

***IN RE: THE PROPER TREATMENT OF COVID 19 PATIENTS AND DIGNIFIED  
HANDLING OF DEAD BODIES IN THE HOSPITALS ETC.***

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**I. Introduction**

TODAY THE whole world is dealing with the challenges posed by an unforeseen pandemic i.e. COVID-19. This pandemic has resulted in the infringement of various fundamental human rights, which have been accorded protection in our Constitution, like Right to employment, Right to food, Right to privacy, Right to freedom of speech and expression, Right to health, Right to free movement, etc. The fundamental human rights most affected are “Right to Health” and “Right to life which also includes Right to die with dignity”.

In the recent past, various disturbing facts surfaced through the media wherein humans were seen to be treated worse than animals. There were numerous news reports which highlighted the mishandling of dead bodies of COVID-19 patients and ill-treatment of other patients suffering or suspected to be suffering from COVID-19. There were reported incidents like dumping the body

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of a COVID-19 positive person in a pit at a burial ground in Villianur<sup>1</sup>, bodies of the dead being stacked next to COVID-19 patients in Delhi hospitals<sup>2</sup> and an elderly patient in Madhya Pradesh having been chained to a hospital bed.<sup>3</sup> These incidents provoked Former Union Law Minister Ashwani Kumar to write a letter and bring this issue into notice of the Supreme Court stating that these amounted to a “grave infraction of the citizen’s right to die with dignity”. Subsequently, the letter motivated the Supreme Court to take *Suo Moto* cognizance of these news reports. Chief Justice of India (CJI) Hon’ble Justice Bobde assigned the case on June 11, 2020 to a bench headed by Justice Ashok Bhushan and comprising Justice R. Subhash Reddy and Justice M.R. Shah. The bench said during the hearing that “the situation in Delhi is horrendous, horrific and pathetic” and issued a slew of guidelines to redeem the miseries of patients.

## II. Facts of the Case

On June 12, 2020, the honourable Supreme Court of India issued notice in its *suo moto* writ petition,<sup>4</sup> the objective of which was to make sure that remedial action by concerned parties are taken to address the needs of patients and other persons in need of medical attention during the pandemic. The decision was taken when the lapses and deficiencies in patient care in various hospitals in Delhi and other states were brought to the notice of the court.

After the hearing and due consideration of all the affidavits and reports of concerned authorities, the Court on June 19, 2020 had issued multiple directions to both State and Centre regarding hospital management, testing, treatment of patients, etc. The Ministry of Health and Family Welfare was also directed to form a Committee for inspection and issuance of further directions to the hospitals in NCT of Delhi.

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<sup>1</sup> “Narayanasamy expresses regret over undignified burial of COVID-19 patient”, *The Hindu*, June 08, 2020, available at, <https://www.thehindu.com/news/national/tamil-nadu/narayanasamy-expresses-regret-over-undignified-burial-of-covid-19-patient/article31779151.ece> (last visited on Sept. 02, 2020).

<sup>2</sup> “SC seeks response of Centre, states on treatment of covid-19 patients, handling of bodies”, *The Economic Times*, June 12, 2020, available at, <https://economictimes.indiatimes.com/news/politics-and-nation/sc-seeks-response-of-centre-states-on-treatment-of-covid-19-patients-handling-of-bodies/articleshow/76337289.cms?from=mdr> (last visited on Sept. 02, 2020).

<sup>3</sup> “Supreme Court urged to protect patients’ right to dignified death, burial”, *The Hindu*, June 11, 2020, available at, <https://www.thehindu.com/news/national/supreme-court-urged-to-protect-patients-right-to-dignified-death-burial/article31799742.ece> (last visited on Sept. 02, 2020).

<sup>4</sup> *Suo Motu Writ Petition (Civil) No.7/2020*.

### III. Affidavits by Authorities - A basis for the guidelines

In response to the notice issued, various state authorities filed their respective affidavits. These affidavits have formed the basis of the guidelines issued by the SC.

The Union of India<sup>5</sup> in its affidavit stated that the Hon'ble Home Minister had held a strategic meeting to fight the coronavirus with the participation of Lieutenant Governor of Delhi, Chief Minister of Delhi, Union Health Minister, Health Minister of Delhi, Mayors and Commissioners of Delhi's three Municipal Corporations. It entailed various action points, for instance,

- i. It was decided that a team of senior doctors from various Government hospitals including All India Institute of Medical Sciences (AIIMS) shall visit all hospitals in Delhi, within 2 days, to study the arrangements made for patient care and treatment and suggest improvements to be done.<sup>6</sup>
- ii. Similarly, the document talks about a decision to increase the testing per day in NCT of Delhi.<sup>7</sup>
- iii. The document also proposes formation of a committee,<sup>8</sup> who will report regarding reasonable rates of various COVID-19 related facilities/tests *etc.* for private hospitals and labs.
- iv. The affidavit also talks about the guidelines framed to ensure proper treatment of COVID-19 patients and dignified handling of the dead bodies in the hospitals and guidelines framed by the Union of India pertaining to COVID-19 hospital management by the Union of India.<sup>9</sup>
- v. It is stated in the affidavit that strict observance and adherence of guidelines will be ensured, especially those related to direct handling of COVID-19 patients.<sup>10</sup>

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<sup>5</sup> Affidavit submitted by Union of India, dated. June 14, 2020.

<sup>6</sup> *Id.* at para 13(ii).

<sup>7</sup> It has been stated that by June 20, 2020, the tests shall be increased up to 18,000 per day.

<sup>8</sup> Committee of Dr. V.K. Paul, Member, NITI Aayog, representative of the AIIMS and representative of GNCTD.

<sup>9</sup> *Supra* note 5 at para 13(iv).

<sup>10</sup> *Id.* at para 18.

Similarly, the Delhi Government also submitted its affidavit,<sup>11</sup> wherein it gives details of the Government hospitals of Delhi designated for COVID-19 patients, details of officers deployed as nodal officers in each of these hospitals, provisions of 24x7 Help desk at each hospital along with display boards for information on availability of beds and other facilities to the general public *etc.*

#### IV. Guidelines passed by the Supreme Court

The Supreme Court, however, observed that the affidavits by the above parties appear to be general statements, and that they lack any mechanism for follow up of the claims made. Therefore, on the basis of the statements made in such affidavits, the Apex Court has provided for certain guidelines as follows:

##### **With regards to formation of Expert Team and their function:**<sup>12</sup>

1. The Union of India in its affidavit has talked about visitation of various hospitals in Delhi to appraise the situation. The Court stated that one visitation would not be enough to address the issues, rather, a constant monitoring, supervision and management is necessary. Therefore, the court instructed for the formation of an Expert Committees consisting of:
  - i) Senior Doctors from Central Government hospitals in Delhi;
  - ii) Doctors from Government of NCT of Delhi (GNCTD) hospitals or other hospitals of Delhi Government;
  - iii) Doctors from All India Institute of Medical Sciences (AIIMS); and
  - iv) Responsible officer from the Ministry of Health and Family Welfare.
2. The function of this Expert Committee will be to inspect, supervise and issue necessary directions to all the Government hospitals, COVID-19 hospitals and other hospitals in NCT of Delhi taking care of COVID-19 patients. The Committee will also make sure that at least one visit in each of the hospitals is done weekly.
3. In addition to normal inspection, this team can also conduct surprise visits to keep check on

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<sup>11</sup> Affidavit submitted by Smt. Padmini Singla, Secretary, Health and Family Welfare, Government of NCT of Delhi.

<sup>12</sup> *Supra* note 5 at para 13.

preparedness of the hospitals. The expert team has the authority to make instructions for improvement of concerned hospitals after such visitations, and their reports will be forwarded to the Government of NCT of Delhi and the Union of India, Ministry of Health and Family Welfare.

4. The Supreme Court further directed the Chief Secretary of each State to also constitute an expert team within the period of seven days, consisting of doctors and other experts in the area for the purposes of inspection, supervision and guidance of Govt. Hospitals and other hospitals specifically dedicated to COVID-19 patients. The function and authority of such a team will be similar to the above mentioned team, and reports will be forwarded to respective state governments.

**With regards to CCTV installation and screening of footage:**<sup>13</sup>

5. The footages from the CCTV cameras installed in the hospitals in NCT of Delhi will have to be made available to the expert team or other authorities/bodies as per the directions of the Union of India, Ministry of Health and Family Welfare for inspection/supervision based on the screening of which the authorities can issue necessary directions.
6. CCTV cameras must be installed in all COVID-19 dedicated hospitals of GNCT, Delhi, if not already installed.
7. Similarly, all the Chief Secretaries of other States have also been directed to take similar steps with regards to installation of CCTV Cameras in all hospitals dedicated to COVID-19 patients so that remedial actions may be suggested by authorities on management of patients.

**With regards to attendants of COVID-19 patients:**<sup>14</sup>

8. Only one willing attendant of the patient will be permitted to remain at a time in an area embarked by the COVID-19 dedicated hospitals for the purpose.
9. All COVID-19 dedicated hospitals are also directed to create a physically and telephonically accessible helpdesk from where the well-being of the admitted patients can be enquired.

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<sup>13</sup> Based on the affidavit of Director, LNJP hospital, Government of NCT of Delhi.

<sup>14</sup> *Supra* note 7.

**With regards to discharge policy and reasonable rates of tests *etc.* for COVID-19 patients:<sup>15</sup>**

10. The revised discharge policy will be followed uniformly by all the States/UT and the Union of India, Ministry of Home Affairs have the authority to issue appropriate directions in exercise of power under the Disaster Management Act, 2005 to do so.
11. The Union of India is directed to give directions to all the States/Union Territories with regard to prescription of reasonable rates of various COVID-19 related facilities/tests *etc.* In case of any difference in any of the states, the same may be specifically noticed and directed accordingly.<sup>16</sup>

The above guidelines in short covers various aspects, such as formation of Expert Team and their function with regards to visitation of hospitals *etc.* during pandemic, CCTV installation and screening of footage, protocols for attendants of COVID-19 patients and discharge policy and reasonable rates of tests *etc.* for COVID-19 patients. However, the Supreme Court has failed to give any specific guidelines with regards to handling of confirmed or suspected dead bodies of COVID-19.

### V. International Guidelines and Regulations

The infringed rights of patients and dead bodies, as highlighted above, have been guaranteed by various international law instruments. One of the resolutions of the United Nations Commission on Human Rights has especially underlined the importance of dignified handling of human remains, including their proper management and disposal as well as of respect for the needs of

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<sup>15</sup> Supplementary affidavit dated 17.06.2020 filed on behalf of the Union of India, details of COVID-19 patients discharge policy of Union of India has been given. Copy of the revised discharge policy for COVID-19 dated 08.05.2020 has also been brought on the record. The revised policy dated 08.05.2020 brought on record does not indicate that necessary directions have been issued to all States/Union Territories to communicate it to the concerned dedicated COVID-19 hospitals and other hospitals to uniformly follow the discharge policy. We are of the view that discharge policy framed by the Union of India has to be followed by all States/Union Territories uniformly to ensure discharge of the COVID-19 patients uniformly and to achieve clarity in the minds of all concerned. We, thus, issue following direction in this regard:-

<sup>16</sup> The Union of India has constituted a Committee of Dr. V.K. Paul, Member, NITI Aayog, representative of the AIIMS and representative of GNCTD who has to report regarding reasonable rates of various COVID-19 related facilities/tests *etc.* Government of India on the basis of a report from the said Committee has already taken a decision for reducing the amount of test in the NCT Delhi. The Union of India may consider issuing uniform directions to all the States and Union Territories with regard to reasonable rates of various COVID-19 related facilities/tests for private hospitals/labs, which may be made applicable across the country. If any variations to be made with regard to any particular State/Union Territory, the same shall be specifically provided for in the guidelines.

families.<sup>17</sup> Similarly, the Universal Declaration of Human Rights, 1948<sup>18</sup> assures that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including medical care, sickness, and disability.

On the similar lines, there are various guidelines at international level -

i. COVID-19 General guidance for the management of the Dead - ICRC forensic unit<sup>19</sup>

The International Committee of Red Cross (ICRC) was established in 1863, and operates worldwide to help people who are affected by conflict, armed violence and help in promotion of laws that protect victims of war. It takes action in response to emergencies and promotes respect for international humanitarian law and its implementation in national law. The ICRC often uses External Communication documents as a way of exchanging information and messages with external audiences. The Pandemic situation led the forensic unit of the ICRC to release “The general guidance for the management of the Dead”.

The documents talk about management of bodies or human remains of persons confirmed or believed to have died due to the novel coronavirus. Part 1 of the document makes recommendations for the management of infectious dead bodies. It also provides guidance for practitioners, managers, planners and decision makers in the overall response to the pandemic. The document details general principles and guidelines for handling the body remains of an infected person by professional and technicians. It talks about special consideration for disposal of remains/hand over to relatives.<sup>20</sup>

Part 2 of the document “Protracted Response to Increased Deaths From Covid-19: A Preparatory Guideline for Mass Fatality Response Plan” is very relevant here as it contains all the essential elements to be addressed by various authorities like Health Ministry, Foreign Ministry, Cabinet of

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<sup>17</sup> United Nations Commission on Human Rights, *Human rights and forensic science*, Human Rights Resolution 2005/26, E/CN.4/RES/2005/26 (April 19, 2005), available at: <https://www.refworld.org/pdfid/45377c43c.pdf> (last visited on Sept. 06, 2020).

<sup>18</sup> The Universal Declaration of Human Rights, art. 25(2).

<sup>19</sup> International Committee of the Red Cross (ICRC), *General Guidance for the Management of the Dead Related to COVID-19*, External Guidance Document Version 1.0 (March 23, 2020).

<sup>20</sup> *Supra* note 19, Part I, page 3 to 7.

Ministers, the Head of the states etc. Even if such directives exist under a National Disaster Management Plan of a state, the recommendations made under the document are worth browsing. It details the guidelines for management and coordinating between different state authorities, starting from identification of the department responsible for particular task to ensuring that the management level staff's responsibilities and procedural aspects are in place. It also talks about recovery and transportation of bodies, handling of bodies, issuance of death certificates, storage and viewing of bodies by families, proper cremation or burial etc.<sup>21</sup>

- ii. Interim Guidance by WHO on Infection Prevention and Control for the safe management of a dead body in the context of COVID-19<sup>22</sup>

The interim guidance by WHO has been specially designed to address those who tend to the dead bodies of confirmed or suspected corona patients. Therefore, it includes managers of health care centres and mortuaries, religious leaders and public health authorities within its scope. The document addresses various aspects of handling infectious dead bodies such as preparing and packing the body for transfer from a patient room in a health facility to an autopsy unit, mortuary, crematorium, or burial site<sup>23</sup>, which talks about guidelines to be followed by trained technical staff for the purpose; Autopsy requirements<sup>24</sup> which details the safety procedures to be followed in case autopsy is required over such bodies; Advice for mortuary care/funeral home<sup>25</sup> which provides do's and don'ts for them during this time; Environmental cleaning which details safety precautions afterwards and what chemicals to use for such cleansing; Burial or cremation in general and Burial by family members or for deaths at home. The said document also provides a detailed annexure as to what safety and cleaning equipment for management of dead bodies are to be kept at ready for the authority handling dead bodies.

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<sup>21</sup> *Id.* at 8-12.

<sup>22</sup> The World Health Organisation, *Infection prevention and control for the safe management of a dead body in the context of COVID-19: interim guidance*, WHO/2019-nCoV/IPC\_DBMgmt/2020.1 (Sept. 4, 2020), available at: <https://www.who.int/publications/i/item/infection-prevention-and-control-for-the-safe-management-of-a-dead-body-in-the-context-of-covid-19-interim-guidance> (last visited on Sept 8, 2020).

<sup>23</sup> *Id.* at 1.

<sup>24</sup> *Id.* at 2.

<sup>25</sup> *Ibid.*



- iii. Technical Report by European Union on Considerations related to the safe handling of bodies of deceased persons with suspected or confirmed COVID-19<sup>26</sup>

Corollary to the above two documents, this technical report by the EU also aims at aiding the public health preparedness on handling bodies of persons deceased due to confirmed or suspected COVID-19. The target audience of this report is also the public health authorities of EU member states and the UK. The document provides detailed guidance and administrative measures on the safe handling of bodies of deceased persons with suspected or confirmed COVID-19 at the site of death, during transport, storage and preparation before burial/cremation, and during burial/cremation.<sup>27</sup>

## VI. Legislative Mechanism in India

At National level, the subject of ‘health’ does not appear in many places of the Indian Constitution, there are indirect and tacit references to health of the people and the role the state has to play in the development of health of the people. Article 47 of Directive Principles of State Policy (hereinafter DPSP) - states that improvement of public health is one of the primary duties of state.<sup>28</sup> Also, under schedule VII powers relating to ‘public health care’<sup>29</sup> and ‘burial and cremation grounds’<sup>30</sup> is under the state list. Therefore, the state governments have the discretion to formulate laws regarding protection of public health and management of burial and cremation grounds. Deriving powers from the seventh schedule, various state governments passed regulations in response to COVID-19 in furtherance to the Epidemic Diseases Act. For example, The West

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<sup>26</sup> European Centre for Disease Prevention and Control, *Considerations related to the safe handling of bodies of deceased persons with suspected or confirmed COVID-19* (March 23, 2020), available at: <https://www.ecdc.europa.eu/sites/default/files/documents/COVID-19-safe-handling-of-bodies-or-persons-dying-from-COVID19.pdf> (last visited on Sept. 09, 2020).

<sup>27</sup> It is a supplementary document that builds upon an already existing ECDC document which addresses a rapid risk assessment: outbreak of novel coronavirus disease – 6th update [1] a technical report on infection prevention and control for COVID-19 in healthcare settings [2] a guidance for wearing and removing personal protective equipment in healthcare settings for the care of patients with suspected or confirmed COVID-19 [3] and the WHO guidance on infection prevention and control of epidemic- and pandemic-prone acute respiratory infections in health care [4].

<sup>28</sup> The Constitution of India, 1950, art. 47.

<sup>29</sup> The Constitution of India, 1950, art. 246, sch. 7, List II, Entry 6.

<sup>30</sup> *Id.* at Entry 10.

Bengal Epidemic Disease, COVID 19 Regulations, 2020<sup>31</sup>, The Maharashtra COVID-19 2020<sup>32</sup>, The Delhi Epidemic Diseases, COVID-19 Regulations, 2020<sup>33</sup>, the Odisha COVID-19 Regulations, 2020<sup>34</sup>, the Uttar Pradesh Epidemic Diseases, COVID-19 Regulations, 2020<sup>35</sup>, the Bihar Epidemic Diseases, COVID-19 Regulations, 2020<sup>36</sup>, the Gujarat Epidemic Diseases, COVID-19 Regulations, 2020<sup>37</sup>, etc.

Apart from these state regulations, there are two national legislations which are relevant for COVID-19 pandemic. The Epidemic Diseases Act, 1897 is one of the laws which were first enacted to tackle bubonic plague in Mumbai in former British India. This Act is meant for containment of epidemics by providing special powers that are required for the implementation of containment measures to control the spread of the disease. On April 22, 2020, the Epidemic Diseases (Amendment) Ordinance, 2020 was promulgated<sup>38</sup>. The Ordinance amends the Epidemic Diseases Act, 1897 and seeks to protect its healthcare personnel, clinics and other facilities. The second piece of legislation is Disaster Management Act, 2005 under which the “Guidelines on Management of Biological Disasters, 2008” were passed. The 2019 National Disaster Management Plan, also deals with Biological Disaster and Health Emergency. This is the broad legal framework within which activities to contain COVID-19 are being carried out by the Union and State

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<sup>31</sup> Government of West Bengal, March 16, 2020, *available at*: [http://purbamedinipur.gov.in/downloads/Epidemic\\_Disease\\_Regulation\\_covid19.pdf](http://purbamedinipur.gov.in/downloads/Epidemic_Disease_Regulation_covid19.pdf) (last visited on Sept. 10, 2020).

<sup>32</sup> Government of Maharashtra, March 14, 2020, *available at*: <https://www.maharashtra.gov.in/Site/Upload/Acts%20Rules/Marathi/Korona%20Notification%2014%20March%202020....pdf> (last visited on Sept. 10, 2020).

<sup>33</sup> Government of National Capital Territory of Delhi, March 12, 2020, *available at*: <http://health.delhigovt.nic.in/wps/wcm/connect/c05a8d804d883d25974cf7982ee7a5c7/NED+Act.pdf?MOD=AJPERES&lmod=-754584952&CACHEID=c05a8d804d883d25974cf7982ee7a5c7> (last visited on Sept. 10, 2020).

<sup>34</sup> Government of Odisha, April 3, 2020, *available at*: <https://health.odisha.gov.in/pdf/Odisha-COVID-Regulation-31082020.pdf> (last visited on Sept. 10, 2020).

<sup>35</sup> Government of Uttar Pradesh, March 14, 2020, *available at*: <http://www.sgpgi.ac.in/covid19/up1.pdf> (last visited on Sept. 10, 2020).

<sup>36</sup> Government of Bihar, March 17, 2020, *available at*: <http://health.bih.nic.in/17-03-2020/BiharEpidemicDiseasesCOVID-19Regulation2020.PDF> (last visited on Sept. 10, 2020).

<sup>37</sup> Government of Gujarat, March 13, 2020, *available at*: [https://gujhealth.gujarat.gov.in/Portal/News/1089\\_1\\_Notification.pdf](https://gujhealth.gujarat.gov.in/Portal/News/1089_1_Notification.pdf) (last visited on Sept. 10, 2020).

<sup>38</sup> The Epidemic Diseases (Amendment) Ordinance, 2020 is passed under Entry 29 of the Concurrent List or List III which deals with the “Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants.”

governments. Similar guidelines were passed by Ministry of Health and family welfare<sup>39</sup> which specifically dealt with the management of dead bodies. But all the relevant guidelines and legislations have their own limitations and they fail to address the issues raised above.

### VII. Judicial Pronouncements

The ongoing pandemic, COVID-19 has created some problems concerning the rights of the dead body. Incidents of mishandling the dead bodies have been coming up with families either keeping infected dead bodies at home to pay their last respect or refusing to accept the dead bodies altogether. More and more petitions are being filed in the Courts regarding safe management and disposal of COVID-19 infected bodies. In *Gulab Chandra Prajapati v. Chief Secretary, State of Jharkhand*<sup>40</sup>, a PIL was filed which sought “safe management and disposal” of COVID-19 infected dead bodies by directing the state government to implement the “Dead Body Management Guidelines”. Similarly, in *Pradeep Gandhi v. State of Maharashtra*, the petitioner sought a stay on burials of COVID-19 infected bodies near his residential area. This petition was rejected by the High Court of Bombay and burials of the dead body was allowed. The Court upheld the rights of the dead as it did not find a reason as to why the dead be deprived of his/her last rites.<sup>41</sup> In *Ketan Tirodkar v. State of Maharashtra*<sup>42</sup>, the High Court of Bombay rejected the petition alleging the negligence in management and disposal of dead bodies of COVID-19 victims by the staff of the Municipal Corporation of Greater Mumbai.

Whenever ‘*right to decent burial*’ is violated, it can be said that ‘*right to death with dignity*’ is infringed too which is ensured through Article 21 of the constitution. In *Suo Moto v. The State of Tamil Nadu*<sup>43</sup>, the Court was of the opinion that the scope and ambit of Article 21 of the Indian Constitution includes the right of a person to have a decent burial. Similarly, in *Pt. Parmanand katara v. Union of India*<sup>44</sup>, the Supreme Court has held that the right to dignity and fair treatment under Article 21 is not available to a living man only but also his body after his death. In *Jamuna*

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<sup>39</sup> Ministry of Health & Family Welfare, *COVID-19: Guidelines on Dead Body Management*, March 15, 2020, available at: [https://www.mohfw.gov.in/pdf/1584423700568\\_COVID19GuidelinesonDeadbodymanagement.pdf](https://www.mohfw.gov.in/pdf/1584423700568_COVID19GuidelinesonDeadbodymanagement.pdf) (last visited on Sept. 10, 2020).

<sup>40</sup> 2020 SCC OnLine Jhar 421.

<sup>41</sup> 2020 SCC OnLine Bom 662.

<sup>42</sup> PIL-CJ-LD-VC-29/2020.

<sup>43</sup> W.P. No. 7492 of 2020.

<sup>44</sup> 1989 SCC (4) 286.

*Das Paras Ram v. State of Madhya Pradesh*<sup>45</sup>, the High Court of Madhya Pradesh held that, “the word person cannot be so narrowly construed as to exclude the dead body of a human being, i.e. the human body must be given the right, irrespective of being alive or dead”.

The High Court of Allahabad in *Ramji Singh @ Mujeeb Bhai v. State of U.P.*<sup>46</sup> held:

the word and expression ‘person’ in Article 21, would include a dead person in a limited sense and that his rights to his life which includes his right to live with human dignity, to have an extended meaning to treat his dead body with respect, which he would have deserved, had he been alive subject to his tradition, culture and the religion, which he professed. The state must respect a dead person by allowing the body of that dead person to be treated with dignity...

In *Common Cause(A regd. Society)v. Union of India*,<sup>47</sup> the Supreme Court contended that the right to die with dignity is an inseparable and inextricable facet of the right to life with dignity. In *S. Sethu Raja v. The Chief Secretary*,<sup>48</sup> the Madras High Court has also ruled that:

The right to life has been held to include the right to live with human dignity. By our tradition and culture, the same human dignity (if not more), with which a living human being is expected to be treated, should also be extended to a person who is dead. The right to accord a decent burial or cremation to the dead body of a person should be taken to be part of the right to such human dignity.

Therefore, it has been established that deceased persons do have some rights, if not all, which can't be detached from them. Salmond has also rightly pointed out that “*There are three things in respect of which the worries of living person extend even after their death. Those are his body, his reputation and his property.*” By analysing different judgments and statutes, we have come to the

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<sup>45</sup> AIR 1963 MP 106.

<sup>46</sup> Civil Misc. Writ Petition No.38985 of 2004.

<sup>47</sup> (2018) 5 SCC 1.

<sup>48</sup> W.P.(MD) No.3888 of 2007.

conclusion that the following rights have been granted even to a deceased person in the Indian context.

### VIII. Conclusion

The ongoing viral media reports clearly highlight the plight of patients of COVID-19 and further the manner in which their dead bodies are treated. These incidents are a clear indication that there exists a void in our legal system. These incidents have been an eye-opener as to the ill preparedness of our health care infrastructure to deal with an epidemic, it also highlights where the state is lacking in fulfilling its duty under the constitution to improve public health. It is clear that states need to do more to improve the basic health facilities and to invest more into the healthcare system at the grassroot level.

As evident from previous judicial precedents by the higher courts, it is established that Right to a dignified death, which includes respectful handling of dead bodies, infected or not, providing proper cremation or burials *etc.* within its scope. It is, therefore, the duty of the court to ensure that no violation of such rights as declared in its past judgment are allowed. On that account, the intervention of the highest court in the matter was not only proper but necessary to make sure that the core constitutional values related to Right to Life are upheld.

In light of the above analysis, therefore, some basic questions must be answered in order to address the main issue of proper treatment of COVID-19 patients and dignified handling of dead bodies in the hospitals. The First question that arises is whether we have adequate guidelines for the authorities to meet the required international or acceptable protocol of the above mentioned issues. It seems that while treatment of COVID-19 patients is addressed in various national and state guidelines for doctors and medical fraternity, there is still a lack of complete handbook for those handling confirmed and suspected COVID-19 infected dead bodies. The portions of guidelines on transportation, storage and viewing of dead bodies is vague in guidelines passed by the Ministry of Health and family welfare.

However, one cannot deny that, there are enough guidelines to address the bigger issues. The above Order passed by the Apex Court on June 19, 2020 however falls short in addressing a lot of issues, especially those related to handling of dead bodies. If anything, it simply provides a few SOPs for

some of the actions to be undertaken by the authorities as per their guidelines. The Affidavits appears to be the only basis for the guidelines provided by the Apex Court, and is not holistic in any sense as it does not take into reference various International Guidelines and Guidelines already available. At best, the order can be treated as a supplementary document to fill in the gaps to National and State guidelines provided by respective governments.

Another question that needs to be resolved is whether we need more guidelines, legislation etc to tackle this enormous problem or can better implementational of existing documents help meet the challenge. To this effect, the “Covid-19:Guidelines On Dead Body Management” by the Government of India, Ministry of Health & Family Welfare, Directorate General Of Health Services, (EMR Division), talks about training of personnel in handling body adequately, however, recent News and media coverage and the number of rising cases in the courts of justice has clearly highlighted the highly unprofessional handling of bodies, inadequate transportation facilities, the issue of bodies being carried and cremated in lots, stacked on top of each other, misplacement and misidentification of bodies etc. Clearly, in spite of black letters, no adequate training or sensitisation has been provided to such workers. There have been cases of ambulance denying to provide service to infected persons. This shows clear failure of authorities when it comes to following guidelines and their implementation. It is safe to say that at lower levels of management and workers, there is lack of coordination and accountability.

Even though the state and national guidelines and judicial precedents are spinning out protocols, it is the responsibility of the authorities to make sure that there is better implementation even at the lowest level. Even though the Ministry guidelines, which is considered a bible for all Hospital authorities across India, has brought some uniformity to some aspects, the nitty-gritties and implementation issues still need to be looked into. Chain of authority needs to be clarified to hold persons in violation accountable for mishaps, because it is ultimately the families of victims and the general public who are being harassed. The workers at the lowest level who are in direct contact with dead bodies and their families need adequate training.