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Editorial Team

Editor-in-Chief

Mr. Nikhil Kumar Chawla

Partner - LawPublicus LLP
Senior Corporate Counsel (Litigation)
M/s Investors Clinic Infratech (P) Ltd.
Contact: +91-9654441680
+91-9654030411
Email ID: Nikhilchawla29@gmail.com
Lawpublicusportal@gmail.com

Senior Editor(s)

Dr. Amita Rathi

Associate Professor – JEMTEC Greater Noida
Contact: +91-9999612484
Email ID: Amrita.gn@jagannath.org

Advocate K.S. Rana

Advocate
Contact: +91-9910326424
Email ID: Jyotideeprana@gmail.com

Dr. Payal Jain

Sr. Assistant Professor – IIMT (GGSIPU), East Delhi
Contact: +91-99991733257
Email ID: Payaljain.iimt@gmail.com

Editor(s)

Dr. Vijeta Verma

Assistant Professor – JEMTEC Greater Noida

Contact: +91-9911393623

Email ID: Vijetaverma.gn@jagannath.org

Dr. Prashant Kumar

Assistant Professor – IMRT, Lucknow

Contact: +91-9889109882

Email ID: Prshntkumar6@gmail.com

Dr. Shishma Kushwaha

Assistant Professor – JEMTEC Greater Noida

Contact: +91-9718485919

Email ID: Shishmakushwaha.gn@jagannath.org

Ms. Shivangi Sharma

Assistant Professor – CLS, Gitarattan International Business
School

Contact: +91-9891496247

Email ID: Shivangi.sharma@gitarattanedu.in

Ms. Kriti Sharma

Assistant Professor – GGSIPU

Contact: +91-9891354307

Email ID: Kritisharmaks30@gmail.com

Ms. Yantakshikaa Sharma

Partner - LawPublicus LLP

Career Counsellor

Contact: +91-9711249637

Email ID: Yantakshika@gmail.com

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With this thought, we hereby present to you

LawPublicus The Legal Portal

Rights of a Dead **Person** **(Death is not the opposite of** **life, but a part of it...)**

Authored By:

Ms. Shraddha Malu

Designation: BBA LL.B (H) Student

Co-Authored By:

Ms. Madhulika Agrawal

Designation: BBA LL.B (H) Student

Rights of a Dead Person

By: Shraddha and Madhulika

ABSTRACT

This thesis throws light on the rights of the dead person. This Article asks why the law gives decedents certain legal rights but not others. This article assessed the rights of the dead person in India and all over the globe. Salmond was of the view that the personality of a man commences from his birth and ends with his death. Interestingly, everyone knows what a dead is but never knows about the dignity, reputation that the dead person holds. Law protects the reputation of the dead. Due to rigorous treatment on the dead it is essential to know the facts and follow the rules and regulations about how a corpse should be treated. In India, some rights have been provided by statutes like the Indian Penal Code and the Indian Constitution to the bodies of people after they die. There was a time, not long ago, when as per law, it was legal to sell our organs. Although, now it has become legal to donate your organs if they are in the interests of humanity. A corpse, however, is no man's property under the law. Therefore, it cannot be done away with any instrument or accord. This article is well versed with the criteria's for the rights and legal remedies of the dead, how a corpse should be treated after the death and the countries which makes the provisions accordingly to safeguard the dead and how euthanasia comes into the scenario.

Keywords: Rights, Dignity, Reputation, euthanasia, Indian Penal Code and Indian Constitution

INTRODUCTION

Read somewhere, that on a cold winter night, one person was passing by a grave and he saw the most horrific visual. He saw a man, naked trying to have sexual intercourse with a corpse! Brutally forcing his body over dead women. He was shaken to the core and ran back home. That was the day we started researching the legality of the dead. Before anything else, we need to understand the concept of a person.

Who is a person? Also, when people die are they to be treated as mere things?

Who is a person?

As everybody knows ,the word person has been derived from the Latin word” persona”, it means those who are recognized by law as being capable of having legal rights and duties. Earlier until the 60th century, this term was used to refer to the role played by a man on stage. But after some time with the evolution of law this term started to be used in sense of someone having rights and duties.

Now it is being used in different senses in different disciplines. In the philosophical and moral sense the term has been used to mean the rational quality of human being. In law it has a wide meaning. It means not only human beings but also artificial person as well. Law personifies some real thing and treats it as a legal person. This symbolises both theoretically and practically clarifies thoughts and expressions. There are human beings who are not person in legal sense such as outlaws and slaves (in earlier times). In the same way there are legal person who are not human being such as corporations, companies, trade unions; institutions like universities, hospitals are examples of artificial person recognized by law in the modern age along with the same way as humans are recognised by having rights and duties.

According to Indian law, U/S 3(42) of the General clauses act defines who is a person. According to this definition, it includes a company or an association of individuals irrespective of the fact that it is incorporated or not. Henceforth, a person as per this definition would have rights and duties and would be treated as a legal entity under the law. The Indian Penal Code also defines a person u/s 11, it includes a company, an association of a group of individuals irrespective of the fact that they are incorporated or not.

Person in law have two types i.e., natural and legal. Natural person are human beings. On the other hand Legal person may also be known as artificial person. They are imaginary person who have rights and duties in law and in whom law vests personality by way of fiction.

Who is a dead person?

Dead persons have no legal personality and hence, cannot sue and be sued. Dead men are no longer person in the eye of law. Legal personality of a person dies with his corpse. They do not remain the owners of their property until their successors enter upon their inheritance.

So after reading this, one question must have come to your mind i.e., **can a dead person be considered as a legal person?**

ARE HUMANS TO BE CONSIDERED AS LEGAL PERSON AFTER THEY ARE DEAD?

Dead persons have no legal personality and hence, cannot sue and be sued so they are no longer person in the eye of law. After death the legal personality of a person also dies. They do not remain the owner of their property until their successors took upon their inheritance. When a person dies leaving a Will, his property is distributed according to the Will. Law recognises and takes account after the death of the person of his desires and interest when alive. There are three things in respect of which the anxiety of a living men extend even after their death. Those are his body, his reputation and his property.

A human body, once dead, is considered only as a weight of material, although it signifies continuity of what used to be a living being. Legal human rights are only applicable to living humans, and not to a corpse. Have you ever wondered, as to what happens to these rights once a person dies? Well, Indian laws do not specifically talk about the rights of a dead person. However, various statutes and judgements under the Indian law address the rights and legal remedies of a dead person to some extent.

UNDER CONSTITUTION OF INDIA

The ‘Right to be Burial with human dignity’-

Right of burial with dignity is an inseparable facet of the Right to Life.

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

It is implied by the Article 21 that A human can die with dignity and be buried the way that person wants to be and rest in peace.

In the case of Pt. ParmanandKatara Vs. Union of India, it was held by the apex court 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 they 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 life of another person in accordance with the law, the preservation of the dead body and its disposal in accordance with human dignity.”¹

Right to die with dignity-

When life becomes far more painful and unbearable than death, then it is very normal for him/her to desire death.

The Right to die is a concept which is based on the opinion that a human being is entitled to make any decisions about ending his or her life.

In the case of GianKaur v. State of Punjab and it was held that right to life does not include right to die or the right to be killed. It was further held that right to life was a natural right embodied in Article 21, but suicide was unnatural termination or extinction of life and therefore, ‘incompatible and inconsistent’ with the concept of the right to life. The right to life includes right to live with human dignity would mean the existence of such a right up to the

¹Omniya anusha, ‘The rights of a dead person’, Mylawrd, June 25 10:30pm, <https://www.mylawrd.com/the-rights-of-a-dead-person/>.

end of natural life. However, the court appears to approve passive euthanasia by holding that one may have the right to die with dignity as a part of the right to live with dignity.²

Right to die with dignity also includes undergoing voluntary Euthanasia. Euthanasia also known as Mercy Killing i.e., "dayamaran" is now legal in India since 09 March 2018 by the Supreme Court of India. Patients must consent through a living will, and must be either terminally ill or in a vegetative state. The decision was made as part of the verdict in a case involving Aruna Shanbaug, who had been in a Persistent Vegetative State (PVS) until her death in 2015.

Article 21 of the Indian Constitution clearly provides for living with dignity. A person has a right to live a life with at least minimum dignity and if that standard is falling below that minimum level then a person should be given a right to end his/her life. Supporters of euthanasia also point out to the fact that as passive euthanasia has been allowed, similarly active euthanasia must also be allowed. A patient will wish to end his life only in cases of excessive agony and would prefer to die a painless death rather than living a miserable life with that agony and suffering. Thus, from a moral point of view it is better to allow the patient die painlessly when in any case he knows that he is going to die because of that terminal illness.

Right to privacy of a dead person-

The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by part III of the Constitution.

In the landmark case of K.S. Puttaswamy (Retd.) & another V. Union of India, Writ Petition (Civil) No 494 of 2012, "In my considered opinion, right to privacy of any individual is essentially a natural right, which inheres in every human being by birth. Such a right remains with the human being till he/she breathes last. It is indeed inseparable and inalienable from human being. In other words, it is born with the human being and extinguish with human being."

²Dignath raj shegal, 'does right to life includes right to die', blog.ipleaders, june 25 10:00, <https://blog.ipleaders.in/does-right-to-life-include-right-to-die/>.

However, in the same judgement itself it has also been observed that, execution of will, right to have a dignified cremation of the body were only available for the dead. But privacy can be extended even after death as privacy is an element of dignity.³

Right to reputation-

Everyone is entitled to maintain reputation even after their death.

A system of law is to be judged not merely by the manner it treats the living, but also by the regard, it gives to the dead. Reputation is indivisible. Indivisibility is an essential attribute of reputation. There is no distinction between the reputation of the dead and the living. This is the quintessence of the concept of reputation. Any bifurcation like the reputation of the dead and the reputation of the living would deprive the reputation of its content and deny it any meaning. Death shows the insignificance of life. Reputation testifies to the significance of life. If the reputation of the dead is not protected, the reputation of the living is not safe. If the reputation of the dead is not valued, the reputation of the living has little worth.”

The dead cannot defend themselves and it is unfair to speak ill of them. Therefore, their legal heirs or representatives can defend their reputation.

UNDER INDIAN PENAL CODE, 1862

Protection of a dead person's property-

Property of a dead person is one of the main thing in respect of which the anxieties of living men extend even after their death.

Section 404 IPC falls within the sub-Chapter ‘Of Criminal misappropriation of property’. This section applies when a person, in a sly manner, appropriates to himself, a property in the possession of the deceased person at the time of his death.

If a person dies intestate, the property is divided in equal shares among all the legal heirs according to the will made by him.

³Supra footnote no 1.

Trespassing on burial places-

According to Section 297 of the Indian Penal Code, the irreverence of dead bodies is strictly prohibited. If any person with the intention or knowledge of wounding or insulting the religion of any person, commits trespass in any place set up for funeral rites or set up as a depository for the remains of the dead or treats a dead body with indignation or causes disturbance to people assembled to carry out funeral rites of the dead, he or she shall be punished for a term extending to one year or fine or both.

The Indian Penal Code does not punish the acts which are mere of earthly vanity or pride particular, but if a person is prosecuted under this section can be punished for imprisonment either for a term which may extend to one year or with fine or with both.

Protection against Defamation-

“Dead but not forgotten: Proposals for Imposing Liability for Defamation of the Dead”

Section 499 of the Indian Penal Code which deals with defamation also defines that libel or slander against a dead person also contributes the offence of defamation.

Courts in India do not impose liability for defamation of the dead. One of the best comments on this issue was given by honourable Justice R Basant in the landmark case Raju vs. Chacko on 5 September, 2005 (Equivalent citations: 2005 (4) KLT 197) “A claim for compensation for defamation under the civil law may not be maintainable in respect of defamation of a deceased person on the principle that a personal right of action dies with the person. (‘Actio personalis moritur cum persona’). But still the law makers felt that defamation of a deceased person can legitimately give rise to a criminal prosecution for the offence of defamation against a deceased person.”⁴

Defamation suit can be filed for loss of reputation of a dead person. If the publication is an attack on the internet of living persons, as a matter of fact, this right is in reality not that of the

⁴Neha Mishra, ‘Liability for defamation of dead’, Lawctopus, June 24 5:00, <https://www.lawctopus.com/academike/liability-defamation-of-dead-123/>.

dead person but of his living descendants. The reputation of a dead person receives some degree of protection from the criminal law.

SCENARIO IN DIFFERENT COUNTRIES-

Laws of euthanasia in different countries-

S.NO.	NAME OF THE COUNTRY	SCENERIO
1.	United kingdom	Euthanasia is illegal in United Kingdom but on November 5, 2006 Britain Royal College of obstructions and gynaecologists submitted a proposal to the Nuffield Counsel of Bioethics calling for consideration of permitting the euthanasia of disabled new-born.
2.	Switzerland	According to Article 115 of Swiss Penal Code, suicide is not a crime and assisting suicide is a crime if only if the motive is selfish. It does not require the involvement of physician nor is that the patient terminally ill. It only requires that the motive must be unselfish.
3.	Australia	The Northern Territory of Australia became the first country to legalize euthanasia by passing the Rights of the Terminally ILL Act, 1996

Different countries law for sexual intercourse with corpse.

1. New Zealand provides a section under the Crimes Act, 1961 which prescribes two-year imprisonment to people who treat dead bodies with dishonour. These dead bodies may be buried or not.
2. United Kingdom's Sexual Offences Act 2003's Section 70 deals specifically with people who commit a sexual act with a dead body. While Section 14 of the South African Law does the same in the country.
3. The United States of America Lacks a Federal Law for the same, different states have their own laws punishing these offences.

4. In Philippines there are no laws related to prohibit sexual acts on corpse. There's only a code which criminalizes defamation to blacken the memory of ones who is dead.

CONCLUSION

“To fear death is to misunderstand life”. This Article suggests that dignity and autonomy play a large role in the granting of posthumous rights by lawmakers the sanctity of human life does not imply the forced continuation of existence in pain and suffering. Given that a person has the right to lead a dignified existence, he cannot be forced to live to his detriment. Corpses don't enjoy the status of legal persons in India. Although dead have their social characteristics which are categorized under statutes manifested by a real thing namely as, reputation and dignity. The dead continues to have rights and duties even if they are not in their lives and holds a position throughout eternity. The rights and legal remedies available for a dead person as above mentioned are under Article 21 of the Constitution and Sections 297, 404, 499 and 503 of IPC. At any given time the living must decide how many rights they are willing to bestow upon the dead, keeping in mind that they may want to safeguard some of their own posthumous rights. This constant battle, tempered by the factors of time, the fundamental nature of rights, and impossibility, leads to a unique balancing act which courts and legislatures will need to continue to navigate with care. So, “Death is not an end, it's a new impulse”.

This case study is for information purpose only. Nothing contained herein shall be deemed or interpreted as providing legal or investment advice.