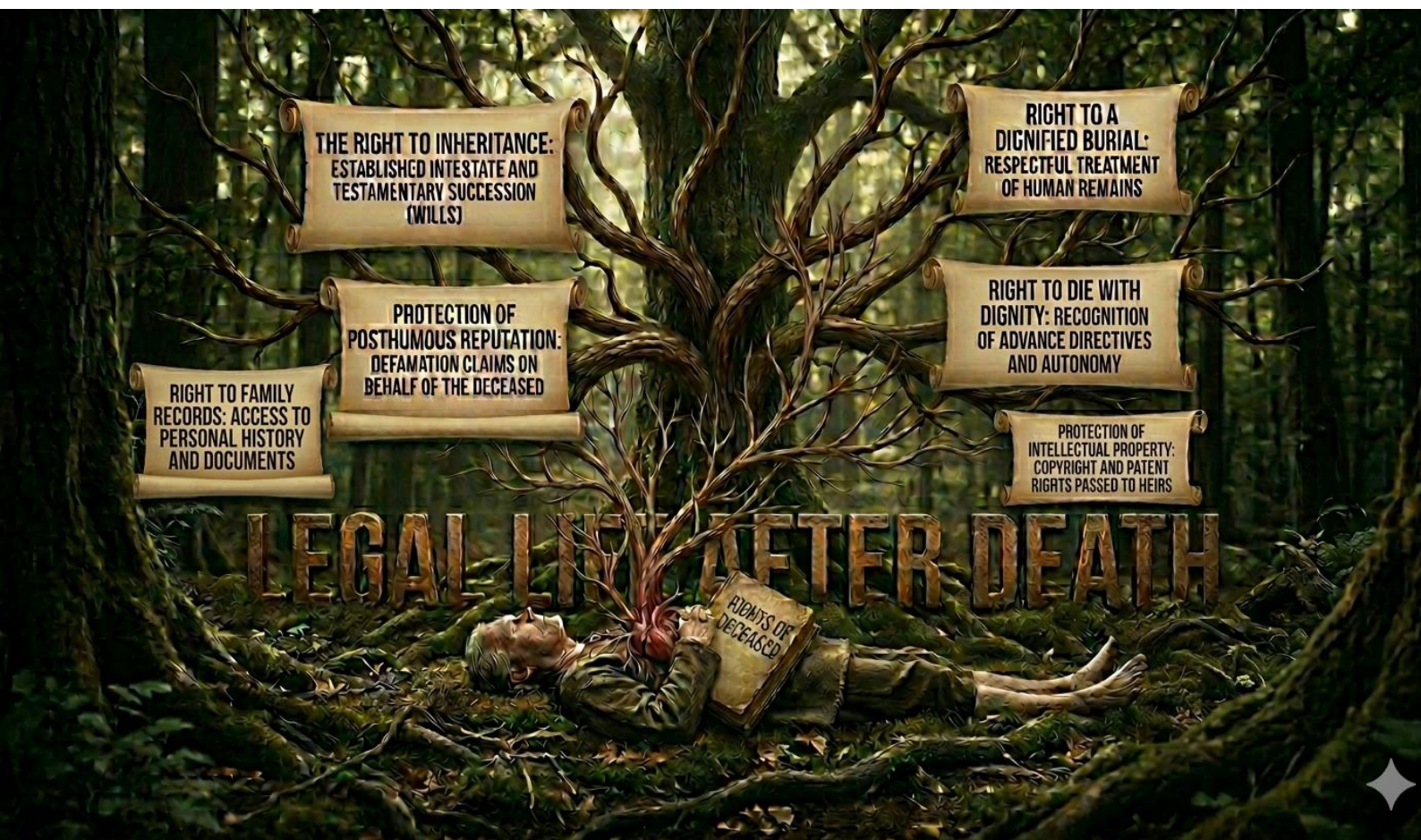




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LEGAL LIFE OF DEAD

-ZEEL AGRAWAL

"A child was born years after his father's death."

I read the sentence twice. How could a dead man become father? The answer lay in use of his preserved genetic material. Yet scientific miracle was not what intrigued me most. The real puzzle was legal: Can reproductive rights survive death can the law give legal effect to the wishes of someone who is not alive?

CONCEPT OF PERSON

That moment made me realize something unsettling: death may end a person's life, but it does not always end their legal existence.

According to Salmond's Theory of Legal Personality, a person is any being whom the law regards as capable of possessing rights and duties. Salmond classifies persons into two categories:

1. **NATURAL PERSONS** – Natural persons are living human beings who possess legal personality by birth and are the primary holders of rights and duties.
2. **LEGAL OR JURISTIC PERSONS** – Legal or juristic persons are non-human entities like companies, the State, or deities that gain legal personality only through legal fiction.¹

CAN DEAD BODIES BE CONSIDERED LEGAL PERSONS?

Salmond was of the view that the personality of a man commences from his birth and ends with his death. they cease to have any rights as all their duties and interests cease with their death²

Dead men do not remain as bearers of rights and duties - they have laid down their rights and duties with their death. Action *personalis moritur cum persona*– action dies with the death of a man.

LEGAL RIGHTS OF DEAD

1. RIGHT TO DIGNITY AFTER DEATH

Indian law recognises that human dignity does not end with death. The dead body must be treated respectfully. The Supreme Court has read this protection into Article 21.

The Court held that the right to life includes dignity, and this dignity extends to the treatment of a dead body, requiring respectful handling after death.³

2. RIGHT TO DECENT BURIAL OR CREMATION

Every individual has a right to be cremated or buried with dignity according to their religion and customs. Even unclaimed bodies must be disposed of respectfully, and the State has a duty to ensure.

The Supreme Court directed that unclaimed dead bodies must be given decent burial or cremation in accordance with dignity and religious practices.⁴

¹ JOHN WILLIAM SALMOND, *JURISPRUDENCE* 299 (12th ed. 1966).

² P.J. Fitzgerald (ed.), *Salmond on Jurisprudence* 299–302 (12th ed. Universal Law Publishing 2009).

³ Pt. Parmanand Katara v. Union of India, (1989) 4 SCC 286.

⁴ Ashray Adhikar Abhiyan v. Union of India, (2002) 2 SCC 27.

3. RIGHT TO RESPECTFUL HANDLING OF DEAD BODY

The law protects dead bodies from insult, misuse, or disturbance. Any act of disrespect toward a corpse is treated as an offence under criminal law.

The Court held that dignity attaches even after death and directed that the body of the deceased be transported and handled respectfully.⁵

4. PROTECTION OF ESTATE / PROPERTY AFTER DEATH

A dead person cannot hold property, but their estate survives and is distributed according to succession law. This ensures continuity of ownership, though the right belongs to heirs, not the deceased.

DOES ENFORCEABILITY OF A WILL INDICATE DEAD ARE LEGAL PERSONS?

No. A will is enforced through living executors and heirs, not because the deceased continues as a legal person. The law only administers the estate of the deceased, not their personality.

The Court clarified that after death, the estate is administered and taxed as per law, but the deceased has no continuing proprietary rights.⁶

5. PROTECTION AGAINST INDIGNITY AND DESECRATION (BNS)

Dead bodies and places of burial or cremation are protected from trespass, insult, or disturbance. Any act causing indignity to human remains or interfering with funeral rites is a criminal offence.

BNS Provision: *Bharatiya Nyaya Sanhita, 2023* (replaces Section 297 IPC with the corresponding provision on indignity to human corpse and places of funeral rites).

6. RIGHT AGAINST DISINTERMENT (EXHUMATION PROTECTION)

Once a body is buried, it cannot be disturbed except under lawful authority. Courts strictly regulate exhumation to protect dignity and public interest.

7. REPUTATION OF THE DEAD (LIMITED PROTECTION)

A deceased person cannot sue for defamation, as legal personality ends with death. However, the law may still protect their reputation where false statements harm the dignity of the deceased or the feelings of surviving family members.

⁵ S. Sethu Raja v. Chief Sec'y, State of T.N., 2007 SCC Online Mad 411.

⁶ *Commissioner of Wealth Tax v. Estate of Late R. Srinivasan*, (1996) 3 S.C.C. 482 (India).

The Honourable Calcutta HC court The Calcutta High Court held that defamation can extend to a deceased person if the statement would have harmed their reputation had they been alive and is intended to hurt the feelings of their family or close relatives.”⁷

7. RIGHTS OF DEAD AGAINST SEXUAL ASSAULT

Under Indian law, there is **no separate statutory offence called “necrophilia”** even under the **Bharatiya Nyaya Sanhita, 2023 (BNS)**.

However, the law protects a dead body indirectly through provisions dealing with:

- Indignity to human remains
- Offences affecting public decency and morality
- Criminal trespass relating to burial/mortuary spaces

The Court held that necrophilia falls outside rape law and highlighted a legislative gap requiring specific criminalisation.⁸

8. POSTHUMOUS RIGHTS IN THE DIGITAL & INTELLECTUAL AGE

Even after death, law continues to manage a person’s identity through records and legally protected assets. This creates a structured continuation of rights through heirs and estates.

9. FAMILY RECORDS AND PERSONAL HISTORY

Personal records such as medical, financial, and educational documents survive death and pass to heirs or executors for purposes like inheritance, insurance, and property claims.

10. INTELLECTUAL PROPERTY AND DIGITAL INHERITANCE

Copyrights, patents, royalties, and digital assets such as social media accounts, YouTube channels, and online businesses can survive death, passing to heirs who may inherit both their economic value and legal protections.

11. AI GHOST PROBLEM

The “AI ghost” problem arises when AI recreates a deceased person’s identity using their voice, writings, or digital data. This raises concerns about misuse of reputation and legacy without consent. While the deceased cannot enforce rights themselves, copyright, personality rights, and actions by heirs may offer protection, underscoring the need for clearer laws on posthumous AI use.

⁷ *Mrs. Pat Sharpe v. Dwijendra Nath Bose*, AIR 1963 Cal 412 (India).

⁸ *Rangaraju @ Vajapeyi v. State of Karnataka*, CRL.A. No. 1610 of 2017, decided on 30 May 2023 (Karnataka High Court).

The core concern is not just imitation, but **misuse of identity**—including misleading audiences, commercial exploitation.

- **COMING BACK**

- We began with a child born after the father's death, seems to defy the rule that legal rights end with death. Yet law operates on continuity, not appearance.⁹
- If conceived before death, the law treats the unborn child as already existing for inheritance purposes—settled principle that “freezes” the child's legal existence protect rights at succession.¹⁰
- Issue is not simple; While the child's inheritance is protected, uncertainty over consent for posthumous reproduction exposes clear gap between scientific possibility and legal clarity.

- **CONCLUSION**

Death does not end law—it only shifts its focus. From inheritance to intellectual property, the legal system preserves fragments of a person's existence, yet struggles with modern realities like digital identity and AI replication. Even in India, posthumous dignity remains only partially protected, with clear gaps in comprehensive legal treatment, including offences like necrophilia. What emerges is a legal system still learning to keep pace with the evolving meaning of presence after death.

⁹ Indian Succession Act, 1925

¹⁰ Doctrine of **Nasciturus pro iam nato habetur**