

Rights of the Dead

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Introduction:

In the situation of a pandemic, there were a series of deaths and this leads to a very serious issue concerning the rights of the people who are dead. As per Article 21 of the constitution, “No person shall be deprived of his life and personal liberty except according to a procedure established by law.” No doubt, these rights apply to the living human beings but the question that arises is “Do dead persons also have the rights under the Indian Constitution?” The definition provided under Article 366 is silent to the definition of ‘person’. Even in the Indian Penal Code and General Clauses Act, there is no proper definition of the word ‘person’ in legal terms. This article, therefore, is concerned with this ambiguity, the problems faced by the people in the pandemic, and the statutory provisions and adjoining case laws in the Indian legal field.¹

Rights to a decent funeral:

Disposal of a dead body is a process and practice of removing body parts of the deceased. There are several methods to do so. Many religions, just as legitimate wards have set principles with respect to the removal of corpses.

In the case of *Ashray Adhikar Abhiyan v. Union of India*², the Court would not give any course with respect to the burial of the dead; it recognized that the Government should find a way to give a good burial to the unclaimed dead bodies found out on the road. Then in the case of, *Vikash Chandra v. Union of India*³, the court ruled out “The right to life has been held to include the right to live with human dignity. The right to accord a decent burial or cremation to the dead body of a person should be taken to be part of the right to such human dignity”.

¹Ritika Goyal and Smriti Shukla, *COVID19-XIII: THE RIGHTS OF THE ‘DEAD’ IN A PANDEMIC*, LAW SCHOOL POLICY REPORT(7 May 2020), <https://lawschoolpolicyreview.com/2020/05/07/covid19-xiii-the-rights-of-the-dead-in-a-pandemic/>

²*AshrayAdhikarAbhiyan v. Union of India*, AIR (2002) SC 554 (India)

³*Vikash Chandra v. Union of India*, Patna High Court (2008) CW CJ No. 6306 of 2000 (India)

The situation in the times of Covid:

The continuous pandemic, COVID-19 has raised a few issues about the privileges of the dead body. There are various situations in which people are compelled to either keep the dead bodies at their homes to complete the funeral process. Recently, a Delhi crematorium would not play out the last ceremonies of the woman who passed on of the continuous pandemic dreading contamination.⁴ Moreover, when a doctor passed on of COVID disease, his internment made a lawful circumstance, which the Madras High Court took discernment of.⁵

Individuals need to hang tight for quite a long time at the burial service. Additionally, ambulances are carrying four to five bodies all at once from the medical clinic. This can make disease and transmission to others additionally whoever is around the dead body of a Coronavirus patient.⁶

The Delhi Government Health department gave certain guidelines on 30 May in respect to the removal of dead bodies because of COVID-19. This request contains headings like the assemblage of COVID-19 positive/suspects patients is shipped off morgue inside two hours of death in an emergency clinic, and assuming family or family members of the individuals who have passed on contact the funeral home inside 12 hours, the medical clinic will plan the incineration inside next 24 hours.⁷

Additionally, a few reports state that bodies are accumulating at funeral homes due to the absence of room at crematoriums. There are restricted assets (Wood fires, CNG heater, and so on) and an absence of staff individuals to deal with the dead body at the crematoriums. There is an absence of disinfection offices at the crematoriums ground which can additionally prompt the spreading of COVID-19. There were reports that the Delhi medical clinics are declining to concede the speculated corona patients in spite of having enough beds to oblige.⁸

⁴Chirag Gothi, *Delhi crematorium refused to perform last rites of woman who died of coronavirus, says family*, INDIA TODAY (March 14, 2020), <https://www.indiatoday.in/india/story/delhi-crematorium-refuses-to-cremate-woman-who-died-of-coronavirus-1655434-2020-03-14>.

⁵Mehal Jain, *"Article 21 Includes Right To Have A Decent Burial": Madras HC Takes Cognizance On Mob Attack Against Burial Of Doctor Died Of COVID-19*, LIVELAW.IN(20 April, 2020), <https://www.livelaw.in/top-stories/article-21-includes-right-to-have-a-decent-burial-madras-hc-takes-cognizance-on-mob-attack-against-burial-of-doctor-died-of-covid-19-155526>.

⁶Ravikiran Shukre, *Do the Dead have any Rights*, JUDICATEME (August 12, 2020), <https://judicateme.com/do-the-dead-have-any-rights/>.

⁷Ravikiran Shukre, *Do the Dead have any Rights*, JUDICATEME (August 12, 2020), <https://judicateme.com/do-the-dead-have-any-rights/>.

⁸Anthony Rodrigues, *Do the dead have rights?*, THE TIMES OF INDIA (May 25, 2015), <https://timesofindia.indiatimes.com/city/goa/Do-the-dead-have-rights/articleshow/47409240.cms>.

The Delhi government had additionally told the court that it has now approved wood-terminated customary incinerations, notwithstanding electric and CNG heaters, giving individual assurance (PPE) units for all laborer's at crematorium and bodies and the working long periods of crematoriums are stretched out to 7 AM-10 PM from existing 9 AM – 4 PM. Additionally, the Delhi government has made courses of action for customary sorts incinerations (wood - fire) and gave PPE packs to all the laborer's at the crematorium.⁹

Statutory Provisions:

Firstly, the definition of “person” is mentioned under section 3 (42) of the General Clauses Act that it includes any company or association or body of individuals, whether incorporated or not. In IPC, the definition is covered under section 11 that includes any company or association, or a body of persons, whether incorporated or not. In law, a person can be either natural or man-made, or artificial. The natural person is the one created by god-like human beings, and the artificial person is the one created by human beings like companies or corporations.

There is no clarity in any law or statute about the status of a dead person in the definition of “person”. The Indian Succession Act, 1923 provides for execution of the will of a person, after his death. A person also has a right to decide about his dead body like his organs or body parts at the time when he is alive or can be decided by his close relatives. Article 21 of the constitution includes the status of a dead person in a limited sense and it considers that the dead person's body should be treated with the same respect and dignity as when the person would be alive.

In India, the law does not expressly state that the burial/cremation of the dead is the responsibility of the state but it is interpreted by courts again and again in various cases from time to time. Section 404 of the IPC talks about dishonest misappropriation of the dead man's property, called it an offence, and is made punishable. In addition, Section 499 of IPC that deals with defamation stipulates that libel or slander against a dead person also constitutes the offence of criminal defamation and is punishable. Section 503 of IPC, which talks about criminal intimidation, includes threatening a person with injuring the reputation of a dead person dear to him, as an offence. Further, section 297 of the IPC deals with the offence of trespassing on burial grounds.¹⁰

⁹ <https://www.ndtv.com>

¹⁰Ravikaran Shukre, *Do the Dead have any Rights*, JUDICATEME(August 12,2020), <https://judicateme.com/do-the-dead-have-any-rights/>

Case laws:

In the case law of *Munn v. Illinois*¹¹, for the first time, the U.S. court describes the meaning of the right to life clearly that it includes quality of life too. Further, in the case of *Common Cause v. Union of India*¹², the court concluded that the right to life also includes the right to die with dignity. Then in the case of *AshrayAdhikarAbhiyan v. Union of India*¹³, it was held by the court that when a person dies and does not have any relative then the state has the obligation to ensure that he has a decent burial.

The court further verifies that every dead person has the right of having a decent funeral and also Article 21 of the right to life with dignity not only includes the living person but also the dead in the case of *Ramsharan Autyanuprasi v. Union of India*¹⁴. In the case of *Sherman v. Sherman*¹⁵, the court concludes that the possession of the dead body can be asked by the spouses or the relatives of the deceased.

Conclusion:

Appropriate courses of action ought to be made by the public authority at the crematoriums as each individual, as alive or even after death, cannot be disregarded by anybody and everybody has the privilege to live with nobility. In spite of the fact that COVID-19 is a pandemic and numerous nations are battling with this however, security and cleanliness ought not to be put in question. Proper disposal of dead bodies with rites and safety precautions is needed; otherwise, this may lead to the spread of infection. Article 21 of the Indian Constitution is the most important right and it should not be violated in any situation.

¹¹*Munn v. Illinois* 94 US 113 (1876)

¹²*Common Cause v. Union of India*, (2005) Petition (Civil) [No.215] (India)

¹³ *AshrayAdhikarAbhiyan v. Union of India*, (2002) SC 554 (India)

¹⁴ *Ramsharan Autyanuprasi v. Union of India*, (1989), Written Petition (Civil) [No.442] (1988)

¹⁵ *Sherman v. Sherman* 304 A.D.2d 744,330 (N.J. Super 638 Ch. Div. 1999)