

RIGHTS OF THE DEAD: LAST RITES IN THE COVID-19 PANDEMIC IN INDIA

*SUNAKSHI AGARWAL

**SARABJIT KAUR

ABSTRACT

With the deadly COVID-19 claiming more than 1.3 lakh lives by November, 2020 in India; a very pertinent thought comes to anyone's mind. That, is it illegal to deny last rites to a COVID-19 deceased in India? Various health and safety guidelines issued by international organizations like the World Health Organization and national organizations like the Ministry of Health and Family Welfare concerning the last rites of COVID-19 patients have failed to address the issue at hand. Numerous reports of inhumane treatment of the dead have raised concerns among human rights activists as well as the Indian Courts wherein it was stated that the rights of the dead to a decent funeral is enshrined in Article 21 and Article 25 of the Indian Constitution. The paper provides detailed insights into the chaos that have unfolded around the last rites of the dead, traces the human rights jurisprudence on this much neglected topic and concludes with the recent judicial pronouncements in the subject area.

Introduction

On 11th March 2020, the World Health Organisation (WHO) declared COVID-19 as a global pandemic and this was a phenomenon that the world has never witnessed before. The virus that spreads so rapidly just by respiratory droplets released when someone with the virus coughs, sneezes or talks was a challenge to control. Different countries dealt with it in their own ways, some made rash decisions while others took calculative steps and came up with their own methods to curb the spread of infection. COVID-19 presented itself as a health and financial crisis which no country was prepared for. Normal order of life was suspended in most parts of the world and nationwide lockdowns were implemented. Anything remotely social was shut down.

India also implemented a nationwide lockdown on 24th March for the next 21 days which affected the entire 1.3 billion population of the country.¹ Migrant workers and poor sections of the country were unable to afford food and basic necessities during this trying time and the government had no clue how to manage it. The virus spread very quickly across the country making it the second worst hit country in the world by September 2020. The death rate in India was lower than the global average, which was the only positive thing at the time.

Though it was an unprecedented event, our government took various steps to curb the spread, which included the lockdown and invoking the provisions of the Epidemic Diseases Act, 1897.² Testing of the virus was expanded from people with recent travel history to 12 virus hit countries to the people that were showing symptoms. Private pathologies were also allowed to test for the virus. Various medical institutes started researching for anti-COVID-19 drugs and anti-COVID vaccines.

India also witnessed grave injustice and lack of basic dignity during this time. The human rights of the citizens were violated be it the health workers or migrant workers. It also presented itself as a crisis of faith in the last rites of a Covid-19 patient. There were many tragic incidents that came to light where the bodies of the COVID infected patients were thrown in the ditch. Similarly, incidents of giving wrong bodies to the families or tying them to hospital beds after they failed to pay the treatment fee were reported. The right to decent and dignified burial is established as an important element of the right to life. Most importantly, the persons cannot be deprived of such rights even in a situation of an emergency like that of the Covid-19 pandemic. In this paper, the authors analyse the right to die and right to last rites with respect to the current situation.

RIGHT TO A DECENT BURIAL

*Amity University, Noida

**Lloyd Law College, Noida

¹ Withnall, Adam (24 March 2020). "India to go into nationwide lockdown", The Independent.

² <https://www.ndtv.com/india-news/coronavirus-impact-visas-to-india-suspended-till-april-15-2193382>.

“Death must be so beautiful. To lie in the soft brown earth, with the grasses waving above one's head, and listen to silence. To have no yesterday, and no tomorrow. To forget time, to forgive life, to be at peace.”³ - Oscar Wilde

Death is often associated with finally being at peace. It is one of the basic human rights. As the person is entitled to live a life with dignity, he is also entitled to die with dignity and be buried or cremated according to his customs. The living benefit from this right through the peace of mind that arises from knowing one's bodily remains will be treated with respect after death. It is a way of respecting the life that he has led and helps the family facing such death to make their peace with it.

People belonging to different religions have different beliefs in regards to last rites of the dead. People belonging to Hinduism, Jainism and Sikhism believe in cremation of bodies and later on scattering the ashes in holy water bodies. While in the Islamic Community, the burial of a deceased person is a collective obligation. This obligation consists of *ghusl*, ritual washing of dead bodies, *kafan*, or shrouding the body with pieces of cloth and finally *salat al-janazah*, a funeral prayer.⁴ They believe in burial of the bodies. In Christian communities, the Church believes in the burial of the bodies preceded by an elaborate funeral service for establishment of sympathy between the pastor and the grieving survivors.

GUIDELINES CONCERNING BURIAL/CREMATION PRACTICES

In the wake of the global COVID-19 pandemic, the guidelines issued by the International Organizations like the World Health Organization (WHO) and the national organizations like the Ministry of Health and Family Welfare (MOHFW) in India aimed at balancing the right to dignity concerning the deceased person's cremation/ burial with the safety protocols to prevent the spread of the virus.

a) WHO Guidelines

³ Oscar Wilde, Quotes, goodreads, <https://www.goodreads.com/work/quotes/3062141-the-canterville-ghost>, (last visited: September 20, 2020).

⁴ <https://blogs.icrc.org/law-and-policy/2020/04/30/covid-19-islamic-burial-laws/>.

On March 24, 2020, WHO released interim guidances titled “Infection Prevention and Control for the safe management of a dead body in the context of COVID-19”⁵. The guidance was 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. The relevant section of the guidelines with regards to Burial:

- 1) People who have died from COVID-19 can be buried or cremated as per their religious norms and traditions.
- 2) The family members and friends may view the dead body once it is ready for burial.
- 3) A minimum number of people should be involved in preparing the deceased (e.g. washing, cleaning or dressing body, tidying hair, trimming nails or shaving) in a community setting.
- 4) The person (family or the religious member) preparing the body should not kiss the deceased.
- 5) Although burials should take place in a timely manner, in accordance with local practices, funeral ceremonies not involving the burial should be postponed, as much as possible, until the end of the epidemic. If a ceremony is held, the number of participants should be limited.

b) MOHFW Guidelines

The Ministry of Health & Family Welfare issued guidelines titled “COVID-19: Guidelines on Dead Body Management”⁶ in March 2020 concerning hospital deaths based on the limited knowledge available at that time. The guidelines concerning cremation or burial practice are as follows:

- 1) The Crematorium/ burial Ground staff should be sensitized that COVID-19 does not pose additional risk.

⁵ https://apps.who.int/iris/bitstream/handle/10665/331538/WHO-COVID-19-IPC_DBMgmt-2020.1-eng.pdf.

⁶ https://www.mohfw.gov.in/pdf/1584423700568_COVID19GuidelinesonDeadbodymanagement.pdf.

- 2) Viewing of the dead body by unzipping the face end of the body bag (by the staff using standard precautions) may be allowed, for the relatives to see the body for one last time.
- 3) Religious rituals such as reading from religious scripts, sprinkling holy water and any other last rites that does not require touching of the body can be allowed.
- 4) Bathing, kissing, hugging, etc. of the dead body should not be allowed.
- 5) The ash does not pose any risk and can be collected to perform the last rites.

I. Right to a Decent Burial/Cremation in International law

The right to disposal of bodies according to a person's traditions and culture has been found to be a human right and even a fundamental right in many countries. It is a basic act of respect and dignity which cannot be taken away in any sense even if there is a state of emergency or the dead are the combatants or criminals. Many International Covenants deal with the right of the dead.-

- 1) Article 16, 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"⁷
- 2) 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 honor, family rights, religions convictions and practices and manners and customs at all times they shall be humanely treated."⁸
- 3) New Zealand's law provides that "Human remains must be disposed of somehow, and ideally this should occur promptly and before a nuisance is created."⁹ Local authorities have also had an obligation to provide cemeteries since the enactment of the *Cemeteries Act 1882*. The *Burial and Cremation Act 1964* also imposes a legal

⁷ Geneva Convention, 1949.

⁸ Australia's Defense force manual, 1994.

⁹ Health Act 1956, section 86.

duty on local authorities and cremation authorities to bury or cremate the body of “any poor person” or the “body of any person from any hospital, prison, or other public institution, on the request of the person in charge of that institution” free of charge.¹⁰

II. Right to A Decent Burial In India

Right to a decent burial has been discussed under Article 21 and Article 25 of the Constitution of India.

a) **Article 21 of the Indian Constitution:**

Article 21 of the Constitution lays down the ‘right to life and personal liberty’ to every person, citizen or alien and gives specific provisions in which these rights are to be applied. According to Article 21:

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”¹¹

The Hon’ble Supreme Court of India has described this right as the ‘heart of fundamental rights’. This is the right from which all other rights emerge. Without the right to life and liberty, all the other fundamental rights would be absolutely meaningless. It embodies many rights within itself like the right to livelihood, privacy, right against handcuffing etc. The basic necessities and requirements that are essential for a person are core concepts of Right to life.

The Honorable Supreme Court in *Kharak Singh*¹² case held that, “life as here used is something more is meant more than mere animal existence...”. As, the right to life also includes the right to dignity, the right to die with dignity and right to decent burial would also be a part of Article 21. The Apex Court in *Pt. Parmanand Katara, Advocate v. Union of India & Anr.*¹³ held that the right to dignity is available not only to a living man but also to his body after his death.

¹⁰ Burial and Cremation Act 1964, Section 49.

¹¹ Constitution of India, 1950, Article 21.

¹² Kharak Singh vs. The State Of U. P. & Others, 1964 SCR (1) 332.

¹³ Pt. Parmanand Katara, Advocate v. Union of India & Anr, (1995) 3 SCC 248.

A Division Bench of the Allahabad High Court in *Mujeeb Bhai v. State of U.P.*¹⁴ held that the word and expression ‘person’ in Article 21 of the Constitution includes a dead person in a limited sense and right to life with dignity should be extended in such a manner that his dead body is given respect, which he would have deserved, had he been alive, subject to his tradition, culture and the religion which he professed. And finally, in the case of *Common Cause v. Union of India*¹⁵, the Supreme Court reiterated that the ‘right to die with dignity’ is a part of the ‘Right to Life’ under Article 21 of Indian Constitution.

b) Article 25 of the Indian Constitution:

The Hon’ble Supreme Court in *Ashray Adhikar Abhiyan v. Union of India & Ors.*¹⁶ mentioned that:

“traditions and cultural aspects are inherent to the last rites of a person’s dead body. Right to a decent funeral can also be traced in Article 25 of the Constitution of India which provides for freedom of conscience and free profession, practice and propagation of religion subject to public order, morality and health and to the other fundamental rights under Part III of the Constitution.”

So, following all these judgments it is clear that Right to Decent Burial have been made a part of fundamental rights and the dead bodies are to be respected and disposed of with dignity that they deserve.

INDIAN SITUATION DURING THE COVID-19 PANDEMIC

The Guidelines issues at national and international level were put to test amidst the COVID-19 crisis giving rise to a web of challenges:

a) Crimes against the corps

When the COVID situation presented itself, the faith and beliefs of people from all communities was shaken as the bodies were not disposed according to the customs, there was

¹⁴ RAMJI SINGH @ MUJEEB BHAI *versus* STATE OF U.P.(Public Interest Litigation No. 38985 of 2004).

¹⁵ WRIT PETITION (CIVIL) NO. 215 OF 2005.

¹⁶ (2002) 2 SCC 27.

a great hue and cry regarding the spread of infection by the dead bodies. In a disturbing situation in Telangana, the body of the deceased was transported in an auto-rickshaw without even waiting for an ambulance.¹⁷

Despite the provision of Section 297 of the IPC criminalizing interference with the burial space, no significant deterrence could be created against such crimes. **Section 297, IPC** concerning trespassing on burial places etc. provides:

“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”.

b) Inadequate Burial Space

India found it very difficult to manage the burial of the deceased COVID patients and many horrifying cases were reported. The burial and cremation grounds weren't allowing the disposal of COVID infected patients, no ceremonies could be conducted as there was a lack of resources and preparedness.

¹⁷ Coronavirus in Telangana: Body of COVID-19 Patient Taken to Burial Ground in Auto Rickshaw, India, July 12, 2020 7:52 AM, available at <https://www.india.com/news/india/coronavirus-in-telangana-body-of-covid-19-patient-taken-to-burial-ground-in-auto-rickshaw-4082144/>.

The *National Human Rights Commission* (NHRC) sought a report from the Puducherry District Magistrate over the alleged improper burial of COVID-19 patients.¹⁸ The Secretary of the *Federation for People's Rights*, G Sugumaran mentioned in his complaint that the body of Jyothimuthu who died of COVID-19 was thrown into the pit by health and municipality workers in the presence of the *Villianur Commune Panchayat Commissioner* and Tahsildar without following the guidelines on burying bodies of COVID victims, thereby dishonouring the body of the deceased.¹⁹

c) Refusal of kin to accept the body of the deceased

The fear of infection exposed another dark side of society wherein the family members refused to accept the body of the deceased who passed away due to COVID-19 infection. In Palakkad, four people who died of Covid were cremated in a public crematorium in Thrissur after their families refused to accept the mortal remains when they came to know that they had died of Covid-19.²⁰ The medical college authorities waited over two months to dispose of the body expecting that they would change their mind.²¹ Similar incidents were reported from Jamshedpur²², Lucknow²³ and other parts of India.

Improper and insufficient knowledge among the family members and the changing guidelines concerning permitting the body of the deceased who died of COVID to be taken home add to further dismay and panic among the families.²⁴ Resultantly, The Pune Municipal Corporation

¹⁸ NHRC seeks report over 'improper' burial of COVID-19 patient in Puducherry, *The New Indian Express*, 18th August 2020 07:17 PM available at <https://www.newindianexpress.com/states/tamil-nadu/2020/aug/18/nhrc-seeks-report-over-improper-burial-of-covid-19-patient-in-puducherry-2185127.html>.

¹⁹ *Id.*

²⁰ Relatives of Covid victims refuse to accept mortal remains, *The New Indian Express*, 02 October 2020, available at: <https://www.newindianexpress.com/states/kerala/2020/oct/02/relatives-of-covid-victims-refuse-to-accept-mortal-remains-2204618.html>.

²¹ *Id.*

²² 'Neighbours suspect Jamshedpur man died of Covid-19, kin refuses to take body', *Debashish Sarkar*, *Hindustan Times*, Apr 21, 2020, available at <https://www.hindustantimes.com/india-news/neighbours-suspect-jamshedpur-man-died-of-covid-19-kin-refuses-to-take-body/story-0DV4fjn2kescNdKUKu0sEP.html>.

²³ 'Kin refused to cremate a man who died of Covid in Uttar Pradesh, Pathikrit Chakraborty', Jun 25, 2020, available at http://timesofindia.indiatimes.com/articleshow/76598491.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

²⁴ 'No dignity even in death for Mumbai's COVID-19 victims', Pooja Biraia Jaiswal, *The Week*, June 16, 2020, available at <https://www.theweek.in/news/india/2020/06/16/no-dignity-even-in-death-for-mumbai-s-covid-19-victims.html>.

(PMC) issued guidelines specifying cremation of bodies of COVID-19 patients, irrespective of their religion, in case family members refuse to claim the body or take custody of it.²⁵

RECENT JUDICIAL PRONOUNCEMENTS

The Hon'ble High Court of Madras in *Suo Motto vs. The State of Tamilnadu*²⁶ held that the right of a person to have a decent burial comes within the scope and ambit of Article 21 of the Indian Constitution. The Court also mentioned that anyone who interferes in the decent burial process shall be liable under Section 297 of the Indian Penal Code²⁷.

The Hon'ble High Court of Allahabad in *Suo-Moto Inre: Right To Decent & Dignified Last Rites/Cremation v. State of U.P. Thru Additional Chief Secretary, Home and Ors.*²⁸ held that

“India is a country which follows the religion of humanity, where each one of us are supposed to respect each other in life and in death....Cremation is one of the ‘Sanskars’ i.e., antim sanskar recognized as an important ritual which could not have been compromised taking shelter of law & order situation.”

The Bombay High Court in the case of *Pradeep Gandhi v. State of Maharashtra*²⁹ held that

“Right to a decent burial, commensurate with the dignity of the individual, is recognized as a facet of the right to life guaranteed by Article 21 of the Constitution. There is, thus, no reason as to why an individual who dies during this period of crisis because of suspected/confirmed COVID-19 infection would not

²⁵ ‘PMC to cremate bodies of COVID-19 patients if kin refuse to take custody’, The Indian Express, April 10, 2020, available at <https://indianexpress.com/article/cities/pune/pmc-to-cremate-bodies-of-covid-19-patients-if-kin-refuse-to-take-custody-6356922/>.

²⁶ W.P. No. 7492 of 2020, available at <http://www.hcmadras.tn.nic.in/SMWP74922020.pdf>.

²⁷ Section 297 IPC -Trespassing on burial places.

²⁸ 2020 SCC OnLine All 1120.

²⁹ 2020 SCC OnLine Bom 662.

be entitled to the facilities he/she would have otherwise been entitled to but for the crisis. Should the extant guidelines for disposal of the cadaver of an individual infected by COVID-19 be adhered to and the cadaver properly handled and placed in special covers to contain any kind of spread, we find little reason to deprive the dead of the last right, i.e., a decent burial according to his/her religious rites.”

Additionally, the High Court of Calcutta in *Vineet Ruia v. Principal Secretary, Ministry of Health & Family Welfare, Govt. of West Bengal and Ors.*³⁰ observed:

“We are of the view that the right to live a dignified life extends up to the point of death including the dignified procedure of death. We are inclined to interpret the phrase ‘dignified procedure of death’ in an expansive manner so as to include dignified disposal of the human remains of a deceased. We unhesitatingly hold that the mortal remains of a deceased person must be treated with care, respect and dignity and have to be disposed of by burial or burning, according to the religion, in so far as the same is ascertainable, that the deceased person practised. It makes no difference if the deceased person was infected with Covid-19. Of course, all requisite safety and precautionary measures must be taken by the persons who carry out the funeral.”


CONCLUSION

As per the current scientific knowledge, only the lungs of the deceased have the potential risk of spreading the virus. In such a situation, denying last rites to the family members and

³⁰ 2020 SCC OnLine Cal 1664.

dumping of bodies in pits amounts to grave human rights violations and are against the mandates of the Indian Constitution.

While observing the safety and adequate hygiene protocols, the right to a decent burial or cremation based on the religious affirmations of the deceased needs to be executed at the grass root level which has been beautifully integrated by the Indian Courts in the human rights jurisprudence over the course of this year. As Salmond has rightly pointed out that *“there are three things in respect of which the worries of a living person extend even after their death. Those are his body, his reputation and his property.”*



IJLPA

WORDS SPEAK
