**Title: Awareness regarding rights of a Dead among medical students.**

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**Abstract**

Human Rights are those unalienable rights which a human being got by taking birth in human species and are recognized on the global basis. Even after death some of the rights have been preserved like implementation of will, protection against Libel, honorable funeral as per religious rituals, exhumation only after proper authorization etc. Apart from legal sanctions, as a cultural society we have ethical and moral responsibility to preserve the dignity of the dead body. Awareness regarding the rights of dead is very less into the society and it needs to be propagated.

**Key words:** Human rights, rights of dead.

**Introduction**

Human Rights are those unalienable rights which a human being got by taking birth in human species and are recognized on the global basis.1 These human rights are enshrined as fundamental rights in our Indian Constitution2.The law has not so far defined a person to include a dead person. It, however, has some rights, which cannot be detached from it, even if the body is denuded of the life, which together forms a human being.

Thus human rights are not terminated immediately after death. Following rights have been preserved and recognized by Law even the person is departed of his soul.

The Indian Succession act 1983 provides execution of the will of a person3. Section 31 IPC defines a will4.

Dead person is protected against Libel: Section 499 in The Indian Penal Code defined Defamation as “Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.” Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives4.

Dead person has rights of honorable funeral as per religious rituals. In cases of unknown and unclaimed bodies their proper disposal is State responsibility. Section 297 IPC4 preserved the dignity of human corpse; violation of it is punishable offence. Mutilation of dead body, necrophilia and necrophagia is punishable offence in many advanced nations, but in India we still in the process to enact any such act5. Exhumation without proper authorization is punishable offence6.

Dishonest misappropriation of property possessed by deceased person at the time of death is punishable offence-Section 404 IPC4. Forgery of a will is punishable offence-Sec 467 IPC4

Human organ transplantation Act provides the right to donate organs after death7. Anatomy Act deals with the artificial preservation of Dead bodies8.

All these rights are well recognized and protected by Law. But as a representative of medical fraternity and member of highly civilized and well cultured Indian society it is the Ethical as well as Moral responsibility of every one to become sensitized and try to elevate over and above these rights of the dead.

The present study is conducted to know the awareness towards the rights of the dead among medical students. Also a comparative study between the medical students and trainee police students (as a control or representative sample of non medicos) have been done to evaluate the level of awareness among masses as compared to medical students.

**Material and methods**

Questionnaire has been given to all the participants’ i.e. second M.B.B.S 100 students and students taking police constable training a total 100, as attached herewith. All the technical words in the questionnaire have been explained to them in detail. Based on the responses the data was tabulated, statistically scrutinized and critically analyzed.

Study design: Cross sectional study.

Study size: A total 200 participants out of which 100 are second MBBS medical students and 100 are students of police training centre.

Statistical methods: Frequency and median score of each question.

Ethical issues: No invasive or non invasive test has been done. Only cognitive domain and perceptions have been tested without revealing the identity of any student hence no need of ethical committee clearance.

**Observation and discussion**

Based on the responses given by Medical students and Students taking training of police constables following observations have been deduced and based on observations the conclusions have been drawn.

1. If the legal heirs are not agreed with the registered valid will regarding distribution of the property earned by a person during life, do they revoke it by their common consensus after his/her death?

|  |  |  |
| --- | --- | --- |
| **Response** | **Police trainee** | **Medical students** |
| Yes | 40 | 35 |
| No | 57 | 63 |
| Don’t know | 3 | 2 |
| **Total** | **100** | **100** |

Legally even if all the legal heirs have a common consensus over the distribution of the property differed from the wish and will of the dead, they can’t revoke it. This is the right of the dead continuous after death too. From the above table it was seen that both the groups were not well aware regarding property rights of the dead.

1. Does the will of a dead person applied to the property of ancestors’?

|  |  |  |
| --- | --- | --- |
| **Response** | **Police trainee** | **Medical students** |
| Yes | 78 | 81 |
| No | 22 | 18 |
| Don’t know | 0 | 1 |
| **Total** | **100** | **100** |

Legally a person can distribute his property through will, which he had earned during his life tenure. But the ancestral property is distributed according to the succession laws. Even the child in womb has his share over the ancestor’s property after his/her live birth and attainment of majority. From the above table it was evident that both the groups were well aware regarding this right of distribution of property and non legality of such a invalid will.

1. Does a dead person is protected against libel?

|  |  |  |
| --- | --- | --- |
| **Response** | **Police trainee** | **Medical students** |
| Yes | 65 | 80 |
| No | 34 | 20 |
| Don’t know | 1 | 0 |
| **Total** | **100** | **100** |

The meaning of libel was explained to all the participants. From the above table it was concluded that majority of the participants were well aware that derogatory remarks against any person even after death could be a punishable crime.

1. On behalf of state who is entrusted for disposable of unknown / unclaimed dead?

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Response** | **Police trainee** | | **Medical students** | |
|  | **MLC** | **Non MLC** | **MLC** | **Non MLC** |
| Don’t Know | 44 | 66 | 30 | 51 |
| FMT Dept |  |  | 4 | 2 |
| Government |  |  | 1 | 1 |
| Hospital |  |  | 7 | 21 |
| Hospital and police | 1 |  | 3 | 2 |
| Police | 46 | 7 | 55 | 19 |
| Doctor | 1 | 10 |  | 3 |
| Family | 3 | 7 |  | 1 |
| Corporation | 2 | 5 |  |  |
| Magistrate | 3 | 5 |  |  |
| Total |  | 100 |  | 100 |

In every Medico-legal case (MLC) it is the responsibility of the Police authority on behalf of the State to disposes off the unknown/unclaimed dead bodies according to prevailing rituals. And in Non Medico-legal cases such responsibility lies with the Municipal Corporation or Local autonomous bodies of that area.

Majority of the students aware that in MLC the responsibility lies with the police authority as regards to disposal, but in Non MLC cases only 5% police trainee students aware about the fact and none of the medical students knows the proper disposing authority in this regard.

1. Does injuring a dead body is crime?

|  |  |  |
| --- | --- | --- |
| **Response** | **Police trainee** | **Medical students** |
| Yes | 73 | 77 |
| No | 21 | 22 |
| Don’t know | 6 | 1 |
| Total | 100 | 100 |

In our Nation there is no proper law dealing with this issue except the disturbance of grave without proper authorization as in exhumation. Since majority of participants in both the groups feels that it is a crime. This issue really needs to be legalized on war foot basis on eve of the cases like famous Nithari tragedy in Delhi.

1. Who gives authorization for exhumation?

|  |  |  |
| --- | --- | --- |
| **Response** | **Police trainee** | **Medical students** |
| Magistrate | 90 | 48 |
| Court | 1 | 17 |
| Collector | 0 | 1 |
| Medical Officer | 0 | 11 |
| Police | 1 | 6 |
| Relatives | 0 | 1 |
| Government | 0 | 2 |
| Coroner | 0 | 2 |
| Don’t know | 8 | 12 |
| Total | 100 | 100 |

From the above table it was seem that 90% of police trainees were well aware regarding the Laws dealing with exhumation. But surprisingly the medical students were ignorant in this regard, in spite of incorporation of this fact in their undergraduate curriculum of Forensic medicine subject.

1. If the legal heirs of the relatives refuse to follow the will of the person to donate organs, should doctor proceed with organ retrieval to preserve the right and will of the dead to donate organs?

|  |  |  |
| --- | --- | --- |
| **Response** | **Police trainee** | **Medical students** |
| Yes | 61 | 74 |
| No | 39 | 26 |
| Don’t know | 0 | 0 |
| Total | 100 | 100 |

In contrast to the prevailing property laws, in our Nation as per Human Organ Transplantation Act, even if the person wishes to donate his/her body or organs after death the consent of legal heirs is must to retrieve the organs. Majority of the participants were ignorant regarding this fact in both the groups.

1. Do you thought non availability of cold storages at PHCs violate the rights of the dead to be preserved till the trace of the relatives?

|  |  |  |
| --- | --- | --- |
| **Response** | **Police trainee** | **Medical students** |
| Yes | 73 | 93 |
| No | 23 | 6 |
| No comment | 4 | 1 |
| Total | 100 | 100 |

The above question is put just to appeal the emotional contents of the participants towards the rights of the dead. Majority of the participant feels the need of dead body preservation facilities at the peripheral level.

1. Do you think the necessity of Forensic expert post at tehsil/taluka level to reduce the referral of PM from rural areas?

|  |  |  |
| --- | --- | --- |
| **Response** | **Police trainee** | **Medical students** |
| Yes | 91 | 89 |
| No | 7 | 9 |
| Don’t know | 2 | 2 |
| Total | 100 | 100 |

Majority of the participants feels the need of Forensic Experts at Peripheral level. After the questionnaire has been handed over by the participant’s majority of them have been interviewed for such a need. Unanimously majority of them feel that not only for reducing the referral but also for carriage of proper justice such a post is need of the time.

J Do you think the human corpse to be preserved through modern techniques like plastination?

|  |  |  |
| --- | --- | --- |
| **Response** | **Police trainee** | **Medical students** |
| Yes | 25 | 29 |
| No | 75 | 70 |
| No comment |  | 1 |
| Total | 100 | 100 |

Majority of the participants feels that after death the body should be disposed off according to religious rituals and beliefs. Majority of them thought that preservation of the dead bodies from any of the modern techniques apart from study purpose is unethical.

**Suggestions and conclusion**

Always there is a huge outcry regarding the rights of the human beings. Many philanthropic organizations were working in this field to preserve the rights a person, has got by taking birth in human species irrespective of race, sex, nationality, religion and caste. To maintained a harmonious balance in the community and for attainment of highest level of cultural and ethical values in the society one has to preserve the rights of human being from womb to tomb. Well ahead in this context now a day’s even the rights of the animals have been recognized and well conserved throughout the globe.

The in animation of the living doesn’t mean the infringement of all its right. The rights of the dead should be preserved well after its journey into the tomb too. There were many lacunas in the existing laws dealing with rights of the dead and much ignorance in highly educated individuals too.

Following are few recommendations to preserve the rights of the dead:

* State should take necessary steps to avoid rodent bites to a body preserved in morgue till further disposal. For that urgent up gradation of all the existing mortuaries is very necessary. Morgue should look like “Dead body treatment center” rather than “Dead House” as popularly called at many regions.
* At many hospitals the dead body is transported from casualty or ward up to mortuary on the routine statures. These bodies are uncovered and not only create a panic in the relatives and hospital visitors but also render the dead body vulnerable to rains and other factors. Thus it is the duty of the hospital authorities to provide well covered transportation facilities.
* Routinely the dead bodies are transported from rural areas up to medical colleges in the veil of non availability of expertise at their place. Many a time inherent fear of medico-legal work is the root cause. The bodies get decomposed during such journey. Thus provision of experts at least at district head quarter and proper training of medical officers is the right of a dead.
* Some State as well as Municipal corporation medical colleges are not enlisted in the panel of custodial death till date even though having all facilities and eligible criteria for the same. Thus a body in custodial death is taken from one college to other to get autopsy as per NHRC norms. All the Government Medical Colleges having well established Forensic Medicine department should be compulsorily enlisted in the authorized center list for custodial deaths in NHRC list.
* No facility is provided from many municipal corporations or the hospital authorities for transportation of unclaimed dead body from morgue to grave yard. In such situations the body is transported on rickshaw or hand cart in a very pathetic condition. Such transportation facility should be made compulsory and a full time ambulance should be provided to every mortuary under the control and supervision of In charge of Mortuary.
* Many a times the unclaimed body admitted in hospital with a diagnosed cause of death is unnecessarily subjected to autopsy on the veil that it is a Medico-legal case as no relatives were available. At some places such cases are sent for preservation to mortuary and then final disposal is very problematic as police and corporations both are reluctant to shoulder the responsibility. Strict shouldering of responsibility over specific government agency is must to deal with such non MLC cases.
* No facilities of transportation for bodies going at distant places after autopsy or after death at hospital. In such cases relatives have to depend upon private vehicles and have to shed extra charges including the dichotomy charges of the servants involved in helping the relatives to procure the vehicle. State should provide hearse van facility with subsidized charges and free of cost to the needy.
* Due to reluctance of Autopsy surgeon and I.O, due to shift in duty or due to some colorful motives, there is unnecessary delay for postmortem is again a violation of right of dead as well as relatives of deceased. Delaying of autopsy without proper justification should be made punishable offence.
* Embalming and proper preservation facilities are not available at many places leading to decomposition or early funeral of the dead. Cold storage facilities are not available at Tahsil level. State should provide all such facilities compulsorily and availability of cold cabinet should be made compulsory in every hospital irrespective of private or government undertaking.
* Many aspirants for body or organ donation after death at rural areas are unable to do so due to non availability of technical experts and facilities at district level.
* In many instances the body and death certificate is not released to relatives at private hospitals until their fees is not paid. Law enforcing authorities is a mute spectator towards such instances. Such medical practitioners should be dealt with strong iron hands.
* Pathology department at many medical colleges is not involved in autopsies of natural death. Forensic expert is more expert in unnatural causes thus the gross appreciation of disease required pathologic vision. The reluctant attitude of pathology department in the involvement of autopsy leads delay in certifying cause of death and many times opinion is reserved for histo-pathological examination. This should be reduced by interdepartmental co-ordination and involvement of experts from different branches into the panel of autopsy.
* Many caretakers are fetching money from the pockets of relatives for transportation, embalming and no objection certificate in dead bodies of vicinity beyond Mumbai jurisdiction.
* Newer techniques like Plastination also raises some ethical issues, Can a dead body are preserved by Plastination?
* Coroner is a person who decides whether autopsy is necessary or not in a particular case. But now coroner act is abolished in India. 174 CrPC permits the I.O to give requisition for Medico-legal autopsy. But in medico-legal cases where patient is hospitalized and the cause of death is certain beyond doubt still the autopsy is conducted only due to the reason that it is medico-legal case. ACP has power to prevent such unnecessary autopsies but he never utilizes such powers. A change in system is really a need of time to avoid 90% unnecessary autopsies and preserve the rights of the dead.

In a nutshell rather than searching for the ethical solution the state should came out with the practical laws and legislations to preserve the rights of the dead.

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