**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**

**CWP No. 9257 of 2011**
**alongwith CWP No.4499/2012**
**and CWP No.5076/2012**
**Reserved on: 24.9.2014**
**Decided on: 26.9. 2014**

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**1. CWP No. 9257 of 2011**

Ramesh Sharma. ...Petitioner.

Versus

State of Himachal Pradesh and others. ...Respondents.

**2. CWP No. 4499 of 2012**

Mehar Singh and another. ...Petitioners.

Versus

State of Himachal Pradesh and others. ...Respondents.

**3. CWP No. 5076 of 2012**

Sonali Purewal. ...Petitioner.

Versus

State of Himachal Pradesh and others. ...Respondents.

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**Coram:**

**Hon'ble Mr. Justice Rajiv Sharma, Judge.**

**Hon'ble Mr. Justice Sureshwar Thakur, Judge.**

**Whether approved for reporting?** [1] Yes

**For the Petitioner(s):** **Mr. Inder Sharma, Advocate in CWP No. 9257/2011.**

**Mr. B.R. Kashyap, Advocate in CWP No.4499/2012**

**Ms. Vandana Misra, Advocate and Mr. Shivank Singh Panta, Advocate in CWP No. 5076/2012 .**

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[1] Whether reporters of the local papers may be allowed to see the judgment? Yes

**For the Respondents:** **Mr. Shrawan Dogra, A.G. with Mr. Anup Rattan, Addl. A.G. with Mr. Vivek Singh Attri, Dy. A.G. for the respondent State.**

**Ms. Seema Guleria, Advocate for respondent No.7 in CWP No. 5076/2012**

**Mr. Y.K. Thakur, Advocate for respondent No.8 in CWP No. 9257/2011.**

**Mr. Vivek Thakur, Advocate for respondent-Pollution Control Board.**

**Mr. Bhupender Gupta, Sr. Advocate with Mr. Neeraj Gupta, Advocate in CMP No. 14962/2014 & 14963/2014.**

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**Per Justice Rajiv Sharma, Judge.**

Since common questions of law and facts are involved in all these petitions, the same were taken up together for hearing and are being disposed of by a common judgment. However, for clarity sake, facts of CWP No.5076/2012 have been taken into consideration.

**CWP No. 5076/2012**

2. Petitioner claims that she is working for animal rights for the past ten years through "People for Animals", Kasauli as a State representative. The core issue raised in this petition is about the slaughtering of thousands of animals in the name of religious sacrifice held by devotees throughout the State of Himachal Pradesh. Petitioner has placed on record photographs of the animal sacrifice being performed. The State has not taken any effective steps to prevent the sacrifice of

innocent animals. According to the petitioner, this practice is not in conformity with Article 51-A (h) of the Constitution of India. According to the petitioner, this practice is prevalent in Chamunda Devi temple in Kangra District, Hadimba Devi temple in Manali, Chamunda Nandi Keshwar Dham in Kangra, Malana in Kullu District, Dodra Kwar (Mahasu), Shikari Devi temple in Mandi District and Shri Bhima Kali Temple in Sarahan, Ani and Nirmand in Kullu District, Shilai in Sirmaur District and Chopal in Shimla District. Animals are beaten up mercilessly and dragged up to mountain slopes to meet their death. The scenic beauty of the religious places is not maintained. According to the petitioner, it takes 25 minutes to kill a buffalo bull. At times, buffalo runs amuck to save itself. The animals are mercilessly beaten up and chilies are thrown into their eyes. Petitioner has laid great stress for improved scientific and rational thinking by the people, who are indulged in this practice. Petitioner has also filed representation before the Deputy Commissioner, Kullu requesting to prevent sacrifice of animals at Dhalpur Maidan, Kullu. The insensitivity of the administration was highlighted in the newspaper "**The Times of India**" dated 23.10.2010. The larger beneficiaries of this practice are priests and the Mandir Committee, animal breeders and designated butchers

community of the temples. Petitioner has sought direction to the State to stop illegal animal slaughtering in the temples and public places. She has also sought direction to the Deputy Commissioners of all the District of Himachal Pradesh to ensure complete ban on animal sacrifices in temples and public places. An action is also sought to be taken against the persons, who are indulging in this practice.

3. Respondents No. 1 to 5 have filed detailed reply. It is averred in the reply that as intimated by Superintendent of Police, Mandi on the application of Mehar Singh for taking legal action against persons, who were scarifying buffalos' calves in **Kamshaha Temple** on the eve of **Ashtami** and on the occasion of **Sharad Navaratars**, the local administration has stopped the evil for the last two years. The Superintendent of Police, Shimla has informed that in some temples under the jurisdiction of Police Stations, Rampur, Rohru, Kotkhai, Jhakri and Chirgaon, animals, i.e. sheep and goats are offered to the **Devta** by the people of local villages when their wishes are fulfilled. The meat is distributed amongst the people gathered for the occasion. The practice of sacrificing animals in the name of deity at **Chamunda Devi** temple in Kangra District was not prevalent. According to the report of Superintendent of Police,

Sirmaur, sacrifice of animals in temples was not prevalent in Sirmaur District for the last many years. However, in Shillai area, goats and sheep are sacrificed during festival season. In some temples of Nirmand and Anni areas of Kullu District animal sacrifice is being done but this tradition has been reduced. "**Bhunda**" and "**Shand**" ceremonies are celebrated after a gap of about 25 to 30 years in which sacrifice of goats and sheep is carried out in mass scale by observing "**Jhatka**". It is also stated in the reply that rituals which take place in the society are having the social sanction behind it. The rituals are attended to by the persons of the vicinity having similar religious faith. There is reference to section 28 of the Prevention of Cruelty of Animals Act, 1960 (hereafter referred to as the "Act" for brevity sake).

4. The Court on 28.9.2012 had directed to issue public notice in two newspapers, i.e. "**Amar Ujala**" and "**Dainik Jagran**" Himachal Pradesh Edition to given an opportunity to all the persons, who wanted to oppose or support the petition. The purpose of notice was to inform the general public that a writ has been filed in this Court challenging the practice of animal sacrifice for religious purposes in temples and other public places in Himachal Pradesh and anybody who wanted to oppose or support the petition could appear in the Court in support of or

against the petition. Since a legal question was involved, they were not permitted to be impleaded as parties but they were permitted to intervene in the matter and file documents in support of their cases. In sequel thereto, notices were issued and a number of communications were received by the Court from various persons. These persons were advised to file proper affidavit. It was also made clear on 14.12.2012 that unless a proper affidavit was filed or a person was represented through counsel or appeared personally, no hearing could be given to them. On 18.6.2013 the following order was passed:

> **"We direct the State to place on record the affidavits of Secretary (Home) and the Secretary (Language, Art and Culture) to spell out the stand of the State in the context of the legal issue raised by the petitioner about the impermissibility of mass scale killing of animals in open and for that matter in religious places. If that is impermissible, the State should spell out the proposed regulatory measures that can be adopted by the State to eschew that activity. The affidavits be filed on or before 3rd July 2013. List this matter on 9th July 2913. The office to ensure that companion matters being CWP Nos. 9257 of 2011 and 4499 of 2012 shall also be listed on the next date."**

5. The Secretary (Language, Arts and Culture) to the Government of Himachal Pradesh filed an application under rule 7 and 13 of Para-C of H.P. High Court (Original Side) Rules, 1997 seeking extension of time of three months to comply with the order dated 18.6.2013. It is averred in para 2 of the application that animal sacrifice practiced in some of the temples of the State is a religious

practice that has deep roots in the religious cultural traditions of the community. There is a reference to section 28 of the Act. The deponent has referred the matter to the Advisory Department, i.e. Law Department for opinion and if required a suitable policy would be framed in consultation with the Home Department and other concerned departments. Thereafter, the Secretary (Language, Arts and Culture) filed the affidavit on 29.7.2013. Surprisingly, the Secretary (Language, Arts and Culture) has not proposed regulatory measures that could be adopted by the State to curb the activity. The deponent has placed on record Annexures R-1, R-2, R-3 and R-4 to show that such practices in some districts such as Sirmour, Shimla, Kullu and Lahaul-Spiti were in vogue. These sacrifices are performed at the time of local fairs and festivals. Some sacrifices are held after a gap of 12 – 20 years. Some sacrifices are performed when a local God or Goddess travels from one place to another and such journeys also happen after a gap of several years. There is a tradition of offering an animal to the presiding deity as a mark of respect when wish is fulfilled, which is sanctioned religious practice in some areas of the State. The practice of animal sacrifice has been regulated in several temples at the initiative of local committees and administration. However, it is pointed out that for some

people it is a matter of faith, ritualistic worship and continuation of a tradition that are passed down from generation to generation. There are details of Scheduled Temples under Himachal Pradesh Public Religious Institution and Charitable Endowments Act, 1984. The animals are offered to the Gods and thereafter taken as a part of food by the devotees. Man has been a flesh eating animal for most part of the history. Non-vegetarianism is oldest habit that has been imbibed by humans. It is a world wide phenomenon and people belonging to every religion and culture are meat eaters. Thus, the practice of animal sacrifice cannot be seen in isolation. Rather, the rituals attached to the practice reflect the deep and embedded cultural moorings. Any change in the practice of such animal sacrifices must also be voluntary and participatory.

6. Now, as far as Bala Sundari Temple, Trilokpur, Sirmour is concerned, people take the animals as an offering to the Goddess, but these animals are sold by the temple on the same day. As per information received from the concerned district authorities regarding Scheduled Temples, animal sacrifices are not performed in some temples or no entry regarding animal sacrifices has been found in **Wajib-Ul-Arz**. Cultural practices always require deeper understanding. The Slaughter House Rules, 2001

are applicable to the Municipal Areas only. The issues of cleanliness, safety and health are required to be addressed by the local temple committees.

7. Petitioner has filed detailed rejoinder to the reply filed by respondent No.5. According to the petitioner, section 28 does not sanction animal sacrifice. The stand of the State that this practice is continuous since time immemorial and is a deep rooted cultural trait does not provide any justification for its continuation because it contravenes the very spirit of the Constitution of India and the basic principles of a progressive and civilized society. The issue of vegetarians and non-vegetarians is irrelevant to the present context. Petitioner is not opposed to non-vegetarianism and meat eating, but the ethos behind sacrificing animals before a deity is embedded in superstition and contravenes the constitutional spirit of a scientific temper. Petitioner has also quoted the words of Mahatma Gandhi as under:

> **"The moral progress and strength of a nation can be judged by the care and compassion it shows towards its animals."**

8. The rituals attached to animal sacrifice reflect only cruelty, superstition, fear and barbarism and has nothing to do with either religion or culture. The practices like Sati, female feticide, child marriage, untouchability etc. were continuing since generations and were deeply

ingrained in the social milieu, but have been almost eradicated with the education and reformation movements as well as judicial intervention.

9. One Sh. Bhajanand Sharma has filed his affidavit at page 134 of the paper book. According to the averments contained in the affidavit, animal sacrifice is a very cruel and barbaric practice and is far from the spirit of worship and reverence as the deponent has seen many a time goats, sheep and rams suffering in agony and crying out in pain during performance of sacrifice. The animals are sacrificed in the presence of other animals. It fills them with fear and dread and become a very depressing and painful sight of watch. Many villagers of the area avoid going to the temple premises. At such times, it is full of blood and corpses of sacrificed animals that becomes a very pathetic sight to encounter.

10. Sh. Khem Chand has also filed his affidavit at page 135 of the paper book. According to the averments contained in the affidavit, he was a "**Karyakarata**" of "**Devi Mandir Nal"** situated at Tehsil Theog. According to him, animal sacrifice is practiced in full public view in the premises of the temple during various festivals and also on a regular basis throughout the year. The ritual of animal sacrifice involves an unimaginable amount of cruelty towards the sacrificial animal which are often seen

lying around in pain and suffering after receiving blows on their necks which usually does not kill them in first go. Sometimes, the animal tries to escape in a fatally wounded condition, which is very painful. He gave up being a "**Karyakarta"** of the temple and decided to raise his voice for the cause of poor and helpless animals that are killed most mercilessly in the name of religion and God.

11. Sh. Kali Ram has also filed his affidavit at page 136 of the paper book. He has also deposed that animal sacrifice is practiced in the temple at various times throughout the year in full public view. He has seen that the goats, sheep and rams are held by four people and then the head is attempted to be cut off by one other person, which is not always successful in the first attempt as there is no check on the sharpness of the weapon/equipment being used for the sacrifice which may be blunt. At times inexperienced people try and participate in the ritual killing and it is abominable to see that sometimes it may take upto 15 blows to kill the sacrificial animal that keeps struggling in a brutally injured and bleeding condition. He is no more "**Karyakarta**" of the temple.

12. Sh. Mast Ram has filed his affidavit at page 137 of the paper book. He was also a "**Karyakarta**" of

"**Shri Devta Kanishwar temple**" situated in village Ghamouri, Gram Panchayat, Mahog. According to him, "Khen Yagyan" is regularly carried out to propitiate the deity. The goats, sheep and rams are sacrificed in full public view. In case any villager avoids going there he is ostracized by the entire community. In the bloody ritual sacrifice more than 100 goats, sheep and rams are sacrificed in full public view without any regard to hygiene or ethical norms. There is no check on the sharpness of the slaughter equipment which is many times blunt and it takes a number of blows to kill the animal which presents a very depressing and traumatizing sight as the animal runs around and cries in pain with blood oozing from the blow. The smell and sight of blood in the temple precinct renders it a horrific sight to many of the villagers like him who dwell there and also to tourists who get shocked by the barbaric sacrifice being carried out in full public view.

13. Sh. Madhu Singh has also filed his affidavit at page 139 of the paper book. He was a "**Karyakarta**" of "**Shadi Devi**" temple situated at Matiana. According to him, animals like goats, sheep and rams are sacrificed in full public view and the whole practice entails a lot of cruelty that spoils the peace and tranquility of the temple. Throughout the year, on one pretext or the other, animals are continuously sacrificed both in the temple and in

public places. **Bhunda** ceremony is practiced in their area and the goats, sheep and rams are massacred on a massive scale in the temple premises. "**Khen**" is also practiced in which animals are sacrificed at the home of the person who may have invited a "**Devta**". Animals sacrifice entails unimaginable cruelty and suffering to the animals.

14. Sh. Mathu Ram has also filed his affidavit at page 140 of the paper book. According to him, in "**Deviji Shadi**" temple he was working as "**Karyakarta**". Animal sacrifice is regularly practiced in full public view. The temple remains covered with blood stains and many times, local people who want to exercise their public right of visiting temples and carrying out peaceful worship gets distributed by the activities of some regressive individuals and priests who carry out the sacrifice. The persons who raise their voice are threatened. "**Bhunda**" is also celebrated in their village after a gap of every five years in which hundred of sheep, goats and rams are killed in full public view. The animals are slaughtered in front of each other and many of them get frightened by their impending death. The open area in which the ritual is practiced is full of blood and stenches and presents a very horrific and unhygienic sight. The practice infuses fear and dread in animals that are sacrificed in the presence of each other.

It is completely against the spirit of any religion as every religion teaches "**Karuna**" or compassion.

15. Sh. Nand Lal has also filed his affidavit at page 142 of the paper book. According to him, he was also a "**Karyakarta**" in the "**Shadi Devi Temple**". The sacrifice practiced is so horrific and cruel that most of the people do not even dare to watch the same what to speak of accepting the flesh of the sacrificed animal as **Prasad**. The rope is fastened behind the legs of the goat or sheep as well as to its horns, after which the animal's body is cruelly stretched way beyond its normal limit and is tied up both at the front as well as at the back. After a person gives blows with a weapon to the animal, he was horrified to say that many times inexperience person giving the blow or because of bluntness of the weapon, it takes as many as 15-20 blows to kill the sheep or goats in which the animal cries away in pain and the whole premises is covered with blood. Many times the person sacrificing the animal also drinks the blood which is horrific sight and sends shivers down one's spine about the kind of barbarism that is being practiced under the garb of religion. Animal sacrifice is not a form of worship but is in essence social evil that is based on superstition and violence against the helpless that goes against the spirit of Hinduism which preaches the spirit of "**Ahimsa**" and

believes that God resides in every living being. The organizing committee of an ancient temple known as "**Devta Manleshwar**" situated at village Manan, P.O. Manan, Tehsil Theog, District Shimla has taken an appreciable move about 20-25 years ago by banning animal sacrifices in the temple during any religious and social ritual and instead prefer to perform the rituals and **Pujas** as per Vedic culture. According to him, worshipers of "**Devta Manleshwar"**, who are spread over two **Parganas** have neither encountered wrath or fury of the deity nor any natural calamity. He has termed the practice as blot on humanity and according to him the same is shame on the civilized society of the 21st century.

**CMP Nos. 14962 of 2014 and 14963/2014**

16. One Sh. Maheshwar Singh and Sh. Dot Ram Thakur have filed CMP Nos. 14962 of 2014 and 14963/2014, respectively, for recalling the order dated 1.9.2014. In the applications, there is a reference to "**Kalika Puran"**. According to the averments contained in these applications, animal sacrifice is going from the time immemorial and has taken shape of custom which is valid. Such practice cannot be considered to be either barbaric, inhuman and does not in any manner adversely affect the sentiments of the people at large. No opposition has been made till date by the **Haryans**, i.e. devotees of

the deities. Sacrifice of animals is well recognized even in various religious texts and the "**Balidan**" offering sacrifice at well recognized places in various religious **granths**. The practice of animal sacrifice is prevalent not only in the State of Himachal Pradesh but throughout the country. Animal sacrifice is part of the faith of the people connected with the religious sentiments. According to the applicants order 1.9.2014 is not in consonance with the principles of natural justice as the applicants have been deprived of their fundamental and legal rights.

**CWP No. 9257/2011**

17. This writ petition has been filed against the issuance of Annexure P-1 dated 1.10.2011 whereby the Sub Divisional Magistrate, Karsog has requested the Tehsildar, Karsog, District Mandi and the Station House Officer, Karsog to take appropriate and immediate steps to stop slaughtering of buffalos in and around "**Kamaksha Temple"** premises during "**Navratras"** and ensure that the law and order situation remains under control. Petitioner is a Wazir/Priest of the temple and is performing all the religious rituals and rights of "**Mata Kamaksha Devi**". Ritual and rights on "**Durga Asthmi**" are being performed by the family of the petitioner since time immemorial. According to him, the State Administration and the private respondents are interfering

in the ritual practice performed by him. The respondents have not permitted the devotees to perform the rituals on "**Durga Asthmi**" and the buffalos which the devotees had brought in order to sacrifice were taken out by respondents No. 2,3,4 and 5 from the premises.

18. The Court on 27.10.2011 had directed the Deputy Commissioners of the State to file their separate affidavits after conducting appropriate inquiry as to whether it has come to their notice that animals have been killed in painful manner or whether there has been any sacrifices of animals in connection with any festival, religious or otherwise and whether it is the requirement of such festivals to have sacrifices of animals and if not what steps have been taken under the provisions of the Prevention of Cruelty to Animals Act, 1960 to prevent such unlawful activities. Thereafter, all the Deputy Commissioners have filed affidavits and few of them have given the details of the sacrifices being carried out in their respective jurisdiction.

19. Respondent No.2, i.e. Sub Divisional Magistrate-cum-Sub Divisional Officer (C), Karsog has filed the detailed reply to the petition. He has admitted that buffaloes were prevented from killings/slaughtering by respondent No.2 to 5 on the day of "**Durga Ashtmi/Navmi of Sharad Navratras**" since he was

informed by various sections of society about merciless, cruel and painful killings of buffaloes in the **Kamaksha Temple** premises. He has received several representations to stop ill-practice of slaughtering of buffaloes. The Pradhan, Gram Panchayat, Bhanera was also opposed to the killings of buffaloes. He also came to know that buffaloes are killed in a cruel, merciless and painful manner and they would be hit only once with a sharp edged weapon and left to die in the open after inflicting injury. He has justified the issuance of Annexure P-1. He has held the meeting with the members of the temple committee of **Mata Kamaksha Devi Temple**, Kao (Karsog), **Kardars** of the temple, priests, Pradhan Gram Panchayats, Bhanera, Pradhan Gram Panchayat Bagaila, Pradhan Temple Committee Pundri Naag, Pradhan Temple Committee Naroli Naag, Tehsildar, Karsog and Station House Officer, Karsog on 19.9.2011. Petitioner had also attended the meeting on 19.9.2011. Another round of meeting was also held on 2.10.2011 in the "**Kamaksha Temple"** premises. A meeting was also held on 30.9.2011. He has not interfered in any manner in the performance of rituals in the temple and all religious activities including Pooja except slaughtering of buffaloes. Nobody had opposed their presence in the temple.

20. According to the affidavit filed by Deputy Commissioner, Sirmaur, no painful killing of animals is carried out in District Sirmaur. However, in some areas of Sirmaur District, there are age old traditions of hosting community feasts wherein animal flesh is served and partaken to celebrate certain festivals.

21. According to the affidavit filed by Deputy Commissioner, Kullu during religious festivals, sacrifice of animals like buffalo, goat cock and fish is made as per the wishes of respective God and Goddesses since ancient times as is required by religion and as per report received, no case of painful killing has been reported in District Kullu.

22. Deputy Commissioner, Mandi has filed his affidavit. According to the averments contained in the affidavit, it was found that in **Kamaksha Temple**, Karsog, District Mandi, there had been a practice of slaughtering buffaloes on the day of **Durga Ashthami/Navami** in a painful manner. This practice was opposed by certain sections of the society in the past. He had directed the Sub Divisional Magistrate, Karsog to take sincere and serious efforts to dissuade the people responsible for such unwarranted act. Meetings were convened by the Sub Divisional Magistrate, Karsog with the Pujaris and priests of the temple committee.

23. Deputy Commissioner, Shimla has also filed his affidavit. According to the affidavit filed by him, in Sub Divisions, Chopal and Rohru in some fair like **Jagra Fair, Shand, Bhunda, Bakrid** etc., goats are offered to the local deity as the practice is customary and religious. People gathered from different **Kardaran** and it is mandatory requirement in such fair.

24. In the affidavit filed by the Deputy Commissioner, Chamba, it is stated that it has been reported during the course of inquiry that it has been found that there is requirement of sacrifices of animals on the occasion of traditional fairs and festivals. Some of the festivals are, Salooni, Jatar, Gadasru Mahadev, Khundi Maral, Kali Mandir Dantuin (Baisakhi), Chamunda Temple Devi Kothi (Baisakhi and Jatar) etc. The District Language Officer has informed vide letter dated 28.11.2011 that people occasionally sacrifice animals, i.e. sheep and goats, in the temples of **Lord Shiva, Naag Devta** and **Kaali Bhagwati**. The people also offer animal sacrifice on the occasions of **Mundan ceremony, Shiv Poojan** and **Jagran** festivals and during **Mani Mahesh Yatra**, **Janamastami** and **Radha Ashthami**, the pilgrims coming from State like Jummu and Kashmir while going to Mani Mahesh sacrifice animals.

**CWP No. 4499/2012**

25. Petitioner No.1 is an elected Village President. Petitioner No.2 was member of "**Kamaksha Temple**". According to the averments contained in the petition, he had launched the agitation against the sacrifice of animals in the "**Kamaksha Temple".** Respondents No. 4 to 9 were provoking the people against the petitioner and he was ready to sacrifice his life in order to save the innocent and poor animals. Respondent Nos.4 to 9 were mobilizing the people in their favour to continue with the practice. Petitioner belongs to poor and scheduled caste category. He has made several complaints and representations before the concerned authorities requesting them to intervene in the matter to stop merciless killing of animals in the name of "**Pooja Archana"**. Petitioners have prayed to ensure the safe lives of the poor and innocent animals being killed mercilessly in the name of Pooja.

26. Respondent Nos. 1 to 3 have filed reply. It is admitted in the reply that Mehar Singh has objected the sacrifice of buffalo calf at "**Kamaksha Temple"** during "**Navratras"**. Accordingly, no buffalo calf was sacrificed in the "**Kamaksha Temple"** during last year. It is also admitted that petitioner No.1 has lodged a report under SC & ST Act. It is also stated that if petitioner desires

police security, he would be provided police security on his request.

27. Respondents No. 4,5,6,7, 8 and 9 have also filed replies. According to them, as per mythology, Goddess "**Durga"** vanquished "**Mahisasur:**, i.e. a "**demon in the form of buffalo**", and it started a tradition of sacrificing buffalo. The concept of sacrifice comes from basic fundamental fact that you offer any food that you eat to the God before you eat it. Animal sacrifice has been a tradition for a long period. They have neither terrorized nor persuaded the people to carry out animal sacrifice. "**Kamaksha Temple"** is dedicated to Goddess "**Durga**".

28. Ms. Vandna Misra, Advocate, has vehemently argued that the practice of animal sacrifice is against constitutional philosophy and spirit. The animal/bird sacrifice is not an essential part of the religious practice. Thus, it does not violate Articles 25 and 26 of the Constitution of India. She has also referred to provisions of the Prevention of Cruelty to animals Act, 1960. Mr. Inder Sharma, Advocate, has argued that Annexure P-1 in CWP No. 9257 of 2011 has been issued without any authority of law. Mr. B.R. Kashyap, Advocate, submitted that his clients are being victimized by the private respondents and The State has not taken effective steps to protect them. Mr. Shrawan Dogra, learned Advocate

General has vehemently argued that the scope of judicial review in these matters is very limited. According to him also, the people have a deep rooted faith in animal sacrifice though he has also submitted that the role of the State Government is practically of an 'umpire'. He has referred to Section 28 of the Prevention of Cruelty to Animals Act, 1960. Mr. Bhupinder Gupta, learned Senior Advocate, has referred to '*Kalika Puran*' to buttress his submission that this practice has religious-social sanctity behind it.

29. In the case of ***The Commissioner, Hindu Religious Endowments, Madras vrs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt,*** reported in ***AIR 1954 SC 282,*** their lordships have held that "religion" is a matter of faith with individuals or communities and it is not necessarily theistic. 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. It will 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 the forms and

observances might extend even to matters of food and dress. Their Lordships have further held that what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. Their Lordships have further held that the language of Articles 25 and 26 is sufficiently clear to enable the Court to determine without the aid of foreign authorities as to what matters come within the purview of religion and what do not. Freedom of religion in the Constitution of India 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. Their lordships have held as under:

> "17. It will be seen that besides the right to manage its own affairs in matters of religion which is given by cl. (b), the next two clauses of Art. 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, where as 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 cl. (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 any rigid definition. In an American case --- -'Vide Davis v. Beason', (1888) 133 US 333 at p. 342 (G), 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 Art 44(2), 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 ay Intelligent First Cause. A religion undoubtedly has its basis in a system of belief or doctrines which are regarded by those who profess that religion as conductive 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.

18. 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 Art. 25. Latham, C. J. of the High Court of Australia while dealing with the provision of S. 116, 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. The Commonwealth', 67 CLR 116 at p. 127 (H) :

> "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 S. 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".

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 Arts. 25 and 26 on grounds of public order, morality and health. Clause (2) (a) of Art. 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-cl. (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 cl (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.

19. 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 Art. 26(b).

What Art. 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 normality but regulation of activities which are economic, commercial or political in their character though they are associated with religious practices.

We may refer in this connection to a few American and Australian cases, all of which arose out of the activities or persons connected with the religious association known as "Jehova's witnesses". This association of persons loosely organised throughout Australia, U.S.A. and other countries regard the literal interpretation of the Bible as fundamental to proper religious beliefs. This belief in the supreme authority of the Bible colours many of their political ideas. They refuse to take oath of allegiance to the king or other constituted human authority and even to show respect to the national flag, and they decry all wars between nations and all kinds of war activities.

In 1941 a company of "Jehova's Witnesses" incorporated in Australia commenced proclaiming and teaching matters which were prejudicial to war activities and the defence of the Commonwealth and steps were taken against them under the National Security regulations of the State. The legality of the action of the Government was questioned by means of a writ petition before the High Court and the High Court held that the action of the government was justified and that S. 116, which guaranteed freedom of religion under the Australian Constitution was not in any way infringed by the National Security Regulations - 'Vide 67 CLR 16 at p. 127 (H)'. These were undoubtedly political activities though arising out of religious belief entertained by a particular community.

In such cases, as Latham C. J. pointed out, the provision for protection of religion was not an absolute protection to be interpreted and applied independently of other provisions of the Constitution. These privileges must be reconciled with the right of the State to employ the sovereign power to ensure peace, security and orderly living without which constitutional guarantee of civil liberty would be a mockery.

22. 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 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 embodie the limitations which have been evolved by judicial pronouncements in America or Australia in the Constitution itself and the language of Arts. 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 had laid down. Under

> Art. 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 interfere 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 Art. 26 (d), it is the 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 cl. (d) of Art 26."

30. In the case of ***Ratilal Panachand Gandhi and ors. vs. State of Bombay and ors.,*** reported in ***AIR 1954 SC 388***, have held that a religion is not merely an opinion, doctrine or belief. It has its outward expression in the Acts as well. Article 25 protects acts done in pursuance of religious belief as part of religion. For, 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. The distinction between matters of religion and those of secular administration of religious properties may, at times, appear to be a thin one. Their lordships have held as under:

> "10. Article 25 of the Constitution guarantees to every person and not merely to the citizens of India the freedom of cnscience 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-cl. (a) of cl. (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-cl. (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. 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-cl. (a) of cl. (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.

12. 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', (1888) 133 US 333 (B), 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".

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 Co. v. The Commonwealth', 67 Com- W. L. R. 116 at p. 124 (C) where the extent of protection given to religious freedom by S. 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 S. 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 pursurance 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 embodies in our Constitution.

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 or 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 & 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. Soonabai', 33 Bom 122 (D), 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 bai. 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 Art. 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 - 'vide 67 Com - WLR 116 at p. 129 (C)', referred to above, the court should take a commonsense 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.”

31. In the case of ***Mohd. Hanif Quareshi and others vs. State of Bihar*** reported in ***AIR 1958 SC 731,*** their lordships of the Hon'ble Supreme Court have held that Bihar Preservation and Improvement of Animals Act, 1956, UP Prevention of Cow Slaughter Act, 1956 and C.P. & Berar Animal Preservation Act, 1949, so far they prohibit the slaughter of cows of all ages and calves of cows and calves of buffaloes, male and female, are constitutionally valid. Their lordships have held that subject to restrictions, which Article 25 imposes, every person has a fundamental right under the Constitution not merely to entertain such a religious belief, as may be approved by his judgment or conscience, but to exhibit his belief and ideas in such overt acts as are enjoined are sanctioned by his religion and further to propagate his religious views for edification of others. The free exercise of religion by which is meant the performance of outwards acts in pursuance of religious beliefs, subject to State regulations, imposed to secure order, public health and morals of the people. Their lordships have further held that the sacrifice on Bakr-Id day is not an obligatory overt act for a Mussalman to exhibit his religious belief and idea and consequently, there was no violation of the fundamental rights of the Mussalmans under Article 25(1). Their lordships have held as under:

"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 Art. 25 (1). That article runs as follows :

> "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 rights freely to profess, practise and propagate religion."

After referring to the provisions of cl. (2) which lays down certain exceptions which are not material for our present purpose this Court has, in Ratilal Panachand Gandhi v. State of Bombay, 1954 SC R 1055 at pp. 1062-1063: (A I R 1954 S C 388 at p. 391) (B), explained the meaning and scope of this article thus:

> "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. 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 then, we inquire, are the materials placed before us to substantiate the claim that the sacrifice of a cow is enjoined or sanctioned by Islam? The materials before us are extremely meager and it is surprising that of matter of this description the allegations in the petition should be so vague. In the Bihar Petition No. 58 of 1956 are set out the following bald allegations:

> "That the petitioners further respectfully submit that the said impugned section also violates the fundamental rights of the petitioners guaranteed under Art. 25 of the Constitution inasmuch as on the occasion of their Bakr Id Day, it is the religious practice of the petitioners' community to sacrifice a cow on the said occasion, the poor members of the community usually sacrifice one cow for every 7 members whereas suit would require one sheep or one goat for each member which would entail considerably more expense. As a result of the total ban imposed by the impugned section the petitioners would not even be allowed to make the said sacrifice which is a practice and custom in their religion, enjoined upon them by the Holy Quran, and practiced by all Muslims from time immemorial and recognised as such in India."

The allegations in the other petitions are similar. These are met by an equally bald denial in paragraph 21 of the affidavit in opposition. No affidavit has been filed by any person specially competent to expound the relevant tenets of Islam. No reference is made in the petition to any particular Suarah of the Holy Quran which, in terms, requires the sacrifice of a cow. All that was placed before us during the argument were Surah XXII, Verses 28 and 33, and Surah CVIII. What the Holy book enjoins is that people should pray unto the Lord and make sacrifice. We have no affidavit before us by any Maulana explaining the implications of those verses or throwing any light on this problem. We, however, find it laid down in Hamiltion's translation of Hedaya Book XLIII at p. 592 that it is the duty

of every free Mussalman, arrived at the age of maturity, to offer a sacrifice on the Yd Kirban, or festival of the sacrifice, provided he be then possessed of Nisab and be not a traveler, the sacrifice established for one person is a goat and that for seven a cow or a camel. It is therefore, optional for a Muslim to sacrifice a goat for one person or a cow or a camel for seven persons. It does not appear to be obligatory that a person must sacrifice a cow. The very fact of an option seems to run counter to the notion of an obligatory duty. It is, however, pointed out that a person with six other members of his family may afford to sacrifice a cow but may not be able to afford to sacrifice seven goates. So there may be an economic compulsion although there is no religious compulsion, It is also pointed out that from time immemorial the Indian Musslamans have been sacrificing cows and this practice, if not enjoyed, is certainly sanctioned by their religion and it amounts to their practice of religion protected by Art. 25. While the petitioners claim that the sacrifice of a cow is essential, the State denies the obligatory nature of the religious practice. The fact emphasized by the respondents, cannot be disputed, namely, that many Mussalmans do not sacrifice a cow on the Bakr Id day. It is part of the known history of India that the Moghul Emperor Babar saw the wisdom of prohibiting the slaughter of cows as and by way of religious sacrifice and directed his son Humayun to follow this example. Similarly Emperors Akbar, Jehangir, and Ahmad shah, it is said, prohibited cow slaughter,. Nawab Hyder Ali of Mysore made cow slaughter an offence punishable with the cutting of the hands of the offenders. Three of the members of the Gosamvardhan Enquiry Committee set up by the Uttar Pradesh Government in 1953 were Muslims and concurred in the unanimous recommendation for total ban on slaughter of cow, 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 in 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.

45. We now proceed to test each of the impugned Acts in the light of the aforesaid conclusions we have arrived at. The Bihar Act, in so far as it prohibits the slaughter of cows of all ages and calves of cows and calves of buffaloes, male and female, is valid. The Bihar Act makes no distinction between she-buffaloes, bulls and bullocks (cattle and buffaloes) which are useful as milch or breeding or draught animals and those which are not and indiscriminately prohibits slaughter of she-buffaloes, bulls and bullocks (cattle and buffalo) irrespective of their age or usefulness. In our view the ban on slaughter or she-buffaloes, breeding bulls and working bullocks (cattle and buffalo) which are useful is reasonable but of those which are not useful is not valid. The question as to when a she-buffalo, breeding bull or working bullock (cattle and buffalo) ceases to be useful and becomes useless and unserviceable is matter for legislative determination. There is no provision in the Bihar Act in that behalf. Nor has our attention been drawn to any rule which may throw any light on the point. It is, therefore, not possible to apply the doctrine of severability and uphold the ban on the slaughter of she-buffaloes, breeding bulls and working bullocks (cattle and buffalo) which are useful as milch or breeding or working animals and strike down the ban on the slaughter of those which are useless. The entire provision banning the slaughter of she-buffaloes, breeding bulls, and working bullocks (cattle and buffalo) has, therefore, to be struck down. The result is that we uphold and declare that the Bihar Act in so far as it prohibits the slaughter of cows of all ages and calves of cows and calves of buffaloes, male and female, is constitutionally valid and we hold that, in so far as it totally prohibits the slaughter of she-buffaloes, breeding bulls and working bullocks (cattle and buffalo), without prescribing any test or

> requirement as to their age or usefulness, it infringes the rights of the petitioners under Art. 19 (1) (g) and is to that extent void.
>
> 46. As regards the U. P. Act we uphold and declare, for reasons already stated, that it is constitutionally valid in so far as it prohibits the slaughter of cows of all ages and calves of cows, male and female, but we hold that in so far as it purports to totally prohibit the slaughter of breeding bulls and working bullocks without prescribing any test or requirement as to their age or usefulness, it offends against Art. 19 (1) (g) and is to that extent void."

32. In the case of ***Sardar Sarup Singh and others vs. State of Punjab and others***, reported in ***AIR 1959 SC 860***, their lordships have held that freedom of religion in our Constitution is not confined to religious beliefs only, but extends to essential religious practices as well, subject to the restrictions which the Constitution has laid down. Their lordships have held as under:

> "7. We are unable to accept this argument as correct. Article 26 of the Constitution, so far as it is relevant for our purpose, says-
>
> > "Art. 26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-
> >
> > (a) ............
> >
> > (b) to manage its own affairs in matters of religion;
> >
> > (c)
> >
> > (d) to administer such property in accordance with law."
>
> The distinction between Cls. (b) and (d) strikes one at once. So far as administration of its property is concerned, the right of a religious denomination is to be exercised in "accordance with law", but there is no such qualification in Cl. (b). In The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005 at pp. 1023, 1026: (AIR 1934 SC 282 at pp. 289, 290) this distinction was pointed out by this Court and it was there observed: "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." Secondly, the expression used in Cl. (b) is 'in matters of religion'. In what sense has the word 'religion' been used? This was considered in two decisions of this Court: 1954 SCR 1005: (AIR 1954 SC 282), and Sri Venkataramana Devaru v. State of Mysore, 1958 SCR 895: (AIR 1958 SC 255) and it was held that freedom of religion in our Constitution is not confined to religious beliefs only, but extends to essential

> religious practices as well subject to the restrictions which the Constitution has laid down. In 1954 SCR 1005: (AIR 1954 SC 282) (Supra) it was observed at p. 1026 (of SCR): (at p. 290 of AIR) that under Art. 26(b), 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 (we emphasise here they word 'essential'). The same emphasis was laid in the later decision of 1958 SCR 895: (AIR 1958 SC 255), where it wad said that matters of religion in Art. 26(b) include practices which are regarded by the community as part of its religion. Two questions, therefore, arise in connection with the argument of learned counsel for the petitioners: (1) does S. 148-B added to the principal Act by the amending Act of 1959 have reference only to administration of property of 'Sikh gurdwaras and, therefore, must be judged by Cl. (d) of Art. 26 or (2) does it affect 'matters of religion' within the meaning of Cl. (b) of the said Article?"

33. In the case of ***Mahant Moti Dass vs. S.P. Sahi*** reported in ***AIR 1959 SC 942***, have held that granting "matters of religion", include practices which our religious denominations regards as part of its religion, none of the provisions of the Bihar Hindu Religious Trusts Act, interferes with such practices, nor do the provisions of the Act seek to divert the trust property or funds for purposes other than indicated by the founder of the trust. Their lordships have held as under:

> "14. With regard to Art. 26, cls. (a) and (b), the position is the same. There is no provision of the Act which interferes with the right of any religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes; nor do the provisions of the Act interfere with the right of any religious denomination or any section thereof to manage its own affairs in matters of religion. Learned consel for the appellants has drawn our attention to Venkataramana Devaru v. State of Mysore, AIR 1958 SC 255, where following the earlier decision in 1954 SCR 1005 : (AIR 1954 SC 282), it was observed that matters of religion included even practices which are regarded by the community as part of its religion. Our attention has also been drawn to Ratilal Panachand v. State of Bombay, 1954 SCR 1055 : (AIR l954 SC 388), in which it has been held that a religious sect or denomination has the right to manage its own affairs in matters of religion and this includes the right to spend the trust property or its income for religion and for religious purposes and objects indicated by the founder of the trust or established by usage obtaining in a particular institution. It was further held therein that to divert the trust property or funds for purposes which the charity commissioner or the court considered expedient or proper, although the original objects of the founder, could still be carried out, was an unwarranted encroachment on the freedom of religious institutions in regard to the management of their religious affairs.

> We do not think that the aforesaid decisions afford any assistance to the appellants. Granting that 'matters of religion' include practices which a religious denomination regards as part of its religion, none of the provisions of the Act interfere with such practices; nor do the provisions of the Act seek to divert the trust property or funds for purposes other than those indicated by the founder of the trust or those established by usage obtaining in a particular institution. On the contrary; the provisions of the Act seek to implement the purposes for which the trust was created and prevent mismanagement and waste by the trustee. In other words, the Act by its several provisions seeks to fulfil rather than defeat the trust. In our opinion, there is no substance in the argument that the provisions of the Act contravene Arts. 25 and 26 of the Constitution."

34. In the case of ***Durgah Committee, Ajmer and anr. Vs. Syed Hussain Ali and others,*** reported in ***AIR 1961 SC 1402***, their lordships have held that matters of religion in Article 26 (b) include even practices which are regarded by the community as part of its religion in order that the practices in question should be treated as part of religion, they must however, 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. 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 scrutinized. In other words, the protection must be confined to such religious

practices as are an essential and integral part of it and no other. Their lordships have held as under:

> "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 Art. 25 (1), subject to public order, morality and health and to the other provisions of Part III, 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-
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> > (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 Commr., Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar, 1954 SCR 1005: (AIR 1954 SC 282). 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 Art. 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)( (of SCR): (p. 290 of AIR). Dealing with the same topic, though in another context, in Venkataramana Devaru v. State of Mysore, 1958 SCR 895: (AIR 1958 SC 255), Venkatarama Aiyar, J. spoke for the Court in the same vein and observed that it was settled that matters of religion in Art. 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 Art. 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 Art. 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."

35. In the case of ***Sardar Syedna Taher Saifuddin Sahib vs. State of Bombay,*** reported in ***AIR 1962 SC 853***, their lordships have held that as the right guaranteed by Article 25 (1) is not confined to freedom of conscience in the sense of the right to hold a belief and to propagate that belief, but includes the right to the practice of religion, the consequences of that practice must also bear the same complexion and be the subject of a like guarantee. Their lordships have also held that for example, there may be religious practices of sacrifice of human beings, or sacrifice of animals in a way deleterious to the well being of the community at large. It is open to the State to intervene, by legislation, to restrict or to regulate to the extent of completely stopping such deleterious practices. Their lordships have held as under:

> "17. It is not disputed that the petitioner is the head of the Dawoodi Bohra community or that the Dawoodi Bohra community is a religious denomination within the meaning of Art. 26 of the Constitution. It is not even disputed by the State, the only respondent in the case, that the petitioner as the head of the community had the right, as found by the Privy

Council in the case of 75 Ind App 1 : (AIR 1948 PC 66) to excommunicate a particular member of the community for reasons and in the manner indicated in the judgment of their Lordships of the Privy Council. But what is contended is that, as a result of the enactment in question, excommunication has been completely banned by the Legislature, which was competent to do so, and that the ban in no way infringes Arts. 25 and 26 of the Constitution. I have already indicated my considered opinion that the Bombay Legislature was competent to enact the Act. It now remains to consider the main point in controversy, which was, as a matter of fact, the only point urged in support of the petition, namely, that the Act is void in so far as it is repugnant to the guaranteed rights under Arts. 25 & 26 of the Constitution. Article 25 guarantees the right to every person, whether citizen or non-citizen, the freedom of conscience and the right freely to profess, practise and propagate religion. But this guaranteed right is not an absolute one. It is subject to (1) public order, morality and health, (2) the other provisions of Part III of the Constitution, (3) any existing law regulating or restricting an economic, financial, political or other secular activity which may be associated with religious practice, (4) a law providing for social welfare and reform, and (5) any law that may be made by the State regulating or restricting the activities aforesaid or providing for social welfare & reform. I have omitted reference to the provisions of Explanations I & II and other parts of Art. 25 which are not material to our present purpose. It is noteworthy that the right guaranteed by Art. 25 is an individual right, as distinguished from the right of an organised body like a religious denomination or any section thereof, dealt with by Art. 26. Hence, every member of the community has the right, so long as he does not in any way interfere with the corresponding rights of others, to profess, practise and propagate his religion, and everyone is guaranteed his freedom of conscience. The question naturally arises : Can an individual be compelled to have a particular belief on pain of a penalty, like excommunication ? One is entitled to believe or not to believe a particular tenet or to follow or not to follow a particular practice in matters of religion. No one can, therefore, be compelled, against his own judgment and belief, to hold any particular creed or follow a set of religious practices. The Constitution has left every person free in the matter of his relation to his Creator, if he believes in one. It is thus, clear that a person is left completely free to worship God according to the dictates of his conscience, and that his right to worship as he pleased is unfettered so long as it does not come into conflict with any restraints, as aforesaid, imposed by the State in the interest of public order etc. A person is not liable to answer for the verity of his religious views, and he cannot be questioned as to his religious beliefs, by the State or by any other person. Thus, though, his religious beliefs are entirely his own and his freedom to hold those beliefs is absolute, he has not the absolute right to act in any way he pleased in exercise of his religious beliefs. He has been guaranteed the right to practice and propagate his religion, subject to the limitations aforesaid. His right to practice his religion must also be subject to the criminal laws of the country, validly passed with reference to actions which the Legislature has declared to be of a penal character. Laws made by a competent legislature in the interest of public order and the like, restricting religious practices, would come within the regulating power of the State. For example, there may be religious practices of sacrifice of human beings, or sacrifice of animals in a way deleterious to the well-being of the community at large. It is open to the State to intervene, by legislation, to restrict or to regulate to the extent of completely stopping such deleterious practices. It must, therefore, be held that though the freedom of conscience is guaranteed to every individual so that he may hold any beliefs he likes, his actions in pursuance of those beliefs may be liable to restrictions in the interest of the community at large, as may be determined by common consent, that is to say, by a competent legislature. It was on such humanitarian grounds, and for the purpose of social reform,

that socalled religious practices like immolating a widow at the pyre of her deceased husband, or of dedicating a virgin girl of tender years to a god to function as a devadasi, or of ostracising a person from all social contacts and religious communion on account of his having eaten forbidden food or taboo, were stopped by legislation.

56. I am unable to accept any of these contentions as correct. (1) First I do not agree that the readings do not sufficiently raise the point at if excommunication was part of the "practice of a religion" the consequences that flow therefrom were not also part of the "practice of religion". The position of the Dai as the religious head of the denomination not being disputed and his power to excommunicate also not being in dispute and it also being admitted that places of worship and burial grounds were dedicated for the use of the members of the denomination, it appears to me that the consequence of the deprivation of the use of these properties by persons excommunicated would be logical and would flow from the order of excommunication. It could not be contested that the consequence of a valid order of excommunication was that the person excommunicated would cease to be entitled to the benefits of the hosts created or founded for the denomination or to the beneficial use or enjoyment of denominational property. If the property belongs to a community and if a person by excommunication ceased to be a member of that community it is a little difficult to see how his right to the enjoyment of the denominational property could be divorced from the religious practice which resulted in his ceasing to be a member of the community. When once it is conceded that the right guaranteed by Art. 25 (1) is not confined to freedom of conscience in the sense of the right to hold a belief and to propagate that belief, but includes the right to the practice of religion, the consequences of that practice must also bear the same complexion and be the subject of a like guarantee.

57. (2) I shall reserve for later consideration the point about the legislation being saved as a matter of social reform under Art. 25 (2) (b), and continue to deal with the argument that the impugned enactment was valid since it dealt only with the consequences on the civil rights, of persons ex-communicated. It has, however, to be pointed out that though in the definition of "excommunication" under S. 2 (b) of the impugned Act the consequences on the civil rights of the excommunicated persons is set out, that is for the purpose of defining an "excommunication". What I desire to point out is that it is not as if the impugned enactment saves only the civil consequences of an excommunication not interfering with the other consequences of an excommunication falling within the definition. Taking the case of the Dawoodi Bohra community, if the Dai excommunicated a person on the ground of forswearing the basic tenets of that religious community the Dai would be committing an offence under S. 4, because the consequences according to the law of that religious denomination would be the exclusion from civil rights of the excommunicated person. The learned Attorney-General is therefore not right in the submission that the Act is concerned only with the civil rights of the excommunicated person. On the other hand, it would be correct to say that the Act is concerned with excommunications which might have religious significance but which also operate to deprive persons of their civil rights."

36. In the case of ***Tilkayat Shri Govindlalji Maharaj etc. vs. State of Rajasthan and others,***

reported in ***AIR 1963 SC 1638***, their lordships have held that religious practice to which Article 25 (1) refers and affairs in matters of religion to which Article 26(b) refers, include practices which are an integral part of the religion itself and the protection guaranteed by Article 25 (1) and Article 26(b), extends to such practices. 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 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. Their lordships have held as under:

> "57. In 1958 SCR 895 at p. 909: (AIR 1958 SC 255 at p. 264) Venkatarama Aiyar J. observed
>
> > "that the matters of religion in Art. 26(b) include even practices which are regarded by the community as part of its religion."
>
> It would thus be clear that religious practice to which Art. 25(1) refers and affairs in matters of religion to which Art. 26(b) refers, include practices which are an integral part of the religion itself and the protection guaranteed by Article 25(1) and Art. 26 (b) extends to such practices.
>
> 58. 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 is an integral 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 Durgah Committee Ajmer v. Syed Hussain Ali, 1962-1 SCR 383 at p. 411: (AIR 1961 SC 1402 at p. 1415) 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 Art. 26."

37. In the case of ***Shastri Yagnapurushdasji and others vs. Muldas Bhundardas Vaishya and another***, reported in ***AIR 1966 SC 1119***, their lordships have held that it is difficult to explain/ define Hindu religion. Unlike other religions in the world, the Hindu religion does not claim any one prophet; it does not worship any one God; it does not subscribe to any one dogma; it does not believe in any philosophic concept; it does not follow any one set of religious rites or performance; in fact, it does not appear to satisfy the narrow traditional features of any religion or creed. It may broadly be described as a way of life and nothing more. Their lordships have held as under:

> "27. Who are Hindus and what are the broad features of Hindu religion, that must be the first part of our enquiry in dealing with the present controversy between the parties. The historical and etymological genesis of the word

"Hindu" has given rise to a controversy amongst indologists; but the view generally accepted by scholars appears to be that the word "Hindu" is derived from the river Sindhu otherwise known as Indus which flows from the Punjab. "That part of the great Aryan race", says Monier Williams, "which immigrated from Central Asia, through the mountain passes into India, settled first in the districts near the river Sindhu (now called the Indust). The Persians pronounced this word Hindu and named their Aryan brethren Hindus. The Greeks, who probably gained their first ideas of India from the Persians, dropped the hard aspirate, and called the Hindus 'Indoi *("Hinduism by Monier Williams, p.1.)*

28. The Encyclopaedia of Religion and Ethics, Vol. VI, has described "Hinduism" as the title applied to that form of religion which prevails among the vast majority of the present population of the Indian Empire (p. 636). As Dr. Radhakrishnan has observed: "The Hindu civilization is so called, since its original founders or earliest followers occupied the territory drained by the Sindhu (the Indust) river system corresponding to the North-West Frontier Province and the Punjab. This is recorded in the Rig Veda, the oldest of the Vedas, the Hindu scriptures which give their name to this period of Indian history. The people on the Indian side of the Sindhu were called Hindu by the Persian and the later western invaders *(The Hindu view of Life" by Dr. Radhakrishnan, P. 12)*. That is the genesis of the word "Hindu".

29. When we think of the Hindu religion, we find it difficult, if not impossible, to define Hindu religion or even adequately describe it. Unlike other religions in the world, the Hindu religion does not claim any one prophet; it does not worship any one God; it does not subscribe to any one dogma; it does not believe in any one philosophic concept; it does not follow any one set of religious rites or performances; in fact, it does not appear to satisfy the narrow traditional features of any religion or creed. It may broadly be described as a way of life and nothing more.

30. Confronted by this difficulty, Dr. Radhakrishnan realised that "to many Hinduism seems to be a name without any content. Is it a museum of beliefs, a medley of rites, or a mere map, a geographical expression *(The Hindu View of Life" by Dr. Radhakrishnan, p. 11)*?" Having posed these questions which disturbed foreigners when they think of Hinduism. Dr. Radhakrishnan has explained how Hinduism has steadily absorbed the customs and ideas of peoples with whom it has come into contract and has thus been able to maintain its supremacy and its youth. The term 'Hindu', according to Dr. Radhakrishnan, had originally a territorial and not a credal significance. It implied residence in a well defined geographical area. Aboriginal tribes, savage and half-civilized people, the cultured Dravidians and the Vedic Aryans were all Hindus as they were the sons of the same mother. The Hindu thinkers reckoned with the striking fact that the men and women dwelling in India belonged to different communities, worshipped different gods, and practised different rites *(The Hindu view of Life" by Dr. Radhakrishnan, p. 12)* (Kurma Purana.).

31. Monier Williams has observed that "it must be borne in mind that Hinduism is far more than a mere form of theism resting on Brahmanism. It presents for our investigation a complex congeries of creeds and doctrines which in its gradual accumulation may be compared to the gathering together of the mighty volume of the Ganges, swollen by a continual influx of tributary rivers and rivulets, spreading itself over an ever-increasing area of country, and finally resolving itself into an intricate Delta of tortuous streams and jungly marshes.......The Hindu religion is a reflection of the composite character of the Hindus, who are not one people but many. It is

based on the idea of universal receptivity. It has ever aimed at accommodating itself to circumstances, and has carried on the process of adaptation through more than three thousand years. It has first borne with and then, so to speak, swallowed, digested, and assimilated something from all creeds. *(Religious Thought & Life in India" by Monier Williams, p. 57)*

32. We have already indicated that the usual tests which can be applied in relation to any recognised religion or religious creed in the world turn out to be inadequate in dealing with the problem of Hindu religion. Normally, any recognised religion or religious creed subscribes to a body of set philosophic concepts and theological beliefs. Does this test apply to the Hindu religion? In answering this question, we would base ourselves mainly on the exposition of the problem by Dr. Radhakrishnan in his work on Indian Philosophy (6)*. Unlike other countries. India can claim that philosophy in ancient India was not an auxiliary to any other science or art, but always held a prominent position of independence. The Mundaka Upanisad speaks of Brahma-Vidya or the science of the eternal as the basis of all sciences, 'sarva-vidya-pratistha. According to Kautilya, "Philosophy" is the lamp of all the sciences, the means of performing all the works, and the support of all the duties "In all the fleeting centuries of history" says Dr. Radhakrishnan, "in all the vicissitudes through which Indian has passed, a certain marked identity is visible. It has held fast to certain psychological traits which constitute its special heritage and they will be the characteristic marks of the Indian people so long as they are privileged to have a separate existence". The history of Indian thought emphatically brings out the fact that the development of Hindu religion has always been inspired by an endless quest of the mind for truth based on the consciousness that truth has many facets Truth is one but wise men describe it differently (6-A)*. The Indian mind has, consistently through the ages, been exercised over the problem of the nature of godhead the problem that faces the spirit at the end of life, and the inter-relation between the individual and universal soul. "If we can abstract from the variety of opinion", says Dr. Radhakrishnan, "and observe the general spirit of Indian thought. We shall find that it has a disposition to interpret life and nature in the way of monistic idealism, though this tendency is so plastic, living and manifold that it takes many forms and express itself in even mutually hostile teachings *(Indian Philosophy" by Dr. Radhakrishnan, Vol. I, pp. 22-23.)*

33. The monistic idealism which can be said to be the general distinguishing nature of Hindu Philosophy has been expressed in four different forms: (1) Nondualism or Advaitism; (2) Pure monism, (3) Modified monism, and (4) Implicit monism. It is remarkable that these different forms of monistic idealism purport to derive support from the same Vedic and Upanishadic texts. Shankar, Ramanuja, Vallabha and Madhva all based their philosphic concepts on what they regarded to be the synthesis between the Upanishads, the Brahmasutras and the Bhagwad Gita. Though philosophic concepts and principles evolved by different Hindu thinkers and philosophers varied in many ways and even appeared to conflict with each other in some particulars, they all had reverence for the past and accepted the Vesas as sole foundation of the Hindu philosophy. Naturally enough, it was realised by Hindu religion from the very beginning of its career that truth was many-sided and different views contained different aspects of truth which no one could fully express. This knowledge inevitably bred a spirit of tolerance and willingness to understand and appreciate the opponent's point of view. That is how "the several views set forth in India in regard to the vital philosophic concepts are considered to be the branches of the self-same tree. The short cuts and blind alleys are somehow reconciled with the main road of advance to the truth*(bid, p.48.)*When we consider this broad sweep of the Hindu philosophic concepts, it would be realised that under Hindu philosophy,

> there is no scope for ex-communicating any notion or principl*e as heretical and rejecting it as such.”*

Their lordships have further held that the development of Hindu religion and philosophy shows that from time to time saints and religious reformers attempted to remove from the Hindu thought and practices elements of corruption and superstitions and that led to the formation of different sects. Budha started Budhism; Mahavir founded Jainism; Basava became the founder of Lingayat religion. Their lordships have also held that all of them revolted against the dominance of rituals and powers of priestly class with which it came to be associated and all of them proclaimed their teachings not in Sanskrit which was the monopoly of the priestly class, but in the languages spoken by the ordinary mass of people in their respective religions. Their lordships have held as under:

> “36. Do the Hindus worship at their temples the same set or number of gods? That is another question which can be asked in this connection; and the answer to this question again has to be in the negative. Indeed, there are certain sections of the Hindu community which do not believe in the worship of idols; and as regards those sections on the Hindu community which believe in the worship of idols, their idols differ from community to community and it cannot be said that one definite idol or a definite number of idols are worshipped by all the Hindus in general. In the Hindu Pantheon the first gods that were worshipped in Vedic times were mainly Indra, Varuna, Vayu and Agni. Later, Brahma, Vishnu and Mahesh came to be worshipped. In course of time, Rama and Krishna secured a place of pride in the Hindu Pantheon, and gradually as different philosophic concepts held sway in different sects and in different sections of the Hindu community, a large number of gods were added, with the result that today, the Hindu Pantheon presents the spectacle of a very large number of gods who are worshipped by different sections of the Hindus.
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> 37. The development of Hindu religion and philosophy shows that from time to time saints and religious reformers attempted to removed from the Hindu thought and practices elements of corruption and superstition and that led to the formation of different sects. Buddha started Buddhism: Mahavir

founded Jainism; Basava became the founder of Lingayat religion, Dhyaneshwar and Tukaram initiated the Varakari cult; Guru Nanak inspired Sikhism; Dayanada founded Arya Samaj, and Chaitanaya began Bhakti cult; and as a result of the teachings of Ramakrishna and Vivekananda, Hindu religion flowered into its most attractive, progressive and dynamic form. If we study the teachings of these saints and religious reformers, we would notice an amount of divergence in their respective views; but underneath that divergence, there is a kind of subtle indescribable unity which keeps them within the sweep of the broad and progressive Hindu religion.

38. There are some remarkable features of the teachings of these saints and religious reformers. All of them revolted against the dominance of rituals and the power of the priestly class with which it came to be associated: and all of them proclaimed their teachings not in Sanskrit which was the monopoly of the priestly class, but in the languages spoken by the ordinary mass of people in their respective regions.

40. Tilak faced this complex and difficult problem of defining door or at least describing adequately Hindu religion and he evolved a working formula which may be regarded as fairly adequate and satisfactory. Said Tilak: "Acceptance of the Vedas with reverence; recognition of the fact that the means or ways to salvation are diverse; and realisation of the truth that the number of gods to be worshipped is large, that indeed is the distinguishing feature of Hindu religion *(ilak's Gitarahasaya". ).* This definition brings out succinctly the broad distinctive features of Hindu religion. It is somewhat remarkable that this broad sweep of Hindu religion has been eloquently described by Toynbee. Says Toynbee: "When we pass from the plane of social practice to the plane of intellectual outlook. Hinduism too comes out well by comparison with the religions and ideologies of the South-West Asian group. In contrast to these Hinduism has the same outlook as the pre-Christian and pre-Muslim religions and philosophies of the Western half of the old world. Like them, Hinduism takes it for granted that there is more than one valid approach to truth and to salvation and that these different approaches are not only compatible with each other, but are compl*ementary("The Present day* experim*ent in Western Civilisation" by Toynbee, page 46-49.).*

48. It is necessary at this stage to indicate broadly the principles which Swaminarayan preached and which he wanted his followers to adopt in life. These principles have been succinctly summarised by Monier Williams. It is interesting to recall that before Monier Williams wrote his Chapter on Swaminarayan sect, he visited the Wartal temple in company with the Collector of Kaira on the day of the Purnima, or full moon of the month of Kartik which is regarded as the most popular festival of the whole year by the Swaminarayan sect. On the occasion of this visit, Monier Williams had long discussions with the followers of Swaminarayan and he did his best to ascertain the way Swaminarayan's principles were preached and taught and they way they were practised by the followers of the sect. We will now briefly reproduce some of the principles enunciated by Swaminarayan.

> "The killing of any animal for the purpose of sacrifice to the gods is forbidden by me. Abstaining from injury is the highest of all duties. No flesh meat must ever be eaten, no spirituous or vinous liquor must ever be drunk, not even as medicine. My male followers should make the vertical mark (emblematical of the footprint of Vishnu or Krishna) with the round spot inside it (symbolical of Lakshmi) on their foreheads. Their wives should only make the

circular mark with red powder or saffron. Those who are initiated into the proper worship of Krishna should always wear on their necks two rosaries made of Tulsi wood, one for Krishna and the other for Radha. After engaging in mental worship, let them reverently bow down before be pictures of Radha and Krishna, and repeat the eight syllabled prayer to Krishna (Sri -Krishnan Saranam mama, 'Great Krishna is my soul's refuge') as many times as possible. Then let them apply themselves to secular affairs. Duty (Dharma) is that good practice which is enjoined both by the Veda (Sruti) and by the law (Smriti) founded on the Veda. Devotion (Bhakti) is intense love for Krishna accompanied with a due sense of his glory. Every day all my followers should go to the Temple of God, and there repeat the names of Krishna. The story of his life should be listened to with the great reverence, and hymns in his praise should be sung on festive days. Vishnu, Siva, Ganapati (or Genesa), Parvati, and the Sun: these five deities should be honoured with worship Narayana and Siva should be equally regarded as part of one and same Supreme Spirit, since both have been declared in the Vedas to be forms of Brahma. On an account let it be supposed that difference in forms (or names) makes any difference in the identity of the deity. That Being, known by various names-such as the glorious Krishna, Param Brahma, Bhagavan, Purushottama-the cause of all manifestations, is to be adored by us as our one chosen deity. The philosophical doctrine approved by me is the Visishtadvaita (of Ramanuja), and the desired heavenly abode is Goloka. There to worship Krishna and be united with him as the Supreme Soul is to be considered salvation. The twice-born should perform at the proper seasons, and according to their means, the twelve purificatory rites (sanskara), the (six) daily duties, and the Sraddha offerings to the spirits of departed ancestors. A pilgrimage to the Tirthas, or holy places, of which Dvarika (Krishna's city in Gujarat) is the chief, should be performed according to rule. Alms giving and kind acts towards the poor should always be performed by all. A tithe of one's income should be assigned to Krishna; the poor should give a twentieth part. Those males and females of my followers who will act according to these directions shall certainly obtain the four great objects of all human desires-religious merit. Wealth, pleasure, and beatitude *("Religious Thought and Life in India" by Monier Williams, pp. 155-158."*

38. In the case of ***His Holiness Srimad Perarulala Ethiraja Ramanuja Jeeyar Swami etc. vs. The State of Tamil Nadu***, reported in ***AIR 1972 SC 1586***, their lordships have held that the protection of Articles 25 and 26 is not limited to the matters of doctrines or belief. They extend also to acts done in pursuance to religion and therefore, contain a guarantee for rituals and observances, ceremonies and modes of

worship which are integral parts of religion. What constitutes an essential part of a religious 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. Their lordships have held as under:

> "12. This Court in Sardar Syedna Taher Saifuddin Saheb v. State of Bombay, (1962) Supp. 2 SCR 496 = (AIR 1962 SC 853) has summarised the position in law as follows (pages 531 and 532).
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> > "The content of Arts. 25 and 26 of the Constitution came up for consideration before this Court in the Commr. Hindu Religious Endowments Madras v. Sri Lakshmindra Thirtha Swamiar, 1954 SCR 1005 = (AIR 1954 SC 282); Jagannath Ramanuj Das v. State of Orissa, 1954 SCR 1046 = (AIR 1954 SC 400) 1958 SCR 895 = (AIR 1958 SC 255) Durgah Committee, Ajmer v. Syed Hussain Ali, (1962) 1 SCR 383 = (AIR 1961 SC 1402), 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 in 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 religious 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 and include practices which are regarded by the community as a part of its religion."

39. In the case of ***Acharya Jagdishwaranand Avadhuta etc. vs. Commissioner of Police, Calcutta and another***, reported in ***AIR 1984 SC 51***, their lordships have held that performance of Tandava dance by Anandmargis in procession or at public places is not an essential religious rite to be performed by every Anandmargi. Their lordships have held as under:

> "8. 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 (1966) 3 SCR 242 : (AIR 1966 SC 1119), also supports the conclusion that Anand 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 Shri Ananda Murti are essentially founded upon the essence of Hindu philosophy. The test indicated by the learned Chief Justice in the case referred to above and the admission in paragraph 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.

8-A. The next aspect for consideration is whether Ananda Marga can be accepted to be a religious denomination. In the Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt 1954 SCR 1005 at p. 1021 : (AIR 1954 SC 282 at p. 289), 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 The Durgah Committee, Ajmer v. Syed Hussain Ali, (1962) 1 SCR 393 : (AIR 1961 SC 1402). In the majority judgment in S. P. Mittal v. Union of India, (1983) 1 SCR 729 at p. 774 : (AIR 1983 SC 1 at Pp. 20-21) reference to this aspect has also been made and it has been stated :

> "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 the 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."

9. 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 cunductive 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. Article 26 of the Constitution provides that subject to public order morality and health, every relgious denomination or any section thereof shall have the right to manage its own affairs in matters of religion. Mukherjea, J. in Lakshmindra Thirtha Swamiar's case (AIR 1954 SC 282) (supra) adverted to; the question as to what were the matters of religion and stated (at p. 290) :

> "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 any rigid definition. In an American case (Davis v. Benson, (1888) 133 US 333 at p. 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 ............"

> "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 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) ........"

12. 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 paragraph 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 paragraph 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 paragraph 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 Shri 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.

13. 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.

17. The writ petitions have to fail on our finding that performance of tandava dance in procession in the public streets or in gatherings in public places is not an essential religious rite of the followers of the Ananda Marga. In the circumstances there will be no order as to costs."

40. In the case of ***Abdul Jaleel and others vs. State of U.P. and others,*** reported in ***AIR 1984 SC 882,*** their lordships have held that shifting of graves is not un-Islamic or contrary to Koran especially when ordered to be done for purpose of maintaining public order, their lordships have held as under:

> "4. In our order dated 23rd September. 1983 it has been pointed out that the fundamental rights conferred on all persons and every religious denomination under Articles 25 and 26 of the Constitution are not absolute but the exercise thereof must yield to maintenance of public order and that the suggestion mooted by the Court to shift the graves was in the larger interest of the society for the purpose of maintaining public order on every occasion of the performance of their religious ceremonies and functions by the members of both the sects herein. It has been further pointed out that the ecclesiastical edict or a right not to disturb an interred corpse is not absolute as will be clear from Section 176 (3) of Cr. P.C. which permits its exhumation for the purpose of crime detection and that this provision is applicable to all irrespective of the personal law governing the dead. In particular reference was made to one of the Fatwas relied upon by Sunni Muslims to show that even according to a Hadis quoted in that Fatwa "unnecessary shifting of graves was not permissible" and as such the edict clearly implies that it may become necessary to shift the graves in certain situations and that exigencies of public order would surely provide the requisite situation. Moreover, during the present hearing we persistently inquired of counsel appearing on both the sides as to whether there was anything in the Holy Koran which prohibited shifting of graves and counsel for the Sunni Muslims was not able to say that there was any to be found in the Koran. On the other hand, Shri Ashok Sen appearing for Shia Muslims categorically stated that there is no text in the Holy Koran which prohibits removal or shifting of graves, he also stated that his clients (Shia Muslims) do not regard removal or shifting of a grave (whether of a Sunni Muslim or Shia Muslim) from one place to another as un-Islamic or contrary to Koran. That it is neither un-Islamic nor contrary to Koran is proved by two things. First, as pointed out in one of the affidavits, in a meeting convened by the Divisional Commissioner on 4-10-1983 Maulana Abdul Salam Nomani, Pesh Imam of Gyan-Vapi Masjid, Varanasi was present and when the Commissioner asked him regarding the shifting of the graves as directed by this Court, he replied that a grave can never be shifted except only in the circumstances when the graves are dug on the land belonging to others and the graves are set up illegally on others' land. (In our order dated 23rd September, 1983 we have pointed out that the two graves in question have come up on the land of Maharaja unauthorisedly and illegally in contravention of Court's injunction) Secondly, two historical instances of such removal have been placed on record before the Court, namely, the grave of Mumtaz Mahal was removed from Burhanpur and brought to Taj Mahal at Agra and the grave of Jahangir was removed from Kashmir and taken to Lahore. There is, therefore, no question of this Court's direction being un-Islamic or contrary to Koran or amounting to desecration of the two graves as suggested. As regards the contention that the impugned direction amounts to disproportionate interference with the religious practice

> of the Sunni to respect their dead, we would like to place on record that during the earlier hearing several alternative suggestions were made to the Sunni Muslims including one to stagger their ceremonies and functions during the Moharram festival to avoid a conflict with the ceremonies and functions of the Shias but all those suggestions were spurned with the result that the spectre of yearly recrudescence of ugly incidents of violence, stone-throwing, hurling of acid bulbs / bottles, damage and destruction to life and property - (the latest in the series even after giving the impugned direction being the burning and destruction of the most valuable Tazia of Shias during Moharram festival of 1983, which was discovered in the morning of 11th October 1983) left no choice for the Court but to direct the shifting of the graves land this direction was also given in the larger interest of the society for the purpose of maintaining. public order on every occasion of the performance of their religious ceremonies and functions by members of both the sects herein. Experience of such yearly recrudescence of ugly incidents over past several years or in the alternative prohibiting ceremonies and functions of both the sects under Section 144 Cr.P.C. necessitated the issuance of the impugned direction with a view to find a permanent solutions to this perennial problem."

41. In the case of ***Bijoe Emmanuel and others vs. State of Kerala and others***, reported in ***AIR 1987 SC 748***, their lordships have held that Article 25 is an Article of faith in the Constitution, incorporated in recognition of the principle that the real test of a true democracy is the ability of even an insignificant minority to find its identity under the country's Constitution. Their lordships have held as under:

> "17. Turning next to the Fundamental Right guaranteed by Art. 25, we may usefully set out here that article to the extent relevant :
>
>> "25.(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.
>>
>> (2) 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 institutions of a public character to all classes and sections of Hindus."

> (Explanations I and II not extracted as unnecessary)
>
> Article 25 is an article of faith in the Constitution, incorporated in recognition of the principle that the real test of a true democracy is the ability of even an insignificant minority to find its identity under the country's Constitution. This has to be borne in mind in interpreting Art. 25."

42. In the case of ***Dr. M. Ismail Faruquui and others vs. Union of India and others***, reported in ***(1994) 6 SCC 360****,* their lordships have held that the right to worship is not at any and every place, so long as it can be practiced effectively, unless the right to worship at a particular place is itself an integral part of that right. Under the Mohomedan Law applicable in India, title to a Mosque can be lost by adverse possession. A mosque is not an essential part of the practice of the religion of Islam. Their lordships have further held that there can be a religious practice but not an essential and integral part of practice of that religion. While offering of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. *Namaz* (prayer) by Muslims can be offered anywhere, even in open. Their lordships have held as under:

> "77. It may be noticed that Article 25 does not contain any reference to property unlike Article 26 of the Constitution. The right to practise, profess and propagate religion guaranteed under Article 25 of the Constitution does not necessarily include the right to acquire or own or possess property. Similarly this right does not extend to the right of worship at any and every

> place of worship so that any hindrance to worship at a particular place per se may infringe the religious freedom guaranteed under Articles 25 and 26 of the Constitution. The protection under Articles 25 and 26 of the Constitution is to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion.
>
> 78. While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially."

43. In the case of ***State of W.B. and others vs. Ashutosh Lahiri and others***, reported in ***(1995) 1 SCC 189,*** their lordships have held that the legislative intention of W.B. Animal Slaughter Control Act, 1950, is that healthy cows which are not fit to be slaughtered can not be slaughtered at all. Their lordships have held that in the context of Section 12, the religious practice must be such which requires the invocation of exemption provision under Section 12 so as to bye pass the main thrust of Section 4. For such an exercise, non-essential religious practices can not be made the basis. Their lordships have further held that it is operational for a Muslim to sacrifice a goat for one person or a cow or a camel for 7 persons. Once, the religious purpose of Muslims consists of making sacrifice of any animal which should be a healthy animal, on BakrI'd, then slaughtering of the cow is not the only way of carrying out that sacrifice. Thus, slaughtering of healthy cows on BakrI'd is not essential or required for religious purpose of Muslims or in other words, it is not a part of religious requirement for a Muslim that a cow must be necessarily sacrificed for earning

religious merit on BakrI'd. Their lordships have also held that the writ petitioners representing a Hindu segment of society had the necessary locus standi to move the petition. Their lordships have held as under:

> "8. The aforesaid relevant provisions clearly indicate the legislative intention that healthy cows which are not fit to be slaughtered cannot be slaughtered at all. That is the thrust of S. 4 of the Act. In other words there is total ban against slaughtering of healthy cows and other animals mentioned in the schedule under S. 2 of the Act. This is the very essence of the Act and it is necessary to subserve the purpose of the Act i.e. to increase the supply of milk and avoid the wastage of animal power necessary for improvement of agriculture. Keeping in view these essential features of the Act, we have to construe S.12 which deals with power to grant exemption from the Act. As we have noted earlier the said section enables the State Government by general or special order and subject to such conditions as it may think fit to impose, to exempt from the operation of this Act slaughter of any animal for any religious, medicinal or research purpose. Now, it becomes clear that when there is a total ban under the Act so far as slaughtering of healthy cows which are not fit to be slaughtered as per S. 4(1) is concerned, if that ban is to be lifted even for a day, it was to be shown that such lifting of ban is necessary for subserving any religious, medicinal or research purpose. The Constitution Bench decision of this Court in Mohd. Hanif Quareshi's case (1959 SCR 629 at page 650) : (AIR 1958 SC 731 at pp. 739-40) (supra) of the report speaking through Das C. J. referred to the observation in Hamilton's translation of Hedaya Book, XLIII at p. 592 that it is the duty of every free Mussulman arrived at the age of maturity, to offer a sacrifice on the YD Kirban, or festival of the sacrifice, provided he be then possessed of Nisab and be not a traveller. The sacrifice established for one person is a goat and that for seven a cow or a camel. It is, therefore, optional for a Muslim to sacrifice a goat for one person or a cow or a camel for seven persons. It does not appear to be obligatory that a person must sacrifice a cow. Once the religious purpose of Muslims consists of making sacrifice of any animal which should be a healthy animal, on Bakri Idd, then slaughtering of cow is not the only way of carrying out that sacrifice. It is, therefore, obviously not an essential religious purpose but an optional one. In this connection Mr. Tarkunde for the appellants submitted that even optional purpose would be covered by the term 'any religious purpose' as employed by S.12 and should not be an essential religious purpose. We cannot accept this view for the simple reason that S. 12 seeks to lift the ban in connection with slaughter of such animals on certain conditions. For lifting the ban it should be shown that it is essential or necessary for a Muslim to sacrifice a healthy cow on Bakri Idd day and if such is the requirement of religious purpose then it may enable the State in its wisdom to lift the ban at least on Bakri Idd day. But that is not the position. It is well settled that an exceptional provision which seeks to avoid the operation of main thrust of the Act has to be strictly construed. In this connection it is profitable to refer to the decisions of this Court in the cases Union of India v. Wood Papers Ltd.,(1991) 1 JT (SC) 151 : (AIR 1991 SC 2049) and Novopan India Ltd., Hyderabad v. C.C.E.& Customs, Hyderabad, (1994) 6 JT (SC) 80 : (1994 AIR SCW 3976). If any optional religious purpose enabling the Muslim to sacrifice a healthy cow on Bakri Idd is made the subject matter of an exemption under S.12 of the Act then such exemption would get granted for a purpose which is not an essential one and to that extent the exemption would be treated to have been lightly or

cursorily granted. Such is not the scope and ambit of Sec. 12. We must, therefore, hold that before the State can exercise the exemption power under S. 12 in connection with slaughter of any healthy animal covered by the Act, it must be shown that such exemption is necessary to be granted for subserving an essential religious, medicinal or research purpose. If granting of such exemption is not essential or necessary for effectuating such a purpose no such exemption can be granted so as to by-pass the thrust of the main provisions of the Act. We, therefore, reject the contention of the learned counsel for the appellants that even for an optional religious purpose exemption can be validity granted under S. 12 In this connection it is also necessary to consider Quareshi's case (AIR 1958 SC 731) (supra) which was heavily relied upon by the High Court. The total ban of slaughter of cows even on Bakri Idd day as imposed by Bihar Legislature under Bihar Prevention of Animals Act, 1955 was attacked as violative of fundamental right of the petitioners under Article 25 of the Constitution. Repelling this contention the Constitution Bench held that even though Article 25(1) granted to all persons the freedom to profess, practice and propagate religion, as slaughter of cows on Bakri Idd was not an essential religious practice for Muslims, total ban on cow's slaughter on all days including Bakri Idd day would not be violative of Art. 25 (1). As we have noted earlier the Constitution Bench speaking through Das C.J., held that it was optional to the Muslims to sacrifice a cow on behalf of seven persons on Bakri Idd but it does not appear to be obligatory that a person must sacrifice a cow. It was further observed by the Constitution Bench that the very fact of an option seemed to run counter to the notion of an obligatory duty. One submission was also noted that a person with six other members of his family may afford to sacrifice a cow but may not be able to afford to sacrifice seven goats, and it was observed that in such a case there may be an economic compulsion although there was no religious compulsion. In this connection, Das C.J., referred to the historical background regarding cow slaughtering from the times of Mughal Emperors. Mughal Emperor Babar saw the wisdom of prohibiting the slaughter of cows as and by way of religious sacrifice and directed his son Humayun to follow this. Similarly, Emperors Akbar, Jehangir and Ahmed Shah, it is said, prohibited cow slaughter. In the light of this historical background it was held that total ban on cows slaughter did not offend Art. 25(1) of the Constitution.

9. In view of this settled legal position it becomes obvious that if there is no fundamental right of a Muslim to insist on slaughter of healthy cow on Bakri Idd day, it cannot be a valid ground for exemption by the State under S. 12 which would in turn enable slaughtering of such cows on Makri Idd. The contention of learned counsel for the appellant that Art. 25(1) of the Consitution deals with essential religious practices while S. 12 of the Act may cover even optional religious practices is not acceptable. No such meaning can be assigned to such an exemption clause which seeks to whittle down and dilute the main provision of the Act, namely S.4 which is the very heart of the Act. If the appellants' contention is accepted then the State can exempt from the operation of the Act, the slaughter of healthy cows even for non-essential religious, medicinal or research purpose, as we have to give the same meaning to the three purposes, namely, religious, medicinal or research purpose, as envisaged by. Sec 12. It becomes obvious that if for fructifying any medicinal or research purpose it is not necessary or essential to permit slaughter of healthy cow, then there would be no occasion for the State to invoke exemption power under S.12 of the Act for such a purpose. Similarly it has to be held that if it is not necessary or essential to permit slaughter of a healthy cow for any religious purpose it would be equally not open to the State to invoke its exemption power under S.12 for such a religious purpose. We, therefore, entirely concur with the view of the High Court that slaughtering of healthy cows on Bakri Idd is not essential or

required for religious purpose of Muslims or in other words it is not a part of religious requirement for a Muslim that a cow must be necessarily scarified for earning religious merit on Bakri Idd.

11. We may also deal with the effort made by the learned counsel for the appellants to distinguish Quareshi's case (AIR 1958 SC 731) on the ground that for interpreting the term 'religious' under Arts. 25 and 26, a restricted meaning was given for balancing the secular nature of democracy on the one hand and the interest of the individual so far as right to practise any religion is concerned on the other. In this connection, our attention was invited to the decisions of this Court in Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan, (1964) 1 SCR 561 : (AIR 1963 SC 1638) and The Durgah Committee, Ajmer v. Syed Hussian Ali, (1962) 1 SCR 383: (AIR 1961 SC 1402). These decisions are of no avail to the appellants as therein while dealing with the question of validity of certain enactments, scope of Articles 25 and 26 of the Constitution was spelt out and nothing has been held in these decisions which is contrary to what was decided in Quareshi's case (AIR 1958 SC 731), which we have noted in detail. The effort made by learned counsel for the appellants to get any and every religious practice covered by S.12 also is of no avail for the simple reason that in the context of S.12 the religious practice must be such which requires the invocation of exemption provision under S.12 so as to by-pass the main thrust of S.4. For such an exercise non-essential religious practices cannot be made the basis. Reliance placed on the decision of this Court in Hazarat Pir Mohd. Shah v. Commr. of Income-tax, Gujarat (1967) 63 ITR 490 (SC), also is of no assistance as the same refers to S. 11 of the Income-tax Act, the scheme of which is entirely different from that of the Act. Even if we agree with learned counsel for the appellants that slaughter of a healthy cow on Bakri Idd is for a religious purpose, so long as it is not shown to be an essential religious purpose as discussed by us earlier, S.12 of the Act cannot be pressed in service for buttressing such a non-essential religious purpose.

12. Before parting we may mention that one preliminary objection was raised before the High Court about the petitioners' locus standi to move the writ petition. The High Court held that it was a public interest litigation and the writ petitioners have sufficient locus standi to move the petition. That finding of the High Court was not challenged by any of the appellants. In our view rightly so as the writ petitioners representing a Hindu segment of society had felt aggrieved by the impugned exemption granted by the State. They had no personal interest but a general cause to project. Consequently, they had sufficient locus standi to move the petition. Rule 7 framed under the Act, provides that provisions of the West Bengal Animal Slaughter Control Act, 1950, shall not apply to the slaughter of any animal for religious medicinal or research purpose subject to the condition that such slaughter does not affect the religious sentiment of the neighbours of the person or persons performing such slaughter and that the previous permission of the State Government or any officer authorised by it is obtained before the slaughter. The case of the original writ petitioners before the High Court was based on religious sentiments and, therefore, they had moved this public interest litigation. In these circumstances, no fault could be found with the decision of the High Court recognising locus standi of the original petitioners to move this public interest litigation which we have found to be well justified on merits."

44. In the case of ***A.S. Narayana Deekshitulu vs. State of A.P. and others***, reported in ***(1996) 9 SCC 548,***

their lordships have held that the only integral or essential part of the religion is protected. Non-integral or non-essential part of religion, being secular in character, can be regulated by legislation. The essential or integral part of religion to be ascertained from the doctrine of that religion itself according to its tenets, historical background and change in evolved process. While performance of religious service is integral part of religion, priest or archaka performing such service is not so. Their lordships have further held that religion not merely an opinion, doctrine or belief. It has outward expression in acts as well. It is not every aspect of religion that has been safeguarded by Articles 25 and 26 nor has the Constitution provided that every religious activity can not be interfered with. Every religion must believe in a conscience and ethical and moral precepts. Their lordships have further held that whether 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. Their lordships have held as under:

> "40. From that perspective, this Court is concerned with the concept of Hindu religion and dharma... Very often one can discern and sense political and economic motives for maintaining status quo in relation to religious forms masquerading it as religious faith and rituals bereft of substantial religious experience. As sure, philosophers do not regard this as religion at all. They do not hesitate to say that this is politics or economic

masquerading as a religion. A very careful distinction, therefore, is required to be drawn between real and unreal religion at any stage in the development and preservation of religion as protected by the Constitution. Within religion, there is an interpretation of reality and unreality which is completely different experience. It is the process in which ideal is made rule. Thus perfection of religious experience can take place only when free autonomy is afforded to an individual and worship of the infinite is made simpler, direct communion, the cornerstone of human system. Religion is personal to the individual. Greater the law bringing an individual closer to this freedom, the higher is its laudable and idealistic purpose. Therefore, in order that religion becomes mature internally with the human personality it is essential that mature self-enjoy must be combined with conscious knowledge. Religious symbols can be contra-distinguished from the scientific symbols and both are as old as man himself. Through scientific symbols there can be repetition of dogmatism and conviction of ignorance. True religion reaching up to the full reality of all knowledge, believe in God as the unity of the whole.

55. It thus follows that to one who is devoted to the pursuit of knowledge, the observance of rituals is of no use since the observance of rituals and the devotion of knowledge cannot co-exist. There is considerable incompatibility between knowledge and rituals inasmuch as their natures are entirely antithetical. It is only he who regards himself as the agent of action that can perform the rituals; but the nature of knowledge is altogether different and it dispels all such ideas. All the wrong ideas beginning with the identification of Self with the physical body etc., are eradicated by knowledge, while they are reinforced by action. Ignorance of Atman is at the root of action, but the knowledge of Atman destroys both. How is it possible for one to perform the prescribed rituals while engaged in the pursuit of knowledge inasmuch as they are incompatible! It is as much impossible as the co-existence of light and darkness. One cannot keep one's eyes open and closed at the same time. It is equally impossible to combine knowledge and rituals. Can one who is looking westward look eastward? How is one whose mind is directed towards the innermost Atman fit to take part in external activities?

77. The importance of rituals in religious life is relevant for evocation of mystic and symbolic beginnings of the journey but on them the truth of a religious experience cannot stand. The truth of a religious experience is far more direct, perceptible and important to human existence. It is the fullness of religious experience which must be assured by temples, where the images of the Lord in resplendent glory is housed. To them all must have an equal right to plead and in a manner of such directness and simplicity that every human being can approach the doors of the Eternal with equality and with equal access and thereby exercise greater freedom in his own life. It is essential that the value of law must be tested by its certainty in reiterating the Core of Religious Experience and if a law seeks to separate the non-essential from the essential so that the essential can have a greater focus of attention in those who believe in such an experience, the object of such a law cannot be described as unlawful but possibly somewhat visionary.

85. Articles 25 and 26 deal with and protect religious freedom. Religion as used in these Articles must be construed in its strict and etymological sense. Religion is that which binds a man with his Cosmos, his creator or super force. It is difficult and rather impossible to define or delimit the expressions "religion" or "matters of religion" used in Articles 25 and 26. Essentially, religion is a matter of personal faith and belief of personal relations of and 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 and in fact there are well-known religions in India itself like Budhism and Jainism which do not believe in the existence of God. In India, Muslims believe in Allah and have faith in Islam; Christians in Christ and Christianity; Parsis in Zorastianism; Sikhs in Gurugranth Sahib and teachings of Gurunanak Devji, its founder, which is a facet of Hinduism like Brahamos, Aryasamaj etc.

86. 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. A religion is not merely an opinion, doctrine or belief. It has outward expression in acts as well. It is not every aspect of religion that has been safeguarded by Articles 25 and 26 nor has the Constitution provided that every religious activity cannot be interfered with. Religion, therefore, be construed in the context of Articles 25 and 26 in its strict and etymological sense. Every religion must believe in a conscience and ethical and moral precepts. Therefore, whatever binds a man to his own conscience and whatever moral or ethical principle regulate the lives of men believing in that theistic, conscience or religious belief that alone can constitute religion as understood in the Constitution which fosters feeling of brotherhood, amenity, fraternity and equality of all persons which find their foot-hold in secular aspect of the Constitution. Secular activities and aspects do not constitute religion which brings under its own cloak every human activity. There is nothing which a man can do, whether in the way of wearing clothes or food or drink, which is not considered a religious activity. Every mundane or human activity was not intended to be protected by the Constitution under the guise of religion. The approach to construe the protection of religion or matters of religion or religious practices guaranteed by Articles 25 and 26 must be viewed with pragmatism since by the very nature of things, it would be extremely difficult, if not impossible, to define the expression religion of matters or religion or religious belief or practice.

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 intricably mixed up. This is more particularly so in regard to Hindu religion because under the provisions of ancient Samriti, 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 Banjamin 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 essentially 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. Whether hereditary archaka is an essential and integral part of the Hindu religion is the crucial question?

116. 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's case, (AIR 1972 SC 1586), (supra) 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 placed of an archaka and had held that the priest would occupy place of importance in the performance of ceremonial rituals by a qualified archaic who would observe daily discipline imposed upon him by the Agamas according to tradition, usage and customs obtaine in the temple. Shri P.P. Rao, learned senior counsel also does not dispute it."

45. In the case of ***Sri Adi Visheshwara of Kashi Vishwanath Temple Varanasi and others vs. State of U.P. and others,*** reported in ***(1997)4 SCC 606,*** their lordships have held that the religious freedom guaranteed by Article 25 and 26 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. Article 25 and 26, therefore, strike

a balance between rigidity or right to religious belief and faith and their intrinsic restrictions in the matters of religion, religious beliefs and religious practices and guaranteed freedom of conscience to commune with his Cosmos /Creator. Their lordships have further held that 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 a religious in character and whether it could be regarded as an essential or integral part of religion and if the Court finds upon evidence adduced before it that it is an integral or essential part of the religion, Article 25 protects it. Their lordships have further held that 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 practice rituals and right to manage in matters of religion are protected under these Articles.

“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 he, 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.

30.Hinduism cannot be defined in terms of Polytheism or Henotheism or Monotheism. The nature of Hindu religion ultimately is Monism/Advaita. This is in contradistinction to Monotheism which means only one God to the exclusion of all others. Polytheism is a belief of multiplicity of Gods. On the contrary, Monism is a spiritual belief of one Ultimate Supreme who manifests Himself as many. This multiplicity is not contrary to on-dualism,

> This is the reason why Hindus start adoring any deity either handed down by tradition or brought by a Guru or Swambhuru and seek to attain the Ultimate Supreme.
>
> 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 on which great reliance was placed and stress was laid by the counsel on either side, this court while reiterating the 9 Seshammal v. State af T.N., 1972 2 SCC 11 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."

46. In the case of ***N.Adithayan vs. Travancore Devaswom Board and others***, reported in ***(2002)8 SCC 106,*** their lordships have held that custom or usage, even if proved to have existed in pre-Constitution period, cannot be accepted as a source of law, if such custom

violates human rights, human dignity, concept of social equality and the specific mandate of the Constitution and law made by the Parliament. Their lordships have further held that the vision of the founding fathers of the Constitution of liberating society from blind adherence to traditional superstitious beliefs sans reason or rational basis.

> "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-Ill, 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 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."

47. In the case of ***Commissioner of Police and others vs. Acharya Jagadishwarananda Avadhuta and anr***, reported in ***(2004)12 SCC 770*** , their lordships have held that the essential part of a religion means the core beliefs upon which a religion is founded. The essential practice means those practices that are fundamental to follow religious beliefs. It is upon the cornerstone of the 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 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. What constitutes an integral or essential part of a religion has to be determined with reference to the doctrines, practices, tenets, historical background etc. of the given religion. In a given case, it is for the Court to decide whether a part or practice is an essential part or practice of given religion. Their lordships have further held that in a Bench consisting of three Judges of the Supreme Court in *Ananda Marga (I) (1983) 4 SCC 522*, arrived at a unanimous conclusion on facts that Tandava dance in public is not an essential and integral part of Ananda Marga faith. The Hon'ble Court further even went to the extent of assuming that Tandava dance was prescribed as a rite and then arrived at the conclusion that taking out Tandava dance in public is not essential to the Ananda Marga faith.

> "8. This observation cannot be considered as a clue to reopen the whole finding. By making that observation the Court was only buttressing the finding that was already arrived at. The learned judges of the High Court

wrongly proceeded on the assumption that the finding of this Court regarding the non-essential nature of Tandava dance to the Ananda Margi faith is due to the non-availability of any literature or prescriptions by the founder. The High Court is under the? wrong impression that an essential part of religion could be altered at any subsequent point of time.

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. The Commissioner v. L. T. Swamiar of Srirur Mutt 1954 SCR 1005, SSTS Saheb v. State of Bombay 1962 (Supp) 2 SCR 496, and Sesharnmal v. State of Tamil Nadu, (1972) 2 SCC 11, 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 the superstructure of religion is built. Without which, a religion will be no religion. Test to determine whether a part or practice is essential to the religion is - to find out whether the nature of 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 is what is protected by the Constitution. No body can say that 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 where the belief is based and religion is founded upon. It could only be treated as mere embellishments to the non-essential part or practices.

10. Here in this case Ananda Margi order was founded in 1955. Admittedly, Tandava dance was introduced as a practice in 1966. Even without the practice of Tandava dance (between 1955 to 1966) Ananda Margi order was in existence. Therefore, Tandava dance is not the 'core' upon which Ananda Margi order is founded. Had Tandava dance been the core of Ananda Margi faith, then without which Ananda Margi faith could not have existed.

11. There is yet another difficulty in accepting the reasoning of the High Court that

> a subsequent addition in Carya Carya could constitute Tandava dance as essential part of Ananda Margi faith. In a given case it is for the Court to decide whether a part or practice is an essential part or practice of .a given religion. As a matter of fact if in the earlier litigations the Court arrives at a conclusion of fact regarding the essential part or practice of a religion - it will create problematic situations if the religion is allowed to circumvent the decision of Court by making alteration in its doctrine. For example, in N. Adithayan v. Travancore Devaswom Board, (2002) 8 SCC 106, this Court found that a non-Brahmin could be appointed as a poojari (priest) in a particular temple and it is not essential to that temple practice to appoint only a brahmin as poojari. Is it open for that

> temple authorities to subsequently decide only brahmins could be appointed as poojaris by way of some alterations in the relevant doctrines? We are clear that no party could even revisit such a finding of fact. Such an attempt will result in anomalous situations and could only be treated as a circuitous way to overcome the finding of a Court. If subsequent alterations in doctrine could be allowed to create new essentials, the Judicial process will then be reduced into a useless formality and futile exercise. Once there is a finding of fact by the competent Court, then all other bodies are estopped from revisiting that conclusion. On this count also the decision of High Court is liable to be set aside."

48. In the case of ***State of Gujarat Vs. Mirzapur Moti Kureshi Kassab Jamat and others***, reported in ***(2005) 8 SCC 534***, their lordships have held that slaughter of cow and cow progeny on BakrI'd is neither essential to nor necessarily required as part of the religious ceremony. Their lordships have held that an optional religious practice is not covered by Article 25 (a). Their lordships have departed from ***Quarishi's*** case (1959 SCR 629). Their lordships have held as under:

> "22. In State of West Bengal and Ors. v. Ashutosh Lahiri, (1995) 1 SCC 189, this Court has noted that sacrifice of any animal by muslims for the religious purpose on BakrI'd does not include slaughtering of cow as the only way of carrying out that sacrifice. Slaughtering of cow on BakrI'd is neither essential to nor necessarily required as part of the religious ceremony. An optional religious practice is not covered by Article 25(1). On the contrary, it is common knowledge that cow and its progeny, i.e., bull, bullocks and calves are worshipped by Hindus on specified days during Diwali and other festivals like Makr-Sankranti and Gopashtmi. A good number of temples are to be found where the statue of 'Nandi' or 'Bull' is regularly worshipped. However, we do not propose to delve further into the question as we must state, in all fairness to the learned counsel for the parties, that no one has tried to build any argument either in defence or in opposition to the judgment appealed against by placing reliance on religion or Article 25 of the Constitution.
>
> 85. Empirical research was carried out under field conditions in North Gujarat Region (described as Zone-I) and Saurashtra region (described as Zone-II). The average age of aged bullocks under the study was 18.75 years. The number of bullocks/pair used under the study were sufficient to draw sound conclusions from the study. The gist of the findings arrived at, is summed up as under:
>
> Farmer's persuasion

The aged bullocks were utilized for different purposes like agricultural operations (ploughing, planking, harrowing, hoeing, threshing) and transport-hauling of agricultural produce, feeds and fodders of animals, drinking water, construction materials (bricks, stones, sand grits etc.) and for sugarcane crushing/ khandsari making. On an average the bullocks were yoked for 3 to 6 hours per working day and 100 to 150 working days per year. Under Indian conditions the reported values for working days per year ranges from 50 to 100 bullock paired days by small, medium and large farmers. Thus, the agricultural operations-draft output are still being taken up from the aged bullocks by the farmers. The farmers feed concentrates, green fodders and dry fodders to these aged bullocks and maintain the health of these animals considering them an important segment of their families. Farmers love their bullocks.

Age, body measurement and body weight

The biometric and body weight of aged bullocks were within the normal range.

Horsepower generation/Work output

The aged bullocks on an average generated 0.68 hp/bullock, i.e.18.1% less than the prime/young bullocks (0.83 hp/bullock). The aged bullocks walked comfortably with an average stride length of 1.43 meter and at the average speed of 4.49 km/hr. showing little less than young bullocks. However, these values were normal for the aged bullocks performing light/medium work of carting. These values were slightly lower than those observed in case of prime or young bullocks. This clearly indicates that the aged bullocks above 16 years of age proved their work efficiency for both light as well as medium work in spite of the age bar. In addition to this, the experiment was conducted during the months of May-June, 2000 _ a stressful summer season. Therefore, these bullocks could definitely generate more work output during winter, being a comfortable season. The aged bullock above 16 years of age performed satisfactorily and disproved that they are unfit for any type of draft output i.e. either agricultural operations, carting or other works.

Physiological responses and haemoglobin concentration

These aged bullocks are fit to work for 6 hours (morning 3 hours + afternoon 3 hrs.) per day. Average Hb content (g%) at the start of work was observed to be 10.72 g% and after 3 hours of work 11.14g%, indicating the healthy state of bullocks. The increment in the haemoglobin content after 3 to 4 hours of work was also within the normal range and in accordance with prime bullocks under study as well as the reported values for working bullocks.

Distress symptoms

In the initial one hour of work, 6 bullocks (3.8%) showed panting, while 32.7% after one hour of work. After 2 hour of work, 28.2% of bullocks exhibited salivation. Only 6.4% of the bullocks sat down/lied down and were reluctant to work after completing 2 hours of the work. The results are indicative of the fact that majority of the aged bullocks (93%) worked normally. Summer being a stressful season, the aged bullocks exhibited distress symptoms earlier than the prime/young bullocks. However, they maintained their physiological responses within normal range and generated satisfactory draft power.

104. Even if the utility argument of the Quareshi's judgment is accepted, it cannot be accepted that bulls and bullocks become useless after the age of 16. It has to be said that bulls and bullocks are not useless to the society because till the end of their lives they yield excreta in the form of urine and dung which are both extremely useful for production of bio-gas and manure. Even after their death, they supply hide and other accessories. Therefore, to call them 'useless' is totally devoid of reality. If the expenditure on their maintenance is compared to the return which they give, at the most, it can be said that they become 'less useful'.(Report of the National Commission on Cattle, July 2002, Volume I, p. 279.)

105. The Report of the National Commission on Cattle has analyzed the economic viability of cows after they stopped yielding milk and it also came to the conclusion that it shall not be correct to call such cows 'useless cattle' as they still continue to have a great deal of utility. Similar is the case with other cattle as well.

> "Economic aspects:
>
> The cows are slaughtered in India because the owner of the cow finds it difficult to maintain her after she stops yielding milk. This is because it is generally believed that milk is the only commodity obtained from cows, which is useful and can be sold in exchange of cash. This notion is totally wrong. Cow yields products other than milk, which are valuable and saleable. Thus the dung as well as the urine of cow can be put to use by owner himself or sold to persons or organizations to process them. The Commission noticed that there are a good number of organizations (goshalas) which keep the cows rescued while being carried to slaughter houses. Very few of such cows are milk yielding. Such organizations use the urine and dung produced by these cows to prepare Vermi-compost or any other form of bio manure and urine for preparing pest repellents. The money collected by the sale of such products is normally sufficient to allow maintenance of the cows. In some cases, the urine and dung is used to prepare the medical formulations also. The organizations, which are engaged in such activities, are making profits also.
>
> Commission examined the balance sheet of some such organizations. The expenditure and income of one such organization is displayed here. In order to make accounts simple the amounts are calculated as average per cow per day.
>
> It is obvious that expenditure per cow is Rs. 15-25 cow/day.
>
> While the income from sale is Rs. 25-35 cow-day.
>
> These averages make it clear that the belief that cows which do not yield milk are unprofitable and burden for the owner is totally false. In fact it can be said that products of cow are sufficient to maintain them even without milk. The milk in such cases is only a by_product.
>
> It is obvious that all cow owners do not engage in productions of fertilizers or insect repellents. It can also be understood that such activity may not be feasible for owners of a single or a few cows. In such cases, the cow's urine and dung may be supplied to such organizations, which utilize these materials for producing finished products required for agricultural or medicinal purpose.

Commission has noticed that some organizations which are engaged in production of agricultural and medical products from cow dung and urine do purchase raw materials from nearby cow owner at a price which is sufficient to maintain the cow."

(Report of National Commission on Cattle, July 2002, Vol. II, pp.68-69)

109. On the basis of the available material, we are fully satisfied to hold that the ban on slaughter of cow progeny as imposed by the impugned enactment is in the interests of the general public within the meaning of clause (6) of Article 19 of the Constitution.

122. We have already pointed out that having tested the various submissions made on behalf of the writ petitioners on the constitutional anvil, the Constitution Bench in Quareshi-I upheld the constitutional validity, as reasonable and valid, of a total ban on the slaughter of : (i) cows of all ages, (ii) calves of cows and she-buffaloes, male or female, and (iii) she-buffaloes or breeding bulls or working bullocks (cattle as well as buffaloes) as long as they are as milch or draught cattle. But the Constitution Bench found it difficult to uphold a total ban on the slaughter of she-buffaloes, bulls or bullocks (cattle or buffalo) after they cease to be capable of yielding milk or of breeding or working as draught animals, on the material made available to them, the ban failed to satisfy the test of being reasonable and "in the interests of the general public". It is clear that, in the opinion of the Constitution Bench, the test provided by clause (6) of Article 19 of the Constitution was not satisfied. The findings on which the above-said conclusion is based are to be found summarized on pp.684-687. Para-phrased, the findings are as follows:

(1) The country is in short supply of milch cattle, breeding bulls and working bullocks, essential to maintain the health and nourishment of the nation. The cattle population fit for breeding and work must be properly fed by making available to the useful cattle in presenti in futuro. The maintenance of useless cattle involves a wasteful drain on the nation's cattle feed.

(2) Total ban on the slaughter of cattle would bring a serious dislocation, though not a complete stoppage, of the business of a considerable section of the people who are by occupation Butchers (Kasai), hide merchant and so on.

(3) Such a ban will deprive a large section of the people of what may be their staple food or protein diet.

(4) Preservation of useful cattle by establishment of gosadan is not a practical proposition, as they are like concentration camps where cattle are left to die a slow death.

(5) The breeding bulls and working bullocks (cattle and buffaloes) do not require as much protection as cows and calves do.

These findings were recorded in the judgment delivered on 23rd April, 1958. Independent India, having got rid of the shackles of foreign rule, was not even 11 years old then. Since then, the Indian economy has made much headway and gained a foothold internationally. Constitutional jurisprudence has indeed changed from what it was in 1958, as pointed out earlier. Our socio-economic scenario has progressed from being gloomy to a shining

one, full of hopes and expectations and determinations for present and future. Our economy is steadily moving towards prosperity in a planned way through five year plans, nine of which have been accomplished and tenth is under way.

136. India, as a nation and its population, its economy and its prosperity as of today are not suffering the conditions as were prevalent in 50s and 60s. The country has achieved self-sufficiency in food production. Some of the states such as State of Gujarat have achieved self-sufficiency in cattle-feed and fodder as well. Amongst the people there is an increasing awareness of the need for protein rich food and nutrient diet. Plenty of such food is available from sources other than cow/cow progeny meat. Advancements in the field of Science, including Veterinary Science, have strengthened the health and longetivity of cattle (including cow progeny). But the country's economy continues to be based on agriculture. The majority of the agricultural holdings are small units. The country needs bulls and bullocks.
137. For multiple reasons which we have stated in very many details while dealing with Question-6 in Part II of the judgment, we have found that bulls and bullocks do not become useless merely by crossing a particular age. The Statement of Objects and Reasons, apart from other evidence available, clearly conveys that cow and her progeny constitute the backbone of Indian agriculture and economy. The increasing adoption of non-conventional energy sources like Bio-gas plants justify the need for bulls and bullocks to live their full life in spite of their having ceased to be useful for the purpose of breeding and draught. This Statement of Objects and Reasons tilts the balance in favour of the constitutional validity of the impugned enactment. In Quareshi-I*(Mohd. Hanif Quareshi v. Sate of Bihar, 1959 SCR 629 : AIR 1958 SC 731)* the Constitution Bench chose to bear it in mind, while upholding the constitutionality of the legislations impugned therein, insofar as the challenge by reference to Article 14 was concerned, that "the legislature correctly appreciates the needs of its own people". Times have changed; so have changed the social and economic needs. The Legislature has correctly appreciated the needs of its own people and recorded the same in the Preamble of the impugned enactment and the Statement of Objects and Reasons appended to it. In the light of the material available in abundance before us, there is no escape from the conclusion that the protection conferred by impugned enactment on cow progeny is needed in the interest of Nation's economy. Merely because it may cause 'inconvenience' or some 'dislocation' to the butchers, restriction imposed by the impugned enactment does not cease to be in the interest of the general public. The former must yield to the latter.

139. Thus, the eminent scientist is very clear that excepting the advanced countries which have resorted to large scale mechanized farming, most of the countries (India included) have average farms of small size. Majority of the population is engaged in farming within which a substantial proportion belong to small and marginal farmers category. Protection of cow progeny will help them in carrying out their several agricultural operations and related activities smoothly and conveniently. Organic manure would help in controlling pests and acidification of land apart from resuscitating and stimulating the environment as a whole.

142. For the foregoing reasons, we cannot accept the view taken by the High Court. All the appeals are allowed. The impugned judgment of the High Court is set aside. The Bombay Animal Preservation (Gujarat Amendment) Act, 1994 (Gujarat Act No. 4 of 1994) is held to be intra vires the Constitution. All the writ petitions filed in the High Court are directed to be dismissed.”

Their lordships have also held that by enacting clause (g) in Article 51-A and giving it the status of fundamental duty, one of the objects sought to be achieved by the Parliament is to ensure that the spirit and message of Article 48 and 48-A are honoured as a fundamental duty of every citizen.

> "51. By enacting clause (g) in Article 51-A and giving it the status of a fundamental duty, one of the objects sought to be achieved by the Parliament is to ensure that the spirit and message of Articles 48 and 48A is honoured as a fundamental duty of every citizen. The Parliament availed the opportunity provided by the Constitution (Forty-second Amendment) Act, 1976 to improve the manifestation of objects contained in Article 48 and 48-A. While Article 48-A speaks of "environment", Article 51-A(g) employs the expression "the natural environment" and includes therein "forests, lakes, rivers and wild life". While Article 48 provides for "cows and calves and other milch and draught cattle", Article 51-A(g) enjoins it as a fundamental duty of every citizen "to have compassion for living creatures", which in its wider fold embraces the category of cattle spoken of specifically in Article 48.
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> 169. One of the other reasons which has been advanced for reversal of earlier judgments was that at the time when these earlier judgments were delivered Article 48(A) and 51(A) were not there and impact of both these Articles were not considered. It is true that Article 48(A) which was introduced by the 42nd Constitutional Amendment in 1976 with effect from 3.1.1977 and Article 51(A) i.e. fundamental duties were also brought about by the same amendment. Though, these Articles were not in existence at that time but the effect of those Articles were indirectly considered in the Mohd. Hanif Qureshi's case in 1958. It was mentioned that cow dung can be used for the purposes of manure as well as for the purpose of fuel that will be more echo-friendly. Similarly, in Mohd. Hanif Qureshi's case their Lordships have quoted from the scriptures to show that we should have a proper consideration for our cattle wealth and in that context their Lordships quoted in para 22 which reads as under:
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>> "[22.] The avowed object of each of the impugned Acts is to ensure the preservation, protection, and improvement of the cow and her progeny. This solicitude arises out of the appreciation of the usefulness of cattle in a predominantly agricultural society. Early Aryans recognized its importance as one of the most indispensable adjuncts of agriculture. It would appear that in Vedic times animal flesh formed the staple food of the people. This is attributable to the fact that the climate in that distant past was extremely cold and the Vedic Aryans had been a pastoral people before they settled down as agriculturists. In Rg. Vedic times goats, sheep, cows, buffaloes and even horses were slaughtered for food and for religious sacrifice and their flesh used to be offered to the Gods. Agni is called the "eater of ox or cow" in Rg.Veda (VIII,43,11). The slaying of a great ox (Mahoksa) or a "great Goat" (Mahaja) for the entertainment of a distinguished guest has been enjoined in the Satapatha Brahmana (III.4. 1-2). Yagnavalkya also expresses a similar view (Vaj.1. 109).

An interesting account of those early days will be found in Rg.Vedic Culture by Dr. A.C. Das, Chapter 5, pages 203-5 and in the History of Dharamasastras (Vol.II, Part II) by P.V. Kane at pages 772-773. Though the custom of slaughtering of cows and bulls prevailed during the vedic period, nevertheless, even in the Rg. Vedic times there seems to have grown up a revulsion of feeling against the custom. The cow gradually came to acquire a special sanctity and was called "Aghnya" (not to be slain). There was a school of thinkers amongst the Risis, who set their face against the custom of killing such useful animals as the cow and the bull. High praise was bestowed on the cow as will appear from the following verses from Rg.Veda, Book VI, Hymn XXVIII (Cows) attributed to the authorship of Sage Bhardavaja:

"1. The kine have come and brought good fortune; let them rest in the cow-pen and be happy near us.

Here let them stay prolific, many coloured, and yield through many morns their milk for Indra.

6. O Cows, ye fatten e'n the worn and wasted, and make the unlovely beautiful to look on.

Prosper my house, ye with auspicious voices, your power is glorified in our assemblies.

7. Crop goodly pasturages and be prolific; drink pure sweet water at good drinking places.

Never be thief or sinful man your master, and may the dart of Rudra still avoid you." (Translation by Ralph Griffith).

Verse 29 of hymn 1 in Book X of Atharva Veda forbids cow slaughter in the following words:

"29. The slaughter of an innocent, O Kritya, is an awful deed, Slay not cow, horse, or man of ours."

Hyman 10 in the same book is a rapturous glorification of the cow:

"30. The cow is Heaven, the cow is Eath, the cow is Vishnu, Lord of life.

The Sadhyas and the Vasus have drunk the outpourings of the cow.

34. Both Gods and mortal men depend for life and being on the cow. She hath become this universe; all that the sun surveys is she."

P.V. Kane argues that in the times of the Rg. Veda only barren cows, if at all, were killed for sacrifice or meat and cows yielding milk were held to be not fit for being killed. It is only in this way, according to him that one can explain and reconcile the apparent conflict between the custom of killing cows for food and the high praise bestowed on the cow in Rg. Vedic times. It would appear that the protest raised against the slaughter of cows greatly increased in volume till the custom was totally abolished in a later age. The change of climate perhaps also make the use of beef as food unnecessary and even injurious to health. Gradually cows became indicative of the wealth of the owner. The Neolithic Aryans not having been acquainted with metals, there were no coins in current use in the earlier stages of their

civilization, but as they were eminently a pastoral people almost every family possessed a sufficient number of cattle and some of them exchanged them for the necessaries of their life. The value of cattle (Pasu) was, therefore, very great with the early Rg. Vedic Aryans. The ancient Romans also used the word pecus or pecu (pasu) in the sense of wealth or money. The English words, "pecuniary" and "impecunious", are derived from the Latin root pecus or pecu, originally meaning cattle. The possession of cattle in those days denoted wealth and a man was considered rich or poor according to the large or small number of cattle that he owned. In the Ramayana king Janaka's wealth was described by reference to the large number of herds that he owned. It appears that the cow was gradually raised to the status of divinity. Kautilya's Arthasastra has a special chapter (Ch.XXIX) dealing with the "superintendent of cows" and the duties of the owner of cows are also referred to in Ch.XI of Hindu Law in its sources by Ganga Nath Jha. There can be no gainsaying the fact that the Hindus in general hold the cow in great reverence and the idea of the slaughter of cows for food is repugnant to their notions and this sentiment has in the past even led to communal riots. It is also a fact that after the recent partition of the country this agitation against the slaughter of cows has been further intensified. While we agree that the constitutional question before us cannot be decided on grounds of mere sentiment, however passionate it may be, we, nevertheless, think that it has to be taken into consideration, though only as one of many elements, in arriving at a judicial verdict as to the reasonableness of the restrictions."

170. Therefore it cannot be said that the Judges were not conscious about the usefulness and the sanctity with which the entire cow and its progeny has been held in our country. Though Article 48(A) and 51(A) were not there, but their Lordships were indirectly conscious of the implication. Articles 48(A) and 51(A) do not substantially change the ground realities which can persuade to change the views which have been held from 1958 to 1996. Reference was also made that for protection of top soil, the cow dung will be useful. No doubt the utility of the cow dung for protection of the top soil is necessary but one has to be pragmatic in its approach that whether the small yield of the cow dung and urine from aged bulls and bullocks can substantially change the top soil. In my opinion this argument was advanced only for the sake of argument but does not advance the case of the petitioners/appellants to reverse the decision of the earlier Benches which had stood the test of time."

49. In the case of ***MP Gopalakrishnan Nayar and another vs. State of Kerala and others,*** reported in ***(2005)11 SCC 45,*** their lordships have held that have explained the word "Hindu" as under:

"22. The word 'Hindu' is not defined. A Hindu admittedly may or may not be a person professing Hindu religion or a believer in temple worship. A Hindu has a right to choose his own method of worship. He may or may not visit a temple. He may have a political compulsion not to openly proclaim that he believes in temple worship but if the submission of the Appellants is accepted in a given situation, the 1978 Act itself would be rendered unworkable. Idol worships, rituals and ceremonials may not be practised by a person although he may profess Hindu religion.

> 24. The legislature has not chosen to qualify the word "Hindu" in any manner. The meaning of word is plain and who is a Hindu is well known. The legislature was well aware that "Hindu" is a comprehensive expression (as the religion itself is) giving the widest freedom to people of all hues opinion, philosophies and beliefs to come within its fold. [See Shastri Yagnapurushdasji and others Vs. Muldas Bhundardas Vaishya and another, AIR 1966 SC 1119 and Dayal Singh and Others Vs. Union of India and Others, (2003) 2 SCC 593, para 37]"

50. In the case of ***Javed and others vs. State of Haryana and others***, reported in ***(2003) 8 SCC 369*** , their lordships have held that protection under Article 25 and 26 of the Constitution is with respect to religious practice which forms an essential and part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion. The latter is not protected by Article 25.

> "43. A bare reading of this Article deprives the submission of all its force, vigour and charm. The freedom is subject to public order, morality and health. So the Article itself permits a legislation in the interest of social welfare and reform which are obviously part and parcel of public order, national morality and the collective health of the nation's people.
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> 45. The meaning of religion - the term as employed in Article 25 and the nature of protection conferred by Article 25 stands settled by the pronouncement of the Constitution Bench decision in Dr. M. Ismail Faruqui and Ors. v. Union of India & Ors., (1994) 6 SCC 360. The protection under Articles 25 and 26 of the Constitution is with respect to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of the religion. The latter is not protected by Article 25.
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> 59. In our view, a statutory provision casting disqualification on contesting, or holding, an elective office is not violative of Article 25 of the Constitution."

51. In the case of ***State of Karnataka and another vs. Dr. Praveen Bhai Thogadia***, reported in ***(2004) 4 SCC 684,*** their lordships have held that the State should have no religion of its own and each person whatever his religion, must get an assurance from the

State that he has the protection of law freely to profess, practice and propagate his religion and freedom of conscience. Their lordships have also observed that the core of religion based upon spiritual values, which the Vedas, Upanishads and Puranas were said to reveal to mankind seem to be "love others, serve others, help ever, hurt never" and "***Sarve Jana Sukhinu Bhavantoo***".

> "6. Courts should not normally interfere with matters relating to law and order which is primarily the domain of the concerned administrative authorities. They are by and large the best to assess and to handle the situation depending upon the peculiar needs and necessities, within their special knowledge. Their decision may involve to some extent an element of subjectivity on the basis of materials before them. Past conduct and antecedents of a person or group or an organisation may certainly provide sufficient material or basis for the action contemplated on a reasonable expectation of possible turn of events, which may need to be avoided in public interest and maintenance of law and order. No person, however, big he may assume or claim to be, should be allowed irrespective of the position he may assume or claim to hold in public life to either act in a manner or make speeches which would destroy secularism recognised by the Constitution of India, 1950 (in short the 'Constitution'). Secularism is not to be confused with communal or religious concepts of an individual or a group of persons. It means that State should have no religion of its own and no one could proclaim to make the State have one such an endeavour to create a theocratic State. Persons belonging to different religions live throughout the length and breadth of the country. Each person whatever be his religion must get an assurance from the State that he has the protection of law freely to profess, practice arid propagate his religion and freedom of conscience. Otherwise, the rule of law will become replaced by individual perceptions of ones own presumptuous good social order. Therefore, whenever the concerned authorities in charge of law and order find that a person's speeches or actions are likely to trigger communal antagonism and hatred resulting in fissiparous tendencies gaining foothold undermining and affecting communal harmony, prohibitory orders need necessarily to be passed, to effectively avert such untoward happenings.
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> 9. Our country is the world's most heterogeneous society, with rich heritage and our Constitution is committed to high ideas of socialism, secularism and the integrity of the nation. As is well known, several races have converged in this sub-continent and they carried with them their own cultures, languages, religions and customs affording positive recognition to the noble and ideal way of life - Unity in Diversity'. Though these diversities created problems, in early days, they were mostly solved on the basis of human approaches and harmonious reconciliation of differences, usefully and peacefully. That is how secularism has come to be treated as a part of fundamental law, and an unalignable segment of the basic structure of the country's political system. As noted in S. R. Bommai v. Union of India etc. (1994 (3) SCC 1), freedom of religion is granted to all persons of India. Therefore, from the point of view of the State, religion, faith or belief of a

> particular person has no place and given no scope for imposition on individual citizen. Unfortunately, of late vested interests fanning religious fundamentalism of all kinds vying with each other are attempting to subject the constitutional machinaries of the State to great stress and strain with certain quaint ideas of religious priorities, to promote their own selfish ends, undeterred and unmindful of the disharmony it may ultimately bring about and even undermine national integration achieved with much difficulties and laudable determination of those strong spirited servants of yester years. Religion cannot be mixed with secular activities of the State and fundamentalism of any kind cannot be permitted to masquerade as political philosophies to the detriment of the larger interest of society and basic requirement of a welfare State. Religion sans spiritual values may even be perilous and bring about chaos and anarchy all around. It is, therefore, imperative that if any individual or group of persons, by their action or caustic and inflammatory speech are bent upon sowing seed of mutual hatred, and their proposed activities are likely to create disharmony and disturb equilibrium, sacrificing public peace and tranquillity, strong action, and more so preventive actions are essentially and vitally needed to be taken. Any speech or action which would result in ostracization of communal harmony would destroy all those high values which the Constitution aims at. Welfare of the people is the ultimate goal of all laws, and State action and above all the Constitution. They have one common object, that is to promote well being and larger interest of the society as a whole and not of any individual or particular groups carrying any brand names. It is inconceivable that there can be social well being without communal harmony, love for each other and hatred for none. The chore of religion based upon spiritual values, which the Vedas, Upanishad and Puranas were said to reveal to mankind seem to be - "Love others, serve others, help ever, hurt never" and "Sarvae Jana Sukhino Bhavantoo". Oneupship in the name of religion, whichever it be or at whomsoever's instance it be, would render constitutional designs countermanded and chaos, claiming its heavy toll on society and humanity as a whole, may be the inevitable evil consequences, whereof."

52. In the case of ***M. Chandra vs. M. Thangamuthu and another,*** reported in ***(2010) 9 SCC 712,*** their lordships have held that Hinduism is not a religion with one God or one holy scripture. The practices of Hindus vary from region to region, place to place. Hinduism does not have a single founder, a single book, a single Church or even a single way of life.

> "40. We must remember, as observed by this Court in Ganpat's case, Hinduism is not a religion with one God or one Holy Scripture. The practices of Hindus vary from region to region, place to place. The Gods worshipped, the customs, Traditions, Practice, rituals etc, they all differ, yet all these people are Hindus. The determination of the religious acceptance of a person must be not be made on his name or his birth. When a person intends to profess Hinduism, and he does all that is required by the practices

of Hinduism in the region or by the caste to which he belongs, and he is accepted as a Hindu by all persons around him.

41. Hinduism appears to be very complex religion. It is like a centre of gravity doll which always regain its upright position however much it may be upset. Hinduism does not have a single founder, a single book, a singe church or even a single way of life. Hinduism is not the caste system and its hierarchies, though the system is a part of its social arrangement, based on the division of labour. Hinduism does not preach or uphold untouchability, though the Hindu Society has practiced it, firstly due to reasons of public health and later, due to prejudices. (copied in tits and bits from the book facets of Hinduism by Sri Swami Harshananda)."

53. In the case of ***Union of India and others vs. Rafique Shaikh Bhikan and another***, reported in ***(2012) 6 SCC 265***, their lordships have held that Haj subsidy was not in consonance with the tenets of Islam and have observed that there should be progressive reduction of subsidy and its complete discontinuance in ten years.

"37. From the statement made in paragraph 21 of the affidavit, as quoted above, it is clear that the Government of India has no control on the cost of travel for Haj. The air fare to Jeddah for traveling for Haj is increased by airlines to more than double as a result of the regulations imposed by the Saudi Arabian Authorities. It is illustratively stated in the affidavit that in the year 2011, the air fare for Haj was Rs.58,800/- though the normal air fare to and from Jeddah should have been around Rs.25,000/. In the same paragraph, it is also stated that for the Haj of 2011, each pilgrim was charged Rs.16,000/- towards air fare. In other words, what was charged from the pilgrims is slightly less than 2/3rd of the otherwise normal fare. We see no justification for charging from the pilgrims an amount that is much lower than even the normal air fare for a return journey to Jeddah.

42. Before leaving the issue of Haj subsidy, we would like to point out that as the subsidy is progressively reduced and is finally eliminated, it is likely that more and more pilgrims would like to go for Haj through PTOs. In that eventuality the need may arise for a substantial increase in the quota for the PTOs and the concerned authorities would then also be required to make a more nuanced policy for registration of PTOs and allocation of quotas of pilgrims to them. For formulating the PTO policy for the coming years, the concerned authorities in the Government of India should bear this in mind. They will also be well advised to invite and take into account suggestions from private operators/ travel agents for preparing the PTO policy for the future."

54. In the case of ***N.R. Nair and others etc. etc. vs. Union of India and others***, reported in ***AIR 2000 Kerala 340***, their lordships have held that banning the training and exhibition of animals was not violative of Article 19(1)(g) of the Constitution.

55. In the case of ***Animal Welfare Board of India vs. A. Nagaraja and others***, reported in ***(2014) 7 SCC 547***, their lordships have held that animal welfare laws have to be interpreted keeping in mind the welfare of animals and species best interest subject to just exceptions out of human necessity. Their lordships have also held that every species has a n inherent right to live and shall be protected by law, subject to the exception provided out of necessity. Their lordships have further held that so far animals are concerned, "life" means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honour and dignity. Animal has also honour and diginity which can not be arbitrarily deprived of. Their lordships have held that Article 51 (g) and (h) are magna carta for protecting the life of animals.

> "15. We have to examine the various issues raised in these cases, primarily keeping in mind the welfare and the well-being of the animals and not from the stand point of the Organizers, Bull tamers, Bull Racers, spectators, participants or the respective States or the Central Government, since we are dealing with a welfare legislation of a sentient- being, over which human-beings have domination and the

standard we have to apply in deciding the issue on hand is the "Species Best Interest", subject to just exceptions, out of human necessity.

57. We may, at the outset, indicate unfortunately, there is no international agreement that ensures the welfare and protection of animals. United Nations, all these years, safeguarded only the rights of human beings, not the rights of other species like animals, ignoring the fact that many of them, including Bulls, are sacrificing their lives to alleviate human suffering, combating diseases and as food for human consumption. International community should hang their head in shame, for not recognizing their rights all these ages, a species which served the humanity from the time of Adam and Eve. Of course, there has been a slow but observable shift from the anthropocentric approach to a more nature's right centric approach in International Environmental Law, Animal Welfare Laws etc. Environmentalist noticed three stages in the development of international environmental law instrument, which are as under:

(a) The First Stage: Human self-interest reason for environmental protection

- The instruments in this stage were fuelled by the recognition that the conservation of nature was in the common interest of all mankind.

- Some the instruments executed during this time included the Declaration of the Protection of Birds Useful to Agriculture (1875), Convention Designed to Ensure the Protection of Various Species of Wild Animals which are Useful to Man or Inoffensive (1900), Convention for the Regulation of Whaling (1931) which had the objective of ensuring the health of the whaling industry rather than conserving or protecting the whale species.

- The attitude behind these treaties was the assertion of an unlimited right to exploit natural resources – which derived from their right as sovereign nations.

(b) The Second Stage: International Equity

- This stage saw the extension of treaties beyond the requirements of the present generation to also meet the needs to future generations of human beings. This shift signalled a departure from the pure tenets of anthropocentrism.

- For example, the 1946 Whaling Convention which built upon the 1931 treaty mentioned in the preamble that "it is in the interest of the nations of the world to safeguard for future generations the great natural resource represented by the whale stocks". Similarly, the Stockholm Declaration of the UN embodied this shift in thinking, stating that "man ...... bears a solemn responsibility to protect and improve the environment for present and future generations" and subsequently asserts that "the natural resources of the earth .... must be safeguarded for the benefit of present and future generations through careful planning and management". Other documents expressed this shift in terms of sustainability and sustainable development.

(c) The Third Stage: Nature's own rights

- Recent Multinational instruments have asserted the intrinsic value of nature.

- UNEP Biodiversity Convention (1992) "Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, educational, cultural, recreational and aesthetic values of biological diversity and its components .... [we have] agreed as follows:......". The World Charter for Nature proclaims that "every form of life is unique, warranting respect regardless of its worth to man." The Charter uses the term "nature" in preference to "environment" with a view to shifting to non-anthropocentric human- independent terminology."

61. When we look at the rights of animals from the national and international perspective, what emerges is that every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity. Animal has also honour and dignity which cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks.

68. Article 51A(h) says that it shall be the duty of every citizen to develop the scientific temper, humanism and the spirit of inquiry and reform. Particular emphasis has been made to the expression "humanism" which has a number of meanings, but increasingly designates as an inclusive sensibility for our species. Humanism also means, understand benevolence, compassion, mercy etc. Citizens should, therefore, develop a spirit of compassion and humanism which is reflected in the Preamble of PCA Act as well as in Sections 3 and 11 of the Act. To look after the welfare and well- being of the animals and the duty to prevent the infliction of pain or suffering on animals highlights the principles of humanism in Article 51A(h). Both Articles 51A(g) and (h) have to be read into the PCA Act, especially

into Section 3 and Section 11 of the PCA Act and be applied and enforced.

71. We have, however, lot of avoidable non-essential human activities like Bullock-cart race, Jallikattu etc. Bulls, thinking that they have only instrumental value are intentionally used though avoidable, ignoring welfare of the Bulls solely for human pleasure. Such avoidable human activities violate rights guaranteed to them under Sections 3 and 11 of PCA Act. AWBI, the expert statutory body has taken up the stand that events like Jallikattu, Bullock-cart race etc. inherently involve pain and suffering, which involves both physical and mental components, including fear and distress. Temple Grandin and Catherine Johnson, in their work on "Animals in Translation" say:

"The single worst thing you can do to an animal emotionally is to make it feel afraid. Fear is so bad for animals I think it is worse than pain. I always get surprised looks when I say this. If you gave most people a choice between intense pain and intense fear, they'd probably pick fear."

Both anxiety and fear, therefore, play an important role in animal suffering, which is part and parcel of the events like Jallikattu, Bullock- cart Race etc..

RIGHT TO LIFE:

72. Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity.
Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word "life" has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution. So far as animals are concerned, in our view, "life" means something more than mere survival or existence or instrumental value for human-beings, but to lead a life with some intrinsic worth, honour and dignity. Animals' well-being and welfare have been statutorily recognised under Sections 3 and 11 of the Act and the rights framed under the Act. Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Sections 3 and 11 of the PCA Act read with Article 51A(g) of the Constitution. Right to get food, shelter is also a guaranteed right under Sections 3 and 11 of the PCA Act and the Rules framed thereunder, especially when they are domesticated. Right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. Right, not to be beaten, kicked, over-ridder, over-loading is also a right recognized by Section 11 read with Section 3 of the PCA Act. Animals have also a right against the human beings not to be tortured and against infliction of unnecessary pain or suffering. Penalty for violation of those

rights are insignificant, since laws are made by humans. Punishment prescribed in Section 11(1) is not commensurate with the gravity of the offence, hence being violated with impunity defeating the very object and purpose of the Act, hence the necessity of taking disciplinary action against those officers who fail to discharge their duties to safeguard the statutory rights of animals under the PCA Act."

56. The United States Supreme Court in the case of ***Abraham Braunfeld vs. Albert N. Brown***, reported in ***6 L. Ed. 2d 563***, have held that a State has power to provide a weekly respite from all labour and, at the same time, to get one day of the week apart from the others as a day of rest, repose, recreation, and tranquility. The Supreme Court has also held that the constitutional guarantee of the free exercise of religion is not violated by the Pennsylvania statute which penalizes the Sunday retail sale of certain enumerated commodities (18 Purdon's Pa Stat Ann (4699.10)), either on its face or as applied to retail merchants who are members of the Orthodox Jewish faith, which requires the closing of their places of business and a total abstention of all manner of work from nightfall each Friday until nightfall each Saturday; this is so even tough enforcement of the statute would impair the ability of such a merchant to earn a livelihood or would render him unable to continue in his business, thereby losing his capital investment.

The Supreme Court has further laid down the test to determine freedom of religion as under:

> "The effect of a law as bringing about an economic disadvantage to some religious sects and not to others because of the special practices of the various religions is not an absolute test for determining whether the law violates the constitutional guaranty of freedom of religion."

57. The United States Supreme Court in the case of ***Employment Division, Department of Human Resources of the State of Oregon v. Galen W. Black,*** reported in ***99 L Ed 2d 753***, have held that the free exercise of religion clause of the Federal Constitution's First Amendment precludes any governmental regulation of religious beliefs as such; government may neither compel affirmation of a repugnant belief, nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities, nor employ the taxing power to inhibit dissemination of particular religious views; however, there is a distinction between the absolute constitutional protection against governmental regulation of religious beliefs, on the one hand, and the qualified protection against the regulation of religiously motivated conduct, on the other; the protection that the First Amendment provides to legitimate claims to the free exercise of religion does not extend to conduct that a state has validly proscribed.

58. Justice Frankfurter in ***Minersville School Dist. Bd. of Ed.*** V ***Gobitis***, 310 US 586, 594-595, *84 L Ed 1375*, 60 S Ct 1010 (1940): has held that "Conscientious

scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs. The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities."

59. In ***Reynolds*** v ***United States***, 98 US 145, 25 L Ed 244 (1879), the United States Supreme Court has held that "Laws are made for the government of actions and while they can not interfere with mere religious beliefs and opinions, they may with practices ..... Can a man excuse his practices to contrary because of his religious beliefs? To permit this would be to make the professed doctrines of religious beliefs superior to the law of the land, and in effect to permit every citizen to become a law unto himself."

60. The core issue involved in these petitions is whether animal sacrifice is an essential/central theme and integral part of Hindu religion or not? The Apex Court, as noticed herein above in the case of ***The Commissioner, Hindu Religious Endowments, Madras (supra***), have held that 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 part of religion and the forms and observances might expand even to matters of food and dress. What constitutes the essential/integral part of Hindu religion is primarily to be ascertained in respect of the doctrine of that religion itself. We could not find it from the material placed on record that animal sacrifice is an essential part of the religion by making reference to the doctrines of Hindu religion itself.

61. The overt act of sacrificing animals in the temples or its premises is not obligatory overt act to reflect religious belief and idea. Their lordships of the Hon'ble Supreme Court in the case of **Durgah Committee, Ajmer** (**supra**), have held that 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 bound to constitute an essential and integral part of a religion, the protection under Article 26 of the Constitution of India is not available.

62. Now as far as the contention raised by Mr. Shrawan Dogra, learned Advocate General that the scope of judicial review in these matters is very limited is concerned, is no more *res integra* in view of the law laid down by the Hon'ble Supreme Court in the case of **Tilkayat Shri Govindlalji Maharaj (supra)**. Their

lordships of the Hon'ble Supreme Court have held that the question will always have to be decided by the Court whether a given religious practice is an integral part of religion or not and 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.

63. In the case of **Shastri Yagnapurushdasji (supra),** their lordships have highlighted that the development of Hindu religion and philosophy shows that from time to time, saints and religious reformers attempted to remove from the Hindu thought and practices elements of corruption and superstition. It led to the formation of different sects. Budha started Budhism and Mahavir founded Jainism. The same principle has been reiterated by their lordships of the Hon'ble Supreme Court in the case of **His Holiness Srimad Perarulala Ethiraja Ramanuja Jeeyar Swami etc. (supra**). In the case of **A.S. Narayana Deekshitulu (supra)**, their lordships of the Hon'ble Supreme Court held that the integral or essential part of religion is to be ascertained from the doctrine of that religion itself according to its

tenets, historical background and change in evolved process. Their lordships have further held that whether 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. In the case of **N. Adithayan (supra**), their lordships of the Hon'ble Supreme Court have held that custom or usage, even if proved to have existed in pre-Constitutional period, cannot be accepted as a source of law, if such custom violates human rights, human dignity, concept of social equality and the specific mandate of the Constitution and law made by the parliament. Their lordships have also highlighted that the vision of the founding fathers of the Constitution was to liberate society from blind adherence to traditional superstitious beliefs sans reason or rational basis. The animal sacrifice can not be treated as fundamental to follow a religious belief and practice. It is only if taking away of that part of practice can result in a fundamental change in the character of that religion or belief that could be treated as essential or integral part. We reiterate that if animal sacrifice is taken out, it will not result in fundamental change in the character of the Hindu religion or in its belief. Their lordships of the

Hon'ble Supreme Court in the case of ***State of Karnataka and another*** **(supra)** have held that the core of religion is based upon spiritual values which the Vedas, Upanishads and Puranas were said to reveal to mankind, seem to be "love others, serve others, help ever, hurt never."

64. The Hindus have regarded the Veda as a body of eternal scripture. The earliest portion of the Veda consists of four metrical hymns known as *Samhitas* and called *Rg Veda, Yajur Veda, Sama Veda* and *Atharva Veda*. The earliest of these texts is that of the *Rg Veda*. The hymns and chants of the Vedas gave rise to elaborate ritualistic approach interpretations called *Brahmanas* and *Aranyakas*. The Vedic ideas of sacrifice and mythology were reinterpreted in terms of the macrocosm and microcosm. The whole of Vedic literature consists of four Vedas, or Samhitas; several expository rituals texts attached to each of these Vedas, called Brahamanas; texts giving secret and mystical explanations of the rituals, called Aranakas; and speculative treatises, or Upanishads, concerned chiefly with a mystical interpretation of the Vedic ritual and its relation to man and the Universe. The most elaborate sacrifice described in the Brahamanas is the horse-sacrifice (*Asvamedha*). It was an ancient rite that a king undertook to increase his influence. The horse-

sacrifice was given cosmological significance by equating various parts of the sacrificial horse with corresponding element of the cosmos as was *brhadaranyaka.* In **Sources of Indian Tradition, Second Edition Volume One From the Beginning to 1800 of Ainslie T. Embree**, sacrifices as enunciated in Upnishads read as under:

> ***" Sacrifices- Unsteady Boats on the Ocean of Life***
>
> Some later Uupnishads represent a reaction to the glorification of the sacrifice. The teacher of the *Mundaka Upnishad quoted below seems to concede a place for sacrifice in man's life- by way of religious discipline; but he concludes that sacrifice is ineffectual as a means to the knowledge of the highest reality and to spiritual emancipation. On the other hand, as is suggested by the passage cited above, some earlier Upanishadic teachers substituted a kind of "spiritual" or "inner" sacrifice for the "material" or "external" sacrifice.*
>
> *[From Mundaka Upanisad, 1.2.1, 7-13]*
>
> This is that truth. The sacrificial rites that the sages saw in the hymns are manifoldly spread forth in the three [Vedas]. Perform them constantly, O lovers of truth. This is your path to the world of good deeds.
>
> When the flame flickers after the oblation fire has been kindled, then, between the offerings of the two potions of clarified butter one should proffer his principal oblations- an offering made with faith…
>
> Unsteady, indeed, are these boats in the form of sacrifices, eighteen in number, in which is prescribed only the inferior work. The fools who delight in this sacrificial ritual as the highest spiritual good go again and again through the cycle of old age and death.
>
> Abiding in the midst of ignorance, wise only according to their own estimate, thinking themselves to be learned, but really obtuse, these fools go round in a circle like blind men led by one who is himself blind.
>
> Abiding manifoldly in ignorance they, all the same, like immature children think to themselves: "We have accomplished our aim." Since the performers of sacrificial ritual do not realize the truth because of passion, therefore, they, the wretched ones, sink down from heaven when the merit that qualified them for the higher world becomes exhausted.
>
> Regarding sacrifice and merit as most important, the deluded ones do not know of any other higher spiritual good. Having enjoyed themselves only for a

> time on top of the heaven won by good deeds [sacrifice, etc.] they reenter this world or a still lower one.
>
> Those who practice penance (tapas) and faith in the forest, the tranquil ones, the knowers of truth, living the life of wandering mendicancy- they depart, freed from passion, through the door of the sun, to where dwells, verily, that immortal Purusha, the imperishable Soul [atman].
>
> Having scrutinized the worlds won by sacrificial rites, a brahman should arrive at nothing but disgust. The world that was not made is not won by what is done [i.e. by sacrifice].For the sake of that knowledge he should go with sacrificial fuel in hand as a student, in all humility to a preceptor [guru] who is well versed in the [Vedic] scriptures and also firm in the realization of Brahman.
>
> Unto him who has approached him in proper form, whose mind is tranquil, who has attained peace, does the knowing teacher teach, in its very truth, that knowledge about Brahman by means of which one knows the imperishable Purusha, the only Reality."

65. In the earliest phase of Indian thought the observance of the cosmic and moral law and the performance of dharma in the form of sacrifice were believed in as means of propitiating the gods and gaining heavenly enjoyment in the after life. The third category besides Vedas, Upnishadas are the Puranas. The Puranas are great storehouse of legends of myths about the gods, principally Shiva and Vishnu, and their relations with mankind. These are at the heart of popular Hinduism. They provide the mythological framework for the tradition. They also exemplify what is pervasive aspect, namely, *bhakti,* or the practice of devotion, passionate devotion to a particular deity.

66. The fourth group can be characterized as '*tantra'. The 'tantras'* have inner meanings that are only to be communicated by a guru to his disciples. The tantric way, although characterized by secret rituals, arcane symbolism, and hidden teachings, shares with the other ways to salvation, with the great emphasis on devotion.

67. The hymn of Rg Veda were much occupied with Soma ritual and animal sacrifices are indicated by the *Apri Suktas.* However, these practices were prevalent only in pre-historic times. Now, in this era, these practices have no social sanction but merely based on superstition and ignorance.

68. The Gita differs from Upanishads. The Upanishads generally put forth the view that, because this phenomenal world and human existence are in some sense unreal, one should renounce this worldly life and aim at realizing the essential identity of one's soul with the Universal Self, which is the only absolute reality. The Upanishadic attitude towards life and society is fundamentally individualistic. The Gita on the other hand, teaches that one has a duty to promote *Lokasangrah*, the stability, solidarity, and progress of society. As an essential constituent of society, therefore, one must have an active awareness of ones social obligations. The Vedic

ritual practices were exclusive in character. The Gita permits a way of life in which all can participate. In contrast to ritual sacrifice, the Gita offers a concept of sacrifice embracing all actions done in fulfillment of ones *sarvadharma.*

69. The advancing Indian society has been depicted by **Amaury de Riencourt in "The Soul of India Revised Edition 1986**", as under:

> *"The optimistic buoyancy of the Rg-Veda had eventually given way to the darker, pessimistic and fearful mood of the Atharva-Veda, whose world picture was replete with nefarious ghosts, grinning demons and spirits of death, and whose rules of conduct were centered on bloody and cruel sacrifices. Men no longer loved or admired the gods but feared them cringingly. Religious spirit was gradually replaced by the magical. The Rg-Vedic devotional mantra (prayer) became a magic spell or incantation that sought to ward off a threat or compel a reluctant spirit, in true magical style, rather than implore it, in true religious style. The prevailing deities were now Kala (Time), Kama (Love), and Skambha, who replaced Prajapati and was soon going to metamorphose itself into Purusa and Brahman. Hell and its horrors came in for an increasing share of attention. In many ways, this Atharva-Veda represents the rising demonology which became so prominent in Europe's pre-Reformation days.*
>
> *Then, the Yajur-Veda and the Brahmanas emphasized the decline of the true spirit of religious fervor along with the growth of an intricate ritual, a complex liturgy, a cold, formal and artificial organization of clerical pomp and sacrifices. It would seem that at all such periods there is a deliberate attempt on the part of an increasingly powerful clergy to emphasize the dark and fearful side of religion in order to increase its power over the superstitious minds of its followers. The gods and spirits are no longer accessible to the common man as they were in the earlier days: the priestly 'experts' interpose themselves and become the highly paid spiritual attorneys of an increasingly bewildered population. Brahmin priests became as powerful and as corrupt as the late medieval clergy in Western Europe, an Indian clergy bent on securing to the utmost their secular power and prerogatives through complex ceremonies and mechanical sacerdotalism. Dry*

> *and pedantic scholasticism took over the great Vedic Revelation and exploited it to the full for the benefit of the Brahmins."*

70. What can be gathered from the facts enumerated, hereinabove, is that the practice of animal sacrifice is prevalent in some areas of the State. There is ample material placed on record by the petitioners and the persons who have filed individual affidavits that the animals are put to a lot of suffering, pain and agony at the time of their sacrifice. The methods adopted to kill these innocent animals are barbaric. It is stated in the affidavits by various individuals that at times it takes about 15 blows to kill the animal. The animal runs amok to save his life. The animals are sacrificed in the presence of other animals, which must be an agonizing experience for those animals.

71. Articles 25 and 26 of the Constitution of India protects, of course, the religious beliefs, opinions and practices but not superstitions. A religion has to be seen as a whole and thereafter it can be seen whether a particular practice is core / central to the religion. It can be a hybrid also. In the instant case, offerings in the temples can be made by offering flowers, fruits, coconut etc. According to us, there are compelling reasons and grounds to prohibit this practice. A democratic polity is

required to be preferred to a system in which each ones conscience is a law and to itself. The State has also the obligation under constitutional mandate to promote the health, safety and general welfare of the citizens and animals.

72. The stand of the State Government in the reply is that this practice is prevalent from time immemorial and the people have a deep routed faith and belief in animal sacrifice. The Court has directed, as noticed hereinabove, the State Government to propose a regulation to arrest this evil. The State Government instead of filing an affidavit giving therein measures required to curb this practice has chosen to file the reply.

73. The Vedas were composed in 1500 B.C. There is reference to sacrifices made in Upanishads and Puranas. The Vedas are eternal, Puranas are the governing of mythological beliefs and the manner in which the *'pooja/archana'* is to be offered to the Gods. The Bhagwat Gita does not deal with this aspect of sacrifices as contained in the Puranas. The Vedas, Upanishads and Puranas were composed during the earliest phase of civilization. The devotees in these days were put to fear and were also afraid of the wrath of natural calamities. The society has advanced. We are in a modern era. The rituals, which may be prevalent in the early period of

civilization have lost their relevance and the old rituals are required to be substituted by new rituals which are based on reasoning and scientific temper. Superstitions have no faith in the modern era of reasoning.

74. Now, as far as Puranas referred to by Mr. Bhupinder Gupta, Senior Advocate are concerned, they only refer to the manner in which the sacrifices are to be performed. There is reference of "tradition of human sacrifice". The devotees are made to believe that the deity would be happy for a number of years as per the sacrifices of each species of animals/birds. The deity, as per this Purana, would be much happier if a man is sacrificed. These practices have outlived and have no place in the 21st century. The animal sacrifice of any species may be a goat or sheep or a buffalo, can not be, in our considered view, treated as integral/central theme and essential part of religion. It may be religion's practice but definitely not an essential and integral part of religion. Hindu Religion, in no manner, would be affected if the animal sacrifice is taken out from it. It has come on record that in a number of temples, the enlightened members of the priestly community and Mandir Committees have done away with the practice of animal sacrifice. Recently, Mandir committee Dharech has stopped this practice as per the news item. The *Karuna* (compassion) is deeply ingrained in

the Hindu philosophy. Vedas, as we have already noticed, are eternal and their relevance would be for all times to come. However, the *Samritis* will come to an end as time passes on more and more *Samritis* will go, Saints would come and would change and would enlighten us on duties and paths according to the necessity of the age. We have to progress. A society should look forward, of course, by following values of all religions. The essentials of any religion are eternal. The non-essentials are relevant for some time. The animal/bird sacrifice cannot be treated as eternal. We should experience religion. We have to stand up against the social evils, with which the society at times is beset with. Social reforms are required to be made. We are required to build up a new social order. We have to take a pragmatic approach. The new Mantra is salvation of the people, by the people. The Hindus have to fulfill the Vedantic ideas but by substituting old rituals by new rituals based on reasoning.

75. The animals have basic rights and we have to recognize and protect them. The animals and birds breathe like us. They are also a creation of God. They have also a right to live in harmony with human beings and the nature. No deity and *Devta* would ever ask for the blood. All *Devtas* and deities are kind hearted and bless the humanity to prosper and live in harmony with each other.

The practice of animal/bird sacrifice is abhorrent and dastardly.

76. The welfare of animals and birds is a part of moral development of humanity. Animals/ birds also require suitable environment, diet and protection from pain, sufferings, injury and disease. It is the man's special responsibility towards the animals and birds being fellow creatures. We must respect the animals. They should be protected from the danger of unnecessary stress and strains. The United Kingdom Farm Animal Welfare Council (FAWC) has expanded 5 freedoms for animals as under:

> 1. Freedom from hunger and thirst – by ready access to fresh water and a diet designed to maintain full health and vigour.
> 2. Freedom from discomfort – by the provision of an appropriate environment including shelter and a comfortable resting area;
> 3. Freedom from pain, injury or disease – by prevention or through rapid diagnosis and treatment;
> 4. Freedom to express normal behaviour – by the provision of sufficient space, proper facilities and company of the animal's own kind; and
> 5. Freedom from fear and distress – by the assurance of conditions that avoid mental suffering.

77. These are fundamental principles of animal welfare. The Welfare Quality Project (WQP) research partnership of scientists from Europe and Latin America founded by the European Commission has developed a standardized system for assessing animal welfare as under:

> 1. "Animals should not suffer from prolonged hunger, i.e. they should have a sufficient and appropriate diet.
> 2. Animals should not suffer from prolonged thirst, i.e. they should have a sufficient and accessible water supply.
> 3. Animals should have comfort around resting.
> 4. Animals should have thermal comfort, i.e. they should neither be too hot nor too cold.
> 5. Animals should have enough space to be able to move around freely.
> 6. Animals should be free from physical injuries.
> 7. Animals should be free from disease, i.e. farmers should maintain high standards of hygiene and care
> 8. Animals should not suffer pain induced by inappropriate management, handling, slaughter or surgical procedures (e.g. castration, dehorning).
> 9. animals should be able to express normal, non-harmful social behaviours (e.g. grooming).
> 10. Animals should be able to express other normal behaviours, i.e. they should be able to express species – specific natural behaviours such as foraging.
> 11. Animals should be handled well in all situations, i.e. handlers should promote good human-animal relationships.
> 12. Negative emotions such as fear, distress, frustration or apathy should be avoided, whereas positive emotions such as security or contentment should be promoted."

78. We definitely need to make an all out effort to overcome the evils in society. Religion, faith gives coherence to lives and the thought process. We must permit gradual reasoning into the religion. Samritis derive their strength from generation to generation. They are storehouse of wisdom. Old traditions must give way to new traditions.

79. Article 48 of the Constitution of India provides for organization of agriculture and animal husbandry. Article 48-A talks of protection and improvement of environment and safeguarding of forests and wild life. It is the fundamental duty of every citizen as per Article 51-A (g) of the Constitution of India to protect and improve

natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. Article 51-A(h) stresses to develop the scientific temper, humanism and the spirit of inquiry and reform. Article 51-A(i) talks of safeguarding public property and to abjure violence. '*Ahimsa*' is also the central theme of the Hindu Philosophy though later on expounded by Budha. The State's affidavit talking of vegetarian and non-vegetarian food is wholly misplaced. The core issue has never been addressed in the reply filed by the State government to the issues. The Court can always see whether a particular practice is essential or non-essential by taking into evidence, including by going through the religious scriptures. It is not a forbidden territory but the Court has to tread cautiously. The Court has to necessarily go into the entire gamut of Articles 25 and 26, the statutes pertaining to religion. Every citizen has a freedom of conscience including right to freely profess, practise and propagate religion and also to manage its own affairs in the matter of religion. The right to freedom of conscience and right to profess, practise and propagate religion and manage its own affairs in the matter of religion would not be affected if the practice of animal sacrifice is discontinued. It may strengthen the religion. The discontinuation of animal sacrifice would not in any

manner violate Articles 25 and 26 of the Constitution of India. Articles 25 and 26 of the Constitution of India are to be read with Articles 48, 48-A and 51-A of the Constitution of India.

80. Strong reliance has been placed by the Government on Section 28 of the Prevention of Cruelty to Animals Act, 1960. This enactment has been carried out to prevent the infliction of unnecessary pain on animals. 'Animal' has been defined to mean any living creature other than a human being. Chapter III of the Act provides for 'Cruelty to Animals Generally'. It inter alia provides beating, kicking, over-riding, over-driving, overloading, torturing or otherwise treating any animal so as to subject it to unnecessary pain or suffering, as cruelty. Section 28 of the Act reads as under:

> "28. Saving as respects manner of killing prescribed by religion: Nothing contained in this Act shall render it an offence to kill any animal in a manner required by the religion of any community."

81. Section 11 and Section 28 of this Act are to be interpreted as per Articles 48, 48-A, 51-A(g), 51-A(h) and 51-A(i). The underlying principle of Section 28 is that it would not be an offence to kill any animal in the manner required by the religion of any community. It does not permit, in any manner, to sacrifice an animal in temple. Mostly the temples are open to public and the conscience

of all the devotees are to be taken into consideration. It has come on record that the killing of animals in a brutal manner causes immense pain, strain, agony and suffering to the animals. The animals are left to bleed after inflicting injuries on their parts. The blood is strewn all over. The Apex Court, as we have already noted above has held that killing of cows on BakrI'd is not an integral part of Muslim religion.

82. The Hon'ble Supreme Court, in the case of ***Sardar Syedna Taher Saifuddin Sahib*** vs. ***State of Bombay,*** reported in *AIR 1962 SC 853*, have already held human and animal sacrifice to be deleterious. We have advanced by another half century but till date, the practice of animal sacrifice is still prevalent in this part of the country. The killing of various species of animals/birds is not an integral/central and essential part of Hindu religion. According to rule 3 of the Prevention of Cruelty to Animals (Slaughter House) Rules, 2001, no person is authorized to slaughter any animal within a municipal area except in a slaughter house recognized or licensed by the concerned authority. No animal, which is pregnant, or has an offspring less than three months old, or is under the age of three months or has not been certified by a veterinary doctor that it is in a fit condition can be slaughtered. According to sub-rule (1) of rule 6, no

animal can be slaughtered in a slaughter house in sight of other animals and according to sub-rule (3) of rule 6, slaughter house shall provide separate sections of adequate dimensions sufficient for slaughter of individual animals to ensure that the animal to be slaughtered is not within the sight of other animals. Sub-rule (5) of rule 6 provides that knocking section in slaughter house is so planned as to suit the animal and particularly the ritual slaughter, if any, and such knocking section and dry landing area associated with it is so built that escape from this section can be easily carried out by an operator without allowing the animal to pass the escape barrier. If the animal cannot be slaughtered in a slaughter house in sight of other animals, how human can see sacrifice of animal, that too, in a holy and pious places like temples.

83. We also take judicial notice of the news items which are published in English and vernacular newspapers, whereby the statements are being made by certain organizations for convening *Jagti* or *Dev Samaj* to discuss this issue. They are free to discuss the issue. However, their actions can not be in negation of rule of law. The prominence of values enshrined in the Constitution is above any religious values or values enshrined in any personal or religious law. They have no right, whatsoever, to issue any mandate/dictate in

violation of basic human rights of the human beings as well as animal rights. The animals have emotions and feelings like us. Religion cannot be allowed to become a tool for perpetuating untold miseries on animals. If any person or body tries to impose its directions on the followers in violation of the Constitution or validly enacted law, it would be an illegal act (see : ***Visha Lochan Madan*** vs***. Union of India and ors***., reported in (2014) 7 SCC 707). The extra Constitutional bodies have no role and cannot issue directives to the followers not to obey the command of law. They cannot be permitted to sit in appeal over the orders/judgments of the Court. Whether a particular practice is an essential/central theme and integral part of religion, can only be decided by the Courts of law and any religion congregation cannot become law unto themselves. This Constitutional issue is no more *res integra*, in view of the law laid down by the Hon'ble Supreme Court in the case of ***Visha Lochan Madan*** vs***. Union of India and ors***., reported in (2014) 7 SCC 707. Their Lordships have held as under:

> "13. As it is well settled, the adjudication by a legal authority sanctioned by law is enforceable and binding and meant to be obeyed unless upset by an authority provided by law itself. The power to adjudicate must flow from a validly made law. Person deriving benefit from the adjudication must have the right to enforce it and the person required to make provision in terms of adjudication has to comply that and on its failure consequences as provided in law is to ensue. These are the fundamentals of any legal judicial system. In our opinion, the decisions of Dar-ul-Qaza or the Fatwa do not satisfy any of these requirements. Dar-ul-Qaza is neither created nor sanctioned

by any law made by the competent legislature. Therefore, the opinion or the Fatwa issued by Dar-ul-Qaza or for that matter anybody is not adjudication of dispute by an authority under a judicial system sanctioned by law. A Qazi or Mufti has no authority or powers to impose his opinion and enforce his Fatwa on any one by any coercive method. In fact, whatever may be the status of Fatwa during Mogul or British Rule, it has no place in independent India under our Constitutional scheme. It has no legal sanction and can not be enforced by any legal process either by the Dar-ul-Qaza issuing that or the person concerned or for that matter anybody. The person or the body concerned may ignore it and it will not be necessary for anybody to challenge it before any court of law. It can simply be ignored. In case any person or body tries to impose it, their act would be illegal. Therefore, the grievance of the petitioner that Dar- ul-Qazas and Nizam-e-Qaza are running a parallel judicial system is misconceived.

14. As observed earlier, the Fatwa has no legal status in our Constitutional scheme. Notwithstanding that it is an admitted position that Fatwas have been issued and are being issued. All India Muslim Personal Law Board feels the "necessity of establishment of a network of judicial system throughout the country and Muslims should be made aware that they should get their disputes decided by the Quazis. According to the All India Muslim Personal Law Board "this establishment may not have the police powers but shall have the book of Allah in hand and sunnat of the Rasool and all decisions should be according to the Book and the Sunnat. This will bring the Muslims to the Muslim Courts. They will get justice".

15. The object of establishment of such a court may be laudable but we have no doubt in our mind that it has no legal status. It is bereft of any legal pedigree and has no sanction in laws of the land. They are not part of the corpus juris of the State. A Fatwa is an opinion, only an expert is expected to give. It is not a decree, not binding on the court or the State or the individual. It is not sanctioned under our constitutional scheme. But this does not mean that existence of Dar-ul-Qaza or for that matter practice of issuing Fatwas are themselves illegal. It is informal justice delivery system with an objective of bringing about amicable settlement between the parties. It is within the discretion of the persons concerned either to accept, ignore or reject it. However, as the Fatwa gets strength from the religion; it causes serious psychological impact on the person intending not to abide by that. As projected by respondent No. 10 "God fearing Muslims obey the Fatwas". In the words of respondent No. 10 "it is for the persons/parties who obtain Fatwa to abide by it or not. It, however, emphasises that "the persons who are God fearing and believe that they are answerable to the Almighty and have to face the consequences of their doings/deeds, such are the persons, who submit to the Fatwa". Imrana's case is an eye-opener in this context. Though she became the victim of lust of her father in law, her marriage was declared unlawful and the innocent husband was restrained from keeping physical relationship with her. In this way a declaratory decree for dissolution of marriage and decree for perpetual injunction were passed. Though neither the wife nor the husband had approached for any opinion, an opinion was sought for and given at the instance of a journalist, a total stranger. In this way,

victim has been punished. A country governed by rule of law cannot fathom it.

Their lordships have further held that the directives issued by a religious congregation have no force of law. Any person trying to enforce that by any method, shall be illegal and is required to be dealt with in accordance with law.

"17. In the light of what we have observed above, the prayer made by the petitioner in the terms sought for cannot be granted. However, we observe that no Dar-ul-Qazas or for that matter, any body or institution by any name, shall give verdict or issue Fatwa touching upon the rights, status and obligation, of an individual unless such an individual has asked for it. In the case of incapacity of such an individual, any person interested in the welfare of such person may be permitted to represent the cause of concerned individual. In any event, the decision or the Fatwa issued by whatever body being not emanating from any judicial system recognised by law, it is not binding on anyone including the person, who had asked for it. Further, such an adjudication or Fatwa does not have a force of law and, therefore, cannot be enforced by any process using coercive method. Any person trying to enforce that by any method shall be illegal and has to be dealt with in accordance with law.

18. From the conspectus of what we have observed above, we dispose off the writ petition with the observation aforesaid, but without any order as to the costs."

84. We have invoked the '*doctrine of parens patriae*' alongwith other constitutional provisions, as discussed hereinabove, to protect the basic rights of animals. The issuance of Annexure P-1 in CWP No. 9257/2011 was valid. The petitioners in CWP No.4499/2012 are required

to be protected by the respondent-State for highlighting this social evil.

85. Accordingly, we allow the writ petition CWP No. 5076/2012 and issue the following mandatory directions, prohibiting/banning animal/bird sacrifice in the temples and public places as under:

1. No person throughout the State of Himachal Pradesh shall sacrifice any animal or bird in any place of religious worship, adoration or precincts or any congregation or procession connected with religious worship, on any public street, way or place, whether a thoroughfare or not, to which the public are granted access to or over which they have a right to pass;
2. No person shall officiate or offer to officiate at, or perform or offer to perform, or serve, assist or participate, or offer to serve, assist, or participate, in any sacrifice in any place of public religious worship or adoration or its precincts or in any congregation or procession, including all lands, buildings near such places which are ordinarily used for the purposes connected with religious or adoration, or in any congregation or procession connected with any religious worship in a public street;
3. No person shall knowingly allow any sacrifice to be performed at any place which is situated within any place of public religious worship, or adoration, or is in his possession or under his control;
4. The State Government is directed to publish and circulate pamphlets henceforth to create awareness among the people, to exhibit boards, placards in and around places of worship banning the sacrifice of animals and birds;

5. The State Government is further directed to give due publicity about the prohibition and sacrifice in media both audio and visual, electronic and in all the newspapers; and
6. All the duty holders in the State of Himachal Pradesh are directed to punctually and faithfully comply with the judgment. It is made clear that the Deputy Commissioners and Superintendents of Police of all the Districts shall personally be responsible to prevent, prohibit the animal / bird sacrifices throughout the State of Himachal Pradesh.
7. The expression 'temple' would mean a place by whatever designation known, used as a place of public worship and dedicated to, and for the benefit of, or used as a right by the Hindu community or any section thereof, as a place of public religious worship. The temple premises shall also include building attached to the temple, land attached to the temple, which is generally used for the purposes of worship in the temple, whether such land is in the property of temple area or place attached to the temple or procession is performed.

86. Consequently, in the light of above judgment, CWP Nos.9257 of 2011 and 4499/2012 are rendered infructuous.

**CMP Nos. 14962 and 14963 of 2014**

87. Now, as far as the plea raised by the applicants, that they were not heard before passing of the order, merits outright rejection. The Court had got the public notices issued in newspapers permitting the persons to place their respective views before the Court. The present applications have been filed very belatedly, when the ad-interim order has been passed on 1.9.2014.

88. No separate orders are required to be passed in the present applications, in view of the judgment and the same are rejected. Pending application(s), if any, also stands disposed of.

***"Live and let live"***

**(Justice Rajiv Sharma),**
**Judge.**

**(Justice Sureshwar Thakur),**
**Judge.**

26.9. 2014
*awasthi/karan*