

HOW TO DEAL WITH DEAD BODY DONATION WITH ETHICS, HUMAN RIGHTS AND LAW

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Abstract

India made liberalization, privatization and globalization reforms in 1991. They have transformed the way of India in terms of economy, trade, commerce, education and health. These reforms lead to increase in the number of private medical and dental colleges in India. As there is change in medical education, many private colleges are indirectly violating the line of law to keep the pace with changing scenarios. Violation of Article 24 of the Haryana Anatomy Act 1974 was reported by the media that was related to the illegal dead body donation by many N.G.O's in various private Medical Colleges. The main aim of this paper is to prevent the human rights as well as legal and ethical violations by suggesting remedies and critical reviewing of laws.

Keywords: Anatomy act, Medical education, Law, Donated dead bodies.

Introduction

There are many issues regarding illegal buying and selling of dead bodies that are reported in newspapers like a youth from Hardoi died in accident in Lucknow and another youth died in an accident on Faizabad Road. Their dead bodies were sold to private medical colleges without any legal paper work. Another case was revealed by Medical Council of India (MCI) related to donation of 14 dead bodies to the G.C.R.G Institute of Medical Sciences, Lucknow, Uttar Pradesh (U. P.), India from Jan. 2017 to May 2017 without any legal paper work and death certificate. This case was mentioned in Nav Bharat Times page no.-10 dated 12/09/2017[1].

A local channel on January 14, 2007 had exposed an alleged human organ trading racket by sting operation, which was further investigated by The Agra police in U. P. It showed a private lab owner dealing with human parts. Dr. A.K. Agarwal, Retired Professor of S.N. Medical College, Agra, along with wild life experts were asked to assist in investigation. In initial investigation by Agra police recovery of only human bones were claimed. [2, 3].

Brutal murder of women and children and the recovery of remains of skeleton along with chopped human flesh at Nithari, Noida, U. P. still trembles the soul [4].

Dissection of human body is required by the

students of 1st year MBBS as it is the part of curriculum mentioned by MCI [5]. To facilitate elaborate and effective teaching of human anatomy, Dead bodies are required by the Anatomy department. The Anatomy Act was made to enable the use of dead bodies required by medical institutes [6].

Health and law being the State Subjects, The Haryana Anatomy Act was provided to medical institutes in 1974 by Haryana government. The main aim of this act was to enable the donation of dead bodies of deceased persons or unclaimed bodies to teaching medical institution for the purpose of dissection and anatomical examination [6].

The right to life is most difficult to define as it cannot be bestowed against taking away of life; it must have a wider application. According to Article 21, "Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law. Regarding a case, J. Field spoke of the right to live as "by the term 'life' as here used, something more important than mere animal existence [7]. It includes life lived with dignity and without any force. The inhibition against its deprivation extends to faculties by which life is enjoyed. The prohibition of this provision includes the destruction of the body by putting out of an eye or the amputation of a leg or an arm, or the mutilation of any other organ of the body through which the soul communicates with the outer world". The Indian Supreme Court has further expanded the same repeated quote in another case by the statement "that any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or temporarily, would be within the inhibition of Article 21". This right also involves the death and dignified disposal of the dead body [8-10].

The rule no. 24 in section 2 of Haryana anatomy Act, 1974 defines "Approved institution, means a hospital or a medical or teaching institution

approved by the State Government for all or any of the purposes of this act. Nothing is mentioned clearly about the dealing of unclaimed bodies i.e. the authorized person, designation and department etc. This leads to apprehension and confusion among the medical personnel regarding the legal complexities of dead bodies involved [6].

There was no privatization of medical education when this act was made. So, no private medical or dental college can perform the dissection or anatomical examination or both with the privilege of anatomy act until it is notified and recognized in the Official Gazette by the concerned State Government. But essential certificate like 'No Objection Certificate' regarding recognition and permitting to open new private medical or dental college can be requested from the State Government.

Prof. Manoj Dixit in his report in Nav Bharat times on page no. 10, said that "G.C.R.G institute of medical sciences is approved for previous year but not approved for next year [1, 6]."

Maharashtra Anatomy Act under section 5A clearly states that the rank of the officer dealing with the issue of unclaimed dead bodies will be equal to the rank of Executive Magistrate ^[11].

Issue of Claimants

The Act 2C, "Near relative" means any of the following relatives of the deceased, namely, a husband, wife, son, daughter, parent, brother and sister, and includes any other person who is related to the deceased-

- I. By collateral or lineal consanguinity within six degrees in collateral relationship and three degrees in lineal relationship or
- II. By marriage either with the deceased or with any relative specifically mentioned in this clause or with any other relative with the aforesaid degrees ^[5].

Explanation

Sections 25 and 26 of the Indian Succession Act, 1925 expresses the assigned meaning of 'collateral and lineal consanguinity'.

Collateral Consanguinity: These are descendant in parallel lines, from a common ancestress or ancestor. For example, brother is collateral, so is, sister. Similarly, maternal uncle and maternal aunt and their children, paternal uncle and paternal aunt and their children, are collaterals, (Section 2c).

Lineal Consanguinity: It means ascendants and descendants; ancestors of an individual are known as ascendants. Immediate ascendants of a person are his father and mother. The father and mother of his father and mother are also his ascendants, and so are their parents up to any degree of ascent. Similarly, descendants mean the offspring of an individual. Immediate descendants of a person are his sons and daughters. The children of sons and daughters and their children, and so on, are also descendants. A human being may have descendant through his sons and

daughters up to any degree of descent. There is a need for further clarification of this position.

Body of a deceased individual shall be regarded as unclaimed if that person has no acquaintance, or it has not been claimed by any of his relatives, servants or friends within stipulated period prescribed in (Section 2e) ^[6]. Again, the position of unclaimed bodies belonging to other religions like Muslims, Christians etc., is not mentioned in the Act.

Disputed claims

Dispute as to relative

When there is any dispute or doubt regarding the relation of a person with the deceased, for such matters an officer shall be appointed by the State Government and his decision shall be conclusive and final. In any case if the decision is pending, the unclaimed dead body shall be preserved from putrefaction in prescribed manner (Section 3,4).

If an individual is getting treatment in a hospital, which is either established by or maintained by the State Government or any local authority, dies and his body is not claimed by anyone, then the authorities in charge of that hospital shall report the fact to the authorized officer with least delay and that officer then hand

over such unclaimed body to the authorities in charge of an approved institution for conducting anatomical examination, dissection, surgical operation or research work or any therapeutic purpose {Section 5(1)}.

When an individual dies in a hospital other than mentioned in sub – section (1), or in prison and his body is unclaimed, the authorities in charge of such hospital or prison shall report the fact to the authorized officer with the least practicable delay, and that officer shall hand over such unclaimed body to the authorities in charge of an approved institution for any purpose specified in sub-section (1)

{5(2)}.

Where a person dies in any public place and has no permanent place of residence in that area where his death has taken place and his body is not claimed, the authorized officer of that area shall take custody of the body and hand over the body to the authorities in-charge of an approved institution for any purpose mentioned in sub-section (1) {Section 5(3)}.

Duty of police and other officials in obtaining possession of unclaimed dead bodies: All the officers and servants of the departments of police, medical, public health and of the local bodies shall take all reasonable measures to assist any authority or officer empowered under this Act to obtain the possession of unclaimed dead bodies ^[6] (Section 7).

Protection of persons

Acting under this Act: No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this "Act (Section 8) ^[12].

Officers to be Public Servants: [Section 9]

All Officers authorized or appointed to act under this Act shall be deemed to be Public Servants within the meaning of Section 21 IPC 1860 ^[13].

Power to make rules [Section 10]

The state government may make rules by

notification for carrying out the purpose of this Act. Such rules without prejudice to the generality of the foregoing power may prescribe the period within which a near relative may claim the body of a deceased individual ^[6].

Procedure

The authority in charge of a prison or a hospital (M.S/Principal/Dean) should give information of death of a destitute or a person died having no relatives to the nearest police station as soon as possible. The concerned police officer on receiving the information of an unclaimed dead body of an individual:

- Dying in a hospital (or prison); or
- In a public place, not being place of his residence; or
- Who after having consented in writing that “his dead body can be used for the purpose of dissection or anatomical examination”,

should take possession of that unclaimed dead body after taking down relevant information for fixing identity letter (gender, age, height religion, photograph and belongings etc.) after waiting for a period of 48 or most preferably 72 hours, hand over that body to a government recognized medical institution; requesting it for dissection or anatomical examination or both.

In case a person died in a hospital or in a prison or in a public place, not being his place of residence and where a relative is known to be alive but has for some reason, beyond his control failed to claim the body within stipulated time period, then the police officer hand over that body to religious or public institutions that belongs to the same religion of the deceased for final disposal as per the rites and rituals {Sec. 5 (1) (2) (3)}^[6].

But in cases where deceased person (unclaimed dead body), who before to his death has specifically stated that his dead body shall not be used for anatomical examination or dissection or both, then that body shall be handed over by the police officer to religious or public institutions belonging to the same religion of the deceased for final disposal as per the rites and rituals {Section 8 (1)}^[14].

On the requisition of the Head of Anatomy department, the Principal/Dean/M.S. of a medical institution may forward or send fresh request in writing to the concerned police station (a copy to DM/SSP) along with the reference of the Anatomy Act and Rules (Section~ 2 of Rules)^[15] mentioning that specific institution requires number of dead bodies for the purpose of the dissection or anatomical examination or both by the end of June every year. Similarly, if anybody intends to donate his dead body willingly for purpose of dissection and anatomical examination should write a letter to the SSP/DM.

The record of the body received like gender, age, date of reception, place from which received as well as the time, the name and age of every person whose body has undergone anatomical examination, and the date of cremation or burial of such body should be noted in a register under the supervision of Head of Anatomy department {Section 10(4)}^[16]. Principal or Head of the department shall send the information regarding the donated dead bodies specifying the gender, date and place from which received, and age of every person whose body has undergone

dissection and anatomical examination during the year, and the date of cremation or burial of such body to the police station in month of November in each year.

{Section 10(5)}^[17].

Methods of disposal of unclaimed dead body: Paragraph 135-A, Police Regulations^[18]

If there is any doubt in cause of death of the deceased or in any case the opinion of police officer expedient then disposal of the unclaimed dead body is done as provided in Section 104^[19] {Section 5 (3) (a)}. But after replacement of Act,1898 by the new Act of 1973^[20], the procedure of disposal should be as per Section 174^[12]. There should be clear rules about disposal of unclaimed dead bodies, when these are not required by the authority in charge of a medical institution for dissection or anatomical examination. Rules regarding the period after which unclaimed dead bodies may be used for dissection and anatomical examination must be mentioned. In ordinary case, this period should be within 72 hours after the death^[3].

Paragraph 135-A read as "when a corpse recovered by the police cannot be identified or unclaimed, the police officer who is making enquiry under Section 174^[13], shall arrange the widest possible fact for publicity regarding its identification and also to the trace the deceased's relatives, friends or acquaintances for disposal. The publicity in rural areas shall be made by beat of drum and in urban areas the police officer may also take the help of the broadcasting station, local press and voluntary organizations like the Sewa Samiti. It is necessary to ensure the proper disposal according to the customary rites to which the deceased belonged. Keeping this view in mind, the concerned officer should make other enquiries along with the careful examination of corpse to see any distinguishing features and these must be noted in general diary and inquest report.

If after due publicity a dead body remains unclaimed the Superintendent of Police of the

district may hand it over to recognized medical college for the purposes of anatomical examination and dissection at their own expense. The officer-in charge of such college shall furnish to the Superintendent of Police a certificate to the effect that after anatomical examination and dissection the corpse was disposed of according to the customary rites of the faith to which the deceased belonged {Paragraph 135~A} ^[18].

Dealing with the Dead in a Medical College

Attending medical officer should be present at the bedside in the case of dying patients. He will declare the patient as dead and the death report should be given only after laps of an hour of death. The cases in which death occurs suddenly under suspicious circumstances or in which death is directly or indirectly due to an accident or all cases of unclaimed dead bodies must be reported to the local police authorities and permission should be taken before releasing the body ^[20].

Recommendations

A website or an application should be launched by the government in which all details of missing persons and unclaimed dead bodies from anywhere in India to be displayed, to help the relatives or friends to search for their missing relatives and to avoid any legal complication or criminal activity ^[3].

Summary and Conclusions

There are many acts like The Hindu Succession Act, 1929, the Code of Criminal Procedure, 1888 and many other laws to prevent human rights violations of the deceased, protection under the Article 21 of the Constitution of the India. The Anatomy Act 1974, becomes very necessary to keep the pace as there is the privatization of medical education. Similar situation may be prevalent all over the India. So, it is important that the efforts should be made at all India level by MCI, DCI, National Human Rights Commission (NHRC) and the States Human Rights Commissions to look into the matter and

prevent human rights violations of the deceased in public interest.

Workshops and Continued Medical Education (CME) should be organized by the concerned medical institutes for doctors, police and others law enforcement agencies to prevent this illegal and unethical acts of human rights violations. For the purpose of this act, the term medical institution should also be qualified to cover the Dental Colleges. There is need to amend the present Act.

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