

REPORT

Consultation Meeting on
REPATRIATION OF MORTAL REMAINS:
POSTHUMOUS BODILY INTEGRITY
under Challenge



PRAVASI LEGAL CELL

December, 2018

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Pravasi Legal Cell

Pravasi Legal Cell is a registered national level Non-Governmental Organization (NGO) of retired Judges, practicing lawyers, social activists, academicians and public spirited citizens of India working to empower people with the power of law. Pravasi Legal Cell began its journey in February 2009 and it has been a decade's *pro bono* legal service to the poor and the voiceless.

Pravasi Legal Cell endeavors to mitigate a wide range of injustice faced by the common man who cannot access justice. We aim at protecting the vitality and dignity of human life without discrimination on any ground like caste, religion, gender, language, place of birth etc. and ensuring the constitutional and legal rights of the common man.

Free Legal Aid – Our Commitment to the Society

The initiating and driving force behind *Pravasi Legal Cell* is providing *pro-bono* and competent legal aid to those who cannot afford the process of getting due justice. A number of committed lawyers on our panel are ever willing to provide free legal aid and legal counseling to common man in various judicial forums.

Niyamavedi – A Platform to raise Voice for Justice

Pravasi Legal Cell conducts *Niyamavedi* in association with leading organizations across the country on issues requiring legal intervention. Each *Niyamavedi* is a platform where a panel of advocates and experts listen to the grievances of people and guide them. Any common concern conveyed during such *Niyamavedis* and requiring legal intervention is brought to the attention of the concerned authorities and the judiciary.

Public Interest Litigations – Channeling Social Change

Bringing relevant social and legal concerns to the attention of various High Courts and the Supreme Court of India in the form of Public Interest Litigations is an important area of activity for us. Recognizing larger social causes in individual petitions and taking them up before the concerned Courts is a powerful source of social change. With every successful PIL, our commitment to social change gets strengthened further.

Research and Publication – Creating and Extending Knowledge

Pravasi legal Cell has a dedicated research team of academicians and lawyers who conduct in-depth analysis of various social and legal issues. Booklets, brochures, videos, and easy to read books are published regularly on different laws and legal rights. These are made available online as well as in print during various public events of the *Legal Cell*.

On the Ground Legal Assistance – Empowering citizens

Common man's experience of anxiety when confronted with the legal and judicial system is also because of lack of legal awareness and unavailability of legal services. It can be truly comforting for the common man if a law practitioner could escort them to various law enforcing institutions like police stations or courts. Pravasi Legal Cell has a dedicated team who makes sure the availability of *pro bono* legal service in deserving cases so that no innocent person is harassed and framed.

Repatriation of Mortal Remains – Caring Hands for the Grieving Minds

Death of a dear one can be unsettling for anyone. It is all the more painful and worrisome if it happens away from one's home state. Along with all the medical and legal complexities involved in repatriation comes immense financial burden as well. The team of Pravasi Legal Cell is committed to providing every little care and assistance that the grieving minds require in their helpless moments of agony during international repatriation or domestic transportation of mortal remains through and from Delhi.

Training and spreading Legal Awareness – Empowering People on Legal Front

Pravasi Legal Cell is committed to spreading legal awareness among the public. Our team of trainers, in association with leading academic institutions and government and non-government organizations, conduct certified workshops and training sessions on various laws and rights of citizens like workplace safety and security, human rights, safe migration, protection of children etc. We strongly believe that without imparting legal awareness, laws would not be efficient in protecting the citizens and helping them achieve justice.

Pravasi legal cell had its humble, but inspired and enthusiastic, beginning when the need for opening the doors of justice to people who cannot walk the lengthy and costly route of grievance redressal system was felt strongly. Having no voice is no reason for anyone to suffer injustice and to live with it, the founders believed. Reaching justice to the voiceless has been the motivational force behind this endeavor. Skepticism about the practicality and success of such an endeavor of providing free legal aid has been dispelled by caring hands and minds that motivated and encouraged us with constant advice and care. It is part of Pravasi Legal Cell's efforts to take up matters of social significance before the appropriate authorities that the matter of repatriation of mortal remains was taken up.

The Cell's involvement in actual instances of struggle for getting the bodies of Indian emigrants back to the country and the grief and agony of the family were the motivating force behind this initiative. Pravasi Legal Cell hopes to contribute in its own limited ways to find workable solutions to problems related to the repatriation of human remains from abroad to India and the transportation of dead bodies domestically within India.

CONCEPT NOTE

Consultation Meeting on Repatriation of Mortal Remains: Posthumous Bodily Integrity under Challenge

Indian diaspora is prominent across the globe. According to the International Migration Report of 2017 published by the United Nations, India is the largest country of origin with an international migrant population of 17 million. With this largest diaspora there arise larger issues too. Most of this migrant population migrates across seeking livelihood for them and their families. Those desperate and indigent hardly go through proper channels and they end up in huge misery in the foreign lands owing to the unfamiliar socio-political and cultural set up in those countries.

One of the major concerns that they always have had is regarding death on foreign land. Along with all the legal and medical concerns, such incidence places the families of Indian emigrant labourers under huge financial burden. In the absence of a proper policy from the government to regulate the transportation and pricing practices followed by various airlines lack uniformity and regulation.

Recently, Pravasi Legal Cell filed a Public Interest Litigation before the Honourable High Court of Delhi, challenging the practices of the airlines including the national carrier, Air India, on repatriation of dead bodies, and the bench comprising of the Chief Justice and Justice V K Rao has issued notice to the Ministry of Civil Aviation, Ministry of External Affairs and Air India, seeking their responses. The PIL highlighted two major concerns:

- The current practice of the airlines of weighing mortal remains to fix the transportation charges as though they were mere cargo is illegal and unconstitutional. It violates the dignity and bodily integrity of the dead, guaranteed under article 21 of the Constitution.
- The exorbitant and fluctuating rates charged by the airlines for transporting the dead bodies of the Indian emigrants place the indigent migrant labourers and their families at a large disadvantage.

The entire bewilderments surrounding the issue squarely directs to the lack of a proper policy or guidelines by the Government as well as the Airline Companies for transporting the mortal remains. Destitute migrants have to bear huge expense involved in it and the cost varies depending on factors such as the country of death, mortuary charges, embalming costs, distance to be travelled, government regulations in the country where death occurred and most importantly the weight of the body. Apart from the financial intricacies, unfamiliar laws, culture and language of the foreign countries bring in more trouble at such difficult times.

Posthumous Bodily Integrity under our Constitutional framework

The taxonomy itself is problematic when the Airlines, name the mortal remains as “sentimental cargo”. Treating the mortal remains as a mere cargo and adding the adjective *sentimental* illustrates the irony and callousness of the entire issue. The commoditization of the human remains gets its ugly picture when it has to be weighed to fix the transportation the rate depending on the weight of the body. This obnoxiousness reflects the human attitude of treating something low if it is of no utility, by discarding entirely the emotions attached to everything that is close to the dead person. This is a clear violation of human dignity and bodily integrity.

Article 21 of the Indian Constitution was expanded by Indian courts to include the rights of the dead. In Pt. Parmanand Katara, Advocate v. Union of India & Anr (1995) 3 SCC 248, the Honourable Apex Court held that right to dignity and fair treatment under Art.21 of the Constitution of India is not only available to a living man but also to his body after his death. Similarly in *Mujeeb Bhai v. State of UP* (2009 SCC OnLine All 310 : (2009) 5 All LJ 376), it was reiterated by the Allahabad High Court that the word and expression ‘person’ in Article 21, would include a dead person in a limited sense and that his right to 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.

Government yet to awake

With this largest migrant population, the country has failed to address one of the major migrant issues, repatriation of mortal remains. Repatriation of mortal remains from countries abroad has got to face many technical and legal hurdles. India being in the top most in the list of states of origin of migrant workers has not yet signed a significant International Convention on migrant workers, the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (Adopted by General Assembly resolution 45/158 of 18 December 1990).

Under Article 71 of the Convention it states that:

- States Parties shall facilitate, whenever necessary, the repatriation to the State of origin of the bodies of deceased migrant workers or members of their families.
- As regards compensation matters relating to the death of a migrant worker or a member of his or her family, States Parties shall, as appropriate, provide assistance to the persons concerned with a view to the prompt settlement of such matters. Settlement of these matters shall be carried out on the basis of applicable national law in accordance with the provisions of the present Convention and any relevant bilateral or multilateral agreements.

The emigrant Indian population hopes that the Court applies its *demosprudence* and makes guidelines to cap the fluctuating rates and bring to a halt the weighing process. At the same time the Government intervention will also make huge difference to this cause. It is a duty on the part of our Government to make sure that the Indian diaspora receives all the privileges guaranteed under our constitution and upheld by Courts time and again

Consultation Meeting

The consultation on “Repatriation of Mortal Remains: *Posthumous Bodily Integrity under Challenge*” aims at bringing a common platform for all stake holders by organising a fruitful dialogue on this matter. Any viable solution arising out of this consultation of the stakeholders may be submitted to the Hon’ble Delhi High Court which is presently adjudicating on this issue and to the government departments responsible for framing policies in this regard.

REPORT

Consultation Meetings on Repatriation of Mortal Remains: Posthumous Bodily Integrity under Challenge

Introduction

India with its largest international migrant population¹ across the globe has failed to address a very riveting issue of migrants, i.e. repatriation of mortal remains of her citizens back home in case of any death abroad. The fact is that the unforeseen tragedy of death of an expat is a matter of extreme helplessness when the specific country is not flexible in its posthumous procedures. The legal and technical complexities involved in the posthumous procedures make the entire process of repatriation dawdling.

In the difficult situation of death abroad, one has to make arrangements for removal of the body from the hospital, coordinating the post mortem reports and dealing with the local police, embalming as it is mandatory for any international transportation, arranging for a coffin or container for international transportation of remains, coordination with Embassy/ Consulate for cancellation of passports, getting import certificates and other custom/ government formalities, transfer to the airport and air shipping costs. Thereby lex fori has a pivotal role to play to bring a plain sailing circumstances revolving around this issue. Unfortunately we lack a law to deal with this issue making the vacuum louder.

Leaving aside the legal vacuum, we are also not signatory to a significant International Convention on migrant workers, the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (Adopted by General Assembly resolution 45/158 of 18 December 1990)² which also speaks about repatriation of mortal remains.

Interestingly, this issue revolves around a jurisprudential tangle leaving the following questions unanswered. It asks whose rights they intend to protect: the rights-holders could consist only of living individuals whose bodies will become the

1 The number of Indian-born persons residing abroad numbered 17 million in 2017, ahead of the number of Mexican-born persons living outside Mexico (13 million). The Russian Federation, China, Bangladesh, Syrian Arab Republic and Pakistan and Ukraine also have large migrant populations living abroad, ranging from 6 to 11 million each. For more details see the International Migration Report, 2017 available at <<https://www.un.org/development/desa/publications/international-migration-report-2017.html>>.

2 The Convention is available at <<https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>>.

corpses at issue or could include the dead themselves. Whether rights to posthumous bodily integrity belong only to the living or survive death, leads to three types of insight. First, the reasons for protecting posthumous bodily integrity are different depending on who the rights-bearers are. Second, to the extent that some laws are more consistent with an approach that views the dead as rights-holders versus only the living (or vice versa), this may help elucidate why we protect posthumous bodily integrity. Third, if one has an opinion about whether the dead are capable of having rights, this has implications for how one thinks laws protecting posthumous bodily integrity should be structured.

In this backdrop, the prevailing practices revolving around the repatriation of mortal remains is what needs to be highlighted due to its nature of despondency. Currently there is a gross inhuman practice of weighing the mortal remains as a mere cargo to be shipped by the Airline companies and to add the agony the exorbitant charges attached to such transportation creates a melancholia situation. There are also considerable practical issues involved in the entire process such as inordinate delay, flexible and exorbitant air transportation charges etc. Thus, repatriation of dead bodies becomes a serious concern for every class of emigrants in their most grieving moments. The delay in repatriation and the huge financial burden add to the agony and grief of the surviving family.

At this juncture, Pravasi Legal Cell comes as a voice for the helpless and hopeless in this trauma of departing their beloved ones forever in a foreign land deprived of much desired last funeral rites. Pravasi Legal Cell initiated this issue by sending memorandums to the concerned Ministries and later finding those steps futile knocked the doors of justice through a Public Interest Litigation before the honorable High Court of Delhi.³ The bench comprising of the Chief Justice and Justice V K Rao has issued notice to the Ministry of Civil Aviation, Ministry of External Affairs and Air India, seeking their responses and has posted the matter for detailed hearing in January 2019.

The PIL filed by Pravasi Legal Cell has highlighted two major concerns:

- The current practice of the airlines of weighing mortal remains to fix the transportation charges as though they were mere cargo is illegal and unconstitutional. It violates the dignity and bodily integrity of the dead, guaranteed under article 21 of the Constitution.
- The exorbitant and fluctuating rates charged by the airlines for transporting the dead bodies of the Indian emigrants place the indigent migrant laborers and their families at a large disadvantage.

³ WP (C) No 10695/2018, Pravasi Legal Cell v. Union of India & Ors

The petitioner, Pravasi Legal Cell, in its written submission has argued that this callous practice adopted by Airlines is an act violating the dignity of the dead body, which has been protected under Article 21 of the Indian Constitution. The petitioner relied on the obiter of *Pt. Parmanand Katara, Advocate v. Union of India & Anr*⁴, where the Honourable Apex Court held that right to dignity and fair treatment under Article 21 of the Constitution of India is not only available to a living man but also to his body after his death and also on the verdict of *Mujeeb Bhai v. State of UP*⁵, wherein the Allahabad High Court held that, 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 petition prayed for an order to frame policy to regulate repatriation of mortal remains of the Indian emigrants from abroad and domestic transportation of dead bodies within India. It has prayed that the practice by airlines of weighing dead bodies to fix transportation costs be stopped immediately and that the pricing policy of the airlines be regulated by a policy of the government.

Meanwhile, Pravasi Legal Cell has taken up the matter to larger social networking platforms, wherein it received huge support for and response on this grave cause. Taking up the responsibility of bringing more clarity to the issue for the laymen and lawmen, Pravasi Legal Cell subsequently conducted two consultations so that various stakeholders could come together on a common platform to deliberate on this issue in a profound manner.

Niyamavedi on Repatriation of Mortal Remains

(December 4, 2018 at Chavara Cultural Centre, Cochin)

The consultation on issues related to the repatriation of mortal remains was organized in the state of Kerala at Chavara Cultural Centre, Cochin on December 4, 2018. Prof. K. V. Thomas, Member of Parliament and Former Minister of State in the Ministry of Agriculture and Ministry of Consumer Affairs, Food and Public Distribution, Government of India, Dr. Sebastian Paul, Advocate and former Member of Parliament, D. B. Binu, Advocate and a prominent RTI Activist, and Jose Abraham, Advocate on Record, Supreme Court of India were pleased to grace the occasion and share their views on the issue.

⁴ (1995) 3 SCC 248

⁵ (2009 SCC OnLine All 310: (2009) 5 All LJ 376)

Professor K. V. Thomas lamented the practice of treating human remains as cargo, whereas the demand of the emigrant Indians was to have the mortal remains repatriated with dignity. It is a custom in India to respect the dead and to extend them the dignity that is enjoyed by living persons. But currently there was no preferential treatment to the human remains by the airlines than merely terming them as sensitive cargo. He observed that any cargo that is refrigerated or frozen can be sensitive, not only human remains and hence naming mortal remains as sensitive cargo was insufficient and ambiguous.



He noted that the issue has already been taken up by a few Members in the Parliament and that there are discussions happening around the topic at various forums. He noted that the government was blind to the illegality and insensitivity of the practice and has not taken any action to correct the practice. Being part of the legislature, he was of the opinion that the government should also take into consideration the sustainability of the airline while forming a policy on the repatriation of dead bodies.

He suggested that with the help of prominent emigrant Indians and various Pravasi NGOs, Pravasi Legal Cell should take this matter to the government so that a workable solution can be thought on this matter. The matter can be resolved with proper discussion and debate at the government level. He conclude by promising that he would discuss the matter with other Members of Parliament and offered all possible assistance to Pravasi Legal Cell for taking this matter forward. He expressed his hope that consultation meetings such as these will help in taking this issue up at the national front.

Dr. Sebastian Paul, advocate at the Kerala High Court and a former Member of Parliament started his speech by observing how transportation of dead bodies was a sensitive and serious matter faced by the migrant Indians both outside and within India.



He noted that India has historically been a country that grants respect and dignity to the dead bodies even to the corpse of a criminal. Quoting the example of Socrates, he mentioned how the state permits even criminals awarded capital punishment by the state are given the opportunity to die with dignity. He also quoted the example of Jesus Christ who was subjected to the most inhuman form of death by the state was granted permission for a dignified and

honourable burial by the same state. He also quoted from the Koran to show how the Prophet respected dead persons while the mortal remains were taken for burial. He elaborated how religions, though different in their creed and practices, conduct last rights of their dead in decent manner.

He stated that right to dignity and decent burial is important in our life and that it was the duty of the Government to protect the fundamental rights of the people. He said that death could happen to anyone at anytime and it was the duty of the government to make sure that no one suffers because one happens to die abroad. He demanded that the illegal practice of weighing the bodies for fixing charges be stopped with immediate effect. To make sure that the citizens enjoyed rights guaranteed under the constitution was the responsibility of the government.

Dr. Paul also pointed out that since airlines were charging heavily for repatriating dead bodies, it becomes difficult for the family members to repatriate dead bodies from abroad. He also observed that this becomes a difficult matter not only for the economically backward families but also for the rich and the affluent, due to various legal and medical complexities involved in the process. He observed that the family members have to wait too long to receive the body from outside India. He said the government should take into account this aspect as well.

He suggested that the matter could be solved by following different procedures. The members can present this issue in the parliament and initiate a discussion and demand for a rightful solution. There should also be attempt to solve the matter by following up on the petitions filed before various courts in India by Pravasi Legal Cell. He concluded by appreciating the efforts of Pravasi Legal Cell and other NGOs working on this front to bring some kind of solace and comfort to people in their most grieving moments.

Advocate D. B. Binu, a Lawyer and a prominent RTI activist in the state spoke about the urgent need to find solutions to the problems faced by the emigrant Indians during the repatriation of mortal remains. He was of the opinion that, if implemented effectively, there are presently sufficient provisions to find solutions to many of such problems. But citizens' active intervention is required to make this possible. The Indian Missions will have to be more accessible and prompt. He opined that the Right to Information Act could be used to correct many wrongs currently faced by the emigrant Indian population. He also demanded that there be immediate formulation of policies to solve issues that are currently overlooked.



Consultation meeting on “Repatriation of Mortal Remains: Posthumous Bodily Integrity under Challenge”

(Nehru Memorial Museum and Library, New Delhi on December 14, 2018)

The second major event organized on this front was a Consultation meeting on the topic “Repatriation of Mortal Remains: Posthumous Bodily Integrity under Challenge”. The speakers of the day were Mr. D.Raja, Member of Parliament, Rajya Sabha, Mr. Sanjay Hegde, Senior Advocate, Supreme Court of India, Mr. Santosh Paul, Advocate, Supreme Court of India, Ms. Neema Noor Mohamed, Advocate, Supreme Court of India, Dr. Bins Sebastian, Assistant Professor, Department of Philosophy, St. Stephens College and Mr. Jose Abraham, Advocate-on-Record, Supreme Court of India and President, Pravasi Legal Cell). Dr. Shashi Tharoor, Member of Parliament and Chairman, Parliamentary Standing Committee for External Affairs sent his message for the consultation meeting and regretted his inability to attend the event as was promised earlier. The consultation meeting was concluded by (Retd) Justice Kurian Joseph, Supreme Court of India who wished every best to the efforts of Pravasi Legal Cell.



The topic for consultation was introduced by Mr. Jose Abraham, Advocate and President, Pravasi Legal Cell. He elucidated how this topic found relevance in the current scenario by narrating his own experience of fighting a legal battle for getting back the mortal remains of a poor emigrant hailing from the state of Jharkhand, Mohammed Afzal from the Kingdom of Saudi Arabia. With the intervention of the Hon'ble High Court of Delhi, the mortal remains were brought back to India after 14 months. The speaker highlighted how cumbersome is the entire process of repatriation of mortal remains and he started this legal battle through Public Interest Litigation, after communicating the problem to the government and seeking policy formulation on the matter.

Mr. D. Raja, Member of Parliament, Rajya Sabha, spoke on this issue citing how he has helped the repatriation of mortal remains from places like Malaysia in individual cases. He highlighted on a very important aspect of this issue, i.e. “Consular Access”. He stressed on the fact that there should always be adequate consular access to make the entire posthumous process hassle free for common man, especially poor migrants.



The speaker brought into knowledge that there is systematic prescribed mechanism for bringing the mortal remains of the Members of Parliament if they die abroad. He thereby insisted that the problem revolves basically on how the Airlines deals with it and pondered why only national Airline, Air India is blamed leaving the rest of the private airlines? He stressed that even the private airlines must also be made equally involved in this issue by fixing a standard cost for transportation.

The next speaker who enlightened the discussion was Mr. Sanjay Hegde, Senior Advocate, Supreme Court of India. The speaker began his talk by describing the Indians as great migrants from centuries and came to the point that after Independence, the trend in the migrating population has changed. The speaker rightly pointed out that there are variants in migration population by citing examples of a carpenter from Kerala to a poor laborer from Bihar who migrated in search of good lives and bring back money to the country.



Coming to the topic squarely the speaker held that this issue when dealt doctrinally has an element of religiousness, where the majority faith of the country has a ritual of mingling the ashes of the dead ones with the holy waters of this country. Similarly the other faith groups believe in the resurrection of the body in the judgment day and have the ritual of burying the body intact. In these circumstances any hurdle to bring back the mortal remains of the human will directly infringe the essential practices of the religion guaranteed under the Indian Constitution. Thereby the speaker stressed on the fact that this becomes a constitutional incumbency on the government to try as far as possible to repatriate the same and ensuring the right to dignity. The speaker concluded with the suggestions that there should be a dedicated funding policy for the expenses incurred in such circumstances and constitutes a Parliamentary Committee to discuss and bring out remedies arising out of such contingencies, especially when we have a foreign mission.

The next speaker for the day was Ms. Neema Noor Mohamed, Advocate, Supreme Court of India. The speaker verbalized this issue in an elaborative manner under the following heads: Speaking through the Jurisprudence of Posthumous Rights; Translating this right (if existing) into enforceable right through a proper legislation; and Confronting the repatriation through International laws as there involves two sovereign States.



The speaker highlighted that the subject that we are dealing with is the right to dignity of dead and the peculiarity of this subject is that it cannot claim its right. Here comes the need of an eligible human agent who can claim the right of dead acting as a human agent. This entire discourse as the speaker said needs to be jurisprudentially dealt to bring out clarity as there is no much deliberations till now on this discourse. The speaker then stressed on the fact there needs a proper legislation to fill up the vacuum on this issue and the Parliamentarians have to show the will to do the same as it is not just a socio-legal issue but more of emotional. At this juncture the speaker urged to call for serious research papers in this issues bringing logistically and practically enabling the procedures of repatriation of mortal remains an unchallenging process. At the same time there needs to be classification of migrants so that the government can reach out to deserving destitute persons. Speaker also expressed as a concluding remark her interest of taking this issue with larger stakeholders discussing and deliberating under one roof as it is also a matter involving International laws.



The next speaker, Mr. Santosh Paul, Advocate, Supreme Court of India began with an interesting illustration of a French man dying in Strasburg in Germany and just being 10km the distance between the both places, how the entire process made the family choked to get back the body. This speaker highlighted how the desire to be buried in the home land is purely human tendency and that needs to be protected. The speaker aptly pointed out the need for a comprehensive pricing policy so that the issue is partially resolved.

The last speaker of the day was Dr. Bins Sebastian, Assistant Professor, Department of Philosophy, St. Stephen's College. He enlightened the audience speaking on the matter from a philosophical angle, trying to establish the right to dignity and integrity of the dead human persons. The speaker expressed his ideas on how the right to claim is not directly proportional to the existence of very right, giving the examples of children or persons mentally sick or in vegetative state.



The speaker argued even if the law does not recognize an individual's right to dignity and integrity, these rights existed as natural rights arising from the individual's interest for flourishing and well being. There was also an extension of the interests while alive about the treatment of the

body once the person is dead, just as he has an interest over the posthumous usage of the property that he owned while alive. His privacy interests extend in similar manner toward the owning and treatment of his body after he is dead.

The speaker also argued that not only from a privacy perspective, but also from property perspective the right of the dead human person for dignity and integrity could be established. Since dead bodies are not owned by the State but by the legal heirs of the dead person as a quasi property for the purpose of decent burial, the dignity and respect of the dead bodies could also be argued for from a property perspective.

Dr. Shashi Tharoor, Member of Parliament, Lok Sabha, had sent his message through a video, in which he noted that this was a major concern that every Member of Parliament had to face, especially in constituencies like his, which is home to many emigrants working in the gulf countries. When death occurs due to accidents, tragedies, or ill health grieving



families come seeking rapid repatriation. He opined that issues such as complications relating to the nature of the deaths, insistence of certain countries on prolonged post-mortem practices, sometimes suspicious circumstances which has complicated the release of the dead bodies, and the affordability for some families to bring back the body of the sole earning member, require serious discussion and talking.

He acknowledged and appreciated the cooperation of various Indian embassies rendered to his office in such situations. But he observed that a number of improvements were always possible especially in some areas in certain countries, for example, to reduce the inordinate delay that occurs in repatriation of mortal remains. He also spoke about the arrangement for more generous availability of funds to ship bodies for the indigent families. He regretted his absence in person and wished all the very best to the consultation meeting and to the cause that Pravasi Legal Cell has taken up. He expressed the hope that the consultation meeting comes up with certain constructive suggestions which can be taken up particularly with the Ministry of External Affairs.

Justice (Retd) Kurian Joseph, Supreme Court of India, concluded the consultation meeting by wishing very best to all the efforts of Pravasi Legal Cell and spoke on the need for young lawyers to be more open to public service, sharing personal experiences and insights.



Findings and Recommendations

The following findings and suggestions were made at the consultations that Pravasi Legal Cell had organized on “Repatriation of Mortal Remains: Posthumous Bodily Integrity under Challenge” at Cochin and Delhi. The suggestions also include inputs received from the participants other than the invited speakers for the discussions.

1. The proper solution for issues related to repatriation of mortal remains should come from the government in the form of a policy. Steps to demand a policy from the government in this regard must be thought about. Various stakeholders like emigrants themselves or Pravasi associations or the affected families of emigrants should be identified and encouraged to approach the government by way of petitions or representations.
2. The appropriate step for the government to take would be to make repatriation of mortal remains free of cost for the deserving Indians, just the way practiced by some neighboring Asian countries. This demand could be presented to the government through the Members of Parliament, by the grieving parties in form of petitions or representation or through various media platforms.
3. If the process of repatriation cannot be made free of cost by the Government, there should be provision for substantial financial assistance to the deserving Indian emigrants. This can be executed through the Indian Missions abroad.
4. Compensation to the bereaved family and immediate financial assistance to meet the transportation costs should be arranged. Reimbursement of repatriation costs is a solace, but often it does not meet its purpose. The most difficult thing for repatriating bodies is to arrange for huge transportation costs at a short notice that too at a time of intense grief and helplessness. The state cannot expect NGOs or kind hearted individuals to assist in the repatriation of mortal remains.
5. Since many suggestions above will imply financial burden for the airlines, the Government should look at the possibility of setting up a regularized funding policy to meet the expenses of repatriation for deserving Indian emigrants. The Indian Community Welfare Fund may be strengthened for this purpose.
6. If the state decides to continue the practice of billing families of the emigrants for repatriation of their dead ones, the government should implement a policy to the effect that the pricing for repatriation of mortal remains is unified. The rates may be fixed for children below the age of 18 and adults separately.
7. The policy should make sure that no business is made out of death and that the airlines must not increase the transportation cost arbitrarily in such helpless

moments of grief. Since no death and related journey can be preplanned, the seasonal fluctuation in the ticket rates should not be applicable for the repatriation of mortal remains and the persons travelling along with the body.

8. There should be a policy directing airlines to transport dead bodies without any accompanying person in the same flight. The current practice of forcing someone to travel along with the body increases the financial burden on the family. Also it might be difficult for a person staying alone in a foreign country to arrange for someone to travel along with the body. Many international airlines do not insist on an accompanying person while a human body is repatriated.
9. The practice of weighing dead bodies to calculate the transportation costs is inhumane and illegal. The Government must take necessary steps to stop such a practice followed by the Airlines. Even when the practice of weighing dead bodies is a must for airlines' safety purposes, the billing should not reflect the weight of the dead body. The bill should ideally read as "adult body" or "body of a child".
10. The policy should also aim at covering domestic transportation within the country adequately. The practice of weighing dead bodies for fixing transportation costs and fluctuating pricing system should immediately stop.
11. The aspect of long delay occurring while transporting dead bodies from foreign countries to India should also be taken to the attention of the Indian government. There should be policy to expedite the entire process. There should be efforts from the side of Indian Missions to help avoid inordinate delay involved in the entire process due to various legal and medical formalities to be completed.
12. Access to various Consular Services should be ensured. The Government must take steps to make the embassy procedures simple and quicker in matters related to repatriation of mortal remains. There should be designated officials to look after matters related to death and repatriation at least in countries with considerable presence of Indian emigrants.
13. A private member bill is another possibility to take this matter before the parliament and ensure that a discussion happens on this matter. The possibility of a private bill to this effect has to be deliberated upon and Members of the Parliament should be approached take up the matter.
14. Demand could be made to the Government through the Members of Parliament for the setting up of a Parliamentary Committee to discuss this issue.
15. Measures to strengthen the Indian railway with more financial and human resources and policy should also be researched upon and implemented so that the domestic migrants within India has the choice of approaching the Indian Railway for inter-state transportation of dead bodies.

16. There must be more academic work related to the topic, in order to establish the dignity of dead human bodies and to press the need for legislation on this front. Discussions and debates to establish the dignity and integrity of dead bodies and to highlight the seriousness of the matter of violating the dignity of human dead bodies must be encouraged and sustained.
17. Establish the dignity of dead bodies academically as there is no enough scholarship on the matter to prove beyond debate the right of the dead person to dignity and integrity. This is must to ascertain if every people in the country considered human remains with the same honour and respect. It is probable that there are communities within the country that do not consider dead bodies worthy of dignity and honour for whatever reasons, including religious. It would be appreciable to establish academically that there is an expressed public sentiment about the matter. In any case, even when the same sentiment is not shared by all, the state should not deny the opportunity and means to any person who wishes the dead bodies to be treated with honour and dignity.
18. Steps should also be taken to create public opinion on the issue through the social media, press writings, and discussions and debates. The NGOs pressing for regulation on this front must be interlinked and should work as a united front on various aspects related to the issue of repatriation.
19. It would be worth looking to see if a clause could be included into the travel insurance, which is mandatory for most of the foreign travels, that the dead body of a person could be brought back home by the insuring company, in case the death happens during the period of travel. Currently this is not included in the international travel insurance policies.
20. The matter of repatriation of dead bodies should not be considered as one affecting the indigent emigrants working outside India. It affects everyone, if not financially per se. the inordinate delay involved in the repatriation of mortal remains is another thing to be taken care of. There must be provisions at the embassy level to speed up fulfilling various legal requirements. There should also be policy to ease various procedures at the airports and by various airlines. The matter should be treated with sensitivity and promptness by the embassies and the airlines; and the government should make sure that this happens.





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