
(2016) 07 MAD CK 0052
In the Madras High Court
Case No : W.P. No. 1215 of 2015

S. Tamilselvan

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision : 05-07-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 292, 292A, 295A, 298, 499, 500

Citation : (2016) 4 CTC 561 : (2016) 3 MIPR 219 : (2016) 3 MLJ Criminal 129

Hon'ble Judges : Mr. Sanjay Kishan Kaul, C.J. and Mrs. Pushpa Sathyanarayana, J.

Bench : Division Bench

Advocate : Mr. S. Senthilnathan, Advocate, in W.P. No. 1215 of 2015, Mr. Sathish Parasaran, Advocate., in W.P. No. 1215 of 2015, Mr. S.P. Chockalingam, Advocate., in W.P. No. 20372 of 2015, Mr. G. Karthikeyan, Advocate., in Crl. O.P. Nos. 7086 & 7153 of 2015, for th

Final Decision : Disposed Off

Judgement

Mr. Sanjay Kishan Kaul, C.J.—"I may not agree with what you say, but will defend to the death, your right to say it", said the author Voltaire (Attributed to Voltaire by S.G. Tallentyre in "The Friends of Voltaire", 1907).

Prelude

India has the benefit of one of the most modern and liberal Constitutions. It is reflective of its rich and diverse heritage, yet enunciating the modern principles of democracy, as distinguished from a feudal society. One of the most cherished rights under our Constitution is to speak one's mind and write what one thinks. No doubt, this is subject to reasonable restrictions, but then the ambit of what one can do is wide.

2. Whether the society is ready to read a particular book and absorb what it says without being offended, is a debate which has been raging for years together. Times have changed. What was not acceptable earlier became acceptable later.

"Lady Chatterley's Lover" is a classical example of it. The choice to read is always with the reader. If you do not like a book, throw it away. There is no compulsion to read a book. Literary tastes may vary - what is right and acceptable to one may not be so to others. Yet, the right to write is unhindered. If the contents seek to challenge or go against the very Constitutional values, raise racial issues, denigrate castes, contain blasphemous dialogues, carry unacceptable sexual contents or start a war against the very existence of our country, the State would, no doubt, step in.

3. The ban on books has been a mixed bag. In a number of cases, it did not receive the nod from the Court - See *Ranjit D. Udeshi v. State of Maharashtra*, 1965 Cri L.J. 8; *Samaresh Bose v. Amal Mitra*, 1986 Cri L.J. 24; *State of Maharashtra v. Sangharaj Damodar Rupawate*, (2010) 7 S.C.C. 398 and *Abdul Ali v. State of Kerala*, (2016) Cri. L.J. 433 (Ker).

4. In the case on hand, we are confronted with a strange situation where a Tamil novel, "Madhorubagan" authored by Prof. Perumal Murugan, translated into English as "One Part Woman", has been a recipient of literary awards, yet is alleged to contain dangerous and damaging materials, evoking emotions of the residents of the location of its storyline. The novel is not really religious in content, but is alleged to be narrating non-existent conventions which seek to tarnish the image of the populace of the area.

5. In essence, the novel seeks to relate the travails and tribulations of a childless couple and the barbs of the society against it, while the couple seeks to battle it out against social and familial pressures. Somewhere, the family pressures gain an upper hand and what transpires to assist procreation is the troubling area of the story.

6. Is the novel based on history and if so, what is its effect? Despite certain locations being mentioned, the author has tried to build a case that it is not so, while the critics of the novel say this is a subsequent thought. Should there always be a recorded history to prove events or can even folklore carried from person to person form the basis of a book? And how do you obviate any offences caused to you? Would what Salman Rushdie said, be the cure, "It is very easy not to be offended by a book, you simply have to close it"?

7. This is a wider canvass, but in a multi-cultural, diverse society, where different religious beliefs are important to varied sections, there are atheists, who are expected to show a minimal element of responsibility in order that there are no unnecessary dissensions on religious and social lines by intrusions into the customs, beliefs and practices of different sections of society, so that such activities satisfy the touchstone of our Constitution. Religion is a major influence in our country, even though sometimes its credibility and relevance is questioned. However, all this is eternal and personal.

8. So much for the wider canvass, for the time being. We now turn to the facts of the case, which are in a narrow compass.

Facts

9. Professor Dr. Perumal Murugan is an Associate Professor hailing from Tiruchengode Town. The controversy about the novel is over the description of certain events more than eight years in period of time in Tiruchengode town, which is about 30 kms away from Namakkal. That is the Kurukshetra of this battle.

10. The novel in controversy "Madhorubagan" was written in the year 2010. It is the claim of the author that, this work of his received considerable attention and in the year 2013, M/s. Penguin Publishers came out with the English translation of the novel. The translation was done by Sri. Aniruddhan Vasudevan, who has incidentally been awarded a literary prize by a Canada based organisation for true reflection of the story by way of translation.

11. The background of the novel is set against the author's native place, Tiruchengode and it is claimed to have been read by readers, fellow writers and critics, encountering only literary criticism.

12. The original Tamil version of the novel was released in January, 2011 at the Chennai Book Fair, where the author claims it sold over 500 copies and more than 5000 copies have so far been sold through its four editions. The English translation of the novel was released in November, 2013 and it also evoked critical acclaim. The author claims that he attended a Writers' Workshop at Bangalore to complete two sequels to the novel, viz. "Aalavandaan" and "Ardhanaari".

13. The travails of Prof. Perumal Murugan began from December, 2014, when on his return to Namakkal, voices were raised against him that he had defamed Tiruchengode town and the womenfolk and the community. It is only when he received information that a police complaint was proposed to be lodged against him in respect of the novel on 26.12.2014 before the Town Police Station, Tiruchengode, he prepared a written complaint on 24.12.2014, which was submitted in person to the Superintendent of Police, Namakkal on 26.12.2014, while seeking police protection. The author came across photographs showing burning of the copies of the novel, beating and kicking his photographs with slippers and voices calling for censoring of all his works and also for his dismissal from Government Service. The series of incidents is stated to have caused quite a consternation and shock to the author, as his view was to the contrary; that he, as a writer, had brought and honour and laurels to Tiruchengode town, having earned accolades for his works and having participated in several intellectual literary discussions.

14. The author verily believes that all this was instigated not necessarily by local persons, but by outsiders. In support of this plea, he cites -

(a) Booklets of select pages from the novel underlined, lithocopied and circulated all across Tiruchengode;

(b) Pamphlets being circulated against the author without name or address, but containing mobile numbers; and

(c) Whatsapp messages against him

The endeavour, it is claimed, was to circulate these, especially to women and caste associations, in kalyana mandapams around Girivella and the path around Tiruchengode Hill Temple.

15. The author claims that all this caused him so much of stress, contrary to the love and respect of the students he had earned till then that he became apprehensive about his and his family's security and was unable to face such developments. Therefore, he issued a Press Statement on 27.12.2014, making it clear that he never intended to insult his native place or its inhabitants, nor did he want to hurt anybody's feelings. This was followed by the author deciding to change the reference to Tiruchengode in his sequel novels to 'Karattur', in order to obviate any further hostile reactions. Despite this, on his return from the Chennai Book Fair held on 3.1.2015, where the sequel novels were released, posters and pamphlets had been published calling for a one day bandh on 9.1.2015 in Tiruchengode town. The author became more apprehensive and on 7.1.2015, he issued a press statement, giving a detailed clarification to the effect that the novel was fictional in character and expressed regret for hurting people's sentiments by the use of the name of Tiruchengode in the novel. In furtherance of such emotion, he proposed to remove the name of Tiruchengode in the future editions and requested people not to protest in a way as to disturb normal life. A note in the same terms was issued to the Tiruchengode Town Police Station adding that the fictional novel was set 100 years back and that the author had no intention to demean women/caste groups or devotees, and stated that he himself was from the same Kongu Gounder community.

16. The author claims that he wanted to take some conciliatory steps by entering into a dialogue with those opposing him, but the opposition was faceless, though the campaign continued with full vigour against him. It was on 8.1.2015 that the author received an intimation from the District Police Office that the Revenue Divisional Officer, Tiruchengode would engage the opponents of the novel in a dialogue, while requesting the author to avoid visiting the venue of the talks, but seeking his clarification in writing. The author claims to have reiterated what he had said earlier. On the morning of 8.1.2015, on being called to the office of the Superintendent of Police, Namakkal, the author gave two letters addressed to the R.D.O., Tiruchengode, in which he apologised and volunteered to withdraw all copies of the novel with the assurance that he would modify the portions which had allegedly hurt the people's sentiments in future editions. He clearly stated that he no more had the intention to write about Tiruchengode.

17. On being called upon to attend the office of the Superintendent of Police by 5.00 p.m., when the protagonists of the bandh who were claimed also to have been invited to the talks, he complied. He, however, received information that till

about 9.30 p.m., no one had turned up at the office of the R.D.O. for the talks. He thus left at that time, but he was cautioned that he and his family should leave Namakkal. A total bandh was thereafter held for a full day on 9.1.2015, when the author and his family went away to Chennai, where they stayed for three days.

18. On 11.1.2015, the District Revenue Officer and the Inspector of Police attached to the office of the Superintendent of Police spoke to him stating that peace talks had been arranged to be held on 12.1.2015, where he was asked to be present and the following ?Summons? was issued to the author as well as the publisher :-

"Summons

Sub: Complaint - To conduct peace talk presided by District Revenue Officer in District Collector?s office related to the complaint given by Thiru. Pon. Govindarasu, representing Ardhaneeswarar Girivala Welfare Association, No. 36, Anjaneyar Koil Street, Tiruchengode Taluk, Namakkal District, seeking a ban on Madhorubagan book, which is written against Indian and Tamil cultures and by denigrating Lord Ardhaneeswarar and women, and seeking to take action against its writer and publisher - reg.

Ref : 1. Arulmighu Ardhaneeswarar Girivala Nala Sangam Petition dated 2.1.2015 of Thiru. Pon. Govindarasu

2. Thiru. Chinnasamy, Hindu Munnani petition dated 26.12.2014 on behalf of town public

3. Morur Kannakula Kongu Nattu Velalar Arakkattalai, Morur President Thiru. Kandasamy?s petition dated 26.12.2014

4. Namakkal District Sengunthar Magasana Sangam (Association) President Thiru. M. Mathesh?s petition dated 26.12.2014

5. Kongu Velalar Sangangal Koottamaippu (federation) Gen. Sec. Thiru. P.T. Rajamanickam?s petition dated -

6. Tiruchengode Police Station CSR No. 220/2014, 218/2014, 221/2014, 219/2014 dated 26.12.2014

It is proposed to hold a "Peace Talk" at 4.30 p.m. on 12.1.2015, Monday, at District Collector?s Office, to be president by District Revenue Officer, Namakkal regarding the complaints in References 1 to 5 above, which seek a ban on ? Madhorubagan? book for writing against Indian and Tamil cultures and mores and for denigrating Lord Ardhaneeswarar and women. The petitioners and respondents are asked to present themselves without absence, bringing with them the original documents they have.

Signed (Name not clear)

Revenue Divisional Officer, Tiruchengode."

At this stage, the author spoke to his friend one Mr. G.R. Swaminathan, an advocate practising at the Madurai Bench of the Madras High Court, who agreed to accompany him to the talks. However, on leaving for Namakkal in the afternoon, he received telephonic information from the police that a tense atmosphere was prevailing and that he should wait in his house. He was asked to come to the Collectorate under escort once he got the signal. However, his advocate/friend was of the view that they should go straight to the Collectorate, as if that was not safe, the position would be no different elsewhere. However, after passing information of his direct arrival at the Collectorate, a police party intervened at the toll plaza and asked the author and his advocate friend to follow them.

19. The author claims that the District Revenue Officer was engaged in talks with the opposite group and told him that the District Administration was under a duty to maintain the law and order situation. In addition to the D.R.O., the Deputy Superintendent of Police, Tiruchengode, the Inspector of Police and the local Tahsildar were also present in the room. The author was asked to make a decision after taking into account the charged conditions. He then informed the D.R.O. that he was ready to express his sincere regret. The D.R.O. is stated to have told him that the opponent groups were insisting on an unconditional apology and that he should make the same openly in their presence. If this was given in writing, the D.R.O. claimed, she would be able to persuade the opponent group. Mr. Swaminathan, the advocate accompanying the author, told the D.R.O. that she should not view the issue from a law and order angle alone, but perceive it from the prism of freedom of speech and expression, to which the D.R.O. is reported to have retorted, "Today you will speak and go, Perumal Murugan and his family will have to survive in Namakkal". The D.R.O. is then alleged to have raised her voice in an agitated manner. This led to some exchange of words between Mr. Swaminathan and the D.R.O. is stated to have asked Mr. Swaminathan to leave the room. The author claims in his affidavit that they felt very pained at this and came out of the room stating that they would write a statement and submit it. A statement was then prepared by Mr. Swaminathan in English, where he used the expression "sincere regret". On the D.R.O. having perused the same, she is stated to have asked the author to change the expression "sincere regret" to "unconditional apology". She is stated to have said that it is only then that she would be able to convince the opposing group. The author claims that he did not have the heart to apologize and came out stating that he will think about the same. The author claims that he was in a state of terrible mental confusion. He could see a large gathering at a distance in the verandah and could sense the aggression in the area, while the police party stood surrounding him and the Press went about clicking photographs. Mr. Swaminathan is stated to have assured the author of supporting him whatever be his decision, and suggested that the author could consult his wife and take a decision thereafter. The author claims to have called his wife at that point, and the conversation was held under unbearable mental strain. This state of anguish

was one that they had been facing in the preceding weeks. The author's family had been living in virtual exile and even his wife was of the opinion that by tendering the unconditional apology alone, would the situation considerably defuse. She also asked the author not to suffer an inner breakdown. It was then that the author claims to have decided to apologize and in view of the same, on re-entering the room of the D.R.O., Mr. Swaminathan struck off the words "sincere regret" and instead, wrote "unconditional apology". At that stage, the D.R.O. informed him that she may add a few more demands of the agitators. Mr. Swaminathan is stated to have told the D.R.O. that the author had agreed to comply with a few more demands, but that was to avoid the bandh. Since the bandh was successfully enforced, there was no going back from the undertaking, but the D.R.O. was insistent. Since the author had already apologized, he felt that there was no point in resisting any further and told the D.R.O. to write whatever she wanted and that he would affix his signature. After waiting for some time in another room, he was asked to come and sign the prepared minutes, but still the D.R.O. told him to wait in the room for 30 more minutes so that the agitators would disperse in the meanwhile. The author claims that he was totally frustrated by then and at that point, Mr. Swaminathan consoled him, dropped him at his house and left for Madurai. The police party is stated to have escorted the author from the Collectorate to his house. The author avers in his affidavit that his students and friends were waiting for him at his house and he felt ashamed to even face them. He justified to himself that whoever may have been behind the scene, he had apologized only to his own town-folk, but kept wondering about his literary future, which began to haunt him.

20. The author has set out what he perceives to be the function of a writer in paragraph 16 of his affidavit as under :-

"The function of a writer is to question the social values and subject them to critical examination. He must not mechanically accept anything. The society which frames the rules also provides for exceptions. It is natural for a writer to focus his writing on the exceptions. When the society insists on the rules, the writer will highlight the exceptions. That is how it is possible to perceive things from the side of the victim. Otherwise, the voice of the victim and marginalised will go unheard."

As per the author's understanding, he had been engaging himself as a writer all these years in terms of the aforesaid thought process and felt that he may not be able to write with the same understanding in the future. In fact, he did not even know who the persons who opposed him were, they still remained nameless and faceless. On introspection, he decided that whatever he wrote should not remain in print and that is why he published his own Obituary as a writer on his Facebook account. Whether others believed in it or not, the author claims that it was the death of Prof. Perumal Murugan as an author, as he could not function as a writer when under threat or fear.

21. In order to appreciate what the author perceives his feelings to be, we may

turn to the Facebook post page of the author, announcing his death as a writer in Tamil with its English translation as under :-

" ?Author Perumal Murugan has died?

Friends, the following note will stay on Facebook for the next two days. After that, Perumal Murugan will withdraw himself from all social networking activities. He thanks all those who supported him on social media.

On behalf of Perumal Murugan, a note from Pe. Murugan :

Author Perumal Murugan has died. He is no god, so he is not going to resurrect himself. Nor does he believe in reincarnation. From now on, Pe. Murugan will survive merely as a teacher, as he has been.

He thanks all magazines, media, readers, friends, writers, organisations, political parties, leaders, students and anyone else who supported Perumal Murugan and upheld the freedom of expression.

The issue is not going to end with Madhorubagan. Different groups and individuals might pick up any of his books and make it a problem. Therefore, these are the final decisions that Perumal Murugan has taken :

1. Other than those books that Perumal Murugan has compiled and published on his own, he withdraws all the novels, short stories, essays and poetry he has written so far. He says with certainty that none of these books will be on sale again.
2. He requests his publishers - Kalachuvadu, Natrinai, Adaiyalam, Malaigal and Kayalkavin not to sell his books. He will compensate them for their loss.
3. All those who have bought his books so far are free to burn them. If anyone feels they have incurred a waste or loss in buying his books, he will offer them a compensation.
4. He requests that he be not invited to any events from now on.
5. Since he is withdrawing all his books, he requests caste, religious, political and other groups not to engage in protests or create problems.

Please leave him alone. Thanks to everyone. Pe. Murugan

For Perumal Murugan

(Translated into English by Aniruddhan Vasudevan)."

The author and his wife subsequently applied for transfer.

The Sympathisers

22. We have put forth the author's story as stated by him in his affidavit filed in W.P. No. 2668 of 2015, but would like to note at this stage that this writ petition was filed by the General Secretary of the People's Union for Civil Liberties

(PUCL), Tamil Nadu and Puducherry, in public interest, in the light of what had transpired aforesaid, alleging that extrajudicial and non-State players had taken law into their hands and launched a virulent campaign demanding the withdrawal of the novel "Madhorubagan" by Prof. Perumal Murugan. While it was expected that the official respondents would give adequate protection to the author and protect his right to free speech, they are alleged to have succumbed to the illegal demands of the extra-judicial bodies and coerced the author into signing the agreement dated 12.1.2015, whereby he agreed to withdraw all unsold copies of the novel, yet while tendering an unconditional apology.

23. The scope of this writ petition was also sought to be expanded, not only to quash the Agreement dated 12.1.2015 which is alleged to have been obtained under perceived threats to the author, but also to issue appropriate directions to the respondents by framing guidelines as to how the State agencies or officials should respond and act in situations where extra-judicial organisations/ individuals threaten the exercise of free speech by individuals. There were also prayers made to provide police protection to victims, option of their transfer to another place, action against law breakers by registering FIRs, educating officials, both Revenue and Police, in addition to the method of dealing with such situations and issue directions to the State of Tamil Nadu to conduct regular programmes on these aspects in schools and colleges, Administrative Training Institutes and Judicial Training Academies.

24. Writ Petition No. 1390 of 2015 was filed by Mr. T. Lajapathi Roy, a practising advocate, to declare the agreement arrived at in the peace committee meeting held on 12.1.2015 as void, illegal, ultra vires, unenforceable, perverse and against the basic tenets of the Constitution and also for a consequent direction to issue appropriate guidelines to the District Magistrates in the State to handle such issues in a sensitive manner so as to ensure the right to freedom of speech guaranteed under Article 19(1)(a) of the Constitution of India.

25. The other writ petition, viz. W.P. No. 1215 of 2015, was filed by one S. Tamilselvan, once again in public interest, seeking a declaration that the decision of the Peace Committee Meeting held on 12.1.2015 be declared as null and void and ultra vires Article 19(1)(a) of the Constitution. The Bench was of the view that for taking into consideration the nature of the relief sought for in this writ petition, it was necessary for the author to approach them since he was party to the decision which is sought to be quashed in this writ petition. The counsel for the petitioner in W.P. No. 1215 of 2015 sought time, and on an application being filed by the author subsequently, he was impleaded as the second petitioner in this writ petition.

26. On 24.2.2015, while examining all these matters, the Division Bench took a view that since the aggrieved party was before the Court as the second petitioner in W.P. No. 1215 of 2015, there was no purpose in entertaining the other writ petitions, more specifically W.P. Nos. 1390 of 2015 and 2668 of 2015. The Bench, however, permitted the petitioners appearing in these writ petitions to assist the

Court, more specifically in view of the typed set of papers filed in W.P. No. 2668 of 2015, which contained the relevant materials in circulation prior to the Peace Committee Meeting held on 12.1.2015.

The Opponents

27. There was a counterblast to these writ petitions in the form of W.P. No. 20372 of 2015 filed by one Mr. R. Velliyangiri, a resident of Tiruchengode, seeking directions to be issued to the Governments, both State and Central, to forfeit all copies of the novel "Madhorubagan", in Tamil as well as its translation. The petitioner in this writ petition claims to be an ardent devotee of Lord Arthanareeswarar or Tiruchengode and Co-ordinator of Arulmighu Arthanareeswarar Girivala Welfare Society. He claims to have read the novel "Madhorubagan" and alleges it to be blasphemous, outrageous, defamatory, offensive and morally unacceptable. The novel is labelled as dubious, perverted, and contains false and vicious claims. The novel is claimed to be revolving around Tiruchengode and its religious life. The petitioner states that Tiruchengode is a temple town and derives its name from the historic Arulmighu Arthanareeswarar Temple located on a hill, whose colour is red and thus giving it the name. It is claimed that the temple has a hoary past, and various kings like Parantaka Chola, Vijayanagar Emperors, Mysore Kings and Nayakar Kings are stated to have developed the temple, which can be verified from the inscriptions on the temple walls. The temple has been referred to in one of the five epics of Tamil Language, viz. Silapathigaram. The temple is claimed to have been revered in the Thevaram hymns. While one of the prominent Saivaite saints Thirugnanasambandar had eulogised about the temple and its deity Ardhaneeswarar, one of the trinities of Carnatic Music, Muthuswami Dikshitar, is stated to have composed and sung songs on this historic and revered temple. It is stated that millions of temple and devotees throng the temple, and the significance of the temple is that the presiding lord is one of the 64 manifestations of Lord Shiva. The lord here is stated to have a unique form representing Shiva and Parvathi, with the deity's idol showing Lord Shiva in the male form on the right portion, while the left portion depicts the female form as Goddess Parvathi, and that is why it is also known as 'Artha-Nari', meaning half lady. The deity is also called Ammayappan or Madhorubagan, which is unique.

28. It is stated that the belief in the deity is such that people afflicted with serious diseases are believed to be cured by drinking the water from the spring which surges from the feet of the lord. It is stated that multitudes of childless couples come to the temple and pray to the God that they be blessed with a child soon. The car festival taken out during the month of Vaikasi is celebrated in a grand manner with participation from all sections of the society and there are said to be certain special rights earmarked for each community.

29. Another belief is stated to be that childless couples who come to the temple and circumambulate the 'Varadi Kal' would be blessed with a child soon. The novel written by the author (arrayed as the first respondent in the writ petition)

is alleged to have denigrated the temple and the festivities associated with it, and no genuine or proper research is said to have been done of the temple or its rituals, so as to be described in what is now claimed to be a novelised history. It is stated that while the title of the novel "Madhorubagan" is one of the names of the principal deity of the temple, the novel is woven around a story of the year 1940 about a childless couple. The plot of the story is stated to be revolving around the Kongu Vellala Gounder Kula-Gothras, while the protagonists in the plot are Kali and Ponna, a married couple, who fail to have a child, despite decades of their marriage. Kali, the husband, is advised by his mother to allow his wife to participate in a sexual orgy on the 14th day of the Vaikasi Car Festival that takes place in Arulmighu Arthaneeswarar Temple for begetting a child. But Kali strongly protests and refuses the proposal. Then, Kali's brother-in-law approaches Kali to pacify his anger and tries to convince him by stating that the popular saying "Sami Kodutha Pillai" (God given child) used by the locals is nothing but reference to children begotten by women having sexual intercourse with unknown persons during the 14th day of Vaikasi car festival.

30. The grievance of the petitioner in this writ petition is that the author, in his aforementioned novelised history, names real places of Tiruchengode, Arthanareeswarar Temple and the associated festivities, relating it with unreal sexual orgy. The novel is said to contain minute details about the festival and the area in question, and the narrative is built up by stating that almost all the married womenfolk in Tiruchengode indulge in sexual orgies with men outside their wedlock and childless women get impregnated from such one night orgies. The author refers to the womenfolk of the town by their caste name, Kongu Vellala Gounders who are predominant in the area and thus creates a slur on that caste by projecting them as prostitutes. The 14th day car festival of the Arthaneeswarar Temple is stated to be a once in a year opportunity for youths of that region to explore their libidos and orchestrate it on a maximum number of women who are aged above 30 years. Thus, the author is alleged to have projected the famous car festival of Tiruchengode Arthaneeswarar Temple as a free-for-all sex festival, thereby denigrating the festival and hurting the religious sentiments of the people. The novel is stated to inform that majority of such youths are from the Scheduled Caste community who have no responsibility and that they disappear after the event. These youths are also stated to be boasting among their friends as to how many of women they had sex with on the 14th day of the car festival.

31. The novel in question is stated to be replete with obscenities and vituperative vulgarity. In particular, reference has been made to Chapter XIV of the Tamil Edition of the novel at pages 86 and 87 describing that sexual unions take place in the Hill Temple Mandapam, in the corners of the village streets and that it is a common sight to see men and women mating with each other and their bodies lying mating everywhere. The author is stated to have narrated that after evening hours, one could see copulating bodies of men and women in the four car streets (naangu ratha veethi), in the empty land outside the town, in the

corners of the rocks and everywhere, under the cover of darkness. The author is thus stated to be projecting through his novel that such immoral, extra-marital sexual orgies take place everywhere in and around Tiruchengode town on the particular day.

32. Another specific reference is made to page 115 of the novel which to the effect that it is not unusual for womenfolk of that region to be conceived by men other than their husbands. Thus, what is believed to be God's blessings ushered in the form of children are sought to be labelled by the author as progenies of sexual orgy rituals carried on during the 14th day of the car festival in the Arthanareeswarar Temple, thereby giving a completely different interpretation to the pious expression of religious belief. This novelised history is thus stated to create a social ridicule about childless parents begetting a child owing to the veneration and blessing of the Almighty of the temple. In fact, it is suggestive of there being nothing licentious about sexual relationships carried outside marital matrimony, and such things are depicted to have been existed as a custom from time immemorial, and womenfolk who underwent these sexual orgies were expected to consider their sexual partners as God himself.

33. It is further averred in the affidavit filed in support of this writ petition that the author, at page 118 of the Tamil Edition of the novel, had expressed that promiscuous relationship is not anathema and in the novelised history, the author is stated to have introduced an entirely new idea stating that in good old days, very young boys were married to brides of much older age and for those brides, the boys were the de jure husbands, while the de facto husbands were their fathers-in-law. The petitioner goes on to state that the novel does not just stop with lewd and indecent comments, but it depresses the readers with scurrilous casteist remarks against not only the Kongu Vellala community, but also against Nadar and Scheduled Caste communities. This is said so as the portrayed characters in the novel hailing from different communities are attributed with remarks and comments ridiculing and degrading each other. It is thus alleged that the author has done so to create friction and enmity between different communities.

34. The very existence of any such social sexual ritual as projected in the novelised history is sought to be denied and thus, the author's statements made in the novel are stated to be false, indecent, derogatory, politically motivated and filthy. The author is alleged to have called the womenfolk of the region as prostitutes and depicting the devotees visiting the car festival as sexual addicts, while simultaneously deprecating Lord Arthaneeswarar's form in foul language, thus insulting the lord and his devotees. The idea behind the narrative of the novel is alleged to be an attempt to revolutionise the existing social norms, making them devoid of morality and thereby create a different social order.

35. It is further stated in the writ petition that though the author had been asked several times to substantiate his statements made in the novel "Mathorubagan", he had not done so, other than attributing it to the hearsay of two persons, Sami

Pillai and Ardhanari of Tiruchengode. There was stated to be no research behind depicting the alleged ritual and yet by portraying the temple and its rituals in a negative manner and showing them in poor light, the author is stated to have caused discredit to the temple and its devotees. The alleged ritual is stated to be a concoction stirred with a malicious intent to belittle the Arthanareeswarar Temple and wantonly wound the religious feelings of the Hindus.

36. The stand in the writ petition is that on enquiry, the petitioner herein has found that all prominent and elderly persons of Tiruchengode cutting across communities have categorically denied the existence of such sexual practise, including an eminent historian of Kongu Region, Pulavar Rasu. The records of the Hindu Religious and Charitable Endowment Department qua the temple also do not mention about any such event having ever taken place. The writ petitioner is greatly troubled by the fact that any reader of the novel would form an idea that the womenfolk of that region are immoral and sexually promiscuous in nature and if the period to which the novel relates is taken into account, it would give rise to a conclusion that even eminent persons born around 1940 are illegitimate. It would also cause severe moral crises among the children of the town.

37. The petitioner herein also pleads that there is no scientific basis for what is alleged, i.e. a barren woman conceiving at once by participating in the sexual orgy that takes place on the 14th day of the car festival. The aspect of conception cannot be reduced to mere copulation. Infertility, it is stated, could be due to either of the couple and therefore, the claim of the author is against science and at the most, absurd. It is stated that the novel is nothing but scandalous and is written with a bad intention to discredit the honour of women of Tiruchengode and that the author has committed intellectual fraud. It is stated that the Tamil publication of the novel is stated to be by the second respondent-Kalachuchuvadu Publications Pvt. Ltd., while the English translation is published by the third respondent-Penguin Books India. The State Government and Home Secretary, Ministry of Home Affairs, Government of India have also been impleaded as parties. It is stated that the English version of the novel is stated to be available in Kindle format and both the versions are on sale online, e.g., Amazon, Flipkart etc., which also carry reviews by readers of the novel. It is alleged that any negative review of the novel would generate a wrong opinion about Tamil culture as lascivious and prurient.

38. The novel has cast aspersions on the womenfolk of the Tiruchengode town of such serious nature that womenfolk who visit the temple are faced with lewd comments by strangers and bystanders and they are now even afraid to participate in the car festival. It is in the aforesaid circumstances that a ban is sought on the novel from being reprinted, published, circulated, marketed and sold, with a direction to the State/Central authorities to forfeit all copies of the offending novel, both in Tamil language and its English translation.

39. The case that is sought to be made out in the writ petition is that freedom of speech guaranteed to the citizens by the Constitution of India cannot be an

unbridled horse where anything and everything can be said, which would be grossly defamatory for other persons, apart from being a scurrilous attack on other religions.

40. Besides the above writ petition, the stand of the author's opponents was further articulated on behalf of respondents 5 and 10 in W.P. No. 1215 of 2015. It is claimed that the novel "Madhorubagan", which hit the stands in late 2010, drew little attention from the market, but grabbed eyeballs only in the year 2014 when the author, while attending a literary function in Singapore, had boasted to his audience that free consensual sex outside marriage is being practised as a ritual during temple festivals in Tamil Nadu and that he had written a book about the same. It is this information which is stated to have spread like a wild fire and the novel came to the attention of the people.

41. The opponents seek to claim that the plot of the novel revolves around the Kongu Vellala Gounder Kula-Gothras, their temple deities like Kariyakali and their villages in and around Tiruchengode, like Anangur. The protagonists in the plot are Kali and Ponna, a married childless couple, and the mother of Kali tries to persuade her son to allow Ponna to participate in the sexual orgy on the 14th day of Vaikasi Car Festival that takes place in Arulmighu Arthanareeswarar Temple for begetting a child. This is resisted by Kali, but his wife is slyly persuaded. The narrative is stated to be revolving around the 14th day car festival when almost all married childless womenfolk of Tiruchengode are stated to indulge in sexual orgy with men outside their wedlock, and childless women get impregnated from the one night orgy. In this behalf, the author is stated to have referred to the caste's name, Kongu Vellala Gounders, who are prominent in that region and thus, he cast a slur on them by calling them prostitutes. The famous car festival is sought to be projected as a 'free for all sex fest', where even unmarried youths participate, with a majority of them hailing from the Scheduled Caste community. Such sexual intercourse is stated to be taking place without any social responsibility and in fact, the youth participating in it chat among themselves and share their experiences. Thus, the portrayal of womenfolk coming to the car festival is one of prostitutes and specific attention is drawn to page 115 of the book, where there is reference to conception by womenfolk of the Kongu Region through men other than their husbands, though the children so begotten are called as "Child of God". The novel is thus stated to be giving a different interpretation to the pious expression of religious minded people, and the so called novelized history creating a social ridicule about childless parents begetting a child owing to the veneration and blessing of the almighty of the temple. This is stated to be a figment of imagination of the author and no such incident has ever occurred or at least there is no historical record of the same. The novel is stated to be containing lewd and indecent comments and casteist remarks while portraying characters from different communities.

42. The objection to the author is stated to be arising from the fact that

reference has been made to Tiruchengode Town, Arthaneswarar Temple, its deity - Madhorubagan, its car festival and the womenfolk and communities of that region. In this endeavour, the author is stated to have provided minute details about the Vaikasi festival and related events.

43. It is stated that multitudes of childless Hindu couples throng the temple and pray to the God to be blessed with a child, with the temple car being taken out during the Tamil month of Vaikasi. In the Utsavar procession, each community is stated to have exclusive rights called ?Mandagapadi?, to do poojas to the deity in procession on the specific day and time allotted to them. The 14th day of the car festival is stated to be allotted to Dalits, on which day the idol is brought down from the hill in procession and placed in the Mandapam, and after they perform the poojas, the idol is taken back to the hill. It is this 14th day of the festival which is stated as mistreated and misinterpreted by the author. The author is stated to have thus denigrated the temple and its festivities, venerated by millions of people. It was thus submitted that though the author in the preface of his novel claimed that he had carried out research and documented references about Tiruchengode, no material was produced to substantiate the same. It is only later in a press statement that the author is stated to have built up a new case of Tiruchengode of the novel not being the Tiruchengode of today and that it had been constructed as a fictional and imaginary town of ages ago and that if the name Tiruchengode was removed, the story could have occurred anywhere. The author also subsequently suggested as if 100 years ago, in different temple festivals in various parts of Tamil Nadu, such practices used to take place and that he had written only a fictional story. The reference to the Niyoga marriage from the epic Mahabharatha cannot be a suggestion for writing a lascivious, prurient, obscene and disparaging novel by the author, especially one involving a temple festival.

44. It is alleged that the reference to various books by the author to emphasise ? Sringara Rasa? as a showcase of Hinduism apart from Dharmas, Artha and Moksha, has not been correctly portrayed, as immorality was something which did not form part of it. The Smritis, Epics, Puranas and numerous other literatures are stated to be speaking about leading a life as per Dharma and the various texts cited by the author are alleged to have lifted ideas from different books written by foreign authors, who are from different cultural backgrounds. The Freudian techniques thus, it is stated, cannot be applied to Asians. The different texts cited will be dealt with while discussing these texts in the context of the book reading in the latter portion of our judgment.

45. It is the case of the opponents that Tantric texts have been misquoted and that no one knows why erotic carvings and paintings have been depicted in the temple walls and pillars. One interpretation is stated to be that these are in tune with tantric worship. For example, in Khajuraho, only 20% of the statues are erotic, while the rest are dedicated to the pantheons of gods.

46. On the issue of such writings, it has been submitted that salvation could be

attained through Bhaktiyog, the others being the Gyanyog and Karmayog. Thus, in Bhaktiyog, the devotee treats God as his personal and considers his Ishtdevta as a friend, a lover, master etc. The bhakt thus gives everything of his life to his god, in order to become one with his god. Radha, Meera, Andal, Kabeer, Tukaram, Ramdas etc. are thus stated to be great proponents of the Bhakti Movement, which is stated to be on a different plain altogether. The opponents also claim that the Devadasi system was for women to dedicate themselves to the worship and service of the temple deity, in addition to learning and practicing classical Indian artistic traditions, with the women enjoying a high social status. Thus, after marrying wealthy patrons, Devadasis spent time honing their skills instead of becoming housewives. But the advent of British Rule made the Kings of Princely States lose power, and the colonials and reformists considered Devadasis as prostitutes and failing to distinguish them from Nauch Girls, sought a ban on the system. Devadasi system was finally outlawed in the year 1988.

47. The significant aspect sought to be emphasised by the opponents is that, whatever be the material and texts submitted on behalf of the author, nothing could link it to the Arthaneswarar Temple. It is canvassed that while on the one hand the author was claiming the novel to be fictional and imaginary in character, the publisher was aligned on the folklore tradition. The events projected in the novel are never stated to have happened and thus, religious feelings of the locals have been wounded.

48. The overall impression of a reading of the book, contend the opponents, undermined the reputation of womenfolk of the Kongu Region as immoral and promiscuous in nature, as if children born in that region in the 1940s are bastards.

49. It was also sought to be canvassed that there was no single scientific basis for infertility as there can be various reasons attributable thereto, and mere copulation of one night could not guarantee conception. The novelized history, it is claimed, could cause severe moral crises among children of the region who were born to women who were childless for a long time.

50. A ban of the novel is thus sought on three primary grounds - (i) Obscenity; (ii) Defamation; and (iii) Derogatory and hurtful to the religious sentiments of the Hindus.

51. The English translation of the novel is stated to be more sophisticated and polished as compared to the Tamil edition, which is candid with abusive words, filthy language and the abominable. The Hicklin's Test is thus stated to be immaterial in proving the offence and subsequent tests have evolved over the years such as Average Person Test, Primary Audience Test, Significant Proportion Test, Roth Test, Prurient Interest Test and finally, all these tests have culminated in the Contemporary Community Standards Test.

52. Reference was made to the following judgments :-

In Re: D. Pandurangan, A.I.R. 1953 Mad 418

Shankar & Co. v. State of Madras, A.I.R. 1955 Mad 498

In Re: B. Chandrasekaran, 1957 (2) M.L.J. 559

Public Prosecutor v. P. Ramasami, A.I.R. 1964 Mad 258

S. Veerabadran Chettiar v. E.V. Ramasami Naicker, A.I.R. 1958 S.C. 1032

Ranjit D. Udeshi v. State of Maharashtra, A.I.R. 1965 S.C. 881

Raj Kapoor v. State, A.I.R. 1980 S.C. 258

Sri Baragur Ramachandrappa v. State of Karnataka, (2007) 5 S.C.C. 11

Devidas Ramachandra Tuljapurkar v. State of Maharashtra, (2015) 6 S.C.C. 1

53. The submission made was that if the test laid down in the judgment of the Supreme Court in Devidas Ramachandra Tuljapurkar's case (supra) is applied, in the instant case, the novel "Madhorubagan" would have to be labelled as obscene.

54. The right under Article 19(1)(a) of the Constitution was pleaded not to be unfettered and unguided, and the State can and has enacted laws curtailing such freedom when there is threat -

to the sovereignty and integrity of India;

to the security of India;

to the friendly relations with foreign countries of India;

to public order, decency or morality;

in relation to contempt of court;

while committing defamation; and

by inciting offence

55. It is stated that the case sought to be canvassed by the counsel for the author that the 14th day car festival is only a celebration and not a religious ceremony cannot at all be countenanced, as wounding of the religious feelings of Hindus was pleaded to be misplaced. On that date, the idol of the presiding deity is brought in a procession from the hilltop and taken to be placed in a Mandap of the Dalits, where poojas, rituals and ceremonies are conducted, where after the idol is taken back in procession to the hilltop. Thus, it is stated to be a religious practise. As to what is a religious practise is submitted to be explained by the observations of the Supreme Court in Shirur Mutt case - The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, A.I.R. 1954 S.C. 282, which was adopted in Commissioner of Police v. Acharya Jagadishwarananda Avadhuta, (2004) 12 S.C.C. 770 and more

recently in *Adi Saiva Sivachariyargal Nala Sangam v. The Government of Tamil Nadu*, (2016) 2 S.C.C. 725.

56. It is stated that both the Tamil and English versions of the novel are available for sale and are even sold online. Thus, a foreigner or people from other places who read this novelized history get a wrong notion that Tamil culture is lascivious and that a sexual orgy festival as portrayed in fact takes place in Arthanareeswarar Temple. The novel is thus alleged to be offensive and scandalous, and unless curtailed, would lead future generations to think that the events narrated in the novel are true. The author himself is stated to have held out assurances to withdraw certain portions from the novel and expressed his heartfelt apology for his writing. The endeavour of the Revenue Divisional Officer to call for a peace meeting could not be doubted, and the agreement, which was arrived at, is in the nature of a private contract. The right to protest is claimed to be a fundamental right and the matter having been brought to arrest, the petitioners were reviving the status quo ante. The opponents claim that if writing is an artistic freedom, expressing angst against it is the readers' freedom. Both rights are reciprocal and therefore, it was unjust and unwise of the first petitioner to have become some kind of a flag bearer of the artistes' rights alone. The burning of books, otherwise known as 'Biblioclasm', is one of the ways of ventilating public anger and has been invoked from times immemorial. The right to freedom of speech and expression should not affect the rights, sentiments and liberties of others. In such circumstances, it was pleaded, that Hinduism itself had come under threat at the hands of the so called progressive writers, Marxists, Periyarists, Pseudo-Christian liberals and Islamists, who have written and published several books ridiculing Hinduism and its saints. Examples of the same are "Thandavapuram" by Solai Sundara Perumal (the book shows Saint Thirugnanasambandar in very bad light) and "Nonbu" by Daniel Selvaraj (denigrating the venerated Vaishnavite Saints Periyalwar and Andal). It was submitted that there was no intimidation or coercion of the author, who had himself proclaimed that the writer in him was dead, which was a stunt to evoke sympathy from a section of the public.

57. Mr. Pon Govindarasu, the 5th respondent in W.P. No. 1215 of 2015, who is the Co-ordinator of Arulmighu Arthanareeswarar Girvala Nala Sangam, has filed a separate counter affidavit, more or less on the aforesaid grounds. According to him, the author is alleged to have allegiance to the Leftist, Marxist and Dravidian ideologies having no faith in Indian culture and heritage. The so called progressive writers are attributed of having vested interests in breaking the country as, their ideologies do not synchronise with the mainstream beliefs, and they operate as fringe groups through their talk of "progressiveness". They are stated to be trying to create aspersions in the minds of people to question their belief system and ridicule their religion with an endeavour to create class struggle and overthrow institutions and the author is stated to be one amongst this clan. It is averred that having chosen to ignore the state of mind of the multitudes of Hindus whose religious sentiments were ridiculed and offended by

his writings, the author cannot take moral high ground, claiming himself to be dead as a writer. In this regard, references were made to a few books of the so called 'progressive' writers, ridiculing Hindu religion. It is stated that the settlement dated 12.1.2015 was the result of the author's own offer and he was stated to be under no compulsion whatsoever. The author is stated to have had the option to refuse to sign the settlement.

58. Similarly, the counter affidavit filed by the Hindu Munnani, the 6th respondent in the writ petition, contains more or less the same statements. It is submitted that initially the novel remained unquestioned as nobody knew about it, but once people had an opportunity to read it, there was a natural outburst. It is stated that on 12.1.2015, when the author came to the Collectorate for the peace talks, he was accompanied by a well known advocate and thus, he could have hardly said to have been under any pressure to sign the settlement. Once again, the allegation is of such authors, through different books, denigrating the Hindu religion.

59. The affidavits of the other private respondents in the writ petition need not be dealt with in extenso because their crux is the same as discussed herein above.

Criminal Proceedings

60. This Court is also confronted with two Criminal Original Petitions bearing Nos.7086 and 7153 of 2015 filed by the Namakkal District Senguntha Mahajana Sangam and the Kongu Vellalar Sangamal Koottamaippu respectively against the author and his novel.

61. In the first petition, it is affirmed that the Association works for the welfare of its community, viz. Sengunthars and its members are handloom weavers for past generations immemorial settled in the area forming considerable population of Tiruchengode. One of the members of the Association is stated to have purchased the novel "Madhorubagan" and on reading, found it vulgar with contents degrading the entire public of Tiruchengode. The main characters are stated to be people belonging to their community. Their deity is Arthaneswarar and another name by which the deity is called is 'Madhorubagan' (Maadhu Oru Bagan). The novel is thus alleged to be portraying a practise which does not exist, when on the 14th day of the temple car festival, childless women are alleged to be licensed to have intercourse with any available male and the children so begotten are given names such as 'Thagappan Samy' and 'Kuzhanthai Samy', meaning Children of God. The novel is stated to contain indecent and humiliating dialogues, whereby the whole society has been offended. No research has been carried out to support the alleged practise. The petitioner is stated to have filed a complaint on 26.12.2014 against the author of the novel and the publishers, and C.S.R. No. 219 of 2015 was issued, but despite lapse of two months, no action is said to have been taken thereon. Thus, the prayer made is to register a F.I.R. based on the complaint and take necessary

action in accordance with law.

62. The petitioner in the second petition claims to be an Association of Federation of various organisations of Kongu Vellalar community and as in the former petition, it is pleaded in this petition also that one of its members purchased the novel titled "Madhorubagan". In fact, the allegations are practically identical, with just the C.S.R. Number being different herein, viz. C.S.R. No. 218 of 2015, and an identical relief is sought qua the said C.S.R.

63. The written submissions filed on behalf of the petitioners in these criminal original petitions, inter alia, go on to narrate the offences allegedly made out under various provisions of the Indian Penal Code. Section 153-A(1)(b) is invoked on the ground that the author has committed acts which disturb or are likely to disturb public tranquillity. Section 292 is invoked on account of the vulgarity stated to be scattered all over the novel. It is stated that some of the dialogues in the Tamil version of the novel have been left out in the English version, and the English version is stated to be much more restrained, in that an endeavour has been made to soften the incidents and while depicting the vulgarity attached thereto. The belief of the devotees is that if a childless couple circumambulate a holy stone named 'Varagadi Kal', they will have a child within a short period and that is not what is portrayed in the novel and thus, the religious feelings of the believers have been wounded and therefore, the author is stated to have committed offences under Section 295-A read with Section 298 of the Code. It is also stated that offences have been committed under Section 505(1)(b) by creating a situation where the entire public of Tiruchengode town and the villages around it came out on the streets to conduct public demonstrations. In addition, the petitioners in the criminal original petitions allege that the author and the publisher are also guilty of an offence under the Indecent Representation of Women (Prohibition) Act, 1986 coming within the meaning of Section 2(c) of the Act, which defines indecent representation of women as depicting her figure, her form or body or any part in such a way as to have the effect of being indecent, or derogatory to or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals. The aforesaid Associations go on record to state that the novel also attracts offences under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as the novel contains several dialogues naming Scheduled Caste persons as 'Chaklis' and 'Parayas'.

The State

64. The District Collector, District Revenue Officer and the Deputy Superintendent of Police, Namakkal viz. respondents 2, 3 and 4 in W.P. No. 1215 of 2015, have adopted a common defence to the plea of quashing the settlement arrived at between the author and the agitating groups at the office of the District Revenue Officer, Namakkal on 12.1.2015, pleading that it was not maintainable in law. According to the authorities, the reason for their intervention is said to have arisen on 26.12.2014, when about 100 persons under the leadership of the local

Hindu Munnani leader one Mr. Mahalingam agitated in front of the Kailasanathar Temple, Tiruchengode against the novel "Madhorubagan" and its author and went to the police station to file a F.I.R. Copies of the novel are stated to have been burnt by about 25 persons in front of the police station. People from all walks of life, including public and communal organisations in Tiruchengode, are stated to have put up handbills and posters calling for a one day strike on 9.1.2015 in Tiruchengode. Such a complete close down did occur that day and thus on 10.1.2015, the Superintendent of Police, Namakkal is stated to have endeavoured to conduct conciliatory talks with the protesters by presenting the written regret letter of the author, but the protesters demanded a public apology. It is averred that the author and the publishers of the book did not participate in the talks and the protestors did not accept the regret letter of the author. On 10.1.2015, about 500 men and women from the Arthaneeswarar Girivala Nala Sangam, Kongu Vellalar Trust, Morur Kannan Kula Trust, Maveeran Theeran Chinnamalai Peravai, Tiruchengode Vanigar Sangam, Nadar Peravai and Tiruchengode Lorry Owners' Association held a meeting and demanded criminal action against the author and threatened that they would intensify the protests till stern action is taken against the novelist and until he made a public apology. It is to put an end to the raging controversy and to maintain law and order that both parties were stated to have been summoned for a peace meeting conducted on 10.1.2015, when about 100 men from various protesting organisations came to the Collectorate. Two representatives from each protesting organisation numbering 30 men were allowed to enter the Collectorate and were seated in the Conference Hall. The District Revenue Officer asked only five men to represent the protesters inside her chamber, where the Tahsildar, the Deputy Superintendent of Police and the Inspector of Police were also present. The author is stated to have come to the peace talks with his advocate friend, Mr. G.R. Swaminathan, who was then and now the Assistant Solicitor General at the Madurai Bench of the Madras High Court, and they were seated in the chamber of the Deputy Collector. The peace talks are stated to have lasted from 4.30 to 10.30 p.m.

65. The protesters are stated to have demanded a public apology from the author, criminal action against him, banning the novel and getting back the unsold copies etc. The author, on the other hand, after introducing himself, talked about the novel "Madhurobagan", the story of a childless couple. He expressed disappointment about the attitude adopted by the people of his home town and referred to his various literary works on Kongu Region. He looked drained and exhausted. The demand of the protesters were informed to him, but the author is stated to have expressed his readiness to apologise if the issue would be settled with that and claimed that he has suffered lot of mental agony in view of the agitations of the people from Tiruchengode. The author and his advocate are stated to have mulled over the issue and the author also discussed the same with his wife. It is averred that the author was informed that he had the option of walking out of the peace talks if the terms were not agreeable to

him. The author thereafter claimed that he wanted to settle the issue amicably and that he was willing to accept some of the demands of the protesters, including unconditional apology, revising the controversial portions and taking back the unsold copies. The protesters were also willing to accept the solutions proposed by the author and consequently agreed to drop their demand for criminal action against the author and withdraw their protests.

66. The Draft Agreement stated to have been prepared after consultation between both the parties read as follows :-

"1. The author tendered unconditional apology for having hurt the feelings of the people of the town.

2. The story of the novel was imaginary.

3. In the further editions of the novel, the controversial areas relating to Tiruchengode would be revised.

4. The unsold copies of the present edition would be taken back by the author from circulation.

5. The people and various protesting organisations of Tiruchengode would withdraw all forms of protests with immediate effect."

Both parties signed the agreement after going through it and the District Administration is stated to have instructed the police to give protection to the author.

67. The counter affidavit filed by the authorities surprisingly goes on to state that nothing could be done at this stage on the aspect of the feelings of the author, as the people of the town were outraged towards the manner in which the author had made slanderous remarks against the womenfolk of Tiruchengode in the novel. It is, however, denied that the District Revenue Officer asked the advocate to leave the room. The factum of the author deciding to publish his own obituary in the face of the reactions to the novel is stated not to have any relevance or bearing on the peace committee meeting and it is stated that the author had taken a voluntary decision. The last paragraph of the affidavit states that the causative factor that contributed to the burning of the novel, bandh and hartal in addition to the adverse law and order situation was the activity of Mr. Perumal Murugan "in publishing slanderous remarks as stated by the protesting groups, questioning the modesty and chastity of the womenfolk in Tiruchengode area in his novel", which ended with his tendering of the unconditional apology.

68. Learned Public Prosecutor and the learned Additional Advocate General appearing on behalf of the State sought to defend the endeavours taken on the part of the Administration to bring peace to the town of Tiruchengode by way of the settlement talks, claiming that the officials were well within their rights to do so.

69. As to whether something is obscene or not, a reference was made to Ranjit

D. Udeshi's case (supra) to contend that the test which we evolve must obviously be of a general character, however, it must admit of just application from case to case by indicating a line of demarcation not necessarily sharp, but sufficiently distinct in order to distinguish between that which is obscene and that which is not. It was also contended that a writ petition under the guise of seeking a writ of mandamus directing police authorities to give protection to the writ petitioner cannot be made a forum for adjudication on civil rights, just as a direction to police authorities to protect possession in case of a disputed property without first establishing his possession in appropriate civil court cannot be the subject of a writ of mandamus (E. Sundaresan v. Tamil Nadu Wakf Board, 2014 (2) CTC 622).

70. We may add at this stage itself that we really find no relevance of this judgment to the matter in issue. A learned single Judge of this Court, in *The Board of Trustees of Arulmighu Poottai Mariamman Temple v. The Revenue Divisional Officer-cum-Executive Magistrate*, (2010) 4 M.L.J. 1077, dealt with a matter of a temple festival and the car festival of the Arulmighu Poottai Mariamman Temple. Peace Committee Meetings were held by the Revenue Divisional Officer, which resulted in prohibition of the car festival as it used to go on with the route being decided by Government Officials. This was assailed by the Board of Trustees of the Temple. It was held that the attempt by the Board of Trustees to prevent Dalits from taking part in the temple car festival cannot be accepted by the Court. Similarly, in *S. Sivakumar v. State of Tamil Nadu*, 2013 (5) C.T.C. 695, another learned single Judge of this Court upheld the police restrictions in respect of conducting celebrations relating to political leaders.

The Publisher

71. The publisher of the novel, M/s. Kalachuvadu Publications Pvt. Ltd., the 14th respondent in W.P. No. 1215 of 2015, which continued its unstinted support for the author and the novel, has filed a counter affidavit in the writ petition through its Managing Director, wherein it is stated that they have published over 700 titles and that many of its writers/authors have received high accolades and recognition for their works. Amongst the list of prominent authors whose works they have published is Dr. Perumal Murugan, who they term as a prolific writer in Tamil, who had published in all genres ranging from poetry, short story, essays, collection of historical works, novels and other forms of writing, with many of his writings having received critical acclaim over a period of time. To illustrate this fact, the publisher enumerates the following works of Dr. Perumal Murugan :-

9 novels, with his first novel 'Eru veyil', published in 1991

4 short story collections

4 poetry collections

8 essay collections

1 dictionary - 'Kongu Vattara Cholagarathi'

- Lexicon of terms in Kongu Region

4 edited volumes of articles by historical personalities of Kongu Region

7 edited volumes of collected writings

According to the publisher, the quality and eminence of the writings of Dr. Perumal Murugan are apparent from the following awards he has received:-

He has won the Government of Tamil Nadu's State Award for Best book (the dictionary) in 2002

He also won the Katha Prize in 2000

His novel 'Koolamadari' was translated into English as 'Seasons of the Palm', was shortlisted for the prestigious Japanese 'Kiryama' Award, an international literary award

He has also won the 'Vilakku' - Pudumaipithan Award (USA) in 2012

He also received the Kasturi Srinivasan Trust Award

He has been awarded the ILF - Bhasha Award, 2015 on 28th November, 2015 for Madhorubagan, which was selected by a distinguished panel of writers/literateurs

His novel 'Madhorubagan' was translated in English as 'One Part Woman' by Anirudhan Vasudevan, who recently received a Canadian Award for his outstanding work

The said novel was also recommended for the Sahitya Akademi Award

In fact, it is stated that Dr. Perumal Murugan has received numerous awards conferred by organisations in his native Kongu Region in recognition of his contribution to documenting the life, culture, history and literature (both oral and written) of the area.

72. The publisher, as he understands the theme of the novel "Madhorubagan" is set in Tiruchengode before India's Independence and chronicles the life of a couple Kali and Ponna, who though very much in love with each other, were struggling with the social implications of childlessness. Thus, the novel is stated to be really exploring the problems of being childless and the social and community stigma that childless couple have to undergo in some communities. The novel dramatises an earlier existing custom of consensual union among consenting adults outside of marriage encouraged during the time of village festivities, thereby providing the couple with community legitimated solution for the problems of childlessness. The novel is stated to contain powerful and earthy dialogues carrying fascinating idiomatic local expressions. The story is said to be gripping and reflects the deep understanding on the part of the author about the social history, the practices and the psyche of the local populace. Thus, the novel is stated to be representative of one of the finest expressions of artistic creativity which weaves intense human stories around social history, thereby giving the

reader a glimpse into the lives of ordinary, rustic villagers living in Tiruchengode area.

73. It is stated that the title "Madhorubagan" is taken from the name of the presiding deity of Tiruchengode Shiva Temple and is supposed to depict the unique concept of Ardhanari showing Lord Shiva's body made up in equal parts of Lord Shiva and Goddess Parvathi. The story is said to be fictional and it is clearly stated so in the novel itself. For four years since the novel was released in 2010, there was no controversy about the novel or its author, despite sale of substantial copies. The controversy broke out only after a year of the publication of the English version in early December, 2014, when the author is stated to have gone to attend a Writers' Residency to Bangalore, during which time he completed two sequel novels, which were to be published as 'Aalavandan' and 'Ardhanari'. It is on his return that the controversy gained ground.

74. The affidavit filed on behalf of the publisher then narrates what transpired with the author as narrated to them, a story which has already been set out. The booklets circulated had picked up 8 pages from the novel of 190 pages in Tamil with certain paragraphs underlined, which are stated to have been widely distributed. Thus, the endeavour was to see that the persons who read the booklet would form an opinion on the basis of isolated pages of the novel, torn out of their context. The manner in which the hate campaign was led against the author showed that rather than this being an act of the local people alone, some organised forces were at play, deliberately stoking embers of caste, hatred and anger against the author and the novel. The police remained totally indifferent during this time when pamphlets and booklets were distributed publicly.

75. It is stated that the procession taken out on 26.12.2014 was not an isolated incident, but was coupled with messages being posed on Facebook. The deponent in fact advised the author to leave Namakkal elsewhere in view of his and his family's personal safety. The two sequels to the novel were released on 3.1.2015 after the author decided to change the reference to Tiruchengode in those two books. Once again, the remaining story set out is as told by the author to the publisher and we have already extracted the author's version herein above. We may add that the episode of the advocate Mr. Swaminathan accompanying the author was narrated by the advocate even to the publisher, who authenticates that version.

76. The end result is stated to be the Facebook post of the author that the writer in him was dead, indicating the author's extreme emotional turmoil and his psychological state of mind. The normally sensitive, creative and expressive author is stated to have retreated into a shell, refusing to meet and talk to others. Later on, the request of the author for transfer to Chennai was accepted, but prior to that, the author or his family dared not venture out anywhere. The publisher claims that since that episode, the author became reclusive, withdrew from society and it became practically the deponent's responsibility to face the public and present the author's version on all public media platforms. In

deference to the wishes of the author, the deponent had decided not to sell the novel, but then realised that this was a trap since once he complied in such a situation, many more such demands would follow in future.

77. The publisher denies any binding force of the agreement to which it was not a party and which was between the author and third parties, in the presence of officials, especially when it was obtained under threat and duress. It is pleaded that there could neither be a waiver of fundamental rights nor an estoppel against such rights. The larger issue thus sought to be raised is that there should be adequate protection against recurring incidents of intolerance to published works on parochial and prejudicial grounds of caste, community and other emotive fronts, with guidelines sought to be laid down regarding the duties of Government functionaries in matters such as this. The controversy in question is stated to have sent shock-waves among writers, authors and film-makers as it highlights a worrying trend being witnessed in different parts of the country - a rising phenomenon of extra-judicial, casteist and religious forces dictating the creativity of authors and writers.

78. The publisher also seeks to highlight the dogmatic role of the State Authorities in the entire episode when little was done to enforce the rule of law and safeguard the fundamental rights of speech and expression. On the other hand, it is stated that there appeared to be a tacit support to the agitators in compelling the author to arrive at some kind of a settlement. This, in turn, it is pleaded, requires a set of guidelines based on Constitutional principles to guide the officials, especially with extra-judicial groups threatening authors and writers.

79. The aforesaid is stated to have a direct impact even on publishers of such literary works as little thought and attention is paid to their predicament or on those who help fund the creative art form. There is stated to be not only the right of the author or creator, but also the fundamental rights of the reader or listener or receiver of the information. The peace talks as the one in the instant case are stated to be slowly taking shape of kangaroo courts with individual writers or film-makers, often cornered alone during the talks, whereas the protesters are in large numbers. These talks are generally held in a climate surcharged with tension and hostility. It results in an absurd situation when individuals are browbeaten and forced to give up their fundamental rights for the sake of a compromise, brokered by administration and police on the ground of maintaining 'law and order'. Thus, the so called peace committees conducted by officials are akin to 'katta panchayats' conducted by local musclemen or local politicians and are a threat to democratic polity and the performance of the fundamental role of the judiciary.

80. Dr. V. Suresh, learned counsel appearing on behalf of the publisher, sought to build a case on the concept of folklore and fictional writing built around folklore. The novel 'Mathorubagan, it was submitted, was touching on the sensitivity of the human pathos of a childless couple. The counsel canvassed that it is not necessary that all part of history be documented. The reason was that such

documentation was not the mode for certain socially and economically backward sections of the society and those at the lower end of the spectrum; the mode of transmission of practices prevalent in those times was by the word of mouth. These were in the nature of folklores. Thus, it would be well nigh impossible to have documented history to back the novel, as sought by the opponents of novel, whose case was that if at all such practices were prevalent, they should have been backed by documented research. Learned counsel submitted that the main plea of the author as circulated was that the writings were fictional in character, though they may have their base in folklores.

81. It is stated that the Indian Languages Festival (ILF), conceived in the year 2011, also known as ILF Samanvay, which has emerged as the only literature festival dedicated exclusively to Indian languages with a view to generate a dialogue at various levels and has presented large number of writers from various languages, bestows two major awards, the Vani-Samanvay Distinguished Translator Award and the ILF Samanvay Bhasha Samman. The latter is stated to be given to recognise the best book writing in the last five years in any of the local languages of the festival in any given year. There was a lifetime achievement award in the year 2014, but it was changed to a Book Award in the year 2015. The author Perumal Murugan was a recipient of this award in 2015. The Jury Chair K. Satchidanandan has stated about the author's work as under :-

"Perumal Murugan's Madhorubhagan (One Part Woman) is a rooted and passionate work of fiction that narrates with searing intensity and unsparing clarity the story of a relationship caught between the dictates of social convention and the tug of personal anxieties. This historian of the Kongu region of Tamil Nadu has brought into play his lyrical imagination, linguistic skill and lexical knowledge in this honest exploration of the tyranny of caste and the pathology of a community. Inspired by local folklore and history, this great work of fiction dreams of a secular future for communities in India that remain hostage to the ways of the past. It is an imaginative contribution by a versatile writer and scholar to the collective struggle for a new India free from the oppression of caste and enslaving conventions."

Responding to the Award, the author gave the following statement :-

"The Samanvay Award for Madhorubhagan is a modern recognition given to Tamil, a classical language with a long and unbroken literary tradition. This recognition, bestowed on my language at an unfortunate moment, will, I hope, be a shining gem rather than an unsightly wart. I wholeheartedly thank everyone who made this possible. Constrained by force of circumstance to act as the shadow of Perumal Murugan, I feel honoured by this award. I dedicate the Samanvay Award to the lotus feet of the almighty lord Madhorubhagan."

82. The translation of the novel is also stated to be a piece of art and received much acclaim. The Tamil Literary Guardian based at Toronto, Canada conferred the 'Lifetime Achievement Award', to the translator of the novel

"Madhorubagan" by issuing a Citation, observing that it dealt with the family and social relationships and was written in a regional idiom that is still accessible to a wide readership: "The English translation has finally retained the spread, richness and beauty of the Tamil novel".

83. Learned counsel for the publisher has made a chart of books and articles where literary references had been made to folklore stories about sexual practices and social mores akin to the practise described in "Madhorubagan". All these are stated to be in Tamil language and have been translated into English :-

(i) ?Nattuppura Paliyal Kathaikal? - It is a collection of 25 hitherto new and untold accounts of sexual explicit folk stories collected from oral sources written by K. Rajanarayanan and Kazhaniooran.

Particular reference is made to Story No.4 of the collection, which talks of a local story where the story teller ends alluding to a sexual act between father-in-law and daughter-in-law.

(ii) ?Vayathu Vandhavargalukku Mattum?

- ?For Adults Only? written by K. Rajanarayanan. This is a collection of 28 popular, sexually explicit folk tales forming part of the major collection by the author, presented with rich sketches by Trotsky Maruthu, serially published in the Tamil literary magazine, ?Thai?.

(iii) ?Manthiramum Sadankukalum? - ?Magic and Rituals? by A.Sivasubramanian.

This book is a collection of research articles based on folklore research, where the author has referred to a festival called ?Thattaikattu Thiruvizha? (Festival of Thattaikadu) in Tuticorin District about 35-40 years back. In page 65 of the book, the author writes that in the Tamil month of Maasi, during the temple festival, there was an accepted and practised ritual when on one night, rules of sexual liaison were relaxed and any man and woman could have sexual relations within the privacy offered by uncut stalks (Thattai) of kambu and cholam (millets) left behind after the harvest in the fields. After that day, the stalks were cut and removed. That?s how the festival got its name. However, in later years, this practise was discontinued.

(iv) ?Karthikai Deepam - Ulagapperuvizha?

- ?Karthikai Deepam, a World Festival? by Dr. K. Kiruttinan. This book documents various rituals and activities associated with Karthikai Deepam festival. From pages 110 to 114 of the book, the author writes about the "festival of unrestrained sex" in which local practices are compared with similar practices of ritualistic unrestrained sex between consenting adults in countries like Chile and Nicaragua.

(v) ?Aavanakkalariaagum Pudhinum? - A Review of Perumal Murugan?s book by noted film and book critic, Theodore Bhaskaran.

This is a story built on the practise that was prevalent in several places in Tamil Nadu. The author states that it is a time old, socially accepted practise for a woman who could not bear a child to have sexual relations with a man of her choice, but who she did not know before, to have sex and thus become pregnant.

The author herein states that from what he knows until 30 years back, in festivals in two of the places where he had worked as a Civil Servant in the State, he had learnt of the prevalence of similar practices. One was a festival occurring during summer times on the broad shores of the wide Cauvery river. It was called 'Thuppatti Vizha' in that place. The processional Siva deities from 5 nearby temples will be brought to the middle of the river bed. The festival continued even after the sun sets. Youths will come to the festival with a blanket or shawl (thuppatti) thrown over their shoulders. The arena (for them) is the wide sandy river bed of the Cauvery.

The author in this review talks about another festival which used to take place in a temple of the then North Arcot District, which was noted for its long and majestic prakaram (verandah way inside temples). 'Son of Saami (god)', 'child of god (sami kozhunthu)' is the term used to refer to such children is what is explained by the author. The acceptability of such practices has been written recently by Jeyamohan in his book 'In the name of the Cross' thus : "Indian customs and practices have always provided space for relaxation and violation of rules and this has been part of Indian culture. Violations are taking place in some intense sites in a society, but Indian morality considered that they cannot be lawfully prevented.

(vi) Book review of Madhorubagan - A.K. Perumal

A.K. Perumal, a respected literary figure, states that in order to ensure that the lineage is not ended, to have sexual relations with another man was seen as a Dharmic (dharma) activity not only in the great texts of traditional literature, but also in folklore. Such practices which existed in specific geographical zones were usually integrated with local festivals or practices. Taking infertile women to such festivals used to be a practise in some places in the southern districts.

This author also refers to the 'Thattaikattu Thiruvizha' which took place in Maasi month in Tuticorin district some 40 years back, where a woman can take a man she likes to the Cholan (maize) fields and have sex.

The author further states that the erstwhile South Travancore region, which is now Kanyakumari district, there is oral evidence of a practise/custom that existed in a famed Catholic church festival and in a specific festival in a famous Hindu temple where an older woman would bring a woman who had not borne children and choose a suitable man for her (to have sexual relations).

He states that on the shores of south Kumari during the period when there were strong winds (sozhakkatru), maidens were not expected to walk and it was believed that they will get pregnant if they violated (this rule). In this

connection, there is the 'Purushadevi Padal' (a type of songs). During the Chithirai Pournami festival in Madurai, women of a particular community will pray to get pregnant, and with the knowledge of their men, will proceed to have sex with other men. In village festivals alone, there will be relaxation of such customary practices, and joining of separated relations used to be a timeless practise.

84. By placing reliance on the aforesaid texts, learned counsel for the publisher contended before us that what the author in the present case has gone through is a battle between a creative person and a mob. In this context, he referred to the critique "The Ponna of Fiction and Ponnas of the Real World" by Ms. Lavanya Manoharan, whose English translation was made by Aniruddhan Vasudevan, the Tamil version being published in Kalachuvadu Magazine, Issue No. 184 in April, 2015. The article points out that the oppressive protests unleashed by one section of the people against the novel is a selfish act that is in no way different from or inferior to the tyranny of those who call childless women 'barren' and men 'useless'. The article observes that those who are familiar of the fate of childless couple in our society cannot but shed tears while reading some sections of the novel. For instance, those advocating a second marriage for Kali say this in front of Ponna :

"Some cows are just bad luck, Mappillai. No matter how many times you mate them with the bull, they never conceive. Just change the cow, Mappillai".

Ponna subjects herself to all sorts of treatments to somehow conceive - even walk around the Barren Rock located dangerously on the hilltop, which even the men of the region find difficult to negotiate. The relatives, on the other hand, encourage their own children to interact with the childless couple and spend time with them only so that they could benefit from the wealth of the two. However, when the children get hurt while playing outside, they quickly retort, "Only a woman who has given birth to her own kids would know how to take care of another's"? When Ponna goes for some auspicious family functions or to help others in their lands during the sowing season, she is insulted as bearer of bad luck. In fact, even Kali is not spared from the social humiliation. People taunt him saying,

"It is not enough that the fluids that go into you are excellent ones, it is important that the fluids that come out of you are also of excellent quality".

Karuppannan, who has an eye on Ponna, tells Kali, "Haven't you been watering the palm? It looks dried and withered".

85. The counsel admitted that the language employed in the novel was earthy and not sophisticated, but then, this earthy language could not be sanitized because it related to the story of a section of the society which spoke that language. The insults and hardships heaped on Ponna gave her a feeling that her body was created for no other purpose but to produce children and thus, if she is unable to beget even one child, there was no point in her living, even driving her

to thoughts of suicide. The article describes the pathos as under :-

"Unlike men, who feel an instantaneous desire to touch and experience the softness of women they meet, most women do not approach men that way. She is not ready to open herself to everyone. No man who is unable to touch a woman's heart gets to touch her body. If he dares to, it is equal to sexual violence. If Ponna brings herself to go with a stranger for the sake of becoming pregnant, how much effort must have taken to keep away her feminine nature? Even if she thinks of the night as a ritual for the gods, what kind of consolation can such an explanation offer her? It does not take away the fact that what she goes through is deeply humiliating her. It is the insults she has suffered in the twelve years of her marriage that force her to resort to such a ritual. Even though she shares a good relationship with Kali, it is only after her sense of privacy has been completely invaded and ripped apart by society that she makes such a decision.

When Kali asks her if she was planning to go to the fourteenth day of the festival, she replies that she would if he wanted her to. That is not the reply he expects to hear. Even though he was witnessed Ponna's suffering at being childless, even though he too has experienced much humiliation, he refuses to send her to the festival. When his mother, his parents-in-law, and brother-in-law come to him, suggesting Ponna should go to the festival, he turns them away, calling them 'pimps'. After two years, they manage to trick Ponna, making her believe that she has Kali's permission. But Kali finds this out somehow. There is no guarantee that Ponna would become pregnant from this encounter. But even if she did not, would n't he always think of her as a wife who has been with another man? Would n't that cause Ponna more suffering than the state of being childless? Why is so much violence dealt to women alone? It must have been Perumal Murugan's intention to merely register this point courageously."

86. The aforesaid issue is sought to be given a contextual meaning in the present day with the existence of fertility centres for/of assisted reproduction, which are thronged by childless couples, much like the festival crowds described in the novel. At these centres, various assisted reproductive technologies are adopted to help aid childless women conceive and it takes hours together to get even a single scanning done. The writer goes on to state the practise in the context of the treatment by the author as under :-

"Centres for/of Assisted Reproduction are thronging with crowds much like the festival crowds described in the novel. In order to get a single scanning done, a woman has to wait from 9 am till 3 p.m. And for the sake of time and efficiency, while a woman is getting scanned, the next woman has to strip and be ready behind a curtain in the same room. After her scan, the first woman would enter the changing room barely covered. Sometimes, they might call in her husband to discuss some test results. In that case, the second woman who has stripped and is waiting, would have to endure the presence of this other man. Women who are ashamed of such things cannot get their tests done in these settings.

In the West, even dental extractions are protected by confidentiality clauses. When violated, hospitals and physicians will have to endure severe penalties or will have to compensate the patient adequately for the breach of confidentiality. But in our country, couples who make such intimate and private choices such as going for Assisted Reproductive Technology are doing so with the full awareness that there is no guarantee here that their privacy and confidentiality will be protected.

On the other hand, there are centres for assisted reproduction that say they can find you embryos from your caste and from those whose appearance and skin colour match yours. They even inseminate a woman with semen from a donor through a process called 'Donor Semen Intrauterine Insemination'. Why don't our self-appointed guardians of culture protest such measures?

Women of today continue to experience all suffering and humiliation experienced by Ponna in the novel's time. And such women are from all religions and all castes. And when such women go out of the house, they have to hear advices like, "Why don't you go to this temple? Why not see this doctor?" Childless women are isolated and insulted in social occasions even today.

At no point does anyone ask if a woman gets to experience any bodily pleasure. She does not even have the right to choose when she wants to have children. How could a novel like 'Madhorubagan' insult a society that drives women, in order to escape social torment for being childless, to subject themselves to the cold, clinical and pleasure-less technique of Assisted Reproduction? Among all these faces that now come bearing the mask of caste to protest the novel, is not there even one that has sought the help of artificial reproductive technologies?

In the Mahabharatha, Amba, Ambika and Ambalika were intended to be Bhishma's wives. But Ambika and Ambalika marry Vichitraveerya. Pandu and Dhritarashtra, who were born to these two women, were they born to Vichitraveerya? Also, were any of the sons of Kunti and Madri born to Pandu? Why have all those who now protest 'Madhorubagan' spared the Mahabharatha? The debates that are now happening around 'Madhorubagan' are nothing but expressions of selfish and ulterior motives."

87. Material is also produced qua the development of sperm banks, which though stated to be controversial, have enabled women to have greater control over their reproductive lives. At these banks, much like blood banks, sperms supplied by sperm donors are collected and preserved, which are then used in cases where a woman's partner is infertile or where there are other genetic disorders affecting impregnation. In fact, we may note that not very long ago, there was a full length Hindi commercial feature film "Vicky Donor" on this very topic, where of course, the subject has been dealt with in a subtle, humorous manner.

88. The publisher seeks to plead that what the author has written is fictionalized history, i.e, take a part of history, implant fictional characters therein and present his own view thereof. This history, however, is not a recorded history as it is

taken from folklore, which is history of the underprivileged and which need not be recorded as history.

The Author

89. The author Perumal Murugan was initially a reluctant participant in the proceedings dealing with the novel in controversy. We have already noticed that he was not the original writ petitioner, but we issued a notice to him to know whether he would like to participate in the proceedings and he ultimately joined in as the second petitioner in W.P. No. 1215 of 2015, with Mr. Satish Parasaran, Advocate canvassing his case.

90. In a nutshell, the author pleaded that getting into controversy was the least of his priorities and was something he was not ready for, as his earlier books had been well received. There was in fact no controversy in respect of the Tamil version of the novel published in 2010. The focus of the novel was on the social difficulties faced by a childless couple. It was only in 2014, after the English version was published, that a small section of the society decided to make an issue out of certain portions of the novel without appreciating its focus - not a way to appreciate a book - and it became a concerted effort of certain groups, to cause social unrest. Saddened by such endeavours, the author had even volunteered to make changes in the future publications and to diffuse the situation, also agreed to express regrets for any hurt of feelings caused to anyone, but the pressure kept building up on him to completely surrender and that is why he ultimately proclaimed that he was dead as an author. He also requested for transfer in his job, which was acceded to. On the Court's notice being issued, after a deep thought, he had decided to come to the Court to place his perspective.

91. Learned counsel for the author expressed concern at the attempt to rope in the author in the criminal proceedings with the objective of harassing him. In that behalf, he referred to, what may be called the counter petitions filed by the agitating individuals/groups, aggrieved by the novel. In this context, the learned counsel referred to different aspects of the provisions of the Indian Penal Code and the Code of Criminal Procedure invoked in the criminal original petitions, by relying on a catena of judgments. We proceed to discuss the same herein below :-

(i) On the scope of review under Section 482, Cr.P.C., learned counsel submitted that the obligation to register a FIR does not arise when a complaint does not disclose the ingredients of the offences alleged, and that is contended to be the position in the present case. Reference is made to *Lalitha Kumari v. Govt. of U.P.*, (2014) 2 S.C.C. 1. It is stated that this principle has also been re-stated in other cases, viz. *Thermax Limited v. K.M. Johnny*, (2011) 13 S.C.C. 412 and *Anil Mahajan v. Bhor Industries*, (2005) 10 S.C.C. 228.

(ii) On the applicability of Section 292 IPC, it is submitted that the ingredients required the publication to be i) lascivious/appealing to prurient interests/

depraved or corrupt when taken as a whole and ii) not protected as a publication for the public good as 'being in the interest of literature, art or learning'. The aforesaid tests, it was submitted, were not satisfied so as to determine what is lascivious/appealing to the prurient interest/depraved or corrupt when taken as a whole, and has to be tested using the contemporary 'community standards' test, wherein the offending portion must be looked at in the context of the message sought to be conveyed and not in isolation (*Aveek Sarkar v. State of West Bengal*, (2014) 4 S.C.C. 257), rejecting the *Hicklin*'s test. The objective standard to be applied as per *Samaresh Bose v. Amal Mitra*, (1985) 4 S.C.C. 289) is whether the material invokes any prurient interest in an ordinary man of common sense and prudence, as further enunciated in *M.F. Hussain v. Raj Kumar Pandey*, (2008) Cri. L.J. 4107), relying on *S. Rangarajan v. Jagjivan Ram*, (1989) 2 S.C.C. 574.

It is submitted that if the theme of the novel is analysed in the aforesaid context, the novel would be found to be a feted publication, wherein the impugned portions have been employed merely to provide a social commentary. Thus, an ordinary reader would only feel repulsed by the mental and physical agony suffered by the protagonist. What is depicted is the desperate measures that the protagonist is forced to adopt to have a child and the hypocrisy of the society, as only the protagonist is chastised, being a woman, while men, including the protagonist's husband, are free to attend the practise.

Learned counsel submitted that the liability under Section 292 IPC cannot be said to be attracted, as the alleged obscenity had been employed qua the preponderating social purpose of deprecating the social practices which cast a stigma on childless couple, more so the women. A reading of the novel would show that it has a social purpose - a work of literature which would fall within exception. In this context, it was submitted that the Court would read the novel and come to a conclusion, something certainly we were encouraged to do.

(iii) As regards Section 500, I.P.C., it was submitted that the Cr.P.C. in Section 199 mandates that the complainant in a prosecution for defamation ought to be a person aggrieved by the offence. If a portion of the material cannot be regarded as being capable of referring to the complainant, no prosecution can be launched at their behest. The test laid down in *Knupffer v. London Express Newspaper Ltd.*, (1944) A.C. 116 (HL) is relied upon, reads as follows :

"The first question is a question of law - can the article, having regard to its language, be regarded as capable of referring to the appellant? The second question is a question of fact - does the article, in fact, lead reasonable people, who know the appellant, to the conclusion that it does refer to him? Unless the first question can be answered in favour of the appellant, the second question does not arise."

In the context of the aforesaid observations, it was submitted that the impugned portions of the novel concern an indeterminate class and at worst, would amount

to vulgar generalization, even if they are unfounded statements containing imputations of disgraceful conduct and could not be penalised as defamation. The statements alleged to be derogatory of Tamil women or Tamil culture pertain to an indefinite body of persons and thus, no person could be prosecuted by claiming a reference to an indefinite body - *Khushboo v. Kanniammal*, (2010) 5 S.C.C. 600.

(iv) On the novel attracting the provisions of Section 295-A IPC, it was submitted that the twin criteria required to be met as material ingredients for this provision are that (i) the publication was capable of insulting religion or religious beliefs, and (ii) the words were published with deliberate and malicious intent of outraging the religious feelings of any class - *Sujato Bhadra v. State of West Bengal (Taslina Nasreen case)*, (2003) Cal L.T. 436 (HC). In fact, the allegation is that the impugned portions were directed against certain attendees of the temple festival and thus at worst, are directed against some portion of followers of a religion and not against any religion or religious belief as a whole. The plea was that the alleged vulgar, obscene practices during temple festivals is not something new, as such deviant practices have been noticed in over 300 orders passed by this Court since 2012, while permitting cultural programmes as part of temple festivals. Thus, ascriptions of immorality to some attendees of a religious festival itself cannot be an attack on the religion itself.

Learned counsel relied on the observations in *M.F. Hussain's case* (supra) to the effect that ancient Indian art, including temple art, discusses "sex worship and graphical representation of the union between man and woman has been a recurring feature". In any event, no aggravated insult had been made out in the present case. He contended that insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention of outraging the religious feelings of that class do not come within the scope of the said section.

Learned counsel, getting into more specifics, submitted that the concepts of *Niyoga*, ascriptions of divinity to procreation through extra-marital means (the instance of *Kunthi* in *The Mahabharata* being the most notable one) and also the recognition and even encouragement of sexual relations outside wedlock are all prevalent in Hindu myths and ancient literature.

92. A separate typed set of documents was filed, which are extracts of Hindu Literature from ancient times as illustrations of this plea, which we will specifically examine when we turn to the analysis of the submissions and counter submissions leading to this plea.

93. On the larger issue as to the obscenity test, it was once again emphasised that the test cannot be on the standard of an ordinary or hypersensitive human - not a person who sees only obscenity even in a work of beauty and art, because his attention is arrested. In fact, the Judge has to first place himself in the position of the author in order to appreciate what the author really wishes to convey and thereafter place himself in the position of the reader of every group

in whose hands the book is likely to fall and then arrive at a dispassionate conclusion - Samaresh Bose case (supra). It was also submitted that a reference to "every age group in whose hands the book is likely to fall" ought to be taken as referring to only those groups that are intended for the readership and not those in whose hands the book might accidentally or wrongfully come into.

94. In the aforesaid context, it is submitted that the standard is of reasonable, strong-minded, firm and courageous men and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view, the standard of an ordinary reasonable man or as they say in English law, "the man on the top of a clapham omnibus" - Taslima Nasreen case (supra).

95. It was lastly contended by extensively referring to the judgment in M.F. Hussain's case (supra) that insofar as the exceptions under Section 292 IPC are concerned, it is only when the impugned matter is found to be obscene that the question of whether the impugned matter falls within any of the exceptions contained in the provision of law would arise. Thus, an artistic/literary work which illustrates the consequences of a social evil must necessarily show that social evil, as in the instant case - Bobby Art International v. Om Pal Singh Hoon, (1996) 4 S.C.C. 1.

Other Literary & Artistic Works

96. The crucial aspect to be kept in mind is the way how the opinion of literary/artistic experts goes and whether the material and writings have an aesthetic or artistic touch with the social purpose of profit. In this context, the following observations in M.F. Hussain's case (supra) may be usefully referred to -

"59. The work of art must have any aesthetic or artistic touch and should not seem to have been taken with the sole purpose of attracting viewers who may have a prurient mind. In other words, where obscenity and art are mixed, art must be so preponderating as to throw obscenity into shadow or render the obscenity so trivial and insignificant that it can have no effect and can be overlooked.

60. Sex and obscenity are not always synonymous and it would be wrong to classify sex as essentially obscene or even indecent or immoral. The basic concern should be to prevent the use of sex designed to play a commercial role by making its own appeal.

61. In relation to nude/semi-nude pictures of a woman it would depend on a particular posture, pose, the surrounding circumstances and background in which woman is shown. Opinion of literary/artistic experts

62. In Ranjit Udeshi's case (supra) this Court held that the delicate task of deciding what is artistic and what is obscene has to be performed by courts and as a last resort by the Supreme Court and, therefore, the evidence of men of literature or others on the question of obscenity is not relevant. However, in Samaresh Bose's case (supra) this Court observed:

"In appropriate cases, the court, for eliminating any subjective element or personal preference which may remain hidden in the subconscious mind and may unconsciously affect a proper objective assessment, may draw upon the evidence, on record and also consider the views expressed by reputed or recognised authors of literature on such questions if there be any for his own consideration and satisfaction to enable the court to discharge the duty of making a proper assessment."

(Emphasis supplied)

Freedom of speech and expression

63. In *S. Rangarajan v. P. Jagjevan Ram and Ors.* (1989) 2 SCC 574, while interpreting Article 19(2) this Court borrowed from the American test of clear and present danger and observed:

"Our commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. [In other words, the expression should be inseparably] like the equivalent of a 'spark in a power keg'."

(Emphasis supplied)

64. Public decency and morality is outside the purview of the protection of free speech and expression, and thus a balance should be maintained between freedom of speech and expression and public decency and morality but the former must never come in the way of the latter and should not substantially transgress the latter.

Test of ordinary man

65. The test for judging a work should be that of an ordinary man of common sense and prudence and not an "out of the ordinary or hypersensitive man".

Social purpose or profit

66. When there is propagation of ideas, opinions and information or public interests or profits, the interests of society may tilt the scales in favour of free speech and expression. Thus books on medical science with intimate illustrations and photographs though in a sense immodest, are not to be considered obscene, but the same illustrations and photographs collected in a book from without the medical text would certainly be considered to be obscene.

67. Obscenity without a preponderating social purpose or profit cannot have the Constitutional protection of free speech or expression. Obscenity is treating with sex in a manner appealing to the carnal side of human nature or having that tendency. Such a treating with sex is offensive to modesty and decency."

97. On behalf of the original writ petitioner (now the first petitioner) in W.P. No. 1215 of 2015, who took up the case on behalf of the author, certain material has been placed on record to show the contextual and current mores of social norms appreciation of how the novel reads. We would now briefly advert to the same as it supports the case of the author. The materials also refer to date-wise how the problem arose.

98. The Index to Typed Set of Papers filed by the petitioner in W.P. No. 2668 of 2015 includes the book review "A Hidden Firebrand" by Ms. Nandini Krishnan of The Open Magazine dated 15.2.2014. The review states that the author was looking from a female protagonist's perspective for the first time and had to think like a women who yearned for children; the father-of-two also had to think like a man who was ridiculed for being unable to produce heirs; and he had to bring to life a world from the 1940s. The review states -

"One Part Woman has the distant romanticism of a gentler, slower, prettier world, but it is infused with a sense of immediacy. It was only towards the end, where there is a reference to British rule and to a 'new' Tamil film called Sri Valli (which was made in 1945), that I realised it was a period novel. The book is about Kali and Ponna, a couple who are childless ten years into marriage. We see their intense, tender love, their constant craving for each other's bodies. This, apparently, is not enough to keep a marriage going. Everyone is preoccupied with their 'failure' to produce a child. We hear voices of reassurance, voices of accusation, voices of pleading, voices of mockery and voices of comfort. But the voices that linger are the cruel ones.

Murugan intricately examines the effect the pressure to have a child has on their relationship. It all comes to a head during a temple festival, where the families of the two conspire to send Ponna 'alone to the hill' on the last day, when it is believed 'the gods go back'. The idols of temple deities, brought downhill for the two-week-long festivity, would be carried back to the hill temple of Lord Ardhanareshwara, the fusion of masculine and feminine. On this day, another fusion of the male-female forms was permissible: it was believed that all men became gods at night, and one would grant a barren woman a child - the old-fashioned way."

The focus is thus said to be on the travails of the childless couple and the taunts of the society, which put pressure on the couple. The reviewer writes,

"Mathorubagan was conceived when he was doing some research on the temple festivals of his native Thiruchengode and the myths around the hill. "This custom, of women being impregnated by 'gods' who were not their husbands, was fascinating. I've seen the way people speak about childless couples. I have relatives who have been through this. I know a woman who would n't leave her home for months on end because of the taunts, and the pity, which can be worse. Look at the way fertility clinics have mushroomed across the country. There are five hospitals in Namakkal alone which specialise in-vitro fertilisation

and treatment for sterility. People spend lakhs on this. They sell property so that they can afford it. The stigma, the pressure, has remained all these decades. We just have a different solution now."

In the book, Murugan uses an interesting device to nudge his readers into rethinking the idea of progeny—he introduces a charming bachelor called Nallupayyan, a 60-year-old man who counsels Kali, setting out the advantages of not having children. Often, Nallupayyan makes wisecracks about his sexual conquests. When he gets contemplative, he speaks about how silly it is to live frugally in order to provide one's children with a better lifestyle, and foster a circle of self-denial.

Like all of Murugan's novels, *One Part Woman* is beautifully rooted in its setting. Murugan delights in description and Aniruddhan translates it ably. What is lyrical in Tamil can get cloying in English, but Aniruddhan circumvents this for the most part. Often, the translation is literal, which brings out the cadence of Tamil to those who know the language. I'm not quite sure whether it would work as well for those who can't imagine the dialogue in Tamil. I also have a personal quibble with the use of adjectives in English, while Tamil is dependent on them."

99. Mr. Dilip Menon, who was then the Mellon Chair in Indian Studies at the University of Witwatersrand, Johannesburg, wrote the book review "It Happened One Night" on 25.4.2014. We extract some portions of the review, which show the focus of the novel -

"However, in a society where masculinity is measured by the ability to procreate and the identity of a woman manifests itself in motherhood, the barbs of those around them begin to chisel away at Kali and Ponna's tender and caring togetherness. They are inexorably drawn towards the only recourse: the festival at a Tiruchengodu shrine where men and women mingle freely and the women are visited by "gods". A bacchanalian night in which passions are let loose, and the barren are allowed an opportunity to redeem themselves by bearing a child; even if not by their spouses. So will Ponna go to this site of last resort? Will Kali let her; more to the point, will Ponna let herself? And what will be the consequence of this brief dalliance with passion for a higher cause?"

"Why is regional literature in India so cosmopolitan and yet rooted, quite unlike the rarefied worlds of Indian English writing? The masters, RK Narayan and Mulk Raj Anand, were strangely stilted in their evocations of rural life: Malgudi reminded one of PG Wodehouse's Blandings more than William Faulkner's Yoknapatawpha. The generation that followed, men and women, were more comfortable in their urban milieus writing about people like themselves. When they ventured beyond the world that they knew, they produce characters of stunning inauthenticity like the driver in Aravind Adiga's *White Tiger*. There are no Rishi Masoom Razas, Nirmal Verma, Krishna Sobti, Sunil Gangopadhyay or Anand, Sarah Josephs and Mukundans writing in English. Perumal Murugan's voice is distinct; it is the voice of writing in the Indian languages rich in

characters, dialogues and locales that are unerringly drawn and intensely evocative. As the novel moves towards its inevitable climax, tragic yet redemptive, the reader shares in the anguish of the characters caught in a fate beyond their control. It is because a superb writer has drawn us adroitly into the lives of those far removed from our acquaintance."

100. On the other hand, the circulation made by the protesters against the book sought to give emphasis to only on a few lines here and there by underlining those portions and focusing on the same; criminal complaints were also filed based on those distorted versions, despite the fact that the author in an explanation to "The Hindu" and other newspapers on 27.12.2014 stated that he has used some practices associated with the town to create a fictional novel: "I have used some practices associated with the town to create a fictional novel. That is all". He emphasised that he had only highlighted the emotional trauma of a childless woman. Since the novel was based on the life in Tamil Nadu, to make it authentic, the author states, he followed the customary style of writers to use identities like place, caste etc. and that was the only way it could be done: "A novel is written in such a way that one cannot differentiate between reality and fiction". "A writer has all the freedom and right to put forward and make a story combining fiction with the life he knows".

101. In a subsequent clarification issued on 7.1.2015, the author states that through the ages, the desire to produce children to perpetuate one's lineage has been an intense one for many people and that has in turn made people follow the practise of begetting a child by engaging in sexual union with a man other than one's husband, as evidenced from The Mahabharatha. The Tiruchengode town of the novel is not the Tiruchengode of today and it was constructed as a fictional and imaginary town of ages ago. Thus, if the name Tiruchengode was removed, the story could have happened anywhere. The author states that the views of our ancestors held about life were very different from our own and it was distressing for him to see that his writing could cause so much disruption of the daily life in Tiruchengode town. Taking a cue from Gandhiji, the author states that he did not think his novel is more important than the everyday life of Tiruchengode and its people and therefore, he expressed sadness with the people of Tiruchengode who found it wrong on his part to have used its name and some of its other identities and landmarks. He further stated that the subsequent editions would remove the reference to Tiruchengode. The endeavour of the author to placate the elements which were indulging in agitations continued and his words of regret turned into an apology with an assurance to modify the allegedly controversial portions in a way they does not hurt anyone.

102. Our attention was also invited by the learned counsel to the ?Summons? dated 11.1.2015 issued by the Revenue Divisional Officer, Tiruchengode. This document, which we have extracted earlier, is of some relevance. We may note the significant aspect that really speaking, it is not ?Summons? under any

provision of law, but claims to be a complaint and the contemplated peace talks presided over by the Revenue Divisional Officer. It was specifically pointed out that none of the so called groups was any women groups, but were generic organisations which made an allegation as if the novel amounted to writing against Indian and Tamil culture and mores and denigrating Lord Ardhaneewarar and women.

103. On the issue of the author declaring the writer in him as dead, various writings emerged. One of them was "Notes on a Literary Death" by Ms. V. Geetha. It is stated that the fliers, posters and pamphlets issued did not refer to any caste, and the Gounder caste organisations which rallied against him remained in the shadows. It has been commented that the novel should be read as a chronicle of small peasant life. In that process, the author has created an interest in the inner lives of his characters and the social relationships that separate and connect them.

104. The editorial page of New York Times dated 23.1.2015 under the heading "Silencing Authors in India" refers to the present petition pending and the larger concern expressed by the Court over extra-judicial groups wielding power to decide what is right and what is not right, and asking authors what to write and what not to write.

105. Similarly, Ms. C.S. Lakshmi, writing under the topic "The Lost Labour of Perumal Murugan: Not the theme of difficult love, the Tamil author's novel may be under attack for his disregard of caste", seeks to suggest that the author continued to do something important, i.e. keep on writing good novels, and it was not foreseen that a novel, for which two different sequels had been written, would cause so much trouble, four years after its first publication and two years after its translation into English. The relevant portions of the comments are extracted hereunder :-

"Kali is not a great hero. He is a person with his own limitations since he belongs to a community. But it is his community, especially his mother, mother-in-law and Muthu, who point to a way out of this situation, a way provided by a custom. They cheat Ponna into believing that her husband wants her to go. And Ponna goes, a little afraid perhaps, but not unwilling. She also wants to feel her womb swell and hold a child in her hands.

Can characters in a fictionalized work be taken as real? Should customs that existed to smooth out tensions in married life and in the community be spoken about, or should they remain the secrets of a community? How pure is a community? Is there any way one can arrive at the "truths" of a family and the seeds that lie at the base of a family tree?

Since these questions are speculative, with no clear answers, the questions asked would be about the veracity and authenticity of the spoken word; of the stories told by people, of the gods they claim as theirs.

The effort would be to arrive at one final truth which would clearly state what is right and what is wrong, what can be done and what cannot be done. All this takes me back to my days in Chicago, when I spent a few months discussing many things with poet A.K. Ramanujan, including his view that a folk story had many "tellings". Once, I remember, I related a folk story I had heard as a child. Ramanujan told me that was not the complete story and related the story with some more incidents and a different end. "Which is the right story then?" I asked him. "Both are right," Ramanujan said. "We are not looking for truth but human experiences."

Those who are looking for truth must look elsewhere and not in a work of fiction even if it draws from anthropological details. A writer is free to choose any theme and write about it whichever way he chooses-and that is what Perumal Murugan chose to do."

Legal Position

106. A large number of judgments on different legal principles were referred to. These are in the context of the right of expression vis-à-vis the State's duty to protect it, what constitutes obscenity, the right guaranteed to individuals under Article 21 of the Constitution and also about the existence of illegal courts in the form of Panchayats. In order to avoid prolixity, we are referring to these citations below under different heads with just the crux of the case and the principle of law laid down therein, along with the plea propounded on the basis of these judgments :-

I. Freedom Of Speech & Expression

(A) Freedom of Expression & Duty of the State to protect Rights

1) S. Rangarajan v. P. Jagjivan Ram, (1989) 2 S.C.C. 574

The case related to the revocation of the U Certificate granted to the film Ore Oru Gramathile, which was an anti-reservation film. There were protests against this film.

It was held therein that the effect of the so called offending words must be judged from the standards of reasonable, strong minded, firm and courageous men and not those of weak and vacillating minds. It was further held that the State cannot plead its inability to handle the problem of hostile audience. It is its obligatory duty to prevent it and protect the freedom of expression.

2) Prakash Jha Productions v. Union of India, (2011) 8 S.C.C 372

This case involved the suspension of the Hindi film Aarakshan by the State of Uttar Pradesh even after the Censor Certificate was issued on grounds that it would cause a law and order issue.

The Supreme Court held that the film was to be allowed to be screened. Law and order maintenance was the duty of the State. The Court held that it is the

duty of the State to maintain law and order and therefore, the State shall maintain it effectively and potentially.

3) *Srishti School of Art, Design & Technology v. Chairperson, Central Board of Film Certification*, 2011 (123) D.R.J. 1.

In this case, the makers of the documentary called 'Had Anhad' were asked to carry out cuts, which the petitioner protested against.

It was held that the cuts proposed were violative of the petitioner's right to free speech and expression and was allowed.

The Court observed that the Indian Constitution provides a democratic space to voice views unacceptable to others but for the reason it is unacceptable, it cannot be prevented from being expressed.

It was thus held that a book must be read as a whole and the context must not be ignored and it is reasonable to see what would be the reaction of a common reader.

4) *LYCA Productions Pvt. Ltd. v. Government of Tamil Nadu*, 2014 S.C.C. Online Mad. 1448

In this case, the producers of the popular Tamil commercial feature film 'Kathi' were Sri Lankans and the film was objected to owing to the nationality of its producers. They were forced to sign an agreement to remove their names from the movie hoardings, which the police attempted to enforce against them.

This Court held agreement not valid and cannot be enforced. It was observed that the letter of undertaking cannot be relied upon by the Police, which cannot grant a seal of approval to such letters of undertaking, as the same tantamounts to the creation of a super-censor Board. It was further observed that the police should not permit attempts of such blackmails to succeed, which if allowed, would automatically lead to extortion and the surrender of power of governance and the rule of law to a few intolerant people.

5) *Ajay Gautam v. Union of India*, 2015 S.C.C. Online Del 6479

The movie 'PK' was sought to be banned on the grounds that it hurt the religious sentiments of the Hindus and violated the rights of the Hindus under Article 19(2).

Holding that no one is captive audience and it is a conscious choice of a viewer, who is free to avoid watching the film, the case was dismissed.

6) *S. Khushboo v. Kanniammal*, 2010 (5) S.C.C. 600

This case pertained to the quashing of cases filed against the petitioner for remarks made by her on pre-marital sex.

This Court observed that a culture of responsible reading is to be inculcated

amongst the prudent readers. Morality and criminality are far from being co-extensive. An expression of opinion in favour of nondogmatic and non-conventional morality has to be tolerated as the same cannot be a ground to penalise the author.

7) Sony Pictures v. State, 2006 3 L.W. 728

In this case, the ban imposed by the State of Tamil Nadu on the English film 'The Da Vinci Code' was challenged.

A learned single Judge of this Court observed that when the State has a duty to prevent all threats of demonstrations and processions which amount to intimidating the right of freedom of expression, it cannot plead its inability to handle breach of peace if and when it arises. The order imposing the ban on the film was thus quashed.

(B) Freedom Of Expression & Obscenity

1) K.A. Abbas v. Union of India, (1970) 2 S.C.C. 780

The case related to the documentary 'A tale of 4 cities', which was not given a U Certificate, against which the writ petition was filed challenged.

It was held that pre-censorship was correct as per the Constitution. The Court observed that standards of obscenity must not be at the level of the most depraved to determine what is morally healthy for a normal person. It is not the elements of rape, leprosy and other social problems that should be censored, it is the manner in which such themes are handled.

2) Maqbool Fida Hussain v. Rajkumar Pandey, 2008 Cr. L.J.4107

This case, which was decided by one of us (S.K. Kaul, C.J.), related to private complaints filed against the noted painter M.F. Hussain for allegedly vilifying Hindu Gods and Goddesses through his art work.

It was observed therein, quoting with approval the ratio of Samresh Bose v. Amal Mitra (1985) 4 SCC 289, that for the purposes of judging obscenity, the judge must first place himself in the shoes of the author in order to appreciate what the author really wishes to convey, and thereafter, he must place himself in that position of the reader of every age group in whose hands the book may fall and then arrive at a dispassionate conclusion. The complaints were thus quashed.

3) Nandini Tiwari v. Union of India, 2014 S.C.C. Online Del. 4662

This case involved a writ petition filed to ban the Hindi film 'Finding Fanny' for using the word Fanny.

The writ petition was dismissed observing that obscenity has to be judged from the point of view of an average person, by applying contemporary community standards. It was held that if a reference to sex by itself is considered to be obscene and not fit to be read by adolescents, the adolescents will not be in a

position to read any novel and will have to read books which are purely religious.

(C) Obligation of State to Protect Rights of Individual Under Article 21

1) NHRC v. State of Arunachal Pradesh, (1996) 1 S.C.C. 742

This case challenged the threats doled out to the Chakma refugees settled in Arunachal Pradesh by the local tribes to leave the State.

The Court held that the State had a duty to protect the rights of the Chakmas. The Court observed that the State is bound to protect the life and liberty of every human-being, be he a citizen or otherwise, and it cannot permit anybody or group of persons to threaten. It was also held that the State Government must act impartially and carry out its legal obligations to safeguard the life, health and well-being without being inhibited by local politics.

2) Bhajan Kaur v. Delhi, (1996) S.C.C. Online Del. 484

In this case, the petitioner's husband was murdered in the 1984 riots. The compensation of Rs. 20,000/- given was challenged as being inadequate.

It was held that the duty and responsibility of the State was to secure and safeguard the life and liberty of an individual from mob violence and that the State and its functionaries were expected to evolve mechanisms to protect the life and liberty of individuals under Article 21.

(D) Katta Panchayats

1) K. Gopal v. State of Tamil Nadu, (2005) 4 C.T.C. 241

This was a Public Interest Litigation filed regarding the functioning of katta panchayats in Tamil Nadu, wherein this Court observed that people can form voluntary organisations but they cannot take the law into their own hands or the sovereign functions of the State.

2) Indian woman says gang-raped on orders of Village Court, (2014) 4 S.C.C. 786

In this case, the Supreme Court took suo motu action upon reading about the gang rape ordered by a kangaroo court against a woman, who wished to marry outside the community.

Referring to the decision in Arumuga Servai v. State of Tamil Nadu, (2011) 6 SCC 405, the Court observed that the effect of Khap Panchayats (known as Katta Panchayats in Tamil Nadu) which often decree or encourage honour killings or other atrocities in an institutionalized way were required to be ruthlessly stamped out as encouraging acts of barbarism and feudal mentality. The question thus which required to be posed is whether the State police machinery could have possibly prevent such an occurrence and if the answer is yes, then the State is duty bound to protect the fundamental rights of its citizens, an inherent aspect of Article 21 of the Constitution of India.

(E) Banning Of Books Under Sections 95 And 96, Cr.P.C.

1) Uttar Pradesh v. Lalai Singh Yadav, A.I.R. 1997 S.C. 202

In this case, the book "Ramayan - A True Reading" written by EVR Periyar was banned by the State of Uttar Pradesh without any reason. This was challenged.

It was held that the Government had to necessarily state reasons for banning a book. The Court observed that the constitutional rapport between the penal Section 99A of IPC and the fundamental right under Article 19 was emphasized.

It was held that the triple facets of a valid order banning a book are :

(i) that the book or document contains any matter; (ii) such matter promotes or is intended to promote feelings of enmity or hatred between different classes of the citizens of India; and (iii) a statement of the grounds of Government's opinion. The Court observed that if the Government itself cannot invoke the power under Section 99-A IPC, how can a group of self-serving persons decide to use their number power to achieve what is not permissible even under the provisions of law?

2) Raj Kapoor v. Laxman, A.I.R. 1980 S.C. 605 This case concerned the film "Satyam Shivam Sundaram", and a case was filed under Section 292, IPC concerning its title, which the Court ultimately quashed.

3) State of Maharashtra v. Sangharaj Damodhar Rupawate, (2010) 7 S.C.C. 398

This was an appeal challenging the order of the High Court striking down the Notification of Maharashtra Govt banning and forfeiting the book "Shivaji - Hindu King in Islamic India".

In this case, the Supreme Court laid down the legal aspects that have to be kept in mind while examining the validity of a notification in such matters.

(F) Precedence For Guidelines Relating To Prosecution

1) Joginder Kumar v. Uttar Pradesh, 1994 (4) S.C.C. 260

In this case, an individual was arrested and kept in custody for five days. The Court laid down guidelines for the police to follow when arresting an individual.

2) Jacob Mathew v. Punjab, 2005 (6) S.C.C. 1

This was a case of medical negligence where the Court evolved a set of guidelines for the prosecution of medical negligence cases.

107. In view of the legal principles discussed herein above, learned counsel for the publisher propounded a case of gross violation of Article 19(1)(a) of the Constitution in the present case, both by the State and the non-State players. This is so, as the non-State players were given a big role to play in hindering free speech by being permitted to gather as a mob, and under threat of that force and from an unequal bargaining position, to almost coerce the author to sign a

pre-written document.

108. The aforesaid is stated to be the larger question to be examined in this matter in which this Court itself had opined, as a matter of significance, expressing its concern at the role which could be played by the police and Revenue authorities in sensitive issues relating to art and culture and whether they were offending enough to invite the State's intervention and that too, not at its own behest, but at the behest of certain non-State players. In view of the large number of cases which are filed these days in respect of films, books, paintings etc., learned counsel for the author pleaded that this Court should frame guidelines as under what circumstances would the State intervene and whether ?Summons? as the one referred to in this case could be issued without any provision of law, under the ostensible ground of maintaining peace, which actually was sought to be disturbed by a motley group of people. It was submitted that there was a Constitutional duty on the part of the State to bring under control a situation where violence was sought to be engineered by non-State players.

A Historical Perspective of the Novel

109. A book is the literary expression of an author. A painter paints his thoughts; a sculptor expresses his thoughts through his murals; an author writes. The first two are simple expressions of a mixed set of thoughts and have to be observed in that manner. The aspect of a painting was dealt with by one of us (Sanjay Kishan Kaul, J.) in M.F. Hussain's case (supra), which also received the imprimatur of the Supreme Court by dismissal of S.L.P. (Criminal) No. 6287 of 2008 on 8.9.2008. A book is definitely a more detailed and expressive method of setting forth one's thoughts. It is not a single expression. It weaves a theme. Thus, while judging a book on any parameter not necessarily restricted to obscenity, it has to be read, digested and examined as a whole. Thus, a book is not to be read like a statute to come to a conclusion. Sentences cannot be picked up here and there to give a conclusion.

110. We also note that the language deployed in books may vary from more sophisticated versions with polished language being used to a more colonial and crass local dialect. There are, of course, boundaries qua use of an abusive language. But then the realities are harsh - they are not a bed of roses. Thus, when a book deals with certain social aspects like the suffering of women or the socially and economically weaker sections of the society and their travails, they may tend to seem harsh. Similarly, even in cinematographic representations, the reality at times has to be portrayed in such a manner that it may shock the viewer, in order to send the message across.

111. We are faced with a delicate situation of a book raising social issues. Has it crossed the boundaries? In deciding the weight of the balance between what may be construed as ?morality? and ?artistic creativity and expression?, one walks on ice. Are even the travails of a childless couple dealing with social stigma in the

context of socially and economically backwardness to be represented in a more "decent" way? Does the story bear any semblance to what is the ground reality or is it a figment of imagination of the author? In this context, what would be the difference between a historical book and a novel?

112. One of the aspects which run through the substratum of the controversy is the extent to which representations about sexual mores can be made in books without crossing the borderline of obscenity. This depends on the cultures and traditions of each society and the current mores. However, the current mores also carry a package of the past. The endeavour of the counsel appearing for the author was to establish that writings of prominent authors have dealt with the subject of love, lust, sex etc. without any aspersions being cast, and the current mores would be more liberal rather than less. We are required to discuss some of these documents filed before us only with the objective of keeping in mind the ancient ethos while trying to interpret the book and thus, we proceed to deal with that first before coming to the actual book itself and what it states.

113. The extracts from various Hindu Literatures are being discussed herein below :-

I. "Love & Lust: An Anthology of Erotic Literature from Ancient and Medieval India" by Pavan K. Varma & Sandhya Mulchandani

This book is about the acceptance of eroticism in Indian Literature, especially Hindu Literature, which is remarkable for its antiquity, lack of inhibition, transcendent absence of guilt, candour, boldness and the often, surprising, literary merit and its origins go back to almost the dawn of time.

A reference is made to several tales in the Vedas, Puranas, Yogavashista, epics like Mahabharata as well as early Jaina texts to state that in Hindu tradition, there is a philosophical and pragmatic acceptance of the relevance of desire, with eroticism as its natural attribute. The greatest part of erotic literature in India is stated to deal with Lord Krishna.

In the aforesaid context, reference is made to Krishna in Tamil poems that extolled him as Kannan, as also the reference in Kamasutra to various regions in India, including the Dravida and Pandya Kingdoms in the South. The authors state that the coming of the Muslims to India from the 10th century A.D. onwards must have certainly had an impact on the social structures that sustained such a vibrant acceptance of the erotic in the literary tradition, but it was the ascendancy of the British in the nineteenth century that dealt a mortal blow to a vision of the world that accommodated desire with such intensity and dignity.

II. "The Wonder that was India" by A.L. Basham

This book, inter alia, refers to the literature of Hindu India, both religious and secular, as being full of sexual allusions, sexual symbolism and passages of frank eroticism, with it increasing in the Middle Ages, when the process of cosmic

creation was figured as the union of god and goddess, and figures of closely embracing couples (maithuna) were carved on the walls of temples. The erotic pre-occupations of ancient India were said to be evident in art and literature.

III. "Polyandry in Ancient India" by Sarva Daman Singh

This book deals with the practise of Polyandry in ancient India through different ages and has repeated references to sexual unregulation among all classes of men, in which even the Gods participate. Polyandry is observed as neither un-Vedic nor merely un-Aryan. The Mahabharata was said to relate to an age of unrestricted sexual expression, innocent of the later taboos of incest and avoidance. Pandu is said to have told his wife Kunti of a time when women were free to cohabit with anybody they chose without a trace of sin. They went uncloistered, and were their own mistresses, taking their pleasure from where it pleased them.

IV. "Experiencing Love as Devadasi Tradition" by Jyotsna Bapat

The book says that temples of medieval and ancient times provided the space for women to fully explore ?possibilities of being?, including ?possibility of being erotic? as part of full self-expression without the inhibition of society.

V. "Roles and Rituals for Hindu Women" by J. Leslie ed.

In Part-III of the book, under the heading ?The Ritual of Dance?, Chapter-6 deals with the Traditional Repertoire of the Tiruttani Temple Dancers and it is said that such temple rituals include daily and festival rituals.

VI. "Gopigeetham (Bhagavata Purana)"

This is an extract of the ?Gopika Geeta? (songs sung by the Gopis) in praise of their Lord as found in Bhagavata Purana: Part-X, Chapter-31, Verses 1 to 19, which contain elements of fantasized eroticism.

VII. "Poems of Kalidasa" from the Classic Poetry Series

This deals with the various of works of Kalidasa like Abhijnanasakuntalam ("Of Shakuntala recognised by a token"), Malavikagnimitram ("Malavika and Agnimitra") and Vikramorvasiyam ("Pertaining to Vikrama and Urvashi"), his epic poems, Raghuvamsa ("Dynasty of Raghu") and Jynarasanvaga ("Birth of Kumara") and his lyric poems Meghaduta ("Cloud Messenger") and Rtusamhara ("The Exposition on the Season").

VIII. "Philosophy of Theistic Mysticism of the Alvars" by S.M.S. Chari

The portions extracted from this book deal with mysticism with a philosophical touch.

IX. "Love in Sanskrit and Tamil Literature" by D. Nadarajah

The extracted portions of the book suggest that both Tamil and Indo-Aryan

society tolerated polygamy. The tolerance as well as the position of the courtesans or harlots is depicted in most of the poems and dramas depicting love.

X. "Jaya" by Devdutt Pattanaik

The third part of this book deals with birth, where a reference is made to sterile men becoming fathers by asking gods to visit their wives. In this context, the birth of Kunti's children (Pandu's wife) is adverted to. Different gods were invoked, from which different progenies were born.

XI. "Puranic Encyclopaedia" by Vettam Mani

This is said to be the first of its kind exhaustive book of study and reference in Malayalam with regard to episodes, incidents and characters occurring in the many Puranas and such other works in Sanskrit.

XII. "A Treasury of Sanskrit Poetry" (Compiled by A.N.D. Haksar)

This contains extracts of a number of Sanskrit poems laced with a tinge of eroticism.

114. We have briefly touched upon the topics dealt with from the compendium given to us, only to give a flavor of what was sought to be propounded before us, i.e. liberal sexual mores being a part of the ancient Hindu religion as reflected from the treatise in the books. The plea thus made is that there is no need to be over-sensitive on these issues, especially when the book in question is really a novel, though referring to certain social practices, to prevent the barbs of the society in relation to childless couple.

115. The various temples, books and literature are reflective of a liberal social norm so far as the aspect of sexuality is concerned and also the customs of polygamy and sexual interaction between men and women not necessarily confined to the relationship of husband and wife. No doubt, the treatise discussed above is of a much earlier period and it is recognised that subsequently, the Moghul rule and British regime brought forth its own social norms, which were more conservative in character. Thus, to some extent, the norm of the contemporary era would have certain bearing.

"Madhorubagan" - The Novel

116. We now turn to the novel "Mathorubagan" and its English translation "One Part Woman". The English version carries on its cover, the comments "An evocative novel?A superb writer" by ?Indian Express?.

117. The praise for the novel and the author through various reviews forms part of the first two pages, reflecting the current mores. We consider it appropriate to reproduce the reviews as under :-

" Praise for One Part Woman

?A superb book in which tenderness, love and desire kindle each Other into a

conflagration of sexual rapture? BAPSI SIDHWA

?Perumal Murugan opens up the layers of desire, longing, loss and fulfilment in a relationship with extraordinary sensitivity and surgical precision? AMBAI

?A fable about sexual passion and social norms, pleasure and the Conventions of family and motherhood... A lovely rendering of the Tamil? BIBLIO

?Perumal Murugan turns an intimate and crystalline gaze on a married couple in interior Tamil Nadu. It is a gaze that lays bare the intricacies of their story, culminating in a heartwrenching denouement that allows no room for apathy . . .

One Part Woman is a powerful and insightful rendering of an entire Milieu which is certainly still in existence. [Murugan] handles Myriad complexities with an enviable sophistication, creating an evocative, even haunting, work... Murugan?s writing is taut and suspenseful... Aniruddhan Vasudevan?s translation deserves mention - the language is crisp, retaining local flavor without jarring, and often lyrical? The Hindu Business Line

?An evocative novel about a childless couple reminds us of the excellence of writing in Indian languages... This is a novel of many layers; of richly textured relationships; of raw and resonant dialogues and characters . . . Perumal Murugan?s voice is distinct; it is the voice of writing in the Indian languages rich in characters, dialogues and locales that are unerringly drawn and intensely evocative. As the novel moves towards its inevitable climax, tragic yet redemptive, the reader shares in the anguish of the characters caught in a fate beyond their control. It is because a superb writer has drawn us adroitly into the lives of those far removed from our acquaintance? INDIAN EXPRESS

?Murugan imbues the simple story of a young couple, deeply in love and anxious to have a child, with the complexities of convention, obligation and, ultimately, conviction ... An engaging story? TIME OUT

?One Part Woman has the distant romanticism of a gentler, slower, prettier world, but it is infused with a sense of immediacy ... Murugan intricately examines the effect the pressure to have a child has on [the couple?s] relationship ... One Part Woman is beautifully rooted in its setting. Murugan delights in description and Aniruddhan translates it ably? OPEN

?Murugan?s insights about relationships spread throughout his work like flashes of lightening? Kalachuvadu

Praise for Perumal Murugan

?Versatile, sensitive to history and conscious of his responsibilities as a writer, Murugan is ... the most accomplished of his generation of Tamil writers? Caravan

?The Tamil Irvine Welsh? Guardian

?Powerful ... lyrical? The Hindu "

118. We have already set out the theme of the novel - the travails of the childless couple, Kali and Ponnayi (called 'Ponna' in the entire story). Learned counsels had adverted to different parts of the novel and learned counsel for the publisher especially took us extensively through various extracts of the novel to establish that the theme of the novel could hardly reflect an endeavour to invoke the prurient interests.

119. The novel begins by referring to the Portia tree with dense foliage and flowers, whose stalk was planted by Kali three months after his marriage to Ponna. Twelve years down the line, Ponna looks at the tree and sighed,

"A shadow fell on her face. She must have thought about how while the tree had grown so lush and abundant in twelve years while not even a worm crawled in her womb. Every wretched thing reminded her of that lack."

120. There had been talks of second marriage to Kali, both openly and secretly for about seven to eight years prior to the period because of the non-conception of a child by Ponna. It is Kali who used to tell Ponna about the chariot festival at Tiruchengode - the reference to the town enters the novel for the first time. Reference is also made to the visit to the temple of Goddess Pavatha, their mother goddess, and the rituals related thereto. Ponna prayed and was hoping to become pregnant. As to what transpired is reflected as follows :

"Ponna, too, was full of hope after praying to Pavatha. Her expectations were heightened in the months that followed. After every twenty days, she prayed, "God, please fill my womb at least this month." Even if there was a day's delay in her menstrual cycle, she was filled with excitement: "This is it" But if her cycle began the next day, the house looked like someone had died in it. She did not eat properly and just lay around. Kali had to go to his mother for food. Even after cutting open a rooster and satiating Pavatha's thirst for revenge, nothing changed."

121. The couple left no stone unturned in offering prayers, whether it be at a big or small temple, or for the forest gods. Kali was stated to be ready to forego his cattle and all that he had saved with his frugality, if only their prayers were to bear fruit. "But no god seemed to pay heed". The couple made prayers 'n' number of times at Tiruchengode itself. They had to go past the forest where the Pavatha shrine is, and climb further up, to arrive at Pandeewarar Temple. The deity on the hill top was called Pillaiyar. No ordinary soul could reach there; one needed both mental and physical strength. Ponna did even that effort, though it was dangerous, and the worry in Kali's mind was that if she were to trip even a little, it would be end of it all because he would be accused of doing away with her by pushing her off the edge deliberately, for that place was (in)famous for murders and suicides. As to what went through the minds of the couple,

"Maama, I will walk around now. If something happens to me, don't let it affect you for long. Marry another woman. At least let her be blessed with a child," Ponna said with teary eyes.

"Chee he exclaimed, dismissing her gloomy words. Wiping the tears from her eyes, he consoled her, "We lack in nothing. We can be happy. It doesn't matter if we don't have a child. How long will these morons in the village keep harassing us? May be for another ten or twelve years. By then we would have grown old. So what if we don't have children? We can still triumph. We can write off the little land we have to some temple. Or else, we can leave it to someone who has nothing. Let him make a living out of it."

He then embraced her. It felt like the mind had acquired some clarity by then. But she was confident about completing her walk around the stone. She took this as a challenge over all the other prayers she had endured until then. Her logic was that gods might find some compassion for her if she put herself through this most difficult of tests. Once she made up her mind to go ahead with it, Kali told her how to. He felt she might fly into a wild panic if he offered to show her how to negotiate the precipice. So he simply showed her. He went to the edge of the wall and said to her, "Look," and in just two swift moves went around the stone, and climbed over the other wall. When she screamed, "Mamaa", he was already in front of her, laughing."

"Two vultures circled around the endless expanse of the sky. They seemed motionless, their wings stretched wide without a discernible flutter. They blessed her. She held her palms together over her head and prayed, "God, my father, please make sure I do not gain the reputation for being barren". And just like he had done, she crossed the wall and navigated the precipice with the tenacity of a rock lizard. When she reached the end of her ordeal, he gave her a hand and helped her cross over the wall to his side. He held her close to his heart and kissed her on the cheek, lips and head. When they sat in front of Pandeewarar, she burst into sobs."

On special religious occasions also, Ponna suffered barbs -

"It seemed that people who had children could do anything they wanted - that only they had such rights. But Ponna was aware of her sharp tongue and what it could unleash at any moment. Fearing the consequences of such an outburst, she tried to be very careful in public spaces. But, somehow or the other, a quarrel would ensue. Even her neighbour Sarasa had a silly expectation that Ponna should bequeath things to her children. After all, Ponna herself had none."

"After this episode, Ponna did not attend any functions. Whether weddings or funerals, either Kali or his mother had to go. If any of them put pressure on Ponna, she would respond in their own style: "I have no children. What function is going to happen in my house tomorrow? Whom am I going to invite with betel leaf and nut? Are things so bad that when I die no one would come to carry me? Will they let me just lie and rot? I don't want to go anywhere. And no one needs to come here either. It is enough if they leave me alone."

122. Sleeplessness started overtaking Kali and he slept little "these past two months". His mind would turn to different thoughts. Kali's mind turned towards

the incident where his mother and mother-in-law stayed together in the night, allegedly confabulating about something, but neither he nor Ponna could make out what they were discussing so intently. Ponna's suspicion was that they were talking about a second marriage for Kali and she knew that her parents did not mind if Kali were to marry again. Even on questioning, she could not elicit an answer from her mother and thus, she went to Kali to express her suspicion -

"I think they have found you a girl. These two hags are trying to ruin my life."

He said, "I will marry the girl only if you like her. Don't worry." "Oho You are even entertaining the thought, is it?" she turned her face away.

Whenever he spoke like that, she was miffed. Then he consoled her. This was a ritual for them. After thinking long and hard about a second marriage, he had abandoned the idea. In truth, the thought had occurred to him once or twice, but his mind simply could not see any other woman in Ponna's place."

123. The eleventh chapter of the novel reads that Kali knew that he had been nicknamed "the impotent one" and although he had no children, he was very happy with Ponna. Ponna used to be in the habit of pulling a long face for two days even if she saw him just talking to another woman and naturally, he apprehended, if he were to marry again, she would surely not stay with him :

"The moment thoughts of a second marriage invaded him, all happiness wilted away. It also meant he would need to learn to handle two women. When his world was already complete with his cattle, his barn and Ponna, could he handle anything more? Also, if the second woman too could not get pregnant, his reputation as an impotent man would be engraved in stone. Thinking through all these things, he abandoned the idea. Whenever someone brought it up, he closed the topic saying, "It won't work. Forget it." They all attributed his hesitation to his fear of Ponna's wrath. "Well, let them think whatever they want," he thought. Only he knew that Ponna was scared that he might, at some point, say yes to the idea."

124. On Kali confronting his mother over the confabulations with his mother-in-law, whether they were again talking about a second marriage, she responded -

"You have said no to it several times. Ponna's parents are fine with the idea. If we are a little forceful, even Ponna would say yes. But you refuse. I don't understand why. Anyway, drop it."

His mother spoke gently and at a measured pace that day. Her nature was to shout. She appeared completely new to him. Even when you have spent years with some people, their real faces are revealed only when the right time comes. God knows how many faces lie concealed forever, with no opportunity to reveal themselves.

His mother spoke without a break. Perhaps she was afraid that if she paused, she might not be able to resume speaking. "You have done all the prayers you could

do," she intoned. "You have even walked around the barren rock that one in a thousand people take on. Nothing has happened. Whether we have children or not, we are all going to die one day; we don't live forever. When we are alive, we should be useful to the people around us. What else is left for human beings? Your father died leaving me all alone. My plight would have been so much harder if I did not have you. Because I had my son entwined around my legs, I could bear all difficulties happily. You were the only hold I had in life. Don't you need one such for yourself? When people ask, 'Do you have grandchildren?', I am unable to reply. I wonder why this earth doesn't split into two and swallow me whole. If this is how hard it is for me, it must be so much more for you and Ponna. The wretched people around us do not see what a man has. They only see what he does not have. We have to hold our heads high in front of these people, my son. Please don't get me wrong. This is not something a mother should talk about with her son. But I have dared to speak. Please listen."

125. The description of the temple chariot festival at Tiruchengode is set out in the XIV Chapter -

"There was no dearth for cultural performances in the four main streets that the chariot did its rounds or in the pillared temple halls at the foothills.

At the peak of the celebration, all rules were relaxed. The night bore witness to that. Any consenting man and woman could have sex. In the narrow lanes, on the fields around the village, in the rest stops on the hill, and on the open surfaces of the rocks, bodies lay casually intertwined. Darkness cast a mask on every face. It is in such revelry that the primal in man surfaces.

No one sent unmarried women to the festival. But women over thirty were to be seen everywhere. Young men roamed all over the place. These men tried to lure as many women as they could on this one night. This was also the night when many of the young men had their first taste of sex. And women took the role of their teachers.

Kali too went there in the days before his marriage. He started roaming the streets when the evening set in. That night, there was no business in the prostitutes' street that was right in front of the temple at the foot of the hill. Those women dressed themselves up to dance in the temple halls. They laughed as they went about: "Who is going to look at us? Today, every woman is a prostitute"

In that first year, when his body was ready to get to know a woman's, he was overcome with shyness and he escaped from all the women and hid under a bullock cart. Lying there, he saw all the movements in the dark around him. He did not dare to come out. On their way back home the next day, Muthu teased him. He gestured the number two to Kali, who was frustrated that he had let the opportunity slip by. He would now have to wait another year. But Muthu made sure Kali did not have to wait a whole year. By the following year's festival, Kali had gained enough experience.

Kali did not know that this was a special day for women who did not have children. He could not bring himself to agree to send Ponna there. Nor did he tell her anything about it. But he told her this much: that they were not going to her place for the festival that year."

The aforesaid to some extent brings forth what the opponents conceived to be the offending part, though the conclusion of that chapter is that Kali was sure that Ponna would not agree to come to the 14th day festivities.

126. Kali was concerned at the fact that people were asking him to send his wife to another man just for the sake of a child, even if he did not need a child. He took a decision that he should find an opportunity to tell Ponna very firmly that he did not want children. It was much better than losing one's honour and he also wanted to know what was in her mind.

127. We may note at this stage that the learned counsel for the publisher sought to emphasise that these recitals in fact show that it was not a practise which was being applauded. Further, when Ponna was finally informed, she was angry, more so because Kali used to go to the festival with Ponna's brother before their marriage :

"Don't you know I even hung around with your brother only to get to you? Would these eyes that had a taste of you even look at another woman? Even when I was fourteen or fifteen, I decided you were mine. And it has stayed that way," he pleaded and buried his face in her neck. But he could not tell if her anger was gone. Then, still in his arms, she turned to face him. He felt emboldened by her hand moving gently caressing his back.

"Will you listen to your mother and mine and go on the day when the gods retreat?" he continued. His heart was thumping, waiting for her reply.

She murmured: "If you want me to go for the sake of this wretched child, I will." His hold around her relaxed. This was not the answer he had expected.

He moved away from her. For a moment, he wondered if this was her way of getting back at him for his exploits before their marriage. He lay on the cot facing the sky. She realised that she had failed to give him the reply he had wanted to hear. She ran to him in panic and spread herself upon him. Laying her head against his cheek, she looked for words of consolation. After all, the core of this relationship consisted in using consoling words.

"Maama," she said, melting, "I thought you wanted me to, for the sake of a child. Will I ever do anything you do not like? You are everything to me. Despite everyone's pressuring you for a second marriage, you have said no to it. That's why I said I would do what you want me to do. Please don't be angry . . ."

But the sex they had that night was the worst they had ever had."

128. In the storyline, if we may say, the web is spun with the help of the brother of Ponna, her mother and her mother-in-law. Her mother-in-law kept on

encouraging her, referring to other people who got conceived by going to the 14th day temple festival, where they may be able to mate with other men and how she had got a male child. This was referred to as a tradition going on for ages and it was a God's child. Ponna kept on chanting for a correct path to follow. The reaction of Kali was always negative to such a misadventure, while Muthu, Ponna's brother kept on encouraging Kali to follow the tradition.

129. Kali was got drunk and kept in a room, while Ponna was taken to the 14th day festivities. As the festivities began and there were dancers, she felt the touch of a man and panicked, thinking it was Kali. She, however, brushed aside that panic, but found no interest in the man standing there.

130. Ponna kept on walking around the area, often feeling apprehensive.

131. Ponna ultimately perceives a young boy as her "God" and succumbs to his charms.

132. Kali ultimately finds out.

133. The Author's Note at the end refers to his historical research about Tiruchengode :

"In my search for historical information about Tiruchengode, I found several things. I cracked open my pride that this was the place of my childhood, that this was the place that stays soaked in my being, and I found out many new things. The moment this town revealed to me one of its secret springs, it was wonderful. In the villages around Tiruchengode, there are people who are referred to as ? god-given child? and ?god's child?. I had presumed that they were called so simply because they had been born after prayers to the god. But during my search, I chanced upon the connection between the temple festival and ?god's children?. In some way or another, this society continues to sustain primal human emotions. When I moved along, holding on to this opening thread, incidents and scenes developed in my mind. The faces of people acquired clarity. I was able to move towards seeing familiar places the way they were seventy or eighty years ago. Even when the entire novel had already taken shape within me, I wrote at a measured pace."

Our view

134. The Indian Freedom Movement intrinsically encompassed the claim for self-rule and the right to say what it felt about the then rule and the views of others. The social changes which have taken place over a period of time had been given leadership by eminent persons who challenged the status quo. Thus, undesirable social practices like Sati coupled with modifications in a religious and social thinking lay at the core of the Movement. On India attaining independence, the makers of the Constitution gave a place of pride to the fundamental rights enshrined in Part-III of the Constitution and the freedom of speech and expression was fundamental to it and has been vigorously defended by the Courts.

135. No freedom is absolute and thus, even the right of freedom and expression is circumscribed by Article 19(2) of the Constitution of India. The writings emanate from ancient times and what was not expected earlier became acceptable later on. Surprisingly, on the issue of a liberal ethos towards the relationship of man and woman, sex and religious mores, the ancient scriptures seemed to be more liberal than at times what appears to be the current norm. Beauty lies in the eye of the beholder and in similar sense is the test for determining obscenity. The objection against "Madhorubagan" by Perumal Murugan and its English translation "One Part Woman" is that it is perversely vulgar and seeks to paint certain communities and persons visiting a well known temple in poor light.

136. How to test obscenity? A common test which can be followed is that - (a) a book when read as a whole appears lascivious or raises lustful thoughts or desire; and (b) when the book contains no literary, artistic, political or scientific value. No doubt, the burden to prove the same is on the party seeking a ban. There are many occasions where the State has intervened by banning a book. It is clearly not so in the present case. ?Decency? and ?obscenity? are relative terms. Would it be desirable for the Courts to intervene or should it be left to the readers to learn for themselves what they think and feel of the issue in question? There are often challenges raised with good intentions, including keeping it away from the reach of children. But it may not be in its entirety. One may look at cinematographic representations where films are categorized by the age profile which is permitted to watch it. In that sense, there appears to be no such procedure for books.

137. The storyline of the novel sets out the travails of a childless couple and the alleged practices in Tiruchengode in earlier periods of time, over which objections have been raised. The family members of the protagonists conspire to create a situation where Ponna, who is married to Kali and does not have any progeny, is induced to participate in the 14th day rituals of the temple car festival with the object of producing a child known as "Gift of God". This is against the will of the husband Kali. This so called sexual permissiveness lies at the root of the agitation seeking to ban the novel and the protests held against it alleging that a story of sexual orgy between a childless woman and a youth has been projected as a practise being followed on the 14th day of the car festival that takes place in the Arulmighu Arthaneswarar Temple at Tiruchengode. The grievance is that the novel actually speaks about the anachronistic ritual allegedly practised, which would be viewed abhorrently in the present day and age. The author's narrative is stated to be identifiable to a specific group of people in a specific region. The plea of novelized history is alleged to have not been established through any material which is contextual, and the novel intrinsically is alleged to be obscene. The reference to the place of the occurrence and the dates are aspects which are treated as critical, though the progeny to be conceived would be called the Child of God. There is no doubt that the language used in the novel, especially the Tamil version, can be said to be rustic and a little crass. Is that by itself fatal? To

our mind, the answer to this would be in the negative. There has to be something more to classify the novel as obscene per se or for requirement to delete certain parts of the novel.

138. We cannot lose sight of the fact that the story is of people who are both socially and economically backward. The language, therefore, has to be contextual. We often see even in films that depending on the backdrop of the story which is sought to be portrayed, the characters speak the language of that milieu. There can be nothing wrong in such a scenario depicted in a novel.

139. In this context, reference may be made to the widespread controversy that arose out of a Hindi film 'Uda Punjab', wherein the challenge laid by the producers of the film to the cuts recommended by the Central Board of Film Certification (CBFC), predominantly aimed at the cuss words used by the characters in the movie, was sustained by a Division Bench of the Bombay High Court in W.P. (L) No. 1529 of 2016 dated 13.6.2016 [Phantom Films Pvt. Ltd. v. The Central Board of Film Certification]. The film highlighted the menace of drug abuse among youngsters in the State of Punjab. Some fictional characters were incorporated into the film in order to illustrate the unrestricted and unchecked movement of drugs and in that context, some of them are shown speaking in a tone and language that may not be generally associated with a cultured/refined person, and are often seen swearing at and abusing each other. The Court observed that it was not to corrupt the viewers' minds, but only to present a realistic account of the issue being depicted that such scenes were inserted. The Court felt that stray sentences picked up from a few scenes, particularly dialogues delivered by the characters, could not be termed as creating a negative impact by tending to encourage, justify or glamorize the issue involved. It was observed that the total impact of the work ought to be assessed and judged, bearing in mind the underlying theme of the film. The following extract of the judgment is relevant :-

"The human sensibilities are not offended by vulgarity, obscenity or depravity. Such scenes and dialogues have to be viewed in totality. The story must be read and considered in its entirety. It is not safe to select a few words, sentences, dialogues and scenes and then to arrive at the conclusion reached by the Board. If the strata of the society and habituated to indulge freely in vulgar abuses are shown as indulging in the same without in the slightest manner glorifying them or their language, then, we do not see anything objectionable in the words."

Thus, the Court was of the view that a blanket direction by the CBFC suggesting various cuts relating to the use of abusive words without reference to the theme and the subject of the film can be seen as infringing upon the artistic freedom and creativity of the film-maker. The Court observed it is important to take note of the spoken words in their entirety and understand the method of conveyance of the intended message.

140. Although the above observations relate to a cinematographic work, they

apply on all fours to the present case, as all literary works, whether films, books or paintings, most certainly fall within the realm of artistic creativity. The novel in question, "Madhorubagan" also attempts to depict the current mores and the stigmas attached to childlessness, with specific reference to the Indian context.

141. After going through the novel, which both of us did - and one of us, even its so called cruder version in Tamil - we feel the crucial test is, what is the impression you carry? Is the impression determined by human pathos of the painful life of a childless couple and their endeavours to come to terms with it in our societal set up? Is it written only to be provocative in itself, using crass language, seeking to evoke prurient interests?

142. Dr. V. Suresh, learned counsel for the publisher sought to make an important and subtle distinction between a novelized history of the elite which would have records backing it, as compared to a novel based on folklores carried by word of mouth. This is not a history of the conquerors and the vanquished. It is about the everyday struggles in the lives of a rustic childless couple who, left to themselves, would be resigned to their fate, owing to the affection they have towards each other, but are constantly pricked and reminded of their status as a childless couple because the progeny is supposed to be of utmost importance.

143. The novel is stated to have been the recipient of several awards with no controversy having been made out during the initial years of its publication. Suddenly and surprisingly so, post its English translation, the novel seemed to have evoked strong reaction from a section of the society, who would invariably be reading only its Tamil version. Thus, can it really be said to be a spontaneous reaction by the locals against some writing, which is allegedly related to them? We do believe that this does not appear to be the situation in the present case.

144. The fact that the novel has received many awards by itself is not determinative, though strongly indicative of how the society perceives the novel. The nature of the awards referred to aforesaid cannot be said to be of the kind which are self-built up. These awards are reflective on the ability of the writer. On reading the novel, we felt that it could not be put down without going the whole hog. It was so absorbing. At the end of the story, what comes to the mind? At least to our mind, it is a heart-rending story of a husband and wife, who are at peace with themselves, but are constantly reminded by the society of their status - of being childless. In order to meet the societal requirement, they do everything within their might, visit every temple, even traversing difficult terrains where not many would dare venture, endangering their lives and performing all kinds of poojas. Such are the levels of desperation to which the couple is driven. Thus, the focus of the novel can hardly be said to be existence of a practise of sexual intermingling on the 14th day of the temple car festival, though that becomes an essential ingredient to show how, despite the refusal of the husband and he having not changed his view, the mothers of the couple and the brother of the wife, hatch a plan in a manner as to ensure that this endeavour is made to enable the couple beget a child.

145. It is also interesting to note that the emphasis is not on what transpires in the festival, but that even those attempts are given legitimacy by calling any progeny thus begotten as 'children of god'. It is thus believed that only from the blessing of God that a child is conceived.

146. It is true as contended by the learned counsel for the opponents of the novel that it could hardly be presumed that biologically a mere passing incident like this would necessarily result in conception. There are various scientific reasons why a couple may not be able to conceive a child. That is not what is significant, as is apparent from the fact that it is nobody's case that there is a portrayal as if every woman who goes to the 14th day car festival and indulges in such sexual act would necessarily have a child. That is shown only as a means to achieve the end. It can even be the woman who may be incapable of conceiving for various biological reasons. The point in issue is that people have faith in God and pray to the Him for a child. The novel refers to a social practise, if at all it ever existed, to somehow solve the problem of a childless couple through this peculiar, yet not very desirable practise. It is in fact a reflection of the desperation to which the society drives the childless couple to make such a compromise.

147. We have extracted various portions of the novel so that someone reading our judgment can get a flavor of what the novel is all about. But then, it is only a flavor and the full absorption is only possible by reading the novel from cover to cover. The novel shakes you, but not in the manner its opponents seek to profess. It jolts you, because it succinctly sets forth the pain and sufferance depicted through the words of this childless couple. That is the take away from the novel. Of course, one of us (Sanjay Kishan Kaul, C.J.) could only have the benefit of reading the English translation of the novel because of the linguistic handicap, but in consultation, both of us do believe that the English version truly reflects the heart of the story and it is not merely a transliteration. In fact, two other sequels of the novel have also been published, which have not evoked, as yet at least, any reaction.

148. The Tamil version of the novel sold a fair amount of copies, as stated by the learned counsel for the publisher, keeping in mind it was a Tamil publication. People have read the novel and have found nothing wrong with it. Four long years elapsed since its initial release. It is nobody's case that it had fallen into some hands where it could cause damage. In any case, there are different kinds of books available on the shelves of book stores to be read by different age groups from different strata. If you do not like a book, simply close it. The answer is not its ban.

149. A large part of ancient literature written at different periods of time where such sexual mores have been discussed liberally have been referred to by the learned counsel for the author, only to substantiate that something unknown had not been written by the author, but that a small group of people with a narrow vision and without any appreciation of ancient Indian literature, has gone up in

arms against the novel. We have extracted extensively from the books referred before us, to the extent possible, to show how from Vedic times onwards has the subject of sex, erotic literature and ancient and medieval practices been dealt with. We have discussed the materials in the earlier part of our judgment in extenso and are not reproducing them for our conclusion, but only say that they truly reflect the liberal ethos, uncorrupted by the Victorian English philosophy, which came to dominate post the British invasion of India. As a society, we seem to be more bogged down by this Victorian philosophy rather than draw inspiration from our own literature and scriptures. Or perhaps may be it is only a small sect of people who believe so, but are vociferous enough to create such a pandemonium. Sex, per se, was not treated as undesirable, but was an integral part right from the existence of civilization. The Indian scriptures, including The Mahabharata, are said to be replete with obvious examples of sex outside marriage, also specifically for the purpose of having progenies and that too, of the intellectual class. These practices have been followed by both the higher and lower social and economical strata of the society, only as an endeavour to have a future perfect King. Can we say The Mahabharata or the various other literatures, which we have quoted herein above, are part of our history, yet they say something that is unusually lascivious and therefore should be banned? We only say this -

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In response to the demands of time and place what is proper may become in proper, and what is improper may become proper.

150. The test of obscenity as it evolves has also been discussed. We observed that reading of the novel does not create an appeal to the prurient interests or can be said to be lascivious or tending to deprave or corrupt. The necessary test of the various provisions of the Indian Penal Code, including Section 292, can hardly be said to have satisfied the prerequisite before one proceeds to prosecute the author/publisher. Mere recitation of the sections or the phraseology of some judgments as part of the complaint cannot suffice to create such prosecutions.

151. If the contemporary community standards test or the community tolerance test as enunciated in Aveek Sarkar's case (supra) and subsequently discussed in M.F. Hussain's case (supra) is applied, it can hardly be said that this novel is so offensive even by the current mores. It is not to be judged by the eyes of the insensitive which sees only obscenity in everything. The judge has to place himself in the position of the author in order to appreciate what the author really wishes to convey and thereafter, placing himself in the position of the reader in every age group in whose hand the book is likely to fall, arrive at a dispassionate conclusion. This is what we have endeavoured to do [a principle reiterated in M.F.

Hussain's case (supra) by reference to Samaresh Bose's case (supra)].

152. It is from the standard of a reasonable, strong and firm minded person that we have to test the book and not that of a person who in every contra point of view smells a danger. It is this view which has found favour in Tasleema Nasreen's case (supra) by reference to the earlier judicial pronouncements.

153. The matter is not to be tested within the parameters of which exception it would fall under, keeping in mind Section 292 of the Indian Penal Code, but whether first it is found to be obscene and only thereafter, would the question arise whether it falls within any of the exceptions contained in the said Section.

154. It is a matter of concern that as an evolving society, our tolerance level seems to be on the decline. Any contra view or social thinking is met at times with threats or violent behaviour. We are not concerned in such cases with issues of security of State or anti-nationalist sentiments, for which different set of rules would apply. India is not endangered by someone writing about social practices, real or unreal, more so qua a childless couple, as is the case here. Thus, certainly greater tolerance is expected.

155. The incident, if examined, can be said to be an orchestrated and stage-managed one, by a small group of people. The dates and events suggest it to be so.

156. The regional Tamil version of the "Madhorubagan" was published as far back as December, 2010 and released in January, 2011 at the Chennai Book Fair. There was not even a whisper of objection, much less any protest, and a fair amount of about 5,000 copies of the novel were stated to have been sold, which had gone into four editions. In November, 2013, "One Part Woman", being the English version, was published by Penguin Books India. A year later in November, 2014, two sequels to the novel had also come into vogue. It is in December, 2014 that various incidents took place qua the novel and its author, including threat calls and local agitations with distribution of booklets containing select pages of the novel underlined and lithographed. There were pamphlets circulated without names and addresses, containing mobile numbers. Women and caste associations are stated to have joined the protests. All this went on till the peace talks and the Agreement in January, 2015, which also did not solve the problem for the author.

157. It is inconceivable that the original Tamil version of the novel would not have invited heckles of the opposing groups for four long years, if they were so aggrieved. These people now agitating were not really concerned or had much to do with the English version, but it appears that the literary function in Singapore, in which the author is said to have participated and had opined on the novel, seems to have triggered something which travelled across the borders. It is accepted by the opponents that the English version is actually a more moderate version of the book. There seems to be thus a concerted effort by a select group of people to drag the author into a controversy, rather than there being angst of

any real substance, be it by the residents of the town or by the community said to have been affected by the author's writing.

158. We may also notice another aspect that one of the substantive claims being made is that the reference to the temple and the area seeks to cast aspersions on the women of the area. The book is a novel. It does not claim to be history. In fact, the author even agreed to delete the reference to any known place, so that the protests by these groups would subside, but even that was not sufficient for the agitating groups.

159. In the aforesaid context, the plea of the learned counsel for the publisher becomes significant, that it was not the claim of the author that he had referred to any written text so as to come to a particular conclusion. In fact, the practices prevalent are also claimed to be based more on folklore, which certainly is not documented history, as enunciated by us hereinbefore. It is carried by word of mouth. It relates to a much earlier period. We cannot really in substance say that the arguments advanced on behalf of the author and the publisher are contradictory as sought to be canvassed by the persons opposed to the novel on the ground that on the one hand the publisher was claiming the novel to be based on folklore, while on the other hand, the author was pleading that it was only a novel which was set to be located in a particular area, which often happens while writing books. It does not necessarily mean that if there is a reference to any geographical area qua a custom or a practise, that practise should be directly correlated to it. However, we must say that in the novel in question, there is a reference not only to the area, but also to the temple and the traditions of that place. The Author's Note at the end of the novel also refers to his search for historical information about the town. But, all this has to be read holistically as folklores of the area which have been referred to in the novel, which is primarily based on the turbulent circumstances a childless couple goes through in a typical societal setup. At the cost of repetition, we seek to emphasise that the theme of the novel is the travails of this couple, and the reference to the so called practise is only a suggestion put forth to the protagonists by their own family members, as a means to attain parenthood.

160. No one reading the novel would be persuaded to draw a definite conclusion as sought to be canvassed by the opponents of the novel that the endeavour of the author was to portray all women coming to the car festival as prostitutes. This is a complete misreading of the novel and its theme.

161. If the novel was really that offensive, the State would have exercised its power under Sections 95 and 96 of the Code of Criminal Procedure. On the other hand, the novel has been receiving accolades from different literary forums which are associated with quality writings.

162. The author has been a prolific writer with various novels, short stories, poetries etc. to his credit and has been conferred with various awards. These have already been sketched out and the curriculum vitae of the author discussed

hereinbefore. If one turns to the novel in question, as an illustration, the Samanvay Bhasha Samman of 2015 saw the Jury Chairperson complement the novel as "a passionate work of fiction that narrated with searing intensity and unsparing clarity, the story of a relationship caught between the dictates of social convention and the tug of personal anxieties". Thus, the emphasis was found to be on the anxiety of the childless couple. It was referred to as one inspired by the local folklore. If the literary world does not find anything offensive in the novel, nor did the Government find anything offensive in it, can a small group of people, who may have a more conservative view of the writings, create such a ruckus, while the simple solution was not to read the book? If we may say so, such antiques have only given hype to the novel and possibly garnered more publicity and readers than it had earlier.

163. Learned counsel for the publisher and the author have been able to establish from the vast amount of materials placed before us that there were folklores of sexual practices and mores akin to the one which formed a part of this novel. It is not for us to judge the veracity of the particular folklore, but suffice it to say that even the author treats it only as a novel and not as a historical book. Thus, there is nothing to give the status of a historical description of events to the alleged controversial portions of the novel. It undoubtedly has an element of fiction also revolving around the folklore.

164. The various reviews referred to of the novel by the learned counsel in support of the author show how contemporarily the novel is perceived. In this context, it has been observed in the book review of Mr. Dilip Menon that "in a society where masculinity is measured by the ability to procreate and the identity of a woman manifests itself in motherhood, the barbs of the society seem to chisel away the tender and caring togetherness of the couple". The folklore has been referred to as "the site of last resort", showing the levels of desperation of Ponna, who was in love with Kali and yet was influenced by societal norms, more pressed through the attitude of even her mother and mother-in-law. That is why the novel is sought to contain "raw and resonant dialogues and characters".

165. There is really no need for the opponents of the novel to perceive themselves or their ancestors as characters portrayed in the novel where it deals with the 14th day festivities of the temple car festival. To do so would be an endeavour as a self-inflicted wound by the more sensitive section of the society, since childlessness was being labelled as a God's will, though the story spins around to show how in desperation a solution is sought to get a God's child. Even if there was a sense of disapproval, the statement made by the author should have more than assuaged such an apprehension, where he categorically stated that there was no endeavour to either denigrate the town or any of its historical places and that he was only highlighting the emotional trauma of a childless woman. But this did not happen and the matter kept on getting aggravated, making it almost a case as if Tiruchengode as a whole was being demeaned, with posters coming up to protect the honour of Tiruchengode.

166. The numerous judicial pronouncements cited on the issue of freedom of expression and obscenity proceeded in the same direction. The Hicklin's Test gave way to the Contemporary Standards Norms, with the requirement of the Court to put itself both in the shoes of the author and the reader. We have already discussed in depth the "carry home", after reading the novel to show that what touches the reader, and what can be made out of the theme by the author is the travails of a childless couple and not the element of the alleged obscene event taking place on the 14th day of the car festival. A contrary view would indeed violate the very theme of the book.

167. We also believe that the reference made by the learned counsel for the opponents to various provisions of the Indian Penal Code, i.e. Sections 292, 292-A, 295-A, 298, 499, 500, 501 and 502, as also the provisions of the Young Persons (Harmful Publications) Act, 1956 is mere recital of the provisions rather than the essential ingredients of these offences having been made out as found in the storyline of the novel. In fact, the fundamental problem is that the actual storyline is something different, while based on a couple of paragraphs extracted from the novel, the opponents to seek to project a storyline based only on those paragraphs, ignoring the main storyline of the book.

168. The written synopsis filed by the opponents of the book also seeks to give a different colour, a historical perspective to the earlier writings referred to by both the author and the publisher and seeking to raise the flag of the religion being in danger at the hands of persons with different political and social ideologies. It is this belief which seems to be behind dragging the author into controversy, though there is no perceived reason to do so. In fact, they had no grievance with the works of the author from time to time, but suddenly found his writing offensive. Thus, there is hardly a case made out for issuance of any directions to initiate proceedings against the author at the behest of the opponents of the book.

169. The novel must be understood in its true perspective and storyline and the mere use of a more crass or earthy language to convey the dialogues cannot be the basis to take on the author and make it into a larger social issue only because a particular temple or site has been referred to in the novel, which also stands subsequently withdrawn by the author in the sequels to the novel.

170. A larger cause has emerged on account of the role played by the State in matters such as these. The State by itself did not find anything offensive in the novel. It got published and remained in the market to be read for more than four years. What seems to have triggered for a State action was a perceived threat to the peace in the town, resulting in interventions by the officials. We can thus perceive it only as an endeavour of peace initiative rather than there being any offence being committed. The Administration wanted to possibly dilute the situation and that is what resulted in the "Summons" being issued, calling upon the author to participate in the peace initiatives.

171. There is a dual consideration which arises for consideration. The first is whether such a peace initiative in the given situation was misplaced and the second is whether in subjects of this nature dealing with art and culture, where there are different points of view, there should be State intervention and if so, to what extent?

172. We had noticed the fact at the inception that we were troubled by the State interventions in such subject matters are not simply matters of brokering peace. There are different and variant thought processes on social mores and while each may be entitled to his own view, it cannot be forced down the gullet of another. It is not unusual to see now a campaign against a book, a film, a painting, a sculpture and other forms of artistic representations. Art is often provocative and is meant not for everyone, nor does it compel the whole society to see it. The choice is left with the viewer. Merely because a group of people feel agitated about it cannot give them a license to vent their views in a hostile manner, and the State cannot plead its inability to handle the problem of a hostile audience (S. Rangarajan's case *supra*). A vague construction therefore, of a possible deplorable impact on a certain section is not reason enough to deprive an artist of his expression. Even more so in a democratic country like ours. This aspect has been emphasised while dealing even the film "Aarakshan", the release of which was suspended by the State even after the Censor Board Certificate was issued, on the ground of possibility of a law and order problem arising. In Prakash Jha Productions case (*supra*), it was held that it was the duty of the State to maintain law and order. The Constitution of India itself provides a democratic space to voice one's views unacceptable to the others, but because it is unacceptable cannot be reason for itself to prevent it from being so expressed.

173. In Laika Productions case (*supra*), this very State saw the producers of a Tamil film "Kathi" being forced to sign certain agreements to remove certain material from the film. Such a letter of undertaking was held not capable of being acted upon by the police authorities as it may amount to creation of a super censor board. It was labelled as a blackmail, which should not succeed. After all, no one is forced to read a book or view a film as it is a conscious choice of the viewer or the reader (Ajay Gautam case (*supra*) dealing with ban on the Hindi movie "PK"). Morality and criminality have been observed not to be co-extensive and the expression of an opinion in favour of non-dogmatic and non-conventional morality has to be tolerated (S. Khushboo's case *supra*). In fact, the social ills of the society are also very stark in character and their expression when made would be stark. In this behalf, examples at times abound of representation of elements of rape, leprosy and other social problems. No one group of persons can threaten another group of persons on this account and mob violence has to be prevented.

174. If the State is not able to achieve the aforesaid, we will have the malice of, what in this State is called the "Katta Panchayat", raising its ugly head. These are non-legal courts which go by their own philosophy in determining and deciding

social and even criminal issues.

175. In M.F. Hussain's case (supra), the Court had expressed the importance of freedom of expression as an after speech as there can be no freedom of speech if there is no freedom after that, to survive with that view :-

"Democracy has wider moral implications than mere majoritarianism. A crude view of democracy gives a distorted picture. A real democracy is one in which the exercise of the power of the many is conditional on respect for the rights of the few. Pluralism is the soul of democracy. The right to dissent is the hallmark of a democracy. In real democracy the dissenter must feel at home and ought not to be nervously looking over his shoulder fearing captivity or bodily harm or economic and social sanctions for his unconventional or critical views. There should be freedom for the thought we hate. Freedom of speech has no meaning if there is no freedom after speech. The reality of democracy is to be measured by the extent of freedom and accommodation it extends."

Thus, it is not an issue where the State should refrain from interfering, but there is requirement of positive measures of protection to be taken against sufferance as a consequence of holding that view. The judgments referred to aforesaid include even international opinions in this field.

176. The fact that the State is duty bound to protect an individual's freedom of expression reflects even in international judgments on this aspect. Reference was made to Dink v. Turkey, Case Nos. 2668/07 6102/08, 30079/08, 7072/09 and 7124/09 decided on 14.9.2010, involving an Armenian journalist by name Dink Firhat in Turkey, who had written a series of articles analysing the identity of Turkish citizens of Armenian origin. This resulted in him being charged with the offence of 'Denigrating Turkishness'. During the course of his trial, Dink Firhat was assassinated by an ultra-nationalist organisation. A seven judge bench of the European Court of Human Rights unanimously held that Turkey was guilty of not protecting the individual's freedom of expression under Article 10 of the European Convention on Human Rights as they had a proactive obligation of protecting his right to express his opinions. The Court had the following observations to make (para 106, concurring opinions of Judge Sajó and Mrs. Székely) :-

"...the real and effective exercise of freedom of expression does not depend merely on the State's duty to refrain from interference, but may require positive measures of protection, even in relationships between individuals. Indeed, in some cases, the State has a positive obligation to protect the right to freedom of expression against damage even from private persons".

"There is a positive obligation of the State to prevent censorship by such (mob) groups and a positive obligation on the State to protect the life and freedom of expression of the writer."

177. Similarly, in *Özgür Gündem v. Turkey*, Case No.23144/93

(42-46 ECHR 2000- III), the office and personnel of a daily newspaper named *Gündem* in Turkey were being attacked, and they requested the State to provide adequate protection to its people and premises, which the State failed to do. It was alleged that the State had failed to provide protection and had directly or indirectly helped the attacks against them. In that case, a seven Judge Bench of the European Court of Human Rights held that the failure of the State to provide adequate protection to the magazine was a violation of its freedom of expression. The Court recalled the key importance of freedom of expression as one of the pre-conditions for a functioning democracy and that genuine, effective exercise of this freedom does not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals.

178. It would also do us well to refer to the recent judgment of the Supreme Court in *Dr. Subramaniam Swamy v. Union of India*, (2016) 2 M.L.J. (CrI.) 542, which highlighted the sanctity and significance of freedom of speech and expression in a democracy. It was observed therein that free speech is the foundation of a democratic society, and the right to freedom of speech and expression includes the right to acquire information and to disseminate it, i.e., the right to publish and circulate one's ideas, opinions and views with complete freedom by resorting to any available means of publication, which would then enable people to contribute to debates on social and moral issues. However, the same would be subject to reasonable restrictions as could be legitimately imposed on grounds of decency and morality, under Article 19(2) - vide *Union of India v. Motion Pictures Association*, (1999) 6 S.C.C. 150; *Ministry of Information & Broadcasting, Govt. of India v. Cricket Association of Bengal*, (1995) 2 S.C.C. 161; *Sakal Papers (P) Ltd. v. Union of India*, A.I.R. 1962 S.C. 305; and *Khushboo's case* (cited supra).

179. The aforesaid case arose in a different context viz. criminal defamation and the Supreme Court, while distinguishing it with the concept of freedom of expression in the fictional realm, referred to the judgments in *Odyssey Communications Pvt. Ltd. v. Lokvidayan Sanghatana*, (1988) 3 S.C.C. 410 and *Bobby Art International* (cited supra) and observed thus :-

"...the right of expression with regard to fictional characters through any medium relating to creation of a fiction would be somewhat dissimilar for it may not have reference to an individual or a personality. Right of expression in such cases is different, and is to be guided by provisions of any enactment subject to constitutional scrutiny. The right of freedom of expression in a poem, play or a novel pertaining to fictional characters stands on a different footing than defamation.

...A person in reality is defamed contrary to a fictional character being spoken of by another character or through any other mode of narrative.

...Freedom of speech and expression is a highly treasured value under the

Constitution and voice of dissent or disagreement has to be respected and regarded and not to be scuttled as unpalatable criticism. Emphasis has been laid on the fact that dissonant and discordant expressions are to be treated as viewpoints with objectivity and such expression of views and ideas being necessary for growth of democracy are to be zealously protected..."

The Supreme Court expanded the jurisprudence on the concepts of constitutional fraternity vis-`-vis fundamental duties as constituting the core principles of our Constitution, whereby the sense of respect and dignity that is to be offered to another and his views, his beliefs and his practices are termed as a constitutional norm; fraternity thereby assuring the dignity of the individual and the collective unity of the nation. In the words of the Supreme Court,

"The right to censure and criticize another legitimately does in no way affect the sense of brotherliness as envisaged by the Constitution. Brother may, nay, must be critical of the fellow siblings in an endeavour to promote and advance the potentials of their brethren. The right to censure and criticize does not conflict with the constitutional objective to promote fraternity. Brotherliness does not abrogate or rescind the concept of criticism. However, the thin line of legitimate criticism must be tread with caution, as the right to faultfinding and disagreement as protected under 19(1)(a) does not confer a right to defame another. The dignity of an individual is an extremely prize asset."

Thus, whenever free speech and expression is sought to be given wings and let loose against the backdrop of one's creativity, it must carry on its flight within the domain of constitutional morals, forever remembering that while individual opinions and forms of expression are critical to advancement and multifaceted national development, equally important is the safeguarding of the dignity and respectability of another and his cherished beliefs, for the latter must never be compromised on account of the freedom guaranteed under 19(1)(a), as the victim in such circumstances will be no less than the constitutional heartbeat of fraternity - The national brotherhood.

180. In the matter at hand, the author faced a challenge from the mob gathered outside the Collectorate, coupled with the pressures of a bandh and a strike in the town, called for by these elements. In such simmering circumstances, it was the bounden duty of the State Government to ensure that the law and order situation does not go out of hand, but that is ought not be achieved by placating anyone who seeks to take the law and order in his own hand at the cost of the person who has peacefully expressed his/her view. The incidents when the so called 'peace meeting' was held as discussed in extenso aforesaid would show that the group of people who were outside the Collectorate were actually permitted to have their way by compelling the author to use certain words of apology, which he was not willing to do, but left with a little choice owing to the hostility, decide to budge. The mere presence of a counsel of eminence, who came as his friend, whose advice was also not permitted to be adhered to, would show that it was an unequal battle, and the authorities really were not neutral in

the episode, but were possibly more concerned with the law and order scenario, as opposed to the freedom of expression of a single individual.

181. We do not believe that there was any mala fide endeavour of the police and the administration, but would call it more of a knee jerk reaction arising out of mere apprehension of law and order situation. But then, the solution was to prevent the breach of law and order through lawful means. We do not say that the peace meeting initiative itself can be said to be faulty, but it ought not to have proceeded the way it did. We may also say that the State and the police authorities would not be the best ones to judge such literary and cultural issues, which are best left to the wisdom of the specialists in the field and thereafter, if need be, the Courts.

182. We do believe that a clear distinction has to be carved out between situations involving the right to expression of an individual or a body of individuals as opposed to a routine law and order tension, where the State intervenes to diffuse the situation. Even in matters of this nature, the State may endeavour to diffuse the situation, but not permit proponents of free speech, authors and artistes, as the case may be, to be put under pressure by surrounding circumstances. On the other hand, the endeavour should be to preserve the rights of expression through other modes. There is thus a requirement of mixing care with caution so that such endeavours do not result in malicious proceedings merely based on a perspective of another set of people, who may have different mores.

183. Dr. V. Suresh, learned counsel for the publisher sought guidelines to be framed by this Court in matters where peace initiatives are held. There is a legal process for holding such peace initiatives and to that extent, we would not like to curtail the same. However, as conceded before us, the authorities certainly could not have issued "Summons" showing some kind of a compelling attendance without even a reference to any provision of law. Every action of a State authority must be in accordance and in conformity with law. If a power is sought to be exercised by the State Agency, the person receiving a notice must be shown as under what provision of law it is being done.

184. We, however, find some important aspects in the suggested guidelines, which we would like to put down as under:-

(i) There is bound to be a presumption in favour of free speech and expression as envisaged under Article 19(1)(a) of the Constitution of India unless a court of law finds it otherwise as falling within the domain of a reasonable restriction under Article 19(2) of the Constitution of India. This presumption must be kept in mind if there are complaints against publications, art, drama, film, song, poem, cartoons or any other creative expressions.

(ii) The State's responsibility to maintain law and order would not permit any compulsion on the artistes concerned to withdraw from his/her stand and non-State players cannot be allowed to determine what is permissible and what is not.

(iii) It is high time the Government constitutes an expert body to deal with situations arising from such conflicts of views, such expert body to consist of qualified persons in the branch of creative literature and art so that an independent opinion is forthcoming, keeping in mind the law evolved by the judiciary. Such an expert body or panel of experts would obviate the kind of situations we have seen in the present case. In such matters of art and culture, the issue cannot be left to the police authorities or the local administration alone, especially when there is a spurt in such conflicts.

(iv) The State has to ensure proper police protection where such authors and artistes come under attack from a section of the society.

(v) Regular programmes need to be conducted for sensitizing officials over matters dealing with such conflicts of artistic and literary appreciation.

185. Learned counsel for the publisher did seek a more detailed set of guidelines based on judicial pronouncements, arrests, nature of enquiry etc., but then we feel that we would be impinging on the legal provisions already laid under the Code of Criminal Procedure. The object is only to make the authorities more aware of this emerging area of conflict so that necessary precautions are taken to nip it in the bud and not to let it assume a larger proportion of a law and order scenario, yet at the same time, fully protecting the freedom of expression of authors and artistes.

186. A book cannot be dismissed merely as sensational, reactionary or mean-spirited. A publisher evaluates the work of an author on the quality of its sourcing and writing.

187. In "Madhorubagan", the author Dr. Perumal Murugan did not set out to explode any myths, but conducted research about what he believed to be ? revealed truths? that are far more complex in nature. He decided to "follow the facts where they led", without regard to any consequences. For that, he has been vilified. In truth, not a single fact stated in the novel had been seriously challenged ever since its publication in Tamil. It is only after the publication of the novel's English version, understandings that otherwise would have remained in darkness came to light. Can a blanket banning of the novel mean that the true perspective and storyline of this novel will not get addressed in our society?

188. Despite the profitability and popularity of other media, books remain a powerful tool, for they maintain a unique role in shaping up history and there are obvious reasons why good books are authoritative, well reasoned and articulate. They make considered determination about the characters of their subjects. Books create a space for reflection by both the author and the reader. Some books, though less worthy might make a splash at first blush, but eventually fade away. However, good books remain in the swim forever. The collective objective of publishers, which is more pressing than ever in these days of online advocacy and intimidation, must be to bring the truth to the readers.

189. In the present case, it seems to be ?sentence first and trial later?.

190. A bold controversial book often generates publicity and translates into sales. For a book to be controversial and yet at the same time sell, it has to get published. The publishers are supporters and facilitators of the knowledge, creation and quality assurance process. They play a key role as promoters for supporting research and connecting authors and reviewers and also assisting users with knowledge access. Publishing a book is not just a commercial activity, but is sometimes aimed at the education and welfare of the society. The mission of the publishing industry must be to promote professional standards among its members so that they may in turn generate and encourage development of knowledge, serve the society through publication of various types of books and make ours a book loving nation. An ideal publisher is one who studies the needs of the society and publishes such books which would enhance the social and cultural standards. A publisher must have respect for its authors and must act as the custodian of their interests. The creativity of the authors has to be respected if the publisher wants to get the best out of them.

191. We are thus of the view that W.P. No. 1215 of 2015 be allowed and the prayer sought therein granted to the extent that there is no binding force or obligation arising from the so called Settlement arrived at with the intervention of the State Authorities on 12.1.2015 and a quietus be given to that issue.

192. There is no necessity warranting action against any publication of the Tamil novel "Madhorubagan" or its English translation by name "One Part Woman", as sought for by the opponents of the novel and therefore, W.P. No. 20372 of 2015 stands dismissed.

193. There can also be no possible direction for any police action against the author and/or the publisher, or for any case to be registered or proceeded further, in view of what we have discussed and therefore, Crl. O.P. Nos. 7086 and 7153 of 2015 also stand dismissed.

194. Insofar as the areas of concern expressed by us in the guidelines enumerated herein above are concerned, they should be adhered to and circulated by the State Government for the benefit of the Police and State Authorities, and the Expert Body as directed, should be constituted with independent experts from different fields after proper consultations, within a period of three months of the receipt of the order.

Epilogue

195. In M.F. Hussain's case (supra), the judgment began with reference to Pablo Picasso, a renowned artiste, who defined art as "Never being chaste and what is chaste not being art". Since in the same way writings are vehicles of personal expression, they must be understood and appreciated, even if provocative, keeping in mind our rich cultural heritage. The ancient Indian Art as depicted has encompassed eroticism as part of it. Of the so called folklore referred to by the

author here, there is material to show that it was not something unknown - and this is why he has labelled his book as a novel. All writings, unpalatable for one section of the society, cannot be labelled as obscene, vulgar, depraving, prurient and immoral. There can hardly be any improper intent or motive assigned to the author in the present case, who even went backwards to ensure that the hurt feelings of all are assuaged. He is a writer who had imbibed education and grown from the same very town, holding it in high esteem. There cannot be a new puritanism imbibed in this civilisation of variant cultures. We are not stating that the creative freedom of an artiste is unhindered. We have referred to the fact that these are not matters concerned with security of the State or of denigration of any religion or a class of people. A section of people are just seeking to put themselves or their ancestors in the shoes of persons who are affected because of a reference to a location and a folklore, which description of location also stood withdrawn subsequently, since the author believed it was a work of fiction and could have been based anywhere else. There has to be an attitude of tolerance towards writings which have existed for ages and which come into being, which may not be "of our kind". The author and artistes like him cannot be under a constant apprehension that if he deviates from the oft-treaded path, he will face adverse consequences. The opponents of the novel may certainly be entitled to its critique, as the proponents of the novel are entitled to applaud it. But shutting down life of the town, holding it to ransom and effecting threats to the author is not the way. The State also performs an important role along with the judiciary in protecting these individual rights and freedoms.

196. The author Prof. Perumal Murugan should not be under fear. He should be able to write and advance the canvass of his writings. His writings would be a literary contribution, even if there were others who may differ with the material and style of his expression. The answer cannot be that it was his own decision to call himself dead as a writer. It was not a free decision, but a result of a situation which was created. Time is a great healer and we are sure, that would hold true for Perumal Murugan as well as his opponents; both would have learnt to get along with their lives, we hope by now, in their own fields, and bury this issue in the hatchet as citizens of an advancing and vibrant democracy. We hope our judgment gives a quietus to the issue with introspection on all sides. Time also teaches us to forget and forgive and see beyond the damage. If we give time its space to work itself out, it would take us to beautiful avenues. We conclude by observing this -

"Let the author be resurrected to what he is best at. Write."