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A STUDY ON PROPRIETARY STATUS OF HUMAN REMAINS

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ABSTRACT:

Medical advancements and organ transplantation have exposed flaws in how the law treats human corpse and its remains. This paper explores the shift from viewing a corpse as "non-property" to "quasi-property," where families hold rights for burial and the state manages unclaimed bodies.

By analyzing statutes like India's THOTA (1994) and the Karnataka State Anatomy Act (1957), alongside landmark cases such as *Williams v. Williams*, *Doodeward v. Spence* and *R v. Kelly*, this study examines the exception of "work and skill" to the principle of "*nullius in bonis*," a Latin phrase which translates to No one's property. This exception dictates that when scientific preservation or technical expertise is applied to a cadaver, it gains the status of personal property.

This paper argues that Property should be viewed Jurisprudentially as a "bundle of rights", recognizing a flexible and regulated property interest in human remains does not commercialize the dead.

Key words: Corpse, Quasi-property, *nullius in bonis*, work and skill exception, bundle of rights

1. INTRODUCTION:

1.1 The human body stands outside the realm of property:

The dignity owed to every human should not end with death. No law treats a dead body as a property. Once organs are separated from the dead body, various jurisdictions recognize them as "things". In jurisprudence, a dead body is generally not recognized

as a legal person and cannot hold rights or duties. It is not considered as a standard “property”. Under Article 21¹ of the Indian Constitution, the right to life and personal liberty does not expire at death; rather, it extends a protective shield over the deceased. This framework imposes a binding legal duty upon state authorities to ensure that a corpse is treated with the same dignity, fairness, and institutional respect as a living individual.

1.2 “No Property” rule:

The “No Property” rule which was originated in English common Law and was adopted in Canada established that a ‘Dead body’ or a ‘Corpse’ cannot be considered as a property and cannot be sold, inherited or owned by anyone. This rule was affirmed in the landmark case of “**Williams V Williams (1882)**”², where the court held that a deceased person’s instructions regarding the disposal of their body are not legally binding. The court confirmed that a person cannot bequeath their body because “there is no property in a human corpse.”

1.3 Next of kin - When blood matters:

Who are the Next of Kin? A person’s closest relative by blood, marriage or legal adoption. The disposal of the dead body; the burial rights are given to these kinsmen. The most authorized persons regarding the deceased body have been deeply rooted in families, i.e., spouses or immediate blood relatives, that are guided by the principles of dignity and respect towards the mortal remains. They have the legal right to immediate possession of the corpse for burial. The dignity of the afterlife is recognized by International Human Rights Law.

1.3.1 The hierarchy of next of kin:

PRIORITY	STATUS
Primary	Surviving spouse
Secondary	Children
Tertiary	Parents
Quaternary	Siblings

¹ Art.21, Constitution of India,1950: Right to life and personal liberty.

² Williams V Williams (1882) 20 Ch D 659 Lexology (England)

1.4 When burial becomes a conflict:

The state interferes in situations where an individual passes away without any traceable family member. The State usually assumes the burial rights for a deceased body in certain cases where the body is unclaimed or the deceased is destituted. The funeral of the unclaimed bodies of those individuals is state funded. The medical examiners or local bodies such as the local municipalities take interest in the peaceful send off, of those cadavers. In the case of “**Ashray Adhikar Abhiyan v. Union of India (2002)**”³ the Supreme Court held that unclaimed bodies without any next of kin to take responsibility are also entitled to dignity even after death. Thus, in situations like this the State steps in and it must take necessary steps to find the next of kin. If the family members are untraceable or not found, then the State takes responsibility towards the body to perform the last rites, whether burial or cremation, whichever deems to be a fit.

1.5 The modern transformation: No Property to Quasi Property:

While in the case of *Williams v Williams*⁴, a dead body was not considered as a property for more than a century, today courts have paved the way for an exception to that. The general prohibition against treating human remains as commercial property undergoes an important alteration under the “**work and skill exception**”.⁵ This doctrine establishes that whenever human tissue or a cadaver is altered, studied, or maintained through the lawful application of technical expertise such as for the purpose of medical teaching, laboratory preservation in medical institutions or museums, the resulting specimen shifts legally into the category of personal property. In the case of “**Doodeward V Spence (1908)**”⁶ it was held that When by the lawful exercise of work and skill⁷ dealt with human body or its parts with lawful possession that acquires attributes differentiating it from a human dead body awaiting burial, he inherits a right to retain possession of it.

Thus, the human remains hold Quasi Property rights, which means corpses or remains are treated with respect which are cared for, with the next of kin holding the rights, duties and responsibilities for performing the act of final rites. The family does not

³ *Ashray Adhikar Abhiyan v. Union of India (2002)* 143 of 2001(Supreme Court)

⁴ *Supra* Note 2

⁵ <https://www.hcourt.gov.au/sites/default/files/eresources/1908/HCA/45.pdf>

⁶ *Doodeward v Spence (1908)* 6 C.L.R. 406 (Australia H.C)

⁷ *Supra* Note 6

hold full Property rights over the corpse or its remains.

2. LEGAL FRAMEWORK GOVERNING THE RIGHTS OVER HUMAN REMAINS:

2.1 Medical and Anatomical framework:

2.1.1 Transplantation of Human remains and tissues Act, (THOTA)1994⁸: The Transplantation of Human remains Act is the primary legislation that governs the human remains. This established that a cadaver or human remains are not commercial property but are managed legal resources for medical purposes. Section 11⁹ of the Act mandates that no human organs or tissues can be removed or transplanted for any purpose other than therapeutic purposes.

2.1.2 State Anatomy Act:

The **State Anatomy Act** is a legislation enacted by individual state governments in India to regulate the collection and use of unclaimed dead bodies and body donations. These laws ensure that deceased individuals are legally and respectfully supplied to approved medical institutions for educational dissection, anatomical examination, and surgical practice. Under the Karnataka State Anatomy Act,1957¹⁰:

- **Section 4 (Unclaimed Bodies):** Authorizes the state to hand over unclaimed bodies directly to approved medical institutions. It treats the body as a scientific and educational resource, entirely removing it from the scope of civil property claims or estate inheritance.¹¹
- **Section 4A (Donation of Bodies):** Establishes that a person can only donate their human remains or body parts for anatomical examination. Because you cannot sell or lease a corpse, it legally strips the human remains of the fundamental characteristics of property (the right to commercially trade, buy, or sell).¹²

⁸ Transplantation of Human remains and tissues Act, 1994

⁹ Section 11, Transplantation of Human remains and tissues Act,1994

¹⁰ Karnataka State Anatomy Act

¹¹ Section 4, Karnataka State Anatomy Act,1957

¹² Section 4A, Karnataka State Anatomy Act,1957

3. LEGAL JUSTIFICATIONS:

In the case of **R v Kelly (1998)**¹³, the Appellant, Anthony Noel Kelly, an artist, was permitted to draw anatomical specimens at the Royal College of Surgeons. He removed approximately 35-40 human parts from the college without permission. He argued that since there was “No Property” in the human body, the college could not use The Theft Act, 1968¹⁴ to claim that any property had been stolen. The Court held that a dead body is not property while it is simply waiting to be buried. However, it becomes property if someone who is legally holding the body uses lawful skill or effort like dissecting, preserving, or being used for medical study.

4. SUGGESTIONS:

Scientific transformation changes a corpse from a state of *res nullius*: belonging to no one into a legally recognized interest. Precedents such as *R v Kelly*¹⁵ prove that using professional skill, dissection, or chemical preservation gives human remains a specific useful value that overrides the old "no-property" rule. Because of this, body parts become property the moment they are modified for medical study or training.

Property is jurisprudentially defined as a "bundle of rights," which includes the right to possess, exclude and dispose of an object. since the law already grants executors and next-of-kin an exclusive right to custody of a corpse for burial purposes or Quasi Property rights, refusing to call it "property" is just an argument over words. The legal rights used to protect the remains look exactly like true ownership.

5. CONCLUSION:

The common law principle of “*nullius in bonis*” holding that a deceased human body cannot be property is increasingly outdated, in the face of modern medical and commercial realities. In the landmark cases of *Doodeward* and *Kelly*, courts found ways around the strict rule of “No Property” by recognizing property rights when work is applied, intent is established, or critical medical need exists. Transitioning to a flexible property system does not turn human bodies into products for sale. Instead, it gives the law the exact tools it needs to stop tissues or parts theft, damage, and unfair use. Property

¹³ R v Kelly (1998) (England)

¹⁴ The Theft Act, 1968 of the United Kingdom

¹⁵ Supra Note 13

laws can be used as the best tools to protect the rights of both families and medical labs.

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