



RAJASTHAN HIGH COURT
HIGH COURT OF JUDICATURE FOR RAJASTHAN
JODHPUR

D.B. Civil Writ Petition No. 8260/2021

Kanchan Patil (Mirasi) Samaj

-----Petitioner

Versus

State Of Rajasthan

-----Respondent



For Petitioner(s) : Mr. Moti Singh
For Respondent(s) : Mr. B.L. Bhati, AAG with
Mr. Sandeep Soni
Mr. B.P. Bohra, Sr. CGSC with
Mr. Vaibhav Bhansali &
Mr. Jitesh Suthar
Mr. Usman Ghani

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE BIPIN GUPTA

Order

Reportable

22/08/2025

"Mankind and life may divide, but death unites."

1. This timeless truth underscores the universality of human mortality. While society may be fractured by caste, creed, religion, or status during life, in death all such distinctions dissolve, and every human being returns to the same origin. Death, thus, emerges as the great unifier.
2. The ancient Indian philosophy of the *pañchatatva* (five elements of nature), beautifully embodies this idea, teaching that the body is created out of earth, water, fire, air and ether (Akasha), and upon death, it inevitably merges back into them. This journey from origin to dissolution has always been treated with solemnity, for it signifies not merely a biological process, but



the final honouring of the individual's existence. The dignity accorded in this return to nature is what distinguishes human society from mere physicality; it is a recognition that every human being, regardless of caste, creed, or faith, deserves a respectful passage back into the very elements that once gave life.

3. The performance of final rites, therefore, is not merely a ritualistic act, but a solemn recognition of this journey of return an affirmation that human dignity does not end with the last breath. It is in this continuum between philosophy and law that the Court recalls the constitutional guarantee of Article 21, which safeguards the dignity of the individual not only in life but also in death. The respectful treatment of mortal remains is thus both a cultural imperative rooted in *pañchatatva* and a constitutional obligation anchored in the right to dignity.

4. The Hon'ble Supreme Court of India emphasized that the right to dignity does not cease with death. In ***Pt. Parmanand Katara v. Union of India (1995) 3 SCC 248***, it was categorically held that "the 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."

5. In ***Ashray Adhikar Abhiyan v. Union of India (2002 (2) SCC 27)***, the Hon'ble Apex Court recognized the right of even an unclaimed homeless deceased to a dignified burial according to their religious faith, holding that this duty correspondingly rests upon the State.

6. Indeed, India is a land of innumerable castes and communities, each with its own traditions and rituals. Yet, in the larger scheme of existence, the final journey converges towards



the same elemental truth, the body turns to ashes, and in the Indian consciousness, the sacred river Ganga symbolizes this ultimate return. Thus, in spite of social diversities, the core religious sentiment remains one of dissolution into nature, a reminder that dignity in death is indivisible.

7. Yet, it is with a sense of deep anguish that this Court records that an issue as solemn as death and the performance of final rites has become the subject of litigation before us. What ought to have remained an unquestioned act of reverence and closure has, instead, resulted in discord and denial. The Court cannot remain unmindful that when the mortal remains of an individual become the cause of strife, it is not merely the deceased but also the living community that suffers indignity. It is against this backdrop of grief and constitutional concern that the facts of the present petition are required to be considered.

8. Brief facts of the case as noticed by this Court are that the petitioner (Samaj) is a group of individuals known as the *Kanchan Patil (Mirasi) Samaj*, residing predominantly in the districts of Jodhpur, Jaisalmer, Barmer, Jalore, and Sirohi of Western Rajasthan.

8.1. The origin of the *Kanchan Patil Samaj* is traceable to the Jasnathi Jat community. During the 18th century, under the influence of and affiliation with various Sufi saints, the community embraced Sufi Islam. However, despite this adoption, their customs relating to marriage, birth, and death ceremonies have continued in a manner consistent with the traditions of the Jasnathi Jat community.



8.2. Though the community, in the course of history, adopted Islam under the influence of Sufi saints, their social and cultural traditions continue to bear traces of their origin in the Jasnathi Jat community. It is precisely on account of this distinct identity of being associated with Islam yet retaining certain customary practices that the members of the *Kanchan Patil (Mirasi) Samaj* are being prohibited from using the *kabaristan* (graveyard) for the performance of burial rites.

8.3. Mr. Moti Singh, learned counsel for the petitioner, submits that the land in question, which has been set apart for use as *shamshan/kabaristan*, does not belong exclusively to any particular community, nor has it ever been handed over to a religious society, trust, or Wakf Board. It is, in fact, vested in the State of Rajasthan and remains public land designated for the purpose of cremation and burial.

8.4. It is urged that once the land is vested in the State for the common purpose of last rites, no community can claim an exclusive right to regulate or restrict its use, nor can the petitioner community be denied access to it on the ground of their distinctive customs or mixed origin. Any such denial, according to the petitioner, is arbitrary, discriminatory, and violative of Articles 14, 19, 21, and 25 of the Constitution of India.

8.5. Learned counsel further submits that a detailed representation was made by the petitioner Samaj before the Jodhpur Development Authority, requesting allotment of the cremation/burial ground land so that the community may peacefully perform the last rites of its members. However, despite



such representation, no effective action has been taken till date, and the grievance of the petitioner remains unaddressed.

8.6. Learned counsel contends that the inaction on the part of the authorities, coupled with the continuing obstruction caused by other communities, has resulted in repeated indignities being suffered by the petitioner Samaj.

8.7. Learned counsel further contends that, in practice, the Rajasthan Muslim Waqf Board has assumed control over the land in question, claiming it to be *kabaristan* land, and is thereby restraining the petitioner community from performing burials therein. It is submitted that such assumption of control by the Waqf Board is without authority of law, for the land continues to remain vested in the State, and no notification, allotment, or transfer in favour of the Board has ever been made.

9. In reply, on behalf of the Rajasthan Board of Muslim Waqfs, it has been averred that the *kabaristan* in question, though not created through any permanent dedication by a written waqf instrument, has by long and continuous use for burials acquired the character of a *waqf* property. It is thus under the management and supervision of the Board in terms of the Waqf Act, 1995, and is intended for the benefit of persons professing the Muslim faith.

9.1. It is further averred that once any person or community adopts the religion of Islam, their personal rights and matters relating to marriage, birth, death, and burial are to be governed in accordance with Muslim personal law. Consequently, the *kabaristan* is available for use to every individual governed by Muslim law, without discrimination. The Board, therefore,



contends that the grievance of the petitioner Samaj is unfounded, as the burial ground is a common waqf property meant for Muslims at large, and not the exclusive right of any sect or group.

10. Upon such rival contentions, this Court cannot remain oblivious to the fact that the present dispute is but another manifestation of how deeply rooted discrimination continues to be in society.

11. The Preamble to the Constitution of India solemnly resolves to secure to all citizens justice, liberty, equality and fraternity. The concept of fraternity is not a mere ornamentation of words, but a foundational value which assures both the dignity of the individual and the unity and integrity of the Nation. It obliges society to rise above parochial barriers and to treat every person as part of a larger human brotherhood. Upon the rival contentions urged before this Court, the present controversy emerges as a stark reminder of how far social reality still falls short of this constitutional vision.

12. It is pertinent to highlight that Section 275 of the Rajasthan Municipalities Act, 2009 casts a direct statutory duty on the Municipality to construct, maintain, acquire, and regulate burial grounds and cremation grounds. The statutory scheme thereby places on municipal authorities the responsibility to ensure that such spaces remain accessible to all citizens, without arbitrary exclusion. Likewise, Section 104 of the Rajasthan Panchayati Raj Act, 1994 empowers Panchayats to frame bye-laws for regulating sanitation and, in particular, the manner in which land for disposal of dead bodies shall be maintained and used. These provisions,



read together, unmistakably underline the legislative intent that the management of cremation and burial grounds is to be exercised by public authorities in the collective interest of the community, and not to be appropriated to the exclusive control of any private or sectarian group.

13. In this backdrop, the denial of access to the cremation/burial ground to the petitioner community strikes at the very core of the constitutional promise. The guarantees of equality, non-discrimination, and freedom of practice are each separately offended.

14. Article 14 of the Constitution of India enshrines equality before the law and equal protection of the laws. When one group is arbitrarily excluded from performing last rites in a common land meant for such purpose, while others are permitted, the principle of equal protection is violated. The State, as trustee of such land, cannot allow selective treatment or exclusion on the basis of social identity.

15. Article 15 of the Constitution of India prohibits discrimination on grounds of religion, race, caste, sex, place of birth or any of them. The exclusion of the petitioner community from access to the cremation ground is nothing but a continuation of social discrimination on the basis of social identity. Such exclusion, when attached to the most solemn act of a dignified farewell in death, amounts to perpetuating inequalities which the Constitution forbids.

16. Article 25 of the Constitution of India secures to every individual the freedom of conscience and the right freely to



profess, practise and propagate faith, subject to public order, morality, and health. The performance of final rites is an intrinsic and inseparable part of such practice. Denial of space to perform these rites amounts to direct interference with this fundamental freedom. The Constitution does not permit one section of society to impose its will on another in matters so personal and sacred.

17. The guarantees under Articles 14, 15 and 25 must be read in harmony with Article 21 of the Constitution, which has been judicially expanded to include the right to dignity even after death. The Supreme Court in ***Parmanand Katara (Supra)*** and ***Ashray Adhikar Abhiyan (Supra)*** has categorically held that the right to dignified treatment extends to the mortal remains of every person.

18. These constitutional guarantees find reinforcement in international covenants to which India is a signatory. The **Geneva Conventions of 1949** mandate honourable burial of the dead in accordance with their religious rites, a principle recognized as a baseline of human dignity. The **International Covenant on Civil and Political Rights, 1996 (ICCPR)**, ratified by India, further secures the right to freedom of religion (Article 18) and the rights of minorities to practice their customs (Article 27), both of which encompass funerary and burial practices. Jurisprudence of the **European Court of Human Rights** has similarly held that denial of dignified last rites violates the right to private and family life, thereby inflicting avoidable suffering on the bereaved.

19. While international instruments may not automatically form part of municipal law, the Hon'ble Supreme Court in ***Vishaka v.***



State of Rajasthan (1997) 6 scc 241 clarified that they can be read into the interpretation of fundamental rights, so long as they are not inconsistent with domestic law. In this sense, India's constitutional guarantees and its international obligations are not divergent but mutually reinforcing. Seen thus, the denial of access to burial/cremation grounds is not merely a matter of local land management; it constitutes a grave violation of **constitutional morality** and a breach of India's international commitments to uphold the dignity of every human being, even in death.

20. Furthermore, The National Human Rights Commission of India, in its *Advisory for Upholding the Dignity and Protecting the Rights of the Dead (2021)*, has underlined that the right to dignity under Article 21 of the Constitution extends even after death. The Advisory further draws upon **international human rights standards**, including the **Universal Declaration of Human Rights, 1948** (which affirms the inherent dignity and equal rights of all members of the human family), the **International Covenant on Civil and Political Rights, 1966 (ICCPR)** (which secures the right to dignity and respect for the dead), and the **Geneva Conventions of 1949** (which impose obligations for the dignified treatment of the dead even in armed conflict). These instruments underscore that dignity in death is recognized globally as an inseparable component of human rights.

21. The "Basic Principles" laid down by the NHRC Advisory include:

(i) no discrimination in the treatment of the body in any form, irrespective of caste, community, religion or region;



(ii) the right to a decent and timely burial or cremation; and
(iii) the duty of the State and local authorities to ensure that burial/cremation grounds are maintained as public facilities accessible to all.

22. These principles flow directly from the constitutional guarantees under Articles 14, 15, 21 and 25 of the Constitution of India, and the statutory duties cast by Section 275 of the Rajasthan Municipalities Act, 2009 and Section 104 of the Rajasthan Panchayati Raj Act, 1994. When viewed in light of international obligations, it becomes evident that denial of access to cremation/burial grounds does not merely violate domestic constitutional mandates but also places India in breach of its international commitments to uphold human dignity.

23. It is in this backdrop that the judgment of the Madras High Court in ***P. Muthusamy & Ors. v. P. Vennila & Ors., (W.A.Nos.909 and 910 of 2014, decided on 21.11.2022)*** assumes significance. The Division Bench, while dealing with the legality of burials in village land, lamented that “even after seventy-five years of Independence, casteism and classification based on caste is made even in matters of burial of the dead.” The Court emphasized that the Government must ensure that, at the very least, burial grounds and burning grounds are made common to all communities. While recognising that the absence of statutory prohibition cannot justify arbitrary exhumation of long-standing graves, the Court simultaneously cautioned that the “no prohibition” clause cannot be used as a license to bury indiscriminately. The ruling, thus, stands as an affirmation of two



constitutional imperatives: that dignity in death cannot be compromised by social exclusion, and that burial grounds are ultimately public resources subject to regulation by the State in the interest of equality and fraternity.

24. Furthermore, reference may also be made to the decision of the Madras High Court in ***B. Kalaiselvi & Anr. v. District Collector, Kallakurichi & Ors., (W.P. No. 9229 of 2021, decided on 29.10.2021)***, wherein it was held that the right to dignified burial cannot be denied to any person on the basis of caste or community. Emphasizing that burial and cremation grounds are public resources, the Court directed the District Collector and revenue authorities to ensure that such grounds are maintained as common facilities accessible to all, and that members of Scheduled Castes are not obstructed from performing last rites. Placing reliance on Articles 14, 15 and 21 of the Constitution, the Court reaffirmed that the right to dignity extends beyond life into death, and that administrative inaction cannot be permitted to perpetuate caste-based exclusion. The relevant paragraphs of the said judgment are reproduced hereunder:

"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.”

25. A more recent illustration of judicial concern is found in the decision of the Meghalaya High Court in ***Re-Seng Khasi Hima Crematorium v. State of Meghalaya, (PIL No. 10 of 2023, decided on 07.07.2025)***, wherein while dealing with disputes relating to cremation and burial across Khasi, Jaintia, Hindu, and Christian communities, noted the acute scarcity of “common burial grounds” and the reluctance of private denominational groups to share cemeteries. The Court held that the State bears a primary duty to ensure that adequate land is made available for common burial purposes accessible to all communities, irrespective of faith. Accordingly, it directed the Government of Meghalaya to take *immediate steps* to acquire sufficient land, either through acquisition or private treaty, for use as common burial grounds, and to constitute a Committee under the Chief Secretary with representatives of all stakeholders to oversee implementation. The relevant paragraphs of the said judgement are reproduced hereunder:

“Villages or at least a significant number of them have community land belonging to the village people in common. A part of it may be gifted for common burial purpose. However, substantial land is required across the districts for the above common burial purpose, if any progress is to be made towards solving this problem. These lands need to be acquired by the government through the land acquisition machinery or through private sale or treaty. We direct that immediate steps be taken by the State government to acquire the required area of land for common burial purpose either by acquisition or private treaty. ”



The judgment reinforces the constitutional mandate that the right to dignity in death, read with Articles 14, 15, 21 and 25, obliges the State to actively secure non-discriminatory access to cremation and burial facilities, rather than merely refraining from interference.

26. The aforementioned constitutional principles, coupled with the statutory framework and the consistent judicial pronouncements of the Hon'ble Supreme Court and various High Courts, make it abundantly clear that public lands earmarked for cremation or burial cannot be segregated or monopolized by any community. Any such practice of exclusion or reservation of common land for the benefit of a particular caste, creed, or community is antithetical to the constitutional vision of equality, fraternity, and dignity.

27. In this backdrop, this Court is of the firm opinion that discrimination, which is proscribed under the Constitution of India, cannot be permitted to exist in any form, and certainly cannot be allowed to extend beyond death. The dignity of the human person is not extinguished with the last breath but continues in the performance of final rites.

28. At the same time, this Court is conscious that public land is a scarce resource, meant to serve multiple social purposes including the establishment of schools, hospitals, and other essential public utilities. If burial and cremation grounds are indiscriminately carved out from every available parcel of government land on the basis of caste or community claims, the consequence will be an unsustainable depletion of land available for such vital civic



infrastructure. The State, therefore, in formulating a uniform policy, must balance the obligation of ensuring dignified last rites for every citizen with the equally compelling need of reserving sufficient land for public welfare facilities, so that the living and the deceased alike are accorded dignity.

28.1. It is, thus, high time that the State formulates a uniform policy to deal with the burial/cremation/shamshan/any kind of public place utilised for the purpose of performing post-death rituals. The bifurcations on the basis of caste and religion have created havoc, as some may feel entitled over such places while others may feel deprived. The performance of post-death rituals ought to be brought into the realm of a comprehensive State/Union policy, so as to enable dignified performance of the last rites which remain socially essential even after death, as the body is still in existence.

29. The dignity of an individual is directly hampered because of the haphazard and vague approach of the State. In some areas, burial/cremation grounds are demarcated on the basis of caste and sub-caste divisions, while in other areas they are segregated for smaller groups. This Court is of the opinion that time has come for the State to adopt a common policy equally applicable to all citizens, while taking into account the requirements of various beliefs that different segments of the population may hold.

30. Learned Additional Advocate General Mr. B.L. Bhati is directed to file an affidavit in response, stating clearly the stand of the State with regard to the organization and regulation of post-death rituals for all sections of society, and whether a common



approach can be devised to address the situation without creating disharmony or damaging the social fabric.

31. List the matter after two weeks.



(BIPIN GUPTA),J

(DR.PUSHPENDRA SINGH BHATI),J

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