

## The Right to Healthy Environment and to Revisit Dead Body Management in India: An Analysis during Covid-19

Life does not include just water, air or living or breathing, it also includes to live with dignity and to cremate or buried with dignity. Article 21 of the Constitution of India is wider enough to add the right to life and dignified burial. A person's right to life includes "the right of the dead body to be treated with the same respect that he would have deserved if he was alive. It is imperative for the state to treat the corpse with dignity<sup>1</sup>."

Before the covid-19 no one had ever thought of the management of dead bodies in India, as there was no such crisis in managing the dead bodies<sup>2</sup>. However, in May 12,2021 for the first time the attention was provided by the newspapers in India which mentioned about the floating of dead bodies in the river Ganga<sup>3</sup>. The bodies were found floating, half burned, people did not get the time and place to cremate the bodies<sup>4</sup>. Moreover, the rising of pollution due to the cremation in the near housing societies of Maharashtra showed us much concern to think and revisit the Dead body management in India.

In my paper I have explained the issues which are attached to dead body management in India These are basically custom, religion, pollution of air and water pollution etc. The dead body management need to be taken seriously as the dead person has the human rights which stays with him/her from cradle to grave. What measures can be adapted in order to strengthen the dead body management during the pandemic and situations alike in future. How the government, Interfaith

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<sup>1</sup> NHRC Advisory for Upholding Dignity & Protecting the Rights of Dead.pdf

<sup>2</sup> Opinion,The truth about immersion and burial of bodies near Ganga in UP, India Tv News Desk, New Delhi, May 27, 2021, available at Opinion | The truth about immersion and burial of bodies near Ganga in UP | India News – India TV (indiatvnews.com),

<sup>3</sup> Amrita Nayak Dutta, Counting burning, buried, floating bodies: How Dainik Bhaskar led national coverage on Covid, June 1, 2021, available at theprint.in,)

<sup>4</sup> Vatsala Gaur, Covid-19 or not, floating body in river a custom in many villages, May 16, 2021, available at The Economic Times (indiatimes.com)

dialogue and civil societies and International Laws can play a vital role in order to protect the right of the dead to protect the dignity and dead body management in India.

### **Custom to Pollute the water**

Custom is a part and parcel of Indians. The same is said to be a tradition of a family or community in the village Unnao, Fathehpur, Raebareli etc.in Uttar Pradesh, to dump the bodies in holy river Ganga. These are usually to be done by the locals, sometimes due to the high cost of the wood, some even go for sand burial without knowing that it is against the dignity of the dead. It happens all the time. However, during covid as the number of deaths increased and number of floating dead bodies in ganga were also increased. However, it did not happen for the first time but reported first time. It is also a culture and custom of these people who usually go for the easy and economical dead body management without thinking that it is a disrespect to the dead body and also a violation of human rights. The District Magistrate of Ghazipur explained, “I had come across a family who would not cremate a body as the death took place due to snake bite and cremating such body is against their custom.” Moreover, the The Ganga ghat at Baksar in Unnao, Uttar Pradesh, has seen an unprecedented rush as dead bodies await their turn to be cremated, or buried. As the poor cannot afford the Rs 15,000 required for a cremation, they are choosing to bury their dead for Rs 700<sup>5</sup>.

The need is to educate the masses and let them know how the dignity of the dead<sup>6</sup> can be maintained. It is a disrespect to a body to throw in the river. It may cause various problems to the people and cattle who use the water for their daily needs.

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<sup>5</sup> Vishwa Mohan, Bodies in Ganga grave breach of Covid protocol, Times of India, May 13, 2021, available at [http://timesofindia.indiatimes.com/articleshow/82593663.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/82593663.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

<sup>6</sup> Graves by the Ganga: a surge of COVID deaths and moneyless families burying, not cremating their kin, Hindustan Times, available at May 13, 2021, June 19, 2022, available at, Bodies of Covid-19 victims among those dumped in Ganga river: Govt | Latest News India - Hindustan Times

The National Human Rights commission also took cognizance for the same issue and observed that “public authorities have failed to take concentric efforts in educating the masses and checking the immersion of half-burnt or unburnt dead bodies into the river Ganga. The practice of disposal of dead bodies in “our sacred river Ganga” is clearly in violation of guidelines of the National Mission for Clean Ganga project of Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation, the commission said<sup>7</sup>. It reminded the authorities that the River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016 cast a duty that “no person shall do any act or carry on any project or process or activity which, notwithstanding whether such act has been mentioned in this Order or not, has the effect of causing pollution in the River Ganga”.

In the year of 2016, the National Green Tribunal (NGT) had imposed a fine of 5 crores as interim environment compensation on Sri Sri Ravi Shankar’s Art of Living organization for damaging the Yamuna’s floodplains<sup>8</sup>. The Art of Living organization was made liable for the event’s impact on environment. The over ambitious NGT did not seem much cautious here when the dead bodies were floating and since then no regulations and order has been passed by them till today.

Moreover, the local residents of Unnao village were worried and wished to know what would happen to the village if these bodies are of covid patient. Then the government need to interfere and must play a part in this concern that it hardly matters if the bodies are of covid patients or of non -covid patients. In both the cases the dignity of the dead is compromised. NHRC

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<sup>7</sup> NHRC issues notices to the Centre and Uttar Pradesh and Bihar Governments over the complaint about several dead bodies found floating in the Ganga River | National Human Rights Commission India, National Human Rights Commission In India, available at NHRC issues notices to the Centre and Uttar Pradesh and Bihar Governments over the complaint about several dead bodies found floating in the Ganga River | National Human Rights Commission India.

<sup>8</sup> Gaurav Vivek Bhatnagar, National Green Tribunal Holds Art of Living Responsible for Damage to Yamuna Floodplains, The Wire, December 7, 2017, available at National Green Tribunal Holds Art of Living Responsible for Damage to Yamuna Floodplains (thewire.in) (thewire.in)

mentioned in its recommendation “These incidents are shameful to the society as a whole as that amounts the violation of human rights of the dead”.

UN Commission on Human Rights in a Resolution adopted in 2005, underlined the importance of dignified handling of human remains, including their proper management and disposal as well as of respect for the needs of families<sup>9</sup>. Think of those people and animals who are dependent on the water of River Ganga for daily activities, in those areas will they not get affected?

## **Air Pollution**

Another incident during covid happened in Maharashtra, the problem of air pollution arose due to the increase in number of cremations because of covid-19 deaths. The plea was filed by six housing societies regarding the rise in air pollution due to increase in number of cremations during covid-19<sup>10</sup>. It means that the need is to find out the more scientific ways or devices at crematoriums to handle the situation of pollution. Justice Amjad Sayyad and G S Kulkarni, Judges at Bombay High Court directed the “Maharashtra government and the state pollution control board to address the issue of rising air pollution owing to increase in instances of cremations following deaths due to the COVID-19 pandemic<sup>11</sup>.”

The need is to find out the ways to arrest the toxic emissions from crematoriums. The air pollution and the environment protection must also be cared for in future not in the case of the pandemic but otherwise also. The need is to shift to new ideas, technology and ways in order to provide the dignity to the dead person. The dead person should not be kept waiting as the crematories don't have a space for cremation or should not just throw in the river or cremate in sand. Instead of mass

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<sup>9</sup> V. Venkatesan, By Issuing Guidelines to Protect the Rights of the Dead, Has NHRC Rediscovered Its Potential?, May 16, 2021, available at [By Issuing Guidelines to Protect the Rights of the Dead, Has NHRC Rediscovered Its Potential? \(thewire.in\)](#) (thewire.in)

<sup>10</sup> COVID-19: HC asks Maharashtra to check rising air pollution due to increase in cremations, The New Indian Express, May 17, 2021, available at [COVID-19: HC asks Maharashtra government to check rising air pollution due to increase in cremations - The Economic Times \(indiatimes.com\)](#)

<sup>11</sup> COVID-19: HC asks Maharashtra government to check rising air pollution due to increase in cremations, The Economic Times, May 27, 2021, available at, [COVID-19: HC asks Maharashtra government to check rising air pollution due to increase in cremations - The Economic Times \(indiatimes.com\)](#) (indiatimes.com)

burial the need is to find out the different ways to handle the situation sensitively with the new technology. The use of electric crematoriums may be encouraged in order to avoid the health hazards emerging from the emission of smoke from burning pyres in large numbers.

During Covid 19 the dead bodies were delayed in cremations and people were having no alternative ways to deal with the dead bodies management. So, the need is to find out the ways in urgent basis to avoid undue delays in cremations.

### **International covenants on Accurate Identification**

The dead body must be accurately identified in case the family members cannot do the cremation. The piling of dead bodies should not be allowed as it is against the human rights of the dead. Accurate identification of the dead body must be aimed by using different criteria for identification and the state authorities must ensure proper handling of the information about the dead and missing persons in disasters. The international covenants and laws that deal specifically with the dignity of the dead. They are:

“Article 16 (II paragraph) of Geneva Convention 1949 IV provides “As far as military consideration allows, each party to the conflict shall facilitate the steps taken to protect the killed against ill treatments”.

Article 3 (a) of the 1990 Cairo declaration on Human Rights in Islam provides “In the event of the use of force and in case of armed conflict- it is prohibited to mutilate dead bodies”.

UN Commission on Human Rights in a Resolution adopted in 2005, underlined the importance of dignified handling of human remains, including their proper management and disposal as well as of respect for the needs of families.

The UN’s Inter Agency Standing Committee’s Operational Guidelines on Human Rights and Natural Disasters recommend that appropriate measures should be taken to facilitate the return of remains to the next of kin. Measures should allow for the possibility of recovery of human remains for future identification and reburial if required.; International humanitarian law provides that

States should ensure that ‘graves are respected, properly maintained, and marked in such a way that they can always be recognized<sup>12</sup>.’”

## **National Laws**

Under the national laws of India in the Indian Penal Code, 1860, various provisions are mentioned in order to protect the right and dignity of a deceased. It has given the rights to family members to file a case under section 503 of the IPC, if someone harms the reputation of the deceased. These laws under the Indian penal code are as under:

*Under the section 297 of the Indian Penal code also deals with the rights of the dead person. It says that “the right of the deceased person includes the right against trespass of burial sites, places of funeral rites, etc<sup>13</sup>.”*

*Section 404 of the Indian Penal Code also deals with the “punishment for dishonest misappropriation of property of a deceased person at the time of his death<sup>14</sup>”.*

*Section 499 of the Indian Penal Code explains that it is “an offence to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or near relative<sup>15</sup>”.*

*Section 503 of the Indian Penal Code also “brings a threat to injure the reputation of any deceased person in whom the person threatened is interested, within the scope of the offence of criminal intimidation<sup>16</sup>”.*

## **Interfaith Dialogue and Dead Body Management**

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<sup>12</sup> Article 130(1) of the fourth Geneva Convention

<sup>13</sup> Section 297 of Indian Penal Code, 1860

<sup>14</sup> Section 404 of the Indian Penal Code, 1860

<sup>15</sup> Section 499 of Indian Penal Code, 1860

<sup>16</sup> Section 503 of the Indian Penal Code, 1860

During covid-19 when the close and physical contact was not possible, the faith had helped the world to adapt the less rigid method to bid goodbye to the dead. These changes affect the way people cope with the death of a loved one.

The world has witnessed the time during covid-19 when the last rites and rituals of the dead were compromised. The near and dear ones were not able to see the face, touch them, and bid them farewell. These were the tough times for the family as the rituals were not fulfilled which were used to be considered as important for both the dead and the remaining relatives. The dead body management has been still fulfilled in India with proper guidance and care with the support of interfaith religious dialogue with the public. The rituals were attended online by the relatives. The dead body management need to be more strengthen as the Human Rights of a person are inalienable and they need to be protected from cradle to grave.

In case of a death of a person the religious rites have to be done in a proper way. However, the pandemic has also created a crisis for not only health but for faith as well. Interfaith dialogue or Religion can play a better role to educate and sensitize people about the relaxing the rituals and rites of the dead in case of pandemic or other situations. As in every religion, the dialogue may be made between the priest, or religious guru to take lead and make people understand to follow the guidelines of the government. As no religion talks about the rigid performance of rituals. In Hinduism, Buddhism, Sikhism and Islam, the interfaith dialogue can go a long way to make people aware about the situation. For examples include reading from religious scriptures, sprinkling holy water, etc., cremation instead of burial etc. are some examples to make people calm and aware about the situation. As WHO (world Health Organization) does not prohibit the burial for those who died due to covid-19 still in order to avoid the transmission cremation is a safer way.

## **Conclusion**

The courts in India have recognized the human rights of the dead through judicial pronouncements. They have appreciated the concept of dead body management from time to time; however, much is left as the courts had imposed a duty on the state to descent burial or cremation of even the homeless in the case of Ashray Adhikar Abhiyan v. Union of India.

The Article 21 of the Constitution of India is wider enough to include the dignity of the dead and as well.

It is important to figure out and find the best possible ways for the dead body management to protect the dignity of the deceased. As in the case of *Parmanand Kataria v. Union of India*, 1989, the court appreciated the concept of Right to Life under Article 21 must extend to dead also.

Again, in the case of *Ashray Adhikar Abhiyan v. Union of India*, the court expressed the rights of dead and dignity of the dead must include the decent burial of even the homeless deceased and the religious rites and customs of these people must be considered while cremation.

In *P. Rathinam v. Union of India*, emphasized that “the right to life means a meaningful life and not merely animal existence. Further, this right to dignity was also expanded to a dead person.”

The need is to strengthen the dead body management in India in order to protect environment. The need is to protect the dignity of a dead at the same time. The need is to also understand that the last rites are flexible and already adapted to minimize contact with the dead body. New technologies must be appreciated for the dead body management. Interfaith dialogues with government are necessary. The guidance must be provided to the health care workers so that they must handle the body carefully. Safety of the frontline workers must also be ensured while pandemic and otherwise. The dead person’s dignity and the living person’s dignity must be respected at par. Even now, when the impact of pandemic has been reduced still the usual burial has been done by the people as per their custom. However, the number is not as much as it happened during the pandemic. Still the sand burial and the bodies can still be seen but for the people of unnao, it is not a strange thing. But for us, it is a necessity to educate the people about the dead body management so that dignity of the dead may be preserved and the environment pollution may be curbed. It is also emphasized that a policy on dead body management must be made by the Government of India to prevent such issues in future.

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