

A Critical Analysis of Right to Disposal of Dead Bodies: Special Reference to Covid-19 Pandemic

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ABSTRACT

Covid-19 has exposed the infrastructural defects of India. The worst picture was blatantly visible in the irregularities in the disposal of Covid infested dead bodies. This has brought a fundamental moral but most critically legal question-whether the right to a decent disposal of dead bodies is available in India or not. This research paper is thus a collative work on the legal regulation of disposal of dead bodies with insights from international regulations in general and India in particular.

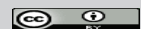
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Covid-19 pandemic has shown the operational flaws in India's healthcare system. Following a sharp drop in covid-19 cases in September of the previous year, the Indian government gained confidence, and Prime Minister Modi stated in January 2021 that India had effectively eradicated the virus and started lifting lockdown in different parts of India ('PM Modi at Davos', 2021). Unfortunately, India has experienced a more devastating second wave of the disease, which has claimed the lives of approximately four lakh people (Sinha, 2021). However, the data is said to be underreported (Saikia and Kumar 2021; Mishra & Arora, 2021). The worst part of the second wave was the insufficiency of crematoriums to burn pyres due to which several state governments were compelled to construct temporary crematoriums. (Yeung, Ward, Pratap, and Mcwhinnie, 2021; 'India Covid', 2021). But, amid all of this, news of victims suspected of dying from Covid flowing in the Ganga

or buried in the sand of the river's banks streamed in (Pandey, 2021). It swept over Bihar and Uttar Pradesh, painting a bleak image of the second wave (Srivastava, 2021). The debate that arose when this news flashed in the media sources was whether or not these bodies had the right to a proper burial. These findings raised the issue of proper disposal and cast doubt on the union government's Clean Ganga project (Yashee, 2021). Meanwhile, the Jal Shakti Ministry recently released a study on water quality based on responses from pollution control boards in Uttar Pradesh and Bihar, ruling out any possibility of increased pollution of the Ganga due to the disposal of cadavers who died of covid-19 (Koshy, 2021).

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However, whether the government equally safeguards the right to a dignified burial of the deceased remains unanswered. This article will be analysing further different legal theories surrounding it, as well as international and national laws about this right, along with judicial pronouncements

Jurisprudential Approach: The term “person” derives from the Latin word “persona.” Idols, companies, gods, etc. have all been given legal status and are entitled to the rights as any other human being. (*M.Siddiq (D) Thr Lrs vs. Mahant Suresh Das & Ors*, 2010). For this particular research, the most relevant question is *whether a human after his death can still be recognized as a legal person?*

Salmond pointed out that a person can be anyone who is legally capable of acquiring rights and responsibilities. He also believed that a man’s personality begins at birth and ends with death. As a result, when a person dies, his body is viewed as a primary object. It does not have the same legal right as a person. Dead persons are no longer considered individuals in the eyes of the law. When a person dies, his legal personality dies with him. Because dead people lack legal individuality, they are unable to sue or be sued. Hence the maxim “*action personalis moritur cum persona*” (action dies with the death of a man) holds. However, the law seeks to protect the rights of the dead by ensuring that their bodies are disposed of in a dignified manner. There are three things about which the concerns of living men extend even after their death- *his body, his reputation, and his property.*

International laws on disposal of dead bodies

Even in the ancient Roman law, one could find traces of practices of either burial or cremation of dead bodies with proper ceremonies for the dead, thus, remembering their memories and paying respect to them. Although having traditional roots, these rules became part of the civilized world (Fife, 2012; Gill, 2019).

In the modern world, the presence of the law to safeguard the dignity of the dead is quite evident

in numerous international legal instruments. The Geneva Convention of 1949 provided for protection, identification, and respect for the dead. (Geneva Convention, 1949). Article 3 (a) of the Cairo Declaration on Human Rights in Islam of 1990 also states that “in the event of the use of force and case of armed conflict -it is prohibited to mutilate dead bodies” (The Cairo Declaration on Human Rights in Islam, 1990). In a 2005 resolution, the United Nations Commission on Human Rights emphasized the importance of human remains being handled with dignity, including proper management and disposal and concern for the needs of families (Human Rights Resolution, 2005). In its Operational Guidelines on protecting persons in situations of natural disasters, the UNInter-Agency Standing Committee recommended that necessary procedures be taken to “enable the return of remains to the next of kin.” And measures should be in place to retrieve human remains for future identification and, if necessary, reburial (IASC, 2011). According to the international humanitarian law, states must also ensure that “graves are respected, appropriately maintained, and identified in such a way that they can always be recognized” (Geneva Convention, 1949).

In a case named *Finley vs. Atlantic Transport Company* court had held that “*At common law it is the duty of an individual under whose roof a poor person dies to carry the body decently covered to the place of burial and to refrain from doing anything which prevents in anywise a suitable burial. The body cannot be cast out so as to expose the same to violation or to offend the feelings or injure the health of the living*” (*Finley vs. Atlantic Transport Company*, 1917).

With these kinds of legal morals behind the disposal of dead bodies, it’s worth considering how countries have remained committed to this ethical practice of providing dignity to the dead in recent years, especially when countries have faced many cases in which human lives have been lost immensely. If some countrywide regulations are considered concerning disposal of dead bodies who succumbed to Covid-19, it can be seen that the Public Health Agency of Canada in collaboration with Canadian Public Health, Infection Prevention and Control

experts, and the Funeral Service Association of Canada had developed guidelines for the handling of covid-19-induced dead bodies. It is in conformity with the World Health Organization's standards ('Interim Guidance', 2021). Pan American Health Organization had also given recommendations on managing the dead bodies and provided for decent burial or cremation of such dead bodies. (PAHO, 2020). On similar lines, the European Centre for Disease Prevention and Control also gave detailed guidelines for managing bodies deceased with Covid -19 (Hogberg, Cenciarelli, Kinross, Kinsman and Plachouras, 2020). Brazil, which has lost more than half a million lives due to Covid-19 also had its own share of regulations for managing dead bodies but definitely faced a tough time bringing it into reality (Calmon, 2020).

After having a glimpse of international laws, let's focus on the Indian judicial rules on the issue concerned.

Legal framework in India

In India, there is no explicit law protecting the rights of the deceased. On the other hand, the courts have repeatedly stated that the dead should be treated with dignity and that their rights should be protected. The Indian judiciary has issued numerous rulings to protect the rights of the deceased. The Supreme Court of India declared in the landmark decision of **Parmanand Katara v. Union of India** in 1989 that the term "person" is not limited to an alive person in the strictest sense. In some extraordinary instances, the term "person" can also refer to a deceased person. It is acknowledged that the right to life, fair treatment, and dignity extends to a living person and their dead body (*Parmanand Katara v. UOI*, 1988). These rights have been derived from Article 21 of the Indian Constitution.¹ In addition, the acknowledgment of posthumous legal rights provides the deceased with significant moral standing within our legal system. The legislation also aims to respect and uphold a decedent's desires.

In simple terms, Article 21 guarantees a person's

¹Article 21 of the Constitution of India reads that "no person shall be deprived of his life or personal liberty except according to the procedure established by law."

rights during his or her lifetime and after death. In the case of **Kharak Singh vs State of Uttar Pradesh**, the scope of Right to Life was broadened to encompass *Right to Life with Human Dignity, not just 'Animal Existence'* (Kharak Singh vs State of Uttar Pradesh, 1963). In **P. Rathinam v. Union of India**, the scope of Article 21 has been expanded to include a person's dignity. It highlighted that the right to life refers to a meaningful life, not mere existence as an animal. Furthermore, a person's right to dignity was extended to a deceased person (*P. Rathinam v. UOI*, 1994). Later, in the case of **Common Cause (registered society) v Union of India**, it was argued that the right to a dignified life extends even after death. By providing a proper death procedure, the individual who is dead should be treated with the same dignity. The right to decent burial is a fundamental right, and burials should follow religious standards (**Common Cause v. UOI**, 2005). The Apex court reaffirmed the same in **Ashray Adhikar Abhiyan v. Union of India** and further held that the deceased's dignity should be respected and honored by religious norms and procedures (**Ashray Adhikar Abhiyan v. UOI**, 2001). The court in **Vikash Chandra Guddu Baba v. The UOI & Ors**, ruled that it is the state's and hospital's responsibility to dispose of unclaimed bodies by the *lex terrae* (the law of the land). If the deceased's religion can be determined, the last rites must be conducted in accordance with the deceased's religious practice (*Vikash Chandra Guddu Baba v. The UOI & Ors*, 2008). The Madras High Court, in the matter of **S. Sethu Raja v. Chief Secretary**, ordered the Government officials to bring the deceased body from Malaysia so that the deceased could be buried at home according to tradition and custom (*S. Sethu Raja v. Chief Secretary*, 2007). The Allahabad High Court contended in the case of **Ramji Singh and Mujeeb Bhai Vs. State of U.P. & Ors**, that a person's right to life includes the right of a dead body to be treated with the same respect as if he were alive. The state must treat the dead with dignity and must only use post-mortem if it is necessary (*Ramji Singh and Mujeeb Bhai Vs. State of U.P. & Ors*, 2010).

Thus, Article 21 - Right to Life incorporates the right to live with human dignity, which includes the right

to die with dignity and respect. It is apparent that the government is responsible for safeguarding and defending the rights of a dead person. And ensure that everyone is given a dignified burial by their religious beliefs. Even provisions in the **Indian Penal Code, 1860**, show that a deceased person has some rights. **Section 297** exists to protect the Right against trespass of burial sites, places of funeral rites etc; **Section 404** protects a deceased person's property by providing a right against dishonest misappropriation and conversion of property; and **Sections 499 and 503** provide for rights against defamation and criminal intimidation, respectively.

The **Transplantation of Human Organs and Tissues Act of 1994 (THOTA)** also governs the removal, storage, and transplantation of human organs and tissues for therapeutic purposes, as well as things related to or incidental to them. THOTA ensures that a deceased person's human organs, tissue, or both are protected and preserved from being harvested without their agreement or the consent of close relatives. It is the state's role to defend the rights of the deceased and prevent crime over the corpse in both natural and unnatural deaths (accident, suicide, homicide, etc.).

COVID- 19 and Disposal of Dead Bodies

Despite the existence of the above-mentioned legislative measures and judicial rulings about the right of a dead person, the government mismanaged the situation during the epidemic, therefore breaching this specific right. Apart from these various fundamental human rights, like as the right to work/employment, the right to food, the right to privacy, the right to freedom of speech and expression, the right to health, and the right to free movement, also got infringed as a result of this pandemic. The most severely impacted fundamental human rights were the "Right to Health" and "Right to Life, which includes the Right to Die with Dignity." Every religion recognizes the importance of treating the dead with respect and dignity in all of their complexities. However, several news reports exposed the mismanagement of Covid-19 victims' bodies, as well as the ill-

treatment of other patients who were suffering from or suspected of suffering from Covid-19. In our country, the pandemic has revealed a heart-breaking truth during the second wave.² The situation had deteriorated rapidly that the National Human Rights Commission (NHRC) was forced to take cognizance of a complaint about dead bodies floating in the Ganga in several parts of Uttar Pradesh and Bihar, thereby advancing the protection of the corpses' fundamental rights to a dignified burial (NHRC, 2020). It also sent notices to the Chief Secretaries of both states, as well as the Secretary of the Union Ministry of Jal Shakti (Department of Water Resources, River Development, and Ganga Rejuvenation), stating that it appears that public authorities have failed to make concerted efforts to educate the public and prevent the immersion of half-burned or unburned dead bodies in the river Ganga. A series of Public Interest Litigation (PIL) was filed, raising the concern regarding the proper burial or cremation of a dead body of a Covid-19 patient. One of the eye-opening cases is the incident of denied burial by protesting mobs of Late Dr. Simon Hercules, a neurologist and the Chairman of New Hope Hospital in Chennai. His mortal remains were being taken to TP Chatram burial ground in Kilpauk with police protection and were buried in haste. This heart-breaking situation took place in a country where people were clapping in their balconies for health care staff and their services on positive preaching of its prime minister. This situation compelled a Division Bench of Justice M. Sathyanarayanan and Justice M. Nirmal Kumar of Madras High court to take up the present matter by way of *Suo Moto* writ petition as a PIL (*Suo Motto vs. The State of Tamil Nadu*, 2020) Bench in the present matter stated that the scope of Article 21 includes, right to have a decent burial.³

²The bodies of the deceased were dumped and discarded as waste. Even the COVID-19 victims' relatives ran away from their remains after they died for fear of becoming infected. Countless bodies have been discovered floating on the Ganges. Crows and dogs gnawed at the bodies' remnants. It is rather unfortunate that this is happening in a country where even a temple's Idol, as well as all corporates, companies, and associations of humans, is a legal person.

³Madras HC Cited - *Francis Coraile Mullin v. Administrator, UT of Delhi*, (1981) 1 SCC 608, wherein, it was observed that, "Now obviously, the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival."

There were reported incidents like dumping the body of a COVID-19 positive person in a pit at a burial ground in Villianur, ('Narayansamy', 2020), bodies of the dead being stacked next to COVID-19 patients in Delhi hospitals ('SC seeks', 2020), and an elderly patient in Madhya Pradesh having been chained to a hospital bed ('Supreme court urged', 2020). Subsequently, Supreme Court took another Suo Moto cognizance of these reports and issued a notice, the main purpose of which was to make sure that remedial act by concerned parties is taken to address the requirements of patients and other persons who are in demand of medical attention during the pandemic. The decision was taken when the lacunae and deficiencies in patient's care in various hospitals in Delhi and various other states were brought to the court's notice (Suo Motu, 2020). On June 19, 2020, the court had dispensed multiple directions to both State and Centre regarding hospital management, testing, and treatment of patients, etc. The Ministry of Health and Family Welfare was also directed to form a committee for inspection and further directions to the hospitals in NCT of Delhi. However, the Supreme Court has failed to give any specific guidelines about the handling of confirmed or suspected dead bodies of Covid-19. Similarly, in **Pradeep Gandhi v. State of Maharashtra**, the Bombay High court dismissed pleas filed against Mumbai municipal authorities for permitting burials at three cemeteries in Bandra (West) amid the Covid-19 and found no reason why a person should be denied right to decent burial. The pleas had been moved on fears that Covid-19 may spread through the buried bodies (*Pradeep Gandhi v. State of Maharashtra*, 2020). Further, in **Vineet Ruia Vs The Principal Secretary, Ministry of Health & Family Welfare, Govt. of West Bengal & Ors** the Calcutta High Court on 1st July 2020, ruled that to perform the last rites of a Covid-19 victim is protected under Article 21 of the Constitution of India. The court further stated that doing so with due respect to tradition and culture is also a fundamental right which can be sketched under Article 25 (*Vineet Ruia v. The Principal Secretary*, 2020). Also, the Telangana High Court in the case of **R. Sameer Ahmed vs. State of**

Telangana & Ors remarked that "Even in death, human bodies are not being treated with the dignity they deserve" and directed the state government to let the court know if the dead bodies are being cremated/buried in a dignified manner or not (*R. Sameer Ahmed v. State of Telangana*, 2020).

Throughout the second wave of the pandemic, when the deaths were on peek, judiciary had suggested that the government should simplify the process for certification of Covid-19 deaths. It asked the government to state the reason of death as Covid-19 in the certificate if the family could produce a Covid-19 report, no matter whether the patient died in a hospital or outside (*Deepak Kansal v. UOI*, 2021). The main concern of the judiciary with the above-mentioned statement was that reports were suggesting that there several Covid deaths which were not accurately recorded and further that death certificates issued do not always specify Covid-19 to be the principal cause of death. While under Section 12 (iii) of the Disaster Management Act, ex-gratia compensation of ₹ 4 lakh is payable to families of disaster victims, and Covid-19 pandemic is a 'disaster.' Supreme court in June 2021 also directed that The National Disaster Management Authority has a statutory obligation to frame guidelines for recommending minimum ex-gratia assistance for the victims of Covid pandemic. The Court held that Section 12 of the Disaster Management Act cast a statutory obligation on the National Disaster Management Authority to recommend minimum relief for the victims. However, Court cannot direct Government to pay a particular amount as compensation (*Gaurav Kumar Bansal vs. UOI*, 2021). Apart from this, there is a constitutional and legal obligation on the State and its different organs to take care of victims of the calamity and their family members, as the state is considered as the guardian of its citizens (*Reepak Kansal vs. UOI*, 2021). Apart from these judicial pronouncements, there were certain guidelines related to this pandemic.

Guidelines: At National level, the subject of 'health' does not appear in many places of the Indian Constitution; there are indirect and tacit references to the health of the people and the role the state has to play in the development of

the health of the people. Article 47 of Directive Principles of State Policy (hereinafter DPSP) -states that improvement of public health is one of the primary duties of state (Art. 47 of *The Constitution of India, 1950*). Also, under schedule VII powers relating to 'public health care' (Art.246, schedule VII, list II, Entry 6, *The constitution of India,1950*) and 'burial and cremation grounds' (Art.246, schedule VII, list II, Entry 10, *The constitution of India, 1950*) is under the state list. Therefore, the state governments have the discretion to formulate laws regarding the protection of public health and management of burial and cremation grounds. This provides power to numerous state governments who accordingly passed regulations in response to Covid-19 in furtherance to the Epidemic Diseases Act. For example, the West Bengal Epidemic Disease, Covid 19 Regulations, 2020, the Maharashtra Covid-19 2020, the Delhi Epidemic Diseases, Covid-19 Regulations, 2020, the Odisha Covid-19 Regulations, 2020, the Uttar Pradesh Epidemic Diseases, Covid-19 Regulations, 2020, the Bihar Epidemic Diseases, Covid-19 Regulations, 2020, the Gujarat Epidemic Diseases, Covid- 19 Regulations, 2020, etc. The Epidemic Diseases Act, 1897 is meant for containment of epidemics by providing distinct powers that are vital for the implementation of containment measures to control the spread of the disease. On April 22, 2020, the Epidemic Diseases (Amendment) Ordinance, 2020, was promulgated. The Ordinance amends the Epidemic Diseases Act, 1897 and seeks to protect its healthcare personnel, clinics, and other facilities. The second piece of legislation is the Disaster Management Act, 2005 under which the "Guidelines on Management of Biological Disasters, 2008" were passed. The 2019 National Disaster Management Plan, also deals with Biological Disaster and Health Emergency. This is the broad legal framework within which activities to contain Covid-19 are being carried out by the Union and State governments. Similar guidelines were issued by World Health Organisation (WHO) titled "Infection Prevention and Control for the safe management of a dead body in the context of Covid-19". The guidelines were released for everyone who managed the health care facilities

and the religious and public health authorities who came into contact with the suspected, confirmed or dead Covid-19 patients (WHO, 2020). After the controversy in Chennai and Delhi, the Union Government has released some guidelines and frameworks which must be followed in the process of handling the body of corpses infected with the novel coronavirus (MHFWGDHS, 2020). But all these relevant guidelines and legislations have their own limitations and they failed to address the issues raised above.

Observation

The suffering of Covid-19 patients and the mistreatment of their bodies are clearly highlighted in viral media stories and articles. These evidence demonstrate that our legal system has a flaw. These incidents uncover our healthcare infrastructure's lack of preparedness for a pandemic, as well as the state's failure to meet its constitutional obligation to provide access to health care. States must undoubtedly do more to improve primary healthcare facilities and invest more in the grassroots healthcare sector. The right to a dignified death is recognized, as proven by past judicial decisions issued by higher courts, and involves proper care of dead bodies, whether infected or not, and providing them suitable cremation or interment and so on. As a result, the court must ensure that no abuse of the rights recognized in previous judgments happens.

This study strongly indicates several fundamental concerns that need to be addressed in the issue of Covid-19 patient treatment and the respectful management of corpses in hospitals. The first question is *whether the existing rules are sufficient to ensure that the authorities follow the needed international or acceptable protocol for the aforementioned concerns?* While there are numerous national and state recommendations for doctors and the medical community handling the Covid-19 situation, but it appears that an all-inclusive guidebook for individuals dealing with confirmed or suspected Covid-19 infected dead bodies is still needed. The Ministry of Health and Family Welfare approved portions of the norms governing transportation,

preservation, and viewing of dead remains are vague. Another question to be answered is *whether further regulations, laws, or other tools are required to manage this vast problem or if better application of existing documents will be enough?* The “Covid-19: Guidelines On Dead Body Management” published by the Ministry of Health & Family Welfare, Directorate General Of Health Services (EMR Division) of the Government of India, discusses personnel training inappropriate disposal of bodies. Recent news and media coverage, as well as a rise in the number of cases filed in courts of justice, have clearly illustrated the extremely unprofessional managing of bodies, insufficient transportation facilities, the issue of bodies being transported and cremated in lots, piled on top of one another, misplacement and misidentification of bodies, etc. Ambulances have been reported as refusing to transport diseased persons. This is a clear example of authorities failing to follow instructions and how they failed in implementing them. It is reasonable to say that there is a lack of coordination and accountability at the lowest levels of management and personnel. However, it is the authorities’ responsibility to see that the state and national standards and court precedents are applied more effectively, even at the most basic level, when they are developing procedures. Because it is the relatives of victims and the general public who are harassed in the end. The chain of command must be specified to hold those who violate accountable for their actions. Moreover, individuals who are near dead bodies and their families require adequate training.

Furthermore, the central government’s recent announcement that states and UTstates expressly reported no deaths and UTstates expressly reported no deaths and UTs expressly reported no deaths due to a lack of oxygen during the second COVID-19 wave is concerning. If there was no lack of oxygen, why hospitals and the news media report on oxygen shortages? By defining health to be a state issue, the government cannot ignore the problem. They must remember that Article 21 guarantees the right to health as a fundamental right. It was feared that the third wave might arrive in India by anytime

soon. Both the public’s disrespectful behavior and the state governments’ continuous directives for easing the lockdown are grounds for concern. The political blame game cannot be accomplished at the risk of harming people’s lives. The government must learn from its mistakes in the past and take the appropriate precautions to protect public health.

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