

ROLE OF FORENSIC MEDICINE EXPERT IN HUMAN RIGHTS IN INDIA

Dogra T.D.^a; Lalwani S.^b, Raina A.^c

^{a,b,c} Department of Forensic Medicine & Toxicology, AIIMS, New Delhi, India.

^aCorresponding author: tddogra@hotmail.com

© Ontario International Development Agency. ISSN 1923-6654 (print)
ISSN 1923-6662 (online). Available at <http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html>

Abstract: Every human being enjoys fundamental human rights without any discrimination. Article 21 of the Indian constitution provides guaranteed right of life and personal liberty to every citizen including the right to health and the conditions that are essential for health.

Considering the health as a fundamental right, the ethical issues like consent, confidentiality, autonomy, justice, doctor patient relationship, malpractices, organ donation, equitable and nondiscriminatory allocation of human organs and other issues of use of spurious drugs, drug abuse, medico legal cases, prevention of torture, scientific interrogative techniques like narco-analysis, brain mapping, custodial death, mental health, female feticide, child abuse, elderly abuse, gender based violence, domestic violence, human trafficking, sexual abuses and exploitation, mass disasters, disposal of dead, identification of living and dead, euthanasia and surrogacy require special consideration in reference to the legal framework in India and human rights.

All these require proper investigation, analysis and documentation. Forensic medicine has made a very significant contribution in detection, reporting and prevention of human rights violation. Thus accurate, proper and honest forensic medicine evidences contribute significantly in above mentioned situations pertaining to human right violations.

Various procedures, directions and recommendation have been made by National Human Rights Commission and other agencies in India for medical doctors and forensic experts to avoid omission or commission on the part of medical practitioner while dealing such situations. Even chapter on human right have been added in undergraduate (M. B., B S Degree) and postgraduate (M.D., Forensic Medicine) curriculum.

The Department of forensic medicine at all India Institute of Medical Sciences is engaged in dealing with large number of cases pertaining to human rights and

is also engaged in teaching to undergraduate and postgraduate students. This department also acts as adviser to National Human Right Commission of India to advice on complicated medico legal cases of custodial deaths. In this article role of Forensic Medicine Expert in all these issues has been discussed.

Keywords: Forensic medicine, forensic expert, human rights, medico-legal case,

I. INTRODUCTION

The declaration of USA (4th July 1776), mentions that all human being are equal and enjoy basic rights of Life, Liberty and the pursuit of Happiness. Both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) recognize that health is central to the dignity of the person and the state's commitment to health of the population as a fundamental human right. Article 25 of Universal declaration of human rights is concerned with the right to health. United Nation has recognized the role of experts of Forensic science and related fields to investigate human rights violations effectively [1]. Forensic expert has a humanitarian as well as legal role in context of human right violation [2].

India is a vast country having ethnic and linguistic diversity. Second largest country having an estimated population of 1.15 billion in 2010 [3]. 37% of population lives below poverty. India is having mixed health care system there are primary health centres, district health centres and government run medical colleges which provide treatment free of cost to all strata of population. In addition there are private hospitals run by individuals and by corporate sector. Many chains of corporate hospitals have started.

Indian healthcare industry is worth about Rs.100,000 crores, accounting 5% of GDP. However, rising economy, sustained economic growth and increased affordability has affected health care sector as well.

The private hospitals are providing services to the upper strata of the population. Many insurance companies are also coming to ensure the people with health care which is targeting the middle segment of the population which constitutes about 300 million. Below poverty line people cannot afford or don't have access to good private medical care. The result is overcrowding of government hospital practically making it impossible to provide a good quality health care. In addition to the health care (Total Population 1.15 billion in 2010, Doctors population ratio 1:1,722 (MCI-2005), No of doctors- 6,68,131 during the year 2006 Report of Planning Commission), the medical doctors are supposed to take care of criminal violation of the human rights of the patient.

II. ROLE OF FORENSIC EXPERT

Crime and Poverty are interrelated to a great extent. In one of the judgment Hon'ble Supreme Court of India has recognized that factors like economic deprivation may lead a person to crime. Court further said that since poor commit crimes because of compulsion, they are more likely to mend [4].

2. 1. Role as a citizen

Section 39 Criminal Procedure Code 1973 of India mentions that it is the duty of every medical doctor whether private or government to report certain type of offences to the investigating agencies. The offences which are required to be reported to the investigating agencies include those against State, public tranquility, illegal gratification and affecting life. Other offences to be reported includes that related to adulteration of food and drugs, kidnapping for ransom, offence of theft after preparation made for causing, death, hurt or restraint in order to the committing of the theft, robbery and dacoity, criminal breach of trust by public servant, mischief against property, offence of house-trespass, offences of lurking house trespass and currency notes and bank notes. Violation of this duty may attract penal provisions under sections 201 and 202 Indian Penal Code 1860 for disappearance of evidences. Therefore, the doctors in this country are extremely careful towards their medico-legal responsibilities.

The guidelines of medico legal work Delhi Government 1983, defines the medico-legal case as "A case of injury or ailment, where an attending doctor after taking history and clinical examination of the patient/s, thinks that some investigations by law enforcing agencies are essential, so as to fix the responsibility regarding the case in accordance with the law of the land". So any person getting injured because of any reason including those involving human right is to be labeled as medico-legal case and information is to be given to the concerned police station. As per the

guidelines, it is not necessary for police to accompany. Therefore, information about all the medico-legal cases are given to law enforcing agencies even if law enforcing agencies are not listening to the victims directly.

The cases that are required to be labeled as medico-legal, medico-legal report is to be prepared in prescribed format and concerned police to be informed. The cases includes Road-side accidents, factory accidents or any other unnatural mishap, Suspected or evident homicides or suicides, including attempted, Suspected or evident poisoning, Burn injuries due to any cause, Injury cases where there is likelihood of death in near future, Suspected or evident sexual offences, Suspected or evident Criminal abortions, Unconscious cases, where cause of unconsciousness is not clear, Cases brought dead with improper history, referred by court or otherwise which require age certificate, pertaining to dowry Act, Domestic violence and violence against child, cases of human rights violation and Cases pertaining to Elderly abuse.

2.2. Role as a practitioner

Section 53 Criminal Procedure Code 1973 prescribes mandatory medical examination of the person taken into custody for preservation of evidences, documentation of injuries or illnesses and prescribing treatment for the same. Further the examination of person of female shall be made only by, or under the supervision of, a female registered medical practitioner. Invariably such medical examinations requires evaluation by forensic specialist.

2.3. Role in Medical Education

India is the one of the country where the curriculum of all undergraduate and postgraduate medical courses includes topics related to human rights. The topics taught by forensic expert includes Medical ethics and law in relation to medical Practice, Consumer Protection Act, Human Experimentation Act, Rights of Patients, Duties of Doctors towards patients, Torture Medicine, Declaration of human right commission, Custodial Death, Criminal abortion, Infanticide and Starvation.

2.4. Role in Organ Donation

In India the donation (cadaveric and brain dead) and transplantation of human organs is governed by Transplantation of Human Organs Act 1994. The forensic expert plays a significant role in facilitating organ donation (brain dead and cadaveric) by coordinating between relations, legal agencies, organ banks and transplant surgeons [5]. However, equitable and nondiscriminatory allocation of human organs is the important human right related issues needed to be addressed appropriately.

Further, forensic expert can also contribute in investigation in cases of illegal removal of organs from the body of persons.

2.5. Role in Protection of Consumer Rights

All the consumers are entitled to right of safety, right to be informed, right to choose, right to be heard and to be assured, right to seek redressal and the right to consumer education.

Practice of medicine involves both curative aspect as well as ethical or medico-legal aspect related to (a) doctor-patient relationship, (b) doctor-doctor relationship, (c) doctor-state relationship in relation to the duties of a doctor, obligation to his patients apart from legal aspect of medical practice including infamous conduct, medical negligence, malpractices, etc. Code of conduct prescribed by the Medical Council of India for registered medical practitioners guide and regulate the professional activities of medical practitioners, to protect the community at large from quacks and charlatans against malpractice [6].

Recently in India, medical profession has also come within the ambit of consumer Protection Act. In recent years there have been significant increase in number of malpractice suits in India [7]. In cases of negligence forensic expert play in significant role in investigation of cases of alleged medical negligence by conducting autopsy or by preserving specimens for analysis at Forensic Science laboratory and at times such efforts play in significant role in addressing the grievances of consumer as well as the medical professionals.

2.6. Prevention against Custodial torture

Forensic science is an important tool in detecting evidence of torture and other cruel, inhuman or degrading treatment or punishment [1]. In India, National Human Right Commission has issued guidelines for medical officers to deal with cases involving human right violation which emphasizes on right of prisoners regarding prompt medical assistance whenever felt necessary. This also includes prevention of torture while in custody therefore, provisions have been made for mandatory medical examination by trained and authorized medical practitioner every 48 hours during his detention in custody and at the time of his release from the police custody.

In cases of death in custody it is mandatory for the District Magistrates and Superintendents of Police of every district to report to the Secretary General of the Commission about such incidents of death in police or judicial custody within 24 hours of occurrence or of these officers having come to know about such incidents. Postmortem examination is to be conducted by board/panel of doctors including forensic

expert and video-recording of postmortem examination in such cases is mandatory.

2.7. Mental Health and Human Rights-

According to provisions of the Mental Health Act 1987 of India the mentally ill persons cannot be put into prison. National Human Right Commission of India has also shown deep concern about the conditions prevailing in the mental hospitals all over the country. There are problems of overcrowding, lack of basic amenities and medical facilities provided are of poor standard. In some places, ECT is administered even today without assistance of anesthetist. Deaths in mental asylums are investigated and opinion of forensic expert is taken regarding circumstances of death.

2.8. Spurious Drugs and Human Rights

In India NDPS Act 1985, is the statutory framework for drug law enforcement in India. Forensic toxicologist helps in examination of counterfeit or spurious medications. Forensic pharmacists play an integral role in legal cases relating to malpractice, drunk and drugged driving and adverse side effects of certain drugs.

2.9. Forensic Expert and Rights of children

Rights pertaining to children includes right to Nutrition (reporting of malnourishment), right to Health & Care (vaccination and treatment of illness), right to protection from Abuse (reporting of sexual and physical abuse), right to protection from Exploitation (child labour, occupation in hazardous industries) and the right to protection from Neglect: exploitative and inhuman conditions. In India, a child less than 14 years of age cannot be engaged as domestic servants. National commission of protection of child rights (NCPCR) and child welfare committees (CWC) refers the cases with suspected violation of child rights for forensic evaluation.

2.10. Forensic Expert and Rights of elderly

In India elderly abuse is underreported because of socio-cultural reasons. Documentation and reporting of elderly abuse is an important task in forensic practice. The regulations related to for elderly care includes, Maintenance and welfare of parents and senior citizens act 2007. Further as per section 125 of Criminal Procedure Code 1973 maintenance of parents is mandatory.

2.11. Domestic Violence

Section 3 of the Domestic Violence Act 2005 says any act/conduct/omission/commission that harms or injures or has the potential to harm or injure will be considered 'domestic violence'. Under this, the law

considers physical, sexual, emotional, verbal, psychological, and economic abuse or threats of the same.

Documentation and reporting by forensic expert plays significant role in getting justice for the victim. Various protocols for forensic assessment of the any harm consequence of domestic violence against women have been prepared all over the world [8].

2.12. Gender based violence (Preconception and Prenatal Diagnostic Techniques Act 2002)

Sex ratio is one the most important indicator used for study of population. In India the reasons for consistent low levels of sex ratio include male child preference, neglect of the girl child resulting in higher mortality at early age, female infanticide, female feticide, higher maternal mortality and male bias/dominance in among population. Widespread availability of the sex determination tests and abortion facilities are contributing in the process, which is further added upon by pre-conception sex selection facilities.

Provisions of Preconception and Prenatal Diagnostic Techniques Act 2002 prohibit such practices of sex selection.

2.13. Forensic expert and criminal abortion

Criminal abortion is performed with intention to get rid of product of conception. However abortion can be legal or justifiable if carried out with the provisions of MTP Act. The law regards criminal abortion as a serious antisocial act and punishable under section 312-316 IPC. A forensic expert may have to examine cases of abortion following an assault or in case of concealment following complications or fatal outcome. Abortion may ensue following an accident and expert may be contacted for compensation purposes. Examination of living or dead female following criminal abortion and examination of aborted material by forensic expert may provide vital clues for investigation.

2.14. Sexual exploitation/ Sexual Offences

Forensic expert conducts medical examination, document injuries and collection and preservation of samples in cases of natural and unnatural sexual assault.

2.15. Scientific Interrogative Techniques and Human Rights

Use of scientific interrogative techniques like brain mapping and narco-analysis has started a debate among medical/forensic fraternity about violation of constitutional right. The discussion has been up to the level of High Courts of various States and in some cases its constitutional validity has been upheld. In

India techniques have been used in various cases like Abdul Karim Telgi of counterfeit stamps case, Mo-ninder Singh of Nithari serial murder case, Vijay Mandal of Arushi murder case and Sadhvi Pragya of Malegaon bomb blast case.

Recently the honorable supreme court of India has ruled that narco-analysis, polygraphs and brain mapping are illegal and violation of personal liberty. Court ruled that tests cannot be conducted on any person without their consent.

2.16. Role in Human Trafficking

Forensic expert play an important role in medical examination of trafficked victims that may include head to toe examination, documentation of injuries with duration, identification of patterned injuries (Bite/belt/rod/ligature Burns etc), Genital examination in cases of sexual assault or abuse, Screening of STD, management of malnutrition, Sample Collection (Orifice swabs, Urine, blood, hairs, Clothings etc) for the purpose of investigation, and age estimation required for various legal provisions (Labour law, Juvenile Justice Act etc).

2.17. Forensic expert and Mass Disasters

Disasters results in large number of deaths in a short span of time placing overwhelming stress on individuals and society. Appropriate recovery, retrieval and storage of dead bodies is an important and essential component of humanitarian response in any disaster situation. Positive identification of the deceased is essential for proper disposal, financial compensation, property rights, inheritance etc. Further disposal of the dead bodies is of great importance according to religious, cultural, ethnic and psychosocial needs of the affected community. Forensic expert play significant role in proper disposal of dead bodies in mass disasters, construction of temporary mortuaries for preservation, establishing identity of dead bodies by DNA FP and other tools and preserving important trace evidences of medico-legal importance for investigation.

2.18. Euthanasia

Forensic expert analyze legal clauses or provisions in prevailing legislations in the country and guide the legal and administrative agencies in these matters,

2.19. Surrogacy and Forensic expert

Important contribution could be in legal protection to surrogate mothers and to prevention of commercialization of this right to life. However other legal issues are also of importance where forensic expert can play a role includes adultery, legitimacy, and implications of provisions of Artificial Insemination Bill etc.

2.20. Independent Inquiry

Forensic pathologist had played a significant role as independent expert in investigation of situations like extrajudicial execution in war like situations as reported from Sri-Lanka [9].

2.21. Communal/cultural/political conflict

In a developing country like India particularly due to high rate of illiteracy and poverty there are Communal/cultural and political conflicts among people even resulting in violence. Forensic / medical experts plays a significant role in redressing these issues in the society. This department played a significant role in Godhra violence to solve the problems.

III. CONCLUSION

There has been strong association between poverty and crime as well as poverty and health. Improvement in socioeconomic status of individuals will reduce the crime rate in India as people with good health, well protected human rights; feeling secured and thereby will contribute with much better and increased output in up-liftment of society and country at large.

REFERENCES

- [1] Human rights and Forensic Science, C.H.R. res. 1998/36, ESCOR Supp. (No. 3) at 130, U.N. Doc. E/CN.4/1998/36 (1998).
- [2] M. Vidanapathirana, Role of Forensic Expert in human right violations, Galle Medical Journal Vol. 12 no.1, pp.56. Sept. 2007.
- [3] India's Population 2010. (Accessed on 16th May 2010).
<http://www.indiaonlinepages.com/population/india-population.html>
- [4] Mulla Vs State of UP, CRIMINAL APPEAL NO. 396 OF 2008, Supreme Court of India Judgment dated 8th Feb 2010.
- [5] Dogra TD, Lalwani S, Vij A, Vyas M, Venugopal P, Organ retrieval in medicolegal cases. *J Acad Hosp Admin*, Vol.16, no. 2, pp.7-12. 2004.
- [6] Mukherjee JB. Legal aspect of medical practice. *J Indian Med Assoc.*, Vol. 97 no. 11. pp.461-5, 474. Nov. 1999
- [7] Bastia BK, Consent to treatment: practice vis-à-vis principle. *Indian J Med Ethics.*, Vol.5, No.3,pp.113-4; discussion 115-6. Jul-Sep. 2008.
- [8] Arce R, Fariña F, Carballal A, Novo M, Creation and validation of a forensic protocol to assess psychological harm in battered women, *Psicothema* vol.21 no.2,pp.241-7. May 2009.
- [9] John Zarocostas, UN human rights expert calls for inquiry into war crimes in Sri Lanka, *BMJ*, pp.340:c174. 2010

ABOUT THE AUTHORS:

Dr.T.D. Dogra, Proferssor & Head, Department of Forensic Medicine & Toxicology, AIIMS, New Delhi. Phone-91-11-26589160; Fax-91-11-26588641; e-mail: tddogra@hotmail.com

Dr. Sanjeev Lalwani, Assistant Professor Department of Forensic Medicine & Toxicology, AIIMS, New Delhi Phone-91-11-26546468; Fax-91-11-26588641; e-mail: drsalal@rediffmail.com

Dr. Anupuma Raina, Scientist, Department of Forensic Medicine & Toxicology, AIIMS, New Delhi Phone-91-11-26593329; Fax-91-11-26588641; e-mail:- anupumaraina2001@yahoo.co.in