
Grounds for Ordering Exhumation of Dead Body



The issue of exhumation remains an area where judicial guidance is dispersed across various decisions rather than consolidated in a single and comprehensive Supreme Court judgment. The Superior Courts of Pakistan have addressed the matter of exhumation in several cases, each contributing different facets to the understanding of when and how exhumation may be ordered. This paper aims to bridge this gap by collating the salient grounds for exhumation as established in various judgments, under which a magistrate may order the exhumation of a dead body.



RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

COURT: HON'BLE MR. JUSTICE SHOUKAT ALI RAKHSHANI
 SUBJECT: CRIMINAL LAW
 DATE: 17TH AUGUST 2024.
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QUERY: **What are cardinal grounds for upholding a request for exhumation of a dead body as envisaged under section 176 (2) of the Code of Criminal Procedure 1898?**

RESEARCH MEMO

The primary statutory provisions governing exhumation in Pakistan is Section 176 of the Criminal Procedure Code (V of 1898), which allows a magistrate to order exhumation to ascertain the cause of death under certain circumstances. The Supreme Court and High Courts have discussed various aspects of exhumation in several cases, which provide guidance on the grounds for ordering such an action.

Superior Courts Precedents on Exhumation: The Superior Courts of Pakistan have addressed the issue of exhumation in several cases, providing a framework for when and how it should be conducted.

1. **2006 SCMR 1468:** This case involved a petition challenging the orders of the lower courts regarding the exhumation and post-mortem examination of a deceased individual, Muhammad Anayat Baig. The petitioner, Ameer Afzal Baig, opposed the exhumation, while the respondent, Ahsan Ullah Baig, sought it, suspecting that his father had been poisoned. The core issue in the case revolved around the legality and justification for ordering exhumation and subsequent post-mortem, based on a suspicion of foul play, particularly when the suspicion is held by a close family member. **The two member bench of the Supreme Court upheld the order of exhumation, emphasizing that legal heirs have the right to remove suspicion regarding the death, and that exhumation and post-mortem are investigative tools that should not ordinarily be interrupted.**

2. **2006 PSC 1877:** The ***Supreme Court*** dealt with an appeal challenging the Lahore High Court's order concerning the exhumation of a deceased body for the purpose of a post-mortem examination. Muhammad Anayat Baig, father of Ahsan Ullah Baig (the respondent), passed away on March 17, 2002. The respondent suspected that deceased's wife, Karam Fatima, had poisoned the deceased. On December 17, 2002, Ahsan Ullah Baig filed an application before a Judicial Magistrate for the exhumation of the body and a post-mortem examination. The Special Judicial Magistrate initially ordered the exhumation on January 22, 2003. However, this order was suspended by the Magistrate on January 25, 2003. After a change of magistrate, the new Magistrate denied the exhumation request on April 3, 2003. An Additional Sessions Judge reversed the decision of the new Magistrate,

restoring the initial order for exhumation. The petitioner (Ameer Afzal Baig) then challenged this decision in a writ petition before the Lahore High Court, which was dismissed on July 17, 2003. The Supreme Court examined whether the judicial authorities correctly applied the law regarding exhumation under Section 176 of the Criminal Procedure Code (CrPC) and the rights of legal heirs to seek removal of suspicion through such measures. **The Supreme Court affirmed the right of the legal heirs to seek exhumation to remove suspicion about the cause of death. The Court emphasized that exhumation and post-mortem are investigative tools, not definitive measures that incriminate individuals without further evidence.** The Court found that the lower courts (Additional Sessions Judge and Lahore High Court) had reasonably and fairly evaluated the necessity of exhumation based on the suspicion of foul play and the legal framework governing such matters. Given the procedural correctness and logical reasoning behind the lower courts' decisions, the Supreme Court deemed that there was no sufficient ground to interfere. The Court held that the initial decision to permit exhumation was justified and that subsequent legal processes should not be interrupted unless substantial irregularities were found.

3. **2008 SCMR 1086:** The Supreme Court mentioned that **medical jurisprudence does not provide a time limit for exhumation or disinterment of a dead body in India and England, while France and Germany have specific time limits.** This implies that, under certain circumstances, exhumation can be permissible even after a significant period.
4. **1987 SCMR 272:** The Supreme Court dismissed objections to exhumation based on the passage of time, stating that disinterment could take place even after one year to ascertain the cause of death.
5. **1987 PSC 383:** This case confirms the stance that the exhumation of a dead body can be ordered irrespective of the time elapsed since death if it is necessary to ascertain the cause of death.
6. **2017 PCrLJ 694:** In this case one Parkha Bibi, the petitioner's daughter, died under unnatural circumstances, specifically poisoning. Her legal heirs did not report her death to the police, believing it to be a suicide. The local police, suspecting the death might have been a murder, applied for the exhumation of the body for a postmortem. This application was initially granted by the Judicial Magistrate, and the Sessions Judge upheld this decision. The petitioner, who opposed the exhumation, sought to quash these orders. **The Peshawar High Court observed that the Investigating Officer had not gathered any evidence suggesting that the death was caused by someone else administering poison. The Court overturned the decision of exhumation and highlighted the importance of maintaining the respect and dignity of the deceased, particularly within the Islamic context.**

7. **2014 PCrLJ 219:** The Sindh High Court noted that there is no time limit for disinterment of a body to ascertain the cause of death, and that **exhumation could be ordered on the request of even a stranger to initiate criminal proceedings if necessary.**

Grounds for Exhumation: Deduced from above judgments, it evinces that the very grounds on which a magistrate may order the exhumation of a dead body typically include:

1. ***Suspicion of Foul Play:*** If there is a suspicion that the deceased may have been a victim of foul play, such as violence or poisoning, a magistrate may order exhumation to conduct a post-mortem examination to ascertain the *cause of death*.
2. ***Application by Legal Heirs or Interested Parties:*** Legal heirs or parties with a legitimate interest in the deceased may apply for exhumation if they have reasons to believe that the death was not natural or if there are doubts about the cause of death.
3. ***Inadequate Initial Inquiry:*** If the initial inquiry into the death was insufficient or if ***new evidence*** has emerged that could shed light on the cause of death, a magistrate may order exhumation to carry out a more thorough investigation.
4. ***Respect for the Deceased and Religious Considerations:*** Exhumation without proper justification may be considered disrespectful and inappropriate, which needs for careful consideration of religious and ethical implications.
5. ***Time Elapsed since Death:*** Exhumation can be permissible even after significant time has passed, suggesting that time alone is not a barrier if other grounds for exhumation are met.

Conclusion: A magistrate may order the exhumation of a dead body on various grounds, primarily when there is suspicion of foul play or when legal heirs or interested parties contest the cause of death. The Superior Courts of Pakistan has consistently upheld the right to conduct exhumation as a means of investigation, without strict time limits, provided there is sufficient reason to believe that the initial inquiry was inadequate or that the cause of death may not have been natural.