

DOES DIGNITY DIE? A CONSTITUTIONAL INQUIRY INTO POSTHUMOUS RIGHTS UNDER ARTICLE 21 OF THE INDIAN CONSTITUTION

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Abstract:

The thinking that has dominated debates about human rights in the mind of the constitution has been the one that sees rights exercised by living individuals who can claim and defend their rights in court. But contemporary constitutional discourses are increasingly recognizing that there are interests or rights that remain in existence even after the physical death of its holders. These concepts, like dignity of the deceased, posthumous reputation, posthumous privacy, posthumous image, and digital legacy have forced courts the world over to reconsider the connection of death and constitutional rights. In India, in the past, the Constitution under Article 21 provided only a limited protection against deprivation of life and personal liberty but later it has come to be used as a broad concept of human dignity. In judicial interpretation, the meaning of dignity has evolved from simply surviving to involving privacy, autonomy, reputation, and respectful treatment. Consequently, courts have begun to recognize that the concepts of fundamental principles are not about "once a person is dead, it is dead. This paper discusses the possibility of dignity beyond death and the possibility of constitutional protection for the deceased. The paper suggests that the constitutional value of dignity remains to impose obligations on the state and society as there is an emerging challenge in the digital era and Indian constitutional jurisprudence, comparative legal developments, and the law of fundamental rights generally end at death. The paper ends by saying that posthumous rights are not 'rights' in the customary sense of the term but rather 'rights' that are 'constitutional duties' owed to the living by virtue of their responsibility to respect the dignity of the deceased.

Keywords: Article 21, Constitutional Law, Human Rights, Death Jurisprudence, Posthumous Rights, Human Dignity and Right to Reputation.

Introduction:

In the past, death was considered to mark the end of a person's legal life. Common law principles like **Actio Personalis Moritur Cum Persona** outlined the doctrine that a person's rights and duties went with them. In contemporary constitutional democracies, however, the realization has been gaining that some of the interests connected with a human being continue after his death. Families seek justice when the remains of a loved one, who died, are mishandled. Efforts are made to preserve the heritage of historical personalities

from being distorted or marred. Personal information is stored on digital platforms even after a person's death. In such cases, one is faced with a crucial constitutional dilemma: Is dignity also eradicated?

Dignity is a matter of primary concern in India, since it has been consistently recognized as one of the basic values of part III of the constitution by Supreme Court. In its current form, the expanded Article 21 is a much more than just a formal right to life, it is a substantive right to human dignity. Is there a loss of dignity when biological life ceases to exist, if it is an inherent

part of human life? Or is constitutional morality satisfied with the protection of certain interests even after death?

This paper examines the concept of dignity to analyse posthumous rights' constitutional position. It explores the question of whether constitutional rights outlast death, the way that Indian courts have treated the dignity of the deceased and whether current issues such as digital inheritance and posthumous privacy should call for an update to constitutional doctrine.

Research Methodology:

This study is doctrinal (legal-theoretical) and analytical, in the sense of the kind of legal inquiry. It examines the provisions of the Constitution, the judicial cases, legislation and relevant research material on post mortem rights and human dignity. Primary sources are the Constitution of India, Supreme Court and High Court decisions and relevant law reports; secondary sources are various academic articles and discussions on comparative constitutional law. The method used to assess the constitutional nature of the right to a funeral, the right to post mortem privacy and the dignified treatment of the deceased in the context of the article 21 of the Constitution, is a qualitative analysis. Moreover, the study contains a restricted comparison of the legal frameworks of Germany, the EU and the USA. The goal of this research is to see if there is a continuing obligation on the state and society as a result of constitutional dignity after the person is gone? This research aims at establishing whether there are any continuing obligations on the State and the society as a result of constitutional dignity after the death of the person?

Review of Literature:

Most of the work undertaken around the concept of human dignity has focused on its role as the foundation of a human's life-long constitutional

rights. Ronald Dworkin defends the intrinsic value of human life that is worthy of respect even after death in 'Life's Dominion' while Kant's idea of dignity, based on the intrinsic worth of human beings, has had a significant impact on modern constitutional law.⁴⁴¹ While human dignity has been the focus of Article 21 by scholars like Upendra Baxi and Justice V.R. Krishna Iyer, the constitutional status of the deceased has yet to be explored⁴⁴². Judicial pronouncements in *Parmanand Katara v. Union of India* and *Ashray Adhikar Abhiyan v. Union of India* have emphasised on the dignity of treatment of dead bodies and funeral rites. In line with this research, questions have been raised about post-mortem privacy in the field of digital legacy and informational privacy. However, in modern language, the right to have a respectable funeral, to have privacy after death, and to be treated with dignity after death are seen in isolation. Moreover, the analysis of the constitution with respect to bodily integrity after death, especially in relation to necrophilia is scarce. This paper aims to fill this gap by discussing these issues in an integrated constitutional approach of 'post-mortem dignity' under Article 21.

1. Constitutional Foundation of Human Dignity and Death:

In the Indian Constitution, 'human dignity' has been recognized as a fundamental constitutional value under Article 21. The Constitution does not define dignity explicitly but the courts have made Article 21 more than a procedural protection and turned it into a guarantee of living a dignified life. In the case of *Maneka Gandhi v. Union of India*,⁴⁴³ the Supreme Court expanded the definition of 'life' to extend beyond mere 'life' to the right to live with human dignity in the case of *Francis Coralie Mullin v. Administrator*⁴⁴⁴, Union Territory of Delhi. This was reiterated in *Justice K.S. Puttaswamy v. Union of*

⁴⁴¹ Ronald Dworkin, *Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom* (Alfred A. Knopf 1993).
Immanuel Kant, *Groundwork of the Metaphysics of Morals* (Mary Gregor trans., Cambridge Univ. Press 1998) (1785).

⁴⁴² Upendra Baxi, *The Future of Human Rights* (3d ed. 2008).

⁴⁴³ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

⁴⁴⁴ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.

India⁴⁴⁵, where dignity was recognised as the fundamental basis of privacy, autonomy and personal identity. Immanuel Kant's philosophical framework of 'dignity' is that all human beings have intrinsic value, and they should never be treated as 'means to an end', but as 'ends in themselves'⁴⁴⁶. In contemporary constitutional order, dignity has been considered as not only a favour or privilege of the state, but also an inherent and inalienable value. But the recognition of dignity brings up an important constitutional question as to whether dignity ends after death. Classical legal doctrine teaches that a person's legal rights end with his or her life, which means they end when he or she dies. However, constitutional values do not necessarily need to be limited to the presence of a living right-holder. Signs of respect for funeral rituals, handling the body of the deceased and maintaining personal identity suggest that dignity remains influential on legal obligations beyond death. So, the crux of the constitutional debate in this instance is not whether the dead man has any enforceable rights; it is rather whether the human dignity has any ongoing responsibilities to the state and society. This viewpoint is relevant to a discussion of the right to a funeral, post-mortem privacy and protection of the dead body under Article 21.

2. Funeral Rights as an Extension of Article 21:

The rights of funeral rites are a good case in point of constitutional rights after biological death. While fundamental rights are universal and apply to the living, the Indian courts have always recognized the need to respect and treat the deceased with dignity. This recognition is guided by the broad reading of Article 21 of the Constitution that protects not only life itself, but also the dignity of human life. This is a landmark case in this regard, as the Supreme Court decided in *Parmanand Katara v Union of India*⁴⁴⁷. The Court stated that the right to dignity and fair treatment is also applicable to the deceased,

which entitles him/her to have funeral services or disposal in a dignified manner as prescribed by the law and custom. In a similar vein, in the *Ashray Adhikar Abhiyan case v. Union of India*,⁴⁴⁸ the Court had ordered the authorities to ensure that the bodies of unclaimed dead are laid to rest in a manner that is in keeping with their dignity, meaning that human dignity does not depend on the social and economic status of a person. Support for rights relating to funeral rite comes from Article 25 of the Constitution which guarantees freedom of religion and conscience. Funeral practices are of great religious, cultural and emotional value in a pluralistic society like India. By preventing people from carrying out such rites it not only hurts the family of the dead, but also the dignity of the person involved. During Covid-19, issues concerning rights relating to funeral rite were more apparent as the court intervened to ensure that public health measures did not result in arbitrary and undignified treatment for the deceased. In the years that passed, judicial decisions reiterated that the constitutional values continue to hold true when dealing with the dead – even in situations of crisis. Rights of proper funeral rites from a constitutional point of view are more than ceremonial customs. Instead, they are a sign of the value society places on the dignity of a person that lasts beyond his or her death. The right to respect for the deceased that is enshrined in the Constitution, with regard to funeral rites, shows that although legal personhood might end, the duty to treat the deceased with respect continues. Therefore, rights with respect to funeral rites are a notable expression of dignity after death in Article 21.

3. Privacy After Death: Digital Dignity and Informational Autonomy:

The recognition of privacy as a fundamental right in the *Justice K.S. Puttaswamy v. Union of India* case, broadened the ambit of Article 21 of the Constitution to include privacy as a component of human dignity, autonomy and

⁴⁴⁵ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

⁴⁴⁶ Neomi Rao, Three Concepts of Dignity in Constitutional Law, 86 Notre Dame L. Rev. 183 (2011).

⁴⁴⁷ *Pt. Parmanand Katara v. Union of India*, (1995) 3 SCC 248.

⁴⁴⁸ *Ashray Adhikar Abhiyan v. Union of India*, (2002) 2 SCC 27.

identity. The question of whether privacy after death has a constitutional dimension, however, was not addressed by that judgment, and the rights of the living predominated. In the digital era, this is also increasingly a relevant problem: Personal data can be of long duration in the absence of the living being who created it. Digital technology allows individuals to keep their online presence in social media accounts, email, cloud storage, photos and other personal information, unlike traditional communication methods⁴⁴⁹. Therefore, nobody's persona or identity disappears after they die; instead, digital footprints can be left behind for a very long time. This fact raises questions about the traditional legal doctrine that one's right to privacy ends upon death. Post-mortem privacy is rooted in the connection between privacy and dignity that is found in the constitution. Privacy is recognized as a right to personal autonomy and control over information about one's identity in the Puttaswamy case. Unauthorized access to personal communications, photos or any other sensitive digital information, after the person has passed away, can be detrimental to the dignity and memory of the deceased. Whereas the deceased had a clear expectation of confidentiality of his personal information, these matters become very important. The increasing significance of post-mortem privacy also can be seen in the development of law in various nations⁴⁵⁰. In many jurisdictions, there are now provisions which enable individuals to choose the management of their data following their death; demonstrating a growing awareness of the concept of 'informational autonomy', enabling the individual to continue to control their data after death. The concept of 'digital legacy' is not addressed in detail in Indian law, but could be covered in the principles of dignity enshrined in its constitution. Concurrently, the right to privacy after death cannot be considered as absolute and unlimited. Certain information may be legitimate for matters related to a family member, government or

history. The problem is to find a balance between these interests; not merely a storage points where easy access data can be acquired. It is better to think about post-mortem privacy as an aspect of 'post-mortem dignity,' than as a continuation of a personal right, from a constitutional point of view. Protection of digital identity, personal information, and the autonomy of information is a general commitment towards respecting the human dignity even after death. In this respect, 'digital dignity' is a modern expression of the universal dignity of the human person protected by Article 21.

4. Treatment of Mortal Remains and Necrophilia: A Constitutional Analysis:

Those who have died shall be treated with dignity and respect, because they are still teaching the living. This is echoed in the cadaveric oath given to medical students in the lead up to anatomical dissection, in which they swear to treat human remains with reverence and with gratitude. The most obvious area where the issue of post-mortem dignity is of constitutional importance is the treatment of the deceased body. Legal personhood ends with death but Indian courts have consistently made it clear that dignity and respectful treatment must be accorded to a corpse. The Supreme Court in the Parmanand Katara case and Ashray Adhikar Abhiyan case recognized that the normal treatment and disposition of the dead body is an integral part of the values of the Constitution, as outlined in Article 21. The protection of a dead body is an example of the principle that human dignity is not necessarily tied up in biological life. The way the dead body is treated, from transport to post mortem, burial and cremation, is a testament to the lasting respect and dignity of people in society. Therefore, a dead body cannot be considered simply as an object outside the constitutional consideration. This is especially important in the context of 'necrophilia' (sexual attraction to or deviant sexual behaviour involving a dead

⁴⁴⁹ Luciano Floridi, *The Ethics of Information* (2013).

⁴⁵⁰ Edina Harbinja & Lilian Edwards, Who Controls Digital Assets After Death? Protecting Post-Mortem Privacy, 31 Computer L. & Sec. Rev. 253 (2015).

body). Necrophilia has also been considered a constitutional issue, however, not a criminal one⁴⁵¹. Sexual intercourse with a corpse is a serious offence of the body and against post mortem dignity. The wrong committed here is not only lack of consent, but desecration of the body, denial of respect to the dead. The issue was pointed out in *S. Sethu v. State* (2024) when the Madras High Court highlighted the importance of the dignity of the dead and noted the absence of a law on necrophilia. Constitutionally, such acts show that the obligation to respect human dignity does not die with the person, while life does. So, the sanctum sanctorum of the dead body is an integral aspect of post mortem dignity as guaranteed by Article-21 of the Constitution.

5. Comparative Constitutional Perspectives: United States

In general, the American law of the Constitution holds that constitutional rights are not contested after death. However, there are some statutory protections for aspects of posthumous reputation, IP and privacy. For example, there are states where the right of publicity is still applicable after death, meaning that the heirs can exert control over the commercial use of a deceased person's identity.

European Union

Human dignity plays a key role in the European perspective. The General Data Protection Regulation (GDPR) secures protection for living persons, but the member states have discretion in regulating posthumous data protection. Some jurisdictions have laws that extend the control of personal information beyond death.

Germany

Germany's constitution provides, perhaps, the greatest protection of posthumous dignity. The Federal Constitutional Court has admitted that human dignity remains relevant in protecting a deceased person's personality and reputation in

spite of the Basic Law's first Article. This doctrine is based on the idea that dignity is not only a right of the person but an objective constitutional value as well. The German model, which illustrates the survival of constitutional values despite the death of the right holder, is especially important for India.

6. Posthumous Rights and Constitutional Morality:

When we recognize there is a post-mortem interest at stake, we create a central theoretical problem – do the deceased have constitutional rights? The argument against recognizing post-mortem rights stems directly from a definition of "rights" as being something to which one can experience harm; therefore, when applied to the concept of post-mortem rights, it appears to be unworkable⁴⁵². Nonetheless, constitutional morality includes more than just rights; it also includes how government exercises its authority over people, and how individuals interact with each other socially.

The value of human dignity does not function solely as an individual right or entitlement; rather it operates as a constitutional duty. Therefore, we don't necessarily view post-mortem protections as rights of the deceased, but rather as duties of the living. These duties will obligate states and societies to treat the deceased respectfully by protecting their bodies, preventing misuse of their personal information and ensuring dignified funeral rites. These duties arise out of constitutional commitments to dignity of the dead, not out of any continued legal personhood of the deceased. Hence, the essential question for constitutional evaluation is not what rights the deceased continue to have, but what responsibilities are owed to those who have died by the living.

Suggestions:

There is a growing demand for a stronger legal framework related to the concept of post-mortem dignity now that it is increasingly recognized within Article 21.

⁴⁵¹ James Stacey Taylor, *The Myth of Posthumous Harm*, 42 Am. Phil. Q. 311 (2005).

⁴⁵² Jeremy Waldron, *Dignity and Rank*, 48 Eur. J. Soc. 201 (2007).

Firstly, parliament should establish legislation that formally recognizes the right to dignified treatment of the deceased and provides consistent standards for dealing with, burying and cremating bodies.

Secondly, India needs a legal structure governing post-mortem privacy and digital identity/asset rights in order to address concerns about digital identities/personal data after someone dies.

Thirdly, while there is a large gap in current law regarding 'necrophilia', specifically deviant sexual attraction to corpses, which is a violation of both physical and moral boundaries, this area of law should be filled via specific legislation that addresses necrophilia.

Finally, the courts need to interpret Article 21 in such a way that dignity is at its heart and that dignity after death is a constitutional value which should guide the actions of the State. These would enhance the rights to receive the last rites, respect for privacy, and proper treatment of the dead, and would help to maintain the dignity of the constitution even after death.

Conclusion:

The issue of "dignity" after death is one that involves constitutional theory and human values. It is well established that the termination of a legal person's life is a consequence of his death but there is a developing trend in the constitutional law of India that dignity is a permanent constitutional value that continues to exist after the death of the legal person. Evolution of Article 21 from its original scope of protection of life and liberty and its extension to protection of dignity have rendered the courts the watchdog of the deceased, the last rights and the human corpse.

The right to a funeral, post-mortem privacy and the treatment of the dead are analyzed and these constitutional issues do not cease at the moment of biological death. Instead, these safeguard the intrinsic dignity of each person, which is an on-going responsibility of the state and the community. The legal consequences of

'necrophilia' (the perverted sexual infatuation with a corpse) further substantiate this position; it shows that some actions are not just an offence against the living, but a violation of human dignity as well.

So, it is not whether a dead person has enforceable rights, but whether the living have constitutional duties for the dead. The question to ask in a constitutional inquiry is not whether the dead have enforceable rights; rather, whether the living have constitutional duties for the dead. In the constitutional morality, post-mortem dignity is not an extension of legal personality, but an extension of the commitment towards human dignity in the Constitution. In this respect, death may be the end of life but death does not always imply the end of dignity.