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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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# **NATURAL DEATH VS CIVIL DEATH'S VALIDITY FOR PROVING PROPERTY OWNERSHIP – AN ANALYSIS**

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## **Abstract:-**

“Life and Death are one thread, the same line viewed from different sides”<sup>2</sup>

The property of a deceased died intestate (i.e) without writing a testamentary will shall go to his/her legal heirs only after confirmation that he/she had died. Next stage is the question of proving that death. After proving the death only the ancestral property or the self acquired property shall devolve to the legatees and legal representatives as per their respective rules under the personal laws. If it is natural death then death certificate can be obtained from proper authorities based upon the doctor's certificate, but if the person is missing then the courts jurisdiction arises to pass a declaration decree. But if he/she is missing or not seen for a long time, how the relatives can obtain the death certificate? . In this situation, the courts can pass an order declaring a person's death and it is called Civil Death under section 107 and 108 of the Indian Evidence Act, 1872. Though the court can declare it , the burden of proof is on the relative who ascertains that a person is alive or dead. The burden of proving the death by the petitioner and corresponding denial made by the respondent must be supported by relevant evidence and precedents before the court of law. Finally the power rests in judiciary to determine the correct nature of death. The petitioner and respondent will agitate to their maximum if their lies any property in the name of the deceased or missing relative.

I have discussed in this article about the various aspects of natural death and civil death and its consequences in courts.

*Key words: Natural Death, Civil Death, Evidence, Presumption, Proof.*

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<sup>2</sup> Lao Tzu



## **1.Introduction**

*The death of a person can be proved only by death certificate. If it is natural or civil death depends on the documentary evidence produced. The natural death can be proved by death certificate issued by Municipal Administration, Town Panchayats , Revenue Administration , Corporation and Health Departments , as the Jurisdiction may be. But the civil death can be proved by civil court declaration order. In India, if a person died then it is compulsory to register as per the Registration of Births & Deaths Act, 1969 before 21 days of date of death. Death Certificate of the proposed dead person is then given after correct verification by the authorities. The Government has also introduced new online system for registering the same and with fine and other procedures if it exceeds twenty one days.*

## **2. Police report of missing person and its validity in civil death suit.**

*If a person is missing or not heard, the first legal obligation of a relative is to file a complaint before police and got FIR registered. Still if the police authorities could not able to trace the missing person , then the aggrieved relation can move the civil court and final judgment shall be passed by the judge for declaring a person's death . The police report will act as additional evidence in the civil suit for death declaration.*

*Though the police report does not act as a final proof of death, it adds weightage to the petitioner side evidence that the death is genuine and there is no ulterior motives behind filing of civil death declaration suit. Moreover the police report is the proof for missing and not presuming as kidnapping or any other offences.*

## **3. Section 101 , 107 and 108<sup>3</sup> view on civil death.**

The sections are coming under Part-III of the Evidence Act, which is titled "Production and effect of evidence". Therefore it deals with the method of producing and its effect over it in court. This is Chapter VI titled "of the burden of proof." Clearly, the whole part manages the idea of evidence and as to on whom such proving weight burden would lie.

“Section 101. Burden of proof.-Whoever desires any Court to give judgment as to any legal right

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<sup>3</sup> Indian Evidence Act 1872.



or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person”.

“Section 107<sup>4</sup>. Burden of proving death of person known to have been alive within thirty years: When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it”.

“Section 108<sup>5</sup>. Burden of proving that person is alive who has not been heard of for seven years: Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it”.

The previously mentioned sections fundamentally characterize the idea of obligation to prove any claim and apply to an individual who is willing to get a judgment from the court. This section's judgment is only applicable to any legal obligation or right. It does not cover anything else.

If we analyse Sections 107 and 108, the two sections mainly concentrate on the proving of death. Prime accentuation of Section 107 is on the point that there should be in presence an inquiry with regards to whether an individual is alive or dead. The provision will not be applicable at all unless this question arises in a proceeding. Second, it must have been demonstrated within thirty years that he is still alive. It is just upon the fulfillment of both the circumstances that the provision applies and projects an obligation to prove any claims on the individual who insists that someone else is dead.

Similarly, Section 108 only applies when a person's life or death is in question. Despite being enacted separately, this section is only a condition to an earlier one and is not a substantive provision in and of it. In addition, it only addresses shifting responsibility. Section 107 places a burden on meeting specific conditions, and Section 108 simply shifts the burden to proving a particular fact. It wouldn't be awkward to specify that Section 108 was at first sanctioned as a full meaningful arrangement and was discussing the projecting of weight in instances of guarantee being that the individual is alive like Section 107 which projects trouble in instances of guarantee

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<sup>4</sup> Indian Evidence Act , 1872

<sup>5</sup> Indian Evidence Act , 1872

being that the individual is dead.

The Section was later amended to become a proviso, and instead of imposing responsibility, it was conceived as shifting responsibility. Normally, trouble can't be moved except if there is introductory weight on the individual on whom now the segment is attempting to move the weight. As a result, the initial claim that a person is still alive cannot be believed. The case should be that an individual is dead and with this guarantee everything begins.

For example we can understand the difference between these 2 sections by the following illustration. 'A' guarantees that an individual is dead, 'M' assures that he is alive. As a result, the issue of whether the aforementioned person is still alive or dead arises. The burden now rests on "A" to establish that the individual is dead after "M" establishes that the individual was alive within the previous 30 years. The burden shifts to "M," who asserts that the person is alive, if "A" can establish that the person has not been contacted by related parties in the past seven years. There is a fascinating distinction between the two sections. Only the factum that the person has been alive for at least 30 years prior to the date of consideration needs to be shown, while the factum that he has not been mentioned by related people in the past seven years needs to be proven. The requirements for each activity will be different. A fact can be demonstrated in a variety of ways, but it can only be proven in accordance with the Evidence Act's definition of "proved." However, suppose that "M" claims against "A"'s claim but fails to demonstrate that the person was alive within the previous 30 years. It is abundantly clear that Section 107 will not apply at all. We know from Section 102 that "A" will fail if there is no evidence, so "A" must prove that the person is dead in some way. He may do so based on presumption or direct evidence. On the off chance that he creates an immediate proof, Section 108 won't come into picture. He will have to "prove" that the person has not been mentioned by related people in the past seven years if he chooses to rely on presumption. The burden of proof will shift to "M," who has claimed that the individual is still alive. The court will have to accept the version of "A" that the person is dead if "M" continues to fail to fulfill his shifted responsibility. Utility of Section 107 and 108 is basically to the above degree and that's it. These sections neither give anyone a right nor make anyone responsible for anything.

However, both clauses deal with assumption and are not relevant when there is direct proof available. If "A" presents a death certificate issued by a competent authority, it is unlikely that "M" will be able to benefit from Section-107 by establishing that the person was alive during the

30 years prior to the date of consideration, or that "A" will be required to demonstrate under Section-108 that the person was not heard of within the previous 7 years by related persons.

#### **4. Court Judgments**

*In N. Prem Ananthi vs Tahsildar, Coimbatore And Ors*<sup>6</sup>.

The writ petitioner, after marriage was ill-treated by her husband both physically and mentally. She left the home with the female child and was struggling for daily livelihood. Mean while she managed to live alone for 10 years. She applied for death certificate of her husband after 10 years to Tashildar, Coimbatore, in order to apply for M.B.B.S seat on the ground of widow. Her husband came back, when she was studying final year and proved his presence within 7 years. Held the civil death order issued by tashildar is void.

*In Union of India v. Polimetla Mary Sarojini*<sup>7</sup>, it was determined that assuming a missing person's death occurred on the day they went missing poses a risk. Despite the presumption only being raised seven years after the date on which he was last mentioned, it would result in the failure of several legal heirs' claims due to the expiration of the limitation period. As a result, the Court concluded that such a person could be presumed dead on the day after seven years had passed.

The Supreme Court made it clear in *Life Corporation of India v. Anuradha*<sup>8</sup> that neither the Evidence Act nor logic or reason could allow the presumption of death to be stretched to the point where a person who had not been seen in seven years was presumed dead on the date of his disappearance. Factual or circumstantial evidence is more reliable than presumption when determining when a person died.

The person who makes the claim bears the burden of demonstrating that the death occurred at any time during the seven years since the disappearance. There is no presumption regarding a person's death time. The presumption of death cannot be raised in a dispute unless it is brought before a forum or in a legal proceeding.

*In Sanju Devi v. State*<sup>9</sup>, it was decided that in order to successfully establish the factum of death, a person must file a suit for declaration of civil death. Death is debatable rather than a fact in

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<sup>6</sup> 4 October, 1988

<sup>7</sup> Andhra High court on 31<sup>st</sup> Jan 2017

<sup>8</sup> Supreme Court on 26<sup>th</sup> March 2004

<sup>9</sup> Delhi High court on 6<sup>th</sup> Jan 2014



*and of itself; a decree declaring the deceased person's death must be issued by a civil court. The legal heirs can only receive the benefits of estate or succession rights when such a declaration of death is made by competent court.*

*If a person has executed a power of attorney and then missing, then the property can be sold by the power agent if the sub registrar is satisfied about his presence. But now a life certificate had to be produced by the power agent if there is a delay after execution of power deed.*

## **5. Conclusion:**

Consequently, a relative of a missing person can move the civil court for civil death declaration on the completion of 7<sup>th</sup> year, but if that missing person returns before 30 years and proved that he was in correspondence with relatives, friends and others within the alleged 7 years, then the declaration order is not valid. Though the court is empowered to declare a person's death, the date of actual death cannot be ascertained. The date of Judgment of civil death shall alone be considered for casualty date in future correspondences. Still many properties movable and immovables in banks are remaining unclaimed because of non production of death and legal heir certificate. As per recent survey the unclaimed deposits amount in scheduled banks is Rs 35,012 crores till February 2023<sup>10</sup>.

To Conclude “Natural Death and Civil Death are in one string, the same result viewed from different sides based on relevant evidence”.

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<sup>10</sup> Finance Ministry told parliament.