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# Editorial

## Specific protocols for conducting medico-legal autopsies in cases of death in custody or following a violation of human rights: Indian perspective

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*This editorial is written to protect international standards set by the Minnesota Protocol on the potentially unlawful death investigation of 2016.<sup>1</sup> Also collected the anecdotes from death investigation guidelines of 2013 in custody by the International Committee of Red Cross,<sup>2</sup> and the guidelines and protocols of Ministry of Health and Family Welfare (MH&FW), Government of India<sup>3</sup> for medico-legal care for survivors/victims of sexual violence.*

*Autopsy, if done appropriately, reports of it can be adequate evidence to prove the allegation of police abuse in custody.<sup>4</sup> The National Human Rights Commission (NHRC) has made efforts from time to time to formulate a proper mechanism for reporting the death in custody. It directed to the chief secretaries of all states in 1993 that all cases of custodial death and rape be reported to it within 24 hours of occurrence, failing which the NHRC would draw an "adverse inference."<sup>5</sup> In 1995, the NHRC again directed to implement its earlier direction besides the autopsy of custodial death to be videographed.<sup>6</sup> The Commission has raised concerns about the documentation of the autopsy reports referring to the doctor issuing reports under the pressure of police and maligning the reporting.<sup>7</sup>*

*Considering the importance of autopsy reports, the NHRC directed to send all the autopsy records of custodial death to the Commission. So finally, in 1997, the Commission endorsed a guideline to be followed in all custodial deaths across the country.<sup>8</sup>*

*Over two decades have passed, but a definite discrepancy still existed nationwide. The gap is palpable even though NHRC continuously works for a uniform protocol.*

*Therefore, a clear guideline is required for the doctor to follow to use this uniform protocol of NHRC. Forensic biases are seen while reviewing an autopsy report of the cases of young girls, including the examination and reporting rape victims, have still existed.<sup>9</sup>*

*In case of death in custody, the 2014 guidelines by the MH&FW for medico-legal examination of survivors/victims of sexual violence need to be followed. The troubling situation arises while examining lesbian, gay, bisexual, transgender, queer, and intersex persons. So, the conflict and queries are still to be resolved.*

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## Custodial Death

Death that occurred in custody, where the State is involved, where the person was in the custody of the State or where the State may have failed to meet the obligation to protect life.<sup>10</sup> The police, military, paramilitary personnel or groups, prison authorities or those acting under the direction of the State are the state agent.

The death investigation following an alleged Human Right Violation deadly depends on the medico-legal autopsy, which needs many ethical guidelines to be followed.

## Ethical guidelines to be followed during the autopsy

Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, in chapter 6, clearly advocated for preserving Human Rights. The physician shall not aid or abet torture, nor shall he be a party to either infliction of mental or physical trauma or concealment of torture inflicted by some other person or agency in clear violation of human rights.<sup>11</sup>

Therefore, physicians must maintain the highest standards of ethics while carrying out their roles. Physicians adhere to the Hippocratic oath of 'do not harm', irrespective of the victim's background, in line with the principle of non-maleficence.

### Physicians must-

- Ensure fairness in their practice by applying the principle of justice.
- Treat the patient and family of the victim with dignity.
- Handle the body of the deceased with dignity.

Failure to exercise the duty with the principle of ethics will be treated as an unethical act and punished accordingly.

## Custodial death investigations: nhrc guidelines

1. According to 176 (1)(A) CrPC, a magisterial inquest must be carried out on all custodial deaths.
2. In 2005, it was further clarified that only in cases of suspected unnatural deaths the Judicial Magistrate should investigate, and in others, the Executive Magistrate shall conduct the inquest. This was essential because it was soon realised that most custodial deaths were due to natural diseases like tuberculosis, old age

and other conditions.

3. A model autopsy proforma based on Minnesota protocol will be followed to conduct the post-mortem examination according to it.
4. The board of doctors should conduct the post-mortem examination, and one of them preferably should be a Forensic Medicine Expert.
5. Video recording of the autopsy is mandatory, demonstrating all the findings with proper narrations; at least twenty-five still photographs should be taken with facial profile and injuries. Further, in 2010, it was clarified that the responsibility of arranging the videography lies with the District Magistrate and not with the physicians/hospital authorities.
6. While performing the autopsy, one must take special precautions, and every attempt must be made to unearth deep-seated contusions. Especially in the back of the body, including the gluteal region.
7. An incision should be made in both palms and soles to look for any deep-seated blood collection.

After completion of the autopsy, the recorded video cassette is to be packed, sealed, and sent to the requesting authority, which will send the same to the NHRC. The name and references are mentioned on the cassette before being sealed.

The Commission has also instructed that all reports, including post-mortem, videograph and magisterial inquiry reports, must be sent within two months of the incident, though initially set as 24 hours. In some cases of custodial death, the viscera are sent for examination after the autopsy, and a viscera report is called for. However, the chemical analysis of the viscera report takes some time to come. Therefore, the Commission has clarified that the autopsy reports and other documents should be sent to the Commission before the viscera report, which should be sent as soon as it is received.

Any forensic doctor investigating a potentially unlawful death has responsibilities to justice, to the relatives of the deceased, and, more generally, to the public. To discharge these responsibilities properly, forensic doctors, including forensic pathologists, must act independently and impartially. Whether or not the police or the State employs them, forensic doctors must clearly understand their obligations to

justice (not to the police or the State) and to the relatives of the deceased so that an accurate account is provided of the cause of death and the circumstances surrounding the death.

More generally, as stipulated by the International Code of Medical Ethics of the World Medical Association (WMA), "A physician shall be dedicated to providing competent medical service in full professional and moral independence,

with compassion and respect for human dignity." For its full realisation, this also requires the State to create the circumstances in which such independence can be exercised, which includes protection for the Forensic Medicine specialist performing the autopsy from harm or harassment due to involvement with potentially sensitive casework.

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