least 30 between 2011 and 2019. Sadly, the number of death sentences has been increasing, with 1009 death-row prisoners in November 2011, which reached up to 2000 as of June 2021. The study also reveals that most death-row inmates are from a socio-economically disadvantaged position with low academic background.

Interestingly, in countries where the death penalty is legal, the crime rate has not decreased but increased on many occasions. Evidence shows that crime rates are relatively low in countries where the death penalty has been abolished. During the last 20 years, in the U.S, the states with the death penalty have had 48 to 101 per cent higher homicide rates than the states without the death penalty. Sadly, the death penalty is a punishment that cannot be reversed once it is carried out. There are countless examples where this inhuman sentence has unlawfully and forcefully been imposed innocent people.

Crime and criminality have socio-cultural, economic, psychological, juridical, political, and environmental aspects. Various factors influence criminal behaviour. Much criminological research shows that most people commit crimes not as habitual offenders or recidivists. In many instances, the death penalty results from the judicial, administrative, or procedural error, where the persons executed, were later found guiltless. Unfortunately, our societal response to crime and offender is vindictive, whereas society is, sometimes, more inclined to vengeance instead of justice, revenge instead of fairness, and retaliation over compassion. In a country where the prison system mainly provides custodial services in place of correctional facilities, that does not help prisoners reform.

Since Bangladesh is a democratic country and its criminal justice system does not comply with faith-based laws; thus, abolishing the death penalty will not be religiously problematic. If we critically analyse the identities of people who have been executed in the country for ordinary crimes so far, with surprise, most of them would be found socio-economically helpless. Interestingly, since the independence of Bangladesh, almost all presidential mercy receivers (sentenced to death) were pardoned merely for their political affiliation. It turns out that there are laws in books on the implementation of the death penalty for multiple heinous offences; nevertheless, in action, the application is not always equal and equitable for all. This picture is nearly similar in every country where the legal provisions of the death penalty exist.

We should recognise that endorsing and executing the death penalty by the criminal justice system might negatively impact the under-trial and convicted prisoners, their families, and society in a broader sense. The lack of good governance and the rule of law stimulates injustice, insecurity, criminality, and corruption in society. The judiciary might have a consensus not to exercise the death penalty, and the legislators should step forward to abolish it from all the legal frameworks. Otherwise, innocent and socio-economically distressed people might be the victim of this inhuman treatment, politically, by mistake, and/or with other prejudice.

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