

# The Rights Of The Dead And Their Rights To Have Dignity In Their Last Rites: A Study In India During The Covid-19 Pandemic

Harikumar Pallathadka

Manipur International University, Imphal, Manipur, India

harikumar@miu.edu.in

## **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 and the Indian Courts wherein it was stated that the rights of the dead to a decent funeral are 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.*

## **1. 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 was difficult to control because it spreads so quickly through respiratory droplets emitted when a person with the virus coughs, sneezes, or talks closely. 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. The standard 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 24<sup>th</sup> March for the next 21 days, which affected the entire 1.3 billion population of the country.<sup>1</sup> Migrant worker and poor sections of the country could not 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.<sup>2</sup> 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 a 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. Many tragic incidents 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 failing to pay the treatment fee were reported. The right to decent and dignified burial is established as an essential element of the right to life. Most importantly, the persons cannot be deprived of such rights even in an emergency situation like that of the Covid-19 pandemic. In this paper, the authors analyse the right to die and the right to last rites concerning the current situation.

## **2. RIGHT TO A DECENT BURIAL**

*“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.”<sup>3</sup> - Oscar Wilde*

Death is often associated with finally being at peace. It is one of the fundamental human rights. As the person is entitled to live a life with dignity, he is entitled to die with dignity and be buried or cremated according to his customs. The living benefit from this privilege by having the assurance that their bodies will be treated with respect after death. It is a way of respecting the life 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 the Cremation of bodies and 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*, the ritual washing of dead bodies, *kafan*, or shrouding the body with pieces of cloth and finally *salat al-Janazah*, a funeral prayer.<sup>4</sup> They believe in the burial of the bodies. In Christian communities, the Church believes in the burial of the bodies preceded by an elaborate funeral service to establish sympathy between the pastor and the grieving survivors.

## **3. GUIDELINES CONCERNING BURIAL/CREMATION PRACTICES**

In the wake of the global COVID-19 pandemic, the guidelines issued by 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**

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”<sup>5</sup>. 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) COVID-19 victims can be buried or cremated according to their religious beliefs and traditions.
- 2) Once the body is ready for burial, family members and friends may view it.
- 3) In a community environment, a minimal number of individuals should be involved in the preparation of the deceased (e.g., cleaning, washing, or clothing the body, tidying hair, shaving or trimming nails).
- 4) The person preparing the body (family or religious member) should not kiss the deceased.
- 5) While burials should be done as soon as feasible in accordance with local customs, funeral rites that do not include a burial should be postponed as much as feasible until the epidemic is over. If a ceremony is held, the number of attendees should be kept to a minimum.

*b) MOHFW Guidelines*

The Ministry of Health & Family Welfare, GOI issued guidelines titled “COVID-19: Guidelines on Dead Body Management”<sup>6</sup> 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 employees at the crematorium/burial ground should be informed that COVID-19 poses no additional risk.
- 2) Relatives may be able to see the dead body for the last time by just unzipping the face end of the wrapped bag of the dead body (as long as the personnel follow customary safeguards).
- 3) Religious ceremonies that do not necessitate touching the body, such as reading from religious scriptures, sprinkling holy water, and any other last rites, may be permitted.
- 4) Bathing, kissing, embracing, and other forms of contact with the deceased should be prohibited.
- 5) The ash is safe to handle and can be used to complete the last rites.

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

According to a person’s traditions and culture, the right to the disposal of bodies has been found to be a human right and even a fundamental right in many countries. It is an essential 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 combats 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”<sup>7</sup>
- 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.”<sup>8</sup>
- 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.”<sup>9</sup> Since the 1882 enactment of the Cemeteries Act, local governments have been required to provide cemeteries. The Burial and Cremation Act of 1964 also makes it illegal for local governments and cremation authorities to refuse to bury or cremate the remains of "any poor person" or "any individual from any hospital, prison, or other public institution, on the request of the person in charge of that institution." And also obligates them to do it free of cost or without any cost to the party<sup>10</sup>

## II. Right to A Decent Burial In India

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

### *Article 21 of the Indian Constitution:*

Article 21 of the Constitution guarantees every person, citizen or immigrant, the right to life and personal liberty, as well as detailed guidelines for how these rights should be exercised. “No one shall be deprived of his life or personal liberty except in accordance with legal procedure,” says Article 21.<sup>11</sup>

This right has been dubbed the "heart of fundamental rights" by the Hon'ble Supreme Court of India. This is the foundational right upon which all other rights are built. All other essential rights would be useless if the right to life and liberty were not guaranteed. It contains various rights, such as the right to a livelihood, the right to privacy, and the right to be free of handcuffs, among others. The key elements of the Right to Life are the bare necessities and needs that are necessary for a person's survival.

The Honorable Supreme Court in *Kharak Singh*<sup>12</sup> 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 the 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.*<sup>13</sup> held that “The right to dignity is applicable not just to a living person, but also to his body when he dies”.

A Division Bench of the Allahabad High Court held in the case of *Mujeeb Bhai v. the State of U.P.*<sup>14</sup> that the term "person" in Article 21 of the Constitution includes a dead person in a limited sense, and that the right to live with dignity should be extended so that his dead body is treated with the respect that he would have deserved if he had been alive, according to his tradition, culture, faith and the law. Finally, in *Common Cause v. Union of India*<sup>15</sup>, the Supreme Court confirmed that the "right to die with dignity" is a component of the "Right to Life" under Article 21 of the Indian Constitution.

### *Article 25 of the Indian Constitution:*

The Hon'ble Supreme Court in *Ashray Adhikar Abhiyan v. Union of India & Ors.*<sup>16</sup> 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 the Right to Decent Burial has been made a part of fundamental rights, and the dead bodies are to be respected and disposed of with the dignity that they deserve.

## 4. INDIAN SITUATION DURING THE COVID-19 PANDEMIC

The Guidelines issues at the national and international level were put to the 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 were shaken as the bodies were not disposed of according to the customs; there was a great hue and cry regarding the spread of infection by the dead bodies: in a disturbing situation in Telangana, the deceased's body was transported in an auto-rickshaw without even waiting for an ambulance.<sup>17</sup>

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 COVID infected patients to dispose of; no ceremonies could be conducted as there was a lack of resources and preparedness.

The National Human Rights Commission (NHRC) asked the Puducherry District Magistrate for a report on the alleged improper burial of COVID-19 victims.<sup>18</sup> In his complaint, G Sugumaran, Secretary of the Federation for People's Rights, stated that the body of one person named as Jyothimuthu, who died of complication due to COVID-19, was just “thrown” into the pit without any respect or dignity which it deserves by health and municipality personnel that's too in the presence of the Commissioner of Villianur Commune Panchayat and concerned Tahsildar, without following the norms on burying remains of COVID victims, thereby dishonoring the deceased's body.<sup>19</sup>

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

Fear of infection revealed another ugly aspect of society, when family members refused to accept the body of a deceased person who had died with COVID-19 illness. Four people in Palakkad died of Covid-19 and were cremated in a public crematorium in Thrissur when their families refused to accept their mortal remains after learning of their death.<sup>20</sup> The medical college administrators held off on disposing of the body for over two months, hoping that they might change their minds.<sup>21</sup> Jamshedpur<sup>22</sup>, Lucknow<sup>23</sup>, and other Indian cities have experienced similar events.

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

(PMC) released guidelines outlining the cremation of COVID-19 patients' bodies, regardless of their faith, if family members decline to claim or accept ownership of the body.<sup>25</sup>

## 5. RECENT JUDICIAL PRONOUNCEMENTS

The Hon'ble High Court of Madras in *Suo Motto vs The State of Tamilnadu*<sup>26</sup> 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 should be liable under Section 297 of the Indian Penal Code<sup>27</sup>.

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

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

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

*“Right to a decent burial, commensurate with the 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 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 unique covers to contain any spread, and 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.*<sup>30</sup> 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 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 the 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.”*

## 6. 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 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 the Indian Courts have beautifully integrated into the human rights jurisprudence over 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.”*

## ENDNOTES

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

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

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

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

<sup>5</sup> [https://apps.who.int/iris/bitstream/handle/10665/331538/WHO-COVID-19-IPC\\_DBMgmt-2020.1-eng.pdf](https://apps.who.int/iris/bitstream/handle/10665/331538/WHO-COVID-19-IPC_DBMgmt-2020.1-eng.pdf).

<sup>6</sup> [https://www.mohfw.gov.in/pdf/1584423700568\\_COVID19GuidelinesonDeadbodymanagement.pdf](https://www.mohfw.gov.in/pdf/1584423700568_COVID19GuidelinesonDeadbodymanagement.pdf).

<sup>7</sup> Geneva Convention, 1949.

<sup>8</sup> Australia's Defense force manual, 1994.

<sup>9</sup> Health Act 1956, section 86.

<sup>10</sup> Burial and Cremation Act 1964, Section 49.

<sup>11</sup> Constitution of India, 1950, Article 21.

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

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

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

<sup>15</sup> WRIT PETITION (CIVIL) NO. 215 OF 2005.

<sup>16</sup> (2002) 2 SCC 27.

<sup>17</sup> 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/>.

<sup>18</sup> 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>.

<sup>19</sup> Id.

<sup>20</sup> Relatives of Covid victims refuse to accept mortal remains, the New Indian Express, 02 October 2020, available:

<https://www.newindianexpress.com/states/kerala/2020/oct/02/relatives-of-covid-victims-refuse-to-accept-mortal-remains-2204618.html>.

<sup>21</sup> Id.

<sup>22</sup> '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>.

<sup>23</sup> '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](http://timesofindia.indiatimes.com/articleshow/76598491.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst).

<sup>24</sup> '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>.

<sup>25</sup> '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/>.

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

<sup>27</sup> Section 297 IPC - Trespassing on burial places.

<sup>28</sup> 2020 SCC OnLine All 1120.

<sup>29</sup> 2020 SCC OnLine Bom 662.

<sup>30</sup> 2020 SCC OnLine Cal 1664.