



Ethical And Medicolegal Issues In Retention Of Organs After Autopsy, For Teaching Purposes

¹Ajay Kumar*, ²Jyoti Barwa, ³Akhilesh Pathak, ⁴Rattan Singh

¹ Additional Professor, ² Associate Professor, ³ Professor and Head, ⁴ Assistant Professor
^{1,2,3,4}Dept of Forensic Medicine and Toxicology, All India Institute of Medical Sciences, Bathinda, India

***Corresponding Author:**

Dr. Ajay Kumar

Additional Professor, Dept of Forensic Medicine and Toxicology,
All India Institute of Medical Sciences, Bathinda, India

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Abstract

Human tissues and organs have been integral to medical teaching and research in hospitals and medical colleges for centuries across the globe. In India, there are no clear guidelines regarding removal of tissues and organs from the dead body. Hence, complaints are being filed to the concerned authorities for illegal removal of organs, body parts, tissues, or biological material after autopsy. This paper discusses the various ethical and medico-legal issues in retention of organs after autopsy without the appropriate authorisation from the family of the deceased or from the legal custodian of the body.

Keywords: Autonomy, Ethical issues, informed consent, medico-legal issues, retention of organs

Introduction

The use of human tissues and organs are one of the main components in medical research and teaching in Hospitals and medical colleges.¹ It is essential for the development of the subject in both teaching and research. Though, tissues and organs from dead bodies have been removed traditionally for various purposes since ages, there are no clear guidelines pertaining to their removal or retention for non-therapeutic purposes. Complaints can be filed to the concerned authorities regarding illegal removal of organs, body parts, tissues or biological material after autopsy. This practice is likely to be more in cases of unknown and unclaimed dead bodies. The mortuary staff may be involved in unauthorised removal of the organs for creation of tissue banks, or for museum specimens. The illegally retained biological samples and organs/ tissues once processed or utilised are often discarded in municipal waste sites which may not only create public unrest but raise enquiries into the source of these samples being recovered. There have been numerous incidents of medicolegal issues

in the United States, at various places like the department of Anatomy, tissue banks, or biotechnology companies.²

Discussion:

Ethical issues in retention of organs

There is a general assumption that consent of the relatives or heirs of the dead body is required before removing of the body parts or organs.¹ If internal organs are removed after obtaining consent from relatives at the time of death, integrity of that cadaver has been retained as the wishes and expectations of those involved have been respected, but if no consent is given, then the cadaver has been desecrated.¹ There is a fundamental difference in the retention of the organs in these two cases. Taking out of the organs without consent, in the interest of the society and public has been termed as reticence by Walke.² It is “doing no more than what can be justified in advance

on reasonable and decent criteria for the benefit of science, justice, and society”.

With advancing time, the number of medico-legal autopsies being requested by police officers are increasing where one must primarily arrive at the cause of death. This process entails examination of all the organs and to perform requisite examination as deemed necessary. The examination may be done in vivo or in vitro i.e., by taking out the organs from the body for gross examination, histopathological examination, and chemical analysis.³ The question as to whether consent of the next of kin or relatives is required, to remove and keep the organs even in cases of medico-legal investigations is of paramount importance. As per the statute, the forensic expert has to do a complete examination and for that matter he may or may not require any of the organs to be taken out and preserved subsequently. The consent of the investigating officer for performing the Autopsy as per Criminal Procedure Code (CrPC)⁴ is sufficient for the forensic expert to go ahead and complete the autopsy. As the consent of the relatives is not required and hence not obtained in Medicolegal cases, they often allege that the organs have been deliberately kept by the autopsy surgeon and will either be misused, or would not be returned to them after Autopsy.

While conducting medicolegal autopsy, some of the organs which are usually retained for onward transmission & toxicological detection to the Forensic Science Laboratory (FSL) are, the stomach with its contents, intestines, liver, spleen and kidney. Sometimes additional organs such as heart, brain, lungs, endocrine organs etc are also retained for examination.³ In cases, when these organs are not returned to the relatives, they are eventually discarded by the respective agencies following the due process. However, there is also a possibility that these organs are not discarded and are used for teaching or research purposes in the form of gross specimens or they may be sectioned for preparation of histopathological slides for being traded in the market as study material. The use of organs for teaching or research purposes can assumed to be based on the principle of paternalism wherein the doctor decides what is in the best interest for the patient or their relatives.⁵ Similarly, in this case, the concerned fraternity decides what is in the best interest of general public by contributing towards

medical education and its upliftment. This theory may explain the existence of available specimens in the form of study materials, in Departmental Museum and archives of medical colleges. Such tremendous task has been made possible & in future can expand further, only by the contribution from eminent fraternity of concerned fields.

To a large extent, the ethical and moral principles for humanitarian treatment of the dead are being governed by laws worldwide.⁶ However, there are controversies regarding use of left over body materials for scientific purposes. In India, except otherwise indicated, after conducting autopsy, the dead body along with its organs is handed over to the relatives of the deceased and the body is disposed thereafter, either by cremation or by burial. For the sake of community welfare, the deceased body and its organs remains futile, however receiving back an almost intact body from the mortuary may just provide mental peace to their relatives. Keeping this scenario in mind, isn't the forensic expert ethically wrong in retaining some of the organs for teaching purposes without informing the relatives, after completing post mortem examination? The question remains unanswered. Even if an effort is being made diligently, the consent of the relatives will be difficult to obtain in large number of cases as they are already in a state of grief for the loss of their beloved one. Another factor behind denial of consent is the religious stigmas associated with conduction of autopsy itself.

The Punjab Anatomy Act 1963, gives permission for use of unclaimed or unknown dead bodies for therapeutic purpose, anatomical examination etc. It states that where a person under treatment dies in any hospital, and his body is unclaimed, the Hospital authorities have to report this fact to the authorised officer of the jurisdiction to which the person belongs. The area jurisdictional officer after conducting preliminary inquiry should then hand over the unclaimed dead body to the authorised in charge of the approved institution. It is for the Institution to decide how the unclaimed body can be used. It can be used for any therapeutic purpose or for the purpose of conducting anatomical examination, dissection, surgical operation or any research work. This is however, applicable only when no foul play is suspected by the concerned investigating officer.⁷

Another ethical problem with unknown dead bodies is that these kinds of cases take a backseat in the priority of police functioning. The inadequate training, as well as the relatively lax attitude of the police personnel in handling unknown dead bodies, delays the Post mortems at the authorised centers. The Punjab Police Manual states that Police should try to identify the dead body for a minimum of 72 hrs before proceeding with a post-mortem examination. The manual does not specify how long police officials should put in the efforts, and this serves as an excuse to “delay the post-mortem” beyond 72 hrs which may extend to weeks. This delay leads to putrefactive changes in the organs and the body, making them useless for anatomical dissection, therapeutic or research purposes. Due to this procedural lapse, the organs and tissues useful for medical colleges and labs get wasted.

In contrast to medico-legal autopsy, in pathological autopsies, the consent of the relatives of deceased is required for using their tissues for any diagnostic examination, procedure, and for retaining any tissue for future use. If consent for using the tissue has been given for research or diagnostic purpose then the legal rights vests with the surgeon or the researcher. Once the person states that he or she does not claim the rights to the tissue specimens, i.e. has signed the informed consent, and decided that he/she has no interest in the outcome of the research in which his/her relatives biological materials will be used, that person cannot change the initial decision no matter what is the result of the research or experiment or what economic benefits the researchers gain from it.⁹ The ICMR guidelines, lays emphasis on obtaining informed consent either from the patient himself or from their legally authorized representative(LAR), in all procedures of biomedical research involving human participants, however, there is no clear specifications for use of human tissues/ organs for teaching or academic purposes.¹⁰

Medicolegal Issues in retention of organs

There are various judgements by different courts in India that a dead body cannot be held captive for want of money or for any other reason by the hospital authorities.^{11, 12} These same directions by various courts can be extrapolated to the various tissues and organs removed after autopsy without proper informed consent. It is illegal to keep the whole body

or organs or use any diagnostic sample of a patient or deceased without the consent of the relatives or the legal heirs, even for the benefit of the society at large. The doctor deliberately retaining the samples or organs will be answerable if it is found that no proper consent was taken from the relatives or legal heirs. A doctor can be sued in a court of law for stealing the organs or tissues from the dead body; being prosecuted under various sections of the Indian Penal Code (IPC) or The Transplantation of Human Organs and tissues Act (THOTA), 1994.¹¹

There have been several amendments in THOTA since it was initially passed in 1994, striving hard with the aim to curb the practice of deceitful removal of organs from unwilling persons. These amendments have streamlined organ donation and body donation to the medical colleges and laboratories. Broadly, the Act THOTA accepts only brainstem death as the death of the person and has made retrieval and the sale of organs a punishable offence. Section 5 of THOTA gives provision for retrieval of human tissues and organs from cases of unclaimed bodies in a hospital or prison which has not been claimed within 48 hours from the time of death. As per Section 6 of THOTA, human organs from the dead bodies can be retrieved during post-mortem examination for knowing the cause or the manner of death Section 6 gives authority for the removal of tissues or. In such cases, the person competent to give authority for the removal of any human organ from dead body may, authorise the removal, for therapeutic purposes, of that human organ of the deceased, if he is satisfied that before his death, the deceased had not expressed any objection to any of his human organs being used, for therapeutic purposes after his death. This, however, can only be done if that competent person is of the opinion that such human organ will not be required for the purpose for which the body has been sent for post-mortem examination. The above sections of THOTA will be rendered useless if, dead body is handed over to the doctor after 72 hrs of death.¹³

As per section 18 of THOTA,¹³ punishment for removal of human organ without authority has been prescribed as—

(1) Any person who is involved in any manner, in the removal of any human organ or tissue for transplantation purpose, without authority, shall be

punishable with imprisonment for up to 10 years and fine up to Rs 20 lakhs.

(2) If the person is a registered medical practitioner, his name may be removed from the register of the State Medical Council for a period of [three years] for the first offence and permanently for the subsequent offence.

(3) Any person who is involved in any manner, in the removal of any human organ or tissue, without authority, shall be punishable with imprisonment for up to 3 years and fine up to Rs 5 lakh rupees.

Section 19 and Section 19A of THOTA prescribes Punishment for commercial dealings in human organs and illegal dealings in human tissues respectively with a maximum imprisonment up to 10 years and fine up to 1 crore rupees. In addition, section 297 IPC outlines a punishment of imprisonment of either description for a term which may extend to one year, or with fine, or with both to those who offer any indignity to any human corpse.⁴ Deliberate removal of the organ without the consent of the patient will result in trespassing on the body of the patient and will amount to assault. Despite the THOTA legislation and various IPC sections, organ commerce and kidney scandals are regularly reported in the Indian media.¹⁴ As with other Indian legislative measures, THOTA too, is silent about the use of organs for teaching or academic purposes.

Since a person is the overall in-charge of his body, he has the right to decide what treatment is to be administered to him during life.¹⁵ The same principle can be applied for deciding what is to be done to his/her body after death. If he/she has expressed the desire not to remove the organs then the autonomy of the patient must be respected.⁵ The pace at which the number of medical colleges are being opened in the country is occurring fast and it appears to be difficult in meeting the teaching requirement of these new medical colleges, as per the National Medical Council (NMC) guidelines. In such circumstances, there is most likely to be an inadvertent shortage of teaching materials (organs for display in museums and for teaching undergraduate students). Though, it is the moral and ethical duty of the teacher to teach their students with a realistic and more life-like samples, ensuring the same is rather intricate. Hence, considering the present digital era, one of the methods by which the above-mentioned

shortcomings may be subdued is, by use of electronic simulation devices and other virtual devices.

Conclusion:

Since, at present there are no clear guidelines for retention of organs after autopsy for teaching or academic purposes, allegations for misuse are likely to be imposed upon the medical staff. Another fact which cannot be denied is the ever-growing requirement of teaching materials in the museum & laboratories of medical colleges. In order to prevent outrage or agitation among the deceased relatives, it is suggested, that the concerned doctors should practice a better communication skill with them by disclosing about the removal of the organs and then proceeding further for autopsy, with their due permission. In addition, a document in the form of receipt may be issued to their relatives, that organs of their near and dear ones will be used for teaching or research purposes only and not for anything else.

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