

Ramesh Baghel Vs State Of Chhattisgarh & Others

Court: Supreme Court Of India

Date of Decision: Jan. 27, 2025

Acts Referred: Constitution of India, 1950 " Article 14, 15(1), 21, 25, 142

Chhattisgarh Panchayat Raj Adhiniyam, 1993 " Section 49(12), 95

Chhattisgarh Gram Panchayat (Regulating Places for Disposal of Dead Bodies, Carcasses and other Offensive Matter) Rules, 1999 " Rule 3, 3(2), 4, 5, 8

Hon'ble Judges: B.R. Nagarathna, J; Satish Chandra Sharma, J

Bench: Division Bench

Advocate: Colin Gonsalves, Satya Mitra, Umesh Kumar, Tushar Mehta, Praful Bharat, Avdhesh Singh, Purna Dhall, Gopinadh, Shivam Ganeshia, Karishma Rajput, Prashant Singh, K M Natraj, Vinay Navre, Gopal Shankarnarayanan, Nachiketa Joshi, Kaustubh Shukla, Rohit Sharma, Santosh Kumar, Pravartak Suhas Pathak, Alabhya Dhamija, Shreya Nair

Final Decision: Disposed Of

Judgement

B.R. Nagarathna, J

1. Leave granted.

2. It is said that death is a great leveller. It is necessary for us to remind ourselves time and again about this solemn truth. But the instant case

demonstrates that the death of a resident of a village can give rise to divisiveness thereby calling upon the Apex Court to rule on his site of burial.

3. Appellant herein is a bereaved son and an aggrieved litigant. A third generation Christian, the appellant belongs to the New Apostolic Church. His

family and ancestors have been native residents of village Chhindwada, Tehsil Darbha, District Bastar, Chhattisgarh for generations and belong to the

Mahra caste or community. A native resident of the same village Chhindwada, the appellant's father, a man of faith and a pastor since 1986-87,

passed away on January 7th, 2025 after suffering from prolonged illness and old age. In his living years, the appellant's father led and participated

in prayers organized in the village church and other places as well.

4. Unfortunately, the appellant's duty as a progeny and wish to accord a decent burial to his father in his own native village was met with abrupt

hurdles as his fellow villagers objected and threatened the appellant's family against the burial of the appellant's deceased father within the

village. This objection to burial within the village confines also extended to restraining the appellant from laying to rest his father's mortal remains

in their privately owned agricultural land. It is the case of the appellant that to his utter dismay even the local police forcefully exhorted the

appellant's family to take the body out of the village. There was no help from the local Gram Panchayat also. Compelled by circumstances and on

the advice of fellow relatives, the family of the appellant proceeded to take his father's body to the mortuary of District Hospital and Medical

College, Jagdalpur.

5. Aggrieved by these circumstances, the appellant, on 07.01.2025, submitted representations to the SHO, Police Station Darbha, District Bastar,

Chhattisgarh and the SDO of Tokapal, District Bastar Chhattisgarh detailing his predicament and seeking police protection and from the State

authorities for ensuring peaceful burial and last rites in the Christian burial area of village Chhindwada.

6. Having received no aid from the State machinery, the appellant approached the High Court of Chhattisgarh at Bilaspur in W.P.(C) No.125 of 2024

seeking a direction to the State of Chhattisgarh to allow the appellant to bury his father at the same site where his ancestors were buried in the village

of Chhindwada and also sought police protection to that end.

7. It is pertinent to note that during the pendency of the writ petition, the Barahpal Chindwara Gram Panchayat No. 1, 2, 3 issued a certificate

wherein it was certified that there existed no graveyard of Christian community at any place within the limits of the Gram Panchayat.

8. Thereafter, the impugned order dated 09.01.2025 came to be passed by the High Court disposing of the writ petition by refusing to grant relief as

prayed for the appellant.

9. It was submitted by the appellant before the High Court, as is before this Court, that village Chhindwada has a graveyard and the Gram Panchayat

has by an oral sanction permitted burial of dead bodies. Separate graveyards exist for Tribals and other communities. It was contended that there is a

separate area earmarked for the burial/cremation of persons belonging to the Christian community within the graveyard of Mahra Caste or

community. It was also argued that appellant's ancestors and relatives, as detailed hereunder, have throughout the decades been buried in the area

demarcated for Christians. For instance,

i. Appellant's grandfather died in the year 2007 and was buried in the graveyard of the village meant for Christians.

ii. Two distant relatives of the appellant, namely, Sadashiv Singh and Bhagirathi, both residents of the same village were buried in the very same graveyard in March

2013 after they suffered with their lives at the hands of Naxalites.

iii. Appellant's aunt passed away in 2015 and was buried in the same graveyard of the village Chhindwada.

10. Therefore, the prayer of the appellant was simply that Christian members of his family i.e. appellant's father be allowed to be buried in the

same manner and at the same place as the Christian members of his family i.e. appellant's grandfather and aunt had been. It must be noted that

nothing has been brought before this Court to reveal that there was similar opposition to performing the funeral rites of appellant's grandfather and

aunt in the native village.

11. Per contra, the State relied on the certificate issued by the Gram Panchayat to contend that no burial ground of the Christian community exists

within its confines. It was alternatively argued that no one can have any quarrel with funeral rites performed as per original custom if the appellant

were to be permitted to bury his father in village Karkapal, situated at a distance of 20-25 kms (or more) from the native village, where a separate

burial ground for Christian community is available.

12. It was this submission that found favour with the High Court as it observed that "admittedly there exists no separate burial ground/graveyard

for the members of the Christian community in the native village whereas it does in the nearby village. The High Court reasoned that it would not be

proper to direct burial of appellant's father's mortal remains in his own native village to avert unrest and disharmony in the public at

large. Accordingly, the writ petition was disposed. Therefore, the appellant was left worse off in his own writ petition as beyond rejecting his

main as well as alternative prayers the High Court also observed that the deceased could be buried in village Karkapal, which is 20-25 kms far from

village Chhindwada. Hence, the appeal before this Court.

13. Counter-affidavits on behalf of the respondent-State of Chhattisgarh have been filed which we shall advert to.

14. The first affidavit is dated 19.01.2025 sworn to by the Additional Superintendent of Police (ASP), District Bastar, Chhattisgarh stating that

he is well conversant with the facts and circumstances of the case borne out of the record and on the basis of the knowledge gathered from the

record he has stated that the appellant is a member of the Christian community belonging to the New Apostolic Church. The appellant, his family and

ancestors have been residing in the village Chhindwada since time immemorial and they have agricultural land in the said village. The appellant and his

family belong to the Mahra Caste and the father of the appellant "the deceased" was a pastor and had been involved in participating in the prayers

of the village Church and elsewhere too. That the village Chhindwada has a total population of 6450 out of which 6000 people belong to tribal

community and rest i.e. 450 people belong to Mahra community. Out of 450 people, 350 people belong to Hindu Mahra community and the remaining

100 people belong to Christian community.

14.1 Further, in the village Chhindwada, there is a graveyard and the Gram Panchayat has orally allocated space for burial/cremation of the dead

bodies. In this village graveyard, separate areas have been earmarked for burial of tribals and for the burial/cremation of persons belonging to Hindu

religion; that the appellant's grandfather Lakeshwar Baghel died 28 years ago and his last rites were carried out as per village rituals as he was a

Hindu; appellant's aunt Shanti Baghel died eight years ago and her burial was carried out as per Mahra community rituals in the said village

graveyard.

14.2 That the appellant's father died on 07.01.2025 at 7.00 am due to prolonged illness and the appellant wanted to bury him in the area specified

for Christians in the abovementioned village graveyard. It is averred that "Hearing about this, some villagers aggressively objected to this and

they threatened of dire consequences if the instant appellant and his family buried the instant appellant's father in this land. It is

averred in paragraph 7(f) of the affidavit that "in the Gram Panchayat, birth, marriage and death rituals are carried out as per

the tradition. Any person who has forsworn the tradition of the community or has converted into a Christian is not allowed to be buried at

the village graveyard. It is also averred that "there is no separate graveyard for Christian community in Gram Barahpal, Chhindwada.

Furthermore, paragraph 7(g) avers that "According to the villagers, a Christian person cannot be buried in their village be it at the

village graveyard or the instant Petitioner's own private land. That, inter alia, the husband of the incumbent Sarpanch, Mangtu, has

objected to the burial in the instant case and as the villagers turned violent, the appellant's family made a report to the Police and 30/35 police

personnel reached the village. Presently, the dead body has been kept in the mortuary in the District Hospital and Medical College, Jagdalpur. The

appellant then made an application seeking protection and help from the respondent-authorities to ensure the peaceful and honourable burial of his

father in the Christian burial area of the village before the Chhindwada Police Station and also made similar applications to the Collector, Bastar;

SDM, Tokapal; Inspector General of Police, Bastar; Superintendent of Police, Bastar and Police Station Darbha also.

14.3 That, when information was received from Dundul Nag and District Sarpanch that a pastor of Mendabhata i.e. the appellant's father has

died in his house due to illness, the police arrived at his house. It is averred in paragraph 8(II) that "as per the senior citizens, people belonging

to tribal community and other hindu community members, burial should be carried out as per the Christian rituals in the graveyard of

Karkapal, Jagdalpur and, on the other hand, the Mahara Christian community members and the family of the deceased wanted to carry out

the burial at Chhindwada as they have been residing there for generations. That there was a heated exchange between the members of

various communities. Later, it was decided to file a petition before the High Court.

14.4 That in exercise of the powers conferred under Section 95 read with Section 49(12) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for

short "the Act of 1993"), the State Government has made Chhattisgarh Gram Panchayat (Regulating Places for Disposal of Dead Bodies,

Carcasses and other Offensive Matter) Rules, 1999 (for short "the 1999 Rules"). That, Rule 3 mandates disposal of the corpse within twenty four

hours whereas Rule 4 casts a duty on the Gram Panchayat to arrange for disposal of corpse, and Rule 5 provides for place for disposal of corpse.

According to this deponent, "there is no separate graveyard for Christians at village Chhindwada which contained the signatures of

Sarpanch, Up-Sarpanch and Panchas; that, there is no objection if the appellant performs the funeral rites of his deceased father in the nearby

village Karkapal, which is situated near village Chhindwada, where there is a separate graveyard for the Christian community. That, in the past few

years, disputes have arisen between the people belonging to Mahra Christian community and tribal community owing to their religious beliefs. That, as

a result, every time a member of Mahra Christian community dies, the police reach at the place of occurrence of death so as to avoid any heated

exchange between the parties and to help them to find a solution or a common ground in case any dispute arises between the parties. It is also averred

in para 13 that if the respective communities are unable to find a solution, "the governmental bodies usually suggest the Mahara Christian

community to use their respective private lands as their burial ground and in case that fails, then the police suggests the Christian

community to carry burial ceremonies at the government burial grounds situated at Karkapal which is approximately 40-45 kms far from

Chhindwada. According to the learned Solicitor General appearing for the State of Chhattisgarh the distance to Karkapal should be read as 20-25

kms away from Chhindwada.

15. The aforesaid affidavit is followed by another affidavit dated 21.01.2025 wherein the ASP, District Bastar has averred that the State of

Chhattisgarh is essentially a tribal State and has its peculiar socio-economic position. The tribals customarily do not resort to cremation at the time of

death but they bury their dead in a separate designated place for burial. This is a "Hindu-tribal-burial site." That, there are some tribals who are

converted Christians and they follow Christianity as their religion. That in the village in question there are only 100 converted Christians as against the

total population of 6450. As a result, one burial ground is designated for three to four villages depending upon the number of Christians in each village.

It is averred that the Rules specify and designate a particular earmarked place for cremation or burial for Muslim/Hindu Tribals/Other Hindus who

bury the dead/Christians. That merely because "that in the past in few occasions, the Hindu tribals permitted their burial grounds to be

used for burial of two persons, cannot be construed as waiver of fundamental rights by the Hindu Tribal community since the fundamental

rights can never be waived. That, "a mere deviation in preserving the right of "practice" of religion in two cases would not

change the character of the burial ground designated for Hindu Tribals whose religion requires burial rather than cremation." Reference

is also made to Articles 21 and 25 of the Constitution. In light of the above, the deponent has stated that the State Government would provide an

ambulance to carry the body for being respectfully buried at a designated burial ground for Christians and/or State Government will ensure adequate

security as deemed necessary.

16. This affidavit is followed by another affidavit filed by the ASP, Bastar on 22.1.2025. It is averred that there is a designated burial space for

Christians at village Karkapal comprised in Khasra No.9 /94 admeasuring 1.96 acres and that the community has also taken over adjoining land

making the designated land as 2.15 acres which is sufficient to cater to the need of the Christian burials, considering the population of Christians in

nearby four villages. That there is a demarcation report prepared in 2013 with respect to the aforesaid burial ground showing the position of 2.15 acres

in the panchnama drawn on 30.01.2013 in the presence of the persons of the Christian community. That Christians of all the four villages i.e.

Chhindwada, Munga, Tirathgarh and Darbha are using the said land for burying the Christians of said four villages. Therefore, the appellant belonging

to Christian community has a designated burial place.

17. In response to these affidavits, the appellant has also filed two additional affidavits. In the additional affidavit dated 21.01.2025, the appellant has

stated that the de facto situation on the ground level has been to use the land in Khasra No.725/136 in village Chhindwada as a graveyard and all

communities have used the aforesaid land as a graveyard which had to be formally recognised by the Gram Panchayat and the Collector. In this

regard, reliance is placed on a hand-drawn map of the graveyard in Khasra No.725/136 prepared by the local Patwari, as annexed to the additional

affidavit. That, earlier several Christians from Mahra Caste have been buried in the village graveyard which has been earmarked partly for the

Christians. Photographs along with the coordinates indicating the latitude and longitude of the graves and affidavits of the persons who have buried the

dead members of their families in the said graveyard have been annexed to the additional affidavit.

18. In support of the said material, another additional affidavit dated 22.01.2025 has been filed to counter what has been stated in paragraph 8 of the

counter affidavit of the State. It is stated that no Christian in the neighbouring villages i.e. Darbha, Mamadpal and Karka has ever buried their

deceased in the village Karkapal. It is also stated that in Chhindwada or the aforesaid surrounding villages, no Christian has ever taken the body of

their dead outside the village for burial.

Submissions:

19. Learned senior counsel, Sri Gonsalves, appearing for the appellant argued that the High Court has gravely erred by finding reason in potential

“unrest and disharmony” in declining relief to the appellant. It is the appellant’s contention that unruly sentiments have transformed

appellant’s deceased father’s last rites into a contentious issue, where none could possibly exist as the family has been burying their dead at

the same location for generations.

19.1. It was emphasized that in the native village of the appellant, Chhindwada, there are separate graveyards for Tribals and the Mahra Caste and

within the graveyard for Mahra caste there exists a separate area for burial/cremation of persons belonging to Hindu religion and the Christian

community. Appellant has also submitted before this Court photographs and co-ordinates of the graves of his aunt and grandfather, in the area

specified for Christians in the village graveyard.

19.2 Furthermore, it was submitted that the existence of oral permission by the Gram Panchayat is confirmed by the practice of burying Christians

from the last few decades including appellant’s grandfather and aunt being buried in the area specified for Christians. Therefore, according to the

appellant, there indubitably is an established practice. In that light, it was contended that all these decades the local Gram Panchayat, on the basis of

oral permission, had permitted Christian burials in the village itself and the photographs of the graves of appellant’s family members stand as a

testimony to the said fact. However, the High Court erred in insisting upon written permission or relying upon the Certificate issued by the Sarpanch

submitted to the Court.

19.3 It was further submitted that this Court may direct the respondents not to create any hindrance to the burial of appellant's father adjacent to

the burials of his grandfather and aunt. In alternative, it was submitted that permission may be granted to the appellant herein to bury his father in his

private agricultural land which would in a way give a quietus to the controversy.

20. Per contra, learned Solicitor General Sri Tushar Mehta led the arguments for the respondents along with the learned Advocate General for the

State as well as other counsel for the respondent-authorities by contending that constitutional issues under Article 25 would arise in this case which

could be argued at length by both sides. However, having regard to the facts of the present case and particularly the fact that the body of the

appellant's father is being preserved at the mortuary of the District Hospital and Medical College at Jagdalpur since 07.01.2025, as a resolution to

the controversy between the parties, the appellant could bury his father at the burial ground at Karkapal which is about 20-25 kms from Chhindwada

village and the appellant would be given all support by the State Government in that regard. In this regard, reliance was placed on the subsequent two

affidavits filed on behalf of the respondents.

20.1 Learned Solicitor General contended that the appellant is prosecuting a cause which could be given a quietus by the appellant being permitted to

bury his father at Karkapal graveyard and the matter could be thus concluded.

21. By way of reply, learned senior counsel submitted that if the appellant desired to conduct the funeral rites of his deceased father at Karkapal

graveyard, which is now being suggested by the respondents, there was no necessity for him to have made a grievance on the touchstone of hostile

discrimination by filing the writ petition before the High Court. On the other hand, it is the case of the appellant that owing to unnecessary objection

and threats being raised and orchestrated for conducting the funeral rites of his father in the village graveyard he had made representations to the

concerned Police and other authorities for protection which have remained unanswered. In these circumstances the appellant was constrained to

approach the High Court which has also declined to grant any relief to the appellant. Hence, appellant is before this Court.

21.1 Learned senior counsel for the appellant submitted with reference to his additional affidavit that in respect of Khasra No.725/136, the Patwari of

the Chhindwada village has prepared a sketch indicating that an area of 1.050 ha. of the total area of 17.607 ha. of the said khasra number is

government land which is "proposed for graveyard". It is averred that this area has been used for decades as a graveyard and a formal

declaration "is to be made to that effect". The document at Annexure A-1 of 2002-2003 clearly indicates that as there has been no

settlement survey of the village, therefore, the map has been prepared by hand. This document is dated 04.05.2024 which is of an undisputed point of

time. A list of Christian deceased persons and the information about those buried in public graveyard, as per Christian customs, in the Gram Panchayat

of Chhindwada is mentioned indicating that there are 26 such persons who have been buried. Further, Annexure A-3 is a hand-drawn sketch

indicating that insofar as the area allocated for the Mahra community is concerned, there is a portion meant for Christian Mahra graveyard and

another adjacent portion meant for Hindu Mahra graveyard. Also, there has been no objection as such for Christians to bury their dead in the said area

indicated as Christian Mahra graveyard in all these decades. The affidavits of the Christian family members whose relatives have been buried in the

said graveyard along with some photographs of the graves have also been filed. According to learned senior counsel, these affidavits indicate that the

Mahra community members who are Christians have buried their dead in the said area as indicated in the sketch.

21.2 Learned senior counsel stressed on the fact that within the Mahra community, there are persons following Hindu faith while others follow the

Christian faith and accordingly there is a demarcation of space in the graveyard area meant for the entire Mahra community.

21.3 The English translation of the affidavits are filed by the following persons: (a) Jaldev Kumar, (b) Vijay Bais, (c) Bali Nag, (d) Piluram Nag, (e)

Samel Baghel, (f) Pila Ram, (g) Surendra, (h) Smt. Poonam, (i) Padmini Nag, (j) Ichhawati Nag, (k) Jwala Nag, (l) Rajesh Baghel, (m) Bhursu

Kashyap, and (n) Rajkumar Nag, which may be perused.

21.4 All the affidavits indicate the details of the members of their families who died and were buried in the village graveyard from the year 1986

onwards till February 2024. The photographs of some of the graves have also been appended to the affidavits including that of the graves of the aunt

(Shanti Baghel) and the grandfather (Lakeshwar Baghel) of the appellant.

21.5 Learned senior counsel therefore submitted that unnecessary objection is being raised for the burial of the appellant's father in the very same

area which has been demarcated for the burial of the members of Mahra community who follow the Christian faith. He contended that the appellant

may be permitted to bury his father in the orally demarcated area just as the other members of the family. According to learned senior counsel,

unnecessarily a controversy has been created with regard to the burial of the appellant's father. Consequently, the appellant's father who died

on 07.01.2025 has not been able to have a decent and dignified burial for over two weeks and his body is lying in the mortuary of the District Hospital.

In the circumstances, he submitted that the objections raised by the respondents may be overruled and the appellant may be granted relief so that the

dignity of his deceased father is not jeopardised. Alternatively, it was submitted that appellant may be permitted to bury his father in his private

agricultural land in Chhindwada village.

Analysis:

22. The pleadings and affidavits filed by the respective parties have been considered. On a perusal of the affidavit of the respondent-State dated

19.01.2025, it is inferred that there is no separate graveyard sanctioned exclusively for the Christians in Gram Barahpal, Chhindwada; that the Mahra

community in Barahpal village, Chhindwada comprises of both Hindus, to a large extent and the Christians are lesser in number. That in the said Gram

Panchayat, birth, marriage and death rituals are carried out as per the religious traditions to which the residents belong.

22.1 It is also noted that earlier, at least 20 persons belonging to the Christian faith have been buried in the graveyard and the Gram Panchayat of

Barahpal, Chhindwada had always orally permitted the members of the Christian community belonging to the Mahra community to be buried in the

demarcated space in the village graveyard and the burials have taken place since mid-1980s and as late as in February 2024.

22.2 But there is now hostility raised against the burial of the appellant's father in the very same area. When earlier the Gram Panchayat,

Barahpal, Chhindwada had permitted burial of the dead who were followers of the Christian faith, there is no reason to disallow in the case of the

appellant's father. The detailed affidavits filed on behalf of the respondents when juxtaposed with the affidavits filed by the appellant would

indicate the following:

i. That in the area demarcated as a graveyard for the Mahra community, there is an internal demarcation as (i) Hindu Mahra graveyard; and, (ii)

Christian Mahra graveyard. The persons belonging to respective faiths are buried within the area demarcated for the Mahra community all these

decades without there being any objection from any quarter.

ii. The demarcation may not be by a formal order passed by the Panchayat but the allocation of the respective areas within the area reserved for the

Mahra community in the graveyard is indicative of the fact that the Panchayat of the Barahpal village Chhindwada has all along recognised and

permitted the burial of the dead, as per their faith, in the demarcated areas of the graveyard meant for the entire Mahra community.

iii. There has never been any objection to the burial of several other persons belonging to the Mahra Community following Christian faith in the said

graveyard from any of the residents of the village inasmuch as the additional affidavit of the appellant indicates that all along persons belonging to the

Mahra community following the Christian faith have buried their dead in the area demarcated for the said community.

iv. The second additional affidavit of the appellant also indicates that not one Christian in Chhindwada village has used the graveyard in village

Karkapal.

22.3 In view of the aforesaid circumstances and Rule 5 of the 1999 Rules, it is observed that it is the duty of the Gram Panchayat to ensure that a

dead person of the village is buried as early as possible and within a period of 24 hours irrespective of whatever faith he follows. But here is a case,

where on the so-called objection of certain residents of the village the appellant is contending that he is being denied burial of his father in the village

graveyard in the, area, demarcated, for, the, Mahra, community, following, the Christian faith, which is adjacent to the area orally

demarcated for the Mahra community following the Hindu faith. The relevant Rules are reproduced as under:

3. Disposal of corpse within 24 hours.-

(1) When a person has died in any place within the Gram Panchayat area, the occupier or owner of such place shall, to the best of his ability, arrange through the

deceased person's relatives or otherwise for the corpse to be buried, burnt or otherwise disposed of in accordance with the custom of the deceased person's religion

within twenty four hours of death; or if he is unable to make such arrangement, shall within twenty four hours of death, report the fact to the Sarpanch or to the

Secretary of the Gram Panchayat or to such person as the Gram Panchayat may appoint in this behalf.

(2) Every person who becomes aware that a corpse is lying in any place uncared for, shall forth with report that fact to the Sarpanch or to such person as the Gram

Panchayat may appoint in this behalf and also to the occupier or owner of that place.

(3) Nothing in this rule shall apply to a case where the body of the deceased is required for the purpose of a judicial or police, enquiry

4. Gram Panchayat to arrange for disposal of corpse.-

(1) On receipt of a report under sub-rule (2) of rule 3, the Gram Panchayat shall arrange for the disposal of the corpse.

(2) The expense's incurred for such disposal shall be recovered from the heirs of the deceased if any, as arrears of tax levied under the Act.

(3) If there be no such heirs the expenses shall be borne by the Gram Panchayat.

5. Place for disposal of corpses.-

No place other than a place approved by the Gram Panchayat by an order in writing duly published in the village, which shall be known as burning ghat or burial

ground or a place determined by the Government or in the Government records shall be used for the disposal of a corpse by burning, burying or otherwise.

22.4, Even according to Annexure P-10 dated 09.01.2025 which is issued, by the, Sarpanch, and, Deputy, Sarpanch, of, "Barahpal

Chhindwada Gram Panchayat No.1, 2 and 3, no graveyard of Christian, community, at, any, place, within, the, limits, of, Gram

Panchayat Chhindwada Nos.1, 2 and 3 is established yet. For immediate reference, the said certificate is extracted as under:

OFFICE

Barahpal Chindwara Gram Panchayat No. 1, 2, 3

It is certified that till date there is no graveyard of Christian community at any place within the limits of Gram Panchayat Chindwara No. 1, Gram Panchayat Chindwada

No. 2, Gram Panchayat Chindwada No. 3 under the Barahpal Chindwara.

That Tehsil of Barahpal Chindwara comes under Darbha, P.S. Dharbha, District Bastar, Chhattisgarh.

Sd/-

Sarpanch

Sd/-

Deputy Sarpanch

Dated: 09.01.2025

22.5 Therefore, even according to the Panchayat, there is no graveyard established yet for the Christian community by the Gram Panchayat within the

premises of the village Chhindwada. Even according to learned senior counsel for the appellant, members of the Christian community were being

orally permitted to utilise a portion of the graveyard meant for the Mahra community adjacent to the area meant for the Hindu Mahra community. This

is probably owing to there being no formal declaration by the Chhindwada Gram Panchayat.

22.6 It was the duty and obligation on the part of the Gram Panchayat to have formally demarcated an area for burial of Christians in Chhindwada

village i.e. within its jurisdiction. Instead, the respondents have stated that a designated burial space for Christians at village Karkapal 20-25 or 40-45

kilometers away comprised in Khasra No.9/94 admeasuring 1.96 acres - 2.15 acres, if adjoining land is also included - is sufficient to cater to the

needs of the Christian burials of four villages and is being used for that purpose. However, there is no material produced before this Court to show

that the burial of Christians deceased at Chhindwada village has taken place at Karkapal. No Government order or notification has been produced.

There is also no material produced to show that Chhindwada Gram Panchayat has, in any manner prescribed the burial ground at Karkapal village to

be the burial ground for Christians from Chhindwada village. Furthermore, no material has been produced before this Court to support the averment

that the graveyard in village Chhindwada has been designated for exclusive use of members of the Hindu community nor has any material been

supplied to suggest such custom.

22.7 Reliance placed by the respondents on Rule 8 of the 1999 Rules can be considered. Rule 8 of the 1999 Rules reads as under:

“8. Digging of grave. - Grave not to be dug within a distance of one metre from any grave or outside the place marked by the Gram Panchayat for this purpose.”

In the instant case, respondent No. 9-Gram Panchayat has categorically stated that no place has been earmarked by it for the purpose of graveyard

for Christian community. As no place has been marked by the Gram Panchayat, Rule 8 cannot be applied in the instant case. In the absence of such

an earmarking by the Gram Panchayat for Christian community in the village, the alternative that the appellant has, is to utilise his private agricultural

land for the burial which is also a plea of the appellant. Such a plea is reasonable.

22.8 The contra suggestion made on behalf of the respondent-State is that the appellant could conduct funeral rites of his father at the burial ground at

Karkapal which is about 20-25 or 40-45 kms away from the village in which the appellant resides. This option was in any case available to the

appellant. On the other hand, the appellant sought permission to bury his father either in the area orally demarcated for the Christian community in the

graveyard reserved for the Mahra Christian community in Chhindwada village or alternatively, in the agricultural land of the appellant herein. It is for

this reason that the appellant approached the High Court. This grievance of the appellant has not been appreciated by the High Court which instead

directed the appellant to conduct the funeral and bury his father 20-25 or more kms away from his village. The appellant need not have approached

the High Court if he had exercised the said option.

22.9 The appellant, on the other hand, is ventilating a grievance based on discrimination and prejudice. The High Court ought to have appreciated the

predicament and difficulty faced by the appellant and could have found a solution in the prayers sought for by the appellant by directing the Gram

Panchayat to permit burial either at the graveyard which was being used by Mahra Community following the Christian faith or in the alternative,

permitted burial at the appellant's private agricultural land. Instead, the High Court has accepted a suggestion made by the respondents which has

the effect of displacing a practice prevailing in Chhindwada village which was also acceptable to the Gram Panchayat over decades. As a result, there

was harmony between all communities of the village. But the death of the appellant's father, who was a pastor in the village, has given rise to

disharmony in the village because it has not been suitably solved by the village Panchayat by finding an amicable solution.

22.10 The village Panchayat has abdicated its duty to ensure burial of appellant's father within a period of 24 hours of his death. Instead, the

Panchayat has been taking sides which led to the appellant approaching the High Court and finally this Court. Had the village Panchayat quelled the

aggressive objections and threats to the appellant's family, the matter would have been resolved at the village itself. Instead, the

affidavit of the ASP, Bastar, states "Any person who has forsworn the tradition of the community or has converted into a Christian is not

allowed to be buried at the village graveyard. This declaration by the respondents is unfortunate. To my mind, this is nothing but a violation of

Article 14 and Article 15(1) of the Constitution of India which speak of equality before the law and the equal protection of the laws as well as places a

strict prohibition of discrimination on the ground of religion, respectively.

For ease of reference, Articles 14 and 15(1) are extracted as under:

"14. Equality before law. " The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

22.11 What could have been solved amicably at the village level is now given a different taint by the respondent-authorities. Such an attitude on the

part of the respondents betrays their responsibility towards all citizens residing in the village and smacks of hostile discrimination and divisiveness and

gives an impression that certain sections of the village can be discriminated against. It is not known as to under what authority, such a declaration

could have been made by the deponent, who is the ASP, Bastar whose duty is to maintain law and order and ensure peace and harmony in the

society. What is the basis for such a declaration? Such an attitude on the part of local authorities, at the village level or higher level, indicates a

betrayal of the sublime principles of secularism and the glorious traditions of our country which believes in "Sarva Dharma Samanvaya/Sarva

Dharma Samabhava" which is the essence of secularism. Secularism together with the concept of fraternity, as envisaged under our Constitution, is

a reflection of harmony between all religious faiths leading to common brotherhood and unity of the social fabric in the country. It is therefore

incumbent on all citizens as well as institutions, whether of governance or otherwise, to foster fraternity amongst the citizens. It is brotherhood and

fraternity among citizens which would make the country stronger and more cohesive given the diversity of the land and the need for unity.

22.12 It also needs to be observed that, in the peculiar facts and circumstances of this case, the grievance of the appellant stems from respondent

No.9-Gram Panchayat's failure to discharge its duty to approve a place for burial for Mahra community following Christian faith howsoever small

in number they may be within its jurisdiction. This has led to social ostracisation of the appellant and his family.

23. Having regard to the peculiar facts and circumstances of this case and particularly bearing in mind that appellant's father's body is lying in

the mortuary of the District Hospital since 07.01.2025 only because of the objections raised not being quelled by the Gram Panchayat, it is just and

proper that he is accorded a dignified burial.

24. We have heard Sri Colin Gonsalves, learned senior counsel for the appellant, learned Solicitor General, learned Advocate General and other

counsel for the respondent(s)-State and others and have closely perused the memorandum of Special Leave Petition/Appeal as well as the three

affidavits filed on behalf of the respondent(s)-State and other authorities and two additional affidavits filed on behalf of the appellant. The interest of

justice would be best served in the instant case by passing the following order. This is by bearing in mind the statement of the respondent-deponent in

the affidavit dated 19.01.2025 in paragraph 13 thereof and the peculiar facts and circumstances of this case. Even according to the

respondents, if there is no designated burial space, in such an event, permission is granted for burial in private land. It is the case of the respondent-

Gram Panchayat that there is no formal designation of a graveyard for Christian community, therefore, permission ought to be accorded to the

members of that community to bury their dead in their private land. Further, the body of the appellant's father is lying in the mortuary since

07.01.2025 for the last three weeks and he is entitled to a decent and dignified burial. Hence, the following directions:

(i) Therefore, the appellant shall be permitted to conduct the funeral rites of his father in his private agricultural land at village Chhindwada at the

earliest.

(ii) However, the appellant shall not take any advantage, legally or otherwise, for having been permitted to bury his father in his private land.

(iii) Since the death of the appellant's father has given rise to the unsavoury controversy regarding the place of burial, we direct respondent Nos.3

to 9 to provide adequate security and protection to the appellant and his family to carry out the funeral rites of his father at his private agricultural land

at village Chhindwada at the earliest.

(iv) It is observed that the implementation of the aforesaid directions shall be expedited bearing in mind the peculiar facts of this case as

appellant's father's body is in the mortuary since 07.01.2025.

(v) The respondent-State and its local authorities are directed to demarcate exclusive sites as grave yards for burial of Christians throughout the State

in accordance with law. This direction is being issued in order to avoid controversies such as in the instant case. The said exercise shall be carried out

within a period of two months from today. The aforesaid direction is issued having regard to Rule 5 and Rule 8 of the Rules.

(vi) Although, by consensus, we have issued certain directions as per the Order of the Court, nevertheless, direction five above shall be complied with

by the respondent-State and its authorities de hors the direction issued under Article 142 of the Constitution.

25. It is concluded by quoting from a recent judgment of this Court:

In *Ashwini Kumar Upadhyay vs. Union of India*, (2023) 8 SCC 402, in paragraph 12, it was observed by this Court as under:

“12. The history of any nation cannot haunt the future generations of a nation to the point that succeeding generations become prisoners of the past. The golden

principle of fraternity which again is enshrined in the Preamble is of the greatest importance and rightfully finds its place in the Preamble as a constant reminder to all

stakeholders that maintenance of harmony between different sections alone will lead to the imbibing of a true notion of nationhood bonding sections together for the

greater good of the nation and finally, establish a sovereign democratic republic. We must constantly remind ourselves that courts of law, as indeed every part of the

State, must be guided by the sublime realisation, that Bharat is a secular nation committed to securing fundamental rights to all sections as contemplated in the

Constitution.”

One can also, upon the words of O. Chinnappa Reddy, J. in *ibn i joe Emmanuel vs. State of Kerala*, (1986) 3 SCC

615:

“Our tradition teaches tolerance; our philosophy preaches tolerance; our Constitution practises tolerance; let us not dilute it.”

It would also be apposite to recollect the words of Mahatma Gandhi as under:

“Our existence as embodied beings is purely momentary; what are a hundred years in eternity? But if we shatter the chains of egotism, and melt into the ocean of

humanity, we share the dignity. !”

Let the State and its authorities realise the import of these valuable thoughts.

The impugned order of the High Court is set aside.

Consequently, the appeal is disposed in the aforesaid terms.

Satish Chandra Sharma, J.

1. Leave Granted.

2. I have perused the erudite opinion authored by my esteemed sister, Her Ladyship B.V. Nagarathna, J. However, despite making a sincere

endeavour, I am unable to persuade myself to subscribe to the direction(s) issued therein. Hence, this differing opinion.

Proceedings Before the High Court

3. The present proceeding(s) emanates from Writ Petition No. 152 of 2025 filed by the Appellant herein, before the Hon'ble High Court of

Chhattisgarh, at Bilaspur (the "High Court") whereunder, the Appellant i.e., the son of one Late Subhash Baghel sought the following

reliefs:

10.1) That the Hon'ble Court may kindly be pleased to issue a writ of mandamus or any other appropriate writ directing the respondents to permit the

petitioner and his family to carry out last rites of his father's mortal remains as per Christian religious customs at the area earmarked for Christians in the village

common graveyard located in village Chhindawada Police Station and Tahsil Darbha, District Bastar (C.G.) in the interest of justice.

10.2) That, the Hon'ble Court may kindly be pleased to issue a writ of mandamus or any other appropriate writ directing the respondents to provide adequate

police protection and local administration's support while carrying out last rites of his father's mortal remains as per Christian religious customs at the area

earmarked for Christians in the village common graveyard located in village Chhindawada Police Station and Tahsil Darbha, District Bastar (C.G.) in view of

the peculiar facts mentioned in this case. further, pass an order directing the respondents to provide police protection to petitioner and his family till the

continuation of threat in the interest of justice.

10.3) Any other relief which this Hon'ble Court may deem and proper in the present circumstances of the case, in the interest of justice

(the "Underlying Writ Petition")

4. The case set up by the Appellant before the High Court in the Underlying Writ Petition was as under:

(a) The Appellant contended that he is a third-generation Christian belonging to the Apostolic Church. The Appellants' father i.e., Late Subhas

Baghel was anointed a pastor between 1986-1987 and has since been involved in religious activities of the Church situated in their village (the

"Deceased").

(b) In village Chhindawada, a burial ground is situated which is allocated to the various sect(s) i.e., (i) the Tribal community; (ii) the Hindu community;

and (iii) the Christian community; (the "Subject Burial Ground") and accordingly, the Appellants' relatives namely, Late Shanti Baghel and the

Appellants' grandfather "Late Lakheshwar Baghel have been interred at the Subject Burial Ground.

(c) In this context, it was stated that the Appellants' father passed away on 07.01.2025 at 7:00 AM due to chronic illness and other age related

ailment(s). Following, the demise of the Appellants' father, the family intended to conduct the last rites i.e., burial, at the "Christian Section" of

of the Subject Burial Ground.

(d) Pursuant to the aforesaid decision by the family, it was contended that several threat(s) were extended to the Appellants' family on account of

the objection(s) raised by the villagers against the burial of the Deceased at the Subject Burial Ground i.e., a site designated for the burial of Hindu

Tribals.

(e) In view of the aforesaid, it was contended that Deceased's remains are retained in the mortuary at the Medical College situated at Jagdalpur;

and thus, the Appellant sought protection and assistance from the relevant authorities to ensure a dignified and proper burial of the Deceased in the

"Christian Section" of the Subject Burial Ground.

5. On the other hand, the Respondent State opposed the submission of the Appellant before the Hon'ble High Court and stated that the Subject

Burial Ground was meant exclusively for Hindus; and rejected the Appellants' contention qua the presence of any "Christian Section" within

the precinct of the Subject Burial Ground. Accordingly, it was submitted that the Appellant may proceed with the last rites of the Deceased at a burial

ground specifically designated for persons of the Christian Community in village Karkapal i.e., a distance of 20-25KM from village Chhindawada i.e.,

the Appellants' native.

6. Vide an order dated 09.01.2025 in the Underlying Writ Petition (the "Impugned Order"), the High Court after hearing the rival contention(s) of

the Parties, dismissed the Underlying Writ Petition observing inter alia that the prayer sought by the Appellant was contrary to the rigours of (i)

Chhattisgarh Gram Panchayat (Regulating Places for Disposal of Dead Bodies, Carcasses, and Other Offensive Matter) Rules, 1999; and (ii)

Chhattisgarh Panchayat Raj Adhiniyam, 1993 "on account of the specific prohibition against the disposal of corpses by way of either a cremation or

a burial in any areas other than those specifically designated. Moreover, it was observed therein that a burial ground specifically demarcated for the

members of the Christian Community was available in the nearby area; and accordingly, it would not be proper to grant the Appellant the relief prayed

for by way of the Underlying Writ Petition as it may cause unrest and disharmony amongst the public at large

Proceedings Before This Hon'ble Court

7. Aggrieved by the aforesaid, the Appellant instituted SLP(C) No. 1399 of 2025 i.e., now this instant appeal, assailing the correctness of the

Impugned Order. On 17.01.2025, this Hon'ble Court passed the following order:

“Issue notice to the respondents.

Petitioner's counsel is also permitted to serve the standing counsel for first respondent-State.

Learned counsel, Mr. Prashant Singh who is present in Court accepts notice for the respondents.

Hence, list the matter on 20.01.2025.

8. On 20.01.2025, upon a request made by the Learned Solicitor General of India appearing on behalf of the Respondent State, the matter was

adjourned to 22.01.2025.

9. On 22.01.2025, in view of the urgency of the underlying lis, judgement/orders were reserved on the relief sought by the Appellant herein.

Submissions of the Parties

10. Mr. Colin Gonsalves, Learned Senior Counsel appearing on behalf of the Appellant made the following submissions:

(a) The Subject Burial Ground is divided into separate designated areas for members of different communities including inter alia member(s) of the

Tribal Community; members of the Hindu Community; and member(s) of the Christian Community;

(b) That pursuant to an oral permission obtained from the Gram Panchayat, an area was demarcated within the Subject Burial Ground for members of

the Christian Community;

(c) In order to bolster the aforesaid contention(s), Mr. Gonsalves also drew our attention to certain photograph(s); affidavits of 3rd parties; and a

hand-drawn map to support his claim vis-à-vis the presence of a “Christian Section” of the Subject Burial Ground;

(d) That the act of the villagers preventing the burial of the Deceased's remains in the “Christian Section” of the Subject Burial Ground was

violative of the fundamental rights including but not limited to the “right to dignity in death”;

(e) That the Impugned Order by which the Appellant has been directed to bury the Deceased's remains at a burial ground specifically designated

for persons of the Christian Community in village Karkapal i.e., a distance of 20-25KM from village Chhindawada i.e., the Appellant's native place

is violative of his fundamental right(s);

(f) In the alternative, it was submitted that the Appellant be permitted to bury the remain(s) of the Deceased on his own land.

11. Mr. Tushar Mehta, Learned Solicitor General of India appearing on behalf of the Respondent State submitted as under:

(a) That member(s) of the Tribal Community form a large segment of the demographic of the Respondent State. The said member(s) of the Tribal

Community customarily bury its deceased member(s) at "Hindu-Tribal-Burial-Sites" and the Subject Burial Ground is one such designated site

for the remains of the deceased persons belonging to the Hindu Tribal Community.

(b) Mr. Mehta underscored that certain sub-sect of person(s) converted to Christianity, however their number(s) remain sparse on an average, in

a village with a population of close to 6,000 (six thousand) person(s), merely 100 (one hundred) persons belong to the Christian Community.

Accordingly, for every cluster of 3 (three) 4 (four) such villages, the Respondent State has demarcated/designated one identified burial ground for

all the Christian members of the community. Turning to the case at hand, it was submitted that all the persons belonging to the Christian

Community, from (i) village Chhindawada; (ii) village Munga; (iii) village Tirathgarh; (iv) village Darbha; and (v) village Karkapal

buried the remains of their ancestors at burial ground specifically designated for persons of the Christian Community in village Karkapal situated at

Khasra No. 9/94 admeasuring 1.96 acres which has further been expanded up to 2.15 acres.

(c) Mr. Mehta stressed on the fact that burial/cremation sites for all the communities including inter alia Hindus, Tribals, Christians and Muslims are

governed under statutory rules. The said rules, ensure that designated spaces are utilised in a manner that is respectful towards the deceaseds

rights under Article 21 and Article 25 of the Constitution of India.

(d) It was vehemently contended that burial rights align with community practices that are protected under Article 25 of the Constitution of India

accordingly, it was submitted that burial sites designated for specific communities cannot be claimed for burial of person(s) belonging to other

communities or religions.

(e) Mr. Mehta while conceding that the matters pertaining to last rites including inter alia religious practices revolving around burials, is protected

under Article 21 and Article 25 of the Constitution of India, submitted that the protection would not extend to arbitrary demands of individual persons.

Moreover, any such demand / act would always be subject to the caveat of public order.

(f) In this context, it was submitted that, a public order situation may erupt on the ground, if the Appellant is permitted to bury the remains of the

Deceased on the Subject Burial Ground. The occasional deviations in the past (if any) cannot alter the site's primary purpose or community rights.

(g) Reliance was placed on Rule 8 of the Chhattisgarh Gram Panchayat (Regulating Places for Disposal of Dead Bodies, Carcasses and Other

Offensive Matter) Rules, 1999 to contend that the Appellants' alternative plea to bury the Deceased in their private land was in the teeth of

statutory rules, having the force of law.

(h) Lastly, Mr. Mehta submitted that the Respondent State, with a view to resolve the controversy was ready and willing to provide the Appellant with

an ambulance to transport the remains of the Deceased to the burial ground specifically designated for persons of the Christian Community in village

Karkapal; and further undertaken to provide security (if deemed necessary by the State Authorities.

12. The Appellant denied the offer made by the Respondent State vis-à-vis providing an ambulance to transport the remains of the Deceased.

13. During the course of argument(s), the Respondent State was asked to furnish an affidavit placing on record the particulars of the burial ground

designated for members of the Christian Community in village Karkapal. The Respondent State has placed on record an affidavit dated 22.01.2025

whereunder a site situated at Khasra No. 9/94, village Karkapal measuring close to 2.15 acres (including the use of the adjacent land) has been

stated to be the designated burial ground for member(s) of the Christian Community (the "Designated Christian Burial Ground").

14. Thus, at this juncture, this Court is tasked with resolving the deadlock between the Parties in view of the fact that the remains of the Deceased are

lying at the Medical College situated at Jagdalpur for a prolonged period of 15 (fifteen) days.

Analysis & Directions

15. Having given my anxious considerations to the competing submissions, the fulcrum of the dispute seems to boil down to whether the fundamental

right to conduct last rites as per one's own specific religion or custom would extend to include the "place" where such ceremonies are

scheduled to take place; and thus, in the context of the present lis "the right to choose the place of burial in a blanket & unilateral manner?

16. At this juncture, it would be important to refer to the relevant rules framed by the Respondent State in exercise of its powers conferred under

Section 95 read with Section 49(12) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 i.e., the Chhattisgarh Gram Panchayat (Regulating Places for

Disposal of Dead Bodies, Carcasses and Other Offensive Matter) Rules, 1999 (the "CG Rules"). Rules 3, 4, 5 & 8 of CG Rules are relevant to

the present controversy, the same are reproduced as under:

"3. Disposal of corpse within 24 hours.-

(1) When a person has died in any place within the Gram Panchayat area, the occupier or owner of such place shall, to the best of his ability, arrange through the

deceased person's relatives or otherwise for the corpse to be buried, burnt or otherwise disposed of in accordance with the custom of the deceased

person's religion within twenty four hours of death; or if he is unable to make such arrangement, shall within twenty-four hours of death, report the fact to the

Sarpanch or to the Secretary of the Gram Panchayat or to such a person as the Gram Panchayat may appoint in this behalf.

(2) Every person who becomes aware that a corpse is lying in any place uncared for, shall forth with report that fact to the Sarpanch or to such person as the

Gram Panchayat may appoint in this behalf and also to the occupier or owner of that place.

(3) Nothing in this rule shall apply to a case where the body of the deceased is required for the purpose of a judicial or police, enquiry.

4. Gram Panchayat to arrange for disposal of corpse.-

(1) On receipt of a report under sub-rule (2) or rule 3, the Gram Panchayat shall arrange for the disposal of the corpse.

(2) The expense incurred for such disposal shall be recovered from the heirs of the deceased if any, as arrears of tax levied under the Act.

(3) If there be no such heirs the expenses shall be borne by the Gram Panchayat.

5. Place for disposal of corpses.-

No place other than a place approved by the Gram Panchayat by an order in writing duly published in the village, which shall be known as burning ghat or

burial ground or a place determined by the Government or in the Government records shall be used for the disposal of a corpse by burning, burying or otherwise.

x-x-x

8. Digging of grave. Grave not to be dug within a distance of one metre from any grave or outside the place marked by the Gram Panchayat for this purpose.

17. A perusal of the CG Rules would reveal that graves cannot be arbitrarily constructed; and must be established in designated areas identified by the

Gram Panchayat. The rationale behind the same appears to be extremely logical -" the designation of an identified areas serves a salutary purpose of

ensuring a systemised procedure of conducting last rites whilst paying due deference to the surrounding sensitivities but also, importantly encompasses

a public-health angle The Impact of Cemeteries on the Environment and Public Health, WHO, EUR/ICP/EHNA010401(A). The earmarking of

designated areas for every community in every village is an evolutionary process that is not perfect and slow-moving, however, it seeks to delicately

handle aspects of human life, and beyond which must receive adequate judicial attention. Thus, with the respect, I am unable to appreciate the need to

exercise of our equitable jurisdiction under Article 142 of the Constitution of India to overcome the prohibition encapsulated under Rule 8 of the CG

Rules; and permit the Appellant to bury the remains of the Deceased on his private land, more-so in light of the fact that a designated burial ground is

present within the vicinity i.e., merely 20-25KM away in village Karkapal.

18. There can be no qualm about the fact that procedures pertaining to last rites; and ceremonies involved, from a part of the right(s) protected under

Part III of the Constitution of India. However, to claim that such right(s) would encompass the unqualified right to choose the place of such

ceremony (including burial) would prima facie appear to stretch constitutional limits beyond what was envisaged. It is well settled that right(s)

protected under Article 21 of the Constitution of India are subject to "procedure established by law" which is required to be to be just, fair and

reasonable. *Maneka Gandhi v. Union of India*, 1978 SCR (2) 621; and *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1. Furthermore, the right

freely to profess, practice and propagate religion under Article 25, is ex facie subject to "public order" *Rev. Stanislaus vs. State of Madhya*

Pradesh, (1977) 1 SCC 677; and the Sub-Clause 2 of Article 25 enables the State to frame provisions regulating certain activities associated with

religious practices *Sri Venkataramana Devaru v. State of Mysore*, AIR 1958 SC 255. Thus, to claim an absolute or unqualified right in respect of the

exact place of burial of a person under Article 21 and Article 25, prima facie, appears to be circumspect. Nonetheless, a person/ community

cannot altogether be denied a place to carry out last rites including inter alia burials - on the contrary, the State has a duty to provide members of all

religious communities with identified places to carry out last rites within the confines and limits of reason and rationality. In the present case, the

Respondent State has informed us of an identified burial ground for members of the Christian Community i.e., the Designated Christian Burial Ground

situated in village Karkapal merely at a distance of 20-25KM from the Deceased's native village. In view thereof, I see no reason why the

appellant ought to be permitted to claim an absolute or unqualified right in respect of the Deceased's exact place of burial.

19. This Court is conscious of the responsibility on its shoulders and would loathe to be swayed by sweeping and illusionary claims of a potential

"public order" eruption, however, in the present case, it cannot be said that the Respondent State have propped up the "public order"

argument as a ruse. The maintenance of "public order" is paramount and in the larger interest of the society. Accordingly, without commenting on

the underlying sensitivities, and with a view to provide the Deceased with a decent and dignified burial, the following direction(s) appear to be just, fair

and reasonable:

(a) The Appellant and his family be provided with an appropriate site within the Designated Christian Burial Ground situated at village Karkapal for

the burial of the Deceased's remains;

(b) The Respondent State is directed to ensure that the Appellant and his family are provided with all ancillary logistical support for the purpose of

transferring the remains of the Deceased from the mortuary at the Medical College situated at Jagdalpur to Designated Christian Burial Ground

situated at village Karkapal;

(c) The Respondent State shall grant the Appellant and his family members adequate police protection which shall be reviewed by the concerned

authorities after a period of 7 (seven) days;

(d) The Respondent State shall take adequate measures to ensure no public order incident takes place at either village Karkapal or village

Chhindawada; and

(e) The Respondent State is directed to ensure that the burial of the remains of the Deceased takes place at the earliest. The Appellant and his family

members are directed to cooperate with the authorities of the Respondent State who shall handle the situation with the sensitivity it deserves.

20. Consequently, the appeal is disposed of in the aforesaid terms and the Impugned Order of the High Court is upheld.

ORDER OF THE COURT

NAGARATHNA, J.

1. The operative portion of the judgment of Nagarathna, J. reads as under:

“(i) Therefore, the appellant shall be permitted to conduct the funeral rites of his father in his private agricultural land at village Chhindwada at the

earliest.

(ii) However, the appellant shall not take any advantage, legally or otherwise, for having been permitted to bury his father in his private land.

(iii) Since the death of the appellant's father has given rise to the unsavoury controversy regarding the place of burial, we direct respondent Nos.3

to 9 to provide adequate security and protection to the appellant and his family to carry out the funeral rites of his father at his private agricultural land

at village Chhindwada at the earliest.

(iv) It is observed that the implementation of the aforesaid directions shall be expedited bearing in mind the peculiar facts of this case as

appellant's father's body is in the mortuary since 07.01.2025.

(v) The respondent-State and its local authorities are directed to demarcate exclusive sites as grave yards for burial of Christians throughout the State

in accordance with law. This direction is being issued in order to avoid controversies such as in the instant case. The said exercise shall be carried out

within a period of two months from today. The aforesaid direction is issued having regard to Rule 5 and Rule 8 of the Rules.

(vi) Although, by consensus, we have issued certain directions as per the Order of the Court, nevertheless, direction five above shall be complied with

by the respondent-State and its authorities de hors the direction issued under Article 142 of the Constitution.

2. The operative portion of the judgment of Satish Chandra Sharma, J. reads as under:

“18. This Court is conscious of the responsibility on its' shoulders and would loathe to be swayed by sweeping and illusionary claims of a potential "public order

eruption, however, in the present case, it cannot be said that the Respondent State have propped up the "public order" argument as a ruse. The maintenance of

public order" is paramount and in the larger interest of the society. Accordingly, without commenting on the underlying sensitivities, and with a view a to provide

the Deceased with a decent and dignified burial the following direction(s) appear to be just, fair and reasonable:

(a) The Appellant and his family be provided with an appropriate site within the Designated Christian Burial Ground situated at village Karkapal for the burial of the

Deceased's remains;

(b) The Respondent State is directed to ensure that the Appellant and his family are provided with all ancillary logistical support for the purpose of transferring the

remains of the Deceased from the mortuary at the Medical College situated at Jagdalpur to Designated Christian Burial Ground situated at village Karkapal;

(c) The Respondent State shall grant the Appellant and his family members adequate police protection which shall be reviewed by the concerned authorities after a

period of 7 (seven) days;

(d) The Respondent State shall take adequate measures to ensure no public order incident takes place at either village Karkapal or village Chindwada; and

(e) The Respondent State is directed to ensure that the burial of the remains of the Deceased takes place at the earliest. The Appellant and his family members are

directed to cooperate with the authorities of the Respondent State who shall handle the situation with the sensitivity it deserves.

3. There is no consensus between the members of this Bench on the place of resting of the appellant's father who died on 07.01.2025. Bearing in

mind the fact that the deceased has been kept in mortuary for the last three weeks since 07.01.2025 and in order to accord an expeditious and

dignified burial of the deceased, we agree to issue the following directions in exercise of our powers under Article 142 of the Constitution of India:

(i) The appellant shall conduct the funeral rites and bury his deceased father at the burial ground at village Karkapal.

(ii) The respondent-State and its local authorities shall ensure that the appellant and his family are provided with all logistical support for the purpose of

transferring the body of the deceased from the mortuary at the Medical College situated in Jagdalpur to the Christian burial ground situated at village

Karkapal, if so desired by the appellant.

(iii) Adequate police protection shall be accorded in this regard.

(iv) The respondent-State and its authorities shall ensure that the burial of the deceased father shall take place at the earliest.

4. The aforesaid directions issued by this Bench are having regard to the peculiar facts and circumstances of the present case and bearing in mind

judicial stewardship and to alleviate the predicament and suffering of the appellant and his family.

The appeal is disposed of in the aforesaid terms.