



## Autopsy from View of Jurisprudence and Law

Mohsen Shahabi<sup>1</sup>, Batool Ghofrani<sup>2</sup>, Ali Maknuni<sup>3</sup>, A'zam Safaee<sup>4</sup>

<sup>1</sup>Assistant professor, Islamic Azad University of Kashmar, mohsen-7654321@yahoo.com

<sup>2</sup>M.A. student in Private Law, Islamic Azad University of Kashmar, b.gh1391@yahoo.com

<sup>3</sup>student in Private Law, Islamic Azad University of Kashmar, Ali.maknuni1365@yahoo.com

<sup>4</sup>M.A. student in Private Law, Islamic Azad University of Kashmar, Azam.safaeel@gmail.com

**Abstract:** *One of matters which today has been paid attention in scientific proof of crimes and determining people's identity is autopsy in forensics and criminal investigations laboratory (scientific police). Today, in many countries, forensic labs have an important role in legal affairs and justice. However, because of some evidence, such as rape, disrespect, mutilation, and necessity of burying the dead and his organs, autopsy in Islamic jurisprudence is in conflict with the exigencies of the autopsy. The present study was prepared with the aim of investigating Autopsy from view of jurisprudence and law.*

**Keywords:** *autopsy, crime proof, crime detection*

### INTRODUCTION

The development of medical science and related fields are called "forensics" using which more correct justice is achieved. Forensic doctor is, in fact, an expert on issues related to human body and mind in judiciary. Studying and careful clinical and laboratory examinations, Forensic doctor submits his remarks to judicial authorities about some matters such as whether the dead person has been hurt or not? And if yes, the lesions are curable or will lead to further complications?.

#### History of forensics

From the outset, beside basic medicine, forensics has traveled the path of development and progress. The oldest civil law has been achieved was related to Hamurabi, the king of Babylon, in which medical and forensic systems have been well-considered and medical malpractice and penalties and compensation payments have been determined.

The term "Pezeshk/doctor" has been taken from the word "Bezeshk", whose root is "Beshazka" in ancient Persia and "Bie Shaza" in Avesta.

From the beginning of Iran's Constitutional Revolution, Islamic laws were used in civil and criminal cases. After formation of the Ministry of Justice, the presence of legal practitioners in courts and prosecutors' offices became essential. The first autopsy in Iran was performed during Naser al-Din Shah-e-Qajar period by Austrian doctor named Pollock on dead body of Mr. Zati, professor of Dara Al-fonun (Ashrafian Bonab, 2002).

Forensic medicine was called "Dadpezeshti" in ancient Persian, "Tebbe Sharei" in Arabic, and «Legal Medicine» in West. Forensics is defined as blood testing and fingerprinting operations performed by professionals on people's writings and burnt clothes to identify relevant factors and even testing soil and rock which may clarify trace of the accused (Biazare Shirazi, 2005).

Autopsy in crime means operating on organs to identify cause of death and recognize rate of crime's effect on crime occurrence.

#### Literal and technical meaning of autopsy or necropsy

Anatomy is a science about recognizing various parts of human body. Necropsy means splitting the dead body, parting organs and body to determine cause of death. Autopsy means splitting human organs to find out of what mixture it formed, where organs are located, and how they are interconnected. The most important word in the present is autopsy or necropsy; the synonym of "Al-tashrih" is Arabic and "Dissection" in English.

Arab lexicographers argue that "Autopsy" literally means fragmenting an object and separating some parts from others, or cutting and separating meat from the body.

### **Types of anatomy**

1. anatomy with non-naked eye
2. evolutionary anatomy
3. anatomy with the naked eye (Misbah ardakani, 2000)

The book written by "Mirza Ali" outlines a broader sense of autopsy as follows: "recognizing human or animal body organs through splitting body". This basic knowledge forms medical knowledge. Autopsy has been common from ancient times among Iranian, Hindi, and Egyptian and in some cases, due to religious influence, has some strength and weakness.

Today, in medical centers, autopsy is divided into several parts as follows: if autopsy is performed in hospital for ill diagnosis after the death, it is known as "morbid autopsy"; if autopsy belongs to identifying basic members and elements of the body, it is described as "general autopsy", and if it is related to knowing every part of members, their name, shapes, and their relationships, it is called "detailed autopsy" (Reshadati, 2009). It should be mentioned that autopsy is for human and animals and would not applied to other things.

### **Autopsy from the perspective of forensics**

Once the cause of death is suspicious to the police and judicial authorities and there is possibility of crime, the forensics examines the body and explains the manner and cause of death through necropsy.

The body is described and examined by forensics can be witnessed a crime or an event. Determining the cause of death; age, gender, and race of the dead person; time of death; and burial permission are of major tasks for the forensics (Sotudeh, Ahmadi, 2012).

### **The importance of scientific police (crime detection)**

To clarify the importance of scientific police which relies heavily on experimental science and physical reasons, at first it is necessary to consider and compare a variety of reasons and more comprehensively, items of crime evidence in order for the importance of physical evidence compared to theoretical reasons can be clarified for adjudication and providing criminal justice. Briefly, the reasons/instruments for crime proof include: confession, oath, witnesses, local examination, circumstantial evidence, hearsay evidence, and judge's knowledge.

1. Physical evidence or eyewitness evidence includes: fingerprints, blood, semen, hair, gun, bullet, casing, line, sign, etc. These reasons can be touched, seen, and evidenced, and rejection of them is impossible.
2. Theoretical reasons include: confession, the testimony of witnesses, and oath. These reasons cannot be touched or seen, and proving the reality of them is difficult (Nejabati, 2010).

### **Judicial applications of autopsy (sampling the dead body)**

Forensic medicine expert will decide based on evidence in autopsy, and exactly like a surgeon, will determine the cause of death and decide about the rights of victim and his family.

With the aim of determining cause of death and other relevant findings, autopsy is performed for scientific detection of crime and offender, and does not necessarily performed on all organs.

In criminal cases, judicial officials with knowledge of the crime are obliged to be present at the crime scene and call for criminal team including the police and forensic experts (Sotudeh, Ahmadi, 2012).

### **Autopsy in rules and regulations**

In Article 88 of the Code of Criminal Procedure, legislator says: for examining bodies, injuries, signs of assault and physical injury, psychological trauma, and other medical examinations and tests, the judge calls for the trusted forensic expert. If the forensic expert cannot be present, another trusted physician can be called for. One of very sensitive sections in forensics is clinical examinations, and one of very important and

busy sectors in it is autopsy hall (Sotudeh, Ahmadi, 2012). The most important task in autopsy hall is determining cause of death, time of death, and if necessary, identifying the dead body. Finally, death certificate and burial permission in unnatural and suspicious deaths are also of autopsy task.

After apparent examination of the bodies in forensics, clothes and appearance characteristics of them are described in details. Any assault and fracture are paid attention accurately. Scratches, wounds, bruises, joint injuries, and burns are also reported (Sotudeh, Ahmadi, 2012).

### **Objectives and methods of autopsy**

The purpose of autopsy in forensics is determining the cause and circumstance of death to report results to the justice authorities. Hence, it is necessary that autopsy outcome be clear and complete. The doctor who performs the surgery should only report the truth of what he sees and understands, rather than states the cause of death by guess. Sometimes, autopsy result is negative or normal, and worthlessness symptoms are found on the body. If this happens, it is necessary to report autopsy result as it is and recommend the tests necessary in terms of toxicology to clarify the cause of death.

Autopsy is performed according to the body condition, location of identification, type of actions before transferring the dead to forensics, or the presence of forensic doctor at the scene and examining the dead. The type of judicial order and information judicial authorities request in autopsy is also different.

In general, autopsy has two major objectives: (1) to dissect the dead with the perspective of anatomy in which the relationship between human body and its parts are examined. This is a scientific and educational purpose only; (2) to discover cause of death, which is principally of forensic aspects. However, anatomy does not only include examining the relationship between organs, but also includes registration of information, measurement, statistical analysis, and mathematical modeling (Reshadati, 2009).

### **Examination and autopsy**

Aim of body examination is primarily to ensure certain death, and in the next stage, to find out the information can guide us in distinguishing the time, manner, possible causes, and contributing causes of death.

First encounter with the body, two cases may be happen:

**1. Examining the body at the scene of an accident or crime:** in these cases that the body may is found in house, street, hotel, restaurant, park and ..., items around the body (such as objects and materials, substances secreted by the body, remains of body, food and utensils in the death scene, blood stains and other stains, clothes, etc.) are exactly identified, documented, and tested in terms of toxicology and serology. Fingerprint of the suspect points (such as door knobs, windows, utensils, and objects in the scene) is also very important. Taking exact multiple photos of the crime scene may be useful in the future.

**2. Examining the body in the morgue:** in many cases where there is no possibility of the presence of forensics at the scene of crime, the body is displaced to the morgue after initial measures taken by the judiciary and police; so, forensics is faced with the displaced body. In these cases, complete shooting and checking clothes and stains and contaminants are also essential; however, firstly, the body appearance should be precisely recorded (Ashrafian Bonab, 2002).

### **White autopsy**

In some cases of suspicious death which unfortunately is not rare, despite autopsy surveillance, toxicology and pathology tests, and use of other scientific procedures, cause of death is not specified. Such cases are called white autopsy (Goudarzi, 1999).

### **Autopsy in Iran's criminal law**

In criminal law, in general, and in criminal procedure, in particular, no definition is provided for autopsy. Identification of this concept requires studying the involvement of legal practitioners and physicians in body examination. According to criminal law, examination must be performed by professional and skilled experts; however, "examination" is a general term has been inserted in criminal investigations on the body. Hence, autopsy is also considered part of criminal preliminary investigation and examination. This entry has been referred in Article 88 of the Criminal Procedure Code of public and revolutionary courts in criminal cases (Reshadati, 2009).

### **Islamic jurisprudence and autopsy**

**A) Reasons for prohibition of autopsy:** Shiite jurists believe that autopsy of Muslim's dead body is not permitted in the first sentence; that is, autopsy of Muslim's dead body, regardless of the necessity and secondary categories, is prohibited.

About the prohibition of autopsy, some evidences can be held from among those, we can name: disrespect, rape, mutilation, and the necessity of burying the dead body completely. These evidences are reviewed and evaluated as follows:

1. The prohibition of rape and disrespect about the dead is the same disrespect to him when he was alive. The reason for the claim can be reviewed in many hadiths on disrespect to the Muslim's body.

In Sahiheh from Abdullah Ebni Sinan and Abdullah Ebni Maskan from Imam Sadiq has been documented about a man who cut head of one dead person, said that: he is responsible for blood-money, because dignity of the dead is as his dignity when he was alive.

In Marsaleh from Mohammad Ebni Sinan has been documented that respect for the dead is such as respect for him when he was alive. Whenever someone disrespects the dead or offenses against him and destroys his right, he is obliged to pay for it. This equality between the dead and alive person results in generalization of warrant. After death, according to the principle of proving truth and respect for the dead person, autopsy is not permissible. Disrespect to the dead body is accompanied with mundane and eternal punishment.

In jurisprudence, crime is typically divided into two categories:

- Crime is accompanied with guilty, which will be interpreted as a "deliberate crime"; -

Crime is not accompanied with guilty, which will be interpreted as "error crime".

Alternatively, in jurisprudence, "crime" means doing a criminal act against others which is accompanied with blood-money.

In cases where autopsy has a rational or legitimate justification, absolute disrespect certainly is not true and using the term "crime" is not correct, and in many cases, blood-money is not applied for it; For example, if a thief's hand is cut off as implementation of the Sharia, or surgery and necropsy is done to cure illness, such matters cannot be considered a crime against a robber or sick. So, citing this reason for the prohibition of criminal autopsy and finding the offender would be invalid.

If cutting off head or feet of the dead, or any act of this kind, is accompanied with no rational purpose and correct goal, certainly is not permissible and makes blood-money obligatory. Therefore, the core of impermissibility of mutilation of the dead is "disrespect". So, if we assume a case in which cutting off organs of the dead body would not be considered disrespect, on the basis of evidence, impermissibility cannot be warranted. As a result, if in autopsy, a rational purpose such as identifying the killer or discovering the identity of the dead and consequences associated with it be present, it will not be subject to evidence predications.

2. Prohibition of mutilation of the dead

Some hadiths prohibit the mutilation are as follows:

Ali (peace on him) orders his children Hasnain about Ibni Moljam: Look, if I died by his slash, in turn, just slash him once; don't mutilate him, because the Prophet Mohammad said that: fear of mutilation, though it is rabid dog.

Sahib Javaher believes that the sentence of autopsy and mutilation of the dead person are the same, but sometimes mutilation is worse than autopsy. In mutilation, the body is sliced, and ear, nose, and other parts of it are cut off in order for torture and humiliation; while in autopsy, only the amount needed in specific areas of the body is removed professionally. The purpose of mutilation is hatred and revenge, but the goal of autopsy is saving the lives of Muslim and other higher goals.

3. Given that rapid burial of the dead is obligatory and of certainties of Islamic law, dead body should be buried rapidly. Autopsy delays burial of the dead at the earliest opportunity.

**B) Legal basis for prescribing autopsy and range of it:** According to what was said, Shi'a jurists believe in prohibitive nature of autopsy at first, but if there is a necessity or an important religious obligation, performing autopsy on Muslim's body becomes permissible. Some of cases in which autopsy is permitted are mentioned below:

\_ Autopsy is permitted when victim's autopsy results in preservation of Muslim's life. Also, autopsy is allowed to protect the life of Muslim charged with murder. According to jurisprudence identifying the killer to execute punishment or to pay blood-money takes precedence over autopsy. In addition, saving life of the accused and acquit him is more important than autopsy. Hence, some Shiite jurists believe that if the body is

dissected according to the necessity; that is, autopsy is performed to discover the crime and identify the killer or to release an innocent defendant of death, there is no hindrance for autopsy.

\_ Sometimes discovering crime and cause of death is related to the presence of a private complainant. In this case, the only way to resolve conflict is autopsy. Sometimes there is no private complainant, yet the cause of death is suspicious. According to some jurists, autopsy is allowed to identify the killer.

\_ Sometimes autopsy is performed with the aim of education and training. However, there is disagreement among contemporary jurists on this matter. Some believe that autopsy for learning is not permissible and subjects to blood-money, even if a Muslim's life does not depend on it. If education and training through autopsy involves human survival, it will be permitted. Some other believe that if autopsy guarantees greater interest, it is permissible. For example, autopsy is permitted for medical students whom their training is followed by an interest.

\_ Sometimes autopsy is performed with the aim of saving embryos. One scope of forensic medicine autopsy is to explore some suspected issues. In Islamic jurisprudence if a pregnant dies and it is presumed that her embryo is alive, she is dissected and the embryo is brought out. Caution is that the left side of the abdomen be opened. If there is no difference in terms of position, embryo should be brought out from the position in which it is healthy more. However, in this verdict, it does not matter that whether child remains alive after birth. In medical and Islamic jurisprudence, precautionary statement for splitting the left side of abdomen is for the dead mother, and perhaps wisdom behind it is that stitch would not get better.

\_ Sometimes, before death, the person wills that his body after death is submitted for autopsy operations. If this happens, in case of recognizing legitimacy, blood-money will not be fixed.

\_ One of rules used for autopsy, is emergency rule which is of general ones. According to this rule, if a person is placed in a state which for exiting from it he is needed to commits an illegal work, emergency rule removes the liability from him.

**C) The verdict of paying for blood-money in autopsy:** doing autopsy operations for Muslim dead is unlawful and results in blood-money. Blood-money is different based on the importance of body's member. For example, blood-money for embryo before blowing the soul is one hundred dinars or shekels of gold. About a man who cut off head of one dead person, Abdullah ibne Sinan cited from Imam Sadiq that: paying blood-money is obligatory for him (Ameli, 653, 327). If the preservation of a Muslims is conditional upon dissection and non-Muslim's autopsy is not possible, there is disagreement among jurists about this matter that whether the person who does autopsy operation is responsible for autopsy's blood-money?. Some contemporary jurists have issued not paying for blood-money for some special cases (Rouhani, 649, 118). The reason for paying blood-money is disrespect to the dead. In cases where autopsy is not considered disrespect, blood-money is not fixed (Sotudeh, Ahmadi, 2012).

## Conclusion

Today, due to technological advances and complexity of criminal events, forensics and in particular, autopsy can reveal what is hidden in a criminal event and can contribute discovery of truth through saving the innocent and arresting the criminals. So, considering this important matter, forensics should be used for better enforcement of justice.

## References

1. Ashrafian Bonab, Maziar, Forensic medical necessities, 2002, Cultural Publication Institute of Teymoorzadeh.
2. Biazare Shirazi, Abdul Karim (2005), Journal of Humanities Teachers, Associate Professor, Faculty of Law, Al-Zahra University.
3. Reshadati, Jafar, Journal of Forensic Medicine, 2009, No. 51.
4. Sotudeh, Hamid; & Ahmadi, Ahmad, (2012), Journal of Medical Jurisprudence, third and fourth year, Nos. 9 and 10.
5. Rouhani Ali Abadi, Mohammad; & Noghaby, Fatemeh, (2000), Medical sentences, Alghadir Publication, Cultural Publication Institute of Teymoorzadeh.
6. Goudarzi, Faramarz, (1999), Forensic Medicine (Vol. 1), First publication, Mashhad, Einstein Publication.
7. Misbah ardakani, Seyyedfakhraldin, (2000), Basic Anatomy, Fourth Edition, Shiraz University of Medical Sciences
8. Nejabati, Mahdi, (2010), Scientific Police of Crime discovery, Tenth Edition, Tehran, Samt

**Laws**

1. Islamic Penal Code of Iran
2. Iranian Civil Code