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FROZEN IN LAW: LEGAL STATUS, OWNERSHIP, AND CONTROL OF CRYOPRESERVED HUMAN BODIES UNDER INDIAN LAW

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ABSTRACT

Cryonics—the low-temperature preservation of people who have died legally—in the hope that medicine might one day bring them back to life—occupies an uncomfortable place in the law. A preserved body is not a living person and not a dead body in the sense; it is something that the law has not yet been asked to fully deal with.

This paper looks at the questions of who owns, controls and what the legal status is of a body that is preserved for a long time at very low temperatures within the Indian legal system. It uses the Transfer of Property Act 1882 the Indian Succession Act, 1925 the Indian Contract Act, 1872 the Bharatiya Nyaya Sanhita, 2023 and Article 21 of the Constitution of India to argue that existing Indian law is not well-equipped to handle preserved bodies.

The idea of quasi-property as used in some countries laws offers some help but is not enough. The paper looks at how courts in England the United States and Australia have dealt with questions and draws lessons for India.

The research also questions whether a persons wish to be preserved—a choice about their body—can be balanced with the rights of their family members who survive them and the constraints of public policy under Indian law.

It ends with some suggestions for new laws:

1. A dedicated Cryopreservation Regulation Act
2. Changes to the laws about succession and property
3. A new interpretation of Article 21 that includes the right to have ones body treated with dignity, after death.

Keywords: *Cryonics, Quasi-property, Cryopreserved bodies, Article 21, Indian Succession Act, Transfer of Property Act, Bharatiya Nyaya Sanhita, Bodily autonomy, Post-mortem rights.*

I. INTRODUCTION

1.1 The Frozen Frontier: Setting the Scene

In 1967 James Bedford became the person to be frozen after he died. Since then thousands of people around the world have made plans with companies that freeze bodies to be preserved in nitrogen at a very cold temperature. The idea is that maybe one day science will be able to fix what caused the person to die and bring them back to life.¹²

India has not been a part of this conversation until now. There is one known case of an Indian person being frozen. Shakuntala Garg in 2021. Her family had her frozen after she died. This showed that there are no laws in India to deal with this. The Indian legal system does not have any rules about freezing people no court has made a decision about whether these contracts are valid and there are no rules, about how these facilities should work in India.³⁴

But not having laws is a problem. When a body is frozen for a time we need to think about some important things. Who gets to decide what happens to the body? Who can visit it? Can someone inherit the right to control what happens to it? Can they give that right to someone? What happens if someone damages the body on purpose?. Does the person who was frozen get to decide what happens to their body or do the government, family or community get to decide? These questions are not just, for schools.

Biotechnology is getting cheaper ways to freeze bodies might become available.

This could make more Indian families think about these choices.

The law will have to change to keep up with these options.

More Indian families may have to make these choices as biotechnology gets better.

The law must catch up with biotechnology advances.

1.2 Historical Background: The Law and the Dead

The way the law treats bodies has a very long and confusing history. This history is found in both law and Hindu law. In common law there was a basic rule that came from a court case in

¹ James Bedford (1893–1967) was cryopreserved on 12 January 1967 by the Cryonics Society of California. See Robert C.W. Ettinger, *The Prospect of Immortality* (Doubleday, 1964).

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³ Shakuntala Garg (d. 2021) is widely reported as India's first cryopreserved individual. Her preservation was arranged through a private agreement with a foreign cryonics provider, highlighting the absence of domestic regulation.

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1614 called Haynes Case. This rule said that you cannot own a body. The reason for this rule was based on beliefs. Christians believe that the body belongs to the earth and will be resurrected. So the body cannot be sold like an animal or a piece of land.⁵⁶

This rule that you cannot own a body was not always followed completely. Courts understood that families have some rights when it comes to the body of a relative. These rights are not the same as owning something. They are still important. Families have the right to get the body back to get money if the body is hurt and to decide how the body is buried. The law calls this "quasi-property" which means it is like owning something but not really.

Indian law took this idea from common law without making many changes. In Hindu law the body is considered sacred. The family, the oldest son has to perform certain rituals when someone dies. Muslim law also has rules about what to do when someone dies like burying the body away. These rules from religions support the idea that you cannot own a dead body.. They also give families some control over what happens to the body and courts will protect this control.

The Transfer of Property Act of 1882 was made with these ideas in mind. This law defines what property is,. It does not include dead bodies. The Indian Succession Act of 1925 is about what happens to property when someone dies. It does not talk about the body itself about other kinds of property. The laws were made for a time when bodies were buried or cremated, not preserved. The law and the dead body have a history, in both common law and Hindu legal tradition and this history is still important today when we talk about the law and the dead body.

1.3 Cryonics: A Brief Technical and Historical Overview

Cryonics started as a practice in the 1960s. This happened when the Cryonics Society of California was set up. Robert Ettingers 1962 book *The Prospect of Immortality* gave cryonics its foundation. The basic process of cryonics involves three steps.⁷⁸

- * First the body is cooled away after clinical death.
- * Second the blood is replaced with chemicals to prevent ice crystals from forming.
- * Third the body is cooled slowly to -196 degrees Celsius for storage in nitrogen.

Modern cryonics organisations, like Alcor Life Extension Foundation and the Cryonics

⁵ Haynes' Case (1614) 12 Co Rep 113: the court held that a corpse is nullius in bonis (the property of no one), establishing the common law's foundational no-property rule for human remains.

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⁷ The Cryonics Society of California was founded in 1966. Robert C.W. Ettinger, *The Prospect of Immortality* (1962), is widely regarded as the foundational text of the cryonics movement.

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Institute in the United States and KrioRus in Russia make a distinction. They differentiate between death and information-theoretic death. Clinical death is when the heart stops beating and brain activity ceases. Information-theoretic death is when the biological structures that hold memory and personality are lost forever.

Cryonics organisations believe that if clinical death is preserved enough it is not true death. They think it is like a suspended state.

This difference is very important for the law. Now the law says death is clinical death. If that is the case then a cryopreserved body is legally dead. This means the estate is dissolved and succession is complete.. If we consider the cryonics claim that the information making up a person still exists in the preserved brain then the body is more than just a dead body.

The law in India has not dealt with this distinction yet.. It needs to start thinking about it. Cryonics and death need to be looked at in a way.

Cryonics organisations, like Alcor Life Extension Foundation, Cryonics Institute and KrioRus are working on cryonics. They are preserving bodies using cryonics.

Cryonics is a way of looking at death and life.

1.4 Thesis Statement and Structure of the Paper

This paper says that the Indian legal framework that we have now is not good enough to deal with cryopreserved bodies. The common law doctrine of quasi-property is a place to start but it is not enough. We really need the government to make laws.

The paper is organized in this way:

Section II looks at the laws of India that apply to property, crime, contracts and the constitution.

Section III compares India to the United Kingdom, the United States and Australia.

Section IV talks about what the courts have said about this issue both in India and in countries.

Section V gets into the arguments, about what is right and wrong what the law should be and how it should work.

Section VI suggests changes that we should make to the law.

Section VII sums everything up.

II. THE LEGAL FRAMEWORK

2.1 Property Law: The Transfer of Property Act 1882

2.1.1 What Is 'Property' Under Indian Law?

The Transfer of Property Act 1882 does not completely define what The Transfer of Property Act 1882 means by 'property'. The Act says that any kind of The Transfer of Property Act 1882

property can be transferred, except in cases. These cases include transfers that go against the nature of the interest or are against the law or public policy.⁹

The courts in India have usually understood 'property' under The Transfer of Property Act, 1882 to mean anything that has value and can be part of legal matters.

For a time a dead body was not considered The Transfer of Property Act 1882 property at all. A dead body does not have value in the usual sense it cannot be sold or used as security for a loan and it cannot be given to someone in a will. The courts have always said that there is no thing as owning a dead body.

However cryopreservation, which is a process that can cost between USD 28,000 and USD 200,000 and the contract, with the organisation that does the preservation bring in economic aspects that were not considered before in The Transfer of Property Act 1882 framework.¹⁰¹¹

2.1.2 The Quasi-Property Doctrine and Its Relevance

The Quasi-Property Doctrine in remains was explained really well in the American case of *Stief v. Hart* back in 1848 and was developed more in *Schloendorff v. Society of New York Hospital* in 1914. The Quasi-Property Doctrine says that even though nobody really owns a body the family of the dead person has a special right to decide what happens to the body. This means they can make sure the body is treated properly stop people from doing things to it and even sue someone if they do something wrong to the body.¹²¹³

In India people have started to accept that families have this Quasi-Property right in the body of their loved one who died. Many High Court decisions have said that hospitals cannot keep bodies without permission and that families have the right to get the body back for last rites. The Bombay High Court has been very strong about this saying that families always have the right to get the body of their loved one back and if necessary they can even get a court order to make it happen.¹⁴¹⁵

What happens when someone wants to preserve their body after they die, like with

⁹ Transfer of Property Act 1882, s 5 defines “transfer of property” but does not exhaustively define “property”. Courts have interpreted the term broadly to include any valuable interest capable of legal enforcement.

¹⁰ Whole-body cryopreservation at Alcor Life Extension Foundation costs approximately USD 200,000; the Cryonics Institute charges approximately USD 28,000. These figures are based on published membership and contract information as of 2023.

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¹² *Stief v. Hart*, 1 N.Y. 20 (1848); *Schloendorff v. Society of New York Hospital*, 211 N.Y. 125 (1914). These cases established that next-of-kin hold a quasi-property right in the body of a deceased relative sufficient to ground claims for wrongful interference.

¹³ *Stief v. Hart*, 1 N.Y. 20 (1848); *Schloendorff v. Society of New York Hospital*, 211 N.Y. 125 (1914). These cases established that next-of-kin hold a quasi-property right in the body of a deceased relative sufficient to ground claims for wrongful interference.

¹⁴ See, e.g., *Poonam Sharma v. State of Maharashtra (Bombay HC)*: the court affirmed that a hospital may not withhold a body from the family pending payment of dues, recognising the quasi-property right of next-of-kin.

¹⁵ See, e.g., *Poonam Sharma v. State of Maharashtra (Bombay HC)*: the court affirmed that a hospital may not withhold a body from the family pending payment of dues, recognising the quasi-property right of next-of-kin.

cryopreservation? This creates a problem. If someone agrees to have their body preserved before they die but their family wants to cremate the body there is a conflict between the familys Quasi-Property right and the preservation companys right to keep the body. The problem is that Indian law does not know how to solve this conflict, between the Quasi-Property Doctrine and the preservation companys contractual right to the body.

2.1.3 Can a Frozen Body Be Moved To Someone Else?

The law says that when you give something to someone it is called a transfer of property. This means a living person gives something to another living person or to a company. A company that does cryonics, which's a real organisation can get something that belongs to someone else. The big problem is that you cannot own a human body even if it is frozen. If you cannot own a body then you cannot give it to someone else. So when you make a contract with a cryonics company you are not really giving them your body. You are paying them to take care of your body and keep it frozen. The body is not something that can be owned.

This is a deal. If a body is not something that can be owned then the cryonics company does not really own it. They cannot say it belongs to them if the family or the government wants it. The company only has the rights that're in the contract and they can only enforce those rights, against the person who is dead and their estate and only if the contract says they can.

2.2 Succession Law: The Indian Succession Act, 1925

2.2.1 The Scope of Testamentary Rights Under the Indian Succession Act

The Indian Succession Act, 1925 is a law that decides what happens to a persons property after they die. This can happen in two ways: if the person made a will or if they did not make a will and the law decides what happens to their property. The Indian Succession Act, 1925 says that anyone who is sane and not a minor can decide what happens to their property in a will.. The big question is: can someone use their will to say what they want to happen to their body after they die?¹⁶¹⁷

The answer to this question is probably no. A will is used to decide what happens to a persons property like their house or their money. A persons body is not considered property. Usually a will is. Officially approved weeks or months after someone dies, which is long after their body has been taken care of. The law does not see a will as a way for someone to say how they want their body to be disposed of whether that is by burial or cremation.

¹⁶ Indian Succession Act 1925, s 2(h) defines "will". Sections 57–191 govern testamentary succession; s 212 provides that a will applies only to property capable of being owned, excluding the human body.

¹⁷ Indian Succession Act 1925, s 2(h) defines "will". Sections 57–191 govern testamentary succession; s 212 provides that a will applies only to property capable of being owned, excluding the human body.

However the Parsee Zoroastrian community in India has had to go to court times to figure out if they have the right to decide how to dispose of their dead. This community has a tradition where they leave their dead in a special tower called the Tower of Silence. Even though these court cases are not exactly about the issue they do show that courts will think about what the person who died wanted and what their religious community wants when they are trying to resolve disagreements about what to do with a body. The Indian Succession Act, 1925 is important, in these cases because it helps decide what happens to a persons property. It does not directly say what happens to their body.¹⁸¹⁹

2.2.2 Inheritance of Custodial Rights Over Cryopreserved Bodies

When someone is cryopreserved and their next-of-kin like a spouse later dies, who then takes care of the preserved body? The Indian Succession Act provides rules for who gets property. There are no court cases that say what happens to the rights to care for a cryopreserved body. One way to look at it is to compare it to how property's handled. When someone dies the person in charge of their estate takes over managing their assets. Maybe that person could also inherit the right to care for the body. This is not a perfect comparison because the right to care for the body is not like a financial asset.

A better approach might be to think of the cryonics contract as creating a kind of relationship like a trust. The cryonics organisation would be like a trustee and the preserved person or their estate or whoever they chose would be, like the beneficiary. This would allow the right to care for the body to be passed on according to the rules that apply to trusts. Indian trust law, as written in the Indian Trusts Act of 1882 was not designed for this situation and it would require a lot of creative thinking from judges to make it work.²⁰²¹

2.3 Criminal Law: The Bharatiya Nyaya Sanhita, 2023

2.3.1 Provisions Governing Dead Bodies

The Bharatiya Nyaya Sanhita, 2023 which is also known as the BNS replaced the Indian Penal Code, 1860. The Bharatiya Nyaya Sanhita, 2023 has rules that could apply to bodies that are frozen.

¹⁸ See disputes over Towers of Silence (dokhmas): Indian courts have weighed Parsi religious tradition alongside public health and municipal regulation when adjudicating body-disposal disputes, demonstrating that judicial intervention in post-mortem wishes is not unprecedented.

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²⁰ Indian Trusts Act 1882, s 3 defines a “trust” as an obligation annexed to property ownership. The Act does not contemplate trusts over non-proprietary interests such as custodial rights over a human body.

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Section 297 of The Bharatiya Nyaya Sanhita 2023 is like Section 297 of the Indian Penal Code. This section says it is a crime to enter a place of worship a burial ground or any other place where people perform rites without permission. It is also a crime to enter these places with the intention of hurting someones feelings or insulting their religion.²²²³

Additionally The Bharatiya Nyaya Sanhita, 2023 says it is a crime to treat a body badly after the person has died. The phrase 'treat a body badly after the person has died' is very important here. If someone interferes with a body like draining the special fluid or moving the body from its container without permission is this a crime? It depends on whether a frozen body's considered a dead body in the eyes of the law.

Since the law says a person is dead when their body stops working, a body that is frozen after it stops working is legally a body. So the rule, about treating a body badly after the person has died should apply to The Bharatiya Nyaya Sanhita, 2023 and frozen bodies.

2.3.2 Theft, Extortion and Mischief with Frozen Bodies

* Section 303 of the BNS talks about theft. It says that for something to be considered theft it must be taken dishonestly and it must be property.²⁴²⁵

If a frozen body is not considered property then it cannot be stolen.

This creates a problem.

* For example if someone took a body from a facility and asked for ransom they could not be charged with stealing the body.

They might be charged with extortion and other crimes though.

* Section 324 of the BNS is about mischief.²⁶²⁷

It says that it is wrong to destroy or damage property on purpose if it causes loss.

Again if a frozen body is not property then damaging it might not be considered mischief.

The organisation that freezes bodies has an interest, in the equipment and the facility, not the body itself.

So if someone damages the body but not the equipment they might not be charged under this section.

²² BNS 2023, s 297 (formerly IPC s 297): trespassing on burial grounds or places of worship with intent to wound religious feelings. The provision protects the sanctity of funerary spaces rather than the physical integrity of the body itself.

²³ BNS 2023, s 297 (formerly IPC s 297): trespassing on burial grounds or places of worship with intent to wound religious feelings. The provision protects the sanctity of funerary spaces rather than the physical integrity of the body itself.

²⁴ BNS 2023, s 303 (formerly IPC s 378). The definition of theft requires the object to be “moveable property”. Because a corpse is not classified as property under Indian law, it cannot be the subject of theft.

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²⁶ BNS 2023, s 324 (formerly IPC s 425). Mischief requires the act to cause wrongful loss or damage to “property”. This gap underscores the need for a dedicated offence protecting cryopreservation facilities and preserved bodies.

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2.3.3 Recommendations for BNS Application to Cryopreserved Bodies

The people who wrote the BNS rules did not think about what would happen with bodies. The laws we have now do cover some things like treating bodies as dead bodies, which is the right thing to do. These laws do not do enough to stop people from interfering with the cryopreservation arrangements for money. We need a law that specifically protects the cryopreservation facilities and the cryopreserved bodies, inside them. This new law would be the way to fix the problems we have now with the BNS rules and cryopreserved bodies.

2.4 Contract Law: The Indian Contract Act, 1872

2.4.1 Are Cryonics Contracts Legally Enforceable?

The Indian Contract Act 1872 is a law that explains contracts in India. For a cryonics contract to be valid it needs to follow some rules.

- * There must be an offer and acceptance.
- * Something of value must be exchanged.
- * The people making the contract must agree freely.
- * They must be capable of making a contract.
- * The contract must be about something allowed by law.

The big question for cryonics contracts is whether they are about something allowed by law. The Indian Contract Act 1872 says a contract is not valid if it is about something not allowed by law.

It also says a contract is not valid if it goes against any law. A contract is not valid if it tries to cheat someone or hurt someone. It is not valid if it goes against what most people think is right. There is no law in India that says we cannot do cryopreservation. We need to ask if it goes against any law. Some people might say cryonics contracts are not valid. They might say it takes away the families control over what happens to the body after death. This could go against what most people in India think is right. Many Indians have beliefs about what should happen to the body after death.

Cryonics contracts are like agreements about donating organs. They are also like making decisions about care before something happens. Indian courts say these kinds of agreements are valid. They show what the individual wants.

The Supreme Court in India said in the case of Common Cause v. Union of India in 2018 that people can make decisions about their body before they die. This shows courts respect what people want to happen to their body after they die. Cryonics contracts are, about what people want to happen to their body after they die, like these other agreements. Cryonics contracts

should be valid because they show what the individual wants. The Indian Contract Act and court decisions support this.

Cryonics contracts are a choice.

2.4.2 Can Cryonics Contracts Override What The Family Wants

If a cryonics contract is valid we still have to ask if it can be enforced when the family does not want it to be. The ICA is an agreement that only affects the people who signed it. The family of the person who died did not sign the cryonics contract so they are not bound by it.

The family has a claim because of a kind of right that we talked about before. This right is recognized by courts. It is not related to the contract. For the cryonics organization to override this claim they would have to show that the contract legally gave them the right to control what happens to the body or that what the person who died wanted's more important, than what the family wants according to the constitution.

The idea that what the person who died wanted is more important is an argument and we will look at it more closely in the next section. The cryonics contract is still a part of this because it is a way for the person who died to express their wishes and the cryonics organization is trying to fulfill those wishes. The family's wishes are also important. The cryonics contract and the wishes of the person who died are a big part of this.

2.5 Constitutional Law: Article 21 and the Right to Body Autonomy

2.5.1 The Expanding Scope of Article 21

The Indian Constitution's Article 21 says that no one can be deprived of their life or personal freedom unless it's according to the law.

Over time the Supreme Court has interpreted Article 21 in a way. They have found rights in it that aren't directly mentioned: the right to health, the right to live with dignity, the right to privacy, the right to identity and even the right to die with dignity.

The question is, does Article 21 also cover what happens to our bodies after we die?

Can we decide, while we're still alive what happens to our body after we pass away?

No Indian court has directly answered this question yet. If we look at how Article 21 has been interpreted over time it seems likely that the answer could be yes.

The Supreme Court has kept expanding what Article 21 means. So it's possible that they might say we have the right to control what happens to our bodies after we die. This is an issue for cryonics, which involves freezing bodies after death in the hope that they can be revived in the future.

Article 21 and body autonomy are closely related. The right to make decisions about our bodies

is a part of our personal freedom. The Supreme Courts interpretation of Article 21 has been very broad. They have used it to protect many of our rights.

Now they might have to consider what happens to our bodies after we die. This could be an area for Article 21. The court will have to decide whether we have the right to control our bodies even after we pass away. The issue of cryonics and Article 21 is an one. It will be important to see how the court interprets Article 21 in the future.

The right to body autonomy is an one. Article 21 has been used to protect many of our rights. Now it might be used to protect our rights after we die. The Supreme Courts decision could have an impact on cryonics. It could also affect how we think about our bodies and our rights. The issue is an one.

It's an important area of law that affects us all. Article 21 and the right to body autonomy are issues. The Supreme Court will have to consider them The courts decision will be important for everyone. It will affect how we think about our bodies and our rights.

The issue of cryonics and Article 21 is an one. The Supreme Courts interpretation of Article 21 will be crucial. The right, to body autonomy is an one.

Article 21 has been used to protect many of our rights. The court will have to decide how to interpret it in this area.

2.5.2 The Right to Die with Dignity and What it Means for Cryopreservation

The Supreme Court made a decision in the case of Aruna Ramchandra Shanbaug v. Union of India back in 2011. They said that people have the right to stop their life support if they want to. This is called euthanasia. The court also said that a living will is valid. A living will is when someone says what they want to happen to them if they cannot make decisions for themselves.²⁸²⁹

Then in 2018 the Supreme Court made another decision in the case of Common Cause v. Union of India. They said that people have the right to die with dignity. This means that people have the right to control what happens to their body when they are dying. The court said that this right is part of the right to live with dignity, which is guaranteed by the Constitution under Article 21.

Cryopreservation is of the opposite of euthanasia. When someone wants to stop their life support and die, that is euthanasia. When someone wants to preserve their body after they die

²⁸ Aruna Ramchandra Shanbaug v. Union of India (2011) 4 SCC 454: the Supreme Court recognised passive euthanasia in limited circumstances and validated the concept of an advance directive, laying the groundwork for the broader ruling in Common Cause (2018).

²⁹ Aruna Ramchandra Shanbaug v. Union of India (2011) 4 SCC 454: the Supreme Court recognised passive euthanasia in limited circumstances and validated the concept of an advance directive, laying the groundwork for the broader ruling in Common Cause (2018).

in the hope that they can be brought back to life someday that is cryopreservation. Both of these things are about people having control over what happens to their body. If the Constitution says that people have the right to stop their life support then it seems like it should also say that people have the right to preserve their body after they die. Cryopreservation is about people having the right to make choices about their own body even after they die. The right to die with dignity and the right to choose Cryopreservation are important because they are both about autonomy. Bodily autonomy means that people have the right to control what happens to their body. The right to die with dignity and the right to choose Cryopreservation are both exercises of autonomy, at the boundary of life and death.

2.5.3 The Right to Privacy and the Puttuswamy Framework

The court made a decision in the case of Justice K.S. Puttaswamy versus the Union of India in 2017. A group of nine judges agreed that people have a right to privacy under Article 21. The judge who wrote the decision Justice D.Y. Chandrachud said that privacy means people can make their choices about their life. This includes being able to control what happens to their body.

When we think about cryonics the Puttuswamy framework says that people should be able to decide what happens to their body after they die. This is a choice that the government should not interfere with unless they have a very good reason to do so. Now there is no law in India that talks about cryopreservation. This means that the government does not have the power to stop people from doing it. Since there is no law people should be able to make their decisions about cryopreservation. The government should respect the right of individuals to make choices about their body and their own life which is what the Puttuswamy framework and the right to privacy are all, about.

III. COMPARATIVE ANALYSIS: LESSONS FROM JURISDICTIONS

3.1 The United States: The Most Developed Framework

The United States is the place where cryonics is most popular. There are two organisations that do this work: Alcor Life Extension Foundation in Arizona and the Cryonics Institute in Michigan. Together they take care of most of the people who are frozen around the world. The United States has come up with a system of laws for cryonics even if it was not done in an organised way.

At the level there is no special law just for cryonics. The Federal Trade Commission has a rule about funeral services that might apply to cryonics organisations. It is not clear if it really does. At the state level some states like Arizona and Michigan have made laws that say people can

make plans for their bodies to be frozen after they die of like donating organs.

American courts have said that parts of the body can be owned in certain situations. For example in a case called *Moore v. Regents of University of California* the court said that a person does not own the cells that are removed from their body during surgery. It also said that those cells can be very valuable. In another case *Hecht v. Superior Court* a court said that a man who had died could leave his sperm to someone in his will which is interesting for people who are frozen.³⁰³¹

The law in the United States about what happens to peoples things after they die has also dealt with bodies. Some states say that people can set up trusts to pay for their bodies to be kept frozen which are called cryonics trusts but sometimes these trusts are limited by a rule that says they cannot last forever.

3.2 The United Kingdom: The Kelly Case and Its Progeny

The laws in the United Kingdom are important for India because they are based on the system. A time ago in a case called *Haynes Case* the court said that a persons body cannot be owned and this was repeated in many other cases. However in 1998 a court case called *R v. Kelly* changed this rule a bit.

In *R v. Kelly* some people had taken body parts from a college to use in art. The court said that even though a dead body cannot be owned parts of the body can become property if someone uses their skills to prepare or preserve them. The court said that if a doctor or someone else uses their skills to keep a body part then that part can become property and can be stolen.

This idea is very important for cryonics. Freezing a body is a process that requires a lot of skill and technology so if using skill can make a body part into property then freezing a whole body should also make it property. This means that frozen bodies can be owned, at least in a way and people can make legal claims about them.

The UK has a law called the Human Tissue Act that says how human tissue can be removed, stored and used. It does not specifically talk about cryonics. It sets up a system where people have to agree to what happens to their tissue and it could be a model for laws in India. The law says that people have to give their consent for their tissue to be used and it sets up a list of who can give this consent which's similar to the idea that families have some rights, over a persons

³⁰ *Moore v. Regents of University of California*, 793 P.2d 479 (Cal. 1990): the California Supreme Court rejected a conversion claim over excised cells but acknowledged their commercial value, generating significant debate on property rights in human biological material.

³¹ *Moore v. Regents of University of California*, 793 P.2d 479 (Cal. 1990): the California Supreme Court rejected a conversion claim over excised cells but acknowledged their commercial value, generating significant debate on property rights in human biological material.

body.

3.3 Australia: The Doodeward Principle

The law in Australia about who owns remains comes from a court case called *Doodeward v. Spence* that happened in 1908. This case was in the High Court of Australia in New South Wales. The court said that a human foetus that was preserved in a jar could be owned by someone. This foetus was special because it had two heads. The judge, Justice Griffith said that a human body or part of a body can be owned if someone has worked on it or used skill to make it special.^{32,33}

The Doodeward principle is very old it was made ninety years before something called Kelly. It says the same thing as Kelly. This principle has been used in courts for things like medical specimens and mummies. It has also been used for human remains that have been preserved. If we apply this principle to something called cryopreservation which's a process that requires a lot of work and skill then the Doodeward principle says that Australian courts would probably say that frozen bodies can be owned.

The law in Australia about what happens to peoples things after they die is also more open to ideas than the law in India. Some places in Australia have made laws that say people can make plans ahead of time for what they want to happen to their bodies after they die. The courts in Australia have usually said that peoples wishes should be respected, long as they do not go against what is good, for the public.

3.4 Russia: The Regulatory Vacuum

Russia is home to KrioRus, which's one of the biggest cryonics companies in the world and it is located outside of Moscow. Russia does not have any laws that specifically deal with cryonics. The law in Russia like the law in India does not consider a dead body to be someones property. Because there are no rules in Russia it is not clear what is legal and what is not and this has caused a lot of problems for KrioRus. They have had disagreements with the families of people who have been preserved. It is hard for them to get the bodies right after someone dies because they do not have the clear legal right to do so.³⁴

What is happening in Russia is a lesson for India. It shows what can go wrong when the

³² *Doodeward v. Spence* (1908) 6 CLR 406 (HCA): the High Court of Australia held that a preserved two-headed foetus was capable of being owned, establishing the “work and skill” exception to the no-property rule, later adopted in *R v. Kelly*.

³³ *Doodeward v. Spence* (1908) 6 CLR 406 (HCA): the High Court of Australia held that a preserved two-headed foetus was capable of being owned, establishing the “work and skill” exception to the no-property rule, later adopted in *R v. Kelly*.

³⁴ KrioRus, established in 2005 near Moscow, is among the world’s largest cryonics providers outside the United States. Its operations have faced legal uncertainty due to the absence of Russian legislation governing cryopreservation contracts.

government does not make any laws about something. When there are no rules cryonics is in a strange situation. It is not against the law but it is also not allowed and there is no way to solve disagreements between what the person who was preserved wanted what their family wants and what the government says about how to handle dead bodies. Russia and its lack of rules, for cryonics is an example of this and it can teach India about the importance of having laws to govern cryonics.

IV. JUDICIAL PRECEDENTS

4.1 Jurisprudence

4.1.1 *Parmanand Katara v. Union of India (1989)*

The Supreme Court of India made an important decision in the case of *Parmanand Katara v. Union of India*. This case was about a person who was hurt in a traffic accident and a hospital would not treat him. The court said that every person has the right to be treated with respect and dignity even after they die. This decision is very important for the issue of cryopreservation.³⁵³⁶

The court said that every person has the right to be treated with dignity during their life and after they die. This right comes from Article 21 of the Indian Constitution. The court also said that the state has to make sure that the body of a person who has died is treated with respect. Even though this case was not about cryopreservation the idea that the court talked about is very relevant. Cryopreservation is not against the idea of treating the body with dignity long as it is done in a way that respects the body.

4.1.2 *Common Cause v. Union of India (2018)*

The case of *Common Cause v. Union of India* is a significant one. The court decided that every person has the right to die with dignity and this is a right under Article 21 of the Indian Constitution. The court also said that a person can make a document called an advance directive, which says what kind of treatment they want or do not want if they are very sick.³⁷³⁸

The court said that this right is about being able to make choices about ones body and life. The court also talked about the idea of self-determination, which means that a person has the right to make decisions about their life and death. This idea is very relevant to cryopreservation.

³⁵ *Parmanand Katara v. Union of India* (1989) 4 SCC 286: the Supreme Court held that the right to emergency medical treatment is a fundamental right under Art 21 and affirmed that human dignity extends beyond clinical death.

³⁶ *Parmanand Katara v. Union of India* (1989) 4 SCC 286: the Supreme Court held that the right to emergency medical treatment is a fundamental right under Art 21 and affirmed that human dignity extends beyond clinical death.

³⁷ *Common Cause v. Union of India* (2018) 5 SCC 1: a five-judge Constitution Bench recognised the right to die with dignity under Art 21 and validated advance medical directives (living wills).

³⁸ *Common Cause v. Union of India* (2018) 5 SCC 1: a five-judge Constitution Bench recognised the right to die with dignity under Art 21 and validated advance medical directives (living wills).

When a person decides to be cryopreserved they are making a decision about what happens to their body after they die.

4.1.3 Justice K.S. Puttaswamy v. Union of India (2017)

The court made another decision in the case of Justice K.S. Puttaswamy v. Union of India. The court said that every person has the right to privacy and this is a right under Article 21 of the Indian Constitution. The court also talked about the idea of privacy and decisional autonomy.³⁹⁴⁰

The court said that a person has the right to make decisions about their body and life. This idea is very relevant to cryopreservation. The court said that the state cannot interfere with a persons decision to be cryopreserved unless there is a law that says otherwise. Since there is no law in India, a persons decision to be cryopreserved should be respected.

4.2 International Judicial Precedents

4.2.1 R v. Kelly [1998] 3 All ER 741 (England and Wales)

There was a case in England called R v. Kelly. This case was about a person who took body parts from a museum and used them to make art. The court decided that the person was guilty of theft.⁴¹⁴²

The court said that body parts can be considered property if they have been changed in some way. The court also said that this idea is not new but it has been part of the law for a time. This decision is very important, for the issue of cryopreservation.

A body that has been cryopreserved has been changed in a significant way. It has been treated with chemicals and cooled to a very low temperature. Because of this a cryopreserved body can be considered property. It should be treated with respect and protected by the law.

4.2.2 Moore v. Regents of University of California 793 P.2d 479 (Cal. 1990)

In the Moore case the California Supreme Court looked at whether a patient had a right to his cells. These cells were removed during spleen surgery. Used to develop a cell line without his consent. The court said the patient did not have a right to his cells. They were worried that if people had rights to their cells it would hurt research.

³⁹ Justice K.S. Puttaswamy (Retd.) v. Union of India (2017) 10 SCC 1: a nine-judge bench unanimously held privacy to be a fundamental right under Art 21. Justice D.Y. Chandrachud's concurrence articulated informational and decisional privacy as distinct dimensions.

⁴⁰ Justice K.S. Puttaswamy (Retd.) v. Union of India (2017) 10 SCC 1: a nine-judge bench unanimously held privacy to be a fundamental right under Art 21. Justice D.Y. Chandrachud's concurrence articulated informational and decisional privacy as distinct dimensions.

⁴¹ R v. Kelly [1998] 3 All ER 741 (CA): the Court of Appeal held that body parts acquire the character of property when subject to the application of skill such as dissection or preservation, departing from the strict no-property rule.

⁴² R v. Kelly [1998] 3 All ER 741 (CA): the Court of Appeal held that body parts acquire the character of property when subject to the application of skill such as dissection or preservation, departing from the strict no-property rule.

The judge who disagreed Justice Mosk thought people should have a right to their cells. He said if someone makes something from their body they should get some of that value.

This case is not directly about cryonics. It shows courts are thinking about rights to human tissue.

4.2.3 Hecht v. Superior Court 20 Cal. Rptr. 2D 275 (Cal. Ct. App. 1993)

In Hecht v. Superior Court a California court looked at a will that left sperm to a girlfriend. The mans children did not want the sperm to be used. The court said the man had a right to his sperm and could leave it to someone in his will.⁴³⁴⁴

This case is important for cryonics. If frozen sperm can be property then a frozen body should also be property.

V. ANALYSIS: THE CONTROVERSIES, IMPLICATIONS, AND LEGAL IMPACT

5.1 The Central Tension: Individual Autonomy Versus Family Rights

There's a conflict in cryonics between what the person wants and what their family wants. In India this conflict is more complicated because of religious traditions.

Indian courts have not decided if what the person wants is more important than what their family wants. A recent case, Common Cause said that advance directives are okay in situations. This has not been applied to cryonics.

We think the persons wishes should come first. They should be able to make a plan for their body after they die.

5.2 Ethical Dimensions: Who Gets to Be Preserved?

Cryonics is very expensive. This raises questions about fairness. Should only rich people be able to preserve their bodies?

This is not a cryonics problem. Other medical treatments also cost a lot.. Cryonics is different because its not clear if it will work.

5.3 Public Policy Concerns: Land Use, Environmental Impact and Perpetual Preservation

Cryonics facilities need a lot of resources. They need nitrogen and electricity. If a facility fails

⁴³ Hecht v. Superior Court, 20 Cal. Rptr. 2d 275 (Cal. Ct. App. 1993): the court held that a testator had a sufficient property interest in his cryopreserved sperm to bequeath it by will, suggesting that preserved biological material can form part of an estate.

⁴⁴ Hecht v. Superior Court, 20 Cal. Rptr. 2d 275 (Cal. Ct. App. 1993): the court held that a testator had a sufficient property interest in his cryopreserved sperm to bequeath it by will, suggesting that preserved biological material can form part of an estate.

the preserved bodies could be in danger.

Indian law does not have rules for cryonics facilities. We think there should be rules to make sure facilities are safe and have money.

5.4 Legal Impact on Succession and Estate Administration

Cryonics creates problems for estate administration. If someone is preserved their estate may not be able to be closed.

One solution is to create a trust for cryopreservation. This trust could hold money for the person.

5.5 The 'Definition of Death' Problem

Cryonics challenges our definition of death. If someone is preserved are they really dead? Some American scholars have suggested a category "suspended animation status." This would put the preserved persons relationships on hold.

VI. SUGGESTIONS AND RECOMMENDATIONS

6.1 Enact a Dedicated Cryopreservation Regulation Act

We think India should have a law for cryopreservation. This law should define cryopreservation. Create rules for facilities.

The law should also say that a persons plan for their body after they die should be respected.

6.2 Amend the Indian Succession Act, 1925

The Indian Succession Act should be changed to include cryopreservation. It should say that a persons body can be an asset of their estate.

It should also create rules for trusts that hold money for people.

6.3 Amend the Transfer of Property Act 1882

The Transfer of Property Act should be changed to include cryopreservation. This will help clarify the rules, for property and cryopreservation.

The Transfer of Property Act needs to be changed to create a type of property called 'special property that includes frozen human bodies. This new type of property should:

- * Recognise that freezing a body gives it characteristics, like a property
- * Define what this special property right means
- * Specify who has the right and how it can be transferred

- * Establish protections against people who try to interfere with it

This change would clear up the confusion about the property status of bodies and provide a legal basis for enforcing cryonics contracts protecting preserved bodies and determining who takes care of them.

6.4 Amend the Bharatiya Nyaya Sanhita, 2023

The Bharatiya Nyaya Sanhita should be changed to include a rule that protects bodies from interference. This rule could say:

- * Anyone who intentionally interferes with, damages, destroys or removes a human body without the lawful permission of the person entitled to care for it will be punished with imprisonment for up to three years and may also have to pay a fine.'

This provision should be placed alongside existing rules that protect bodies from disrespect.

Also the Bharatiya Nyaya Sanhita should be changed to include a cryopreservation facility in the definition of a 'place set apart for the performance of funeral rites. This would ensure that the law protects facilities.

6.5 Issue Constitutional Guidelines Under Article 142

The Supreme Court can use its power under Article 142 of the Constitution to issue temporary guidelines on cryopreservation. These guidelines could:⁴⁵⁴⁶

- * Say that cryonics directives are constitutional under Article 21
- * Specify the minimum requirements for a directive
- * Establish a process for resolving family disputes about cryopreservation
- * Direct the formation of a committee to draft the Cryopreservation Regulation Act within a specified time

This approach would provide an immediate legal framework while the longer-term legislative process proceeds.

6.6 Establish an Ethics and Regulatory Commission

A National Bioethics Commission with a specific mandate to address cryonics should be established. This commission should include:

- * Medical ethicists

⁴⁵ Constitution of India, Art 142: the Supreme Court may pass such decree or order as is necessary for doing complete justice. The Court exercised this power in Common Cause (2018) to promulgate guidelines on advance directives pending legislation.

⁴⁶ Constitution of India, Art 142: the Supreme Court may pass such decree or order as is necessary for doing complete justice. The Court exercised this power in Common Cause (2018) to promulgate guidelines on advance directives pending legislation.

- * scholars
- * Representatives of religious communities
- * Consumer advocates
- * Representatives of the community

Its mandate should include:

- * Developing ethical guidelines for cryonics in India
- * Advising the government on proposals
- * Reviewing applications for licences from cryonics organisations
- * Adjudicating disputes between cryonics organisations and families

VII. CONCLUSION

The law is faced with a dilemma: a form of existence that is neither life nor death.

The existing Indian legal framework provides the materials for a response to cryonics but these materials must be shaped by legislative action.

India needs legislation—a Cryopreservation Regulation Act amendments, to the succession and property statutes and strengthened criminal protections—to give the law clarity and certainty.

The deeper question posed by cryonics is not merely legal but philosophical: what does it mean to die and what obligations does the law owe to those who refuse to accept the finality of death? The law can ensure that those who choose to confront that question are given the tools to make their choice meaningful.

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