

RIGHTS OF THE DECEASED: ARTICLE 21

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INTRODUCTION

The living persons are given several rights under various laws, statutes etc. Under Article 21 of the Indian Constitution, protection of life and personal liberty is given to the citizens, which includes right to travel abroad, right to privacy, right against solitary confinement, right to legal aid, right to speedy trial, right against hand cuffing, right against delayed execution, right against custodial violence, right to health etc and these rights are inherent in the persons guaranteed to by the Constitution of India and can't be denied except in accordance with the procedure established by law.

Right to life which is the most fundamental of the rights and is also the most difficult to define, thus it cannot be conferred to a guarantee against the taking away of life, it must have a wider application. This includes the expansion of this right to the dead people i.e. protecting the body of the dead and treating it with dignity, which it was accustomed to before the death.

The Supreme Court through various cases has held that the right to dignity and fair treatment under Article 21 of the Constitution of India is not only available to a living man but also to his body after his death and the word and expression 'person' in Article 21, would include a dead person in a limited sense and that his rights to his life which includes his right to live with human dignity, to have an extended meaning to treat his dead body with respect, which he would have deserved, had he been alive subject to his tradition, culture and the religion, which he professed. This further imposes a duty on the State to ensure that the same is being adhered to.

ARTICLE

The living person, under various statutes, laws etc are given innumerable rights whereas the dead persons only have rights in macro sense in two main areas:

- i. Disposal of bodies
- ii. Crimes against the corpses

Disposal of bodies includes proper burial facilities, to be buried with dignity and the right to not be dug from the grave for any reasons other than the ones mentioned under the law for any crime investigation or for the good of the society. The most heinous crime that can be committed against the corpses is necrophilia (sexual intercourse with or attraction towards corpses), which is a crime included under Section 377 (Unnatural Offences) of the Indian Penal Code, though The Hon'ble Supreme Court of India in the landmark case, *Navtej Singh Johar v. Union of India*¹, ruled that the application of Section 377 to consensual homosexual intercourse was unconstitutional, this Section remains in force and continues to criminalize voluntarily having carnal intercourse against the order of the nature

From time immemorial, it is believed that corpses have the right to rest undisturbed and unmolested. This includes safeguarding the corpses from getting harmed or disrespected. Even in the tomb of the Christian community an inscription like RIP (Requiscat in Peace) which means Rest in Peace can be seen. In the book "Burial of the Dead" written by William Henry Francis Bsevi, it is clearly specified that "Across history, cultures with almost no other rituals in common treat their dead with reverence", i.e. irrespective of the cultural and differences and the various rituals and practices followed by people across the globe, one of the common ritual is the treating of the deceased with respect. The notion of respect is so rooted that people even agree to deal gently with the bodies of their enemies.

The Supreme Court of India has interpreted and broadened the meaning of Article 21 of the Constitution of India, in numerous cases, which guarantees protection of life and personal liberty, to include right to travel abroad, right to privacy², right against solitary confinement³,

¹ MANU/SC/0947/2018

² KS Puttuswamy v. Union of India (MANU/SC/1044/2017)

³ Nilabati Behera v. State of Orissa (MANU/SC/0307/1993)

right to legal aid, right to speedy trial, right against hand cuffing, right against delayed execution, right against custodial violence, right to health etc and these rights are inherent in the persons guaranteed to by the Constitution of India and cannot be denied except in accordance with the procedure established by law. Right to life is the most fundamental of the rights and is also the most difficult to define, thus it cannot be conferred to a guarantee against the taking away of life, it must have a wider application.⁴

In *Parmanand Katara, Advocate v. Union of India & Anr.*⁵, the Supreme Court held that, "We agree with the petitioner that right to dignity and fair treatment under Article 21 of the Constitution of India is not only available to a living man but also to his body after his death. We thus find that the word and expression 'person' in Article 21, would include a dead person in a limited sense and that his rights to his life which includes his right to live with human dignity, to have an extended meaning to treat his dead body with respect, which he would have deserved, had he been alive subject to his tradition, culture and the religion, which he professed. The State must respect a dead person by allowing the body of that dead person to be treated with dignity and unless it is required for the purposes of establishing a crime, to ascertain the cause of death and be subjected to post-mortem or for any scientific investigation, medical education or to save the life of another person in accordance with law, the preservation of the dead body and its disposal in accordance with human dignity."

In some cases, the bodies of the victims of the crimes and of those who are killed in action, or in accidents are paraded in open by their kith or kin, or those, who have its temporary possession, in retaliation or in protest to the nature of the incident in which they died. Many a times recently, it is reported and has happened, like the incident in the Allahabad High Court, where the dead body of Late Shri Srikant Awasthi, an Advocate was used by a section of the members of the Bar Association including its leaders, for ransom, i.e. the demand for compensation and rehabilitation of his family. The body was brought from the mortuary to be kept in the portico of the Bar Association in the building of the Allahabad High Court, with threats of carrying it through the corridors of the Court, demanding action against the jailer in whose custody the person was entrusted in a contempt case and for extracting political mileage.

⁴ JIAFM,2007 29 (1) ISSN: 0971-0973 Dealing with Unclaimed Dead Bodies: An Issue of Ethics, Law and Human Rights

⁵ (1995) 3 SCC 248

The society should not permit such disgrace to the dead body. The State, which allows the possession of the dead body to be taken by a person or group of persons for such purposes, fails in its duty to preserve and to dispose of the dead body with dignity. The State through its agencies must take immediate possession of such dead bodies used for illegal means, for its decent and dignified cremation or burial in accordance with the religion or sect the person may have professed. If Courts are required to fulfil the desires of the dead person by execution of his will, the same Courts are also obliged for giving appropriate directions for the preservation and disposal of the dead bodies and for that purpose, to give an extended meaning of the expression, 'person' under Article 21 of the Constitution to include dead bodies of the persons, who were human beings, in a restricted sense.

The State is obliged in law both under powers as a Welfare State and to protect the rights of dead person in its extended meaning under Article 21 of the Constitution of India, for the disposal of a dead body, for a decent and dignified cremation/burial in accordance with the religious beliefs the man kept or professed.

In the case, *Munn v. Illinois*⁶, Field, J. spoke of the right to life in the following words: "By the term 'life' as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed; the provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world". This statement, which has been repeatedly quoted with approval by the Supreme Court of India⁷ has been further expanded in another case⁸ by the statement, "that any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or temporarily, would be within the inhibition of Article 21", i.e. this right extends to the death and dignified disposal of the dead body also. This raises the issue of what a dignified disposal means, ideally it must mean that when the body of a deceased person is buried, with due respect, the same respect must be accorded to the body

⁶ (94 U.S. 111)

⁷ *Kharak Singh v. State of UP*, AIR 1963 SC 1295; *Sunil Batra v. Delhi Administration*, (1978) 4 SEC 494; *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180

⁸ *Francis Coralie v. Union Territory of Delhi*, AIR 1981 SC 746

even after the burial. The disposal must not be disturbed, or the body must not be tampered with or injured by any person, unless allowed so by the law.

Though the definition clause in Article 366 of the Constitution of India does not define a person, Section 3(42) of the General Clauses Act, defines a person to include any company or association or body of individuals, whether incorporated or not and considers such a person as a legal entity that is recognized by law with its own rights and duties.

The Indian Penal Code defines a person in Section 11 to include any company or association of body of persons whether incorporated or not.

A person is defined in Tomlins Law Dictionary as man or woman, also the state or condition, whereby one man differs from another.

A person in law may be either natural or artificial. Natural persons are those that are formed by the God of nature i.e. living human beings including men, women or children as individuals of human race and an artificial person like those that are created for the purpose of the society and government, also known as corporations or body politic. The expression 'person', however, cannot be detached from its context, which raises the question of whether it includes a person who has died, having his body in the physical form to be protected by the kith or kin, friends, society or the state, if no one else can be found?

The Indian Penal Code clearly prohibits irreverence to dead bodies. Section 297, "Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both." This Section deals more specifically with trespasses on places of sculptures and places set apart for the performance of funeral rights and depositories for the remains of the dead. The essence of this Section is an intention or knowledge of likelihood to wound feelings of any person or any religion and who with that intention or knowledge, trespasses on places

of sculpture, or causes indignity to a corpse or disturbance to persons assembled for funeral ceremony.

In *Jamuna Das Paras Ram v. State of Madhya Pradesh*,⁹ with reference to Section 392 of the Indian Penal Code and in the matters of crime the High Court of Madhya Pradesh had found that the word person cannot be so naturally construed as to exclude the body of human being, i.e. the human body must be given the right, irrespective of being alive or dead.

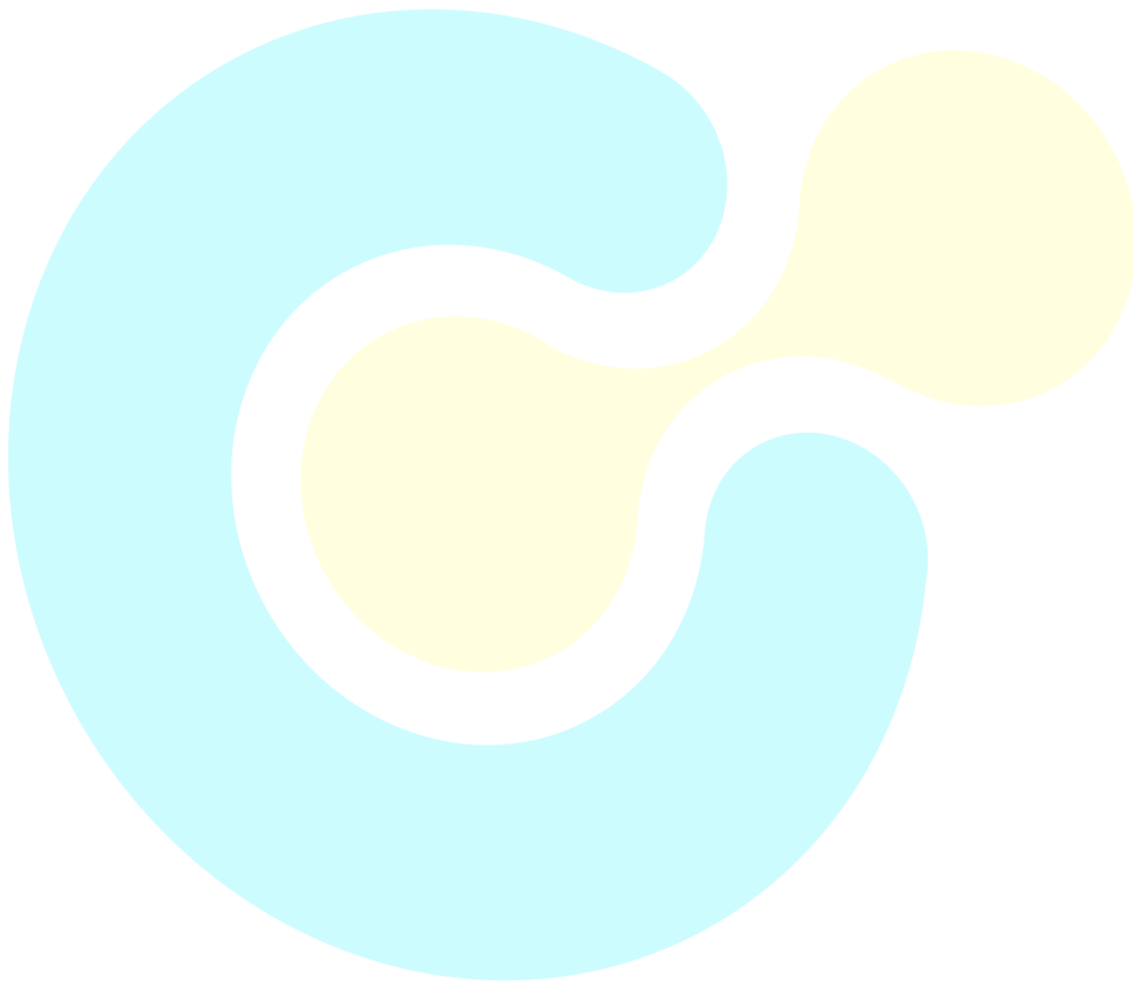
The law has not so far defined a person to include a dead person. It, however, has some rights, which cannot be detached from it, even if the body is denuded of the life, which together forms a human being. The Indian Succession Act, 1923, provides for the execution of the will of a person after he has died. A person also has a right to protection of his dead body, to be mutilated, wasted or its organs to be taken out, by the consent of that person, when he/she was alive or on the consent of his/her kith and kin or the State, if the body is unclaimed, under the Transplantation of Human Organs Act, 1994.

With the privatization of medical education leading to mushrooming of medical and dental colleges in India, there have been violations of many laws, as the laws are not able to keep pace with the development and the changing scenario. Many types of crimes are reported by the media, one of which is related to the illegal human dead body organ trading, which is in violation of Article 21 of the Constitution of India, the Transplantation of Human Organ Act, 1994 etc. These crimes happen mainly because dissection of human body is required by the MBBS Students in their first year of medical education, to facilitate elaborate teaching of human anatomy and for the same dead bodies are required by the anatomy department.

With the number of crimes against the corpses increasing, it is essential that a law be made for the protection of the same i.e. safeguard the human body, not only when the person is alive, but also when the person is dead. Every person has a right to safety, this includes the safety of his/her body from any harm that may be caused to him/her by a third party and this right being essential, cannot be taken away once a person dies only on the basis that the person is no longer alive and thus is not considered as a person. If the same argument that is applied to fetuses and the abortion argument, where the foetus, which is not yet born into the world is accorded the status of a living person and subsequently granted certain rights, then the body of a person

⁹ AIR 1963 MP 106

who was once an actual living person, must be granted certain rights. The right to safety and dignity that is given to a person under Article 21 of the Constitution of India is mainly for the safety and dignity of the body of that person and to prevent any crime or harm that may be caused against it. Similarly, the body of the dead too must be respected and assured safety and dignity because irrespective of a person being alive or dead, a third person does not have the right to cause harm to the body of another.¹⁰



¹⁰ ISSN: 2249-7196, IJMRR, May 2015, Volume 5, Issue 5, Article No-2/296-301, A. Nasim et. al.,
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