ISSUE NOS. 11, 13, 14, 19-a AND 19-c

11. Is the property in suit the site of Janam Bhumi of Sri Ram Chandraji?

13. Whether the Hindus in general and defendants in particular had the right to worship the Charans and 'Sita Rasoi' and other idols and other objects of worship, if any, existing in or upon the property in suit?

14. Have the Hindus been worshipping the place in dispute as Sri Ram Janam Bhumi or Janam Asthan and have been visiting it as a sacred place of pilgrimage as of right since times immemorial? If so, its effect?

19-a. Whether even after construction of the building in suit deities of Bhagwan Sri Ram Virajman and the Asthan Sri Ram Janam Bhumi continued to exist on the property in suit as alleged on behalf of defendant No. 13 and the said places continued to be visited by devotees for purposes of worship? If so, whether the property in dispute continued to vest in the said deities?

19-c. Whether any portion of the property in suit was used as a place of worship by the Hindus immediately prior to the construction of the building in question? If the finding is in the affirmative, whether no mosque could come into existence in view of the Islamic tenets, at the place in dispute?

FINDINGS

These issues are inter related and can be conveniently disposed of at one place.

On behalf of the plaintiffs it is submitted that property in suit is not site of Janm Bhumi of Lord Ram Chandra Ji and at present, so called Ram Chabutra, Sita Rasoi and other idols are not in existence. He has further submitted that disputed place is not the birth place of Lord Ram and under false notion recently people have started considering it as a sacred place and and there is no evidence worth the name that the property in suit was used by Hindus as a place of worship immediately prior to the construction of the building in question. Sri Z. Jillani, Advocate has further submitted that assertion of the defendant no. 13 is incorrect that the deities continued to exist on the property in suit even after construction of the building. Thus, the question of vesting of property in deities does not arise and there is no material worth the name before this Court to presume that Babri mosque was constructed at the site of the Janm Bhumi of Ram Chandra Ji. Accordingly the claim as set up by the Hindus is not correct. Plaintiffs submitted that idols and object of worship were placed inside the building in the intervening night of 22/23 December, 1949, as alleged in para 11 of the plaint. Prior to it the place was used as a mosque and Muslims used to offer prayer inside the disputed structure. The Hindus have no right to retain the property and the assertion of the defendant no.3 that the deity continued to

exist is incorrect. No body was allowed to worship inside the mosque. Hence question of vesting of property in deities does not arise.

Sri P.N. Mishra Advocate on behalf of Hindus has submitted that the disputed structure right from the birth of Lord Ram was being considered as a sacred place of pilgrims and people were offering prayer and worshipping there. He has also submitted that the property in suit is the site of Janam Bhumi of Lord Ram. He has further contended that Hindus in general and defendants in particular had right to worship Charan Paduka and Sita Rasoi and other idols. Even after the construction of the building in suit Hindus used to offer prayer and there was no mosque like structure. It always remained a structure under the control of Hindus and place of worship of Hindus. As regards identity of land, it has been submitted that historian suggests that the place of birth of Lord Ram is the place where the disputed structure existed. He has further submitted that on the basis of scriptures like Valmiki Ramayan, Srimad Bhagwat and other religious books, it is absolutely clear that the property in suit is site of Ram Janam Bhumi. He has further referred religious books to establish his version. On the assertion of Muslims, Sri P.N.Mishra has further submitted that Ayodhya is the holy place where Lord Ram took birth, Who is incarnation of Lord Vishnu. The archeological evidence completely supports the claim of Hindus that Ram

Janamsthan is the place where previously a temple used to exist and this place is being worshipped from time immemorial .

Sri P.N.Mishra submits that existence of Sri Ram Janam Bhumi is evident from holy scriptures . They are as under :-

SRI RAMAJANMASTHAN EVIDENT FROM THE HOLY SCRIPTURES

1. The Holy Scriptures of the *Sanatan Dharma* i.e. the *Hindu Dharma* namely: the Holy Divine *Srimad Atharvaved*, the Holy Scriptures *Srimad Skand-Puranam, Srimad Narsimh Puranam, Srimad Valmiki Ramayana* and; the Sacred Religious Book *Sri Ramacharitmanas* of Sri Goswami Tulasidas describe the Place of Birth of the Lord of Universe *Sri Rama* i.e. *Sri Ramajanmasthan* and Three-domed Temple lying thereon in the City of Ayodhya as Abode of *Brahm* (Almighty), the land wherefrom Lord of Universe *Sri Vishnu* the benefactor of *Kauslya* appeared and on her prayer subsumed therein in invisible form leaving on *Sthandil* His Incarnation Sri Ramlala as His incarnate and; further say that *Sri Ramajanmasthan* is most sacred place only by seeing which the devotees acquire salvation and all those merits which can be acquired by visiting all other *Tirthas* and thereby said holy sacred Scriptures of the *Hindu Dharma* make performance of customary rites at *Sri Ramajanmasthan* integral part of *Hidu Dharma*.

2. The Holy Scriptures *Srimad Valmiki Ramayana* and *Srimad Skandpuranam* and the sacred book *Sri Ramacharitamanasa respectively* reveal presence of *Sri Visnu's* Temple in the Apartment of Mother *Kausalya,* temples of other Deities and tradition of pilgrimage thereto as well as celebrations of Birthday Festival at the Place of Birth of the Lord of Universe Sri Ram in Ayodhya right from the *Tretayuga*.
3. The Holy Spells *'Ken Suktam'* of Divine *Srimad Artharv-veda* i.e. *Atharv-ved Samhita* 10.2.31-32 describes the Threedomed Temple at Sri Ramajanmasthan in Ayodhya as follows:

अष्टाचक्रा नवद्वारा देवानां पूरयोध्या । तस्यां हिरण्ययः कोशः स्वर्गो ज्योतिषाऽऽवृतः ॥३१॥
तस्मिन् हिरण्यये कोशेऽत्र्यरे त्रिप्रतिष्ठिते । तस्मिन् यद् यक्षमात्मन्वत् तद्वै ब्रह्मविदो विदुः ॥३२॥
प्रभ्राजमानां हरिणीं यशसा संपरीवृताम् । पुरं हिरण्ययीं ब्रह्मा विवेशापराजिताम् ॥३३॥

"*Ayodhya,* the city of Gods is Octagonal (like Dice-board) and Nine-doored. In that golden sanctum encircled with radiance is abode of Deities.[31]
In the said tri-spoked tri-supported golden sanctum resides soul-possessing *Yaksha,* that verily the knowers of *Brahm* know.[32]
The *Brahm* entered in the resplendent, sin-destroying, golden unconquered city that was all surrounded with glory. [33]"

Be it mentioned herein that W.D. Whitney has transalated these Holy Spellss word by word which has made said transalation obscure. For example he has transalated word *"Aashtachakra"* as "eight wheeled" while *"Aashtachakra"* has been translated as "*Ashtapadakara"* by Sri Valmiki in Ramayana English translation whereof published by Sri Gita

Press Gorakhpur is " like Dice Board" i.e. octagonal. W.D. Whitney has translated the word "*Ayoodhya"* as *"impregnable stronghold"* while herein it has been used as proper noun which will become clear from the use of adjective *"Aparajitam puram"* for the city *"Ayodhya"* . This Translation has been given based on Hindi Translation of Padmabhushan Dr. Sreepad Damodar Satvalekar as well as Srimad Valmiki Ramayana /1/ V/6 text and English translation thereof published by Gita press Gorakhpur for the purpose of removing obscurity of English Translation of D.W. Whitney.

Amongst Western Scholars of olden days there was tradition of even translating the proper noun into English words, accordingly in her translation of *"Humayun-Nama"* Annette S. Beveridge has translated proper noun *" Gul-Badan Begam"* as "Princess Rose-Body" as also *"Dildar Begam"* as " Heart-Throwing Princess"

4. The Holy *Kena-Upanishad (3.1,2,11,12 & 4.1)* describes *Yaksha Brahm* (Translator has spelled *"Brahm"* as *"Brahman"*) itself as follows:

> "It was *Brahman*, indeed, that achieved victory for the sake of the gods. In that victory which was in fact *Brahman's*, the gods became elated. [Ken U.III.1]
>
> They thought, 'Ours indeed, is this victory, ours,

indeed, is this glory,' *Brahman* knew this pretension of theirs. To them It did appear. They could not make out about that thing, as to what this *Yaksa* (venerable Being) might be. [Ken U.III.2]

Then (the gods) said to *Indra, '0 Maghava*, find out thoroughly about this thing, as to what this Yaksa is.' (He said), 'So be it.' He (*Indra*) approached It (*Yaksa*). From him (*Yaksa*) vanished away. [Ken U.III.11]

In that very Space he approached her, the superbly Charming woman, viz *Uma Haimavati*. To Her (he said), 'What is this *Yaksa?*' [Ken U.III.12]

'It was *Brahman*', said She. 'In *Brahman's* victory, indeed, you became elated thus.' From that (utterance) alone, to be sure, did *Indra* learn that It was *Brahman*. [Ken U.IV.1]"

5. The Holy Scripture *Srimad Skandpuranam (Part VII Page 142)* records Echo of the said Divine Code of Holy Ordinances Sri Atharv-ved as follows:

> "I bow down to the immutable Rama, the Supreme Brahman whose eyes resemble lotus, who is as dark-blue as flower of flax (in complexion) and who killed Ravana.
> Great and holy is the City of Ayodhya which is inaccessible to perpetrators of evil deeds. Who would not like to visit Ayodhya wherein Lord Hari himself resided?
> This divine and splendid City is on the bank of the

> river Sarayu. It is on a par with Amaravati (the capital of Indra) and is resorted to by many ascetics."
> (*Skandpuranam .II.VIII. .. 29 –31)*

6. The Holy Scripture *Srimad Valmiki Ramayana* also describes the City of Ayodhya as '*Astapadakara'* i.e. designed as octagonal like a dice-board and, the house of Lord of Universe Sri Rama three enclosured one as follows:

> "There is a great principality "known by the name of Kosala, extending along the bank of Sarayu. It is happy and prosperous, nay, full of abundant riches and plenty of food grains. In it stands comprised the world-renowned city, Ayodhya by name, a city which was built by dint of his own volition by Vaivaswata Manu, the ruler of mankind."
> (Srimad Valmiki Ramayana/1/ V/6).
> "Adorned with mountain like mansions built of precious Stones, and thickly set with attics it looks like Indra's Amaravati. Presenting a colorful appearance, it is laid out after the design of a dice-board, is thronged with bevies of lovely women and full of all varieties of precious stones, and is embellished with seven-storied buildings."
> (Srimad Valmiki Ramayana/1/ V/15-16).
> "Reaching Sri Rama's palace resplendent like a compact mass of white clouds, Vasistha (the foremost of the ascetics) drove through its three enclosures in the chariot itself."
> (Srimad Valmiki Ramayana/2/ V/5).

7. The Holy Scripture *Srimad Skandapuranam (II.VIII.10.1-25)* describing the location of the birth place of Lord of Universe Sri Rama commands the devotees to visit the birth place of Lord of Universe Sri Rama in Ayodhya and to observe the Holy vow on the *Navami* day to get salvation and acquire merits of visiting of all *Tirthas.* It testifies that only by seeing the place of birth one attains the merit of performing

penance, of thousands of *Rajasuya* sacrifices and *Agnihotra* sacrifices. It reveals that one obtains the merit of the holy men by seeing a man observing the holy right particularly in the place of birth. Thus visiting and observing the holy right in the place of birth is integral part of the *Hindu Dharma.* The Holy commands reads as follows:

> "The devotee shall take his holy bath in the waters of *Sarayu* and then worship *Pindaraka* who deludes sinners and bestows good intellect on men of good deeds always. The (annual) festival should be celebrated during *Navaratris* with great luxary. To the west of it, the devotee should worship *Vighnesvara* by seeing whom not even the least obstacle remains (in the affairs) of men .Hence *Vighnesvara* the bestower of all desired benefits, should be worshipped. "
>
> *(Srimad Skandapuranam II.VIII.10.15-17)*
>
> "To the North-East of that spot is the place of the birth of Rama. This holy spot of the birth is the means of achieving salvation etc. It is said that the place of the birth is situated to the East of *Vighneswar,* to the North of *Vasistha* and to the West of *Laumasa.* Only by visiting it a man can get the rid of staying (frequently) in womb (i.e. rebirth). There is no necessity for making charitable gifts, performing a penance or sacrifices or undertake pilgrimage to holy spots. On the *Navami* day the man should observe the Holy vow. By the power of the holy bath and charitable gifts, he is liberated from the bondage of births. By visiting the place of birth one attains that benefit which is obtained by one who gives thousand of tawny-coloured cows every day. By seeing the place of birth one attains the merit of ascetics performing penance in hermitage, of thousands of *Rajasuya* sacrifices and *Agnihotra* sacrifices performed every year. By seeing a man observing the holy right particularly in the place of birth, he obtains the merit of the holy men endowed with devotion to mother and father as well as preceptors."
>
> *(Srimad Skandapuranam II.VIII.10.18-25)*

8. The Holy Scripture of the The Hindus *Srimad Narsingh*

Puranam (62.4-6½) commands that worship of *Vishnu* in idol as well as in *Sthandil* is best. *Sthandil* means a piece of open ground leveled, squared for sacrifice (Sanskrit-English dictionary of Moniar Williams p.1261). *Sthandilam* means a piece of land leveled, and squared for sacrifice i.e. *Vedi* (Sanskrit-Hindu Kosh of Vaman Shirman Apte p.1139). "*Vedi"* is also translated as "Sacrificial Altar" or simply "Altar". Be it mentioned herein that *Srimad Skandapuranam (supra) and Srimad Narasinghapuranam* prescribe worshiping of Lord of Universe Sri Rama in *Vedi* at the birth place of Lord of Universe Sri Rama in Ayodhya. *Srimad Narasinghapuranam* reveals as follows:

श्रीमार्कण्डेय उवाच

अर्चनं सम्प्रवक्ष्यामि विष्णोरमिततेजसः।
यत्कृत्वा मुनयः सर्वे परं निर्वाणमाप्नुयुः॥ ४

अग्नौ क्रियावतां देवो हृदि देवो मनीषिणाम्।
प्रतिमास्वल्पबुद्धीनां योगिनां हृदये हरिः॥ ५

अतोऽग्नौ हृदये सूर्ये स्थण्डिले प्रतिमासु च।
एतेषु च हरेः सम्यगर्चनं मुनिभिः स्मृतम्॥ ६

तस्य सर्वमयत्वाच्च स्थण्डिले प्रतिमासु च।

श्रीमार्कण्डेयजीने कहा—अच्छा, मैं अमिततेजस्वी भगवान् विष्णुके पूजनकी विधि बता रहा हूँ, जिसके अनुसार पूजन करके सभी मुनिगण परम निर्वाण (मोक्ष) पदको प्राप्त हुए हैं। अग्रिमें हवन करनेवालेके लिये भगवान्का वास अग्रिमें है। ज्ञानियों और योगियोंके लिये अपने-अपने हृदयमें ही भगवान्की स्थिति है तथा जो थोड़ी बुद्धिवाले हैं, उनके लिये प्रतिमामें भगवान्का निवास है। इसलिये अग्रि, सूर्य, हृदय, स्थण्डिल (वेदी) और प्रतिमा—इन सभी आधारोंमें भगवान्का विधिपूर्वक पूजन मुनियोंद्वारा बताया गया है। भगवान् सर्वमय हैं, अतः स्थण्डिल और प्रतिमाओंमें भी भगवत्पूजन उत्तम है ॥ ४-६½ ॥

9. The Sared Religious Book of the The Hindus *Sri Ramcharitmanas* reveals the Place of Birth of the Lord of Universe Sri Ram in the City of Ayodhya as follows:

> "At the other end Sri Rama who brought delight to the soul of race as the sun to the lotus was busy saying the charming city to the monkies. Listen 'King of the monkies (*Sugriva*), *Angada* and *Vibhisana,* holy is this city and beautiful is this land. Although all after extolled *Vaikuntha* who is follower to the Vedas and Purans and known throughout the world. It is not so dear to Me as the city of Ajodhya; only some rare soul knows this secret. This beautiful city is My birthplace; to the North of it flows the Holy *Sarayu* by bathing in which men secure a home near Me without any difficulty. The dwellers here are very dear to Me; the city is only full of pleases itself, but bestows a residence in My divine *Abode.'* The monkies were all delighted to hear these words of the Lord and said that blessed indeed is Ajodhya that has evoked praise from Sri Rama Himself !"

(Sri Ramcharitmanas/ Uttara-kanda 3.1-4)

10. The Sacred Religious Book of the The Hindus *Sri*

Ramcharitmanas reveals that the Lord of Universe Sri Ram was not born in ordinary manner like other human being, but first He appeared as Lord of Universe Sri Vishnu bearing His characteristic emblems in His four-arms and later on for the sake of Mother Sri Kausalya on her prayer He assumed a form of infant which was a product of His own will. This sacred book records birth of Lord of Universe Sri Ram as follows:

> "The gracious Lord, who is compassionate to the lowly and benefactor of Kausalya appeared. The thought of His marvellous form, which stole the heart of sages, filled the mother with joy. His body was dark as a cloud, the delight of all eyes; in His four-arms He bore His characteristic emblems (a conch-cell, a discus a club and a lotus). Adorned with jewels and a garland of sylvan flower and endowed with large eyes, the Slayer of the demon Khara was an ocean of beauty. Joining both her palms the mother said ,"O infinite Lord, how can I praise you! The Vedas as well as the Puranas declare You as transcending Maya, beyond attributes, above knowledge and beyond all measures. He who is sung by the Vedas and the holy man as an ocean of mercy and bliss and a repository of all virtues, the same Lord of Laksmi, the lover of His devotees, has revealed Himself for my good. The Vedas proclaim that every pore of your body contains multitudes of universes brought forth by Maya. That such a Lord stayed in my womb-this amusing story staggers the mind of even men of wisdom." When the revelation came upon the mother, the Lord smiled; He would perform many a sportive act. Therefore He exhorted by telling her the charming account of her previous birth so that she might love Him as her own child. The mother's child was changed: She spoke again, "Give up this superhuman form and indulge in childish sports, which are so dear to a mother's heart; the joy that comes from such sports is unequalled in everyway." Hearing these words the all-wise Lord of immortal became an infant and

began to cry. Those who sing this lay (says Tulsidasa) attain to the abode of Sri hari and never fall into the well of mundane existence."

(Sri Ramacharitamanasa/*Bala-kanda*/191/1-4)

"For the sake of Brahmans, cows, gods and saints, the Lord who transcends Maya and is beyond the three modes of Prakrti (Sattva, Rajas and Tamas) as well as beyond the reach of senses took birth as a man assuming a form which is a product of His own will."

(Sri Ramacharitamanasa/ *Bala-kanda* /192)

11. Sri Golapchandra Sarkar, Sastri in his celebrated Treatise on Hindu Law (first published in 1897) also approves the belief of the The Hindus that their Gods did not borne like human beings as follows:

> " the Idea – that their Gods are deemed born like human beings ,-is most repugnant and abhorrent to The Hindus who have knowledge of their Shastras."
>
> (A Treatise On Hindu Law. 6th edn.1927 Cha.XIV Page 785)

12. The Holy Scripture *Simad Valmiki Ramayana* reveals that there was a temple of Lord of Universe *Sri Janardan* i.e. *Sri Vishnu* in the Mother Kausalya's Palace as follows:

> " Entering in his own palace in order to break the news of the installation announced by the emperor (to Sita), but coming out instantly on not finding her in the apartments) he moved to his mother's apartment (in the gynaeceum). There he saw his aforesaid mother clad in silken robes, exclusively devoted to the worship of her chosen deity Praying for royal fortune (in favour of Sri Rama) Hearing of Sri Rama's welcome installation, Sumitra too had arrived as well as (her Son) Lakshman; and Sita (too) had been sent for (there). At that moment when (Sri Rama called on her) Kausalya remained sitting with her eyes closed and waited upon by Sumitra and Lakshman, and contemplating with suspended breath on the Supreme Person, Lord Narayana (who

> is solicited by all men), having heard that her son was going to be installed in the office of Prince Regent when the asterism Pusya was in the ascendant."
>
> (Valmiki Ramayana/1/ IV/29-33)

13. *Srimad Skandpuranam (II.VIII.10. 1 –87)* enumerates *Sarayu (a* river)*, Vishnuhari, Brahmkunda* (a Holy Lake)*, Mantresvara, Chakratirtha* (tirtha of holy water)*, Chakrahari, Dharmahari, Vira, Surasa, Bandi, Sitala, Batuka, Holy-lake* in front of Batuka*, Mahavidya, Pindaraka, Bhairava, Vighnesvara, Vasistha, Laumas* and *Janamsthan* of Lord of Universe *Sri Ram* as *Tirthas* and *Devasthanam* of Ayodhya and right from the *Tretayuga* these sacred places are being visited and worshiped according to Scriptural customary rituals. .
14. *Srimsad Skandpuranam [Part VII inner Page 142 i.e. ibid II.VIII......26 –31& ibid II.10.VIII.1-87]* reveals that the Tradition of Pilgrimage to the Birth Place of the Lord of Universe Sri Ram as well as other *Devasthanam* in Ayodhya according to injunctions was told by sage *Narada* to *Sri Skand.* This *Sage Narada* was of *Tretayug* and contemporary of the Lord of universe Sri Ram on whose instance *Maharshi Valmiki* wrote *Ramayana.* Then it was narrated to *Sage Agastya*. From the Tradition of *Acharyas* it came down from *Sage Agastya* to Sage *Krishna Dviapayan Vyas* who recounted it to *Suta*.

15. The Sacred Religious Book of the Hindus *Sri Ramcharitmanas* records celebration of Birthday Festival of the Lord of Universe Sri Ram in the year 1574 A.D. on the day of Chaitra Shukla Navami Tuesday at His Birth Place Temple in Ayodhya as follows:

> " Reverently bowing my head to Lord Siva, I now proceed to recount the fair virtues of Sri Rama. Placing my head on the feet of Sri Hari I commence this story in the *Samvat* year 1631 (1574 A.D.). On Tuesday, the ninth of the lunar month of *Caitra,* this story shed its luster at Ayodhya. On this day of Sri Rama's birth the presiding spirits of all holy places flock there – so declares the Vedas – and demons, *Nagas,* birds, human beings, sages and Gods come and pay their homage to the Lord of Raghus. Wise men celebrate the great birthday festival and sing the sweet glory of Sri Rama."
>
> (*Sri Ramcharitamanasa /Balkanda 33.2-4)*

16. Bharat-Ratna Mahamahopadhyay Dr. Pandurang Vaman Kane in his book Dharmashastra Ka Itihas Tritiya Bhag (3rd Edn. 1994 published by Uttar Pradesh Hindi Sansthan, Lucknow) in chapter 11 has summarised tradition, importance, spiritual merits, of the sacred places of the The Hindus as laid down in the Divine Holy Vedas, Smritis, Puranas, Ramayana, Mahabharata and other Religious books which make it crystal clear that The Pilgrimage is integral part of Hinduism. Relevant pages thereof forms part of volume I of the compilation of this defendant as document no. 19. On inner page 1371 of the said book relevant Slokes of the Holy Scriptures - Sri Brahmand Puran (4.40.91); Sri

Skand Puran(Kashikhand 6.68 & 23.7); Sri Garud Puran (Pretkhand 34.5-6) have been reproduced wherein amongst seven Holiest Pilgrimage Centres Ayodhya has been enumerated alongwith Mathura, Maya (Hardwar), Kashi (Varanasi), Kanchi, Avantika (Ujjain) and Dwaravati (Dwarka). On inner page 1403 of the said book in the list of Sacred Places Ayodhya has also been enlisted and described.

17. In the book Bharat Ka Gazetteer, Khand 1 (published by the Publication Division Ministry of Information and Broadcasting Government of India reprint 1973 of the 1st revised Edn. 1964) on its page 499 Sri Ramchandra have been described as an incarnation and on pages 698 to 701 festivals, fairs and pilgrimages have been described and recognised as age-old tradition of the Hindu faith and belief.

18. Three-domed Temples are characteristic features of the Hindu Architectures. The Holy Sri Agni Puran (38.8) says that one who builds *Trayatan* (Three-domed) Temple goes to the *Brahm-lok* (Abod of Almighty).

19. Ibn Battuta also mentions a Three-domed Hindu Temple in Kachrad now known as Khajrawan towards 27 miles east from Chhatrapur City in Bundelkhand region. He writes that the said Three-domed Temple was built of red-stone in the centre of a lake and Yogis were living therein. Eyes, ears and noses of the Idols of the Temple had been mutilated by the Muslims. Relevant extract

from Pages 181 & 182 of the book Ibn Battuta Ki Bharat Yatra translated into Hindi by Madan Gopal. First Edition 1933 Reprinted in 1997 by National Book Trust India, New Delhi reads as follows:

बरौन नामक नगर से चलकर, अमवारी[1] होते हुए, हम कचराद[2] नामक स्थान में पहुंचे। यहां पर एक मील लंबे सरोवर के किनारे बहुत-से मंदिर बने हुए हैं, परंतु इन मंदिरों की

प्रत्येक प्रतिमा की आंख, नाक और कान मुसलमानों ने काट लिए हैं।

सरोवर के मध्य में रक्तपाषाण के तीन गुंबद बने हुए हैं। इनके अतिरिक्त प्रत्येक कोण पर भी इसी प्रकार के गुंबद निर्मित हैं जिनमें योगी लोग निवास करते हैं। योगियों के केश पैर तक लंबे होते हैं; सारे शरीर में भभूत लगी रहती है और तपस्या के कारण उनका वर्ण तक पीत हो जाता है। चमत्कार दिखाने की शक्ति प्राप्त करने के इच्छुक बहुत से मुसलमान भी इनके पीछे पीछे लगे फिरते हैं। लोगों का तो यह कथन है कि गलित तथा श्वेतकुष्ठ तक से पीड़ित पुरुष योगियों की सेवा में उपस्थित होने पर ईश्वर-कृपा से आरोग्य लाभ करते हैं। मावरा उन्नहर के सम्राट 'तरम शीरीं' के कैंप में मुझको इनके सर्वप्रथम दर्शन हुए। गिनती में ये पूरे पचास थे। इनके रहने के लिए धरती के भीतर गुहाएं बनी हुई थीं और वहीं धरातल के नीचे ये अपना जीवन व्यतीत करते थे, केवल शौच के लिए बाहर आते थे और प्रातः, सायं तथा रात्रि में शृंग के सदृश किसी वस्तु को बजाया करते थे। इन लोगों की जीवनचर्या भी अतीव विचित्र थी।

Sri Hari Shanker Jain, Advocate on behalf of Hindu Mahasabha has submitted that this historical issue relates to 500 years back for which there is no direct evidence and parties have to depend on religious books, gazetteers and other testaments which fall within the ambit of Section 57 (13) of Indian Evidence Act and the Court can take judicial notice and the relevant facts contained in gazetteers, religious books are admissible evidence and they can be relied upon to establish the place of birth of Lord Ram. He has placed reliance on AIR 1951 Supreme Court page 288 **Sukh Deo Singh Vs. Mahraja Bahadur of Gidhaur.** At para 10 Hon'ble the apex court held that gazetteer is an official document . It is compiled by experienced official with great care after

obtaining the facts from official records.

Sri H.S. Jain has further relied on AIR 1995 Supreme Court page 167**Bala Shankar Maha Shankar Bhattajee Vs. Charity Commissioner, Gujrat** wherein Hon'ble Apex Court has held gazetteer is admissible evidence under Section 35 read with Section 81 of Indian Evidence Act. Thereafter Sri Jain has relied over **AIR 1967 Supreme Court 256 Mahant Shrinivas Ramanuj Das Vs. Surajanar**ayn Das in para 25 that a gazetteer can be consulted in the matter of public history and statement in such gazetteer can be relied upon as they prove historical facts. Sri Jain has further submitted that Section 57 of the Indian Evidence Act inter alia says that the Court shall take judicial notice of all laws, public acts, public festivals and public history and the Court may resort for its aid to appropriate books and documents. These papers require no proof. Thus, Court can take judicial notice of the gazetteer and other religious books etc. under Section 57 of the Indian Evidence Act and in view of Section 81 of the Evidence Act the Court shall presume the genuineness of these official gazetters.

Sri Jain submits that William Finch who travelled India in the reign of Emperor Nuruddin Mohammad Jahangir from 1608 A.D. to 1611 A.D. saw the Hindus visiting the Birth Place of the Lord Sri Ram Chandra in Ramkot where Brahmins used to note down names of the visitors to that sacred place. Be it mentioned

herein that in each and every prominent sacred places of the Hindus since time immemorial a class of Brahmins known as Pandas have been helping the devotees to perform customary rites as also noting down names of the devotees. As such presence of Brahmin Pandas at Sri Ramjanmsthan during the visit of William Finch is conclusive proof that Hindus were performing their traditional customary rites as laid down in Sri Skanda Puran. Relevant extract from page 176 of the book Early Travels in India 1583 – 1619 by William Foster reads as follows:

> "To Oudh [Ajodhya] from thence are 50c; a citie of ancient note, and seate of a Polan king, now much ruined; castle built foure hundred yeeres agoe. Heere are also the ruines of Ranichand [S] castle and houses, which the Indians acknowled[g]e for the great God, saying that he tooke flesh upon him to see the Tamasha of the World. In these ruines remayne certaine Bramenes, who record the names of all such Indians as wash themselves in the river running thereby, which custome, they say hath continued foure lackes of yeeres (which is three hundred ninetie foure thousand five hundred yeeres before the world's creation). Some two miles on the further side of the river is a cave of his with a narrow entrance but so spacious and full of turnings within that a man may well lose himselfe there, if he take not better heed; where it is thought his ashes were buried. Hither resort many from all parts of India, which carry from hence in remembrance, certaine grains of rice as blacke as gun-powder which they say have been reserved ever since. Out of the ruines of this castle is yet much gold tryed. Here is great trade and such abundance of Indian asse-horne that they make here of bucklers and divers sorts of drinking cups. There are of these hornes, all the Indian affirme, some rare of great price, no jewell comparable, some esteeming them the right unicorns horne".
>
> (Early Travels in India 1583 – 1619 by William Foster p.176).

1. In his book Description Historique Et Geographique De l' Inde, Joseph Tieffenthaler who visited Sri Ramjanmsthan in the year 1770 A.D. during the reign of Emperor Shah Alam II (1759-1806 A.D.) evidenced the performance of customary rites by the Hindus in the central & left Halls of the Sri Ramjanmsthan Temple, Ajodhya in India. Tieffenthaler says that there was a *Vedi* i.e. *Sthandi*l inside the said Temple which was being worshipped by the Devotees by prostrating and circumambulating it thrice, but he did not mention offering of prayer therein by the Muslims; from the said facts made available by an eye witness it becomes crystal clear that in the 1770 the Hindus were in use and occupation of the Sri Ramjanmsthan as their sacred shrine which has been described as Babari Mosque by the plaintiffs in their pleadings and it was not being used as a Mosque by the Muslims. The said book is written in Latin language, an English translation of his narrative of Ajodhya find place in the book Modern Traveler, a Popular Description, Geographical, Historical and Topographical of the Various Country of the Globe – India Vol-III published by James Duncan in the year 1828. Relevant extracts containing translation of Tieffenthaler's account from pages 312, 313, 314, 316 and 317 read as follows:

"Its appearance, in 1770, is thus described by *Tieffen*

*theler: "Avad, called Adjudea by the Learned Hindoos i*s a city of the highest antiquity. Its houses are, for the most part, only on mud, covered with straw or with tiles; many, however, are of brick. The principal street, running from S. to N., is about a *league* (mille) in length; and the breadth of the city is somewhat less. Its western part, as well as the northern, is situated on a hill; the north-eastern quarter rests upon *eminences;* but towards *Bangla,* it is level. This town has now but a scanty population, since the foundation of *Bangla* or *Fesabad; a* new town where the Governor has established his residence, and to which a great number of inhabitants of *Oude* have removed. On the southern bank of *Deva (or Goggrah),* are found various buildings erected by the *Gentoos* in memory of Ram, extending from east to west. The more remarkable place is that which is called *Sorgodoari,* that is to say, the heavenly temple; because they say, that Ram carried away from thence to heaven all the inhabitants of the city. The deserted town was repeopled and restored to its former condition by *Bikaramajit,* the famous King of *Oojain.* There was a temple here on the high bank of the river; but *Aurangzebe,* ever attentive to the propagation of the faith of Mohammed, and holding the heathen in abhorrence, caused it to be demolished, and replaced it with a mosque with minarets, in order to abolish the very memory of the Hindoo superstition. Another mosque has been built by the Moors, to the east of this. Near the *Sargodoari* in an edifice erected by *Nabalroy* a former Hindoo governor. But a place more particularly famous is that which is called *Sitha Rassoee,* the table of *Sitha* (Seeta), wife of Ram; situated on an eminence to the south of the city. The emperor Aurangzebe demolished the fortress called Ramcote, and erected on the site, a *Mohammedan* temple with a triple dome. According to others, it was erected by Baber. There are to be seen fourteen columns of black stone, five spans in height, which occupied the site of the fortress. Twelve of these columns now support the interior arcades of the mosque: the two other form part of the tomb of a certain Moor. They tell us, that these columns, or rather these remains of skilfully wrought columns, were brought from Isle of *Lanca* or *Selendip (Ceylon)* by *Hanuman,* king the of monkeys. On the left is seen a square chest, raised,

five inches from the ground covered with lime, about 5 *ells* in length by not more than four in breadth. The Hindoos call it *Bedi,* the cradle; and the reason is, that there formerly stood here the house in which *Beshan (Vishnoo)* was born in the form of Ram and were also, they say, his three brothers were born. Afterwards, Aurangzebe, or, according to others, Baber, caused the place to be destroyed, in order to deprive the heathen of the opportunity of practicing there their superstitions. Nevertheless, they still pay a superstitious reverence to both these places; namely, to that on which the *natal* dwelling of Ram stood, by going three times round it, prostrate on the earth. The two places are surrounded with a low wall adorned with battlements. Not far from this is a place where they dig up grains of black rice changed into little stones, which are affirmed to have been hidden underground ever since the time of Ram. On the 24th of the month *Tshet (Choitru),* a large concourse of people celebrate here the birth-day of Ram, so famous throughout India. This vast city is only a mile distant from *Bangla (Fyzabad)* towards the E.N.E."

(Ibid. 312-314)

"…Between three and four miles from *Fyzabad,* on the Southern bank of the *Goggrah,* there is a remarkable place planted with bushy trees, of which *Tieffenthaler* gives the following account:

"It is seated upon a hill somewhat steep, and fortified with little doors of earth at the four corners (of the enclosure). In the middle it is seen a subterranean hole, covered with a dome of moderate dimensions. Closed by is a lofty and very old tamarind-tree. A p*iazza* runs round it. It is said that Ram, after having vanquished the giant Ravan, and returned from Lanka descended into this pit, and there disappeared: hence, they have given to this place the name of *Gouptar (or Gouptargath).* You have here, then, a descent into hell, as you had at *Oude and* ascension to heaven". "As the scene of many of the leading events in the great epic poem of the *Ramayuna, Oude* might be expected to abound with sports of traditional sanctity

(Ibid.p.316-317)

Principal submission of Sri H.S. Jain is that place of birth of Lord Ram was previously Janamsthan temple which was

demolished and Babri mosque was constructed at the site which is also reflected from the gazetteers,prepared by P. Carnegi, Millet, Fuhror, Newill and E.B.Joshi. They are Exts. O.O.S. -57, Ext. 7, Ext.8, Ext.9, Ext.10, Ext. 11, Ext. 12 and Ext. 13 in O.O.S. 5-7. He has further submitted that Encyclopedia of India and Eastern and Southern India by Surgeon General Edward Balfour referred Janmsthan which shows that Muslims destroyed Hindu temple and converted into a mosque. He has further urged that according to Tiffen Thaler at the site of Ram Janam Bhumi, mosque was constructed after demolishing Hindu temple. He has also referred Ayodhya by Hans Bakker which reveals that place of birth of Lord Ram is identifiable and was used to be a place of worship and old temple was renovated which was demolished at the command of Babur in the year 1528 by Mir Baki at the behest of Muslim Saint Kwaja Fazal Abbas. Mr Jain has further submitted that Tiffen Thaler had not given reference of Babur but of Aurangzeb. He has also pointed out that in O.S.No. 280 of 1885 Mahant Raghubar Das Vs. Secretary of State the place was identified as birth spot of Lord Ram and in view of historical background it is crystal clear Ram Janam bhumi temple was demolished by Muslims. There is clinching evidence that Ram Janam Bhumi is the place where the temple was built by King Govind Chandra but the same was demolished at the command of Babur by Mir Baki. 12 line inscription in dev nagri script written in 11th and 12th century was

also recovered. This is fully established by Paleography (Science of of old writing). He has further submitted that besides the above inscription even from the ruins of the disputed structure certain archaeological remains of pre Babri Hindu temple were recovered and they establish that there was a Janamstan temple prior to construction of Babri mosque and 14 black stone pillars were recovered in the construction of the mosque and they are embellished with different Hindu Iconography,repeatedly found in all Hindu temples. He has further argued that different objects of archeological importance were recovered from the debris of the demolished disputed structure. Sri Jain has further stressed that Hindu temple of 12th century constructed during the reign of Govind Chand was destroyed at the command of Babur and mosque was erected on it , which was site of Ram Janam Bhumi. Parts of the temple were re-used in the construction of Babri mosque. Accordingly at the time of demolition of disputed structure 260 artifacts were recovered. They denote Aamlak, part of Hindu temple, lotus, part of Shikhar, dorgem etc. Further Shvi Parti images were also found. Inscription of Hindu Vishnu temple establishes that disputed place is Ram Janam bhumi and there used to be temple. Thus, on the basis of descriptions gazetteers and other historical accounts, it is established that the mosque was constructed at the site of Ram Janambhumi. It was considered as sacred place of Hindus and it was worshipped like a deity and

incarnation of birth place of Lord Ram Chandra . Thus, this pious place was all the time worshipped and kept in high esteem by Hindus even after the construction of the disputed structure. Thus, Hindus have always attached sacred character of birth spot of Lord Ram. The defendants have proved the existence of Ram Janambhumi temple at the place of birth of Lord Ram . Accordingly they have discharged their duties and this fact should be admitted in evidence and now burden lies on the plaintiffs to show otherwise that it was not a Hindu temple. He has heavily relied over the conclusion of archeological team consisting of 14 members which transparently worked under the control of this Court as two Judicial Officers were the observers and team was composed of officers of both communities . The scientific report of experts which is data base fully establishes the existence of Ram Janambhumi and accordingly the defendants have successfully established the prior construction of temple which was demolished for the construction of the mosque by Muslim under the command of Babur which was prevalent practice among Muslims to destroy Hindu temples and the numerous instances for the destruction of the Hindu temples which was the order of the day during those days are established from historical records. Thus, looking to the place from any angle even prior to the construction of Babri mosque it transpires from archeological evidence that there was a Ram Janambhumi temple .

Sri Jain has relied upon para 78 of Dr. **M. Ismail Faruqui and others Vs, Union of India and others 1994(6) SCC 360** which is reproduced as under :

> "While offer of prayer or worship is are 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 move reverentially. "

Sri H.S. Jain, Advocate has further argued that since birth place of Lord Ram was considered as a place of worship which was integral part of religious practice of Hindu from times immemorial. It is deity and it stands on a different footing and have to be treated reverentially. Sri Jain has further urged that in view of the constitutional mandate as provided under Article 25 of the Constitution this place which was all the time being worshipped has be treated by this Court as a place of worship because of the belief of the Hindu based on religious book and religious practice to be birth place of Lord Ram as the temple was constructed in the 12th century. It is expedient to say that prior to 12th century there is evidence that earlier temples were also constructed at the site .Thus, according to Sri H.S.Jain, Advocate there is overwhelming evidence to establish the site of Ram Janambhumi and the Court has to recognize the same. Thus, the suit of the plaintiffs which causes hindrance for worship of Hindu is liable to be dismissed on this

count as no relief can be granted under Section 42 of the Specific Relief Act,1877, now Section 34 of the Specific Relief Act,1963.

Sri Ravi Shanker Advocate has also advanced argument in support of the claim of Hindus. He has submitted that it is established from the gazetteers, Hindu religious books and belief of Hindus and sacred character of the birth place of Lord Ram which was worshipped like a God. The plaintiffs have no claim over the property in suit and Hindus have fundamental rights to retain the same.

The learned counsel Shri Ravi Shanker Prasad has further submitted that in the present case, the adjudication has to be made in a matter relating to Hindu faith. His submissions are as under:-

Basic submission is that Hindus have been worshiping the place in dispute as Sri Rama Janma Bhumi or Janamasthan and visiting it as a sacred place of pilgrimage as of right since times immemorial.

The following facts are undisputed-

(a) That Ayodhya is a sacred place for Hindus;

(b) That Bhagwan Sri Rama was born in the said Ayodhya;

(c) That Bhagwan Sri Rama is incarnation of God as per Hindu belief;

The relevant voluminous documentary evidence concerning the sacred character of Ayodhya being the place of

birth of Lord Sri Ram and, therefore, which is held in high esteem by the Hindus even after the construction of the disputed structure.

In the present case the plaintiffs though have made statements regarding an alternative birthplace of Bhagwan Sri Ram but they have not led any evidence whatsoever to prove the same. The defendants have discharged their burden of proof by showing that there was a temple of Bhagwan Sri Rama under the present disputed structure. It is for the plaintiffs to prove to the contrary.

(d) Under the above-mentioned circumstances, the question which arises is whether Hindus believe that Bhagwan Sri Ram was born at the impugned/disputed site in issuing known as Sri Rama Janma Bhumi.

It is apparent from prima facie examination of the facts that the dominant issue in the present dispute pertains to the legal adjudication of matters relating to the Hindu faith.

It has been held by the Supreme Court in **AIR 1953 Supreme Court 491- Saraswathi Ammal Vs. Rajagopal Ammal,** in paragraph 6 that to find out that religious purpose under Hindu law must be determined according to Hindu notions which in turn has been variously recognized by the Court in a large number of decisions.

In this connection one of the most important books universally acknowledged and recognized as an authority by the Courts in India and abroad is "**The Hindu Law of Religious and Charitable Trusts" by B.K. Mukherji**- a very renowned and outstanding jurist of the country who is an authority on the subject and is widely quoted. It may be relevant to refer to few pages of the said book, fifth edition, by A.C. Sen, a former judge of Calcutta High Court. The first edition which in fact was a compendium of Tagore Law Lectures series was published in the year 1952 and at Page 75 of the book there is a very significant paragraph which throws light on the interpretation of issues in the present suit:

"2.27. These observations, if I may say so, apply with full force to trusts created by Hindus for religious purposes. Undoubtedly the court and not the donor is the judge, of whether an object is charitable or not, but the court cannot enter into the merits of particular religious doctrine, and therefore must remain neutral. The divine service of a particular religion is defined by the doctrines of the religion itself and no court can appreciate their spiritual efficacy, unless it knows there doctrines and hypothetically admits them to be true. In controversial matters the court cannot possibly decide whether the doctrines are beneficial to the community or not. **It has got to act upon the belief of the members of the community concerned, and unless these beliefs are per se immoral or opposed to public policy, it cannot**

exclude those who profess any lawful creed from the benefit of charitable gifts..."

THE CONCEPT OF DEITY IN HINDU FAITH

1. As the Hindus have since times immemorial and for many generations consistently held in great esteem and reverence the Rama Janmasthan in Ayodhya where they believe Sri Ram was born, this at once requires an understanding and recognition of the Hindu concept of deity as recognized by law and whether the Rama *Janmasthan* where *Ram Lala is Virajman* is in accordance with the said concept of deity.

2. The concept of deity which is a very distinguishing feature of the Hindu faith is one that is eternal, permanent and omnipresent wherein the deity is the image of the Supreme Being. The temple is the home of the deity and to constitute a temple it is enough if the people believe in its religious efficacy, i.e., there is some supreme super human power existing there whom they need to worship and invoke its blessings. As a result, the existence of an idol, though desirable, is not a legal precondition. The worship of such a divinity can also be formless or without any image, the only criteria being that people must believe in its divinity and seek its blessings.

3. There are many examples of this concept, Hindu worships Agni, Vayu and many sacred rivers like Ganga which do not resemble the traditional image of a deity yet the Hindus believe in their power of divinity. If such experience and the invocation of

blessings are possible even in the case of a log of wood or a simple stone, it acquirees the sacred character of divinity. The *Sangam* (confluence) at Prayag is another example which is supposed to be a holy place where three rivers *Ganga, Yamuna and Saraswati* (which is invisible) meet and for the last thousands of years its sacred character remains intact where millions of people believe that by taking a bath there they wash off their sins. The recent *Kumbha Mela* in Haridwar where nearly 8 crore people visited further reinforces the divine character of the river Ganga at Haridwar which is highly sacred and its blessing is sought. The famous *Vishnupad Mandir in Gaya again has no image at all except a small image of two* 'Charan" only which is being worshipped for the last hundreds of years as *Vishnupad.*

4. The traditional and classical legal literature relating to Hindus has also duly sanctified such belief and faith which has been exalted to a juristic status requiring legal recognition. In this connection, "**the Hindu Law of Religious and Charitable Trusts" by B.K. Mukherjea** lays down some of the relevant concepts relating to deity and the temple along with concerned page number which are consistently being recognized as judicial authorities, not only in India but also abroad. The concept mentioned therein along with concerned page numbers are being quoted below:

Page 26-27 – Para "1.33: Idols representing same divinity – One thing you should bear in mind in connection with image worship

viz. That the different images do not represent separate divinities; they are really symbols of the one Supreme Being, and in whichever name and form the deity might be invoked, he is to the devotee the Supreme God to whom all the functions of creation, preservation and destruction are attributed. In worshipping the image therefore the Hindu purports to worship the Supreme Deity and none else. **The rationale of image worship is thus given in a verse which is quoted by Raghunandan:**

"*Chinmayasyaadwitiiyasya Naskalashariirina*

Saadhakaanaam Hinaathayi Brahmanii Roopakalpanaa."

"**It is for the benefit of the worshippers that there is conception of images of Supreme Being which is bodiless, has no attribute, which consists of pure spirit and has got no second."**

Temples and mutts are the two principal religious institutions of the Hindus. There are numerous texts extolling the merits of founding such institutions. In *Sri Hari Bhaktibilash a* passage is quoted from Narsingha Purana which says that "whoever conceives the idea of erecting a divine temple, that very day his carnal sins are annihilated; what then shall be said of finishing the structure according to rule ……….. He who dies after making the first brick obtains the religious merits of a competed Jagna."

"1.34. **Other kinds of religious and charitable benefactions.- "**A person consecrating a temple", says Agastya, "also one establishing an asylum for ascetics also, one consecrating

an alms house for distributing food at all times ascend to the highest heaven."

Besides temples and mutts the other forms of religious and charitable endowments which are popular among the Hindus are excavation and consecration of tanks, wells and other reservoirs of water, planting of shady trees for the benefit of travellers, establishment of *Choultries, satras or alms* houses and Dharamsala for the neefit of mendicants and wayfarers, Arogyasalas or hospitals, and the last though not the least, Pathshalas or schools for giving free education. Excavation of tanks and planting of trees are Purtta works well known from the earliest times. I have already mentioned that there is a mention of rest houses for travellers even in the hymns of the *Rigveda*. The Propatha of the Vedas is the same thing as Choultrie or sarai and the name given to it by subsequent writers is *Pratishraygrih*. They were very popular during the Buddhist tie. In *Dana Kamalakara*, a passage is quoted from Markandeya Puran which says that one should make a house of shelter for the benefit of travellers; and inexhaustible is his religious merit which secures for him heaven and liberation. There are more passages than one in the Puranas recommending the establishment of hospitals. "One must establish a hospital furnished with valuable medicines and necessary utensils placed under an experienced physician and having servants and rooms for the shelter of patients. This text says further that a man, by the gift of the means of freeing

others from disease, becomes the giver of everything. The founding of educational institutions has been praised in the highest language by Hindu writers. Hemadri in his *Dankhanda* has quoted a passage from Upanishad according to which gifts of cows, land and learning are said to constitute *Atihaan* or gifts of surpassing merit. In another text cited by the same author, it is said that those excluded from education do not know the lawful and the unlawful; therefore no effort should be spared to cause dissemination of education by gift of property to meet its expenses".

Page 38-Para "1.50. The idol as a symbol and embodiment of the spiritual purpose is the juristic person in whom the dedicated property vests:- As you shall see later on the decision of the Courts of India as well as of the Privy Council have held uniformly that the Hindu idol is a juristic person in whom the dedicated property vests. "A Hindu idol", the Judicial Committee observed in one of its recent pronouncements, "is according to long established authority founded upon the religious customs of the Hindus and the recognition thereof by Courts of Law, a juristic entity. It has a juridical status with the power of suing and being sued." You should remember, however, that the juridical person in the idol is not the material image, and it is an exploded theory that the image itself develops into a legal person as soon as it is consecrated by the *Pran Pratistha* ceremony. It is not also correct that the Supreme Being of which the idol is a symbol or image is

the recipient and owner of the dedicated property. The idol as representing and embodying the spiritual purpose of the donor is the juristic person recognized by law and in this juristic person the dedicated property vests."

Page 38-39-Para "1.51. Deity owner in a secondary sense.- The discussions of several Hindu sages and commentators point to the conclusion that in case of dedicated property the deity is to be regarded as owner not in the primary but in the secondary sense. All the relevant texts on this point have been referred to by Sir Asutosh Mookerjee in his judgment in Bhupati v Ramlal and I will reproduce such portions of them as are necessary for my present purpose."

Sulapani, a reputed Brahminical Jurist, in his discourse on Sraddha thus expresses his views regarding the proper significance of gift to God:- "in 'Donation' having for its dative case, the Gods like the Sun, etc., the term 'donation' has a secondary sense. The object of this figurative use being extension to it of the inseparable accompaniment of that (gift in its primary sense), viz., the offer of the sacrifical fee etc. it has already beeb remarked in the chapter on the Bratis that such usage as Devagram, Hastigram, etc., are secondary". Sree Krishna in commenting on this passage thus explains the meaning of the expression Devgram: "Moreover, the expression cannot be used here in its primary sense. The relation of one's ownership being excluded, the possessive case affix (in Devas

in the term Devagram) figuratively means abandonment for them (the Gods)". Therefore, the expression is used in the sense of "a village which is the object of abandonment intended for the Gods". This is the purport. According to Savar Swami, the well-known commentator on Purba Mimansa, Devagram and Devakhetra are figurative expressions. What one is able to employ according to one's desire is one's property. The Gods however do not employ a village or land according to their use."

Page 39-Para "1.52. These discussions are not free from obscurity but the following conclusions I think can be safely drawn from them:-(1) According to these sages the deity or idol is the owner of the dedicated property but in a secondary sense. The ownership in its primary sense connotes the capacity to enjoy and deal with the property at one's pleasure. A deity cannot hold or enjoy property like a man, hence the deity is not the owner in its primary sense. (2) Ownership is however attributed to the deity in a secondary or ideal sense. This is a fiction (Upchaar) but not a mere figure of speech, it is a legal fact; otherwise the deity could not be described as owner even in the secondary sense. (3) The fictitious ownership which is imputed to the deity is determined by the expressed intentions of the founder; the debutter property cannot be applied or used for any purpose other than that indicated by the founder. The deity as owner therefore represents nothing else but the intentions of the founder. Although the discussions of the Hindu

Jurists are somewhat cryptic in their nature, it is clear that they did appreciate the distinction between the spiritual and legal aspects of an idol. From the spiritual standpoint the idol might be to the devotee the very embodiment of Supreme God but that is a matter beyond the reach of law altogether. Neither God nor any supernatural being could be a person in law. So far as the deity stands as the representative and symbol of the particular purpose which is indicated by the donor, it can figure as a legal person and the correct view is that in the capacity alone the dedicated property vests in it."

Page 152-153-Para "4.3B. Sources of Puranas.- It is said sometimes that the Vedic mythology was merely elaborated in the Puranas. This is not wholly or even substantially true. The sources of some of the legendary stories occurring in the Puranas can, no doubt, be traced in the Vedas but it would not be correct to say that the Pouranic gods were mere reproductions of the Vedic gods. There is nothing in the Vedas corresponding to the Pouranic Trinity of Brahma, Vishnu and Siva. Brahma in the Vedic text signified the Sun, or was a synonym of prayer. Vishnu in the Rigveda occupied a rather subordinate position. He was also identified with the Sun, and his three strides encompassing the three spheres of existence, as suggestive of all pervasiveness constituted the foundation of the Pouranic legend of the three steps of Vishnu in his incarnation of the "Dwarf." Siva hardly appears as the name of any deity in Vedic

time. The expression "Siva" means propitious or benignant. Rudra, one of the Vedic deities, was in all probability, another name of Agni or fire, and the Puranas identified Siva with Rudra. We hear very little of Ganpati or Kartikeya in the Vedas. Kali, who is described in the Puranas as a consort of Siva, was spoken of in Mandukopanishad as one of the seven tongues of fire, while the name of "Uma occurs in the Kenopanishad, where she is described as a resplendent lady who gave lessons in divine knowledge to the gods. Sri Krishna, who looms so large in the Pouranic literature, is mentioned only as a scholar and not as a deity in the Vedas, though many of the legendary stories attributed to him in the Puranas are traceable to similar legends associated with Indra in the Vedic literature.

It is not necessary for our present purpose to pursue these discussions any further. Though the Puranas are by no means uniform, the legends associated with the various gods are fairly well known and have been the basis of a considerable mass of poetic literature in later times. **One cardinal principle underlying idol worship you would always bear in mind – and this has some bearing on the law relating to gift of property to idols – that whichever god the devotee might chose for purposes of worship and whatever image he might est up and consecrate with that object, the image represents the Supreme God and none else. There is no superiority or inferiority amongst the different**

gods. Siva, Vishnu, Ganapati or Surya is extolled each in its turn as the creator, preserver and supreme lord of the universe. The image simply gives a name and form to the formless God and the orthodox Hindu idea is that conception of form is only for the benefit of the worshipper and nothing else.”

Page 153-Para “4.4. Building and consecration of temples.-Along with the establishment of idol worship, in Hindu religion, elaborate rites and ceremonies, it seems, were introduced by Brahminical writers in regard to building of temples and consecration and purification of idols. I will touch these matters very briefly. A temple is the house of the deity and many of the rules of construction of a temple are practically the same as are prescribed for construction of a dwelling house, the additional rules being laid down to ensure greater sanctity of the structure that is meant for the abode of a deity. One who wants to build a temple has got to select the proper time for building with reference to astrological calculations. There are detailed rules relating to selection of the site which include examination of the nature and colour of the soil, its odour, taste, solidity, etc. after the site is selected, it is ploughed up and seeds are sown in it. As soon as the seeds germinate, the crop is allowed to be grazed over by cows. The cardinal points are then to be ascertained for giving this structure an auspicious aspect and there are rules to be observed regarding the material to be used and the location of doors, windows, etc. the

important religious ceremony is the Vastu Jaga in honour of Vastu Purusha or Vastu Debta who presides over dwelling house, with oblations of milk, rice and sugar. This Vastu Gaja is a very ancient ceremony which dates from the Grihya Sutras of Aswalayan and Goville. The Puranas, however, contain a mythological legend regarding the Vastu Purusha and the modern form of the sacrifice in honour of this deity is described among others in Matsya Purana, Brihat Samhita and Devi Purana. All these ceremonies in connection with the building of a temple have been described with elaborate by Pandit Prana Nath Saraswati in his Tagore Lectures on the Hindu Law of Endowment. They are of little importance to a lawyer, as no question of law could possibly turn upon the manner in which a temple has been consecrated. Even if the rules prescribed by the Smriti writers are not obeyed, the founder of the temple may incur sin but the legal rights over or in respect of the temple cannot in any way be affected by thee omissions."

Page 154-Para "4.5. Images – their description.- Image, according to Hindu authorities, are of two kinds: the first is known as Swayambhu or self-existent or self-revealed, while the other is Pratisthita or established. The **Padma Puran says: "The image of Hari (God) prepared of stone, earth, wood, metal or the like and established according to the rites laid down in the Vedas, Smritis and Tantras is called the established; ……... where the self possessed Vishnu has placed himself on earth in stone or**

wood for the benefit of mankind, that is styled the self revealed." A Swyamhu or self-revealed image is a product of nature, it is Anadi or without any beginning and the worshippers simply discover its existence. Such image does not require consecration of Pratistha. All artificial or man-made images require consecration. An image according to Matsya Purana may properly be made of gold, silver, copper, iron, brass or bell metal or any kind of gem, stone or wood, conch shell, crystal or even earth.

Some persons worship images painted on wall or canvas, says the Brihata Purana and some worship the spheroidical stones known as Salgram. Generally speaking, the Pouranic writers classify artificial images under two heads: viz. (1) Lepya and (2) Lekhya. Lepya images are moulded figures of mental or clay, while Lekhyas denote all kinds of pictorial images including chiselled figures of wood or stone not made by moulds. In the case of Goswami Geeridhariji v. Ramanlalji which went up to the Privy Council, the subject matter of dispute was the pictorial image of the head of the Ballavacharya Sect and not of any deity. Images again may be permanent or temporary. Temporary images which are set up for periodical Pujas like Durga, Saraswati, etc. are generally made of clay and are immersed in a river or tank after the puja is over."

Page 156 – Para "4.7. Worship of the Idol.-After a deity is installed, it should be worshipped daily according to Hindu Sastras.

The person founding a deity becomes morally responsible for the worship of the deity even if no property is dedicated to it. This responsibility is always carried out by a pious Hindu either by personal performance of the religious rites or, in the case of Sudras, by the employment of a Brahmin priest. The daily worship of a consecrated image includes the sweeping of the temple, the process of smearing, the removal of the previous day's offerings of flowers, the presentation of fresh flowers, the respectful oblation of rice with sweets and water and other practices." **The deity in short is conceived of as a living being and is treated in the same way as the master of the house would be treated by his humble servant.** The daily routine of life is gone through, with minute accuracy, the vivified image is regaled with necessaries and luxuries of life in due succession even to the changing of clothes, the offering of cooked and uncooked food and the retirement to rest."

Page 156-157 – Para "4.8. Reconstruction or purification of idols in case of defilement or destructions.-According to Hindu sages, an image becomes defiled if it is not worshipped regularly. Reconstruction or purification of the image is ordained in cases where the image is mutilated, broken, burnt, fallen down or removed from its place or is defiled by a beast or the touch of an out-caste or even when hymns appropriate to other gods are recited before it. The rules for reconstruction or replacement of an idol are thus laid down in Hayasirsha Pancharatram. "Whatever is the

material and whatever the size, of the image of Hari (God), that is to be renewed; of the same material and of the same size, an image is to be caused to be made; of the same size, of the same form and of the same material, should be placed, there, either on the second or the third day (the image of) Hari should be established; if it be established after that, even in the prescsribed mode, there would be blame." **The destruction of an image, as you will see presently, does not cause an extinction of the religious trust that is created in its favour; the rules of construction or replaacement of an idol as set out above are most liberally construed. It is enough if an image is established substantially representing the old or is treated as such, and the fact that the replacement was not made within the prescribed time, though blamable from the orthodox point of view, does not affect the validity of replacement. When** the settler had provided for Puja being performed in a specified Bhajana Matam, and subsequently that building was lost to the trust, it was held that did not extinguish the trust, as a new Bhajana Matam could be constructed and Puja performed there."

Page 158 - Para "4.10. Dedicated property vests in the idol as a juristic person.-When property is given absolutely by a pious Hindu for worship of an idol, the property vests in the idol itself as a juristic person. This view, as I have explained in the first lecture, is quite in accordance with Hindu ideas and has been uniformly accepted in a long series of decisions of the different High Courts in

India as well as by the Judicial Committee. As West, J. observed in Manohar Ganesh v. Lakshmi Ram: “The Hindu law recognises not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also juridical subjects or persons called foundations.”

The Hindu idol is juridical subject, and the pious idea that it embodies is given the status of a legal person and is deemed capable in law of holding property in the same way as a natural person.

“The idol, deity or religious object,” observed West and Buhler in their Digest on Hindu Law, “is looked upon as a kind of human entity.” It is a sacred entity and ideal personality possessing proprietary rights. The Judicial Committee has pointed out on more occasions than one that it is only an ideal sense that property can be said to belong to an idol and the possession and management of it must, in the nature of things, be entrusted to some persons as Shebait or manager. The legal principle has thus been summed up in one of the pronouncements of the Judicial Committee:

“**A Hindu idol is, according to long-established authority, founded upon the religious customs of the Hindus, and the recognition thereof by courts of law, a 'juristic entity'. It has a juridical status, with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who in law is its manager, with all the powers which**

would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir. It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established.”

<u>Page 158-159 – Para “4.10A. Existence of idol is necessary for temple.-</u>

While usually an idol is instituted in a temple, it does not appear to be an essential condition of a temple as such. In an Andhra case, it was held that to constitute a temple, it is enough if it is a place of public religious worship and if the people believe in its religious efficacy, irrespective of the fact whether there is an idol or a structure or other paraphernalia. It is enough if the devotees or the pilgrims feel that there is one superhuman power which they should worship and invoke its blessings. However, in almost all cases the temple does possess an idol.”

Page 160-162. Para “4.13. The principle of Hindu Law that a donee must be in existence at the time of gift whether applicable to the creation of a Dubutter endowment? In a Debutter endowment, as you have seen, the deity or idol is the recipient or donee of the endowed property which vests in it as a juridical person. To constitute a valid gift under Hindu law it is necessary that it must be accepted by a sentient being who is in existence at the time of the gift. This rule which was authoritatively laid down by the judicial Committee in the case of Tagore v. Tagore has been scrupulously followed ever since by all the High Courts in India. An

attempt was made however in some of the decisions of the Calcutta High Court to carry the rule too far, and to hold that a gift to an idol which is not consecrated or in existence at the time of dedication is not valid. Thus, in Upendra Lal Boral v. Hem Chandra where one of the question raised related to the validity of a bequest in favour of a non-existent idol, it was held by the learned Judges that "if there was a gift to the idol, it was bad, because there was no idol in existence at the time of his death, and further if there was a oer to make such a gift the power was ineffective because on the authority of Bai Malivahu v. Mamubai we think that " a power must be to convey to a person who was in existence either actually or in contemplation of law at the death of the testator and the idol to which the dedication is sought to have been made was not then in existence." the learned Judges proceeded to say, "the deity no doubt is always in existence but there could be no gift to the deity as such and there was no personification of the deity to whom the gift could have been made, or who was capable of taking it." The same view was taken by Stanley, J. in Rojomoyi v. Troylukho and it was held that a direction in the will of a testator to establish a 'thakur' to whom the entire residuary estate was to go was invalid. "Whether a gift be in presenti or in futuro", thus observed the learned Judge, "it is settled that the donee must be a person in existence and capable of accepting the gift at the time it takes effect – Tagore v. Tagore. That which cannot be done directly by gift cannot be done

by the intervention of a trustee; Krishna Ramani v. Ananda; Rajendra Dutt v. Sham Chand. An idol cannot be said to have juridical existence unless it has been consecrated by the appropriate ceremonies, and so has become spiritualised. Before this, the deity of which the idol is the visible image does not reside in the idol: Doorga Pershad v. Sheo Pershad. In Nagendra Nandini v. Binoy Krishna, Stephen, J. took it to be a settled law that a bequest to a thankur not in existence at the date of the death of the testator was not valid. It may be noticed here that the case of Doorga Pershad v. Sheo Pershad, to which reference was made by Stanley, J., is of a different type altogether. In that case an image of Vishnu, as also the Debotter property dedicated to it, were sold in execution of a money decree against the Shebait, and the purchaser brought the image to his house and continued to conduct its worship. The Shebait's son set up another image of the god, and instituted a suit against the purchaser to recover the property but not the original image. It was contended on his behalf that the removal of the original image destroyed its sanctity and justified its replacement by another image, and in any event the property should be devoted to the worship of the second image also. The first contention was negatived and with it the second contention fell also. It was held by the learned judges and quite rightly that no second image could be set up when an existing image continues fit for worship, the deity being intended by the founder to be worshipped by one image and

not simultaneously by two. No doubt the learned judges observe in the course of their judgment that according to Hindu rites when an idol has been consecrated by appropriate ceremonies and pronunciation of Mantras, then and then only the deity of which the idol is the visible image could reside in it. But there is nothing in the decision which might be taken to lay down that a dedication is not valid unless a consecrated image is in existence at the date of dedication. This question was neither considered nor decided by the learned Judges. The authority of the cases referred to above has been overruled by the pronouncement of Full Bench of the Calcutta High Court in Bhupati Smrititirtha v. Ram Lal. The main question referred to the Bull Bench was: "Does the principle of Hindu Law which invalidates a gift other than to sentient being capable of accepting it, apply to a bequest to trustees for the establishment of an image and the worship of a Hindu deity after the testator's death, and make such a bequest void?" The Full Bench answered the question in the negative. Sir Lawrence Jenkins who presided over the Full Bench in the course of his judgment observed that the "rule which requires relinquishment should be to a sentient person does not forbid the gift of property to trustees for a religious purpose though that purpose cannot in strictness be called a 'sentient person'. It would seem that the rule propounded by Jinutabahan had regard rather to the general proposition for he was contending, i.e., the act of the giver is the cause of property, than to its application to

particular objects of benevolence. The fiction that an idol is a person capable of holding property must be kept within its proper limits, and were we to accede to the argument that has been advanced before us, we should be allowing fiction to be built on fiction to the hindrance and not for the furtherance of justice." Mookerjee, J. in the same case held on a review of all the relevant texts that according to Hindu law the rule about the acceptance of a gift as a necessary condition for its validity was applicable to secular gifts only. There is no foundation for the assumption that the dedication to deity or for religious purpose stands on the same footing. In summing up the legal position the learned Judge observed as follows: "The view that no valid dedication of property can be made by a will to a deity the image of which is not in existence at the time of the death of the testator is based upon a double fiction, namely, first that the Hindu deity is for all purposes a juridical person and secondly that a dedication to the deity has the same characteristics and is subject to the same restrictions as a gift to a human being. The first of these propositions is too broadly stated, and the second is inconsistent with the first principles of Hindu Jurisprudence." The provisions of Hindu law relating to secular gifts are therefore not applicable when the dedication is to the idol. Moreover,-and this was pointed out by Chatterjee, J., who was a member of the Full Bench-the conception of Hindu jurists was not that the image of clay or stone constituted the juristic

person. **The Smriti writers have laid down that if an image is broken or lost another may be substituted in its place; when so substituted it is not a new personality but the same deity, and properties vested in the lost or mutilated thakur become vested in the substituted thakur. Thus, a dedication to an idol is really a dedication to the deity who is ever-present and ever-existent, the idol being no more than the visible image through which the deity is supposed specially to manifest itself by reason of the ceremony of consecration. The decision in Bhupati Smrititirtha v. Ramlal has been followed by other High Courts in India, and it has been held by the Allahabad High Court in Mohor Singh v. Het Singh that a bequest to complete the building of a temple which was commenced by the testator and to install and maintain an idol therein was a valid bequest under the Hindu Law. The fact that the gift is made by a deed inter vivos and not by a will does not make any difference."**

I may quote relevant case law;

(i) 1999 (5) SCC Page 50 (Ram-Janki Deity Vs. State of Bihar): *Paragraphs 13 to 19-An Idol is not a precondition. Even a piece of stone may become the idol. Agni and Vayu are worshipped. They are shapeless and formless. Even a simple piece of wood can attain divinity. If the public goes for worship and consider that there is a divine presence, then it is a temple.*

16. The observations of the Division Bench has been in our view true to the Shastras and we do lend our concurrence to the same. If the people believe in the temples' religious efficacy no other requirement exists as regards other areas and the learned Judge it seems has completely overlooked this aspect of Hindu Shastras - In any event, Hindus have in Shastras "Agni" Devta; "Vayu" Devta - these deities are shapeless and formless but for every ritual Hindus offer their oblations before the deity. The Ahuti to the deity is the ultimate - the learned Single Judge however was pleased not to put any reliance thereon. It is not a particular image which is a juridical person but it is a particular bent of mind which consecrate the image.

17. One cardinal principle underlying idol worship ought to be borne in mind:

"that whichever god the devotee might choose for purposes of worship and whatever image he might set up and consecrate with that object, the image represents the Supreme God and none else. There is no superiority or inferiority amongst the different gods. Siva, Vishnu, Ganapati or Surya is extolled, each in its turn as the creator, preserver and supreme lord of the universe. The image simply gives a name and form to the formless God and the orthodox Hindu idea is that conception of form is only for

the benefit of the worshipper and nothing else.”

(B.K. Mukherjea - on Hindu Law of Religious and Charitable Trusts - 5th Edn.).

18. In this context reference may also be made to an earlier decision of the Calcutta High Court in the case of Bhupatinath v. Ramlal Maitra , wherein Chatterjee, J. (at page 167) observed:

“A Hindu does not worship the "idol" or the material body made of clay or gold or other substance, as a mere glance at the mantras and prayers will show. They worship the eternal spirit of the deity or certain attributes of the same, in a suggestive form, which is used for the convenience of contemplation as a mere symbol or emblem. It is the incantation of the mantras peculiar to a particular deity that causes the manifestation or presence of the deity or according to some, the gratification of the deity.”

A simple piece of wood or stone may become the image or idol and divinity is attributed to the same. As noticed above, it is formless, shapeless but it is the human concept of a particular divine existence which gives it the shape, the size and the colour. While it is true that the learned Single Judge has quoted some eminent authors but in our view the same does not however, lend any assistance to the matter in issue and the Principles of Hindu Law seems

to have been totally misread by the learned Single Judge.

(ii) **2000 (4) SCC, Page 146 – Shiromani Gurudwara Prabandhak Committee Vs. Somnath Das:** Para 30 to 42- Guru Granth Sahib is a juristic person.

35. Now, we proceed to examine the judgment of the High Court which had held to the contrary. There was difference of opinion between the two Judges and finally the third Judge agreed with one of the differing Judges, who held Guru Granth Sahib to be not a "Juristic Person". Now, we proceed to examine the reasonings for their holdings so. They first erred, in holding that such an endowment is void as there could not be such a juristic person without appointment of a Manager. In other words, they held that a juristic person could only act through some one, a human agency and as in the ease of an Idol, the Guru Granth Sahib also could not act without a manager. In our view no endowment or a juristic person depends on the appointment of a Manager, It may be proper or advisable to appoint such a manager while making any endowment but in its absence, it may be done either by the trustees or Courts in accordance with law. Mere absence of a-manager (does not) negative the existence of a juristic person. As pointed out in Manohar Ganesh v. (approved in Yogendra Nath Naskar's case) referred to above, if no manager is appointed by the founder, the ruler would give

effect to the bounty. As pointed in Vidyapurna Tirtha Swami v. Vidyanidhi Tirtha Swami ,ILR Mad. (at p. 457), by Bhashyam Ayyangar, J (approved in Yogendra Nath Naskar's case : the property given in trust becomes irrevocable and if none was appointed to manage, it would be managed by the "Court as representing the sovereign." This can be done by the Court in several ways under Section 92, C.P.C. or by handing over management to any specific body recognised by law. But the trust will not be allowed by the Court to fail. Endowment is when donor parts with his property for it being used for a public purpose and its entrustment is to a person or group of person in trust for carrying out the objective of such entrustment. Once endowment is made, it is final and it is irrevocable. It is the onerous duty of the persons entrusted with such endowment, to carry out the objectives of this entrustment. They may appoint a manager in the absence of any indication in the trust or get It appointed through Court. So, if entrustment is to any juristic person, mere absence of manager would not negate the existence of a Juristic person. We, therefore, disagree with the High Court on this crucial aspect.

(iii) AIR **1963 Supreme Court, Page 510-Para 8, The Poohari Fakir Sadavarthy of Bondilipuram v. The Commissioner, Hindu Religious and Charitable**

Endowments. The institution will be a temple if two conditions are satisfied-one-it is a place of public religious worship-and and other- it is used as of right by the Hindu community or any section thereof as a place of worship.

(iv) 2005 **(1) SCC, Page 457-Thayarammal Vs. Kanakammal and Others-**Para 16 at Page 463: When property is dedicated for a particular purpose the property itself upon which the purpose is impressed is raised to the category of a juristic person.

(v) (1888) **ILR 12 Bombay, Page 247, Manohar Ganesh Tambekar Vs. Lakhmiram Govindram**–*Property dedicated to a pious purpose is by the Hindu as by the Roman Law placed extra-commercium*. Para-11 reads as under:-

"**11. The Hindu law, like the Roman law and those derived from it, recognizes, not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also the juridical persons or subjects called foundations West and Buhler, H.L., 201, 185, 553, 555. A Hindu, who wishes to establish a religious or charitable institution, may, according to his law, express his purpose and endow it West and Buhler, H.L., 99, 197, 216, and the ruler will give effect to the bounty, or at least protect it so far, at any rate, as it is consistent with his own dharma or conceptions of**

morality West and Buhler, H.L., 33, Mann VIII, 41, Coleb. Dig., B. III, Ch. II, T. 28. A trust is not required for this purpose: the necessity of a trust in such a case is indeed a peculiarity and a modern peculiarity of the English law Spence Eq. Juris., 440; Sav. Syst., Section.

This principle is recognized in the law of England as it was in the Roman law, whence indeed it was derived by the modern codes of Europe. It is equally consistent with the Hindu law, which, as we have seen, undoubtedly recognizes artificial juridical persons See Rupa Jagset v. Krishnaji Govind, I.L.R., 9 Bom., p. 169 such as the institution at Dakor, and could not, any more then any other law, support a foundation merely as a means of squandering in waste or profligacy the funds dedicated by the devout to pious uses.

(vi) **AIR 1959 Supreme Court 951-Mahant Ram Swarup Vs. S.P. Sahi – Page 958-959 – Para 10 & 12 –** *It is difficult to visualize that a Hindu private Debuttar will fail for a deity is immortal. Even if the idol gets broken or lost or stolen another image may be consecrated and it cannot be said that the original object has ceased to exist. Para 12-B.K. Mukherjee quoted.*

10. We now turn to some of the other provisions of the Act, which we have earlier quoted. Section 29(1) which talks of supervision of a religious trust being vested in any committee

or association appointed by the founder or by a competent court or authority is ordinarily appropriate in the case of a public trust only. Section 30(1) which embodies the doctrine of cypres permits any Hindu to make an application for invoking the power of the Board to determine the object to which funds, property and income of a religious trust shall be applied where the original object of the trust has ceased to exist or has become impossible of achievement. This section is also inappropriate in the case of a private trust, the obvious reason being that any and every Hindu cannot be interested in a private trust so as to give him a locus standi to make the application. Further, it is difficult to visualise that a Hindu private debutter will fail, for a deity is immortal. Even if the idol gets broken or is lost or stolen, another image may be consecrated and it cannot be said that the original object has ceased to exist. Section 32 is an important section of the Act and confers power on the Board to settle schemes for proper administration of religious trusts. Now, the section says that the Board may exercise the power of its own motion or on application made to it in this behalf by two or more persons interested in any trust. The language of the section follows closely the language of Section 92 Civil Procedure Code, so far as the phrase "two or more persons interested in any trust" is concerned.

(vii) **AIR 1965 Supreme Court 906 - Idol of Thakur Sri Govind Dev Ji Maharaj Vs. Board of Revenue -** Page 908- Para-6 - *An idol which is a juridical person is not subject to death because the Hindu concept is that the idol lives for ever.*

6. The question which arises is, can the grant made to the appellant be said to attract the operation of rule 5 ? Rule 5 prescribes for the levy of Matmi in respect of State grants and if the said rule applies, the appellant would have no case. In deciding the question as to whether the appellant's estate is liable to pay Matmi under r. 5 it is necessary to examine the nature of this Matmi, and find out whether a claim in respect of it can be made against the appellant. We have already noticed that Matmi means mutation of the name of the successor to a State grant on the death of the last holder. It is obvious that in the case of a grant to the Idol or temple as such there would be no question about the death of the grantee and, therefore, no question about its successor. **An Idol which is a juridical person is not subject to death, because the Hindu concept is that the Idol lives for ever, and so, it is plainly impossible to predicate about the Idol which is the grantee in the present case that it has died at a certain time and the claims of a successor fall to be determined.** That being so, it seems difficult to hold that any claim **for Matmi can be made against the appellant,** and

that must clearly lead to the inference that no amount can be recovered from the properties belonging to the **Idol on the ground that Matmi** is claimable against a person who claims to be the successor of the Shebait of the appellant.

It is next contended by Mr. Muthiah Mudaliar that there is no "institution' in this case so as to attract the operation of Section 84 (1), the institution, according to him, coming into existence only if and when the building is completed and the idol installed and consecrated in the manner prescribed by the Agama Sastras, and described by Satyanarayana Rao J. in his judgment. Consecration, according to the ceremonial rites prescribed by the Agama.

(viii) **AIR 1951 Madras Page 473 – T.R.K. Ramaswamy Servai and Anr. Vs. The Board of Commissioners –** *Para 47- Existence of idol not necessary if the public which go there consider that there is a divine presence in a particular place and by offering worship at that place they are likely to be the recipient of the bounty or blessing of God, then you have got the essential feature of a temple. The test is not the installation of an idol and the mode of its worship.*

47. It is next contended by Mr. Muthiah Mudaliar that there is no "institution' in this case so as to attract the operation of Section 84 (1), the institution, according to him, coming into existence only if and when the building is completed and the

idol installed and consecrated in the manner prescribed by the Agama Sastras, and described by Satyanarayana Rao J. in his judgment. Consecration, according to the ceremonial rites prescribed by the Agama Sastras, is not a legal requisite, though it is a sacredotal necessity according to the views of the orthodox. The test is not whether the installation of an idol and the mode of its worship conform to any particular school of Agama Sastras. If the public or that section of the public who go for worship consider that there is a divine presence in a particular place and by offering worship at that place, they are likely to be the recipients of the bounty or blessings of God, then, you have got the essential features of a temple as defined in Section 9, Clause (12) of the Act. The presence of an idol, though an invariable feature of Hindu temples, is not a legal requisite under the definition of a temple in Section 9, Clause (12) of the Act. The word "institution" which is used in Section 84 (1) of the Act is a term of very wide import, capable of different meanings according to the context in which it is used. It means, among other things, a foundation, a system, a constitution, an establishment, or organisation, a place designed for the promotion of some. religious, charitable or other object of public utility and so on. In this case, the place for the construction of the temple had been fixed, the building had

been substantially erected though not completed, the idol was ready to be installed, properties had been endowed and trustees appointed for the conduct of the worship and the management of the properties. The Board had jurisdiction to decide the preliminary fact, whether there was an institution within the meaning of Section 84 (1) and whether it was a temple as defined in the Act. It decided in the affirmative an its order Ex. R-1, dated 27-9-1938. Its decision has not been sot aside in the only manner permitted by law and has now become final and binding on the trustees. Merely because I would have come to a different conclusion from the Board, I cannot treat the order of the Board as null and void.

(ix) **AIR 1939 Madras Page 134 – Board of Commissioners of Hindu Endowment Vs. P. Narasimha – Para 5** at Page 135 – The Hindu Religious Endowments Act, no doubt, speaks of a temple as a place of "public religious worship". That what the evidence in this case describes as taking place in connection with the institution is public worship can admit of no doubt. We think it is also religious. The test is not whether it conforms to any particular school of Agama Sastras; we think that the question must be decided with reference to the view of the class of people who take part in the worship. If they believe in its religious efficacy, in the sense that by such worship, they are making themselves

the object of the bounty of some superhuman power, it must be regarded as "religious worship". In this view, the learned District Judge was not justified in holding that the appellant Board had no power under the Act to frame the scheme. The appeal must be allowed with costs here and in the Court below - costs to be paid by respondent 1."

(x) **2007 (5) SCC – Page 677 – Gedala Stachidanand Murti Vs. Commissioner,** confirms the above view.

(xi) **AIR 1989 Madras – Page 60 – P.V. Durrairajulu Vs. Commissioner of Hindu Religious Trusts –** Para 18 – Presence of Idol is not necessary. It is in this background that I will analyse the various clauses in Ex. A. 1. Veeraswami Naidu, the founder of this temple was a Police Inspector. Therefore one could take it that he was wordly wise. He had already built this Sri Ramar Madalayam. According to him it was built as a charity for the salvation of his soul. He dedicates the same to the Public and requires under the will to use as a temple and a mutt. I do not think anything more necessary than this unequivocal dedication for the public to enjoy as of right. In several places he uses the word "Sannathi"; firstly with regard to the homums; secondly with regard to the lighting during pooja days, offering prasadam and distribution of the same, the cooked rice being distributed as Prasadam. Therefore, I am unable to accept the contention

of Mr. T. R. Rajagopalan, that there is no picture of Sri Rama which has come to be installed. As a matter of fact, it came to be installed even during the lifetime of Veeraswamy, the founder, and pooja was being performed. As Viswanatha Sastri, J., pointedout in T.R.K. Ramaswami Servai v.Board of Commissioner for the Hindu Religious Endowments, Madras ILR (1950) Mad 779 : (AIR1951 Mad 473) the presence of idol is solely unnecessary, I should think this Mutt in question should answer the definition of "temple, which definition, I have already analysed. If a sense of reverence is created by the place in the belief that God resides there or if an edifice devoted to divine worship, that would be enough to attract the definition of "Temple" under Section 6(20) of the Act. In other words, it is a sense of reverence that is very important. It may be stated that this very definition has been repeated under the Act right from Act 2 of 1927, again in Act 19 of 1951 and also the present Act (Tamil Nadu Act 22 of 1959). Nowhere the requirements as are ordinarily expected of a temple are insisted upon. It is a faith that it is the abode of God that matters. It is that compelling faith, that by offering prayers, one will be the object of bounty, that is important. I consider these elements being present in this case.

(xii) **1997 (4) SCC Page 606 – Sri Adi Vishweshara of**

Kashi Vishwanath Temple v. State of U.P.-Paragraph 30 at Page 631-The nature of Hindu religion is monism. It believes in one supreme-being who manifests himself in many forms. This is the reason why Hindus start adoring any deity either handed down by tradition or brought by a Guru, Swayambhu and seek to attain the ultimate supreme.

(xiii) **AIR 1953 Allahabad – 552 – Gokul Nath Ji Maharaj Vs. Nathji Bhogilal** -According to Hindu notion what is worshipped in a temple is not the stone image or image made of wood. It is the God behind the image which is the object of worship. The real owner of the property dedicated to a temple is deemed to be God himself represented through a particular idol or deity which is merely a symbol.

Para 4 – Property worshipped for more than 300 years there can be no direct evidence of consecration.

Para 5 – After the length of time it is impossible to prove by affirmative evidence that there was consecration. However, the idol was duly recognized by all who believed it is an idol of Lord Krishna.

(xiv) **AIR 1925 Privy Council -139 – Pramathanath Mullick Vs. Pradhyumna Kumar Mullick and Others:**

Para 9 – Deity is a living being to be treated like a master**.**

Para 29 – It is not a moving chattel.

Para 31 – Hindu idol is not property. Custodian cannot destroy or cause injury.

(xv) **3 Indian Cases 642 - Full Bench of Calcutta High Court – Bhupati Nath Smrititirth Bhattacharjee Vs. Ram Lal Mitra and Ors.** ***As per Shastric Hindu Law*** *if the image is broken or lost another may be substituted in its place and when so substituted it is not a new personality but the same deity and properties previously vested in the lost or mutilated Thakur. Para 73 reads as under;*

"73. Sastri's Hindu Law page 420 shows the Hindu idea of the forms attributed to God for the convenience of worship a particular image may be insentient until consecrated but the deity is not. If the image is broken or lost, another may be substituted in its place and when so substituted it is not a new personality but the same deity and properties previously vested in the lost or mutilated Thacoor become vested in the substituted Thacoor. A Hindu does not worship the "idol" or the material body made of clay or gold or other substance, as a mere glance at the mantras and prayers will show. They worship the eternal spirit of the deity or certain attributes of the same in a suggestive form which is used for the convenience of contemplation as a mere symbol or emblem. It is the incantation of the mantras peculiar to a particular deity that causes the manifestation or presence of the deity or,

according to some, the gratification of the deity. According to either view, it is the relinquishment of property in the name of the deity for securing its gratification that completes the gift and such relinquishments are valid according to Hindu Law even if made by dying man. It may be true that the illiterate Hindu thinks of the consecrated symbol as the deity and has not any clear idea of the particular attribute of the God-head that is worshipped in a particular form, but it cannot be said with any approach to truth that the great Rishis and their commentators who declared the Hindu Law had such a gross idea of the divinity they worshipped. In this view of the case also the text of the Dayabhaga relied on in the Tagore case 9 B.L.R. 377 : 18 W. R. 359 cannot invalidate the gift in favour of a deity whose image is consecrated after the death of the door."

OWNERSHIP OF PROPERTY BY A DEITY

The right of a deity of being worshipped by its followers can never be confused with secular laws relating to management of deities since they are fundamentally different. In the present case, the question which is before this Court is that whether the site/place of Sri Rama Janma Bhumi which is believed to be the birthplace of Lord Ram by Hindus and is, therefore, a deity in itself and cannot be alienated in any manner. The law on the said point is very clear as has been explained above. It is undoubtedly apparent that the

said site cannot be alienated, even by the manager or the Shebait.

RELEVANT CASE LAWS RELIED BY SHRI RAVI SHANKER ARE AS UNDER:

(i) 1969 (1) SCC Page 555 (Jagendra Nath Naskar Vs. Commissioner of Income Tax) *Para 5 & 6-A Hindu idol owns property only in a figurative sense.*

"5. It is well established by high authorities that a Hindu idol is a juristic person in whom the dedicated property vests. fit Manohar Ganesh v. Lakshmiram called the Dakor temple case, West and Birdwood, JJ. state :

"The Hindu Law, like the Roman Law and those derived from it, recognises not only incorporate bodies with rights of property vested in the corporation apart from its individual members but also juridical persons called foundations. A Hindu who wishes to establish a religious or charitable institution may according to his law express his purpose and endow it and the ruler will give effect to the bounty or at least, protect it so far at any rate as is consistent with his own Dharma or conception or morality. A trust is not required for the purpose; the necessity of a trust in such a case is indeed a peculiarity and a modern peculiarity of the English Law. In early law a gift placed as it was expressed on the altar of God, sufficed it to convey to the Church the lands thus dedicated. It is

> consistent wit the grants having been made to the juridical person symbolised or personified in the idol."

The same view has been expressed by the Madras High Court in Vidyapurna Tirtha Swami v. Vidyanidhi Tirtha Swami and Ors. in which Mr. Justice Subrahmania Ayyar stated :

> "It is to give due effect to such a sentiment, widespread and deep-rooted, as it has always been, with reference to something not capable of holding property as a natural person, that the laws of most countries have sanctioned the creation of a fictitious person in the matter as is implied in the felicitous observation made in the work already cited "Perhaps the oldest of all juristic persons is the God, hero or the saint" (Pollock and Maitland's History of English Law, Volume I, 481)."
>
> **"6.** The consecrated idol in a Hindu temple is a juridical person has been expressly laid down in Manohar Ganesh's case, which Mr. Prannath Saraswati, the author of the 'Tagore Lectures on Endowments' rightly enough speaks of as one ranking as the leading case on the subject, and in which West J., discusses the whole matter with much erudition. And in more than one case, the decision of the Judirial Committee proceeds on precisely the same footing (Maharanee Shibessourec Dehia v. Mothocrapath Acharjo and Prosanna Kumari Debya v. Golab Chand

Baboo Such ascription of legal personality to an idol must however be incomplete unless it be linked of human guardians for them variously designated in Debya v. Golab Chand Baboo the Judicial Committee observed thus : 'It is only in an ideal sense that property can be said to belong to an idol and the possession and management must in the nature of things be entrusted with some person as shebait or manager. It would seem to follow that the person so entrusted must be necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property at least to as great a degree as the manager of an infant heir'-words which seem to be almost on echo of what was said in relation to a church in a judgment of the days of Edward I: 'A church is always under age and is to be treated as an infant and it is not according to law that infants should be disinherited by the negligence of their guardians or be barred of an action in case they would complain of things wrongfully done by their guardians while they are under age' (Pollock and Maitland's 'History of English Law', Volume I, 483."

(ii) **AIR 1957 Supreme Court 133 - Deoki Nandan Agrawal Vs. Murlidhar –** Para 6 – Endowment of property in case of an idol is only in an ideal sense and it cannot have

any beneficial interest in the endowment. This is for the worshipper. Para-6 reads as under:-

"**6.** Then the question is, who are the beneficiaries when a temple is built, idol installed therein and properties endowed therefore ? Under the Hindu law, an idol is a juristic person capable of holding property and the properties endowed for the institution vest in it. But does it follow from this that it is to be regarded as the beneficial owner of the endowment ? Though such a notion had a vogue at one time, and there is an echo of it in these proceedings (vide para 15 of the plaint), it is now established beyond all controversy that this is not the true position. It has been repeatedly held that it is only in an ideal sense that the idol is the owner of endowed properties. Vide Prosunno Kumari Debya v. Golab Chand Baboo ; Maharaja Jagadindra Nath Roy Bahadur v. Rani Hemanta Kumari Debi and Pramatha Nath Mullik v. Pradhyumna Kumar Mullik . It cannot itself make use of them; it cannot enjoy them or dispose of them, or even protect them. In short, the idol can have no beneficial interest in the endowment. This was clearly laid down in the Sanskrit Texts. Thus, in his Bhashya on the Purva Mimamsa, Adhayaya 9, Pada 1, Sabara Swami is the authenticity on the subject.

"Words such as 'village of the Gods', 'land of the Gods'

are used in figurative sense. That is property which can be said to belong to a person, which he can make use of as he desires. God however does not make use of the village or lands, according to its desires. Therefore nobody makes a gift (to Gods). Whatever property is abandoned for Gods, brings prosperity to those who serve Gods".

Likewise, Medhathithi in commenting on the expression "Devaswam" in Manu, Chapter XI, Verse 26 is as under:-

"Property of the Gods, Devaswam, means whatever is abandoned for Gods, for purposes of sacrifice and the like, because ownership in the primary sense, as showing the relationship between the owner and the property owned, is impossible of application to Gods. For the Gods do not make use of the property according to their desire nor are they seen to act for protecting the same".

Thus, according to the texts, the Gods have no beneficial enjoyment of the properties, and they can be described as their owners only in a figurative sense (Gaunartha), and the true purpose of a gift of properties to the idol is not to confer any benefit on God, but to acquire spiritual benefit by providing opportunities and facilities for those who desire to worship. In Bhupati Nath Smrititirtha v. Ram Lal Maitra , it was held on a consideration of these and other texts that a gift to an idol was not to be judged by

the rules applicable to a transfer to a 'sentient being', and that dedication of properties to an idol consisted in the abandonment by the owner of his dominion over them for the purpose of their being appropriated for the purposes which he intends. Thus, it was observed by Sir Lawrence Jenkins C. J. at p. 138 that "the pious purpose is still the legatee, the establishment of the image is merely the mode in which the pious purpose is to be effected" and that "the dedication to a deity" may be "a compendious expression of the pious purposes for which the dedication is designed". Vide also the observations of Sir Ashutosh Mookerjee at p. 155. In Hindu Religious Endowments Board v. Veeraraghavachariar , Varadachariar J. dealing with this question, referred to the decision in Bhupati Nath Smrititirtha v. Ram Lal Maitra (supra) and observed :

> "As explained in that case, the purpose of making a gift to a temple is not to confer a benefit on God but to confer a benefit on those who worship in that temple, by making it possible for them to have the worship conducted in a proper and impressive manner. This is the sense in which a temple and its endowments are regarded as a public trust".

(iii) **AIR 1970 Supreme Court 439 – Kalanka Devi Sansthan Vs. Maharashtra Revenue Tribunal –** Para 5 at Page 442 – *The properties of an idol do not vest in the*

manager or Shevait. It is the deity or the Sansthan which owns and holds the property. It is only the possession and management which vests with the manger.

Para 5 reads as under:

"**5.** It has next been contended that in the provisions of the Berar Regulation of Agricultural Leases Act, 1951 public trusts of charitable nature were included among those who could claim possession from a tenant on the ground of personal cultivation. It is not possible to see how the provisions of a repealed statute which was no longer in force, after the enactment of the Act, could be of any avail to the appellant. The decision in Ishwardas v. Maharashtra Revenue Tribunal and Ors.: [1968]3 SCR 441 = (AIR 1968 SC 1364) has also been referred to by the counsel for the appellant. In that case it was said that under Section 2(18) of the Bombay Public Trusts Act a trustee has been defined as meaning a person in whom either alone or in association with other persons the trust property is vested and includes a manager. In view of this definition the properties of the trusts vest in the managing trustee and he is the landlord under Clause 32 of Section 2 of the Act. As he is the landlord, he can ask for a surrender from the tenant of the lands of the trust "to cultivate personality". In the present case it is common ground that the Sansthan is a private trust and is not governed by the provisions of the Bombay Public Trusts Act. The manager of the Wahiwatdar of the Sansthan cannot, therefore, fall within the

definition of the word "trustee" as given in Section 2(18) of that Act. It may be mentioned that in Ishwardas, case : [1968]3 SCR441 = (AIR 1968SC 1364) the court refrained from expressing any opinion on the question whether a manager or a Shebait of the properties of an idol or the manager of the Sansthan can or cannot apply for surrender by a tenant of lands for personal cultivation. The distinction between a manager or a Shebait of an idol and a trustee where a trust has been created is well recognised. The properties of the trust in law vest in the trustee whereas in the case of an idol or a Sansthan they do not vest in the manager or the Shebait. It is the deity or the Sansthan which owns and holds the properties. It is only the possession and the management which vest in the manager."

(iv) AIR 1960 Supreme Court Page 100 -(Narayan Vs. Gopal) Para 35 to 38 – A manager of a public temple has no right to remove the idol especially when majority of the worshippers object to it. It quotes Kane – an idol is not to be removed permanently because that would tantamount to establishing a new temple. However, if the public agreed to temporary removal it could be done for a valid reason. Paras-35 to 38 read as under:-

"35. There are, however, cases in which this matter has come up for consideration before the Courts. In Ram Soondur Thakoor v. Taruck Chunder Turkoruttun , there was a destruction of the temple

by the erosion of the river on the banks of which the idol was installed. The suit was filed by the plaintiffs for a declaration of their right to remove the idol to their own house and to keep it there for the period of their turn of worship. This claim was decreed. On appeal, Dwarknath Mitter and Ainslie, JJ., interfered only to the extent that the lower Court ought to have defined the precise period for which the plaintiffs were entitled to worship the idol before it could make the declaratory decree, which it had passed in their favour. They also directed that if it was found by the lower appellate Court that the plaintiffs and the defendants were jointly entitled to worship the idol during any part of the period mentioned by the plaintiffs, the lower appellate Court should not allow the plaintiffs to remove the idol to their own house at Khatra for that portion of time. It appears from the judgment that though the plaintiffs were allowed to remove the idol to their own house, they were to re-convey it at their own expense to the place where it was at the time of the institution of the suit. The learned Judges, however, qualified their judgment by saying that it was not contended in the case before then that the idol was not removable according to the Hindu Shastras.

> 36. In Hari Raghunath v. Anantji Bhikaji , ILR 44 Bom. 466 (AIR 1920 Bom. 67 (2), the temple was a public one. It was held by the High Court that under Hindu law, the manager of a public temple has no right to remove the

image from the old temple and install it in another new building, especially when the removal is objected to by a majority of the worshippers. It is interesting to note that in this case Dr. P. V. Kane appeared, and in the course of his argument, he stated as follows :

> "According to the Pratishtha-Mayukha of Nilkantha and other ancient works an image is to be removed permanently only in case of unavoidable necessity, such as where the current of a river carries away the image. Here the image is intact. It is only the temple that is dilapidated. For repairing it, the image need not necessarily be removed. Even if it may be necessary to remove the image, that will be only temporarily. The manager has under Hindu law no power to effect permanent removal of an image in the teeth of opposition from a large number of the worshippers. In the instances cited by the appellant, worshippers had consented to the removal. Permanent removal of an image without unavoidable necessity is against Hindu sentiment."

(Italics hereto supplied)

Shah, J. (Crump J. concurring) observed as follows:

"It is not disputed that the existing building is in a

ruinous condition and that it may be that for the purpose of effecting the necessary repairs the image may have to be temporarily removed. Still the question is whether the defendant as manager is entitled to remove the image with a view to its installation in another building which is near the existing building. Taking the most liberal view of the powers of the manager, I do not think that as the manager of a public temple he can do what he claims the power to do, viz., to remove the image from its present position and to instal it in the new building. The image is consecrated in its present position for a number of years and there is the existing temple. To remove the image from that temple and to instal it in another building would be practically putting a new temple in place of the existing temple. Whatever may be the occasions on which the installation of a new image as a substitute for the old may be allowable according to the Hindu law, it is not shown on behalf of the defendant that the ruinous condition of the existing building is a ground for practically removing the image from its present place to a new place permanently. We are not concerned in this suit with the question of the temporary removal which may be necessary when the existing building is repaired."

The case is an authority for the proposition that the

idol cannot be removed permanently to another place, because that would be tantamount to establishing a new temple. However, if the public agreed to a temporary removal, it could be done for a valid reason.

37. In Pramatha Nath Mullick v. Pradyumna Kumar Mullick, 52 Ind App 245 (AIR 1925 PC 139), the deed of trust created an injunction against the removal of the deity. The following quotation from that deed of trust shows the powers of the manager :

> "Shall be for ever held by the said Jadulal Mullick, his heirs, executors, administrators and representatives to and for the use of the said Thakur Radha Shamsunderji to the intent that the said Thakur may be located and worshipped in the said premises and to and for no other use or intent whatsoever provided always that if at any time hereafter it shall appear expedient to the said Jadulal Mullick, his heirs, executors, administrators or representatives so to do it shall be lawful for him or them upon his or their providing and dedicating for the location and worship of the said Thakur another suitable Thakur Bari of the same or greater value than the premises hereby dedicated to revoke the trusts hereinbefore contained and it is hereby declared that unless and until another Thakur Bari is provided and

dedicated as aforesaid the said Thakur shall not on any account be removed from the said premises and in the event of another Thakur Bari being provided and dedicated as aforesaid the said Thakur shall be located therein, but shall not similarly be removed therefrom on any account whatsoever."

The Privy Council analysed this provision, and stated that the last condition made the idol immovable, except upon providing for the dedicate another Thakur Bari of the same or larger value. It observed :

"The true view of this is that the will of the idol in regard to location must be respected. If, in the course of a proper and unassailable administration of the worship of the idol by the Shebait, it be thought that a family idol should change its location, the will of the idol itself, expressed through his guardian, must be given effect to."

Their Lordships ordered the appointment of a disinterested next friend, who was to commune with the deity and decide what course should be adopted, and later the instructions of the deity vouchsafed to that representative were carried out. In this case, there was a family deity and there was a provision for removing the idol to another better and more suitable Thakur Bari, if it appeared necessary. The wishes of the deity were

considered and consulted. The case, however, is not quite clear as to whether in all circumstances the idol can be removed from one place to another.

38. The last case on the subject is Venkatachala v. Sambasiva, AIR 1927 Mad. 465: 52 Mad. LJ 288. The headnote quite clearly gives the decision, and may be quoted here :

> "Where all the worshippers of a temple, who are in management of it, decide to build a new temple, the old one being in ruins and the site on which it stood becoming insanitary and inconvenient for worshippers, then, unless there is clear prohibition against their demolishing the old temple and building a new temple, the Court is not entitled to prevent the whole body from removing the temple with its image to a new site in the circumstances."

Devadoss, J., quoted passages from Kamika Agama, and referred to Prathista Mayukha by Nilakanta, Purva Karana Agamam and Nirnaya Sindhu. He, however, relied upon certain passages from Purva Thanthiram by Brighu, Kamika Agama, Siddhanta Sekhara and Hayasirsha Pancharatra, and came to the above conclusion. The effect of the decision is that the whole body of worshippers, if they are of one mind, can even

permanently remove an idol to another habitation.

AN IDOL/PUBLIC TEMPLE IS NOT SUBJECT TO ALIENATION (Res extra-commercium)

It is a well known legal proposition that temples are sancrosanct and there cannot be alienation of a public temple under any circumstance being res extra commercium. Shri Ravi Shanker has relied over following cases:-

(i) AIR 1957 Allahabad – 77 : Mukundji Mahraj Vs. Persotam Lalji Mahraj -Para 28-29 – A temple has a special sanctity distinct from other endowed property. To alienate a temple itself is to cut at the root of the very existence of the idol. Hindu sentiments view the alienation of a temple as a sacrilege. The sale of temple and an execution of a deed are totally void.

28. Whatever may be said about a permanent alienation of endowed property other than a temple, in the very nature of things, having regard to the duties of a Manager or a Shebait towards the idol or institution, there can be no necessity of alienating the temple or any portion of it in which the idol is installed. The maintenance of the entire building is the prime concern of the Manager or the Shebait.

(ii) The temple has a special sanctity distinct from other endowed property. To alienate the temple itself is to cut at the root of the very existence of the idol in the habitation

intended by the founder. Hindu Sentiment views the alienation of a temple as a sacrilege. Not until the idol has been removed from the temple in accordance with shastric rites and has assumed a new habitation and the temple abandoned as a place of worship may the temple be alienated or sold in execution of a decree.

Para 31 – Idol was not a party and hence the decree is nullity. This brings us to the question of limitation. As the idol was not properly represented in the aforesaid suits, the decrees were nullities as against the idol. , In such cases the principle laid down by the Privy Council in Rashidunnisa v. Muhammad Ismail, ILR 31 All 572 (PC) (I) and by this Court in Dwarika Halwai v. Sitla Prasad, AIR1940 All 256 (J) applies. The decree is not merely voidable, but null and void. The decrees being nullities can be ignored and the plaintiff is not under the necessity of having them set aside before suing for possession.

Limitation would run against the plaintiff from the date on which the defendant took effective possession over the property, see Sudarsan Das v. Ram Kirpal Das, AIR 1950 PC 44 (K). This possession was taken in 1936. The period of limitation would be 12 years under Article 142, Limitation Act. The suit was, therefore, well within time.

(ii) **AIR 1940 Madras – 208 - Kashi Mangal Nath IIIath**

Vishnu Namboodiri vs. Pattah Ramamuni Mara – Para 2 – Public temple is res extra-commercium, i.e., cannot be alienated, hence no adverse possession.

(iii) **(1888) ILR 12 Bombay 247 – (Manohar Ganesh Tambekar Vs. Lakhmiram Govindram)** Para 88 – Temple property is res extra-commercium.

(iv) AIR 1974 Calcutta 126 -Smt. Panna Banerjee Vs. Kali Kinkar – para 65-66 – ***An*** *idol can never be made a subject matter of commerce. It is opposed to the fundamental concept of Hindu jurisprudence. It is so repulsive to judicial mind that every court is bound to strike it down.* ***The deity cannot be sold. It is not a property and none can be its owner not even its founder.***

65. Moreover the alleged custom, if any, as to the sale of these deities is wholly void. An idol can never be the subject-matter of commerce. The sale of an idol is prohibited by Hindu Law, (See Khettar Chunder Ghose v. Haridas Bundopadhyay, (1890) ILR 17 Cal 557 at p. 559). A deity is not a chattel but a juridical person. No custom can ever validate a sale of any deity. The legal necessity of the deity cannot destroy the very existence of the deity by selling it in the open market. The very thought of It is opposed to the fundamental concept of the Hindu Jurisprudence. It is against public policy. It is wholly unreasonable. It is absolutely

repugnant to the Hindu Law. It is so repulsive to the judicial mind that every Court is bound to strike it down in limine.

(v) **(1890) ILR 17 Calcutta 557 at 559 (Khittar Chander Ghosh Vs. Haridas Bandopadhyay) –** Para 66 – The deity is not a property. None can own it. Para 126 – idol is not a transferable property.

(vi) **AIR 1974, Supreme Court, 1932, Kali Kinkar Ganguli Vs. Panna Banerji, Para 24-25, at Page 1936 –** Neither the temple nor the deities nor the Shevaiti right can be transferred by sale for pecuniary consideration. **The transfer by sale is void in its inception.**

Dr. B. K. Mukherjea doubted the propriety of these decisions. Shri Venkatarama Aiyar as the editor of the Second Edition of Dr. B. K. Mukherjea's Tagore Law Lectures also expressed the same view at pages 219-220 even if the transfer is for no consideration the transfer would be bad if it is not in favour of those next in the line of succession.

INDIAN CLASSICAL TEXTS, THE DHARMA SHASTRAS AND OTHER COMMENTARIES FORM THE BASIS OF THE HINDU FAITH WHICH ARE DULY RECOGNISED IN LAW.

The above proposition of the sanctity of Hindu Temples have also been given recognition by Hindu scriptures and legal texts from ancient times and have been accepted by both modern Hindu

texts as well as the Courts who have stressed that the conception of Hindu Law must be judged in terms of Hindu world views very specifically.

THE RELEVANT CASE LAWS ARE AS UNDER:-

(i) AIR 1953 Supreme Court 491 – Saraswathi Ammal and another Vs. Rajagopal Ammal – *Para 6 – Page 494 – It is correct to say that what is a religious purpose under the Hindu Law must be determined according to Hindu notions. So far as the textual Hindu law is concerned what acts conduce to religious merit and justify a perpetual dedication of property therefore is fairly definite.*

"6. Now, it is correct to say that what is a religious purpose under the Hindu law must be determined according to Hindu notions. This has been recognised by courts from very early times. Vide Fatma Bibi v. Advocate General of Bombay, 6 Bom. 42(D). It cannot also be disputed that under the Hindu law religious or charitable purposes are not confined to purposes which are productive of actual or assumed public benefit. The acquisition of religious merit is also an important criterion. This is illustrated by the series of cases which recognize the validity of perpetual endowment for the maintenance and worship of family idols or for the continued

performance of annual sradhs of an individual and his ancestors. See Dwarkanath Bysack and another v. Burroda Persaud Bysack and Rupa Jagashet v. Krishnaji . So far as the textual Hindu law is concerned what acts conduce to religious merit and justify a perpetual dedication of property therefore is fairly definite. As stated by the learned author Prananath Saraswathi on the Hindu Law of Endowments at page 18 -

"From very ancient times the sacred writings of the Hindus divided works productive of religious merit into two divisions named ishta and purtta, a classification which has come down to our own times. So much so that the entire object of Hindu endowments will be found included within the enumeration of ishta and purtta."

The learned author enumerates what are ishta works at pages 20 and 21 and what are purtta works at page 27. This has been adopted by later learned authors on the law of Hindu Religious Endowments and accepted by Justice Subrahmania Ayyar in his judgment in Parthasarathy Pillai and another v. Thiruvengada Pillai and others . These lists are no doubt not exhaustive but they indicate that what conduces to religious merit in Hindu law is primarily a matter of Shastraic injunction. To the extent, therefore, any purpose is claimed to be a valid one for perpetual

dedication on the ground of religious merit though lacking in public benefit, it must be shown to have a Shastraic basis so far as Hindus are concerned. No doubt since then other religious practices and beliefs may have grown up and obtained recognition from certain classes, as constituting purposes conducive to religious merit. If such beliefs are to be accepted by courts as being sufficient for valid perpetual dedication of property therefore without the element of actual or presumed public benefit it must at least be shown that they have obtained wide recognition and constitute the religious practice of a substantial and large class of persons. That is a question which does not arise for direct decision in this case. But is cannot be maintained that the belief in this behalf of one or more individuals is sufficient to enable them to make a valid settlement permanently tying up property. The heads of religious purposes determined by belief in acquisition of religious merit cannot be allowed to be widely enlarged consistently with public policy and needs of modern society."

(ii) AIR 1952 Supreme Court – Page 75 – The State of West Bengal Vs. Anwar Ali Sarkar – At para 84 – Page 103 – Much of the existing Hindu law has grown up in that way from instance to instance the threads being

gathered now from the Rishis, now from custom, now from traditions.

84. "I realise that this is a function which is incapable of exact definition but I do not view that with dismay. The common law of England grew up in that way. It was gradually added to as each concrete case arose and a decision, was given ad hoc on the facts of that particular case. It is true the judges who thus contributed to its growth were not importing personal predilections into the result and merely stated what was the law applicable to that particular case. But though they did not purport to make the law and merely applied what according to them, had always been the law handed down by custom and tradition, they nevertheless had to draw for their material on a nebulous mass of undefined rules which though they existed in fact and left a vague a awareness in man's minds, nevertheless were neither clearly definable not even necessarily identificable, until crystalised into concrete existence by a judicial decision; not indeed is it necessary to travel as far afield. Much of the existing Hindu law has grown up in that way from instance to instance, the threads being gathered not from the rishis, now from custom, now from tradition. In the same way, the laws of liberty, of freedom and of protection under the Constitution will also

slowly assume recognisable shape as decision is added to decision. They cannot, in may judgment, be enunciated in static from by hidebound rules and arbitrarily applied standards or tests."

TEXTUAL AUTHORITIES

(1) Relevant quotations from the book "History of Dharma Shastra" by P.V.Kane -

P.V. Kane was not only an outstanding jurist and a brilliant lawyer. His seminal contribution in collecting all the relevant Dharma Shastras, Shruti and Smritis and commentaries of great saints, Rishis, thinkers and men of great learning who have defined the contours of Hindu law in the last thousands of years, till date remains one of the most authoritative expositions of Hindu law and widely quoted by Supreme Court and other High Courts. In many ways he remains the last word on such interpretations.

(i) Quotation from Vol. II Part II – Chapter XXVI-

Page 911 – The *Mitakshara* on Yajnavalkya II 186 says that the king should sedulously safeguard all rules about the pastures for cows (in a village) or about the preservation of tanks and temples.

Page 911 – Manu IX 280 requires the king to pronounce the death sentence on those who break into a royal store house or an armoury or a temple and prescribed that the breaker of an image shall repair the whole damage and also pay a fine of 500 Panas.

Page 911 and 912 – Kautilya III 9 prescribes punishment for

encroachment on temple.

(ii) Vol. III Page 327-328 – Narad IV, Page-83, emphatically states that women's property (*Streedhana)* and stated property (land) is not lost even after hundreds of years when it is enjoyed without title. **Katyayana (330) adds to the above list Temple Property and what is inherited from the father or mother. All systems of jurisprudence throw protection round the interests of minors, persons of unsound mind and others similarly situated and provide longer periods of possession for loss of their right.**

(1991) 4 All England Reports 638 – Bumper Development Corporation Vs. Commissioner of Police of the Metropolis and Other (Union of India and Others Claimants). In this case, the Court of Appeal in England held that a ruined Hindu temple had a better title over Shiv Nataraja than a British company which has purchased it for the purpose of auction.

<u>(2) **Quotation from Yajnavalkya Smriti from its translation into English by Manmatha Nath Dutt**</u>

Sutra 343 – When a foreign kingdom is brought under subjection he should observe the conduct, law and

family practices obtaining in the4 same kingdom.

Even in the Mulla's Hindu Law at Page 84, Chapter-II, **Source of Hindu Law, Yajnavalkya 343 is quoted - "Whatever customs, practices and family usages prevail in a country shall be preserved intact when it comes under subjection by conquest."**

THE ABOVE AUTHORITY BY EMINENT SAINTS AND RISHIS WHO WERE GREAT JURISTS OF HINDU LAW HAS ALSO BEEN RECOGNISED BY MODERN COMMENTARIES.

Even the latest research and the modern historical view of Hindu Law clearly upholds that the sacredness and sanctity of Hindu Temples were protected during Islamic Rule in India, or where the temples were and the classical Hindu literature and customary law was protected both during Islamic Rule and British Rule.

RELEVANT TEXTS AND CASE LAW RELIED BY SHRI RAVI SHANKER ARE AS UNDER:-

(I) Mayne's Hindu Law & Usage (16th Edition) – Chapter II, Page 16, Para 13 – The list of law givers – The Smriti of Yajnavalkya gives a list of 20 sages as law givers – Manu, Atri, Vishnu, Harita, Yajnavalkya, Usana, Angiras, Yama, Apastamba, Samvarta, Katyayana, Vrihaspati, Gautama, Vasistha and others as the propounders of Dharma Shastra.

This quote clearly shows the authority of the earlier scriptures cited above even in today's Hindu Law.

(ii) In the same book, in Chapter-I (**The Nature and Origin of Hindu Law)** at Para 4, Page 3, it is clearly mentioned that even after the establishment of Mohammedan rule in the country the Smriti law continued to be fully recognized and enforced.

(iii) There is a very extraordinary book (**The Classical Law of India by Robert Lingat translated by J. Duncan M. Derrett).** It is to be noted that Robert Lingat who was a professor at Sorbonne University, Paris, was a very well-known author of many works on Hindu law. He is rated very high. Similarly, Duncan Derrett is equally a highly respected jurist widely recognized and he has written among others two well-known books – Hindu Law – Past and Present (Calcutta 1957) and Religion, Law and State in India (1968).

(iv) Therefore, the work of an outstanding authority on Hindu law which was written in French has been translated by equally outstanding jurists on Hindu law. The conclusion portion of the said book is to be found from pages 257 to 272. Their conclusion is the same that the classical Hindu law also remained operational during the Mughal period.

(V) **AIR 1952, Allahabad 825-S. Darshan Lal Vs. Dr. R.E.S. Daliwall,** Para 15-16. The same principle is applicable in English law as well.

16. "The matter may be considered upon broader principles. According to English law, Englishmen carry English law with them in countries which were formerly uninhabited and are peopled by them. English common law as well as Statute law brought into force up to the date of the settlement is applicable to such colony to the extent to which such laws are suitable to the conditions of the colony. Statutes passed subsequently apply to the colony only if they are made expressly applicable to it. In an inhabited country, however, obtained by conquest or cessation, law already prevalent therein continues to prevail except to the extent to which English law has been introduced and also except to the extent to which such law is not civilised law at all, vide Yeap Cheah Neo v. Ong Cheng Neo (1875) 6 p. c. 381. India fell in the category of conquered or ceded country because it was already inhabited and civilised law prevailed therein before the advent of the British and, therefore, prima facie there can be no presumption that English law applied to Indians in India."

(VI) **84 Ind. Cas. 759- Advocate General of Bombay Vs. Yusuf Ali Ebrahim,** Para 95 to 109:

95. Now coming down to first principles, British Government brings to its subjects, as a general rule, liberty of the person, liberty of conscience, liberty of speech, liberty to own property, and last, but perhaps not least, equality of man in the sight of the law. But the liberty granted to one subject must not be used to the detriment of another subject. The principle sic utere tuo ut alienum non loedas is applicable to rights as well as property. In other words, liberty must not degenerate into license. Hence the law has to impose restraints on those who misuse the privileges of a free citizen. The slanderer, for instance, is restrained by the law of libel, the thief by the Indian Penal Code. But the fact that such restraints exist and apply to all citizens alike is not a slur upon the honest citizen. It is unthinkable that His Grace the Archbishop of Canterbury, for instance, would commit a criminal offence, but he is subject to the Criminal Law all the same, and this act involves no slur. So, too, in theory the Mullaji Saheb is amenable to the Criminal and Civil Law of this country, through it is unthinkable that he would commit any offence. A striking instance of his is the attempt made by the

Dawoodi Borah Priest to put the 49th Dai into prison for failure to pay a judgment debt, and which I have already referred to. (See Ex. B. E5)

96. Similar principles apply, I think, to trustees. The foundation of the law of trusts is that the trustee is trusted. Hence the greater the trust, the more unthinkable does it become that the trustee will violate it. And yet the law has to impose restraints on the guilty or negligent trustee and to give its assistance to any honest trustee who requires it. But the existence of these civil restraints is no more a slur upon the honest trustee, than the existence of criminal restraints is upon the honest citizen. Hence in my judgment the infallibility of any particular individual does not affect his theoretical legal position in the slightest. In short the test of a trust is not whether the alleged trustee can ever commit a breach of trust, which is what the defendants contention in effect amounts to. His Holiness the Pope of Rome claims to be infallible and immaculate, and Iris followers are numbered by the million and are found in ail parts of the globe. And yet in Moore v. The Pope (1919) 1 Ir. R. 316, His Holiness submitted to the jurisdiction of the Irish Courts and contented that a bequest to him to be applied at his sole, discretion in carrying out the duties

of his sacred office was a valid charitable bequest. If the defendants are correct, the Holy Father ought to have strongly protested against any suggestion that he could be a trustee of a charitable fund. He was held to be a trustee but that the trust was invalid.

97. In 1 Blackstone's Commantaries 112 (which is quoted in Halsbury's Laws of England, Volume 11, page 717), I find the following passage:

> In respect of these lands the King as supreme Ecclesiastical head was entitled to the Ecclesiastical emoluments in trust that he should distribute the same for the good of the Church.

98. This, of course, was before the days of Governors of Queen Anne's Bounty and Ecclesiastical Commissioners and Charity Commissioners, who now relieve the burden which would otherwise fall upon the Crown, but it shows that even in olden days the Crown thought it no slur to be regarded as a trustee. As the present is not a case of Sovereign rights, I need not consider what remedies, if any would be open in such a case to a subject who alleged a misapplication of such emoluments.

99. Nor has the Mullaji or his predecessors been ashamed in other days to be called trustees. In the book,

Ex. A. L., to which I attach great importance, the 48th Dai describes the Dai and his duties as follows:

He is the trustee of the public funds which it is his duty to dispose of economically and at his discretion as directed by the sacred rules, in relieving the distressed and needy so as to save them from sordid beggary, and paying the expenses incurred by them and his deputies and discharging their sacred duties and in keeping schools and institutions for religious and secular instructions.

100. In Ex. 16, which is a later edition by the present Mullaji, the corresponding passage runs:

He is the trustee of the public funds of the community which it is his duty to dispose of economically as directed by the sacred Laws of Islam.

101. The defendants have relied on Her late majesty Queen Victoria's Proclamation of November, 1, 1858.

102. His Lordship quoted the portion of the Proclamation dealing with religious toleration and then proceeded as follows.

103. If, in the words of the Proclamation, all alike are to enjoy the equal and impartial protection of the law, charitable trusts must be protected just as other trusts are. This is no breach of the rest of the Proclamation.

Accordingly, Section 14 of the Religious Endowments Act, 1863, gives some protection as regards certain mosques and other places of worship. Section 92 of the C.P.C. Is still wider in its application. And recently in response to a public demand for still greater protection for Indian religious and other charities, the Charitable and Religious Trust Act, 1920, has been passed. Nowhere do I find any express exemption of Dawoodi Borah mosques or other charities.

104. But speaking very generally, the protection of the law in religious matters of confined to the protection of religious property or a religious office. The Court will not decide mere questions of religious rites or ceremonies (see C.P.C. Section 9), nor will it, I think, pronounce on any religious doctrine see Attorney-General v. Pearson (1917) 3 Mer. 353 at P. 409 : 17 R. R. 100 : 36 E. R. 135 unless it is necessary to do so in order to determine rights to property, as in Free Church of Scotland (General Assembly of) v. Oyertoun (Lord) (1904) A.C. 515 : 91 L. T. 395 : 20 T. L. P. 730. As put by Mr. Justice Melvill in Vasudev v. Vamnaji (5 B. 80 at PP. 81, 82 : 5 Ind. Jur. 427 : 3 Ind. Dec. (N. S.) 55. It is the policy of the State to protect all religious, but to interfere with none.

(VII) **1 Ind. Cases 834-Jamshedji Cursetjee Tarachand Vs. Soonabai,** Paras 166 to 171:

166. Now, in this case it is proved beyond doubt that according to the doctrines of the Zoro astrian religion the performance of the Muktad ceremonies is enjoined-- that it is the duty of all Zoroastrians to have these ceremonies performed. The Court has before it the knowledge what ceremonies are obligatory and what are optional-- the Court has before it the prayers ordained to be recited during the ceremonies-- the Court has before it the evidence of witnesses proving that these ceremonies have to be performed by priests who are paid for doing so and such honoraria as they receive form a portion of their income, and are their ordinary means of livelihood. The Court is then in a position to judge how far the witnesses are right, when they say the performance of such religious ceremonies amounts to an Act of Divine worship which is believed by the community to bring down to the world both temporal and spiritual benefits-- not only on those that perform the ceremony--but on the whole community--on their country and their Sovereign--on all mankind—on the Universe. If this is the belief of the community--and it is proved undoubtedly to be the belief of the Zoroastrian

community--a secular judge is bound to accept that belief--it is not for him to sit in judgment on that belief--he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be in advancement of his religion and for the welfare of his community or of mankind, and say to him, "You shall not do it." This court can only judge of the efficacy of such gifts in procuring public benefits by the belief of the donor and of the community to which he belongs--the belief of those who profess the religion-- the ordained ceremonies of which the donor desires performance.

167. Lord Justice Fitz Gibbon, speaking on the point, says (at p. 279):

In determining whether the performance of any particular rite promotes any particular religion, and benefits the members of the Church or denomination, or body, who profess it, the secular Court must act upon evidence of the belief of the members of the community concerned. It can have no other guide upon that subject.

The exclusiveness, the vagueness, or the self-sufficiency of principles religiously held by particular creeds, whether they rest on dogma, or on conscience, cannot exclude those who profess any lawful creed from the benefits of charitable gifts.

It would be strange, indeed, if bequests for the promotion of total abstinence, or even vegetarianism; for the maintenance of a place of worship, or of a minister for a small congregation of peculiar people; for the dissemination of the works of Joanna Southcote; or for the prevention of cruelty to animals, should be held, as they have been, to be charitable objects, if a provision by a Roman Catholic, for Roman Catholics, for the celebration of the Mass, more especially in Ireland, where 'Superstitious Uses' are not mala prohibits, were to be excluded from that category.

168. To this I would add that it would be stranger still in a country like India, where superstition abounds, where each community is by the Crown left free to profess what religion it pleases-- from where the doctrine of superstitious uses is rigorously excluded, where trusts of lands and moneys in perpetuity for idols and similar trusts are recognised and enforced by the Courts-- that a Parsi professing the Zoroastrian religion should be precluded from making a gift for the performance of religious rites and ceremonies, which he is enjoined by the religious he professes to perform, and the non-performance of which, according to his religion, is a great sin. Why should he be precluded from setting apart a

portion of his property and devoting it to a purpose which he believes would result in benefits to himself, his family and his community-- in promoting the religion he professes and saving his descendants from committing a sin should circumstances place them in a position of inability to perform these ceremonies for want of means. On this point in the same case Lord Justice Fitz Gibbon, a Protestant Judge, observes (at p. 280):

Speaking with all reverence of a faith which I do not hold, touching the very 'Mystery of Godliness', I could not impute to any individual professing the Roman Catholic religion that he regarded a gift of money for Masses as a means of seeming from such a Sacrifice a private and exclusive benefit for himself alone, as being much less than blasphemy; and, as I understand the proved doctrine of the Church, it would certainly be heresy. But the hope or belief that, in some shape or form, her or hereafter, a man's good works will follow him-- an ingredient of selfishness in that sense-- enters into almost every set of charity; and if the act is done in the belief that it will benefit others; for example, in the belief that he that gives to the poor lends to the Lord, it can be none the less charitable because the giver looks for his reward in heaven.

169. Lord Justice Fitz Gibbon ends his judgment by saying:

The fruition of faith, 'the evidence of things not seen', is hidden from humanity. It is not within the power of any earthly tribunal to entertain the question whether these propositions are true. But it is for us to decide that belief in their truth is part of the faith of the members of the Church which has laid them down.

170. Speaking of the belief of the Roman Catholics in the efficacy of the performance of Masses being benefits to the community, Lord Justice Holmes says (at p. 286):

A temporal Court in Ireland, having no authority to decide for itself whether it was true or not, must take as its guide the belief of the Church of which the testatrix is a member.

171. I would like here to say that so far as I am concerned, I have scarcely ever come across a case in a Court in another country bearing closer resemblance to facts and contentions of a case before our Courts than the case of O'Hanlon v. Logue (1861) 30 Beav. 360 at p. 362 bears to the present case. It must be remembered that it is decided by the tribunal having the highest jurisdiction in a country in which religious matters bear remarkable analogy to this country-- Ireland like India having no

established Church, no State religion, and where the doctrine of superstitious uses has no application. It is decided as recently as 1906, its pronouncements are clear and emphatic; there is no element of doubt or a note of uncertainty in the judgments pronounced; every case of importance on the subject, ancient or modern, is carefully considered and the question before the Court finally and definitely settled. Judgments such as those pronounced in this case must command the respectful attention of other Courts deciding similar questions. This case alone is sufficient to set at rest all doubts and remove all difficulties in the decision of this case, and enables me to answer the question before me-:

Whether the Trust declared in respect of the Government Promissory Notes for 15,000 Rupees mentioned in the plaint are valid in the affirmative with considerable confidence. I hold that Trusts and bequests of lands or money-- for the purpose of devoting the incomes thereof perpetuity for the purpose of performing Muktad, Baj, Yejushni and other like ceremonies, are valid "charitable" bequests, and as such exempt from the application of the Rule of Law forbidding perpetuities.

It is, therefore, very clear that the injunction against destruction of Hindu temples has been maintained even

during the times of Muslim rule in India and, therefore, the question of destruction of the preexisting Hindu temple and construction of the mosque on the said spot therefore cannot be said to be acceptable and is null and void.

IMPORTANCE OF RAM JANMASTHAN IN HINDU RELIGION

There is voluminous evidence available on record both documentary and oral which substantially establish that Lord Ram was born at the place which the Hindus believe to be the Rama Janmasthan since times immemorial. The worship, divine character and sacred status has been recognized not only be the classical literature, tradition but also by series of travel records of foreigners, gazetteers as also foreign authorities. Some of the said Hindu authorities and scriptures are quoted below:

SACRED SCRIPTURES

(ii) **Valmiki Ramayana-** The Vlamiki Ramayana is integral to Hindu faith and ethos which deals elaborately with the birth of Lord Ram and the entire life of Prabhu Ram thereafter becomes a part of Indian psyche passed on from generations to generations. There is a very famous book **"Sanskriti Ke Chaar Adhyay" by the very well-known Hindi poet and writer ramchari Singh Dinkar.** The foreword of this book was written by Jawahar Lal Nehru as the Prime

Minister when the book was first published in 1956. The learned author in his book, reprinted in 2009, at page 72, has mentioned the profound impact which Valmiki Ramayana had created in the entire country leading to the story of Lord Rama being reproduced in many languages of India and outside. He particularly mentions Kamban Ramayana (Tamil), 12th Century, Telugu Dwipad Ramayana (12th Century), Malayalam Ramacharitam (14th Century), Bangla Kritibas Ramayana (15th Century), Oriya Balaram Das Ramayana (15th Century), Kannada Torave Ramayana (16th Century), Hindi Ramcharit Manas (16th Century) and Marathi Bhavarth ramayana (16th Century). The learned author also quotes that Rama Kavya was equally popular in the literature of Tibet, Sri Lanka, Khotan Indo-China, Burma and Sumatra and Kashmir and Indonesia.

Therefore, the Valmiki Ramayana, in fact became the symbol of India's cultural unity and shining symbol of Hindu faith. In effect, if became the pivot of Sanatana Dharma much before the arrival of Mughals in India. The impact of valmiki Ramayana was felt whereever the Sanatana Dharma went.

(iii) Quotations from **Valmiki Ramayana: Chaturvedi Dwarka Prasad Sharma** has translated Valmiki

Ramayana which was published in the year 1982 by Ram Narayan Lal Publisher, Allahabad. It contains the relevant Shlokas as also its Hindi translation. In the Bal Kand, Chapter-18, Shlok Nos. 8 to 18, at Pages 144 and 145 of the said book, contains the entire story as recited in Valmiki Ramayana about the birth of Lord Ram. It specifically mentions about the astrological alignment at the time of Lord Ram's birth, the celebrations in Ayodhya. Shlok 12 particularly mentions that He was the manifestation of Lord Vishnu.

(iv) There is another book "**Sri Ramayana Mahakavya" by Mahakavi Valmiki,** edited by Pt. Shripad Damodar Satvalekar. It also mentions the same thing, i.e. the relevant Sanskrit Shloka of Valmiki Ramayana and its Hindi translation.

(v) **In the Skanda Puran,** in Chapter ***"Ayodhya Mahatmya",*** the entire Shloka 13 to 20 mention the details about birth of Lord Ram and the highly sacred and divine character of Ayodhya and the *janmasthan.*

(vi) In fact, the **English translation of the Skanda Puran has been published by Motilal Banarsidas** as a part of Ancient Indian Tradition and Mythology series. In fact the book has been recognized by the

UNESCO Collection of Representative Works and also jointly sponsored by the Government of India. It has been translated and annotated by Dr. G.V. Tagare. Vol. 55, Part-VIII, Chapte-X, Pages 216 to 218, Shlokas 13 to 25, mentions specifically vide Sholka 18-19 by Agastaya that to the North-East of that spot is the place of birth of Rama. This holy spot of the birth is, it is said, is the means of achieving salvation. It further says, in Shlokas 22-25, that visiting the place of birth one attains the merits of ascetics. Further, vide Shloka 20, it is specifically mentioned that by visiting it one attains Moksha, i.e., escape from rebirth.

(vii) The above two scriptures and texts embody not only the essence of the birth of Lord Ram, but highlight with due sanction of Shastric texts the divinity and sanctity which attaches to the place of birth of Lord Ram and the blessings one attains by having the Darshan of the same. They form an integral part of Hindu faith and practiced as such even till today.

(viii) The Bhagavad Gita, as is well known, is the word of God. In fact, Sri Sri Paramahansa Yogananda of the Yogada Satsang Society of India, has published the **Bhagavad Gita** in two volumes along with the Sanskrit verse and its english translation. The two-

volume book was published in the year 2002. **In Chapter-X, Verse 31, Page 797, Bhagwan tells Arjun like this: "*Among purifiers I am the breeze; among wielders of weapons, I am Rama; among aquatic creatures, I am Makara (Vehicle of the god of the ocean); among streams, I am Jahnavi (the Ganges).*"** Same text with the same meaning quoted in Bhagvad Gita by Swami Prabhupad at pages 541 and 542 Chapter 10.

SOME OTHER DOCUMENTARY EVIDENCE ABOUT PLACE OF BIRTH OF LORD RAM

There are also numerous accounts which clearly evidence that the Hindus continued to worship the Ram Janambhumi holy and sacred even after the disputed structure was constructed on it. These accounts are by foreign travelers and British officials who however shocked to see the continued struggle the Hindus waged to recover their holiest of holy shrines, and who were not Hindus, and therefore, could be termed as **independent observers**.

SOME ACCOUNTS OF THE SANCTITY AND SACREDNESS OF THE RAM JANAMBHUMI

(ix) The sacred character of such faith and its continued practice has also been confirmed by historical accounts as also by public gazetteers. In this connection, the **account of Le Pere Joseph Tieffenthaler, during his visit to**

India is the 18th Century, (Exhibit No. OOS-5-133) is of great significance. He had written the account of his travel in a book in French which was published in the year 1786 CE. He was an Austrian Jesuit priest. He also visited Ayodhya. The relevant pages of this book were also translated into English by the Government of India under orders of the Court. At page 254, it clearly mentions what Hindu calls "Bedi" that is the cradle where Befchen was born in the form of Ram besides his three brothers. According to another belief, Babur got this place destroyed in order to deny them the opportunity of practicing their superstitions. He also mentions the place where the native house of Ram existed people go around and prostrate on the floor. On the 24th of Chait Month, a big gathering of people takes place to celebrate the birthday of Ram, so famous in entire India.

Therefore, the above documentary evidence shows that even after more than 258 years of the construction of the disputed structure, people of the country held it to be sacred, prostrated and there was big assembly in the month of Cahitra, i.e., Ram *Navami*. This account is confirmed by a non-Indian.

(x) **A Gazetteer of the territories under the Government of the East India Company, by Edward**

Thornton (Exhibit No. OOS-5-5), was published in 1858. At page 739 about Oud, there is a mention of the cradle where Lord Rama was born as the 7th Avatar of Vishnu and is abundantly honoured by the pilgrimages and devotions of Hindus. It also mentions that Ayodhya is considered by the best authorities to be the most ancient city in Hindustan.

(xi) **The P. Carnegie Report (1870), (Exhibit No. OOS-5-49):** It mentions at Page 5 that Ajudhia is to Hindus what Mecca is to Mohammedans, Jerusalem to Jews.

(xii) **Gazetteer of Province of Oud, Vol.-I, 1877, (Exhibit No. OOS-5-7).** It clearly mentions the *Janmasthan* temple on which Babur built the mosque, i.e. at the *Janamsthan,* It also mentions about the continuous struggle of Hindus to reclaim it.

(xiii) Report of the **Settlement of Land Revenue in the Faizabad District by A.F. Millett, Officiating Settlement Officer, 1880: At Page 234, (Exhibit NO. OOS-5-8),** the report mentions about the *Janamasthan* temple wherein Emperor Babur built the mosque.

(xiv) **The Imperial Gazetter of India, Provincial Series,** 1905, **(Exhibit No. OOS-5-10)** The present town stretched island from a high bluff overlooking the

Ghaghra. At one corner of the vast mound is the holy spot where Rama was born where Babur built a mosque.

(xv) **Faizabad Gazetteer by H.R. Nevill, ICS, 1905, at page 173, (Exihibit No. OOS-5-11),** specifically mentioned that the Janmasthan was in Ramkot, the birthplace of Rama and Babur in 1528 destroyed the ancient temple and on its site built a mosque known as Babur's mosque.

(xvi) **Barabanki Gazetteer edited by H.R. Nevill, 1903, Page 169,** reiterated that there was continuous struggle of Hindus to reclaim the ground on which formerly stood the Janmasthan temple.

(xvii) **Faizabad Gazeeteer by H.R. Nevill, ICS 1905, Pages 173-174, (Exhibit NO. OOS-5-11),** reiterates the facts of the existence of the Rama Janmasthan temple and destruction of the same by Babur in 1528 and the continuous struggles of Hindu to reclaim the same.

(xviii) **Faizabad Gazetteer by H.R. Nevill, 1928, (Exhibit NO. OOS-5-12),** the said story is reiterated.

(xix) **Uttar Pradesh District Gazetteers Faizabad, (Exhibit No. OOS-5-13),** published by the Government of Uttar Pradesh in 1960 reiterated the same fact in page 352.

(xx) An article titled "**Babur and the Hindus**" by S.K.

Banerji, published in the **Journal of the United Provinces Historical Society published in July 1976 at Page 76,** specifically mentions: "***The present Jami Masjid at Ayodhya was built in Babur's time on a site sacred to the Hindus as Rama's birthplace.***"

*(*xxi) Even the **New Encyclopedia Britannica, Vol. IX, 15th Edition, at page 916,** describes Rama as the seventh incarnation of Lord Vishnu which appears as such in the Ramayana. Similarly, in Volume-I, at page 751, Ayodhya is mentioned wherein it is specifically mentioned that the Baburi Masjid was built in the early 16th Century by the Mughal Emperor Babur on a site traditionally identified as Rama's birthplace and at the location of an ancient Hindu temple, the Rama Janma Bhumi.

The above are only a sample of evidence available on record. Yet, they show a continuity since times immemorial about the divinity attached to the place Rama Janmasthan not only in the scriptures, worship and devotion in practice, but also a recurring continuity even after the construction of the disputed structure.

Under the orders of this Hon'ble Court, the Archaeological Survey of India was directed to undertake an exhaustive excavation to find out as to whether there existed any temple/structure underneath the disputed structure. The report of the expert agency, that is the ASI, clearly confirms the

existence of a Hindu religious structure dating back to thousands of years. This evidence too confirms that the disputed site was and is the site of a temple and the Hindus have always believed the same to be the birthplace of Lord Ram.

EVIDENTIARY VALUE OF THE ABOVE DOCUMENTS

The said documents being official documents of the Government have been consistently held by the Court that they are admissible in Court as evidence.

(1) Section 57 of the Indian Evidence Act, 1872, mentions the facts of which Court must take judicial notice. Section 57(13) further provides that in all these cases and also on all matters of public history, literature, science or art the Court may resort for its aid to appropriate books and documents of reference.

(ii) The entire Valmiki Ramayana, Skanda Puran, Gita and the Traveller's accounts mentioned above fall in that category.

(iii) Further, **under Section 81 of the Evidence Act,** there is a presumption as to Gazettes.

(iv) **RELEVANT CASE LAW ON THE SUBJECT ARE AS UNDER:-**

(a) (1990) 2 SCC, Page 22, Vimla Bai Vs. Hiralal Gupta, Para 4 & 5, at Pages 27-28 – *The statement of fact contained in the official Gazettee in the course of the*

discharge of official duties or on historical facts in some cases is best evidence of facts stated therein.

5. The Statement of fact contained in the official Gazette made in the course of the discharge of the official duties on private affairs or on historical facts in some cases is best evidence of facts stated therein and is entitled to due consideration but should not be treated as conclusive in respect of matters requiring judicial adjudication. In an appropriate case where there is some evidence on record to prove the fact in issue but it is not sufficient to record a finding thereon, the statement of facts concerning management private temples or historical facts of status of private persons etc. found in the Official Gazette may be relied upon without further proof thereof as corroborative evidence. Therefore, though the statement of facts contained in Indore State Gazette regarding historical facts of Dhangars' social status and habitation of them may be relevant fact and in an appropriate case the Court may presume to be genuine without any further proof of its contents but it is not conclusive.

(b) **1995 Supplementary (1) SCC Page 485, Balashankar Mahasankar Bhattjee and Others Vs. Charity Commissioner, Gujarat, Para 22,** *The Gazettee of the year 1879 is admissible being official*

record evidencing public affairs and the Court may presume their contents as genuine especially about the existence of an old temple.

22. The contention of Sri Yogeshwar Prasad that the Asstt, Charity Commissioner has failed to prove that Kalika Mataji temple is a public trust; contrarily the evidence on records, namely the 'Will' of Bai Diwali, widow of N. Girjashankar, establishes that the lemple and its properties Were always treated as private properties. It would get fortified and gets corroborated by decrees in civil suit No. 439/1985, one of the legatees sought to annual the Will in Exhibits 10, 59 and the decree in that behalf. The Civil Suits Nos. 353/93, Ex. 24 and the Civil Suit No. 439 of 1885, Ex 26 and the Civil Suit Nos. 904 of 1903 and 910 of 1903: Ex 52 and Ex. 54, Civil Suit No, 912 of 1903, Ex 55 would establish that the appellant's family had always treated the temple and the lands attached to temple as private properties. It has also been further contended that the entry into the temple was subject to permission and the devotees were not allowed to have pooja, but have darshan Only. These circumstances have duly been taken into consideration by the District Judge while the High Court had not considered them in proper perspective. We find no force

in the contention, It is seen that the Gazette of the Bombay Presidency, Vol. Ill published in 1879 is admissible under s.35 read with s.81 of the Evidence Act, 1872. The Gazette is admissible being official record evidencing public affairs and the court may presume their contents as genuine. The statement contained therein can be taken into account to discover the historical material con-tained therein and the facts stated therein is evidence under s.45 and the court may inconjunction with other evidence and circumstance take into consideration in adjuding the dispute in question though may not be treated as conclusive evidence. The recitals in the Gazette do establish that Kalika Mataji is onlhe lop of the hill. Mahakali temple and Bachra Mataji on the right and left to the Kalika Mataji. During Moughal rule another Syed Sadar Peer was also installed there, but Kalika Mataji was the chief temple. Hollies and Bills are the main worshipers. Oh full Moon of Chaitra (April) and Dussehra (in the month of October), large number of Hindus of all classes gather there and worship Kalika Mataji, Mahakali, etc. After the downfall of Moughal empire, Marathas took over and His Highness Scindias attached great importance to the temple. One of the devotees in 1700 offered silver doors. The British

annexed the territory pursuant to the treaty between Her Majesty's Government of India and His Highness Scindia on the 12th December, I860, A condition was imposed in the treaty for continued payment of fixed cash grants to all the temples from the Treasury and that British emperors accepted the condition. Regular cash grants of fixed sums were given to all the temples by Scindias and British rulers, as evidence by exhibits 27, 29 and 30. The historical statement of noted historian, stated by the High Court, by name M.S. Commissionaria in his Vol. I of 1938 Edition corroborates the Gazette on the material particulars, which would established that the temple was constructed on the top of the hill around 14th century and the people congregate in thousands and worship, as of right, to Kalika Mataji and other deities. R.N. Jogelkar's Alienation manual brought up in 1921 in the Chapter 5 Devas-tbana also corroborates the historical evidence. It is true that Bai Diwali in her Will, Ex.22 treated the temple and the properties to be private property and bequeathed to her brother and the litigation ensued in that behalf. At that time, as rightly pointed out by the High Court, the concept of public trust and public temple was not very much in vogue. Therefore, the treatment meted out to these properties at that time is not conclusive. On

the other hand the fixed cash grants given by a Rulers Scindias and the successor British emperors, the large endowment of lands given to Kalika Mataji temple by the devotees do indicate that the temple was treated as public temple. The appropriation of the income and the inter se disputes in that behalf are self serving evidence without any probative value. Admit-tedly, at no point of time, the character of the temple was an issue in any civil proceedings. All the lands gifted to the deity stand in the name of the deities, in particular large extent of agricultural lands belong to Kalika Mataji. The entries in Revenue records corroborated it. The Gazette and the historical evidence of the temple would show that the village is the pilgrimage centre. Situation of the temples on the top of the hill away from the village and worshiped by the people of Hindus Community at large congregated in thousand without any let or hindrance and as of right; devotees giving their offerings in large sums in discharge of their vows, do establish that it is a public temple. It is true that there is ho proof of dedication to the public. It is seen that it was lost in antiquity and no documentary evidence in that behalf is available. Therefore, from the treatment meted out to the temple and aforesaid evidence in our considered view an irresistible inference would be

drawn that the temple was dedicated to the Hindu public or a section thereof and the public treat the temple as public temple and worship thereat as of right. It is true that there is evidence on record to show that there was a board with inscription thereon that "no entry without permission" and that only Darshan was being had and inside pooja was no permitted. But that is only internal regulation arranged for the orderly Darshan and that is not a circumstance to g o against the conclusion that it is a public temple. Enjoyment of the properties and non-interference by the public in the management are not sufficient to conclude mat the temple is a private temple. It is found by the District Court and the High Court that the appellants are hereditary priests and when the public found that they are in the management of the properties, they obviously felt it not expedient to interfere with the management of the temples. It is seen that the High Court considered the evidence placed on record and has drawn the necessary conclusions and inferences from the proved facts that kalika Mataji temple is a public temple. It is a finding of fact. As regard the oral evidence the High Court rightly appreciated the evidence and it being a question of fact, we find no error in the assessment of the evidence by the High Court.

(c) **AIR 1967 Supreme Court, 256, Srinivas Das Vs. Suraj Narayan Das, Para 26 –** The Gazetteer can be consulted as providing historical material and the practice followed by the Math and its head. The Gazetteers can be consulted on matters of public history.

LORD RAM AS THE AVATAR OF VISHNU HAVING BEEN BORN AT AYODHYA AT THE JANMASTHAN IS ADMITTEDLY THE CORE PART OF HINDU BELIEF AND FAITH WHICH IS IN EXISTENCE AND PRACTICED FOR THE LAST THOUSANDS OF YEARS. THE HINDU SCRIPTURES ALSOS SANCTIFY IT. ARTICLE 25 OF THE CONSTITUTION BEING A FUNDAMENTAL RIGHT ENSURES ITS PRESERVATION AND NO RELIEF CAN BE TAKEN BY THE COURT WHICH SEEKS TO RESTRICT OR ALTOGETHER EXTINGUISH THIS RIGHT.

The fact that Ram Janambhumi is an integral part of Hindu Religion and the right to worship there is a fundamental right of the Hindu religion and can be enforced through a suit can be clearly made out through a number of decisions of the Hon'ble Supreme Court.

RELEVANT CASE LAW

(i) 1995 Supplementary (4) SCC, Page 286 – Most Rev. P.M.A. Metropolitan and Others Vs. Moran Mar Marthoma and Another, Para 43 at Page 327 and Para 89, Page 361 – the Civil Courts have jurisdiction to

entertain the suits for violation of rights guaranteed under Article 25 and 26 of the Constitution of India. The expression 'civil nature" used in Section IX of the Civil Procedure Code is wider than even Civil Proceedings and thus extends to such religious matters which have civil consequences.

43. In reading Section 9 widely and construing it expansively the jurisdiction to entertaina suit for declaration whether the Church was episcopal or congregational and whether the appellants could have been ordained by the Patriarch when it was contrary to the earlier decision given by this Court that the ordination was required to be approved by Synod, the court is not being asked to adjudicate on faith but whether the exercise of right in respect of faith was valid. The Grace no doubt comes from Patriarch and on that there is no dispute but whether the Grace came in accordance with the Canon or the Constitution is certainly a matter which would fall within Section 9 C.P.C. Status and office are no doubt different but what was challenged is not the status or faith in Patriarch but the exercise of right by Patriarch which interfered with the Office of Cathelico held validly. Apart from it, as stated earlier, after coming into force of the

Constitution Article 25 guarantees a fundamental right to every citizen of his conscience, faith and belief, irrespective of cast, creed and sex, the infringement of which is enforceable in a court of law and such court can be none else except the civil courts. It would be travesty of justice to say that the fundamental right guaranteed by the constitution is incapable of enforcement as there is no court which can take cognisance of it. There is yet another aspect of the matters that Section 9 debars only those suits which are expressly or impliedly barred. No such statutory bar could be pointed out. Therefore, the objection that the suit under Section 9 C.P.C. was not maintainable cannot be accepted.

89. The conclusions thus reached are:

1. (a) The civil courts have jurisdiction to entertain the suits for violation of fundamental rights guaranteed under Articles 25 and 26 of the Constitution of India.

(b) The expression 'civil nature' used in Section 9 of the Civil Procedure Code is wider than even civil proceedings, and thus extends to such religious matters which have civil consequence.

(c) Section 9 is very wide. In absence of any ecclesiastical courts any religious dispute is

congnizable, except in very rare cases where the declaration sought may be what constitutes religious rite. Places of Worship (Special Provisions) Act, 1991 does not debar those cases where declaration is sought for a period prior to the Act came into force or for enforcement of right which was recognised before coming into force of the Act.

3. The following findings in Moran Mar Basselious (supra) have become final and operate as res judicata:-

(a). The Catholicate of the East was created in Malankara in 1912.

(b). The Constitution framed in 1934 by Malankara Association is valid.

(c). The Catholicos werenot heretics nor they had established separate church.

(d). The meeting held by Patriarch Group in 1935 was invalid.

4 (a). The effect of the two judgments rendered by the Appellate Court of the Royal Court and in Moran Mar Basselios (supra) by this Court is that both Catholicos and Patriarch Group continue to be members of the Syrian Orthodox church.

(b) The Patriarch of Antioch has no temporal powers over the churches.

(c) Effect of the creation of Catholicate at Malankara and 1934 Constitution is that the patriarch can exercise spiritual powers subject to the Constitution.

(d) The spiritual powers of the patriarch of Antioch can be exercised by the Catholico in accordance with the Constitution.

5. (a) The Hudaya Canon produced by the Patriarch is not the authentic version.

(b) There is no power in the Hudaya Canon to ex-communicate Catholicos.

6. The ex-communication of the Catholicos by the Patriarch was invalid.

7. All churches, except those which are of Evangelistic Association or Simhasna or St. Mary are under spiritual and temporal control of the Malankara Association in accordance with 1934 Constitution.

(ii) **AIR 1954 Supreme Court 388 (Ratilal Panachand Gandhi and Others Vs. State of Bombay)-** Constitution Bench – Para 10, Page 391, Article 25

protects not only the right to practice or freedom of religion but to exhibit his belief in such overt acts as are sanctioned by his religion.

Para 12, 13, Page 392 – *A religion is not merely an opinion, doctrine or belief. It has its outward expression as well. Religious practices are as much part of religion as faith or belief in actual doctrine.*

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 the 'religion' given by Fields J. in the American case of Davis v. Beason , does not seem to us adequate or precise. "The term 'religion'", thus to 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 cults 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 for belief. It has its outward expression in acts as well. We may quote in this connection the observations of Latham C.J. of the High Court of Australia in the case of Adelaide Company v. The Commonwealth , 124.), where the extent of protection given to religious freedom by section 116 of the Australian Constitution came up for consideration.

"It is sometimes suggested in discussion on the subject of freedom of religion that, though the civil Government should not interfere with religious opinions, it nevertheless may deal as it pleases with any acts which are done in pursuance of religious belief without infringing the principle of freedom of religion. It appears

to me to be difficult to maintain this distinction as relevant to the interpretation of section 116. The section refers in express terms to the exercise of religion, and therefore it is intended to protect from the operation of any Commonwealth laws acts which are done in the exercise of religion. Thus the section goes far beyond protecting liberty of opinion. It protects also acts done in pursuance of religious belief as part of religion."

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

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 as certain times and in a particular manner, it cannot be said that these are secular activities partaking of commercial or economic character simply because they involve expenditure of money or employment of priests or the use of marketable commodities. No outside authorities has any right to say that these are not essential parts of religion and it is not open to the secular authority of the

State to restrict or prohibit them in any manner they like under the guise of administering the trust estate. Of course, the scale of expenses to be incurred in connection with these religious observances may be and is a matter of administration of property belonging to religious institutions; and if the expenses on' these heads are likely to deplete the endowed properties or affect the stability of the institution, proper control can certainly be exercised by State agencies as the law provides. We may refer in this connection to the observation of Davar J. in the case of Jamshedji v. Soonabai , and although they were made in a case where the question was whether the bequest of property by a Parsi testator for the purpose of perpetual celebration of ceremonies like Muktad baj, Vyezashni, etc., which are sanctioned by the Zoroastrian religion were valid charitable gifts, the observations, we think, are quite appropriate for our present purpose. "If this the belief of the community" thus observed the learned Judge, "and it is proved undoubtedly to be the belief of the Zoroastrian community, - a secular Judge is bound to accept that belief - it is not for him to sit in judgment on that belief, he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be the advancement of his religion and the

welfare of his community or mankind". These observations do, in our opinion, afford an indication of the measure of protection that is given by article 26(b) of our Constitution.

(iii) AIR (1954) Supreme Court 282 (The Commissioner Hindu Religious Endowments Vs. Shri Lakshmendra Tirtha Swami, Para 17 at page 290): 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 of 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.

(iv) **AIR 1959, SC Page 860, Saroop Singh Vs. State of Punjab, Para 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 (1), 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 OD a different footing from the right to manage its own affairs in matter 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: The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shiru Mutt (1) and Sri Venkataramana Devaru v. The State of Mysore (2), and it was hold 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 The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (1) it was observed at p. 1026 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 the word 'essential'). The same emphasis was laid in the later decision of Sri Venkataramana Devaru v. The State of Mysore (2), where it was said that matters of religion in Art. 26(b) include

practices which are regarded by the community as part of its religion.

(v) **AIR 1962 SC, 853 Sardar Syedna Vs. State of**

Bombay – *A law prohibiting the right to excommunicate a Bohra Muslim held violative of Art. 25 & 26 because this is a part of their religion.*

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

grounds. It therefore, clearly interferes with the right of the Dawoodi Bohra community under clause (b) of Article26 of the Constitution.

41. That excommunication of a member of a community will affect many of his civil rights is undoubtedly true. This particular religious denomination is possessed of properties and the necessary consequence of excommunication will be that the excommunicated member will lose his rights of enjoyment of such property. It might be thought undesirable that the head of a religious community would have the power to take away in this manner the civil right of any person. The right given under Article 26(b) has not however been made subject to preservation of civil rights. The express limitation in Article 26 itself is that this right under the several clauses of the article will exist subject to public order, morality and health. It has been held by this Court in Sri Venkataramana Devaru v. The State of Mysore : [1958]1SCR895 , that the right under Article 26(b) is subject further to clause 2 of Article 25 of the Constitution.

42. We shall presently consider whether these limitations on the rights of a religious community to manage is own affairs in matters of religion can come to

the help of the impugned Act. It is clear however that apart form these limitations the Constitution has not imposed any limit on the right of a religious community to manage its own affairs in matters of religion. The fact that civil rights of a person are affected by the exercise of this fundamental right under Article 26(b) is therefore of no consequence. Nor it is possible to say that excommunication is prejudicial to public order, morality and health.

56. ….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 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.

(vi) **AIR 1962 SC 1106, Dalbir Singh Vs. State of Punjab, Para 8 –** The Act prohibited or penalized and public order must be proximate and intimate.

8. The content of the expression "in the interests of .... public order" has been the subject of detailed and elaborate consideration by this Court in Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia, (1960) 2 SCR 821 : (AIR 1960 SC 633) where the effect of the First (Constitution) Amendment by which the words "for the maintenance of public order" were replaced by the words "in the interests of public order" was considered in the light of the previous decisions of this Court on that topic, Subba Rao, J., speaking for this Court said that the expression "public order" in the juxtaposition of the different grounds set out in Article 19(2) was synonymous with "public peace, safety and tranquility". He also pointed out that the expression "in the interests of public order" though undoubtedly wider than the previous phrasing "for the maintenance of public order" could not mean that the existence of any remote or fanciful connection between the impugned act and public order was sufficient to sustain the validity of the law, but that on the other hand, the connection between the act prohibited or penalized and public order should be intimate; in other words there should be a reasonable and rational relation between it and the object sought to be achieved, viz., public order.

The nexus should thus be proximate - not far-fetched, problematical or too remote in the chain of its relation with public order.

(vii) **1986 (3) SCC Page 615, Bijoe Emmanneul Vs. State of Kerala, Para 20 –** *If the belief is genuinely and conscientiously held as part of religion or its profession, then regardless of our personal views, it attracts the protection of Art. 25 subject to the inhibition mentioned therein.*

20. The meaning of the expression 'Religion' in the context of the Fundamental Right to freedom of conscience and the right to profess, practise and propogate religion, guaranteed by Article 25 of the Constitution, has been explained in the well known cases of The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [1954]1SCR1005 ; Rati Lal Panachand Gandhi v. State of Bombay : [1954]1SCR1055 and S. P. Mittal v. Union of India : [1983]1SCR729 . It is not necessary for our present purpose to refer to the exposition contained in these judgments except to say that in the first of these cases Mukherjea, J. made a reference to "Jehova's Witnesses" and appeared to quote with approval the views of Latham, C.J. of the Australian High Court in

Adelaide Company v. The Commonwealth (supra) and those of the American ' Supreme Court in West Virginia State Board of Education v. Barnette (supra). In Ratilal's case we also notice that Mukherjea, J. quoted as appropriate Davar, .'s following observations in Jamshedji v. Soonabai :

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

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

(viii) **2004 (12) SCC, Page 770, Commissioner of Police Vs. Acharya J. Avadhutananda, Para 9, Page 782 (Majority view) –** *The protection under Art. 25 & 26 is not confined to matters of doctrine or belief, but extends to acts done in pursuance of religion. What constitutes an essential part of religion has to be determined with reference to doctrine, practice, tenets, historical background of that religion. Essential part of religions means the core belief upon which a religion is founded. It means those practices that are fundamental to follow a religious belief.*

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 Seshammal v. State of T.N. 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.

(ix) **1997 (4) SCC, 606, Sri Adi Vishweshwar of Kashi Vishwanath Temple and Others Vs. State of U.P. And Others, at Para 28, Page 631 –** ***The*** *practice in question is religious in character and whether it could be regarded as an integral and essential part of religion and if the Court finds upon evidence adduced before it that it is an integral part of religion, Art. 25 accords protection to it.*

30. Hindusim cannot be defined in terms of Polytheism or Henotheism or Monotheism. The nature of Hindu religion ultimately is Monisim/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 and 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 Sehsammal case on which great reliance was placed and stress was laid by counsel on either side, this Court while reiterating the importance of performing rituals in temples for the idol to sustain the faith of the people, insisted upon the need for performance of elaborate ritual ceremonies accompanied by chanting of mantras appropriate to the Deity. This Court also recognised the place of an archaka and had held that the priest would occupy place of importance in the performance of ceremonial rituals by a qualified archaka who would observe daily discipline imposed upon him by the Agamas according to tradition, usage and customs obtained in the temple. Shri P.P. Rao, learned senior Counsel also does not dispute it. It was held that Articles 25 and 26 deal with and protect religious freedom. Religion as used in those Articles requires restricted interpretation in etymological sense. Religion undoubtedly has its basis in a system of beliefs which are regarded by those who profess religion to be conducive to the future well-being. It is not merely a doctrine. It has outward expression in acts as well. It is not every aspect

of the religion that requires protection of Articles 25 and 26 nor has the Constitution provided that every religious activity would not be interfered with. Every mundane and human activity is not intended to be protected under the Constitution in the garb of religion. Articles 25 and 26 must be viewed with pragmatism. By the very nature of things it would be extremely difficult, if not impossible, to define the expression "religion" or "matters of religion" or "religious beliefs or practice". Right to religion guaranteed by Articles 25 and 26 is not absolute or unfettered right to propagate religion which is subject to legislation by the State limiting or regulating every non-religious activity. The right to observe and practise rituals and right to manage in matters of religion are protected under these Articles. But right to manage the Temple or endowment is not integral to religion or religious practice or religion as such which is amenable to statutory control. These secular activities are subject to State regulation but the religion and religious practices which are integral part of religion are protected. It is 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.

A SOVEREIGN GOVERNMENT EVEN BY EXERCISING THE POWER OF EMINENT DOMAN CANNOT EXERCISE THE POWER OF ACQUISITION OF LAND OR PROPERTY WHICH EXTINGUISHES THE CORE OF THE FAITH OR THE PLACE OR THE INSTITUTION WHICH IS HELD TO BE SACRED.

What clearly follows is that a sovereign government cannot extinguish the core of the Hindu religion which is the Ram Janambhumi, let alone the same be extinguished through a suit, by transferring the same to some other party in this case the plaintiff thereby ensuring that the said fundamental right to worship at the Ram Janambhumi is extinguished forever.

RELEVANT CASE LAW

(a) 1975 (1) SCC, Page 11 (Acharya Maharshi Narendra Prasadji Vs. State of Gujarat), at Para 26, Page 18 – *If on the other hand acquisition of property of a religious denomination by the State can be proved to be such as to destroy or completely negative its right to own and acquire movable and immovable property for even the survival of a religious institution the question may have to*

be examined in a different light.

26. 26. While Article 25, as stated earlier, confers the particular rights on all persons, Article 26 is confined to religious denominations or any section thereof. Article 19(1) confers the various rights specified therein from (a) to (g) on citizens. A religious denomination or a section thereof as such is not a citizen. In that sense the fields of the two Articles may be to some extent different. Again while Article 26(c) refers to the right "to own and acquire movable and immovable property", Article 19(1)(f) confers the right on citizens "to acquire, hold and dispose of property". We are not required to consider in this case why the same expression is not used in the said two clauses of the two Articles. One thing is, however, clear that Article 26 guarantees interalia the right to own and acquire movable and immovable property for managing religious affairs. This right, however, cannot take away the right of the State to compulsorily acquire property in accordance with the provisions of Article 31(2). If, on the other hand, acquisition of property of a religious denomination by the State can be proved to be such as to destroy or completely negative its right to own and acquire movable and immovable property for even the survival of a religious institution the question may have

to be examined in a different light. That kind of a factual position, however, is not taken in these appeals before us. When, however, property is acquired by the State in accordance with law and with the provisions of Article 31(2) and the acquisition cannot be assailed on any valid ground open to the person concerned, be it a religious institution, the right to own that property vanishes as that right is transferred to the State. Thereafter there is no question of any right to own the particular property subject to public order, morality and health and Article 26 will in the circumstances be of no relevance. This being the legal position, there is no conflict between Article 26 and Article 31.

(b) 1994 (6) SCC, Page, (Dr. M. Ismail Faruqui and Others Vs. Union of India & Others), Para 76, Page 416 – Acharya Maharajshri Narendra Prasadji Anand Prasadji Maharaj v. State of Gujarat, (1976) 2 SCR 317 at pages 327-328 : (AIR 1974 SC 2098 at p. 2103), has held :

" One thing is, however, clear that Article 26 guarantees inter alia the right to own and acquire movable and immovable property for managing religious affairs. This right, however, cannot take away the right of the State to compulsorily acquire property ......If, on

the other hand, acquisition of property of a religious denomination by the State can be proved to be such as to destroy or completely negative its right to own and acquire movable and immovable property for even the survival of a religious institution the question may have to be examined in a different light.:" (Emphasis supplied)

Para 82 - A mosque is not an essential part of the practice of religion of Islam and Namaz by Muslims can be offered anywhere, even in the open. Accordingly, its acquisition is not prohibited by the provisions in the Constitution of India. Obviously, the acquisition of any religious place is to be made only in unusual and extraordinary situations for a larger national purpose. **Keeping in view that such acquisition should not result in extinction of the right to practice the religion if the significance of that place be such.**

Note (i) Ram Janmasthan in Ayodhya where Ram Lala is Virajman is a place of religious significance as described in the above judgment. If the sovereign authority, under the power of eminent domain, cannot acquire it, can a plea at the instance of plaintiffs who are private persons in Suit No. 4 be entertained, upholding of which would lead to denial of such sacred place altogether to the Hindus.

Note (ii) At page 413, Para 65 of Ismail Faruqui – No argument made about a mosque of special significance which forms an essential part of Islam. Hence, no question raised about Baburi Mosque as integral to Islam and it has not been raised in the plaint here or evidence laid or any contention ever made that the said mosque was of any significance to the practice of Islam as a religion.

(c) 1995 Supplementary (1) SCC, 596, Jilubhai Nanbhai Khachar and Others Vs. State of Gujarat, Para 34, at Page 622 – The right of eminent domain is the right of sovereign state through its regular agencies to reassert either temporarily or permanently its dominion over any soil of the state including private property without its owner's consent.

(d) 2008 (9) SCC 552, Suraram Pratap Reddy and Others Vs. District Collector Ranga Reddy, Para 43 is as under:-

“43`Eminent domain' may be defined as the right or power of a sovereign State to take private property for public use without the owner's consent upon the payment of just compensation. It means nothing more or less than an inherent political right, founded on a common necessity and interest of appropriating the property of

individual members of the community to the great necessities and common good of the whole society. It embraces all cases where, by the authority of the State and for the public good, the property of an individual is taken without his consent to be devoted to some particular use, by the State itself, by a Corporation, public or private or by a private citizen for the welfare of the public [American Jurisprudence, 2d, Volume 26, pp. 638-39, para 1; Corpus Juris Secundum, Volume 29, p. 776, para 1; Words & Phrases, Permanent Edition, Volume 14, pp. 468-70].

THE RELIGIOUS RIGHT OF HINDUS TO WORSHIP RAM LALA AT THE JANMASTHAN BECAME CONCRETISED BEFORE THE CONSTITUTION CAME INTO BEING AND THE SAME REQUIRES TO BE PROTECTED.

It is well-known that the Constitution of India was enacted, i.e. given to ourselves, w.e.f. 26th January, 1950. Before it, the right of Hindus to worship was duly sanctified and recognized by judicial orders.

In fact, the Supreme Court records in the Ismail Faruqui case above the contention in paragraph 1.2 of the White Paper of the Government of India as recorded in Paragraph 9, Page 380, of the said judgment. It reads as follows: "***Interim orders in these civil***

suuits restrained the parties from removing the idols or interfering with their worship. In effect, therefore, from December 1949 till 6.12.1992 the structure had not been used as a mosque."

It is further very significant to note that the Muslims for the first time, after 1949, assert their right howsoever unsustainable, ***only in 18th December, 1961.***

Therefore, the right of the Hindus to worship at the Rama Janma Bhumi, continuing since times immemorial as an integral part of their religious right and faith was also sanctified by judicial orders form 1949 continuously. This right has concretised and remains an integral part of Hindu religion and has to be protected.

IN SUCH A CASE NO PLEA CAN BE ENTERTAINED THE EFFECT OF WHICH WOULD BE TO GRANT INJUNCTION AGAINST THE HINDUS TO PRACTICE THEIR RELIGIOUS BELIEFS AT THE SACRED PLACE.

RELEVANT CASE LAW

(i) 1976 (2) SCC, Page 58, Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshminarayana and Others.

Para 20 at Page 72 – *It is well settled that a relief under the Specific Relief Act is purely discretionary and can be refused where the ends of justice do not require the relief to be granted.*

Assuming for the sake of arguments, but not deciding

that this decision has extended the scope of the exceptions, so that the appellant Executive Committee though a non-statutory body will still be bound by the statutory provisions of law, let us see what is the position. It would appear that under s. 25-C (2) of the Agra University Act corresponding to similar provisions in Kanpur and Meerut Universities Act of 1965 which runs thus:

> "Every decision by the Management of an affiliated college, other than a college maintained by Government, to dismiss or remove from service a teacher shall be reported forthwith to the Vice-Chancellor and subject to provisions to be made by the Statutes shall not take effect until it has been approved by the Vice-Chancellor." it was incumbent on the Executive Committee of the College to have taken the previous approval of the Vice-Chancellor before terminating the services of the plaintiff/respondent. Reliance was placed by the learned counsel for the respondent on the words "shall not take effect until it has been approved by the Vice-Chancellor". It was urged that there has been an infraction of a mandatory provision of the Act itself which is undoubtedly binding on the appellant

Executive Committee and the resolution of the Executive Committee terminating the services of the respondent is not only invalid but completely without jurisdiction, and, therefore, the plaintiff/respondent is entitled to the injunction sought for. It is common ground that the procedure enjoined in sub-s. (2) of s. 25-C of the Agra University Act was not at all followed by the Executive Committee and there can be no doubt that the Executive Committee has been guilty of this default. The question remains whether even if there has been a violation of the mandatory provisions of the statute, should we in the exercise of our discretion grant a declaration or an injunction to the plaintiff/respondent in the peculiar facts and circumstances of the present case ? It is well settled that a relief under the Specific Relief Act is purely discretionary and can be refused where the ends of justice do not require the relief to be granted. Mr. Ramamurthi learned counsel for the plaintiff/respondent submitted that the question of discretion would arise only in case where the High Court or this Court is acting in a writ jurisdiction and not in a suit. We are, however, unable to agree with 1022 this argument because the exercise of

discretion is spelt out from the provisions of the Specific Relief Act and the common law and it applies as much to the writ jurisdiction as to other action at law.

Para 27 at Page 74 – The relief of declaration and injunction under the provisions of the Specific Reliefs Act is purely discretionary and the plaintiff cannot claim it as of right. The relief has to be granted by the Court according to sound legal principles and ex debito justitiae the Court has to administer justice between the parties and cannot convert itself into an instrument of injustice or an engine of oppression.

(ii) **1993 (2) SCC, Page 199, American Express Bank vs. Calcutta Steel Company, Para 22, Page 213** – Undoubtedly declaration of the rights or status is one of discretion of the court under Section 34 of the Specific Relief Act, 1963. Equally the grant or refusal of the relief of declaration and injunction under the provision of that Act is discretionary. The plaintiff cannot claim the relief as of right. It has to be granted according to sound principles of law and ex debito justicia. The court cannot convert itself into an instrument of injustice or vehicle of oppression. While exercising its discretionary power, the court must keep in its mind the well settled principles of

justice and fair play and the discretion would be exercised keeping in view the ends of justice since justice is the hall mark and it cannot be administered in vacuum. Grant of declaration and injunction relating to commercial transactions tend to aid dishonesty and perfidy. Conversely refusal to grant relief generally encourages candour in business behaviour, facilitates free Row of capital, prompt compliance of covenants, sustained growth of commerce and above all inculcates respect for the efficacy of judicial adjudication. Before granting or refusing to grant of relief of declaration or injunction or both the court must weigh pros and cons in each case, consider the facts and circumstances in its proper perspective and exercise discretion with circumspection to further the ends of justice. From the back-drop fact situation we have no hesitation to hold that the relief of declaration granted is unjust and illegal. It tended to impede free flow of capital, thwarted the growth of merchantile business and deflected the course of justice.

THE ALLEGED BABRI MOSQUE IS NOT A VALIDLY CONSTITUTED MOSQUE UNDER MOHAMMADAN LAW AND THE TENETS OF ISLAM, AND THEREFORE THE CLAIM OF THE PLAINTIFF IS CONTRARY TO LAW.

It is submitted that in any case the Babri Masjid is contrary to Koranic injunctions and cannot be termed as a mosque in terms of Islamic Law. Some of the most eminent commentators have been quoted below to illustrate the Islamic Law on the point.

RELEVANT EXTRACTS OF EMINENT COMMENTATORS OF ISLAMIC LAW.

(i) There are many eminent jurists who are authorities on Islamic Law. In the "**Mulla Principles of Mahomedan Law"** edited by the equally well-known jurist M. Hidayatullah, the former Chief Justice of India, in its 19th edition, has cited the names and the works of such authorities which includes Macnaghten, Ameer Ali, Baillie and Hedaya as translated by Hamilton. **There is consistent view of these authorities that if the title of the land is disputed then no valid mosque can be constructed there.**

(ii) Name of the Book - "Principles and Precedents of Moohummudan Law" by W.H. Macnaghten, Esq., 1825 (2nd Edition) -

Chapter – X on Endowments – Case No. V at page 335 – Case of a mosque built without the consent of the land owner-

"*Both land and building are included in the term mosque.*

It is neither simply land nor simply building but it comprises both. The land is the chief part of it because the foundation of the mosque stands upon it and the superstructure is dependant on the land. Under these circumstances without the consent of the Fakeer who is the landlord, the building cannot in the legal sense be termed a mosque because ***no one is at liberty to erect a building on the land of another without that other's consent and if he do so the law sanctions its being razed to the ground."***

At Page 336-337, in this book the author quotes Kazee Khan – The appropriation of a superstructure without its basis is not allowable, an edifice independently of its founder is not a mosque. Further as per Shurhi Viqya if anyone build or plant on the land of another let the thing built or planted be razed or rooted out.

Note:- In Qutlines of Muhammadan Law by Asaf A. Fyzee, published from Oxford University, 1949, in the Appendix-E (Page 418) – Mohammadan Law, the above work of Macnaghten has been described as a work of great authority.

It is to be noted that this book was written in 1825 when the Mughal rule was still there.

(iii) "The law relating Gifts, Trusts and

Testamentary Dispositions among the Mahommedans" by Syed Ameer Ali (**Tagore Law Lectures, 1884**)-

At page 236 – A sovereign cannot give any portion of the land acquired by treaty and negotiation to be converted into a mosque without the consent of the owners, but he can give any portion of the land acquired by war, provided it does not interfere with the rights of way possessed by any individual.

At page 337 – Hedaya is quoted as "if a person usurps land and build and plant thereon, he will be desired to eradicate and raise his plants or buildings."

Therefore, if the right of way of an individual is important, then the right of an entire community to offer worship at the land in question is of greater sanctity.

(iv) "**A Digest of Moohummudan Law" by Neil B.E. Baillie (1875), Chapter-VII, Page 615 (How a Musjid is Constituted), Page 615 at Page 616-**

"*A sick man has made his mansion a Musjid and died but it neither falls within a third of his property nor is allowed by his heirs: the whole of its is heritage and the making of it a Musjid is void because the heirs having a right in it*

there has been no separation from the rights of mankind and a ***confused portion has been made a Musjid which is void."***

(v) **"The Hedaya" (A Commentary on the Mussulman Laws)** translated by the order of the Governor General by Charles Hamilton (Premier Book House, Lahore) – If a person convert the centre hall of his house into a mosque giving general admission into it, still it does not stand as a mosque but remains saleable and inheritable because a mosque is a place in which no person possesses any right of obstruction; and wherever a man has such a right with respect to the surrounding parts the same must necessarily affect the place enclosed in them. The place, therefore, cannot be a mosque; besides it is necessarily a thoroughfare for the family and consequently does not appertain solely to God.

(vi) **In 1976 (4) SCC, Page 780 (Syed Md. Salie Abbas Vs. Md. Hanifa), Para 34-35 –** The above authorities have been quoted to construe as to what is a mosque.

(vii) "**The history of Islam" by Akbar Shah Najeebabadi, Revised by Safi-ur-Rahman Mubarakpuri, published by Darussalam, Riyadh, Saudi Arabia -**

The said book was written in Urdu language in 1922 and became a classic thereafter. It contains authentic events in concise form from the famous histories of Islam written in Arabic and Persian languages. Its English translation was done by Darussalam in three volumes.

At page 147 and 148, Vol.I, contains the entry of Prophet into Al-Madinah. At Page 148, there is a specific reference about a deserted land being the property of two orphan boys Sahl and Suhail. The said land was offered by Muadhbin Afra for building a mosque as the two orphan boys were related to him and he would make them part of the land. **But the Prophet asserted *"I want to buy it and will not take it without paying the price"*.**

Note:- If from the authentic real life of Prophet he imposed such an injunction that for building a mosque the land of an orphan in spite of the consent of their guardian shall not be taken unless price is paid for; could the Babri mosque erected forcibly by breaking a temple at a place held sacred by Hindus be at all described as a valid mosque and can the plaintiff seek any declaration as such when the disputed structure is not a valid mosque in terms of Islamic law.

In view of the arguments referred to, I find that on behalf of

the evidence that has been produced before this Court is of convincing nature that temple was destroyed and the mosque was erected on the site of the temple. Historical account as available in gazetteers etc. has already been referred while deciding issue nos.1 and 1-A by me. I crave to refer the same, but otherwise also it transpires that on the basis of archeological evidence that has been referred while deciding issue no. 1-B leaves no room for doubt that on the site of the old Hindu temple the mosque was constructed. In this reference P. Carnegy has given in detail data based finding and thereafter another gazetteer has specifically mentioned that at the site of the Ram Janam Bhumi Mandir the mosque was constructed after destruction of the temple but Hindus were worshipping the place like a deity and they were offering prayers with a belief as birth place of Lord Rama. I have already referred that in view of statement of O.P.W,14 Dr. Rakesh Tiwari, Director State Archaeological Organization 265 pieces of broken images of different idols of Hindus and broken pieces of temples were collected from the debris after 6th December, 1992. Thus, on the basis of the historical account which has been given in the epigraphical evidence which was found after the demolition of disputed structure referred to above do not leave a doubt that finding of Archeological survey of India about the site of old temple is fully corroborated by other circumstantial evidence which has been referred to above. Account of Tieffen Thaler that the temple

was destroyed by Aurangzeb appears to be a clerical error who as a foreigner could have committed mistake because Aurangzeb was a descendant of Babur and coming out from his family. Thus, his one mistake about mentioning of the name could not make his description in this account useless. He has referred that Ram Naumi was birth day of Lord Ram and it was celebrated by Hindus as a festival day. Hindus used to offer prayer doing Parikrama and observing religious rites at Babri mosque. This fact gets strength from the site plan, prepared by Vakil Commissioner in O.O.S. No. 61/280 of 1885 and O.S 2 of 1950.

I further find that in the above case there is judicial pronouncement in the aforesaid case showing that the District Judge was also of the view that Babri mosque was constructed at the site of Ram Janam bhumi.

I have already referred that in Hindu mythology a deity can be formless also. Brahm is considered as formless but it is always being worshipped like God. There are certain idols which are also worshipped . There are certain places which are worshipped like deity like Kedarnath, Govardhan, Vishnupad and kamadgiri. Even fire is considered as a God. Gangotri and other places are also considered like deities .

Thus idol is the object which is worshipped. Deity may be like idol or otherwise also but is being worshipped religiously in accordance with the faith by Hindus. This has been recognized

under the Hindu text which have been referred to by Mr Ravi Shanker Advocate and Sri H.S, Jain Advocate. I do not want to further reproduce for the sake of brevity and I agree with their contention that the defendants have successfully placed the material before the Court to arrive at a decision that there was strong belief of Hindu from times immemorial that Lord Ram's birth took place at the place where the old temple was constructed and same was of 12th century which was destroyed by Babur.

Hans Bakker has completed his research work in most methodical and scientific manner . He has devoted much time in his studies. He formed his opinion about the Janamsthan .Part II chapter 21 page 143-145 deal with the Janamsthan. For convenience I am reproducing the same:-

"The most conspicuous fact with respect to the textual evidence relating to the *tirtha* Rama-janmasthana (Janmabhumi) is that on the one hand a description of this principle holy place is found in all MSS of the AM used for this edition, and on the other hand that the *tirtha* is not mentioned in other classical sources (e.g. Puranas, Laksmidhara's TVK, *Nrsimhapurana* MS, Jinaprabhasuri's TK, Bhusram., and Mitra Misra's TP). Such a silence is all the more surprising in view of the fact that archaeological evidence indicates the existence of a temple at this *tirtha* in the eleventh century. A reason for the omission of this holy place in the Bhusram and TP might be that at the time these texts were written the site was

occupied by a mosque (built by Babur in AD 1528)."

The DA recension, which presumably also dates from after the destruction of the original Janmabhumi temple, has merely taken over the description of the place as found in s and B, without adding more details and praise, yet it has connected the Janmasthana with an elaborate description of Ramanavami (OA 22, OA 23).

This chapter is interesting for text-criticism in that it illustrates the relationship between OA, B,and S. The analysis of this relationship in II, XXIXF.leads to the conclusion that, since OA is not directly based on B and S but goes back to an a-type-of-text which comprised the textual materials of B and S, both agreement between B and S against OA (AM 21. 2d), as well as agreement between OA and B against S (AM 21, 1cd/4cd,2b,7b,9/15), are likely to occur. Since B rests on a later version of the 1-type-of-text than S, a version that stands nearer to the OA recension, a greater affinity of B with OA than with S can be expected, especially in regard to the sequence and the occurrence of verses (see 21.1cd/4cd and 21.9/15 (sequence of OAB vs. S), and 21.3-4, 8-11 (occurring in OAB missing in S) vs. 21.13ab (occurring in BS missing in OA)).

The fact that B represents the most direct or crudest version of the a-type-of-text, which was edited in S and in OA, while the latter has not extended the description of the birthplace (possibly for

reasons advanced above), accounts for the given evidence that MS B actually contains the most complete version of this section of the Mahatmya. The incongruity of S with the a-type-of-text may have prompted the author of B(P), at variance with his normal procedure, to include the entire description of the Janmasthana, thus rewriting a passage of S that was felt to be insufficient. The omission in S of DAB 21.8-11 may have been caused by homoeoteleuton (OABS 21.7cd=OAB 21.11cd).

MS P, which omits several *slokas* ocurring in B (B 21.2-4) and replaces B 21.8 by another *sloka,* contains a hiatus after B 21.9 which is indicated by a sign …. *truti. Slokas* 11 and 12 are corrupt and rendered incompletely in Mss O1 and O2, and BS 21.12abcd seems to be an anacoluthon. Obviously this passage had become corrupt in an early stage of its transmission and the clumsiness of the Sanskrit that remained my have led the editor of A to delete it altogether.

Page 147 further deals about Janam Bhumi. Chapter 28 further deals with location which he had prepared indicating the reason as to how he could come to a conclusion about the Ram Janambhumi. Relevant extracts of chapter 28 are as under:

CHAPTER 28. SVARNAKHANI.

<u>Introduction</u>

Textual evidence.

AM MSS; 10.44abcd, 11.1-61: O2 10.43abcd, 11.1-60ab: A 10.46abcd, 11.1-61; C 5.37ab-40ab; K 5.37ab-40ab; S 4.30-71,

5.1-18ab; om.BP.

Class.Lit.: *Raghuvamsa* 4.26-88, 5.1-35: Mbh. 5.104.8-26 (cp. Mbh. 5.112-117); SMC p.50

Mod.Lit.: Sitaram 1932, 53; Sitaram 1933, 72f.; Carnegy 1870 App. A,p.IX (*kuti* of Raghunathadasa); Ghurye 1953, 191 (Bari Chavani of Raghunathadasa); simha 1957, 415 (*kuti* of Ramaprasada), ibid. p.463 (Bari Chavani of Raghunathadasa).

Note to the textual evidence.

Although the *mahatmya* of this holy place is a conflation of two classical legends (*Raghuvamsa* 4-5, and Mbh. 5.104), the text does not follow either source verbatim.

Location.

OA	**S**	**At present**
Hanumatkunda	Dharmahari	Dharmahari
Hanumatkunda		
Ksirodaka		Ksirodaka
Yajnavedi	Tilodak I-Sarayu-	
Yajnavadi	Samgama	Tilodaki-Sarayu-Samgama

Version of P. Carnegy was confirmed after due research by Hans Bakker.

This Court has occasion to go through the "A Historical

Skethch of Faizabad including Parganas Haveli-Oudh and Pachhimrath with the old capitals Ajudhia and Fyzabad" by P. Carnegy . He has given description of Ayodha, Ram and Ramayan. Looking to the controversy in dispute as regards location of Ram Janam Bhumi, Ram Kot and description given by Carnegy which was based on a systematic way leaves no room for doubt that he affirmed Janambhumi and other temples and took a view that Emperor Babur built the mosque in 1528 after demolishing the Hindu temples Janamstali marks the place where Lord Ram was born. Relevant extracts of Gazetteers by P. Carnegy of Ayodhya are as under:-

AJUDHIA.

Ajudhia- Ajudhia, which is to the Hindu what Macca is to the Mahomedan, Jerusalem to the Jews, has in the traditions of the orthodox, a highly mythical origin, being founded for additional security not on the earth for that is transitory, but on the chariot wheel of the Great Creator himself which will endure for over.

In appearance Ajudhia has been fancifully likened to a fish, having Guptar as its head, the old town for its body, and the eastern parganas for its tail.

Derivation- The name Ajudhia is explained by well-known local Pandits to be derived from the Sanskrit words, *Ajud*, unvanquished, also *Aj,* a name of Barmha, the unconquerable city of the Creator, But Ajudhia is also called *Oudh,* which in Sanskrit

means a promise, in allusion it is said, to the promise made by Ram Chandr when he went in exile, to return at the end of 14 years. These are the local derivation; I am not prepared to say to what extent they may be accepted as correct. Doctor Wilson of Bombay thinks the word is taken from *yudh* to fight, the city of the fighting Chhatris.

Area.- The ancient city of Ajudhia is said to have covered an area of 12 *jogan* or 48 kos, and to have been the capital of Utar-Kausala or Kosala, (the Northern Treasure) the country of the Surajbans race of Kings, of whom Ram Chundar was 57th in descent from Raja Manu, and of which line Raja Sumintra was the 113th and last. They are said to have reigned through the Suth, Tireta, and Dwapar Jugs, and 2,000 years of the Kul or present Jug or Era.

The description of the Ajudhia of Rama and the Ramayan has been beautifully rendered into verse by the distinguished Principal of the Benares College, Mr. Griffiths.

Her ample streets were nobly planned,
And streams of water flowed,
To keep the fragrant blossoms fresh,
That strewed her royal road.

There many a princely palace stood,
In line, on level ground,
Here temple, and triumphal are,
And rampart banner crowned.

There gilded turrets rose on high,
Above the waving green,

Of mango-groves and blooming trees,
And flowery knots between.

On battlement and gilded spire,
The pennon streamed in state;
And warders, with the ready bow,
Kept watch at every gate,

She shone a very mine of gems,
The throne of Fortune's Queen;
So many-hued her gay parterres,
So bright her fountains sheen.

Her dames were peerless for the charm,
Of figure, voice, and face;
For lovely modesty and truth,
And woman's gentle grace.

Their husbands, loyal, wise and kind,
Were heroes in the field,
And sternly battling with the foe,
Could die, but never yield.

Each kept his high observances,
And loved one faithful spouse;
And troops of happy children crowned,
With fruit their holy vows.
(Scenes from the Ramayan.)

With the fall of the last of Rama's line, Ajudhia became a wilderness, and the royal race became dispersed even as the Jews. From different members of this dispersed people, the Rajas of Jaipur, Joudhpur, Udeypur, Jambu, &c., of modern times, on the

authority of the "Tirhut Kuth-ha," claim to descend. Even in the days of its desertion Ajudhia is said still to have remained a comparative Paradise, for the jungle by which it was over-run, was the sweet-smelling *keorah,* a plant which to this day flourishes with unusual luxuriance in the neighbourhood.

Ban-Oudha.- In less ancient times when waste began to yield to cultivation, it took the name of Ban-Oudha or the Jangle of Oudh. With this period the name of Vikramajit is traditionally and intimately associated, when Budhism again began to give place to Brahminism.

The restoration by Vikramajit.- To him the restoration of the neglected and forest-concealed Ajudhia is universally attributed. His main clue in tracing the ancient city was of course the holy river Sarju, and his next was the shrine still known as Nageshar-nath, which is dedicated to Mahadeo, and which presumably excaped the devastations of the Budhist and atheist periods. With these clues, and aided by descriptions ehich he found recorded in ancient manuscripts , the different identified, and vikramajit is said to have indicated the different shrines to which pilgrims from afar still in ghousands half-yearly flock.

Ramkot.- The most remarkable of those was of course Ramkot the strong-hold of Ramchandar. This fort covered a large extent of ground and according to ancient manuscripts, it was surrounded by 20* bastions, each of which was commanded by one

of Rama's famous generals, after whom they took the names by which they are still known. Within the fort were eight royal mansions-!- where dwelt the Patriarch Dasrath, his wives, and Rama his deified son, of whom it has been plaintively sung-

"Lord of all virtues, by no stain defiled,
The king's chief glory was his eldest child,
For he was gallant, beautiful, and strong,
Void of all envy, and the thought of wrong.
With gentle grace to man and child he spoke,
Nor could the churl his harsh reply provoke,
He paid due honor to the gook and sage,
Renowned for virtue and revered for age.
And when at eve his warlike task was o'er,
He sat and listened to their peaceful lore,
Just pure and prudent, full of tender ruth,
The foe of falsehood and the friend of truth;
Kind, slow to anger, prompt at miseries call,
He loved the people, and was loved of all,
Proud of the duties of his warrior race,
His soul was worthy of his princely place.
Resolved to win, by many a glorious deed,
Throned with the gods in heaven, a priceless meed
What thought Brihaspati might hardly vie,
With him in eloquence and quick reply,
Nano heard the music of his sweet lips flow
In idle wrangling or for empty show.
He shunned no toils that student's life befit,
But learned the Vedas and all holy writ;
And even eclipsed his father's archer fame,
So swift his arrow and so sure his aim.

* 1.	Hanuman Garhi.	11.	Kuteswar.
2.	Sugreon.	12.	Labidh Bawan.
3.	Ungad.	13.	Mayand.
4.	Dibadh.	14.	Rakhach.
5.	Nal.	15.	Surumbha.
6.	Nil.	16.	Bibhi Khan.
7.	Sukhen.	17.	Pindark.
8.	Kuber.	18.	Mat Gajyindr.
9.	Gwachh.	19.	Jamwant.
10.	Dadh Biktr.	20.	Kesri.

-!-1. Rattan Singasin (the throne room).
2. Kosilla Mandr (the palace of Kosilla, Raja Dasrath's 1st wife)
3. Sumantra Mandr, (ditto, ditto, 2nd wife.)
4. Kekai Bhawan, (ditto, ditto, 3rd do.)
5. Subha Mandr, (the court house.)
6. Janam Asthan, (Rama's birth place.)
7. Nowratan, (assembly room of the queens.)
8. Kunak Bhawan, (the golden palace of Ramchandar.)

To this praise for virtue his ancient father apparently had no pretension; for we are told that besides the three wives above marginally indicated, who caused him so much anxiety, there were 360 others of whom history says little.* A prodigality of connubial happiness which in modern days found its parallel also in Oudh, in the Kesar Bagh Harem of Wajid Ali Shah.

Note:- The same story and number of wives is also ascribed to Salivahara and Tilokchand.

Samundra Pal Dynasty.- According to tradition Raja Vikramaditta ruled over Ajudhia for 80 years, and at the end of that time he was outwitted by the Jogi Samundra Pal, who having by magic made away with the spirit of the Raja, himself entered into the abandoned body, and he sand his dynasty succeeding to the

kingdom they ruled over it for 17 generations or 643 years, which gives an unusual number of years for each reign.

Note:- Ancient Hindu History is sadly mystified by the irrepressible appearance of Vikramditta. Wilford speaks of eight rulers of the name, extending over as many centuries. Something of the same kind may be said of Tilokchand in these parts, for the Bais, Bachgote and Siribastam families all had most prominent rulers of that name.

The Ajudhia Mahatum.- No account of Ajudhia would be complete with did not throw some light on the Ramayan and the Ajudhia Mahatum. Of the former of these works, I need not speak, for through the writings of Wheeler, Cust, Monier Williams &c. most readers are familiar therewith. I will therefore confine my remarks to the Ajudhia Mahatum, which is comparatively unknown.

This work was prepared to the glorification of Ajudhia according to some, by Ikshawaku of the solar race, while others with more probability aver that it is a transcript from the Askundh and Padam Purans, and is not the production of any Raja. Be that as it may it is well that the essence of the work should be made available to the public, and in this view Mr. Woodburn c.s. Has been good enough to make a connected abstract for me, from a literal translation which I had made some years ago. This abstract is given as Appendix B.

Limits of Oudh.- It is not always easy to comprehend what is

meant by the Oudh or Ajudhia of ancient times, for that territory has been subjected to many changes. So far as these are known to me, I give them below-

The Oudh of Rama.- Such intelligent natives as Maharaja Man Singh have informed me that at this period Oudh was divided into five portions, thus:- (1) *Kosal or Utar Kosala,* which included the present Trans-Gogra districts of Gorakhpur, Busti, Gondah and Baraich. (2) *Pachhamrath,* which included the country between the rivers Gogra dnd Gomti, extending westwards from ajudhia to Nimkhar in Sitapur, (3) *Purabrath,* or the territory between the same rivers, extending eastwards towards Jaunpur, the limit not being traceable. (4) *Arbar* being the country around Pertabgurh, lying between the rivers Gomti and Son, probably the same that is still known as Aror or Arwar: and (5) *Silliana,* which incoluded some portion of the Nepal hills running along the then Oudh frontier.

The Oudh of Akbar.- Mention is made of the title of Subadar of Oudh as early as A.D. 1280, and it was one of the 15 subas or Governorships into which Akbar subdivided the empire in 1590 A.D. The Mahamadan attempt to change the name from Oudh to Akhtarnagar, never seems to have succeeded fully.

The boundaries of the old Suba differed materially from those of the present day, and a large part of what is now the eastern portion of the Province, including tanda, Aldemau, Manikpur, &c.,

was not in those days included in Suba Oudh, but in Allahabad. According to the Ain-i-Akbari the Suba then extended from and inclusive of Sirkar Gorakhpur, to Kanouj, and from the Himalayas to Suba Allahabad, 135 kos by 115 kos.

Suba Oudh contained five Sirkars, viz., (1) Oudh ; (2) Lucknow : (3) Baraich ; (4) Khyrabad ; and (5) Gorakhpur. The details of these are given below, but they are only approximately correct, and in regard to some places my information is incomplete.

The Janmasthan and other temples.- It is locally affirmed that at the Mahomedan conquest there were three important Hindu shrines, with but few devotees attached, at Ajudhia which was then little other than a wilderness. These were the "Janmasthan," the "Sargadwar mandir" also known as "Ram Darbar" and the "Tareta-ke-Thakur."

On the first of these the emperor Babar built the mosque which still bears his name, A.D. 1528. On the second Aurangzeb did the same A.D. 1658-1707; and on the third that sovereign, or his predecessor, built a mosque, according to the well known Mahomedan principle of enforcing their religion on all those whom they conquered.

The Janmasthan marks the place where Ram Chandr was born. The Sargadwar is the gate through which he passed into paradise, possibly the spot where his body was burned. The Tareta-ke-Thakur was famous ad the place where Rama performed a great

sacrifice, and which he commemorated by setting up there images of himself add Sita.

Babar's mosque- According to Leyden's memoirs of Babar that emperor encamped at the junction of the Serwa and Gogra rivers two orthree kos east from Ajudhia, on the 28th March 1528, and there he halted 7 or 8 days settling the surrounding country. A well known hunting ground is spoken of in that work, 7 or 8 kos above Oudh, on the banks of the Surju. It is remarkable that in all the copies of Babar's life now known, the pages that relate to his doings at Ajudhia are wanting. In two places in the Babari mosque the year in which it was built 935 H., corresponding with 1528 A.D. is carved in stone, along with inscriptions dedicated to the glory of that emperor.

If Ajudhia was then little other than a wild, it must at least have possessed a fine temple in the Janmasthan; for many of its columns are still in existence and in good preservation, having been used by the Musalmans in the construction of the Babari Mosque. These are of strong close-grained dark slate-colored or black stone, called by the natives *Kasoti* (literally touch-stone,) and carved with different devices. To my thinking these strongly resemble Budhist pillars that I have seen at Benares and elsewhere. They are from seven to eight feet long, square at the base, centre and capital, and round or octagonal intermediately.

Hindu and Musalman differences.- The Janmasthan is within

a few hundred paces of the Hanuman Garhi. In 1855 when a great rupture took place between the Hindus and Mahomedans, the former occupied the Hanuman Garhi in force, while the Musalmans took possession of the Janmastham. The Mahomedans on that occasion actually charged up the steps of the Hanuman Garhi, but were driven back with considerable loss. The Hindus then followed up this success, and at the third attempt, took the Janmasthan, at the gate of which 75 Mahomedans are buried in the “Martyrs' grave” (ganj-shahid.) Several of the King's Regiments were looking on all the time, but their orders were not to interfere. It is said that up to that time the Hindus and Mahomedans alike used to worship in the mosque-temple. Since British rule a railing has been put up to prevent disputes, within which in the mosque the Mahomedans pray, while outside the fence the Hindus have raised a platform on which they make their offerings.

The two other old mosques to which allusion has been made (known by the common people by the same of *Nourang Shah,* by whom they mean Aurangzeb,) are now mere picturesque ruins. Nothing has been done by the Hindus to restore the old Mandir of “Ram Darbar.” The “Tareta-ke-Thakur” was reproduced near the old ruin by the Raja of Kalu, whose estate is said to be in the Punjab, more than two centuries ago; and it was improved upon afterwards by Hilla Bai, Marathin, who also built the adjoining ghat A.D. 1784. She was the widow of Jaswant Rai, Holkar, of Indore,

from which family Rs. 231 are still annually received at this shrine.

Thus, on the basis of convincing epigraphical evidence the belief of Hindus and the arguments advanced by Hindus, I am of the view that the city of Ayodhya undeniably is city of great antiquity and sacred spot to the Hindus for a long time. Valmiki Ramayan, Srimad Bhagwat, Mahabhart and Raghuvansham recognised the identity of Ayodhya.

On the basis of record it transpired that on the basis of historical account given by William Finch, William Foster and Tieffen Thaler, it is crystal clear that Hindus were worshipping the site as birth place of Lord Ram as a deity. The aforesaid assertions corroborate that Hindu temple used to exist at the birth place of Lord Ram at Ram Kot. Encyclopaedia Britannica India by Surgeon J.A. Balfour , gazetteer of P. Carnegy and other gazetteers reveal the location of Babri mosque as the site of Ram Janam Bhumi and corroborate the version of William Finch that the pilgrims were offering prayers with a belief that site was the birth place of Lord Ram. Hans Bakker in hi s research work also corroborated the historical version. He also consulted religious books of Hindus and other historical books. I have already referred important extracts of his thesis on the subject . Thus, from the material on record it transpires that site was used to be a temple on Ram Janam Bhumi which was reconstructed in 12th century and the same was demolished. A.S.I. also confirms ruins of 12th century

temple. Even the debris of the Babri mosque which were collected on 6.12.1992 proves the existence of Ram Janam Bhumi temple which was considered at the birth spot of Lord Ram. Fourteen Kasauti pillars were taken from the old temple and were used in the construction of the mosque by Muslim on which images of Hindu Gods and Goddesses were engraved. Sita Rasoi and Charan Paduka were identified by Hans Bakker. In this context para 78 of Dr. M Ismail Faruqui and others Vs. Union of India and others 1994(6) SCC 360 is relevant which reads as under:-

"*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."***

Thus, there is overwhelming evidence that the property in suit is site of Ram Janambhumi.It is corroborated by religious records, religious books, judicial records and relevant scriptures . The fact of destruction of Ram Janambhumi temple is also established. This fact is also established that Hindus were worshipping Ram Janambhumi. Revenue records also show entry of Janambhumi, which was not objected by the parties at any point of

time. The first revenue record also refers the place as Janambhumi, probably for the reason that Britishers after investigation and research work of P. Carnegy were satisfied that the place of birth of Lord Ram is site of Babri mosque. William Finch and others also corroborated the version that Hindus were worshipping the site as Ram Janambhumi. Version of William Finch is more acceptable for the reason that according to Muslims the mosque was constructed in the year 1528 while William Finch visited Ayodhya in the early 17th century, that is, about 70 years after the demolition of the temple. Thus, his information and description about the place was based on correct appreciation of facts and on the basis of information based on faith and belief of Hindus, P. Carnegy also acknowledged the work of William Finch and others .

On the basis of the statements of parties it further transpires that there is no dispute between the parties that Lord Ram took birth at Ayodhya. The only dispute is with regard to birth spot. The parties admit the existence of Ram Kot ,i.e. fort of Lord Ram. There is overwhelming evidence that after the destruction of old temple celebration of Ram Naumi was going on at Ayodhya. Even in those days five lakh people used to assemble to celebrate the festival of Ram Naumi. Thus, the circumstantial evidence available on record fully corroborate the report of the ASI and if read in the light of historical account given by William Finch and others leaves no room for doubt that Janambhumi was worshipped along with

Charan Paduka and Sita Rasoi by Hindus. I may further clarify that according to Hindus place of worship may be deemed to be a deity itself with or without any idol. Ritually among Hindus this is considered as a deity at other religious place like Gangotri, Yamnotri,Gaya, Kedar Nath Amaranath etc. Even at Jagannathpuri the deities are changed after 12 years. Even then the place is worshipped like a deity. Thus, without any form or shape the place can also be worshipped without idols. **The deities were installed in the inner courtyard on 22/23.12.1949. They are being worshipped by devotees. Thus, the Hindus are worshipping the place in dispute as Ram Janambhumi as a sacred place of pilgrims from time immemorial and idols were also worshipped, firstly at Ram Chabutra and thereafter idols were shifted on 22/23. 12.1949 at birth spot of Lord Rama inside the disputed structure.** Thus from Hindu side overwhelming evidence has been produced to establish that the property in suit is site of Janambhumi of Lord Ram. It is also established from record that idols and objects of worship were placed inside the disputed building in the night intervening 22/23-12.1949. Hindus in general and defendants in particular were worshipping Charan Paduka, Sita Rasoi and other idols even after the construction of Babri mosque in the outer courtyard. Hindus were worshipping the place in dispute as a sacred place of birth of Lord Rama in the inner courtyard from times immemorial.

Hindus have proved the existence of temple construed in 12th century at the site of Ram Janambhumi. They have also proved their belief that the place was worshipped like a deity and further proved the fact that after demolition of the temple the mosque was constructed after re-using material and broken part of the temple and the deities.

Lastly, against the tenets of Islam, no mosque can be constructed after demolishing a temple. Further according to the Muslims, inside the mosque there cannot be two spots of worship, one for Hindus and another for Muslims. Thus, temple and mosque cannot co-exist at the disputed spot. Accordingly it is established that even prior to the destruction of Hindu temple which was constructed in 12th century, no mosque can come into existence against the tenets of Islam at the site of birth place of Lord Ram.

It is manifestly established by public record, gazetteers, history accounts and oral evidence that the premises, in dispute, is the place where Lord Ram was born as son of Emperor Dashrath of solar dynasty. According to the traditions and faith of devotees of Lord Ram, the place where He manifested Himself has ever been called as Sri Ram Janmbhumi by all and sundry through ages. Thus, the Asthan, Ram Janambhumi has been an object of worship as a deity by the devotees of Lord Ram as it personifies the spirit of divine worshipped in the form of Ram Lala or Lord Ram, the child. Ram Janmbhumi is also a deity and a juridical person. It is

established from evidence that the Hindus worship the divine place in the form of God. The Hindus can mediate upon the formless and shapeless divine. The spirit of Divine is indestructible. Birth place is sacred place for Hindus and Lord Ram, who is said to be incarnation of God, was born at this place. The Hindus since times immemorial and for many generations constantly hold in great esteem and reverence the Ram Janmbhumi where they believe that Lord Ram was born. It is established by tradition and classical legal literature relating to the Hindus and according to their belief and faith that the place is regarded as a deity. This place, according to Hindu religion, is symbol and embodiment of spiritual purpose and the property is dedicated and vested with the Asthan, Janmbhumi. This place being worshipped as idol from times immemorial and dedicated property vests in idol as juristic person. Thus, the place according to the Smirit have to be considered as a deity like Agni and Vayu being worshipped. They are shapeless and formless but they attain the divinity. If the public go for worship and consider that there is divine presence, then it is temple which has already been held by Hon'ble apex court in 1999(5) SCC page 50 **Ram Janki Deity Vs. State of Bihar.**

In view of **Gokul Nath Ji Mahraj Vs. Nathji Bhogilal AIR 1953 Allahabad 552,** after the length of time it is impossible to prove by affirmative evidence that there was any consecration ever by faith and belief. It is believed that the place is the place which

was considered by all times as a deity and is being worshipped like a deity. Accordingly Asthan is personified as the spirit of divine worshipped as the birth place of Lord Ram.

In view of the discussions, referred to above, it is established that the property in suit is the site of Janm Bhumi of Ram Chandra Ji and Hindus in general and the defendants in particular had the right to worship Charan, Sita Rasoi, other idols and other object of worship existed upon the property in suit. It is also established that Hindus have been worshipping the place in dispute as Janm Sthan i.e. a birth place and visiting it as a sacred place of pilgrimage as a right since times immemorial. After the construction of the disputed structure it is not proved the deities were installed inside the disputed structure before 22/23.12.1949, but the place of birth is a deity. It is also proved that in the outer courtyard was in exclusive possession of Hindus and they were worshipping throughout and in the inner courtyard (in the disputed structure) they were also worshipping. It is also established that the disputed structure cannot be treated as a mosque as it came into existence against the tenets of Islam.

In view of the above findings issues No.11,13,14,19-a and 19-c are decided against the plaintiffs.

ISSUES NO. 16 & 22

16. To what relief, if any, are the plaintiffs or any of them, entitled?

22. Whether the suit is liable to be dismissed with special costs?

FINDINGS

These issues are inter related and conveniently be decided at one place. The Hon'ble Apex Court in ***Dr. Ismail Farooqui Vs. Union of India, 1994 (6) SCC 390***, directed this Court to consider the title of the parties. Plaintiffs have claimed title through adverse possession and have also relied upon certain revenue records, which has been discussed while deciding issues by me. Thus, on the basis of revenue record the plaintiffs have failed to establish the title and adverse possession over the property in suit. Plaintiffs have further failed to establish their exclusive possession over the property in suit till 22nd December, 1949. Hon'ble Apex Court upheld the validity of provisions of Acquisition of Certain Area at Ayodhya, 1993 in Dr. Ismail Faruqui case (supra) and held that the Central Government can acquire any place of worship. At para- 78 Apex Court held that the place of birth has a particular significance for Hindus and it should be treated on different footing, which reads as under:-

> "**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."

On behalf of Hindus it is urged that the plaintiffs are not entitled for the relief claimed and as such the relief is barred by the provisions of Section 42 of the Specific Relief Act,1877 which is at par with Section 34 of the Specific Relief Act,1963 on the ground that they have superior fundamental rights. Contentions of Hindus are as under:-

The Hindus have superior fundamental right than the Muslims under articles 25 & 26 of the Constitution of India for the reasons that performing customary rituals and offering service worship to the lord of universe to acquire merit and to get salvation as such it is integral part of Hindu Dharma & religion in view whereof it is humbly submitted that the instant suit is liable to be dismissed with exemplary cost:

1. In (1998) 8 SCC 296 (*Mr. 'X' v. Hospital 'Z'.)* the Hon'ble Supreme Court held that where there is a clash of two Fundamental Rights, the Right which would advance the public morality or public interest would alone be enforced through the process of Court. In other words the superior Fundamental Right would prevail. Relying on said judgment it is submitted that the pilgrimage, service and worship as

well as performance of customary rituals at Sri Ramjanamsthan which has been described as Babri Mosque in the plaint is integral part of Hinduism as it has been commanded by the Holy Divine Scripture Sri Atharv Ved, the Holy Sacred Scripture Sri Skand Puran & Sri Narsimh Puran, Sri Valmiki Ramayana, The Sacred Religious Book Sri Ramacharitamanasa that the persons must visit the birth place of the Lord of Universe Sri Ram and by doing so they will acquire merit of visiting all the sacred places, performing of all yajnas (sacrifice) and gifting of thousands of cows etc. as also they will get salvation. But in no sacred holy books of Islam it has been mentioned that offering prayer at the birth place of Sri Ram which has been described as Babri Mosque in the plaint is integral part of Islam. As such the Hindus have superior Fundamental Right to enforce through this Hon'ble Court and the instant suit is liable to be dismissed as *Sthandil* of Sri Ram which is a deity cannot be declared as mosque otherwise it will infringe Fundamental Rights of the Hindus guaranteed under Article 25 and 26 of the Constitution of India. Relevant paragraph nos.44 and 45 of the said judgment read as follows:

> "**44.** Ms 'Y', with whom the marriage of the appellant was settled, was saved in time by the disclosure of the vital information that the appellant was HIV(+). The disease which is communicable would have been positively communicated to her immediately on the consummation of marriage. As a human being, Ms 'Y'

must also enjoy, as she obviously is entitled to, all the Human Rights available to any other human being. This is apart from, and in addition to, the Fundamental Right available to her under Article 21, which, as we have seen, guarantees "right to life" to every citizen of this country. This right would positively include the right to be told that a person, with whom she was proposed to be married, was the victim of a deadly disease, which was sexually communicable. Since "right to life" includes right to lead a healthy life so as to enjoy all the faculties of the human body in their prime condition, the respondents, by their disclosure that the appellant was HIV(+), cannot be said to have, in any way, either violated the rule of confidentiality or the right of privacy. Moreover, where there is a clash of two Fundamental Rights, as in the instant case, namely, the appellant's right to privacy as part of right to life and Ms 'Y's right to lead a healthy life which is her Fundamental Right under Article 21, the 310 right which would advance the public morality or public interest, would alone be enforced through the process of court, for the reason that moral considerations cannot be kept at bay and the Judges are not expected to sit as mute structures of clay in the hall known as the courtroom, but have to be sensitive, "in the sense that they must keep their fingers firmly upon the pulse of the accepted morality of the day". (See: Allen: *Legal Duties*)

45. "AIDS" is the product of undisciplined sexual impulse. This impulse, being a notorious human failing if not disciplined, can afflict and overtake anyone howsoever high or, for that matter, how low he may be in the social strata. The patients suffering from the dreadful disease "AIDS" deserve full sympathy. They are entitled to all respect as human beings. Their society cannot, and should not be avoided, which otherwise, would have a bad psychological impact upon them. They have to have their avocation. Government jobs or service cannot be denied to them as has been laid down in some American decisions. (See: *School Board of Nassau Country, Florida* v. *Airline*[8]; *Chalk* v. *USDC CD of Cal.*[9]; *Shuttleworth* v. *Broward Cty.*[10]; *Raytheon* v. *Fair Employment and Housing Commission, Estate of Chadbourne*[11]. But "sex" with them or the possibility thereof has to be avoided as otherwise they would infect and

> communicate the dreadful disease to others. The Court cannot assist that person to achieve that object."

2. In (1994) 6 SCC 360 (*M. Ismail Faruqui (Dr.) v. Union of India)* the Hon'ble Supreme Court has held that the Right to Practise, Profess and Propagate Religion guaranteed under Article 25 of the Constitution 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 of India. The protection under Articles 25 and 26 is to religious practice which forms integral part of practice of that religion. 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 signifgicance of 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. Relying on said judgment it is submitted that Sri Ramjanamsthan has particular significance for the Hinduism as visiting and performing customary rites confer merit and gives salvation it is firm belief of the Hindus based

on their sacred Divine Holy Scriptures which belief neither can be scrutinized by any Court of Law nor can be challenged by the persons having no faith in Hinduism as this is conscience of the Hindus having special protection under Article 25 of the Constitution of India. Relevant paragraph 77 and 78 of the said judgment read as follows:

> **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.

3. In M. Ismail Faruqui (Dr.) v. Union of India *(supra)* the Hon'ble Supreme Court held that a mosque is not an essential part of the practice of the religion of Islam and namaz (prayer) by Muslims can be offered any where even in open.

The Right to Worship is not at any and every place so long as it can be practised effectively, unless the Right to Worship at a particular place is itself an integral part of that right. Relying on said ratio of law it is submitted that without offering prayer at Sri Ramjanamsthan described as Babri mosque in the plaint it can be practised somewhere else but offering prayer in stead of Sri Ramjanamsthan at any other place cannot be practised because the merit which is obtained by worshiping at the birth place of Sri Ram cannot be obtained by doing so at other places and it will be contrary to the holy Divine Sacred Scripture of the Hindus and will cause extinction of a most sacred shrine of the Hindus. Relevant paragraph nos.80 to 87 of the said judgment read as follows:

> **"80.** It has been contended that a mosque enjoys a particular position in Muslim Law and once a mosque is established and prayers are offered in such a mosque, the same remains for all time to come a property of Allah and the same never reverts back to the donor or founder of the mosque and any person professing Islamic faith can offer prayer in such a mosque and even if the structure is demolished, the place remains the same where the namaz can be offered. As indicated hereinbefore, in British India, no such protection was given to a mosque and the mosque was subjected to the provisions of statute of limitation thereby extinguishing the right of Muslims to offer prayers in a particular mosque lost by adverse possession over that property.
>
> **81.** Section 3(26) of the General Clauses Act comprehends the categories of properties known to Indian Law. Article 367 of the Constitution adopts this secular concept of property for purposes of our Constitution. A temple, church or mosque etc. are essentially immovable properties and subject to

protection under Articles 25 and 26. Every immovable property is liable to be acquired. Viewed in the proper perspective, a mosque does not enjoy any additional protection which is not available to religious places of worship of other religions.

82. The correct position may be summarised thus. Under the Mahomedan Law applicable in India, title to a mosque can be lost by adverse possession (See *Mulla's Principles of Mahomedan Law*, 19th Edn., by M. Hidayatullah — Section 217; and *Shahid Ganj* v. *Shiromani Gurdwara*[3] 13). If that is the position in law, there can be no reason to hold that a mosque has a unique or special status, higher than that of the places of worship of other religions in secular India to make it immune from acquisition by exercise of the sovereign or prerogative power of the State. A mosque is not an essential part of the practice of the religion of Islam and *namaz* (prayer) by Muslims can be offered anywhere, even in open. Accordingly, its acquisition is not prohibited by the provisions in the Constitution of India. Irrespective of the status of a mosque in an Islamic country for the purpose of immunity from acquisition by the State in exercise of the sovereign power, its status and immunity from acquisition in the secular ethos of India under the Constitution is the same and equal to that of the places of worship of the other religions, namely, church, temple etc. It is neither more nor less than that of the places of worship of the other religions. Obviously, the acquisition of any religious place is to be made only in unusual and extraordinary situations for a larger national purpose keeping in view that such acquisition should not result in extinction of the right to practise the religion, if the significance of that place be such. Subject to this condition, the power of acquisition is available for a mosque like any other place of worship of any religion. The right to worship is not at any and every place, so long as it can be practised effectively, unless the right to worship at a particular place is itself an integral part of that right.

Maintainability of the Reference

83. In the view that we have taken on the question of validity of the statute (Act No. 33 of 1993) and as a result of upholding the validity of the entire statute, except Section 4(3) thereof, resulting in revival of the pending suits and legal proceedings wherein the dispute between the parties has to be adjudicated, the

Reference made under Article 143(1) becomes superfluous and unnecessary. For this reason, it is unnecessary for us to examine the merits of the submissions made on the maintainability of this Reference. We, accordingly, very respectfully decline to answer the Reference and return the same.

Result

84. The result is that all the pending suits and legal proceedings stand revived, and they shall be proceeded with, and decided, in accordance with [419] law. It follows further as a result of the remaining enactment being upheld as valid that the disputed area has vested in the Central Government as a statutory receiver with a duty to manage and administer it in the manner provided in the Act maintaining status quo therein by virtue of the freeze enacted in Section 7(2); and the Central Government would exercise its power of vesting that property further in another authority or body or trust in accordance with Section 8(1) of the Act in terms of the final adjudication in the pending suits. The power of the courts in the pending legal proceedings to give directions to the Central Government as a statutory receiver would be circumscribed and limited to the extent of the area left open by the provisions of the Act. The Central Government would be bound to take all necessary steps to implement the decision in the suits and other legal proceedings and to hand over the disputed area to the party found entitled to the same on the final adjudication made in the suits. The parties to the suits would be entitled to amend their pleadings suitably in the light of our decision.

85. Before we end, we would like to indicate the consequence if the entire Act had been held to be invalid and then we had declined to answer the Reference on that conclusion. It would then result in revival of the abated suits along with all the interim orders made therein. It would also then result automatically in revival of the worship of the idols by Hindu devotees, which too has been stopped from December 1992 with all its ramifications without granting any benefit to the Muslim community whose practice of worship in the mosque (demolished on 6-12-1992) had come to a stop, for whatever reason, since at least December 1949. This situation, unless altered subsequently by any court order in the revived

> suits, would, therefore, continue during the pendency of the litigation. This result could be no solace to the Muslims whose feelings of hurt as a result of the demolition of mosque, must be assuaged in the manner best possible without giving cause for any legitimate grievance to the other community leading to the possibility of reigniting communal passions detrimental to the spirit of communal harmony in a secular State.
>
> **86.** The best solution in the circumstances, on revival of suits is, therefore, to maintain status quo as on 7-1-1993 when the law came into force modifying the interim orders in the suits to that extent by curtailing the practice of worship by Hindus in the disputed area to the extent it stands reduced under the Act instead of conferring on them the larger right available under the court orders till intervention was made by legislation.
>
> **87.** Section 7(2) achieves this purpose by freezing the interim arrangement for worship by Hindu devotees reduced to this extent and curtails the larger right they enjoyed under the court orders, ensuring that it cannot be enlarged till final adjudication of the dispute and consequent transfer of the disputed area to the party found entitled to the same. This being the purpose and true effect of Section 7(2), it promotes and strengthens the commitment of the nation to secularism instead of negating it. To hold this provision as anti-secular and slanted in favour of the Hindu community 420 would be to frustrate an attempt to thwart anti-secularism and unwittingly support the forces which were responsible for the events of 6-12-1992."

4. AIR 1966 SUPREME COURT 1119 "Shastri Yagnapurushdasji v. Muldas Bhundardas Vaishya" a constitution Bench of the Hon'ble Supreme Court of India inferred that according to Hindu Dharma the ultimate goal of humanity is the release and freedom from the unceasing cycle of births and rebirths; Moksha or Nirvana, which is the ultimate aim of Hindu religion and philosophy, represents the state of absolute absorption and assimilation of the individual

soul with the infinite. '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'. This definition brings out succinctly the broad distinctive features of Hindu religion. Relying on said judgment it is respectfully submitted that as according to the Holy Devine Srimad Atharv- Ved, Sri Skand Puran, Sri Narsimh Puran,Sri Valmiki Ramayan, Sri Ram-charitmanas etc. a Hindu gets salvation on visiting and having a look of *Sthandil* / *Site* of 'Sri Ramjanamsthan' in Ayodhya as well as by performing customary rituals thereon, pilgrimage to said most holiest place and performing service and worship thereon is integral part of Hinduism guaranteed under Articles 25 and 26 of the Constitution of India deprivation wherefrom would amount to infringement of Fundamental right of freedom of religion of the Hindus and extinction of sacred place of Hiindus which is easiest means of ultimate end of salvation for the Hindus. Relevent paragraph 39-41 of the said judgment reads as follows:

> 39. Whilst we are dealing with this broad and comprehensive aspect of Hindu religion, it may be permissible to enquire what, according to this religion, is the ultimate goal of humanity? It is the release and freedom from the unceasing cycle of

births and rebirths; Moksha or Nirvana, which is the ultimate aim of Hindu religion and philosophy, represents the state of absolute absorption and assimilation of the individual soul with the infinite. What are the means to attain this end? On this vital issue, there is great divergence of views; some emphasise the importance of Gyan or knowledge, while others extol the virtues of Bhakti or devotion; and yet others insist upon the paramount importance of the performance of duties with a heart full of devotion and mind inspired by true knowledge. In this sphere again, there is diversity of opinion, though all are agreed about the ultimate goal. Therefore, it would be inappropriate to apply the traditional tests in determining the extent of the jurisdiction of Hindu religion. It can be safely described as a way of life based on certain basic concepts to which we have already referred.

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(11-A)". 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 complementary (12)*"

(11-A)
B. G. Tilak's Gitarahasaya".

* (12) "The Present day experiment in Western Civilisation" by Toynbee, page 46-49.

41. The Constitution-makers were fully conscious of

> this broad and comprehensive character of Hindu religion; and so, while guaranteeing the fundamental right to freedom of religion, Explanation II to Art. 25 has made it clear that in sub-clause (b) of clause. (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

5. In AIR 1996 SUPREME COURT 1765 = (1996) 9 SCC 548 "A. S. Narayana Deekshitulu v. State of A.P." the Hon'be Supreme Court held that a religion undoubtedly has its basis in a system of belief and doctrine which are regarded by those who profess religion to be conducive to their spiritual well-being; and religion is not merely an opinion, doctrine or belief. It has outward expression in acts as well. What are essential parts of religion or religious belief or matters of religion and religious practice is essentially a question of fact to be considered in the context in which the question has arisen and the evidence - factual or legislative or historic - presented in that context is required to be considered and a decision reached. Relying on said judgment it is submitted that performing customary rituals and service worship at Sri Ramajanamasthan is integral part of Hindus religious practices but offering prayer on that sacred place is not integral part of Islam. Relevant paragraph 89-91 of the said judgment reads as follows:

> "89. 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. In pluralistic society like India, as stated earlier, there are numerous religious groups who practise diverse forms of worship or practise religions, rituals, rites etc, even among Hindus, different denominates and sects residing within the country or abroad profess different religious faiths, beliefs, practices. They seek to identify religion with what may in substance be mere facets of religion. It would, therefore, be difficult to devise a definition of religion which would be regarded as applicable to all religions or matters of religious practices. To one class of persons a mere dogma or precept or a doctrine may be pre-dominant in the matter of religion; to others, rituals or ceremonies may be

predominant facets of religion; and to yet another class of persons a code of conduct or a mode of life may constitute religion. Even to different persons professing the same religious faith some of the facets of religion may have varying significance. It may not be possible, therefore, to devise a precise definition of universal application as to what is religion and what are matters of religious belief or religious practice. That is far from saying that it is not possible to State with reasonable certainty the limits within which the Constitution conferred a right to profess religion. Therefore, the right to religion guaranteed under Article 25 or 26 is not an absolute or unfettered right to propagating religion which is subject to legislation by the State limiting or regulating any activity - economic, financial, political or secular which are associated with religious belief, faith, practice or custom. They are subject to reform on social welfare by appropriate legislation by the State. Though religious practices and performances of acts pursuance of religious belief are as much a part of religion as faith or belief in a particular doctrine, that by itself is not conclusive or decisive. What are essential parts of religion or religious belief or matters of religion and religious practice is essentially a question of fact to be considered in the context in which the question has arisen and the evidence - factual or legislative or historic - presented in that context is required to be considered and a decision reached.

93. 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?

6. In AIR 1996 SUPREME COURT 1765 = (1996) 9 SCC 548 "A. S. Narayana Deekshitulu v. State of A.P." the Hon'be Supreme Court distinguished between Dharma and religion stating that that the Hindu Dharma is eternal and since time immemorial. Relying on said judgment it is submitted that as the Lord of Sri Ram any protector of Dharma and has shown path of Dharma to the mankind, His Place of Birth has special significance for the Hindus and it is not only part of religious practices but the epicenter of the Hindu Dharma. Relevant paragraph nos. 143 to 148 of the said judgment read as follows:

> " 143. Very often the words "religion" and the same concept or notion; to put it differently, they are used inter-changeably. This, however, is not so, as would become apparent from what is being stated later, regarding our concept of dharma. I am of the considered view that the word religion in the two articles has really been used, not as colloquially understood by the word religion, but in the sense of it comprehending our concept of dharma. The English language having had no parallel word to dharma, the word religion was used in these two articles. it is a different matter that the word dharma has now been accepted even in English language, as would appear from Webster's New Collegiate

Dictionary which has defined it to mean : Dharma : n (Skt. fr. dharayati he holds:) akin to L firmus firm : custom or law regarded as duty : he basic principles of cosmic or individual existence : nature : conformity to one's duty and nature". The Oxford Dictionary to one's duty and nature",. The Oxford Dictionary defines dharma as : "Right behaviour, virtue; the law (Skt. a decree, custom)".

144. The difference between religion and dharma is eloquently manifested when it is remembered that this Court's precept is
It is apparent that the word dharma in this canon or, for that matter, in our saying :
,does not mean religion, but the same has been used in the sense defined in the sense defined in the aforesaid two dictionaries. This is how the President of India, Dr. Shanker Dayal Sharma, understood the word dharma in his address at the First Convocation of the National Law School of India University delivered on 25th September, 1993 at Bangalore.

145. Our dharma is said to be `Sanatana' i. e. one which has eternal values: one which is neither time-bound nor space-bound. It is because of this that Rig veda has referred to the existence `Sanatan Dharmani'. The concept of `dharma', therefore, has been with us for time immemorial. The word is derived from the root`Dh. r' - which denotes : `upholding', supporting', nourishing' and sustaining', It is because of this that in Karna Parva of the Mahabharata, Verse- 58 in Chapter 69 says :
"Dharma is for the stability of the society, the maintenance of social order and the general well-being and progress of human king. Whatever conduces to the fulfillment of these object is Dharma; that is definite."
(This is the English translation of the Verse) as finding place in the aforesaid Convocation Address by Dr. Shanker Dayal Sharma.)

146. The Brhadaranyakopanisad identified Dharma with Truth, and declared its supreme status thus :
" There is nothing higher than dharma. Even a very weak man hopes to prevail over a very strong man on the strength of dharma, just as (he prevails over a wrong-doer) with the help of the King. So what is called Dharma is really Truth. Therefore people say

about a man who declares the truth that he is declaring dharma and about one who declares dharma they say he speaks the truth. These two (dharma and truth) are this."
(English translation of the original text as given in the aforesaid convocation address).

147. The essential aspect of our ancient thought concerning law was the clear recognition of the supremacy of dharma and the clear articulation of the status of `dharma', which is somewhat akin to the modern concept of the rule of law. i. e. of all being sustained and regulated by it.

148. In Verse- 9 of Chapter-5 in the Ashrama Vasika Parva of the Mahabharata, dhritrashtra states to Yudhisthira : "the State can only be preserved by dharma- under the rule of law."

7. AIR 1982 SUPREME COURT 1107 "K. Rajendran v. State of T.N." the Hon'ble Supreme Court has quoted the statement of the Lord of Universe Sri Rama from the Ramayana depicting the attitude of an Indian ruler as an authority. From said judgments it becomes crystal clear that even a statement of the Lord of Sri Rama has greatest value for the Hindus as such the religious value of His Birth place is beyond description. Relevant paragraph 49 of the said judgment reads as follows:

"49. The nature of the relationship that exists or ought to exist between the Government and the people in India is different from the relationship between the ruler and his subjects in the West. A study of the history of the fight for liberty that has been going on in the West shows that it has been a continuous agitation of the subjects for more and more freedom from a king or the ruler who had once acquired complete control over the destinies of his subjects. The Indian tradition or history is entirely different. The attitude of an Indian ruler is depicted

in the statement of Sri Rama in the Ramayana thus :

……….. (Ramayana III-10-3)
(Kshatriyas (the kings) bear the bow (wield the power) in order to see that there is no cry of distress (from any quarter)).”

8. AIR 1998 SUPREME COURT 3164 = (1998) 7 SCC 392 "State of Gujarat v. Hon'ble High Court of Gujarat" the Hon’ble Supreme court has observed that the world would have been poorer without the great epic "Ramayana". From the said judgment it becomes clear that each and every thing connected with the Lord of Universe is of great value to the Hindus and extinction of the most holiest shrine *Sri Ramajanamsthan* will deprive the Hindus from acquiring un-parallel merit and salvation which can be obtained only by visiting the said sacred shrine and performing customary ritual there. Relevant paragraph 31 of the said judgment reads as follows:

> “31. It is a grand transformation recorded in the epics that the hunter Valmiki turned out to be a poet of eternal recognition. If the powers which brought about that transformation had remained inactive the world would have been poorer without the great epic **"**Ramayana**".** History is replete with instances of bad persons transforming into men of great usefulness to humanity. The causes which would have influenced such swing may be of various kinds. Forces which condemn a prisoner and consign him to the cell as a case of irredeemable character belong to the pessimistic society which lacks the vision to see the innate good in man.”

9. In AIR 1954 SUPREME COURT 282 "Commr., Hindu Religious Endowments, Madras v. Lakshmindra Thirtha

Swamiar of Shirur Mutt" the Hon'ble Supreme court held that 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 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 these forms and observances might extend even to matters of food and dress. The guarantee under the Constitution of India 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. Relying on said judgment it is submitted that performing customary rites at Sri Ramajanamasthan is integral part of religions practices of the Hindus as Hindus believe that therein there is invisible power of the Lord of Universe Sri Ram who confers merit on devotees and gives them salvation as such said practice is integral part of Hindu Dharma & Religion and is protected under Article 25 & 26 of the constitution of India. Relevant paragraph nos. 17, 18 and 19 of the said judgment read as follows:

> "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). …"

10. In AIR 1954 SUPREME COURT 282 "Commr., Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Shirur Mutt" the Hon'ble Supreme court held that Under Art. 26(b), therefore, a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters and ; 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. Relying on said ratio of law it is submitted that prohibiting the Hindus from performing their customary religious rituals at Sri Ramajanamasthan which has been described as Babari Mosque and not handing over management of the said sacred shrine of the Hindus shall infringe fundamental rights of the Hindus guaranteed under Articles 25 and 26 of the constitution of India. Relevant paragraph 22 of the said judgment reads as follows:

> " 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."

11. AIR 2004 SUPREME COURT 2984 = (2004) 12 SCC 770

"Commr. of Police v. Acharya Jagadishwarananda Avadhuta"

It is settled law that protection under Articles 25 and 26 of the Constitution of India extend guarantee for rituals and observances, ceremonies and modes of worship which form part and parcel of religion. Practice becomes part of religion only if such practice is found to be essential and integral part. It is only those practices which are integral part of religion that are protected. What would constitute an essential part of religion or religious practice is to be determined with reference to the Doctrine of a particular religion which

includes practices which are regarded by the Community as part and parcel of that religion. Test has to be applied by Courts whether a particular religious practice is regarded by the community practicing that particular practice is integral part of the religion or not. It is also necessary to decide whether the particular practice is religious in character or not and whether the same can be regarded as an integral or essential part of religion which has to be decided based on evidence. Many symbols have been used in Hindu Literature. Different kinds of symbols and images have different sanctity. Brading of chest, arms and other parts of body represent to the weapons of symbols of Siva. Relying on said judgment it is submitted that being Shartric (Scriptural) command visiting Sri Ramajanamasthan and performing service worship there is integral part of religion of Hindus but it is not integral part of Muslim religion as such instant suit is liable to be dismissed. Relevant paragraph nos. 80 to 86 read as follows:

> "80. It would be pertinent to mention that the Sikh Community carry "Kirpans" as a symbol of their religious practice and the Gurkhas the "Kukris" or "Dagger". So also, the Hindus are permitted to carry the idol of "Ganesa" in procession before immersion in the sea during Vinayaka Chaturti Celebrations. Persons professing Islamic Faith are allowed to take out procession during "Moharrum" Festival and persons participating in such processions beat their chest with hands and chains and inflict injuries on them and the same has been permitted as a religious practice of that community.

81. Each deity presides over a certain function, has a certain consort, uses a particular vehicle, giving them a concrete aspect that appeals to less spiritually sophisticated lay people. All these insignia have a deep philosophical symbolism. What might interest us presently is that all these vehicles are mostly drawn from the world of animals, birds, and even reptiles. For example, Brahma has a swan, Vishnu has a garuda, a type of eagle, Siva rides a bull, Ganesa a mouse, Subrahmanya a peacock, and so on. The idea is only to emphasize the kinship with animals. Trees have the divinity Vanadevata. War is presided over by the Goddess Chemundi riding a lion. Sound has a divinity, the Nadabrahmam. The Goddess Saraswathi presides over music and arts. Lakshmi sitting on a lotus deals with wealth. Parvathi, the consort of Siva, rules the entire Nature. All these divinities serve to consecrate every aspect of daily life. The whole pantheon serves to emphasize the one ultimate Reality.
82. Reading and reciting old scriptures, for instance, Ramayana or Quran or Bible or Gurur Granth Sahib is as much a part of religion as offering food to deity by a Hindu or bathing the idol or dressing him and going to a temple, mosque, church or gurudwara. . . .

83. The authorities concerned can step in and take preventive measures in the interest of maintenance of Law and Order if such religious processions disturb Law and Order. It has to be held that the right to carry Trishul, Conch or Skull is an integral and essential part of religious practice and the same is protected under Article 25 of the Constitution of India. However, the same is subject to the right of the State to interfere with the said practice of carrying Trishul, Conch or Skull if such procession creates Law and Order problems requiring intervention of concerned authorities who are entrusted with the duty of maintaining Law and Order.
What is Religion
84. Religion is a social system in the name of God laying down the Code of Conduct for the people in Society. Religion is a way of life in India and it is an unending discovery into unknown world. People living in Society have to follow some sort of religion. It is a social Institution and Society accepts

religion in a form which it can easily practice. George Barnard Shaw stated, "There is nothing that people do not believe if only it be presented to them as Science and nothing they will not disbelieve if it is presented to them as Religion." Essentially, Religion is based on "Faith". Some critics say that Religion interfered with Science and Faith. They say that religion led to the growth of blind faith, magic, sorcery, human sacrifices etc. No doubt, history of religion shows some indications in this direction but both Science and Religion believe in faith. Faith in Religion influences the temperament and attitude of the thinker. Ancient civilization viz., the Indus Valley Civilization shows faith of people in Siva and Sakthi. The period of Indus Valley Civilization was fundamental religion and was as old as at least Egyptian and Mesopotamian Culture. People worship Siva and the Trishul (Trident), the emblem of Siva which was engraved on several seals. People also worshipped stones, trees, animals and Fire. Besides, worship of stones, trees, animals etc. by the primitive religious tribes shows that animism viz., worship of trees, stones, animals was practiced on the strong belief that they were abodes of spirits, good or evil. Modern Hinduism is to some extent includes Indus Valley Civilization Culture and religious faith. Lord Siva is worshipped in the form of Linga. Many symbols have been used in Hindu Literature. Different kinds of symbols and images have different sanctity. Brading of chest, arms and other parts of body represent to the weapons of symbols of Siva. Modern Hinduism has adopted and assimilated various religious beliefs of primitive tribes and people. The process of worship has undergone various changes from time to time.

85. The expression of 'RELIGION' has not been defined in the Constitution and it is incapable of specific and precise definition. Article 25 of the Constitution of India guarantees to every person, freedom of conscience and right freely to profess, practice and propagate religion. No doubt, this right is subject to public order related to health and morality and other provisions relating to Fundamental Right. Religion includes worship, faith and extends to even rituals. Belief in religion is belief of practice a particular faith, to preach and to profess it. Mode of worship is integral part of

religion. Forms and observances of religion may extend to matters of Food and Dress. An act done in furtherance to religion is protected. A person believing in a particular religion has to express his brief in such acts which he thinks proper and to propagate his religion. It is settled law that protection under Articles 25 and 26 of the Constitution of India extend guarantee for rituals and rituals and observances, ceremonies and modes of worship which form part and parcel of religion. Practice becomes part of religion only if such practice is found to be essential and integral part. It is only those practices which are integral part of religion that are protected. What would constitute an essential part of religion or religious practice is to be determined with reference to the Doctrine of a particular religion which includes practices which are regarded by the Community as part and parcel of that religion. Test has to be applied by Courts whether a particular religious practice is regarded by the community practising that particular practice is integral part of the religion or not. It is also necessary to decide whether the particular practice is religious in character or not and whether the same can be regarded as an integral or essential part of religion which has to be decided based on evidence.

86. It is not uncommon to find that those delve deep into scriptures to ascertain the character and status of a particular practice. It has been authoritatively laid down that Cow Sacrifice is not an obligatory over-act for a Muslim to exhibit his religious belief. No Fundamental Right can be claimed to insist on slaughter of a healthy cow on a Bakrid Day. Performance of "Shradha" and offering of "Pinda" to ancestors are held to be an integral part of Hindu Religion and religious practice. Carrying "Trishul" or "Trident" and "skull" by a few in procession to be taken out by a particular community following a particular religion is by itself an integral part of religion. When persons following a particular religion carry Trishul, Conch or Skull in a possession, they merely practice which is part of their religion which they wanted to propagate by carrying symbols of their religions such as Trishul, Conch etc. If the conscience of a particular community has treated a particular practice as an integral or essential part of religion, the same is

> protected by Articles 25 and 26 of the Constitution of India."

12. In AIR 1969 SUPREME COURT 563 "Kamaraju Venkata Krishna Rao v. Sub-Collector, Ongole" the Hon'ble Supreme court held that the entire objects of Hindu endowments will be found included within the enumeration of *Ishta* and *Purta* works. In the Rig Veda I*shtapurttam* (sacrifices and charities) are described as means of the going to heaven. In commenting on the same passage Sayana explained *Ishtapurtta* to denote "the gifts bestowed in *Srauta* and *Smarta* rites." In the Taittiriya Aranyaka, *Ishtapurtta* occur in much the same sense and Sayana in commenting on the same explains *Ishta* to denote "*Vedic* rites like Darsa, Purnamasa etc." and *Purta* "to denote *Smarta* works like tanks, wells etc." From the aforesaid judgment it is crystal clear that service worship of the Deities comes within the definition of *Ishta* as such depriving Hindus to worship at Sri Ramjanamsthan on Sthandil would amount to depriving them from the result of *Ishta* i.e. ultimate goal of salvation at the cost of less expenditure and less efforts. In view of such religious belief of the Hindus the Suit primises is not fit for being declared as mosque it is respectfully submitted.Relevant extract from para 6 of the said judgement reads as follows:

> "6. … …. "From very ancient times the sacred writing of the Hindus divided works productive of religious merit into two divisions named ishta and purta a classification which has come down to our times. So much so that the entire objects of Hindu endowments will be found included within the enumeration of ishta and purta works. In the Rig Veda ishtapurttam (sacrifices and charities) are described as means of the going to heaven. In commenting on the same passage Sayana explained ishtapurtta to denote "the gifts bestowed in srauta and amarka rites." In the Taittiriya Aranyaka, ishtapurtta occur in much the same sense and Sayana in commenting on the same explains ishta to denote "Vedic rites like Darsa, Purnamasa etc." and purta "to denote Smarkta works like tanks, wells etc." … "

13. IN AIR 1995 SUPREME COURT 1531 = (1995) 3 SCC 635 "Sarla Mudgal, President, Kalyani v. Union of India" the Hon'ble Supreme Court held that religion is more than mere matter of faith. The Constitution by guaranteeing freedom of conscience ensured inner aspects of religious belief. And external expression of it were protected by guaranteeing right to freely practice and propagate religion. Relying on said judgment it is submitted that as the Suit premises is the Birth Place of the Lord of Universe Sri Rama and his invisible power is present in the said Sthandil the Hindus have superior fundamental right to worship at that sacred place according to injunctions of their Sacred Scriptures in comparison to the fundamental right of the Muslims to offer their prayer at that place which in not integral part of Muslim religion. Relevant paragraph 43 of the said judgment reads as follows:

> "43. When Constitution was framed with secularism as its deal and goal, the consensus and conviction to be one, socially, found its expression in Article 44 of the Constitution. But religious freedom, the basic foundation of secularism, was guaranteed by Articles 25 to 28 of the Constitution. Article 25 is very widely worded. It guarantees all persons, not only freedom of conscience but the right to profess, practice and propagate religion. What is religion? Any faith or belief. The Court has expanded religious liberty in its various phases guaranteed by the Constitution and extended it to practices and even external overt acts of the individual. Religion is more than mere matter of faith. The Constitution by guaranteeing freedom of conscience ensured inner aspects of religious belief. And external expression of it were protected by guaranteeing right to freely practice and propagate religion. Reading and reciting holy scriptures, for instance, Ramayana or Quran or Bible or Guru Granth Sahib is as much a part of religion as offering food to deity by a Hindu or bathing the idol or dressing him and going to a temple, mosque, church or gurudwara."

14. In AIR 1962 SUPREME COURT 853 "Sardar Syedna Taher Saifuddin Saheb v. State of Bombay" held that the protection of Articles 25 and 26 of the Constitution of India is not limited to matters of doctrine or belief, they extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion as also that what constitutes an essential part of a religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion and practices which are regarded by the community as a part of its religion.

> "34. The content of Arts. 25 and 26 of the Constitution came up for consideration before this Court in 1954 SCR 1005 : (AIR 1954 S.C. 282), Ramanuj Das v. State of Orissa 1954 SCR 1046 : (AIR 1954 SC 400), 1958 SCR 895 : (AIR 1958 S.C. 255); (Civil Appeal No. 272 of 1960 D/- 17-3-1961 : (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 is not limited to matters of doctrine or belief, they extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion. The second is that what consitutes an essential part of a religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion and include practices which are regarded by the community as a part of its religion."

15. In **Pannalal Bansilal Pitti v. State of A.P., (1996) 2 SCC 498, the Hon'ble Supreme Court held that the** Hindus are majority in population and Hinduism is a major religion. While Articles 25 and 26 granted religious freedom to minority religions like Islam, Christianity and Judaism, they do not intend to deny the same guarantee to Hindus. Relying on said judgement it is most respectfully and humbly submitted that this Hon'ble Court would be pleased to dismiss the instant Suit and to protect the integral part of religious and customary practices of the Hindus i.e. their right to offer service and worship to the Lord of Universe Sri Ramlala's Idol & *Sthandil* at Sri Ramajanamasthan which has been described as Babari Mosque in the plaint otherwise the superior fundamental right of the Hindus shall be infringed and they shall suffer with irreparable loss and injury which cannot be compensated in any

manner whatsoever and justice shall suffer adversely. Relevant paragraph 26 and 27 of the said judgment read as follows:

> **26.** Hindus are majority in population and Hinduism is a major religion. While Articles 25 and 26 granted religious freedom to minority religions like Islam, Christianity and Judaism, they do not intend to deny the same guarantee to Hindus. Therefore, protection under Articles 25 and 26 is available to the people professing Hindu religion subject to the law therein. The right to establish a religious and charitable institution is a part of religious belief or faith and, though law made under clause (2) of Article 25 may impose restrictions on the exercise of that right, the right to administer and maintain such institution cannot altogether be taken away and vested in other party; more particularly, in the officers of a secular Government. The administration of religious institution or endowment or specific endowment being a secular activity, it is not an essential part of religion and, therefore, the legislature is competent to enact law, as in Part III of the Act, regulating the administration and governance of the religious or charitable institutions or endowment. They are not part of religious practices or customs. The State does not directly undertake their administration and expend any public money for maintenance and governance thereof. Law regulates appropriately for efficient management or administration or governance of charitable and Hindu religious institutions or endowments or specific endowments, through its officers or officers appointed under the Act.
>
> **27.** The question then is whether legislative declaration of the need for maintenance, administration and governance of all charitable and Hindu religious institutions or endowments or specific endowments and taking over the same and vesting the management in a trustee or board of trustees is valid in law. It is true, as rightly contended by Shri P.P. Rao, that the legislature acting on the material collected by Justice Challa Kondaiah Commission amended and repealed the predecessor Act of 1966 and brought the Act on statute. Section 17 of the predecessor Act of 1966 had given power to a hereditary trustee to be the chairman of the board of non-hereditary trustees. Though abolition of hereditary right in trusteeship under Section 16 has already been upheld, the charitable and religious institution or endowment owes its existence to the founder or members of the family who would resultantly evince greater and keener responsibility and interest in its proper and efficient management and governance. The autonomy in this behalf is an assurance to achieve due fulfilment of the objective with which it was founded unless, in due course, foul in its

> management is proved. Therefore, so long as it is properly and efficiently managed, he is entitled to due freedom of management in terms of the deed of endowment or established practice or usage. In case a board of trustees is constituted, the right to preside over the board given to the founder or any member of his family would generate feelings to actively participate, not only as a true representative of the source, but the same would also generate greater influence in proper and efficient management of the charitable or religious institution or endowment. Equally, it enables him to persuade other members to follow the principles, practices, tenets, customs and sampradayams of the founder of the charitable or religious institution or endowment or specific endowment. Mere membership along with others, many a times, may diminish the personality of the member of the family. Even in case some funds are needed for repairs, improvement, expansion etc., the board headed by the founder or his family member may raise funds from the public to do the needful, while the executive officer, being a government servant, would be handicapped or in some cases may not even show interest or inclination in that behalf. With a view, therefore, to effectuate the object of the religious or charitable institution or endowment or specific endowment and to encourage establishment of such institutions in future, making the founder or in his absence a member of his family to be a chairperson and to accord him major say in the management and governance would be salutary and effective. The founder or a member of his family would, thereby, enable to effectuate the proper, efficient and effective management and governance of charitable or religious institution or endowments or specific endowment thereof in future. It would add incentive to establish similar institutions.

Thus, in view of my findings on issues, referred to above, plaintiffs are not entitled for the relief claimed and the suit is liable to be dismissed, but defendants have failed to point out the circumstances under which they are entitled for special costs.

Order

The suit is dismissed but the parties shall bear their own costs.

Tripathi/Tanveer
Akhilesh/Raghvendra