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Funeral pyres and embalming

Your constituent, who is a Sikh, has raised with you two issues connected with funerals: whether it is possible to be cremated on a natural wood funeral pyre; and whether it is possible for a body to be flown in a coffin to India without it having to be embalmed, if flown within hours of a death certificate being obtained. I am setting out below some general information but your constituent may need to take specific advice based on her personal circumstances, for definitive answers to her questions.

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as legal or professional advice, or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

Funeral pyres

The current regulations governing cremation are the [Cremation \(England and Wales\) Regulations 2008](#). Regulation 13 provides for where a cremation may take place:

No cremation may take place except in a crematorium the opening of which has been notified to the Secretary of State.

The regulations were made in exercise of powers contained in the *Cremation Act 1902*. Section 2 of that Act provides that:

The expression 'crematorium' shall mean any building fitted with appliances for the purpose of burning human remains, and shall include everything incidental or ancillary thereto.

In 2010, the Court of Appeal considered whether the legislation permitted cremation on a funeral pyre in accordance with Hindu religious beliefs.

In short, Davender Ghai wanted his body to be cremated in accordance with his religious beliefs as a Hindu. He contacted Newcastle City Council ("the Council"), asking for "out-of-town land, some 10-12 miles from the city" to be "dedicated ... for traditional open air funeral pyres". The Council refused his request, basing their decision on their interpretation of the 1902 Act and the regulations made under it, and Mr Ghai sought judicial review of their decision. The High Court upheld the Council's decision but the Court of Appeal overturned it.

In the High Court, there was an assumption that the cremation desired by Mr Ghai would be in the open air, i.e. not within any structure. However, the Court of Appeal looked at evidence which showed this not to be a requirement;

3...However, examination of the evidence, including further documents put in on behalf

of Mr Ghai for the purpose of this appeal, suggested that his religious belief does not in fact require him to be cremated, after his death, on a pyre in the open air. As was confirmed by his counsel on the hearing of this appeal, Mr Ghai's religious belief would be satisfied if the cremation process took place within a structure, provided that the cremation was by traditional fire, rather than by using electricity, and sunlight could shine directly on his body while it was being cremated. An example of the type of structure which would be acceptable to him was shown to us in the form of photographs of premises in Ceuta in Spanish Morocco ("the Ceuta premises").

The Court of Appeal held that "difficulties which may be thrown up by planning and public health legislation do not fall for consideration at this stage". The Master of the Rolls said that questioning had established that Mr Ghai's beliefs "would not prevent his remains being cremated on a grate, with a tray underneath to collect the ashes", and that there would be no difficulty in notifying the Secretary of State once an appropriately located and fitted out building was constructed. The Court focused therefore, on whether a cremation according with Mr Ghai's beliefs could reasonably be achieved in a structure which is a "building" within the meaning of the Act.

The Court of Appeal considered the type of structure which might satisfy Mr Ghai's requirements:

13. The evidence before the Judge, as supplemented before us, enables one to identify the sort of structure within which Mr Ghai would be prepared to have his body cremated after his death. As already explained, any structure within which his cremation occurs will need to have a substantial aperture, or substantial apertures, which enable sunlight to fall directly on his body while it is being cremated by fire. It does not matter whether the sunlight shines more or less vertically (e.g. as in the case of a structure which, while wholly enclosed by walls, has no roof) or more laterally (e.g. as would apply to structure with a roof, which is supported by columns, rather than walls).

The Court of Appeal considered that it was possible to accommodate Mr Ghai's wishes under the current legislation:

39.... I have come to the conclusion that Mr Ghai's wishes as to how, after his death, his remains are to be cremated can be accommodated under the Act and the Regulations. This is because the various structures I have described in paragraphs 14 to 18 above, namely the cremation area in the Ceuta premises and the various structures in India, are "building[s]" within section 2 of the Act. They are buildings in the ordinary sense of the word, and they are substantial and effectively permanent structures. There is nothing in the Act, or in any external material which can be taken into account when construing the Act, to support the notion that the word is not to be given its ordinary meaning in section 2.

I attach links to some press articles about the case:

- ["Hindu wins Northumberland funeral pyre battle"](#), *BBC News*, 10 February 2010;
- Jerome Taylor, ["Hindu healer wins funeral pyre battle"](#), *Independent*, 10 February 2010;
- Beth Hale, ["Hindu grandfather wins 'human right' to be cremated on open-air funeral pyre"](#), *Daily Mail*, 11 February 2010;
- Nicholas Dobson, ["A dream end?"](#) *New Law Journal*, 19 March 2010;
- Michael Marsh, ["Newcastle Hindu healer Babaji Davender Ghai reignites funeral pyre plans"](#), *Chronicle Live*, 1 February 2015.

It should be noted that this decision was based on the circumstances of the case which may differ from what your constituent is hoping to achieve.

Embalming

The High Commission of India in London issues [Certificates for Transporting Dead Bodies to India](#). The requirements for the issue of a certificate are set out on the High Commission's website:

If the next of kin/ relative (s)/ family member (s) of the deceased wish to transport the

dead body to India for funeral purposes, the High Commission issues a No Objection Certificate (NOC) in this regard for transportation of dead body to India. Before issuance of this NOC, next of kin/ relative (s)/ family member (s) of the deceased have to complete certain formalities with local government authorities and have to appoint a Funeral Director/ Undertaker to complete other required formalities for transportation of the dead body. For this service, applicants have to apply in Person only.

One of the listed requirements is an embalming certificate from the Funeral Director/ Undertaker.

Embalming also appears to be a requirement of airlines. A press article states that "IATA (a worldwide airline trade association) rules state that if moved from one country to another, a body should have an embalming certificate". Further information is provided on the IATA website including, [International Transport of Human Remains](#), January 18, 2005.

It would be necessary to check with individual airlines to establish their policies.

Notice to coroner

Anyone intending to remove the body of a deceased person out of England and Wales for a funeral abroad must give notice of this intention to the coroner within whose jurisdiction the body is lying (*Removal of Bodies Regulations 1954 (SI1954/448)*). The notice enables the coroner to inquire into the circumstances surrounding the death and to consider whether a post-mortem and/or an inquest is necessary.

Generally, the body may be moved after four clear days from when the coroner received the notice. However, depending on the circumstances, a coroner may allow removal sooner than this, or may direct within the four-day period that the body is not to be removed as further inquiries or examination are needed.

It is an offence to remove a body in contravention of the regulations.

I hope that this information is helpful.