

Legal Status of a Dead Person: A Critical Analysis in the Light of Jurisprudence

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Abstract

This study states that while legal rules affecting the dead often have a practical aspect, one of the primary, and yet unrecognized, forces driving the creation of these legal rules are cultural norms, including dignity and respect for decedents' wishes. In reaching this conclusion, this study adopts an interest theory approach to rights. Interest Theory recognizes persons currently incapable of making choices, such as the mentally incapacitated and infants, as potential right-holders. Using interest theory, this study argues that the dead, although unable to make real-time choices, are capable of being legal right-holders. Furthermore, certain interests, such as the interest in seeing one's offspring survive or the interest in one's reputation, can survive death. When these interests are protected by legal rules, the dead are granted de facto legal rights that can be enforced against the living. The law also strives to honor a decedent's wishes and to protect his interests because society has chosen, within limits, to adhere to the principle of autonomy. This is why courts often consider a decedent's wishes when determining the disposition of his corpse or property.

Keywords: Dead Person, Legal Status and Jurisprudence.

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1.1 INTRODUCTION

The identity of a human being may be said to commence presence of birth and cease to exist at passing and in common the law takes the same view. Dead men are now not people within the eye of law. They have laid down their lawful identity with their lives, and are presently as down and out of rights as of liabilities.¹ They have no rights since they have no interface. They don't indeed stay the proprietors of their property until their successors enter upon their inheritance.

1.2 Objective of the Study

The main objectives of this study are following:

- i. To explain the concept of Legal Status of a Dead Person.
- ii. To focus on the Powers and Duties of a Dead Person.
- iii. To identify the Action taken by Law Enforcing Agency to Protect the Rights of a Dead Person.
- iv. To identify the laws and remedies for a Dead Person.

1.3 Meaning of a Dead Person

Dead Person means someone who is no longer alive. Synonyms: dead soul, deceased, deceased person, decedent, departed. This formal definition of passing is broadly appropriate not as it were to human creatures but to non-human creatures, plants, etc. In any case if it may be a case of characterizing human passing, we need to recognize characteristics that are basically noteworthy to a human being. Subsequently, we here characterize passing essentially as "the ultimate and irreversible cessation of a person's life". Human passing can be characterized as a prepare in which a person's dead body gets to be vested with the status of a vessel that both means his/her passing and objectifies the concept of passing.²

1.4 Legal Provisions of a Dead Person

The law moreover endeavors to honor a decedent's wishes and to secure his interface since society has chosen, within limits, to follow to the guideline of independence. This can be why courts regularly consider a decedent's wishes when deciding the

¹ V. D. Mahajan, *Jurisprudence & Legal Theory*, 5th ed, Eastern Book Company, 2018, p. 378

² https://etheses.whiterose.ac.uk/14754/1/274997_vol1.pdf P 51

mien of his cadaver or property. Of course there are lawful limits to independence, indeed for the living, and the law is always battling with the precise boundaries of these limits. With the dead, independence is more constrained than with the living, both since there's no person who can speak out contemporaneously around the decedent's desires as a result the capacity to form choices and alter inclinations passes on with the decedent. This Article gives a to begin with cut at characterizing the boundaries of both after death independence and Posthumous lawful rights.³

Utilizing illustrations from a wide assortment of legitimate disciplines, the Article creates an arrangement of standards that will offer assistance judges, lawmakers, and lawful researchers think approximately the lawful treatment of decedents' interface, counting the way the law ought to treat decedents' lawful interface.

1.5 Powers of a Dead Person

The identity of a human being commences its presence on birth and ceases exist of passing. Dead men are no longer people within the eye of law. They have laid down their legitimate identity with their lives and they are down and out of rights and liabilities. They have no rights since they have no interests. They don't indeed stay the proprietor of their property until their successors enter upon their legacy.⁴ Without conferring rights upon the dead, Law recognizes and takes account after the passing of a individual of his wants and interface when alive. There are three things in regard of which the tensions of living men expand indeed after their passing. Those are his body, his reputation and his bequest. A living man is fascinated by the treatment to be given to his claim dead body. A cadaver is the property of no one. It cannot be arranged of by will or any other instrument and no wrongful managing with it can sum to burglary. Be that as it may, criminal law secures a better than average burial for all dead man and the violation of a grave may be a criminal offense. The bearings of a man in his will with respect to the transfer of his dead body are without any official drive. Be that as it may, by statute he is given the control of ensuring it from the outrage of anatomical employments. A lasting believe for the upkeep of his tomb is illicit and void as no property can forever committed for this reason. Indeed a brief believe for this.⁵

Law is an instrument of the society which incorporates rules of conduct, activity or behavior of individual, made and upheld by the State and the most question of law is to bring peace and solidness within the society. Most of the laws are for the living people or individuals but as we see upon closely ready to discover

that there are moreover laws for the dead. Conventional burial of dead bodies and wrongdoings against the body are the two primary regions where these laws are made upon. There is a covenant in the Geneva Convention 1949, which states that, "As far as the military consideration allow, such party to the conflict shall facilitate the steps taken to protect the killed."⁶

1.6 Duties of a Dead Person

An individual can, by his will or something else make a valid trust for the repair of all the graves in a graveyard since that would sum to an open or charitable trust, but one cannot make a trust for the perpetual repair of one's own grave or the graves of his ascendants and relatives since such a believe would be a private trust and would encroach the run the show against interminability. Indeed in case a estate is for the advantage of one's soul or souls of one's predecessors or relatives, that estate is to be respected as a public or charitable inheritance since that's likely to development the cause of religion by pulling in other people who are outsiders to that specific put on the days on which such ceremonies are performed.⁷

For a long time after a man is dead, his hand may proceed to control and decide the delight of the property which he possessed whereas he was alive. The Law of Succession grants the wants of the dead to direct the activities of the living. Additionally, anything he has cleared out behind to be disseminated as gifts or given in charity will be regarded by law and upheld agreeing to his wishes laid down in legitimate report.⁸

1.7 Rights of a Dead Person

From the prior times itself the concept is that dead bodies have the right to rest and ought to not get aggravated in any way. Most of the civilizations, religions and culture all have acknowledged this concept and they take after it. In this advanced world as there's an appropriate system of law and administration is input, we are able see upon the rights of a dead individual which are recognized beneath law in Bangladesh.

Trespassing a burial place, place of worship and place of sepulcher is a cognizable offence under Section 297 of the Penal Code 1860, it clearly prohibits irreverence to dead bodies.⁹ Trespassing implies any violent or harmful act and entering into a place where, the burial service are performed or as a safe for the remains of the dead or offers any outrage to any human carcass or causes unsettling influence to any other people, who are collected for the execution of burial service ceremonies and with an purposeful to wound the sentiments of any individual.

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https://law.hofstra.edu/pdf/academics/journals/lawreview/lrv_issues_v37n03_cc4.pdf

⁴ *Supra note* 1, p. 380

⁵ *Ibid*, p. 381

⁶ Article 16 of the Geneva Convention, 1949

⁷ *Supra note* 1, p. 381

⁸ *Ibid*, p.38

⁹ The Penal Code, 1860, S.297

In the case of Amir Hassan,¹⁰ four accused entered the premises of the complainant and one of them demolished the wall which he was constructing and took a deity which was worshipped by the complainant and his family from the niche and threw it into a drain. It was held that the accused were guilty under this section.

Section 404 of The Penal Code, 1860 deals with dishonest misappropriation of a dead man's property.¹¹ The object behind Section 404, is to afford protection of property which by reason of its being peculiarly needs protection where the person who could look after it is dead and the person, who is expected and entitled to look after it after the death of the aforesaid person has not appeared on the scene. A person prosecuted under Section 404, can be punished with imprisonment either description for a term which may extend to 3 years and also shall be liable to fine and if the offender is a clerk or a servant of the deceased person, the imprisonment may extend up to 7 years.

Section 499 of the Indian Penal Code which deals with defamation, also defines that libel or slander against a dead person also contributes the offence of defamation.¹²

In cases where passing happens due to fire accidents, self-immolation, murders, passing due to sexual offenses, custodial deaths, suicides, street and other accidents, the body of the perished must be secured, dealt with regard and sent to funeral home quickly for performing the post-mortem examination methods.¹³

1.8 Legal Action Against a Dead Person

When an individual passes on, his or her bequest ordinarily passes through a legitimate process known as probate. Through probate, a decedent's resources are inventoried and esteemed, banks and obligations are paid, and any remaining property is exchanged to recipients or beneficiaries.

Depending on the complexity and value of the decedent's bequest, probate can take a couple of months or drag on for a long time. In case the decedent cleared out a will, the individual who is designated to supervise the probate process is alluded to as the agent. In case there's no will, the court delegates an individual agent to fulfill that part. The agent or individual agent informs all potential heirs that the bequest is being probated.¹⁴ It

ought to be the obligation of each citizen to advise, after taking note of any occurrence of passing, quickly to the closest police station and/or to crisis emergency vehicle administrations or the regulatory/ legitimate specialists, whichever is attainable.¹⁵

1.9 Legal Action Taken by a Dead Person

Salmond was of the view that the identity of a man commences from his birth and closes with his passing. It is said that they terminate to have any rights as all their obligations and interface terminate with their passing. For deciding that a dead individual may be a legal person or not, the taking after questions got to be replied.¹⁶

The passing of an adored one is unavoidably traumatic. With the passionate pain and enduring comes the trouble of making choices approximately how to appropriately honor the adored one's life, and tragically in some cases whether or not to look for remuneration for their misfortune when it was caused by another's carelessness, carelessness, or carelessness. Under the law, individuals who are suing for wrongful passing are not suing on behalf of the expired individual. They are suing on their own behalf for the misfortunes caused by the passing of an adored one. Wrongful passing claims give recompense for misfortunes experienced within the occasion of a adored one's passing.¹⁷

2.0 Different Views of Jurists for the Protection of Rights of a Dead Person

The identity of a human being commences its presence on birth and ceases to exist at passing. Dead men are now not persons in the eye of law.¹⁸ They have laid down their lawful identity with their lives and they are down and out of rights and liabilities. They have no rights since they have no interface. They don't indeed stay the proprietors of their property until their successors enter upon their inheritance. Without conferring rights upon the dead, law recognizes and takes account after the passing of an individual of his wants and interface when alive. A carcass is the property of no one. It cannot be disposed of by will or any other instrument and no wrongful managing with it can sum to burglary. Be that as it may, criminal law secures a better than average burial for all dead individuals and the infringement of a grave may be a criminal offense.

¹⁰ (1939) 21 PLT 121; 41 Cri LJ 810; (1940) AIR (P) 414

¹¹ The Penal Code, 1860, S.404

¹² Ibid, S.499

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<https://nhrc.nic.in/sites/default/files/NHRC%20Advisory.pdf>

¹⁴ <https://www.marianomoralesslaw.com/blog/sue-dead-person/>

¹⁵

<https://nhrc.nic.in/sites/default/files/NHRC%20of%20Dead.pdf>

¹⁶ <https://blog.ipleaders.in/all-about-the-legal-rights-of-the-dead>

¹⁷ <https://www.fvflawfirm.com/can-i-sue-on-behalf-of-a-deceased-person>

¹⁸ *Supra note 1*, p. 333

According to Salmond: "A person is any being whom the law regards as capable of rights or duties. Any being that is so capable is a person, whatever a human being or not and no being that is not so capable is a person, even though, he be a man. Persons are the substance of which rights and duties are the attributes. It is only in this respect that persons possess juridical significance and this is the exclusive point of view from which personality receives legal recognition." In the case of Williams¹⁹ it was laid down- that a person cannot during his lifetime make a will disposing of his body, e.g., giving his brain to the museum or giving any part of his body to the medical college. However, the trend is changing today and it is perfectly legal to donate one's eyes after death. In the case of Jamshedji²⁰, muktad ceremonies of the Parsees tend to advance the religion of the followers of the Prophet Zoroaster and therefore trusts and bequests for the purpose of such ceremonies are valid. In the case of Advocate General,²¹ it was held that a gift for the perpetual upkeep of the tomb of St. Chandabhai was a Charitable gift, and therefore valid, even though perpetual.

2.1 Action Taken by Law Enforcing Agency to Protect the Rights of a Dead Person

In Bangladesh, some rights have been provided by statutes to the bodies of people after they die. These are enumerated as under:

According to Section 297 of the Penal Code 1860, the irreverence of dead bodies are strictly prohibited. If any person with the intention or knowledge of wounding or insulting the religion of any person, commits trespass in any place set up for funeral rites or set up as a depository for the remains of the dead or treats a dead body with indignation or causes disturbance to people assembled to carry out funeral rites of the dead, he or she shall be punished for a term extending to one year or fine or both.²²

This section deals particularly with the individuals attempting to trespass places set up for the conduction of burial service ceremonies or with individuals. It is germane to note that the individual who must incinerate or bury the dead also has the correct to require activity against the individual who tries to hurt the dead body in any way.

2.2 FINDINGS

In this study it has been attempted to focus on four major factors of the Legal Right of Dead Person; those are specially taken into consideration for ensuring the Legal Rights of Dead Person. The study reveals that the most significantly relate factor in case of ensuring the

rights of a Dead Person but, the Dead person are so much deprived and dissatisfied with their most important and basic rights that they are unable to think about other factors because they don't get the basic things those are ensuring by various provisions of Bangladesh. Without the proper and strict provisions those rights won't be protected. In this study the findings are stated below:

- a. Weak/inadequate provisions of law to ensure the rights of the dead person,
- b. Lack of enforcement of the provisions of law by the competent authority,
- c. Unavailability of skilled manpower for making constraint of implementation and
- d. Lack of knowledge about the rights of the dead person.

2.3 RECOMMENDATIONS

To protect the rights and interest of a dead person some recommendations are stated below:

- a. Government should ensure adequate implementation of all the provisions regarding the legal rights of a dead person,
- b. There is a need for specific legislation to be enacted for the purpose of upholding the dignity and protecting the rights of a dead person,

There are lacks of enforcement of the provisions of law by authority and for that reason the legal rights of dead person violate mostly. Without proper and strict provisions of law, those rights won't be safeguarded for the dead person. So, there need some changes in those provisions those are dealing with the legal rights of the dead person. Those amendments are necessary. After applying those recommendations, The Legal Status of Dead Persons are becoming an important tool relating the rights of the dead persons at the very initial stage.

2.4 CONCLUSION

Dead man is not a legal person. As soon as a man dies, he ceases to have a legal personality. Dead men do not remain as bearers of rights and duties. It is said that they have laid down their rights and duties with their death. *Action personalis moritur cum persona* action dies with the death of a man. With death personality comes to an end. A dead man ceases to have any legal right or bound by any legal duty. Yet, law to some extent, recognizes and takes account of the desires or intentions of a deceased person. Law ensures a decent burial, it respects the wishes of the deceased regarding the disposal of his property, protects his reputation and in some cases continues pending action instituted by or against a person who is now deceased. The testaments of the dead are respected and enforced by the law. This does not mean that the dead have a right to have their wills

¹⁹ Williams v Williams (1881) 20 ChD 659; Rees v Hughes [1946]

²⁰ Jamshedji v Soonabai (1907) ILR 33 Bom 122

²¹ Advocate - General vs. Yusuf Ali, (1921) 24 Bom LR 1060

²² A.R.M. Borhanuddin & Khairul Islam (Taj), *The Penal Code, 1860*, Titu Publications, Dhaka, Bangladesh p.513

enforced. For years after a man dead, his hand may continue to regulate and determine the enjoyment of the property which he owned while he was alive. The law of succession permits the desires of the dead to regulate the actions of the living. Moreover, whatever he has left behind to be distributed as gift or given in charity will be respected by law and enforced according to his wishes laid down in a proper document. The dead person holds

their social characteristics. The characteristics are the dead roles and statuses manifested by a real thing such as names or reputation. The grounds on which the protection of names infringed is required, or on which a remedy against the defamation is claimed, are that the social characteristics that a person continues to have after his/her death contain the concepts of both rights and duties.