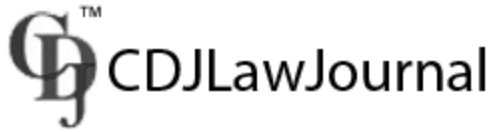


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Citation : CDJ 2026 Ker HC 785

Court : High Court of Kerala

Case No : WA No. 1090 of 2026

Judges : THE HONOURABLE DR. JUSTICE A.K. JAYASANKARAN NAMBIAR & THE HONOURABLE MRS. JUSTICE A.K. PREETA

Parties : Greeny Tomy & Others Versus State Of Kerala Represented By Secretary, Home Department, Secretariat, Thiruvananthapuram & Others

Appearing Advocates : For the Appellants: Haroon Ashraf, K.T. Saju, Mohammad Ishaq, T.H. Amjath, Advocates. For the Respondents: B. Unnikrishna Kaimal, SR.G.P.

Date of Judgment : 21-05-2026

Head Note :

Kerala Anatomy Act, 1957 - Section 4A -

Comparative Citation:  
2026 KER 36320,

Judgment :

A.K. Preeta, J.

The appellants who are the petitioners in the Writ Petition are challenging the judgment dated 10/04/2026 of the learned Single Judge whereby challenge against the retention and proposed use of the body of their deceased mother for anatomical purposes, was dismissed. The brief facts leading to the filing of the Writ Appeal is as follows :

The appellants and respondents 6 to 8 are the Children of late Mary, wife of John who died on 23/02/2026. The fifth respondent is the son-in-law of the said Mary. The allegation in the Writ Petition was that respondents 5 to 7, without informing the appellants or obtaining their consent, took custody of the dead body of the deceased on the date of death, transported the dead body to Government Medical College Hospital, Kalamassery and represented before the hospital authorities that the body was being donated for medical purposes. Acting upon such representation, the hospital authorities received the body and shifted the same to the mortuary. The appellants who are also the legal heirs, thereupon, approached the statutory authorities and sought for the release of the body to perform the last rites and burial in accordance with their religious customs, as according to them, they had not given consent for

donating the body. The appellants inter alia sought for a writ of mandamus for directing respondents 4 and 5 to forthwith release the dead body of the petitioners' mother to the petitioners to enable them to conduct last rites and burial in accordance with their religious customs. The contesting respondents 5 to 7 filed a counter affidavit inter alia contending that the appellants and the eighth respondent were not on good terms with the deceased mother and father and that during their lifetime, they were looked after by their eldest daughter Elizabeth and her husband – the fifth respondent herein. It was also contended that on account of the ruckus created by the second appellant and the eighth respondent at the time of the death of their father, the funeral had to be delayed and this had prompted their mother to execute a consent as envisaged under Section 4A of the Kerala Anatomy Act, 1957 to donate her body to the hospital and that the body was handed over to the Medical College, Kalamassery in accordance with the wishes of the deceased. The learned Single Judge after considering the rival contentions held as follows:

“In the instant case, Ext.R5(a), which has not been disputed, is an unequivocal expression in writing of the deceased, during her lifetime in the presence of two of her children, that her body be used for educational purposes in Ernakulam Medical College. Based on the said document, the Principal of the Medical College has accepted the said body as well. Mere desire on the part of the petitioners, who are also the children of the deceased, cannot overcome the explicit expression of intention of the deceased to handover her body after her death to Medical College. Further, there is nothing to doubt the credibility of the expression of the desire of the deceased in Ext.R5(a). In this context, it needs to be mentioned that, curiously, petitioners have not arrayed Smt.Elizabeth, one of the daughters of the deceased, whose name appears in Ext.R5(a) as a party and instead, her husband has been arrayed as the fifth respondent. Having regard to the totality of circumstances mentioned above, the contentions of the petitioners lack merit.”

2. Heard the learned counsel for the appellants. It is contended by the appellants that in so far as the appellants, who are the legal heirs of the deceased, have not consented to handover the body for anatomical uses, they have a right to claim that the deceased should have a burial in accordance with their religious rites.

3. The right claimed by the appellants is a reflection of two competing rights – the right to posthumous bodily integrity of the deceased and the right of the family to get a closure of the loss of their near and dear ones. The question whose rights a law protects is a question of who is its subject matter rather than its object; “for whom” the law is enacted rather than “in regard to” what. The locus classicus “Salmond on Jurisprudence” (See P.J.Fitzgerald (ed.), Salmond on Jurisprudence, (12th edn. 2010) p.301) discussing the legal status of the dead men has opined : “Ordinarily speaking, the personality of a human being may be said to commence existence on birth and cease to exist at death, and in general the law takes the same view.... Yet although all a man's rights and interests perish with him, he does when alive concern himself much with that which shall become of him and his after he is dead. And the law, without conferring rights upon the dead, does in some degree recognise and take account after a man's death of his desires and interests when alive. There are three things, more especially, in respect of which the anxieties of living men extend beyond the period of their deaths, in such sort that the law will take notice of them. These are a man's body, his reputation, and his estate. By a natural illusion a living man deems himself interested in the treatment to be awarded to his own dead body.”

4. The fact that corpses are legally protected is therefore not determinative of whether only the living are rights holders. The law also strives to honour a deceased's wishes and to protect his interests which is exemplified through the unconditional recognition of “will” in law. The right of a living person to decide on the fate of her body remains a part of her posthumous bodily integrity. Though commonly human beings desire a decent burial, it is also not uncommon that human beings choose to render their body for

anatomical studies as part of their commitment to the society. That the law strives to honour the wishes of the deceased and to protect her interests is exemplified through the unconditional recognition of “will“ in law. This facet of the right to posthumous bodily integrity can also be seen in legislations like Transplantation of Human Organs Act, 1994, the Kerala Anatomy Act etc. Section 4A of the latter Act deals with instances where the dead-body of a person who has expressed an unequivocal request during her life-time for using the body after death for conducting anatomical dissection, can be so used subject to the conditions in Section 4A. In the instant case, Ext.R5(a) is a consent letter given by the deceased mother which is under Section 4A of the Kerala Anatomy Act. In so far as the appellants have not challenged the genuineness of Ext.R5(a), we find no illegality in the act of donation of the body of the deceased by respondents 5 to 7 to the Government Medical College, Kalamassery as the same has been done to honour the wishes of the deceased as expressed in Ext.R5(a).

In the result, we find ourselves in complete agreement with the view taken by the learned Single Judge in the impugned judgment and for the reasons stated in the said judgment, as supplemented by the reasons in this judgment, this Writ Appeal is dismissed. No costs.

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