**COVID-19 AND THE RIGHT TO BE CREMATED DECENTLY**

**BY-**

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**August 10, 2021**

**Abstract**

The most basic right to which a person is entitled is the right to live with dignity, a dignified procedure of death and a dignified cremation. Over the years, this right has been enumerated as an implied Fundamental Right under the heading of Article 21 of the Constitution of India, as well as a Human right all across the world. Indian judiciary has many times and when needed pronounced about the right to decent cremation. It would not be wrong to say that cremation is a significant and mandatory rite that should be performed so that the soul can rest peacefully and start its journey over again. Every religion supports the last rites in their own way which is why the right to decent cremation has a huge backing from the cultural aspect. “Death must be beautiful”, Wilde has said. Moreover, beautiful and respectful must be the way of saying goodbye.

But due to the pandemic COVID-19, we have seen how the corpses were thrown into the river, burnt with tyres, piled up and buried or burnt to ashes. The deceased doesn’t deserve such disregard even though they were infected with COVID. Therefore, this paper has tried to explain the right of the dead- the right to decent cremation/burial in depth with the help of judicial pronouncements. It would also deal with the position of the right during COVID time and how various agencies came forward to protect the right of the dead.

**Keywords**- right, decent, dignity, respect, Article, dead, deceased, dead body, corpse, cremation, burial, COVID-19

**Introduction**

The citizens of India are entitled to fundamental rights enshrined under the Constitution of India. The most important and basic right that a human deserves is the right to life enumerated under Article 21. Right to life can be seen and understood in different aspects- right to live with dignity, right to clean environment, right to health, right to education, right to clean water, right to food, right to privacy, right to livelihood, right to shelter, even the right to die. The right to dignity not only includes a person’s dignity while he is alive but after his death as well. It means that Article 21 extends up to the point of death of a person and the procedure of his death. The mortal remains of a person are very much entitled for dignity and decency. It can be interpreted that a corpus of the dead deserves to be disposed decently followed by religious rituals and ceremonies. The right to die with dignity is inseparable and inextricable facet of right to life with dignity.

Today, when the whole world is facing the pandemic COVID-19, there are various Fundamental rights protected under the Constitution like right to employment, right to move freely and right to health that have been neglected and violated. One of the most important issues that arise is the disposal of the body of the person dying due to COVID. It raises questions on the right to die with dignity, whether the state administration can dispose of the corpus without even a pretence showing respect to the mortal remains.

**Cremation and Religious Belief**

Disposal of the dead is a customary practice followed differently for different religions. Some religions practice burial while some support cremation. In ancient Egypt, the body of the dead was preserved through mummification which they believed that without a home the soul wandered around and couldn’t be at peace.

Hinduism, Jainism and Sikhism strongly favour cremation (antim-sanskar) and mandate it as the last ritual. The dead body is offered to the God of Fire (Agni) praying that the soul be purified and lead it to a better, brighter afterlife. This is followed by gathering the leftover bones and ashes and immersing them into the holy river- Ganga; known as “Asthi Visarjan”. It is believed that with cremation, earthly ties are severed and produce detachment in the newly disembodied soul to be able to move on. Furthermore, it is believed that cremation helps the soul to get closer to ‘Mukti’. Muslims bury their loved ones believing that the dead must be treated with the same respect as it was treated when alive.

Both the forms whether it is burial or cremation, is practiced as a form of respect to the deceased. They don’t want the body to be left to be eaten and consumed by the animals, vultures or insects. The conventional belief in our nation is that except if the last rituals are performed before the internment/incineration, the spirit of the dead will not find happiness in the afterlife and will keep wandering around without peace. It additionally has a passionate and wistful viewpoint. The emotions of the family and relatives of the deceased are immensely connected to the cremation.

**National Legislative Framework**

The Constitution of India offers a large variety of rights to the citizens. **Article 21** covers various rights under its headings in the implied form, which is why it is often considered as the “Magna Carta” of our Constitution due to its progressive nature. It is titled as “Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law”.[[1]](#footnote-1)

The right to life enumerated under Article 21 of the Constitution embraces the right to human dignity which is extended to a breathing person as well the dead. Supreme Court of India and various High Courts have recognized this right in their judgments. In **Parmanand Katara v. Union of India**[[2]](#footnote-2), Supreme Court underlined the importance of maintaining dignity of the dead. It opined that right to dignity under Article 21 extends to a living person as well as to the dead body. Significant moral standing is provided to the dead by the Indian legal system.

Reiterating its view in **Ashray Adhikar Abhiyan v. Union of India**[[3]](#footnote-3), Apex Court added that the right of a homeless deceased should not be infringed and stated that even a homeless person who died on the streets deserve a decent burial or cremation according to the religion and practices he follows. Duty was extended to the State to ensure decent cremation. Similar view was taken in **Vikash Chandra @Guddu Baba v. Union of India & ors**[[4]](#footnote-4). The Court said that it is expected from the hospital authorities to cremate an unclaimed body of the deceased in compliance with the laws. If it is identifiable, the last rites must be performed in accordance with the religious faith he professed.

In the landmark judgment given in [**Kharak Singh v. State of Uttar Pradesh**](https://main.sci.gov.in/judgment/judis/3641.pdf)[[5]](#footnote-5) and **P. Rathiram v. Union of India**[[6]](#footnote-6), Supreme Court took the view widening the scope of Article 21 to include dignity of a human being. It opined that right to life doesn’t mean mere animal existence; it has to be meaningful and expanded the right to a dead person.

The Madras High Court in one of its judgments directed the state government to bring the dead body of a person that was kept in a mortuary in Malaysia, so that the family of deceased could perform his last rites and cremation as per their customs. [[7]](#footnote-7)

Another important judgment in this regard was given by Allahabad High Court in **Ramji Singh & Mujeeb Bhai v. State of Uttar Pradesh & ors**.[[8]](#footnote-8) Herein the Court gave its view that the dead corpus of a person should be given the same respect as they deserved when they were alive and breathing. The judgment was pronounced in relation to post-mortem. Adding further to this, Court said that state must abide by its duty to show respect to the dead and permit post-mortem only when there is utter necessity.

Right to live with human dignity is not limited till the time a person is breathing but extends past death and includes a dignified procedure of death. When the phrase “dignified procedure of death” is analyzed and read as an expansive term, it is inclusive of the dignified disposal of mortal remains.[[9]](#footnote-9)

After having a look at Article 21 and its wider scope, it can be called the Life Insurance of a person; as the motto of LIC says, “*Zindagi k saath bhi, Zindagi k baad bhi*”.

It can undoubtedly be said that traditions and customary practices are intrinsic to the last rites and ceremonies of a dead. Therefore, the right to be cremated decently can also be traced in **Article 25** of the Constitution which enumerates the right to practice, profess and propagate religion of one’s choice.

Indian Penal Code also embodies certain rights of the dead under the headings of Section 297, 404, 499 and 503. The provisions under **Section 297** prescribes punishment for a person who commits any trespass in a place established for performing funeral rites or as a depository for funeral remains or disturbs the performance of such rites or offers any kind of indignity to the corpse. **Section 404** was enacted to provide special protection to the property of the dead. It punishes the person who dishonestly misappropriates the property of the dead.

**Section 499** which talks about the offence of defamation, expands its provision and meaning to the dead as well. It state that anything wrong said against a deceased would amount to defamation if it would have harmed the reputation of that person when if he was alive. The provision of **Section 503** includes the threat to injure the reputation of any deceased person in whom the threatened person is interested, as an offence of criminal intimidation. All these provisions are enacted with the object of protecting the dignity of a deceased.

**The Transplantation of Human Organs and Tissues Act, 1994** is another legislative mechanism that has been in force in India which guarantees rights to the dead. It provides that a deceased person has right to protect and preserve his organs and that no organ or part of the body of the deceased shall be harvested without the prior consent of deceased or his near relatives.

In both circumstances whether a person dies a natural death or unnatural, it is the obligation of the state to ensure the privileges of the dead and forestall wrongdoing over the dead body. It is additionally a prerequisite that the states and Union Territories set up a SOP after consultation with all the stakeholders to ensure that the nobility of the dead is guaranteed. Herein the stakeholders are hospital administration, forensic medicine personnel, police, municipal corporations, district administration, civil society groups and the citizens of the country.

**International Framework**

Human dignity is of the utmost importance and lies at the core of all the international humanitarian laws. The important international covenants that deal specifically with the right to dignity of the dead are:

* **Article 16 of the Geneva Convention 1949 IV**- states “As far as military consideration allows, each party to the conflict shall facilitate the steps taken to protect the killed against ill treatments”.
* **Article 3(a) of the 1990 Cairo declaration on Human Rights** states prohibits mutilation of dead bodies during war or armed conflict where force has been used.
* **Resolution adopted in 2005 by the UN Commission on Human Rights** highlights that it is important to pay respect to the dead and their remains must be disposed of in a dignified manner
* **UN’s Inter-Agency Standing Committee’s Operational Guidelines on Human Rights and Natural Disasters** recommended that mortal remains of the dead should be returned to his family and appropriate measures should also be taken to facilitate the recovery of remains for the purpose of identification or burial.
* **Article 130(1) of the IV Geneva Convention** provides that States should ensure that the graves are respected, maintained and marked so that identification is easy.

**COVID Situation**

COVID pandemic hit the world like no other pandemic in mankind's set of experiences. The vast effects it carries were never predicted, its degree is exceptional and humankind still can't seem to grasp its results. An individual’s life is of vital significance and because of the spread of novel Corona virus, people around the globe are battling to save their own lives and the lives of their family and near and dear ones. Just like time once wasted can’t be recovered, life once lost can’t be regained. Due to the sudden rush, the world is witnessing overall deficiency of clinical and medical science, infrastructural facilities and lack of endeavours and helping hands for the affected ones.

Discussing the current circumstance, India being a welfare State, is one of the most exceedingly awful influenced nations which is battling hard to defeat the dangerous, life threatening waves of Corona virus. It is the role of the governmental authorities to protect the life of its citizens and ensure their welfare. But in times like this, it becomes more important for the authorities to take their responsibilities seriously and try to be more efficient to be able to curb the disease as soon as possible. Be that as it may, tragically, the public authority has neglected to release its obligation in providing proper medical facilities. Although the state has not declared an Emergency, the nation is going through lockdown and curfews to decrease the spread of the virus.

As of 6th August, 2021, India has witnessed 427, 149 deaths due to the ongoing pandemic of COVID-19. This huge account of death toll has left the country to deal with the issue of disposal and management of the dead bodies. The administration has to be cautious about the safety protocol, transportation of the corpse from medical care units and hospitals to the place for cremation or burial and the procedure to be followed for the disposal. While, we all have heard the news that cremation grounds are overly occupied, dead are being buried on the river banks, some are being thrown into the river, it is a major challenge for the country to maintain a balance between the health of citizens and also provide a decent cremation to the dead.

**Guidelines by International and National Agencies**

In these COVID times, there have been various guidelines issued by International Agencies, Central and State Governments and National Agencies. These guidelines have emphasized to adhere to the COVID-19 protocol and take standard precautions while upholding the dignity of the dead. At the international level, **ICRC Forensic Unit** released a document for **COVID-19** **General Guidance for the Management of the Dead.** Due to the urgency caused by the pandemic, ICRC had to issue the guidelines. Part I of this document lays down recommendations for the management of the infected dead. Part II provides a preparatory guideline for mass fatality response plan.

The **Technical Report by European Union** also guides on the handling procedure of the infectious dead bodies and aims at a safe handling. The **World Health Organization (WHO)** and **National Disaster Management Authority (NDMA)** also came forward and issued guidelines emphasizing on maintaining the dignity of dead while complying with the COVID-19 protocols and precautions.

Seeing the horrific situation of floating cadavers in rivers in several parts of UP and Bihar, **National Human Rights Commission (NHRC)** took cognizance of the matter to protect the Fundamental Right of cremation/burial of the dead. The first major recommendation was that legislation should be enacted to specifically protect the rights of the dead and uphold the dignity of the dead bodies. Undue delay in cremation should be avoided as much as possible and the crematorium staff should be sensitized about the COVID precautions while handling the dead bodies. It is recommended that last rites must be performed without touching the corpse. Where the relatives do not appear to perform the rituals, state or local administration should take the responsibility for the same. NHRC also encouraged the use of electric crematoriums and at the same time discouraged piling of bodies during transportation and mass burial/ cremation.

When these guidelines and directions by the agencies are analyzed, a clear statement can be made that these aims at a decent disposal of the dead body that was confirmed or suspected to be infected with COVID, thereby supporting the right to decent cremation/burial.

**Recent Developments**

On 27th July 2020, the Karnataka High Court expressed that the state government and municipal body “Bruhat Bengaluru Mahanagara palike” should undoubtedly come out with rules to guarantee dignity of the dead. The court guided the state administration of Karnataka to guarantee that the dead bodies are given a legitimate entombment/incineration. Following this judgment, the state administration of Karnataka delivered the rules for the disposal of dead bodies during COVID. [[10]](#footnote-10)

Making a statement, Telangana High Court has remarked, “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”.[[11]](#footnote-11)

In the extremely laudable case of **Vineet Ruia v. The Principal Secretary, Department of Health and Family Welfare, Govt of West Bengal**[[12]](#footnote-12), the Court observed that under Article 21 of the Constitution, the right to dignity and fair treatment is not only available to a living person but also to his mortal remains after he passes away. Disposal of a dead body should be done with due respect and solemness irrespective of the fact that such person was infected with corona virus.

In this case, the Division Bench of Calcutta Court laid down some guidelines in furtherance of those laid down by the Ministry of Health and Family Welfare, Government of India. It states that post-mortem of the body shall be carried out only when needed. Proper precautions shall be taken while handling the body, during transportation and touching the body should not be allowed while performing last rites. Huge gathering must be avoided. The state shall cremate an unclaimed body which was infected with COVID-19 in a dignified manner at its own cost.

In the recent case-**Pradeep Gandhy v. State of Maharashtra**[[13]](#footnote-13), at first, the Municipal Corporation of Greater Mumbai suggested that all the corpse of COVID-19 patients ought to be incinerated in the closest crematorium independent of their religion. The said Circular further permitted the family and relatives of the dead to take the body outside the local limits of Mumbai city at their own cost and arrangements while following the guidelines and precautions, for the purpose of cremation. The circular was later amended on the same day which allowed the cremation of all COVID patients in the city’s crematorium and burial sites, provided that they were spacious enough and not created the probability of spread of virus.

The Petitioner contested the Circular on the ground that cremation of Covid-19 dead bodies could prompt further spreading of the virus. The Petition was dismissed; the corrected Circular was maintained and recognized the right of cremation as a component of the right to freedom of religion.

Herein, it was pointed out by the Division Bench of Bombay High Court that: “We find little reason to deprive the dead of the last right, i.e., a decent burial according to his/her religious rites, on the face of there being no evidence, at least at this stage, that Covid-19 infection may spread to living human beings from the cadaver of any suspected/confirmed Covid-19 infected individual."[[14]](#footnote-14)

**Conclusion**

COVID-19 went on to be one among a sort of pandemic that the mankind has ever seen. Its effects are deadly and the end is not known yet. While the nation is going through such situation of emergency, it led to infringement of various Fundamental rights, the right to decent cremation being in the most merciful position. Every person has the right to live with dignity and a decedent must also be treated with full respect. There are sufficient legal provisions and pronouncements by the Courts to support the statement and it is also what the culture says. The sense of respect is so fundamental in nature that people tend to treat even the dead bodies of their enemies reverently. It is very important that people understand the situation, cooperate with the government and bid their loved ones a reverent goodbye.

At the end, it would not be wrong to quote Oscar Widle as he says, “Let the death be so beautiful, let’s make a collective effort to protect their fundamental Right, let’s not deny the Right to a decent burial.” Let’s adhere to this saying and not violate the Fundamental right to dignity of the dead ones in this COVID situation or any other difficult time.

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