



## PROPERTY RIGHTS ON THE HUMAN BODY, PARTS, TISSUES AND CELLS

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### ABSTRACT:

In recent years, the human body has confronted a lot of complex and considerable advancement in the field of medicine and biotechnology. Now, in the field of law, the human body plays a critical appearance. How a human body is related to a property? Can ownership rights be subjected to the parts, tissues, and cells of the human body? Essentially, we need to know what is a “property”. A property is widely considered as an object, thing or an element is owned by a person. When something is contemplated as a property then the owner has the right of possession, disposal, use or demolition, which is termed as “ownership”. Now, will these interpretations of property and ownership be suitable to a human body, parts, tissues, and cells? According to law, when a property right is given to any of the cases, the subject must be settled in every aspect. It must be morally, legally, constitutionally resolved. But, in this case, there are many unsettled issues. The legally unconvincing conditions are prostitution, abortion, suicide, euthanasia, slavery and, related topics. Even after examining these legal complications should property rights must be given to the human body? This article explains how a human body is studied as a property, what are the current legal status, strengths, and weaknesses of recognizing property rights over a human body. The author illustrates the various decisions and judgments so far.

This article demonstrates the probable consequences of recognition of property rights over the human body will reflect.

### INTRODUCTION:

Do we OWN our own body? Many people may think that the answer would be yes. But legally and technically speaking no people have right over their own body or others. Is our body a property? Who are we then? We could answer this question in different ways. We may be the mind, we may be the body, we may be the spirit or flesh or anything that the man desires. But, in each case, the contrast arises that the realization of the body is indeed a kind of stranger over which we have utterly no control.

In the famous American case, Henrietta Lacks was a young woman who died of cancer in 1951. During her treatment, a sample of her cervical cells was sent to a laboratory for research purpose without her consent. And those cells were the first human cells to manipulate outside the human body. And those cells were sent to the HeLa cell line which is one of the largest cell line industry. And fifty years later those cells were used to earn a multimillion-dollar as it was used to cure various diseases. And the family of Lacks has no idea of those cell line. Do any of her relatives have the right to demand the share over the profit earned by her cells? Did Lacks herself own her body?

Even if it is claimed that we should not go quite that far, we are still in detail that impressionistically – about why we treat body parts as so different from other things. We do not have an exact answer to questions like these, with a catch that bodies are not



like other things. If they are not, we need a clear account of what the difference is, and what is the difference of rules that explains the giving of organs from the giving of other things.

The definition of property is defined in Black's law as, "The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this Code, the thing of which there may be ownership is called property."

An author described this philosophy as follows:

"Natural persons are distinguishable from things, this being a bioethical imperative derived from the prevailing Kantian philosophy that insists that human persons be accorded nothing less than full human dignity and not be relegated to the status of sub-humans or objects. Recognizing freewill as the basis of moral right, Kant deduced the right of private property from the fact that the human will must be capable of exercising control over things. Accordingly, we may explain the absence of legal ownership of body materials naturally contained within or upon a living person by concluding that such materials are part of the person."

#### THE CURRENT STATE OF LAW:

According to Black's law dictionary, ownership is defined as, "He who has dominion of a thing, real or personal, corporeal or incorporeal, which he has a right to enjoy and do with as he pleases, even to spoil or destroy it. as far as the law permits, unless he is prevented by some agreement or covenant which restrains his right".

It can be told that the definition of ownership indicates the right to buy, sell and possess a particular object or thing. But a body is never an object to be owned and, the definition of ownership does not apply to the human body, its parts, tissues and, cells. The human body is an array of living tissues and cells.

The countries like the UK do not recognise the property rights over the body. These were initially seen and dealt with the corpses. But in a peculiar case of *R v. Bentham*<sup>1</sup>, the living bodies were also included. In this case, the defendant committed a robbery by giving an impression that his hand was a gun which was concealed in his leather jacket. He was charged for possession of imitation firearm, but because he cannot be charged for the possession of his own body part, this was overturned by the House of Lords.

The recent and famous California case *Moore v. Regents of the University of California*<sup>2</sup> spots about the ideas and ramifications that would help to get an explanation regarding the property rights. This case talks about the non-consensual use of plaintiff's cancerous MO spleen cells to develop a million-dollar pharmaceutical products using recombinant deoxyribonucleic acid technology. The plaintiff contended for the conversion of his property and was, therefore, entitled to share the profit which was acquired from trading the cells. The Supreme Court of California held that there are no property rights over the substances and tissues extracted from a human body. And the plaintiff would

<sup>1</sup>*R v. Bentham*, [2005] 1 WLR 1057.

<sup>2</sup>*Moore v. Regents of the University of California*.



acquire compensation only for not obtaining the consent of his and not for the conversion of property.

In this situation of suborning, the selling of body and the body tissues will be a very profitable business. Once the right of ownership is given, then there is a lot on the plate to be approved linked with the ownership rights.

In the case of *Venner v. State*<sup>3</sup>, narcotics were found in the defendant's faeces in the hospital bedpan which was seized by the police. The legality of the seizure is depending on if the defendant has a property right over it or not. The Court of Maryland stated that a person has no right over the body and the substances removed from it. Thus, the seizure is found to be legal and it states that there are no property rights applied.

If the person is given the right to ownership then he is allowed to sell his body parts. And definitely, there will be other arguments regarding the sale of their whole body while a part of their body is sold. Thus, the concept of property rights is itself fundamentally wrong because it gives rise to various other constitutional issues.

In the other famous case of *Browning v. Norton-children's Hospital*<sup>4</sup>, the plaintiff was admitted in the hospital and after learning four weeks of amputation surgery, his legs have been incinerated. He has suffered a severe mental torment and agony. The Kentucky Court of Appeals rejected the

claim stating that he has no right over his body.

In the case of *Morky v. University of Texas Health Science Centre*<sup>5</sup>, at Dallas the patient lost his eyeball down due to unprotected skin drain. The plaintiff had filed the case based on two clauses stating that due to that loss he has suffered headaches and nervousness. And the other is his loss of property. Morky also sufficiently filed the suit under the Texas Tort Claims Act. This statute allows the Court to award damages according to the loss of property rights or personal injury. And the Court chose the latter. This decision clearly indicates the lack of property recognition in the human body and its parts.

#### **CLAIM OF PROPERTY OVER DEAD PERSON:**

It is been told that a person after death can be claimed as "Quasi-property". The property rights are restricted to the cremations and other rituals to be performed. And not all the person can exercise that property right but only the legal heirs.

Canada also suggests similar decisions in various cases. This is stated in the case *Hunter v. Hunter*, in Ontario Supreme Court, where the term quasi-property is interpreted. But it is clearly told that no absolute rights can be claimed over the body, only the rights for performing the cremations is been allowed. And those cremating rights will only be given to the kith and kin.

The similar decision is seen in the case *Edmund v. Armstrong Funeral Home*

<sup>3</sup>*Venner v. State*, 279 Md 47 (1977).

<sup>4</sup>*Browning v. Norton-Children's Hospital*, 504 S.W. 2d 713 (1974).

<sup>5</sup>*Morky v. University of Texas Health Centre*, 793 P 2d 479 (Cal 1990).



*Limited*<sup>6</sup>. The Alberta Supreme Court has given a similar judgment of *Hunter v. Hunter* of no property rights over the body.

### **BODY INCLUDES EMBRYOS TOO:**

If property recognition is given to the body, will embryo come under all these clauses? Will it be considered as a property? One of the highly debatable topics is the distinction between a foetus and a frozen embryo. The author opines that the only difference between them is, the foetus is inside the human body and the frozen embryo is outside.

And the other major controversy would be based on to whom the property rights are given. In all other cases, there are no other people associated. Here, respecting this foetus and frozen embryo, there are two people involved.

In the case of *York v. Jones*<sup>7</sup>, a husband and wife who were worried about conceiving preserved a frozen embryo for later use. But the marriage broke and the woman was left infertile. Should the embryo be considered as a property? If the Court held that it must be considered as a property and the woman is entitled to own it, then it will be considered as a movable property. If such rights are given, the woman will have a right to do anything with the embryo. She can do trade with it, dump it or chop it, making the provision of such rights immoral.

But according to the Draft Human Tissues and Embryos Bill 2006/2007, the embryo is considered as a bundle of human tissue and

cell and thus it has to be given legal status equivalent to living human being.

### **LEGAL CONDITION OF ABORTION:**

Interestingly, in the case of abortions, a woman can abort a foetus before 24 weeks of her pregnancy unless there is a valid reason to progress beyond that according to the Abortion Act 1957. And thus, this does not give any validity after the time period of 24 weeks. It can be inferred that after the time period the woman has no rights over the foetus because it is now a child and she cannot decide anything regarding it. This clarifies the question of legal status over the

### **CASE OF YEARWORTH AND ITS LEGACY:**

In the case of *Yearworth v. North Bristol NHS Trust*<sup>8</sup>, the plaintiff and five others had been admitted to a hospital for cancer treatment. The patients were asked to store their sperms due to the chance of infertility during the treatment. But the hospital, due to negligence failed to store the sperms safely. The plaintiff after 10 years approached the hospital regarding the sperm. The hospital informed that the stored sperms were not preserved safely due to the fault in the storage fridge. The plaintiff had filed a case in the Court regarding the loss of sperm and has put forth three issues. The first issue is the breach of bailment, second, damage of property because of negligence and the third is for suffering personal injuries. The hospital contended that they could not claim for both personal injuries and destruction of properties because sperm is nowhere a 'person'. The Court held that the

<sup>6</sup>*Edmund v. Armstrong Funeral Home Limited*, [1931] DLR 676.

<sup>7</sup>*York v. Jones*, [1989] 717 supp. 421.

<sup>8</sup>*Yearworth v. North Bristol NHS Trust*, [2009] 3 WLR 118.



compensation for the destruction of property must be given because the person has property rights over his sperm.

Even though this is one of the famous decisions for recognising property rights over body, tissues, and cells, this did not pave the way for its development in the legal system. It is still unclear, ambiguous and undecided.

#### **OTHER SIMILAR RECOGNITIONS:**

An exception to this rigid prohibition was outraged in Australian case in the nineteenth century. In the case of *Doodeward v. Spence*<sup>9</sup>, there was a dispute over a two-headed foetus which was examined and brought for an exhibition. The Court gave the rights over that foetus to the person who brought it because of the work and skill involved in the preservation of that foetus. And the Court also stated that the foetus in this instance is not considered as a corpse because of the lawful exercise of work and skill.

The rule stated in the above case was confirmed by the case, *R v. Kelly*<sup>10</sup>, where the parts of the human corpse could be considered a property for the Theft Act 1958 because of the lawful preservation and dissection over it.

Analysing the decisions, the law has kept us in a rather unsatisfactory situation. In the uncertain position, we can not come to situation respecting to the acceptance of this right.

#### **KANT AND HIS CONTRIBUTION:**

<sup>9</sup>*Doodeward v. Spence*, [1908] 6 CLR 406.

<sup>10</sup>*R v. Kelly*, [1998] 3 all E.R. 741.

Kant, philosophically speaking, does not agree with this right. According to his view, a person is not allowed to sell his limbs what so ever the amount may be. He gives some more reasons for his opposition. He insists on humanity and dignity as a major argument. Speaking of humanity and dignity, he considers the human body is filled with moral value. And if such thing has been started to apprise as a property, it is not acceptable. The human body does not deserve to be treated in a way how an object or a thing is treated. It has its own dignity which in any case should be protected. Kant thinks that when a person has started to sell his body then it would be the end of humanity. And of course, it degrades humanity. Next, Kant takes self-respect as his argument. He explains self-respect as an inner moral value which every person has to consider for a standard of moral living by which one person judges himself and others. He insists that cultural differences also play a role here. Thus, according to his arguments, he does not consider approving property rights is a faithful decision. Form his views we get inferred that this recognition of property rights over the human body is not only legally settled but morally too.

#### **CONSTRUCTIVE BACKGROUND OF PROPERTY RIGHTS:**

If this property is been approved, there will be a greater chance of prevention over misuse of genetic information. The wrongful use of body parts after death can be taken into care. Next, bodies can be prevented form unlawful tampering. Already there are offences like desecration of a corpse. If rights and punishments towards these offences are taken into a slightly



higher level of consideration, these offences can be averted. Thirdly, this would improve the enhancement of research purposes. Bodies can be used for teaching and research. The biotechnology industry will have a greater chance of improvement due to these rights. Finally, organ donation and transplantation will have a clear path. People will have authority over their parts and the work of transplantation will be made easier. The intellectual property rights and the patentability over body materials will increase the quality of organ donation and the usage of body parts for the commercial purpose can be certainly decreased. According to the present legal condition, these property rights are not widely appreciated and approved. Due to which there is complexity in the matters of organ transplantation, organ donation and, even blood transfusion. This dispute will be resolved due to the acceptance of property rights over the human body. Finally, speaking about the invasion of privacy, rights, which is a highly debatable topic will come to an end.

#### **OTHER CONSTITUTIONAL ISSUES:**

If such rights of ownership over our body is been permitted we have immense authority to do anything that is related to the same. And those authorities include many activities which are not legally acceptable. One can commit suicide, sell his own organs, can go into slavery, gets right to prostitution, euthanasia, women can abort their children in early stages, people could exercise drugs in their body. All these legally unapproved activities would take place if the absolute command over their body is given to the persons.

Logically speaking, once a body is made a property, it has to be inherited. For example, if a father dies and he writes a will to inherit all of his property to be equally shared between his two sons. As his body is also considered as a property, on which grounds will this property be shared? The concept of this itself is absurd.

If my body and its parts are my property, I may sell them to whomever I wish and under such terms as I think civil. There is a great deal of antagonism on whether a person is ought to be allowed to sell body parts or not. One detailed reason is that it makes the poor specifically susceptible. But, on the other hand, of course, it is a way for the poor to gather in needed capital.

Exploitation is considered as one of the major problems for recognising the said right. This may again lead us to the slippery slope of slavery and exploitations. After these many years of education and awareness, one will not again exploit himself. There is a greater chance of being exploited by others after the acceptance of this right. As the basic definition of the property itself says it as an object to be sold, bought, owned and possessed, anybody can do such things to any individual if people started to own their fellow beings.

In the concept of slavery, it states that a slave is a property of the master. Later this slavery was abolished. But even in this twenty-first century, there is a widespread commotion on baby-selling and sex-slavery. Nobody has the right over other's body when they don't own theirs. There is a period when baby-selling was considered as a trade. Only after the recent years of



awareness and punishments, such trade was taken into control. If this right is recognised then there is a greater chance of bringing back those offences.

In the case of *R v. Tang*<sup>11</sup>, a person who was operating a brothel was convicted of slavery for treating five contract workers as if they were some objects which he owns. In this case, Hayne J stated that slavery is ‘defined as the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised’.

When there was a case in India regarding the enrolment of Aadhar card, there was a controversy regarding the invasion of their privacy and their body parts. People contended that the fingerprint and the iris are their body parts and they need not submit it to any of the government or private officials.

Thus, the basic idea of ownership is itself not appropriate. This conveys that the body is nowhere a private property and it is entirely a different thing. Totally, the human body has some grace which has to be protected.

Analytically speaking, the human body must be treated with some moral value. By interpreting all the above cases and facts, we could witness that this right has gone through a path of improvement. When this right has been brought into the spotlight, this was not approved and actually, this was not even taken into consideration. The Court in later years has observed a lot more cases than expected. This right initially came into the consideration of the Court in Moore’s

case. This topic has got itself into the greater debates only after this case. This decision of this case wasn’t positive for the recognition. In the following cases, there was mixed opinions, judgements, and interpretations. There comes the Yearworth case which was a very big step stone for the enhancement of this right. Even though the Court had started to recognise it but in the recent Tang’s case, there was a controversy in approving it.

The author doesn’t support this idea of recognising property rights over the human body, parts, tissues, and cells. Yes, this right may give a lot more opportunity to explore and traverse towards improvement and modernization, but the author prefers to save the moral values over the rationalisation in this particular topic. The author desires to prevent some crimes which would probably happen due to this recognition by raising a voice against it.

#### CONCLUSION:

From all the above-discussed arguments the view of property rights on the human body is not ideal and optimal. Even though the rights were denied in the earlier period, the cases like Yearworth has given the acceptance to such rights to the body and its parts. One cannot own his body, tissues, parts of his body as of now according to the major decisions seen and witnessed. As this will lead to various other legal issues, this concept is not legally applicable.

But many philosophers and lawyers even have a different opinion on this complex concept. Some don’t agree with the concept of property rights on the body, some argue that those are their central rights which should not be invaded.

<sup>11</sup>*R v. Tang*, [2008] HCA 39.



If the court decides to provide this right, then certain consequences which will be both positive as well as negative will be experienced.

contribute. Thus, the author is of the conclusion that it is not an intelligent idea to provide liberty over this right.

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The positive consequences of recognising this right can be,

- The widespread debate of invasion over privacy rights can be put to rest.
- The body can be prevented from unlawful tampering.
- This property rights may be helpful for the enhancement of research purposes.
- This would increase the instances of organ-donation.

The negative consequences are,

- This will again ignite the concept of slavery.
- Demands will arise to make prostitution legal.
- A greater possibility of exploitation can be expected.
- Compulsion to make abortions legal.
- Increasing instances of organ selling as a business.
- Coercion to permit euthanasia and suicide.
- Baby-selling and sex slavery may again come into practice.

From taking account of both the highlights and challenges of the recognition of this right, the adverse effect has an upper hand. Some provisions or laws can be made to prevent offences that are happening due to this restriction, but a sanction of this right is not applicable. Strict punishments can be enforced to prevent the offences which are happening because of its refusal. Time and its change will give us an appropriate answer to all the questions demanded. It is not only the work of the Court to implement a suitable law, but also the division of medicine and biotechnology should

