

# RIGHTS OF DEAD: AN ANALYSIS

*Posted on August 6, 2021*



**Category:** [Opinion Based Blog](#)



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## **Introduction**

Law is an instrument of the society which incorporates rules of conduct, action or behaviour of a person, created and enforced by the State and therefore the main object of law is to bring peace and stability within the society. Most of the laws are for the living persons or people however as we look upon closely we are able to notice that there are laws for the dead. Decent entombment of dead bodies and wrongdoings against the dead body are the two primary places where these laws are made. There's a contract in the Geneva Convention 1949, that expresses that, "To the extent the tactical thought permit, such gathering to the contention will work with the means taken to secure the killed". In India the Constitution manages the option to have a fair entombment. Additionally, the Indian reformatory code manages some of the offenses related with entombment of dead bodies.

## **Concept Of A Person**

Interestingly, the word person has been derived from the Latin word persona, which implies the mask worn by a person. till the sixtieth century, this term was accustomed conferring the role compete by a person on stage. It had been solely for some time that this term began to be utilized in terms of someone having rights and duties.

It must be noted here, that authors normally limit the word character to people. Be that as it may, in law, the undertones are totally unique, symbols, organization, divine beings, and so forth all are given the situation with juristic people, and in this manner have rights as some other person would have.

This word has at present gained various implications. As indicated by the eminent legal scholar Litelmana, the embodiment of a legitimate character is its "will", the bodiliness of man being a totally unique and irrelevant quality.

As per Salmond, an individual might be anybody able in law to get rights and obligations. Essentially, Hindu law regards icons as character. Thus, this is frequently apparent that character and humankind aren't equivalent words.

People in law have two classifications, common and legitimate. Regular people are individuals, lawful people, then again, maybe known as counterfeit people. they're nonexistent people who have rights and obligations in law and in whom law vests character through fiction.<sup>[1]</sup>

## **Person According To Indian Laws**

Section 3(42) of the general Clauses Act defines who is a person. According to this definition, it includes a Company or an association of people regardless of the very fact that it's incorporated or not. Henceforth, an individual as per this definition would have rights and duties and would be treated as a legal entity underneath the law. The Indian penal code additionally defines an individual underneath Section 11, and it includes a company, an association of a group of people regardless of the fact that they're incorporated or not.

### **Can dead bodies be considered legal persons?**

Salmond was of the view that the character of an individual starts from his introduction to the world and closes along with his passing. it's previously mentioned that they stop to have any rights as the entirety of their obligations and interests stop with their demise.

## **Provisions For The Rights Of The Dead In India**

In India, some rights are provided by statutes just like the Indian penal code to the bodies of people when they die. These are enumerated as under:

### **[A] Under The Constitution**

The constitution is the essential lawful instrument of a country and it clarifies the basic or fundamental rights and obligations of the people of that country. The conservation of life and individual freedom that is obtained under Article 21 of the Constitution has been perceived by the Supreme Court on a few occasions. There are a ton of rights that are encased in Article 21 like the privilege to security, directly against isolation, right to legitimate guide, right to fast preliminary and so forth The Judiciary in a few cases have determined and deciphered that option to have fair internment is furthermore encased in Article 21 of the Constitution.

Right to human dignity isn't restricted to living individuals however is obtainable even after death also. This view was recognized by the Apex Court for the very first time in an exceedingly public interest litigation filed by an Advocate . Later in several cases the court held that Right to human dignity is additionally a right underneath Article 21 of the

Constitution. In *Ashray Adhikar Abhiyan v. Union of Republic of India*, the court ruled that it's the duty of the State to possess an honest burial to the decedent as per their theological virtue.<sup>[2]</sup>

## **[B] Under The Indian Penal Code**

### **Section 297 of the Indian penal code**

As indicated by Section 297 of the Indian Penal code, the disrespectfulness of dead bodies is rigorously disallowed. On the off chance that any person with the goal or knowledge of injuring or offending the religion of any individual, submits trespass in anyplace made for burial service ceremonies or found as a store for the remaining parts of the dead or treats a dead body with shock or makes unsettling influence people collected to hold out stately customs of the dead, the person will be rebuked for a term stretching out to one year or fine or both.<sup>[3]</sup>

This section deals specifically with the people attempting to trespass places discovered for the conductivity of funeral ceremonies or with individuals. it's pertinent to notice that the one who should cremate or bury the dead additionally has the right to take action against the one who tries to damage the body in any means.

### **Property rights**

Ordinarily, a corpse isn't considered property within the eyes of the law. However, for burial, once someone dies, his body becomes quasi- property in law. Its rights are then possessed by the spouse equivalent or next of kin. The property, however, is taken into account to be a part of the ground when burial.

### **Right to a decent burial**

There was a time, shortly past, once as per law, it had been legal to sell our organs. Although, currently it's become legal to give your organs if they're within the interests of humanity. A corpse, however, is not any man's property below the law. Therefore, it can not be done away with any instrument or accord.

In India, the rights of the dead are attained from Article 21 of the Constitution of India. This was followed in the landmark case of *Pt. Parmanand Katara Vs. Union of India*. During this case, public interest procedures were documented by an attorney, testing the technique for execution. The court acknowledged the petitioner's second dispute that there was no need to compulsorily suspend the body of the dead for half an hour. The sole obligatory provision is that a medical officer needs to make sure that the person is dead. Therefore, during this case, the Supreme Court Of India recognized that Right to life, to

honest treatment and dignity, extends not solely to a living person however conjointly to their bodies when death.<sup>[4]</sup>

Another important case was that of *S.Sethu Raja v. The Chief Secretary*. In this, looking forward to the previous judgment, it has been held that, right to human dignity is available to persons even after their death.

In another case of *Ashray Adhikar Abhiyan Vs. Union of India*, which manages the privileges of destitute people for a fair entombment, an indistinguishable decision was given. It had been held by the apex court that people reserve an option to a decent entombment, predictable with the profound religion that the individual had a place before death.<sup>[5]</sup>

Therefore, it is safely over that a body has a right to an honest burial in India. Also, it's within the best interests of each deceased and therefore the society that the body is buried or cremated as presently as attainable.

Coming to the question of who has the duty or the right to bury the dead. This can be intrinsically not explained in any Indian law. However, it's accepted that the right to bury is with the partner or the next in kin. In law, duty has conjointly been obligatory on the person below whose roof the person died.

### **Right to disinterment**

When a body is covered on public property, it turns into the property of and stays in the authority of the law. These dead bodies aren't to be vexed and are to remain in harmony. The court is dispatched to defend these dead bodies against any disinterment or aggravation.

Law doesn't support any sort of disinterment and hence secures the holiness of the covered dead bodies, inside the soul of the property. at the point when a body is covered, it's to not be upset, except if the court requests to do this underneath outstanding conditions.

## **Conclusion**

The law has not nevertheless outlined who may be a deceased person, however, it recognized some rights to a deceased person as that of a living person. The rights and lawful cures accessible for an expired as previously mentioned are underneath Article 21 of the Constitution and Sections 297, 404, 499, and 503 of IPC. . The state is accountable or responsible to deal with and take away the body that gets perilous for the security of the other living being for its sufficient removal. Additionally, an unwanted dead body must

be asserted by the state for the aim of investigation of the crime if it had been committed on the individual, who didn't die naturally or for scientific investigation or for research and medical education.<sup>[6]</sup>

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## References

<sup>[1]</sup> Diva Rai, All about legal rights of the dead, IP Leaders(Aug. 17, 2020), <https://blog.ipleaders.in/all-about-the-legal-rights-of-the-dead/>.

<sup>[2]</sup> Ajin Raj, Rights of the Dead under the Law and Legal remedies, Latest Laws (Jul. 10, 2020), <https://www.latestlaws.com/articles/rights-of-the-dead-under-the-law-and-legal-remedies/>.

<sup>[3]</sup> Indian Panel Code, § 297.

<sup>[4]</sup> Parmanand Katara v. Union of India & Ors, 1989 AIR 2039, 1989 SCR (3) 997.

<sup>[5]</sup> Ashray Adhikar Abhiyan v. Union of India, 2002 WCP 143 of 2001.

<sup>[6]</sup> Indian Panel Code, § 503, 506.

