National Human Rights Commission, India

Advisory for Upholding the Dignity and Protecting the Rights of the Dead

I. Background

There is no specific law in India for protecting the rights of the dead. However, the courts have time and again reiterated to uphold the dignity and protect the rights of the dead. The Apex Court of India in the landmark case of ***Parmanand Katara v. Union of India*** in 1989 recognized that the right to life, fair treatment and dignity, extend not only to a living person but also to his dead body. These rights have been derived from Article 21 of the Constitution of India. Further, recognition of posthumous legal rights gives the dead significant moral standing within our legal system. The law also strives to honour a decedent's wishes and to protect his interests.

In both natural or unnatural deaths (accident, suicide, homicide, etc.), it is the duty of the State to protect the rights of the deceased and prevent crime over the dead body. It is also a requirement that the States/ UTs prepare a SOP in consultation with all the stakeholders so that the dignity of the dead is ensured and their rights are protected. The stakeholders include Hospital Administration, Police, Forensic Medicine personnel, District Administration, Municipal Corporation, Civil Society Groups, etc., as well as the citizens of the country.

A. International Framework

Human dignity lies at the core of all international human rights laws. Some of the international covenants and laws that deal specifically with the dignity of the dead are given below:

1. **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".
2. **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".
3. **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.
4. **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'.
5. **International humanitarian law [Article 130(1) of the fourth Geneva Convention]** provides that States should ensure that 'graves are respected, properly maintained, and marked in such a way that they can always be recognized'.

B. National Framework

Article 21 of the Indian Constitution which guarantees the Right to Life, embraces many aspects of a person's life including Right to Dignity. By various judgments of the Supreme Court and High Courts, this right has been extended to dead persons also.

1. Supreme Court Cases:

i. In the case of **Parmanand Katara v. Union of India, 1989** (W. P. (Crl) No. 270 of 1988, SCC (4) 286), the Supreme Court highlighted the importance of conferring dignity to dead persons. Again, it was reiterated by Apex Court in the case of ***Ashray Adhikar Abhiyan v. Union of India, 2002*** (W. P. (C) 143 of 2001)**,** that dignity of the dead must be maintained and respected. Moreover, it extended the right to the homeless deceased person to have a decent cremation according to the religious customs to which one belongs to, it also established a corresponding duty on the State to ensure that decent cremation is served to the person.

ii. **In P. Rathinam v. Union of India**, **1994** (SCC (3) 394), the ambit of article 21 was widened to include the dignity of a person. It 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.

2. High Court Cases:

i. **In the case of S. Sethu Raja v. Chief Secretary, 2007** (W.P. (MD) No. 3888 of 2007), the Madras High Court directed the Government authorities to bring the dead body from Malaysia, so that burial can take place at home according to traditions and customs.

ii. **Ramji Singh and Mujeeb Bhai Vs. State of U.P. & Ors, 2010** (PIL) No.- 38985 of 2004) - In this case the Allahabad High Court contended that 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 were alive. It is imperative for the State to treat the corpse with dignity, and must only resort to postmortem if it is a necessity.

3. Provisions under Indian Penal Code, 1860: Under the IPC, 1860, the rights of deceased persons include Right against trespass of burial sites, places of funeral rites, etc. under Section 297; Right against dishonest misappropriation and conversion of property under Section 404; Right against defamation under Section 499 and Right against criminal intimidation under Section 503.

4. Transplantation of Human Organs and Tissues Act, 1994 (THOTA): The THOTA regulates the removal, storage and transplantation of human organs and tissues for therapeutic purposes for preventing commercial dealings in human organs and tissues as well as matters connected therewith or incidental thereto. THOTA guarantees a deceased person the right to protect and preserve the human organs or tissue or both of the dead body from being harvested without his/ her consent or the consent of near relatives.

II. <u>Basic Principles for Upholding the Dignity and Protecting the Rights of the Dead</u>

1. **No discrimination in treatment of the body in any form-** To ensure that the dead body is properly preserved and handled irrespective of religion, region, caste, gender, etc.

2. **No physical exploitation-** Any form of physical exploitation of the body of the dead violates the basic right of the deceased person.
3. **Decent and timely burial/ cremation-** The deceased person has the right to a decent and timely burial/ cremation.
4. **To receive justice, in case of death due to crime-** The dead have the right to receive justice in cases where death occurs due to crime.
5. **To carry out a legal will-** The will, if any, left by the dead must be respected and honoured.
6. **No defamation after death-** The deceased person should not be defamed by any kind of statement or visible representation, made or published intending to harm his/her reputation.
7. **No breach of privacy-** The deceased person has the right to privacy, i.e., the right to control the dissemination of information about one's privacy.

III. Role and Responsibilities of the Stakeholders Towards Upholding the Dignity and Protecting the Rights of the Dead

1. Citizen:

i. **Duty to inform:** It should be the duty of every citizen to inform, after noticing any incident of death, immediately to the nearest police station and/or to emergency ambulance services or the administrative/ legal authorities, whichever feasible.
ii. **Carrying procession:** Citizens should not use the dead bodies as baits for pursuing their demands, etc.

2. Hospital Administration:

i. **Clothing of the dead body:** Clothing of the deceased should be collected, examined as well as preserved and sealed by the doctor conducting the autopsy, and should be sent for further examination at the concerned forensic science laboratory. Further, it should be covered in special Body Bags for proper transportation.
ii. **Storage of unclaimed bodies:** The unclaimed bodies must be stored under safe conditions in the deep freezer to prevent any decay or damage to the dead bodies.
iii. **Segregation and arrangement of the dead bodies**: It must be ensured that the bodies are segregated based on gender and are kept in a dignified manner by avoiding piling up.
iv. **Release of dead bodies:** The Hospital administration should be explicitly prohibited from deliberately retaining any dead body on the count of pending bill payment. The hospitals must hand over the body to the family of the deceased or to the civic body (if it is an unclaimed body) in a dignified way.
v. **Licensure for use of unclaimed bodies:** Hospitals that utilise the unclaimed bodies for academic, research and training of the medical students must have valid license for the same.

3. Medical Practitioners

i. **Implementation of the ethical guidelines of ICMR:** All the medical practitioners must follow the guidelines of the ICMR while dealing with the claimed as well as unclaimed dead bodies.
ii. **Announcement of the death:** After death, it must be officially pronounced/ declared by a doctor without any delay.

4. Forensic Department and Practitioners:

i. **Trained and qualified professionals:** Only the trained and qualified professional in forensic medicine should perform the autopsy procedure and the use of inappropriate tools such as a hammer, etc. should be avoided.
ii. **Video-filming and photography of post-mortem examination**: In case of custodial death where there is a requirement of post-mortem examination, NHRC guidelines for video-filming and photography should be complied with accordingly.
iii. **Handing over the body to the family:** It must be ensured that the external appearance of the deceased and the incisions on the body must be hidden by clothes while handing over the body to the family/relatives.
iv. **Timely post-mortem:** It must be ensured that the post mortem examination is done without any delay so that funeral arrangements are not delayed
v. **Protection of personal and genetic information:** Genetic data obtained through DNA profiling must be handled carefully and confidentially as the same may be required to trace the identity of the unclaimed dead bodies. For this, data banks should be properly maintained to store the genetic data and biological samples of the unclaimed bodies, as per the existing laws.

5. Mortuary Services:

i. **Mortuary hygiene:** Regular mopping and cleaning of mortuary should be undertaken so that dead body remains are preserved in a proper, clean environment, thereby maintaining its dignity.
ii. **Secured information:** The facility should maintain confidentiality of clinical records and must have a mechanism for guarding information related to the deceased, especially for cases that are stigmatized and socially criticised, such as that of HIV and suicidal cases.
iii. **Maintaining privacy of premises:** Post mortem room should not come under the direct line of sight of the general public/visitors. To ensure the same, provision of curtain, screen or buffer area may be made in a post mortem room.
iv. **Removing physical/ infrastructural barriers:** The facility must have infrastructure for delivery of assured services, to meet the prescribed norms. All basic requirements must be available and maintained as per the Indian Public Health Standard Guidelines for District Hospitals for management of the dead bodies.
v. **Sensitization of the staff:** The mortuary administration may sensitize the staff from time to time to train them in handling of the dead body and deal with the attendants of the deceased with sensitivity.

6. Governments

A - Central/ State Government:

i. **Digitization of data:** Each State must maintain a district wise digital dataset of death cases. A dynamic web portal for displaying data for both identified and unidentified bodies must be created and it must be the responsibility of the State to ensure protection of such data.
ii. **Digital confirmation of the death** of a person must be simultaneously updated in all documents such as Bank Account, Aadhar Card, Insurance etc., wherever applicable, to prohibit the scope of any impersonation or illegal monetary transaction gains.
iii. **24x7 Helpline:** Whenever there is any calamity or disaster or major accident, etc., leading to deaths of persons being away from family, the Government should create a 24x7 Helpline facility

to help the families of deceased persons for collection of body or to report any grievance regarding any unethical behavior such as assault or any inhuman conduct with the body of the deceased.

iv. **Opting partial autopsy methods:** The Government/ National Medical Commission may consider to adopt a partial autopsy method in cases where the complete autopsy is not necessary, arrangements of techniques, experts and training of the forensic experts shall be conducted to promote advanced methods of autopsy.

v. **Availability of equipment for post-mortem:** The State should ensure the arrangements of standardized instruments at all forensic medicine departments for effective conduct of post-mortem procedure.

vi. **Preparation of SOP:** State Governments should make their own SOPs, as required, to ensure dignity of the dead, taking into account the specific practices, rituals, customs, etc., followed in their respective States/ regions.

B - Local Government/ Administration:

i. **Ensuring appropriate disposal of the dead body:** In the event of legal heirs disowning the body and depriving it of a decent burial, the local Government / civic body should ensure proper disposal of the body after due legal procedures like post-mortem etc.

ii. **Donation of organs by the deceased:** The law should be amended to the effect that the will of the deceased regarding the organ donation is given prime importance irrespective of the opinion of the legal heir.

iii. **Maintenance of burial grounds/ crematoriums:** It must be ensured by the State/ Local Government that the condition of crematoriums, burial grounds, electric crematoriums are properly maintained to keep them in effective working conditions.

iv. **Encouraging electric cremation methods:** Environment friendly cremation practices like the usage of electric crematoriums may be encouraged, which would also reduce the burden on the existing burial grounds/ crematoriums.

v. **Periodic inspections:** The local government bodies should visit the local hospitals to ensure the compliance of the guidelines in management of the claimed or unclaimed dead bodies.

vi. **Transportation of the dead bodies:** The local authorities should ensure that the transportation facilities are available to transport the body of the deceased at the request of family members.

vii. **In case of unidentified dead bodies:** The last rites of unidentified dead bodies should be performed with honor and dignity while taking their religion into consideration. The necessary fund required for this purpose may be adequately maintained.

viii. **Maintenance of database:** Local government/ District Registrar of deaths should maintain the database of deaths in the district.

7. Police:

i. **No delay in post mortem:** The Police administration should ensure that there is no undue delay in calling a forensic team to the crime scene and in transferring the body of the deceased for post-mortem examination. Transfer of the dead body to the hospital administration and submission of the complete inquest form should be done within the stipulated period of time.

ii. **Handling of the dead body:** In cases where death occurs due to fire accidents, self- immolation, murders, death due to sexual offences, custodial deaths, suicides, road and other accidents, the body of the deceased must be covered, handled with respect and sent to mortuary immediately for performing the autopsy procedures.

iii. **Identification of the dead bodies:** For identification of the dead bodies, labelling of a unique body code, technical photographs, other data from the dead bodies may be collected and stored under the police record for identification and further transfer of the dead body to the family.
iv. **Availability of body bags & basic forensic kits:** 'Body bags and basic forensic kits to be made available at police stations to maintain the sanctity of the body and collection of evidence from the incident site, if it is a case of homicide/accident/unnatural death.
v. **Keeping the dead bodies in the mortuary:** It may be ensured that the dead bodies do not remain in the mortuary for more than 72 hours. In case of an unidentified body, the Police should make serious efforts for its identification and disposal accordingly in a dignified manner.
vi. **Photography:** Video-filming and photography of the post-mortem examination should be done by a person trained in forensic photography and videography.

8. Prison

i. **Custodial death:** In case of death inside prison, as per section 176 (1A) CrPC, the prison officials shall inform the Judicial Magistrate for judicial enquiry on the cause of death. The family of the deceased should also be informed simultaneously.
ii. **Dignified treatment:** In case of death in custody, the body must be covered and handled in a dignified manner while sending it to the forensic department/ hospital without delay for performing the autopsy procedures.

9. Family:

i. **Donation of the organs, tissues or cells:** If the deceased had consented to the donation of the organs, tissues or cells, it should be honored and implemented accordingly.
ii. **Death registration:** The death of a person should be registered by the family members as soon as possible so as to avoid any kind of misuse of his identity for claiming any kind of benefit by an unauthorised person.

10. Media:

i. **Right to privacy and dignity:** Media including social media must avoid explicit photographs or videos of dead bodies from being shown to the common public and must use masking techniques wherever the dead body is shown, so as to ensure that the right to privacy and dignity of the deceased person is not compromised.
ii. **No derogatory remarks:** Personal remarks or comments which are derogatory in nature, hampering the dignity of a dead person, should not be published.

11. Civil Society Organizations and NGOs:

The CSOs/NGOs should come forward to take up the responsibility of performing last rites of the unclaimed and unattended bodies in dignified manner.

IV. COVID-19 & RIGHTS OF DEAD

As of May 9, 2021, globally 32,96,841 people have died on account of COVID-19 pandemic whereas in India 2,42,398 people have lost their life due to this deadly virus. Due to this record number of

deaths, the process of management of dead bodies while adhering to the Covid safety protocol, transportation of dead bodies and their burial or cremation, etc., has become challenging.

The guidelines issued by WHO, NDMA, Govt. of India and various State Governments have emphasized on the maintenance of the Covid Protocol while upholding the dignity of the dead, including decent burial according to respective religious customs and practices. The Supreme Court and various High Courts have highlighted the importance of providing decent burial to dead persons amidst this pandemic. Despite these guidelines, various disturbing facts have surfaced through the media that have reported about the mismanagement/ mishandling of COVID-19 affected dead bodies thereby lowering their dignity.

Judgements of High Courts:

i. **The Karnataka High Court on 27 July 2020**, stated that the state government and civic body Bruhat Bengaluru Mahanagara Palike (BBMP) are bound to come out with guidelines to ensure dignity of the dead. The Court directed the State Government of Karnataka to ensure that dead bodies are given a proper burial/cremation. Immediately after this judgement, the State Government of Karnataka released the guidelines on 29.07.2020 for management of dead bodies during COVID-19.

ii. **The Calcutta High Court on 16 September 2020, in the case of Vineet Ruia Vs The Principal Secretary, Department of Health & Family Welfare, Govt. of West Bengal & Ors** (W.P. No. 5479 (W) of 2020)**,** was of the firm view that the right to dignity and fair treatment under Article 21 of the Constitution is not only available to a living person but also to his mortal remains after his demise. Disposal of a human body, whether or not the person dies of Covid-19, whether by cremation or burial, should be done with due respect and solemness.

iii. **Telangana High Court on 27 April, 2021, in the case of R. Sameer Ahmed Vs State of Telangana & Ors. (W.P. (PIL) No. 56 and 58 of 2020):** The Court observed that " human bodies are not being treated with the dignity they deserve. The dead bodies are piling up waiting to be cremated due to paucity of space and non-availability of adequate facilities and manpower. The State was asked to submit the details of the number and capacity of the cremation.

Recommendations:

1. **Enact specific legislation to protect the rights of dead:** There is a need for specific legislation to be enacted for the purpose of upholding the dignity and protecting the rights of the dead.

2. **Set-up temporary crematoriums:** In view of the large number of COVID deaths and long queue of dead bodies seen at crematoriums, temporary arrangements should be made urgently in order to avoid undue delay in cremation.

3. **Sensitization of the staff working in crematoriums/ burial grounds/ cemeteries:** In order to ensure that dignity is upheld during handling of dead bodies, the cremation/ burial ground staff must be sensitized about proper handling of the dead body. Further, they need to be provided necessary safety equipment and facilities so that they may perform their duty efficiently without any fear or risk.

4. **Performing last rites:** Religious rituals that do not require touching of the dead body may be allowed such as reading from religious scripts, sprinkling holy water, etc.

5. **In cases where the family members are not in a position to perform last rites:** In cases where family members or relatives are not there to perform last rites as they themselves may be infected or are not willing being afraid of getting infected, etc., or where the repatriation of the body to the family may not be possible, the State/ Local Administration may perform the last rites of the body, taking into account the religious/ cultural factors.

6. **Encourage use of electric crematoriums:** 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 number.

7. **Piling of dead bodies:** Piling up of dead bodies during the transportation or at any other place must not be allowed to happen.

8. **Mass burial/ cremation:** Mass burial/ cremation should not be allowed to take place as it is in violation of the right to dignity of the dead.

9. **Proper identification and information:** 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.

10. **Curbing arbitrary hike of ambulance charges:** To curb arbitrary hike/ overcharging for transportation of dead bodies the prices of the hearse / ambulance services should be regulated so that people are not exploited and do not face difficulties in transportation of dead bodies.

11. **Staff handling dead bodies to be protected and fairly paid:** Since the staff at crematoriums, burial grounds, mortuaries, etc., are working round the clock during this wave of pandemic, they may be paid fair wages to compensate their hard work. Further, they should be vaccinated on priority basis keeping in view the risk they are exposed to.

****