IN THE SUPREME COURT OF INDIA
EXTRAORDINARY CIVIL WRIT JURISDICTION
REVIEW PETITION (CIVIL) NO. 3358 OF 2018
IN
WRIT PETITION (CIVIL) NO. 373 OF 2006

IN THE MATTER OF:

KANTARU RAJEEVARU ... PETITIONER

VS.

INDIAN YOUNG LAWYERS ASSOCIATION ... RESPONDENTS

WRITTEN SUBMISSIONS

Tushar Mehta

Volume I.4

SOLICITOR GENERAL OF INDIA

On behalf of
UNION OF INDIA

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OPENING STATEMENT

1. It is submitted that the present bench has assembled in order to locate the correct position of law and to evolve a judicial policy for the constitutional courts of this country, to enunciate the manner in which, the plenary power of the constitutional courts is to be exercised, in matter concerning religious freedoms of individuals and institutions in the country and their interplay with other constitutional rights.

2. By way of background, it is important to highlight that the present controversy is not confined merely to the facts of one temple, one practice, or one set of worshippers. In ***Kantaru Rajeevaru v. Indian Young Lawyers Association through its General Secretary & Ors.*, (2020) 2 SCC 1** [Vol. III.6 @ Pg. 71 – 157], while dealing with the review petitions arising from **Indian Young Lawyers Association *v. State of Kerala*, (2019) 11 SCC 1** [Vol.V.5 @ Pg. 2662 – 2999], the majority speaking through the then Chief Justice Ranjan Gogoi held that it was time for the Court to ***"evolve a judicial policy"*** befitting its plenary powers to do substantial and complete justice, and to secure an authoritative enunciation of constitutional principles on the rights flowing from Articles 25 and 26 of the Constitution. This Hon'ble Court held as under:

> **"4. It is time that this Court should evolve a judicial policy befitting to its plenary powers to do substantial and complete justice and for an authoritative enunciation of the constitutional principles by a larger Bench of not less than seven Judges. The decision of a larger Bench would put at rest recurring issues touching upon the rights flowing from Articles 25 and 26 of the Constitution of India.** It is essential to adhere to judicial discipline and propriety when more than one petition is pending on the same, similar or overlapping issues in the same court for which all cases must proceed together. Indubitably, decision by a larger Bench will also pave way to instil public confidence and effectuate the principle underlying Article 145(3) of the Constitution, which predicates b that cases involving a substantial question of law as to the interpretation of the Constitution should be heard by a Bench of minimum five Judges of this Court. Be it noted that this stipulation came when the strength of the Supreme Court Judges in 1950 was only seven Judges. The purpose underlying

was, obviously, to ensure that the Supreme Court must rule authoritatively, if not as a full court (unlike the US Supreme Court). **In the context of the present strength of Judges of the Supreme Court, it may not be inappropriate if matters involving seminal issues including the interpretation of the provisions of the Constitution touching upon the right to profess, practise and propagate its own religion, are heard by the larger Bench of commensurate number of Judges. That would ensure an authoritative pronouncement and also reflect the plurality of views of the Judges converging into one opinion. That may also ensure consistency in approach for posterity.**"

3. It is respectfully submitted that no part of Part III of the Constitution invites a more stimulating, vexed and a complex debate than the provisions under Article 25 and 26. The question before this august bench is the interpretation of the said Articles and the embedding of a profound and stable judicial policy, ***befitting the high stature and the plenary powers exercised by this Hon'ble Court*** as the final and apex arbiter of disputes / questions of law in this country. Through ages, the Hon'ble Courts have been tasked with deciding questions concerning religion and its interplay with individuals and with the society at large. While the Hon'ble Courts may not carry a special expertise in ecclesiastical matters, the Courts have, in their responsibility as the guardian of rights, sought to carry out this enviable task.

4. The Constitution of India, being a verbose document, has weaved a complex fabric surrounding religious freedoms, both individual and community based, and the power of the State [legislature and the executive] to regulate or restrict them. This interplay creates the playground for the exercise of these freedoms between the degree of State regulation and the extent of rights to individuals / denominations [**or sections thereof**].

5. The Constituent Assembly, intentionally and precisely, elevated the freedom of religion and conscience to the stature of the fundamental right. The expanse of such rights are to be understood in juxtaposition to three particular aspects as under: -

(i) The expanse of the right sans any power of the State to regulate or restrict;

(ii) The scope of the enabling power of the State to regulate or restrict;

(iii) The interplay between individual freedoms of religion, life and liberty, right against arbitrariness and the community rights to establish, maintain and manage matters of religion on part of religious denominations and sections thereof.

6. In terms of a prima facie interpretation of Article 25 and 26, it may be noted that Article 25 represents a right available to '*all persons*'. This right is curtailed on the conditionalities of '*public order*', '*morality*' and '*health*'. Further, Article 25 mandates that all such persons are '*equally entitled*' to the said right thereby indicating towards an interpretation which manifests

itself in embarking a situation wherein adherents of different religions exercise the same extent of religious freedoms irrespective of the varying nature of such religions themselves. The content of the right under Article 25 is further accentuated by the use of the words '*profess*', '*practice*' and '*propagate*'. The caveat of '*public order*', '*morality*' and '*health*' control the expanse of '*profess*', '*practice*' and '*propagate*', thereby limiting the extent of the right. The caveat of '*other provisions of this Part*' provides for a balanced approach in case of any perceptible clash between the different provisions in Part III and Article 25.

7. The next provision in Article 25 is unmistakably an enabling provision. The nature of any enabling provision is well settled and the same provides for a power to the State to make appropriate law in appropriate situations. The extent of the enabling provision is dependent upon the interpretation of the power to '*regulate or restrict*' any '*economic*', '*financial*', 'political' or '*other secular activity*' associated with religious practice. It may be noted that because this particular provision is an enabling provision, it does not restrict the expanse of the right under Article 25[1] but merely grants the State leeway to legislate. Further, the said enabling provision also provides the State to enact laws for '*social welfare*', '*reform*' or '*throwing open of Hindu religious institutions of public character to all classes and sections of the Hindus*'. Therefore, the mandate for regulation of secular aspects and for welfare / reform rests solely with the State [legislature or executive]. It is submitted that in absence of any express intention in the form of a legislation or any executive activity, the language of the provision under Article 25[2] would not curtail the right enshrined under Article 25[1].

8. The Article 26 provides for four separate rights as under: -

(i) Establish and maintain religious and charitable institutions;

(ii) Owning and acquiring movable and immovable properties by such institutions;

(iii) Administration of such properties in accordance with law; and

(iv) Managing its own affairs in matters of religion in such institutions.

9. The said right is available to every religious denomination or section thereof and to such institutions that may be established by such religious denominations or sections thereof. In effect, every institution claiming to be a part of any religious denomination or section thereof can trace its rights, as enshrined under Article 26, subject to '*public order*', '*morality*' and '*health*'. **It may be noted that the said right is textually not curtailed by '*other provisions of this Part*'.** However, the said right would be subject to the enabling power of the State under Article 25[2]. The present written submission seeks to propose a renewed understanding of the Article 25 and suggests sound a judicial approach in consonance with the high constitutional ideals of protection of private rights in harmony with the role of State to regulate and reform.

10. It is submitted that that the Hon'ble Court, while making an attempt to define "denominations" in order to assess the scope of the applicability of Article 26, has restricted the meaning to a strict definition and further not defined the scope of the term "or a section thereof" occurring in the text of the Article. It is stated that the said restrictive approach sits at odds with the inherent plurality of religions across the world and further, invades the intra-religious diversity. The present written submissions seek to present a fresh understanding of "denomination" within the complex mosaic of society, cultures, sub-cultures, sects, groups and beliefs in the country. The said position seeks to protect the intra-religious diversity and to ensure that every belief, faith or custom [held by howsoever minor a community], would be capable of a constitutional protection.

11. Further, it is stated that in case wherein there is a perceptible clash of fundamental rights under Article 14, 19, 21 on one hand and the Article 25 or 26 on the other, the Hon'ble Court must apply the ***doctrine of optimisation*** [giving effect to both provisions] in order to arrive at an apt harmonising position. It is stated that in cases wherein the applicability of right under other provisions of Part III would result in effacing the effect and width of the right under Article 25 or Article 26, the latter ought to prevail. In the corollary situation, especially wherein civil rights are affected profoundly and in continuity thereby affecting numerous aspects of human life, the former must prevail. The balance between the two is critical, and often vexed and mired in the fact situations arising in each case. The written submission seeks to propound and import the theory of 'pith and substance' in order to determine such vexed questions.

12. These submissions are categorized as under:

I. The peculiar nature of India's position reflecting plurality of various religions. Each religion in the country has an internal plurality divided by different internal religious groups, faiths, beliefs, rituals and other material pertaining to the same religion.

II. The genesis of Articles 25 and Article 26 as introduced in the Constitution of India. This is reflected from the historical context compartmentalized in two parts:

i) The historical events starting from the year 1809 till the framing of the Constitution reflecting the intent of the Executive and the Legislature while dealing with religion and religious institutions.

ii) The proceedings prior to and during the Constituent Assembly Debates which reflects the intention of makers of the Constitution. These debates have largely gone unnoticed in judgments delivered so far.

III. The journey of evolution of jurisprudence under Articles 25 and 26 mainly commencing from ***Nar Hari Shastri and Ors. v. Shri Badrinath Temple Committee***

Through Its Special Officer (Secretary)*, (1952) SCR 849** [Badrinath Temple Committee*** case] [Vol. V.1 @ Pgs. 139 – 159], ***Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, 1954 SCR 1005 [*Shirur Mutt* case] [Vol. V.1 @ Pgs. 160 – 201] till ***Adi Saiva Siva Chariyargal Nala Sangam and Others v. Govt. of Tamil Nadu and Anr, (2016) 2 SCC 725 [Adi Saiva*** case**]** [Vol. V.6 @ Pgs. 3222 – 3262] ***and Indian Young Lawyers Association and Ors. v. The State of Kerala and Ors., (2019) 11 SCC 1*** [***Sabarimala Temple*** case] [Vol.V.5 @ Pg. 2662 – 2999].

IV. Specific response to the questions referred to this Hon'ble Bench.

V. International position on freedom of religion, more specifically the European Law, British, American and Australian position in respect of Essential Religious Practice.

13. It is submitted that none of the judgments, through which scope and ambit of Articles 25, 26 and their interplay is examined, has taken note of a fundamental point of constitutional interpretation. This is the Preamble of the Constitution itself. The Preamble of the Constitution reads thus-

> "WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:
>
> JUSTICE, social, economic and political;
>
> **LIBERTY of thought, expression, belief, faith and worship;**
>
> EQUALITY of status and of opportunity;
>
> And to promote among them all
>
> FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;
>
> IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION"

14. The Preamble unequivocally confers liberty to "WE THE PEOPLE OF INDIA" of, *inter alia*, "belief, faith and worship". Articles 25 and 26 shall have to be read, understood, construed and interpreted in line with the aspirations mentioned in the Preamble conferring liberty, belief, faith and worship.

RELIGIOUS PLURALITY IN INDIA AND INTERNAL PLURALITY WITHIN RELIGION OR DENOMINATION

15. The concept of "religion" and religious plurality does not lend itself to precise definition within the boundaries of a single formula. It comprehends matters of faith, belief, doctrine, practice, observance, symbolism, and modes of spiritual life, all of which may vary from community to community.

This difficulty becomes even more pronounced in the context of Hinduism, which does not rest upon a single founder, a single text or scripture, a single ecclesiastical authority, a single creed, or a single mandatory set of practices. Hinduism, by its very character, accommodates within its fold a wide plurality of traditions, schools of thought, customs, rituals, philosophies, and forms of worship, often coexisting. It is, therefore, submitted that any attempt to compress Hinduism into a narrow or singular definition would be doctrinally flawed and constitutionally unsafe. The inherent diversity and pluralism of Hinduism make it impossible to define it or denominations under its fold or "a section thereof" in any exclusive or inflexible terms.

16. It is respectfully submitted that the expression "religion" is incapable of any rigid, exhaustive, or universally satisfactory definition. India's religious landscape is marked not merely by the coexistence of multiple religions, but by the fact that each religion itself contains within it a rich internal plurality. Every major religious tradition in the country is expressed through diverse sects, denominations, spiritual lineages, regional traditions, faith, practices, rituals, customs, and systems of belief.

17. This internal diversity is of particular significance in the present case. Any legal or constitutional understanding of religion in India must remain sensitive to this distinctive feature, for the Indian experience of faith is shaped as much by diversity within religions as by diversity between religions. A separate note on diversity across religion is annexed as **Annexure A.**

18. A consequence of this diversity, especially in religions with lack of written codes and doctrines, is that it makes the exercise of locating the core or "essential practices" extremely difficult and confusing. It may also lead to a situation wherein various denominations and/or sects and religions, wherein there is no canonical text and are inherently [or by experience] open to change and contain no strict rules, would find it very difficult to establish any aspects of their beliefs, practices or culture to be ***essential.*** In such a situation, denominations and/or

sects and religions, merely due to the lack of stringent norms, would be afforded less constitutional protection under the present jurisprudence.

LIST OF EVENTS

19. The important events in India and across the world demonstrating the historical context of the religion, religious institutions and state regulation is as under:

YEAR	EVENT
1809	The first move by the colonial government Regulation IV was passed by the Governor-General regarding the Puri Temple. This regulation entrusted the management of the temple to the Raja of Khurda (later Puri) subject to government control.
1810	Bengal Regulation XIX was enacted. It empowered the East India Company to supervise religious endowments and prevent the misappropriation of funds, marking the state's entry into temple management in Bengal.
1817	Madras Regulation VII was enacted. Mirroring the Bengal regulation, it transferred the supervision of temples and mosques in the Madras Presidency to the Board of Revenue.
1827	Bombay Regulation I and Regulation XVII were enacted regarding religious charities.
1833	Directives were issued by the Court of Directors of the East India Company to ***disassociate the government from religious rites*** and "debasing superstitions," marking a policy shift away from direct management due to pressure from Christian groups.
1857	The First War of Independence (Great Indian Rebellion). This led the British to adopt a strict policy of religious non-interference to avoid provoking further unrest.
1863	The Religious Endowments Act (Act XX of 1863) was enacted. It formally ended the era of direct Company control, transferring management to local committees and enabling court-based accountability.
1890	The Charitable Endowments Act was enacted to provide a framework for charitable trusts. The Guardians and Wards Act was also passed.
1920	The Charitable and Religious Trusts Act was enacted. On November 15, a gathering at the Akal Takht led to the formation of the SGPC to manage Sikh shrines.
1925	The Sikh Gurdwaras Act was enacted, placing management in the hands of an elected Board (SGPC). Madras Act I of 1925 was passed but faced validity challenges. The Indian Succession Act was also enacted.

YEAR	EVENT
1926	A bill was introduced repealing Act I of 1925 and re-enacting its provisions to cure legal defects, becoming the Madras HRE Act.
1927	The Madras Hindu Religious Endowments Act (Act II of 1927) was enacted. It created a statutory Board with powers to supervise temples and levy contributions.
1930	The Mussalman Waqf Validating Act (Amendment) was passed, giving retrospective effect to the 1913 Act.
1931	Temple committee functions in Madras were shifted to the Board.
1933	The Tirumala Tirupati Devasthanams Act was passed, vesting administration in a committee.
1934	The Bengal Wakf Act was enacted, creating a statutory Board to supervise waqfs, serving as a prototype for other provinces.
1935	The Government of India Act was passed. The Bombay Waqf Act was also enacted.
1936	The United Provinces Waqf Act, the Parsi Marriage and Divorce Act, and the Durgah Khwaja Saheb Act (Act 23) were enacted.
1937	The Muslim Personal Law (Shariat) Application Act was enacted, giving statutory recognition to Shariat.
1938	The Malabar Temple Entry Act was passed.
1939	The Madras Temple Entry Authorization and Indemnity Act was passed.

20. In this background it is apposite to examine the drafting history of the provisions governing religious freedom in the Constitution.

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1947	India's constitution-makers began formulating fundamental rights to guarantee religious freedom for the new republic. The Advisory Committee on Fundamental Rights and Minorities was chaired by Sardar Patel. The Sub-Committee on Fundamental Rights had 10 members including J.B. Kripalani, M.R. Masani, Prof. K.T. Shah, Rajkumari Amrit Kaur, Sir Alladi Krishnaswamy Aiyar, K.M. Munshi, Dr. B.R. Ambedkar, and others.
17.03.1947	K.M. Munshi submitted his Note and Draft Articles, proposing Article VI which provided all citizens equally entitled to freedom of conscience and the right to 'profess' and 'practice' religion, compatible with public order, health

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	and morality. He clarified that 'economic, financial or political activities' associated with religious worship fall outside the protected freedom. Notably, Munshi's draft included a specific clause prohibiting and punishing conversion brought about by coercion, undue influence, or material inducement. The relevant extracts are reproduced hereunder: ARTICLE VI *The Right to Religious and Cultural Freedom* **(1) All citizens are equally entitled to freedom of conscience and to the right freely to profess and practise religion in a manner compatible with public order, morality or health:** **Provided that the economic, financial or political activities associated with religious worship shall not be deemed to be included in the right to profess or practise religion.** (2) All citizens are entitled to cultural freedom, to the use of their mother tongue and the script thereof, and to adopt, study or use any other language and script of their choice. (3) Citizens belonging to national minorities in a State whether based on religion or language have equal rights with other citizens in forming, controlling and administering at their own expense, charitable, religious and social institutions, schools and other educational establishments with the free use of their language and practice of their religion. (4) No person may be compelled to pay taxes the proceeds of which are specifically appropriated in payment of religious requirements of any com-munity: of which he is not a member. (5) Religious instruction shall not be compulsory for a member of a community which does not profess such religion. (6) No person under the age of eighteen shall be free to change his religious persuasion without the permission of his parent or guardian. (7) Conversion from one religion to another brought about by coercion, undue influence or the offering of material inducement is prohibited and is punishable by the law of the Union. (8) It shall be the duty of every unit to provide, in the public educational system in towns and districts in which a considerable proportion of citizens of other than the language of the unit are residents, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such citizens through the medium of their own language. Nothing in this clause shall be deemed to prevent the unit from making the teaching of the national language in the variant and script of the choice of the pupil obligatory in the schools. (9) No legislation providing State-aid for schools shall discriminate against schools under the management of minorities whether based on religion or language. (10) Every monument of artistic or historic interest or place of natural interest throughout the Union is guaranteed immunity from spoliation, destruction, removal, disposal or export except under a law of the Union, and shall be preserved and maintained according to the law of the Union."

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24.03.1947	Dr. B.R. Ambedkar independently circulated a Memorandum and Draft Articles. His version affirmed freedom of conscience and rights to profess and practice religion, and added freedom '*to preach and to convert*', within limits compatible with public order and morality. Dr. Ambedkar also provided a clause that no person shall be compelled to become a member of any religious association. The draft provided that each religious association shall be free to manage its own affairs within the bounds of law. The relevant extracts are reproduced hereunder: ARTICLE II- Section I *Fundamental Rights of Citizens* The Constitution of the United States of India shall recognize the following as fundamental rights of citizenship: ..... 14. The State shall guarantee to every Indian citizen liberty of conscience and the free exercise of his religion including the right to profess, to preach and to convert within limits compatible with public order and morality. 15. No person shall be compelled to become a member of any religious association, submit to any religious instruction or perform any act of religion. Subject to the foregoing provision, parents and guardians shall be entitled to determine the religious education of children up to the age of sixteen years.
26.03.1947	During discussions of the Fundamental Rights Sub-Committee, Rajkumari Amrit Kaur alleged that the clause was defective as it may 'invalidate legislation against anti-social customs'. The Sub-Committee was meeting to hammer out religious freedom clauses using Munshi's and Ambedkar's formulations as the basis for discussion. The Sub-Committee also accepted at this stage Alladi Krishnaswamy Aiyar's formulation of the clause empowering sects/groups/individuals the right to establish places of worship. The draft accepted as of that stage is as under: "**Article VI(1) of Mr. Munshi's draft was adopted in the following form:** **All persons are equally entitled to freedom of conscience and the right freely to profess and practise religion in a manner compatible with public order, morality or health. The right to profess and practise religion shall not include economic, financial or political activities associated with religious worship.** Rajkumari Amrit Kaur wanted it to be recorded that the clause is defective inasmuch as it might invalidate legislation against anti-social customs which have the sanction of religion. It was decided to adopt the following clause in Sir B. N. Rau's draft:

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	Every religious denomination shall have the right to manage its own affairs in matters of religion and to own, acquire and administer property immovable and movable, and to establish and maintain institutions for religious or charitable purposes consistently with the rights guaranteed in this Constitution. The committee considered the following draft submitted by Sir Alladi Krishnaswami Ayyar : Such properties shall not be diverted wholly or in part for purposes unconnected with their original objects nor be confiscated except on payment of just compensation under the laws relating to land acquisition. Dr. Ambedkar pointed out that the objects of trusts may in some cases require to be modified. He mentioned examples of trusts for educational purposes intended only for Hindus; these trusts having been made at a time when the definition of Hindus' was circumscribed may be held not to apply to members of the Scheduled Castes. It was not right to perpetuate such trusts by a clause in the Constitution. The committee agreed that this was a valid point and Mr. Munshi promised to submit a re-draft to cover it. The committee considered the following draft submitted by Sir Alladi Krishnaswami Ayyar: Every religious community or sect or group or individual thereof, to whatever religion it may belong, shall have a right to build and maintain places of worship according to the needs of such community or sect or group subject to the laws and orders of the State in regard to the maintenance of public peace and public morality and town planning or village planning. It was decided to accept this in some such form as the following to be drafted by Sir B. N. Rau : The right to build places of worship in any place shall not be denied except for reasonable cause. Mr. Masani and Prof. Shah dissented from the inclusion among fundamental rights of any provision guaranteeing institutions belonging to any religious community. They said they would submit a note of dissent. The committee agreed to the following clause : Neither the Union nor any unit thereof shall recognize any religion as the State religion. Prof. Shah desired it to be recorded that in his opinion the clause should be expanded so as to read that the State shall be a solely secular organization. The committee considered paragraph 20 of Dr. Ambedkar's memorandum* and rejected it by 5 votes to 3. Sub-clause (4) of Article VI of Mr. Munshi's draft was accepted in the following form: No person may be compelled to pay taxes the proceeds of which are specifically appropriated in payment of religious requirements.

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	In clause (5) of Article VI, it was decided to adopt the following draft of Sir B. N. Rau: No person attending any school maintained or receiving aid out of public funds shall be compelled to attend the religious instruction that may be given in the school. Sardar Harnam Singh raised the question of the right of Sikhs to wear and carry kirpans. It was decided to provide in sub-clause (1) of Article VI, an explanation to the effect that the practice of religion includes in the case of Sikhs the right to wear and carry kirpans. It was also decided that it would be provided in the clause dealing with the right to assemble peaceably and without arms that this does not prohibit the Sikhs from wearing and carrying kirpans. Sardar Harnam Singh also raised the question of Jhatka meat and suggested that a provision should be made to the effect that jhatka meat shall be provided for Sikhs in public institutions. It was decided that this was a matter to be dealt with by the Minorities Sub-Committee. Clause (6) of Article VI was accepted in principle but it was considered that it required re-drafting."
27.03.1947	The Sub-Committee accepted Mushi's formulation of the anti-conversion clause which was Clause 7 in Article VI. The relevant extract is reproduced hereunder: "**3. Clause (6) of Article VI was accepted in the following form:** No person under the age of 18 shall be converted to any religion other than the one in which he was born or be initiated into any religious order involving loss of civil status. **4. Clause (7) of Article VI was passed in the following form:** Conversion from one religion to another brought about by coercion or undue influence shall not be recognized by law and the exercise of such coercion or undue influence shall be an offence."
31.03.1947	Rajkumari Amrit Kaur, on behalf of herself and Mrs. Hansa Mehta, wrote to B.N. Rau emphasising that many oppressive practices (child marriage, polygamy, untouchability) are justified in the name of religion. They proposed narrowing the right to 'freedom of religious worship' rather than the broader 'practice of religion'. The Sub-Committee revised clause 16 in line with this suggestion. The relevant extracts are reproduced hereunder: "I am writing this on behalf of Mrs. Hansa Mehta and myself. She is not in Delhi and I am, therefore, unable to append her signature along with mine. She and I went over the draft report together and are agreed on the following points: 1. We recorded our vote against compulsory service in any form during the discussions and adhere to this position. We are, therefore, not in favour of the "explanation" as given under clause 15.

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	2. We still feel considerable hesitation in accepting clause 16 as worded, even with explanation II. As we are all aware there are several customs practised in the name of religion e.g., pardah, child marriage, polygamy, unequal laws of inheritance, prevention of inter-caste marriages, dedication of girls to temples. We are naturally anxious that no clause in any fundamental right shall make impossible future legislation for the purpose of wiping out these evils. As worded. clause 16 may even contradict or conflict with the provision abolishing the practice of untouchability in clause 6. Indeed we have a further fear that validity of existing laws such as the Sarda Act, and the Widow Remarriage Act may even be questioned. In the light of the above objections we would like to amend the said clause as follows : Freedom of conscience, freedom of religious worship and the free profession of religion subject to public order, morality or health **and to the other provisions of this chapter** are guaranteed to every citizen. In other words, we would like "free practice of religious worship" to replace "free practice of religion". 3. This is personal to me as I was unfortunately unable to discuss it with Mrs. Mehta. I would like clause 24 to read as follows: Every citizen is entitled as of right to free primary education and it shall be the duty of the State to provide this within a period of 10 years from the commencement of this Constitution for all children until they complete the age of 14 years. 4. We would also like to draw the attention of the Fundamental Rights Sub-Committee to what was, as a matter of fact, brought to their notice by you in regard to clause 27. As it stands the clause might interfere not only with future legislation but might also entail revision of or invalidate past legislation. It would appear that section 299 of the Government of India Act is more progressive and fair enough and would, therefore, meet our purpose better. 5. While the non-justiciable rights shall not be cognizable by any court, we would respectfully urge that they are nonetheless fundamental. We would, respectfully urge that they are nonetheless fundamental. We would, therefore, like this to be stressed either in the foreword or at the end of clause 35 so that it shall be the duty of the State to take, as soon as possible, the necessary action in fulfilment of the directives. For example clause 41 is, in our opinion, very vital to social progress. Indeed all the non-justiciable rights are fundamental to the well-being and ordered progress of the State."
03.04.1947	First conjoint Draft Report of the Sub-Committee on Fundamental Rights published. It contained clauses 16–23 on religious freedoms, including: right to profess and practise religion (subject to public order, morality or health); rights of religious denominations to manage affairs and own property; prohibition on compulsory religious taxes; anti-conversion clauses (clauses 22 and 23)

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	prohibiting conversions by coercion, undue influence, or material inducement, and protecting minors from conversion. Notably, 'propagate' was not yet included and contained only the right was to practice and profess only. The relevant extracts are reproduced hereunder: "Rights relating to religion 16. All persons are equally entitled to freedom of conscience and the right freely to profess and practise religion subject to public order, morality or health and to the other provisions of this chapter. Explanation I.-The wearing and carrying of kirpans shall be deemed to be included in the practice of the Sikh religion. Explanation II.-The right to profess and practise religion shall not include any economic, financial, political or other secular activities that may be associated with religious worship. Explanation III.—No person shall refuse the performance of civil obligation or duties on the ground that his religion so requires. 17. Every religious denomination shall have the right to manage its own affairs in matters of religion and to own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes consistently with the provisions of this chapter. The right to build places of worship in any place shall not be denied except for reasonable cause. 18. No person may be compelled to pay taxes the proceeds of which are specifically appropriated to religious purposes. 19. The State shall not recognize any religion as the State religion. 20. No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school. 21. The property of any religious body shall not be diverted, save for necessary works of public utility and on payment of compensation. 22. No person under the age of 18 shall be converted to any religion other than the one in which he was born or be initiated into any religious order involving a loss of civil status. 23. Conversion from one religion to another brought about by coercion or undue influence shall not be recognized by law and the exercise of such coercion or undue influence shall be an offence."

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04.04.1947	Alladi Krishnaswami Ayyar wrote to B.N. Rau expressing concern that clause 16 as worded might invalidate all existing social reform legislation (including temple entry laws, laws against untouchability, child marriage, sati). He drew attention to Section 116 of the Australian Constitution and the Adelaide Company of *Jehovah's Witnesses v. Commonwealth* case, where Chief Justice Latham warned that broad religious liberty provisions can be problematic if taken too literally. Ayyar urged insertion of a '*suitable rider or explanation*' to preserve State power to enact social welfare and reform laws. The relevant extracts are reproduced hereunder: "I am expecting to receive the formal draft embodying the results of the decisions reached by the Fundamental Rights Sub-Committee. Meanwhile there are one or two points bearing upon the decisions reached, to which 1 would like to draw the attention of the committee. The recent happenings in different parts of India have convinced, more than ever, that all the fundamental rights guaranteed under the Constitution must be subject to public order, security and safety though such a provision may to some extent neutralize the effect of the fundamental rights guaranteed under the Constitution. In view of the wide import that may be given to the word religion. its bearing on social legislation and the legislation relating to rights of property from the time of early establishment of British rule down to the present day, including the latest enactment relating to temple entry, I feel very strongly that there is a good deal to be said in favour of what the lady members have urged and for inserting an explanation to the clause relating to the freedom of religion on the lines indicated by them. The committee will realize that if for any reason the Federal Court construes the clause relating to religion and practice of religion in a wide sense, it may have the effect of invalidating all existing legislation apart from prohibiting such legislation for the future. That an apprehension of this sort is not ill- founded is clear from the very full discussion of section 116 of the Australian Constitution relating to freedom in matters of religious belief and exercise of religion in Adelaide Company of Jehovah's Witnesses v. Commonwealth (67 Commonwealth Law Reports, 116). I request you to go through the decision carefully before our next meeting and circulate extracts* from Chief Justice Latham's judgment in the case to the members of the committee. You may state that the judgment is circulated on my suggestion. I doubt if merely stating that the clause relating to freedom of religion is subject to other clauses will serve the purpose. In this connection it may be remembered that when, during the passage of the Government of India Act, 1935, a deputation of orthodox Hindus pressed upon Parliament to safeguard religious institutions from interference of any kind by the Legislature. Parliament did not insert any provision, as such a provision might stand in the way of social and religious reform. I request you to consider the terms of the exception or the rider that may be inserted to the freedom of the religion clause for being placed before the committee in the next sitting. I shall be glad if you can communicate the contents of this letter also to the members of the committee."

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	This letter is later considered a key precursor to what became known as the 'essential practices doctrine' and forms the basis of the Supreme Court's reasoning in ***Shirur Mutt*** case (1954).
08.04.1947	Constitutional Adviser B.N. Rau issued Notes on Draft Report, noting that clauses 16 and 17 (akin to Articles 25 and 26) were adapted from the Irish Constitution — Section 44(2). On the anti-conversion clauses 22 and 23, Rau noted that they were present 'to stop certain practices which, it is feared, are becoming increasingly common.' Rau also specifically endorsed Ayyar's view on draft Clause 16. The relevant extracts are reproduced hereunder: "Clause 16. Adapted from the Irish Constitution, section 44(2)1 Explanation I. Based on the recommendations of the All Parties Conference, 1928. Explanation III. Adapted from the Yugoslavian Constitution, Article 12, paragraph 2, but omitting reference to military obligations. Clause 17. Adapted from the Irish Constitution, section 44(2)5°. The second paragraph of the clause is new. ***** Clauses 22 and 23. These clauses are meant to stop certain practices which, it is feared, are becoming increasingly common."
14.04.1947	Alladi Krishnaswami Ayyar wrote another letter specifically suggesting a clause empowering the State to enact social welfare legislation, as suggested by Rajkumari Amrit Kaur and Mrs. Hansa Mehta. The relevant extract is reproduced hereunder: "Clause 16. On further consideration and with due regard to the innumerable acts from the beginning of Anglo-Indian history bearing upon social rights and obligations which are inter-mixed with Hindu religion and the danger of such legislation being upset in the peculiar conditions of this country by force of this clause I am for some clause being inserted on the lines suggested by the lady members of the committee. **To meet the point an explanation or proviso to the following effect may be added: "The right to profess and practise religion shall not preclude the legislature from enacting laws for the social betterment of the people"."**
14.04.1947	Meeting of the Sub-Committee resulted in minor redrafting of clauses 16 and 17, accepted by the Committee. The relevant extracts are reproduced hereunder: "Clause 16 was decided to be redrafted as follows: All persons are equally entitled to freedom of conscience, to freedom of religious worship and to freedom to profess religion subject to public order, morality or health and to the other provisions of this chapter. *Explanation 1*. The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

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	Explanation 2. The above rights shall not include any economic, financial, political or other secular activities that may be associated with religious worship. Explanation 3. No change. Clause 17. Accepted."
15.04.1947	Anti-conversion clauses 22 and 23 went through minor changes. The relevant extracts are reproduced hereunder: "Clause 22. For the words "converted to" substitute the words "made to join or profess" Clause 23. In the third line, Omit the words "or undue influence". Dr. Ambedkar proposed that the clause should end with the words "recognized by law" but this was not accepted by the committee."
16.04.1947	Report issued with revised clauses on religious freedoms. Clause 16 now guaranteed 'freedom of conscience, freedom of religious worship and freedom to profess religion' which a significant narrowing from the earlier 'practice'. Clauses 17–22 addressed denominational rights, religious taxes, religious instruction in schools, property protection, and anti-conversion provisions. The relevant extracts are reproduced hereunder: "**16. All persons are equally entitled to freedom of conscience, to freedom of religious worship and to freedom to profess religion subject to public order, morality or health and to the other provisions of this chapter.** **Explanation I - The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.** **Explanation II - The above rights shall not include any economic, financial, political or other secular activities that may be associated with religious worship.** **Explanation III - No person shall refuse the performance of civil obligations or duties on the ground that his religion so requires.** **17. Every religious denomination shall have the right to manage its own affairs in matters of religion and to own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes consistently with the provisions of this chapter. The right to build places of worship in any place shall not be denied except for reasonable cause.** 18. No person may be compelled to pay taxes the proceeds of which are specifically appropriated to religious purposes. 19. No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto.

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	20. Any property used for or in connection with religious worship shall not be taken or acquired by the State, save for necessary works of public utility and on payment of just compensation. 21. No person under the age of 18 shall be made to **join or profess** any religion other than the one in which he was born or be initiated into any religious order involving a loss of civil status. 22. Conversion from one religion to another brought about by coercion or undue influence shall not be recognized by law and the exercise of such coercion shall be an offence."
17th–18th April 1947	Sub-Committee of Minorities was formed with Dr. H.C. Mookherjee as the Chairman. Mr. Ruthnaswamy pointed out that Christianity and Islam are essentially proselytising religions and the clause should permit them to propagate their faith. Dr. S.P. Mookerjee noted that the right to build places of worship in public places needs regulation so as not to infringe the rights of other communities. The relevant extracts are reproduced hereunder: "Clause 16**. Mr. Ruthnaswamy pointed out that certain religions, such. as Christianity and Islam, were essentially proselytizing religions, and provision should be made to permit them to propagate their faith in accordance with their tenets.** Mr. Thakur: All religions should have freedom to observe their practices in all public places, such as the playing of music before mosques. Clause 17. Dr. S. P. Mookerjee pointed out the necessity of regulating the right of building places of worship in public places only on the condition that the public rights of members of other communities were not in-fringed, such as the use of a public highway for processions after a new place of worship had been built on it. The right to repair places of worship should also be guaranteed. Mr. Munshi desired that the rights of minorities to form and manage charitable, religious and social institutions at their own expense should be guaranteed.." Mr. Ruthnaswamy also raised concern that the anti-conversion clause 21 may 'break up' family life. C. Rajagopalachari remarked that such a clause may not be required in fundamental rights as it was already covered by penal laws. The relevant extracts are reproduced hereunder: The relevant extracts are reproduced hereunder: "Clause 21. Mr. Ruthnaswamy: Its provisions will break up family life.

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	A minor should be allowed to follow his parents in any change of religion or nationality which they may adopt. Clause 22. Mr. Rajagopaiachari questioned the necessity of this provision, when it was covered by the ordinary law of the land, e.g., the Indian Penal Code."
18.04.1947	Clause 16 and 17 were re-drafted as under: "Clause 16: It was decided to recommend the redraft of this clause as follows: All persons are equally entitled to freedom of conscience and the right freely to profess, practise and **propagate** religion subject to public order, morality or health and to the other provisions of this chapter. **And that in Explanation 2, for the words "religious worship" "religious practice" should be substituted.** This decision was carried by a majority of 10 to 5; the dissentients being Rajkumari Amrit Kaur, Mr. Jagjivan Ram, Pandit Govind Ballabh Pant, Mr. Salve and Dr. Ambedkar. Clause 17: It was decided to recommend the redraft of the second para of this clause as follows: The right to build and maintain places of worship shall not be denied except for reasonable cause. The committee also accepted the following in principle, namely, that the location of such places of worship shall not interfere with the freedom of any person to use a public road without let or hindrance."
19.04.1947	Clause 21 was re-drafted to include that no conversion would be recognised till attested by a Magistrate after due inquiry. The Minorities Sub-Committee suggested that the word 'propagate' be added to Clause 16. Minor changes were suggested to Clauses 17, 20, and 21. The relevant extracts are reproduced hereunder: 2. The committee resumed consideration of the points noted for discussion on the various clauses recommended by the Fundamental Rights Sub-Committee. The following decisions were made: *Clause 20:* Recommend the redraft of this clause as follows : Any property continuously used for public religious worship shall not be taken or acquired by the State, save for necessary works of public utility on payment of just compensation and with the consent of the parties concerned which shall not be unreasonably withheld. *Clause 21*: Recommend the redraft of this clause as follows : (a) No person under the age of 18 shall be made to join or profess any religion other than the one in which he was born, except when his parents themselves have been converted, and the child does not choose to adhere to his orginial faith;

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	Nor shall such person be initiated into any religious order involving a loss of civil status. (b) No conversion shall be recognized unless the change of faith is attested by a Magistrate after due inquiry.
20.04.1947	Note by Alladi Krishnaswamy Aiyar shared the text of the articles on freedom of religion from Switzerland, USA, Ireland, Germany, Poland and Australia.
21st–22nd April 1947	Clauses went for discussion and debate before the larger Advisory Committee. The discussion accepted the change to Explanation II from 'religious worship' to 'religious practice'. Chairman Sardar Patel requested C. Rajagopalachari and S.P. Mookerjee to draft a comprehensive clause allowing the legislature to intervene to reform and regulate secular affairs. Their proposal was appending a new Explanation stating that nothing in the right to practice religion shall 'debar the State from enacting laws for the purpose of social welfare and reform' and was swiftly approved. The word 'propagate' was taken up at the instance of Ruthnaswamy. Munshi and Ayyar noted it was already covered by free speech guarantees, but G.V. Pant intervened and said it 'at worst is redundant' and it may not harm anyone to adopt it. The word was thus included. Clause 17 (Article 26): several members including Sardar Patel, Ambedkar, Munshi, and Rajagopalachari debated whether the legislature ought to be allowed to 'prohibit' religious bodies from holding property. Rajagopalachari offered a middle path — retain the clause but qualify it with 'subject to the general law'. This compromise was adopted. The debate on anti-conversion clauses (21 and 22) between S.P. Mookerjee, Bakshi Tek Chand, Frank Anthony, and Ruthnaswamy was settled by Sardar Patel's observation that forced and fraudulent conversion was already an offence under existing statutory law, and the matter was better left to the legislature. The relevant extracts are reproduced hereunder: *Chairman*: Now we will proceed to clause 16. *Secretary*: 16. "All persons are equally entitled to freedom of conscience, to freedom of religious worship and to freedom to profess religion, subject to public order, morality or health and to the other provisions of this chapter:"

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	To this, the Minorities Sub-Committee suggested an amendment which reads like this: "All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion, subject to public order, morality or health and to the other provisions of this chapter." *Jagjivan Ram*: I propose that the original clause may remain as it is: *C. Rajagopalachari*: Apart from verbal difference which does not matter, the difference is this. Clause 16, as it originally stood, protected freedom of conscience and worship. The Minorities Committee's suggestion includes the right to propagate religion also. This is the actual difference between the two. *K. M. Munshi*: There was discussion on this in the Minorities Committee. Many things may not be exactly worship but may be in a sense practice of that religion. You may have for instance the immersion procession of Ganapathi. It is not worship, but practice of religion. If you go to a temple, it is worship. Further than that, it will be practice of religion. *C. Rajagopalachari:* The second difference is the right to propagate Propagation comes under freedom of expression. There is a sharp difference of opinion on whether these words should be put separately. Then about practice. The question is whether worship alone, whatever it may be, should be allowed or whether practice should be included in our fundamental rights. *K. M. Panikkar*: During the past, many practices have been rightly or wrongly interfered with beginning with *sati,* down to *Sarda* Act, Widow Remarriage Act, which have been considered as part of religious practice. The question is whether a fundamental right should be introduced to cover all religious practices which the legislature may at one time or other have to deal with by legislation. It seems to me rather a wide power to be restricted by a fundamental right. We thought that it is essential to give a certain amount of discretion in that matter to the State. It does not mean that religious practices are to be interfered with. If the State considers that certain religious practices require modification by the will of the people, then there must be power for the State to do it. *Rajkumari Amrit Kaur*: If this is accepted, the Sarda Act, the Widow Remarriage Act and other Acts may be invalidated. I second Mr. Jagjiwan Ram's suggestion that the original clause may be retained. *Syama Prasad Mookerjee*: There are certain religious practices which do not come within religious worship and if you omit religious practice. it will lead to considerable hardship and difficulties. It would still be open to the government to take any step to prevent the observance of religious worship or practice on grounds of public order, morality or health. As regards social reform, I suggest we insert a proviso to cover that. *Govind Ballabh* Pant: I want the committee to be clear about certain fundamental matters while dealing with these fundamental rights. We are in a way framing *smrithis* that every commentator will thereafter try to get over by introducing some sort of subterfuge or other. It is only to put up some sort of impediment in the way of the advancing tide of public opinion, which you cannot possibly in any way circumvent or guard against. Whatever precautions you introduce are bound to be blown away. Only you make things more difficult. In framing these fundamental rights, you must try to make them clear and simple and

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	not try to put something in one sentence and then to follow it with three provisos which will only make the whole thing unworkable. I personally think it would be extremely dangerous to have the word "religion". To say that it will be open to people to claim a safeguard against a thing done by the legislature in the Supreme or other courts on the ground that the law infringes the practices that come under the name of religion is to make constitution utterly unworkable. So I suggest that we stick to the original clause. By introducing the word 'religion' it will militate against any real right of religious worship. *K. M. Munshi*: If you cut down the words it will mean very serious consequences. The first question is ordinarily "freedom of religion' which is used in most constitutions. It is generally left to the judge to decide what is religion and what is not. Certain constitutions have used the word 'practice of religion'. That is accepted by many constitutions. This was thought to be very wide by some members of the Fundamental Rights Committee. I am only mentioning the arguments which weighed with me and several other friends both here as well as in the Minorities Committee. Then with regard to "practice' take an ordinary temple which maintains certain cows. *Chairman:* It is only a question of guaranteeing a certain amount of religious worship. The minimum is provided as a guarantee. *K. M. Munshi: Smrithis* have made it abundantly clear that whatever is customary law is not part of Hindu religion. Most of the *Smrithis* were based on custom and not on Dharma. Secondly so far as *Smrithis* themselves are concerned they contend that they can be altered. Therefore it is not correct to say that the amendment of the Hindu law will come in the way. *Alladi Krishnaswami Ayyar*: If you look into the history of law reports and various orders passed under section 144, if anything has been responsible for disturbing the peace of the country it is the religious practices such as music before the mosque, cow killing etc. Are you going to give a kind of guarantee to this practice which has been the bane of our country and which has been responsible for communal and class hatred? We can trust the wisdom of the legislatures not to interfere with religious practices, but to give a kind of solemn sanction in a constitutional document to these practices will be perpetuating an evil which will strike at the very foundation of the State. My second point is that you can never separate social life from religious life. I cannot claim the knowledge of my friend but if there is one thing which has contributed to the merit of the old Hindu system it is the inter-mixture between religion and the social fabric of society. It is a single society. If you get away from your society, you have no business to hold property. That is why the Caste Disabilities Act was passed and similarly in regard to temple entry. The *Sanatanists* waited on Parliament at the time when the last Act was passed in order that there might be guarantee of religious institutions. Parliament said: "You want to advance in social matters and we do not want to give a kind of constitutional guarantee which will stand in the way of social progress and social amelioration." Therefore I am for retaining the clause as it emerged from the Fundamental Rights Committee. *Alban D'Souza*: If it is necessary to cover certain practices, there is no reason why we should not add this proviso. Fears have been expressed that practice of religion would be a bar to future social legislation as well as those which have been passed. Even Acts like the Sarda Act have been on the statute for years and no effort

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	has been made to repeal or abrogate these. It is always not the prevention of the practice of religion, but education and social service work that has helped us over the difficulties and social disability. *Ujjal Singh*: Both these provisions are to protect the citizens and particularly the minorities in respect of rights which are considered vital against the whims of a majority. It may be all right for the majority provinces like Madras, but we have to protect the rights of the minorities against the brute majority. Sir, in my religion it is more a religious practice that matters. I therefore strongly feel that whatever provision you may make in respect of public order or morality or even in respect of social legislation, you must protect religious worship. Otherwise you will not be protecting my religion. *J. L. P. Roche-Victoria*: It was after taking everything into consideration that the Minorities Sub-Committee has put in this recommendation. *Chairman*: If the minority decision is to be taken as a basis the majority need not come at all. *J. L. P. Roche-Victoria*: It requires a very great consideration in the hands of this committee. *Chairman*: Those who are in favour of inserting the word "religious practice" in Explanation II of clause 16 will raise their hands. (The amendment was accepted.) *C. Rajagopalachari*: Having accepted the enlargement of practice of worship we will have to provide against more than one matter, namely first of all, social reforms in the particular community must be permissible with the consent of the legislature of course. The other thing is conflicts and mutual difficulties. These will have to be provided in a comprehensive clause. Chairman: The principle is accepted. You and Dr. Syama Prasad may sit together and draft. *M. Ruthnaswamy*: The word 'propagate' is a well known word. It includes not only preaching but other forms of propaganda made known by modern developments like the use of films, radio, cinemas and other things. *K. M. Munshi*: The word might be brought, I think, to cover even forced conversion. Some of us opposed it. I am not in favour of it. So far as the 'freedom of speech' is concerned it carries sufficient authority to cover any kind of preaching. If the word 'propaganda' means something more than preaching, you must know what it is and therefore I was opposed to this introduction of the word 'propaganda'. *Alladi Krishnaswami Ayyar*: Even in the American continent we do not have these practices as a special right, because we have freedom of speech. We have freedom of conscience. You have got the freedom of the press which is involved in the freedom of speech and writing. Therefore why place in the forefront of our country this propagation of particular religious faiths and belief. I personally do not recognise the right of propagation. *Govind Ballabh Pant*: At the worst it is redundant and as so many members want it we had better introduce it. *K. M. Munshi*: It is not a redundant word. *Chairman*: Let us take votes on it. Those who are in favour of retaining the word "propagate" may raise their hands. (The amendment was accepted.)

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	(Addressing Sardar Ujjal Singh) When you are allowed religious practice, why do you want it here? *Ujjal Singh*: You have introduced the words 'subject to public order. I do not want the wording 'the wearing of kirpans should be allowed" should be there, but that the practice of the Sikhs may be allowed. *Chairman*: Having inserted religious practice, if you say it is not a religious practice then it is necessary. The wearing of kirpans is recognised as a religious thing. *C. Rajagopalachari*: Having accommodated in every manner all these fears and apprehensions, we have introduced no doubt the word "practice. This is a major point raised by a very large and important community. There is no harm, I think, in our putting it clearly since they have raised this point. Let us say "The Sikh practice of wearing kirpans is recognized herein.' *Chairman*: We will take votes on this. Sardar Ujjal Singh says that Explanation 1 should be retained. C. Rajagopalachari supports it. (After taking votes) The clause is retained. *C. Rajasopalachari*: I think the wording should be corrected as "The Sikh practice of wearing and carrying kirpans as a religious duty shall be protected under this clause." *Bakshi Tek Chand*: It is not necessary. *C. Rajagopalachari*: The language was suited to the clause as it stood originally. We have changed the clause. We will have to alter this to suit the present clause. *Many Members*: We may leave it as it is. *Chairman*: Keep it as it is. We will take up Explanation III. *K. I. Shah*: If a civil obligation is made, let us say, to kill rats plague carriers, on the ground of their religion, the Jains would naturally refuse. I suggest i that conscientious objection should be permitted even if you do not delete the clause. *K. M. Panikkar*: I have very strong objection to this clause. I think this goes against all the doctrines of renunciation. It is not for us here to reform dogmatic principles which are held strongly by a section of the people. To say that a *Sanyasin*... *Chairman*: Shall we omit Explanation III? (With the concurrence of the House) Explanation III is omitted. We take up clause 17. *Syama Prasad Mookerjee*: The words at the end, "consistently with the provisions of this chapter" are redundant and may be dropped. *K.M. Munshi*: It leads to this anomaly. It may attract the operation of clause 4. *C. Rajagopalachari*: This would give, I think, an opportunity which was prevented by laws against perpetual ownership of property. *K. M. Munshi*: No. *C. Rajagopalachari*: In other matters we have provided for public order and morality. Here we have apart from profession of religion, property acquisition. It must be subject to the law. The words "subject to the general law" may be added: Supposing we make laws with regard to property, this should not over-ride the laws. What is the need for clause 17 when we have an ordinary law of property. You feel there is a need. You feel there is need for a fundamental right that a religious denomination shall hold property. How can a religious denomination hold

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	property? It means that an institution may hold property. There is no meaning in making a fundamental right that a denomination shall hold property. We must therefore say, subject to the general law and not make it absolute and above law. *K. M. Munshi*: The point is this. We have said that a citizen can hold property. We have not stated that a religious group can hold pro-perty. It would be competent to the legislature to prohibit this. *B. R. Ambedkar*: It may be prohibited by the legislature. *Alladi Krishnaswami Ayyar*: "Subject to any law as to maladministration of funds", should be added. "Subject to law" is meaningless. *Chairman*: I think this clause may be dropped. *Frank Anthony*: This is a very vital clause so far as the Christians are concerned. *Chairman*: It is not possible to provide every conceivable thing in fundamental rights. *C. Rajagopalachari*: A denomination cannot hold property. It is some corporation that will hold some property. *K. M. Panikkar*: In various countries laws have been passed against religious corporations holding property. For example, in France it has been held that religious corporations and religious bodies shall not hold property and shall not have educational institutions. The French Government itself had to modify after 15 years of experience. *Chairman*: The *French people learnt after experience. We have no bad Fundamental freedom of religion necessarily carries with it the right for a* *K. M. Munshi:* Religious freedom is meaningless if this clause is deleted. religious denomination to retain property. *Govind Ballabh Pant:* I move that the words "subject to the general law of the land" be inserted at the outset. *Alladi Krishnaswami Ayyar:* I would rather drop the clause than put it in this way. *C. Rajagopalachari:* I would suggest this modification, the words "subject to the general law" may be inserted after the word "and' and before 'to own'. *Chairman:* With this addition, and with the deletion of the last seven words, this clause may be put to vote. The clause as revised would read: "Every religious denomination shall have the right to manage its own affairs in matters of religion and subject to the general law, to own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes." The clause is accepted as amended. *B. R. Ambedkar:* All that is necessary to do is to say that the State shall not impose disqualification upon a religious denomination holding property. If we put it in this way, "No religious denomination shall be disqualified to manage its own affairs, etc.", that would cover the case. *Chairman:* Then we take up paragraph 2 of the clause. We have already a good number of them which are not cared for. *Alladi Krishnaswami Ayyar:* This is unnecessary. This may be dropped. *Chairman:* This paragraph is dropped. We take up clause 18.

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	C. Rajagopalachari: I suggest that the words "to further or maintain a particular religion or denomination" should be substituted in the place of 'religious purposes? To say that no one shall pay any tax in furtherance of religious purposes is not right. *Chairman:* May I take it that this is agreed to. The clause is accepted with the amendment. We take up clause 19. *C. Rajagopalachari:* Now that we have got the other similar clause, this would be unnecessary. *Many Members:* This clause should be retained. *Chairman:* This clause is accepted. We go to clause 20. *Secretary:* The Minorities Committee has suggested a re-draft of the clause as follows: "Any property continuously used for public religious worship shall not be taken or acquired by the State, save for necessary works of public utility on payment of just compensation and with the consent of the parties concerned which shall not be unreasonably withheld." *Alladi Krishnaswami Ayyar:* I would rather omit this clause. *Chairman:* This clause 20 is omitted. *Ujjal Singh:* This clause is necessary and should be retained. Even today, the Defence of India Rules provide for the acquisition of places of religious worship. *Chairman:* The Defence of India Rules are not in existence today. We cannot have every conceivable thing in the fundamental rights. We do not interfere with the rights of the legislatures. We may take up clause 21. *Secretary:* This has been redrafted by the Minorities Committee like this: "(a) No person under the age of 18 shall be made to join or profess any religion other than the one in which he was born except when his parents themselves have been converted and the child does not choose to adhere to his original faith; nor shall such person be initiated into any religious order involving a loss of civil status. (b) No conversion shall be recognized unless the change of faith is attested by a Magistrate after the inquiry." ***Chairman*: I consider these are matters to be left to legislation. (With the concurrence of the House) Clause 21 is deleted. We may take up clause 22. This clause too is unnecessary, and may be deleted. This is not a fundamental right.** ***Frank Anthony*: These are matters which are absolutely vital to the Christians; clause 22 about conversion.** ***M. Ruthnaswamy*: The deletion of the clause allows conversion.** ***Frank Anthony*: You are leaving it to legislation. The legislature may say tomorrow that you have no right.** **Chairman: Even under the present law, forcible conversion is an offence.** ***Syama Prasad Mookerjee*: There is significance with regard to the civil law. If a person is converted by undue influence or coercion, the rights do not relate to the point at which he was converted.** ***Chairman:* What you really want is that society will not recognize forcible conversions. It is for the society and not for the law.** *Syama Prasad Mookerjee:* Clause 22 should not be deleted. It may not be recognized by law. Let us be clear about facts. If a person is converted to another religion even by undue influence...

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	Chairman: Is not the exercise of such undue influence an offence? *Syama Prasad Mookerjee:* I am talking about the first part. If there is conversion by coercion, it does not put back the civil rights of the person as before. *Chairman:* We cannot have a fundamental right for every conceivable thing. We are not legislating. *Bakshi Tek Chand:* Take the recent case of a Sikh who was forcibly converted in Rawalpindi District. The Sikh society took him back later. Now, what is the position of his rights in between these two times? ***Chairman:* That was forcible conversion. Forcible conversion is no conversion. We won't recognise it.** "Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law." We drop the last line."
23.04.1947	Advisory Committee headed by Sardar Patel submitted its Interim Report. The clauses on religious freedoms (now numbered 13–17) included: the right to freely profess, practise and propagate religion (subject to public order, morality or health); right of religious denominations to manage their own affairs and own property subject to the general law; no compulsory religious taxes; no compulsory religious instruction in aided schools; conversion by coercion or undue influence not to be recognised by law. The relevant extracts are reproduced hereunder: *"Rights relating to religion* 13. All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion subject to public order, morality or health, and to the other provisions of this chapter. *Explanation 1*.-The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion. *Explanation 2*.-The above rights shall not include any economic, financial, political or other secular activities that may be associated with religious practice. Explanation 3-The freedom of religious practice guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform. 14. Every religious denomination shall have the right to manage its own affairs in matters of religion and subject to the general law, to own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes. 15. No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination. 16. No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto.

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	17. Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law."
01.05.1947	The Constituent Assembly, meeting in New Delhi, took up Sardar Patel's Interim Report on Fundamental Rights. Debate was relatively limited. K.M. Munshi moved to add a specific provision that religious freedom will not prevent laws for 'throwing open Hindu religious institutions of a public character to all classes and sections of Hindus', directly targeting exclusion of Dalits and lower castes from temples. Munshi also proposed that sections or sub-groups within religious denominations (not just the denomination as a whole) are entitled to rights under the denominational clause. The anti-conversion clause triggered 'heated discussion'. The Advisory Committee ultimately recommended dropping it, deciding the doctrine was self-evident and better left to legislatures. The extracts of the Constituent Assembly debate are reproduced hereunder: **CLAUSE 13-RIGHTS RELATING TO RELIGION** **Sardar Vallabhbhai Patel:** Sir, I move the adoption of clause 13, viz., "All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion, subject to public order, morality or health, and to the other provisions of this Part. Explanation 1.- The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion. Explanation 2.- The above rights shall not include any economic, financial, political or other secular activities that may be associated with religious practice. Explanation 3.- The freedom of religious practice guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform." **Sardar Vallabhbhai Patel:** I see that there are a number of amendments on the Order Paper. I shall speak on them when they are moved and, if there is any that could be accepted, I shall accept. **Mr. K. M. Munshi:** Sir, I move an amendment to the effect that, after the last Explanation, the following words be added:- "and for throwing open Hindu religious institutions of a public character to any class of section of Hindus." **Mr. K. M. Munshi:** After the Explanation above was drafted it was thought that the practice of religion referred to should not be of such a character as will interfere with the right of the Legislature to legislate on social questions. The question arose with regard to the throwing open of all temples to all classes of Hindus, whether it would be religious practice. In order to prevent any, such construction of clause, it was decided that

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	the throwing open of Hindu religious institutions shall not be held to contravene the practice of Hindu religion. **President:** I shall now call upon Members who have given notice of amendments to this clause, to move them .....(after a pause.....) As I find that there is no amendment moved to the clause I shall put it to the vote of the House. ***** **L. Krishnaswami Bharathi:** Sir, the clause reads: "*other provisions of this Chapter*". It should read "*other provisions of this Part*". **Sardar Vallabhbhai Patel:** The word "Chapter" has been substituted by the word "Part". **Sardar Vallabhbhai Patel:** I accept Mr.Munshi's amendment and I congratulate the House on agreeing to pass this very controversial matter which has taken several days in the Committees and gone through several Committees. There might be differences of opinion, but on the whole we have tried our best to accommodate all sections of the people. I move that this clause as amended be passed. **President:** I am putting to the vote first the amendment to Explanation No. 3. The amendment is: "That the words 'and for throwing open Hindu religious institutions of a public character to any class or section of Hindus be added at the end of- Explanation No. 3" The amendment was adopted. **President:** Now I put the clause as amended to the House. Clause 13, as amended, was adopted. **President:** Now we go to clause. **CLAUSE 14.** **Sardar Vallabhbhai Patel:** Now I move clause 14. "Every religious denomination shall have the right to manage its own affairs in matter of religion and, subject to the general law to own, acquire and administer property movable and immovable, and to establish and maintain institutions for religious or charitable purposes." **Sardar Vallabhbhai Patel:** There is a little addition by way of an amendment which Mr.Munshi will move. I move this clause for the acceptance of the House. **Mr. K. M. Munshi:** Sir, I move an amendment that in clause 14 the words "or a section thereof" be added between the word "denomination" and the word "shall". It was felt that the use of the term "religious denomination" may prevent a section of a denomination from being protected. **K. Santhanam:**

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	What is meant by "general law". **Mr. K. M. Munshi:** There is a general law of the country as apart from any special legislation. When the word 'law' is used, it means the law of either the Unit or the Union according to the power which is being exercised. If it is a Union subject, it is Union law. If it is a Unit subject, it is Unit law. **President:** Has the word "general" any special significance here, Law is law. **Mr. K. M. Munshi:** The intention was that any specific legislation was to be excluded. There are certain legislations specifically intended for certain classes of people. If the desire of the House is that it should be 'law', I have no objection. **Several Members:** ".....subject to 'law'." ***** **President:** The clause and the amendment are now open for discussion. **Ananthasayanam Ayyangar:** I oppose the omission of the word 'general' which is opposed to special or local laws which are defined in the Indian Penal Code as relating to a particular subject or a particular part of British India. There ought to be no restriction on the acquisition of rights and property by any religious institution under any special law. The same definition relating to special and local laws will be found in the General Clauses Act also. I, therefore, want the retention of the word 'general'. I think the framers of the clause were right in including it. **Alladi Krishnaswami Ayyar:** The General Clauses Act and the Penal Code will not apply to the interpretation of our Constitution. We must have an interpretation clause in our Constitution when the Constitution is finally framed. **H. V. Kamath:** I could not hear a word of what Sir Alladi said. **President:** Sir Alladi's view was that the General Clauses Act and the Penal Code will not apply to our Constitution and, therefore, We need not attach any importance to them. **D. N. Datta:** If the words "existing Indian law" are there, the General Clauses Act will apply. **President:** You are at liberty to differ from Sir Alladi. **C. Rajagopalachariar:** Apart from the question of how words should be interpreted, it is very necessary that this special right that we are giving to religious denominations should be subject to all the laws that will be enacted and, therefore, the expression should be only 'law' and not any particular portion of the law. **Ananthasayanam Ayyangar:**

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	We are trying to get these on the statute book. What is the meaning of taking these technical objections? **President:** As a matter of fact, the point has been discussed, and if there is anything else, then the Drafting Committee will attend to them. **President:** **Now I will put the various amendments. The first amendment I will put is that the words "or a section thereof" be added between "denomination" and "shall". That part of the clause will read as follows : "Every religious denomination or a section thereof shall have the right to manage its own affairs."** **President:** **and so on.** **The amendment was adopted.** **President:** The next amendment is that the be omitted. The amendment was adopted. **President:** **The clause as amended will read: "Every religious denomination or a section thereof shall have the right to manage its own affairs in matters of religion and, subject to law, to own, acquire and administer property movable and immovable, and to establish and maintain institutions for religious or charitable purposes."** **President:** **I put the clause, as amended, to the House.** **Clause 14, as amended, was adopted.** **CLAUSE 15** **Sardar Vallabhbhai Patel:** Clause 15. "No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination." **Sardar Vallabhbhai Patel:** I do not think that there is any amendment to this clause and I move this clause for the acceptance of the House. **President:** As there is no amendment to this clause, I put it to the vote of the House. Clause 15 was adopted. **CLAUSE 16** **Sardar Vallabhbhai Patel:** Clause 16. This clause was passed in the Advisory Committee, but I think that it may be referred back to the Advisory Committee, because there are some difficulties and it has been suggested that it may be referred back. The House agrees that this clause may be referred back to the Advisory Committee. **President:**

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	Then you formally move it. **Sardar Vallabhbhai Patel:** I formally move: "No person attending any school maintained or receiving aid out of public funds shall be compelled to take parts in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto." ." **President:** On the vote of the House this clause is referred back to the Advisory Committee. **CLAUSE 17** **Sardar Vallabhbhai Patel:** Sir, I move Clause 17. "Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law." **Mr. K. M. Munshi:** Sir, I beg to move the following amendment, That for clause 17 substitute the following clause: "Any conversion from one religion to another of any person brought about by fraud, coercion or undue influence or of a minor under the age of 18 shall not be recognised by law." **Mr. K. M. Munshi:** The additions that are made to the clause as it is originally moved are there. First of all, the word 'fraud' is added to the words, 'coercion' and undue influence'. The second matter is with regard to the conversion words "the general" of a minor. As a matter of fact, it was proposed by one of the other Committees in some form or other, and it is the general feeling that this clause should be restored in this form, any conversion of a minor under the age of 18 shall not be recognised by law. The only effect of non-recognition by law would mean that even though a person is converted by fraud or coercion or undue influence or be converted during his minority he will still in law be deemed to continue to belong to the old religion and his legal rights will remain unaffected by reason of his conversion. The idea behind this proposal is that very often, if there are conversions by fraud or undue influence or during minority, certain changes in the legal status take place, certain rights are lost. This will have only this effect that the rights will remain exactly the same as at the moment a person was converted by fraud or coercion or undue influence and in the case of a minor at the moment of conversion. **Mr. K. M. Munshi:** If Hon'ble Members desire I will read the whole clause. The whole clause is put in this form. "Any conversion from one religion to another of any person brought about by fraud, coercion or undue influence or of a minor under the age of 18 shall not be recognised by law." **xxx** **B. R. Ambedkar:** Mr. President, Sir, I am sorry to say that I do not find myself in agreement with the amendment which had been moved by Mr.Munshi relating to the question of the conversion of minor children. The clause, as it stands, probably gives the impression to the House that this question relating to the conversion of minors was not considered by the Fundamental Rights Committee or by the Minorities Sub-Committee or by the Advisory Committee. I should like to assure the House that a

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	good deal of consideration was bestowed on this question and every aspect was examined. It was, after examining the whole question in all its aspects, and seeing the difficulties, which came up, that the Advisory Committee came to the conclusion that they should adhere to the clause as it now stands. **xxxx** **Sardar Vallabhbhai Patel:** **Sir, this is not a matter free from difficulties. There is no point in introducing any element of heat in this controversy. It is well known in this country that there are mass conversions, conversions by force, conversions by coercion and undue influence, and we cannot disguise the fact that children also have been converted, that children with parents have been converted and that orphans have been converted.** Now, we need not go into all the reasons or the forces that led to these conversions, but if the facts are recognised, we who have to live in this country and find a solution to build up a nation,–we need not introduce any heat into this controversy to find a solution. What is the best thing to do under the circumstances ?There may be different points of view. There are bound to be differences in the view points of the different communities, but, as Dr. Ambedkar has said, this question has been considered in three Committees and yet we have not been able to find a solution acceptable to all. Let us make one more effort and not carry on this discussion, which will not satisfy everybody. Let this be therefore referred to the Advisory Committee. We shall give one more chance. **President:** **Do I take it that it is the wish of the House that this clause be referred back to the Advisory Committee for further consideration ?** **The clause was referred back to the Advisory Committee."**
April-May, 1947	Clauses as adopted by the Assembly are as under : *Rights relating to Religion* 13. All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion subject to public order, morality or health, and to the other provisions of this Part. *Explanation 1*.-The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion. *Explanation 2*.-The above rights shall not include any economic, financial, political or other secular activities that may be associated with religious practice. *Explanation 3*.-The freedom of religious practice guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform and for throwing open Hindu religious institutions of a public character to any class or section of Hindus. 14. Every religious denomination or a section thereof shall have the right to manage its own affairs in matters of religion and, subject to law, to own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes.

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	15. No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination. **[16. No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto.]* **[17. Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law.]* Starred clauses are referred back to the Advisory Committee by the Assembly.
25.08.1947	Supplementary Report of Advisory Committee notes that the anti-conversion principle is a rather obvious principles and it was unnecessary to include it in the Fundamental Rights chapter. It was noted as under : FROM The Hon'ble Sardar VALLABHBHAI PATEL, Chairman, Advisory Committee on Minorities, Fundamental Rights, etc. To The President, Constituent Assembly of India. DEAR SIR, In continuation of my letter No. CA/24/Com/47, dated the 23rd April 1947, I have the honour, on behalf of the committee, to submit this supplementary report on fundamental rights. 2. We have come to the conclusion that, in addition to justiciable fundamental rights, the Constitution should include certain directives of State policy which, though not cognizable in any court of law, should be regarded as fundamental in the governance of the country. The provisions that we recommend are contained in the Appendix. 3. In para. 8 of our previous report, we had referred to the recommendation of the Fundamental Rights Sub-Committee that the right of the citizen to have redress against the State in a court of law should not be fettered by undue restrictions. After careful consideration, we have come to the conclusion that it is not necessary to provide in the Constitution for any further right in this connection than those already contained in clause 22 as accepted by the Assembly in the April-May session. 4. The Constituent Assembly had referred back to us clauses 16, 17 and 18(2) of our previous report. We have re-examined the clauses and our recommendations are as follows: *Clause 16*: "No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto." We recommend that this clause be accepted by the Assembly in its present form.

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	Clause 17: "Conversion from one religion to another brought about by coercion or undue influence shall not be recognized by law." **It seems to us on further consideration that this clause enunciates a rather obvious doctrine which it is unnecessary to include in the Constitution and we recommend that it be dropped altogether.** *Clause 18(2)*: "No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them." We recommend that the latter portion of the clause, namely "nor shall any religious instruction be compulsorily imposes on them" be deleted in view of Clause 16 above which we recommended that the rest of the clause be adopted by the Assembly. We have examined the question as to whether the scope of the clause should be extended so as to include *State-aided* educational institutions also and have come to the conclusion that in present circumstances we would not be justified in making any such recommendation. 5. The Fundamental Rights Sub-Committee in their report to us had recommended the adoption of Hindustani, written either in *Devnagari* or the Persian script, as the national language of the Union of India, but we had thought fit to postpone consideration of the matter in April 1947. In view of the fact the Constituent Assembly is already seized of the matter by certain recommendations of the Union Constitution Committee's report, we think it unnecessary to incorporate any provision on the subject in the list of fundamental rights. 6. We have also examined numerous amendments in the nature of new provisions, notice of which had been given by several members during the April-May session of the Assembly, and have not been able to accept any of them. Some of them relate to matters which have already been provided for either in the clauses already accepted by the Assembly or in the new clauses which we have recommended in this report; and the others seem to us unnecessary or inappropriate. VALLABHBHAI PATEL, Chairman."
October 1947	Constitutional Adviser B.N. Rau produced the full Constitutional Adviser's Draft Constitution. The religious freedom provisions appeared as clauses 20–23. Explanation III was re-numbered as a separate sub-clause (precursor to Article 25(2)(b)). Conversion clauses were omitted. The clauses are as under : *Rights relating to religion* 20. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. *Explanation I*: The wearing and carrying of Kirpans shall be deemed to be included in the profession of the Sikh religion.

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	Explanation II: The rights conferred by this sub-section shall not include any economic, financial, political or other secular activities which may be associated with religious practice. (2) Nothing in this section shall preclude the State from making laws for social welfare and reform and for throwing open Hindu religious institutions of a public character to any class or section of Hindus. 21. Every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion and, in accordance with the provisions of law, to own, acquire and administer property, movable or immovable, and to establish and maintain institutions for religious or charitable purposes. 22. No person may be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. 23. No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in any religious instruction that may be imparted in the school or to attend any religious worship that may be conducted in the school or in any premises attached thereto."
November 1947	Dr. Ambedkar's Drafting Committee reviewed B.N. Rau's draft and made minor adjustments for clarity and consistency.
21st February 1948	Official Draft Constitution circulated. The Drafting Committee's Report re-numbered the religious freedom clauses as Draft Articles 19–22 (becoming Articles 25–28 in the final Constitution). Draft Article 19 (freedom of religion) closely matched what is now Article 25 and the Draft Article 20 (denominational rights) matched Article 26. The text read largely the same as the present-day articles. The relevant extracts are reproduced hereunder: Rights relating to Religion 19. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. Explanation: The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion. (2) Nothing in this article shall affect the operation of any existing law or preclude the State from making any law- (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) for social welfare and reform or for throwing open Hindu religious institutions of a public character to any class or section of Hindus. 20. Every religious denomination or any section thereof shall have the right- (a) to establish and maintain institutions for religious and charitable purposes:

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	(b) to manage its own affairs in matters of religion; *The committee has omitted the words "by and between the citizens" which occurred after the words "trade, commerce and intercourse" in the provision as adopted by the Constituent Assembly. The qualifying words might necessitate elaborate inquiries at State frontiers as to the nationality of the consignor and consignee. (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law. 21. No person may be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.
Mid-1948	The Constituent Assembly prepared for the second reading of the Draft Constitution. Suggestions were received from both Assembly members and the public: – At least one member reiterated the demand for an explicit 'no State religion' clause, but the Drafting Committee did not include it. – Two members submitted suggestions to remove or limit the word 'propagate', but the Drafting Committee declined. – Dr. Pattabhi Sitaramayya proposed: (a) broadening 'any class or section of Hindus' to 'all classes and sections' in Article 19(2)(b); and (b) subjecting denominational rights to public order, morality and health. Both suggestions were accepted. The relevant extracts are reproduced hereunder: ARTICLE 19 **R. R. Diwakar and S. V. Krishnamoorthy Rao**: That in clause (1) of article 19 after the words "freely to profess" the word "and" be inserted and for the words "and propagate religion" the words "what one believes to be his religion". be substituted. *Note*: This amendment seeks to omit the reference to the propagation of religion from clause (1) of article 19. This involves a question of policy. The expression "what one believes to be his religion" used in the amendment appears to draw an unnecessary distinction between a person's religion and what *he believes to be his religion*. ***B. Pattabhi Sitaramayya**: That in clause (2) (b) of article 19 for the words "any class or section" the words "all classes and sections" be substituted.* ***Note: The expression "any class or section of Hindus" used in sub-clause (b) of clause (2) of article 19 will not prevent the making of any law for throwing open Hindu religious institutions of a public character to all classes and sections of Hindus. There is, however, no objection to this amendment: discrimination on the ground of caste etc., is already forbidden by article 9.*** ***Tajamul Husain**: That in clause (1) of article 19 the words "and the right freely to profess, practise* and propagate religion" be deleted.

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	or, alternatively, That in clause (1) of article 19, for the words "practise and propagate religion" the words "and practise religion privately" be substituted. *Note*: This amendment which seeks to omit the reference to the right of freely professing, practising and propagating religion, or in the alternative to omit the reference to the propagation of religion and to restrict the right to profess and practise religion to the professing and practising of religion privately, involves a question of policy. **Tajamul Husain**: That the Explanation to clause (1) of article 19 be deleted and the following be inserted in its place: No person shall have any visible sign or mark or name, and no person shall wear any dress whereby his religion may be recognized. *Note:* This amendment also involves a question of policy. ***Tajamul Husain:*** That in sub-clause (b) of clause (2) of article 19, the words "of Hindus" be deleted. *Note*: If this amendment is given effect to, then sub-clause (b) of clause (2) of article 19 will not prevent the making of any law throwing open Hindu religious institutions of a public character to members of any other religious community, such as Muslims or Christians. **The Editor of the Indian Law Review** and some other members of the Calcutta Bar have suggested that in sub-clause (b) of clause (2) of article 19 (a) the word "Hindus" should be omitted; and (b) for the words of *Hindus"* the words of persons professing that religion" should be substituted. ***Note:* Clause (2) of article 19 is based on the decision of the Advisory Committee on Fundamental Rights as adopted by the Constituent Assembly.** ***Asthika Sabha, Nungambakkam (Madras)*** has sent a representation for the amendment of article 19(2) on the ground that it will seriously interfere with the religious rights of the citizens. Several similar representations have been also received from the South. *Note*: These criticisms express the orthodox point of view which was fully considered by the sub-committees of the Constituent Assembly. Article 19(2) is essential in the interests of social reform. **Decision of the Drafting Committee, October, 1948** : The Drafting Committee decided that for the word "preclude" in clause (2) of article 19 the word 'prevent' be substituted. ARTICLE 20 **B. Pattabhi Sitaramayya and others*** : That in article 20. after the words "have the right" the words "subject to public order, morality and health" be inserted. *Note*: There is no objection to this amendment. If it is accepted, then it should be redrafted as follows: In article 20, before the words 'Every religious denomination' the words Subject to public order, morality and health' be inserted.

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	Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the redraft. ARTICLE 21 **B. Pattabhi Sitaramayya and others*** : That for article 21, the following be substituted: No religion shall be recognized as a State religion nor shall any tax be levied for the promotion or the maintenance of any religion. *Note*: This amendment seeks to substitute a new article for the existing article 21. The existing article 21 is based on the last paragraph of article 49 of the Swiss Constitution. The proposed amendment involves a question of policy. *Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam."
October 1948	The Drafting Committee finalised the text of the articles in light of accepted suggestions. The stage was set for the final Constituent Assembly debates on Draft Articles 19 and 20 in December 1948.
3rd, 6th & 7th Dec 1948	The Constituent Assembly debated Draft Articles 19–22 on the floor. Key events: – Dr. Ambedkar proposed replacing 'preclude' with 'prevent' in clause (2). Accepted. – Mrs. Durgabai (Durgabai Deshmukh) moved Pattabhi Sitaramayya's amendment changing 'any class or section' to 'all classes or sections' in clause (2)(b). Accepted. – Prof. K.T. Shah argued for stronger State power to 'positively and absolutely prohibit' secular activities of religious bodies. His amendment was not adopted. – Mohamed Ismail proposed that every citizen should have the right to follow their personal law, unaffected by regulation under clause (2)(a). Expressly rejected by Ambedkar and the Assembly. – Tajamul Husain and Lokanath Misra argued forcefully for deleting the word 'propagate', contending it would sanction divisive missionary activity and had no parallel in any other constitution. Their amendments were not passed. – Sardar Santosh Singh, Rev. J.J.M. Nichols-Roy, T.T. Krishnamachari, and K.M. Munshi defended 'propagate', clarifying it does not give any right to convert by force or fraud; peaceful propagation is akin to sharing ideas, and the right is available to all communities equally.

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	– Draft Article 19 was adopted with minor tweaks as future Article 25. Draft Articles 20 and 21 were dispatched with broad agreement. Dr. Ambedkar added the opening phrase 'Subject to public order, morality and health' to Draft Article 20. The relevant extracts of the debates are reproduced hereunder: **"03rd December, 1948** ***** **B. R. Ambedkar:** (Bombay: General) Sir, I beg to move: "That in clause (2) of article 19, for the word "preclude" the word "prevent" be substituted." **B. R. Ambedkar:** This is only for the purpose of keeping symmetry in the language that we have used in the other articles. ***** **K. T. Shah:** Mr. Vice-President, Sir, I beg to move: "That in sub-clause (a) of clause (2) of article 19, for the words "regulating or restricting any economic, financial, political or other secular activity "the words" regulating. restricting or prohibiting any economic, financial political or other secular activity' be substituted." **K. T. Shah:** The clause as amended would read: "Nothing in this article shall affect the operation of any existing law or preclude the State from making any law-(a) regulating, restricting or prohibiting any economic, financial, political or other secular activity which may be associated with religious practice;....." **K. T. Shah:** These are the words that I have ventured to add, and I think they are necessary. (If the State has to have its supreme authority asserted as against, or in relation to, any Religion, which, merely in the name of religion, carries on practices of a secular kind whether it is financial, economic or political, it is necessary) that those words be added and form part of the article. **xxx** **Vice-President:** The question is: "That in clause (2) of article 19, for the word "preclude" the word "prevent" be substituted." The amendment was adopted. **Vice-President:** The question is: "That in sub-clause (a) of clause (2) of article 19, for the words "regulating or restricting any economic, financial, political or other secular activity" the words "regulating, restricting or prohibiting any economic, financial, political or other secular activity" be substituted." The amendment was negatived. **Vice-President:**

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	The question is: "That in sub-clause (b) of clause (2) of article 19,after the words 'or throwing open to Hindu' the words 'Jain, Buddhist or Christian' be added." The amendment was negatived. **Vice-President:** The question is: "That in sub-clause (b) of clause (2) of article 19 for the words "any class or section" the words 'all classes and sections' be substituted." **Vice-President:** Have you accepted it, Dr. Ambedkar? **B. R. Ambedkar:** Yes, Sir. **Vice-President:** The amendment has been accepted by Dr. Ambedkar. The amendment was adopted. **Vice-President:** The question is:"That after clause 2, of article 19, the following new clause be added:–"(3) Nothing in clause (2) of this article shall affect the right of any citizen to follow the personal law of the group or the community to which he belongs or professes to belong'. The amendment was negatived. **Vice-President:** I shall now put article 19, as amendment by amendment numbers 596 and 609 to vote. The question is: "That article 19, as amended, from part of the Constitution." The motion was adopted. (Article 19, as amended, was added to the Constitution.) ***** **07th December, 1948** **Vice-President:** Then we can go to the next article, that is article 20. **Vice-President:** The motion before the House is: *"That article 20 form part of the Constitution."* **Vice-President:** I have got a series of amendments which I shall read over. Amendment No. 613 is disallowed as it has the effect of a negative vote. Nos. 614 and 616 are almost identical; No. 614 may be moved. **B. R. Ambedkar:** Sir, I move: *"That in the beginning of article 20, the words 'Subject to public order, morality and health,' be inserted."* **B. R. Ambedkar:** Sir, it was just an omission. Honourable Members will see that these words also govern article 19; as a matter of fact they should also have governed article 20 **because it is not the purpose to give absolute rights in these matters relating to**

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	religion. The State may reserve to itself the right to regulate all these institutions and their affairs whenever public order, morality or health require it. **Vice-President:** I can put amendment No. 616 to the vote if it is to be pressed. Has any Member anything to say on the matter? (Amendment No. 616 was not moved.) **Vice-President:** There is, I understand, an amendment to amendment No. 614 in List No. VI. Is that amendment to amendment being moved? **xxx** **Lokanath Misra:** **Sir, I move:** ***"That in clause (a) of article 20, after the word 'maintain' the words `manage and administer' be inserted."*** **Lokanath Misra:** **One who has a right to establish and maintain an institution for religious and charitable purposes ought also to have the right, unless such institutions offend against public order and morality or any established law, to manage and administer the same. Otherwise, there will be difficulty.** **xxx** **Vice-President:** I will now put the amendments, one by one, to vote. **Vice-President:** The question is: *"That in the beginning of article 20, the words "Subject to public order, morality and health," be inserted."* The amendment was adopted. **Vice-President:** The question is: *"That article 20 be numbered as clause (1) of that article and the following new clause be added at the end, namely:-* *'(2) Nothing in clause (1) of this article shall affect the operation of any existing law or prevent the State from making any law for ensuring public order, public morality and public health.'"* The amendment was negatived. **Vice-President:** The question is: *"That in clause (a) of article 20, after the word "maintain" the words 'manage and administer' be inserted."* The amendment was negatived. **Vice-President:** The question is:

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	"That in clause (a) of article 20, for the words 'religious and charitable purposes' the words `religious, charitable and educational purposes' be substituted."* The amendment was negatived. **Vice-President:** The question is: *"That in clause (c) of article 20, for the words 'and immovable property' the words `immovable and incorporeal property' be substituted." The amendment was negatived. **Vice-President:** The question is: *That article 20, as amended, be adopted.* The motion was adopted. Article 20, as amended, was added to the Constitution
Mid-1949 (Final Touches)	The Drafting and Language Sub-Committee performed the final editorial pass. A new Explanation II was added to draft Article 19 (Article 25) clarifying that references to 'Hindus' in the social reform clause shall include persons professing the Sikh, Jaina or Buddhist religion, and references to 'Hindu religious institutions' shall be construed accordingly. This assuaged concerns from Sikh and Jain communities that they might be excluded. Draft Articles 19–22 were renumbered as Articles 25–28 in the final sequencing of the Constitution.
26th November 1949 (Adoption)	The Constitution of India was adopted by the Constituent Assembly. Articles 25–28 on religious freedoms embodied the result of over two years of deliberation. Article 25 guarantees freedom of conscience and the right to profess, practise and propagate religion, subject to public order, morality, health, and the other provisions of Part III, with an enabling provision for State laws on secular activities and social reform. Article 26 guarantees every religious denomination or section thereof the right to establish and maintain institutions, manage its own affairs in matters of religion, and own and administer property in accordance with law.

COMMENT ON THE PRE-EXISTING CASE LAW ON RELIGIOUS FREEDOMS

Badrinath Temple Committee case

21. The first case after the coming into force of the constitution of India dealing with religious freedoms was the ***Nar Hari Shastri And Ors. V. Shri Badrinath Temple Committee Through Its Special Officer (Secretary),* (1952) SCR 849** [***Badrinath Temple Committee*** case] [Saiyid Fazl Ali, Bijan Kumar Mukherjea and Sudhi Ranjan Das, JJ. (delivered by Bijan Kumar Mukherjea, J.)- **3 Judges**] [Vol. V.1 @ Pgs. 139 – 159]. The said case does not provide an elaborate comment on the rights under Article 25 and 26, however, in express terms states that the right of entry into a public temple is not an unregulated or unrestricted right and it is open to the trustees of a temple to regulate the same. The following is the relevant passage of the said case:

> ***"18.*** *This right of entry into a public temple is, however, not an unregulated or unrestricted right. It is open to the trustees of a public temple to regulate the time of public visits and fix certain hours of the day during which alone members of the public would be allowed access to the shrine. The public may also be denied access to certain particularly sacred parts of the temple, e.g., the inner sanctuary or as it is said the "Holy of Holies" where the deity is actually located. Quite apart from these, it is always competent to the temple authorities to make and enforce Rules to ensure good order and decency of worship and prevent overcrowding in a temple. Good conduct or orderly behaviour is always an obligatory condition of admission into a temple [Vide Kalidas Jivram v. Gor Parjaram, ILR 15 Bom p 309; Thackeray v. Harbhum, ILR 8 Bom p 432] , and this principle has been accepted by and recognised in the Shri Badrinath Temple Act, Section 25 of which provides for framing of bye-laws by the temple committee inter alia for maintenance of order inside the temple and regulating the entry of persons within it [Vide Section 25(1)(m)] ."*

No "unrestricted right of entry"

Saraswathi Ammal Case

22. The next case was the ***Saraswathi Ammal V. Rajagopal Ammal,* 1954 SCR 277** [***Saraswathi Ammal*** Case] [Mehr Chand Mahajan, Bijan Kumar Mukerjea and B. Jagannadhadas, JJ. (delivered by B. Jagannadhadas, J.)- **3 Judges**] [Vol. V.9 @ Pgs. 296 – 308]The said case failed to provide a jurisprudential basis to Article 25 and 26. The Court however held that the Madras High Court decisions that perpetual delegation of property for worship at a Tomb is not valid amongst Hindus, were correctly decided. The following is the relevant passage of the said case:

> ***"7.*** *.....Indeed it may be assumed that such a practice is not likely to grow up amongst Hindus where cremation and not burial of the dead is the normal practice, except probably as regards sanyasis and in certain dissident communities. We see no reason to think that the Madras decisions are erroneous in*

Intra religious diversity noted

holding that perpetual dedication of property for worship at a tomb is not valid amongst Hindus".

Shirur Mutt Case

23. The next is the ***Commissioner, Hindu Religious Endowments, Madras V. Sri Lakshmindra Thirtha Swamiar Of Sri Shirur Mutt*, 1954 SCR 1005 [*Shirur Mutt* Case]** [Mehr Chand Mahajan (C.J), Bijan Kumar Mukerjea, Sudhi Ranjan Das, Vivian Bose, Ghulam Hasan, N.H. Bhagwati and T.L. Venkatarama Ayyar, JJ. (delivered by Bijan Kumar Mukherjea, J.)- **7 Judges**] [Vol. V.1 @ Pgs. 160 – 201] wherein this Hon'ble Court, sitting *en banc*, adjudicated upon the scope and expanse of Article 25 and 26.

Striking Feature

(i) The Mathadhipati, a person directly affected, initiated the proceedings and not a proceedings initiated by third party.

(ii) There was a specific challenge to an Act of legislature namely Madras Hindu Religious and Charitable Endowments Act, 1951.

(iii) The matter was decided on 16th March 1954 by a 7-Judges Bench.

Brief Facts

The respondent was Mathadhipati of Shirur Mutt. An agent was appointed under the Madras Hindu Religious and Charitable Endowments Act, 1951 to manage the religious institution against which Mathadhipati filed a suit. Pending the Suit, a draft scheme for settlement of administration of the Mutt was formulated which was challenged in a writ petition by Mathadhipati. The writ petition was allowed by the High Court under Article 226 against which the Commissioner Hindu Religious Endowments filed the appeal before this hon'ble Court.

The following are the relevant passages of the said case:

"15. *We now come to Article 25 which, as its language indicates, secures to every person, subject to public order, health and morality, a freedom not only to entertain such religious belief, as may be approved of by his judgment and conscience, but also to exhibit his belief in such outward acts as he thinks proper and to propagate or disseminate his ideas for the edification of others. A question is raised as to whether the word "persons" here means individuals only or includes corporate bodies as well. The question, in our opinion, is not at all relevant for our present purpose. A Mathadhipati is certainly not a corporate body; he is the head of a spiritual fraternity and by virtue of his office has to perform the duties of a religious teacher. It is his duty to practise and propagate the religious tenets, of which he is an adherent and if any provision*

Wide connotation given to concept of "Mutts" noting the historical significance of the practice

of law prevents him from propagating his doctrines, that would certainly affect the religious freedom which is guaranteed to every person under Article 25. ***Institutions, as such cannot practise or propagate religion; it can be done only by individual persons and whether these persons propagate their personal views or the tenets for which the institution stands is really immaterial for purposes of Article 25. It is the propagation of belief that is protected, no matter whether the propagation takes place in a church or monastery, or in a temple or parlour meeting.***

Even group of individuals can invoke Article 25

16. *As regards Article 26, the first question is, what is the precise meaning or connotation of the expression* ***"religious denomination"*** *and whether a Math could come within this expression. The word "denomination" has been defined in the Oxford Dictionary to mean "a collection of individuals classed together under the same name: a religious sect or body having a common faith and organisation and designated by a distinctive name". It is well known that the practice of setting up Maths as centres of theological teaching was started by Shri Sankaracharya and was followed by various teachers since then. After Sankara, came a galaxy of religious teachers and philosophers who founded the different sects and sub-sects of the Hindu religion that we find in India at the present day.* ***Each one of such sects or sub-sects can certainly be called a religious denomination****, as it is designated by a distinctive name, — in many cases it is the name of the founder — and has a common faith and common spiritual organisation. The followers of Ramanuja, who are known by the name of Shri Vaishnabas, undoubtedly constitute a religious denomination; and so do the followers of Madhwacharya and other religious teachers. It is a fact well established by tradition that the eight Udipi Maths were founded by Madhwacharya himself and the trustees and the beneficiaries of these Maths profess to be followers of that teacher. The High Court has found that the Math in question is in charge of the Sivalli Brahmins who constitute a section of the followers of Madhwacharya.* ***As Article 26 contemplates not merely a religious denomination but also a section thereof, the Math or the spiritual fraternity represented by it can legitimately come within the purview of this article.***

17. The other thing that remains to be considered in regard to Article 26 is, what is the scope of clause (b) of the article which speaks of management ***"of its own affairs in matters of religion"****? The language undoubtedly suggests that there could be other affairs of a religious denomination or a section thereof which* ***are not matters of religion*** *and to which the guarantee given by this clause would not apply. The question is, where is the line to be drawn between what are matters of religion and what are not?*

18. It will be seen that besides the right to manage its own affairs in matters of religion, which is given by clause (b), the next two clauses of Article 26 guarantee to a religious denomination the right to acquire and own property and to administer such property ***in accordance with law.*** *The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The latter is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly impose.* ***It is clear, therefore, that questions merely relating to administration of properties belonging to a religious group or institution are not matters of religion to which clause (b) of the article applies.*** *What then are matters of religion? The word "religion" has not been defined in the Constitution and it is a term which is hardly susceptible of*

Segregation of "matters of religion" and secular matters

any rigid definition. In an American case [Vide Davis v. Benson, 133 US 333 at 342] it has been said "that the term 'religion' has reference to one's views of his relation to his Creator and to the obligations they impose of reverence for His Being and character and of obedience to His will. It is often confounded with cultus of form or worship of a particular sect, but is distinguishable from the latter". We do not think that the above definition can be regarded as either precise or adequate. Articles 25 and 26 of our Constitution are based for the most part upon Article 44(2) of the Constitution of Eire and we have great doubt whether a definition of "religion" as given above could have been in the minds of our Constitution makers when they framed the Constitution. Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.

19. ***The guarantee under our Constitution not only protects the freedom of religious opinion but it protects also acts done in pursuance of a religion*** *and this is made clear by the use of the expression "practice of religion" in Article 25. Latham, C.J. of the High Court of Australia while dealing with the provision of Section 116 of the Australian Constitution which inter alia forbids the Commonwealth to prohibit the "free exercise of any religion" made the following weighty observations [Vide Adelaide Company v. Commonwealth, 67 CLR 116, 127] :*

> *"It is sometimes suggested in discussions on the subject of freedom of religion that, though the civil Government should not interfere with religious opinions, it nevertheless may deal as it pleases with any acts which are done in pursuance of religious belief without infringing the principle of freedom of religion. It appears to me to be difficult to maintain this distinction as relevant to the interpretation of Section 116. The section refers in express terms to the exercise of religion, and therefore it is intended to protect from the operation of any Commonwealth laws acts which are done in the exercise of religion. Thus the section goes far beyond protecting liberty of opinion. It protects also acts done in pursuance of religious belief as part of religion."*

Right of the Legislature to make law for reform

These observations apply fully to the protection of religion as guaranteed by the Indian Constitution. Restrictions by the State upon free exercise of religion are permitted both under Articles 25 and 26 on grounds of public order, morality and health. Clause (2)(a) of Article 25 reserves the right of the State to regulate or restrict any economic, financial, political and other secular activities which may be associated with religious practice and there is a further right given to the State by sub-clause (b) under which the State can legislate for social welfare and reform even though by so doing it might interfere with religious practices. *The learned Attorney-General lays stress upon clause (2)(a) of the article and his contention is that all secular activities, which may be associated with religion but do not really constitute an essential part of it, are amenable to State regulation.*

Submission of the then AG.

*20. **The contention formulated in such broad terms cannot, we think, be supported**. **In the first place, what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself.** If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Article 26(b). **What Article 25(2)(a) contemplates is not regulation by the State of religious practices as such, the freedom of which is guaranteed by the Constitution except when they run counter to public order, health and morality but regulation of activities which are economic, commercial or political in their character though they are associated with religious practices....***

xxx

*...**This difference in judicial opinion brings out forcibly the difficult task which a court has to perform in cases of this type where the freedom or religious convictions genuinely entertained by men come into conflict with the proper political attitude which is expected from citizens in matters of unity and solidarity of the State organization.***

*23. It is to be noted that both in the American as well as in the Australian Constitution the right to freedom of religion has been declared in unrestricted terms without any limitation whatsoever. Limitations, therefore, have been introduced by courts of law in these countries on grounds of morality, order and social protection. An adjustment of the competing demands of the interests of Government and constitutional liberties is always a delicate and a difficult task and that is why we find difference of judicial opinion to such an extent in cases decided by the American courts where questions of religious freedom were involved. **Our Constitution makers, however, have embodied the limitations which have been evolved by judicial pronouncements in America or Australia in the Constitution itself and the language of Articles 25 and 26 is sufficiently clear to enable us to determine without the aid of foreign authorities as to what matters come within the purview of religion and what do not. As we have already indicated, freedom of religion in our Constitution is not confined to religious beliefs only; it extends to religious practices as well subject to the restrictions which the Constitution itself has laid down. Under Article 26(b), therefore, a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interefere with their decision in such matters.** Of course, the scale of expenses to be incurred in connection with these religious observances would be a matter of administration of property belonging to the religious denomination and can be controlled by secular authorities in accordance with any law laid down by a competent legislature; for it could not be the injunction of any religion to destroy the institution and its endowments by incurring wasteful expenditure on rites and ceremonies. It should be noticed, however, that under Article 26(d), it is the*

Separation of religious activity and commercial activity – an approach similar to ***doctrine of pith and substance***

Regulation cannot mean denial of any control by religious authorities.

fundamental right of a religious denomination or its representative to administer its properties in accordance with law; and the law, therefore, must leave the right of administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose. ***A law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under clause (d) of Article 26."***

24. The judgment in ***Shirur Mutt (supra)*** was authored by Justice Bijan Kumar Mukerjea and the judgment was delivered on 16th March 1954 on behalf of seven Hon'ble Judges.

25. ***Shirur Mutt (supra)*** rightly construed the scope and ambit of Articles 25 and 26 which is in tune both with the constitutional intent and the text of the provisions.

26. The ruling did not establish, even remotely, any test suggesting that a religious practice must be an "essential religious practice" to be protected under Article 25 or Article 26.

27. The entire issue in ***Shirur Mutt (supra)*** was not whether a particular practice is 'essential part of religion' or 'non-essential part of religion'. The real question was "practices" of 'religious nature' versus "practices" which are 'not of religious nature' like administration and other secular activities.

28. It was in this context of a debate between religious part of a religion and non-religious part of the religion that a mere argument was made by the then Ld. Attorney General. It is recorded in para 19 and rejected in para 20 quoted above.

29. The argument of the then Ld. Attorney General was with regard to the expansive meaning of the State control under Article 25(2)(a). It was in that context that with a view to argue larger leeway for State regulation that the Ld. Attorney General argued that "all secular activities" which may be associated with religion but do not really "constitute an essential part of it" are amenable to State regulation. Even the then Ld. Attorney General did not attempt to introduce any notion of only "essential religious practice" being protected at all under Articles 25 and 26.

30. This argument is categorically rejected in the first three lines of para 20 itself. It is, thus, clear that the 7-Judge Bench in ***Shirur Mutt (supra)*** never ever introduced any additional condition for getting protection of Article 25 and Article 26.

Ratilal Panachand Gandhi case

31. This Hon'ble Court, in the next judgment, in ***Ratilal Panachand Gandhi V. State Of Bombay*, 1954 SCR 1055** [***Ratilal Panachand Gandhi*** case] [Mehr Chand Mahajan (C.J), Bijan Kumar Mukerjea, Sudhi Ranjan Das, Vivian Bose, Ghulam Hasan JJ. (delivered by Bijan Kumar Mukherjea, J.)- **5 Judges**] [Vol. V.1 @ Pgs. 202 – 224] had the opportunity to expand upon the judgment in ***Shirur Mutt*** [supra].

Striking Feature

(i) The affected parties namely the trustees of a religious trust initiated the proceedings and not a proceedings initiated by third party.

(ii) The validity of some of the provisions of an Act of legislature namely the Bombay Public Trust Act, 1950 was under challenge.

(iii) This case was decided 2 days after the judgment in ***Shirur Mutt (supra)***, i.e., on 18th March 1954.

(iv) The judgment in ***Ratilal Panachand Gandhi*** case pronounced two days after ***Shirur Mutt (supra)*** was also authored by Justice Bijan Kumar Mukerjea. It is also relevant to note that then Chief Justice Mehr Chand Mahajan, Justice B.K. Mukherjea, Justice Sudhi Ranjan Das, Justice Vivian Bose and Justice Ghulam Hasan constituting the 5-Judge bench in ***Ratilal Panachand Gandhi case*** were also part of ***Shirur Mutt case***.

Brief Facts

(i) The trustees of two separate religious trusts challenged the validity of the said Act on namely two grounds substantially covering the point that they conflicted with the rights under Article 25 and 26 of the Constitution.

(ii) This challenge made under Article 226 of the Constitution of India was rejected by Bombay High Court against which affected parties approached this Hon'ble Court.

This Hon'ble Court while specifically dealing with Article 26 indicated that the said right is available to a religious denomination or a section of it thereof. The Court also held that the right of management under Article 26 is given to a regions body thereby indicating that the existence of a denomination is not the sole determinative factor in ascertaining the applicability of Article 26. The Court also held that the right of administration cannot be taken away altogether and vested in a secular authority. The following are the relevant passages of the said case:

"***13.*** *Religious practices or performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrines.* ***Thus if the tenets of the Jain or the Parsi religion lay down that certain rites and ceremonies are to be performed at certain times and in a particular manner, it cannot be said that these are secular activities partaking of commercial or economic character simply because they involve expenditure of money or employment of priests or the use of marketable commodities. No outside authority has any right to say that these are not essential parts of religion and it is not open to the secular authority of the State to restrict or prohibit them in any manner they like under the guise of administering the trust estate.*** *Of course, the scale of expenses to be incurred in connection with these religious observances may be and is a matter of administration of property belonging to religious institutions; and if the expenses on these heads are likely to deplete the endowed properties or affect the stability of the institution, proper control can certainly be exercised by State agencies as the law provides. We may refer in this connection to* ***the observation of Davar, J. in the case of Jamshed ji v. Soonabai3*** *and although they were made in a case where the question was whether the bequest of property by a Parsi testator for the purpose of perpetual celebration of ceremonies like Muktad baj, Vyezashni, etc., which are sanctioned by the Zoroastrian religion were valid charitable gifts, the observations, we think, are quite appropriate for our present purpose.* ***"If this is the belief of the community" thus observed the learned Judge, "and it is proved undoubtedly to be the belief of the Zoroastrian community,—a secular Judge is bound to accept that belief—it is not for him to sit in judgment on that belief, he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be the advancement of his religion and the welfare of his community or mankind".*** *These observations do, in our opinion, afford an indication of the measure of protection that is given by Article 26(b) of our Constitution.*

14. ***The distinction between matters of religion and those of secular administration of religious properties may, at times, appear to be a thin one. But in cases of doubt, as Chief Justice Latham pointed out in the case referred to above, the court should take a common sense view and be actuated by considerations of practical necessity****. It is in the light of these principles that we will proceed to examine the different provisions of the Bombay Public Trusts Act, the validity of which has been challenged on behalf of the appellants.*

15. *Article 25 of the Constitution guarantees to every person and not merely to the citizens of India, the freedom of conscience and the right freely to profess, practise and propagate religion. This is subject, in every case, to public order, health and morality. Further exceptions are engrafted upon this right by clause (2) of the article. Sub-clause (a) of clause (2) saves the power of the State to make laws regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; and sub-clause (b) reserves the State's power to make laws providing for social reform and social welfare even though they might interfere with religious practices. Thus, subject to the restrictions which this article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others. It is immaterial also whether the propagation is made by a person in his individual capacity or on behalf of any church or institution.*

Scope of Article 25(2)(a)

The free exercise of religion by which is meant the performance of outward acts in pursuance of religious belief, is, as stated above, subject to State regulation imposed to secure order, public health and morals of the people. ***What sub-clause (a) of clause (2) of Article 25 contemplates is not State regulation of the religious practices as such which are protected unless they run counter to public health or morality but of activities which are really of an economic, commercial or political character though they are associated with religious practices.***

16. *So far as Article 26 is concerned, it deals with a particular aspect of the subject of religious freedom. Under this article, any religious denomination or* ***a section of it*** *has the guaranteed right to establish and maintain institutions for religious and charitable purposes and to manage in its own way, all affairs in matters of religion. Rights are also given to such denomination* ***or a section of it*** *to acquire and own movable and immovable properties and to administer such properties in accordance with law. The language of the two clauses (b) and (d) of Article 26 would at once bring out the difference between the two. I****n regard to affairs in matters of religion, the right of management given to a religious body is a guaranteed fundamental right which no legislation can take away.*** *On the other hand, as regards administration of property which a religious denomination is entitled to own and acquire, it has undoubtedly the right to administer such property but only in accordance with law. This means that the State can regulate the administration of trust properties by means of laws validly enacted; but here again it should be remembered that under Article 26(d), it is the religious denomination itself which has been given the right to administer its property in accordance with any law which the State may validly impose. A law, which takes away the right of administration altogether from the religious denomination and vests it in any other or secular authority, would amount to violation of the right which is guaranteed by Article 26(d) of the Constitution*

The right of religious denomination is extended to "a section thereof"

17. The moot point for consideration, therefore, is where is the line to be drawn between what are matters of religion and what are not? Our Constitution-makers have made no attempt to define "what religion" is and it is certainly not possible to frame an exhaustive definition of the word "religion" which would be applicable to all classes of persons*. As has been indicated in the Madras case referred to above, the definition of "religion" given by Fields, J. in the American case of Davis v. Beason [133 US 333] does not seem to us adequate or precise. "The term 'religion'" thus observed the learned Judge in the case mentioned above,*

> *"....has reference to one's views of his relations to his Creator and to the obligations they impose of reverence for His Being and character and of obedience to His Will. It is often confounded with cultus or form of worship of a particular sect, but is distinguishable from the latter".* (L Ed p. 640)

It may be noted that "religion" is not necessarily theistic and in fact there are well known religions in India like Buddhism and Jainism which do not believe in the existence of God or of any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs and doctrines which are regarded by those who profess that religion to be conducive to their spiritual well being, but it would not be correct to say, as seems to have been suggested by one of the learned Judges of the Bombay High Court, that matters of religion are nothing but matters of religious faith and religious belief. A religion is not merely an opinion, doctrine or belief. It has its outward expression in acts as well. We may quote in this connection the observations of

Latham, C.J. of the High Court of Australia in the case of Adelaide Company v. Commonwealth [67 CLR 116, 124] where the extent of protection, given to religious freedom by Section 116 of the Australian Constitution came up for consideration.

> *"It is sometimes suggested in discussions on the subject of freedom of religion that, though the civil Government should not interfere with religious opinions, it nevertheless may deal as it pleases with any acts which are done in pursuance of religious belief without infringing the principle of freedom of religion. It appears to me to be difficult to maintain this distinction as relevant to the interpretation of Section 116. The section refers in express terms to the exercise of religion, and therefore it is intended to protect from the operation of any Commonwealth laws acts which are done in the exercise of religion. Thus the section goes far beyond protecting liberty of opinion. It protects also acts done in pursuance of religious belief as part of religion.*

In our opinion, as we have already said in the Madras case, these observations apply fully to the provision regarding religious freedom that is embodied in our Constitution.

18. <u>Religious practices or performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrines. Thus if the tenets of the Jain or the Parsi religion lay down that certain rites and ceremonies are to be performed at certain times and in a particular manner, it cannot be said that these are secular activities partaking of commercial or economic character simply because they involve expenditure of money or employment of priests or the use of marketable commodities.</u> *No outside authority has any right to say that these are not essential parts of religion and it is not open to the secular authority of the State to restrict or prohibit them in any manner they like under the guise of administering the trust estate. <u>Of course, the scale of expenses to be incurred in connection with these religious observances may be and is a matter of administration of property belonging to religious institutions; and if the expenses on these heads are likely to deplete the endowed properties or affect the stability of the institution, proper control can certainly be exercised by State agencies as the law provides.</u> We may refer in this connection to the observation of Davar, J. in the case of Jamshed ji v. Soonabai [33 Bom 122] and although they were made in a case where the question was whether the bequest of property by a Parsi testator for the purpose of perpetual celebration of ceremonies like Muktad baj, Vyezashni, etc., which are sanctioned by the Zoroastrian religion were valid charitable gifts, the observations, we think, are quite appropriate for our present purpose. "If this is the belief of the community" thus observed the learned Judge,*

The involvement of a secular aspect in an otherwise religious activity would not make it secular

> *"and it is proved undoubtedly to be the belief of the Zoroastrian community,—a secular Judge is bound to accept that belief—it is not for him to sit in judgment on that belief, he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be the advancement of his religion and the welfare of his community or mankind". These observations do, in our opinion, afford an indication of the measure of protection that is given by Article 26(b) of our Constitution.*

> ***19.*** *The distinction between matters of religion and those of secular administration of religious properties may, at times, appear to be a thin one. But in cases of doubt, as Chief Justice Latham pointed out in the case [Vide Adelaide Company v. The Commonwealth, 67 CLR 116, 129] referred to above,* ***the court should take a common sense view and be actuated by considerations of practical necessity****. It is in the light of these principles that we will proceed to examine the different provisions of the Bombay Public Trusts Act, the validity of which has been challenged on behalf of the appellants."*

The common sense view is critical in segregation

32. ***Ratilal Panachand Gandhi*** case was decided by 5 Judges who were part of 7 judges' bench in ***Shirur Mutt*** *case*.

33. It was decided on 18th March, 1954 i.e. just two days after the pronouncement in ***Shirur Mutt*** *case*.

34. The ***Ratilal Panachand Gandhi (supra)*** is in line with the findings recorded in the earlier case of ***Shirur Mutt (supra)***.

35. Both 7 judges Bench and 5 judges Bench in ***Shirur Mutt (supra) and Ratilal Panachand Gandhi (supra)*** respectively, specifically takes note of the word **"a section of it"** along with the religious denomination.

36. In ***Ratilal Panachand Gandhi (supra)***, the court in Para 18 takes note of faith and belief which is part of the Preamble.

37. ***Ratilal Panachand Gandhi (supra)*** again makes a statement of law that "*no outside authority has any right to say that these are not essential parts of religion*…."

38. Even ***Ratilal Panachand Gandhi (supra)***, therefore, did not add any additional qualification of religious practice being 'essential religious practice'. Further, it also records that what is essential part of religion is for the denomination to decide and no outside agency can take a call on the same.

The Devaru case

39. The Hon'ble Supreme Court, thereafter pronouncement a judgment in ***Sri Venkataramana Devaru And Others v. State Of Mysore And Others;*** **1958 SCR 895** [now famously known as the ***Devaru*** case] [Sudhi Ranjan Das, C.J., T.L. Venkatarama Aiyar, Syed Jafer Imam, A.K. Sarkar and Vivian Bose, JJ. (delivered by T.L. Venkatarama Aiyar)- **5 Judges**] [Vol. V.1 @ Pgs. 225 – 252]

Striking Feature

(i) The affected parties initiated the proceedings by filing a suit in which trial took place and all fact regarding past religious practice etc came to be tried and findings were recorded.

(ii) The validity of a legislative Act namely Madras Temple Entry Authorisation Act was directly in question.

(iii) Again, this was not a proceeding initiated by third party.

Brief Facts

(i) A substantial question was as to whether in a temple dedicated to Lord Vishwanath only Gowda Saraswath Brahmins can perform the rituals.

(ii) Secondly, whether the provisions of Madras Temple Entry Authorisation Act initiated to permit entry of Hindus [including belonging to reserved categories] was permitted.

(iii) The affected parties lost in the High Court and preferred appeal before this Hon'ble Court.

40. The judgment in ***Devaru (supra)*** is a landmark judgment which determines the interplay between Article 25(2)(b) and Article 26(b). The judgment, however, needs to be examined contextually since it dealt with a statutory provision made by the then Madras legislature having the effect of allowing "all sections of Hindus" in all temples. It was essentially a measure of reform under Article 25(2)(b) and was to give effect to the second part of Article 25(2)(b). The act under challenge was the Madras Temple Entry Authorization Act, 1947. The Statement of Objects and Reasons read as under:

> "WHEREAS it is the policy of the State Government to remove the disabilities imposed on certain classes of Hindus against entry into Hindu temples in the State
>
> AND WHEREAS the State Government are satisfied, from the rapidity with which, under pressure of Hindu public opinion, a number of temples have been thrown open to certain classes of Hindus in recent months, under the provisions of the Madras Temple Entry Authorization and Indemnity Act, 1939, that the time has now arrived for throwing open to all classes of Hindus every Hindu temple in the State
>
> AND WHEREAS THE State Government consider that the provisions of the said Act are inadequate for the early and complete implementation of the policy of the State Government aforesaid."

41. The governing section which was substantially in challenge was Section 3 of the said Act, which reads as under:

"3. (1) Notwithstanding any law, custom or usage to the contrary, every Hindu irrespective of the caste or sect to which he belongs shall be entitled to enter any Hindu temple and offer worship therein in the same manner and to the same extent as Hindu in general or any section of Hindus; and no Hindu shall, by reason only of such entry or worship whether before or after the commencement of this Act, be deemed to have committed any ac tionable wrong or offence or be used or prosecuted therefor.

(2) without prejudice to the generality of the foregoing provision, it is hereby declared that the right conferred by sub-section (1) shall include the following rights, if, and to the extent to which, they are enjoyed by Hindus in general, or any section of Hindus-

(a) The right to bathe in, or use the waters of, any sacred tank, well, spring or water course appurtenant to the temple, whether situated within or outside the precincts thereof;

(b) The right of passage over any sacred place, including a hill or hillock or a road, street or pathway, which is requisite for obtaining access to the temple."

42. The relevant portion of the judgment reads as under :

The regard held by the community is the test

"17. <u>It being thus settled that matters of religion in Article 26(b) include even practices which are regarded by the community as part of its religion, we have now to consider whether exclusion of a person from entering into a temple for worship is a matter of religion according to Hindu Ceremonial Law.</u> *There has been difference of opinion among the writers as to whether image worship had a place in the religion of the Hindus, as revealed in the Vedas. On the one hand, we have hymns in praise of Gods, and on the other, we have highly philosophical passages in the Upanishads describing the Supreme Being as omnipotent, omniscient and omnipresent and transcending all names and forms. When we come to the Puranas, we find a marked change. The conception had become established of Trinity of Gods, Brahma, Vishnu and Siva as manifestations of the three aspects of creation, preservation and destruction attributed to the Supreme Being in the Upanishads, as, for example, in the following passage in the Taittiriya Upanishad, Brigu Valli, First Anuvaka:*

"That from which all beings are born, by which they live and into which they enter and merge."<u>The Gods have distinct forms ascribed to them and their worship at home and in temples is ordained as certain means of attaining salvation. These injunctions have had such a powerful hold over the minds of the people that daily worship of the deity in temple came to be regarded as one of the obligatory duties of a Hindu. It was during this period that temples were constructed all over the country dedicated to Vishnu, Rudra, Devi, Skanda, Ganesha and so forth, and worship in the temple can be said to have become the practical religion of all sections of the Hindus ever since. With the growth in importance of temples and of worship therein, more and more attention came to be devoted to the ceremonial law relating to the construction of temples, installation of idols therein and conduct of worship of the deity, and numerous are the treatises that came to be written for its exposition. These are known as Agamas, and there are as many as 28 of them relating to the Saiva temples, the most important of them being the Kamikagama, the Karanagama and the Suprabhedagama, while</u>

Different elements of Hindu deity worship

the Vikhanasa and the Pancharatra are the chief Agamas of the Vaishnavas. These Agamas, contain elaborate rules as to how the temple is to be constructed, where the principal deity is to be consecrated, and where the other Devatas are to be installed and where the several classes of worshippers are to stand and worship. The following passage from the judgment of Sadasiva Aiyar, J., in Gopala Muppanar v. Subramania Aiyar [(1914) 27 MLJ 253] gives a summary of the prescription contained in one of the Agamas:

"In the Nirvachanapaddhathi it is said that Sivadwijas should worship in the Garbhagriham, Brahmins from the ante chamber or Sabah Mantabam, Kshatriyas, Vysias and Sudras from the Mahamantabham, the dancer and the musician from the Nrithamantabham east of the Mahamantabham and that castes yet lower in scale should content themselves with the sight of the Gopuram."

The other Agamas also contain similar rules.

18. *According to the Agamas, an image becomes defiled if there is any departure or violation of any of the rules relating to worship, and purificatory ceremonies (known as Samprokshana) have to be performed for restoring the sanctity of the shrine. Vide judgment of Sadasiva Aiyar, J., in Gopala Muppanar v. Subramania Aiyar [(1914) 27 MLJ 253] . In Sankaralinga Nadan v. Raja Rajeswara Dorai [(1908) LR 35 IA 176] it was held by the Privy Council affirming the judgment of the Madras High Court that a trustee who agreed to admit into the temple persons who were not entitled to worship therein, according to the Agamas and the custom of the temple was guilty of breach of trust.* ***Thus, under the ceremonial law pertaining to temples, who are entitled to enter into them for worship and where they are entitled to stand and worship and how the worship is to be conducted are all matters of religion.*** *The conclusion is also implicit in Article 25 which after declaring that all persons are entitled freely to profess, practise and propagate religion, enacts that this should not affect the operation of any law throwing open Hindu religious institutions of a public character to all classes and sections of Hindus. We have dealt with this question at some length in view of the argument of the learned Solicitor-General that exclusion of persons from temple has not been shown to be a matter of religion with reference to the tenets of Hinduism.* ***We must, accordingly hold that if the rights of the appellants have to be determined solely with reference to Article 26(b), then Section 3 of Act 5 of 1947, should be held to be bad as infringing it.***

The question of entry in to a Temple is dependent upon the Agamas and is clearly a "religious matter" protected under Article 25 and Article 26. The Court noted that had there been no enabling provision under Article 25(2)(b), the law would have been ultra vires.

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20. ***We have held that matters of religion in Article 26(b) include the right to exclude persons who are not entitled to participate in the worship according to the tenets of the institution****. Under this Article, therefore, the appellants would be entitled to exclude all persons other than Gowda Saraswath Brahmins from entering into the temple for worship. Article 25(2)(b) enacts that a law throwing open public temples to all classes of Hindus is valid. The word "public" includes, in its ordinary acceptation,* ***any section of the public****, and the suit temple would be a public institution within Article 25(2)(b), and Section 3 of the Act would therefore be within its protection. Thus, the two Articles appear to be apparently in conflict.* ***Mr M.K. Nambiar contends that this conflict could be avoided if the expression "religious institutions of a public character" is understood as meaning institutions dedicated to the Hindu community in general, though some sections thereof might be excluded by custom from entering into them, and that, in that view, denominational institutions founded for the benefit of a section of Hindus would fall outside the purview of Article***

25(2)(b) as not being dedicated for the Hindu community in general. He sought support for this contention in the law relating to the entry of excluded classes into Hindu temples and in the history of legislation with reference thereto, in Madras.

21. *According to the Agamas, a public temple ensures, where it is not proved to have been founded for the benefit of any particular community, for the benefit of all Hindus including the excluded classes. But the extent to which a person might participate in the worship therein would vary with the community in which he was born. In Venkatachalapathi v. Subbarayadu [(1890) ILR 13 Mad 293] the following statement of the law was quoted by the learned Judges with apparent approval:*

> *"Temple, of course, is intended for all castes, but there are restrictions of entry. Pariahs cannot go into the court of the temple even. Sudras and Baniyas can go into the hall of the temple. Brahmins can go into the holy of the holies."*

In Gopala Muppanar v. Subramania Aiyar [(1914) 27 MLJ 253] Sadasiva Aiyar, J., observed as follows at p. 258:

> *"It is clear from the above that temples were intended for the worship of people belonging to all the four castes without exception. Even outcastes were not wholly left out of the benefits of temple worship, their mode of worship being however made subject to severe restrictions as they could not pass beyond the Dwajastambam (and some times not beyond the temple outer gate) and they could not have a sight of the images other than the procession images brought out at the times of festivals."*

22. *The true position, therefore, is that the excluded classes were all entitled to the benefit of the dedication, though their actual participation in the worship was insignificant. It was to remove this anomaly that legislation in Madras was directed for near a decade. First came the Malabar Temple Entry Act (Madras 20 of 1938). Its object was stated to be "to remove the disabilities imposed by custom and usage on certain classes of Hindus in respect of their entry into, and offering worship in, Hindu temples". Section 2(4) defined "temple" as "a place which is used as a place of public worship by the Hindu community generally except excluded classes...." Sections 4 and 5 of the Act authorised the trustees to throw such temples open to persons belonging to the excluded classes under certain conditions. This Act extended only to the District of Malabar. Next came the Madras Temple Entry Authorisation and Indemnity Act (Madras Act 22 of 1939). The preamble to the Act states that "there has been a growing volume of public opinion demanding the removal of disabilities imposed by custom and usage on certain classes of Hindus in respect of their entry into and offering worship in Hindu temples", and that "it is just and desirable to authorise the trustees in charge of such temples to throw them open to ... the said classes". Section 3 of the Act authorised the trustees to throw open the temples to them. This Act extended to the whole of the Province of Madras.* ***Then we come to the Act, which has given rise to this litigation, Act 5 of 1947. It has been already mentioned that, as originally passed, its object was to lift the ban on the entry into temples of communities which are excluded by custom from entering into them, and "temple" was also defined as a place dedicated to the Hindus generally.***

Denominational temples falling outside the purview of Article 25(2)(b) due to the use to the terms "*temples of public character*"

23. *Now, the contention of Mr Nambiar is that Article 25(2)(b) must be interpreted in the background of the law as laid down in Gopala Muppanar v. Subramania Aiyar [(1914) 27 MLJ 253] and the definition of "temple" given in the statutes mentioned above, and that the expression "religious institutions of a public character" must be interpreted as meaning institutions which are dedicated*

for worship to the Hindu community in general, though certain sections thereof were prohibited by custom from entering into them, and that, in that view, denominational temples will fall outside Article 25(2)(b). ***There is considerable force in this argument. One of the problems which had been exercising the minds of the Hindu social reformers during the period preceding the Constitution was the existence in their midst of communities which were classed as untouchables. A custom which denied to large sections of Hindus the right to use public roads and institutions to which all the other Hindus had a right of access, purely on grounds of birth could not be considered reasonable and defended on any sound democratic principle, and efforts were being made to secure its abolition by legislation****. This culminated in the enactment of Article 17, which is as follows:*

> *"'Untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'Untouchability' shall be an offence punishable in accordance with law."*

24. *Construing Article 25(2)(b) in the light of Article 17, it is arguable that its object was only to permit entry of the excluded classes into temples which were open to all other classes of Hindus, and that that would exclude its application to denominational temples. Now, denominational temples are founded, ex hypothesi, for the benefit of particular sections of Hindus, and so long as the law recognises them as valid — and Article 26 clearly does that — what reason can there be for permitting entry into them of persons other than those for whose benefit they were founded? If a trustee diverts trust funds for the benefit of persons who are not beneficiaries under the endowment, he would be committing a breach of trust, and though a provision of the Constitution is not open to attack on the ground that it authorises such an act, is it to be lightly inferred that Article 25(2)(b) validates what would, but for it, be a breach of trust and for no obvious reasons of policy, as in the case of Article 17?* ***There is, it should be noted, a fundamental distinction between excluding persons from temples open for purposes of worship to the Hindu public in general on the ground that they belong to the excluded communities and excluding persons from denominational temples on the ground that they are not objects within the benefit of the foundation.*** *The former will be hit by Article 17 and the latter protected by Article 26, and it is the contention of the appellants that Article 25(2)(b) should not be interpreted as applicable to both these categories and that it should be limited to the former. The argument was also advanced as further supporting this view, that while Article 26 protects denominational institutions of not merely Hindus but of all communities such as Muslims and Christians, Article 25(2)(b) is limited in its operation to Hindu temples, and that it could not have been intended that there should be imported into Article 26(b), a limitation which would apply to institutions of one community and not of others. Article 26, it was contended, should therefore be construed as falling wholly outside Article 25(2)(b) which should be limited to institutions other than denominational ones.*

The basis of the purported exclusion is to be critically examined

25. The answer to this contention is that it is impossible to read any such limitation into the language of Article 25(2)(b). It applies in terms to all religious institutions of a public character without qualification or reserve. As already stated, public institutions would mean not merely temples dedicated to the public as a whole but also those founded for the benefit of sections thereof, and denominational temples would be comprised therein. The language of the Article being plain and unambiguous, it is not open to us to read into it limitations which are not there, based on a priori reasoning as to the probable intention of the legislature. Such intention can be gathered only from the words actually used in the statute; and in a court of law, what is unexpressed

has the same value as what is unintended. We must therefore hold that denominational institutions are within Article 25(2)(b).

26. *It is then said that if the expression "religious institutions of a public character" in Article 25(2)(b) is to be interpreted as including denominational institutions, it would clearly be in conflict with Article 26(b), and it is argued that in that situation, Article 26(b) must, on its true construction, be held to override Article 25(2)(b). Three grounds were urged in support of this contention, and they must now be examined. It was firstly argued that while Article 25 was stated to be "subject to the other provisions of this Part" (Part III), there was no such limitation on the operation of Article 26, and that, therefore, Article 26(b) must be held to prevail over Article 25(2)(b). But it has to be noticed that the limitation "subject to the other provisions of this Part" occurs only in Clause (1) of Article 25 and not in clause (2). Clause (1) declares the rights of all persons to freedom of conscience and the right freely to profess, practise and propagate religion.* ***It is this right that is subject to the other provisions in the Fundamental Rights Chapter. One of the provisions to which the right declared in Article 25(1) is subject is Article 25(2). A law, therefore, which falls within Article 25(2)(b) will control the right conferred by Article 25(1), and the limitation in Article 25(1) does not apply to that law.***

The enabling provision under clause 2 controls the right under Article 25(1).

27. *It is next contended that while the right conferred under Art. 26(d) is subject to any law which may be passed with reference thereto, there is no such restriction on the right conferred by Art. 26(b). It is accordingly argued that any law which infringes the right under Art. 26 (b) is invalid, and that s. 3 of Act V of 1947 must accordingly be held to have become void. Reliance is placed on the observations of this Court in The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (supra) at page 1023, in support of this position. It is undoubtedly true that the right conferred under Art. 26(b) cannot be abridged by any legislation, but the validity of s. 3 of Act V of 1947 does not depend on its own force but on Art. 25(2)(b) of the Constitution. The very Constitution which is claimed to have rendered s. 3 of the Madras Act void as being repugnant to Art. 26(b)has, in Art. 25(2)(b), invested it with validity, and, therefore, the appellants can succeed only by establishing that Art. 25(2)(b) itself is inoperative as against Art. 26(b)).*

28. *And lastly, it is argued that whereas Article 25 deals with the rights of individuals, Article 26 protects the rights of denominations, and that as what the appellants claim is the right of the Gowda Saraswath Brahmins to exclude those who do not belong to that denomination, that would remain unaffected by Article 25(2)(b). This contention ignores the true nature of the right conferred by Article 25(2)(b). That is a right conferred on "all classes and sections of Hindus" to enter into a public temple, and on the unqualified terms of that Article, that right must be available, whether it is sought to be exercised against an individual under Art 25(1) or against a denomination under Article 26(b). The fact is that though Article 25(1) deals with rights of individuals, Article 25(2) is much wider in its contents and has reference to the rights of communities, and controls both Article 25(1) and Article 26(b).*

29. The result then is that there are two provisions of equal authority, neither of them being subject to the other. The question is how the apparent conflict between them is to be resolved. The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect could be given to both. This is what is known as the rule of harmonious construction. Applying this rule, if the contention of the

The rule of harmonious construction

appellants is to be accepted, then Article 25(2)(b) will become wholly nugatory in its application to denominational temples, though, as stated above, the language of that Article includes them. On the other hand, if the contention of the respondents is accepted, then full effect can be given to Article 26(b) in all matters of religion, subject only to this that as regards one aspect of them, entry into a temple for worship, the rights declared under Article 25(2)(b) will prevail. While, in the former case, Article 25(2)(b) will be put wholly out of operation, in the latter, effect can be given to both that provision and Article 26(b). We must accordingly hold that Article 26(b) must be read subject to Article 25(2)(b).

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32. *We have held that the right of a denomination to wholly exclude members of the public from worshipping in the temple, though comprised in Article 26(b), must yield to the overriding right declared by Article 25(2)(b) in favour of the public to enter into a temple for worship. But where the right claimed is not one of general and total exclusion of the public from worship in the temple at all times but of exclusion from certain religious services, they being limited by the rules of the foundation to the members of the denomination, then the question is not whether Article 25(2)(b) overrides that right so as extinguish it, but whether it is possible — so to regulate the rights of the persons protected by Article 25(2)(b) as to give effect to both the rights. If the denominational rights are such that to give effect to them would substantially reduce the right conferred by Article 25(2)(b), then of course, on our conclusion that Article 25(2)(b) prevails as against Article 26(b), the denominational rights must vanish.* ***But where that is not the position, and after giving effect to the rights of the denomination what is left to the public of the right of worship is something substantial and not merely the husk of it, there is no reason why we should not so construe Article 25(2)(b) as to give effect to Article 26(b) and recognise the rights of the denomination in respect of matters which are strictly denominational, leaving the rights of the public in other respects unaffected."***

The freedom under Article 26 is subject to power of the State under the enabling provision

43. The judgment in ***Devaru (supra)***, in effect deals with interplay between Article 25(2)(b) and Article 26(b).

44. The entire judgment proceeds in the context of exclusion of certain Hindus based upon caste / class/ birth which was condemnable situation prevailing before independence [which was in fact the subject matter of second part of Article 25(b)]

45. There was no question of any exclusion based upon gender. The Act applied equally to the entire State and not to one particular religious denomination.

46. In ***Devaru (supra)***, even after taking note of ***Shirur Mutt (supra)*** and ***Ratilal Panachand Gandhi (supra)***, the 5-Judge bench did not even consider the question of any "essential religious practice".

47. The Court examined the interplay between Article 25(2)(b) and Article 26(b) and read them harmoniously while giving primacy to the reform measure contemplated under Article 25(2)(b).

48. The most relevant part of the judgment is para 32 where the Court in terms of accepted law laid down in ***Shirur Mutt (supra)*** gives autonomy to the denomination to decide its religion and religious practice which are 'strictly denominational'.

49. The ***Sabarimala*** judgment runs contrary to the binding law laid down in the coordinate bench judgment in ***Devaru (supra)*** over and above several other errors which are apparent on the face of the record.

Mahant Ram Saroop Dasji case

The Hon'ble Supreme Court in ***Mahant Ram Saroop Dasji Vs. S P Sahi Spl Officer,*** **AIR 1959 SC 951** [Vol. V.6 @ Pgs. 194 – 214] examined question of the extent of the applicability of the Bihar Hindu Religious Trusts Act, 1950 in the context of "private" and "public" Temples. The question in simpler terms was whether that enactment extends to private religious endowments in Hindu law. The judgment, delivered by S. K. Das, J., on behalf of the Court, concludes that the Act, on pure statutory interpretation, does not apply to private religious trusts.

Mohd. Hanif Quareshi case

50. The Hon'ble Supreme Court in ***Mohd. Hanif Quareshi & Others vs The State Of Bihar,*** **1959 SCR 629** [***Mohd. Hanif Quareshi*** case) [Sudhi Ranjan Das (CJ), T.L. Venkatarama Aiyyar, S.K. Das, P.B. Gajendragadkar, Vivian Bose JJ. - Author: J. S R Das **5 Judges**] [Vol. V.7 @ Pgs. 78 – 139] dealt with the small aspect of Article 25.

Striking Feature

(i) The affected parties initiated the proceedings by filing writ petitions.

(ii) The validity of Acts banning cow slaughter in the States were challenged.

(iii) These were not a proceeding initiated by third party.

Brief Facts

(i) A substantial question, for the present purpose was whether cow slaughter is an essential tenant of Islam.

The Court however, in light of lack of material before it held that it is unable to record that the sacrifice of a cow is an obligatory overt act to exhibit religious belief. The following is the relevant passage of the said case:

> ***"11.*** *As already stated the petitioners, who are citizens of India, and Muslims by religion, mostly belong to the Quraishi community and are generally engaged in the butchers' trade and its subsidiary undertakings such as supply of hides, tannery, glue making, gut making and blood de-hydrating.* ***Those, who carry on the butchers' trade, are mostly Kasais who, the petitioners say, kill only cattle but not sheep or goat which are slaughtered by other persons known as Chicks. Learned counsel appearing for the petitioners challenge the constitutional validity of the Acts respectively applicable to them on three grounds, namely, that they offend the fundamental rights guaranteed to them by Articles 14, 19(1)(g) and 25.*** *Learned counsel appearing for the respondent States, of course, seek to support their respective enactments by controverting the reasons advanced by learned counsel for the petitioners. Bharat Go-Sevak Samaj, All India Anti-Cow-Slaughter Movement Committee, Sarvadeshik Arya Pratinidhi Sabha and M.P. Gorakshan Sangh put in petitions for leave to intervene in these proceedings. Under Order XLI, rule 2 of the Supreme Court Rules intervention is permitted only to the Attorney-General of India or the Advocates-General for the States. There is no other express provision for permitting a third party to intervene in the proceedings before this Court. In practice, however, this Court, in exercise of its inherent powers, allows a third party to intervene when such third party is a party to some proceedings in this Court or in the High Courts where the same or similar questions are in issue, for the decision of this Court will conclude the case of that party. In the present case, however, the petitioners for intervention are not parties to any proceedings and we did not think it right to permit them formally to intervene in these proceedings; but in view of the importance of the questions involved in these proceedings we have heard Pandit Thakurdas Bhargava, who was instructed by one of these petitioners for intervention, as amicus curiae. We are deeply indebted to all learned counsel appearing for the parties and to Pandit Thakurdas Bhargava for the valuable assistance they have given us.*
>
> ***13.*** *Coming now to the arguments as to the violation of the petitioners' fundamental rights, it will be convenient to take up first the complaint founded on Article 25(1). That article runs as follows:*
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> *****
>
> ***We have, however, no material on the record before us which will enable us to say, in the face of the foregoing facts, that the sacrifice of a cow on that day is an obligatory overt act for a Mussalman to exhibit his religious belief and idea. In the premises, it is not possible for us to uphold this claim of the petitioners****."*

51. In this case, 5-Judge Bench did not go into the question as to whether religious practice to be "an essential religious practice" is necessary to get protection of Article 25. This judgment is, therefore, of not much significance.

Durgah Committee case

52. After the era ushered by J. BK Mukherjea as its main proponent, the Hon'ble Supreme Court thereafter, in ***Durgah Committee, Ajmer And Another V. Syed Hussain Ali And Others*****, (1962) 1 SCR 383** [***Durgah Committee*** case] [P.B. Gajendragadkar, A.K. Sarkar, K.N. Wanchoo,

K.G. Das Gupta and N. Rajagopala Ayyanagar, JJ. (delivered by P.B. Gajendragadkar)- **5 Judges**] [Vol. V.1 @ Pgs. 253 – 291] entered the next era with J. Gajendragadkar, as the main architech.

Striking Feature

(i) The affected parties initiated the proceedings by filing writ petitions.

(ii) The validity of Acts taking control of the part of administration of the durgah were challenged.

(iii) These were not a proceedings initiated by third party.

Brief Facts

(i) A Writ Petition under Article 226 was filed in the High Court of Judicature for Rajasthan at Jodhpur by the nine Respondents, who are Khadims of the tomb of Khwaja Moin-ud-din Chishti of Ajmer challenging the vires of the Durgah Khwaja Saheb Act 36 of 1955.

(ii) The writ petition filed by the respondents substantially succeeded and the High Court made a declaration that the impugned provisions of the Act are *ultra vires* and issued an order restraining the appellants from enforcing them.

The Hon'ble Supreme Court held that in order for any practice to be treated as a part of religion it must be regarded by the said religion as its essential and integral part. While the word "essential" was used in the judgment of ***Shirur Mutt***, the said usage was not expressed as a test to ascertain the expanse of Article 25 and 26 in ***Shirur Mutt***. The Court also for the first time shunned the practices it regarded as "superstitious" to not fall under the umbrella of Article 25.

Further, the Hon'ble Court also held that if the right to administer a religious institution never vested in a denomination or had been validly surrendered by it or had been otherwise effectively and irretrievably lost by it, right under Article 26 cannot successfully be invoked. The following is the relevant passage of the said case:

> ***"33.*** *We will first take the argument about the infringement of the fundamental right to freedom of religion. Articles 25 and 26 together safeguard the citizen's right to freedom of religion. Under Article 25(1), subject to public order, morality and health and to the other provisions of Part 3, all persons are equally entitled to freedom of conscience and their right freely to profess, practise and propagate religion. This freedom guarantees to every citizen not only the right to entertain such religious beliefs as may appeal to his conscience but also affords him the right to exhibit his belief in his conduct by such outward acts as may appear to him proper in order to spread his ideas for the benefit of others. Article 26 provides that subject to public order, morality and health, every religious denomination or any section thereof shall have the right—*
>
> *(a) to establish and maintain institutions for religious and charitable purposes;*

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

The four clauses of this article constitute the fundamental freedom guaranteed to every religious denomination or any section thereof to manage its own affairs. It is entitled to establish institutions for religious purposes, it is entitled to manage its own affairs in the matters of religion, it is entitled to own and acquire movable and immovable property and to administer such property in accordance with law. What the expression "religious denomination" means has been considered by this Court in Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [(1954) SCR 1005] . Mukherjea, J., as he then was, who spoke for the Court, has quoted with approval the dictionary meaning of the word "denomination" which says that a "denomination" is a collection of individuals classed together under the same name, a religious sect or body having a common faith and organisation and designated by a distinctive name. The learned Judge has added that Article 26 contemplates not merely a religious denomination but also a section thereof. Dealing with the questions as to what are the matters of religion, the learned Judge observed that the word "religion" has not been defined in the Constitution, and it is a term which is hardly susceptible of any rigid definition. Religion, according to him, is a matter of faith with individuals or communities and it is not necessarily theistic. It undoubtedly has its basis in a system of pleas or doctrines which are regarded by those who profess that religion as conducive to their spiritual well-being, but it is not correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress (pp. 1023, 1024). Dealing with the same topic, though in another context, in Venkataramna Devaru v. State of Mysore [(1958) SCR 895] Venkatarama Aiyar, J. spoke for the Court in the same vein and observed that it was settled that matters of religion in Article 26(b) include even practices which are regarded by the community as part of its religion, and in support of this statement the learned Judge referred to the observations of Mukherjea, J., which we have already cited. ***Whilst we are dealing with this point it may not be out of place incidentally to strike a note of caution and observe that in order that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices within the meaning of Article 26. Similarly, even practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. Unless such practices are found to constitute an essential and integral part of a religion their claim for the protection under Article 26 may have to be carefully scrutinised; in other words, the protection must be confined to such religious practices as are an essential and an integral part of it and no other****."*

The rejection of superstition is laid down as law

Essential practices entrenched.

53. The ***Durgah Committee case (supra)*** started a new line of reasoning introducing substantially two amendments in Articles 25 and 26

a. To get protection of both the fundamental rights, there must be demonstrated that the practice is "essential religious practice" of a particular religion or denomination.

b. Such "essential religious practice" should not be mere 'superstition'.

54. With regard to the ***Durgah Committee*** case, the observations of Mr. Seervai, in his commentary on Constitutional Law, with regard to the role of the Court in deciding what constitutes essential practice and the issue of superstition not being a part of religious freedoms, may be noted:

Seervai's commentary on the said case

*"**It is submitted that the above obiter runs directly counter to the judgment of Mukherjea J. in the Shirur Mutt Case and substitutes the view of the court for the view of the denomination on what is essentially a matter of religion. The reference to superstitious practices is singularly unfortunate, for what is "superstition" to one section of the public may be a matter of fundamental religious belief to another**. Thus, for nearly 300 years bequests for masses for the soul of a testator were held void as being for superstitious uses, till that View was overruled by the House of Lords in Bourne v. Keane. It is submitted that in dealing with the practice of religion protected by provisions like those contained in s. 116, Commonwealth of Australia Act or in Art. 26(b) of our Constitution, it is necessary to bear in mind the observations of Latham C.J. quoted earlier, namely, that those provisions must be regarded as operating in relation to all aspects of religion, irrespective of varying opinions in the community as to the truth of a particular religious doctrine or the goodness of conduct prescribed by a particular religion or as to the propriety of any particular religious observance. **The obiter of Gajendragadkar J. in the Durgah Commute; Case is also inconsistent with the observations of Mukherjea J. in Ratilal Gandhi's Case, that the decision in Jamshedji v. Soonabai afforded an indication of the measure of protection given by Art. 26(b).**"*

Sardar Syedna case

55. The Hon'ble Supreme Court thereafter in ***Sardar Syedna Taher Saifuddin Saheb V. State Of Bombay*, 1962 Supp (2) SCR 496** [***Sardar Syedna*** case] [Bhuvaneshwar Prasad Sinha (C.J.), A.K Sarkar, K.C. Das Gupta, N. Rajagopala Ayyangar and J.R. Mudholkar, JJ. (delivered by Bhuvaneshwar Prasad Sinha (C.J.)- **5 Judges**] [Vol. V.1 @ Pgs. 292 – 350] for the first rendered a fractured verdict.

Striking Feature

(iv) The affected party initiated the proceedings by filing writ petition under Article 32.

(v) The 51st *Dai-ul-Mutlaq* and head of the Dawoodi Bohra Community, challenged the constitutionality of the Bombay Prevention of Excommunication Act, 1949.

(vi) These were not a proceedings initiated by third party.

Brief Facts

(iii) It was claimed that the said Act violated the fundamental rights under Articles 25 and 26 of the Dawoodi Bohra Community.

(iv) The Head Priest of this community was vested with certain powers, one of which included the power of excommunication, which was to be exercised in accordance with the tenets of the community.

(v) Such power, it was argued, was integral to the religious faith and beliefs of the Dawoodi Bohra Community which was a religious denomination under Article 26 of the Constitution.

Ld. Chief Justice BP Sinha was in minority [perhaps the first instance in the history of the Court] with Justice K.C. Das Gupta writing the majority opinion and Justice N. Rajgopala Ayyangar writing a concurring opinion. The case concerned the challenge to an enactment banning the practice of excommunication in the then State of Bombay. The Ld. Chief Justice relying upon the *Devaru* case [supra] held that since the right under Article 26 is subject to the mandate of reform available to the State under Article 25[2][b], the impugned enactment is valid in law. The following is the relevant passage of the said case:

J. B.P. Sinha [Minority]

"22. *Then it is argued that the guaranteed right of a religious denomination to manage its own affairs in matters of religion (Art. 26(b)) is subject only to public order, morality and health and is not subject to legislation contemplated by Article 25(2)(b). This very argument was advanced in the case of Shri Venkataramana Devaru v. State of Mysore [(1958) SCR 895] . At p. 916 this argument has been specifically dealt with and negatived. This Court observed as follows:*

> *"The answer to this contention is that it is impossible to read any such limitation into the language of Article 25(2)(b). It applies in terms to all religious institutions of a public character without qualification or reserve. As already stated, public institutions would mean not merely temples dedicated to the public as a whole but also those founded for the benefit of sections thereof, and denominational temples would be comprised therein. The language of the article being plain and unambiguous, it is not open to us to read into it limitations which are not there, based an a priori reasoning as to the probable intention of the legislature. Such intention can be gathered only from the words actually used in the statute; and in a court of law, what is unexpressed has the same value as what is unintended. We must, therefore, hold that denominational institutions are within Article 25(2)(b)".*

In that case also, as in, the present case, reference was made to the earlier decision of this Court in Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [(1954) SCR 1005 at pp. 1028-29] but the latter decision has explained the legal position with reference to the earlier decision, and after examining the arguments for and against the proposition at pp. 916-18, it has been distinctly laid down that Article 26(b) must be read subject to Article 25(2)(b) of the Constitution.

23. *It has further been contended that a person who has been excommunicated as a result of his non-conformity to religious practices is not entitled to use the communal mosque or the communal burial ground or other communal property, thus showing that for all practical purposes he was no more to be treated as a member of the community, and is thus an outcast.* ***Another result of excommunication is that no other member of the community can have any contacts, social or religious, with the person who has been excommunicated. All that is true. But the Act is intended to do away with all that mischief of treating a human being as a pariah, and of depriving him of his human dignity and of his right to follow the dictates of his own conscience.*** *The Act is, thus, aimed at fulfilment of the individual liberty of conscience guaranteed by Article 25(1) of the Constitution, and not in derogation of it. Insofar as the Act has any repercussions on the right of the petitioner, as trustee of communal property, to deal with such property, the Act could come under the protection of Article 26(d), in the sense that his right to administer the property is not questioned, but he has to administer the property in accordance with law. The law, in the present instance, tells the petitioner not to withhold the civil rights of a member of the community to a communal property. But as against this it is argued on behalf of the petitioner that his right to excommunicate is so bound up with religion that it is protected by clause (b) of Article 26, and is thus completely out of the regulation of law, in accordance with the provisions of clause (d) of that article.* ***But, I am not satisfied on the pleadings and on the evidence placed before us that the right of excommunication is a purely religious matter.*** *As already pointed out, the indications are all to the contrary, particularly the judgment of the Privy Council in the case of Hasanali v. Mansoorali [(1947) LR 75 IA 1] on which great reliance was placed on behalf of the petitioner."*

Notes a pervasive invasion of civil rights

56. The majority opinion of Justice Das Gupta noted that what constitutes an essential part of a religion or regions practice is to be ascertained on the basis of the doctrine of a particular religion to include practices which are regarded by that community as a part of its religion. In the first leg of the opinion, this Hon'ble Court holds that the enactment banning excommunication interferes with the right under Article 26. However, unlike the Devaru case [supra], without substantial reasoning, this Hon'ble Court held that the impugned enactment banning excommunication would not be a statute intended for reform under Article 25[2][b] despite noting that there are serious, continuous and pervasive civil right aspects of individuals involved in cases of excommunication. The following is the relevant passage of the said case:

J. Das Gupta [Majority]

33. *The content of Articles 25 and 26 of the Constitution came up for consideration before this Court in Commissioner, Hindu Religious Endowments, Madras v. Sri Lahshmindra Thirtha Swamiar of Sri Shirur Mutt [(1954) SCR 1005] ; Mahant Jagannath Ramanuj Das v. State of Orissa [(1954) SCR 1046] ; Sri Venkataramana Devaru v. State of Mysore; Durgah Committee, Ajmer v. Syed Hussain Ali [CA No. 272 of 1960, judgment dated March 17, 1961] and several other cases and the main principles underlying these provisions have by these decisions been placed beyond controversy. The first is that the protection of these articles is not limited to matters of doctrine or*

belief, they extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion. The second is that what constitutes an essential part of a religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion and include practices which are regarded by the community as a part of its religion.

***37.** According to the petitioner it is "an integral part of the religion and religious faith and belief of the Dawoodi Bohra community" that excommunication should be pronounced by him in suitable cases. It was urged that even if this right to excommunicate is considered to be a religious practice as distinct from religious faith such religious practice is also a part of the religion of the Dawoodi Bohra community. It does appear to be a fact that unquestioning faith in the Dai as the head of the community is part of the creed of the Dawoodi Bohras. It is unnecessary to trace the historical reasons for this extraordinary position of the Dai as it does not appear to be seriously disputed that the Dai is considered to be the vice-regent of the Imam so long as the rightful Imam continues in seclusion.*

***39. Let us consider first whether the impugned Act contravenes the provisions of Article 26(b). It is unnecessary for the purpose of the present case to enter into the difficult question whether every case of excommunication by the Dai on whatever grounds inflicted is a matter of religion. What appears however to be clear is that where an excommunication is itself based on religious grounds such as lapse from the orthodox religious creed or doctrine (similar to what is considered heresy, apostasy or schism under the Canon Law) or breach of some practice considered as an essential part of the religion by the Dawoodi Bohras in general, excommunication cannot but be held to be for the purpose of maintaining the strength of the religion. It necessarily follows that the exercise of this power of excommunication on religious grounds forms part of the management by the community, through its religious head, "of its own affairs in matters of religion". The impugned Act makes even such excommunications invalid and takes away the power of the Dai as the head of the community to excommunicate even on religious grounds. It, therefore, clearly interferes with the right of the Dawoodi Bohra community under clause (b) of Article 26 of the Constitution**.*

Excommunication interferes with religious activities

***40.** That excommunication of a member of a community will affect many of his civil rights is undoubtedly true. This particular religious denomination is possessed of properties and the necessary consequence of excommunication will be that the excommunicated member will lose his rights of enjoyment of such property. It might be thought undesirable that the head of a religious community would have the power to take away in this manner the civil rights of any person. **The right given under Article 26(b) has not however been made subject to preservation of civil rights.** The express limitation in Article 26 itself is that this right under the several clauses of the article will exist subject to public order, morality and health. It has been held by this Court in Sri Venkataramana Devaru v. State of Mysore [(1958) SCR 895] that the right under article 26(b) is subject further to clause 2 of Article 25 of the Constitution.*

The right to under Article 26 is not subject to other parts of the Part III

43. *It remains to consider whether the impugned Act comes within the saving provisions embodied in clause 2 of Article 25. The clause is in these words:*

"Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institution of a public character to all classes and section of Hindus."

Quite clearly, the impugned Act cannot be regarded as a law regulating or restricting any economic, financial, political or other secular activity. Indeed, that was not even suggested on behalf of the respondent State. It was faintly suggested however that the Act should be considered to be a law "providing for social welfare and reform". The mere fact that certain civil rights which might be lost by members of the Dawoodi Bohra community as a result of excommunication even though made on religious grounds and that the Act prevents such loss, does not offer sufficient basis for a conclusion that it is a law "providing for social welfare and reform". The barring of excommunication on grounds other than religious grounds, say, on the breach of some obnoxious social rule or practice might be a measure of social reform and a law which bars such excommunication merely might conceivably come within the saving provisions of clause 2(b) of Article 25. But barring of excommunication on religious grounds pure and simple, cannot however be considered to promote social welfare and reform and consequently the law insofar as it invalidates excommunication on religious grounds and takes away the Dai's power to impose such excommunication cannot reasonably be considered to be a measure of social welfare and reform. As the Act invalidates excommunication on any ground whatsoever, including religious grounds, it must be held to be in clear violation of the right of the Dawoodi Bohra community under Article 26(b) of the Constitution.

Court will subjectively define what is 'reform' and what is 'religious'

57. Justice Ayyangar, following the reasoning in Justice Das Gupta's judgment held that an enactment for reform cannot reform the religion out of its existence or identity. He also held that Article 25[2][b] is not intended to cover the basic essentials of the creed of a religion. It was further held that the position of Dai-ul-Mutlaq and his power to excommunicate for the purpose of enforcing discipline is an essential part of the Dawoodi Bora Sect and, therefore, a legislation which penalizes such powers, cannot be sustained. The following is the relevant passage of the said case:

J. Ayyangar [Concurring]

"60. *But very different considerations arise when one has to deal with legislation which is claimed to be merely a measure "providing for social welfare and reform". To start with, it has to be admitted that this phrase is, as contrasted with the second portion of Article 25(2)(b), far from precise and is flexible in its content. In this connection it has to be borne in mind that limitations imposed on religious practices on the ground of public order, morality or health have already been saved by the opening words of Article 25(1) and the saving would cover beliefs and practices even*

though considered essential or vital by those professing the religion. I consider that in the context in which the phrase occurs, it is intended to save the validity only of those laws which do not invade the basic and essential practices of religion which are guaranteed by the operative portion of Article 25(1) for two reasons: (1) To read the saving as covering even the basic essential practices of religion, would in effect nullify and render meaningless the entire guarantee of religious freedom — a freedom not merely to profess, but to practice religion, for very few pieces of legislation for abrogating religious practices could fail to be subsumed under the caption of "a provision for social welfare or reform". (2) If the phrase just quoted was intended to have such a wide operation as cutting at even the essentials guaranteed by Article 25(1), there would have been no need for the special provision as to "throwing open of Hindu religious institutions" to all classes and sections of Hindus since the legislation contemplated by this provision would be par excellence one of social reform.

61. ***In my view by the phrase "laws providing for social welfare and reform" it was not intended to enable the legislature to "reform" a religion out of existence or identity.*** *Article 25(2)(a) having provided for legislation dealing with "economic, financial, political or secular activity which may be associated with religious practices", the succeeding clause proceeds to deal with other activities of religious groups and these also must be those which are associated with religion. Just as the activities referred to in Article 25(2)(a) are obviously not of the essence of the religion, similarly the saving in Article 25(2)(b) is not intended to cover the basic essentials of the creed of a religion which is protected by Article 25(1).*

The opinion fails to point how the banning of excommunication reforms the Dawoodi Bohra out of existence.

62. *Coming back to the facts of the present petition, the position of the Dai-ul-Mutlaq, is an essential part of the creed of the Dawoodi Bohra sect. Faith in his spiritual mission and in the efficacy of his ministration is one of the bonds that hold the community together as a unit. The power of excommunication is vested in him for the purpose of enforcing discipline and keep the denomination together as an entity. The purity of the fellowship is secured by the removal of persons who had rendered themselves unfit and unsuitable for membership of the sect. The power of excommunication for the purpose of ensuring the preservation of the community, has therefore a prime significance in the religious life of every member of the group.* ***A legislation which penalises this power even when exercised for the purpose above-indicated cannot be sustained as a measure of social welfare or social reform without eviscerating the guarantee under Article 25(1) and rendering the protection illusory****."*

The second Udipi Mutt case

58. The next case was again from Tamil Nadu - ***H.H. Sudhindra Thirtha Swamiar v. Commr. for Hindu Religious and Charitable Endowments,*** **1963 Supp (2) SCR 302 [5 Judges]**, where the constitutional validity of Sections 52(1)(*f*), 55, 76(1) & (2), 80, 81 and 82 of the Madras Hindu Religious Endowments Act, 1951 as amended by Act 27 of 1954 was challenged. It chiefly concerns the contentious aspect of removal of a Mahant and "fees" being imposed on Temples by the State for secular purposes. This case also discusses the nature of the power of the

Mahants and the procedure for their removal in case of alleged misconduct. The High Court had invalidated certain provisions but predominantly upheld the validity of the amended provisions concerning the procedure to remove a mahant from a mutt. On the issue of power of removal of mahant, it was held as under :

> *"11. Reasonableness of the restrictions which may be placed upon that right must be adjudged in the light of the character and the extent of that right, and the general interest of the public which may be served by the restrictions. In Arunachellem Chetty v. Venkatachalapathi Guruswamigal [46 IA 204] the Judicial Committee of the Privy Council observed that the Mahant is under an obligation not to utilise the surplus income after defraying the expenses of the math for personal enjoyment but is bound to add the same to the capital of the estate administered. At p. 226 the Judicial Committee dealing with the accummulated income in the hands of the receiver who had been appointed during the pendency of a suit observed:*
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> > *"Under the decree quoted the gurukul would be entitled to instant possession and entire beneficial enjoyment of that sum. If the present purposes of the math did not consume it, he could employ it for his personal use quite apart from the dignity of his office. It is plain to Their Lordships that this would be not only a subversion of the usage and custom of the math, but would be a violation of the law applicable to such institutions. A fair test to be applied in such cases is to demand what is the true principle or nature of the administration of surplus income. It is, of course, the duty of a trustee to refrain from the personal enjoyment of such surplus and to add the same to the capital of the estate to be administered; and this law also applied to the property of a math or asthal, and that whether the title to the same is in the gurukkal as spiritual head of the institution — which is an ordinary case — or is in trustees like the Chettys according to the usage and custom of the institution as in the present case."*
>
> *The power of the Mahant over the income does not therefore differ in quality from the power he has over the property of the Math. The property and the income belong to the math, and must therefore be applied for the purposes of the math, and consistently with the usage and custom of the endowment. By Section 52(1)(f) application of funds or properties for purposes unconnected with the institution i.e. purposes for which the custom of the institution does not warrant application, is a ground for removal. It cannot be said that by enacting a provision which enables a Court, in an appropriate case, to remove a Mahant, if it be found that he has applied the funds or the properties of the institution for purposes unconnected with the institution, any unreasonable restriction is sought to be placed. This provision does not in effect seek to cut down the authority of the Mahant which is traditionally recognised.* ***It merely implies that by virtue of his position and the limited character of his powers he may not waste the property of the Math or utilise the property for personal enjoyment or luxury or for objects incongruous with his position or for purposes wholly unconnected with the Math; if he does so, he may by order of the Court be liable to be removed. Such a restriction on the power is in the interest of the general public, and cannot be said to be unreasonable."***

59. On the other issue, as explained previously in the ***Shirur Mutt*** **case**, the Supreme Court upheld the power of the State to levy a "fee" on Temples in the name of public services, and only struck down the previous provision due to a technicality of it being in the nature of a tax.

After the said judgment, the amendment by the State created a separate Fund called ""The Madras Hindu Religious and Charitable Endowments Administration Fund" was constituted which was vested in the Commissioner and the contributions payable and the audit fee payable when realized were credited in the said Fund.

60. Previously in *Shirur Mutt* case, the Court noted an absence of any co-relation between the expenses incurred by the Government and the amount raised by contribution, thereby rendering it as a "tax" and not a "fee". While examining the amendment provisions, the Court noted that the Legislature rectified the defects as amounts raised are specifically ear-marked for defraying expenses for rendering services and do not go into the Consolidated fund of the State, but are included in a separate Fund.

Govindlalji Maharaj case

61. The Hon'ble Supreme Court in the case of ***Tilkayat Shri Govindlalji Maharaj V. State of Rajasthan and Others*, (1964) 1 SCR 561** [***Govindlalji Maharaj*** case] [Bhuvaneshwar Prasad Sinha (C.J.), A.K Sarkar, K.C. Das Gupta, N. Rajagopala Ayyangar and J.R. Mudholkar, JJ. (delivered by Bhuvaneshwar Prasad Sinha (C.J.)- **5 Judges**] [Vol. V.1 @ Pgs. 381 – 459] was dealing with the validity of a legislation specifically enacted for regulation / administration of a religious institution. The Hon'ble Court, after noting the nature of temples and the manner of worship amongst the Vallabha sect, decided the question whether the philosophical doctrine of the Vallabha school prohibits the existence of a public temple.

Striking Features

(i) The affected party, the Tilkayat Govindlalji, the traditional spiritual head of the Nathdwara temple in Rajasthan, challenged the constitutionality of the Nathdwara Temple Act 1959.

(ii) These were not a proceedings initiated by third party.

Brief Facts

(i) The grounds for challenging the Act was infringement of Article 25, 26(b) and 26(c) since it was claimed that the temple was a private one owned and managed by the Tilkayat as head of the Vallabha denomination.

(ii) It was urged that throughout the history of this temple, its properties have been managed by the Tilkayat and so, such management by the Tilkayat amounts to a religious practice under Article 25(1) and constitutes the denomination's right to manage the affairs of its religion under Article 26(b).

In the judgment, the Hon'ble Court held, in a departure from the previous positions, that in deciding the question as to whether a given religious practice is an essential part of the religion or not, the test may not always be of mere following the acceptance of the same by a particular community. The Hon'ble Court held that in certain cases the court may have to enquire, not by relying upon the belief of the said community, but rather on the basis of evidence adduced before it as to the conscience of the community and whether the same is an essential or integral part of the practice of the said religion. Critically the Hon'ble Court, while seeking to segregate what constitutes a religious practice and what constitutes a secular practice held that obviously secular matters claimed to be part of religion cannot have the protection of Article 25 and 26. The Court also reiterated that under the guise of regulation or administration of property, the denominational right cannot be extinguished altogether. The following is the relevant passage of the said case:

"19. *The practical modes of worship adopted by the members of this cult bring out the same effect.* ***Lord Krishna as a child is the main object of worship.*** *His worship consists of several acts of performance every day in the prescribed order of ceremonies. These begin with the ringing of the bell in the morning' and putting the Lord to bed at night. After the Lord is awakened by the ringing of the bell, there is a blowing of the conch-shell, awakening of the Lord and offering morning refreshments; waving of lamps; bathing; dressing; food; leading the cows out for grazing; the mid-day meal; waving of lamps again; the evening service: the evening meal and going to bed. These rituals performed with meticulous care from day to day constitute the prescribed items of Seva which the devotees attend every day in the Vallabh Temple. In order to be able to offer Bhakti in a proper way, the members of this denomination are initiated into this cult by the performance of two rites; one is Sharana Mantropadesh and the other is Atma Nivedan. The first gives the devotee the status of a Vaishnava and the second confers upon him the status of an Adhikari entitled to pursue the path of service or devotion. At the performance of the first rite, the mantra which is repeated in the ears of the devotee is "Shree Krishna Sharanam mamah" and on the occasion a "tulsi Kanthi" is put around the neck of the devotee. At the second initiation, a religious formula is repeated, the effect of which is that the devotee treats himself and all his properties as belonging to Lord Krishna. We have already referred to the original image which Vallabha installed in the temple built in his time and the seven idols; which Vithalnathji gave to his sons. These idols are technically described as 'Nidhi Swaroops'. Besides these idols, there are several other idols which are worshipped by Vaishnava devotees after they are sanctified by the Guru. It is thus clear that believing in the paramount importance and efficacy of Bhakti, the followers of Vallabha attend the worship and services of the Nidhi Swaroops or idols from day to day in the belief that such devotional conduct would ultimately lead to their salvation.*

The different forms of deity worship and even the different stages/forms in which such gods/deities are worshipped is taken note of.

21. ***The question which we have to decide is whether there is anything in the philosophical doctrines or tenets or religious practices which are the special features of the Vallabha school, which prohibits the existence of public temples or worship in them.*** *The main object underlying the requirement that devotees should assemble in the Haveli of the Guru and worship the idol obviously was to encourage*

collective and congregational prayers. Presumably it was realised by Vallabha and his descendants that worship in Hindu public temples is apt to clothe the images worshipped with a formal and rigid character and the element of personality is thereby obliterated; and this school believes that in order that Bhakti should be genuine and passionate, in the mind of the devotee there must be present the necessary element of the personality of God. It is true that Vaishnava temples of the Vallabha sect are generally described as Havelis and though they are grand and majestic inside, the outside appearance is always attempted to resemble that of a private house. This feature can, however, be easily explained if we recall the fact that during the time when Vithalnathji with his great missionary zeal spread the doctrine of Vallabha, Hindu temples were constantly faced with the danger of attack from Aurangzeb. In fact, the traditional story about the foundation of the Srinathji Temple at Nathdwara itself eloquently brings out the fact that owing to the religious persecution practised during Aurangzeb's time, Srinathji himself had to give up his abode near Mathura and to start on a journey in search of a place for residence in more hospitable and congenial surroundings. Faced with this immediate problem Vithalnathji may have started building the temples in the form of Havelis so that from outside nobody should know that there is a temple within.

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57. *In deciding the question as to whether a given religious practice is an integral part of the religion or not, the test always would be whether it is regarded as such by the community following the religion or not.* ***This formula may in some cases present difficulties in its operation. Take the case of a practice in relation to food or dress. If in a given proceeding, one section of the community claims that while performing certain rites white dress is an integral part of the religion itself, whereas another section contends that yellow dress and not the white dress is the essential part of the religion, how is the Court going to decide the question? Similar disputes may arise in regard to food. In cases where conflicting evidence is produced in respect of rival contentions as to competing religious practices the Court may not be able to resolve the dispute by a blind application of the formula that the community decides which practice in an intergral part of its religion, because the community may speak with more than one voice and the formula would, therefore, break down. This question will always have to be decided by the Court and in doing so, the Court may have to enquire whether the practice in question is religious in character and if it is, whether it can be regarded as an integral or essential part of the religion, and the finding of the Court on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its religion. It is in the light of this possible complication which may arise in some cases that this Court struck a note of caution in the case of Dungah Committee Ajmer v. Syed Hussain Ali [(1962) 1 SCR 383 at p. 411] and observed that in order that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices within the meaning of Article 26.***

The states for the first time that the Court may, in certain situations, would have to decide whether a particular practice is essential or not. The said observations and the context in which they were made, have been ignored in subsequent judgments.

58. *In this connection, it cannot be ignored that what is protected under Articles 25(1) and 26(b) respectively are the religious practices and the right to manage affairs in matters of religion.* ***If the practice in question is purely secular or the affair which is controlled by the statute is essentially and absolutely secular in character, it cannot be urged that Article 25(1) or Article 26(b) has been contravened.*** *The protection is given to the practice of religion and to the denomination's right to manage its own affairs in matters of religion. Therefore, whenever a claim is made on behalf of an individual citizen that the impugned statute contravenes his fundamental right to practise religion or a claim is made on behalf of the denomination that the fundamental right guaranteed to it to manage its own affairs in matters of religion is contravened, it is necessary to consider whether the practice in question is religious or the affairs in respect of which the right of management is alleged to have been contravened are affairs in matters of religion. If the practice is a religious practice or the affairs are the affairs in matter of religion, then, of course, the right guaranteed by Article 25(1) and Article 26 (b) cannot be contravened.*

Essential practices test is only acknowledged qua the interplay between State regulation and private rights.

59. *It is true that the decision of the question as to whether a certain practice is a religious practice or not, as well as the question as to whether an affair in question is an affair in matters of religion or not, may present difficulties because sometimes practices, religious and secular, are inextricably mixed up. This is more particularly so in regard to Hindu religion because as is well known, under the provisions of ancient Smritis, all human actions from birth to death and most of the individual actions from day-to-day are regarded as religious in character. As an illustration, we may refer to the fact that the Smritis regard marriage as a sacrament and not a contract. Though the task of disengaging the secular from the religious may not be easy, it must nevertheless be attempted in dealing with the claims for protection under Articles 25(1) and 26(b). If the practice which is protected under the former is a religious practice, and if the right which is protected under the latter is the right to manage affairs in matters of religion, it is necessary that in judging about the merits of the claim made in that behalf the Court must be satisfied that the practice is religious and the affair is in regard to a matter of religion. In dealing with this problem under Articles 25(1) and 26(b), Latham C.J.'s observation in Adelaide Company of Jehovah's witnesses Incorporated v. Commonwealth [67 CLR 116 at p. 123] that "what is religion to one is superstition to another", on which Mr Pathak relies, is of no relevance.* ***If an obviously secular matter is claimed to be matter of religion, or if an obviously secular practice is alleged to be a religious practice, the Court would be justified in rejecting the claim because the protection guaranteed by Article 25(1) and Article 26(b) cannot be extended to secular practices and affairs in regard to denominational matters which are not matters of religion, and so, a claim made by a citizen that a purely secular matter amounts to a religious practice, or a similar claim made on behalf of the denomination that a purely secular matter is an affair in matters of religion, may have to be rejected on the ground that it is based on irrational considerations and cannot attract the provisions of Article 25(1) or Article 26(b). This aspect of the matter must be borne in mind in dealing with true scope and effect of Article 25(1) and Article 26(b).***

The *obviously secular* argument and the test emerging from the same.

61. *That leaves one more point to be considered under Article 26(d). It urged that the right of the denomination to administer its property has virtually been taken away by the Act, and so, it is invalid. It would be noticed that Article 26(d) recognises the denomination's right to administer its property but it clearly provides that the said right*

to administer the property must be in accordance with law. Mr Sastri for the denomination suggested that law in the context is the law prescribed by the religious tenets of the denomination and not a legislative, enactment passed by a competent legislature. In our opinion, this argument is wholly untenable. In the context, the law means law passed by a competent legislature and ***Article 26(d) provides that though the denomination has the right to administer its property, it must administer the property in accordance with law****. In other words, this clause emphatically brings out the competence of the legislature to make a law in regard to the administration of the property belonging to the denomination. It is true that under the guise of regulating the administration of the property by the denomination, the denomination's right must not be extinguished or altogether destroyed. That is what this Court has held in the case of the Commissioner Hindu Religious Endowments, Madras and Ratilal Panachand Gandhi v. State of Bombay [1954 SCR 1055] .*

62. *Incidentally, this clause will help to determine the scope and effect of the provisions of Article 26(b). Administration of the denomination's property which is the subject-matter of this clause is obviously outside the scope of Article 26(b) Matters relating to the administration of the denomination's property fall to be governed by Article 26(d) and cannot attract the provisions of Article 26(b). Article 26(b) relates to affairs in matters of religion such as the performance of the religious rites or ceremonies, or the observance of religious festivals and the like; it does not refer to the administration of the property at all.* ***Article 26(d) therefore, justifies the enactment of a law to regulate the administration of the denomination's property and that is precisely what the Act has purported to in the present case. If the clause "affairs in matters of religion" were to include affairs in regard to all matters, whether religious or not, the provision under Article 26(d) for legislative regulation of the administration of the denomination property would be rendered illusory****."*

Raja Bira Kishore case

62. The Honble Supreme Court in ***Raja Bira Kishore Deb, Hereditary Superintendent Jagannath Temple V. State Of Orissa,*** **(1964) 7 SCR 32** [***Raja Bira Kishore*** case] [P.B. Gajendragadkar (C.J.), K.N. Wanchoo, J.C. Shah, N. Rajagopala Ayyangar and S.M. Sikri, J. (delivered by K.N. Wanchoo, J.)- **5 Judges**] [Vol. V.9 @ Pgs. 339 – 355] for examining the constitutionality of the Jagannath Temple Act.

Striking Feature

(i) The affected party, Raja of Puri, alleged that the Shri Jagannath Temple was the private property of the Raja, and the Act, which deprived the Raja of his property was unconstitutional in view of Article 19 of the Constitution.

(ii) These were not a proceedings initiated by third party.

Brief Facts

(i) It was alleged that the Raja had the sole right of superintendence and management of the Temple and that that right could not be taken away without payment of

compensation, and the Act inasmuch as it took away that right without any compensation was hit by Article 31 of the Constitution.

(ii) The Raja, also sought to be seeks rights, in a representative capacity by placing reliance on Articles 26, 27 and 28 of the Constitution.

The Court herein examined the assertion on behalf of the Raja claiming to be the owner of the Temple and the assertion that worshipers of Lord Jagannath constitute a religious denomination and, therefore, can claim rights under Article 26, the Hon'ble High Court in the said matter had repelled the argument on the ground that the temple was meant for all Hindus and hence, was a public temple and the management as per the enactment still remained entirely of Hindus and, therefore, there is no divesting of the right to administer property in accordance with law. This Hon'ble Court declined to answer the question. The following is the relevant passage of the said case:

> *"**11.** This brings us to the contention relating to Articles 26, 27 and 28 of the Constitution, which were referred to in the petition. Articles 27 and 28 in our opinion have nothing to do with the matters dealt with under the Act. The main reliance has however been placed on Article 26(d) which lays down that subject to public order, morality and health, every religious denomination or any section thereof shall have the right to administer its property in accordance with law. In the first place besides saying in the petition that the Act was hit by Article 26 there was no indication anywhere therein as to which was the denomination which was concerned with the Temple and whose rights to administer the Temple have been taken away. As a matter of fact the petition was filed on the basis that the appellant was the owner of the Temple which was his private property. There was no claim put forward on behalf of any denomination in the petition. Under these circumstances we are of opinion that it is not open to the appellant to argue that the Act is bad as it is hit by Article 26(d). **The argument addressed before the High Court in this connection was that the worshippers of Lord Jagannath constitute a distinct religious denomination within the meaning of Article 26 and that they had a right to administer the Temple and its endowments in accordance with law and that such administration should be only through the Raja of Puri as superintendent of the Temple assisted by the innumerable sevaks attached thereto. But inasmuch as the Act has taken away this right of management from the religious denomination i.e. the worshippers of Lord Jagannath, and entrusted it to the nominees of the State Government, there had been a contravention of the fundamental rights guaranteed under clause (d) of Article 26. This argument was met on behalf of the State with the contention that the Temple did not pertain to any particular sect, cult or creed of Hindus but was a public temple above all sects, cults and creeds, therefore as the temple was not the temple of any particular domination no question arose of the breach of clause (d) of Article 26.** The foundation for all this argument which was urged before the High Court was not laid in the writ petition. In these circumstances we think it was unnecessary for the High Court to enter into this question on a writ petition of this kind. The High Court however went into the matter and repelled the argument on the ground that the Temple in the present case was meant for all Hindus, even if all Hindus were treated as a denomination for purposes of Article 26, the management still remains with Hindus, for the Committee of management consists entirely of Hindus, even*

The observations of the high Court may not be completely correct.

though a nominated committee. In view of the defective state of pleadings however we are not prepared to allow the argument under Article 26(d) to be raised before us and must reject it on the sole ground that no such contention was properly raised in the High Court."

Sri Digyadarshan case

63. Thereafter the Hon'ble Supreme Court in para 11 and 12 in the ***Digyadarsan Rajendra Ramdassjivaru V. State Of Andhra Pradesh,* (1969) 1 SCC 844** [***Sri Digyadarshan*** case] [J.C. Shah, V. Ramaswami and A.N. Grover, JJ. (delivered by A.N. Grover)- **3 Judges**] examined the validity of an enactment giving powers to the Commissioner to appoint someone to carry the administration of a Mutt or its endowments in case of a temporary vacancy or misappropriation or mal-administration. This Hon'ble Court reiterated that rights and ceremonies essential to the tenets the religion cannot be interfered with and further the administration cannot be taken away altogether for all times to come. It was held as under :

"9. On the question whether Sections 46 and 47 of the Act contravene Articles 25 and 26, a good deal of reliance has been placed on the observations in the first Shirur Mutt case [(1954) 1 SCC 412 : 1954 SCR 1005] . Mukherjea, J. (as he then was) delivering the judgment of the court had examined the scope of the language of Articles 25 and 26. It was indicated by him that freedom of religion in our constitution is not confined to religious beliefs only; it extends to religious practice as well subject to the restrictions which the Constitution itself has laid down. Under Article 26(b), therefore, a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rights and ceremonies are essential according to the tenets of the religion and no outside authority has any jurisdiction to interfere with its decision in such matters. Moreover, under Article 26(d) it is the fundamental right of a religious denomination or its representative to administer its property in accordance with law; and the law, therefore, must leave the right of administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose. It was further laid down that a law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under clause (d) of Article 26. Now under Section 47 of the Act where a madadhipathi is under suspension the Commissioner can make such arrangement as he thinks fit for the administration of the Math until another madadhipathi succeeds to the office and in making such arrangement he has to have due regard to the claims of the disciples of the Math. It is maintained on behalf of the petitioner that the appointment of Assisstant Commissioner, Endowments Department, Tirupathi as the day-to-day administrator of the Math and its endowment has a two fold effect. The first is that the complete autonomy which a religious denomination like the Math in question enjoys in the matter of observance of rights and ceremonies essential to the tenets of the religion has been interfered with. The second is that the right of administration has been altogether taken away from the hands of the religious denomination by vesting it in the Assistant Commissioner. This clearly contravenes the provisions of clauses (b) and (d) of Article 26 within the Rule laid down in the first Shirur Math case. By doing so in exercise of the

powers under Section 47, the Commissioner has also debarred the petitioner from practising and propagating religion freely which he is entitled to do under Article 25(1).

10. The attack on the ground of violation of Article 25(1) can be disposed of quite briefly. It has nowhere been established that the petitioner has been prohibited or debarred from professing, practising and propagating his religion. A good deal of material has been placed on the record to show that the entire math is being guarded by police constables but that does not mean that the petitioner cannot be allowed to enter the Math premises and exercise the fundamental right conferred by Article 25(1) of the Constitution. *As regards the contravention of clauses (b) and (d) of Article 26 there is nothing in Sections 46 and 47 which empowers the Commissioner to interfere with the autonomy of the religious denomination in the matter of deciding as to what rights and ceremonies are essential according to the tenets of the religion the denomination professes or practises nor has it been shown that any such order has been made by the Commissioner or that the Assistant Commissioner who has been put in charge of the day-to-day affairs is interfering in such matters. Section 47 of the Act deals only with a situation where there is a temporary vacancy in the office of the madadhipathi by reason of any dispute in regard to the right of succession to the office or the other reasons stated therein as also because the madadhipathi has been suspended pending an inquiry under Section 46. Its provisions do not take away the right of administration from the hands of a religious denomination altogether and vest it for all times in a person or authority who is not entitled to exercise that right under the customary rule and custom prevailing in the Math. In the first Sirur Math case, Section 56 of the repealed Act before its amendment by Act 12 of 1954, was struck down as power had been given to the Commissioner to require the trustee to appoint a manager for the administration of the secular affairs of the institution and the Commissioner himself could also make the appointment. It was pointed out that this power could be exercised at the mere option of the Commissioner without any justifying necessity whatsoever and no pre-requisites like mismanagement of property or maladministration of trust funds were necessary to enable the trustee to exercise such drastic power. The effect of the section really was that the Commissioner was at liberty, at any moment, to deprive the Mahant of his right to administer the trust property even if there was no negligence or maladministration on his part. Such a restriction was held to be opposed to the provisions of Article 26(d) of the Constitution. Section 47 of the Act is not in pari materia with Section 56 of the repealed Act. On the contrary Section 47 indicates quite clearly the conditions and situations in which the Commissioner can appoint someone to carry on the administration of the Math and its endowments. In the present case, the Assistant Commissioner has been appointed as a day-to-day administrator because of the inquiry which is pending against the petitioner and in which serious charges of misappropriation and defalcation of trust funds and of leading an immoral life are being investigated.* ***It cannot be said that Section 47 would be hit by Article 26(d) of the Constitution as the powers under it will be exercised, inter alia, when mismanagement of property or maladministration of trust funds are involved****."*

Seshammal case

64. Thereafter the Hon'ble Supreme Court in ***Seshammal And Others Etc. V. State Of Tamil Nadu*, (1972) 2 SCC 11 [*Seshammal* case]** [S.M. Sikri (C.J.), A.N. Grover, A.N. Ray, D.G. Palekar

and M.H. Beg, JJ. (delivered by D.G. Palekar J.)- **5 Judges]** [Vol. V.1 @ Pgs. 621 – 640] for the first time, examined an Act which ended the hereditary right of succession to the office of Archakas even if the Archakas are otherwise qualified.

Striking feature

(i) There existed a legislation governing the field.

(ii) The validity of a legislation was challenged at the instance of an affected party.

Facts

(i) An amendment to the Tamil Nadu Religious and Charitable Endowments Act, 1959, which abolished the entitlement of a person to the Archaka post based on hereditary succession was challenged before the Court.

The Hon'ble Court, after examination of the Agama Shastras and the importance of the mode, manner and place of worship noted that State actions which permit defilement or pollution of the deity against the Agama Shastras would violently interfere with the religious faith and right under Article 25. The question that squarely fell before the Honble Court was whether the hereditary succession amongst Archakas was secular usage or religious usage. Mr. Palkiwala arguing on behalf of the petitioner asserted that because archakas perform the sacred religious rituals which are obviously a matter of religion, the mode and manner of appointment of such persons as archakas would also be a facet of religious freedoms. He asserted that under the pretext of social reform the practice of hereditary succession cannot be abolished as in some manner the priest is more important that the ritual. The Honble Court held that because the archaka owes his appointment to a purportedly secular authority [the Board or trustees], the act of his appointment would be essentially secular and merely because the said archakas perform a religious function it cannot be said that the appointment is a part of a religious practice or a matter of religion. The following is the relevant passage of the said case:

D.G. Palekar J.

"10. *It is clear from a perusal of the above provisions that the Amendment Act does away with the hereditary right of succession to the office of Archaka even if the Archaka was qualified under Rule 12 of the Madras Hindu Religious Institutions (Officers and Servants) Service Rules, 1964. It is claimed on behalf of the petitioners that as a result of the Amendment Act, their fundamental rights under Article 25(1) and Article 26(b) are violated since the effect of the amendment is as follows—*

"(a) The freedom of hereditary succession to the office of Archaka is abolished although succession to it is an ***essential and integral part of the faith of the Saivite and Vaishnavite worshippers****.*

(b) It is left to the Government in power to prescribe or not to prescribe such qualifications as they may choose to adopt for applicants to this religious office

while the Act itself gives no indication whatever of the principles on which the qualifications should be based. The statement of objects and reasons which is adopted in the counter-affidavit on behalf of the State makes it clear that not only the scope but the object of the Amendment Act is to override the exclusive right of the denomination to manage their own affairs in the matter of religion by appointing Archakas belonging to a specific denomination for the purpose of worship.

(c) The Amendment Act gives the right of appointment for the first time to the trustee who is under the control of the Government under the provisions of the principal Act and this is the very negation of freedom of religion and the principle of non-interference by the State as regards the practice of religion and the right of a denomination to manage its own affairs in the matter of religion."

11.** Before we turn to these questions, it will be necessary to refer to certain concepts of Hindu religious faith and practices to understand and appreciate the position in law. The temples with which we are concerned are public religious institutions established in olden times. Some of them are Saivite temples and the others are Vaishnavite temples, which means, that in these temples God Shiva and Vishnu in their several manifestations are worshipped. The image of Shiva is worshipped by his worshippers who are called Saivites and the image of Vishnu is worshipped by his worshippers who are known as Vaishnavites. The institution of temple worship has an ancient history and according to Dr Kane, temples of deities had existed even in the 4th or 5th century B.C. (See History of Dharmasastra Vol. II, Part II, p. 710). With the construction of temples the institution of Archakas also came into existence, the Archakas being professional men who made their livelihood by attending on the images. Just when the cult of worship of Siva and Vishnu started and developed into two distinct cults is very difficult to say, but there can be no doubt that in the times of the Mahabharata these cults were separately developed and there was keen rivalry between them to such an extent that the Mahabharata and some of the Puranas endeavoured to inculcate a spirit of synthesis by impressing that there was no difference between the two deities. (See p. 725 supra.) With the establishment of temples and the institution of Archakas, treatises on rituals were compiled and they are known as "Agamas". The authority of these Agamas is recognised in several decided cases and by this Court in Sri Venkataramana Devaru v. State of Mysore [1958 SCR 895] Agamas are described in the last case as treatises of ceremonial law dealing with such matters as the construction of temples, installation of idols therein and conduct of the worship of the deity. There are 28 Agamas relating to the Saiva temples, the most important of them being the Kamikagama, the Karanagama and the Suprabedagama. The Vaishnavas also had their own Agamas. Their principal Agamas were the Vikhanasa and the Pancharatra. **The Agamas contain elaborate rules as to how the temple is to be constructed, where the principal deity is to be consecrated, and where the other Devatas are to be installed and where the several classes of worshippers are to stand and worship. Where the temple was constructed as per directions of the Agamas the idol had to be consecrated in accordance with an elaborate and complicated ritual accompanied by chanting of mantras and devotional songs appropriate to the deity. On the consecration of the image in the temple the Hindu worshippers believe that the Divine Spirit has descended into the image and from then on the image of the deity is fit to be worshipped. Rules with regard to daily and periodical worship have been laid down for securing the continuance of the Divine Spirit. The rituals have a two-fold object. One is to attract the lay worshipper to participate in the worship carried on by the priest or Archaka. It is believed that when a congregation of worshippers participates in the worship a particular attitude of aspiration and

devotion is developed and confers great spiritual benefit. The second object is to preserve the image from pollution, defilement or desecration. It is part of the religious belief of a Hindu worshipper that when the image is polluted or defiled the Divine Spirit in the image diminishes or even vanishes. That is a situation which every devotee or worshipper looks upon with horror. Pollution or defilement may take place in a variety of ways. According to the Agamas, an image becomes defiled if there is any departure or violation of any of the rules relating to worship. In fact, purificatory ceremonies have to be performed for restoring the sanctity of the shrine [1958 SCR 895 (910)]. Worshippers lay great store by the rituals and whatever other people, not of the faith, may think about these rituals and ceremonies, they are a part of the Hindu religious faith and cannot be dismissed as either irrational or superstitious. *An illustration of the importance attached to minor details of ritual is found in the case of His Holiness Peria Kovil Kelvi Appan Thiruvenkata Ramanuja Pedda Jiyyangarlu Varlu v. Prathivathi Bhavankaram Venkatacharlu [73 IA 156] which went up to the Privy Council. The contest was between two denominations of Vaishnava worshippers of South India, the Vadagalais and Tengalais. The temple was a Vaishnava temple and the controversy between them involved the question as to how the invocation was to begin at the time of worship and which should be the concluding benedictory verses. This gives the measure of the importance attached by the worshippers to certain modes of worship. The idea most prominent in the mind of the worshipper is that a departure from the traditional rules would result in the pollution or defilement of the image which must be avoided at all costs.* ***That is also the rationale for preserving the sanctity of the Garbhagriha or the sanctum sanctorum. In all these temples in which the images are consecrated, the Agamas insist that only the qualified Archaka or Pujari shall step inside the sanctum sanctorum and that too after observing the daily disciplines which are imposed upon him by the Agamas. As an Archaka he has to touch the image in the course of the worship and it is his sole right and duty to touch it. The touch of anybody else would defile it.*** *Thus under the ceremonial law pertaining to temples even the question as to who is to enter the Garbhagriha or the sanctum sanctorum and who is not entitled to enter it and who can worship and from which place in the temple are all matters of religion as shown in the above decision of this Court.*

The importance of the Agamas

12. *The Agamas have also rules with regard to the Archakas. In Saivite temples only a devotee of Siva, and there too, one belonging to a particular denomination or group or sub-group is entitled to be the Archaka. If he is a Saivite, he cannot possibly be an Archaka in a Vaishnavite Agama temple to whatever caste he may belong and however learned he may be. Similarly, a Vaishnavite Archaka has no place as an Archaka in a Saivite temple. Indeed there is no bar to a Saivite worshipping in a Vaishnavite temple as a lay worshipper or vice versa. What the Agamas prohibit is his appointment as an Archaka in a temple of a different denomination. Dr Kane has quoted the Brahmapurana on the topic of Punah-pratistha (Re-consecration of images in temples) at p. 904 of his History of Dharmasastra referred to above. The Brahmapurana says that "when an image is broken into two or is reduced to particles, is burnt, is removed from its pedestal, is insulted, has ceased to be worshipped, is touched by beasts like donkeys or falls on impure ground or is worshipped with mantras of other deities or is rendered impure by the touch of outcastes and the like — in these ten contingencies, God ceases to indwell therein". The Agamas appear to be more severe in this respect. Shri R. Parthasarathy Bhattacharya, whose authority on Agama literature is unquestioned, has filed his affidavit in Writ Petition No. 442 of 1971 and stated in his affidavit, with special reference to the Vaikhanasa Sutra to which he belongs, that*

according to the texts of the Vaikhanasa Shastra (Agama), persons who are the followers of the four Rishi traditions of Bhrigu, Atri, Marichi and Kasyapa and born of Vaikhanasa parents are alone competent to do puja in Vaikhanasa temples of Vaishnavites. They only can touch the idols and perform the ceremonies and rituals. None others, however, high placed in society as pontiffs or Acharyas, or even other Brahmins could touch the idol, do puja or even enter the Garbha Griha. Not even a person belonging to another Agama is competent to do puja in Vaikhanasa temples. That is the general rule with regard to all these sectarian denominational temples. ***It is, therefore, manifest that the Archaka of such a temple besides being proficient in the rituals appropriate to the worship of the particular deity, must also belong, according to the Agamas, to a particular denomination. An Archaka of a different denomination is supposed to defile the image by his touch and since it is of the essence of the religious faith of all worshippers that there should be no pollution or defilement of the image under any circumstance, the Archaka undoubtedly occupies an important place in the matter of temple worship. Any State action which permits the defilement or pollution of the image by the touch of an Archaka not authorised by the Agamas would violently interfere with the religious faith and practices of the Hindu worshipper in a vital respect, and would, therefore, be prima facie invalid under Article 25(1) of the Constitution.***

The breach of an Agama would be a serious invasion of the religious space.

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20. ***Mr Palkhivala*** *on behalf of the petitioners insisted that the appointment of a person to a religious office in accordance with the hereditary principle is itself a religious usage and amounted to a vital religious practice and hence falls within Articles 25 and 26. In his submission, priests, who are to perform religious ceremonies may be chosen by a temple on such basis as the temple chooses to adopt.* ***It may be election, selection, competition, nomination, or hereditary succession.*** *He, therefore, contended that any law which interferes with the aforesaid basis of appointment would violate religious freedom guaranteed by Articles 25 and 26 of the Constitution. In his submission the right to select a priest has an immediate bearing on religious practice and the right of a denomination to manage its own affairs in matters of religion.* ***The priest is more important than the ritual and nothing could be more vital than chosing the priest.*** *Under the pretext of social reform, he contended, the State cannot reform a religion out of existence and if any denomination has accepted the hereditary principle for chosing its priest that would be a religious practice vital to the religious faith and cannot be changed on the ground that it leads to social reform.* ***Mere substitution of one method of appointment of the priest by another was, in his submission, no social reform.***

21. *It is true that a priest or an Archaka when appointed has to perform some religious functions but the question is whether the appointment of a priest is by itself a secular function or a religious practice. Mr Palkhivala gave the illustration of the spiritual head of a math belonging to a denomination of a Hindu sect like the Shankaracharya and expressed horror at the idea that such a spiritual head could be chosen by a method recommended by the State though in conflict with the usage and the traditions of the particular institution. Where, for example, a successor of a Mathadhipati is chosen by the Mathadhipati by giving him mantra-deeksha or where the Mathadhipati is chosen by his immediate disciples, it would be, he contended, extraordinary for the State to interfere and direct that some other mode of appointment should be followed on the ground of social reform. Indeed this may strike one as an intrusion in the matter of*

*religion. But we are afraid such an illustration is inapt when we are considering the appointment of an Archaka of a temple. The Archaka has never been regarded as a spiritual head of any institution. He may be an accomplished person, well versed in the Agamas and rituals necessary to be performed in a temple but he does not have the status of a spiritual head. Then again the assumption made that the Archaka may be chosen in a variety of ways is not correct. The Dharam-karta or the Shebait makes the appointment and the Archaka is a servant of the temple. It has been held in K. Seshadri Aiyangar v. Ranga Bhattar [ILR 35 Mad 631] that even the position of the hereditary Archaka of a temple is that of a servant subject to the disciplinary power of the trustee. The trustee can enquire into the conduct of such a servant and dismiss him for misconduct. As a servant he is subject to the discipline and control of the trustee as recognised by the unamended Section 56 of the principal Act which provides "all office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite therefrom shall, whether the office or service is hereditary or not, be controlled by the trustee and the trustee may, after following the prescribed procedure, if any, fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause". **That being the position of an Archaka, the act of his appointment by the trustee is essentially secular. He owes his appointment to a secular authority. Any lay founder of a temple may appoint the Archaka. The Shebaits and Managers of temples exercise essentially a secular function in choosing and appointing the Archaka. That the son of an Archaka or the son's son has been continued in the office from generation to generation does not make any difference to the principle of appointment and no such hereditary Archaka can claim any right to the office.** See Kali Krishan Ray v. Makhan Lal Mookerjee [ILR 50 Cal 233] , Nanabhai Narotamdas v. Trimbak Balwant Bhandare [(1878-80) Vol. 4, Unreported printed Judgments of the Bombay High Court, p. 169] and Maharanee Indurjeet Kooer v. Chundemun Misser [16 WR 99] . **Thus the appointment of an Archaka is a secular act and the fact that in some temples the hereditary principle was followed in making the appointment would not make the successive appointments anything but secular. It would only mean that in making the appointment the trustee is limited in respect of the sources of recruitment. Instead of casting his net wide for selecting a proper candidate, he appoints the next heir of the last holder of the office. That after his appointment the Archaka performs worship is no ground for holding that the appointment is either a religious practice or a matter of religion."***

The appointment of an Archaka is a secular act despite the role of the Archaka being of a completely religious nature

Shri Sajjanlal case

65. This Honble Court in the case of ***State Of Rajasthan And Others V. Shri Sajjanlal Panjawat And Others,* (1974) 1 SCC 500** [***Shri Sajjanlal*** case] [P. Jaganmohan Reddy, S.N. Dwivedi and P.K. Goswami, JJ. (delivered by P. Jaganmohan Reddy, J.)- **3 Judges**] [Vol. V.2 @ Pgs. 1009 – 1035] after relying upon the case of *Durgah Committee* [supra], *Govindlalji* [Supra], *Shirur Mutt* [supra] and *Devaru* [supra] held that the right under Article 26 to administer properties is circumscribed by the phrase 'in accordance with law'.

Rev. Stainislaus case

66. This Hon'ble Court in the ***Rev. Stainislaus V. State Of Madhya Pradesh And Others*, (1977) 1 SCC 677** [***Rev. Stainislaus*** case] [A.N. Ray (C.J.), M.H. Beg, R.S. Sarkaria, P.N. Shinghal and Jaswant Singh, JJ. (delivered by A.N. Ray, C.J.)- **5 Judges**] [Vol. V.8 @ Pgs. 111 – 118] examined the scope of the words 'propagate' and 'public order'.

In this case, the constitutionality of M.P. Dharma Swatantraya Adhiniyam, 1968 and the Orissa Freedom of Religion Act, 1967 was challenged on the grounds that:

(i) They violate the right to propagate one's religion under Article 25(1)

(ii) State legislatures lacked the legislative competence to enact such provisions, relate as they do to matters of religion falling within the residuary Entry 97 of List I. Herein, the M.P. High Court held the M.P. Act constitutional while the Orissa High Court held otherwise.

This Hon'ble Court held that the word 'propagate' does not envisage the right to convert a person rather is in the nature of the positive right to spread once religion by exposition of its tenets. This Hon'ble Court further held that fraudulent or induced conversion impinges upon the right to freedom of conscience of an individual apart from hampering public order and, therefore, the State was well within its power to regulate / restrict the same. The following is the relevant passage of the said case:

> ***"16.*** *Counsel for the appellant has argued that the right to "propagate" one's religion means the right to convert a person to one's own religion. On that basis, counsel has argued further that the right to convert a person to one's own religion is a fundamental right guaranteed by Article 25(1) of the Constitution.*
>
> ***17.*** *The expression "propagate" has a number of meanings, including "to multiply specimens of (a plant, animal, disease, etc.) by any process of natural reproduction from the parent stock", but that cannot, for obvious reasons be the meaning for purposes of Article 25(1) of the Constitution. The article guarantees a right to freedom of religion, and the expression 'propagate' cannot therefore be said to have been used in a biological sense.*
>
> ***18.*** *The expression 'propagate' has been defined in the Shorter Oxford Dictionary to mean "to spread from person to person, or from place to place, to disseminate, diffuse (a statement, belief, practice, etc.)".*
>
> ***19.*** *According to the Century Dictionary (which is an Encyclopaedic Lexicon of the English Language) Vol. VI, "propagate" means as follows:*
>
> *"To transmit or spread from person to person or from place to place; carry forward or onward; diffuse; extend; as to propagate a report; to propagate the Christian religion."*

20. We have no doubt that it is in this sense that the word 'propagate' has been used in Article 25(1), for what the article grants is not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets. It has to be remembered that Article 25(1) guarantees "freedom of conscience" to every citizen, and not merely to the followers of one particular religion, and that, in turn postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the "freedom of conscience" guaranteed to all the citizens of the country alike.

Propogate does not mean right to convert. There exists a fundamental right to conscience as well.

21. *The meaning of guarantee under Article 25 of the Constitution came up for consideration in this Court in Ratilal Panachand Gandhi v. State of Bombay [AIR 1954 SC 388 : 1954 SCR 1055, 1062-63] and it was Held as follows:*

> *"Thus, subject to the restrictions which this article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others." (emphasis added)*

This Court has given the correct meaning of the article, and we find no justification for the view that it grants a fundamental right to convert persons to one's own religion. It has to be appreciated that the freedom of religion enshrined in the article is not guaranteed in respect of one religion only, but covers all religions alike, and it can be properly enjoyed by a person if he exercises his right in a manner commensurate with the like freedom of persons following the other religions. What is freedom for one, is freedom for the other, in equal measure, and there can therefore be no such thing as a fundamental right to convert any person to one's own religion.

24. The expression "public order" is of wide connotation. It must have the connotation which it is meant to provide as the very first Entry in List II. It has been Held by this Court in Ramesh Thappar v. State of Madras [AIR 1950 SC 124 : 1950 SCR 594 : 51 Cri LJ 1514] that "public order" is an expression of wide connotation and signifies state of tranquillity which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established.

The State can curtail in the name of "public order"

25. *Reference may also be made to the decision in Ramjilal Modi v. State of U.P. [AIR 1957 SC 620 : 1957 SCR 860, 866 : 1957 Cri LJ 1006] where this Court has Held that the right of freedom of religion guaranteed by Articles 25 and 26 of the Constitution is expressly made subject to public order, morality and health, and that*

> *it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to have been enacted in the interests of public order."*

It has been Held that these two articles in terms contemplate that restrictions may be imposed on the rights guaranteed by them in the interests of public order. Reference may as well be made to the decision in Arun Ghoshe v. State of West Bengal [(1970) 1 SCC 98 : 1970 SCC (Cri) 67] where it has been Held that if a thing disturbs the current of the life of the community, and does not merely affect an individual, it would amount

to disturbance of the public order. ***Thus if an attempt is made to raise communal passions, e.g. on the ground that some one has been "forcibly" converted to another religion, it would, in all probability, give rise to an apprehension of a breach of the public order, affecting the community at large. The impugned Acts therefore fall within the purview of Entry 1 of List II of the Seventh Schedule as they are meant to avoid disturbances to the public order by prohibiting conversion from one religion to another in a manner reprehensible to the conscience of the community.*** *The two Acts do not provide for the regulation of religion and we do not find any justification for the argument that they fall under Entry 97 of List I of the Seventh Schedule."*

Auroville case

67. This Hon'ble Court in ***S.P. Mittal V. Union of India,*** **(1983) 1 SCC 51** [Auroville case] [Y.V. Chandrachud (C.J.), P.N. Bhagwati, O. Chinnappa Reddy, V. Balakrishna Eradi, and R.B. Misra JJ. (delivered by Chinnappa Reddy, J. (partly dissenting) and Misra, J. (on behalf of Chandrachud, Bhagwati and Eradi JJ.)- **5 Judges**] [Vol. V.3 @ Pgs. 495 – 587] was tasked with the question of determining whether Auroville and the followers of Aurobindo constitute a separate religion.

Striking feature

(i) There existed a legislation governing the field.

(ii) The validity of a legislation was challenged at the instance of an affected party.

Facts

(i) The disciples and devoted followers of Sri Aurobindo formed the Aurobindo Society in Calcutta in 1960. The Society was initially registered under the Societies Registration Act, 1860, but after the enforcement of the W.B. Societies Registration Act, 1961, it was deemed to be registered under that Act.

(ii) Due to some factual situation which may not be relevant for the present purpose, the members of the Auroville approached the Government of India to give protection against oppression and victimisation at the hands of the Society.

(iii) The government enacted the Auroville (Emergency Provisions) Act, 1980.

While examining the constitutionality of the said Act, the Hon'ble Supreme Court, in great detail examined the meaning and scope of what constitutes religion and what are its distinguishable characteristics. The Hon'ble Court for the first time laid down the test for determining what constitutes a religious denomination laying down three conditions for the same. The Hon'ble Court after detailed analysis held that Auroville and the society in question were not religious institutions, not a religious denominations and further Sri Aurobindo only represented philosophy and not a religion. The Hon'ble Court held that the impugned

enactment in any case does not stand in the way of the society to manage its affairs in matters of religion. The following is the relevant passage of the said case:

J. Chinappa Reddy [partly dissenting – partly concurring]

"20. *It is obvious that religion, undefined by the Constitution, is incapable of precise judicial definition either. In the background of the provisions of the Constitution and the light shed by judicial precedent, we may say religion is a matter of faith. It is a matter of belief and doctrine. It concerns the conscience i.e. the spirit of man. It must be capable of overt expression in word and deed, such as, worship or ritual. So, religion is a matter of belief and doctrine, concerning the human spirit, expressed overtly in the form of ritual and worship. Some religions are easily identifiable as religions; some are easily identifiable as not religions. There are many in the penumbral region which instinctively appear to some as religions and to others as not religions. There is no formula of general application. There is no knife-edge test. Primarily, it is a question of the consciousness of the community, how does the fraternity or sodality (if it is permissible to use the word without confining it to Roman Catholic groups) regard itself, how do others regard the fraternity or sodality. A host of other circumstances may have to be considered, such as, the origin and the history of the community, the beliefs and the doctrines professed by the community, the rituals observed by the community, what the founder, if any, taught, what the founder was understood by his followers to have taught, etc. In origin, the founder may not have intended to found any religion at all. He may have merely protested against some rituals and observances, he may have disagreed with the interpretation of some earlier religious tenets. What he said, what he preached and what he taught, his protest, his dissent, his disagreement might have developed into a religion in the course of time, even during his lifetime. He may be against religion itself, yet, history and the perception of the community may make a religion out of what was not intended to be a religion and he may be hailed as the founder of a new religion. There are the obvious examples of Buddhism and Jainism and for that matter Christianity itself. Neither Buddha, nor Mahavira, nor Christ ever thought of founding a new religion, yet three great religions bear their names.*

21. *If the word "religion" is once explained, though with some difficulty, the expression "religious denomination" may be defined with less difficulty. As we mentioned earlier Mukherjea, J., borrowed the meaning of the word "denomination" from the Oxford Dictionary and adopted it to define religious denomination as "a collection of individuals classed together under the same name, a religious sect or body having a common faith and organisation and designated by a distinctive name". The followers of Ramanuja, the followers of Madhwacharya, the followers of Vallabha, the Chishtia Soofies have been found or assumed by the Court to be religious denominations. It will be noticed that these sects possessed no distinctive name except that of their founder-teacher and had no special organisation except a vague, loose-un-knit one. The really distinctive feature about each one of these sects was a shared belief in the tenets taught by the teacher-founder. We take care to mention here that whatever the ordinary features of a religious denomination may be considered to be, all are not of equal importance and surely the common faith of the religious body is more important than the other features. It is, perhaps, necessary to say that judicial definitions are not statutory definitions; they are mere explanations, every word of which is not to be weighed in golden scales. Law has a tendency to harden with the passage of time and judicial pronouncements are made to assume the form of statutory pronouncements. So soon as a word or expression occur in the statute is judicially defined, the tendency*

is to try to interpret the language employed by the judges in the judicial definition as if it has been transformed into a statutory definition. That is wrong. Always, words and expressions to be interpreted are those employed in the statute and not those used by judges for felicitous explanation. Judicial definition, we repeat, is explanatory and not definitive. One remark requires to be added here. Religious denomination has not to owe allegiance to any parent religion. The entire following of a religion may be no more than the religious denomination. This may particularly be so in the case of small religious groups or "developing" religions, that is, religions in the formative stage.

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33. If the followers of Sri Aurobindo constitute a "religious denomination", as, to my mind, they undoubtedly do, the members of Sri Aurobindo Society are certainly a distinct and identifiable section of the 'religious denomination'. The members of the Society are followers and disciples of Sri Aurobindo. *The Society was formed to preach and propagate the beliefs and ideals of Sri Aurobindo. The primary object of the Society was "to make known to the members of the public in general the aims and ideals of Sri Aurobindo and the Mother, their system of Integral Yoga and to work for its fulfilment in all possible ways and for the attainment of a spiritualised society as envisaged by Sri Aurobindo". It is nobody's case that this is not the principal object of the society or that it is only a facade for other activities. However it was argued that the Society had represented itself as, "a non-political, non-religious organisation" and claimed exemption from income tax on the ground that it was engaged in educational, cultural and scientific research. If the Society consists of the disciples and followers of Sri Aurobindo, if its primary object is to profess, practise and propagate the system of Integral Yoga, and, if, therefore, it is a section of a religious denomination, the circumstance that it is engaged in several secular activities and has represented itself to be a non-religious organisation for certain purposes cannot detract from the fact that it is a section of a religious denomination within the meaning of Article 26. Therefore, we must hold, the Sri Aurobindo Society is a section of a religious denomination within the meaning of the expression in Article 26 of the Constitution.*

J. R.N. Misra

77. *The expression "Religion" has, however, been sought to be defined in the Words and Phrases, Permanent Edn., 36-A, p. 461 onwards, as given below:*

> *"Religion is morality, with a sanction drawn from a future state of rewards and punishments.*
>
> *The term "religion" and "religious" in ordinary usage are not rigid concepts.*
>
> *'Religion' has reference to one's views of his relations to his Creator and to the obligations they impose of reverence for his being and character, and of obedience to his will.*
>
> *The word 'religion' in its primary sense (from 'religare', to rebind, bind back), imports, as applied to moral questions, only a recognition of a conscious duty to obey restraining principles of conduct. In such sense we suppose there is no one who will admit that he is without religion.*
>
> *'Religion' is bond uniting man to God, and virtue whose purpose is to render God worship due him as source of all being and principle of all government of things.*
>
> *'Religion' has reference to man's relation to divinity; to the moral obligation of reverence and worship, obedience, and submission. It is the recognition of God as*

an object of worship, love and obedience; right feeling toward God, as highly apprehended.

'Religion' means the service and adoration of God or a god as expressed in forms of worship; an apprehension, awareness, or conviction of the existence of a Supreme Being; any system of faith, doctrine and worship, as the Christian religion, the religions of the Orient; a particular system of faith or worship.

The term 'religion' as used in tax exemption law, simply includes: (1) a belief, not necessarily referring to supernatural powers; (2) a cult, involving a gregarious association openly expressing the belief; (3) a system of moral practice directly resulting from an adherence to the belief; and (4) an organization within the cult designed to observe the tenets or belief, the content of such belief being of no moment.

While 'religion' in its broadest sense includes all forms of belief in the existence of superior beings capable of exercising power over the human race, as commonly accepted it means the formal recognition of God, as members of societies and associations, and the term, 'a religious purpose', as used in the constitutional provision exempting from taxation property used for religious purposes, means the use of property by a religious society or body of persons as a place for public worship.

'Religion' is squaring human life with superhuman life. Belief in a superhuman power and such an adjustment of human activities to the requirements of that power as may enable the individual believer to exist more happily is common to all 'religions'. The term 'religion' has reference to one's views on his relations to his Creator, and to the obligations they impose of reverence for His being and character and obedience to his will.

The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with."

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80. The words "religious denomination" in Article 26 of the Constitution must take their colour from the word "religion" and if this be so, the expression "religious denomination" must also satisfy three conditions:

"(1) It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is, a common faith;

(2) common organisation; and

(3) designation by a distinctive name."

The test for what constitutes a denomination is brought about.

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121. *On the basis of the materials placed before us viz. the Memorandum of Association of the Society, the several applications made by the Society claiming exemption under Section 35 and Section 80 of the Income Tax Act, the repeated utterings of Sri Aurobindo and the Mother that the Society and Auroville were not religious institutions and host of other documents there is no room for doubt that*

neither the Society nor Auroville constitute a religious denomination and the teachings of Sri Aurobindo only represented his philosophy and not a religion.

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124. *The impugned enactment does not stand in the way of the Society establishing and maintaining institutions for religious and charitable purposes**. It also does not stand in the way of the Society to manage its affairs in matters of religion. It has only taken over the management of the Auroville by the Society in respect of the secular matters**. The position before the present Constitution came into force was that the State did not interfere in matters of religion in its doctrinal and ritualistic aspects treating it as a private purpose, but it did exercise control over the administration of property endowed for religious institutions (dedicated to the public) treating it as a public purpose, and this position has not changed even under the present Constitution [Narayanan Nambudripad v. State of Madras, ILR 1955 Mad 356] .*

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134. On an analysis of the aforesaid cases it is evident that even assuming that the Society or Auroville was a religious denomination, clause (b) of Article 26 guarantees to a religious denomination a right to manage its own affairs in matters of religion. *It will be seen that besides the right to manage its own affairs in matters of religion, which is given by clause (b), the next two clauses of Article 26 guarantee to a religious denomination the right to acquire and own property and to administer such property in accordance with law. The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The latter is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly impose. It is clear, therefore, that questions merely relating to a religious group or institution are not matters of religion to which clause (b) of the article applies. The impugned Act had not taken away the right of management in matters of religion of a religious denomination, if the Society or Auroville is a religious denomination at all, rather it has taken away the right of management of the property of Auroville."*

First Anand Margis case

68. Thereafter this Hon'ble Court in ***Acharya Jagdishwaranand Avadhuta And Others V. Commissioner Of Police, Calcutta And Another*****, (1983) 4 SCC 522** [**First Anand Margis** case] [P.N. Bhagwati, Amarendra Nath Sen and Ranganath Misra, JJ. (delivered by Ranganath Misra, J.)- **3 Judges**] [Vol. V.3 @ Pgs. 588 – 604] examined the issue concerning the procession carried out by Anand Margis.

Striking Feature

(i) The affected party, a monk of the Ananda Marga and currently General Secretary, Public Relations Department of the Ananda Marga Pracharak Sangh, has filed this petition under Article 32 of the Constitution

(ii) The petition sought for a direction to the Commissioner of Police, Calcutta and the State of West Bengal to allow processions to be carried in the public streets and

meetings to be held in public places by the followers of the Ananda Marga cult accompanied by the performance of Tandava dance within the State of West Bengal.

In the said case, this Hon'ble Supreme Court missed an opportunity to examine the scope of what constitute 'public order' and 'morality' in the context of religious freedoms. The Hon'ble Court held that Anand Margi's were not an institutionalised religion but a religious denomination. The Hon'ble Court, however, erroneously held that merely because the Anand Margi's do not constitute a separate religion, the application of Article 25 is not attracted. The Hon'ble Court further examined whether the Tandava Dance was an essential tenet of the religious faith of Anand Margi's. The Hon'ble Court concluded that the performance of Tandav Dance in a procession or a public place is not an essential religious right to be performed by every Anand Margi and, therefore, it is not protected under Article 25 and 26. In view of the same, the Hon'ble Court held that it was not necessary to examine whether the repeated and regular prohibitory orders against the Tandava Dance were justified in the interest of public order or not. The following is the relevant passage of the said case:

9. *We have already indicated that the claim that Ananda Marga is a separate religion is not acceptable in view of the clear assertion that it was not an institutionalised religion but was a religious denomination. The principle indicated by Gajendragadkar, C.J., while speaking for the Court in Sastri Yagnapurushadji v. Muldas Bhudardas Vaishya [AIR 1966 SC 1119 : (1966) 3 SCR 242 : (1966) 2 SCJ 502] also supports the conclusion that Ananda Marga cannot be a separate religion by itself. In that case the question for consideration was whether the followers of Swaminarayan belonged to a religion different from that of Hinduism. The learned Chief Justice observed:*

> *"Even a cursory study of the growth and development of Hindu religion through the ages shows that whenever a saint or a religious reformer attempted the task of reforming Hindu religion and fighting irrational or corrupt practices which had crept into it, a sect was born which was governed by its own tenets, but which basically subscribed to the fundamental notions of Hindu religion and Hindu philosophy."*

The averments in the writ petition would seem to indicate a situation of this type. We have also taken into consideration the writings of Shri Ananda Murti in books like Carya-Carya, Namah Shivaya Shantaya, A Guide to Human Conduct, and Ananda Vachanamritam. These writings by Sri Ananda Murti are essentially founded upon the essence of Hindu philosophy. The test indicated by the learned ChiefJustice in the case referred to above and the admission in para 17 of the writ petition that Ananda Margis belong to the Shaivite order lead to the clear conclusion that Ananda Margis belong to the Hindu religion. ***Mr Tarkunde for the petitioner had claimed protection of Article 25 of the Constitution but in view of our finding that Ananda Marga is not a separate religion, application of Article 25 is not attracted.***

Merely because Anand Magris are not a separate religion, they cannot claim a right under Article 25.

10. *The next aspect for consideration is whether Ananda Marga can be accepted to be a religious denomination. In Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [AIR 1954 SC 282 : 1954 SCR 1005, 1021-22 : 1954 SCJ 335] Mukherjea, J. (as the learned Judge then was), spoke for the Court thus:*

"As regards Article 26, the first question is, what is the precise meaning or connotation of the expression "religious denomination" and whether a Math could come within this expression. The word "denomination" has been defined in the Oxford Dictionary to mean "a collection of individuals classed together under the same name: a religious sect or body having a common faith and organisation and designated by a distinctive name"."

This test has been followed in Durgah Committee, Ajmer v. Syed Hussain Ali [AIR 1961 SC 1402 : (1962) 1 SCR 383] . In the majority judgment in S.P. Mittal v. Union of India [(1983) 1 SCC 51, 85 : (1983) 1 SCR 729, 774] reference to this aspect has also been made and it has been stated: (SCC p. 85, para 80)

"The words 'religious denomination' in Article 26 of the Constitution must take their colour from the word 'religion' and if this be so, the expression 'religious denomination' must also satisfy three conditions:

(1) It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is, a common faith;

(2) common organisation; and

(3) designation by a distinctive name."

11. Ananda Marga appears to satisfy all the three conditions viz. it is a collection of individuals who have a system of beliefs which they regard as conducive to their spiritual well-being; they have a common organisation and the collection of these individuals has a distinctive name. Ananda Marga, therefore, can be appropriately treated as a religious denomination, within the Hindu religion.

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14. *The question for consideration now, therefore, is whether performance of Tandava dance is a religious rite or practice essential to the tenets of the religious faith of the Ananda Margis. We have already indicated that Tandava dance was not accepted as an essential religious rite of Ananda Margis when in 1955 the Ananda Marga order was first established. It is the specific case of the petitioner that Shri Ananda Murti introduced Tandava as a part of religious rites of Ananda Margis later in 1966. Ananda Marga as a religious order is of recent origin and Tandava dance as a part of religious rites of that order is still more recent. It is doubtful as to whether in such circumstances Tandava dance can be taken as an essential religious rite of the Ananda Margis. Even conceding that it is so, it is difficult to accept Mr Tarkunde's argument that taking out religious processions with Tandava dance is an essential religious rite of Ananda Margis. In para 17 of the writ petition the petitioner pleaded that "Tandava dance lasts for a few minutes where two or three-persons dance by lifting one leg to the level of the chest, bringing it down and lifting the other". In para 18 it has been pleaded that "when the Ananda Margis greet their spiritual preceptor at the airport, etc., they arrange for a brief welcome dance of Tandava wherein one or two persons use the skull and symbolic knife and dance for two or three minutes". In para 26 it has been pleaded that "Tandava is a custom among the sect members and it is a customary performance and its origin is over four thousand years old, hence it is not a new invention of Ananda Margis". On the basis of the literature of the Ananda Marga denomination it has been contended that there is prescription of the performance of Tandava dance by every follower of Ananda Marga. Even conceding that Tandava dance has been prescribed as a religious rite for every follower of the Ananda Marga it does not follow as a necessary corollary that Tandava dance to be performed in the public is a matter of religious rite. In fact, there is no justification in any of the writings of Sri Ananda Murti that Tandava*

dance must be performed in public. At least none could be shown to us by Mr Tarkunde despite an enquiry by us in that behalf. ***We are, therefore, not in a position to accept the contention of Mr Tarkunde that performance of Tandava dance in a procession or at public places is an essential religious rite to be performed by every Ananda Margi.***

Merely because the Tandava dance is not an essential tenet, no right under Article 26 can be claimed

15. Once we reach this conclusion, the claim that the petitioner has a fundamental right within the meaning of Article 25 or 26 to perform Tandava dance in public streets and public places has to be rejected. In view of this finding it is no more necessary to consider whether the prohibitory order was justified in the interest of public order as provided in Article 25."

Bijoe Emmanuel case

69. At this juncture, before adverting to further judgments, it is necessary to note the observations of J. Chinnappa Reddy in ***Bijoe Emmanuel v. State of Kerala,*** **(1986) 3 SCC 615 [2 Judges]** [Vol. V.6 @ Pgs. 1669 – 1690] with regard to the First Anand Magis case. J. Chinappa Reddy, noted as under :

"19. *We see that the right to freedom of conscience and freely to profess, practise and propagate religion guaranteed by Article 25 is subject to (1) public order, morality and health; (2) other provisions of Part III of the Constitution; (3) any law (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; or (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. Thus while on the one hand Article 25(1) itself expressly subjects the light guaranteed by it to public order, morality and health and to the other provisions of Part III, on the other hand, the State is also given the liberty to make a law to regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practise and to provide for social welfare and reform, even if such regulation, restriction or provision affects the right guaranteed by Article 25(1). Therefore, whenever the Fundamental Right to freedom of conscience and to profess, practise and propagate religion is invoked, the act complained of as offending the Fundamental Right must be examined to discover whether such act is to protect public order, morality and health, whether it is to give effect to the other provisions of Part III of the Constitution or whether it is authorised by a law made to regulate or restrict any economic, financial, political or secular activity which may be associated with religious practise or to provide for social welfare and reform. It is the duty and function of the court so to do. Here again as mentioned in connection with Article 19(2) to (6), it must be a law having the force of a statute and not a mere executive or a departmental instruction. We may refer here to the observations of Latham, C.J. in Adelaide Company of Jehovah's Witnesses v. The Commonwealth [67 CLR 116] a decision of the Australian High Court quoted by Mukherjea, J. in the Shirur Mutt case [Commr, HRE v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282 : 1954 SCR 1005] . Latham, C.J. had said :*

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20. *The meaning of the expression "religion" in the context of the Fundamental Right to freedom of conscience and the right to profess, practise and propagate*

religion, guaranteed by Article 25 of the Constitution, has been explained in the well known cases of Commissioner, Hindu Religious Endowment, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [Commr, HRE v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282 : 1954 SCR 1005] , Ratilal Panachand Gandhi v. State of Bombay [AIR 1954 SC 388, 392 : 1954 SCR 1055] and S.P. Mittal v. Union of India [(1983) 1 SCC 51] . It is not necessary for our present purpose to refer to the exposition contained in these judgments except to say that in the first of these cases Mukherjea, J. made a reference to "Jehovah's Witnesses" and appeared to quote with approval the views of Latham, C.J. of the Australian High Court in Adelaide Company v. The Commonwealth [67 CLR 116] and those of the American Supreme Court in West Virginia State Board of Education v. Barnette [87 Law Ed 1628, 1633 : 319 US 624, 629 (1943)] . In Rotilal's case [AIR 1954 SC 388, 392 : 1954 SCR 1055] we also notice that Mukherjea, J. quoted as appropriate Davar, J.'s following observations in Jamshed Ji v. Soonabai [(1909) 33 Bom 122 : 10 Bom LR 417] :

"If this is the belief of the community and it is proved undoubtedly to be the belief of the Zoroastrian community, — a secular Judge is bound to accept that belief — it is not for him to sit in judgment on that belief, he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be the advancement of his religion and the welfare of his community or mankind."

We do endorse the view suggested by Davar, J's observation that the question is not whether a particular religious belief or practice appeals to our reason or sentiment but whether the belief is genuinely and conscientiously held as part of the profession or practice of religion. Our personal views and reactions are irrelevant. If the belief is genuinely and conscientiously held it attracts the protection of Article 25 but subject, of course, to the inhibitions contained therein*.*

Reasonable-ness is not the test, rather the test is the conscientious belief of the community

25. *We are satisfied, in the present case, that the expulsion of the three children from the school for the reason that because of their conscientiously held religious faith, they do not join the singing of the National Anthem in the morning assembly though they do stand up respectfully when the anthem is sung, is a violation of their fundamental right "to freedom of conscience and freely to profess, practise and propagate religion".*

"26. *Shri Vishwanath Iyer and Shri Poti, who appeared for the respondents suggested that the appellants, who belonged but to a religious denomination could not claim the Fundamental Right guaranteed by Article 25(1) of the Constitution. They purported to rely upon a sentence in the judgment of this court in Acharya Jagdishwaranand v. Commissioner of Police, Calcutta [(1983) 4 SCC 522 : AIR 1984 SC 51] . The question in that case was whether the Ananda Margis had a fundamental right within the meaning of Article 25 or Article 26 to perform Tandava dance in public streets and public places. The court found that Ananda Marga was a Hindu religious denomination and not a separate religion. The court examined the question whether the Tandava dance was a religious rite or practice essential to the tenets of the Ananda Marga and found that it was not. On that finding the court concluded that the Ananda Marga had no fundamental right to perform Tandava dance in public streets and public places. In the course of the discussion, at one place, there is found the following sentence: (SCC p. 530, para 9)*

"Mr Tarkunde for the petitioner had claimed protection of Article 25 of the Constitution but in view of our finding that Ananda Marga was not a separate religion, application of Article 25 is not attracted."

This sentence appears to have crept into the judgment by some slip. It is not a sequitur to the reasoning of the court on any of the issues. In fact, in the subsequent paragraphs, the Court has expressly proceeded to consider the claim of the Ananda Marga to perform Tandava dance in public streets pursuant to the right claimed by them under Article 25(1).

The Court noted that the above sentence might have crept in due to some oversight.

27. *We, therefore, find that the Fundamental Rights of the appellants under Articles 19(1)(a) and 25(1) have been infringed and they are entitled to be protected. We allow the appeal, set aside the judgment of the High Court and direct the respondent authorities to re-admit the children into the school, to permit them to pursue their studies without hindrance and to facilitate the pursuit of their studies by giving them the necessary facilities. We only wish to add: our tradition teaches tolerance; our philosophy preaches tolerance; our Constitution practises tolerance; let us not dilute it."*

Pannalal Bansilal Pitti, Lakshamana Yatendrulu, Narayana Deekshitulu– J. Ramaswamy cases

70. After the ***First Anand Margis case (supra)*** and ***Bijoe Emmanuel case (supra)***, there came few judgments [all incidentally authored by Justice K. Ramaswamy sitting in the benches smaller than 5-Judges Benches]. These judgements are as under-

i) ***Pannalal Bansilal Pitti***

ii) ***Sri Sri Sri Lakshamana Yatendrulu***

iii) ***A.S. Narayana Deekshitulu***

iv) ***Bhuri Nath***

v) ***Sri Adi Visheshwara of Kashi Vishawananth Temple***

These judgments which appear to have been delivered between 1996 and 1997 and authored by Hon'ble Mr. Justice K. Ramaswamy restricted the right under Articles 25 and 26 and introduced a new concept of religion to be DHARMA. The details are given as under-

71. This Hon'ble Court in in the case of ***Pannalal Bansilal Pitti And Others v. State of A.P. Ans Others*, (1996) 2 SCC 498 [Pannalal** case] [Vol. V.3 @ Pgs. 761 – 787] [K. Ramaswamy and B.L. Hansaria, JJ. (delivered by K. Ramaswamy- **2 Judges**] while deciding the constitutionality of certain provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, which interalia abolished hereditary trusteeship and vested the management rights with a board of non-hereditary trustees, held that the right to establish a religious institution or endowment is a part of religious belief or faith, but its administration

is a secular part which would be regulated by law appropriately made by the legislature. This Hon'ble Court has further held that such a regulation would only be in respect of the administration of the secular part of the religious institution or endowment, and not of beliefs, tenets, usages and practices, which are an integral part of that religious belief of faith. The following are the relevant passages of the said case:

> ***"13.*** *The second question is: Whether abolition of hereditary trusteeship violates Articles 25 and 26 of the Constitution. Article 25(1) assures, subject to public order, morality and health and to the other provisions of Chapter III that all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. Sub-clause (2) of Article 25 saves the operation of the existing law and also frees the State from Article 25(1) to make any law regulating or restricting any economic, financial, political or other secular activity, which may be associated with religious practice. Equally, law may provide for social welfare and reform, the throwing open of Hindu religious institutions of a public character to all classes and sections of the society. Article 26 gives freedom to manage religious affairs, subject to public order, morality and health, every religious denomination or any section thereof, to establish institutions for religious and charitable purpose, to manage its own affairs in matters of religion, to own and acquire moveable and immovable property and to administer such property in accordance with law.*
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> ***14.*** *Contents of Articles 25 and 26 of the Constitution have been considered in several decisions starting from Shirur Mutt case [Commr., H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005 : AIR 1954 SC 282] and have been placed beyond controversy. The first principle laid is that the protection of these articles is not limited to matters of doctrine or belief. They extend also to acts done in pursuance of religion and, therefore, a guarantee for rituals and observances, ceremonies and motive of worship which are integral parts of religion. The second principle is that what constitutes an essential part of religion or religious properties has to be decided by the courts with a reference to the doctrine of a particular religion and includes practices which are regarded by the community as a part of its religion.*
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> ***15.*** *In Commr. H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [Commr., H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005 : AIR 1954 SC 282] known as Shirur Mutt case [Commr., H.R.E.v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005 : AIR 1954 SC 282] , this Court had held that the language of Article 25 indicates to secure to every person subject to public order, health and morality, a freedom not only to entertain such religious belief, as may be approved by his judgment and conscience, but also to exhibit his belief in such outward acts as he thinks proper and to propagate or disseminate his ideas for the edification of others. It is the propagation of belief that is protected, no matter whether the propagation takes place in a church or monastery or in a temple or parlour meeting. At SCR p. 1023, it was held that the word 'religion' has not been defined in the Constitution and it is a term which is hardly susceptible of any rigid definition. Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. Religion, undoubtedly, has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion conducive to their spiritual well-being. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship etc.*

Guarantee under the Constitution not only protects the freedom of religious denomination but it also protects ceremonies and modes of worship which are regarded as integral parts of religion; and the forms and observations might extend even to interests of food and dress. What Article 25(2)(a) contemplates is not regulation by the State of religious practices as such, the freedom of which is guaranteed by the Constitution. The guarantee is inbuilt to every religion to establish and maintain institutions for religious and charitable purposes and their management in matters of religion to own and acquire moveable and immovable properties. But they are subject to Article 25 and other provisions of the Constitution.

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18. *Hindu piety found expression in establishing temples, creation of endowments or specific endowments, by gifts to idols and images consecrated and installed in temples and to religious institutions of every kind. The word 'charity' in a legal sense includes every gift for a general public use, to be applied consistent with existing laws for the benefit of an indefinite number of persons and designed to benefit them from an educational, religious, moral, physical or social standpoint — vide Black's Law Dictionary at p. 233. Therefore, every Hindu imbued with religious or charitable disposition and pious wish would create or establish a charitable or religious institution or endowment or specific endowments for general public use to be applied consistent with the law for the benefit of an indefinite number of people or persons and designed to benefit the religious, moral and social standpoint equally of educational standpoint. Therefore, a Hindu who has founded a religious or charitable institution or endowment has a fundamental right to administer it in accordance with law; and so, the law must leave the right of administration to the religious denomination or general body itself, subject to the restrictions and regulations as the law might choose to impose. In Shirur Mutt case[Commr., H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005 : AIR 1954 SC 282] this Court held (at SCR p. 1029) that a law which takes away the right to administration to the religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under clause (d) of Article 26. So, a law would not totally divest the administration of a religious institution or endowment, but the State has a general right to regulate the right to administration of a religious or charitable institution or endowment; and such a law may choose to impose such restrictions whereof as are felt most acute and provide a remedy therefor.*

19. *In Ratilal Panachand Gandhi v. State of Bombay [1954 SCR 1055 : AIR 1954 SC 388] (SCR at p. 1063) this Court further had pointed out the distinction between clauses (b) and (d) of Article 26 thus: In regard to affairs in matters of religion, the right of management given to a religious body is a guaranteed fundamental right which no legislation can take away. On the other hand, as regards administration of property which a religious denomination is entitled to own and acquire, it has undoubtedly the right to administer such property, but only in accordance with law. This means that the State can regulate the administration of trust properties by means of laws validly enacted; but here again it should be remembered that under Article 26(d), it is the religious denomination or general body of religion itself which has been given the right to administer its property in accordance with any law which the State may validly impose. A law which takes away the right of administration altogether from the religious denomination and vests it in any other or secular authority, would amount to violation of the right which is guaranteed by Article 26(d) of the Constitution. In that case, the Court found that the exercise of the power by the Charity Commissioner or the Court*

to divert the trust property or funds for purposes which he or it considered expedient or proper, although the original objects of the founder can still be carried out, was an unwarranted encroachment on the freedom of religious institutions in regard to the management of their religious affairs.

20. It would thus be clear that the right to establish a religious institution or endowment is a part of religious belief or faith, but its administration is a secular part which would be regulated by law appropriately made by the legislature. The regulation is only in respect of the administration of the secular part of the religious institution or endowment, and not of beliefs, tenets, usages and practices, which are an integral part of that religious belief or faith.

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26. *Hindus are majority in population and Hinduism is a major religion. While Articles 25 and 26 granted religious freedom to minority religions like Islam, Christianity and Judaism, they do not intend to deny the same guarantee to Hindus. Therefore, protection under Articles 25 and 26 is available to the people professing Hindu religion subject to the law therein.* ***The right to establish a religious and charitable institution is a part of religious belief or faith and, though law made under clause (2) of Article 25 may impose restrictions on the exercise of that right, the right to administer and maintain such institution cannot altogether be taken away and vested in other party; more particularly, in the officers of a secular Government. The administration of religious institution or endowment or specific endowment being a secular activity, it is not an essential part of religion and, therefore, the legislature is competent to enact law, as in Part III of the Act, regulating the administration and governance of the religious or charitable institutions or endowment. They are not part of religious practices or customs. The State does not directly undertake their administration and expend any public money for maintenance and governance thereof. Law regulates appropriately for efficient management or administration or governance of charitable and Hindu religious institutions or endowments or specific endowments, through its officers or officers appointed under the Act.***

72. This Hon'ble Court in in the case of ***Sri Sri Sri Lakshamana Yatendrulu And Others v. State of A.P. And Another,*** **(1996) 8 SCC 705 [Lakshamana Yatendrulu** case] [K. Ramaswamy and B.L. Hansaria, JJ. (delivered by K. Ramaswamy- **2 Judges**] examined the constitutionality of provisions under Chapter V of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, which dealt with 'Maths' and specific endowments, including provisions relating to the powers and appointment of 'Mathadhipati'. This Hon'ble Court although acknowledged the dual nature of the role of a mahant, as a spiritual head and as a manager administering the Math, however, held that the Chapter V of the Act did not attempt to regulate the propagation or preaching of the tenets by the Mahant or of the math or religious beliefs for which the math is founded or it seeks to propagate. This Court observed that the *mahant* himself may nominate his successor, who may then be appointed by the Commissioner, provided the nominee satisfies the required qualifications. It was held that the other provisions in Chapter V, which concern the administration of *math* properties or specific

endowments, are secular activities, though connected with religion, and therefore do not qualify as matters of religion under Article 26(b). This Hon'ble Court, thus, dismissed the challenge to the constitutionality of the Act by holding that none of the provisions offend Article 25 or Article 26. It was held as under :

> *"**28.** Section 54 deals with nomination of the mathadhipathi. Shri Parasaran, learned Senior Counsel while addressing his arguments which need no repetition, raised a very strong objection and fervently, repeatedly, forcibly and persuasively argued that the secular authority should not be permitted to interpose in the nomination of Mahant by act of acceptance of the nominated mathadhipathi on diverse grounds mentioned hereinbefore. Having given our due careful and very anxious consideration to his arguments and equally palatable contentions of Shri P.P. Rao, we find that role of the Commissioner in that behalf is minimal. It is seen that by operation of sub-section (1) with a non obstante clause, viz., "subject to provisions of Section 53", the basic qualifications required for a person to be nominated as mathadhipathi are enumerated in sub-section (2) of Section 53. The approach to this problem, which has to be kept in view by the Commissioner, has already been stated and bears no repetition. The Mahant may himself nominate his successor. In other words, the predecessor Mahant should keep in mind the prohibited grounds enumerated in sub-section (1) of Section 51 and qualifications mentioned in Section 53(2) before he nominates the successor. He is the best person to adjudge among his disciples or any other persons, the most fitting person eminently suited to succeed him. He would be actuated solely with religious fervour and capacity of his successor to properly and efficiently manage the trust, to elongate the object and purpose of the math according to the established traditions, usage, customs and Sampradayams. He is enjoined, after due deliberation, to decide his successor and to intimate such nomination to the Commissioner within 90 days. The Commissioner is further required to recognise such nomination. Nomination ipso facto cannot be recognised by the Commissioner.*
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> ***29.** In Commr., H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [1954 SCR 1005 : AIR 1954 SC 282] which is locus classic, this Court had held that:*
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> > *"Having regard to the fact that the mathadhipathi occupies the position of a trustee with regard to the math, which is a public institution, some amount of control or supervision over the due administration of the endowments and the appropriation of their funds is certainly necessary in the interest of the public and we do not think that the provision of this section by itself offends any fundamental right of the Mahant. We do not agree with the High Court that the result of this provision would be to reduce the Mahant to the position of a servant. No doubt the Commissioner is invested with powers to pass orders, but orders can be passed only for the purposes specified in the section and not for interference with the rights of the Mahant as are sanctioned by usage or for lowering his position as the spiritual head of the institution. The saving provision contained in Section 91 of the Act makes the position quite clear. An apprehension that the powers conferred by this section may be abused in individual cases does not make the provision itself bad or invalid in law."*
>
> *The ratio with equiforce is applicable to the context in which we are called upon to test the validity of the provision.*

30. *In this behalf, the Commissioner is guided by Pandit Rules under which the duly competent person assists him in convening the meeting of Mahants having similar Sampradayams for nomination of a mathadhipathi. He is required to recognise the nomination of Mahant. We find that the suitable procedure has been made in GOMs No. 218 Revenue dated 17-3-1988 known as Administration of Math Rules, 1987 (for short "Math Rules"). Proviso to clause (v) of sub-rule (1) of Rule 3 and proviso to clause (v) of sub-rule (2) of Rule 3 by way of amendment have been placed before us with an affidavit of Shri N. Narasimha Rao, Additional Commissioner, Endowment Department who was duly authorised to swear the affidavit in that behalf.*

31. *The above provisos intend to operate thus:*

Proviso under clause (v) of sub-rule (1) of Rule 3:

> *"Provided that the Commissioner shall consult and obtain the opinion of eminent persons in the field of religion and philosophy and Sampradayam to which the math belongs to satisfy himself that the nominee possesses the prescribed qualification."*

Proviso under clause (v) of sub-rule (2) of Rule 3:

> *"Provided that it shall not be competent for the Commissioner to refuse recognition of the nomination or permission to succeed without giving an opportunity of being heard to the mathadhipathi and the nominee or the successor as the case may be."*

32. *It would thus be seen that the Commissioner shall consult and obtain the opinion of eminent persons in the field of religion, philosophy and Sampradayam to which the math belongs to satisfy himself that the nominee possessed the prescribed qualifications under sub-section (2) of Section 53 and is not disqualified under Section 51(2) and would take a decision before granting recognition. In case he would choose to refuse recognition to the nomination, the Commissioner should give an opportunity of being heard to the Mahant and the nominee giving the grounds on which he proposes to refuse recognition and consider the same. It would be obvious that he should record reasons for refusal. In other words, what is required is that the Commissioner should test the nomination but not interpose with the nomination, nor interdict a duly qualified person as mathadhipathi. The role of the Commissioner in that behalf, therefore, is only in the nature of an intervener in the nomination duly testing whether the nominated person is a fit person to hold the office of Mahant and to manage and administer the math according to the tenets, Sampradayams, usage, customs and philosophy of the math and the properties attached to it.*

33. *The power of the Commissioner to frame a scheme under Section 55 of the Act is not absolute but is conditioned upon reasonable belief on the basis of the report submitted by the Deputy Commissioner or the Assistant Commissioner having jurisdiction over the math or suo motu; but in later event he should have material on record for entertaining a reasonable belief that the affairs of the math and its properties are being mismanaged or that funds are misappropriated or that the mathadhipathi grossly neglected in performing his duties. Prior enquiry in that behalf is duly made in accordance with the Rules prescribed thereunder. The enquiry would include an opportunity to the mathadhipathi to satisfy the Commissioner that the report or the material, the foundation for the formation of adverse opinion against the Mahant, is not well-founded or does not exist. After holding such an enquiry and recording the finding in that behalf as is implied in sub-section (1), the Commissioner is required to frame a*

scheme to administer and manage the properties attached to the math or specific endowment. In the scheme so framed, he is required (a) to appoint an executive officer for day-to-day administration of the properties; and (b) to constitute a committee consisting of not more than five persons for the purpose of assisting him in the administration of the math as a whole or any part of the administration of all the endowments of such math or specific endowments. Under the proviso to sub-section (2)(b) "the members of such committee so chosen shall be among the persons having interest in such math or endowment". ***In other words, the members of the committee will be persons who are genuinely interested in the proper management of the math, management of the properties and useful utilisation of the funds for the purpose for which the math or specific endowment is created. The paramount consideration is only proper management of the math and utilisation of the funds for the purpose of the math as per its customs, usage, Sampradayams and philosophy and not the self-benefit of persons intervening in the management of the math.***

34. *It would appear that the executive officer appointed should be in charge of day-to-day management of the math or the specific endowment attached to the math and the committee constituted would be of supervisory mechanism as overall in-charge of the math. Until the scheme is so framed, by operation of sub-section (3), the Commissioner may appoint a fit person to manage the properties of the math and its endowments. After consulting the mathadhipathi and other persons having interest and after making such enquiry in the prescribed manner, by operation of sub-section (4), the Commissioner may, by order, modify or cancel the scheme framed under sub-section (1). Every order made either under sub-section (1) or sub-section (4) shall be published in the prescribed manner. Any person aggrieved by the order of the Commissioner passed under sub-section (1) or (4), may, within 60 days from the date of publication of the order, prefer an appeal to the court. The order of the court by implication would be final.*

35. *It is true that it is the civil court, under Section 92 of the Civil Procedure Code, which frames the scheme. Instead, the legislature has entrusted that power to the Commissioner. The legislature in its wisdom felt it expedient to invest the said power with necessary limitations in the Commissioner with a right of appeal to an established court defined in Section 2(8) of the Act. This Court in catena of cases had upheld the schemes framed by the civil court. The change in the Act is only substitution of the Commissioner to (sic for) the court, subject to the limitations prescribed before and after making the scheme. Thus a scheme framed by the Commissioner is subject to right of appeal to the established court which would duly take care and correct any misapplication or non-application of the settled rules or principles in framing the scheme and could remedy it in an appeal. The duration of this scheme thus framed may also be specified either in the original scheme or one upheld with modification, if any, in appeal.*

36. *The object of Section 55 appears to be to remedy mismanagement of the math or misutilisation of the funds of the math or neglect in its management. The scheme envisages modification or its cancellation thereof, which would indicate that the scheme is of a temporary nature and duration till the evil, which was recorded by the Commissioner after due enquiry, is remedied or a fit person is nominated as mathadhipathi and is recognised by the Commissioner. The scheme is required to be cancelled as soon as the nominated mathadhipathi assumes office and starts*

administering the math and manages the properties belonging to, endowed or attached to the math or specific endowment.

37. The next question is whether Section 50 of the Act interferes with religion and is, therefore, violative of Articles 25 and 26 of the Constitution? It is seen that the right to administer the math according to the tenets, philosophy, customs, usages and Sampradayam would include the right to manage the properties and utilisation of the funds thereof for their due fulfilment. Section 50 divides Padakanukas into two parts, i.e., gifts personal to Mahant and to the math as such but given to him as being spiritual head. *Sub-section (1) provides that the mathadhipathi shall maintain regular accounts of receipts of Padakanukas, viz., gifts offered as personal to the Mahant or other personal gifts of properties made to him as head of the math. In other words, he is required to account for the receipts of personal gifts. As head of the math he is entitled to utilise the funds at his discretion for any purposes connected with the objects of the math and propagation of Hindu Dharma. The latter part indicates that after he renders accounts of their receipt, he is free to utilise and spend the gifts so received by him for any legitimate purpose which is connected with the objects of the math and for propagation of Hindu Dharma. Since the latter part is integratedly connected with his status as Mahant, it does not interpose or control his power to exercise his discretion. The obligation fastened on him is only to maintain regular accounts of receipts of personal gifts or other personal gifts of properties made personally to him as head of the math. As rightly conceded by Shri Parasaran, any such Padakanukas or other personal gifts which remain undisposed of during the life of the mathadhipathi shall devolve on the math as its properties by operation of sub-section (2) since the mathadhipathi is an ascetic, a sanyasi and it will devolve only on the head of the math as math property. The explanation makes the meaning more clear and unambiguous. Any gift of property or of money made to mathadhipathi shall, unless it is specified by the donor as Padakanukas or personal gift, be presumed to be gift intended for the benefit of the math.*

41. *The Mahant being bound to discharge the duties of a trustee and being answerable as such, a provision requiring him to maintain accounts of such Padakanukas would conduce to the effective exercise of control over him and imposing an obligation to spend the same in accordance with the customs and usages of the institution, is not inconsistent with his position as a Mahant, even though he has beneficial interest therein.*

42. *If the Mahant resorts to devices to convert the income of the institution or of the funds or properties thereof into personal gifts made to him, that would be improper conduct for which he would be liable to be removed in a suit under Section 52. The legislature by enacting that section did not attempt to re-enact Section 55 to bring the obligation of the Mahant, in a different garb. The same ratio applies to the present case.*

43. *Sub-section (3) provides that in the case of gifts of properties made to the mathadhipathi as personal gifts but gifts intended for the benefit of the math, he is enjoined to maintain accounts of all the receipts and disbursement of such gifts and to cause such accounts to be produced before the Commissioner or anyone authorised by him in that behalf whenever so required. Right to manage and administer the math includes right to use any gifts of money made to the math as gift intended for the benefit of the math. In law, he is enjoined as a trustee to account for the properties in his possession and is responsible for due management which is a secular act. It is seen*

that the report of Justice Challa Kondaiah Commission had collected material that some Mahants had resorted to corrupt practices by diverting the funds of the math as Padakanukas and personal gifts and utilised the same to lead immoral or luxurious life or siphoning the income to the members of natural family to which he belonged or on wine and women. The legislature on consideration thereof felt it expedient to remedy the evil and imposed a duty, which as trustee is enjoined on him. Fastening an obligation on mathadhipathi to maintain accounts of the receipts of Padakanukas as personal gifts made to the mathadhipathi and to see that the funds are properly utilised for the purposes of the math in accordance with its objects and propagation of Hindu Dharma does not amount to interference with religion. ***Equally, in respect of gifts of properties or money made to the mathadhipathi as gifts intended for the benefit of the math, he is bound under law as trustee, even without amendment to the Act, to render accounts for the receipts and disbursement and cause the accounts in that behalf produced from time to time before the Commissioner or any authorised person in that behalf, whenever so required is part of administration of properties of the math. Questions relating to administration of properties relating to math or specific endowment are not matters of religion under Article 26(b). They are secular activities though connected with religion enjoined on the Mahant.***

44. *Section 50 of the Act which is corresponding provision in the predecessor Act of 1966 requires the mathadhipathi to maintain accounts in the manner prescribed therein which is a secular activity on the part of a mathadhipathi. The intervention of the legislature in that behalf is in the interest of the math itself. He is, therefore, enjoined to maintain accounts in the regular course of the administration and maintenance of the math.* ***Operation of Section 50 is, therefore, a permissible statutory intervention under Articles 25(2)(a) and 26(b) and (d) of the Constitution****."*

73. This Hon'ble Court in ***A.S. Narayana Deekshitulu Vs. State of A.P.,*** **(1996) 9 SCC 548** [J. K. Ramaswamy, J. B.L. Hansaria **2 Judges**] [Vol. V.3 @ Pgs. 788 – 884], in highly eloquent terms sought to define the scope of what constitutes 'religion' and what it must mean in a modern progressive society. [para 33 to 87]. The Hon'ble Court critically noted that a careful balance is to be struck between the essential and integral part of religion as opposed to the non-essential or integral parts subject to State regulation or control. The Hon'ble Court further held that the concept of essentiality is not in itself a determinative factor and merely one of the circumstances to be considered. The Hon'ble Court further reiterated the integral matters may not always be decided by the community itself thereby providing for a role of the Court to conduct a judicial enquiry in such matters. Relying on ***Seshammal*** [supra] the Court held that hereditary succession is not an exorable rule and that the service of an archaka is a secular part. The following are the relevant passages of the said case:

73. *In "Chief Justice Gajendragadkar" — his life, ideas, papers and addresses — by V.D. Mahajan, in Chapter on "Secularism, its impact on law and life in India" it is stated that personal law is a secular institution and has to be based on rational and secular considerations. This position is consistent with the real, ancient, pristine view of Hindu law. Dharma, according to the old concept, is a purely secular institution. Dharma is that which sustains the society. Dharma is that by which people at large are held*

together. At p. 234 the author quoted Dr Gajendragadkar stating that though the Constitution guarantees freedom to all religions, it recognises that in certain aspects, and under certain conditions, religious practices may impinge upon socio-economic problems and the Constitution has made it clear that wherever socio-economic problems or relations are involved, the State will have a right to interfere in the interests of public good. Articles 25 and 26 of the Constitution provide for the right to freedom of religion and though the Indian Constitution is secular and does not interfere with religious freedom, it does not allow religion to impinge adversely on the secular rights of citizens or the power of the State to regulate socio-economic relations.

Restriction of scope of essential practices by elevating the concept of religion to the concept of *Dharma*

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90. *The religious freedom guaranteed by Articles 25 and 26, therefore, is intended to be a guide to a community life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order.* ***Articles 25 and 26, therefore, strike a balance between the rigidity of right to religious belief and faith and their intrinsic restrictions in matters of religion, religious beliefs and religious practices and guaranteed freedom of conscience to commune with his Cosmos, Creator and realise his spiritual self.*** *Sometimes, practices religious or secular, are inextricably mixed up. This is more particularly so in regard to Hindu religion because under the provisions of the ancient Smriti, human actions from birth to death and most of the individual actions from day-to-day are regarded as religious in character in one facet or the other. They sometimes claim the religious system or sanctuary and seek the cloak of constitutional protection guaranteed by Articles 25 and 26. One hinges upon constitutional religious model and another diametrically more on traditional point of view. The legitimacy of the true categories is required to be adjudged strictly within the parameters of the right of the individual and the legitimacy of the State for social progress, well-being and reforms, social intensification and national unity. Law is a social engineering and an instrument of social change evolved by a gradual and continuous process. As Benjamin Cardozo has put it in his Judicial Process, life is not a logic but experience. History and customs, utility and the accepted standards of right conduct are the forms which singly or in combination shall be the progress of law. Which of these forces shall dominate in any case depends largely upon the comparative importance or value of the social interest that will be, thereby, impaired. There shall be symmetrical development with history or custom when history or custom has been the motive force or the chief one in giving shape to the existing rules and with logic or philosophy when the motive power has been theirs. One must get the knowledge just as the legislature gets it from experience and study and reflection in proof from life itself. All secular activities which may be associated with religion but which do not relate or constitute an essential part of it may be amenable to State regulations but what constitutes the essential part of religion may be ascertained primarily from the doctrines of that religion itself according to its tenets, historical background and change in evolved process etc.* ***The concept of essentiality is not itself a determinative factor. It is one of the circumstances to be considered in adjudging whether the particular matters of religion or religious practices or belief are an integral part of the religion. It must be decided whether the practices or matters are considered integral by the community itself. Though not conclusive, this is also one of the facets to be noticed. The practice in question is religious in character and whether it could be regarded as an integral and essential part of the religion and if the court finds upon evidence adduced before it that it is an integral or essential part of the***

The nature and construction of a Temple

religion, Article 25 accords protection to it. Though the performance of certain duties is part of religion and the person performing the duties is also part of the religion or religious faith or matters of religion, it is required to be carefully examined and considered to decide whether it is a matter of religion or a secular management by the State. Whether the traditional practices are matters of religion or integral and essential part of the religion and religious practice protected by Articles 25 and 26 is the question. *Whether hereditary archaka is an essential and integral part of the Hindu religion is the crucial question?*

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100. *The construction of the temple, the nature of the sculpture and the specific way of worshipping the Deity are taught in the respective Agamas, namely, Vaishnava, Saiva, Shakti, Skanda, Saura (Surya) and Ganpatya. The Vaishnava Agamas are divided into pancharatra and Vaikhanasa, whereas Saiva Agamas are seen as non-dualistic, dualistic-cum-non-dualistic and dualistic together. Each sect follows its own Agamic text in constructing the temples, chiselling and consecrating the Idol, the images, as well as performing worship. It was believed that the priest knew the texts, receiving uninterruptedly from their predecessors in the family or from the Guru. This succession either through family or through the Guru is called parampara. It has now taken shape in Agama schools established by the State wherein Agamic education is taught. Purohit, thus educated, becomes an accomplished priest fit to perform rituals according to a particular Agama and Sampradaya. The dispensation of these rituals in accordance with the Agamic Shastras is meant for enlightened ones and not as a common rule. The entire Indian history of art owes its development of Agamic texts which elaborate rules of temple architecture, image-making, ritualistic celebrations, music, paintings and dance etc.*

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115. *Temples were constructed by private owners or kings. In the respective Agamas of either Vaishnava or Shaiva form of worship, priests appointed are from amongst the sects who have implicit faith, devotion, dedication of a man of good character, integrity and piety. He must also be an accomplished man to perform ritual in ceremonial form of worship steeped with profound knowledge in Agama rules, proficiency in recitation and performance of rituals accurately and systematically with total identification and personification.* ***The right to work as priest is traceable to an appointment for life. The priesthood was systematised among the families of priests having faith and devotion initiated with Diksha and learning in the respective Agamas. They succeeded from generation to generation subject to good conduct and were terminable due to acts of misconduct. Hereditary succession is not an exorable rule. Due to non-availability of persons from the family eligible to be priest, outsiders would also become eligible. Normally, succession to the priesthood up to the lifetime of the priest is open to his successors. In some instances, priests from same Gotra were inducted and in their absence, even the disciples of the Guru and others were initiated.*** *The property dedicated to the temple or income derived from the offerings of devotees was enjoyed by the priest for himself and his family maintenance and the temple. The object, thereby, appears to be to keep the priest above want and free from family worries to enable him to dedicate himself totally to perform daily rituals to the Deity. Generally, the person acquainted with same Agama rules and Sampradaya, practising and professing same religious faith and hailing from the same sect remained in the same temple or similar temples elsewhere.*

Hereditary succession is not an essential part

The reiteration of the Seshammal position in a different manner

116. <u>The protection of Articles 25 and 26 of the Constitution is not limited to matters of doctrine. They extend also to acts done in furtherance of religion and, therefore, they contain a guarantee for rituals and observances, ceremonies and modes of worships which are integral parts of the religion</u>. *In Seshammal case [(1972) 2 SCC 11 : (1972) 3 SCR 815] on which great reliance was placed and stress was laid by the counsel on either side, this Court while reiterating the importance of performing rituals in temples for the idol to sustain the faith of the people, insisted upon the need for performance of elaborate ritual ceremonies accompanied by chanting of mantras appropriate to the Deity. This Court also recognised the place of an archaka and had held that the priest would occupy place of importance in the performance of ceremonial rituals by a qualified archaka who would observe daily discipline imposed upon him by the Agamas according to tradition, usage and customs obtained in the temple. Shri P.P. Rao, learned Senior Counsel also does not dispute it.*

118. *There is a distinction between religious service and the person who performs the service; performance of the religious service according to the tenets, Agamas, customs and usages prevalent in the temple etc. is an integral part of the religious faith and belief and to that extent the legislature cannot intervene to regulate it. But the service of the priest (archaka) is a secular part. As seen earlier, the right to perform religious service has appointment by the owner of the temple or king as its source. The legislature is competent to enact the law taking away the hereditary right to succeed to an office in the temple and equally to the office of the priest (archaka). The hereditary right as such is not an integral part of the religious practice but a source to secure the services of a priest independent of it.* ***<u>Though performance of the ritual ceremonies is an integral part of the religion, the person who performs it or associates himself with performance of ritual ceremonies, is not.</u>*** *Therefore, when the hereditary right to perform service in the temple is terminable by an owner for bad conduct, its abolition by sovereign legislature is equally valid and legal. Regulation of his service conditions is sequenced to the abolition of hereditary right of succession to the office of an archaka. Though an archaka integrally associates himself with the performance of ceremonial rituals and daily pooja to the Deity, he is a holder of the office of priest (archaka) in the temple. So are the other office-holders or employees of the temple. In Seshammal case [(1972) 2 SCC 11 : (1972) 3 SCR 815] this Court had upheld the legislative competence to take away the hereditary right as such.*

119. *The real question, therefore, is whether appointment of an archaka is governed by the usage and whether hereditary succession is a religious usage? If it is religious usage, it would fall squarely under Article 25(1)(b) of the Constitution. That question was posed in Seshammal case [(1972) 2 SCC 11 : (1972) 3 SCR 815] wherein this Court considered and held that though archaka is an accomplished person, well-versed in the Agamas and rituals necessary to be performed in a temple, he does not have the status of a head of the temple. He owes his appointment to Dharmakarta or Shebait. He is a servant of the temple. In K. Seshadri Aiyangar v. Ranga Bhattar [ILR 35 Mad 631 : 21 MLJ 580] the Madras High Court had held that status of hereditary archaka of a temple is that of a servant, subject to the disciplinary power of the trustee who would enquire into his conduct as servant and would be entitled to take disciplinary action against him for misconduct. As a servant, archaka is subject to the discipline and control of the trustee. The ratio therein was applied and upheld by this Court and it was held that under Section 56 of the Madras Act archaka is the holder of an office attached to a religious institution and he receives emoluments and perks according to*

the procedure therein. This Court had further held that the act of his appointment is essentially a secular act. He owes his appointment to a secular authority. Any lay founder of a temple may appoint an archaka. The Shebait or Manager of temple exercises essentially a secular function in choosing and appointing the archaka. ***Continuance of an archaka by succession to the office from generation to generation does not make any difference to the principle of appointment. No such hereditary archaka can claim any right to the office. Though after appointment the archaka performs worship, it is no ground to hold that the appointment is either religious practice or a matter of religion. It would thus be clear that though archaka is normally a well-versed and accomplished person in the Agamas and rituals necessary to be performed in a temple, he is the holder of an office in the temple. He is subject to the disciplinary power of a trustee or an appropriate authority prescribed in the regulations or rules or the Act. He owes his existence to an order of appointment — be it in writing or otherwise. He is subject to the discipline on a par with other members of the establishment. Though after appointment, as an integral part of the daily rituals, he performs worship in accordance with the Agama Shastras, it is no ground to hold that his appointment is either a religious practice or a matter of religion. It is not an essential part of religion or matter of religion or religious practice. Therefore, abolition of the hereditary right to appointment under Section 34 is not violative of either Article 25(1) or Article 26(b) of the Constitution."***

74. In ***Bhuri Nath v. State of J&K,*** **(1997) 2 SCC 745 [2 Judges]** [Vol. V.9 @ Pgs. 738 – 778], the Hon'ble Court was dealing with the validity of J&K Mata Vaishno Devi Shrine Act and the abolition of the right of the baridars to receive share in the offerings made by the pilgrims. The Hon'ble Court held that the rights under Article 25 and 26 are not absolute or unfettered especially in light of the enabling provision under Article 25[2] providing for restriction or regulation of economic, financial, political or secular activity. The Hon'ble Court also observed that the question as to what constitutes essential part of a religion is essentially a question of fact to be considered on the basis of material and not merely based on claims relying upon supernaturalism on superstitious beliefs. It was held as under :

*"**4.** The preamble of the Act manifests that the Act came to be passed "to provide for the better management, administration and governance of Shri Mata Vaishno Devi Shrine and its endowments including the land and buildings attached, or appurtenant to the Shrine, beginning from Katra up to the holy cave and adjoining hillocks currently under the management of Dharmarth Trust". Section 2 gives to the Act overriding effect and envisages that the Act shall have effect, notwithstanding anything to the contrary contained "in any law or in any scheme of management, decree, custom, usage or instrument". The Act consists of, in all, 25 sections. Section 3(a) defines the "Board" to mean "the Shri Mata Vaishno Devi Shrine Board constituted under this Act". Section 3(b) defines "endowment" to mean all property, moveable or immovable, including the idols installed therein. The important facet of this definition of "endowment" is that the sum total of properties belonging to, given or endowed for the maintenance, improvement, additions to or worship in the Shrine or for the purpose of any service or charity connected therewith including the idols installed therein, the premises of the Shrine, the lands and buildings attached or appurtenant thereto, beginning from Katra up to the holy cave and the adjoining hillocks, are the endowment of Mata Shri Vaishno*

Deviji. They all, as on the date of the Act, were endowment properties under the management of the Dharmarth Trust, or property belonging to Baridar or Baridars' Association within the area specified in the preamble of the Act. Section 3(c) defines "Shrine Fund" to mean the endowment and includes all sums received by or on behalf of the Shrine or for the time being held for the benefit of the Shrine; it being an inclusive definition and details of the endowments described therein being not material, the same are omitted. Section 3(d) is relevant which defines the "Shrine" to mean the Shrine of Shri Mata Vaishno Devi and includes the Shrine, holy cave and other temples within the premises specified in the preamble of the Act. It would, thus, be clear that the Act was made to provide better management, administration and governance of Shri Mata Vaishno Devi Shrine, its endowments, all temples and sum total of the properties, moveable and immovable attached or appurtenant to the Shrine within the area specified in the preamble of the Act, notwithstanding the fact that there exists any law, scheme of management, decree, custom, usage or instrument to the contrary. The object of the Act, therefore, clearly is proper, efficient and effective management, administration and governance of the Shrine, its endowments and properties. All this is aimed to cater facilities, sources and comfort to the pilgrims who visit the Shrine.

5. *Section 4 vests the ownership of the Shrine Fund in the Board envisaging that "the ownership of the Shrine Fund shall, from the commencement of this Act vest in the Board and the Board shall be entitled to its possession, administration and use for the purposes of this Act". The Board gets constituted under Section 5. Sub-section (1) adumbrates that the administration, management and governance of Shri Mata Vaishno Devi Shrine and the Shrine Fund shall vest in the Board comprising a Chairman and not more than ten members. The composition thereof is elaborated with the mandatory language, viz., "shall be". Under clause (a) of sub-section (1) thereof, the Governor of the State of Jammu and Kashmir, and if the Governor be not a Hindu, then an eminent person professing Hindu religion and qualified to be a member to be nominated by the Governor, shall be the ex-officio Chairman of the Board. Clause (b) provides that a Governor shall nominate nine members in the manner indicated therein, viz., (i) two persons who, in the opinion of the Governor, have distinguished themselves in the service of Hindu religion or culture; (ii) two women, who in the opinion of the Governor, have distinguished themselves in the service of Hindu religion, culture or social work, especially in regard to advancement of women; (iii) three persons, out of persons who have distinguished themselves in administration, legal affairs or financial matters; and (iv) two eminent Hindus of the State of Jammu and Kashmir. Under the proviso, for a period not exceeding three months from the date the Act came into force, the Governor shall "act as and exercise all the powers of the Board under this Act". Sub-section (2) of Section 5 declares that a person shall not be eligible for being nominated as a member of the Board, if he suffers or incurs any of the disqualifications specified in Section 8.*

6. *Section 6 declares that the Board shall be a body corporate and shall have perpetual succession and a common seal. It is to sue or be sued in the name of the Statutory Board. Section 7 prescribes term of office of the members for a period of three years from the date of nomination made under Section 5. Disqualifications for membership of the Board are enumerated in Section 8 which envisages that a person shall be disqualified for being nominated as a member of the Board for any of the disqualifications mentioned in clauses (a) to (i). Clause (a) is of importance and provides that if "such person is not a Hindu" he becomes disqualified to be appointed as a member. Clause (b) provides that unsoundness of mind declared by a competent*

court is a disqualification. Under clauses (c) to (i) are enumerated various disqualifications, the details of which are not material for the purpose of this case. Section 9 gives power to the Governor for dissolution and supersession of the Board. Sub-section (1) says that "if in the opinion of the Governor, the Board is not competent to perform or persistently makes default in performing the duties imposed on it under this Act, or exceeds or abuses its powers, the Governor may, after due enquiry and after giving the Board reasonable opportunity of being heard, by order, dissolve or supersede the Board and reconstitute another Board in accordance with this Act". Thereafter, by operation of Section 9(2), the Governor "shall assume all the powers and perform all the functions and exercise all the powers of the Board for a period not exceeding three months or until the constitution of another Board whichever is earlier". Filling up of vacancies is provided for under Section 10; the details thereof are not material for the present purpose. Under Section 11, any member may resign his office by giving notice in writing to the Chief Executive Officer of the Board and his office becomes vacant from the date of acceptance of such resignation. Section 12 speaks of "removal of a member" by the Governor. It reads as under:

> *"12. Removal of a member.—The Governor may, for good and sufficient reason, remove any member after giving him an opportunity of showing cause against such removal and after considering the explanation offered therefor".*

9. Section 18 prescribes duties of the Board. Section 19 which is material for the purpose of this case, extinguishes the rights of Baridars. Sub-section (1) thereof reads as under:

> ***"(1) All rights of Baridars shall stand extinguished from the date of commencement of this Act:***
>
> ***Provided that the Governor may appoint a Tribunal which shall give personal hearing to the Baridars and representatives of the Board, shall recommend compensation to be paid by the Board in lieu of extinction of their rights. While making its recommendation to the Board, the Tribunal shall have due regard to the income which the Baridar had been deriving as a Baridar. The Board shall examine the recommendations forwarded to it by the Tribunal and take such decision as it may deem appropriate. The decision of the Board should be final:***
>
> ***Provided further that where the Baridar surrenders his right to compensation and offers himself for employment to the Board, the Board shall cause his suitability for such employment to be adjudged and may offer him employment in case he is found suitable by the Selection Committee to be appointed for the purpose subject to the Baridar giving an undertaking to the Board to abide by the administration and disciplinary control of the Board in accordance with bye-laws framed by the Board."***

11. *By order dated 16-1-1995, this Court directed the Board to frame a scheme for rehabilitation of all the persons engaged in the performance of Pooja at Shri Mata Vaishno Devi Shrine and other temples to be displaced by the implementation of the Act. When the matter had come up on 20-3-1995, Shri D.D. Thakur, learned Senior Counsel appearing for Baridars, stated that Baridars do not want rehabilitation. Instead they prefer to receive compensation to be determined under Section 20. He pointed out the absence of guidelines for determination of the compensation by the Tribunal to be appointed under the proviso to Section 20 of the Act. Accordingly, we ordered that the issue be left to the Governor to make appropriate guidelines to determine the compensation. Pursuant thereto, guidelines framed by the Governor were published in the State Gazette and placed on record on 8-5-1995. By order dated 21-8-1995, the controversy was limited to a question, as suggested by Shri Thakur, thus: "whether Mata*

Vaishno Devi Management Board is a controlled corporation?" If the finding was to go in favour of the appellants, they would be entitled to compensation for deprivation of their right to receive offerings made by the pilgrims to Shri Mata Vaishno Deviji. The counsel were directed to file the written arguments. Accordingly, written arguments were filed by the counsel on both sides.

***26.** The next question is whether the Board is a controlled Corporation. The thrust which Shri D.D. Thakur forcefully sought to bring home is that the Governor, be it in exercise of his executive power in the cabinet system of Government devised under the Constitution or in his official capacity as Governor, draws his power, which flows from the statute, as the repository of the State executive. He has control over the nomination of the members to the Board, supersession, dissolution and reconstitution of the Board as well as administration, management and governance of Shri Mata Vaishno Devi Shrine, Shrine Fund and the sum total of all the properties. He performs the functions with the assistance of the Chief Executive Officer of the rank not below the District Magistrate and of the Chief Accounts Officer of the rank not below Deputy Director of Accounts. Government bureaucrats on deputation and all officers of the Board are under the control and supervision of the Chief Executive Officer. Therefore, it is a controlled Corporation. Section 19 of the Act, while extinguishing all rights of the Baridars from the date of the commencement of the Act, does not provide for compensation in a specified sum nor it lays any principles to determine compensation. Therefore, the Act is void offending their fundamental rights guaranteed by Article 19(1)(f) and Article 31(2) of the Constitution. Though, prima facie, the argument is alluring but on deeper probe, we find it difficult to give acceptance to the same. The presumption in law is that an Act is valid and the legislature does not intend to enact a law which is ultra vires the Constitution. The burden to prove contra is on the appellants to establish the contrary. **The provisions of the Act are required to be examined carefully to find whether it is purported to have that effect. Section 19 in this behalf is relevant**. It is already seen that "all rights of Baridars shall stand extinguished from the date of the commencement of the Act" by operation of sub-section (1) of Section 19 of the Act. It is an admitted case of the appellants themselves that they perform Pooja and would appropriate part of the offerings. Their right to perform Pooja is only customary right coming from generations. Section 2 of the Act gives overriding effect to any custom, usage or instrument or any law, decree or scheme of management, notwithstanding anything contained contra to the Act etc. It declares that the Act shall have overriding effect thereon. In A.S. Narayana Deekshitulu v. State of A.P. [(1996) 9 SCC 548] (SCC at p. 604) Section 144 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 abolished the right of the appellants to receive offerings with the abolition of the hereditary right of Archaka service. The question arose whether it offended the religion or protection of Articles 25 and 26. It was held that the word "religion" used in Articles 25 and 26 of the Constitution is personal to the person having faith and belief in the religion. The religion is that which binds a man with his Cosmos, his Creator or super force. Essentially, religion is a matter of personal faith and belief or personal relations of an individual with what he regards as Cosmos, his Maker or his Creator which, he believes, regulates the existence of insentient beings and the forces of the universe. Religion is not necessarily theistic. A religion undoubtedly has its basis in a system of beliefs and doctrine which are regarded by those who profess religion to be conducive to their spiritual well-being. Right to religion guaranteed under Article 25 or 26 is not an absolute or unfettered right but is subject to legislation by the State limiting or regulating any activity — economic, financial, political or secular which are associated with the religious belief, faith, practice or custom. They*

are subject to reform as social welfare by appropriate legislation by the State. Though religious practices and performances of acts in pursuance of religious belief are, as much as, a part of religion, as faith or belief in a particular doctrine, that by itself is not conclusive or decisive. What are essential parts of religion or religious belief or matters of religion and religious practice is essentially a question of fact to be considered in the context in which the question has arisen and the evidence — factual or legislative or historic — presented in that context is required to be examined and a decision reached. In secularising the matters of religion which are not essentially and integrally parts of religion, secularism, therefore, consciously denounces all forms of supernaturalism or superstitious beliefs or actions and acts which are not essentially or integrally matters of religion or religious belief or faith or religious practice. Non-religious or anti-religious practices are antithesis to secularism which seeks to contribute in some degree to the process of secularisation of the matters of religion or religious practices. A balance, therefore, has to be struck between the rigidity of right to religious belief and faith and their intrinsic restrictions in matters of religion, religious beliefs or religious practices guaranteed under the Constitution. The Andhra Pradesh Act impugned therein, was held to regulate administration and maintenance of charitable and Hindu religious institutions and endowments in their secular administration. It laid emphasis on preserving Hindu Dharma and performance of religious worship ceremonies and Pooja in religious institutions according to their prevailing Sampradayams and Agamas. There is a distinction between religious service and the person who performs the service; performance of the religious service according to the tenets, Agamas, customs and usages prevalent in the temple etc. is an integral part of the religious faith and belief and to that extent the legislature cannot intervene to regulate. But the service of the priest (Archaka) is a secular part. ***The hereditary right as such is not an integral part of the religious practice but a source to secure the services of a priest independent of it. Though performance of the ritual ceremonies is an integral part of the religion, the person who performs it or associates himself with performance of ritual ceremonies, is not. Therefore, when the hereditary right to perform service in the temple can be terminated or abolished by sovereign legislature, it can equally regulate the service conditions sequel to the abolition of the hereditary right of succession in the office of an Archaka. Though an Archaka integrally associates himself with the performance of ceremonial rituals and daily pooja to the Deity, he is the holder of an office of priest in the temple. He is subject to the discipline on a par with other members of the establishment. Abolition of emoluments attached to the office of the Archaka, therefore, cannot be said to be invalid. The customs or usages in that behalf were held not an integral part of the religion. It was, therefore, held that the legislature has power to regulate the appointment of the Archaka, emoluments and abolition of customary share in the offerings to the Deity. The same ratio applies to the facts in this case****.*

27. *In a private litigation between Baridar holders, this Court in Badri Nath case [(1979) 3 SCC 71 : AIR 1979 SC 1314] had held that though the right to receive a share in the offerings was subject to performance of those duties, none of them was in nature priestly or required a personal qualification. All of them were of non-religious or secular in character which could be performed by the Baridar's agents or servants incurring expense on his account. When the right to receive the offerings made at a temple is independent of an obligation to render services involving qualification of personal nature such a right is heritable as well as alienable.* ***The right of the Baridars cannot be equated with the right and duties of a shebait. The Baridars are not managers of the Shrine in the sense that a shebait is in relation to a temple in his***

charge. The right to a share in the offerings being a right coupled with duties other than those involving personal qualification and being heritable property, it will descend in accordance with the dictates of the Hindu Succession Act in supersession of all customs to the contrary in view of Section 4 of the Hindu Succession Act."

75. In ***Sri Adi Visheshwara of Kashi Vishawananth Temple and others Vs. State of U.P. and Others*, (1997) 4 SCC 606** [*Shri Adi Vishweshwara* Case] [J. K. Ramaswamy, J. K. Venkataswami, J. G.B. Pattanaik **– 2 judges**] [Vol. V.6 @ Pgs. 2003 – 2044] the Honble Supreme Court held that administration of properties belonging to a religious group or institution and the management of the same is not protected under Article 25 and 26. The Hon'ble Court concluded that the religious practice of Hindu form of worship of Lord Vishwanath is not restricted to any particular denomination or sect and, therefore, they are not entitled to protection under Article 26[b] and [d] in the matters of management, administration and governance of the temples. The following is the relevant passage of the said case:

"28. The religious freedom guaranteed by Articles 25 and 26, therefore, is intended to be a guide to a community life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order. Articles 25 and 26, therefore, strike a balance between the rigidity of right to religious belief and faith and their intrinsic restrictions in matters of religion, religious beliefs and religious practices and guaranteed freedom of conscience to commune with his Cosmos/Creator and realise his *spiritual self. Sometimes, practices religious or secular, are inextricably mixed up. This is more particularly so in regard to Hindu religion because under the provisions of the ancient Smriti, human actions from birth to death and most of the individual actions from day-to-day are regarded as religious in character in one facet or the other. They sometimes claim the religious system or sanctuary and seek the cloak of constitutional protection guaranteed by Articles 25 and 26. One hinges upon constitutional religious model and another diametrically more on traditional point of view. The legitimacy of the true categories is required to be adjudged strictly within the parameters of the right of the individual and the legitimacy of the State for social progress, well-being and reforms, social intensification and national unity. Law is a tool of social engineering and an instrument of social change evolved by a gradual and continuous process. As Benjamin Cardozo has put it in his Judicial Process, life is not logic but experience. History and customs, utility and the accepted standards of right conduct are the forms which singly or in combination all be the progress of law.* ***Which of these forces shall dominate in any case depends largely upon the comparative importance or value of the social interest that will be, thereby, impaired.*** *There shall be symmetrical development with history or custom when history or custom has been the motive force or the chief one in giving shape to the existing rules and with logic or philosophy when the motive power has been theirs. One must get the knowledge just as the legislature gets it from experience and study and reflection in proof from life itself.* ***All secular activities which may be associated with religion but which do not relate or constitute an essential part of it may be amenable to State regulations but what constitutes the essential part of religion may be ascertained primarily from the doctrines of that religion itself according to its tenets, historical background and change in evolved process etc.*** *The concept of essentiality is not itself a determinative*

factor. It is one of the circumstances to be considered in adjudging whether the particular matters of religion or religious practices or belief are an integral part of the religion. It must be decided whether the practices or matters are considered integral by the community itself. Though not conclusive, this is also one of the facets to be noticed. The practice in question is religious in character and whether it could be regarded as an integral and essential part of the religion and if the court finds upon evidence adduced before it that it is an integral or essential part of the religion, Article 25 accords protection to it. Though the performance of certain duties is part of religion and the person performing the duties is also part of the religion or religious faith or matters of religion, it is required to be carefully examined and considered to decide whether it is a matter of religion or a secular management by the State. Whether the traditional practices are matters of religion or integral and essential part of the religion and religious practice protected by Articles 25 and 26 is the question. And whether hereditary archaka is an essential and integral part of the Hindu religion is the crucial question.

31.** The protection of Articles 25 and 26 of the Constitution is not limited to matters of doctrine. They extend also to acts done in furtherance of religion and, therefore, they contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of the religion. In Seshammal case [Seshammal v. State of T.N., (1972) 2 SCC 11] on which great reliance was placed and stress was laid by the counsel on either side, this Court while reiterating the importance of performing rituals in temples for the idol to sustain the faith of the people, insisted upon the need for performance of elaborate ritual ceremonies accompanied by chanting of mantras appropriate to the deity. This Court also recognised the place of an archaka and had held that the priest would occupy place of importance in the performance of ceremonial rituals by a qualified archaka who would observe daily discipline imposed upon him by the Agamas according to tradition, usage and customs obtained in the temple. Shri P.P. Rao, learned Senior Counsel also does not dispute it. It was held that Articles 25 and 26 deal with and protect religious freedom. Religion as used in those articles requires restricted interpretation in etymological sense. Religion undoubtedly has its basis in a system of beliefs which are regarded by those who profess religion to be conducive to the future well-being. It is not merely a doctrine. It has outward expression in acts as well. **It is not every aspect of the religion that requires protection of Articles 25 and 26 nor has the Constitution provided that every religious activity would not be interfered with. Every mundane and human activity is not intended to be protected under the Constitution in the garb of religion. Articles 25 and 26 must be viewed with pragmatism**. By the very nature of things it would be extremely difficult, if not impossible, to define the expression "religion" or "matters of religion" or "religious beliefs or practice". Right to religion guaranteed by Articles 25 and 26 is not absolute or unfettered right to propagate religion which is subject to legislation by the State limiting or regulating every non-religious activity. The right to observe and practise rituals and right to manage in matters of religion are protected under these articles**. But right to manage the Temple or endowment is not integral to religion or religious practice or religion as such which is amenable to statutory control. These secular activities are subject to State regulation but the religion and religious practices which are an integral part of religion are protected. It is a well-settled law that administration, management and governance of the religious institution or endowment are secular activities and the State could regulate them by appropriate legislation. This Court upheld the A.P. Act which regulated the management of the religious institutions and endowments and abolition of hereditary rights and the right to receive offerings and plate collections attached to the duty.

Communities which do not fall under the strict definition of "denomination", cannot claim rights under Article 26(b) and 26(d).

33. *Thus, it could be seen that every Hindu whether a believer of Shaiva form of worship or of panchratna form of worship, has a right of entry into the Hindu Temple and worship the deity.* ***Therefore, the Hindu believers of Shaiva form of worship are not denominational worshippers.*** *They are part of the Hindu religious form of worship. The Act protects the right to perform worship, rituals or ceremonies in accordance with established customs and practices. Every Hindu has right to enter the Temple, touch the Linga of Lord Sri Vishwanath and himself perform the pooja. The State is required under the Act to protect the religious practices of the Hindu form of worship of Lord Vishwanath, be it in any form, in accordance with Hindu Shastras, the customs or usages obtained in the Temple.* ***It is not restricted to any particular denomination or sect. Believers of Shaiva form of worship are not a denominational sect or a section of Hindus but they are Hindus as such.*** *They are entitled to the protection under Articles 25 and 26 of the Constitution.* ***However, they are not entitled to the protection, in particular, of clauses (b) and (d) of Article 26 as a religious denomination in the matter of management, administration and governance of the temples under the Act. The Act, therefore, is not ultra vires Articles 25 and 26 of the Constitution****.*

34. *It is then contended that abolition of the right to manage the Temple as Mahant is offensive of their right to religious practice and management of the Temple. This controversy is no longer res integra. This Court in Pannalal Bansilal Pitti v. State of A.P. [(1996) 2 SCC 498] was to decide the validity of the provisions of the A.P. Act in the matter of abolishing the right of hereditary trustees and appointment of the Executive Officer and non-hereditary trustee. In Sri Sri Sri Lakshamana Yatendrulu v. State of A.P. [(1996) 8 SCC 705] this Court was to decide the constitutionality of Sections 50 to 55 of the said A.P. Act dealing with action against erring Mathadhipati, maintenance of accounts and removal of Mathadhipati for misconduct and filling up of the resultant vacancies. After elaborate consideration, the provisions were upheld as valid and constitutional. Diverse provisions of the A.P. Act, 1987 were upheld. We need not reiterate them once over and to avoid burdening the judgment, we adopt the reasons given therein and agree with the same. For the same reasons, the need to examine in detail aforequoted provisions is obviated. Accordingly, we hold that the contention that some of the persons have customary and hereditary rights as archakas and that the Act extinguishes their rights and so is violative of Articles 25 and 26(b) and (d) of the Constitution, is untenable and devoid of substance.*

40. The Government kept its control only on the secular side as the Temple is one of the important Hindu Temples in the State of U.P. and in Bharat. Properties and endowments vest in the deity, Lord Shri Vishwanath. The management of the Temple by mahant/panda/archaka is not their property. The Act has merely changed the management from pandas to the Board. Only the right of management in the pandas has been extinguished from the appointed day and placed in the Board for better and proper management. It is not vested in the State nor the State acquired it for itself. In other words, the affairs of Lord Shri Vishwanath Temple by pandas/mahant have become extinct and the Board has assumed the management. This entrustment of management cannot be said to constitute acquisition of the property or extinguishment of right to property. In the light of the above, there is need to give restrictive interpretation to the word "religious faith" and "religion" so as to allow the pandas to manage the Temple both on temporal part and deny them the secular part of the management of the Temple. The ratios laid in Pannalal case [(1996) 2 SCC 498]

, Lakshamana case [(1996) 8 SCC 705] and Narayana case [(1996) 9 SCC 548] do not apply to the Act in question."

- ❖ All these judgments are either per incuriam as it did not notice the ratio of larger bench decision or laid down the law not in conformity with Article 25 and 26 and are, therefore, required to be declared 'not a good law'.

All these judgments are either *per incuriam* as it did not notice the ratio of larger bench decisions or laid down the law not in conformity with Articles 25 and 26 and are therefore, required to be declared 'not a good law'.

Second Shri Jagannath Temple case

76. In the case of ***Sri Jagannath Temple Puri Management Committee and Another Vs. Chintamani Khuntia and Others*, (1997) 8 SCC 422 [*Shri Jagannath Temple* case]** [J. J.S. Verma, J. Suhas C. Sen and j. S.P. Kurdukar] [Vol. V.6 @ Pgs. 1977 – 2002] , the Hon'ble Supreme Court noted that the placing of hundies at different parts of the temple and the possibility of reducing the income of the Meakps would not result in the violation of Article 25 and 26. The Honble Court further held that if there is a financial or economic activity connected with religious activities, the State can make law to regulate the same. The Hon'ble Court further held that the management of the temple is a secular act and the control of the activity of various servants, the disciplinary powers over such servants, the manner of payment of remuneration to such servants cannot be struck down as violative of Article 25 and 26. The following is the relevant passage of the said case:

"29. *It is true that placing of the Hundis at different parts of the Temple has the possibility of reducing the income of the Mekaps, but simultaneously, their duties and responsibilities have also diminished. They do not have to keep guard over the Hundis nor do they have to collect and deposit the offerings made in the Hundis with the Temple authority. Collection of money also carries with it the responsibility for accounting for the money collected. All these onerous obligations now stand reduced. It is not the case of the Sevaks that they have been asked to work without any pay. Therefore, in our view, there cannot be any question of violation of any religious right guaranteed by Articles 25 and 26 of the Constitution.*

Placing of *hundis* is a secular act.

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32. *A further aspect of the case is that the Puri Jagannath Temple is a very ancient structure which needs to be maintained properly. One of the objects of creation of Shri Jagannath Temple Funds is to maintain the Temple and also to do various other charitable works including training of Sevaks and providing medical relief, water and sanitary arrangement for the worshippers and the pilgrims and constructing buildings for their accommodation. Money is needed for all these purposes. The Temple*

Committee had adopted certain measures like placing closed receptacles in place of Gadu and also Hundis to ensure proper collection of the offerings. The monies are to be used for charitable purposes. The Sevaks cannot be heard to complain that their property and also religious rights had been taken away in the process. The placing of the Hundis may restrict their activities and also reduce their share in the offerings but that does not amount to abridgement of any religious or property right of the Sevaks.

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35. *All these provisions go to show that the Sevaks are appointed by the Administrator and have to do the jobs assigned to them by the Administrator. The Administrator has the power to take disciplinary proceedings against them whenever necessary. The Administrator has also been empowered to prepare a schedule of the employees of the Temple and fix their salaries etc. these provisions again go to show that the Sevaks are essentially servants of the Temple. The status of the Sevaks cannot by any means be equated with that of a Mahant or a Shebait. The Sevaks do not have any interest in the properties of the Temple which they may have to guard. They have certain duties during the seva-puja but they are not allowed to touch the deities. They have to clean the throne keeping their feet at the edge of the throne. They have to collect whatever Veta and Pindika is thrown on the throne, standing on the ground stretching their hands as far as they can reach. They bring golden ornaments from the Bhandar Mekaps for use in the three Dhupas and give them to the puja pandas and after the puja they take back the ornaments and deposit the same in the Bhandar daily. They also bring the sandal paste from the storehouse and give the same to the three Pandas. After the ritual is over, they deposit the silver plate in the Bhandar. They also bring camphor for light and remain present at the time of closure of the doors and sleep near the doors. These duties performed by the Sevaks are connected with the seva-puja but the actual seva-puja is not done by the Sevaks. The collection of offerings including monies lying scattered inside the Temple and also on the throne of the deities have nothing to do with the seva-puja. These duties are performed after the seva-puja is completed.* ***The collection of monies and other offerings inside the Temple cannot be treated as a practice of religion by the Sevaks. They were simply discharging their duties assigned to them for remuneration****. **Every activity inside the Temple cannot be regarded as a religious practice. Moreover, sub-clause (2) of Article 25 of the Constitution has specifically reserved the right of the State for making any law "regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice". If there is any financial or economic activity connected with religious practice, the State can make law regulating such activities even though the activity may be associated with religious practice. In the instant case, we are of the view that the various duties assigned to the Sevaks are nothing but secular activities, whether associated with religious practice or not. Moreover, the State Legislature has, in any event, power to frame laws for regulating collection and utilisation of the offerings of monies made inside the Temple by the devotees.***

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49. *A review of all these judgments goes to show that the consistent view of this Court has been that although the State cannot interfere with freedom of a person to profess, practise and propagate his religion, the State, however, can control the secular matters connected with religion.* ***All the activities, in or connected with a temple are not religious activities. The management of a temple or maintenance of discipline and order inside the temple can be controlled by the State.*** *If any law is*

Restriction of the financial aspects and the reading of the same secular aspects related to religion.

passed for taking over the management of a temple it cannot be struck down as violative of Article 25 or Article 26 of the Constitution. ***The management of the temple is a secular act.*** *The temple authority may also control the activities of various servants of the temple. The disciplinary power over the servants of the temple, including the priests, may be given to the temple committee appointed by the State. The temple committee can decide the quantum and manner of payment of remuneration to the servants. Merely because a system of payment has been prevalent for a number of years, it is no ground for holding that such system must continue for all times. The payment of remuneration to the temple servants was not a religious act but was of purely secular nature."*

N. Adithyanan case

77. In the case of ***N. Adithyanan v. Travancore Devasom Board,*** **(2002) 8 SCC 106** [J. S. Rajendra Babu and J. Doraiswamy Raju- **2 Judges**] [Vol. V.4 @ Pgs. 96 – 116] , the Hon'ble Court observed that merely because as a matter of convention or tradition a Brahmin alone was conducting Pujas, would not mean that only a Brahmin would be entitled to become a priest in the absence of which there will be breach of Article 25 and 26. The following is the relevant passage of the said case:

"***16.*** *It is now well settled that Article 25 secures to every person, subject of course to public order, health and morality and other provisions of Part III, including Article 17 freedom to entertain and exhibit by outward acts as well as propagate and disseminate such religious belief according to his judgment and conscience for the edification of others. The right of the State to impose such restrictions as are desired or found necessary on grounds of public order, health and morality is inbuilt in Articles 25 and 26 itself. Article 25(2)(b) ensures the right of the State to make a law providing for social welfare and reform besides throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus and any such rights of the State or of the communities or classes of society were also considered to need due regulation in the process of harmonizing the various rights. The vision of the founding fathers of the Constitution to liberate the society from blind and ritualistic adherence to mere traditional superstitious beliefs sans reason or rational basis has found expression in the form of Article 17.* ***The legal position that the protection under Articles 25 and 26 extends a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion and as to what really constitutes an essential part of religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion or practices regarded as parts of religion, came to be equally firmly laid down.***

No protection outside essential domain

17. *Where a temple has been constructed and consecrated as per Agamas, it is considered necessary to perform the daily rituals, poojas and recitations as required to maintain the sanctity of the idol and it is not that in respect of any and every temple any such uniform rigour of rituals can be sought to be enforced, dehors its origin, the manner of construction or method of consecration. No doubt only a qualified person well versed and properly trained for the purpose alone can perform poojas in the temple since he has not only to enter into the sanctum sanctorum but also touch the*

idol installed therein. It therefore goes without saying that what is required and expected of one to perform the rituals and conduct poojas is to know the rituals to be performed and mantras, as necessary, to be recited for the particular deity and the method of worship ordained or fixed therefor. For example, in Saivite temples or Vaishnavite temples, only a person who learnt the necessary rites and mantras conducive to be performed and recited in the respective temples and appropriate to the worship of the particular deity could be engaged as an Archaka. If traditionally or conventionally, in any temple, all along a Brahmin alone was conducting poojas or performing the job of Santhikaran, it may not be because a person other than the Brahmin is prohibited from doing so because he is not a Brahmin, but those others were not in a position and, as a matter of fact, were prohibited from learning, reciting or mastering Vedic literature, rites or performance of rituals and wearing sacred thread by getting initiated into the order and thereby acquire the right to perform homa and ritualistic forms of worship in public or private temples. ***Consequently, there is no justification to insist that a Brahmin or Malayala Brahmin in this case, alone can perform the rites and rituals in the temple, as part of the rights and freedom guaranteed under Article 25 of the Constitution and further claim that any deviation would tantamount to violation of any such guarantee under the Constitution.*** *There can be no claim based upon Article 26 so far as the Temple under our consideration is concerned. Apart from this principle enunciated above, as long as anyone well versed and properly trained and qualified to perform the pooja in a manner conducive and appropriate to the worship of the particular deity, is appointed as Santhikaran dehors his pedigree based on caste, no valid or legally justifiable grievance can be made in a court of law. There has been no proper plea or sufficient proof also in this case of any specific custom or usage specially created by the founder of the Temple or those who have the exclusive right to administer the affairs — religious or secular of the Temple in question, leave alone the legality, propriety and validity of the same in the changed legal position brought about by the Constitution and the law enacted by Parliament.* ***The Temple also does not belong to any denominational category with any specialized form of worship peculiar to such denomination or to its credit. For the said reason, it becomes, in a sense, even unnecessary to pronounce upon the invalidity of any such practice being violative of the constitutional mandate contained in Articles 14 to 17 and 21 of the Constitution of India."***

John Vallamattom case

78. It is submitted that in the case of ***John Vallamattom v. Union of India,*** **(2003) 6 SCC 611** [V.N. Khare, C.J., J.S.B. Sinha and J. Dr. A.R. Lakshmana- **3 Judges**], this Hon'ble Court held that Article 25 protects the freedom to practise rituals, ceremonies, etc. which are an integral part of a religion. While saying so, the Court ruled that charity in and of itself cannot be an essential aspect of religion. The relevant parts are reproduced hereunder:

> "**40**. Coming to the last argument raised by the petitioners' counsel it may be stated that in the instant case, this Court is not concerned with the right of a person to freedom of conscience but is only concerned with a question as to whether by reason of Section 118 of the Indian Succession Act the right of Christians to profess, practise and propagate religion is violated. **Article 25 is subject to the other provisions contained in Part III of the Constitution of India. What was thought of by the Constitution makers while**

conferring right to profess, practise and propagate religion was that freedom of conscience be supplemented by freedom of unhampered expression of spiritual conviction. Article 25 provides freedom of 'profession' meaning thereby the right of the believer to state his creed in public and freedom of practice meaning his right to give it expression in forms of private and public meaning his right to give it expression in forms of private and public worships [See Stainislaus Rev. v. State of M.P.]. A disposition towards making gift for charitable or religious purpose may be a pious act of a person but the same cannot be said to be an integral part of any religion. It is not the case of the petitioners that the religion of Christianity commands gift for charitable or religious purpose compulsory or the same is regarded as such by the community following Christianity. **The petitioner has not been able to place any material to show that disposition of property for religious and charitable purposes is an integral part of Christian religious faith.**

41. Disposition of property for religious and charitable purpose is recommended in all the religions but the same cannot be said to be an integral part of it. If a person professing Christian religion does not show any inclination of disposition towards charitable or religious purposes, he does not cease to be a Christian. Even certain practices adopted by the persons professing a particular religion may not have anything to do with the religion itself.

42. Article 25 merely protects the freedom to practise rituals and ceremonies etc. which are only the integral parts of the religion. Article 25 of the Constitution of India will, therefore, not have any application in the instant case.

43. For the self same reasons, Article 26 may also not have any application in the instant case.

44. Before I part with the case, I would like to state that Article 44 provides that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. The aforesaid provision is based on the premise that there is no necessary connection between religious and personal law in a civilized society. Article 25 of the Constitution confers freedom of conscience and free profession, practice and propagation of religion. The aforesaid two provisions viz. Articles 25 and 44 show that the former guarantees religious freedom whereas the latter divests religion from social relations and personal law. **It is no matter of doubt that marriage, succession and the like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution. Any legislation which brings succession and the like matters of secular character within the ambit of Articles 25 and 26 is a suspect legislation, although it is doubtful whether the American doctrine of suspect legislation is followed in this country.** In *Sarla Mudgal* v. *Union of India* [(1995) 3 SCC 635 : 1995 SCC (Cri) 569] it was held that marriage, succession and like matters of secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution. It is a matter of regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies."

79. It is submitted that in the same case, the concurring judgement of His Lordship Justice Sinha stated as follows :

"47 Message of charity and compassion is to be found in all religions without any exception. Only because charity and compassion are preached in every religion, the

same by itself would not be a part of the 'religious practice' within the meaning of Article 25 of the Constitution of India.

48. Thus, the Religion of Christianity encouraging the Christians to practice charities to attain spiritual salvation is of not much relevance for this purpose. Such preaching are also found in Bhagavat Geet and Upanishad.

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54. Renouncement of world by a person following any religion is necessarily not the essential practice of the religion which is meant for commonness. Gandhiji also said renouncement and enjoy

55. Such preaching for renouncement from the word have no co-relation with the tenets of Article 25 of the Constitution of India."

Nallor Marthandam Vellalar case

80. It is submitted that in ***Nallor Marthandam Vellalar v. Commr., Hindu Religious and Charitable Endowments*, (2003) 10 SCC 712** [J. Shivaraj V Patil and J. D.M. Dharmadhikari- **2 Judges**] [Vol. V.7 @ Pgs. 1059 – 1068], the question that arose before the Court was whether the temple at Nellore owned by the Vellala Community of Marthandam constituted a "religious denomination" within the meaning of Article 26 of the Constitution. It was argued in this case that the Vellala Community observed special religious practices and beliefs which are integral part of their religion and that the front mandappam of the sanctorum is open to access only to the members of their community and no one else and outsiders can offer worship from the outer compound. The Court held that the temple at Nellore owned by the Vellala community of Marthandam did not constitute a religious denomination as there was no evidence to prove that the members of the Vellala Community had common religious tenets peculiar to themselves other than those which are common to the entire Hindu community and further, the Court, following the principle laid down in ***S.P. Mittal (supra)*** held as under:

7**. It is settled position in law, having regard to the various decisions of this Court that the words "religious denomination" take their colour from the word "religion". The expression "religious denomination" must satisfy three requirements : (1) it must be collection of individuals who have a system of belief or doctrine which they regard as conducive to their spiritual well-being i.e. a common faith; (2) a common organisation; and (3) designation of a distinctive name. It necessarily follows that the common faith of the community should be based on religion and in that they should have common religious tenets and the basic cord which connects them, should be religion and not merely considerations of caste or community or societal status**.

The Second Anand Margis case

81. In case of ***Commissioner of Police and Others Vs. Acharya Jagadishwarananda Avadhuta and Another*, (2004) 12 SCC 770 [*Acharya Jagdishwarananda* case] [the Second Anand Margis case] [J. S. Rajendra Babu, J. Dr. A.R. Lakshmanan and J. G.P. Mathur] [Vol. V.9 @ Pgs. 885 – 926]**, the Hon'ble Supreme Court again by way of a fractured verdict held that it is the permanent essential parts which are protected by the constitution and alterable parts or practices which are definitely not the core of the religion are not protected. The following is the relevant passage of the said case:

> "**9.** *The protection guaranteed under Articles 25 and 26 of the Constitution is not confined to matters of doctrine or belief but extends to acts done in pursuance of religion and, therefore, contains a guarantee for rituals, observances, ceremonies and modes of worship which are essential or integral part of religion. What constitutes an integral or essential part of religion has to be determined with reference to its doctrines, practices, tenets, historical background, etc. of the given religion. (See generally the Constitution Bench decisions in Commr., H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [AIR 1954 SC 282 : 1954 SCR 1005] , Sardar Syedna Taher Saifuddin Saheb v. State of Bombay [AIR 1962 SC 853 : 1962 Supp (2) SCR 496] and Seshammal v. State of T.N. [(1972) 2 SCC 11 : AIR 1972 SC 1586] regarding those aspects that are to be looked into so as to determine whether a part or practice is essential or not.) What is meant by "an essential part or practices of a religion" is now the matter for elucidation. Essential part of a religion means the core beliefs upon which a religion is founded. Essential practice means those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practices that the superstructure of a religion is built, without which a religion will be no religion. Test to determine whether a part or practice is essential to a religion is to find out whether the nature of the religion will be changed without that part or practice. If the taking away of that part or practice could result in a fundamental change in the character of that religion or in its belief, then such part could be treated as an essential or integral part. There cannot be additions or subtractions to such part because it is the very essence of that religion and alterations will change its fundamental character.* ***It is such permanent essential parts which are protected by the Constitution. Nobody can say that an essential part or practice of one's religion has changed from a particular date or by an event. Such alterable parts or practices are definitely not the "core" of religion whereupon the belief is based and religion is founded upon. They could only be treated as mere embellishments to the non-essential (sic essential) part or practices.***
>
> Only the permanent and core parts are afforded protection.
>
> ***12.*** *In the result, we respectfully adopt the finding of this Court in the first Ananda Margi case [(1983) 4 SCC 522 : 1984 SCC (Cri) 1] and allow the instant appeal. Since we find that practice of Tandava dance in public is not an essential part of Ananda Margi faith, there is no need to look into any other arguments advanced before us. The order in the writ petition as affirmed by the Division Bench is set aside and the writ petition is dismissed."*

82. In a minority opinion of Justice Lakshmanan, it was held that what constitutes an essential part is to be ascertained by a reference to the doctrine of that religion itself and the Court cannot say that a belief or practice is not a part of a religion. Critically, Justice Lakshamanan noted [as also noted by Seervai in his treaties on constitutional law] that the opinion of Justice Gajendragadkar in ***Durgah Committee*** [Supra] to the effect that the court may have to itself ascertain whether a particular practice is an essential or integral part of the religion or not is not in line with the opinion of a larger bench of this Court in ***Shirur Mutt*** [supra]. Justice Laxmanan concluded that the tandava dance and the right to carry out a procession in a public place after obtaining necessary permission would be protected under Article 25. The following is the relevant passage of the said case:

> "***55.*** *I shall now consider whether Ananda Margis have the fundamental right under Articles 25 and 26 of the Constitution.*
>
> ***56.*** ***The Ananda Margis are a religious denomination and as such are entitled to the protection under Articles 25 and 26(b) of the Constitution for their beliefs and practices including their practice of Tandava dance in a procession or public place.*** *This is because, as held by this Court in several cases that:*
>
> > *"Religious practices or performances of acts in pursuance of religious beliefs are as much a part of religion as faith or belief in particular doctrines. ... No outside authority has any right to say that these are not essential parts of religion and it is not open to the secular authority of the State to restrict or prohibit them in any manner they like"*
>
> *[Ratilal Panachand Gandhi v. State of Bombay [AIR 1954 SC 388 : 1954 SCR 1055] (AIR p. 392, para 13), citing with approval Davar, J. in Jamshedji Cursetjee Tarachand v. Soonabai [ILR (1909) 33 Bom 122 : 10 Bom LR 417] , Commr., H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [AIR 1954 SC 282 : 1954 SCR 1005] , SCR at pp. 1021-22, 1025, Sardar Syedna Taher Saifuddin Saheb v. State of Bombay [AIR 1962 SC 853 : 1962 Supp (2) SCR 496] , SCR at pp. 531-32]. In Venkataramana Devaru case [AIR 1958 SC 255] this Court has held that the right under Article 26(b) of a denomination to manage its own affairs in matters of religion includes even practices which are regarded as part of religion.*
>
> ***57.*** *The exercise of the freedom to act and practise in pursuance of religious beliefs is as much important as the freedom of believing in a religion. In fact to persons believing in religious faith, there are some forms of practising the religion by outward actions which are as much part of religion as the faith itself. The freedom to act and practise can be subject to regulations. In our Constitution, subject to public order, health and morality and to other provisions in Part III of the Constitution. However, in every case the power of regulation must be so exercised with the consciousness that the subject of regulation is the fundamental right of religion, and as not to unduly infringe the protection given by the Constitution.* ***Further, in the exercise of the power to regulate, the authorities cannot sit in judgment over the professed views of the adherents of the religion and to determine whether the practice is warranted by the religion or not.*** *That is not their function. (See Jesse Cantwell v. State of Connecticut [84 L Ed 1213 : 310 US 296 (1939)] , L Ed at pp. 1213-1218, United States v. Ballard [88 L Ed 1148 : 322 US 78 (1943)] , L Ed at pp. 1153, 1154.)*

Rationality review of religion

58. *I shall now consider the right of the Ananda Margis to religious procession. In Parthasaradi Ayyangar v. Chinnakrishna Ayyangar [ILR (1882) 5 Mad 304] Turner, C.J. said: (ILR p. 309)*

In India, persons of whatever sect are entitled to conduct religious procession through public streets so long as they do not interfere with the ordinary use of such streets by the public and subject to such directions as the Magistrates may lawfully give to prevent obstruction of thoroughfare or breaches of public peace.

*The power to suspend is extraordinary and the Magistrate should resort to it only when he is satisfied that other powers are insufficient. This authority of the Magistrate should be exercised in defence of rights rather than in their suspension. [**Ed.**: See Sundram Chetti v. Queen, ILR (1883) 6 Mad 203 (FB)] (ILR pp. 220-21)*

59. *These observations were quoted with approval by this Court in Gulam Abbas v. State of U.P. [(1982) 1 SCC 71 : 1982 SCC (Cri) 82 : (1982) 1 SCR 1077] , SCR at pp. 1130-33. It was observed that the authorities should not in the face of such religious rights prohibit religious processions on the "facile ground of public peace and tranquillity" but adopt a positive approach to protect fundamental rights under Articles 25 and 26 of the Constitution.*

Meaning of "public order".

60. ***Moreover, "public order" has a larger connotation than "law and order". Contravention of law to affect public order must affect the community or the public at large. A mere disturbance of law and order leading to disorder is not one which affects "public order".*** *(See Ram Manohar Lohia (Dr.) v. State of Bihar [AIR 1966 SC 740 : (1966) 1 SCR 709] .)*

61. *Similar processions by other communities even with use of swords e.g. Sikhs, Muslims and Bharat Sevashram Sanghs have been permitted by the Commissioner of Police.*

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65. ***This Court has explained in a number of decisions that what constitutes an essential part of a religion is primarily to be ascertained with reference to the doctrine of that religion itself and the court cannot say that a belief or practice is not part of religion. This proposition was authoritatively laid down by the Constitution Bench of this Court (seven Judges) in Shirur Mutt case [AIR 1954 SC 282 : 1954 SCR 1005] as extracted in paras supra. This is the most essential part of the fundamental right of freedom of religion****. This Court in subsequent cases has followed the proposition in Shirur Mutt case [AIR 1954 SC 282 : 1954 SCR 1005] , Sardar Syedna Taher Saifuddin Saheb v. State of Bombay [AIR 1962 SC 853 : 1962 Supp (2) SCR 496] (five Judges), SCR at pp. 531-32 and in Seshammal v. State of T.N. [(1972) 2 SCC 11 : AIR 1972 SC 1586] (five Judges), SCC at p. 21.*

66. *In the case of Ratilal Panachand Gandhi v. State of Bombay [AIR 1954 SC 388 : 1954 SCR 1055] this Court emphasised that: (AIR p. 392, para 13)*

"No outside authority has any right to say that these are not essential parts of religion and it is not open to the secular authority of the State to restrict or prohibit them in any manner they like under the guise of administering the trust estate."

This Court quoted with approval Jamshedji Cursetjee Tarachand v. Soonabai [ILR (1909) 33 Bom 122 : 10 Bom LR 417] where the Bombay High Court held: (ILR p. 210)

"If this is the belief of the community ... a secular judge is bound to accept that belief — it is not for him to sit in judgment on that belief — he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be in advancement of his religion and for the welfare of his community or mankind."

67. *As late as 2002, this Court has reiterated this in* ***N. Adithayan v. Travancore Devaswom Board*** *[(2002) 8 SCC 106] , SCC at p. 123. This Court observed that*

> *"as to what really constitutes an essential part of religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion or practices regarded as parts of religion" (SCC para 16).*

68. ***The obiter of Gajendragadkar, J. in Durgah Committee, Ajmer v. Syed Hussain Ali [AIR 1961 SC 1402 : (1962) 1 SCR 383] to the effect that the Court may have carefully scrutinised the practices to find out whether they constitute an essential or integral part of religion is not in line with the above decisions including that of a seven-Judge Bench in the case of Shirur Mutt [AIR 1954 SC 282 : 1954 SCR 1005] .***

Notes that J. Gajendragadkar's opinion may be obiter as it is against the Shirur Mutt case. This is in line with the criticism by Mr. Seervai.

69. *Seervai in Constitutional Law of India (4th Edn.), Vol. II, at p. 1268 has criticised this as obiter, as inconsistent with earlier decisions of this Court cited above.*

70. ***Subject to consideration of public order, health and morality, it is not open for anybody to question the tenets and practices of religion, however irrational they may appear to an outsider****.*

71. ***It is brought to our notice that the following observation in Acharya Jagdishwaranand Avadhuta case [(1983) 4 SCC 522 : 1984 SCC (Cri) 1] is not correct in law: (SCC p. 530, para 9)***

> ***"Mr Tarkunde ... had claimed protection of Article 25 of the Constitution but in view of our finding that Ananda Marga is not a separate religion, application of Article 25 is not attracted."***

As rightly stated by this Court in Bijoe Emmanuel case [(1986) 3 SCC 615 : AIR 1987 SC 748 : (1986) 3 SCR 518] , SCC at p. 631, this sentence appears to have crept into the judgment by some slip.

Notes that the particular part of the first Anand Margis case wherein the right under Article 25 is denied may be erroneous.

71-A*. Article 25(1) states that all persons are entitled to freedom of religion. Hence every member of a religious denomination is entitled to the fundamental right of freedom of religion under Article 25. It necessarily follows that every sect or denomination is entitled to freedom of religion under Article 25. It is undisputed that under Article 26(b) a denomination is entitled to manage its own affairs in matters of religion.*

71-B*. The above observation in Jagdishwaranand case [(1983) 4 SCC 522 : 1984 SCC (Cri) 1] is also contrary to the interpretation of Article 25(1) given by this Court in the Constitution Bench of seven Judges in Shirur Mutt case [AIR 1954 SC 282 : 1954 SCR 1005] where the Court observes that: (AIR p. 289, para 14)*

> *"Institutions, as such cannot practise or propagate religion; it can be done only by individual persons and whether these persons propagate their personal views or the tenets for which the institution stands is really immaterial for the purpose of Article 25."*

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80. ***Here, the Court has assumed the role of the theologian after making a roving enquiry. While the decision is criticised on the ground that once this door is opened, there is no limit to which the Court cannot go, the answer is that the power of judicial review as a part of the basic structure is vested with the Court and if someone has to be trusted, let it be the courts even in matters of faith. This Court, as stated earlier, considered the question whether performance of Tandava dance is a religious rite or practice essential to the tenets of the religious faith of the Ananda Margis****. The*

Critique of the role of the Court as a theologian.

Court while upholding that Ananda Marga satisfies all the three conditions envisaged by Article 26 of the Constitution [(1. It is a collection of individuals who have a system of beliefs which they regard as conducive to their spiritual well-being. 2. They have a common organisation. 3. The collection of these individuals has a distinctive name.)] and as such was a religious denomination negatived their claims to perform Tandava dance in public. The specific case of the petitioners is that Shri Ananda Murtiji introduced Tandava as a part of religious rites of Ananda Margis in 1966. What is Tandava dance? It lasts for a few minutes, where two or three persons dance by lifting one leg to the level of the chest, bringing it down and lifting the other. When the Ananda Margis greet their spiritual preceptor, they perform a brief welcome dance of Tandava using skull and knife for 2/3 minutes. According to them, Tandava is a custom among its sect members and it is a customary performance and its origin is over thousands of years old. Repelling the contention, the Court held that even conceding that Tandava dance has been prescribed as a religious rite for the followers of Ananda Marga, it does not follow as a necessary corollary that Tandava dance to be performed in the public is a matter of religious rite. The Court went on to observe that there is nothing (sic) that Tandava dance must be performed in public. In the result, this Court rejected the claim of Ananda Margis to perform Tandava dance in public streets.

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84. *The authorities concerned can step in and take preventive measures in the interest of maintenance of law and order if such religious processions disturb law and order. It has to be held that the right to carry trishul, conch or skull is an integral and essential part of religious practice and the same is protected under Article 25 of the Constitution. However, the same is subject to the right of the State to interfere with the said practice of carrying trishul, conch or skull if such procession creates law and order problems requiring intervention of authorities concerned who are entrusted with the duty of maintaining law and order."*

A balance to be maintained in terms of law and order.

Subramanian Swamy case

83. In the case of ***Dr. Subramnian Swamy Vs. State of T.N. and Others,*** **(2014) 5 SCC 75 [*Subramaniam Swamy*** case] [Vol. V.6 @ Pgs. 3053 – 3094], this Hon'ble Court observed that while the right under Article 25 may be subject to provision of Part III, the right under Article 26 is not circumscribed by the same. The Honble Court also noted that if the management of a particular religious institution is taken over to remedy an evil, the said management must be handed over once the evil stands remedied. The following is the relevant passage of the said case:

*"**24.** Undoubtedly, the object and purpose of enacting Article 26 of the Constitution is to protect the rights conferred therein on a "religious denomination" or a section thereof. **However, the rights conferred under Article 26 are subject to public order, morality and health and not subject to any other provision of Part III of the Constitution as the limitation has been prescribed by the lawmakers by virtue of Article 25 of the Constitution.** The term "religious denomination" means collection of individuals having a system of belief, a common organisation; and designation of a distinct name. The right to administration of property by a "religious*

The conspicuous absence in Article 26.

denomination" would stand on a different footing altogether from the right to maintain its own affairs in matters of religion. (Vide Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj v. State of Gujarat [(1975) 1 SCC 11 : AIR 1974 SC 2098] , T.M.A. Pai Foundation v. State of Karnataka [(2002) 8 SCC 481] and Nallor Marthandam Vellalar v. Commr., Hindu Religious and Charitable Endowments [(2003) 10 SCC 712 : AIR 2003 SC 4225] .

***65.** **Even if the management of a temple is taken over to remedy the evil, the management must be handed over to the person concerned immediately after the evil stands remedied.** Continuation thereafter would tantamount to usurpation of their proprietary rights or violation of the fundamental rights guaranteed by the Constitution in favour of the persons deprived. Therefore, taking over of the management in such circumstances must be for a limited period. Thus, such an expropriatory order requires to be considered strictly as it infringes the fundamental rights of the citizens and would amount to divesting them of their legitimate rights to manage and administer the temple for an indefinite period. We are of the view that the impugned order [Sri Sabanayagar Temple v. State of T.N., (2009) 4 LW 705 : (2009) 8 MLJ 1503] is liable to be set aside for failure to prescribe the duration for which it will be in force.*

66.** Supersession of rights of administration cannot be of a permanent enduring nature. Its life has to be reasonably fixed so as to be co-terminus with the removal of the consequences of maladministration. The reason is that the objective to take over the management and administration is not the removal and replacement of the existing administration but to rectify and stump out the consequences of maladministration. **Power to regulate does not mean power to supersede the administration for indefinite period.

The meaning of "regulate" to be distinguished from the meaning of "control"

67. "Regulate" is defined as to direct; to direct by rule or restriction; to direct or manage according to the certain standards, to restrain or restrict. The word "regulate" is difficult to define as having any precise meaning. It is a word of broad import, having a broad meaning and may be very comprehensive in scope. Thus, it may mean to control or to subject to governing principles. Regulate has different set of meanings and must take its colour from the context in which it is used having regard to the purpose and object of the legislation. The word "regulate" is elastic enough to include issuance of directions, etc. (Vide K. Ramanathan v. State of T.N. [(1985) 2 SCC 116 : 1985 SCC (Cri) 162 : AIR 1985 SC 660] and Balmer Lawrie & Co. Ltd. v. Partha Sarathi Sen Roy [(2013) 8 SCC 345 : (2013) 3 SCC (Civ) 804 : (2014) 1 SCC (L&S) 114] .)

***68.** Even otherwise it is not permissible for the State/statutory authorities to supersede the administration by adopting any oblique/circuitous method. In Sant Lal Gupta v. Modern Coop. Group Housing Society Ltd. [(2010) 13 SCC 336 : (2010) 4 SCC (Civ) 904] , this Court held: (SCC p. 344, para 21)*

"21. It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud. An authority cannot be permitted to evade a law by 'shift or contrivance'."

(See also Jagir Singh v. Ranbir Singh [(1979) 1 SCC 560 : 1979 SCC (Cri) 348 : AIR 1979 SC 381] , A.P. Dairy Development Corpn. Federation v. B. Narasimha Reddy [(2011) 9 SCC 286 : AIR 2011 SC 3298] and State of T.N. v. K. Shyam Sunder [(2011) 8 SCC 737 : AIR 2011 SC 3470] .)"

Riju Prasad Sarma – The note of caution

84. In ***Riju Prasad Sarma Vs. State of Assam*, (2015) 9 SCC 461** [***Riju Prasad Sarma*** case] [J. F.M. Ibrahim Kalifulla and J. Shiva Kirti Singh] [Vol. V.5 @ Pgs. 115 – 179], the Hon'ble Court critically held that in a pluralistic society as existing in India, the task of carrying out reforms must be entrusted exclusively in the hand of the state especially in the light of Article 25[2] and the judiciary cannot and should not be equated with the organs of the State. The following is the relevant passage of the said case:

> "**66.** *On considering the rival submissions and the relevant case laws, we are inclined to agree with the submissions on behalf of the respondents that Article 13(1) applies only to such pre-Constitution laws including customs which are inconsistent with the provisions of Part III of the Constitution and not to such religious customs and personal laws which are protected by the fundamental rights such as Articles 25 and 26. In other words, religious beliefs, customs and practices based upon religious faith and scriptures cannot be treated to be void. Religious freedoms protected by Articles 25 and 26 can be curtailed only by law made by a competent legislature to the permissible extent.* ***The court can surely examine and strike down a State action or law on the grounds of Articles 14 and 15. But in a pluralist society as existing in India, the task of carrying out reforms affecting religious beliefs has to be left in the hands of the State. This line of thinking is supported by Article 25(2) which is clearly reformist in nature. It also provides scope for the State to study and understand all the relevant issues before undertaking the required changes and reforms in an area relating to religion which shall always be sensitive. While performing judicial functions stricto sensu, the Judiciary cannot and should not be equated with other organs of State—the Executive and the Legislature. This also fits in harmony with the concept of separation of powers and spares the judiciary or the courts to dispassionately examine the constitutionality of State action allegedly curbing or curtailing the fundamental rights including those under Articles 25 and 26***."

The enabling power of the State is to be separate from the power of judicial review of the Hon'ble Court.

Adi Saiva case

85. In ***Adi Saiva Siva Chariyargal Nala Sangam and Others v. Govt. of Tamil Nadu and Anr*, (2016) 2 SCC 725 [*Adi Saiva* case- 2 Judges]** [Vol. V.6 @ Pgs. 3222 – 3262] [J. Ranjan Gogoi and J. N.V. Ramana], the Hon'ble Court noted that the wide expanse of beliefs, thoughts and forms of worship that Hinduism encompasses without any divergence or friction within itself is protected under Article 25 and 26. The Court noted the difficulties arising out of the ecclesiastical jurisprudence laid down by the Supreme Court and the fact that it is an enviable task in its role as the constitutional arbiter, the Hon'ble Court further noted that, for the first time in the context of religious appointments, the provision of Article 16[5] which had not been

considered by this Hon'ble Court in the case of *Seshammal* [supra]. The Court repelled the challenge on the ground of Article 17 holding that the exclusion from the *sanctum santoram* and duties of performance of pujas extends even to Brahmins. The Court noted that especially in light of Article 16[5], the exclusion of some and inclusion of a particular segment or denomination for appointment as Archaka would not violate Article 14 so long as such inclusion / exclusion is not based on the criteria of caste, birth, or any other constitutionally unacceptable parameter. Therefore, the Agamas mandating the appointment as Archakas only from a sharply defined and limited sect out of the Brahmins would not be impermissible. The following is the relevant passage of the said case:

> "***2.*** *Before highlighting the issues that confront the Court in the present case, the relevant constitutional provisions in Part III of the Constitution may be taken note of. Article 13, in clear and unequivocal terms, lays down that all laws including pre-Constitution laws which are inconsistent with or in derogation of the fundamental rights guaranteed by Part III are void. Article 13(3) brings within the fold of laws, all rules, regulations, notification, custom and usage having the force of law. While the several provisions of Part III would hardly need to be re-emphasised, specific notice must be had of, in the context of the present case, the provisions contained in Articles 25 and 26 of the Constitution.*
>
> ***3.*** *While Article 25 makes the freedom of conscience and the right to profess, practice and propagate the religion to which a person may subscribe, a fundamental right, the exercise of such right has been made subject to public order, morality and health and also to the other provisions of Part III. Article 25(2)(b) makes it clear that the main part of the provisions contained in Article 25 will not come in the way of the operation of any existing law or prevent the State from making any law which provides for social welfare and reform or for throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. Similarly, Article 26 while conferring the right on every religious denomination to manage its own affairs makes it clear that the right to manage the affairs of any religious denomination is restricted to matters of religion only.*
>
> ***4.*** *The provisions of Part III, as noted above, therefore make it amply clear that while the right to freedom of religion and to manage the religious affairs of any denomination is undoubtedly a fundamental right, the same is subject to public order, morality and health and further that the inclusion of such rights in Part III of the Constitution will not prevent the State from acting in an appropriate manner, in the larger public interest, as mandated by the main part of both Articles 25 and 26.* ***Besides, the freedom of religion being subject to the other provisions of Part III, undoubtedly, Articles 25 and 26 of the Constitution have to be harmoniously construed with the other provisions contained in Part III.***
>
> *****
>
> ***36.*** ***Image worship is a predominant feature of Hindu religion. The origins of image worship is interesting and a learned discourse on the subject is available in a century-old judgment of the Madras High Court in Gopala Moopanar v. Dharmakarta Subramaniya Iyer [Gopala Moopanar v. Dharmakarta Subramaniya Iyer, 1914 SCC OnLine Mad 104 : AIR 1915 Mad 363] . In the said Report the learned Judge (Sadasiva Aiyar, J.) on the basis of accepted texts and a study thereof had found that in the "first stage" of existence of mankind God was worshipped as immanent in the heart***

of everything and worship consisted solely in service to ones fellow creatures. In the second stage, the spirit of universal brotherhood lost its initial efficacy and notions of inferiority and superiority amongst men surfaced leading to a situation where the inferior man was asked to worship the superior man who was considered as a manifestation of God. Disputes arose about the relative superiority and inferiority which were resolved by the wise sages by introducing image worship to enable all men to worship God without squabbles about their relative superiorities. *With passage of time there emerged rules regulating worship in temples which came to be laid down in the treatises known as Agamas and the Thantras. Specifically in Gopala Moopanar [Gopala Moopanar v. Dharmakarta Subramaniya Iyer, 1914 SCC OnLine Mad 104 : AIR 1915 Mad 363] , it was noticed that the Agamas prescribed rules as regards "what caused pollution to a temple and as regards the ceremonies for removing pollution when caused".*

38. The Ecclesiastical jurisprudence in India, sans any specific Ecclesiastical jurisdiction, revolves around the exposition of the constitutional guarantees under Articles 25 and 26 as made from time to time. The development of this branch of jurisprudence primarily arises out of claimed rights of religious groups and denominations to complete autonomy and the prerogative of exclusive determination of essential religious practices and principles on the bedrock of the constitutional guarantees under Articles 25 and 26 of the Constitution and the judicial understanding of the interplay between Articles 25(2)(b) and 26(b) of the Constitution in the context of such claims. *In Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282 : 1954 SCR 1005] (Shirur Mutt) while dealing with the issue of autonomy of a religious denomination to determine what rites and ceremonies are essential according to the tenets of its religion it has been stated that: (AIR p. 291, para 22)*

Reiteration of the view taken in Durgah Committee by J. Gajendragadkar.

> *"22. ... **Under Article 26(b), therefore, a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters."** (SCR pp. 1028-29)*

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43. *That the freedom of religion under Articles 25 and 26 of the Constitution is not only confined to beliefs but extends to religious practices also would hardly require reiteration. Right of belief and practice is guaranteed by Article 25 subject to public order, morality and health and other provisions of Part III of the Constitution. Clause (2) is an exception and makes the right guaranteed by clause (1) subject to any existing law or to such law as may be enacted to, inter alia, provide for social welfare and reforms or throwing or proposing to throw open Hindu religious institutions of a public character to all classes and sections of Hindus. Article 26(b) on the other hand guarantees to every religious denomination or section full freedom to manage its own affairs insofar as matters of religion are concerned, subject, once again, to public order, morality and health and as held by this Court subject to such laws as may be made under Article 25(2)(b). The rights guaranteed by Articles 25 and 26, therefore, are circumscribed and are to be enjoyed within constitutionally permissible parameters. Often occasions will arise when it may become necessary to determine whether a belief or a practice claimed and asserted is a fundamental part of the religious practice of a group or denomination making such a claim before embarking upon the required*

*adjudication**. A decision on such claims becomes the duty of the constitutional court.** It is neither an easy nor an enviable task that the courts are called to perform. Performance of such tasks is not enjoined in the court by virtue of any ecclesiastical jurisdiction conferred on it but in view of its role as the constitutional arbiter. Any apprehension that the determination by the court of an essential religious practice itself negatives the freedoms guaranteed by Articles 25 and 26 will have to be dispelled on the touchstone of constitutional necessity. Without such a determination there can be no effective adjudication whether the claimed right is in conformity with public order, morality and health and in accord with the indisputable and unquestionable notions of social welfare and reforms. A just balance can always be made by holding that the exercise of judicial power to determine essential religious practices, though always available being an inherent power to protect the guarantees under Articles 25 and 26, the exercise thereof must always be restricted and restrained.*

44. Article 16(5) which has virtually gone unnoticed till date and, therefore, may now be seen is in the following terms:

> ***"16. (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."***

45.** A plain reading of the aforesaid provision i.e. Article 16(5), fortified by the debates that had taken place in the Constituent Assembly, according to us, protects the appointment of Archakas from a particular denomination, if so required to be made, by the Agamas holding the field. The debates in the Constituent Assembly referred to disclose that the suggestion that the operation of Article 16(5) should be restricted to appointment in offices connected with administration of a religious institution was negatived. The exception in Article 16(5), therefore, would cover an office in a temple which also requires performance of religious functions. **In fact, the above though not expressly stated could be one of the bases for the views expressed by the Constitution Bench in Seshammal [Seshammal v. State of T.N., (1972) 2 SCC 11] .

***46.** The preceding discussion indicates the gravity of the issues arising and the perceptible magnitude of the impact thereof on Hindu society. It would be, therefore, incorrect, if not self defeating, to take too pedantic an approach at resolution either by holding the principle of res judicata or locus to bar an adjudication on merits or to strike down the impugned G.O. as an executive fiat that does not have legislative approval, made explicit by the fact that though what has been brought by the G.O. dated 23-5-2006 was also sought to be incorporated in the statute by the Ordinance, eventually, the amending Bill presented before the legislature specifically omitted the aforesaid inclusion. The significance of the aforesaid fact, however, cannot be underestimated. What is sought to be emphasised is that the same, by itself, cannot be determinative of the invalidity of the G.O. which will have to be tested on certain other premises and foundation treating the same to be an instance of exercise of executive power in an area not covered by any specific law.*

***47.** The issue of untouchability raised on the anvil of Article 17 of the Constitution stands at the extreme opposite end of the pendulum. Article 17 of the Constitution strikes at caste-based practices built on superstitions and beliefs that have no rationale or logic. The exposition of the Agamas made a century back by the Madras High Court in Gopala Moopanar [Gopala Moopanar v. Dharmakarta Subramaniya Iyer, 1914 SCC OnLine Mad 104 : AIR 1915 Mad 363] that exclusion from the sanctum sanctorum and duties of*

Article 17 may not be of aid unless the discrimination is directly against reserved categories.

performance of poojas extends even to Brahmins is significant. ***The prescription with regard to the exclusion of even Brahmins in Gopala Moopanar*** *[Gopala Moopanar v. Dharmakarta Subramaniya Iyer, 1914 SCC OnLine Mad 104 : AIR 1915 Mad 363] has been echoed in the opinion of Shri Parthasarthy Bhattacharya as noted by the Constitution Bench in Seshammal [Seshammal v. State of T.N., (1972) 2 SCC 11] .* ***Such exclusion is not on the basis of caste, birth or pedigree. The provisions of Article 17 and the Protection of Civil Rights Act, 1955, therefore, would not be of much significance for the present case.*** *Similarly, the "offer" of the State in its affidavit to app oint Shaivite as Archakas in Shiva temples and Vaishnavas in Vaishnavite temples is too naïve an understanding of a denomination which is, to say the least, a far more sharply identified subgroup both in case of Shaivite and Vaishnavite followers. However, what cannot be ignored is the "admission" inbuilt in the said offer resulting in some flexibility in the impugned G.O. that the State itself has acknowledged.*

49. ***The difficulty lies not in understanding or restating the constitutional values. There is not an iota of doubt on what they are. But to determine whether a claim of State action in furtherance thereof overrides the constitutional guarantees under Articles 25 and 26 may often involve what has already been referred to as a delicate and unenviable task of identifying essential religious beliefs and practices, sans which the religion itself does not survive. It is in the performance of this task that the absence of any exclusive ecclesiastical jurisdiction of this Court, if not other shortcomings and adequacies, that can be felt.*** *Moreover, there is some amount of uncertainty with regard to the prescription contained in the Agamas. Coupled with the above is the lack of easy availability of established works and the declining numbers of acknowledged and undisputed scholars on the subject. In such a situation one is reminded of the observations, if not the caution note struck by Mukherjea, J. in Shirur Mutt [Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282 : 1954 SCR 1005] with regard to complete autonomy of a denomination to decide as to what constitutes an essential religious practice, a view that has also been subsequently echoed by this Court though as a "minority view". But we must hasten to clarify that no such view of the Court can be understood to be an indication of any bar to judicial determination of the issue as and when it arises. Any contrary opinion would give rise to large-scale conflicts of claims and usages as to what is an essential religious practice with no acceptable or adequate forum for resolution. That apart the "complete autonomy" contemplated in Shirur Mutt [Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282 : 1954 SCR 1005] and the meaning of "outside authority" must not be torn out of the context in which the views, already extracted, came to be recorded (p. 1028).* ***The exclusion of all "outside authorities" from deciding what is an essential religious practice must be viewed in the context of the limited role of the State in matters relating to religious freedom as envisaged by Articles 25 and 26 itself and not of the courts as the arbiter of constitutional rights and principles.***

50. *What then is the eventual result? The answer defies a straightforward resolution and it is the considered view of the Court that the validity or otherwise of the impugned G.O. would depend on the facts of each case of appointment. What is found and held to be prescribed by one particular or a set of Agamas for a solitary or a group of temples, as may be, would be determinative of the issue.* ***In this regard it will be necessary to re-emphasise what has been already stated with regard to the purport and effect of Article 16(5) of the Constitution, namely, that the exclusion of some and inclusion of a particular segment or denomination for appointment as Archakas would not violate Article 14***

The observations are critical in developing a sound judicial policy on the subject.

> ***so long as such inclusion/exclusion is not based on the criteria of caste, birth or any other constitutionally unacceptable parameter.*** *So long as the prescription(s) under a particular Agama or Agamas is not contrary to any constitutional mandate as discussed above, the impugned G.O. dated 23-5-2006 by its blanket fiat to the effect that, "Any person who is a Hindu and possessing the requisite qualification and training can be appointed as a Archaka in Hindu temples" has the potential of falling foul of the dictum laid down in Seshammal [Seshammal v. State of T.N., (1972) 2 SCC 11] . A determination of the contours of a claimed custom or usage would be imperative and it is in that light that the validity of the impugned G.O. dated 23-5-2006 will have to be decided in each case of appointment of Archakas whenever and wherever the issue is raised. The necessity of seeking specific judicial verdicts in the future is inevitable and unavoidable; the contours of the present case and the issues arising being what has been discussed."*

86. In view of the afore-referred judgments, it is evidently clear that any such reading of one more condition [which over and above] public order, morality, health and other provisions of Part III] [in case of Article 25] and public order, morality and health [in case of Article 26] would be nothing but introduction of the words neither intended by the framers of the Constitution nor reflected even remotely from the text of both the Articles.

87. It is submitted that even ***Shirur Mutt (supra)*** [delivered by a bench of 7 Hon'ble Judges] has not introduced any such additional ground. So long as the words 'essential' or 'integral' are not to be found either in Article 25 or Article 26 while defining either 'religion', 'religious practice' or 'matters pertaining to religion', no such words can be read.

88. At this juncture, it is also important to examine the reports of Commission on Hindu Religious Endowments and Niyogi Committee.

COMMISSIONS ON HINDU RELIGIOUS ENDOWMENTS AND NIYOGI COMMITTEE

Hindu Religious Endowment Commission Report - 1960

89. The Hindu Religious Endowments Commission was constituted by the Central Government on 1 March 1960 under the Commissions of Inquiry Act, 1952, under the chairmanship of Dr. C. P. Ramaswami Aiyar. Its mandate was expansive: to define what constitutes a public religious endowment, to inquire into the management and application of endowment resources, to scrutinise succession and appointment to religious offices, and to recommend measures for improving administration. The Commission adopted a broad understanding of the term "Hindu," bringing within its scope not only all Hindu institutions but also the religious endowments of Buddhism, Jainism, the Veerasaiva or Lingayat tradition, the Brahmo Samaj, and other denominations.

90. In tracing the historical evolution of temples and religious institutions, the Commission observed that the early Vedic period did not prominently feature temple worship, ritual life being centred around sacrificial fires such as the Agnyagara. The idea of the temple emerged more distinctly in the Sutra and Brahmana periods, with references to Devathayathanam (house of God) and Devapratima (image of God), and assumed centrality in the Puranic age, which elaborately prescribed consecration rites and distinguished between Swayambhu and man-made idols. The Commission also noted that the rise of Buddhism in the fifth century BCE contributed to the development of image worship through reverence for relics and later for the image of the Buddha. It meticulously documented the flourishing of temple architecture under Hindu dynasties, particularly in Southern India from the rock-cut temples of the Pallavas to the grand structural edifices of the Cholas and subsequent embellishments under the Vijayanagar rulers, while contrasting this with the extensive historical loss of temple architecture in Northern India. Temples, in the Commission's account, were far more than places of worship; they were vibrant religio-cultural centres, hosting education in the Vedas, Sastras, grammar, logic, and medicine, maintaining alms-houses, and serving as forums for dispute resolution and social welfare. Alongside temples, mutts were identified as foundational institutions devoted to spiritual instruction and propagation of religious tenets.

91. The Commission concluded that even in pre-colonial times Hindu rulers exercised supervisory authority over temples, correcting mismanagement where necessary. British rule formalised this oversight through regulations such as those of 1810 and 1817, placing supervision under the Board of Revenue. A shift occurred after 1833, when the British

withdrew from active management under pressure from groups in the United Kingdom who objected to a Christian government administering non-Christian religious institutions. Post-Independence, the Commission observed that some States had enacted regulatory legislation while others relied on ill-defined executive authority. It found that States with statutory frameworks maintained at least a minimum degree of efficiency, whereas in States without such laws important temples were often treated as private property without scrutiny. It therefore regarded suitable legislation in all States as an imperative necessity.

92. A Report also focuses on the legal distinction between public and private religious endowments. An endowment was defined as a perpetual dedication of property for religious purposes. The decisive question, according to the Commission and consistent Supreme Court jurisprudence, was whether the dedication was intended for the benefit of the public or a fluctuating body of worshippers, or for specified individuals or families. In the absence of formal deeds, courts were to infer intention from factors such as public access, long-standing user, participation in festivals, public offerings, the size and character of the institution, and prior governmental control. Relying on decisions such as *Deoki Nandan v. Murlidhar*[1] and *Mahant Ram Sarup Dasji v. S. P. Sahi*[2], the Commission underscored that a public trust is marked by beneficiaries who constitute an uncertain and fluctuating body. Applying this framework, it took a firm view that mutts are inherently public institutions founded for propagation of religious tenets and should be treated as public religious endowments. On the question of offerings, it concluded that temple offerings are impressed with a public character, while in the case of mutts, personal offerings to the head may be used at his discretion during his lifetime for institutional purposes, but any undisposed balance must vest in the mutt upon his death.

93. The Commission devoted substantial attention to temple functionaries, particularly priests and intermediaries. It articulated an ideal vision in which temples function as ritual centres dependent on properly trained archakas versed in Agamic prescriptions. However, based on its inquiries, it described widespread deficiencies in competence and integrity, especially among ill-trained priests and aggressive intermediaries in certain northern pilgrimage centres. At the same time, it acknowledged positive models, such as improved management systems at Tirupati and devotional excellence in major Himalayan shrines. To address deficiencies, it recommended state-supported training institutions, minimum qualifications and testing even for hereditary priests, fixed remuneration and social security

[1] (1956) S.C.R. 756 - Venkatarama Iyer J.
[2] *Mahant Ram Saroop Dasji Vs. S P Sahi Spl Officer*, AIR 1959 SC 951

benefits, denial of proprietary rights over offerings, and licensing and regulation of intermediaries such as pandas.

94. Turning to trusteeship, the Commission reaffirmed that shebaits and dharmakartas are fiduciaries and not owners; endowed property vests in the deity or institution as a juristic person. It recorded instances of alienation, misappropriation, and neglect, particularly in States lacking regulatory laws, and advocated legislative frameworks mandating accounting, audits, budgets, and supervisory oversight. While insisting that the State should not interfere in daily rituals or essential religious practices, it supported firm control over financial and proprietary matters, even suggesting constitutional clarification if necessary.

95. The Report engaged deeply with the question of surplus funds, grounding its reasoning in the traditional categories of Ishta (ritual acts) and Purta (charitable acts), emphasising the conceptual overlap between religion and charity in Hindu thought. It distinguished between apparent, hidden, and true surplus, and proposed a two-tier framework. Obligatory objects—such as prescribed services (Dittam), staff salaries, discharge of liabilities, repairs, conservation, and maintenance of reserves must first be fully funded. Only thereafter could surplus be applied to optional but related objects, including pilgrim amenities, aid to poorer institutions, promotion of religious education, temple arts, and reasonably connected hospitals and charitable activities.

96. On succession to hereditary offices, particularly in mutts, the Commission affirmed that the founder's scheme is paramount and, failing that, established custom governs. It rejected the imposition of a uniform electoral model and considered headship an ecclesiastical office rather than a civil property right. It also opined that the Hindu Succession Act should not automatically apply to such offices where it would conflict with institutional traditions. Nevertheless, it insisted on modern standards of competence, recommending prescribed qualifications concerning moral character, knowledge of the relevant sampradaya, and capacity to teach, along with training before assumption of office. To adjudicate disputes, it proposed a specialised Tribunal with exclusive jurisdiction over succession and essential religious practice determinations.

97. With respect to Jain and Buddhist endowments, the Commission recognized high standards of maintenance in certain Jain institutions but expressed concern over large accumulations of idle funds, attributing them to negligence or hoarding tendencies. It recommended that surpluses, subject to safeguards, be channelled toward deficit institutions or educational and religious purposes. It considered similar supervisory frameworks appropriate for Buddhist endowments.

98. Institutionally, the Commission evaluated various administrative models and ultimately preferred executive administration by a single Commissioner rather than autonomous boards, which it regarded as prone to factionalism. It recommended a regulatory framework empowering intervention in cases of mismanagement, but maintained that the State should not interfere in essential religious practices. It also recommended protection of lands under direct management of religious institutions from land ceiling laws.

99. In its constitutional analysis, the Commission examined Articles 25 and 26 and emphasised the distinction between essential religious practices and secular or economic activities associated with religion. Drawing from decisions such as Shirur Mutt and Durgah Committee, it nevertheless recommended constitutional clarification to ensure that temples and mutts open to the public are definitively treated as public trusts, that historical management by particular lineages does not alter public character, and that mutts cannot be regarded as private institutions.

100. The critique of the Report situates it within its post-colonial and socialist milieu. While acknowledging that its diagnosis responded to real historical problems uncertain titles, missing deeds, and mismanagement, the critique argues that the proposed cure leans excessively toward permanent state management. A preferable model would be firm but limited regulation triggered by objective breaches, coupled with an obligation on the State to withdraw once order is restored. Regulation should focus on transparent accounting, digitised inventories, independent audits, and fit-and-proper governance standards, while leaving ritual autonomy to denominational bodies. Surplus funds should be defined narrowly and applied within a closed list of permissible objects consistent with Ishta and Purta, with *cy pres* applied cautiously and inter-temple transfers governed by transparent criteria. Succession should respect founder's intent and custom while ensuring competence, potentially separating spiritual headship from civil administration. Institutional design should separate regulation from control, employing a regulator and tribunal to safeguard property and process, while restoring governance to devotee communities rather than embedding temples as permanent branches of the State.

Niyogi Committee Report - 1956

102. The Government of Madhya Pradesh had previously published a report titled the Niyogi Committee Report in 1956. The report was on the purportedly controversial missionary activities in India by a Committee chaired by M. Bhawani Shankar Niyogi, a retired Chief

Justice of the Nagpur High Court and included five other members viz. M.B.Pathak, Ghanshyam Singh Gupta, S.K.George, Ratanlal Malviya and Bhanu Pratap Singh. The Committee recorded that "*there was a general complaint from the non-Christian side that the schools and hospitals were being used as means of securing converts*." The Report also noted that "*the practice of the Roman Catholic priests or preachers visiting newborn babies to give 'ashish' (blessings) in the name of Jesus, taking sides in litigation or domestic quarrels, kidnapping of minor children and abduction of women and recruitment of labour for plantations in Assam or Andaman as a means of propagating the* Christian *faith among the ignorant and illiterate people*." The report also noted that Roman Catholic missions used money-lending as a device for proselytization which gave loans which were later written off if the debtor became a Christian. The Committee gave the following recommendations

- Withdrawal of missionaries whose primary object is proselytization;
- A check on the large influx of foreign missionaries;
- The use of medical and other professional services as a direct means of making conversions should be prohibited by law;
- Attempts to convert by force or fraud or material inducements, or by taking advantage of a person's inexperience or confidence or spiritual weakness or thoughtlessness, or by penetrating into the religious conscience of persons for the purpose of consciously altering their faith, should be absolutely prohibited;
- Rules relating to registration of doctors, nurses and other personnel employed in hospitals should be suitably amended to provide a condition against evangelistic activities during professional service; and
- Circulation of literature meant for religious propaganda without approval of the State Government should be prohibited.

103. The legislations enacted by the MP Legislature in pursuance of the Report sought to tackle the problems highlighted by the said Committee. The legislation prohibited forced conversions, which included conversions by the threat of divine displeasure, and conversions through allurement/inducement which included conversion by offering any material benefit, monetary or otherwise. The said legislations were upheld in the ***Rev. Stainislaus*** **case discussed** hereinabove.

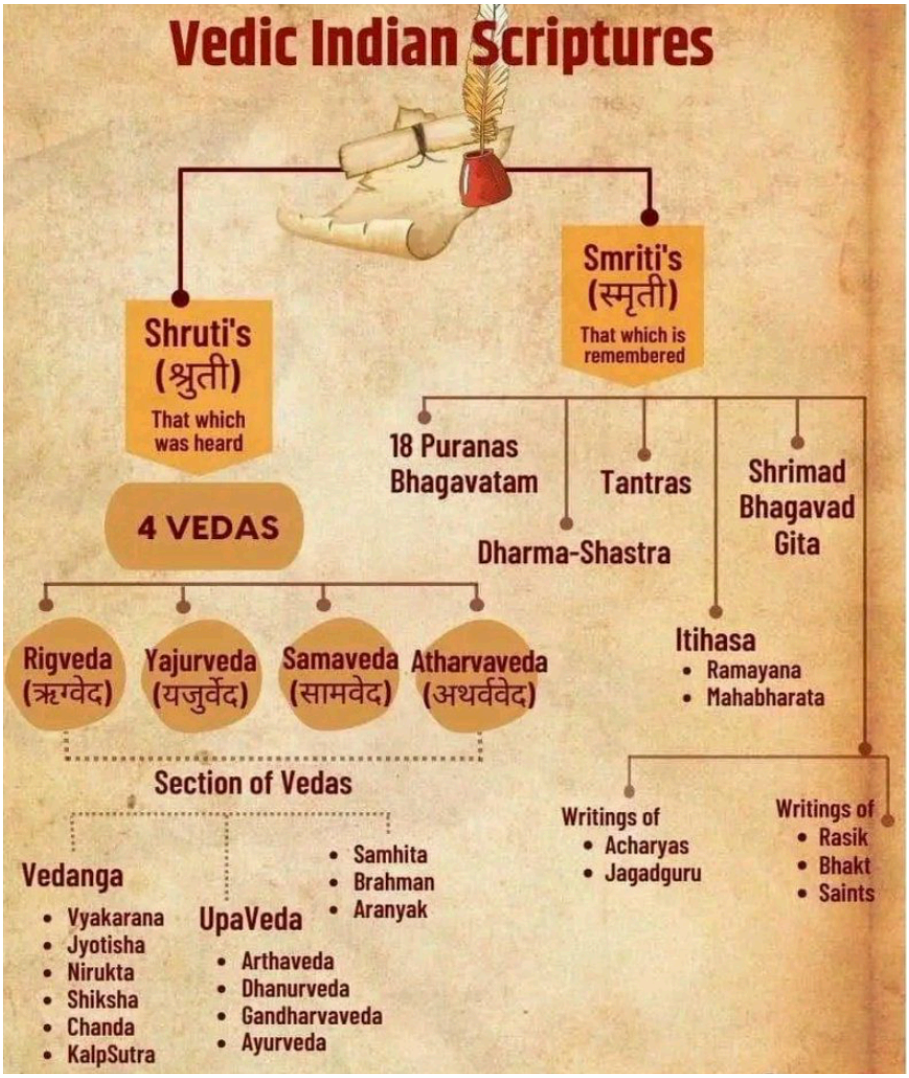
104. With this backdrop, the next section would answer the questions of law framed by this Hon'ble Court.

ANNEXURE A

PLURALITY OF RELIGIONS : A STUDY ON HINDUISM, ISLAM, BUDDHISM, CHRISTIANITY AND JAINISM

Hinduism

1. It is respectfully submitted that Hinduism is primarily divided into four major denominations or traditions based on primary deity worshipped viz. *Vaishnavism, Shaivism, Shakti's* and *Smartism.* While their point of focus may be different, they share common beliefs in karma, dharma, reincarnation and validity of the vedas. It is further submitted that the core beliefs is that all paths lead to the same ultimate reality (*Moksha* or *Nirvana*), allowing followers to respect different traditions. Furthermore, Hinduism has no centralised authority, or singular book that mandates obedience, preventing top-down religious disagreements.



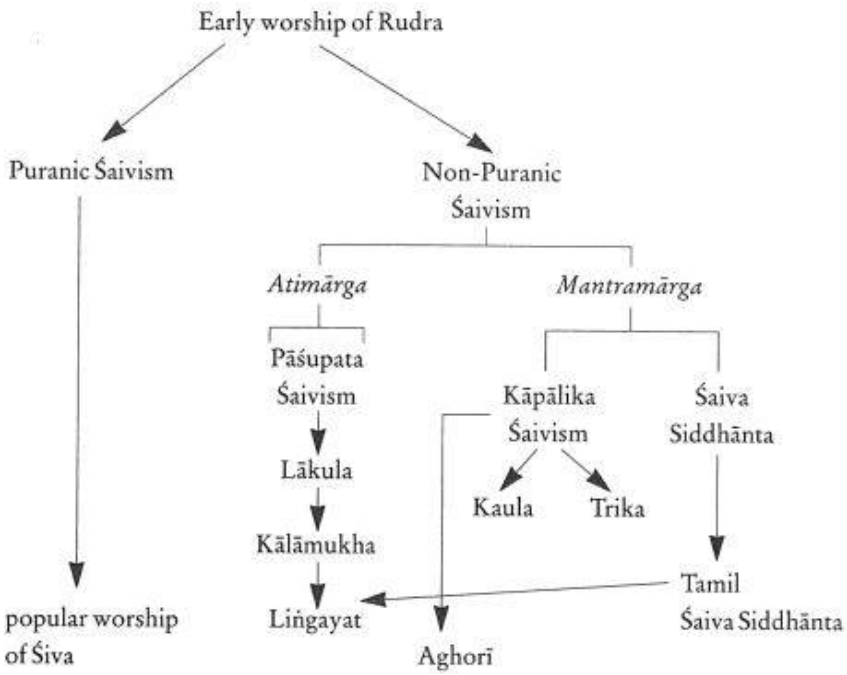
2. It is submitted that Hinduism started as the first ancient religion with 4 vedas. The vedas are: ***Rigveda***, ***Yajurveda***, ***Samaveda*** and ***Atharvaveda***. It would be interesting to note that while ***Rigveda*** is a book of mantras. ***Samveda*** has very design for singing hymns, which acts as the foundational text for Indian classical music and chanting. It is further submitted that ***Yajurveda*** is a book of rituals guide for priests. Lastly, ***Atharvaveda*** is the knowledge on life, health and other procedures.

3. It is further submitted that ***Charvaka*** is an ancient Indian school of materialism and hedonism (600 BC) that represents the atheist / heterodox branch of Hindu philosophy. It rejects the Vedas, afterlife, soul and karma, holding direct perception as the only source of knowledge. It believes that universe consists only of four elements - *earth*, *water*, *fire* and *air*. It explicitly denies the existence of gods, supernatural beings and the authority of Vedic scriptures. Furthermore, only 'sensory perception' 'Pratyaksa' is accepted as a valid source of knowledge, wherein inference and testimony are rejected.

Shaivism

4. It is stated that in ***Shaivism,*** the Shaivites worship the Supreme God as Shiva, the Compassionate One. They believe in self discipline and philosophy and follow a satguru. They worship in the temple and practice yoga, striving to be one with Shiva within. It is further categorised into several distinct sub-sects based on philosophy and practice viz. **devotional Shaiva Siddhanta, non-dualistic Kashmir Shaivism, reformist Lingayatism (Veerashaivism), and the ascetic Natha sect.**

Shaivism



5. It is submitted that in terms of origin also Shaivism was either ***Puranic Shaivism*** or ***Non-Puranic Shaivism***. It is respectfully submitted that Puranic Shaivism is rooted in the Puranas and popular devotion (bhakti), focuses on worshiping Shiva as a supreme deity through temple rituals, often integrating with Smarta traditions. On the other hand, non-Puranic Shaivism (Agamic/Tantric) focuses on esoteric, ritualistic, or ascetic paths to liberation (mukti) or supernatural powers (bhukti).

6. It is respectfully submitted that following are the major Shaivite Sects viz.

I. Shaiva Siddhanta: A prominent dualistic school that originated in South India, emphasizing ritual, devotion to Shiva, and the relationship between Pati (Lord), Pasu (soul), and Pasa (bondage).

II. Kashmir Shaivism (Trika): A monistic, non-dual tradition that flourished in Northern India (9th-12th century), teaching that individual souls are identical with Shiva (absolute consciousness). It includes the Pratyabhijna (Recognition) school.

III. Veerashaivism / Lingayatism: A 12th-century reformist movement founded by Basavanna,

Major sects of Shaivism

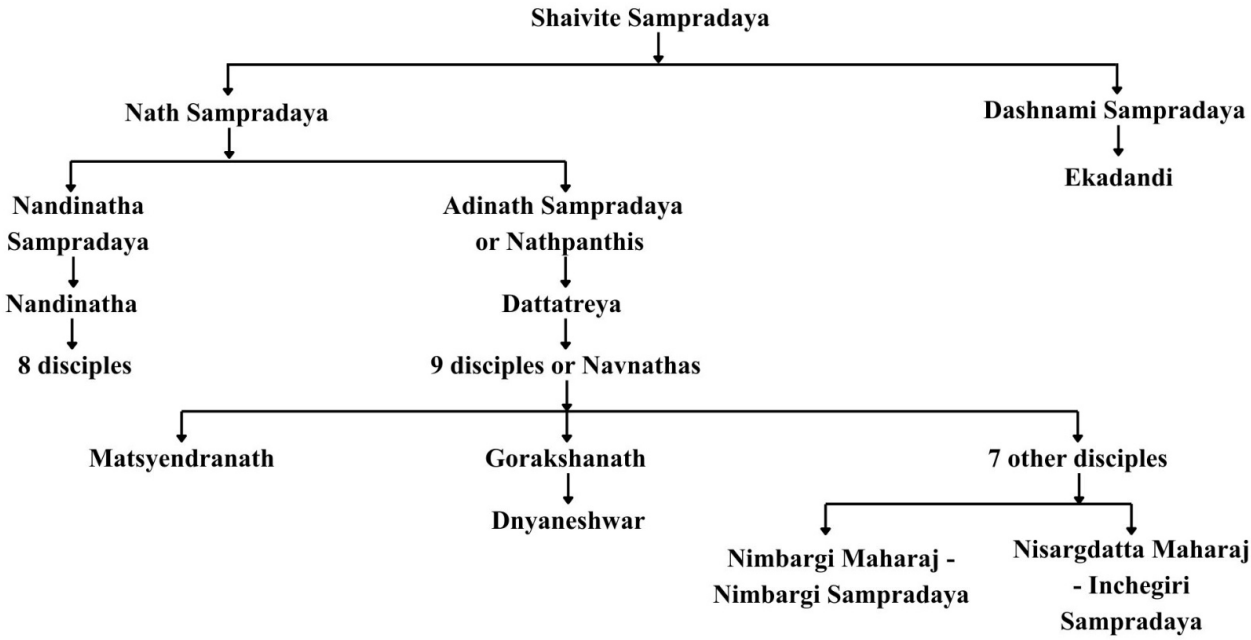
prevalent in Karnataka, which rejects temple worship and caste, focusing on carrying a Linga on the body.

IV. Natha Shaivism: A tradition focusing on Hatha Yoga, Kundalini, and tantra, tracing its roots to the Nava Nathas (nine masters), including Gorakhnath.

V. Siddha Shaivism: Mainly found in Tamil Nadu, this school follows the teachings of 18 Siddhas (yogic saints), emphasizing self-realization through inner practices.

7. It is respectfully submitted that there is further difference in Shaivism based on the ***monastic traditions*** in Hinduism i.e. ***Nath Sampradaya*** and ***Dashnami***, which are the two prominent Shaivite monastic traditions in Hinduism. It is stated that Naths focus on Hatha Yoga and internal alchemy, often wearing large ear-rings, while Dashnamis ***(organized by Adi Shankaracharya)*** are ten sects of Advaita Vedanta practitioners focusing on renunciation, knowledge, and Shaivism.

Difference in terms of monastic traditions



8. It is further submitted that ***Nath*** focuses on perfecting the body and mind via yoga (Hatha/Raja Yoga), whereas the ***Dashnami*** focuses on *jnana* (knowledge) and monism (Advaita). Also, Naths often pierce ears ('darshan mudra') for initiation. Dashnamis (including Naga Sadhus) adopt one of ten names: Giri, Puri, Bharati, etc.

9. Furthermore, in terms of lifestyle Naths include both ascetics and householder lineages. However, the Dashnamis are, generally, ascetic renunciates (Sannyasis). The ten branches of Dashnami are **Giri, Puri, Bhāratī, Vana/Ban, Āraṇya, Sagara, Āśrama, Sarasvatī, Tīrtha,** and **Parvata**. They are based at four main *mathas* (monasteries) in Dwarka, Puri, Sringeri, and Badrinath. Similarly, the Nath Sampradaya is divided into 12 main sects (Barah Panth) including Satya Nath, Dharam Nath, Daria Nath, and others. They are often associated with alchemy (Rasa Siddhas) and using yoga to attain liberation within the same lifespan.

10. It is further submitted that **Daśanāmi Sampradaya** also known as the **Order of Swamis,** is a Hindu monastic tradition of "single-staff renunciation" (*ēka daṇḍi saṃnyāsī*). According to hagiographies composed in the 14th-17th century, the Daśanāmi Sampradaya was resurrected by Adi Shankaracharya, organising a section of the Ekadandi monks under an umbrella grouping of ten names and the four cardinal mathas of the Advaita Vedanta tradition. Some of the prominent practitioners of Dasanami have been illustrated below ***[A sannyasin's name typically follows the format: Title (Swami) + Personal Name + Sub-order Name (e.g., Swami Chinmayananda Saraswati)] :-***

Dasanami	Notable Practioner
Giri (Mountain)	***Swāmī Dhanarāja Giri*** (Advaita Vedānta ācārya. Founder of the highly-prestigious Kailash Ashram, Rishikesh.)
Puri (Tract)	***Swāmī Yogānanda Puri*** (One of the six disciples of Ramakrishna who were regarded as Iśvarakoti.)

Dasanami	Notable Practioner
Bharati (Land)	***Swāmī Agehānanda Bhāratī*** (Austrian American intellectual and expert on Indian languages and phonology) , ***Swami Kesavananda Bharati***
Vana / Ban (Forest)	
Aranya (Forest)	***Swāmī Hariharānanda Āranya*** (Noted Samkhya Yogi)
Sagara (Sea)	
Asrama (Hermitage / Spiritual Exertion)	
Sarasvati (Wisdom of nature / Learning)	***Swāmī Dayānanda Sarasvatī*** (Socio-religious reformer. Founder of the Arya Samaj)
Tirtha (Place of Pilgrimage)	***Swāmī Vidyāranya Tīrtha*** (Jagadguru Śankarācārya of Śrngeri.)
Parvata (Mountain)	

Shaktism

11. Shaktism is a major Hindu denomination focusing on the worship of the Divine Mother (Devi/Shakti) as the Supreme Being. The primary sub-sects are divided into ***Srikula*** (South India, focus on Lalita Tripura Sundari) and ***Kalikula*** (Northeast India, focus on Kali/Durga). These traditions are characterized by tantric practices involving mantra, yantra, and yoga.

12. Srikula, worships the Devi in her benevolent, beautiful, and "royal" forms, primarily Lalita Tripura Sundari. It is strongest in South India (Kerala, Tamil Nadu, Andhra Pradesh). It emphasizes *Srividya* (knowledge of the divine mother) and uses the *Sri Chakra* (or Sri Yantra) as the primary symbol. It focuses on *Samayacharya* (internal, meditative, "right-handed" worship).

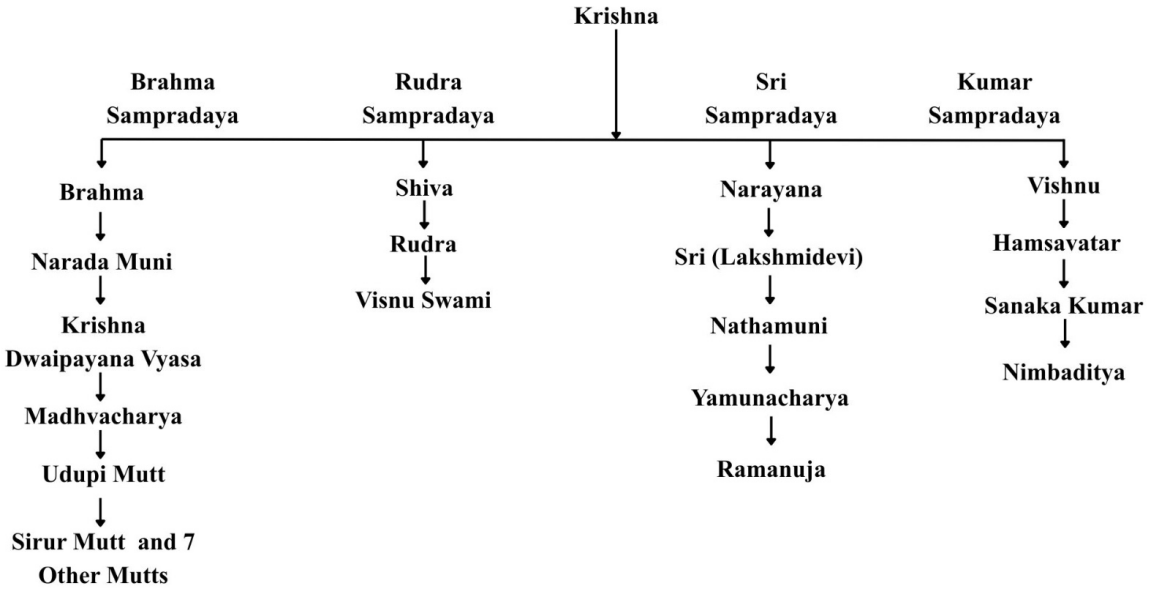
Major sects of Shaktism

13. It is respectfully submitted that Kalikula (Family of Kali) focuses on worshipping primarily Maa Kali and Maa Durga, in her fierce, transformative, and "protective" forms. It prevails in northern and northeastern India (Bengal, Assam, Bihar, Odisha) and Nepal. The key deities are Kali, Tara, Chandi, and the ten Mahavidyas (wisdom goddesses).

14. It is further submitted that other specific lineages like *Kamakhya Kula* (associated with the Kamakhya temple in Assam) are also significant sub-sects.

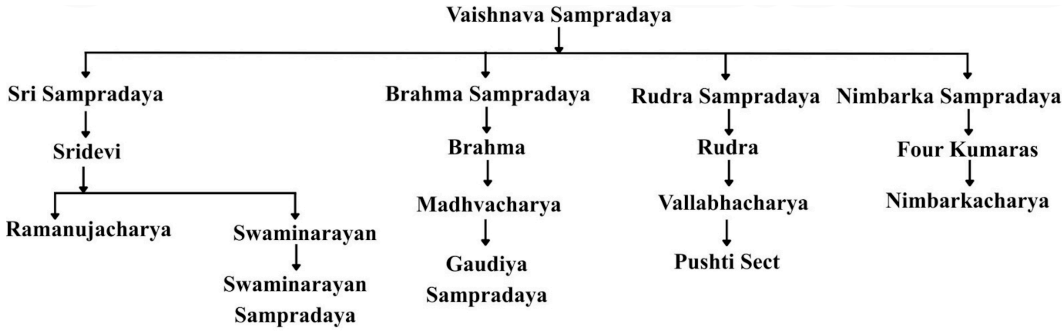
Vaishnavism

15. Vaishnavism is a major tradition within Hinduism focusing on the worship of Vishnu as the supreme God and his incarnations, primarily Rama and Krishna. It emphasises loving devotion (Bhakti) and total surrender (Prapatti) as the path to liberation (moksha) from the cycle of birth and death. It is primarily divided into four major, historic Sampradayas (lineages) based on Vedanta philosophies, alongside several later traditions. These main sects are the ***Sri (Ramanuja), Brahma (Madhva), Rudra (Vallabha),*** and ***Kumara (Nimbarka) sampradayas***. They primarily worship Vishnu, Krishna, and Rama, emphasizing devotion (bhakti) and surrender.



16. Sri Sampradaya (Ramanuja): Founded by Ramanujacharya, this school follows Vishishtadvaita (Qualified Non-dualism). It focuses on the worship of Vishnu and Lakshmi, with special emphasis on the Goddess Lakshmi as the mediator (mediator/mediatrix) between the human soul and God. Rooted in Vedanta, it emphasizes *Visistadvaita* (qualified non-dualism) and *Prapatti* (total surrender). According to tradition, the sect originates with Sri Lakshmi Devi herself, passing through saints like Vishvaksena, Nammalvar, Nathamuni, and Yamunacharya. It teaches that the individual soul (*jiva*) is a part of the Supreme Lord (Narayana), and the material world is real, not illusion, yet entirely dependent on God. In terms of worship and practices, it focused on Lakshminarayana or Sita-Rama, involving devoted service, temple worship, and the chanting of holy names. Major temples include Srirangam, Tirupati, and Melkote.

Sri Sampradaya



17. It is further submitted that the ***Swaminarayan Sampradaya*** is a distinct Vaishnava tradition within Hinduism, officially founded by Sahajanand Swami (1781–1830), also known as Swaminarayan, who is worshipped as the supreme manifestation of God. It evolved from the Uddhava Sampradaya, emphasizing monotheism (Ekeshwarvad), strict moral codes (non-violence, vegetarianism), and bhakti (devotion). It largely follows the Vishishtadvaita (qualified non-dualism) philosophy of

Ramanujacharya, emphasizing that Swaminarayan is the supreme Godhead (Parabrahman). Its followers worship Krishna or Narayana as the supreme deity. Key practices include daily puja, regular temple attendance, and following strict codes of conduct (shikshapatri).

18. Brahma Sampradaya (Madhva): Founded by Madhvacharya, this school adheres to *Dvaita* (Dualism), maintaining that the individual soul and God (Vishnu) are eternally separate entities. It is a bona fide disciplic succession (sampradaya) in Vaishnavism originating from Lord Brahma, dedicated to the worship of Vishnu/Krishna. It is famously associated with the Dvaita Vedanta philosophy founded by Madhvacharya and the Brahma-Madhva-Gaudiya tradition. This tradition emphasizes devotion, chanting, and spiritual succession, notably continued by Chaitanya Mahaprabhu.

Brahma Sampradaya

19. It is respectfully submitted that ***Madhvacharya*** formalized this tradition, spreading *Dvaita* (dualism), which holds that the soul and God are distinct entities. A major branch (Gaudiya Vaishnavism) connects Madhva's lineage with Sri Chaitanya Mahaprabhu, popularizing the Hare Krishna mantra. The tradition adheres strictly to disciplic succession (*parampara*), ensuring that knowledge is passed down directly from teacher to student. Followers often focus on the *Srimad-Bhagavatam* and the teachings of Madhvacharya.

20. It is respectfully submitted that Rudra Sampradaya, is one of the four authorized Vaishnava disciplic successions (sampradayas) in Hinduism, tracing its origins to Lord Shiva (Rudra) receiving knowledge from Lord Vishnu. Primarily associated with the philosophy of *Suddhadvaita* (pure non-dualism), it was traditionally propagated by Vishnu Swami and later significantly by Vallabhacharya (1479–1531 CE) through the Pushtimarg path. The sampradaya focuses on *Suddhadvaita* (pure monism), believing that everything is a form of Krishna and that the world is not an illusion, but a real expansion of the divine.

Rudra Sampradaya

21. It is submitted that while Vishnu Swami is credited as the historical founder-acharya of this tradition, the sampradaya considers Lord Shiva as the first teacher. It is stated that Vallabhacharya, a 15th-century philosopher, is central to the modern development of this tradition, emphasizing devotion and grace. It is stated that a major branch of the Rudra Sampradaya, focusing on devotion to Shrinathji (Krishna). It emphasizes *sewa* (service) and *pushti* (divine grace). Its followers generally wear a *Urdhva Pundra* tilak, often a vertical red line (derived from saffron) representing Krishna's lotus feet. The tradition is particularly prominent in Gujarat and Rajasthan.

22. Kumara/Sanaka Sampradaya (Nimbarka) was founded by Nimbarkacharya, this school teaches Dvaitadvaita (Dualistic Non-dualism), emphasizing the Radha-Krishna union. It originating from the Four Kumaras—Sanaka, Sananda, Sanatana, and Sanat—who received knowledge from the Hamsa avatar of Vishnu, the lineage propagates the philosophy of *Dvaitadvaita* (simultaneous oneness and duality). While inaugurated by the Four Kumaras, the tradition is commonly known today as the Nimbarka Sampradaya, named after Sri Nimbarkacharya (11th-12th century), who established the philosophy. The doctrine teaches that the living entity (jiva) and the universe are both distinct from (dvaita) and inseparable from (advaita) the Supreme Lord (Krishna). The tradition emphasizes the worship of Radha and Krishna in *swakiya* (wedded) mood, focusing on devotion and surrender. It is recognized as one of the oldest traditions focusing on Vaishnava bhakti, often emphasizing renunciation and the celibate life of the Four Kumaras.

Nimbarka

23. In furtherance to the above, the other significant traditions are as follows:-

- ***Gaudiya Vaishnavism***: Founded by Chaitanya Mahaprabhu, this tradition emphasizes Achintya Bheda Abheda(Inconceivable Oneness and Difference) and is known for congregational chanting of Krishna's names.
- ***Ramanandi Sampradaya***: A major branch focusing on the worship of Lord Rama, originated by Ramananda.

- ***Warkari Panth***: A popular devotional tradition in Maharashtra focusing on Vitthal (a form of Krishna/Vishnu).

Smartism

24. It is respectfully submitted that ***Smartism*** is a liberal, nonsectarian Hindu tradition, often identified with Advaita Vedanta, focusing on the worship of five or six deities (Panchayatana/Shanmata) as equal reflections of one supreme reality, Brahman. Unlike other sects of Hinduism, Smartism does not view any single deity as superior to others. The word "Smarta" refers to followers of *Smriti* (tradition/texts), including the Puranas and Dharma Sastras, rather than just the Vedas.

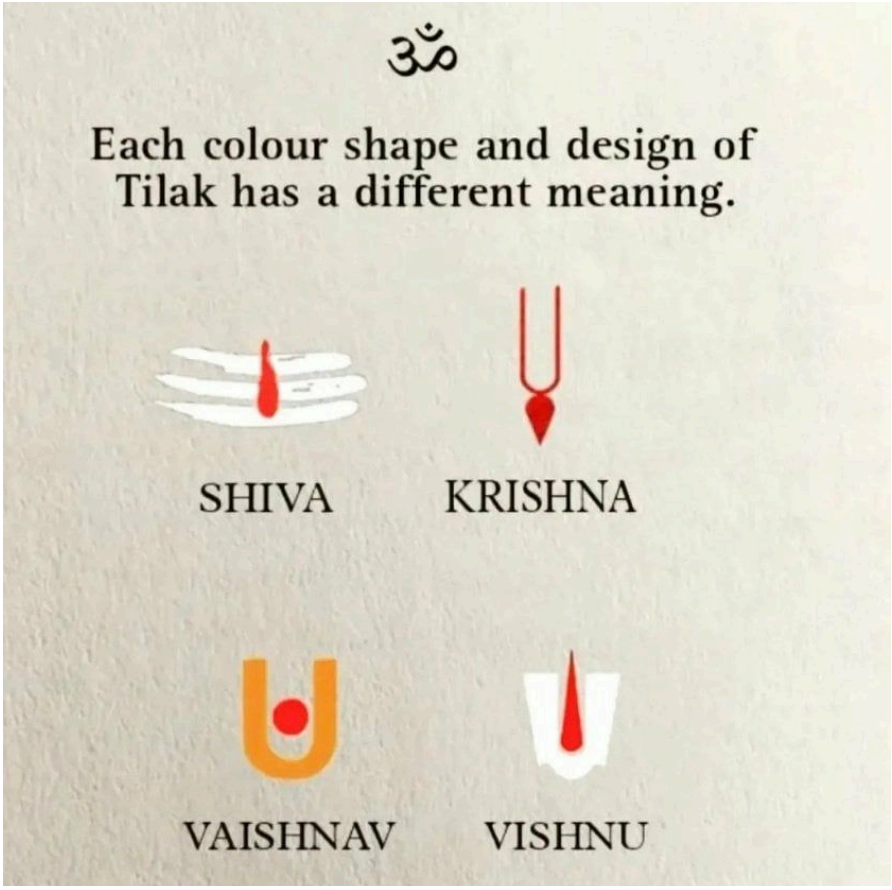
25. Reformed by Adi Shankara in the 9th century, this tradition emphasizes knowledge (jnana) and intellectual study over strict adherence to a single deity. It is submitted that smarts worship five or six primary deities: **Vishnu, Shiva, Shakti, Ganesha, Surya,** and sometimes **Kumara**. These are seen as different forms of the same, formless Brahman (Nirguna).

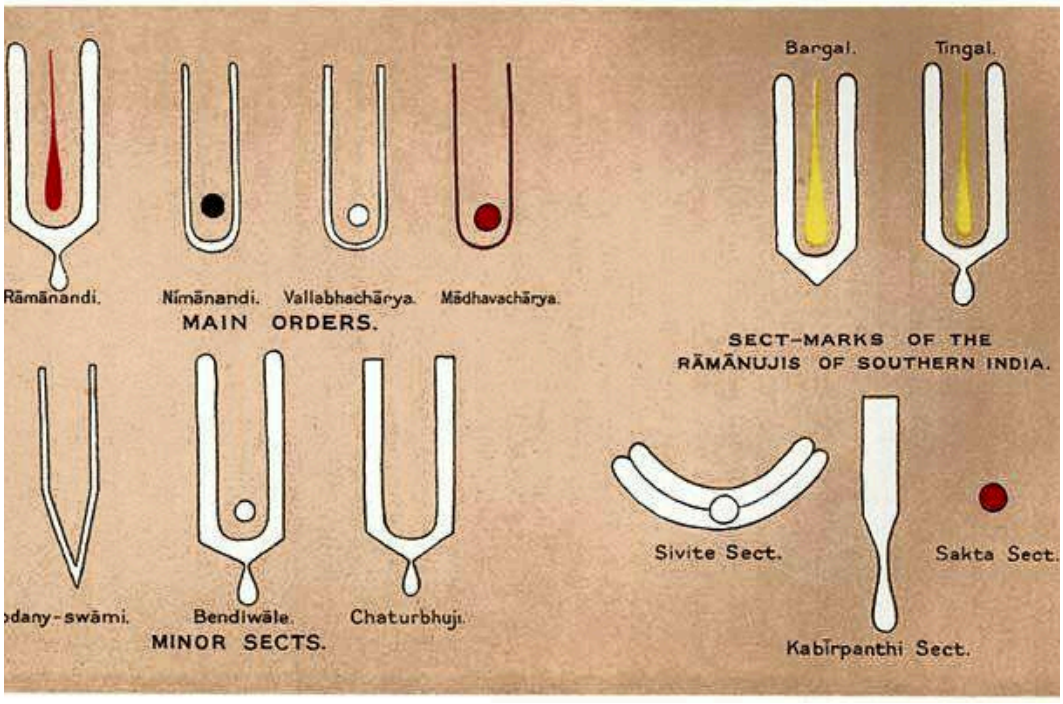
26. The tradition is largely based on the teachings of Adi Shankara, a 9th-century philosopher who aimed to unify different Hindu sects under the philosophy of Advaita. It is stated that the Smartas follow the *Panchayatana puja*, a ritual where five symbols of the major deities are arranged on an altar, often with the worshiper's chosen deity (*Ishta Devata*) in the center. It emphasizes *jnana yoga* (the path of knowledge) to understand that the individual soul (Atman) is identical to the universal reality (Brahman), aiming for *moksha* (liberation) through this understanding. Shankara organized several monasteries (*mathas*) across India to maintain the tradition, with key centers in places like Sringeri, Puri, and Dwarka.

Variations in Hinduism in terms of Tilak

27. It is respectfully submitted that differences in tilak within Hinduism are largely driven by sectarian affiliations (Sampradaya), regional traditions, and specific deity worship, reflecting diverse approaches to devotion, purity, and spiritual lineage. It is stated that Tilak styles (shapes,

materials) and clothing choices, such as traditional garments and head coverings, serve as outward expressions of these inner philosophies.





Variations in Tilak

- Vaishnava (Worshippers of Vishnu): Typically wear the **Urdhva Pundra**, a vertical tilak styled as a "U" or "Y" shape, often made with white clay (Gopi Chandan) or yellow sandalwood, symbolizing the footprints of Vishnu.
- Shaiva (Worshippers of Shiva): Usually apply the **Tripundra**, three horizontal lines of sacred ash (Vibhuti or Bhasma), representing the three Vedic fires and the removal of ignorance.
- Devi/Shakti (Worshippers of the Divine Mother): Commonly apply a single vertical line or a red dot (Bindu) made of kumkum (vermilion), representing power, energy, and auspiciousness.
- Other Variations: Regional and familial customs dictate the use of red (power), yellow (wisdom), or white (purity) sandalwood/paste.
- General vs. Specific: A simple round bindu is often worn by women, while men may use a line or sectarian mark.

Variations as per Sampradaya

- Madhva: Use Gopichandana for two vertical lines, often with a black line in the middle made from yajna-kunda (fire sacrifice) coal.
- Gaudiya: Similar to Madhva, using Gopichandana mud, sometimes explicitly from Vrindavana.
- Vallabha: Generally a single, simple vertical red line.
- Other: Unique styles exist, such as the *Vijayshree* (white Urdhva Pundra with a white line) or *Bendi* (white vertical line with a round dot).

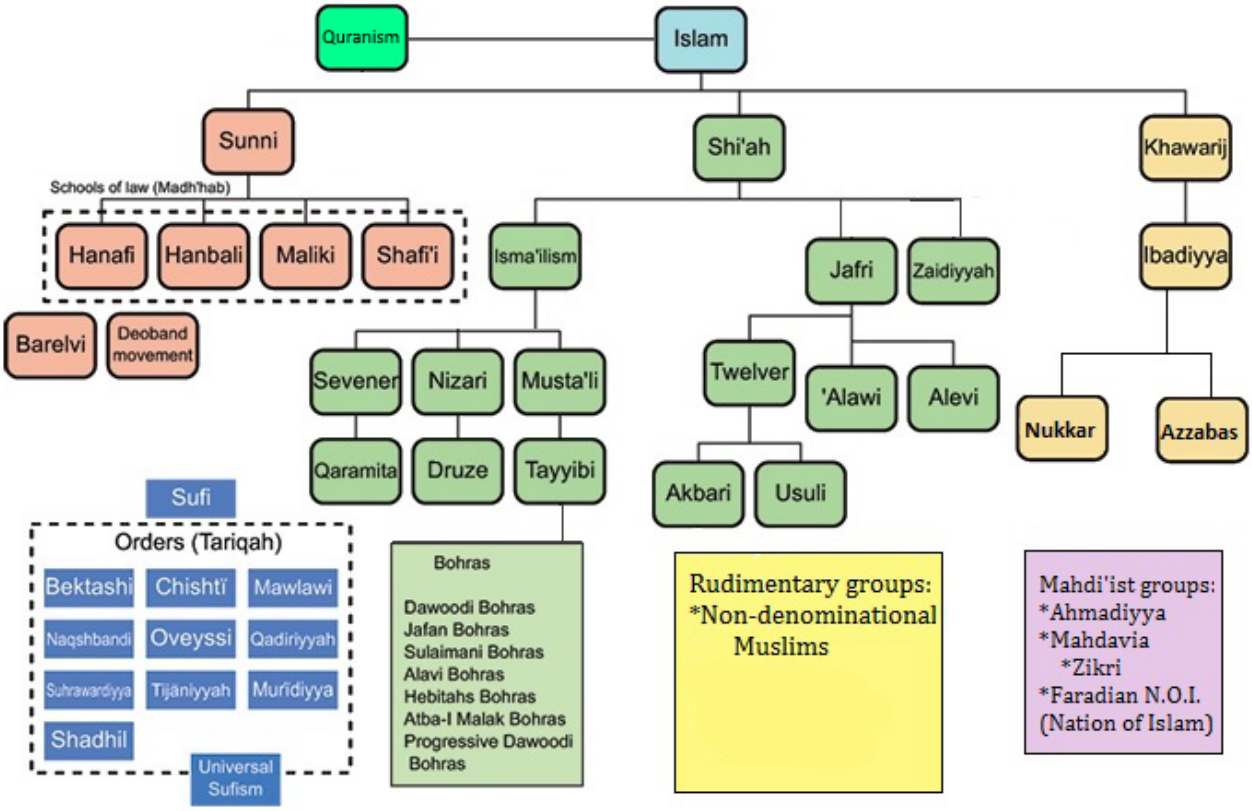
Islam

28. It is respectfully submitted that Muslims consider the Holy Quran to be the verbatim word of God and the unaltered, final revelation. They believe that Prophet Muhammad is the main and final of God's prophets, through whom the religion was completed, and after whom no new prophet or divine law will come. The teachings and normative examples of Prophet Muhammad, called the Sunnah, documented in accounts called the hadith, provide a constitutional model for Muslims. Islam is based on the belief in the oneness and uniqueness of God (**tawhid**), and belief in an afterlife (**akhirah**) with the Last Judgment (**qayamat)**— wherein the righteous will be rewarded in paradise (**jannah**) and the unrighteous will be punished in hell (**jahannam**).

29. It is submitted that the Five Pillars, considered obligatory acts of worship, are the **Islamic oath and creed (shahada)**, **daily prayers (salah)**, **almsgiving (zakat)**, **fasting (sawm)** in the month of Ramadan, and a **pilgrimage (hajj)** to Mecca.

30. It is stated that despite these unifying features, Islam has over time, split into different branches and groups.

31. In this regard, there are two main branches of Islam viz. Sunni and Shia, along with a third branch i.e. the Khawarij, which predates the formation of the other two.



Khawarij

32. The Khawarij is a sect of an early Islam predating the division into what became to be known as Sunni and Shia Islam.

33. Contrary to the Sunni view that the holy Quran is God's eternal word and is therefore 'uncreated', the Ibadis see the holy Quran as God's creation. They do not subscribe to the Sunni designation of the first four successors to the holy prophet as 'rightly guided' (rashidun): while they consider the first two caliphs (i.e. Abu Bakr and Umar) legitimate successors to the holy Prophet.

Khawarij

Sunni Islam

34. Sunni Islam is the largest branch of Islam, comprising 85-90% of the world's Muslims, who are followers of the Sunnah (Prophetic tradition). The very term Sunni, the name Sunnis use to refer to themselves, reflects

the ideal of community solidarity: "the people of tradition (sunna) and the community."

Sunni Islam

35. In Sunni sect, there are four major schools of Muslim law which have been described as under:-

I. Hanafi School (699 AD – 767 AD):

- The founder of this school was 'Imam Abu Hanifa'. He had two most important disciples:
  - Abu Yusuf
  - Imam Muhammad.
- They did not rely much on the hadiths[1] until they were proved to be true beyond a reasonable doubt. They relied very much on Qiyas. They even extended 'Ijma'[2] and gave preference to 'Isthiasan'[3].
  - This school was believed to be stricter than other schools in lifting traditions.
  - Also, in the application of the law, Abu Hanifa believed that it is important to rely on usages and local authorities.

II. Maliki School (711 AD – 795 AD):

- 'Imam Malik' was the founder of this school. This school gets its name from Malik-bin-Anas. He was the 'Mufti of Madina'.
- People of 'Madina' also followed a certain way of 'Islam', this way was also followed by the 'Maliki School' and accepted the practices of the people of 'Medina' and the sayings of the companions of the holy prophet.

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1 ***Hadith*** refers to the recorded sayings, actions, and silent approvals of the Prophet Muhammad, serving as a primary source of Islamic law, theology, and moral guidance second only to the Qur'an. These reports (traditions) comprise a chain of narrators (isnad) and the main text (matn), crucial for understanding Sunnah.

2 Unanimous consensus or agreement of Islamic scholars (or the community) on a specific legal, religious, or social issue in a particular generation.

3 It refers to juristic discretion or equity in Islamic law, where a jurist departs from a strict analogy (qiyas) in favor of a different ruling that better serves the public interest, equity, or fairness. It literally means "to consider something good"

- They followed 'Qiyas'[4] only when the 'Holy Quran' or 'Sunnat'[5] were silent on that particular matter. They also followed the 'Public Interest' –Al-masalih, al- mursalah.
- This school was popularly followed in North Africa, Morocco, Spain, Algeria, Tanzania, etc.

III. Shafi School (767 AD – 820 AD):

- Imam Muhammad Ibn Idris Ash-Shafi was the founder of this school. He was the student of Imam Malik of Madina.
- It is characterised by a strict methodology, prioritising the Holy Quran and authentic Hadith while employing, but limiting, analogical reasoning.

IV. Hanbali School (780 AD – 855 AD):

- It is the most conservative and traditionalist of the four major Sunni Islamic schools of jurisprudence, founded on the teachings of Ahmad ibn Hanbal. It prioritises literal interpretations of the Holy Quran and Hadith, limiting reliance on human reasoning (Qiyas) and consensus (Ijma).

Shiite Islam

36. It is respectfully submitted that this sect derive their name from *'Shiat Ali'* ('the party of Ali') which denotes the belief in Ali ibn Abi Talib and his descendants as the only legitimate successors of the Holy Prophet.

Major sub-sects of Shiism

I. The Twelver Shiism

II. Zaidiyyah

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4 ***Qiyas*** is the Islamic legal principle of analogical reasoning, used to derive rulings for new situations by comparing them to established precedents in the Holy Quran or Sunnah..

5 ***Sunnat (or Sunnah)*** refers to the habitual practices, traditions, and "way of life" of the Prophet Muhammad, acting as a foundational source of Islamic law and guidance alongside the Holy Quran. It encompasses his words, actions, silent approvals, and character, often used to define recommended, non-obligatory acts.

III. The Ismaili Branch

37. Further sub-sects of Islam are described as under:-

A. ***Ahmadiyya***:- It promotes reformist interpretation of Islam, emphasising spiritual revival but is widely considered heretical by mainstream Muslims due to its view on prophethood.

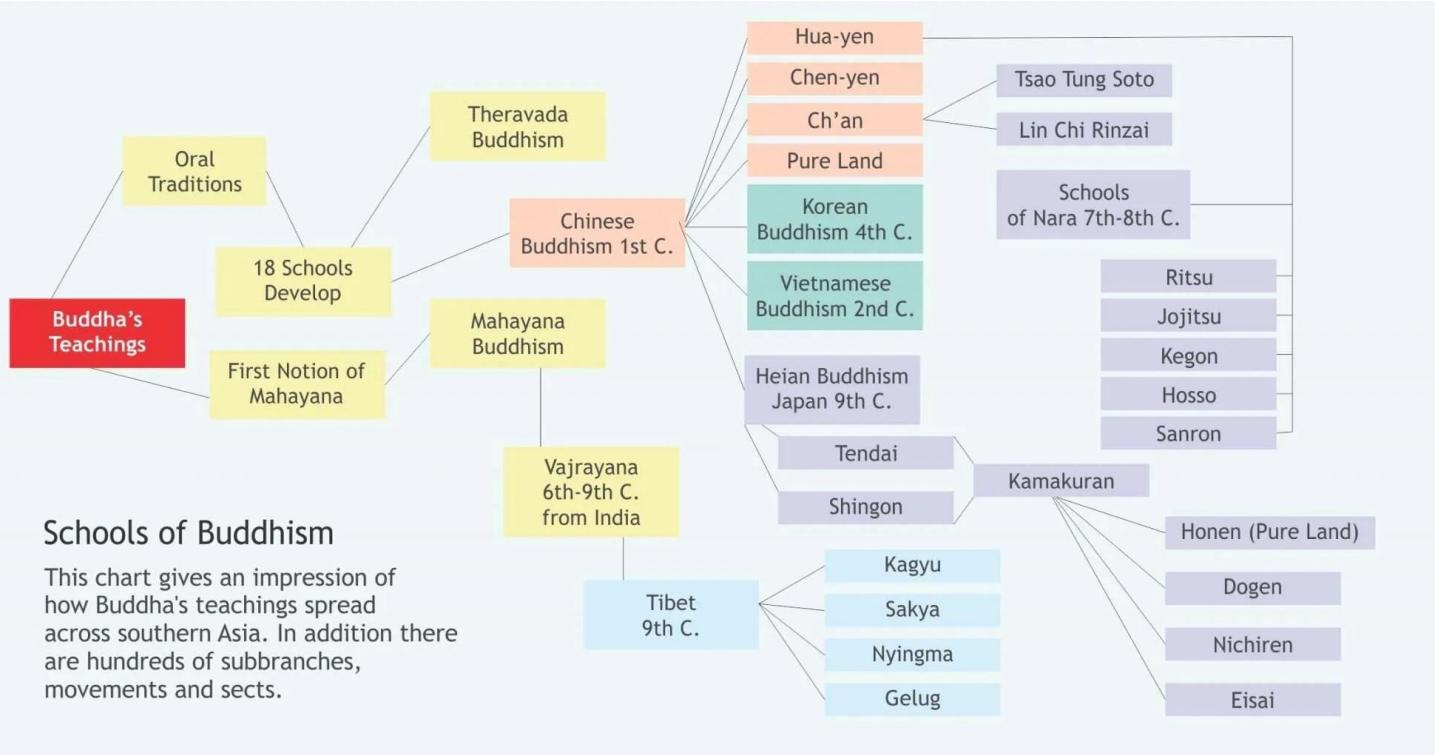
B. Quranism:- It generally rejects the authoritative role of Hadiths, and considers the Qur'an to be the only dependable religious text. Quranist Muslims believe that the Qur'an is clear and complete and can be fully understood without recourse to external sources.

Buddhism

38. It is respectfully submitted that Buddhism is divided into multiple sects based on philosophical interpretations, practices, and propagation methods. It is stated that the three main sects / schools of Buddhism are: Theravada, Mahayana and Vajrayana, originated from early splits over monastic discipline and doctrine.

39. Even though the Lord Buddha had discouraged rigid organisation and told his followers to be "a lamp unto themselves," Monks gathered to recite what they remembered, comparing versions, trying to establish what the Buddha actually said. This led to the First Buddhist Council around 483 BCE, where senior monks worked to preserve the teachings before the generation who'd known the Buddha personally died off. It is respectfully submitted that they organised everything into three collections, called the **Tripitaka** or **"Triple Basket"**: the ***Sutra Pitaka*** containing roughly 10,000 discourses, the ***Vinaya Pitaka*** laying out monastic rules, and the ***Abhidhamma Pitaka*** exploring philosophical and psychological details. This massive compilation was memorised and passed down orally for several centuries before being written down.

40. It is respectfully submitted that divisions started to emerge when different groups remembered things differently or emphasised different aspects of the teaching. The **Second Buddhist Council** around 383 BCE argued about monastic practices on the strictness of the rules. The **Third Council** around 250 BCE focused on commentaries, trying to interpret what the teachings meant. By the **Fourth Council** around 250 CE, the community had split significantly into what became known as Mahayana (the "Great Vehicle") and what Mahayana practitioners called Hinayana (the "Lesser Vehicle"—a term the other group never used for themselves).



Timeline of Buddhism

41. It is submitted that '*Theravada*' is considered the oldest surviving school, and it views the Buddha as a teacher who attained ultimate wisdom, rather than a god. It emphasizes the original teachings of Gautama Buddha his personal effort and monastic discipline to reach Nirvana. It is conservative and adheres strictly to the *Pali Canon* and *Vinaya (Monk's Code)*. It focuses on personal enlightenment (Arahantship) through self-discipline and meditation. It is predominantly practised in Sri Lanka, Thailand, Myanmar, Laos and Cambodia.

Theravada

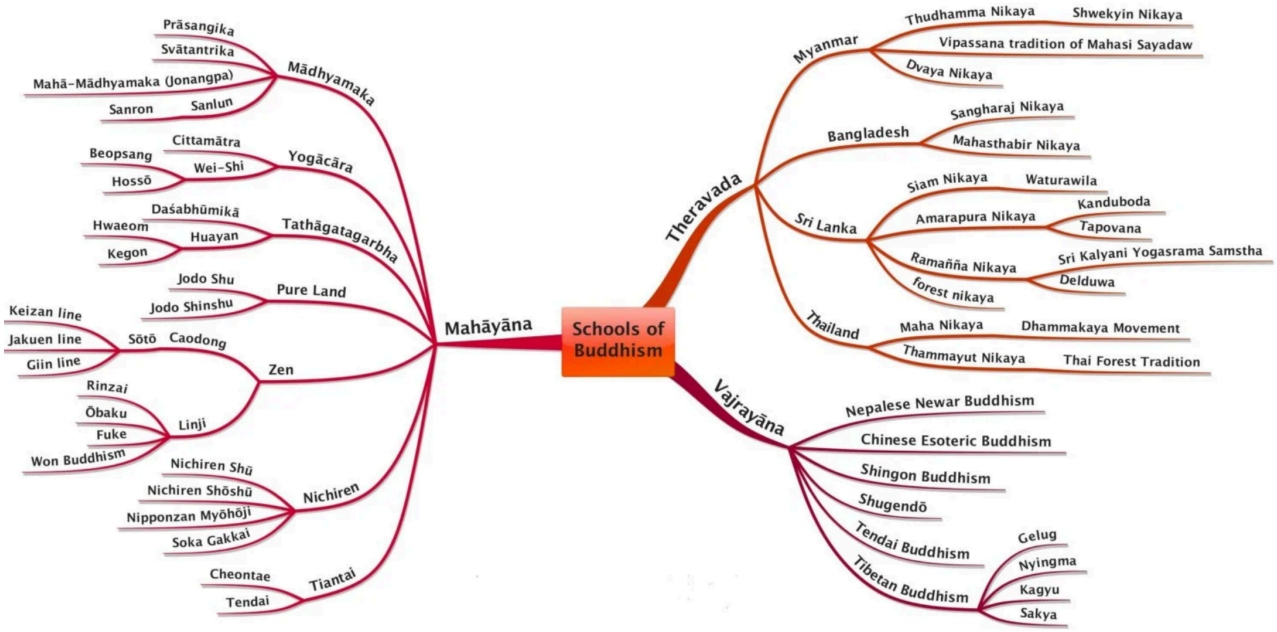
42. It is stated that *'Mahayana'*, the 'Great Vehicle' is the largest major tradition of Buddhism today, focusing on the Bodhisattva ideal - seeking enlightenment for the sake of all beings, not just oneself. The key beliefs are *Bodhisattva Path* i.e. the goal of an individual is to become a Bodhisattva, an awakened being who delays entering Nirvana to help others achieve enlightenment. It emphasises compassion, wisdom and concept of

Mahayana

emptiness (sunyata) with a wide following in East Asia, including China, Japan and Korea.

43. In '*Vajrayana Buddhism*' or 'Diamond Vehicle', is an esoteric Mahayana tradition emerging in India (5th-7th century) that offers a rapid, transformative path to enlightenment, often within a single lifetime. It purports to achieve the same by methods like mantras, mandalas and deity visualisation, it aims to transform ordinary experiences into enlightenment. It is stated that the same was developed from Mahayana philosophy incorporating Tantric texts and ritual yoga and heavily influencing Tibetan Buddhism, as well as traditions in Mongolia, Bhutan and Nepal. It directly uses techniques to directly experience 'emptiness' and 'deity yoga' [visualizing oneself as a Buddha]. Due to its advanced, complex nature, it emphasises the importance of a skilled guru (teacher) for initiation, guidance and protection to safely navigate the path. Ultimately, it aims to promote that rather than renouncing worldly desires, tantric practitioners work to convert them into enlightened energy.

Vajrayana



Main Schools of Buddhism

44. Thereafter, the **Second Buddhist Council (~383 BCE)** marked the first major split into ***Sthaviravada (followers of traditional teachings)*** and ***Mahasanghika (a more liberal group)***. Over time, further divisions emerged as illustrated in the following table:-

Major Sects of Buddhism		
Sect	**Key Characteristics**	**Subsects/Key Features**
Hinayana	• Orthodox, conservative • Focuses on Arahantship (individual salvation) • Rejects Buddha's deification and idol worship	• Sthaviravada: Strict adherence to original teachings • Sautrantika: Emphasized Buddha's discourses
Theravada	• Developed in Sri Lanka (~3rd BCE) • Preserves the Pali Canon • Focuses of Vibhajjavada (analysis-based teaching)	• Key Text: Visuddhimagga by Buddhaghosa • Practiced in Sri Lanka, Myanmar, Thailand, Cambodia, and Laos
Mahayana	• Liberal, focuses on Bodhisattva path and universal salvation • Introduces Buddha deification and idol worship	• Madhyamika: Founded by Nagarjuna; emphasizes sunyata (emptiness) • Yogacara: Focused on Consciousness-Only Doctrine
Vajrayana	• Evolved from Mahayana (~5th CE) • Incorporates Tantric rituals, mantras, and meditation	• Prominent in Tibet, Nepal, and Bhutan • Features deities like Tara and Avalokitesvara • Focused on esoteric enlightenment
Zen Buddhism	• Offshoot of Mahayana • Focuses on meditation and spiritual experience over formal doctrines	• Popular in Japan • Practices include Zazen (seated meditation) and simplicity

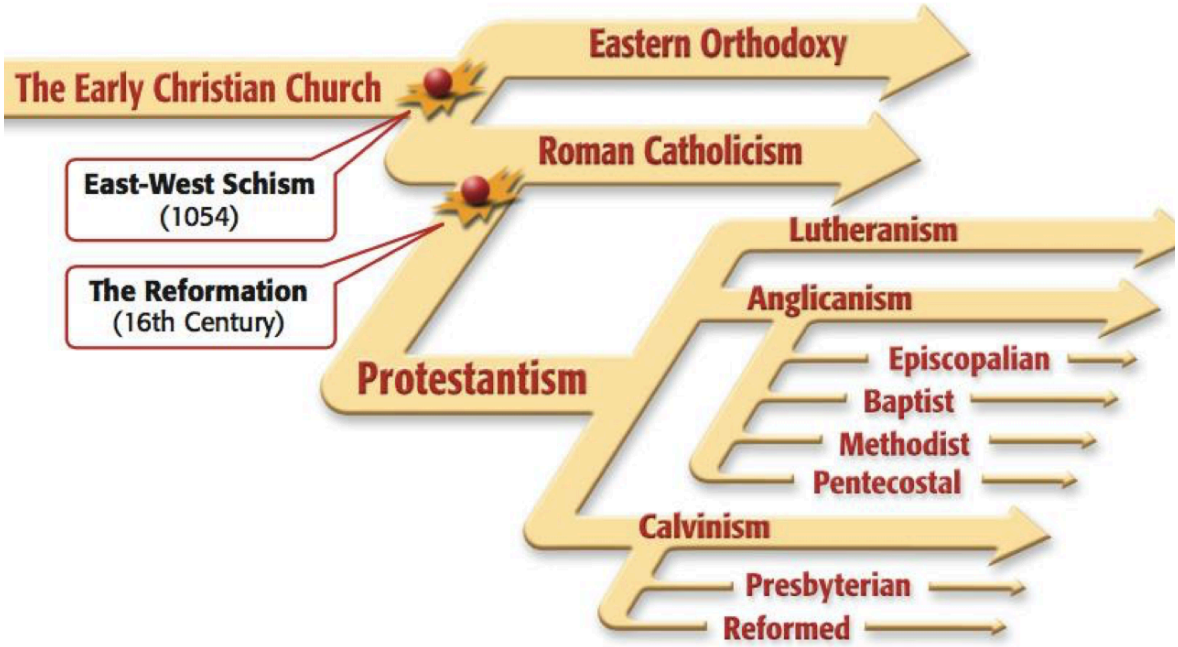
Sub-Sects of Buddhism			
Sect/Sub-Sect	**Time/Origin**	**Key Teachings & Beliefs**	**Key Features**
Sthaviravada	After 2nd Council (~383 BCE)	• Realist philosophy: All phenomena exist as unstable compounds of elements • Emphasized Arahantship (liberation from Samsara)	• Rejected transcendental nature of Buddhas • Root of Theravada • Strict adherence to Vinaya (Monk's Code)
Mahasanghika	After 2nd Council (~383 BCE)	• Mind's original nature is pure but contaminated by passions • Buddhas are supramundane and transcendental	• Introduced Buddha divinity and anthropomorphic art • Mahayana Buddhism evolved from this sect • Represented majority after the 2nd Council
Lokottaravadin	Sub-sect of Mahasanghika (~1st CE)	• Concept of Lokottara Buddha (Supernatural Buddha)	• Buddha's teachings transcend worldly reality • Highlighted Buddha's supernatural qualities
Ekavyavaharika	Sub-sect of Mahasanghika	• Emphasized unity of teachings (Ekavyavahara)	• Focused on transcendental nature of Buddha
Kaukkutika	Sub-sect of Mahasanghika	• Conservative interpretation of Mahasanghika teachings	• Focused on scriptural analysis and doctrinal adherence
Sarvastivada	Split from Sthaviravada (~3rd BCE)	• Doctrine of Sarvam asti (everything exists)	• All phenomena (past, present, future) exist • Influential in Abhidharma texts • Spread across Central Asia and China
Pudgalavada	Split from Sthaviravada (~3rd BCE)	• Doctrine of Pudgala (self/person) distinct from aggregates	• Proposed a quasi-self concept • Criticized and declined after 7th century CE

Dharmaguptaka	Split from Sthaviravada (~3rd BCE)	• Emphasized monastic discipline and merit-making	• Spread Buddhism to China and East Asia • Developed own Vinaya (monastic code)
Navayana	Modern (~20th CE)	• Focused on social equality and justice • Reinterpretation by Dr. B.R. Ambedkar in India	• Popular among Dalits and marginalized communities • Addressed modern social issues

Christianity

45. It is respectfully submitted that Christianity is primarily divided into three major branches viz. **Roman Catholicism**, **Protestantism** and **Eastern Orthodoxy**, along with smaller groups like **Oriental Orthodoxy, the Church of the East** and **Restorationism**. These groups diverge on issues of authority, tradition and theology, with Protestantism further branching into denominations like Baptist, Methodist and Pentecostal.

46. The following chart highlights the growth and development of different sects of Christianity:-



I. Catholicism (Roman Catholic Church): Catholicism is the largest Christian branch, led by the Pope in the Vatican City. It claims direct apostolic succession from Jesus Christ and St. Peter, emphasising seven sacraments, the authority of Scripture and Tradition, the Real Presence of Christ in the Eucharist, and devotion to Mary. It is submitted that it is centered on the Trinity **[Father, son and Holy Spirit]** and the incarnation of Jesus Christ as God and man. It is submitted that there are seven core rituals of

Catholicism i.e. **Baptism, Confirmation, Eucharist[6], Penance/ Reconciliation, Anointing of the Sick, Holy Orders and Matrimony**. It is further submitted that the Church is led by the Pope (successor of St. Peter) and bishops (successors of the Apostles). Teaching authority, or magisterium (***magisterium of the Catholic Church is the church's authority or office to give authentic interpretation of the word of God, "whether in its written form or in the form of Tradition)***, interpret scripture and tradition.

47. It is respectfully submitted that Latin is the largest autonomous (sui iuris) particular church within the Catholic Church, whose members constitute the vast majority of the 1.3 billion Catholics. The Latin Church is one of 24 sui iuris churches in full communion with the pope; the other 23 are collectively referred to as the Eastern Catholic Churches. The Latin Church is directly headed by the pope in his role as the bishop of Rome, whose cathedra as a bishop is located in the Archbasilica of Saint John Lateran in Rome, Italy. It is stated that unlike Eastern Catholic Churches, the Latin Church requires priests to be celibate. In this regard, married men cannot be ordained priests and priests cannot marry after ordination.

Latin Church is the largest autonomous Catholic Church

48. The Latin Church employs the Latin liturgical[7] rites, which since the mid-20th century are very often translated into the vernacular. The predominant liturgical rite is the Roman Rite, elements of which have been practiced since the fourth century. There exist and have existed since ancient times additional Latin liturgical rites and uses, including the currently used Mozarabic Rite in restricted use in Spain, the Ambrosian Rite in parts of Italy, and the Anglican Use in the personal ordinariates[8].

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6 The central Christian act of worship, established by Jesus at the Last Supper to commemorate his sacrifice.

7 Liturgical refers to the formal, public, and structured worship rituals of a religious body, commonly seen in Christian traditions like Catholic, Anglican, Orthodox, and Lutheran churches. It involves a "work of the people" (liturgy) through scheduled services, seasons (e.g., Advent, Lent), and structured prayers.

8 An ordinariate is a specialized, non-geographical ecclesiastical structure within the Catholic Church, functioning similarly to a diocese but established to provide pastoral care for specific groups, such as former Anglican communities (Personal Ordinariates) or military personnel (Military Ordinariates). They are led by an Ordinary, who may be a bishop or priest, and operate under their own jurisdiction.

49. In the early modern period and subsequently, the Latin Church carried out evangelizing missions to the Americas, and from the late modern period to Sub-Saharan Africa and East Asia. The Protestant Reformation in the 16th century resulted in Protestantism breaking away, resulting in the fragmentation of Western Christianity, including not only Protestant offshoots of the Latin Church, but also smaller groups of 19th-century break-away Independent Catholic denominations.

II. Protestantism: It is respectfully submitted that Protestantism originated in the 16th century reformation, a movement aimed at reforming the Roman Catholic Church's practices and doctrines. It lays emphasis on the authority of the Bible over church tradition and salvation through faith alone. It is submitted that the said reformation began in Europe as a response to corruption within the Catholic Church, such as selling of indulgences, and a desire for a new type of piety. It is stated that Protestantism is generally united by the ***'Five Solas'*** viz.:-

- **Sola Scriptura ("Scripture Alone"):** The Bible is the highest authority for faith and practice.
- **Sola Fide ("Faith Alone"):** Salvation is gained through faith alone, not by good works.
- **Sola Gratia ("Grace Alone"):** Salvation is a free gift from God.
- **Solus Christus ("Christ Alone"):** Christ is the only mediator between God and man.
- **Soli Deo Gloria ("To God Alone Glory").**

It is stated that Protestantism was different from Roman Catholicism in the namely three ways i.e. it rejected the authority of the Pope in favour of the scripture, it reduced the sacraments from seven to two (Baptism and Communion / Eucharist) and it rejected the mandatory celibacy and emphasised the 'priesthood of all believers'.

50. It is respectfully submitted that Protestantism is further categorized into Mainline, Evangelical, and Historically Black churches. Major branches include Lutheranism, Calvinism (Reformed), Anglicanism, Baptists, Methodists, and Pentecostals, with further groups like Anabaptists, Quakers, and Adventist traditions. The following are a brief overview of the same:-

- **Lutheranism:** Founded on the teachings of Martin Luther, focusing on justification by faith alone.
- **Calvinism/Reformed:** Stemming from John Calvin and Huldrych Zwingli, including Presbyterianism and Continental Reformed churches.
- **Anglicanism/Episcopalianism:** Historically connected to the Church of England, often blending Protestant and Catholic traditions.
- **Baptists:** Known for believer's baptism (rather than infant baptism) and congregational governance, including Southern Baptist and independent churches.
- **Methodism:** Originally arising from an 18th-century revival movement within Anglicanism, emphasizing personal holiness.
- **Pentecostalism:** Emphasizes direct, personal experience of God through the Holy Spirit, often with experiential worship.
- **Anabaptists:** Includes Mennonites, Amish, and Hutterites, emphasizing pacifism and believer's baptism.
- **Adventists:** Known for focusing on the second coming of Jesus, with Seventh-day Adventists being the most prominent.

Sub-sects of Protestantism

Other Classifications

- **Non-denominational:** Evangelical or independent churches not affiliated with a traditional denomination.
- **Quakers (Society of Friends):** Known for pacifism and finding the "Inward Light".
- **Holiness Movement:** Groups that grew out of Methodism, emphasizing sanctification.

- **Restorationism:** Groups aiming to restore "primitive" Christianity, such as the Disciples of Christ or sometimes, by broader definition, Jehovah's Witnesses or Latter-day Saints.
- Protestantism also includes diverse expressions, such as the Salvation Army, Plymouth Brethren, and various independent Evangelical and Charismatic churches.

III. Eastern Orthodox Church: It is one of the oldest Christian bodies, tracing its roots to the apostles and the early church in the Eastern Roman Empire. It is submitted that the Ecumenical Patriarch of Constantinople holds the honorary primacy. The church split from the Roman Catholic Church during the Great Schism of 1054, primarily over issues regarding papal authority and theological disagreements.

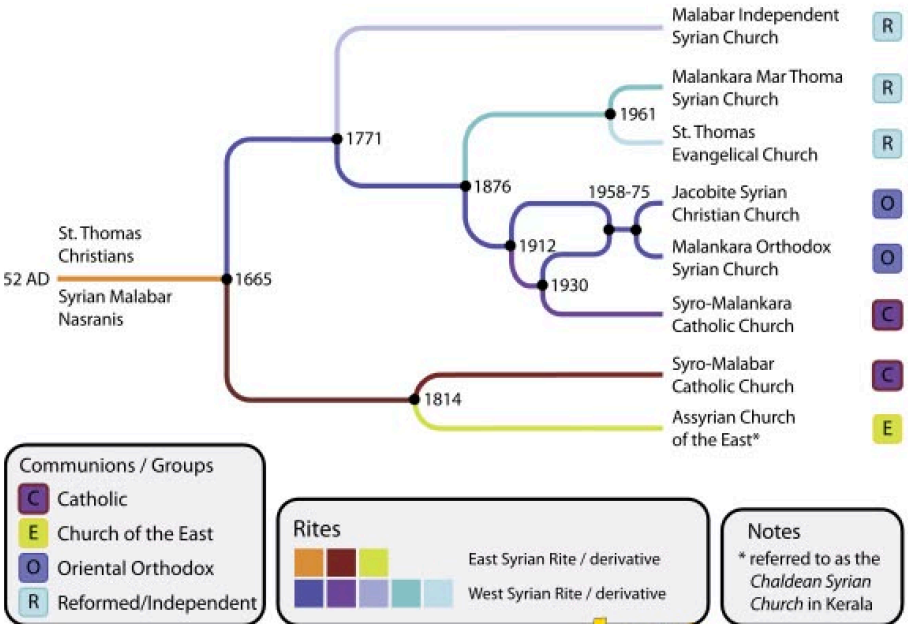
- It is submitted that church is not centralised like Roman Catholicism. consists of several independent churches (e.g., Greek, Russian, Serbian) that share the same faith and liturgy. The Ecumenical Patriarch of Constantinople is considered "first among equals" but holds no direct authority over other patriarchs. It is further submitted that the church emphasizes maintaining the tradition of the early church without changes, adhering to the seven ecumenical councils. Core beliefs include the Trinity[9], the Resurrection, and the use of the Nicene Creed (without the *filioque* clause). Furthermore, the worship is highly liturgical, with the Eucharist as the central act of worship. Icon veneration is a key part of Orthodox tradition, representing the divine in physical form. They believe in theosis—a lifelong process of becoming more united with God.

- Other branches include Greek, Russian, Serbian, Bulgarian, Romanian, and Antiochian Orthodox churches, primarily divided by nation rather than doctrinal differences.

9 Christian doctrine defining one God as three co-equal, co-eternal persons—the Father, Son (Jesus), and Holy Spirit—sharing one divine essence.

Christianity in India

51. It is respectfully submitted Christianity is believed to have arrived in South India with the arrival of St. Thomas, one of the apostles of Jesus Christ, at the Malabar Coast in 52 AD. At present, Christians are spread across India, with most of them concentrated in the Northeast and in Kerala and other southern states. The following timeline although not exhaustive gives an overview of the same:-



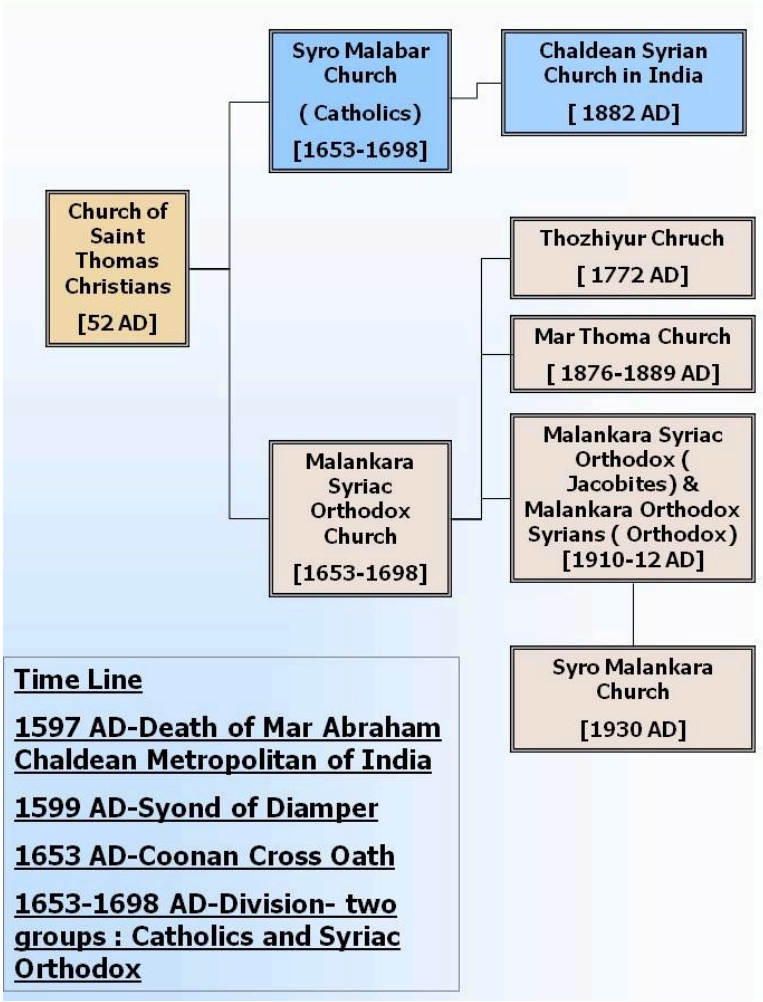
52. It is respectfully submitted that Christianity in India is diverse, with the following key sects and denomination viz. ***Roman Catholic Church, Protestant, Saint Thomas*** and ***Oriental Orthodox***.

53. ***Roman Catholic Church:*** It is stated that Roman Catholics are heavily concentrated in southern states (Kerala, Tamil Nadu, Andhra Pradesh), with significant presence in the Northeast and the Chhottanagpur belt. It consists of three distinct individual churches - ***Latin***, ***Syro-Malabar*** and ***Syro-Malankara***, organised under 174 dioceses and the Catholic Bishops Conference of India (CBCI).

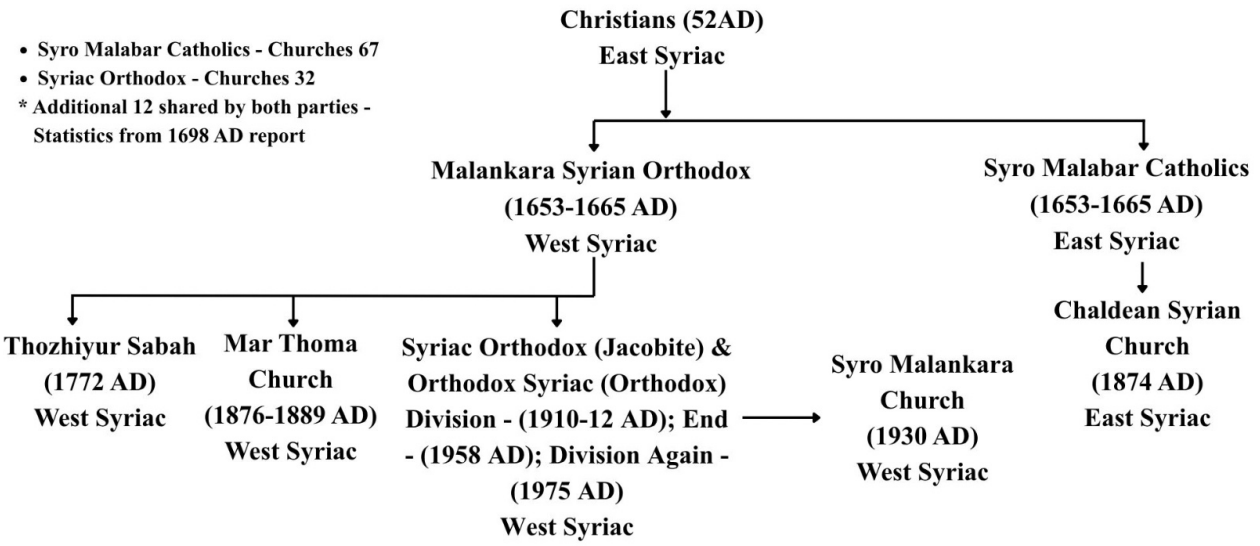
54. ***Protestant:*** It is rooted in 18th Century European mission, growing rapidly under British rule, resulting in diverse denomination (Baptist, Lutheran, Methodist) eventually uniting into major bodies like the Church of South India (CSI) and Church of North India (CNI).

55. ***Saint Thomas (Nasranis):*** It is an indigenous Christian community in Kerala, India, tracing their origin to St. Apostle Thomas. Subsequently, the community split into several churches, including the ***Syro-Malabar Catholic church*** and various ***Malankara (Orthodox)*** churches. The following table describes the various sub-sects of Saint Thomas :-

Divisions -Saint Thomas Christians



56. ***Oriental Orthodox Church:*** It is stated that the Oriental Orthodox is primarily represented by the Malankara Orthodox Syrian Church (Indian Orthodox Church) and the Jacobite Syrian Christian Church, is an ancient apostolic body tracing its roots to St. Thomas the Apostle in AD 52. The following table highlights the sub-sects:-



- Note: Statistics of 2008 (*based on rough estimate)
- Malankara Syriac Orthodox Church (Jacobite) & Malankara Orthodox Syriac Church (Orthodox) - West Syriac rite - Oriental Orthodox - Population - 1, 750,000; Churches - 1600-2000
- Syro Malabar Catholics - East Syriac rite - Catholic Communion - Population - 3,947,396; Churches - 4228
- Chaldean Syrian Church - East Syriac rite - Church of East Communion - Population - 25,000

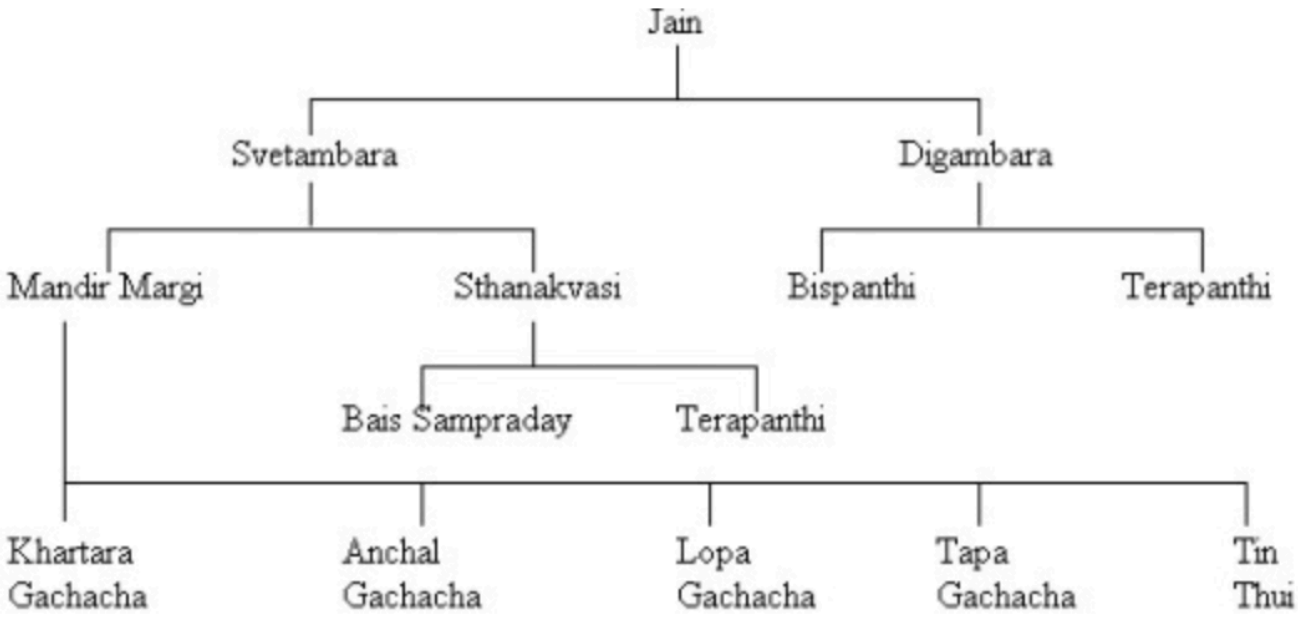
Jainism

57. It is respectfully submitted that Jainism is an ancient Indian religion emphasizing non-violence (ahimsa), strict vegetarianism, and asceticism to liberate the soul from karma and rebirth. It is founded on the teachings of 24 Tirthankaras—most notably Mahavira (6th century BC), it promotes self-discipline, compassion for all living beings, and ethical living, with about 6-10 million followers. It is respectfully submitted that the main beliefs and philosophy of Jainism is a lifestyle that avoids harming any life.

58. It is submitted that Jainism is not founded by one person but is a tradition of 24 enlightened teachers, with Rishabnath as the first and Mahavira as the 24th. They believe that every living being possesses a soul (jiva). Karma is seen as a physical substance that flows into the soul, adhering to it through actions, and preventing liberation. Furthermore, it is there belief that the path to liberation is achieved through the "Three Jewels" (Ratnatraya): ***Right Faith***, ***Right Knowledge***, and ***Right Conduct***.

Five main vows of Jainism

59. It is respectfully submitted that strict vegetarianism is mandatory, with many adherents avoiding root vegetables to prevent killing small organisms. It is stated that Jains have to follow five main vows i.e. ***Ahimsa (non-violence), Satya (truthfulness), Asteya (not stealing), Brahmacharya (chastity)***, and ***Aparigraha (non-attachment)***. In terms of dietary restrictions, followers often eat before sunset to avoid insects falling into food and avoid fermented foods.



Digambar Jains

60. It is stated that Digambar Jains is known for its strict adherence to non-possession and non-violence. It includes rejection of clothing for male monks, belief that women must reincarnate as men to attain moksha, and adherence to 28 primary vows.

61. It is submitted that the main sub-sects of Digambar are : ***Bispanthi*** and ***Terapanthi***. It is stated that Bispanthi worship idols with flowers and fruits and are led by traditional monks (Bhattaraka). Whereas the Terapantha, oppose the use of flowers and green vegetables in worship and generally do not use idols, or perform rituals differently. Other prominent sub-sects are Taranapantha (or Samaiya):, which was founded by Taran Swami; where they worship holy books instead of idols and Gumanapantha, where a minor, more conservative sub-sect founded by Pandit Gumani Rai.

Shwetambar Jains

62. It is submitted that in Shwetambar, monks and nuns wear simple white robes. They believe that women can attain liberation (moksha), that Arihants can hold possessions, and they recognize 45 canonical texts

(Agamas). This sect is divided into ***Murtipujaka***, ***Sthanakvasi***, and ***Terapanthi sub-sects***.

63. It is stated that ***Murtipujak (Deravasi or Mandir-margi)*** are the largest sub-sect, they worship idols of Tirthankaras in temples (derasars), adorned with clothes and ornaments. They follow 45 scriptures (Agamas) and believe in elaborate rituals.

64. Furthermore, ***Sthanakvasi*** originated in the 17th century as a reform movement, they do not believe in idol worship or temples. They perform spiritual practices (like Samayik) in simple halls called Sthanaks and believe in 32 Agamas. Their monks wear a mouth covering (Muhapatti) at all times. Also, ***Terapanthin*** founded by Acharya Bhikshu, reject image worship and emphasize extreme austerity.