

DIGNITY AND DEATH OF A HUMAN - AN ANALYTICAL OVERVIEW VIS A VIS VARIOUS ASPECTS

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DIGNITY

Dignity implies the right of a person to be respected and treated ethically. Its importance lies in morality, ethics, law, and politics as Enlightenment concepts of inherent and inalienable rights of the people.

MEANING

Dignity has a descriptive meaning, relating to a person's worth. In normal parlance, the term carries different meanings depending on usage and context. In the modern era, it means "respect" and "status" and indicates that a person is not being respected or not even being treated with due respect.

Practices violating human dignity - examples

- rape,
- social exclusion,
- labor exploitation,
- forced labor
- slavery
- absolute¹ poverty
- relative poverty (has other essential dimensions, like social injustice)
- lack of sanitation facilities
- Female genital mutilation (FGM) (recognized by Pope Francis I)

depending on others for survival is an affront to dignity, even in the absence of more direct violations. women in developing countries, currently a billion people worldwide have no choice but to defecate outdoors, which the UN Under-Secretary-General regards as an affront to personal dignity.²

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¹ blatant exploitation and humiliation such as being forced to eat food from someone else's garbage.

² Progress on drinking water and sanitation, 2014 Update WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation (JMP).

HUMAN RIGHT

Moral principles or specific norms of human behavior that are regularly protected by local as well as international laws. They are generally regarded as the fundamental and inalienable rights "to which a person is entitled by nature only because he is human" and which "is inherent in all human beings", irrespective of age, race, place of residence, language, religion, ethnic origin or another factor. They can be used anywhere anytime in the universal sense. They are believed to require empathy hence obliging individuals to respect the human rights of other individuals and are generally only revocable through due process of law based on specific circumstances.

The Moral and philosophical concepts of dignity proclaim that a human being has the right to respect and values at all stages of life and even after death.

DEATH WITH DIGNITY

Many scientists and medical warriors are supportive of the idea that all people have the right to die with dignity and naturally and, according to the applicable laws, their last wishes be respected. The limit to which the notion of dignity should be applied to the mortal remains of the deceased or even to members of his family is unclear. In recent history, few major events challenged the handling of human remains. A consideration of these circumstances allows us to examine the dilemma and shows that dignity - and perhaps even some form of greater legal protection - should also be extended to the remains of the deceased. Dying with dignity is a term derived from Oregon law that governs the prescription of life-terminating drugs to eligible individuals suffering from the deadly disease.

DEATH WITH DIGNITY REFERS

The End-of-Life Option, allows eligible individuals with terminal illnesses to voluntarily legally request and receive medication from physicians to end their life in a peaceful and dignified manner. Some of the false and imprecise terms used by opponents of euthanasia to mislead the public include: assisted suicides, and physician-assisted suicides.

Euthanasia (active) - A legal prescription for life-terminating drugs is only available in states that have laws on the dignity of death.

TO DIE WORTHILY

- An adult residing in a country where this law applies;
- Able to make and communicate their own health decisions;

- Diagnosed with a life-threatening condition resulting in death within six months as verified by trained healthcare professionals;
- Able to self-administer and take medications without assistance.

The qualification process varies from state to state.

INDIAN CONTEXT

Before euthanasia became practicable - sign the leaving against medical advice (LAMA) which transferred the full responsibility for discontinuing living therapies from the physician to the patient.

Euthanasia - as per The Oxford English Dictionary, is "the painless killing of a patient suffering from an incurable and painful disease or in an irreversible coma". The term is derived from the Greek "euthanatos", 'eu' means well, and 'thanatos' means death. ancient Greece and Rome reign, citizens were entitled to a good death to end the sufferings of a terminal illness.

On March 9, 2018, India's Supreme Court legalized passive euthanasia by removing life support from patients in the PMV ie., permanent vegetative state – Aruna Shanbaug V UOI – the decision came after Pinka Virani appealed to the Supreme Court - constitution's "another friend" arrangement arguing that "Aruna's continued existence violates her right to a dignified life." During the rape attack by a sweeper, Aruna was strangled with a chain and the lack of oxygen left her in a vegetative state.

Passive euthanasia - A revolutionary law placed in the hands of a single governmental, medical, or religious body that sees all the sufferings of a person as "destiny." : (i) brain death in which the ventilator can be turned off; (ii) Individuals in a prolonged vegetative condition (PVS) who, according to some international specifications, may allow for reduction of food intake and the addition of analgesics. On February 25, 2014, India's three-member Supreme Court bench called the Aruna-Shanbaug decision "per se inconsistent" and referred the issue to the five-member constitutional body. The court denied termination of Aruna's life support system but set up a general set of guidelines which in turn legalized passive euthanasia in India. Aruna breathed her last due to pneumonia after 42 years in a coma.

Guidelines have been established for a "living will" to be drawn up by terminally unwell patients who have knowledge in advance about likelihood of them entering to permanent coma. The court clearly stated that the dignity of the dying forms a large part of the right to

life under Article 21. To deprive the individual of his dignity at the end of his life is to deprive him of a meaningful existence

Thalaikoothal - the traditional practice of senicide (killing of the elderly) or involuntary euthanasia, by their own family members, observed in Tamil Nadu. Typically, a person is given an extensive oil bath early in the morning and subsequently made to drink glasses of tender coconut water which results in kidney failure, high fever, fits, and death within a day or two.³

Sallekhana is an additional vow of the Jain code of conduct. It is a religious practice to voluntarily fast to death by gradually reducing food and water intake. this is seen as a weakening of human passions and the body and another way of destroying the karma that affects rebirth through the deprivation of all physical and mental activity.

Active euthanasia, which involves administering lethal compounds to end life, is still illegal in India.

INTERNATIONAL CONTEXT

- Most countries shift full responsibility for disruptions to life therapies from the doctor to the patient.
- Legal in Luxembourg, Belgium, the Netherlands, and the United States of Washington.
- Switzerland though has banned euthanasia but allows assisted dying.
- Canada - euthanasia allowed for mentally ill patients by March 2023; however, the decision is widely criticized.

CARE OF THE PATIENT AFTER DEATH

Personal assistance must be provided once death has been established or verified, followed by the issuance of the death certificate. this should be done within four hours of the person's death. This preserves the appearance, condition and dignity of the body. It is recommended that two people personally attend to the patient. One of them should be a registered nurse or other medical professional with appropriate training. Treat the sick respectfully and preserve dignity. Check the care plan in advance, and talk to the family about personal wishes for care after death. If known, give respect to the spiritual, religious and cultural practices of the deceased.

³ "After thalaikoothal scare, 80-year-old fights back". Deccan Chronicle, 15 June 2010, last assessed on 10 June 2023.

DIGNITY AFTER DEATH

Necrophilia - Rape of the dead: Necrophilia term is derived from the combination of 2 Greek words philios meaning attraction/love and nekros meaning corpse and thus it encompasses sexual attraction to a corpse.

ORIGIN

necrophilia dates back hundreds of years in Greek mythology, the Roman period, the Middle Ages, and modern times. Though The exact date of the origins of necrophilia is not well understood or documented and therefore requires further research. Back then, historians believed that people were so soul-bound that they simply could not accept that death was a possible cause that could destroy their relationship. Thus, in the event of the death of a person eternally loved, their corpse would be preserved in order to continue the activities undertaken with the other partner prior to death. These activities did not show any effects related to the occurrence of sexual activity.

RECORDS

Funeral directors, mortuary attendants and undertakers were caught sexually abusing bodies, and people digging graves to get bodies to have sex with. the actual prevalence of necrophilia is unknown, as necrophilia is mostly covert and the victim cannot report the act.

MOTIVES FOR DOING SUCH SEXUAL CONDUCT

The most common reason for necrophilia is that the partner can't resist or reject him. However, necrophiles have historically claimed to have more than one motive.

LESS COMMON MOTIVES

- Partner is unavailable;
- The belief that sex with a living woman is a mortal sin;
- Need to feel complete control over a partner;
- hallucination, compliance with regulation;
- Perform a series of demolition actions;
- Make naughty polymorphic sexual desires;
- Requirement for unrestricted sexual activity.

INDIAN CONTEXT

India has witnessed many cases of necrophilia in the past decade, but there are no specific penal laws against it. The most notorious case was noticed in 2006 and has been dubbed the "Nithari serial murder case." Police arrested a wealthy businessman and his servant on suspecting them of murdering a 19-year-old female. After a thorough investigation, it was revealed that the two were involved in killing and doing sex with the bodies of nearly a dozen children. Tests have also found that they cut up and eat body parts after cooking.

RECENT INCIDENT- KARNATAKA- 2023⁴

The Karnataka High Court observed that **“necrophilia is a morbid fascination with death and the dead and more particularly, an erotic attraction to corpses.”** Examining the evidence, the session’s judge found that **the accused committed murder and then “raped” the dead body.** Asserted that it is “high time for the Centre to amend Section 377 IPC to include dead bodies, bring a separate penal provision to criminalize necrophilia with life imprisonment at least up to 10 years with fine.

LOOP IN CURRENT INDIAN LAW

The above incidents would have been barbaric not because of the number of victims but the nature of the crime committed. Furthermore, in the case of "crimes against the dead", IPC has very limited scope. *Navtej Singh Johar v Union of India*⁵, the Supreme Court decriminalized S. 377 for consensual sexual acts between two adults of any sexual orientation. In order to punish an individual under this article, three basic conditions are required: [i] consensual sex [ii] against the natural order [iii] with any man, woman, or animal. The general case of necrophilia satisfies only two basic requirements. One of the basic requirements, namely consensual sex, is still not recognized in the current Indian legal system. With necrophilia, there is no way to decipher whether the intercourse was intentional or unintentional. If the deceased's consent can be proven, they are certainly guilty of rape or sexual assault. The other two essential requirements of this article are fully met as it states that the relationship must be “unnatural”. The term "violation of nature" and "against the order of nature" itself is vague and imprecise in the absence of an objective definition, but the declaration of the "Victorian principle" is sexual intercourse that does not end in procreation, i.e. against Nature. Therefore, cases of necrophilia fit very well under this heading, as they do not lead to procreation. After death, the human body changes into a quasi-subject under the law, but

⁴ Rangaraju @ Vajapeyi vs State of Karnataka.

⁵ WRIT PETITION (CRIMINAL) NO. 76 OF 2016.

remains "human" and thus s.377 can be used or applied. slight correction is needed to avoid the inadequacies of the provision and to adequately assimilate the crime of necrophilia.

Finally, s.511 IPC punishes the attempted crime. R v. Cheesman⁶ also states that cases of necrophilia fall within the scope of this article. An attempt to commit any crime means an act done with the intention to commit that crime and is one in the series of acts that constitutes the actual commission of the crime. The degree of mens rea in the perpetrator in an attempt is the same as if it had been successfully committed. The rationale is that the real man commits the crime. So if the rape was committed on a corpse, the rapist would be guilty of raping the man because if the victim would be alive he would be responsible for the crime of rape.

THE DIGNITY OF THE DEAD ACCORDING TO THE CONSTITUTION OF INDIA

Although there has long been a plethora of court decisions that have upheld the dignity of the deceased by Art. 21 of the Indian Constitution. In Paramananda Kataria v UOI, ⁷ It was recognized that "Article 21 imposes on the State an obligation to protect life and extends not only to live but also to corpses." In Mujeeb v State of UP,⁸ it was repeated that according to Article 21 the word "person" conferring the right to dignified life also extends to his corpse. Additionally, in Amrutha v. Commissioner⁹, the court found that "deceased persons also have a right to privacy and their souls should not be chained, having immortal life after death."

INTERNATIONAL LEGISLATION FRAMEWORK

In 2005, United Nations Commission on Human Rights underlined "the importance of dignified handling of human remains, including their proper management of disposal as well as respect for the needs of the families". This obliges the state to enact laws to fulfill its international obligations.

United States, there are some laws that recognize and duly provide protection for the dignity of the deceased. For example, physicians must derive the consent of the deceased's next of kin before the usage a cadaver while teaching students. the Native American Graves Protection and Repatriation Act of 1990 (i) federal authorities have to return the Native American human remains to their direct descendants and culturally related Native American tribes, and (ii) provides increased protection for the burial sites of Native Americans as well as closer control over the disposal of Native American human remains. In addition, there are

⁶ [2019] WLR(D) 90.

⁷ 1989 AIR 2039, 1989 SCR (3) 997.

⁸ CRIMINAL MISC. BAIL APPLICATION No. - 55281 of 2019.

⁹ W.P.No.33762 of 2017.

a number of laws criminalizing the desecration of burial sites, and the handling of human remains - e.g., grave robbery and grave desecration are still widespread.

According to the International Association of Cemeteries, Cremations, and Burials, no cemetery is safe from vandalism and serious desecration, as many states have virtually no statutory laws against vandalism or desecration of cemeteries. However, most states have laws that specifically prohibit the illicit disturbance, disposal, or sale of human remains.

- Canada's Penal Code of 1985 makes necrophilia illegal but doesn't specifically use the term necrophilia, penetration or a gender-related word - anyone who acts indecently or indecently, or insults the corpse or its remains, commits a criminal offense and is punishable by imprisonment for up to 5 years¹⁰.
- The French Penal Code also does not use the term necrophilia or anything similar, but the simple implications for a simple understanding of Article 225-17 mean that the behavior falls within its scope and therefore constitutes a crime. The prison sentence provided for in French law is only one year (maximum two years), but the fine imposed for these acts is high (15,000-30,000 euros), at least from an Indian point of view, which calms down the amount of the sanction to be applied.

WHAT HAPPENS WHEN THE SANCTITY OF HUMAN REMAINS IS POTENTIALLY COMPROMISED OUTSIDE OF A CRIMINAL CONTEXT?

Is the current law sufficient to protect the dignity of the deceased?

One such controversy erupted in 1995 when European anatomist Gunther von Hagens created BODY WORLDS - the original displays of real human bodies. In BODY WORLDS, von Hagens collected and plastinated real human bodies in order to make them more malleable and protect them from decay. Some of the internal organs of the bodies were exposed and then put in fun and realistic poses. While supporters of the exhibition recognized its potential educational value - including the moral and ontological status of plastinates - critics argued that the exhibition failed to respect the dignity of human remains. For example, bioethicist Lawrence Burns has observed that "some aspects of exposure violate human dignity," and medical ethicist Carol Taylor has observed, "My main objection stems from the belief that human beings have an inherent dignity that extends to our body stretches." Other critics have pointed out that the body was denied proper burial and was not allowed to be displayed

¹⁰ Section 182, Criminal Code of Canada, 1892.

publicly. The exhibition toured Europe, Africa, Asia and even America, although it was only released in the United States in 2004.

COVID 19 REIGN

One may be tempted to consider letting his /her descendants take control of what happens after he /she dies.

Can human remains/corpses of people infected with Covid-19 be unceremoniously and rudely disposed of by the government without even a symbol of respect for the remains?

Treatment of the human body, whether by cremation or burial, whether the person has died of Covid-19, should be done with respect and dignity. Relatives of the deceased suffering from Covid-19 should be able to take a last look at the deceased's remains and pay their last respects to the soul. the whole world has faced the challenges of an unforeseen pandemic, coronavirus ie., COVID-19.

INTERNATIONAL GUIDELINES

The violations of the rights of the sick and corpses set out above are guaranteed by various instruments of international law.

- A resolution of the United Nations Commission on Human Rights specifically emphasized the importance of the dignified handling of human remains, including their proper disposal, and respect for the concerns of their families.
- The 1948 Universal Declaration of Human Rights states that everyone has the right to a standard of living for the well-being of him and his family, including medical care during sickness and disability.
- At a similar level, there are several international guidelines: General COVID-19 guidelines for treating the dead –
- ICRC Forensic Service - Part 1 of the document contains recommendations for handling infected carcasses; provides guidance for practitioners, and decision-makers in global pandemic response when handling the remains of an infected person.
- The WHO Interim Guidelines were developed specifically for those caring for the cadavers of patients with confirmed or suspected coronavirus. It therefore affects managers of healthcare facilities and morgues, religious leaders and public health authorities.

INDIAN CONTEXT

There is no longer any doubt that the right to life enshrined under the fundamental right of Article 21 of the Indian Constitution includes the right to live with dignity. A life of dignity encompasses a person's dignity during his life, also his dignity after death. The right to dignity and fair treatment belongs not only to a living person but also to their remains after death. This pandemic has resulted in the violation of various basic human rights protected by the Constitution of India such as the right to

- work,
- food,
- privacy,
- freedom of speech and expression,
- health,
- free movement, etc.

The fundamental human rights most affected are the rights to health and life, which include the right to die with dignity.

West Bengal Epidemic COVID-19 Ordinance 2020

Maharashtra COVID-19 2020,

Delhi Epidemic COVID-19 Ordinance 2020,

Odisha COVID-19 Ordinance 2020,

Uttar Pradesh Epidemic COVID-19 Ordinance 2020 , etc.

- In addition to these state laws, there are two national laws that apply to the COVID-19 pandemic. The Epidemics of Diseases Act 1897.
- The 2019 National Disaster Management Plan addresses disasters and health threats. It is a comprehensive legal framework in which efforts to manage COVID-19 repercussions are led by governments at the Union and state levels.
- The Department of Health and Family Welfare guidelines dealing specifically with the management of cadavers.

Pt. Parmanand Katara, Counsel v Union of India ¹¹, the Supreme Court ruled that the right to dignity is accorded to a living person and his body after death. the petitioner complained that

¹¹ (1995) 3 SCC 248.

the method of carrying out the death penalty by hanging, based on the Punjab Prison Manual, which involves the holding of the corpse of a suspended prisoner for half an hour after hanging was inhumane and contrary to Article 21 of the Indian Constitution. Although the Supreme Court dismissed the challenge to the hanging method of execution, it agreed with the applicant's contention that hanging the body for half an hour after death violated his right to dignity.

In the *Vikash Chandra vs. Indian Union*¹² filed a Petition regarding the improper disposal of corpses by Patna Medical College & Hospital. The Patna High Court ruled that hospital staff and government officials are required to lawfully dispose of uncollected and unidentified bodies with the utmost respect for the deceased and that the last rites, if verifiable, must be of the deceased's known beliefs.

*Ashray Adhikar Abhiyan Vs Union of India*¹³, members of the applicant organization sent a letter to the then Chief Justice of India, which was treated as a written application, complaining that the homeless were not currently treated for receiving a dignified burial, violating the homeless deceased's right of to a dignified burial. It was repeated that the body of the homeless died on the streets had the right to proper burial according to the religious practices of the community to which he belonged. Traditions and cultural aspects are inherent in the final ritual of the corpse. The right to dignified burial is also found in art. 25 of the Constitution of India which guarantees freedom of conscience and practice, exercise and propagate religion subject to public order, morals and health and other fundamental rights as defined in Part III of the Constitution of India.

CONCLUSION

“You matter because you are you, and you matter to the end of your life. We will do all we can not only to help you die peacefully but also to live until you die.”

- Dame Cicely Saunders

that is, the human body must have a law whether it is alive or dead. Analyzing various judgments and laws, it is safe to say that the right to live with dignity extends in the afterlife too, including a dignified death procedure that in turn essentially includes the dignified disposal of the remains of the deceased. The remains are to be treated with care, respect and disposed of by burial, depending on the religion professed by the deceased, if this can be

¹² 2008 SCC OnLine Pat 905 = (2008) 2 PLJR 127.

¹³ (2002) 2 SCC 27.

ascertained. Necrophilia is a little-known phenomenon nowadays, almost all countries have laws against necrophilia; Some are powerful and some are weak or cunning. India is at the bottom of the latter category of countries, as its legislation in this regard is worse and less clear than that of other countries. This fragility and uncertainty have contributed to the deliberate questioning of Articles 297 and 377 of IPC as to whether or not they make necrophilia a crime. With the growing prevalence of necrophilia, it is time for Parliament to clarify its position by taking action to criminalize it by amending the IPC. It doesn't matter if the deceased was infected with Covid-19. Of course, funeral directors must take all necessary safety and precautionary measures.

