

RIGHTS OF THE DEAD

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ABSTRACT

Almost all the laws on earth provides innumerable rights to the living persons. The Constitution of India guarantees various rights along with the International Covenant on Civil and Political Rights, 1966 (ICCPR)¹ and the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)² provides various rights like the right to life (Art. 6), Right to Liberty and Security (Art. 9), Right of detenu to be treated with humanity (ART. 10), Right to fair trial (Art. 14), Right to recognition as a person before the law (Art. 16), Right to Privacy, family, Home or correspondence (Art. 17), Right of Peaceful Assembly (Art. 21), Right to Marry and found a family (Art. 23), Right of the Child (Art. 24), It is a settled law that the rights set forth in the covenant are not absolute and are subject to certain limitations. The living person enjoy many rights, but our exploration here is whether the dead persons have rights, whether any laws, statutes or covenants describe about the rights of the dead persons, whether the deceased can be called as a dead person, whether he/she is a person within the normal or legal parlance.

Keywords: legacy of death, human being, right of deceased, property rights, burial rights, international rights.

INTRODUCTION

The living person has innumerable rights but the dead persons have rights in macro sense in two main areas

- (a) Disposal of bodies
- (b) Crimes against the corps.

Every corpse have the right to rest in silent. From time immemorial it is believed that corps have the right to rest undisturbed and unmolested. 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 clearly specified that "Across history, cultures with almost no other rituals in common treat their dead with reverence". The notion of respect is so rooted that we even agree to deal gently with the bodies of our enemies.

The 1949 Geneva convention explicitly provide that prevailing forces must search for the enemy's dead and prevent their being despoiled. Also this demands the dead are honorably

interred, if possible according to the rites of the religion to which they belonged that their graves are respected groups if possible according to the nationality of the deceased, properly maintained and marked so that they may always be found

THE LEGACY OF DEATH

Daniel Webster viewed "One may live as a conqueror, a king or a magistrate, but he must die as a man. The bed of death brings every human being to his pure individuality, to the intense contemplation of that deepest and most solemn of all relations. The relation between the creature and his creator".

Shakespeare aptly opined that "Death is a great leveller" ie. death brings level to the rich, the poor, the young or old, the haves and the have nots."

Lupes explained death as " the state of death is the condition of non- existence caused by the extent of death".

Death relinquishes a person from all the miseries mysteries and obligations and is taken to another world purifying.

Who is a human Being?

The Supreme Court of India has interpreted Article 21 of the Constitution of India, guarantying protection of life and personal liberty to include 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, These rights are inherent in the persons guaranteed to by the constitution of India included in the right to life and personal liberty of a person, which can't be denied except in accordance with the procedure established by law.

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. Such a person would be a legal entity that is recognized by law as a subject of 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 defined in Tomlins Law Dictionary as man or women, also the state or condition, whereby one man differs from another. A person in Law may be either natural or artificial.

Natural persons are such as the God of nature has formed us, an artificial are such as are created and dicided human laws for the purpose of society and government which are called corporations or body politic. Natural person means and refers to living human being including a man, women or child as individual's of human race. The reference to a statutory provisions of the word person speaking artificially excludes firm, company, partnership, society, joined stock company or association with various manners to describe them and their rights and liabilities.

The expression person, however, can't be detached from its context. But does it include 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?

Right of deceased - Provisions under Indian penal code

Indian penal code clearly prohibits irreverence to dead bodies section 297 describes an “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 on any place of sepulture, 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 the section is an intention of knowledge of likelihood to wound feelings on himself religion and whom with that intention or knowledge, trespass on places of sculpture indignity to a corpse or disturbance to persons assembled for funeral ceremony as common that the offence is completed.

A person who has the duty of properly burying a dead body also has right, including the right to the possession of the body for burial the right to maintain the burial place and protect the body therein, and right to initiate legal proceedings for disturbances to such burial place.

Property Rights

In ordinary parlance, a property right does not exist in a corpse. For the purpose of burial, the corpse of a human being is considered to be property a quasi-property, the right to which are held by the surviving spouse or next of kin. Following burial, the body is considered part of the ground in which it is placed.

INTERNATIONAL COVENANTS

Many international covenants and laws deal specifically the rights of the dead. Some are described below.

(a). Article 16, II nd paragraph of Geneva Convention 1949 IV provides “As far as military consideration allow, each party to the conflict shall facilitate the steps taken to protect the killed – against ill treatments

(b). Article 3(a) of the 1990 Cairo declaration on Human Rights in Islam provides “In the event of the use of force and in case of armed conflict- it is prohibited to mutilate dead bodies

(c). Australia's Defense force manual (1994) provides “The remains of the dead, regardless of whether they are combatants, non-combatants, protected persons or civilians are to be respected, in particular their honour, family rights, religions convictions and practices and manners and customs at all times they shall be humanely treated.

(d). The Central Africal Republics Iristacors Manuel (1999) , states in volume 2 that “ Dead enemy must be treated well”

(e). The UK Military Manual (1958) states “ The dead must be proteced against maltreatment”

(f). The US Field Manuel (1956) provides that “ Maltreatment of dead bodies” is a war crime.

(g). US. Naval Hand book (1995) provides that mutilation and other mistreatment of the dead are representation of war crimes.

(h). UN Commission on Human Rights

In a resolution adopted in 2005 , on human rights and forensic science , the UN commission on Human Rights underlined” The importance of dignified handling of human remains , including their proper management and disposal as well as of respect for the needs of families.

(i). The Turku Declaration of minimum Humanitarian standards

The Turku Declaration of minimum Humanitarian standards, adopted by an expert meeting convened by the Institute for Human Rights of Abo Akadami University in Turko/Abo – Finland in 1990 , states Every possible measure shall be taken with out delay- to prevent (the dead) being despoiled

Burial Rights

The right to decent burial is uphold in Indian context, but who is authorised for burial is not explained in any Indian Law. Generally unless otherwise provided before death, by the deceased, the right will got to the surviving spouse, if there is none it will go to the next of kin. The burial Right is scared trust for those who have an interest in the remains.

Right of the Dead vs Duties as to Burial.

There is a strong societal interest in the proper disposition of the bodies of deceased person . It is universally accepted that a duty is owed to both society and the deceased that the body be buried without any unnecessary delay. This duty rests upon whoever has the right to bury the descendant . At law , the duty was imposed upon the person under whose roof of deceased died.

Right to Disinterment

After a body has been buried, it is considered to be in the custody of the law. Therefore disinterment is not a matter of right . The disturbance is removal of an interred body is subject to the control and direction of the court.

The law does not favour disinterment , buried on the public policy that the sanctity of the grace should be maintained . Once buried , a body should not be disturbed . A court will not ordinarily order or permit a body to be disinterred unless there is a strong showing of necessity that disinterment is within the interests of justice.

Rules Related to dying in Muslim Perspective

- (a). It is obligatory to bury a dead body in the ground , so deep that its smell does not come out and the beasts of prey does not dig it out, and if there is danger of such beasts digging it out then the grave should be made solid with bricks etc.
- (b). If it is not possible to bury a dead body in the ground , it may be kept in a vault or coffin instead.
- (c). If it is feared that an enemy may dig up the grave and exhume the dead body and ampute its ears or nose or other limbs, it should be lowered into sea,if possible as stated in the forgoing rule.
- (d). It is not permissible to bury a dead body in an usurped place nor in a place which is dedicated for purposes other than burial (eg in a masjid).
- (f). It is not possible to dig up a grave for the purpose of burying another dead body in it , unless one is sure that the grave is very old and the former body has been totally disintegrated.
- (g). If a person dies in well and it is not possible to take him out , the well should be sealed, and the well should be treated as his grave.

RESULTS AND DISCUSSION

The law has not so far defined a person to include a dead person. It, however, has some rights which can't be detached from it, even if the body is denuded for life, which together form 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, except by the consent of the person, when he was alive or on the consent of his kith and kin or the state if the body is unclaimed, under the Transplantation of Human Organs Act 1994. The accused person may not be construed narrowly so as to exclude the body of a human being, who was the person, alive which is not claimed and which is required to be cremated or buried with dignity in accordance with the religious beliefs of the person if such beliefs can be found by establishing his identity.

The state is obliged in law to maintain sanction to remove the body which becomes dangerous for the safety of the other living being for its adequate disposal. Unclaimed dead body has to be claimed by the state for the purpose of investigation of the crime if it was committed on the human being, who did not die naturally for scientific investigation or for research and medical education.

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

In an effort to define death in a way that keeps pace with modern technology all states have adopted some form of the Uniform Determination of Death Act ³(See – Kirsten Robe

Smolensky defining life from the perspective of Death. An Introduction to the Forced Symmetry Approach, 2006 U. CHI. LEGAL F 41, 45.)

Under the Uniform Determination of Death Act (UDDA), an individual who has sustained either (a) Irreversible cessation of the entire brain, including the brain stem (b) Irreversible cessation of all functions of the entire brain including the brain stem, ie. Dead. Death transforms the decedent's body from a living vessel over which its occupant has almost complete autonomy to a corpse in which the family is granted quasi-property rights. After death the being which was once a person becomes a corpse. Corpse have no attributes like (a) Rationality (b) Morality (c) Freedom and (d) have keen interest and autonomy, which the living person has.

The dead have many rights to a great extent more than what normal living Person enjoys. It is a holy action submitted to the soul of the dead, to the wish of the dead.

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