

# “Property Of Those In Coma ”

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Intern at Anbay Legal, October-November, 2021.

*We live in uncertain times, where we are highly prone to injuries and diseases, one may fall into a state of Coma due to many unforeseen reasons. Hence one must be aware how to tread such difficult waves for the sake of themselves and loved ones if ever the need arises. With exorbitant medical expenses we must understand that the family of the patient have to step in and take care of them and bear these expenses but the cost involved for the medical upkeep and maintenance of patients makes it very difficult for those taking care hence there is a need for understanding the concept of guardianship of such patients and how to deal with their property to manage the expenses.*

*Individuals who are unconscious for a long period of time commonly either fall in the state of coma, or are in a vegetative state. In layman terms medically unconscious usually involves being in a persistent vegetative state which is a disorder of consciousness in which patients with severe brain damage are partially awake rather than being truly aware. After four weeks in a vegetative state , the patient is classified as in a persistent vegetative state. While Coma is a deep state of prolonged unconsciousness in which a person cannot be awakened and they fail to respond to painful stimuli, light, or sound and do not initiate voluntary actions. Coma patients exhibit a complete absence of wakefulness and are unable to consciously feel, speak or move.*

*When a person falls into the state of Coma, they lose their ability to take care of themselves, in such cases the family of the patient have to step in and take care of them and bear the expenses. But the cost involved for the medical upkeep and maintenance of patients makes it very difficult for those taking care. In such times, those in an pseudo guardian position have to rely on the assets owned by the patients, this involves dealing with property owned by the patients and if the need be, the sale and transfer of the patients property might also be required to bear the medical expenses of the patients or for the upkeep of their family. It is during such situations that lack of accounting for in the Transfer of Property Act and in any other legislations causes distress to all those involved. When faced with such situations the family of the patient is faced with many legal and financial hurdles which bundle together with the mental agony of taking care of a comatose or vegetative person and become unbearable and extremely difficult.*

## Current Legislation and Data

*There is a lack of data available for the number of patients who are in a comatose or vegetative in India the available data of individuals is mainly available for few European countries one of the key data includes data from Spain in 2018 which brought to light that in the year 2018 there were about 23000 Spanish people in*

Comatose<sup>1</sup>, it is key to note that population of India is more than 20 times that of Spain, bundled with lower quality of health care facility it can only be assumed that the numbers of patients in India in a state of Coma will be quite great.

Currently there exist no legislations governing the rights of those in Comatose or Vegetative state. Under the law there are provided with no aid in form of direction or guidelines over the movable and immovable property owned by them. The lack of legislation on the same has led to the courts of various parts of India to step in and issue guidelines in this legislative vacuum. Since there does not exist any legislation there is lack of clarity surrounding the rights of those in the disadvantageous position. While there do exist various laws which govern the appointment of a guardian and the transfer of property made by a guardian or an agent, they would not be applicable to those in a comatose or vegetative state. The provisions of The Transfer of Property Act, Guardian and Wards Act, 1980 and Rights of Persons with Disabilities Act, 2016 do not take in account those who are suffering in a Comatose or Vegetative State.

#### Judgements Providing Ray Of Relief

Due to the lack of legislations surrounding the same the court has at many times faced with situations when the property owned by a comatose and vegetative person has been in discussion. Due to the lack of centralised law the courts have had to independently pass a judgement over such sensitive matters. The various judgements that have touched upon the rights of Comatose or Vegetative persons and also rights in respect to the property owned by them-

- **Aruna Ramchandra Shanbaug v. Union of India**<sup>2</sup>

This landmark judgement while does not concern itself with the property of a person in a Comatose or Vegetative state but is monumental in understanding the legal position of those suffering in such a condition. In this case the Supreme Court observed that when a person who is in Comatose or Vegetative state is in the need of aid then the doctrine of *Parens Patriae* would come in picture that is there is a need of someone who can act as a parent, who can make decisions and take other important decisions and actions, the court then held that the State is best qualified to take on this role in some cases.

- **Shobha Gopalakrishnan Vs. State of Kerala and Ors.**<sup>3</sup>

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<sup>1</sup> J. Mendoza Number of individuals in a coma in Spain in 2018, by age group, Statista, (Jul 2, 2021) , <https://www.statista.com/statistics/748750/number-of-comatose-patients-in-spain-by-age-group/> .

<sup>2</sup> (2011) 4 SCC 454

<sup>3</sup> 2019 SCC OnLine Ker. 739

*In this case the family of the patient in the Comatose stage were finding it extremely difficult to see arrange for finances to provide adequate treatment and life support to the victim, who was the sole bread winner of the family. It was stated in the court that the patient who was in a comatose state did have properties his family members were unable to handle the same due to the 'legal hurdles'. Court in this case highlighted that the petitioners had already incurred heavy expenses apart from the pain caused due to their dear one lying in a 'permanent vegetative state' and 'coma', court in this case also highlighted that there are no legislation in India which provide for appointment of Guardian for a person in comatose state. In this case court took cognizance of the plight of the patients, "who are living in 'comatose state' as prisoners in their own body, unable to respond to any stimuli and the world around." While providing with relief to the petitioners the court stated that person seeking appointment as Guardian of a person lying in comatose state should be a close relative and in the absence of the suitable close relative, a public official such as 'Social Welfare officer' should be appointed as a Guardian to the person in 'comatose state'.*

- ***Vandana Tyagi Vs Government Of National Capital Territory Of Delhi***<sup>4</sup>

*Court in this case relied and reiterated the guidelines laid down by Kerala High Court in the case of Shobha Gopalakrishnan Vs. State of Kerala and Ors., on how to deal with cases regarding the appointment of a legal guardian for comatose persons. These guidelines were issued by the Division Bench of Kerala High Court and followed by the Delhi High Court since no specific provision is available in any Statutes to deal with the procedure for such appointment of Guardian to a victim lying in 'comatose state'. In this case the Delhi court stated that The Kerala High Court in its Judgement was right in coming to the rescue of the victim and held that it was necessary to stipulate some 'Guidelines'.*

- ***Rajni Hariom Sharma v. Union of India***<sup>5</sup>

*This case further reinforced the judgement passed in the above two cases. Court when faced with the facts as argued by the appellants that because husband is in a comatose condition, he is not in a position to use his intellect, converse and sign various documents and because of that, a guardian should be appointed so as to safeguard the business and other interests of patient and also to look after their family.*

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<sup>4</sup> 2020 SCC OnLine Del.32

<sup>5</sup> 2020 SCC OnLine Bom 880

While passing the judgement the court highlighted that the patient, Mr. Hariom Sharma has fundamental right to live his life with dignity even though he is in a comatose / vegetative condition. And being the wife, his wife has “legal, moral, familial and societal obligations to look after the needs of her husband Mr. Hariom Sharma as well as the needs of the family.” Court in this case also noted that there were no statutory provision for appointment of guardian to look after persons in comatose condition or in vegetative state, and hence people have no option but to approach Court under Article 226 of the Constitution for relief. Court to make sure that order is followed in letter and highlighted the need of some kind of monitoring of the functioning of the guardian for a limited duration to ensure that guardianship is being used for the benefit of the person who is in a vegetative state.

- **Archana Gupta And Others & Ors vs Government Of Nct Of Delhi & Ors<sup>6</sup>**

In this recent case the patient, infected with the Covid 19 virus was further put in a state of comatose and the petitioner the wife of the comatose approached the court asking to be appointed as her husband's guardian and if the need be to sell his property and use the money for his medical expenses and for taking care of the family expenses. Allowing her petition, the court observed, “In our opinion, in the present case this Court cannot shirk its responsibility when a distress call is given by a sinking family of a person lying in a comatose state for the past year and a half.” It was also further added by the court that, “Under the circumstances, this Court, under Article 226 of the Constitutions of India, is the ultimate guardian of a person who is lying in a comatose/vegetative state and may provide adequate relief of appointment of a Guardian.”

The court also stated that in case the guardian appointed by the court misuse the assets of the comatose persons or does not utilise it for the patients best interests, the court then has power to remove the guardian and appoint someone else in their place.

### Need for change

The number of cases before the court only highlights the need of legislature governing the rights of those in a state of Coma or in a vegetative state. While there is a need for the general legislation with directions for the aid of those affected but there should be provisions in the Transfer of Property Act, which considers and account for situations where the legal holder of a property is unable to function and deal with his property due to medical constraints. In every case the court has taken cognizance of severity of being in a Comatose or a vegetative state and how this brings along with it great difficulties for those taking care of the patient. The upkeep and medical expenses for the wellbeing and maintenance of the patients amounts to a huge sum and due to the nature of state of the patient there is no way to understand their intentions. During such difficult times the expenses can be accounted from the property owned by patients. As was the case in , Shobha Gopalakrishnan Vs. State of Kerala and Ors, if a sole breadwinner of a family is in a comatose or vegetative state, then there exists even

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<sup>6</sup> Archana Gupta And Others & Ors Vs Government Of Nct Of Delhi & Ors, High Court Of Delhi At New Delhi, W.P.(C) 3926/2021

greater hardships for the family. In such cases while some have resorted to moving to court to gain relief, it is difficult for everyone to do so, hence taking cognizance of the sensitivity of the issue, amendment with addition accounting for the speedy and appropriate aid should be incorporated into the Transfer of Property act which accounts for such situations and places guidelines and directions for the transfer of property owned by a person in comatose or vegetative state. Special care must be taken so that these provisions are not used as a tool for abuse and self-gain but rather should be for the benefit of the disadvantaged. There are many questions that the legislature should account for which include but are not limited to the order in which guardianship will move to, rights over profits accrued over an property by an guardian and many other which if not addressed can be exploited by the guardian. The legislature should also incorporate provisions which ascertain the liability of Comatose and Vegetative person and that of the Guardian how it would affect the transfer under the Transfer of Property Act. The procedure, if applied by legislations should be inclined towards the Comatose or Vegetative person and there should be increased standards and liabilities on the opposite parties when concerned with dealing with property belonging to Comatose or Vegetative individual.

## References

- *Indian laws need to wake up to help its comatose patients, Times of India , Last accessed on (Sept. 17, 2021).*
- *Lawyered, Procedure To Appoint A Legal Guardian For A Person Under A Vegetative Condition Or Coma, (Sept. 19, 2020 ), <https://www.lawyered.in/legal-disrupt/articles/procedure-appoint-legal-guardian-person-under-vegetative-condition-or-coma-advocate-abdul-azeez/> .*
- *Mandhani, Spouses can be appointed as guardians for comatose patients to manage their properties: HC, The Print, (June 16, 2020).*
- *Sattin et, al. , Patients with Disorders of Consciousness in India: Preliminary Results from a Pilot Survey, Annals of Indian Academy of Neurology, Vol: 22 Issue: 4 (Oct 25, 2019), 10.4103/aian.AIAN\_355\_18*
- *Shannan Keen, Vegetative State, Brain and Mind Research Institute, University of Sydney, (Jan., 2021).*
- *Sharma, Bom HC | Can a wife be appointed as the guardian of husband who is in a state of comatose or vegetative state? Court elaborates, SCC online, (Aug. 27, 2020).*
- *Thomas, Wife of man in coma can sell his assets: Bombay HC, The Times of India, (May 9, 2019).*
- *Yang Lixin & Zhang Li, On legal personality of human vegetables and protection of their rights, Frontiers of Law in China, pages 586–615 (2007).*
- *Dr. Madhu Vijaykumar Gupta Vs. State of Maharashtra, 2019 (3) RCR (Civil) 259.*
- *Philomena Leo Lobo Vs. Union of India, 2017 SCC OnLine Bom.8836; and*
- *Shobha Gopalakrishnan Vs. State of Kerala, 2019 SCC OnLine Ker. 739;*
- *Uma Mittal Vs. Union of India, 2020 SCC OnLine Allahabad 777;*
- *Vandana Tyagi Vs. Government of National Capital Territory of Delhi, 2020 SCC OnLine Del.32;*
- *Rajni Hariom Sharma v. Union of India, 2020 SCC OnLine Bom 880.*