



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 29.10.2021

CORAM

**THE HONOURABLE MR. JUSTICE R. MAHADEVAN**

Writ Petition No. 9229 of 2021

and

W.M.P.No. 9767 of 2021

1. B. Kalaiselvi
2. Mala Rajaram

Both are represented by their power of attorney agent

3.R. Gokul Kannan

.. Petitioners

Versus

1. The District Collector  
District Collector Office  
Kallakurichi District
2. The Revenue Divisional Officer  
Kallakurichi District
3. The Tahsildar  
Adi-Dravidar Welfare  
Kallakurichi District

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the first respondent to allocate a permanent place for burial ground for Arunthathiyar Community and prevent them from burying dead bodies on the Odai in Survey Nos. 64 and 65.

For Petitioner : Mr. M. Deivanandam

For Respondents : Mr. Stalin Abimanyu  
Government Counsel



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**ORDER**

“Death is the great equalizer of human beings”

- Kilroy J. Oldster

This Court wishes to commence this order reminding itself to the aforesaid words, even at the threshold.

In his poem, ‘Death the Leveller’, the English dramatist, James Shirley (1596-1666) made poignant about the virtue of equality in his philosophical words, as follows:

“The glories of our blood and state  
Our shadows, not substantial things;  
There is no armor against fate;  
Death lays his icy hand on Kings:  
Spectre and crown  
Must tumble down,  
And in the dust to be equal made  
The poor crooked scythe and spade...”

The following words of the saint Buddha in Dhammapada (15:4) also deserved to be noted hereunder:

“Let us live most happily, possessing nothing”



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2. Death has often been described as the all-powerful, looming and inescapable force that every human being born, must necessarily face and reckon with. For this reason, the philosophers, poets and thinkers have in their own style, outlined death as a force that equalizes all human beings across mankind and it is the final altar, where all differences, natural and man-made, cease to exist. It is rather painful, however, even at that final step of human existence, litigation seeking relief relating to the right to a decent burial, which is an integral part of the right to human dignity, reaches this Court on the same lines that seek to divide people in life, on factors such as caste and other man-made differences that impose ascribed statuses on people and their lives.

3. Right from the beginning of the introduction of the caste system, the social intercourse and interaction between different castes and classes of society have always been in such a way that the different castes in the hierarchy of system do not interact with each other from birth to death. With respect to the right of cremation or burial after death, the same turned on the existence or ownership of lands by the said class or caste. The economic and social status of the respective caste/class also decided whether they had ownership of lands which could be used for cremation/burial. It is indeed an undeniable fact that there have been several instances where Dalits,



Arundathiyars and several others perceived to be members of the lowest in the hierarchy of the caste system, do not have lands where they can cremate or bury the dead bodies of their community people, and still worse cases, where they could not even carry the dead bodies across certain lands belonging to the people of the so-called higher castes. With these prefatory words, this court now, proceeds to state the facts of the present case.

4. According to the petitioners, their lands are bounded by Survey Nos.64 and 65 in Madur Village, Kallakurichi Taluk and District, which are classified as "Odai Poromboke" as per the revenue records and during rainy season, rainwater flows through the odai, which connects the nearby Manimuthaar River. The survey No.65 has been used by Arunthathiyar community people for burying dead bodies of their community. In July 2020, an issue was raised regarding encroachment of the burial land, which, after enquiry by the third respondent officials, came to an end, by arriving at a settlement among all the parties, in which, it was accepted that S.Nos.64 and 65 were classified as odai poramboke belonging to the Public Works Department and an undertaking was given to use Survey No.65 as burial ground temporarily till a permanent land is reserved for burying the dead bodies of Arunthathiyar community people. Since the lands of the petitioners



are bounded by Survey Nos.64 and 65, they made a representation dated 02.01.2021 to the first respondent to allocate a permanent place for burial of the dead bodies of Arunthathiyar community people and to prevent them from burying the dead bodies any longer in the land in Survey No. 65. Such a representation did not yield any response. Therefore, the petitioners have come up with this writ petition for issuance of a mandamus directing the first respondent to allocate a permanent place for burying the dead bodies of those who belong to Arunthathiyar Community and to prevent them from burying the dead bodies on the odai in the survey number.

5.Adding further, Mr. M.Deivanandam, learned counsel for the petitioners submitted that the lands abutting the odai poramboke are patta lands and a lay out was formed, after getting approval from the competent authorities; and due to non-allocation of burial ground for Arunthathiyar community, they are burying dead bodies in the odai poramboke, which infringes the rights of the petitioners as guaranteed under Articles 21 and 300 of the Constitution of India. It is pointed out that Rule 4 of the Tamil Nadu Village Panchayats (Provision of burial and burning grounds) Rules, 1999 (in short, 'the Rules, 1999') mandates that every owner or other person having control over any place used as a place for burial and burning of dead bodies,



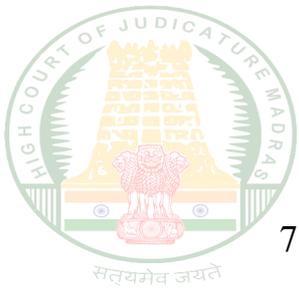
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shall register the place with the Village Panchayat; and if there is no owner or person having control of such place, the Village Panchayat shall assume control and register such place or may with the sanction of the Assistant Director (Panchayats) close the same from using it as a burial ground; and Rule 7 of the Rules, 1999, prohibits any person from buying or burning any corpse in any place within 90 meters of a dwelling place or source of drinking water supply other than a place licensed as a burial and burning ground. Whereas, in the present case, the Arunthathiyar community people are burying dead bodies in the lands classified as Odai Poromboke in contravention of the Rules, 1999. If the odai is continued to be used as burial ground, the channel would be affected, which would result in flooding during the rainy season. Therefore, in order to protect the water body as well as the rights of the owners of the adjacent lands including the petitioners, this court may direct the first respondent to identify a separate land for burial of the dead bodies of Arunthathaiyar community. The learned counsel also submitted that even a dead person is entitled to protection under Article 21 of The Constitution of India and that, the dead body has to be buried with dignity and honour. To support his submission, he placed reliance on the various decisions passed by the supreme court and High Courts.



6.Reiterating the averments made in the counter affidavit, Mr.Stalin

Abhimanyu, learned Government Counsel appearing for the respondents, stated that totally, there are 30 families belonging to Arunthathiyar community residing at Madur Village and they have been using the lands in Survey Nos.64 and 65 of Odai Poramboke for cremating dead bodies of their community for the past three decades. They have now requested to provide suitable land for burial ground. Pursuant to the request made by the Arunthathiyar community people, the Revenue department has verified the surrounding lands to be earmarked as a burial ground for Arunthathiyar community people, but there was no suitable Government land available in and around the place. In the mean while, it was suggested that the Arunthathiyar community people may use the lands in Survey Nos. 64 and 65, classified as Odai Poromboke for burying the dead bodies of their community people as a temporary arrangement, till a permanent land is identified and earmarked as a burial ground. Thus, the learned counsel submitted that the Revenue Divisional Officer, Kallakurichi in his proceedings dated 15.06.2021 has already directed the Tahsildar, Kallakurichi to find a suitable Government Poromboke land or acquire any other private land for burial ground to Arunthathiyar community people of Madur Village and hence, this writ petition may be dismissed.

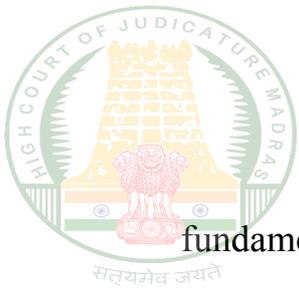


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7.This court has considered the submissions made by the learned counsel on either side and also perused the materials available on record.

8.The facts detailed in the writ petition are not in dispute. Admittedly, the lands in S.Nos.64 and 65, classified as odai poramboke in the revenue records, have been used for burying the dead bodies of Arunthathiyar community people of Madur Village, temporarily. Since the petitioners' lands are bounded by the odai poramboke lands and being aggrieved by the usage of the said lands for burying the dead bodies of Arundathiyar community people, the petitioners sought a mandamus directing the first respondent to allocate a permanent place for burying the dead bodies of those, who belong to Arunthathiyar Community and prevent them from burying the dead bodies in the odai poramboke lands.

9.Be it noted, it has always been a trite position of law that the right to dignity in human life is an integral part of the fundamental right to life and personal liberty as guaranteed under Article 21 of the Constitution of India. The further question that would arise is, whether the 'right to dignity' only subsists during the span of one's life or takes within its sweep, the right to a decent burial or cremation after death as well. This would be one of the



fundamental questions to be answered before going into the other issues that arise for consideration in this case. The Supreme Court has laid down that the right to life under Article 21 of the Constitution also includes the right to die with dignity. In the present case, this court deals with the stage after death. Whether the fundamental guarantee of human dignity continues and extends beyond human life and upto the decent disposal of one's body even after the last trace of life, has been snuffed out of one's biological being.

10. In this context, a Division Bench of this Court in **S.Sethu Raja v. The Chief Secretary, Government of Tamil Nadu**<sup>1</sup>, held that 'the right of human dignity is not restricted to human life alone, but was available after death'. The relevant portion of the judgment reads as follows:-

*“18. The fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution has been given an expanded meaning by judicial pronouncements. The right to life has been held to include the right to live with human dignity. By our tradition and culture, the same human dignity (if not more), with which a living human being is expected to be treated, should also be extended to a person who is dead. The right to accord a decent burial or cremation to the dead body of a person should be taken to be part of the right to such human dignity. As a matter of fact,*



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*the Supreme Court held in Ram Sharan Autyanuprasi v. Union of India (AIR 1989 Supreme Court 549) that the right to life enshrined in Article 21 of the Constitution would include all that gives meaning to a man's life namely, his tradition, culture, heritage and protection of that heritage in its full measure. The relevant portion of the judgment of the Supreme Court in Para 13 of the said judgment reads as follows:*

*13.....It is true that life in its expanded horizons today includes all that gives meaning to a man's life including his tradition, culture and heritage and protection of that heritage in its full measure would certainly come within the encompass of an expanded concept of Article 21 of the Constitution."*

*19. That the right to human dignity is not restricted to a living human being but available even after death, appears to have been recognised by the Apex Court, first in a public interest litigation filed by an Advocate in 1995. An Advocate by name Pandit Parmanand Katara filed a writ petition under Article 32 of the Constitution in public interest challenging the method of execution of death sentence by hanging under the Punjab Jail Manual as inhuman and violative of Article 21 of the Constitution. He also assailed Para 873 of the Jail Manual which required the body of a condemned convict to remain suspended for a period of half an hour, (after hanging) as offending the right to dignity. Though the Supreme Court rejected the challenge to the*



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*method of execution of death sentence by hanging, the contention of the petitioner in the said case regarding Para 873 of the Jail Manual was upheld. While doing so, the Supreme Court held in the said case namely, Pt. Parmanand Katara v. Union of India [(1995) 3 SCC 248], as follows:*

*“We agree with the petitioner that right to dignity and fair treatment under Article 21 of the Constitution of India is not only available to a living man but also to his body after his death.”*

11. In **Dalip Kumar Jha v. State of Punjab**<sup>2</sup>, it has been held that “a dead person is also entitled to protection under Article 21 of the Constitution i.e. dead body has to be respected and dealt with dignity for its disposal”.

12. The Allahabad High Court in **Ramji Singh Mujeeb Bhai v. State of UP and others**<sup>3</sup> held as follows:-

*“17. We thus find that the word and expression ‘person’ in Article 21, would include a dead person in a limited sense and that his rights to his life which includes his right to live with human dignity, to have an extended meaning to treat his dead body with respect, which he would have deserved, had he been alive subject to his tradition, culture and the religion, which he*

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<sup>2</sup> 2014 SCC ONLINE P&H 2082



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*professed. The State must respect a dead person by allowing the body of person to be treated with dignity and unless it is required for the purposes of establishing a crime to ascertain the cause of death and be subjected to postmortem or for any scientific investigation, medical education or to save the life of another person in accordance with law, the preservation of the dead body and its disposal in accordance with human dignity.*

*18. We are pained to take judicial notice of the fact that in some cases the bodies of the victims of the crimes and of those who are killed in action, or in accidents are paraded in open by their kith or kin, or those, who have its temporary possession, in retaliation or in protest to the nature of the incident in which he died. Many a times recently, it is reported and had actually happened in Allahabad High Court when the dead body of Late Shri Srikant Awasthi, an Advocate was used by a section of the members of the Bar Association including its leaders, for ransom, for the demand made by them for compensation and rehabilitation of his family and more for their own selfish interest was brought from the mortuary to be kept in the portico of the Bar Association in the building of the Allahabad High Court, with threats of carrying it through the corridors of the Court, demanding action against the jailer in whose custody the person was entrusted in a contempt case and for extracting political mileage.*



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19. Every day newspapers are covered with the reports of group of persons illegally confining the dead bodies on the road, or in front of the police stations holding up traffic for hours, making demands of compensation or for better road safety. The society should not permit such disgrace to the dead body. The State, which allows the possession of the dead body to be taken by a person or group of persons for such purposes, fails in its duty to preserve and to dispose of the dead body with dignity. The State through its agencies must take immediate possession of such dead bodies used for illegal means, for its decent and dignified cremation or burial in accordance with the religion or sect the person may have professed.

20. We are firmly of the view and direct that in all such cases, where dead body of a person is used for purposes other than a decent cremation/burial, by the relatives and friends or where the dead body is unclaimed, the State Government is obliged in law to provide necessary facilities for its preservation and disposal in accordance with dignity and respect which the person deserves, and except in a case of establishment of crime to which person may have been subjected or to ascertain the cause of death by scientific investigation, medical studies, or to save the life of another living person, the dead body shall not be allowed used for any other purposes.

21. If Courts are required to fulfill the desires of the dead person by execution of his will, the same Courts are also



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*obliged for giving appropriate directions for the preservation and disposal of the dead bodies and for that purpose, to give an extended meaning of the expression, 'person' in Art.21 to include dead bodies of the persons, who were human beings, in a restricted sense.”*

13.It is now, beyond the pale of doubt that the right to be cremated or buried in accordance with one's religious rituals, rites, practices and beliefs is an essential part of the fundamental right to practice and profess one's religion in accordance with Article 25 of the Constitution. In this regard, some of the important decisions that elaborate on the above principle, are as follows:

(i)**Mohammed Gani v. The Superintendent of Police & Others**<sup>4</sup>, in which, it was held that 'the right to bury dead bodies in accordance with one's religious rites and customs is a part of Article 25 of the constitution and hence, it is a fundamental right'. The relevant passage of the said decision is profitably extracted below:

*“14. A basic feature of India is that it is a country with tremendous diversity having so many religions (including their different sects), castes (including hundreds of sub-castes), communities, languages, ethnic groups, etc. Hence, the only policy that can work in this country, and keep it united and on the path of progress is the policy of secularism and giving*



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*equal respect to all religions, castes, ethnic groups, communities, languages, cultures, etc. Without such a policy our country cannot survive for long.*

*18. In our opinion, the right to bury dead bodies in accordance with one's religious rites and customs is a part of article 25 of the constitution, and hence it is a fundamental right.*

*21. As already stated above, the right to practise one's religion freely is enshrined in our Constitution under Article 25(1). It is a fundamental right, and this includes the right to bury dead bodies in accordance with one's religious rites and customs."*

(ii) Further, in the same case, citing the judgment of the Supreme Court in **Gulam Abbas Case v. State of U.P.**<sup>5</sup>, it was observed that 'from the right to profess one's religion follows the right to take out processions, which however, is subject to the restrictions, which may be imposed by the authorities for preventing a breach of the peace or obstruction of the thoroughfare'. On the right to take dead bodies for burial in the graveyard, it was observed as follows:

*"26. In our opinion, the right to take out religious processions would include the right to take dead bodies for burial in the graveyard. As observed by the Supreme Court, this right cannot be interfered with on the ground that it offends the*



*sentiments of another community.*

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27. In every religion there are rites and ceremonies performed on the death of a member of that religion, and these include the carrying or transporting the dead body to the cremation place or graveyard. In our opinion, these rites and ceremonies are an essential and integral part of that religion, and hence cannot be prohibited in a secular State.”

From the above decisions, the law emerges clearly that the right to bury the dead body in accordance with one’s religious rites and customs is a part of the fundamental right to religion under Article 25 of the Constitution. The use of public land or public facilities cannot be subject to discrimination on the ground of religion, race, caste, sex or place of birth. No Caste or community can be allowed to appropriate any Government land exclusively for the purpose of last rites of the members of that Caste or community alone. Further, the refusal for any caste to use the burning Ghats on the ground that the societies of other castes are maintaining, is discriminatory and violative of Articles 14, 15 and 25 of the Constitution of India.

14. In the backdrop of the above established principle of law, which has been time and again reiterated by the Supreme Court and this Court in various decisions, this court is of the opinion that the issue under consideration in the present writ petition does not directly touch upon the right to practice / profess



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one's religion. In fact, in the case at hand, the preliminary issue would be as to whether the petitioners, who seem to be aggrieved by the fact that the water body adjacents to their properties is being used by the people of the Arundathiyar community for disposal of the dead bodies of their community, can seek a direction to the first respondent for providing a separate and specific land or ground for cremation or burial of the dead bodies of the members of the said community alone.

15. While the primary issue would be the *locus standi* of the petitioners to approach this court seeking such nature of relief and the extent to which their grievance can be redressed by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, the larger issue that once again comes to fore is the sociological menace of the divisive forces at play, such as, caste and the resultant ideas of segregation staring at society and the issues to which this Court, being a Court of law and justice, cannot turn a Nelson's eye to.

16. It is rather ironic and to be placed on record that the members of the Arunthathiyar community, who for lack of land or property or a particular ground for cremation or burial of their dead bodies and being forced to dispose of their dead bodies in the water body or other public lands, have not approached this court. However, considering the important sociological issue



raised in the writ petition and the constitutional guarantees available in this regard, this case calls for an analysis of the issue viewed from the societal as

well as constitutional viewpoint, in order that this Court aids in the fulfilment of the constitutional guarantee of the right to dignity from birth to death encompassing every aspect of human life including ending with the right of a human being to decent cremation/burial/disposal of his body after death.

17. In this regard, pertinent it is to look at some of the international documents which deal with human rights, educational, scientific and cultural rights of people, which touch upon the factors that tend to divide people, such as, race, ethnic origin, economic and socio-cultural factors. In the Declaration on Race and Racial Prejudice, adopted and proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organisation at its 20<sup>th</sup> session, on 27.11.1978, certain general principles have been affirmed with specific reference to race and racial prejudice, which are correspondingly applicable in respect of other divisive factors like caste and differences in ethnic origin and hence, the same may be extracted hereunder, for better understanding:

**“Article 1**

1. All human beings belong to a single species and are descended from a common stock. They are born equal in dignity and rights and all form an



integral part of humanity.

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2. All individuals and groups have the right to different, to consider themselves as different and to be regarded as such. However, the diversity of lifestyles and the right to different may not, in any circumstances, serve as a pretext for racial prejudice; they may not justify either in law or in fact any discriminatory practice whatsoever, nor provide a ground for the policy of apartheid, which is the extreme form of racism.
3. Identity of origin in no way affects the fact that human beings can and may live differently, nor does it preclude the existence of differences based on cultural, environmental and historical diversity nor the right to maintain cultural diversity.
4. All peoples of the world possess equal faculties for attaining the highest level in intellectual, technical, social, economic, cultural and political development.
5. The differences between the achievements of the different peoples are entirely at people to geographical, historical, political, economic, social and cultural factors. Such differences can in no case serve as a pretext for any rank-ordered classification of Nations or peoples.

### **Article 2**

1. Any theory which involves the claim that racial or ethnic groups are inherently superior or inferior, thus implying that some would be entitled to dominate or eliminate others, presumed to be inferior, or which bases value judgements and racial differentiation, has no scientific foundation



and is contrary to the moral and ethical principles of humanity.

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2. Racism includes racist ideologies, prejudiced attitudes, discriminatory behaviour, structural arrangements and institutionalised practices resulting in racial inequality as well as the fallacious notion that discriminatory relations between groups are morally and scientifically justifiable; it is reflected in discriminatory provisions in legislation or regulations and discriminatory practices as well as in anti-social beliefs and acts; it hinders the development of its victims, towards those who practice it, divides nations internally, impedes international cooperation and gives rise to political tensions between peoples; it is contrary to the fundamental principles of international law and, consequently, seriously disturbs international peace and security.
3. Racial prejudice, historically linked with inequalities in power, reinforced by economic and social differences between individuals and groups, and still seeking today to justify such inequalities, is totally without justification.

### **Article 3**

Any distinction, exclusion, restriction or preference based on race, colour, ethnic or national origin or religious intolerance motivated by racist considerations, which destroys or compromises the sovereign equality of states and the right of peoples to self-determination, or which limits in an arbitrary or discriminatory manner the right of every human being and full development is incompatible with the requirements of an international order which is just an guarantee respect for human rights; the right to full development implies equal access to the means of personal and collective



advancement and fulfilment in a climate of respect for the values of civilisations and cultures, both national and worldwide.

#### **Article 4**

1.....

2.....

3. Other policies and practices of racial segregation and discrimination constitute crimes against the conscience and dignity of mankind and may lead to political tensions and gravely endangered international peace and security.

#### **Article 6**

1. The state has primary responsibility for ensuring human rights and fundamental freedoms on an entirely equal footing in dignity and rights for all individuals in all groups.

2. So far as its competence extends and in accordance with its constitutional principles and procedures, the state should take all appropriate steps, *inter alia* by legislation, particularly in the spheres of education, culture and communication, to prevent, prohibit and eradicate racism, racist propaganda, racial segregation and apartheid and to encourage the dissemination of knowledge and the findings of appropriate research natural and social sciences on the causes and prevention of racial prejudice and racist attitudes and with due regard to the principles embodied in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.



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3. Since laws prescribing racial discrimination are not in themselves sufficient, it is also incumbent on states to supplement them by administrative machinery for the systematic investigation of instances of racial discrimination, by a comprehensive framework of legal remedies against acts of racial discrimination, by broadly based education and research programs designed to combat racial prejudice and racial discrimination and by programs of positive political, social, educational and cultural measures calculated to promote genuine mutual respect among groups. The circumstances warrant, special programs should be undertaken to promote the advancement of disadvantaged groups and, in the case of nationals, to ensure the effective participation in the decision-making processes of the community.”

18. In the Report by Human Rights Watch for the United Nations World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, submitted in August 2011, for the conference held in Durban, South Africa in September 2011, it has been specifically mentioned that “caste discrimination’s place in the World Conference Against Racism, Racial Discrimination, Xenophobia And Related Intolerance (WCAR) has been confirmed by numerous international bodies created by treaties and by the title of the conference itself. In the concluding observations of its 49<sup>th</sup> session held in August/September 1996 (as it reviewed India’s 10<sup>th</sup> to 14<sup>th</sup> periodic reports under the International Convention on the elimination of all forms of racial discrimination, 1965), the Committee On The Elimination Of Racial



Discrimination (CERD) affirmed that “the situation of scheduled castes and scheduled Tribes falls within the scope” of the Convention.

19. In one of the recommendations of the Report, it has been observed that all governments, and in particular those of countries where citizens suffer from caste or descent-based discrimination and abuse, should ratify and fully implement the International Convention on the Elimination of All Forms of Racial Discrimination. It also calls upon concerned governments to establish a program and timetable to enforce the abolition of untouchability, segregation and similar practices. In the said report, the bitter reality of segregation practised in every aspect of human life in India on the divisive line of caste has been highlighted and the specific fact of segregated burials and the social factors involved in the same have also been discussed. The said report is significant as it discusses the various forms of discrimination and segregation between castes and communities, not only prevalent in India, but also in other countries as well as in countries where a sizeable number of Indians have migrated carrying along with them their castes and connected prejudices. The economic factors and the inequalities of power and the resultant landlessness of certain sections of society and the perpetuation of such inequalities which have further institutionalised the caste system, have also been discussed in detail.



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20. It also becomes apparent, that forms of discrimination whether they are on the basis of race, caste, economic disparities or due to historical factors like feudal slavery, have been consistently assaulting the moral fabric of our society, both domestic and international. The examples of the Burakus in Japan, the Osu in Nigeria, the castes in the sub Saharan Africa, the caste-based distinctions in Burkina Faso, Mali, Cameroon, and Mauritania, caste in Burundi and Mauritius, outside of West Africa and the castes found in Guinea, Guinea Bissau, Ivory Coast, Gambia, Sierra Leone and Liberia are the cases in point to show the rampant and all pervasive existence of caste all over the world. Apart from the above, segregation relating to racial groups as well as ethnic groups, like the non-Caucasians in Caucasian countries, the Africans, who belong to the Negroid race and segregation of ethnic groups like Indian origin Tamils in Sri Lanka, are all examples of the scourge of segregation that refuses to leave the world.

21. Subsequent reports such as those by the Centre for Human Rights and Global Justice and Human Rights Watch for Presentation at The Committee On The Elimination of Racial Discrimination in 2007, have also taken note of the instances of segregation as stated in detail in the previous report and suggested measures that the government as well as private organisations and entities must take in order to eliminate all forms of discrimination and segregation.



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22. One of the instances of segregation, which has been a stark reality in the United States of America would be in the decision of the Washington Supreme Court in **Milton V. Price v. Evergreen Cemetery Co. of Seattle**<sup>6</sup>, in which case, Mr. and Mrs. Price, who were non-Caucasians had made enquiries for an available space for burial of their infant son in that portion of the company' cemetery for infants known as "Babyland". The Company's office advised that "Babyland" was restricted by the Corporation to the burial of infants of the Caucasian race, and hence their infant son could not be buried in "Babyland", but their infant son could be buried in other sections of the cemetery property which were unrestricted and where Caucasians or non-Caucasians were buried. Based on the company's refusal to inter their infant in "Babyland", the Prices instituted this action for damages against the Evergreen Cemetery Company, alleging violation of RCW 68.05.260 (Laws of 1953, chapter 290, 53, p.838), which provides that **"It shall be unlawful for any cemetery under this chapter to refuse burial to any person because such person may not be of the Caucasian race"**. In the said case tried sitting with the jury, the verdict was issued in favour of the defendant cemetery company. The plaintiffs filed an appeal before the Supreme Court of Washington which affirmed the verdict of the jury on the technical ground that

<https://www.mhc.tn.gov.in/judis> 6997 WP. 2d 352, 357 P.2d 702 (1960)



Section 53 was part of a larger bill with the title (AN ACT relating to the regulation of cemeteries). The court was of the opinion that the bill was in violation of the provisions of Article II, Section 19 of the state constitution which provided that “no bill shall embrace more than one subject, and that shall be expressed in the title”. On this sole ground, the Supreme Court of Washington held that the said provision was in violation of the state constitution and hence, unconstitutional and as such, the plaintiffs’ case basing their claim on the said provision, could not succeed. What is more disturbing in the said case is the concurring judgement of Justice Mallery, which may be extracted as follows:

*“This case is more significant for what it reveals, than for what it decides. It reveals an ultimate aspiration of the Negro race, but the only legal question passed upon is a defect in the title of a bill passed by the legislature.*

*This case demonstrates that the Negro’s desegregation program is not limited to public affairs. The right of white people to enjoy a choice of associates in their private lives is marked for extinction by the NAACP. Compulsory total togetherness of Negroes and whites is to be achieved by judicial decrees in a series of Negro court actions. Browning v. Slenderella Systems of Seattle, 54 Wn. (2d) 440, 341 P.(2d) 859, was the opening gun of the campaign.*



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*The undisputed facts in the instant litigation are that the Evergreen Cemetery had segregated sections restricted to white children, masons, veterans, Lutherans and so forth. These restrictions implement universal desires of religious, racial, and fraternal groups to be associated in death as well as in life. “Birds of a feather flock together.”*

*In view of the cemetery’s long-standing segregation restrictions, it could not sell the Negro appellants a burial plot in “Babyland”. The white parents who have relied upon the white restriction in question have acquired a right to the association of their own race exclusively. It is this specific right of segregation which this particular case in a series was brought to eliminate. Let it be noted herein that there is no refusal of sepulchre to a Negro nor any complaint as to the quality of available burial plots.*

*\*356 the cemetery representative tried earnestly to show and sell appellants a burial plot in a children’s section of the cemetery where both white and Negro children were interred. The appellants refused to even look at it. They insisted on burial in “Babyland” and brought this action for injuries to their feelings because they were not permitted to intrude upon the white children segregated therein. Obviously, if Negro children were admitted to “Babyland”, its white exclusiveness would be gone, and it would be in the same category as the segregated section which was rejected by the Negro appellants. The appellant’s grievance is the mere*



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*existence of any exclusive section for white children into which Negroes cannot intrude at will. In view of the fact that the respondent cemetery provides unsegregated facilities of equal quality for the general public, including Negroes, there is no other possible issue herein than that of compulsory total desegregation in cemeteries.*

*This lawsuit is but an incident, the second of a series, in the overall Negro crusade to judicially deprive white people of their right to choose their associates in their private affairs.”*

23. After about sixty years from the issuance of the above judgement, the Supreme Court of Washington in its judgement issued on 15.10.2020, while dealing with a case which involved the interpretation of Article II, Section 19 of the state constitution, added a very significant note to the judgement, which would run thus:

*“We take this opportunity to overrule this Court’s opinion in Price v. Evergreen Cemetery Co. of Seattle, 54 Wn. (2d) 352, 357 P.2d 702 (1960). We may overrule a prior case when it is both incorrect and harmful. Deggs v. Asbestos Corp., 186 Wn 2d 716, 727-28, 381 P.3d 32 (2016) (quoting In Re Rights to Waters of Stranger Creek, 77 Wn 2d 649, 653, 466 2d. 508 (1970). Price is both. Price considered the constitutionality of a 1953 law that said, “It shall be unlawful for any cemetery under this act to refuse burial to any person because such person may not be of the Caucasian race.” Laws of 1953,*



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*CH.290, 53, at 838. Section 53 was part of a larger bill with the title “AN ACT relating to the regulation of cemeteries.” ID., CH.290. The majority concurred that the bill had two subjects in violation of article 2, section 19: “(1) civil rights, and (2) the endowment care funds of private cemeteries and creation of cemetery board.” Price, 57 Wn., 2d at 354. This was a strange and incorrect way to divide the subjects in the bill, all of which were germane to the subject of cemetery regulation. It is harmful for two reasons: first, because it suggests a more stringent standard than is required to survive an article to, section 19 challenge, second and more importantly, the case is harmful because of Justice Mallery’s concurrence, which condemned civil rights and integration. ID. At 355-58. “As judges, we must recognise the role we have played in devaluing black lives.” Letter from the Washington State Supreme Court to the members of the judiciary and the legal CMTY.1 (June for, 2020) (addressing racial injustice). The Price concurrence is an example of the unfortunate role we have played.”*

24. In spite of the above positive development, the instances of such discrimination and segregation continue to happen. Even as recently as in January 2021, the Oaklin Spring cemetery in Louisiana, which has existed since the 1950s, and where racial discrimination was legal, denied a plot for burial to a local black police officer, Daniel Simeon. A staff member of the Oaklin Spring cemetery told his wife and children that it was a “white only”



graveyard. After the issue was publicised, the cemetery board president called

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for an immediate change in its sales contract policy, but it was too little too late.

25. Before going into the measures to be taken in the future for prevention of such instances of social disability, discrimination, segregation on lines of caste and other diverse factors, it is significant to examine the earlier instances, where various High Courts had an opportunity to deal with the said issue.

(i) In **T. Balasubramanian v. Commissioner**<sup>7</sup>, this Court was of the view that 'allotment of a separate cremation yard based upon communities or castes should come to an end'. In the said writ petition filed to challenge the order passed by the respondent/Commissioner, Corporation of Madurai, Madurai, cancelling the agreement entered into between the said community and the Corporation in allotting a separate cremation yard for the purpose of burning the dead bodies belonging to the members of the petitioner's community, this Court held as follows:

*“10. The petitioner must be reminded of a yesteryear popular cinema song which beautifully summarised the burning ghat as*



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*the only place where total equality between communities exists. It may be quoted verbatim for the benefit of the petitioner and his community so that they may give up a separate enclosure within the public grave yard/ cremation ground.*

*11. Even though the writ petition is dismissed as without merits, it is necessary for this Court to direct the respondent/Corporation that the allotment of a separate cremation yard based upon communities or castes should be brought to an end. Atleast in the departure from this world there can be unity so that apartheid may not be practiced by the official acts of the Corporation. The Corporation must make note of such a direction in future and desist from allotting such separate sheds on caste basis. Even though the Corporation Act makes it obligatory for the Corporation to provide public cremation grounds, it does not mean that it should be vivisected on the basis of community wise or caste wise. While the writ petition is dismissed the Corporation is hereby directed to maintain a common cremation shed depending upon the requirements in a particular area.”*

(ii) In **P. Rathinam v. State of Tamil Nadu, rep. by Secretary to Government, Home Department, Fort St. George & Others**<sup>8</sup>, while dealing with the case of discrimination caused to the members of the scheduled caste at the time of cremation of dead bodies, this court held as under:

<sup>8</sup><https://www.mhc.tric.gov.in/judis> MLJ 235 (DB)



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*“3. The prayer itself appears to be very general and omnibus in nature. Therefore, in course of hearing, we had called upon the petitioner to specify his specific grievances. The petitioner submitted that the problem relates to use of the cremation-cum-graveyard, which was constructed under the welfare scheme of the Government of Tamil Nadu. His main grievance is that when recently a person belonging to scheduled caste community expired, the family members of such deceased person were not permitted to use the cremation-cum-graveyard because of the caste feeling prevailing in the village.*

*7. ARTICLE 17 of the Constitution of India has the laudable intention of abolishing all forms of untouchability. Article 17 of the Constitution itself declares that enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law. There is no doubt that the protection of Civil Rights Act has been enacted only with the specific purpose of giving effect to the sentiments in Article 17 of the Constitution of India. In such view of the matter, there cannot be any two opinion about the fact that it is the duty of all concerned and more particularly all responsible public officials to ensure that Article 17 of the Constitution is not violated, neither in letter nor in spirit. Similarly, the provisions contained in Protection of Civil Rights Act and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are also required to be enforced strictly. Therefore, it is*



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*the duty of such public officials to ensure strict compliance with the provisions of the Constitution as well as the Protection of the Civil Rights Act.*

*9. In this context, it is unfortunate to notice that even after the death, there is some perception regarding segregation. A very illuminating judgment of a learned Single Judge of this Court was brought to our notice while the matter was argued and we are inclined to follow such decision wholeheartedly. As a matter of fact, in paragraph 10 of the said judgment, a very touching poem has been extracted, the basic meaning of which is "in death at least all people are equal". The laudable object of the said poem should be brought to the notice of each and every individual and no efforts should be made to create any vivisection in the society.*

*10. In the background of the sentiments expressed in Article 17 of the Constitution as well as in the Protection of the Civil Rights Act and in the lucid expression used in the judgment, dated 02.09.2008, in W.P.No.3855 of 2005, we can only add that the officers could have been more pro-active in preventing any forbidden practice of untouchability. It is no doubt true that in a particular village or in a particular area there may be some apprehension of law and order situation. It is a matter for the public officials, including the Collector and Superintendent of Police to control the same. It will be the duty of all public officials concerned to ensure that no member of any particular community would be forced to go to a different place for the*



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*purpose of cremation of a dead body. Anything contrary, either directly or indirectly, would obviously be against the sentiments expressed in Article 17 of the Constitution.”*

(iii) In **Ramachandra Machwal v. State of Rajasthan**<sup>9</sup>, while citing with approval the judgment of this Court in **P.Rathinam**'s case<sup>8</sup>, the Rajasthan High Court observed as follows:

*“2. By this writ petition, the petitioner has drawn the attention of this court to the discrimination caused to the members of the Scheduled Caste at the time of cremation of dead bodies, by the Nagar Nigam, Jaipur. The Nagar Nigam had allotted plots, which are maintained by the Societies at the burning Ghats to be used exclusively by the said Societies of various Castes.*

#### GOVERNMENT LAND

*3. On 8.9.2014, we had passed an order that practice of putting signboards reserving the areas exclusively for certain castes at the burning Ghats on the land, which belongs to Nagar Nigam, Jaipur is violative of Articles 14, 15 and 17 of the Constitution of India. We directed the Nagar Nigam to remove all the billboards, signboards and hoardings of all the communities on the cremation grounds maintained by it and that to allow the burning Ghats to be used by the members of all the castes and communities, without any discrimination or reservation or preference to any Castes or communities who may have*

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<sup>9</sup> 2015 SCC OnLine Raj 9660 (DB)



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*contributed to the development of cremation grounds. We also held that no Caste or community can be allowed to appropriate any Government land exclusively for the purpose of last rites of the members of that Caste or community.*

*10. It is a matter of common knowledge and we take judicial notice that in the State of Rajasthan, almost all the Municipal Corporations have divided the burning Ghats and have allotted them to different communities to be maintained by them. The division of lands for the purpose of maintenance cannot be a ground to exclusively appropriate the municipal lands for burning Ghats of the respective communities. The use of public land or public facilities cannot be subject to discrimination on the ground of religion, race, caste, sex or place of birth. The refusal for any caste to use the burning Ghats only on the ground that the Societies of other Castes are maintaining it, is discriminatory and violative of Article 15 of the Constitution of India. If such refusal is on the ground of untouchability, the matter will be subject to violation of provisions of the Protection of Civil Rights Act and Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, and punishable in accordance with the provisions of the said Act.”*

**(iv) In P. Joseph Raj Vs. The District Collector, Dindigul District and**

**4 others<sup>10</sup>**, this Court while expressing anguish over the relief of prevention of



the disposal of dead bodies of a particular religion in water bodies, quoted with

approval the thought-provoking observations made in another decision as

follows:

*“18. We may also add paragraphs 9 and 10 from the Judgment in W.P(MD)No.10782 of 2006 dated 14.08.2012 (Paul Thankom vs. Secretary to Government Home Department, State of Tamil Nadu, Fort St. George, Chennai and six others):*

*“9. Nobody shuns a doctor, or staff or even an employee, who cleans up a patient, in a hospital, on the grounds of caste, creed or religion. Differences though exist, nobody would ever think of it. Blood transfused in a hospital is not segregated on the basis of caste, creed or religion. Nor the person who requires blood, would ever demand blood only from a person belonging to his caste, community, creed or religion. If for his survival and existence a person can consciously believe and accept that all are equal, irrespective of caste, creed, community or religion, then why this hatred and division. Organs are transplanted. Blood and body have no religion or caste. When the blood and organs of a Hindu can save a Muslim or vice versa or even a Christian then why this intolerance. Is there not a similarity in ‘Om’, ‘Amen and ‘Ameen?’. All religions aim at the same destination. Forms and practices may differ. One should not forget that our glorious constitution enshrines, secularism, fraternity and equality. Unity in diversity is our strength.”*

(v) In **Seng Khasi Myllem v. Midnight Kharlukki**<sup>11</sup>, the Meghalaya

High Court held as follows:

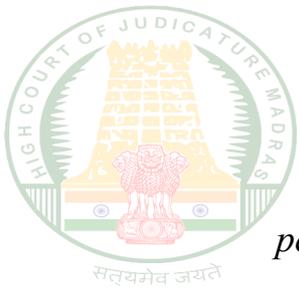


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*“10. I am pained that even after so many years of independence, now at the 21st Century, people are not aware of the Constitution of the country where they live in and violates the Constitution. Now also, we have to remind them about the Constitutional rights and liability. To ensure the rights and the liability, the Constitution has also enacted 10 fundamental duties which are incorporated in Article 51A, though it is not enforced directed till date which is unfortunate.*

*11. In my considered view, until and unless a person is aware of his or her duty, he or she cannot claim to enjoy the fundamental rights.*

*12. For example, besides these constitutional provision, I would like to ask today through my small judgment and order; “If the water that we drink does not ask about our faith, caste and religion; if the air that we breathe do not ask about our faith, caste and religion; and if the land where we all live do not ask about our faith, caste and religion; if the cosmos do not ask about our faith, caste and religion, then who are we to ask about others faith, caste and religion. Therefore, let the dead rest in peace.” It is really very sad that even after death, we are fighting over our faith, caste and religion. Do the people of this country want to say that after death, somebody will go to heaven or somebody will go to hell; nobody knows that. My humble belief is that there are not two or three Gods, God is only one. Another example I would like to put forward is that: “if the blood of a Khasi, Bengali and Nepali or any other*

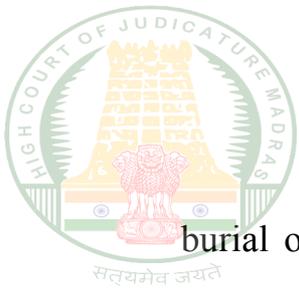


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*person is mixed together, no science has established any methodology to distinguish the blood whether it belongs to a Khasi, a Bengali or a Nepali and it is an undisputed fact that the blood of all human beings is red, no matter what faith, caste or religion he or she belongs to, so why so much difference.” I think it is high time that society should wake up and literate the people of India and it is also my appeal to the society that the time has come to make the people aware about their fundamental duties, specifically, Clause ‘h’ of Article 51A which speaks about humanity. I further mention that no person can practice religion or become spiritual, until and unless he or she becomes a good human being because humanity comes first, then religion.*

*13. With this, I conclude my judgment since the matter has already been settled amicably and the parties are happy. However, I totally disagree that the crematorium as proposed in the Myllem village shall be used for cremation of only the deceased members of the Seng Khasi Myllem. Hence, it is directed that anybody belonging to the indigenous faith and from any locality who needs to use the crematorium, can use it. Further, the respondents have disrespected the Constitution of India and for that reason, the respondents will have to pay cost.*

(vi) In **Surjit Singh v. State of Punjab**<sup>12</sup>, The Punjab and Haryana High Court dealt with a shocking case impugning a resolution of the Gram Panchayat proposing to earmark the graveyard used for dead animal bodies for



burial of the dead of Scheduled Caste persons alone. The Court came down heavily upon the respondents in the said case, while holding that

*“Upon perusal of the resolution, we find that resolution is absolutely unsustainable. If the resolution had been to use the land for cremation ground there would have been no quarrel but if it is intended for scheduled caste community, we are of the opinion that it goes against all norms of the Constitution, besides, smacking of discrimination against sections of the society. We would thus unhesitatingly quash the resolution and direct that proper proceedings be initiated against the Sarpanch and other Panches who were responsible for passing such a resolution.*

*State is directed to do the needful.”*

26. At this juncture, it is of great relevance to note an emulation. In the village of Gobindpura in Nabha Tehsil of Patiala district of Punjab, caste was as much as a reality in any other part of the country, and had often followed people to their grave. However, all that is now a thing of the past, as the village has a common cremation ground and the old cremation ground which was set aside for the Dalits, was closed and has been converted into a park. Today, Gobindpura is one of 144 such villages in Patiala district that have done away with caste-based cremation grounds. A change which was brought about by



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one of the Members of Parliament by imposing a simple condition that villages that agreed to end the system of separate cremation grounds were given the Member of Parliament Local Area Development (MPLAD) funds for renovation and other development work at cremation grounds and those who resisted the change were denied the funds. Though there was initial resistance from all sections of society, people have now accepted it and in fact, made use of the MPLAD grant and used the same to build boundary walls, shed and toilets at the common cremation ground. In the circumstances of this case, this is an example clearly worthy of emulation.

27.The above available materials, historical instances, precedents have been cited to make this court alive to the reality that the curse of caste and the scourge of segregation continues to divide us in life and death alike. At the same time, slow measures are being taken by some sections of society towards demolishing these divisive factors that strike at the very root of the right to dignity under Article 21 of the Constitution and thereby at the very foundation of the basic structure of our Constitution and the ideals of justice, equality, liberty and fraternity envisioned in it.

28.It is therefore limpid that any act of segregation or discrimination in



the cremation/burial of the dead body on the basis of caste or community within a religion, as well as preventing the members of any caste/community from burying/cremating their dead in common cremation grounds or grounds meant or earmarked for cremation/burial, and earmarking cremation/burial grounds for any particular caste/community exclusively, is violative of Articles 14, 15, 17 and 25 of the Constitution as well as against the spirit of the Fundamental Duties enshrined in the Constitution. As such, the prayer made in this writ petition qua allocation of a permanent place for burial ground for a particular community viz., Arunthathiyar community, cannot be entertained by this court. However, the petitioners can seek the indulgence of the respondent department to have a suitable place to be earmarked for common burial ground and not for particular community.

29.It is an admitted fact that the lands in S.Nos.64 and 65 classified as odai poramboke in the revenue records, have been used for burying the dead bodies of Arunthathiyar community people of Madur village. Though it is stated on the side of the respondents that the usage of the said water poramboke lands is only for temporary measure and the Revenue Divisional Officer, Kallakurichi, already directed the Tahsildar (ADW), Kallakurichi, to take immediate steps to find out the alternate land for permanent burial ground for the Arunthathiyar Community people, this court is not inclined to accept



the same, in view of the settled principle that the encroachment made in the odai poramboke lands for any purpose is highly condemnable; and that, the department has to maintain common burial and burning grounds irrespective of caste, creed and religion. In such view of the matter, the respondents are directed to take an immediate step to acquire a suitable land for common burial ground for all the people of Madur village.

30. Above all, the entire analysis and discussion made in the preceding paragraphs of this order, in regard to the issue involved, would compel this court to suggest the following for appropriate action of the state Government / Local body / authority concerned:

i. To remove all the boards put up in the cremation grounds situated in every village/ block / District, by different communities to use the part of land exclusively for their castes and communities and allow the entire cremation grounds to be used for the members of all castes and communities without any discrimination.

ii. To construct and maintain common cremation/burial grounds in every village without any distinction whatsoever on the basis of caste and community within the respective religion without in any way impinging upon the right of every citizen to their fundamental right under Article 25 of the Constitution of India.



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iii. Every citizen should be entitled to use the common burial/cremation grounds with all connected facilities and amenities attached thereto, without being discriminated or segregated.

iv. To take steps for the prevention of any instance of social disability in a manner as to act towards the fulfilment of its commitment under the Constitution as well as the International Convention for Elimination of All Forms Of Racial Discrimination, and the Declaration on Race and Racial Prejudice, to which India is a signatory.

v. To engage in meaningful discussion and dialogue with stakeholders such as government as well as non-government organisations and other private entities, who are aware of the anthropological as well as sociological factors that need to be assessed for remedial measures in this regard and implement the same in an effective manner.

vi. The decision taken or orders to be passed should make a specific mention with respect to the various kinds of social disability that are rampant in everyday life which touch upon the aspect of social intercourse on the lines of caste as well as other ethnic factors that continue to divide people in our society. The 'social disability' to be addressed is to include aspects of cremation/burial of the dead body of different communities in society and specific provisions for construction and maintenance of common cremation/burial grounds for all communities of a particular religion and in accordance with their religious beliefs of each religion as protected under the Constitution.



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vii. Penal action to be taken and any violation thereof should attract imprisonment as well as fine as deemed fit by the law. Also, the aggrieved persons should be afforded legal remedies for such violations by the other.

viii. To conduct awareness programs in order to bring about societal change in a way as to boost effective implementation in its letter and proper spirit.

ix. To consider granting incentives, financial and otherwise to constituencies/wards, etc., as well, which are able to enforce the spirit of such law by engaging its people to accept common cremation/burial grounds irrespective of caste or community with a sense of mutual respect.

x. To include, as part of the school curriculum, the values of religious and communal tolerance and mutual respect for differences and diversity in religion, community, culture and tradition.

xi. To ensure that the educational resources of the country including the teaching profession are utilised to combat segregation and apartheid in all forms, by fostering the scientific temper in children and including in the curricula and textbooks ethical considerations, taking note of human unity and diversity and that, no invidious distinctions are made among the people, and by training teachers to achieve these ends. This would go a long way in fulfilling



the promise of substantive equality as enshrined in the Fundamental Rights as well as the ideals of justice, equality, liberty and fraternity as envisioned in the Preamble to our Constitution. This measure is particularly important, as the best way to bring about a societal change is to shape young minds in their formative years of educational and socio-cultural conditioning.

31. With the aforesaid observations and directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

29.10.2021

Index : Yes/No

Internet : Yes/No

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To

1. The District Collector  
District Collector Office  
Kallakurichi District

2. The Revenue Divisional Officer

<https://www.mhc.tn.gov.in/judis>



Kallakurichi District

WEB C3. The Tahsildar  
Adi-Dravidar Welfare  
Kallakurichi District



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**R. MAHADEVAN, J**

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