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*“VIOLENCE AND THE  
SOCIETY”*

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Professor Dr. Kasinathan Nadesan

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**SYARAHAN PERDANA**

**UNIVERSITI MALAYA**

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**"VIOLENCE AND THE SOCIETY"**

**Profesor Dr. Kasinathan Nadesan, Fakulti Perubatan  
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- Professor Kasinathan Nadesan is the first to be appointed as Professor in Forensic Pathology in Malaysia. He has written extensively on the subject of violence. He has also presented many papers and delivered several lectures to Malaysian and International audiences. He counts twenty seven years of practice in Forensic Medicine and has numerous publications, including chapters in textbooks, to his credit. He holds memberships in more than 20 learned societies and professional bodies. He is the member of the International Editorial Board of the Journal of Clinical Forensic Medicine and the member of the Editorial Advisory Board for the book “Encyclopedia of Forensic and Legal Medicine” to be published by the Academy Press London.
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# Violence and the Society

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Professor Dr.Alias Daud, Hon. Deputy Vice Chancellor, academic colleagues of the University of Malaya and distinguished guests. I am delighted indeed to deliver this inaugural lecture today entitled "Violence and the Society". My chosen specialty is Forensic Medicine, which comprises of clinical forensic medicine and forensic pathology. Today forensic medicine has evolved into a multi-disciplinary specialty with the objective of protecting the society from crime, violence and many other social evils. Virulent forms of violence are endemic in most parts of the world. And hence "Violence and the Society" is an appropriate topic for today's lecture. However, the subject is so vast that it is not possible to touch even briefly on all the topics. Therefore I have selected only a few areas which I think may be of relevance to the present day context. It is also my belief that this lecture may sensitise the audience to some of our burning social problems.

Generally one encounters difficulty in precisely defining the term violence. Aggressive behaviour with actual use of physical force may result in some form physical and emotional trauma to an individual and this could be considered as violence against the person. The trauma may range from minimal physical injury to even death. It is also relevant to note that if members of the law enforcement agencies with appropriate authority resort to certain acts of "violence" for lawful purposes, then such acts of violence may be excluded from this category. However, if the law enforcement personnel exceed their limits of authority, or resort to various unacceptable and unauthorised methods of violence then certainly such acts will become violence against person.

In today's context the word violence has expanded to encompass many issues, besides the usual physical violence such as assault. Rape, child sexual abuse, other forms of sexual abuses, non accidental injury to children, battered wife, battering in custody, torture, victims of war, civil unrest and ethnic violence are all considered under violence. While general violence is almost endemic in many countries, battering in custody, torture, political and ethnic violence are serious problems in some of the third world countries. In these countries particularly the law enforcement agencies and other unlawful groups who are backed by politicians inflict politically motivated violence against its citizens. In such cases often attempts are made to cover up such crimes. Forensic physicians and forensic pathologists who examine these cases are at times in a dilemma owing to various "pressures" being brought upon them to issue "favourable" reports. On the other hand there is also a general dearth of suitably trained forensic physicians and forensic pathologists in many of these countries. Medical officers without any training in forensic medicine often undertake the examination of victims of violence, both living and fatal cases. Lack of training makes them more vulnerable to political and other forms of "pressures".

Victims of violence may present as non-fatal or fatal cases. The acute non-fatal cases may be seen by general practitioners or at the accident emergency departments. Fatal cases very often will be subjected to an inquest and a medico-legal postmortem. There are instances where the victims of violence are prevented from seeking medical help when the perpetrators are the law enforcement personnel or persons who are backed by governments or terror groups. This appears to be a serious problem in many Asian and other third world countries, particularly in the Latin American region. In many instances, by the time they are seen by a doctor, already several months have elapsed. Hence one can appreciate the difficulties encountered in examining and assessing these persons who are traumatised both physically and emotionally. On the other hand the bodies of fatal victims are disposed of in several ways without any inquiries being held and if the remains are discovered they are already decomposed or even skeletanised. In many instances persons are arrested in the nights and they are kept in custody without any documentation in order to avoid accountability. Often they are tortured to extract information and if

they die during the process, the bodies may be secretly disposed of without any inquiry. Burning appears to be a popular method of surreptitious disposal of such bodies in the Asian region.

The victims of violence may present in different ways:

1. Physical assaults and other forms intentional violence
2. Rape, child sexual abuse and other forms of sexual abuses
3. Non-accidental injury to children
4. Battered wife, battered servants and other similar situations
5. Battering in custody, victims of torture
6. Victims of war, civil unrest, ethnic violence and terrorism.

### Objectives of medico-legal examination

The responsibility lies with the doctor to correctly identify and interpret the wounds. Then only will the report be of benefit to the victim, the court and the community at large. Knowledge, skill and experience in handling the victims of various types of violence have to be acquired before a doctor could be considered as an expert

The doctor who examines the injured person should document the wounds and look actively for the following:

1. Accurately identify the wounds
2. Establish if possible the causative agent or agents that caused the wounds
3. The mechanism of causation and reconstruction of the event. The latter will help to accept or refute the account given by the injured or an eyewitness.
4. Determine as to whether the wounds were self inflicted or fabricated.
5. Try to establish the approximate age of the wounds, and this issue may become important in cases of battered children, battered wives and victims of torture.
6. Look for specific wound pattern, which may help in identifying battered children, battered wives, victims of torture, etc. In Asian



countries through fear or for social and cultural reasons battered wives and victims of torture may not voluntarily admit to abuse and some times may even deny.

7. Look for any underlying conditions and diseases that may have aggravated the original wound.
8. Try to ascertain whether any disease process has developed subsequent to trauma. A well-known example is the development of meningioma following a head injury. Reference should be made to Ewing's postulate regarding trauma and disease.
9. Classify and categorise the wounds in a medico - legal context.
10. Write a legally valid report to court. Comment on what was actually found and try to interpret the findings in an acceptable, objective and factual manner. There is no room for speculation.

Valid consent should be obtained from the injured person prior to medical examination. However, with a court order a person could be examined without consent. Similarly a new prisoner at the time of admission to prison too could be examined without consent. A detailed history has to be obtained from the injured person prior to examination. If the injured person is a suspect and is produced by the police or any member of the law enforcement, history taking and examination have to be ideally undertaken in private without the presence of any officials in the examination room. All wounds have to be carefully documented with sketches and photographs. Always a complete physical examination should be performed. Confidentiality has to be maintained at all cost.

### **Physical violence against women**

People continue to be marginalized on the basis of class, religion, ethnicity, colour, sex and caste. Discrimination and exploitation on the basis of gender constitutes a serious problem worldwide which effectively means that half the human race is unable to realise its potential and condemned to sub-optimal standard of existence. The 1993 UN declaration on the elimination of violence against women states that any act of gender based violence that results in or is likely to result in, physical, sexual or mental harm or suffering to women,

including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in the private life. Violence against women is defined as physical, sexual and psychological violence occurring in the family and in the community. It may take the form of the following:

- a. Wife battering
- b. Rape / marital rape
- c. Sexual abuse and incest
- d. Dowry-related violence
- e. Forced prostitution
- f. Female genital mutilation
- g. Violence perpetrated by state

Physical abuse on women is repeated acts of violence, which cause physical or emotional harm perpetrated by a woman's intimate partner. The word "abused" or "battered" referred to in wife battering do not refer to the normal conflict and stress that occur in all close relationship. It refers to violence that is often repeated, intentional and intense that affects the physical, emotional and family well being. Wife abuse involves all strata of the society and no social class is exempt. Over the years those who govern community affairs, the courts, medicine, psychiatry, police, schools and religious institutions, have tolerated it. History shows that helping professions often protected patterns of family authority, unwittingly sanctioning wife abuse rather than condemning it. In wife battering, "wife" is any woman who maintains an intimate relationship with a man. He could be the husband, ex-husband, boyfriend or lover. In countries where reliable data is available 10% - 50% of women have been physically abused by an intimate partner in their lifetime.

## Sexual offences

Sexual violence forms an important group amongst the victims of violence. Sexual offences include an infinite variety of physical acts, either executed or attempted, in the furtherance of sexual gratification, by a person or persons, of differing or similar genders, without the lawful consent of those offended, and having regard also to considerations of age, mental development, physical development, kinship and species.

Rape is dealt with under section 375 of the Malaysian penal code. According to this section a man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under the circumstances falling under any of the following descriptions:

- First – Against her will.
- Secondly – Without her consent.
- Thirdly – With her consent, when her consent has been obtained by putting her in fear of death or hurt to herself or any other person, or obtained under a misconception of fact and the man knows or has reason to believe that the consent was given in consequence of such misconception.
- Fourthly – With her consent, when the man knows that he is not her husband, and her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married or to whom she would consent.
- Fifthly – With her consent, when, at the time of giving such consent, she is unable to understand the nature and consequences of that to which she gives consent.
- Sixthly – With or without her consent, when she is under sixteen years of age.

Section 363 of the Sri Lankan penal code and section 375 of the Indian penal code deal with the definition of rape. Until the Sri Lankan penal code (amendment) act, No.22 of 1995 came into force, Malaysian, Sri Lankan and Indian laws regarding the definition of rape were almost similar. After the 1995 amendment to the Sri Lankan penal code, the sub section "against her will" was removed. The sub section "without her consent" was replaced by "without her consent even where such woman is his wife and she is judicially separated from the man". The age of consent for sexual intercourse too was raised from fourteen to sixteen years.

This amendment was a major step forward because "against her will", arose from the early nineteenth century English Common Law, which looked for evidence of struggle and resistance on the rape survivor as proof of rape. The

word rape is probably derived from the Latin “rapere” to snatch; it literally means a forcible seizure. This led to a misconception in the minds of many that one has to always find some evidence of a struggle before establishing rape. However, it is very well known that under many situations a woman will be compelled to yield to a rapist without offering any resistance. Hence the main issue in the offence of rape is the question of consent. Under the English Law, the Sexual Offences (Amendment) Act 1976 defines rape. According to this section, a man commits rape if:

- (a). There is unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it and
- (b). at that time he knows that she does not consent to the intercourse or he is reckless as to whether she consents to it or not.

Rape is the fastest growing violent crime in many parts of the world. In spite of heavy punishment including death sentence and many law reform initiatives, rape still remains a serious problem all over the world. It is also important to remember that there are many reported cases of rape that are found to be false. On the other hand many genuine cases of rape are not reported because of fear, damage caused by publicity to the victims and also often the cases cannot be proved and so no justice seems to be done to the rape victim.

A thorough medical examination often provides an independent, scientific and a corroborative evidence. However, corroboration is not essential to prove a case of rape in many countries. The 1995 amendment act on rape laws in Sri Lanka, in its procedural law had described that “evidence of resistance such as physical injuries are not essential to prove that there was no consent”. It is also the responsibility of the trial judge to explain this aspect to the jurors during the commencement of the trial. A negative medical finding, therefore does not rule out the possibility of rape. In Malaysia however, it is still a rule of law that the testimony of the complainant in a sexual offence case need to be corroborated by an independent witness such as medical evidence or any other evidence. Medical examination and expert opinion will also save an innocent person who may have been wrongly implicated. The doctor should have special expertise in performing the examination, collecting the relevant speci-

mens and in interpreting the findings. Finally a comprehensive report has to be submitted to court.

Child sexual abuse is another issue that causes grave concern. It is believed that virtually every child is vulnerable to sexual abuse. According to researchers one out of every four children will be the victim of sexual abuse in the West. No such details are available for the Asian region. In many instances, unfortunately, the perpetrators are immediate family members. For various reasons including fear of reprisals, these offences are not reported immediately. Sexual abuse can be physical, verbal or emotional. There is a whole spectrum of activities that range from touching and fondling, exhibitionism, masturbation to even rape and buggery. However, the experience at the University Hospital is that the incidence of rape of small children including statutory rape is very rare. But buggery appears to be a serious problem amongst the victims of child sexual abuse. Unless the victim of buggery is examined immediately or shortly after the act there will be less chance of detecting any positive evidence at a clinical examination. However, if buggery had been committed repeatedly over a period of time, then there may be specific changes found which may support chronic abuse. Unfortunately most of the cases of child sexual abuse that comes before the doctors for examination are not "fresh cases", that is the offence had been committed some time prior to actual examination.

### **Female genital mutilation**

It is a destructive, invasive procedure usually performed on girls before puberty. This leaves them with reduced or no sexual feelings. Orgasms are some time impossible to experience. Many health problems result from these procedures. This practice is forced on approximately 6,000 girls worldwide. This is done when the girls are young. They are unable to give even their informed consent. The people who support this practice argue that this procedure reduces sexual response and thus they are less likely to become sexually active before marriage. In married women it reduces the chance of extra-marital affairs. They further say that it is a cultural requirement and has health benefits. It makes women physically beautiful. Female genital mutilation involves:

- a. "Sunnā" circumcision which involves the removal of the prepuce and the tip of the clitoris
- b. Clitoridectomy is where the prepuce and the entire clitoris is removed
- c. Infibulation (Pharaonic circumcision) where the clitoris, labia majora and minora are removed with adjoining raw tissues are secured over the vaginal orifice with thorns or sutured with catgut or thread. Small opening is allowed for urine and menstruation.

This practice is largely based on a desire to reduce feelings of sexual arousal in women so that they will be less likely to engage in pre-marital intercourse or adultery. In some of those countries men prefer circumcised wife because they are considered more faithful. Uncircumcised women may have difficulty finding a marriage partner. Many women who undergo this procedure suffer from painful scars, keloid formation, labial adhesions, clitoral cysts and chronic urinary and pelvic infections. Late complications include sterility, sexual dysfunction, depression, and various gynaecological and obstetrical problems. In 1989 the Regional Committee of the WHO for Africa passed the following resolution: "to adopt appropriate policies and strategies in order to eradicate female circumcision and to forbid medicalisation of female circumcision and to discourage health professionals from performing such surgery". The UN Convention on the rights of the Child is vague regarding female genital mutilation. It says that the parties shall take all effective and appropriate measures with a view to abolish traditional practices prejudicial to the health of children.

### **Non-accidental injury to children**

The other area of concern is the Non-Accidental Injury to Children, also referred to as "battered child" or the "battered baby syndrome". At one time it was believed that non-accidental injury to children was very uncommon in the Asian region owing to the existence of extended families. However, now it is proved to be wrong, and physical and sexual abuse of children appear to be a serious problem in the Asian countries.

Non-accidental injury to children refers to a child who suffers repeated non-accidental injuries, sometimes fatal, caused through episodes of violence by a parent or guardian. Various social, economic, personal and other factors are attributed to this problem. The pointers to true battering are:

- a. Variation and inconsistencies in the parental explanation of how the child sustained the injuries.
- b. Delay in seeking medical advice
- c. Injuries and the explanations are inconsistent
- d. Multiple injuries in different stages of healing
- e. Presence of "classic" lesions
- f. Repeated visits to different doctors

Doctors especially in the paediatric, surgical, accident and emergency and primary care departments and in the general practice should be quite alert about this problem of child abuse. If they are watchful, then cases of child abuse could be easily identified. Johnson, Cameron and Camps said, "The skin and bones tell a story that the child is either too young or too frightened to tell". Skin bruising is the common injury that is seen in battered children. These contusions are often confined to certain areas of the body and also they exhibit certain characteristics. Besides they may be of different ages and particularly in light complexioned children the colour changes that take place with ageing can easily be identified. Skin bruises of different ages are strongly suggestive of physical abuse. It may be useful to carry out a complete skeletal survey in suspected cases, particularly when the parent or guardian claims accident proneness as an explanation for repeated trauma. It is important to remember that the doctors need to have clear knowledge about the various presentations and also the tact to handle not only the children but also the parents and guardians. Failure to identify the abuse early may lead to a tragic outcome. On the other hand over enthusiasm or unwarranted suspicion too can be counterproductive and may even involve the doctor in litigation. It is ideal to have a child abuse team in each institution that is represented by various medical experts, child psychologists and social well-fare officials and decision making especially in difficult cases should be collective. Regular case conferences should be held before crucial decisions are made.

## Victims of torture

Torture and battering in custody is another major problem encountered specially in some of the third world countries. In many instances members of the police force and armed services are responsible for these crimes. These crimes are often committed in the course of crime investigation and for political reasons.

Torture is defined as the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason. The Congress of the World Medical Association (WMA) in Tokyo in 1975 adopted the above definition. It is mainly applicable to medical personnel. Torture has been known throughout the history of man. In the modern times, the Second World War was a good example where doctors were involved in torture and using prisoners and others for various unethical researches. The doctors who take part in any form of torture are acting against the Hippocratic oath. The Declaration of Tokyo forbids doctors from taking part in torture and other forms of cruel, inhuman or degrading procedures.

Victims of torture may present alive or dead. Torture takes the form of physical or emotional abuse; often it is a combination of both. Survivors of torture may come to a doctor on their own, brought by police, by prison officials, or on a magistrate's order. Physical abuse often presents as blunt weapon trauma, inflicted over the soft tissues. Hitting on the soles of feet with baton or plastic pipes filled with sand is a common method employed by police, which is referred to as *falanga* or *bastonade*. Some of these victims may end up with permanent malfunction of gait.

However, there are many possible varieties and variation of acts of physical torture such as suspension by thumbs, wrists and feet, burning, pricking under the finger nails, traumatisation of genitals, immersion and near drowning, sexual abuse, sexual humiliation and so on to name a few. Unless the survivors are examined early, most physical signs and symptoms may disappear except where intense and cruel physical violence had been inflicted.



Many victims who have survived the initial ordeal may subsequently develop anxiety, depression, posttraumatic stress disorder (PTSD) and suicidal tendencies. The doctor who examines these patients should interview them in the absence of any law enforcement officials. Fatal cases may present with multiple contusions, especially with subcutaneous bleeding resulting in hypovolemic shock, muscle damage and acute renal failure or trauma to fatty tissues resulting in fat embolism syndrome such as cerebral fat embolism. Rarely is injury to vital organs demonstrable.

Clinical examination and autopsy examination have to be thorough and the doctor should be familiar with the special techniques of examination and the various ways in which these cases may present. His report should be unbiased and impartial. In certain situations "pressure" may be brought upon doctors to suppress facts and to issue "favourable" reports. A doctor should, under all circumstances resist such "pressures", and must be courageous enough to make a true and genuine report according to the established ethical standards. The World Medical Association will stand by the doctors when they are under threat for following this practice.

### **Ethnic violence and terrorism**

Sadly ethnic violence has become a way of life in many countries. In several Asian and African countries ethnic violence has not only affected the entire lifestyle of the people but has even affected the neighbouring states. In most instances when violence breaks out, people are beaten with hands and kicked or with weapons such as clubs, knives and swords. The victims often end up with multiple blunt weapon traumas, slash wounds, cut and stab wounds. Looting and arson is another common manifestation of ethnic violence. Undesirable elements use these situations for their advantage. Firearms too are being increasingly used during ethnic violence. Police and military may be called upon to maintain law and order during such crises and this also results in various other types of wounds.

Terrorism is an equally serious problem in several countries in the region. Ethnic, religious and political differences are the main causes that finally lead

to terrorism. This is the reason why defining “terrorism” is sometime difficult. For a particular ethnic group the violent acts of a militant group may appear as terrorism where as for the other ethnic groups it may appear as a freedom struggle. Armed attacks and other forms of attack against civilians must be regarded as acts of terror and the perpetrators regarded as terrorists. Whether the attackers are acting on their own or on the orders of their governments, whether they are regulars or irregulars, if the attack is against civilians, then they must be considered as terrorists. Dr. Brian Seneviratne has the following to say regarding “terrorism”: “This is often generated in those who have been subjected to intense trauma such as living in a war zone, or in a refugee camp for years. This despair and anger result in a sense that your life and the lives of others count for nothing. It is powerful enough to override the natural desire to survive and have this replaced by a feeling that the gift of one’s own life is worthwhile”. If terrorism, militancy and insurgencies are to be eradicated, the underlying factors that have produced these problems must be addressed.

### **Training of undergraduates and doctors**

Clinical forensic medicine is not included in the undergraduate medical curriculum in Malaysia. General pathologists who have no special training in forensic pathology perform medico-legal autopsies in many large hospitals. Medical officers who have no training in this field handle clinical forensic cases. Some of them are quite incompetent, particularly in handling cases of sexual abuse, child abuse, victims of torture and battery and hence their examinations and reports may lack the necessary objective findings. There is also a severe dearth of trained forensic medical experts in Malaysia to undertake good quality post mortem and clinical examinations on a countrywide basis.

### **What is the future for forensic medicine?**

Forensic medicine is the application of medical knowledge in the administration of justice. Unfortunately in Malaysia this specialty does not receive the necessary importance both in the undergraduate curriculum and in the day to day practice. Medical, legal and law enforcement personnel are not well in-

formed in this important subject and the crucial role it can play in the administration of justice. During my eight years of experience in this country I have come across numerous instances where injustice has been done to people or the next of kin of the deceased owing to the incompetence of the doctors in either performing post-mortems or conducting clinical forensic examinations. The only way to overcome this problem is to give equal prominence to forensic medicine in the undergraduate curriculum. There is a four-year course in Master of Pathology in Forensic Pathology being conducted in some of the state medical schools. Presently in addition, there are two postgraduate courses being conducted by the University of Malaya to non-medical personnel. One is Masters of Criminal Justice (MCJ) and the other is Diploma in Criminal Investigation. Both these courses receive elaborate instruction in forensic medicine and certainly this is a progressive step forward.

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