SEPTEMBER
2021

COMPILATION OF SELECTED CASES BASED ON RELIGIOUS ISSUES

PREPARED BY
TEAM PROBONO INDIA

ProBono India
SocioLegally Yours !

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“Freedom prospers when religion is vibrant and the rule of law under God is acknowledged.”

- Ronald Reagan

September 2021

Coverpage Designed by :-

Shree Ram Printers and Stationers
Sector 16, Gandhinagar Gujarat

Disclaimer

Team ProBono India has made all efforts to summarize the cases from original cases retrieved from AIR, SCC, Manupatra and other leadings databases. For some cases, team has tried to summarize cases from the available sources as they could not find original ones.

National Forensic Sciences University
Knowledge | Wisdom | Fulfilment
An Institution of National Importance
(Ministry of Home Affairs, Government of India)

FOREWORD

"Be involved; be informed. Make meaningful contributions to society through service and involvement."

~ M Russell Ballard

Religion has always been believed to shape human lives to make them into socially acceptable beings. However, when the extremes are traversed at times the religion and its practices can transgress human freedoms; both fundamental and legal. With the pandemic (COVID-19) that has unleashed a fear in every human being left many devastated. Not one religious practice could surpass the COVID-19 rather it made one think, if at all it is anything then it is humankind that is the foremost religion to be practiced. This is the most trying hour where perseverance, tolerance, mindful living as taught by the scriptures is to be put out on the line. And this is when the freedom of religion subject to the mindful exceptions put down in the Constitution is subjected to calculated speculation.

Religion has influenced India's society, not only on the political front but also on the cultural and economic fronts. India has acknowledged globally for its magnificent mannerism in upholding "Unity in Diversity" which emphasizes that there is unity between people despite their differences in culture, religious faiths, social status. With 29 states and 7 union territories and as many as 22 official languages, religions India truly has embodied the spirit of unity in diversity.

This Eight Case Compilation, one among the many series by Pro Bono, titled "**Compilation of Selected Cases on Religious Issues**"; containing summarised analyses of **30** cases, is an intricate disclosure of how religious freedom has been upheld by our judiciary and the state unless the need for interference was the only measure to remedy a possible turmoil that would arise if let loose. Each case summary is a commendable careful analysis by each author that paved path to execute this wonderful and extensive work, through dedicated team spirit. This exemplary work under the guidance of **Dr. Kalpeshkumar L. Gupta,** Founder of ProBono India, collocating like-minded young and enthusiastic lawyers and law students who was determined to contribute to the society and not institutions alone prove nothing but the existence of youth in India who are driven by the intention to ensure justice over everything, equality over demarcations, harmony over difference of opinion.

This work certainly offers an insight into the many religious conflicts that led to uproars across the breadth and width of a nation like India, and how the same was adequately decided upon ensuring that the Court never acted in a prejudiced manner rather, the Constitution guided at all times whenever the

personal law has been in want of proper provisions to put arising problems to rest. The team of **19** members, from across prominent Universities and Law Colleges in India, including the coordinator **Ms. Simi Varghese Tharakan,** final year law student of Mar Gregorios College of Law, Nalanchira, Thiruvananthapuram, Kerala, despite all odds during this pandemic, has managed through intense team work to draw together this carefully combed collection of work. It gives me a sense of pride to see that this team of young prospective lawyers have made an ardent effort to bring out the best of the ready reference on religious as part of their contribution to the society.

I take this opportunity to express my heartfelt appreciation and acknowledgement of this carefully crafted compilation by quoting the words of Cecile B DeMille: "*Most of us serve our ideals by fits and starts. The person who makes a success of living is the one who sees his goal steadily and aims for it unswervingly. That is dedication.*" The dedication and patience of the whole team, to bring about this laudable compilation, which went beyond the planned dates due to unforeseen obstacles that were and with a few unwavering team members who saw to it that this sees the daylight, significantly speaks volume of how determination is the key no matter how harsh the realities can be and also it takes selflessness against all odds to achieve one's goals.

To epitomize, in the words of Shri Abdul Kalam, again our former President, "*Do not take rest after your victory because if you fail in second, more lips are waiting to say that your first victory was just luck.*" This Seventh Case Compilation has proven that the team of ProBono under the able guidance of Dr. Kalpeshkumar never stopped after the success of their first compilation but kept going with a drive within to ensure more compilations came into being.

I extend my heartfelt wishes and pray for success in all their future endeavours too to come out with such informative and beneficial compilations that helps with the novice lawyers as well as law students aspiring to be not only litigators alone but to step into the shoes of judiciary to create benchmarks by pronouncing exemplary decisions in matters of great importance to the nation.

Prof. (Dr.) Purvi Pokhariyal
Dean & Professor
National Forensic Sciences University, Gandhinagar
(An Institution of National Importance, Ministry of Home Affairs, Govt. of India)

PREFACE

"*Religion is never more tested than when our emotions are ablaze. At such a time, the timeless grandeur of the Law and its ethics stand at our mercy.*"

- ***Timothy Winter***

In a diverse nation like our India, religion is one of the sheer fabrics that is interwoven with other subject matters which holds out communities distinctly yet keeps them unified. When our Constitution allows us the freedom of our religion, the reigns are still kept together by the authorities concerned and the justice machinery of the land, ensuring that each citizen maintains a harmonious balance between their and others' Fundamental Rights. There have been various instances when the delicate nature of the sentimentality regarding the love for religion was rustled and, emotions and law were placed against each another. Justice to each party was the primary motive and morality was the prime intention. During this COVID pandemic we could see that irrespective of differences in religion people came together showing that humanity was the epitome of our survival. This insightful compilation is one such which shows that our team of law students, under able guidance, in this field have managed to work on the cases assigned to them and provide an analysis that is worthwhile their efforts.

This Case Compilation is based on the concept 'Religion and the Freedom to Practice the same', and this is yet another brain child of **Dr. Kalpeshkumar L. Gupta (Founder, ProBono India)**, amongst a series of Case Compilations that has been completed and those in the making as well. The Case Compilation is known as **"Compilation of Selected Cases Based on Religious Issues"**. The landmark cases that stirred complex questions and challenged the religious aspects forms the crux of this compilation and thorough research into the undertones of the religious facets has been brought into light. This topic has so much of relevance in a country like ours which has been shattered several times due to group conflicts, caste discrimination, and such, despite the secularism that has been affirmed by our Constitution during the 42nd Amendment, that was introduced by Shri H. R. Gokhale, then Minister of Law, Justice and Company Affairs, in 1976.

This is to serve as a reference for novice lawyers, students of law and those who are eager to know more about the topic. Extreme care has been taken to acknowledge all the pivotal matters and cases such that the readers are enlightened with the in-depth details of the same. Since it is a crucial requirement of anyone who is involved in the legal fraternity to be aware of what the

country's system has gone through and is going through, the compilation here lends class assistance.

This compilation has been in the making ever since February 2021 and it has never been an easy task. This would not have been possible today if it were not for the ardent enthusiasm that each team member came forth with. It took so much of determination and motivation to keep the team move forward during this pandemic. Dr. Kalpeshkumar had been constantly keeping us motivated by ensuring that he challenges us to give our finest into the project. The able guidance of Dr. Kalpeshkumar helped us bring our analysis on the cases together and each member of the team who contributed to this certainly deserves praise for bringing this vision to fruition.

The initial stages to the compilation involved appointing of coordinator and team members, all students pursuing their 3-year or 5-year LL.B. It was certainly an honour and pleasure for me to be selected as the coordinator of this exemplary compilation under the ProBono India banner and to work along with like-minded individuals. Even with several of them falling out we still had the team ever growing with more enthusiasts. Thus, with the immense knowledge pool, twenty pro-active members, and with the limited resources that was put to the best use it was an incredible learning that we had till date.

With this, I take the pleasure to introduce our team who put forth the best of their efforts and have done a tremendously appreciable work that is in the form of case analysis here which will be useful on both academic and professional front.

1. **Aadira Menon** (*O. P. Jindal Global University, Sonepat*)
2. **Akanksha Bhattarai** (*Symbiosis Law School, Pune*)
3. **Arti Khaitan** (*Veer Narmad South Gujarat University, Surat)*
4. **Ayushi J Kankariya** (*Department of Law, VNSGU, Surat)*
5. **Jiya Kalra** (*Delhi Metropolitan Education, GGSIPU, New Delhi)*
6. **Joncy Lakhani** (*Parul University, Vadodara)*
7. **Manisha Gupta** (*National Law University, Odisha*)
8. **Nikita Sharma** *(Indore Institute of Law, Indore)*
9. **Nivedita Kushwaha** (*Indore Institute of Law, Indore)*
10. **Poulomi Chatterjee** (*Bennett University, Greater Noida)*
11. **Rakshita Shah** (*V. T. Choksi Sarvajanik Law College, Surat)*
12. **Rishi Raj** (*Symbiosis Law School, Noida)*
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14. **Serafina Illyas** (*Mar Gregorios College of Law, University of Kerala)*
15. **Shreya S Palely** (*School of Law, Christ (Deemed to be University), Bengaluru)*
16. **Sonalika Nigham** *(Parul University, Vadodara)*
17. **Tuhupiya Kar** (*Department of Law, University of Calcutta)*
18. **Yash Patil** (*Bharati Vidyapeeth New Law College, Pune)*

I take this opportunity to express my sincere gratitude to our team and Dr. Kalpeshkumar, who maintained their perseverance for long time in working along together to bring this compilation into being. A long journey coupled with lot of expectation and eagerness to watch the outcome of our intellectual toil has now turned into a reality.

On behalf of the Team ProBono India

Simi Varghese Tharakan

(Coordinator)

ABBREVIATIONS

A. C.	Appeal Cases (U.S.)
A. P.	Andhra Pradesh
Adv.	Advocate
AIR	All India Reporting
All. C J	Allahabad Civil Journal
Anr.	Another
Art. / Art(s).	Article / Articles
BHC	Bombay High Court
Bom	Bombay
BomCR	Bombay Cases Reporter
BOMLR	Bombay Law Reporter
C. A.	Civil Appeal
C. J. / CJI	Chief Justice / Chief Justice of India
Cal	Calcutta
CDJ	Complete Digital Judgements
cl. / cls.	Clause / Clauses
CMA	Civil Miscellaneous Application
Const.	Constitution
CPC	Civil Procedure Code
CPCB	Central Pollution Control Board
Cr.PC	Code of Criminal Procedure
D. Ariz.	District of Arizona
DJ	District Judge
Ext.	Exhibit
F. Supp.	Federal Supplement
FCG	Female Genetial Cutting / Female Genetial Mutilation
G. O.	Government Order
IA	Iowa (USA)
ICT	Indic Collective Trust
ILR	Indian Law Reporter
IPC	Indian Penal Code, 1860

IRCG	Islamic Relief Committee of Gujarat
J. / JJ.	Justice / Justices
JCC	Joint Charity Commissioner
Ker.	Kerala
L. Ed. / Law Ed.	Lawyer's Edition (U.S.)
LPA	Letters Patent Appeal
Ltd.	Limited
M. P.	Madhya Pradesh
MANU	Manupatra
MHC	Madras High Court
MLJ	Madras Law Journal
NCR	National Capital Region
NEP	National Education Policy
NHRC	National Human Rights Commission
No. / Nos.	Number / Numbers
O. S.	Original Suit
Ors.	Others
PC	Privy Council
POCSO	Protection of Children from Sexual Offences Act, 2012
r. / Rr.	Rule / Rules
R. P. (C)	Review Petition (Civil)
Regd.	Registered
s. / Ss.	Section / Sections
SC	Supreme Court
SCA	Supreme Court Appeal
SCC	Supreme Court Cases
SCR	Supreme Court Reports
SEBI	Securities and Exchange Board of India
SLP(C) / SLP(Civil)	Special Leave Petition (Civil)
Supp.	Supplement
U.P.	Uttar Pradesh
u/s	Under section

UOI	Union of India
USSC	United States Supreme Court
v.	Versus
Vol. / Vols.	Volume / Volumes
W. P.	Writ Petition
W. P. (C) / CWP	Writ Petition (Civil) / Civil Writ Petition
WHO	World Health Organization
WLR	Weekly Law Reporter

LIST OF CASES

CASE NO. 1
SHAYARA BANO
V.
UNION OF INDIA
(2017) 9 SCC 1
TRIPLE TALAQ CASE

ABSTRACT

The following is a case summary of the landmark case *Shayara Bano v. Union of India and Others*; also known as "Triple Talaq Case". Shayara Bano, the petitioner, married for 15 years to Allahabad-based property dealer Rizwan Ahmed, was determined to fight against three practices claimed as essential part of Muslim Personal Law; talaq-e-biddat, polygamy and nikah halala. This battle was spurred by her own experience, wherein she received the triple talaq notice from her husband through post. Accordingly, she knocked the doors of the Supreme Court and contended to declare the aforementioned three practices unconstitutional since they violated the fundamental rights guaranteed under Article 14, 15, 21 and 25, guaranteed fundamental rights under the Constitution of India. Union of India and other women's rights protecting bodies backed her petition, while the All-India Muslim Personal Law Body contended that this was an essential practice that was protected under Article 25 of the Constitution. It is in this case wherein upon receipt of the petition the Apex Court constituted a 5-Judge Constitutional Bench and it was declared, on August 22, 2017, by a majority of 3:2 ratio that the practice of talaq-e-biddat is unconstitutional.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	WP (C) 118 of 2016
Jurisdiction	:	Supreme Court
Case Filed On	:	February 2016
Case Decided On	:	August 22, 2017
Judges	:	Justice Jagdish Singh Kumar, Justice Abdul Nazeer, Justice Rohinton Fali Nariman, Justice Uday Lalit, Justice Kurian Joseph
Legal Provisions involved	:	Constitution of India, Article 14, 15, 21, 25; Muslim Personal Law (Shariat) Act, 1937

Case Summary Prepared By	:	Simi Varghese Tharakan Mar Gregorios College of Law, Kerala

2. BRIEF FACTS OF THE CASE

- **Parties**

  Petitioner: Shayara Bano

  Respondents: Union of India and Others

- **Factually**

  Shayara , resident of Kashipur town, was married to Rizwan Ahmed, an Allahabad-based property dealer in 2011. However, she did not have a happy married life. She was subjected to both physical and mental torture by her husband and her in-laws. They allegedly tortured her for more dowry. There were even days when she was let to starve behind locked doors of a room.

  Bano's father was an accountant in Indian Army and Firoza Begum, her mother, was a house. Her father earned just enough to maintain the family. Despite that he managed to conduct Bano's marriage in a manner that was in fact heavy on his pocket.

  In April 2015, Bano's husband left her stranded in Murdabad while on way to Kashipur and she had to walk to her parent's house. Later, in October 2015, she received talaqnama by post. Subsequent to this she decided to move the Apex Court.

- **Procedurally**

  Shayara Bano, original petitioner, moved the Supreme Court through a writ petition in February 2016, pleading the Court to declare the three practices in Muslim personal law; talaq-e-biddat (triple talaq), polygamy and nikah halala.

  Talaq-e-biddat or Triple Talaq is an Islamic practice that permits men to arbitrarily and unilaterally effect instant and irrevocable divorce by pronouncing the word 'Talaq' (Arabic word for divorce) three times orally or written or through electronic media which has become a recent trend due to the advancement of technology.

  Polygamy is yet another practice in Islam where men are allowed to have multiple wives, to a maximum of 4, without divorcing any of them, at a time.

Nikah Halala is yet another practice where the women who has been divorced by her first husband has to marry another man and get divorced by the latter to marry her first husband again.

Her petition was supported by Union of India, women's rights protection bodies and others. Upon receipt of the petition the Supreme Court immediately constituted a 5-Judge Constitutional Bench to decide on the petition.

While the petitioner argued that the practices aforementioned were unconstitutional as they violated Article 14, 15, 21 and 25 of the Constitution, the respondent argued that there was no violation of fundamental rights as these practices were protected under Article 25 of the Constitution.

The Bench decided on the case by a majority of 3:2 ratio on August 22, 2017.

3. ISSUES INVOLVED IN THE CASE

I. Whether the practice of talaq-e-biddat (specifically instantaneous triple talaq) is an essential practice of Islam?
II. Whether the practice of Triple Talaq violates any fundamental right?

4. ARGUMENTS OF THE PARTIES

- **Petitioner**

The petitioner being represented by senior advocate Mr. Amit Chadha argued that triple talaq was not a form of divorce that was recognised under the Islam or the Muslim Personal Law (Shariat) Application Act, 1937.

That several High Courts and this Apex Court had in various similar cases vehemently criticized the practice of Muslim men to divorce their women at their whims under the garb of talaq-e-biddat. These judgments were an affirmation that Quran recognised certain permissible divorce subject to preceding attempts to reconciliation.

That this practice of men arbitrarily divorcing their wives violated Articles 14 and 15 and that if such practise was struck down then the law of divorce for Muslims as under Dissolution of Muslim Marriages Act, 1939 would apply equally irrespective of gender.

- **Respondent**

  The respondents were represented by Kapil Sibal who clarified that the Act of 1937 did not codify the substantive Muslim Personal Law instead it did restate that the Sharia law shall apply in the event a decision is to be notified and this shall override any customary practices to the contrary.

  That the object of the very Act was to overcome unruly customs that discriminated against women in matter of inheritance and also that marriage being a private contract within the Islamic law could not be legislated to be amended.

  That even during the Constituent Assembly Debates it was emphasized that 'Law' as defined under Article 13 shall not include personal laws that is the reason why when "and anything else" was asked to be added, it was not done so.

  That the explicit mention of religious personal laws within the Concurrent List under the Constitution and that of its absence under Article 13 demonstrated the intention of the framers of the Constitution to exclude the personal laws from the scope of judicial review. That this is affirmed under Article 25 that individuals have 'Right to Freedom of Religion', wherein personal laws can be only regulated by the legislations issued by the Parliament and that too for the socio-economic reforms of the secular activities in association to any religion and its people. Hence, unless such legislation passed by the Parliament exists the Courts are not in a position to check on the validity of religious practises.

  That the Muslim women are not discriminated as against the triple talaq since this could always be seen as an immediate relief from a bad marriage. And in the even they wanted to protect themselves from the discriminatory use of triple talaq they have four options that have been laid down by legislation or personal law:

i. Register marriage under the Special Marriage Act, 1954.
ii. Insert conditions into Nikahnama to prohibit her husband from exercising a triple talaq.
iii. Delegate the right to talaq to herself.
iv. Insist on payment of a high *mehar* amount to deter the exercise of triple talaq.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- **Article 14**

  According to Prof. Dicey, the Rule of Law says that no person is beyond or above law rather they are equal in front of law. Evils like discrimination is combatted by this Article 14, which makes part of the golden triangle along with Articles 19 and 21 of the Constitution. The framers of Constitution of India with a foresight embedded this Article under Part III of the Constitution which envisages the Fundamental Rights. Article 14 ensures that, irrespective of being citizen or foreign national, every individual enjoys equality under law and equal protection of law which is the basic concept of liberalism. Equality of law basically means that all persons should be treated equally without regards to their economical or societal status or even gender. State cannot provide special privileges to any community or people. By equality before law, it means that everyone has access to justice and no one can be barred from the same. Similarly, equal protection under law emphasizes that every individual must be protected against arbitrariness of the State.

- **Article 15**

  This very provision upholds that no citizen shall be discriminated by the State on the grounds of caste, religion, sex, race and place of birth. 'Discrimination', here refers to the adverse distinctions from others. This Article is subject to certain exceptions and one such is that the State is permitted to make any special provisions for women and children as under clause 3 of the Article.

- **Article 21**

  Iyer, J. characterized Article 21 as "the procedural magna carta protective of life and liberty". So did Bhagwati, J. emphasize that "Article 21 embodies a constitutional value of supreme importance in a democratic society". The right under this Article has been held to be the soul of the Constitution which can be claimed only when a person is deprived of his "life" or "personal liberty" by the 'State' as defined under Article 12. Hence, violation of rights by private individuals will not come under the purview of Article 21.

- **Article 25**

  This Article provides to all citizens the freedom of conscience to profess, practice and propagate their belief or religion; subject to public order, health and morality. The provision also gives State the power to regulate and restrict any financial,

economic, political or other secular activity associated with any religious practice. Further, it also provides for the social welfare and reform or opening of Hindu religious institutions of a public character to all sections of Hindu religious institutions of a public character to all sections and classes of Hindus. And that people of the Sikh faith wearing and carrying the kirpan shall be considered as included in the profession of Sikh religion.

6. JUDGEMENT IN BRIEF

- **<u>Ratio Decidendi</u>**

I. Rule of Law – Nobody is above Law

(i) Article 25 – Religious Freedom is not absolute and subject to exceptions

Article 25 clearly states that state cannot take away the citizens right to practice or profess or propagate their own religion, however, the same is subject to certain exceptions. The religion and its practices cannot be at the cost of public health, public morale, public order and other provisions under Part III of the Constitution.

Here in this case, though the said practice is not against public order or public health or for even that matter public morality, it is against Article 14 which is a fundamental right as under Part III of the Constitution.

Further, in order to decide whether the said practise is an essential part of the religion or not it needs to be looked into whether taking away the said practise would bring about any major or adverse change in the religion or its profession and propagation. If the answer is in the positive then such practice can be termed as 'an essential religious practice'; and only such practices are protected by Article 25 (1). The usurpation of circumstantial and non-essential practices by the State cannot be claimed to be a violation against Article 25(1) and the fact that even majority of Islamic countries have done away with such practises reflects that the said practise is no more an essential religious practise.

(ii) Article 14 – Equality under Law and Equal Protection of Law

The said practice is in violence of equality since the rights of women are being suppressed such that they do not have a say in the matter of divorce unlike other religions. It was held by Nariman and Lalit JJ. that "the impugned practice is a tool by which a marital tie can be broken on whims of Muslim husbands without any attempt of reconciliation to save it". This form of Talaq is therefore in violation of Article 14.

(iii) Section 2 of the 1937 Act

"Application of Personal Law to Muslims – Notwithstanding any customs or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Laws, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable instructions and charitable and religion endowments) the rule of decisions in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)."

Thus, the section attempts at doing away with any customs or usages which are contrary to the Muslim Personal Law, the Shariat. The section further makes Muslim Personal Law, applicable rule of law in cases related to matters such as intestate succession, property for females, marriage, and its dissolution between Muslims.

Treating the 1937 Act as a pre-constitutional legislative enactment, it was concluded that the Act is well within the purview of Article 13(1) of the Constitution of India and after applying the 'test of manifest arbitrariness' to it, it was held that the Act of 1937 sought to recognise and enforce triple talaq is violative of Article 14 and hence void to that extent.

"What is bad in theology, cannot be good in law" - Joseph Kurian, J. relied on Quranic verses and also on a 2-Judge Bench decision in *Shamim Ara v. State of Uttar Pradesh*[1] and concluded that triple talaq lacks sanctity, since it was emphasized as a sin within the Quran itself and whatever is against the Quran is in contrary to the Shariat.

- **<u>Dissent</u>**

  The minority judgement authored by Khehar and Nazeer JJ., held that "though triple talaq is considered a sinful practice, it has been considered valid according to the Sunni and Hanafi sect of Muslims. And that since it has been in practice for more than 1400 years, it has become an essential constituent of their personal law enjoying protection under Article 25 of the Constitution of India.

[1] *Shamim Ara v. State of Uttar Pradesh, (2002) 7 SCC 518.*

7. COMMENTARY

It can be understood, from the above judgement where in the majority has favoured the petitioner, that nobody is placed above law, no matter whether it is just one person or more on whom the injustice is imposed on. Women cannot be treated as in the erstwhile when their status was symbolised to that of a chattel and nothing else. Women are human beings just like men and they are vested with the rights to enjoy the protection and equal treatment as enjoyed by their male counterparts. Similarly, the practice of Talaq-e-biddat which has been practiced amongst Muslim men in India had gone overboard, since they manipulated the teachings of Islam to their whims and fancies.

The majority judges on the Constitutional Bench have taken a right decision after looking into how the practice has been with majority Islamic nations which proved that this practice has been scrapped ages ago.

The dissenting judges might have been right when they wanted to move on the legal lines however, there is much more than just legalities sometimes it is the morality that is involved. And even on legal grounds our Constitution has always upheld women's rights much above their counterpart since they have been treated inhumanely since time immemorial, under the garb of customary practice, religious practice, tradition and usage.

The striking down of the Talaq-e-biddat has come as a blessing not only to the women of Islam alone, it has become a lesson for men when they think of divorcing women just for the sake of having a life with another woman, or for the greed of dowry and what not.

8. IMPORTANT CASES REFERRED

- *Shamim Ara v. State of Uttar Pradesh*, (2002) 7 SCC 518.

CASE NO. 2

SUNITA TIWARI

V.

UNION OF INDIA

(2016) 2 SCC 725

THE FEMALE GENITAL MUTILATION CASE

ABSTRACT

The following is a case summary of the landmark case *Sunita Tiwari v. Union of India*. Violation of their emotional and physical rights, have been an age-old battle, that women and children have been grappling against. Under the pretext of religious practices, it has been way easier to curb their actions and supress their needs. Even the minute needs of a woman and child is questioned by the patriarchal backdrop of the society as well as religion. This case has brought into light the inhuman practice of 'Female Genital Cutting/Mutilation' (hereinafter referred to as FGC or FGM) among the members of Dawoodi Bohra Muslim community in India. Women and girls, belonging to around 30 countries suffered from this procedure in the name of attaining 'purity' and keeping away from "needless sexual desires". The unconstitutional and callous nature of the procedure was the core point in the petition filed as a 'Public Interest Litigation' under Article 32 of the Constitution, that was allegedly challenging the fundamental freedom to religion of the community under Articles 25 and 26.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	W. P. (C) No. 286 of 2017
Jurisdiction	:	Supreme Court of India
Case Filed On	:	April 2017
Judges	:	Justice Dipak Misra, Justice A. M. Khanwilkar, Justice D. Y. Chandrachud
Legal Provisions Involved	:	Constitution of India, Article 14, 15, 25, 26, 32; IPC 1860, Section 319 to 326; Section 3 of POCSO Act
Case Summary Prepared By	:	Serafina Illyas, Mar Gregorios College of Law, Kerala

2. BRIEF FACTS OF THE CASE

- **Parties**

  Petitioner - Sunita Tiwari represented by Adv. Rajesh Khanna.

  Respondents - Union of the India, Ministry of Health and Family Welfare and others represented by Adv. K. K. Venugopal

- **Factual**

  On April, 2017, the petitioner filed a public interest litigation demanding the criminalizing and banning of the vicious practice, *'Khafz'/'Khatna'* among the Dawoodi Bohra Muslim community. It was the procedure of altering or injuring the genitalia of women for various reasons that included controlling her so-called sexual desires, indicating her entry into womanhood and so forth. There were several other sociological and cultural and socio-economic factors which was the reason for this practice being carried out in the 1950 in Western countries. This issue rose to prominence in India when convictions in countries like US and UK increased. Several women came out sharing their horrific experiences whereby they were subjected to this horrendous practice at the tender age of 6 or 7, which was performed by untrained midwives, with or without the usage of anaesthesia.

- **Procedural**

  As the issue fired up, Adv. Sunita Tiwari filed a public interest litigation under Article 32 questioning the inhumane practice and calling for a ban on the same. This issue was first put up before a 3-judges bench, which was later transferred to a Constitutional bench. Due to the complex nature of the case and the questioning of constitutional elements in the case it was transferred to a 7-judges bench.

3. ISSUES INVOLVED IN THE CASE

I. Whether the practice of female circumcision violates the right to privacy of the female upon whom this procedure is carried out, without their consent?
II. Whether *'khafz'* violates the autonomy of women and girls on their body and infringes their right to life under Article 21 of the Constitution?
III. Whether this discriminatory practice, subjecting only women and young girls, violates Articles 14 and 15 guaranteed under the Constitution?
IV. Whether the practice is protected as a religious practice under Articles 25 and 26 of the Constitution?

V. Whether the prohibition of the aforementioned practice would violate the religious rights of the Dawood Bohra Community?

4. ARGUMENTS OF THE PARTIES

- **Petitioner**

  It was contended that the practice of FGM had no reference in the Holy Qur'an and it grossly violated the fundamental integrity of a woman's body and it was also against the international principles adopted by the UN Convention on the Rights of the child, UN Universal Declaration of Human Rights, to which India was a signatory. The FGM, consisted of the cutting of the clitoris hood or other injury to female genital areas in order to restrict their sexual desires and the removal of 'unwanted flesh' protected them from being sexually aroused and going wayward in their desires. It had both short term and long-term ill effects on health and psychological well-being of the women and children. This act was violative of women's dignity, identity and privacy and this act had no medical basis and violated the essential rights of women and children under Articles 14 and 21. Ms. Tiwari also pointed out the fact that the WHO (World Health Organisation) on December 2012, unanimously adopted a resolution which called for the elimination of FGM due to the adverse effects of the heinous practice in women and children such as problems during pregnancy, infections and other physical impairments. The PIL also highlighted the absence of a law that particularly punished this practice.

- **Defendant**

  It was submitted that the practice of FGM formed an "essential part" of the religious practice, thereby it was a valid practice and couldn't be banned terming it, 'unconstitutional', as it was protected under the Articles 25 and 26 of the Constitution. The defendants in their written submissions highlighted certain vital facts about their community and how they promoted growth of both women and children through education and empowered them by supporting them whenever required. They also denied that the practice was discriminatory in nature, against women as their religious practice required both men and women to be circumcised. Adv. A.M. Singhvi, argued that the practice was carried out, in a non-mutilating and safe manner. It was pleaded that what formed the essential and integral part of a religion could not be decided by objective tests and it had to be decided on the basis of understanding and beliefs of the religion as considered by the community practicing such religion. It was also stated that *Khafz* / Female circumcision ('FC')

cannot be equated with FGM which was banned in several countries. The difference in each procedure was underlined and the practice was accentuated as an ancient custom that could not be foregone.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- **Article 14**

  This Article forms a part of the 'Golden Triangle', a Fundamental Right that is guaranteed under "Right to Equality' which states that "the State shall not deny equality before the law and equal protection of the laws within the territory of India." This Article prohibits discrimination and contains both negative and positive concepts. The equals would be treated equally and un-equals would be treated unequally.

- **Article 15**

  This Article is a corollary to the Article 14 and prohibits discrimination based on caste, sex, religion, place of birth and so on. Further the 2nd sub-clause of the Article states that no citizen shall be discriminated and restricted in public places. The 3rd sub-clause states how nothing can bar the State from making special laws for women and children. In this instant case, the women are being discriminated against based on their sex, they have no say in how their body is treated for the religious custom.

- **Article 25**

  This Article guarantees the freedom to practice, profess and propagate, an individual's choice of religion. One has the freedom and opinion as to how and what they practice. But this article also states a provision that the State can make a law when required.

- **Article 26**

  This Article deals with the right of every religious denomination to manage their religious affairs and also to maintain their institutions for both religious and charitable purposes. It takes an institutional approach to religion. It grants recognition to a legally well-defined entity of any and every religion whilst investing the constitutional claim to religious freedom with it. But it is also stated in the succeeding clause that the State shall intervene in the religious matters subject to the ground provided.

- **Article 32**

  This Article allows all the Indian citizen to move the Apex Court of the country with regards to the violation of their Fundamental Rights guaranteed in Part III of the Constitution. It is the 'Right to Constitutional Remedies'. And under this article the Supreme Court is empowered to issue writs to enforce the infringed fundamental rights.

- **Section 319 to 326 of Indian Penal Code**

  The chapter XVI of IPC deals with hurt and grievous hurt against human body by any means.

- **Section 3 of Protection of Children against Sexual Offences**

  This section deals with what constitutes penetrative sexual assault and the punishment for the same.

- **Article 19 of the Convention on the Rights of the Child**

  This article states that children have the right to be protected from physical and mental violence, neglect, sexual abuse and exploitation, while they are in the care of parents or any other person.

- **Article 1 and 3 of Universal Declaration of Human Rights**

  The right to physical integrity includes the right to freedom from torture, the dignity, liberty, security and privacy of a person. This article states that all human beings are born free and equal.

6. JUDGEMENT IN BRIEF

The three-judges bench, after acknowledging the oral contentions, stated that the complexity of the matter at hand is such that it requires deeper inspection and that the practice that is apparently an inhumane practice is a part of a religion and it cannot be struck down that easily. The judges unanimously agreed and noted that the practice infringes upon a woman's bodily integrity, privacy and most importantly her life with dignity under Article 21. The Court also observed that, by referring to the Universal Declaration of Human Rights and the CRC, this practice was infringing the bodily rights of a woman, subjecting it to an external authority thereby it could be penalized under IPC. It was also stated that the practice was of such a scarring nature that it couldn't be termed 'essential religion practice'.

The bench later transferred the case to a Constitutional bench, who then transferred it to a 7-judges bench, considering the involvement a substantial question of law, 'proclaimed' custom inasmuch as the contended practice is an essential and integral practice of the religious section under Article 25. It is presently pending before the Court.

7. COMMENTARY

Under the garb of the rules and sanctions of religion, people are put into constant pressure to attain the 'so-called' purified state of life. But even more pressure is put upon women and children, restricting their will to live and putting boundaries to what they do with their lives. What is more paradoxical is that no religion, claims to harm or bound a person's life into a corner and to control them out of fear or restrictions.

An evident instance is that when 'Female Circumcision' is associated mostly with Islam, the religion doesn't advocate any such practice. The Quran has no mention of such practice nor does the instructions of Holy Prophet Muhammad (S. A.) state such a practice. FGM is neither Islamic or Christian.

FGM is a psychologically and physically scarring act that has been recognised a crime in most of the developed countries. According to the WHO report, between 100 and 140 million women and girls have undergone FGM. Yet another report states that 125 million women and girls, in 29 countries in Africa and Middle East have been cut for the procedure. Looking into cultural origins of this practice it dates back to an ancient period in the West. The aim has always been to control the sexuality and sexual desires of the women. The Dawoodi Bohra community claimed that this practice was to prevent women from straying away from marriage. This practice abusing human rights, exploited the bodily right of women and children alone and infringed upon their integrity and right to a proper life. They are deprived of pleasure and are ingrained with horror. Social pressure and stigma in several culture is a growth factor for this practice as, a women are deemed to be 'clean' and 'beautiful' only after this practice. It is projected as only the women's responsibility to attain 'Taharat' and shut out all their desires.

Where this practice has been banned in several countries, in India it is not banned. The government set down that no new laws are required as the existing provisions in the IPC and POCSO are sufficient to deal with this act.

Nonetheless, the delay in addressing this issue will end up being a nightmare for a lot of women and children and not curbing this will lead to condoning the act.

8. IMPORTANT CASES REFERRED

- *A. S. Narayana Deekshitulu v. State of A.P. and Ors. – (1996) 9 SCC 548.*
- *Bijoe Emanuel v. State of Kerala – (1986) 3 SCC 615.*
- *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshimindra Thirtha Swamiar of Sri Shirur Mutt – 1954 SCR 1005.*
- *Indian Young Lawyers' Association v. Union of India - (2006) 1 SCC 51.*
- *Ratilal Panachand Gandhi v. State of Bombay and Ors. – 1954 SCR 1055.*
- *S Mahendran v The Secretary, Travancore Devaswom Board – AIR 1993 Ker 42.*
- *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay – AIR 1962 SC 853.*
- *Shayara Bano v. Union of India – (2017) 9 SCC 1.*
- *Tilkayat Shri Govindlalji Maharaj etc. v. State of Rajasthan – AIR 1963 SC 1638.*

CASE NO. 3

RIJU PRASAD SARMA

V.

STATE OF ASSAM

(2015) 9 SCC 461

JUDICIARY CANNOT BE CONSIDERED AS STATE

ABSTRACT

The following is the case summary of *Riju Prasad Sarma v. State of Assam* wherein it was decided whether the court can determine religious freedoms protected by Articles 25 and 26 of the Constitution or can be curtailed only by law, made by a competent legislature to the permissible extent. The Court can examine and strike down a state action or law on the grounds of Article 14 and 15, but it cannot and should not be equated with other organs of state - the executive and the legislature. The definition of 'State' under Article 12 of the Constitution is contextual depending upon all relevant facts including the concerned provisions in Part III of the Constitution. The definition is inclusive and not exhaustive. Hence the omission of the judiciary when the government and Parliament of India as well as government and legislature of each of the State have been included is conspicuous, but not conclusive that judiciary must be excluded. Judiciary cannot be a State under Article 12. Here in this case two issue has arises weather there is a violation of the religious right under the Indian Constitution and second whether Article 12 include judiciary or not?

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No. 3276-78 of 2013
Jurisdiction	:	Supreme Court of India
Case Filed On	:	2012
Case Decided On	:	July 7, 2015
Judges	:	Justice F. M. Ibrahim, Justice Shiva Kirti Singh
Legal Provisions Involved	:	Constitution of India, Article 12, 14, 15, 25A, 25(2)(b), 26, 32, 226 Civil Procedure Code, Section 92
Case Summary Prepared By	:	Nikita Sharma, Indore Institute of Law, Indore

2. BRIEF FACTS OF THE CASE

- **Parties**

  Petitioner/Appellant: Riju Prasad Sarma

  Respondent: State of Assam

- **Factually**

  The Deputy Commissioner passed an order appointing an Additional Deputy Commissioner to discharge the functions of the Managing Committee at Kamakhaya till a Committee under Section 25A of the Act, 1959 could be constituted. The order clarified that the status quo would be maintained as far as religious functions were concerned. The Appellants filed a petition, in which by interim order the Assistant Deputy Commissioner was to not use the main Bharal, existing office of the Appellant and not to interfere with the functioning of "Peethas" of the "Jal Kuber" and "Dhan Kuber" and also religious functions of the Kamakhya Temple.

  The Appellants were also restrained from preparing draft voters list and also from holding or conducting any general election of the Board without prior permission of the Court. The Single Judge also held that Section 25A of the Act, 1959 was found constitutionally valid, the role of the Committee could not be limited to the utilization of annuity paid. The Division Bench reversed the finding of the Single Judge on the issue of the *locus standi* of the Appellants and held that the Regulations constituting the Appellant, and the Appellant itself, had no sanctity in law.

- **Procedurally**

  A writ petition was filed by Riju Prasad Sarma on Assam state acquisition of land belonging to religious or charitable Institution of Public nature (election of managing committee of Sri Sri Maa Kamakhya Temple) Rule, 2012. Because it violated Article 14, 15, 17 and 25 of the Indian Constitution.

  Past Disputes

  A title suit bearing No. 45 of 1919 under Section 92 of the Civil Procedure Code was filed against the then two Dolois, seeking a fresh scheme for management of endowment known collectively as Kamakhya Endowment inclusive of Maa Kamakhya Temple or Devalaya. The suit was finally decided in favour of the Dolois by judgment dated February 25, 1931. The judgment reveals that the

Bordeoris who earlier belonged to five principal families of priests attached to the main temple at Kamakhya, now reduced to four families, were found to be not only the de facto but also de jure trustees of the entire concern in the Kamakhya Scheme of Endowment and the Dolois were their agents or managers. The judgment also indicates that descendants of the five principal and leading families of priests who were originally appointed for the Kamakhya temple were also sometimes called collectively as five Pandas and sometimes as five Deoris.

It is interesting to note that in the 1931 judgment the Civil Court looked into an old decree of the Sadar Diwani Adalat of Calcutta dated 1838 made in appellate jurisdiction in connection with a dispute over the Doloiship at Kamakhya. The Sadar Diwani Adalat judgment contained several references to the five ancient families of priests and made it clear that save and except those five houses, the work of the Doloiship and Sebayati could not be conferred on anyone else; that none of the other Brahmins at Kamakhya or elsewhere had any right, power or authority of even touching or handling the Goddess at Nilachal Kamakhya Temple proper for conducting the Sevapuja (Rajaki puja) at the temple. Such rights and privileges were held to be hereditary ancestral rights of the Bordeori families and hence the Dolois elected by them were restored to possession and management of Kamakhya by replacing another person who was put in as Doloi by an independent agency during the chaos and disorder of the Burmese occupation. The Judicial Commissioners findings in 1873 have been summarised in the said judgment as follows:

(1) That the office of the Doloi is not hereditary, but elective and the right of election is in the hands of the Bordeoris; That as the Government will no longer take any steps, as of old, to guard the Temple funds against misappropriation by the Dalois, the power to guard them must be held to have developed upon the Elective Body; That the power of guarding is a power someone must exercise, as it would be in the highest degree wrong to have left the uncontrolled management to the Dolois. That the Bordeoris as a class fall within the description of Zamindars and other recipients of the rent of lands, according to the spirit of the law and that they do fall within that description that the Bordeoris, as a class, have a right to watch over the administration of the temple lands, and protect such funds from waste and that the Dolois are, so to speak, their (the Bordoris) agents in that matter.

Another judgment in the case of *Baroda Kanta v. Bangshi Nath*[2] is a judgment of Calcutta High Court dated November 30, 1939 which again clearly recognized the custom of exclusive control of Dolois elected by Bordeori families to be in charge of religious as well as secular affairs of Kamakhya temple and endowment.

3. ISSUES INVOLVED IN THE CASE

I. Whether, the validity of the Assam State Acquisition of Lands belonging to Religious or Charitable Institutions of Public Nature (Election of Managing Committee of Sri Sri Maa Kamakhya Temple) Rules, 2012 framed under Section 25A of the Act, 1959 was valid?

II. Whether excluded the Deoris (both male and female) and the female bordeuris of their voting rights as well as the right to contest in elections for the Managing Committee of the Kamakhaya temple is valid?

III. Whether Judiciary is included under the definition 'State'?

4. ARGUMENTS OF THE PARTIES

- **<u>Appellant</u>**

The stand of the appellants is that essential religious rites of Maa Kamakhya Temple is still left in the hands of the Dolois as per custom and the Debutter Board is governing and entitled to govern only the secular/non-religious activities of the temple and its properties because for that it is empowered by the Debutter Board Regulation of 1998. It was highlighted in the oral as well as in the written submissions that no observations be made by this Court which may have any impact in the pending proceeding initiated by the appellants under Section 92 of the Code of Civil Procedure pending before the learned District Judge, Kamrup, and Guwahati. On the other hand, it is the categorical stand of private respondents except for the State of Assam that there is no dispute between the parties concerning the amplitude of Section 25A of the Act. All except the State of Assam are in agreement that it has to be given a narrow meaning in the context of the Act and the various provisions contained therein which restrict the functions of the Statutory Managing Committee conceptualized thereunder to exercise control only over the matter of utilization of annuity and verification of the proper maintenance of the institution.

[2] AIR 1940 Cal. 269.

- **Respondent**

  The Debutter Board represented by the appellants has used writ petitions filed before the learned single judge for the clandestine and concealed object of grabbing control over the properties and affairs of the Maa Kamakhya temple after it attempts to get recognition from the District Judge failed. According to respondents only the two Dolois whose term has expired and who did not want holding of elections to elect Dolois for a further term of five years, went in collusion with the Deuries/priests of other subsidiary temples known as Nanan Devalayas to support the formation of a body which describes itself as Debutter Board and its self-serving constitution as Debutter Board Regulation 1998, which has no legal sanctity.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- **Article 12**

  In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

- **Article 14**

  The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

- **Article 15**

  The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.

- **Article 25(2)**

  Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice. (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

- **Article 26**

  Subject to public order, morality and health, every religious denomination or any section thereof shall have the right— (a) to establish and maintain institutions for

religious and charitable purposes; (b) to manage its affairs in matters of religion; (c) to own and acquire movable and immovable property, and (d) to administer such property under the law.

- **Article 32**

  The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

- **Article 226**

  Notwithstanding anything in Article 32 every High Court shall have power, throughout the territories concerning which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories' directions, orders or writs, including writs like habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

- **Section 92 of the CPC**

  Contemplates a suit against a Trust either for removing any trustee; appointing new trustee, or vesting any property in a trustee etc.

6. JUDGEMENT IN BRIEF

Rejecting the contention, Supreme Court held: Article 25(2)(a) and Article 26(b) guaranteeing the right to every religious denomination to manage its affairs in matters of religion are subject to and can be controlled by a law contemplated under Article 25(2)(b) as both the article are required to be read harmoniously. Social reform or the need for regulation contemplated by Article 25(2) cannot obliterate essential religious practice or their performance and what would constitute the essential part of a religion can be ascertained concerning the doctrine of that religion itself.

While dealing with the objection that the writ petitioners were not competent and had no right to maintain the writ petitions, the learned Single Judge decided not to go deeper into that issue and preferred to dispose of the writ petitions on merits. The two main reasons are given above by the learned Single Judge for not pursuing the issue of locus seriously, the first cannot be questioned. Once the petitioners gave up their claim of having approached in the capacity of administrators/members of the Board of Trustees, relief of action in terms of Section 25A of the Act could have

been granted for the benefit of the religious institution even on the asking of petitioners in their capacity as Shebaits of the Temple. The other reason however does not merit acceptance and must be treated only as an orbiter or a passing reference. At no point of time, the State or Deputy Commissioner had recognized the Debutter Board as Head of the institution and in such a situation there was no need for even the private respondents to challenge the authority of the Debutter Board. The issue as to who could be a voter for electing the Dolois and who could stand for that post had not arisen at that stage because the election of the Dolois had not been ordered by any court till then.

The judgment of the learned Single Judge is mainly founded upon earlier Division Bench judgment upholding the constitutionality of Article 25A of the Act. Learned Single Judge noted the arguments advanced on behalf of the rival parties that article 25A must be given a narrow meaning to confine the Committee constituted under that provision only to matters concerning the utilization of annuity. But in the judgment, it fell back upon the judgment of the Division Bench dated May 2, 2000 for holding that since article 25A was held to be constitutionally valid, there will hardly be any room to consider the argument advanced on behalf of the petitioners and the supporting respondents to the effect that having regard to the object of 1959 Act, the Managing Committee constituted under Article 25A of the Act must be ascribed a limited role restricted to the annuity paid.

The Hon'ble Supreme Court has observed that the definition of the State under Article 12 of the Constitution of India is contextual depending upon all the relevant facts and the concerned provisions of Part III of the Constitution. The definition is inclusive and not exhaustive. Hence the omission of the judiciary when the Government and Parliament of India and Government and Legislature of each of the State have been included is conspicuous but not conclusive that judiciary must be excluded.

The Court noted that while acting on the judicial side the courts are not included in the definition of the State. Only when they deal with their employees or act in other matters purely in an administrative capacity, the courts may fall within the definition of the State for attracting writ jurisdiction against their administrative actions only.

It was further observed that the judgments of the High Court and the Supreme Court cannot be subjected to writ jurisdiction and for want of requisite governmental

control; judiciary cannot be a State under Article 12. Such a contextual interpretation must be preferred because it shall promote justice, especially through impartial adjudication in matters of protection of fundamental rights governed by Part III of the Constitution.

7. COMMENTARY

I have supported their plea that Article 13 will have no application in respect of personal laws based on Shastaras and Scriptures and also in respect of essential religious practices which are matters of faith-based upon religious scriptures that are inviolable for the believers. In the pleadings, petitioners have highlighted that in the several kinds of pujas the women Bordeories take an active part and hence are equally aware of all the rituals and have the necessary qualification to be treated as equal of men Bordeories to elect the Dolois and also for being a candidate. The reply of the respondents, in essence, is a complete denial of aforesaid assertion with a counter plea that women participate only as worshippers and not as priests and they have no say in the matter of management of the temple to claim same knowledge and consequent equality with the male Bordeories. Such dispute of facts may be resolved only on basis of a detailed proper study of the customs and practices in the temple of Sri Sri Maa Kamakhya but there is no authoritative textual commentary or report which may help this Court in coming to a definite finding that women belonging to Bordeori families are equally adept in religious or secular matters relating to that Temple. The relevant scriptures have also not been disclosed to this Court which could have helped in ascertaining whether the basic religious tenets governing the Shakti Peethas in the Kamakhya Temple would not stand violated by permitting female Bordeories to elect or to get elected as Dolois. The petitioners have also not explained at all as to why equality be extended only to female Bordeories and Deories and not to all and sundry. In the aforesaid situation, it is always with a heavy heart that a Writ Court has to deny relief. It may not always be safe for a Writ Court to decide issues and facts having a great impact on the general public or a large part of it only based on oath against oath. Where the right is admitted and well established, the Writ Court will not hesitate in implementing such a right especially a fundamental right. In the present case, as indicated above, it is indeed difficult for this Court to come to a definite conclusion that the petitioners claim to equality for the purpose at hand is well established. Hence, the court have no option but to deny relief to the petitioners.

8. IMPORTANT CASES REFERRED

- *Baroda Kanta Deba Sarma Deka Baredori v. Bangshi Nath Deba Sarma Bidhipathak Barderoi, AIR 1940 Cal 269*

CASE NO. 4

KANTARU RAJEEVARU

V.

INDIAN YOUNG LAWYERS ASSOCIATION, THR. ITS GENERAL SECRETARY AND OTHERS

[2019] 8 MLJ 227

SABARIMALA TEMPLE REVIEW CASE

ABSTRACT

In the case of *Kantaru Rajeevaru v. Indian Young Lawyers Association and Ors*, the main legal issue that is dealt with is whether the Supreme Court can refer the cases to review to a larger bench, relating to the questioning of law. A 9-Judge Constitution Bench in its Judgment dated May 11, 2020, has held that in review petitions arising out of writ petition, the Supreme Court under Article 137 read with Article 141 and 142, has wide powers to correct the position of law. It further held that this Court is not hindered by the limitation of Order XLVII Rule 1 of the Code of Civil Procedure, 1908, since writ petition are not 'civil proceedings' as specified in Order XLVII Rule 1 of the Supreme Court Rules, 2013. A review must be permitted only if the earlier decision is liable to give rise to a miscarriage of justice due to some manifest mistake. This is a historic case that also highlights other important cases regarding women's rights issues.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Review Petition (Civil) No. 003358 of 2018
Jurisdiction	:	Supreme Court of India
Case Filed On	:	November 14, 2019
Case Decided On	:	May 11, 2020
Judges	:	Justice S. A. Bobde, Justice R Bhanumathi, Justice Ashok Bhushan, Justice L Nageswara Rao, Justice M Shantanagoudar, Justice S. A. Nazeer, Justice R Subhash Reddy, Justice B R Gavai, Justice S. Kant
Legal Provisions Involved	:	Constitution of India, Article 25, 26, 137, 141, 142, 145(3)
Case Summary Prepared By	:	Manisha Gupta, National Law University, Odisha

2. BRIEF FACTS OF THE CASE

- **Parties**

  Petitioner**:** Kantaru Rajeevaru

  Respondent: Indian Young Lawyers Association, Through its General Secretary and Ors.

- **Factually**

  The Indian Young Lawyers Association had filed a Writ Petition challenging the validity of Rule 3(b) of the Kerala Hindu Places of Worship (Authorization of Entry) Rules, 1965 and sought directions to the State of Kerala to permit female devotees between the ages of 10 to 50 years to enter Sabarimala temple without any restriction. The High Court of Kerala had ruled that the decision on these issues has to be decided by the religious priests and thus approached the Supreme Court to decide on the issue.

  The case was titled *Indian Young Lawyers Association v. the State of Kerela*. On September 28, 2018, by a majority of 4:1, the Supreme Court allowed the Writ Petition and held inter alia that Rule 3(b) was violative of Article 25(1) of the Constitution of India. The five-judge bench including Justice Dipak Mishra, Justice Ajay Manikrao, Justice Rohit Nariman, Justice D.Y Chandrachud, and Justice Indu Malhotra allowed the entry of women of all the age group to the Sabarimala temple of Kerala. The court also held that the devotees of Ayyappa cannot rely on Kerala Hindu Public Worship Act, 1965 as it does not constitute religious domination in the case. Correspondingly, the court held that Sabarimala Customs and practices of excluding women of menstruating age from visiting the temple, as unconstitutional. It violated the fundamental right of freedom of religion under Article 25 of the Indian Constitution including Article 14, 15, 26. Accordingly, women between the ages of 10 to 50 years were permitted to enter the Sabrimala temple. The court concluded that any practice that violates the constitutional rights of an individual of any religion, caste, sex, or group is not entertained and such practices had to be stopped.

  This judgment of the Supreme Court on the Sabarimala case was not acceptable by most of the devotees. Several review petitions and writ petitions were filed against this Judgment. Kantaru Rajeevaru petition is one of them. The bench headed by Justice Bobde decided that there was a need for review and also specified the reason for directing the case to be reviewed by a larger bench.

- **Procedurally**

  On November 14, 2019, a judgment in these review petitions was pronounced and was titled *Kantaru Rajeevaru v. Indian Young Lawyers Association*. This case involves Kantaru Rajeevaru, the petitioner versus the Indian Young Lawyers Association through its General Secretary, Ms. Bhakti Pasrija. It talks about Article 25 that says, "All persons are equally entitled to freedom of conscience and the right to freely profess, practice, and propagate religion subject to public order, morality and health." Further, it also discusses Article 26 that says, "All denominations can manage their own affairs in matters of religion". The main issue, in this case, was whether grounds for review and grounds for the filing of writ petitions had been made relating to the issue of essential religious practices. Several parties raised an objection to the reference. They contended that the review petitions in the Kantara Rajeevaru case were not maintainable because of the limitations in Order XLVII of Supreme Court Rules and hence, the reference arising out of those review petitions was bad. In the alternative, they submitted that reference to a larger bench is permissible only after review is granted

  However, on February 10, 2019, the nine-judge bench upheld the referral order issued on November 14, 2019 judgment and the court held that the court has the power to refer a point in law to a larger bench in a review petition though there was no reason for this finding. The review petition also tagged the petition of three cases – the Parsi Women's right to enter Fire temple after marrying a non-Parsi, Muslim Women's right to enter mosques, and the practice of female genital mutilation (FGM) practiced among the Dawoodi Bohra community.

3. ISSUES INVOLVED IN THE CASE

I. Whether the court has the power to refer the questions arising from the decided cases to the larger bench?
II. Whether a person not belonging to a religious denomination or religious group can question a practice of that religious denomination or religious group by filing a PIL?
III. What is the scope and extent of judicial review of the case with regard to religious practice as referred to in Article 25 of the Constitution of India?
IV. What is the scope and extent of the word 'morality' under Articles 25 and 26 of the Constitution of India and whether it is meant to include Constitutional

morality?

V. What is the meaning of the expression "Sections of Hindus" occurring in Article 25 (2)(b) of the Constitution of India?

VI. Whether there could be a balance between personal rights under Article 25 of the Constitution and the right to religious domination as per Article 26 of the Constitution of India or can an individual right supersede religious rights?

VII. Whether the rights of religious domination under Article 26 of the constitution of India are subject to the provisions of Part III of the Indian Constitution apart from public order, morality, and health?

VIII. Whether a particular practice is essential to religion or is an integral of the religion, in respect of female genital mutilation in the Dawoodi Bohra community?

4. ARGUMENTS OF THE PARTIES

- **Petitioner**

  The argument from the petitioner, Kantaru Rajeevaru was based on the 2018 judgment of declaring the Sabarimala Temples practice of excluding women of 'menstruating age' as unconstitutional. They filed a review petition along with other organizations to deal with the issue and refer them to a larger bench for review.

- **Respondent**

  They contended that the review petitions in Kantara Rajeevaru were not maintainable because of the limitations in Order XLVII of Supreme Court Rules and hence, the reference arising out of those review petitions was bad. In the alternative, they submitted that reference to a larger bench is permissible only after review is granted. They also contended that hypothetical questions of law should not be referred to.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- **Article 145(3)**

  It predicates those cases involving a substantial question of law as to the interpretation of the Constitution should be heard by a bench of a minimum of five judges of this Court. Be it noted that this stipulation came when the strength of the Supreme Court Judges in 1950 was only seven Judges.

- **Article 14**

  This Article states that the rights are absolute to all citizens. “The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”.

- **Article 15**

  Article 15 deals with discrimination based on sex, religion, caste sex, or place of birth.

- **Article 25**

  Chandrachud, J. concluded, in paragraph 291, that Article 25 of the Constitution of India implies equal entitlement of all persons to profess, practice, and propagate religion. The Supreme Court relied on Article 25 in the 2018 Sabarimala verdict which provides that, “All persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion subject to public order, morality and health”.

- **Article 26**

  This Article gives an absolute right to all the citizens to establish their own religious laws as per the public interest. “Article 26 of the Indian Constitution gives every religious group a right to establish and maintain institutions for religious and charitable purposes, manage its affairs, properties as per law”.

6. JUDGEMENT IN BRIEF

- **Ratio Decidendi**

  On February 10, 2020, the 9 Judge bench dismissed these contentions. It was held that review petitions as well as writ petitions to be kept pending until determination of questions indicated by a Larger Bench. By a literal interpretation of this rule, the bench held that the power to review judgments is plenary and limitations exist only in the context of civil proceedings and criminal proceedings. Writ Petitions filed under Article 32 of the Constitution do not fall within the purview of civil and criminal proceedings. The review petitions in Kantaru Rajeevaru had arisen from a Writ Petition under Article 32. The bench then dismissed the alternative submission of the parties that reference can only be made after the grant of review citing Order VI Rule 2 of Supreme Court Rules, 2013 and Article 142 of the Constitution. The bench then proceeded to hold that

pure questions of law could be referred to and answered by a larger bench. The majority directed to set up a larger bench not less than seven to resolve the recurring issues and also it was necessary for the court for ensuring judicial discipline and propriety.

Then in Paragraph 30, the bench concluded that the review petitions and the references arising from the review petitions were maintainable. Through the May 11, 2020 order the bench has provided their reasons. The reasoning of the bench in the May 11, 2020 orders proceeds in the following manner. The bench firstly referred to Order XLVII Rule 1 of the Supreme Court Rules, 2013 (Paragraph 11), which states:

"*The Court may review its judgment or order, but no application for review will be entertained in a civil proceeding except on the ground mentioned in Order XLVII, Rule I of the Code, and in a criminal proceeding except on the ground of an error apparent on the face of the record*".

- **<u>Obiter Dicta</u>**

The court observed that in a country like India, the judicial powers on religious faith are limited. Hence, the court should be very careful while assessing such issues. Therefore, by referring to the decision on the Shirur Mutt case (7 judge decision)[3] and Durgah committee case[4], the court concluded that it was necessary for the case to be decided by the larger bench. After laying down the need to have a larger bench to decide on substantive constitutional questions including Muslim and Parsi women's entry and the female genital mutilation cases and also mentioned the possibility of overlapping of the cases. The overlapping issues may be relating to the freedom of religion under Article 25 and 26 and the right to equality under Article 14; the expression of 'public order, morality, health' in Article 25 (1). Expression of 'section of Hindus' in Article 25(2) (b). The majority noted that Articles 25 and 26 provide for the right to individuals and religious denominations as well as corresponding restrictions on those rights.

[3] *The Commissioner Hindu Religious Endowments,Madras v. Shri Lakshmindra Thritha Swaminar of Sri Shirur Mutt, AIR 1954 SC 282.*

[4] *The Durgah Committee, Ajmer and another v. Syed Hussain Ali and Others, 1961 AIR 1402.*

- **Dissenting Judgement**

  Indu Malhotra, J. dissented. The summary of her conclusions is reflected in paragraph 312 of the judgment as follows:

  "*The Writ Petition does not deserve to be entertained for want of standing. The grievances raised are non-justiciable at the behest of the Petitioners and Intervenors involved herein. The equality doctrine enshrined Under Article 14 does not override the Fundamental Right guaranteed by Article 25 to every individual to freely profess, practice, and propagate their faith, in accordance with the tenets of their religion.*"

  Constitutional Morality in a secular polity would imply the harmonization of the Fundamental Rights, which include the right of every individual, religious denomination, or sect, to practice their faith and belief in accordance with the tenets of their religion, irrespective of whether the practice is rational or logical.

  The Respondents and the Intervenors have made out a plausible case that the Ayyappans or worshippers of the Sabarimala Temple satisfy the requirements of being a religious denomination, or sect thereof, which is entitled to the protections provided by Article 26. This is a mixed question of fact and law that ought to be decided before a competent court of civil jurisdiction. The limited restriction on the entry of women during the notified age group does not fall within the purview of Article 17 of the Constitution.

  Rule 3(b) of the 1965 Rules is not ultra vires Section 3 of the 1965 Act, since the proviso carves out an exception in the case of public worship in a temple for the benefit of any religious denomination or sect thereof, to manage their affairs in matters of religion.

7. COMMENTARY

The Sabarimala verdict of 2018 helped to bolster the greatest constitutional protections in India, but it also prompted heavy criticism. Protests were not only organized nationwide but attempts by women to enter the temple were blocked in open rejection of the verdict. Simultaneously with these acts of disobedience, petitions were lodged before the Supreme Court demanding a review of the judgment in certain instances. It is to be noted that the case is still pending in court. In the past few decades, it is evident that the government has gotten more involved in the governance of

religious institutions by supervising the judiciary to define a particular religious practice as right or wrong. The notion that women must be prevented from entering the Sabarimala temple in order to safeguard the deity's celibacy must be rejected. According to my view, the nine-judge bench will not only aim to answer whether women of all ages may be permitted to enter the Sabarimala temple, but it will also analyse all issues connected to gender discrimination in other religions before making the final judgment. The denial of the entrance into the mosque and dargahs for Muslim women, the female genital mutilation between Dawoodi Bohras and the denial of the entry into the Agyari of Parsi women who are married to non-Parsi seek equal attention.

8. IMPORTANT CASES REFERRED

- *Ambard v. Attorney-General for Trinidad & Tobago, MANU/PR/0109/1936 : (1936) A.C. 322*
- *Brown v. Board of Education of Topeka MANU/USSC/0037/1954 : 347 U.S. 483 (1954)*
- *Burah's case MANU/PR/0013/1878 : 5 I.A. 178*
- *Canara Bank v. N.G. Subbaraya Setty and Ors. MANU/SC/0433/2018*
- *Cherokee Nations v. State of Georgia 30 U.S. 1, 43 (1831)*
- *Chhajju Ram v. Neki and Ors. MANU/PR/0006/1922*
- *Cooper v. Aaron MANU/USSC/0118/1958 : 358 U.S. 1 (1958)*
- *Department of Conservation and Development v. Tate, MANU/FEFO/0024/1956 : 231 F. 2d 615*
- *Derrington v. Plummer MANU/FEFT/0385/1956 : 240 F. 2d 922*
- *Forward Construction Co. and Ors. v. Prabhat Mandal (Regd.), Andheri and Ors. MANU/SC/0274/1985*
- *In Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950 MANU/SC/0010/1951*
- *Indian Young Lawyers Association and Ors. v. State of Kerala, W.P. (C) No. 373 of 2006*
- *Kamlesh Verma v. Mayawati and Ors., MANU/SC/0810/2013*
- *M. C. Mehta v. Union of India & Ors., MANU/SC/0264/2001*
- *Mathura Prasad Bajoo Jaiswal and Ors. v. Dossibai N. B. Jeejeebhoy, MANU/SC/0420/1970*

- *Moran Mar Basselios Catholicos and Anr. v. The Most Rev. Mar Poulose Athanasius and Ors. MANU/SC/0003/1954*
- *Naresh Shridhar Mirajkar and Ors. v. State of Maharashtra and Anr., MANU/SC/0044/1966*
- *Natraj Studios, MANU/SC/0477/1981 : AIR 1981 SC 537*
- *Pennsylvania v. Board of Directors of City Trusts of Philadelphia MANU/USSC/0021/1957 : 353 U.S. 230*
- *Plessy v. Ferguson MANU/USSC/0197/1896 : 163 U.S. 537 (1896)*
- *Rajasthan State Electricity Board, Jaipur v. Mohan Lal and Ors. MANU/SC/0360/1967*
- *Rajnarain Singh v. The Chairman, Patna Administration Committee, Patna and Anr., MANU/SC/0024/1954*
- *Rupa Ashok Hurra v. Ashok Hurra and Anr., MANU/SC/0910/2002*
- *Rural Litigation and Entitlement Kendra v. State of U. P. MANU/SC/0415/1988*
- *S. Mahendran v. The Secretary, Travancore Devaswom Board, Thiruvananthapuram and Ors., MANU/KE/0012/1993*
- *S. P. Mittal v. Union of India (UOI) and Ors., MANU/SC/0532/1982*
- *Smith v. Texas, MANU/USSC/0035/1940 : 311 U.S. 128*
- *Sow Chandra Kante and Anr. v. Sheikh Habib, MANU/SC/0064/1975;*
- *State of Tamil Nadu v. State of Karnataka MANU/SC/1335/2016 : (2016) 10 SCC 617*
- *State of Uttaranchal v. Balwant Singh Chaufal and Ors. MANU/SC/0050/2010*
- *Supreme Court Bar Association v. Union of India & Anr. MANU/SC/0291/1998*
- *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, MANU/SC/0136/1954*
- *The State of Madras v. Gannon Dunkerley, & Co., (Madras) Ltd., MANU/SC/0152/1958*
- *The Durgah Committee, Ajmer and Anr. v. Syed Hussain Ali and Ors. MANU/SC/0063/1961*
- *Union of India v. Sandur Manganese and Iron Ores Ltd. and Ors. MANU/SC/0417/2013*
- *United States v. United Mine Workers, MANU/USSC/0002/1947 : 330 U. S. 258*
- *V. Purushotham Rao v. Union of India and Ors., MANU/SC/0673/2001 : (2001) 10 SCC 305*

- *Virginia v. Rives, MANU/USSC/0098/1879 : 100 U.S. 313*
- *Worcester v. State of Georgia, 31 U.S. 515 (1832)*

CASE NO. 5

COMMISSIONER OF POLICE & OTHERS

V.

ACHARYA JAGADISHWARANANDA AVADHUTA & ANR.

(2004) 12 SCC 770

TANDAVA DANCE CASE

ABSTRACT

The following is a Case Summary of *Commissioner of Police v. Acharya Jagadishwarananda Avadhuta*, commonly known as the "*Tandava Dance Case*". This case is a civil appeal before the Hon'ble Supreme Court of India. The case was taken up under the quorum of 3 judge's bench. The majority judgement was delivered by Justice S. Rajendra Babu and dissent was given by Justice Dr A. R. Lakshmanan. The present case pertains to Article 25 and 26 of the Constitution of India. The founder of Sect, in his book stated that Tandava dance is an essential practice of the faith. On this doctrine, the sect of sought permission of the Commissioner of Police for Tandava dance in Public. The police commissioner allowed the procession without knives, live snakes or tridents. The said order was challenged before the Supreme Court which gave the liberty to the High Court to decide the same. The Hon'ble High Court allowed the procession with knives, tridents and snakes. Hence, Commissioner appealed the said decision of the High Court before the Supreme Court of India.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No. 6230 of 1990
Jurisdiction	:	Supreme Court of India
Case Filed On	:	1990
Case Decided On	:	March 11, 2004
Judges	:	Justice S. Rajendra Babu, Justice Dr A. R. Lakshmanan, Justice G. P. Mathur
Legal Provisions Involved	:	Constitution of India, Article 25, 26, 32; Arms Act, 1959, Section 2c
Case Summary Prepared By	:	Rishi Raj, Symbiosis Law School, Pune

2. BRIEF FACTS OF THE CASE

- **Parties**

  Appellant: Commissioner of Police

  Respondent: Acharya Jagadishwarananda Avadhuta, Ananda Marg

- **Factual**

  The founder of Sect, in his book stated that Tandava dance is an essential practice of the faith. On this doctrine, the sect of sought permission of the Commissioner of Police for Tandava dance in Public. The police commissioner allowed the procession without knives, live snakes or tridents. The said order was challenged before the Supreme Court which instead gave the liberty to the High Court to decide on the same. The Hon'ble High Court allowed the procession with knives, tridents and snakes. Thus, the Commissioner of Police appealed the said decision of the High Court before the Supreme Court of India.

- **Procedural**

  The case is a civil appeal before the Hon'ble Supreme Court of India against an order passedby the Division Bench of Calcutta High Court. In the year 1986, the founder of the Ananda Math faith in his book Carya published that Tandava was an essential practice of the Sect since 1966. The Sect was established in the year 1955. Based on this excerpt from his book, the Ananda Margis sought permission from the police, for the performance of Tandava dance in public. The Commissioner of police allowed the procession, however, placed reasonable restrictions such as the prohibition on the use oflive snakes, tridents, knives etc.

  Aggrieved by the said order, the sect brought an appeal before the Hon'ble Supreme Court of India under Article 32 of the Constitution. The Supreme Court through its order vide December 1, 1987 stated that the High Court be approached on this issue. The single bench and subsequently, the division bench of the High Court held that carrying knives, tridents etc. in public during Tandava dance is an essential part of the Ananda Marg faith and the conditions imposed by the Commissioner of police was not apt.

  Aggrieved by the impugned order, the present appeal was filed before the Hon'ble court. Tapas Ray was the counsel for the appellants. T. R. Andhyarujina was the counsel on behalf of the respondents.

3. ISSUES INVOLVED IN THE CASE

I. Whether High Court was correct in finding that Tandava dance is an essential and integral part of Ananda Marga?

4. ARGUMENTS OF THE PARTIES INVOLVED

- **Appellant**

The Police Commissioner submitted that activities of Ananda Margis cannot come under the scope of religious functions or practices as compared to well-established practices of festivalsin Muslims and Sikhs.

Commissioner of Police further submitted that if Ananda Margis do not carry knife, trident or skull but only perform Tandava dance in public there would be no objection. Tandava Dance is not a religious rite or practice essential to the tenets of the religious faith of Anand Margis. Hence, the Ananda Margis have no protection under Article 25 and 26 of the constitution merely because their spiritual guru has recently announced that Tandava dance is an essential practice. The Ananda Marg is not a religious institution or denomination in itself and comes under the Hindu religion.

The respondents cannot be allowed to carry trident, daggers, knives and lives snakes as it may disturb public peace and tranquillity.

- **Respondent**

The action of appellants of refusing Ananda Margis the right to perform Tandava is violative of Article 15, 19, 25 and 26. Carrying a knife whose blade is shorter than 10.16 cm is not rm as per the meaning given under Section 2(c) of the Arms Act, 1959.

He further submitted that there can be no question of any 'public order' being violated bythe procession of Ananda Margis involving in the Tandava dance. The concept of 'public order' which is a permissible restriction under Article 25 needs to be distinguished from the connotation 'law and order'.

He concluded his arguments by stating that the respondents are willing to abide by any reasonable regulations issued by the commissioner of police in the interest of public order

5. LEGAL ASPECTS INVOLVED IN THE CASE

The legal aspects in this case involved are as follows-

- **Constitution of India**

  Article 25 Constitution of India- Freedom of conscience and free profession, practice and propagation of religion.

  Article 26 Constitution of India- Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right.

  Article 32 Constitution of India- Remedies for enforcement of rights conferred by Part-III.

- **Arms Act, 1959**

  Section 2(c) - Definition of the term "Arms".

6. JUDGEMENT IN BRIEF

The judgement of the present case was delivered by the Hon'ble Supreme Court of India on March 11, 2004. The quorum consisted of Justice S. Rajendra Babu, Justice Dr A. R. Lakshmanan and Justice G. P. Mathur. The majority judgement was delivered by Justice S. Rajendra Babu on behalf of himself and Justice G.P. Mathur. The dissenting judgement was given by Justice Dr A. R. Lakshmanan.

- **Majority- (Author- Justice S. Rajendra Babu for himself and on behalf of Justice G. P. Mathur)**
  - Essential practices are those practices that are fundamental to follow in a religious belief.
  - Test to determine whether a part of the practice is essential to a religion is that it shall change the practice or belief.
  - There cannot be additions and subtractions to essential or integral parts or practices of the religion as they are the very essence of that religion.
  - The fact that Ananda Marga was founded in 1955 and the Tandava dance came into existence in 1966 shows that such practice is not an essential practice since the inception of the religious institution and is not core principle on which the institution was established.
  - It is not for the Police Commissioner to give his disapproval to the practice of a particular sect which is in his opinion not well established.
  - Performance of Tandava dance in public is not an essential practice or part of Ananda Margi.

- **Dissent (Author- Justice Dr A.R. Lakshmanan)**
  - A religious denomination or organisation enjoys complete autonomy.
  - The test must be applied by courts based on whether a particular religious practice as an integral practice or not.
  - A practice introduced by the head of the religious sect does not make it any less of a matter of religion.
  - Rites and rituals introduced by Anand Murti, head of the sect are thus essential practices and thus come under Articl 25 and 26.
  - Carrying of tridents, live snakes, Koch shells, knives etc is an integral part of the religionas it depicts the Hindu religion as rhythm, posture, ornaments and weapons have always been important for the Tandava dance under the Hindu religion.
  - The regulation formulated by state authority must not be in infringement of the state authority.
  - The activities of a religious sect are subject to the state's regulation and public order and morality but it cannot be to the detriment of the Fundamental right itself.
  - The court allowed the use of knives, live snakes, Trishul etc and gave the following directions.
  - The participants to the procession shall not carry wooden bars, weapons, metal rods, weapons capable of inducing violence.
  - Loudspeakers shall not be used.
  - Traffic regulations should be observed.
  - Traffic should not be obstructed.
  - Normal activities of the common man should not be disturbed.
  - Objectionable slogans and illegal slogans or provocative slogans affecting others' sentiments shall not be expressed or voiced.
  - Precisionists shall proceed in a five-person row and shall keep one side of the road by keeping the other side for transport.
  - Crackers are prohibited
  - They should not spray colour powders the instructions of police officers and other regulations as above should be followed.

7. COMMENTARY

The present case is *Commissioner of Police and others v. Acharya Jagadishwarananda Avadhuta and another* is a civil appeal filed before the Hon'ble Supreme Court of India. The case pertains to Article 25 and 26 of the Constitution of India.

I am in concurrence with the majority judgement which held that the Ananda Margis are not a religious denomination and they come under the Hindu religion itself. For this declaration, the court relied on the case of *Acharya Jagadishwarananda Avadhuta v. Commissioner of Police*[15] also known as the Anand Margi Case -1 which was based on the same issue. I support this classification by placing reliance on the definition given in the case of *Commissioner, Hindu religious endowments v. Sri Laxmindra Tirtha Swamiar of Shirur Mutt*[6] in which the court stated that- "Religion is certainly a matter of faith with individuals or communities not necessarily theistic".

Furthermore, the court held that performing Tandava dance in public is not an essential practice of the sect and not doing so won't accord detriment to core principles of the sect. In my opinion, it is true as the performance of Tandava dance in public is not essential to practice. The court in the case of *John Vallamattom v. Union of India*[7] held that gifting for charitable purposes is not an essential practice of Christianity. It is true that an individual has the right to profess his or her religion or freely practise his religion as held in *Punjabrao v. D. P. Meshram*[8]. However, it cannot be part of the essential practise of any sect or religion. H. M. Seervai one of the finest commentators of the Indian Constitution has also stated in his book for *the 1st Aanada margi case* where the court held that the order of Commissioner of Police did not prohibit Tandava dance in public but placed a restriction onthe use of daggers, trishul and skulls. Furthermore, Seervai Sir has stated that the use of word "essential part" of a religion is to be ascertained with reference to the doctrine of the religion. I also agree with the fact that adding a practice after 10 years of establishment of the sect cannotbe a part of its basic structure.

8. IMPORTANT CASES REFERRED

- *Acharya Jagadishwarananda Avadhuta v. Commissioner of Police, 1984 AIR 512, 1984SCR (1) 447*
- *Commissioner, Hindu religious endowments v. Sri Laxmindra Tirtha Swamiar of ShirurMutt, 1954 AIR 282, 1954 SCR 1005*
- *John Vallamattom v. Union of India, (2003) 6 SCC 611*
- *Punjabrao v. D. P. Meshram, 1965 AIR 1179, 1965 SCR (1) 849*

[5] 1984 AIR 512, 1984 SCR (1) 447.
[6] 1954 AIR 282, 1954 SCR 1005.
[7] (2003) 6 SCC 611.
[8] 1965 AIR 1179.

CASE NO. 6

M. K. GEORGE & ORS.

V.

STATE OF KERALA & ORS.

(AIR 1987 SC 748)

RIGHT TO PRACTICE RELIGIOUS PRACTICES

ABSTRACT

The instant case in the matter of *M. K. Gorge and Ors. v. State of Kerala and Ors.* is regarding the right to practice a religion of an individual's own choice and to have the ability to practice religious customs and practices based on that, as is guaranteed under Article 25 and Article 26 of the Constitution of India. The petitioners argued that they had not discussed the issue and their rights regarding funeral services and other religious customs like Holy Mass, baptism, confession, etc. in their respective churches according to their personal religious beliefs and faith. Consequently, the order was dismissed after it was clarified by the learned court that the order dated July 2, 2019, i.e., *K. P. Paulose v. Union of India* will operate as the interpretation of this court and in all such similar matters, the judgments in the matters regarding *K. S. Varghese v. Saint Peter's and Saint Paul's Syrian Orthodox Church* and *Mathews Mar Koorilos (Dead) v. M. Pappy (Dead)* will be followed and referred to in future disputes.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition (Civil) 446 of 2018
Jurisdiction	:	Supreme Court of India
Case Filed On	:	April 24, 2018
Case Decided On	:	November 19, 2019
Judges	:	Justice D.Y. Chandrachud, Justice Ajay Rastogi
Legal Provisions Involved	:	Constitution of India: Article 21, 25, 26, 32
Case Summary Prepared By	:	Poulomi Chatterjee, Bennett University, Greater Noida

2. BRIEF FACTS OF THE CASE

- **Parties**

  Appellant(s): M.K. George and Others

  Respondent(s): State of Kerala and Others

- **Factually**

  The issue was brought about when the worshippers of Parish Churches who believe in the ecclesiastical supremacy of the Patriarch of Antioch were discouraged when they tried to perform their religious customs and duties under their religion of Patriarch of Antioch. In addition to this, the bishops and clergymen who have a duty under the ecclesiastical Supremacy of the Patriarch of Antioch to perform their respective religious ceremonies which are approved by the Synod of the Syrian Orthodox Church of all the East in Parish Churches where the majority believes in Parishioners and the worshipers of the spiritual succession of St. Peter through the Patriarch of Antioch.

  Thus, as a result, the petitioners approached the court under Article 32 of the Constitution of India when their fundamental rights, specifically under Article 25 and Article 26 were violated when they were denied their right to perform and practice religious rituals of their respective religion. In addition to this, they also claimed that their right to privacy which is inferred under Article 21 of the Constitution of India has also been violated.

  However, the respondents in the instant case contended that these prayers have already been addressed in cases with similar facts as compared to the instant case. The writ petition was accordingly dismissed by the learned court on this contention given by the respondents.

- **Procedurally**

  The petitioners approached the court under Article 32 of the Constitution of India and prayed before the Supreme Court of India for the following reliefs:

  a) To issue a writ of mandamus to the respondent to enforce the fundamental rights of the petitioners under Article 25 and 26 of the Constitution of India;
  b) To issue a writ of mandamus to the respondent to allow worshippers of Parish Churches who believe in the supremacy of Patriarch of Antioch;
  c) To issue a writ of mandamus to the respondent to protect Bishops and other clergymen performing religious ceremonies;
  d) To declare that the petitioners have a fundamental right of religious freedom and worship guaranteed under Article 25 and 26 of the Constitution of India;
  e) To declare that the petitioners have the fundamental right of privacy and have a right to life and personal liberty which is granted under Article 21 of the Constitution of India;

f) To declare that the petitioners have the right to follow their own religious beliefs and customs;

g) To allow the writ petition by affirming the rights of the petitioners which are guaranteed to them under Articles 25 and 26 of the Constitution of India and allow them to follow all religious customs including Holy Mass, Baptism, Confession, Marriage, Funeral Services, etc. in their respective churches as per their respective beliefs.

When respondents claimed that the prayers had already been answered for in other cases hear by the learned court, counsel for appellants, Mr. V. Giri claimed that all prayers (a) to (f) except (g) had not been resolved before the Supreme Court of India, to which the respondents answered that the same had been answered in the matter of *St. Marys Orthodox Church v. The State Police Chief*, (WP(C) 16248 of 2018), in High Court of Kerala, specifically in paragraph 12 of the order, which is specified as follows:

"In the course of arguments in these writ petitions, another vital aspect relating to the parishioners, that was brought to our notice is that there have been instances where parishioners of a particular church, who owe allegiance to the Patriarch faction, have been denied their right to bury their family members, in the space allotted for burial of their family members in the cemetery attached to the church concerned. This, in our view, would not be in accordance with the declaration of the Supreme Court in the cases referred above. As observed by the Supreme Court in paragraph 228.17 in K. S. Varghese's case, the Church and the cemetery cannot be confiscated by anybody. It has to remain with the Parishioners as per the customary rights and nobody can be deprived of the right to enjoy the same as a Parishioner in the Church or to be buried honourably in the cemetery, in case he continues to have faith in the Malankara Church. The property of the Malankara Church in which is also vested the property of the Parish Churches, would remain in trust as it has for time immemorial for the sake of the beneficiaries and no one can claim to be owners thereof even by majority and usurp the Church and the properties. Accordingly, so long as the person claiming a right to burial continues to be a parishioner of the church, and his/her name is not removed from the register of parishioners of the church pursuant to a due process of law, the mere fact of allegiance of the Parishioner to the Patriarch, who is admittedly the spiritual head of the Malankara Church even as per the 1934 Constitution, or his/her inclination to the ideology of the Patriarch faction, cannot deprive the parishioner of his/her right to burial in the church of which he/she is the parishioner.

This right cannot be taken away even if, in particular circumstances, the parishioner chooses to forego funeral services in the church or its cemetery or opts for a funeral service at any other premises by a priest of his/her choice. The right to a burial in the cemetery must be seen as flowing from his status as a Parishioner of the Church."

Thus, the instant writ petition which had filed by the appellants on the grounds of violation of their fundamental rights which is respectfully guaranteed under Articles 25 and 26 of the Constitution of India was accordingly dismissed by the learned court in the instant matter as appropriate orders had already been given by the learned court in similar matters which have been cited in the above headlines.

3. ISSUES INVOLVED IN THE CASE

I. Whether the writ petition filed by the petitioners under Article 32 is maintainable before this court?
II. Whether the petitioners have a fundamental right to practice their religion under Article 25, 26, and 21 guaranteed under the Constitution of India?
III. Whether the petitioners have a right to funeral services offered by their respective churches?

4. ARGUMENTS OF THE PARTIES

- **Petitioner**

  The rights which have been guaranteed under Article 21, 25 and 26 of the Constitution of India have been violated.

  Writ petition filed under Article 32 in the matter of *K P Paulose v. Union of India (1975 AIR 1259)* in the Supreme Court which had similar facts than that of the instant case was still pending before the learned court of India.

  Albeit prayers (a) to (f) have been addressed by the learned court in previous cited orders, but prayer (g) which is regarding funeral services still has not been covered by the court and remains to be argued upon.

- **Respondent**

  The writ petition filed by the petitioners under Article 32 of the Constitution of India is not maintainable since the court has addressed all the issues brought up by the petitioners in previous orders given by the learned court in the matters related to *K. S.*

Varghese v. Saint Peter's and Saint Paul's Syrian Orthodox Church [(2017) 15 SCC 333] and *Mathews Mar Koorilos (Dead) v. M. Pappy (Dead) [(2018) 9 SCC 672].*

Since the issues raised by the petitioners have already been addressed by the court in previous orders and judgements, as was in the case of *Shiju P. Kunjumon v. State of Kerala [(2019) SC 1862]* and *St. Marys Orthodox Church v. The State Police Chief (WP(C) 16248/2018),* the respondents are not entitled to entertain the current writ petition filed under Article 32 of the Constitution of India.

Learned counsel for respondents said that the issue regarding funeral services had also been addressed in the matter related to *St. Marys Orthodox Church V. The State Police Chief (WP(C) 16248/2018)* in paragraph 12.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- **Article 21**

  Article 21 of the Constitution of India grants one the right to privacy in addition to the right to life and personal liberty, unless otherwise mentioned by the just procedure of law. Thus, even in the instant matter, it should be allowed for the people belonging to the said religious community to be able to carry out their activities without being posed by any restrictions. However, since all fundamental rights are not absolute and most come with restrictions, Article 21 also comes with its restriction of the just law holding its power to refuse such a right against any individual or a group of individuals in order to maintain public welfare. However, it is clear that the violation of Article 21 of the Constitution of India against the petitioners in the instant case is clearly not in favour public welfare, but a violation in actuality.

- **Article 25**

  Article 25 of the Constitution of India grants one the freedom of conscience and free profession, along with the right to practice and propagate any religion any individual chooses to pursue. It should also be noted that the same shall be ensured unless otherwise stated by the just law in order to maintain public order, morality, and the health of the society as a whole. Moreover, in this context, it is also submitted that the Constitution of India under Article 25 grants every religious denomination and section to carry on with their economic, financial, political, or any other secular activity associated with their religious practices, in accordance with law. Thus, even in the instant matter, it should be allowed for the Parishian Churches to freely practice their

religion against any other restrictions posed by the just law, in order to maintain public order and welfare in the society. However, the violation of Article 25 of the Constitution of India against the petitioners in the instant case is clearly not in favour public welfare, but a violation in actuality.

- **Article 26**

  Article 26 of the Constitution of India grants the right to manage one's own personal religious affairs, unless otherwise stated in favour of maintaining public order, morality, and health. Moreover, in this context, it is also submitted that the Constitution of India under Article 26 grants every religious denomination and section to establish and maintain their respective religious institution, as well as have the right to manage its own religious affairs in accordance with law. Thus, even in the instant matter, it should be allowed for the Parishian Churches to freely practice their religion against any other restrictions posed by the just law, in order to maintain public order and welfare in the society. However, the violation of Article 26 of the Constitution of India against the petitioners in the instant case is clearly not in favour public welfare, but a violation in actuality.

6. JUDGEMENT IN BRIEF

Since the learned court had already passed adequate measures to counter the issues brought forth in the instant case in previously brought forth cases in the matters of *K.S. Varghese v. Saint Peter's and Saint Paul's Syrian Orthodox Church [(2017) 15 SCC 333]* and *Mathews Mar Koorilos (Dead) v. M. Pappy (Dead)*, the State of Kerala, acting as a party from the respondents' side, represented by Mr. Jaideep Gupta, Mr. C. U. Singh, and Mr. Krishnan Venugopal claimed that the state was not responsible and does not have the power to entertain the writ petition brought forth by the petitioners under Article 32 of the Constitution of India.

In addition to this, the learned court had clearly stated in the previous orders in the matters of *Shiju P. Kunjumon v. State of Kerala [(2019) SC 1862]* and *St. Marys Orthodox Church v. The State Police Chief (WP(C) 16248/2018)* that in view of the judgment in relation to *K. S. Varghese v. St. Peter's & Paul's Syrian Orth. [(2017) 15 SCC 333]*, there is no scope for any authority to be able to construe the order in a different manner as was prescribed in the above-mentioned case. Thus, there cannot be any violation of the said order and that the court has a duty to implement this judgement, i.e., rule to all similar issues that are brought forth. Further, it was also stated that any observation aside from that of the judgement given

by this High Court would stand diluted and that the state and all parties shall abide by this judgment in totality, claiming that no parallel systems can be created. Thus, the instant writ petition was accordingly dismissed.

7. COMMENTARY

It is clear that the petitioners in the instant case related to *M. K. George and Ors. v. State of Kerala and Ors. [(2017) 15 SCC 333],* that the petitioners had faced a grave violation of their fundamental rights in regards to Article 21, 25, and 26, of the Constitution of India respectively. This is because the nature of the Constitution and the beliefs of our country itself exhibits the belief that every individual is free in their own sense.

This refers to the intimate right of them having the right to practice, profess, and propagate their personal religious practices, as well as have the ability to choose any religion they wish to pursue, without any restrictions or questions posed against their right of doing so. However, the same is also not absolute, like all fundamental rights. In this case, it is important to note that every individual may carry out their fundamental rights unless otherwise stated by the just law.

The court in the instant matter smartly dealt with the writ petition brought to it under Article 32 of the Constitution of India by enforcing the orders which were already passed in cases having similar circumstances, facts, and issues. Through this, it has been observed that the court in all cases has an extremely important duty to not abuse the time and power of the court and direct orders already declared, when necessary, in order to avoid repugnancy in justice which could lead to tangled wires of justice in the same sense.

8. IMPORTANT CASES REFERRED

- *K. P. Paulose v. Union of India, (1975 AIR 1259).*
- *K. S. Varghese v. Saint Peter's and Saint Paul's Syrian Orthodox Church, [(2017) 15 SCC 333]*
- *Mathews Mar Koorilos (Dead) v. M. Pappy (Dead), [(2018) 9 SCC 672].*
- *Shiju P. Kunjumon v. The State of Kerala, [(2019) SC 1862].*
- *St. Marys Orthodox Church v. The State Police Chief, (WP(C) 16248/2018).*

CASE NO. 7

BIJOE EMMANUEL & ORS.

V.

STATE OF KERALA & ORS.

1987 AIR 748

NATIONAL ANTHEM CASE

ABSTRACT

The following is a case summary of the case *Bijoe Emmanuel & Ors. v. State of Kerala & Ors.*, dealing in the matter of whether the non-participation in the singing of the national anthem of our country may be classified as an offence. This is a Civil Appeal which has been filed before the Supreme Court of India by the witnesses of Jehovah, in regards to the violation of their fundamental rights, specifically prescribed under Article 25 of the Constitution of India which guarantees the citizens of the country their right to freedom of conscience, the freedom to profess, as well as practice and propagate religion. As the case was concluded on August 11, 1986, after a round of discussions regarding the honour, name, and reputation of religions as well as the national anthem and other properties of the nation, the Supreme Court of India resolved the case by saying that it had unwillingly and unfortunately violated the fundamental rights of the poor children who were posing as petitioners in the instant case.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No. 876 of 1986
Jurisdiction	:	Supreme Court of India
Case Filed On	:	July 26, 1986
Case Decided On	:	August 11, 1986
Judges	:	Justice M. M. Dutt, Justice O. Chinnappa Reddy
Legal Provisions Involved	:	Constitution of India, Article 19(1)(a), 25(1), Prevention of Insult to National Honour Act, 1960; Kerala Education Act, 1959; Kerala Education Rules, 1959
Case Summary Prepared By	:	Poulomi Chatterjee, Bennett University, Greater Noida

2. BRIEF FACTS OF THE CASE

- **Parties**

  Appellant(s): Bijoe Emmanuel and Ors.

  Respondent(s): State of Kerala

- **Factually**

  The appellants in the instant case are children belonging to the religion of Witnesses of Jehovah, who filed a writ petition on account of being expelled from their respective school for not singing the national anthem with everyone else during their school's prayer time.

  The appellants argued that the same is discouraged in their religion, i.e., it is not encouraged in the religion of Jehovah to follow the chants and prayers of any other religion than their own. It is contended by their faith that the words of the national anthem do not hurt their belief in any way, but the mere singing and participation in the national anthem does hurt their belief, since it causes treachery towards their religion.

  Until July 1985, no one complained about this kind of behaviour by the three children of the Jehovah sect, but when a patriotic member from the Legislative Assembly noticed the same and questioned the non-participation of these children in the national anthem with everyone else during the school's prayer time in front of the headmistress of the school, not only were the children defamed for simply following their religious beliefs and practices, but they were also expelled as a result on July 26, 1985 based on the strict orders received by the Deputy Inspector of Schools.

  Accordingly, they came before the Supreme Court of India under Article 136 of the Constitution of India when the Lower Court as well as the High Court rejected their appeal in order to look for proper and valid legal recourse.

- **Procedurally**

  When the appellants tried to seek for legal recourse for the violation of their fundamental rights on various grounds which also includes international covenants, both the Single judge and the Division Bench in the lower court and High Court rejected their prayers respectively, which forced the appellants to file a Special Leave Writ Petition under Article 136 of the Constitution of India in front of the Supreme Court of India, hoping that their prayers would be answered and catered to.

In the instant case, a question regarding the scope of the fundamental right to freedom of conscience and freely to profess, practice and propagate religion guaranteed under Article 25 of the Constitution of India has been discussed.

When both judges, Justice M. M. Dutt and Justice O. Chinnappa Reddy listened to the arguments presented before the Supreme Court of India and came to a decision, they both agreed to the principle that, *"our tradition teaches tolerance; our philosophy preaches tolerance; our Constitution practices tolerance; let us not dilute it."* Following the above, the appeal was fulfilled under the grounds that the three children had faced a terrible injustice by facing a session of not having access to their most important fundamental right, which is the Right to Freedom of Conscience and to Freely Profess, Practice, and Propagate Religion which is guaranteed under Article 25 of the Constitution of India, while also being unnecessarily defamed for simply trying to practice their religion and religious beliefs and practices.

3. ISSUES INVOLVED IN THE CASE

I. Whether non-participation in singing the national anthem is disrespectful to the country's patriotic nature?
II. Whether the petitioner faced a violation of fundamental rights guaranteed under the Constitution of India?

4. ARGUMENTS OF THE PARTIES

- **Petitioner**

The petitioners were denied their right to education and entry to school when they simply chose to follow their religious beliefs by not participating in singing the national anthem. In the case of *West Virginia State Board of Education v. Barnette,* Justice Jackson referred to the beliefs of the Witnesses of Jehovah, which was the literal version of Exodus, Chapter XX, verses 4 and 5, which particularly cited:

"Thou shall not make unto thee any graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; thou shall not bow down thyself to them, nor serve them."

Where the Witnesses of Jehovah interpret "flag" as an image, which is why they refuse to salute to it. The abovementioned is claimed by the petitioners because although they respect the country as well as the King, but the prayer voiced in the anthem is not

compatible with the prayer they sing for their God Jehovah, which tampers with their belief system.

Pertinent to this case, in a similar judgment named, *Donald v. The Board of Education for the City Hamilton [1945 OR 518]* which was decided in the Court of Appeals belonging to Ontario, where the matter was related to the objection by Jehovah's Witnesses in saluting the flag and singing the National Anthem. It was argued by the appellants that they do not prefer to sing the national anthem as although they respect the country as well as the King, but the prayer voiced in the anthem is not compatible with the prayer they sing for their God Jehovah, which tampers with their belief system.

The petitioners claim that the Witnesses of Jehovah have faced this kind of injustice for decades now, simply because they chose to follow their religious beliefs and orders. This has caused most of them a violation of their fundamental rights mentioned under Article 19(1)(a) and 25(1) of the Constitution of India respectively.

In support of the above stated arguments by the petitioners, in the case of *Minersvill School District v. Gobitis [(1939) 84 Law Ed 1375] and West Virginia State Board of Education v. Barnette [(1942) 87 Law Ed 1628]*, which was decided by the Australian Supreme Court, the witnesses of Jehovah cannot be compelled to and it is not necessary for them to salute the flag of the United States while reciting pledge of allegiance, although it was at first considered offensive which resulted in the law suit. However, to stop this injustice, the final judgement is the only secret ingredient to the solution of all such violations faced by the Witnesses of Jehovah.

- **<u>Respondent</u>**

  The petitioners showed disrespect to the Indian National Anthem, ‘Jana Gana Mana’ by not participating in singing the anthem in the morning assembly at their respective school. When the petition had come before the High Court, it had honestly and fairly considered each and every word of the National Anthem but came to a conclusion that the words of the National Anthem in no way hurt the beliefs of any religion, as stated by the Learned Judge on the same matter in the High Court of Kerala. Thus, it shall not be an excuse available to the petitioners that they could not participate in singing the national anthem because of their religious beliefs.

  It must also be noted that through the reasonable precedent of *Board of Education v. Barnette [(1943) 319 US 624]*, people of this religion who worship the Jehovah God are now willing to stand and show respect during the Pledge of Allegiance as well as the

national anthem as one of the only symbols signifying their respect to the flag, which also represents the religious freedom that is enjoyed by them.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- **Article 19 and 25**

  There has been a grave violation of fundamental rights that has been suffered by the Witnesses of Jehovah for decades now, and it is high time we should reconsider what we call 'offensive', as it is guaranteed under Article 19 and 25 that an individual has the freedom of speech and expression and that the stage cannot impose restrictions on their freedom. They also have a freedom to enjoy their own religion and have the freedom to practice, profess, and propagate their religion subject to public orders.

- **Prevention of Insults to National Honour Act**

  Section 3 of the Act directs that whoever disturbs the singing of the national anthem or causes any disturbance in the assembly shall be punished. However, the mere non-performance in singing the national anthem while standing up to it does not signify any kind of direct disrespect to the anthem, which is the only reason why the topic has become so controversial. Even the circulars issued by The Kerala Education Authorities under the Kerala Education Act broadly states that all religions are entitled to respect and no one should be wrongfully questioned about their acts in favour of their God on the basis of their religion.

6. JUDGEMENT IN BRIEF

The Honourable Supreme Court in light of the fundamental rights guaranteed by the Constitution under Article 19(1)(a), 25(1) and the above cited supporting case laws regarding similar matters, the court believes that the petitioners have faced a grave injustice since decades now and it is high time their rights should be recognized. According to the court consisting of learned judges, Justice M. M. Dutt and Justice O. Chinnappa Reddy, the fundamental rights mentioned under Article 19(1)(a) and 25(1) which are respectively the Right to Freedom of Speech and Expression and the Right to Freedom of Conscience and the Right to Freely Profess, Practise, and Propagate Religion have been violated and denied to the people belonging to the religion of Witnesses of Jehovah since decades.

In In *Minersville School Dist. v. Gobitis, (1939) 84 Law Ed 1375*, Justice Frankfurt was of the dissenting opinion that the government does have the power to suppress religious

practices which may affect the integrity and morals of the country in view of public safety, health, and good order, as well as for attempting to discipline the young.

It has been submitted by several judges in several aforementioned cases, the dissenting opinions regarding the true nature of the actions committed by the three infant school children. It is contended that they simply ask for every citizen to respect and honour the national anthem of the country.

However, as stated earlier in the brief, it is the case through *Donald v. The Board of Education for the City Hamilton [1945 OR 518]* which allowed the court to move forward in favour of the petitioners in the instant case. In the cited reference, it was argued by the appellants in the Court of Appeals belonging to Ontario, that they do not prefer to sing the national anthem as although they respect the country as well as the King, but the prayer voiced in the anthem is not compatible with the prayer they sing for their God Jehovah, which tampers with their belief system.

Thus, ultimately, Justice M. M. Dutt and Justice O. Chinnappa Reddy believe that the judgement of *Bijoe Emmanuel and Ors. v. State of Kerala* will act as a noble precedent which hopefully stops any further injustice to the strength of the beliefs of the followers of Jehovah.

Thus, subsequently, the respondent authorities are directed to re-admit the three children back to their respective school and to allow them to pursue their studies in an interest they deem to see fit, in terms of practising a religion and beliefs they personally may have and to not question them based on the same.

Further, the court held that the unjust act of expelling the infant school children based on their conscientiously held religious faith has violated the principles mentioned within the Constitution of India. On this matter, Justice O. Chinnappa Reddy said that no provision of law shall oblige or force any individual to sing the national anthem. In addition to this, the court also stated that the exclusive right of free speech and expression also includes the right to remain silent and that merely standing for the national anthem also signifies respect for the same. Further, Justice Reddy had added that our personal views do not matter if the belief held by the other party is genuine and conscientious enough for it to attract safeguard under Article 25 of the Constitution of India.

Learned Judges Justice M. M. Dutt and Justice O. Chinnappa concluded the hearing by remembering the most important element of the nature of our nation, ‘tolerance’. *“We only*

wish to add, our tradition teaches tolerance; our philosophy preaches tolerance; our Constitution practices tolerance; let us not dilute it."

7. COMMENTARY

The instant case compilation is a brief summary about the grave violations and the injustice that has been faced by the Witnesses of Jehovah since decades now. It is undeniable that the three children from the particular religion sect were expelled from their school unjustly, simply because they chose to respect their beliefs. Moreover, the instant case acted as a revolutionary element towards the kind of interpretation required towards the fundamental right mentioned under Article 25 as well as the interpretation of the Prevention of Insults to National Honour Act.

After critically analysing various case laws in light of the instant issue, the court came to this interpretation, which the author resonates with, and gains the confidence in the legal justice system of the country, since the instant case marks one more victory of innocent children who were accused unjustly.

The fact that individuals from this religion sect have been having to endure such unjust punishments simply because of their belief system since thousands of years, is spine-chilling. Thus, the victory of the petitioners in the instant case is not only a big win for the witnesses of Jehovah, but also a win for the Indian Legal Justice System since it did not disappoint its worshippers by discarding their pleas, but acted as a good listener, a good judge, as well as a body which is ready to evolve continuously.

Moreover, through the analysis of the instant case, the true essence of our nation was marked once again, which was quoted by the Learned Judges Justice M. M. Dutt and Justice O. Chinnappa, that, *"our tradition teaches tolerance; our philosophy preaches tolerance; our Constitution practices tolerance; let us not dilute it."*

8. IMPORTANT CASES REFERRED

- *Board of Education v. Barnette, [(1943) 319 US 624].*
- *Donald v. The Board of Education for the City Hamilton, [1945 OR 518].*
- *Minersvill School District v. Gobitis, [(1939) 84 Law Ed 1375].*
- *Sheldon v. Fannin, [221 F. Supp. 766 (D. Ariz. 1963)].*
- *West Virginia State Board of Education v. Barnette, [(1942) 87 Law Ed 1628].*

CASE NO. 8

LILY THOMAS

V.

UNION OF INDIA

AIR 2000 SC 1650

BIGAMY MARRIAGES IN INDIA

ABSTRACT

The following is a case summary of a landmark case *Lily Thomas v. Union of India*. Lily had filed a petition in the Supreme Court on status of the earlier marriage regarding a case when a non-Muslim gets converted to the 'Muslim' faith without any real change or belief without divorcing the wife. In a nutshell apostasy does not bring an end to the civil obligations or the matrimonial bond, however it forms a ground for divorce. It was during this case that the judgement of Sarla Mudgal was reviewed on the ground that the impugned case violated fundamental rights to life and liberty and freedom to practice any religion enshrined under Articles 20, 21, 25 and 26 of the Indian Constitution. However, Court held that this allegation was a far-fetched one by those who wants to hide behind the cloak of religion to escape the law. The Court further stipulated that the freedom under Article 25 of the Constitution is such freedom which does not encroach upon similar freedom of other persons.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	W.P. (C) No. 798 of 1995
Jurisdiction	:	Supreme Court of India
Case Filed On	:	1992
Case Decided On	:	April 5, 2000
Judges	:	Justice Saiyed Saghir Ahmad, Justice R. P. Sethi
Legal Provisions Involved	:	Constitution of India, Articles 25, 26; Hindu Marriage Act, 1955 – Section 5(i), 11, 17; Indian Penal Code, 1860 – Section. 494
Case Summary Prepared By	:	Simi V Tharakan, Mar Gregorios College of Law, Kerala

2. BRIEF FACTS OF THE CASE

- **Parties**

  Petitioner – Lily Thomas

Respondent – Union of India & Ors.

- **Factually**

  The Respondent, Shri. G. C. Ghosh, husband of the Petitioner, Smt. Sushmita Ghosh both Hindus married according to the Hindu rituals.

  Mrs. Sushmita Ghosh was married to Mr. Gyan Chand Ghosh on May 10, 1984, according to the rituals of Hindus. After almost eight years of marriage, on April 1, 1992, Mr. G. C. Ghosh insisted his wife to agree on divorce by mutual consent. She refused the proposal given by her husband.

  The notion behind seeking divorce from his wife was to marry a girl named Vanita Gupta, who was a divorcee and resident of Preet Vihar, Delhi. Being a Hindu, he was forbidden by law to remarry so he converted to Islam on June 17, 1992, and also got certificate that he has embraced Islam religion and converted into Mohammad Karim Ghazi. The petitioner in the case (Mrs. Sushmita Ghosh) contacted her father and aunt and tried to stop her husband from conversion and consequently remarriage.

  The respondent (Mr. G. C. Ghosh) refused to listen to anyone and finally got married with Miss Vanita on September 3, 1992. It may be said that the sole motive of respondent to get converted into Islam was to obtain a second marriage which he can't do being a Hindu.

  Even after conversion, it was seen that he doesn't have any faith in Islam religion. When the birth certificate of his child from his second wife was issued, the name mentioned on the certificate was his Hindu name and also the religion mentioned there was Hindu. Even when he applied for Bangladesh visa, it was his Hindu name that was mentioned in the application form. Again, in the electoral roll it was his Hindu name that had been mentioned.

  The petitioner, 34 years old and unemployed then, decided to knock the doors of court for justice to be delivered. At that time, it was quite difficult for an unemployed lady to maintain herself and family.

- **Procedurally**

  Finally, a petition was filed in summer vacation by (late) Adv Lily Thomas and this suit was entertained by vacation judge, Justice M. N. Venkatachaliah in 1992. She prayed the honourable court for following reliefs in her writ petition:

i. By an appropriate writ, order or direction, declare polygamy marriages by Hindus and Non-Hindus after conversion to Islam religion are illegal and void;
ii. Issue appropriate directions to the authority concerned to carry out suitable changes in Hindu Marriage Act so as to curtail the practice of polygamy;
iii. Issue appropriate direction to declare that where a non-Muslim male gets converted to Muslim faith without any change of belief only to obtain a second marriage, any marriage entered by him after conversion to be void.
iv. Issue appropriate direction to respondent restraining him to enter the second marriage with Miss Vanita.

Pass such other orders and directions which this honourable court may deem fit to this condition and circumstances.

3. ISSUES INVOLVED IN THE CASE

I. Whether there should be Uniform Civil Code for all citizens of India?
II. Whether a Hindu husband can solemnise second marriage by converting to Islam?
III. Whether the husband would be liable for bigamy under section 494 of IPC?

4. ARGUMENTS OF THE PARTIES

- **Petitioner**

Petitioners emphasized, through their first issue that since marriage is a sacred institution then resorting to the act of religious conversion to Islam to commit the act of bigamy, as Muslim personal law allows, is an attempt of violating Article 21 (Right to life and liberty) of the Constitution under Part III, as the women facing such bigamous marriage and betrayal is violated.

Lily Thomas pleaded before the court to male polygamy in Muslim Law to be unconstitutional. It was urged before the court to apply Uniform Civil Code under Article 44 of the Constitution so as to deal with vast socio-legal issues that were due to various religious personal law.

Many Muslim women have filed petitions before the SC and HC to declare Polygamy in Muslim law to be unconstitutional. To reframe Muslim personal law with the change in time and disallow the practice of Polygamy as it is disrespectful to the integrity and liberty of women who have to face such situations. To declare that Mr. Gosh's second marriage unconstitutional following the Section 11 of the Hindu Marriage Act, 1995,

which explains that remarrying, when the first marriage subsists with the first spouse being alive, an unlawful practice known as Bigamy.

- **Respondent**

  The respondents in all the above petitions assert a common contention that having embraced Islam, they can have four wives irrespective of the fact that the first wife continues to be Hindu.

  Thus, they are not subject to the applicability of Hindu Marriage Act, 1955, the Section 11 of which makes bigamous marriage void and also to the section 17 of which made them guilty for bigamy under section 494 of Indian Penal Code (IPC).

5. LEGAL ASPECTS INVOLVED IN THE CASE

- **Hindu Marriage Act, 1955**

  I. Section 5(i)

  Section 5 of the Act specifies conditions for a valid Hindu Marriage between any two Hindus. From amongst the conditions S. 5 (i) speaks of the condition that the bridegroom, at the time of marriage, must have completed the age of 21 years; and that the bride, at the time of marriage, must have completed age of 18 years. However, S. 13 of the Act provides a remedy in the form of application for divorce, if there is found to be non-compliance of this provision. Moreover, according to the Prohibition of Child Marriage Act, 2006 if the marriage was conducted without completing the requisite age, it will be considered as Child Marriage and in itself becomes a voidable marriage. And in the event an injunction was obtained against the child marriage and still particular party goes ahead with the marriage then the marriage becomes void marriage ab initio.

  II. Section 11

  According to S. 11 of the Act if any marriage between two Hindus is solemnized in contradiction to the provisions under S. 5(i), (iv) and (v) of the Act, then either the husband or the wife can file a petition at the Court and obtain a decree for declaring the marriage null and void.

  III. Section 17

  Punishment of bigamy—Any marriage between two Hindus (including Buddhist, Jaina or Sikh) solemnized after the commencement of this Act is void if at the date

of such marriage either party had a husband or wife living; and the provisions of Sections 494 and 495 of the Indian Penal Code (45 of 1860) shall apply accordingly.

- **Indian Penal Code, 1860 (IPC)**

IV. Section 494

The essential requirement of this section is that any person committing this offence must be married to another woman or man during the subsistence of their first marriage. And in addition, S. 198 (1)(c) of the Cr.PC provides that where the person aggrieved by an offence under S. 494 of the IPC is the wife then a complaint can be lodged on her behalf, by her parents, siblings, children, etc. or with the leave of the court through any other individual.

- **Constitution of India, 1949**

V. Article 25 of the Constitution of India, 1949

This article guarantees the freedom of conscience, the freedom to profess, practice and propagate religion to all citizens. Thus, all persons are equally entitled to religious freedom but with an exception which subjects it to public order, morality and health, as mentioned in the opening of the article. Hence restrictions imposed in the article itself makes it not an absolute right but one which is to be practiced by ensuring that no adversities arise in relation to public order that is creating community riots and so, or is against the socially defined concept of morality and the health of the public as well.

VI. Article 26 of the Constitution of India, 1949

This right, as mentioned above, is subjected to public order, public morality and public health. Hence, it is the freedom of a religious denomination to manage their own religious affairs however with mandated restrictions. And when there is a violation of the restriction then the State and the Judiciary can involve; to make decisions and impose them on the followers of any particular religion. And in such instance, there will be no violation of Article 25 or 26, which otherwise is one among the fundamental rights guaranteed under Part III of the Constitution of India.

6. JUDGEMENT IN BRIEF

- **Ratio Decidendi**

There were no relevant changes made in any document which concluded such conversion to be of concrete nature.

Neither was there anything to denote the conversion as a legit one since the child born from the wedlock did not also bear a Muslim name neither did its birth certificate mention Islam rather it was read Hindu.

Article 21 has not been violated in this case as it has been told that no person shall be deprived of his right of life and personal liberty except as per procedure established by law and herein such an act of marriage while the first marriage subsisted is codified under S. 494 IPC.

- **Obiter Dicta**

  Desirability of Uniform Civil Code under Article 44 of the Constitution can hardly be doubted. But it can concretize only when social climate is properly built up by the society, statesmen amongst leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change for the betterment of the nation at large.

7. COMMENTARY

Religion is a matter of faith stemming from the depth of the heart and the mind. Our Indian society has nurtured different cultures from time immemorial and has been a home to majority of the world's religion and such a historical lineage plays a great role in allowing freedom of religion with great importance. Religion is a belief which binds the spiritual nature of man to a super-natural being. It is basically an object of contentious devotion, faith and pietism. If the person feigns to have adopted another religion just for some worldly pleasure, then it would amount to religious bigotry.

Article 25 of the Constitution of India guarantees the freedom of conscience, the freedom to profess, practice and propagate religion to all citizens, subject to public order, health and morality.

Every person in India has a fundamental right under Part III of our Constitution which entertains such religious beliefs as may be approved of his conscience but the exhibition of such beliefs or ideas are joined by sanction by his religion. However, there are people who convert to other religion for trivial reasons such as polygamy, to get reservation benefits, for gaining admission benefits in some institutions, divorce, etc. Such conversions are invalid since they take place for wrongful gains.

In this case it is very evident that the conversion was for marrying another lady while the first marriage subsisted. However, the religious conversion into Islam by a person from non-

Islamic belief is not valid if the conversion was done for the purpose of polygamy. Neither Islam nor the law in India recognizes any such conversion valid in India. Further, conversion into another faith ipso-facto does not dissolve the first marriage as no one shall be allowed to take benefit of his own wrong. It is also an emphasized fact here that just because a person converts to another religion does not assume him to have converted completely unless he does not renounce his religion or starts living and practicing the beliefs of the religion that he has converted into.

Moreover, it is high time that India implements Article 44 under the Directive Principles of State Policy to uphold the Constitutional Preamble by ensuring that everyone comes under the umbrella social justice in equity.

Personal laws time and again with regards to familial knots like marriage, divorce, maintenance, child custody proves that it is highly gender biased and unfair to the women and children as such when Article 15 has vested the State with the right to form laws specially for children and women. When this uniform civil code is brought about then the matters that would rise too can be judged fairly.

8. IMPORTANT CASES REFERRED

- *Lily Thomas v. Union of India, 2000 (6) SCC 224.*
- *Rev. Stainslaus v. State of Madhya Pradesh & Ors., 1977 SCR (2) 611.*
- *Sarla Mudgal v. Union of India, 1995 (3) SCC 635.*

CASE NO. 9

ADI SAIVA SIVACHARIYARGAL

V.

GOVT. OF TAMIL NADU & ORS.

(2016) 2 SCC 725

STATE LEGISLATURES GOVERNING RELIGIOUS AFFAIRS

ABSTRACT

The following is a Case Summary of the landmark case *Adi Saiva Sivachariyargal v. Govt. of Tamil Nadu (2015)*. Writ petitions were filed by an Association of Archakas and individual Archakas of Sri Meenakshi Amman Temple of Madurai. The State Legislature of Tamil Nadu in order to consolidate the laws relating to the governance and administration of Hindu religious and charitable institutions enacted the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, which was amended later in 1970 and abolished the practice of appointing religious office holders on a hereditary basis. The Supreme Court in this case, concluded that such an appointment is not violative of Article 14 as long as such Agamas conform to the Constitutional mandate and does not include practices that go against constitutionally prohibited criterions like Caste.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition (Civil) No. 354 of 2006
Jurisdiction	:	Supreme Court of India
Case Filed On	:	2006
Case Decided On	:	December 16, 2015
Judges	:	Justice Ranjan Gogoi, Justice N. V. Ramana
Legal Provisions Involved	:	Constitution of India, Article 14, 16 (5), 25, 26; Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 - Section 55 and 55(2); Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 2006
Case Study Prepared By	:	Aadira Menon Jindal Global Law School, Sonipat

2. BRIEF FACTS OF THE CASE

- **Parties**

  Petitioners: Shri K. Parasaran, learned senior counsel appearing for the petitioners.

  Respondents: Shri P. P. Rao and Shri Colin Gonsalves, learned senior counsels appearing for the respondents.

- **Factual**

  The State legislature of Tamil Nadu enacted the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 under which Section 55 provided that where the servants or office holders can take over office according to the principles of hereditary succession i.e., whoever was next in line to the successor is only entitled to succeed to such a position. However, Section 55 was amended by the Amendment Act of 1970 and came into force in 1971. The amendment had abolished the next in line succession principle which meant that now anyone who had the required qualifications could be entitled to such a position.

- **Procedural**

  After the landmark judgement in *Seshammal & Ors. v. Government of Tamil Nadu* which stated that Agamas and religious scriptures were secular in nature, a Government Order Department of Tamil Development, Cultural and Endowments was released in 2006 to the effect that, "Any person who is a Hindu and possessing the requisite qualification and training can be appointed as a Archaka in Hindu temples". This was the main issues being contended in the writ petitions filed by the petitioners.

3. ISSUES INVOLVED IN THE CASE

I. Whether by virtue of the amendment and the G. O. dated May 23, 2006, the State had gained a right to step into and control the Sanctum Sanctorum of a temple through the agency of the trustee and the Archaka thereby transgressing the rights granted to a religious denomination by Articles 25 and 26 of the Constitution?

II. Whether the appointments of Archakas will have to be made in accordance with the Agamas or if that is violative of Article 14, 16(2), 25 and 26?

4. ARGUMENTS OF THE PARTIES

- **Petitioner**

  The petitioners argued that the matter regarding the validity of Agamas being secular and within the ambit of Fundamental Rights is res judicata in the case of Seshammal. The

Constitutional Bench has unambiguously verified that the appointment of a Archaka as per the Agamas is deeply rooted in Hindu Culture and deviating from such due process would be an infringement on the right to freedom of religion and the rights of religious denominations to decide their own affairs as given under Article 25 and 26.

- **Respondent**

The respondents argued that the decision of the Constitutional Bench in Seshammal wherein the Constitutional validity of the Amendment Act of 1970 was upheld, it also opened the path for all Hindus regardless of caste or denominations to be appointed as a Archaka. Thereby contending that the exclusive right of a particular group to have the unconditional qualification to be a Archaka is negated and such an opportunity is now open to all and is consistent with Articles 14 and 16 of the Constitution. Nothing, even including the interpretation of the Agamas can be contrary to what is laid down under part III of the Constitution.

5. LEGAL ASPECTS INVOLVED IN THE CASE

I. Tamil Nadu Hindu Religious and Charitable Endowments Amendment Act, 2006

- **Section 55 & 55 (2)**

The case highlights these sections that has laid down the rules for appointment of office-holders and servants in religious institutions.

II. Constitution of India

- **Articles 25 & 26**

The petitioners have relied on Article 25 of the Constitution that lays down Freedom of conscience and free profession, practice and propagation of religion and Article 26 of the Constitution which lays down the freedom to manage religious affairs which is subject to public health, morality and health.

- **Articles 14 & 16**

The respondents have relied on Article 14 of the Constitution that lays down the Right to Life and Personal Liberty and Article 16 of the Constitution that lays down Equal Opportunity in matters of Public Opportunities.

- **Articles 16(5)**

The Court has relied on Article 16(5) of the Constitution that lays down that nothing can deny a person equal opportunity on grounds of belonging to a different denomination or professing a different religion.

6. JUDGEMENT IN BRIEF

The Supreme Court held that the appointment of Archaka as laid down by the Agamas falls well within the ambit of part III of the Constitution and would not violate Article 14 of the Constitution. However, keeping in mind Article 16(5) of the Constitution, as long as such appointment does not involve the inclusion of some and the exclusion of others on the basis of caste, birth and other denominations that are unacceptable constitutional parameters such an appointment is valid and legitimate.

7. COMMENTARY

There exists a fundamental dichotomy with interpretations in the Seshammal case and the present case that lies before us. The Court in the Seshammal case acknowledged the fact that the appointment of Archakas is secular and falls well within the ambit of Article 25 of the Constitution while clearly Article 25(2)(a) gives the State Legislature can act as a competent body and without the influence of religious tenets. However, in this case, we clearly see that the state's power has been curbed by taking religious tenets into consideration. Thus, the fundamental question that arises here is that since the appointment of Archakas is governed by unalterable religious diktats, whether the nature of such an appointment should be derived from the norms that govern it or from its appointee, the answer to this question could resolve this dichotomy when it comes to the appointment of an Archaka.

Moreover, the question of the validity of the G. O. under Article 25(2)(b) which can be seen as a legislation in furtherance of social reform and welfare requires a clearer interpretation. Both the Benches have managed to navigate around this question and have held that the Agamas which contain the rules of appointment are essential religious practices which cannot be violated by either the Government or the Courts under any constitutional provision. Therefore, the Courts have given the impression that the appointment of Archakas is secular and has to be in accordance to the essential religious practice thereby undermining Article 25(2) which is supposed to have been away from religious influence or concern.

In my opinion, the *Adi Saiva* case tried to explain the concerns of adopting a clear ecclesiastical jurisprudence especially in a country like India wherein the line between religious and social practices is often overlapping with one another. However, the judiciary still needs to develop a clearer interpretation of temple appointments by engaging with the qualitative dichotomy that exists within such appointments.

8. IMPORTANT CASES REFERRED

- *Commissioner of Police and Others v. Acharya Jagadishwarananda Avadhuta and Another [(2004) 12 SCC 770]*
- *N. Adhithyan v. Travancore Devasom Board and Other [(2002) 8 SCC 106]*
- *Sanjeev Coke Manufacturing v. M/s. Bharat Coking Coal Limited & Anr. [(1983) 1 SCC 147]*
- *Sastri Yagnapurushadji and Others v. Muldas Bhudradas Vaishya and Another [1966(3) SCR 242]*
- *Seshammal & Ors. v. State of Tamil Nadu [(1972) 2 SCC 11]*

CASE NO. 10

SRI ADI VISHESHWARA OF KASHI

V.

STATE OF U. P. & ORS.

(1997) 4 SCC 606

DEFINING "ESSENTIAL RELIGIOUS PRACTICE"

ABSTRACT

The following case is a case summary of the case *Sri Adi Visheshwara of Kashi v. State of U.P* (1997). This case is one among the many cases wherein the Supreme Court had to draw a distinction between what constitutes as an 'Essential Religious Practice' and whether a state's legislature intervening into the institutional arena of the Kashi temple is violative of one's Fundamental Rights. This case is known most famously because the renowned Lord Vishwanath is the litigant in this case, he is also known by the name of Sri Adi Visheshwara of Kashi. The main contention of this case challenged the constitutionality of the Uttar Pradesh Sri Kashi Vishwanath Temple Act, 1983, which was made to oversee and manage the Temple. The reason for such an act was because the temple was not being maintained rightfully and there was an incident wherein Lord Shiva's jewellery was stolen from the temple. This alarmed the citizens of Varanasi for the protection of such valuable items of the lord and therefore the government of Uttar Pradesh took steps to ensure that the temple is rightfully managed under their supervision.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Appeal (Civil) 1013-1015 of 1987
Jurisdiction	:	Supreme Court of India
Case Filed On	:	1984
Case Decided On	:	1987
Judges	:	Justice K. Ramaswamy, Justice K. Venkataswami, Justice G B. Pattanaik
Legal Provisions Involved	:	The Uttar Pradesh Shri Kashi Vishwanath Temples Act, 1983- Section 5, 4, 23, 18, 22, 19, 21; Constitution of India, Article 25 (1) and 26 (b) & (d); Hindu Religious Institutions and Endowments Act, 1987
Case Summary Prepared By	:	Aadira Menon Jindal Global Law School, Sonipat

2. BRIEF FACTS OF THE CASE

- **Parties**

  Appellant: Learned Senior Counsel Shri Rajeev Dhavan, S. S. Javali and D.V. Sehgal

  Respondent: State of U. P. & Ors.

- **Factually**

  The appellants filed writ petitions before the Supreme Court of India against the State of Uttar Pradesh for enacting a law regarding the management of the Kashi Vishwanath Temple which they claim is violative of their Right to profess and practice their religion.

  The Uttar Pradesh Shri Kashi Vishwanath Temple Act, 1983 came into force as per Section 1 sub-section (2) of the act. A writ petition was filed by the petitioners before the High Court on grounds that the act was discriminatory and violative of Article 25 (1) and 26 (b) & (d) as enshrined in the Constitution. To this, one of the learned judges of the High Courts sided with the petitioners wherein he felt that Lord Vishwanath is the Lord of the common people and it is the temple of the denominational sect of Hindu- Shivaites and therefore all rights rest with him. However, another learned judge held a dissenting opinion wherein he held that Shivaites did not belong to a denominational sect. Both judges came to the similar conclusion that the State legislature holds power and is competent enough to control the management of the temple and therefore, enacting a law that does the same is not violative of any of the rights of the petitioner.

- **Procedurally**

  The appellants felt aggrieved by this decision of the High Court and therefore filed these appeals in front of the Supreme Court.

  The appellants, by stating various section of the Act argued in front of the court that this violated the freedom given to them by the Lord himself in the upkeep and maintenance of the temple. However, the Court taking cognisance of the matter held that it is Res Integra of the legislation to have taken up management of the temple as it is co terminus of the removal of corruption and maladministration when it comes to matters of the temple. The management of the temple does not infringe upon the rights of the Archakas in any way and are not considered essential ingredients to any religious texts.

3. ISSUES INVOLVED IN THE CASE

I. Whether the appellants have any Fundamental Rights in the aforesaid and if so, by what extent?

II. Whether Sri Kashi Vishwanath is a denominational temple and whether the state act interferes with the right to profess, practice and propagate one's religion?

4. ARGUMENTS OF THE PARTIES

- **Appellants**

  The appellants argued that the act infringes upon their rights as the devotees and descendants of Lord Shiva to manage the temple and its affairs. They argued that Shivaites as a sect is a denominational sect and therefore, they deserve the protection under Article 26 of the Constitution.

- **Respondents**

  The respondents argued that the Shivaites are not a denominational sect and that due to the unhygienic and unsafe temple premises, the state had to take the necessary actions of safeguarding the sanctity of such an old and important temple.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- The entire Uttar Pradesh Shri Kashi Vishwanath Temple Act, 1983 was hotly contested in this case. Mainly **Section 4 (3)** that defines "Board" and "Trustees of the Board" out of which 8 of the board members were non-officials but who were well-versed with the religious scriptures so the management of the temple should be rested upon such individuals who respect and adhere to the wishes of Lord Shiva. **Section 5** of the act declares that the totality of the endowments and temple trust is vested wholly with the Deity. Furthermore, **Section 14** of the act lays down how the board is expected to ensure the upkeep of the temple at all times.

- **Article 25** has laid down the Freedom of conscience and free profession, practice and propagation of religion and **Article 26** has laid down the Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right.

6. JUDGEMENT IN BRIEF

The court in this case held that since believers of both Shaiva form and Pancharatna form can enter the Temple and offer their prayers to the Lord then that means that the temple is open to all Hindus and not just the Shaivas. So, within this, the Shri Kashi Vishwanath temple Shaiva's do not fall under the denominational category and **Article 26 (b)** and **(d)** do not apply to them. Moreover, the state under this Act has to ensure that the rights of practising the Hindu religion in any form is protected and is done in accordance with the Hindu scriptures and no denominational sect is an exception under this.

For the second issue pertaining to whether the Act violated the appellants right to profess and practice their religion the court drew a distinction between secular and religious functions of the Temple. The impugned act is concerning the secular functions of the management and administration of the Temple. These functions are not essential to the Hindu religion and therefore the Legislature has the power to interfere.

7. COMMENTARY

This was yet another crucial case that was decided by the Apex court when it comes to distinguishing between secular and religious functions within a temple. Much like the *Adi Saiva Sivachariyargal v. State of Tamil Nadu*, wherein the court dealt with the same matter when it came to the appointment of an Archaka and whether the rules for such appointment was violative of their Fundamental Rights. In this case however, the court was able to separate religion and secularity on a clearer and more logical premise.

The court in this case set a precedent for communities who wish to be recognised as a denominational sect that such rights under Article 26 (b) and (d) of the Constitution can only be granted to communities who worship and function under a separate set of belief or have essential practices that require such a sect to seek protection under such an article. In this case, Shivaites are not a denominational sect as they follow the Hindu scriptures and their temples are open to all Hindus. The court gave the Legislature the much-required legitimacy in cases where enforcing a secular standard becomes critical.

8. IMPORTANT CASES REFERRED

- *Bhuri Nath and Ors. v. State of J&K and Ors. [AIR 1997 SC 1711].*
- *Lakshamana Yatendrulu and Ors. v. State of Andhra Pradesh and Ors. [AIR 1996 SC 1414].*

- *Pannalal Bansilal Patil and Ors. v. State of Andhra Pradesh and Ors. (AIR 1996 SC 1023).*
- *State of Rajasthan and Ors. v. Sajjanlal Panjawat and Ors [AIR 1975 SC 706].*
- *The Durgah Committee, Ajmer and Ors. v. Syed Hussain Ali and Ors. [AIR 1961 SC 1402].*

CASE NO. 11

DURGAH COMMITTEE, AJMER & ANR.

V.

SYED HUSSAIN ALI & ORS.

1962 SCR (1) 383

STATE LEGISLATION VIOLATING FUNDAMENTAL RIGHT INVALID AB INITIO

ABSTRACT

The following is a case summary of the case *Durgah Committee, Ajmer & Anr. v. Syed Hussain Ali & Ors*. Khwaja Moinuddin Chisti born in the province of Sijistan to the east of Persia in 1142 A.D. came to India some time towards the end of twelfth century and settled in Ajmer. He was a sufi of Chisti order and after his death, his tomb which was kachcha was made pucca and then the tomb gained prestige and came to be known as Durgah Khwaja Saheb. It was alleged that in 1955 the Parliament of India enacted the Durgah Khwaja Saheb Act which violated the fundamental rights of not only of the petitioners but of all other khadims of the dargah. A petition under Art. 226 of the Constitution was presented by nine khadims, against the Durgah Committee constituted under the Durgah Khwaja Saheb Act, 1955 for a declaration that the said act is ultra vires of the Constitution, and for a direction restraining the respondents from enforcing its provisions.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No. 272 of 1960
Jurisdiction	:	Supreme Court
Case Filed On	:	1959
Case Decided On	:	March 17, 1961
Judges	:	Justice P. B. Gajendragadkar, Justice A. K. Sarkar, Justice K. N. Wanchoo, Justice K. C. Das Gupta, Justice N. Rajagopala Ayyangar
Legal Provisions Involved	:	Durgah Khwaja Saheb Act, 1955 Ss. 2(d)(v), 45, II(f) and (h), 13, 14, 16, 18; Constitution of India – Article 14, 19(1)(f), 25, 26, 32
Case Summary Prepared By	:	Simi Varghese Tharakan, Mar Gregorios College of Law, Kerala

2. BRIEF FACTS OF THE CASE

- **Parties**

  Appellants: Durgah Committee, Ajmer, Attorney General for India

  Respondents: Syed Hussain Ali

- **Factually**

  Khwaja Moinuddin Chishti was born in the province of Sijistan to the east of Persia somewhere around 1142 A.D. and came to India around the 12th Century, settling in Ajmer. Being a sufi of Chisthi order he attracted large number of followers and was held high by the mass during his lifetime. After his demise in 1236 A.D. initially he was buried in a kachcha grave later on that was transformed into pucca and a dome was built over it. The tomb gained stature as Durgah Khwaja Saheb which was taken care by the followers. Subsequent to the followers' deaths, their descendants continued to maintain the tomb and they came to be known as Khadims whose occupation from generation to generation has been that of religious service at the tomb of Saint Moinuddin Chishti.

  They not only had the right to look after the vast premises but also kept the keys to the tomb and the duty to attend to the multitude of pilgrims, who came to pray at the shrine, to be their guides in the performance of religious functions for which they used to receive offerings (nazars) which were their main source of livelihood. These offerings were like their property however, this had become a subject matter of litigation for some time.

  This has gone to the Privy Council in *Altaf Hussain v. Ali Rasul Ali Khan*[9] which was finalized by affirming the declaration made by the Judicial Commissioner of Ajmer-Merwara with some modifications and the rights of the Khadims were determined in the suit.

  In 1955 the Parliament of India enacted the Durgah Khwaja Saheb Act which travelled beyond the object of the proper administration of the Durgah. However, its provisions from Ss. 2(d), 5, 11, 16 and the intention behind it was alleged to contravene Art(s). 14, 19(1)(f), Art. 25 & 26 the guaranteed fundamental rights and also violated the right to property then under Art(s). 31(1)&(2)

- **Procedurally**

  A writ petition was filed under Art. 226 of the Constitution by nine respondents who are from the Khadims challenging the vires of the Durgah Khwaja Moniud-din Chishti of

[9] AIR 1938 PC 7

Ajmer challenging the vires of the Durgah Khwaja Saheb Act of 1955 expressing that the Act in general and the provisions specified in the petition in particular are ultra vires and they claimed a direction or order restraining the appellants from enforcing its provisions. High Court made a declaration that the impugned provisions of the Act are ultra vires and issues a restraining order. The appellants then obtained a certificate from the High Court to appeal at Supreme Court.

3. ISSUES INVOLVED IN THE CASE

I. Whether the provisions of the Durgah Khwaja Saheb Act 1955 have violated the fundamental rights elaborated under Art(s). 14, 19(1)(f)[10], Art. 25 & 26?

II. Whether the provisions of the Durgah Khwaja Saheb Act 1955 have violated the right to property mentioned under Art 31 (1) & (2)[11]?

III. Whether the Legislature is competent enough to enact such an Act?

IV. Whether legal rights of the respondents or of the section of the denomination they, seek to represent are prejudicially affected by the impugned legislation?

V. Whether the provisions of the Act with regards to administration and management of property is violative of the denominational right of Chishti Soofies – Provisions?

4. ARGUMENTS OF THE PARTIES

- **Appellants**

  The appellants pleaded that according to the Islamic belief offerings made at the tomb of a dead saint are meant for the fulfilment of objects which were dear to the saint in his lifetime and they are meant for the poor, the indigent. The sick and the stiffening so that the benediction may reach the soul of the departed saint. The averments made by the respondents in regard to the fundamental rights and their infringement were challenged by the appellants and it was urged that the Act in general and the provisions specified in the petition in particular were intra vires and constitutional.

- **Respondent**

  The respondents pleaded that material provisions take away and/or abridge their fundamental rights as a class and also the fundamental rights as a class and also the

[10] Art.19(1)(f) – "Right to Property" [Omitted during the 44th Amendment hence not explained in this article.]
[11] Art(s). 31(1) & 2) – sub-heading "Rigt to Property" [Omitted during the 44th Amendment hence not explained in this article.]

fundamental rights of the Muslims belonging to the Soofi Chishtia Order guaranteed by Arts. 14, 19(1)(f) and (g), 25, 26, 31(1) & (2) as well as 32.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- **Article 14**

  According to Prof. Dicey, the Rule of Law says that no person is beyond or above law rather they are equal in front of law. Evils like discrimination is combatted by this Article 14, which makes part of the golden triangle along with Articles 19 and 21 of the Constitution. The framers of Constitution of India with a foresight embedded this Article under Part III of the Constitution which envisages the Fundamental Rights. Article 14 ensures that, irrespective of being citizen or foreign national, every individual enjoys equality under law and equal protection of law which is the basic concept of liberalism. Equality of law basically means that all persons should be treated equally without regards to their economical or societal status or even gender. State cannot provide special privileges to any community or people. By equality before law, it means that everyone has access to justice and no one can be barred from the same. Similarly, equal protection under law emphasizes that every individual must be protected against arbitrariness of the State.

- **Article 25**

  This Article provides to all citizens the freedom of conscience to profess, practice and propagate their belief or religion; subject to public order, health and morality. The provision also gives State the power to regulate and restrict any financial, economic, political or other secular activity associated with any religious practice. Further, it also provides for the social welfare and reform or opening of Hindu religious institutions of a public character to all sections of Hindu religious institutions of a public character to all sections and classes of Hindus. And that people of the Sikh faith wearing and carrying the kirpan shall be considered as included in the profession of Sikh religion.

6. JUDGEMENT IN BRIEF

- **Ratio Decidendi**

  Rule of Law – Nobody is above Law

  Ss. 4 & 5 of the Act has not violated Art. 26

  Although this Court has laid down what is a religious denomination and what are matters of religion, it must not be overlooked that the protection of Art. 26 of the Constitution

can extend only to such religious practices as were essential and integral parts or the religions and to no others. Assuming that the Chishti order of the Soofies constituted such a denomination or section of it whom the respondents represented, it was obvious that cls. (c) and (d) of Art. 26 could not create any rights which the denomination or the section never had; they could merely safeguard and guarantee the continuance of such rights which the denomination or section had. Where right to administer properties had never vested in the denomination or had been surrendered by it or had otherwise been effectively and irretrievably lost to it, Art. 26, could not be successfully invoked. In this instant case, since Chishti Soofies never had any rights of management over the Durgah Endowment for centuries since it was created, the attack on Ss. 4 and 5 of the Act must fail.

Ss. 2(d)(v) and 14 of the Act had not violated Art. 19(1)(f)(g)

It was not correct to say that ss. 2(d)(v) and 14 of the impugned Act infringed Art. 19(1)(f) and (g) of the Constitution. Those sections, properly construed, meant that offerings earmarked generally for the Durgah belonged to the Durgah and could be received only by the Nazim or his agent. These offerings, as found by judicial decisions, belonged to the respondents and the impugned sections did not affect what was found to belong to them.

Ss. 11(f) & (h) read along with S. 15 does not violate Art. 25(1)

There could be no doubt as to the competency of the Legislature to regulate matters relating to the property of the Durgah by providing that the said offerings could be solicited by the Nazim or his agent. The powers conferred on the committee by s. 11(f) & (h), which must be read in the light of the mandatory provisions of s. 15 which made it obligatory on the committee to observe Muslim Law and the tenets of the Chishti saint and which had to be exercised within the limits laid down by s. 16, could not violate Art. 25(1) of the Constitution.

Section 13(1) does not offend Art. 25

S. 13(1) could not be read apart from the other provisions of s. 13. That section really intended to lay down the procedure for determining disputes relating to succession to III Office of Sajjadanashin and it was therefore fertile to contend that S. 13(1) offended against Art. 25(1).

S. 16 has not infringed Art. 14 or 32

S. 16 which provides for the setting up of a Board of Arbitration, embodied a healthy and unexceptionable principle, obviously in the interest and of the institution as well as the parties, and could not be said to infringe Art. 14 or 32 of the Constitution

S. 18 did not infringe Art. 32

S.18 was confined to such final orders as were within the jurisdiction of the committee and passed against persons who did not object to them but failed to comply with them, it did not contravene Art(s). 14 or 32 of the Constitution.

It is held that none of the impugned provisions of the Act in question has been laid down in such manner that it violates the fundamental rights or legal rights of the respondents in any manner. If as a result of the enforcement of the present Act incidentally more offerings are paid to the Durgah and are received on behalf of the Durgah that is a consequence which the respondents may regard as unfortunate but which introduces no infirmity in the validity of the Act.

Thus, the appeal is allowed setting aside the order of the High Court and petition of the respondents were dismissed with costs throughout.

7. COMMENTARY

From the above judgement it clearly states that though India being a secular State providing freedom of religion and the freedom for religious endowments to manage their welfare State will have a say in the matters if it feels that the matter in question affects the public morale, health, welfare, order adversely.

It is true that religion is one's personal faith and this right to believe in one's own religion is does not affect anyone else. However, if it is to expressly affect someone from outside that realm calls for intervention. So, when the competency of the legislature to make legislations is questioned one needs to understand that legislations made considering the majority part of the population to ensure that not one individual is restricted from what they had love to follow or practice as their faith then that is not violating any others fundamental rights or legal rights here.

In this instant case it is a Dargah which means a shrine built over a grave of a revered religious figure, a Sufi saint in most cases, who according to the Court would not have left any property so claiming something to be the property to be of a religious sect falls under scrutiny. Especially, when the revered figure while alive had followers from various walks

of lives following varied beliefs but had some mutual agreement in following the saint or dervish then it would be out of place for one religion to claim its rights over the dargah which instead shall be open to the public who would like to visit and make prayers or offers. Hence this could not be the property of the Muslims alone rather the provisions within the Act of 1955 needs to be upheld which in fact has not violated any of the fundamental rights, legal rights or even any of the Constitutional provisions.

I strongly support the views of the Supreme Court in this matter who has made a timely and right decision of negating the respondents and allowing the petitions of the appellants.

8. IMPORTANT CASES REFERRED

- *Asrar Ahmed v. Durgah Committee, Ajmer, AIR 1947 PC 1.*
- *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmidra Thirtha Swamiar of Sri Shirur Mutt, [1954] SCR 1005.*
- *Piran v. Abdool Karim, (1892) ILR 19 Cal 203.*
- *Sri Venkataramana Devaru v. The State of Mysore, [1958] SCR 895.*
- *Syed Altaf Hussain v. Dewan Syed Ali Rasul Ali Khan, AIR 1938 PC 71.*

CASE NO. 12

SARDAR SYEDNA TAHER SAIFFUDDIN SAHEB

V.

STATE OF BOMBAY

AIR 1962 SC 853

THE DAWOODI BOHRA CASE

ABSTRACT

The following is a case summary of the landmark case of *Sardar Syedna Taher Saiffuddin Saheb v. State of Bombay*, which is profoundly known as 'The Dawoodi Bohra Case'. The petitioner in this case – Sardar Syedna Saheb – is the 51st Dai-ul-Mutlaq of the Dawoodi Bohra Community which falls under the Shia sect of the Muslim religion. As the Dai-ul-Mutlaq and the vicegerent of Imam on Earth in seclusion, the Dai has not only the civil powers as head of the sect and as the trustee of the property, but also ecclesiastical powers as the religious leader of the community. He has also got the power of excommunication. Through this petition filed under Article 32, the petitioner challenges the constitutionality of the Bombay Prevention of Excommunication Act, 1949 (Bombay Act XLII of 1949) on the basic ground that several provisions of the Act violate Articles 25 & 26 of the Indian Constitution. The Supreme Court constituted a 5-Judge Bench to look into the matter of religious importance. With a 4:1 majority, on January 9, 1962, the Bench upheld the right and power of excommunication bestowed upon the Dai-ul-Mutlaq.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Petition No. 128 of 1958
Jurisdiction	:	Supreme Court
Case Filed On	:	August 18, 1958
Case Decided On	:	January 9, 1962
Judges	:	Justice B. P. Sinha, Justice A. K. Sarkar, Justice K. C. Dasgupta, Justice N. Rajgopal Ayyangar, Justice J. R. Mudholkar
Legal Provisions Involved	:	Constitution of India, Article 17, 25, 26; Bombay Prevention of Excommunication Act, 1949, Sections 2, 3 and 4
Case Summary Prepared By	:	Sonalika Nigam Parul University, Vadodara

2. BRIEF FACTS OF THE CASE

- **Parties**

  Petitioner: Sardar Syedna Taher Saiffuddin Saheb

  Respondent: State of Bombay

- **Factually**

  Sardar Syedna Saheb became the 51st Dai-ul-Mutlaq of the Dawoodi Bohra Community and hence became entitled to the rights and powers guaranteed to the Head Priest under the Koran. This also included the power to excommunicate a person from the Dawoodi Bohra community, meaning thereby that such a person will totally be isolated and wouldn't even have the right and opportunity to use the community burial ground. He asserts that this right has been guaranteed under Articles 25 and 26 of the Constitution.

  Meanwhile, the Bombay legislature enacted the Bombay Prevention of Excommunication Act, 1949 - which came into force on November 1, 1949 and made excommunication illegal. Within no time, many suits were filed which asked for declaring their excommunications to be null and void.

- **Procedurally**

  Tayebhai Moosaji Koicha (Mandivala) initiated a suit In the Bombay High Court praying for a declaration that the excommunication orders passed by the petitioner against him prior to November 1, 1949 were illegal and void. But the Judge held that the act is consistent with Article 26 of the Constitution. Being dissatisfied, he then appealed in the Court of Appeal, but it was again rejected and the next appeal was made to the Apex Court. Unfortunately, he died before the matter could be decided.

  The present petitioner made an appeal to the Top Court via Article 32 as the Act, according to him, was in violation with Articles 25 and 26 and a writ of mandamus, or a writ in the nature of mandamus, was sought. The State of Bombay made available its opinions by an affidavit.

  While this matter was pending in the Supreme Court, in April 1961, Kurbanhusein Sanchawala made an application either for being added as a party to the main petition, or, for being granted leave to intervene in the proceedings of the Court. He was later granted the leave to intervene in the proceedings.

  The Bench decided the case by a majority of 4:1 ratio on January 9, 1962.

3. ISSUES INVOLVED IN THE CASE

I. Whether the Legislature was competent and constitutionally justified in enacting the law declaring excommunication to be void?
II. Whether the petitioner as the head of the Dawoodi Bohra community had the power to excommunicate?
III. Whether the impugned Act contravenes the provisions of Article 26(b)?
IV. Whether the impugned Act comes within the saving provisions embodied under Article 25(2)?
V. Whether the impugned enactment could be sustained as a measure of social welfare and reform under Article 25(2) (b)?

4. ARGUMENTS OF THE PARTIES

- **Petitioner**
  a. The petitioner was represented by Advocates K.M. Munshi, R. J. Joshi, G.K. Munshi, T.S.N. Diwanji, J.B. Dadachanji, S.N. Andley, Rameshwar Nath and P. L. Vohra.
  b. It was argued that the right to excommunicate a person is a matter of religion which relates to the management of the Dawoodi Bohra community – a religious denomination under Article 26.
  c. It was contended that the impugned Act, in so far as it takes away the power to enforce religious discipline and thus compels the denomination to accept dissidents as having full rights as a member of the community, including the right to use the properties and funds of the community dedicated to religious use, violates the fundamental rights of the petitioner under Article 26.
  d. It has been argued that religious reform, if that is the intention of the impugned act, is outside the ambit of Article 25(2) (b) of the Constitution.

- **Respondent**
  a. The respondent was represented by M. C. Setalvad, Attorney General of India, C.K. Daphtary, Solicitor-General of India, H.N. Sanyal, Additional Solicitor General of India, B. Sen and R. H. Dhebar.
  b. The respondent contended that the right to excommunicate (rendered invalid by the Act) was not a matter of religion under the ambit of Article 26(b) and the Act had

tried to do the communal welfare, as distinguished from matters of religion, which were within the protection of Articles 25 and 26.

c. It was argued that the act could not be rendered void because it was made with reformative intentions for the public welfare. Also, there was no evidence on the record to show that excommunication was an essential matter of religion.
d. It was also argued that excommunication involving deprivation of rights of worship or burial and the like were not matters of religion within the meaning of Article 26(b) and that this Article was controlled by Article 25(2)(b) and hence, even if excommunication touched certain religious matters, the Act was in consonance with modern notions of human dignity.

- **Intervener**
  a. The intervener was represented by I. N. Shroff.
  b. He supported the provisions of the impugned Act as they were in furtherance of the public order.
  c. He asserted that the community had no dispute up till the 46th Dai-ul-Mutlaq, the dispute surged up between the reign of the 47th and the 51st Dai-ul-Mutlaq.
  d. He insisted that the Holy Koran does not permit excommunication, which is against the Islamic spirit.
  e. He also contended that the practice of excommunication was opposed to the universally accepted fundamentals of human rights as embodied in the Universal Declaration of Human Rights.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- **The Constitution of India**

I. Article 17

In this case, . CJI B.P. Sinha had delivered his own dissenting judgement. He said –" *On the social aspect of excommunication, one is inclined to think that the position of an excommunicated person becomes that of an untouchable in his community, and if that is so, the Act in declaring such practices to be void has only carried out the strict injunction of Art. 17 of the Constitution, by which untouchability has been abolished and its practice in any form forbidden. The Article further provides that the enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law. The Act, in this sense, is its logical corollary and must, therefore, be upheld* ".

II. **Article 25**

Article 25 provides for "Freedom of conscience and free profession, practice and propagation of religion". It lays down certain clauses which would diversify the ambit of religions existing in India.

III. **Article 26**

Article 26 provides for "freedom to manage religious affairs" and it thus bestows the fundamental rights on the citizens to manage their own religious institutions in the manner they desire, but with subject to certain restrictions.

- **The Bombay Prevention of Excommunication Act, 1949**

IV. **Section 2**

It has two definitions –

i. Of the word "community" which would include the religious denomination of Dawoodi Bohras, and

ii. of "excommunication" as meaning:

"The expulsion of a person from any community of which he is a member depriving him of rights and privileges which are legally enforceable by a suit of civil nature by him or on his behalf as such member.

V. **Section 3**

It is the main operative section which invalidates all excommunications of members of any religious community.

VI. **Section 4**

It penalises any person who does "any act which amounts to or is in furtherance of the excommunication" and subjects him to criminal proceedings, for which the procedure is mentioned under Sections 5 and 6.

6. JUDGEMENT IN BRIEF

The majority judgement was delivered by Justice K.C. Das Gupta. With a 4:1 majority, the Hon'ble Bench allowed the appeal and held the impugned Bombay Prevention of Excommunication Act, 1949 to be void as being in violation of Article 26 of the Constitution.

Resultantly, the Court directed the issue of a writ in the nature of mandamus on the respondent, to not enforce the provisions of the Act.

Justice Ayyangar said –" *I would add that these Articles embody the principle of religious toleration that has been the characteristic feature of Indian civilization from the start of history. The instances and periods when this feature was absent being merely temporary aberrations. Besides, they serve to emphasize the secular nature of Indian Democracy which the founding fathers considered should be the very basis of the Constitution".*

The Bench was not even ready to accept the argument which raised the point that if excommunication was part of the "practice of a religion", the consequences that flow there from were not also part of the "practice of religion".

The Top Court also cited in its decision that history records the existence of that practice from Pagan times and Aeschylus records –"The exclusion from purification with holy water of an offender whose hands were defiled with bloodshed".

- **Dissent**

The dissenting judgment in this case was delivered by CJI B. P. Sinha, who held that the practice of excommunication is against certain human rights and hence, the appeal should be dismissed. Also, such a practice does not fall under the purview of Articles 25 and 26 of the Indian Constitution.

Ultimately, it was held that it has not been established that the Act has been passed by a legislature which was not competent enough to legislate on the subject, and that it infringes any of the provisions of the Constitution.

7. COMMENTARY

The judgement rendered by the Supreme Court has made it crystal clear that no statute or legislation could ever overpower the fundamental rights enshrined in the Law of the Land – the Constitution. While the majority judgement had made the practice of excommunication to be legal and gave overwhelming powers to the Dai-ul-Mutlaq of the Dawoodi Bohra community, the minority judgment made it open and enunciated that such a practice is in absolute violation to the Universal Declaration of Human Rights, to which India is a signatory. At the end, the customary practice and religious concept had prevailed in this bleak world of enmity. This judgement had not only given an upper hand to the Head Priest, but also made the community members realize that the decisions made by the Dai-ul-Mutlaq would always be in their interests. This particular case had widely opened the gate for the forthcoming religious decisions falling within the purview of Articles 25 and 26.

8. IMPORTANT CASES REFERRED

- *Durgah Committee, Ajmer v. Syed Hussain Ali [1962 SCR (1) 383]*
- *Hasan Ali v. Mansoor Ali [(1948) 50 BOMLR 389].*

CASE NO. 13

MASUD ALAM AND ORS.

V.

COMMISSIONER OF POLICE AND ORS.

AIR 1956 CAL 9

LOUD SPEAKERS USED FOR AZAN

ABSTRACT

Following is the case summary of *Masud Alam and Ors. vs Commissioner of Police and Ors. (AIR 1956 Cal 9).* The petitioners in this case are Muslims who belonged to the Congregation, which habitually worships at the Murgihatta Mosque at Brabourne Road in Calcutta. The Commissioner refused to grant the permission to the petitioners for the use of loud-speakers for calling the Azan in response to the complaints filed by other residents. The petitioners in this case pleaded that the refusal of the permission was in violation of their fundamental right under Article 25 of the Indian Constitution. The respondent, Commissioner of Police contended that the permission was refused in view of public policy. The court in this case iterated the invention of loudspeakers both as a boon and a curse. The importance of music during festivals was also remarked as to how people have their sentiments attached with the same. The court held that there has been no executive discrimination and no one intended to discriminate particularly in religious matters, thereby application of the petitioners failed and there was no violation of any fundamental right.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No. 146 of 1954
Jurisdiction	:	High Court of Calcutta
Case Filed On	:	May 1954
Case Decided On	:	January 1955
Judges	:	Justice Sinha
Legal Provisions Involved	:	Constitution of India, Article 14, 25
Case Summary Prepared By	:	Nivedita Kushwaha, Indore Institute of Law, Indore

2. BRIEF FACTS OF THE CASE

- **Parties**

  Petitioners: Muslims who belonged to the Congregation, who habitually worshipped at the mosque situated at No. 38/A, Brabourne Road in Calcutta, commonly known as the Murgihatta Mosque.

  Respondents: Commissioner of Police and others.

- **Factually**

  Since May 1953, the system was introduced to call the Azan (call for prayer) through an electrical loud speaker five times a day. Also, it was alleged that a prior permission must be obtained from the Commissioner of Police before installation or operation of loud speakers.

  Even after such rule, the Commissioner of Police was not approached for permission and loud speakers kept being operated. Several residents complained against the disturbance caused and the Commissioner countermanded the use of loud speakers through local thana officers.

  Some of the residents then demanded permission to use a loudspeaker in connection with the Azans, through the General Secretary of the West Bengal Pradesh Congress Committee and the Mutawalli of the Murgihatta Mosque. The Commissioner, however, declined to grant permission by letter dated November 12, 1953.

- **Procedurally**

  Justice Bachawat on the November 2, 1954, issued a rule upon the respondents to show cause as to why an appropriate writ should not be issued calling upon the respondents not to give effect to the order of the Commissioner of Police which countermanded the use of loud speakers.

3. ISSUES INVOLVED IN THE CASE

I. Whether there was curtailment of liberty provided under Article 25 of Indian Constitution by suppressing the use of loud speakers for Azan?
II. Whether there was an executive discrimination?

4. ARGUMENTS OF THE PARTIES

- **Petitioner**

  It was argued by Dr. Chaudhury that India is a secular state and under Article 25 of the Constitution, all persons are at liberty to freely practice their religion.

  He further adds that such liberty has been curtailed by the suppression of the use of loud-speakers to propagate the Azan in a very crowded and noisy locality, where the Azan cannot be heard, unless magnified by some device such as a loud-speaker.

  It was also argued that there has been discrimination in this case because the two adjoining mosques viz. Nakhoda mosque and Colootola mosque, have been allowed to use the loud-speakers for propagating the Azans.

- **Respondent**

  It was pointed out by the commissioner in his affidavit that the continuous use of loud-speakers would cause great annoyance to people residing in the locality, especially to invalids.

  He also points out that if this practice is taken up by the numerous mosques in the city it would cause great inconvenience and annoyance to citizens.

  On the issue of discrimination, it was argued that the circumstances prevailing in all the three mosques were different. The commissioner points out that Murgihatta mosque is situated in a less crowded locality than the other mosques and so far as the Nakhoda mosque is concerned there exist special reasons why a permission was accorded. Also, with regard to the other two mosques, nobody has yet complained.

5. LEGAL ASPECTS INVOLVED IN THE CASE

I. Article 25: Freedom of conscience and free profession, practice and propagation of religion

1. Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion
2. Nothing in this article shall affect the operation of any existing law or prevent the State from making any law
   a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus

Explanation I The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion

Explanation II In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jains or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly

6. JUDGEMENT IN BRIEF

I. **Ratio Decidendi**

The court observed that the arguments of the petitioners overlook the essential features of Article 25 of the Constitution.

It was held by the court that these congregational prayers (Azan) are a beautiful feature of the Muslim religion, and one remembers with pleasure the romantic sound of an early morning muezzin from the turrets of an upcountry mosque on a misty morning. But to transform this into a noisy fanfare is neither artistic nor necessary.

Further, the court observed that the freedom guaranteed under Article 25 is subject to public policy. To support this observation, the court relied on several judgements. In *State of Bombay v. Narasu Appa Mali*[12], Chagla C. J observed that sharp distinction must be drawn between religious faith and belief and religious practices. What the State protects is religious faith and belief. If religious practices run counter to public order, morality or health, then religious practices must give way before the good of the people of the State as a whole.

In *Ratilal v. State of Bombay*[13], the Chief Justice of Bombay observed that there are religions which bring under their own cloak every human activity. But it would be absurd to suggest that a constitution of a secular state ever intended that every humane and mundane activity was to be protected under the guise of religion.

[12] AIR (1952) Bom 84
[13] AIR 1953 Bom 242 (244)

In *Reynolds v. United States'*[14], Chief Justice White said that Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices.

On the issue of executive discrimination, the court held that from the facts of the case, it cannot come to the conclusion that there has been executive discrimination of a description which calls for interference by the court. It was further held that there exists no intention whatsoever of singling out any particular community for discriminating treatment, particularly in religious matters.

Therefore, the application of the petitioners failed in the light of above-mentioned observations.

II. **Obiter Dicta**

Justice Bachawat iterated about the use of loud speakers in connection with religious houses and festivals. Indeed, it was a great technological discovery of the age to discover the means for enhancing the sound and it is even used in many ways such as telephone, radio etc. He further stated that just as all other contemporary discoveries in science, this too has been a boon and curse at the same time.

Every peace-loving citizen has to complain in full about the indiscriminate use of the electric speaker in connection with religious festivities in the town. The most offending instance is when the city is torn with thousands of loud speakers, doling out cheap jazz or movie music that not only improperly is unsuitable in these circumstances, but also, believed to be harmful to public health and morality.

The biggest cause of disaster is the use it makes in connection with Hindu festivals. He further stated that this kind of thing would not be accepted in any other civilized country. He was even shocked to learn that the canker has now entered the precincts of Muslim religious institutions. In such case, what was desired might not be profane music but an invitation for the faithful to give regular prayer, however the objection persisted. What is disheartening and abhorrent in human house is singularly improper, and also irreverent when it is used in God's house; the priest is meant to be a secret communion with the creator.

[14] (1879) 25 Law Ed. 244

7. COMMENTARY

This case, very efficiently demarcates the difference between religious faith and religious practice. While the courts of our country have always favoured the protection of religious faith, religious practices that are absurd and detrimental to the society cannot be allowed. It is pertinent to note that the freedom guaranteed under Article 25 of the Constitution is subject to public order, morality and health. Loud-speakers are undeniably a source of noise pollution and allowance of such practices will set an unhealthy precedent for the future.

There is a plethora of judgements where different courts have frowned upon the use of sound amplifiers for religious practices. For instance, In *Church of God (Full Gospel) v. K.K.R. Majestic Colony Welfare Association*[15], the Supreme Court observed that nowhere in any religion, it is mentioned that prayers should be performed through the beating of drums or through voice amplifiers which disturbs the peace and tranquillity of others. If there is any such practice, it should be done without adversely affecting the rights of others as well as that of not being disturbed in their activities.

8. IMPORTANT CASES REFERRED

- *Ratilal v. State of Bombay, AIR 1953 Bom 242 (244)*
- *Reynolds v. United States, (1879) 25 Law Ed. 244*
- *State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84*

[15] AIR 2000 SC 2773

CASE NO. 14

SHRI GOPINATHJI DEV MANDIR AND ITS SUBORDINATE TEMPLES PUBLIC TRUST GADHADA

V.

JANAKBHAI MOHAN PATEL

MANU/GJ/0751/2018

POWER STRUGGLE OVER CHAIR AT TEMPLE BOARD

ABSTRACT

The following is a case summary of the dispute that broke between "The Trust of the Temples of Shri Gopinath dev at Gadhada and its Subordinate Temples" and the two Satsangis (ardent followers of the Swaminarayan Sect). This case stretches over a series of CMAs (Civil Miscellaneous Applications), SCAs (Special Civil Applications) and various First Appeals over a long-time span per se a number of years for that matter. The case was brought before the High Court of Gujarat with a prime objective for it to preside over the order and decision of the District Court, Bhavnagar and to deliberate whether the decision was violative of the Articles 25 and 26 of the Constitution of India or for that matter any other provisions of the Scheme of 1978 i.e., the Scheme which was framed for the management of the properties pertaining to the temple of Shri Gopinath dev, Gadhada and the temples subordinate thereto.

1. PRIMARY CASE DETAILS

Case No.	:	First Appeal No. 765 of 2018, 771 of 2018, 773 of 2018, 780 of 2018, 807 of 2018; Civil Application No. of 2018
Jurisdiction	:	High Court of Gujarat
Case Decided On	:	August 27, 2018
Judges	:	Justice J. B. Pardiwala
Legal Provisions Involved	:	The Bombay Public Trusts Act, 1950, Section 50; Civil Procedure Code – Section 96; Constitution of India – Article 19(f), 25, 26 & 227; Madras Hindu Religious and Charitable Endowments Act, 1951
Case Summary Prepared By	:	Tuhupiya Kar, Department of Law, University of Calcutta

2. BRIEF FACTS OF THE CASE

- **Parties**

  Appellants: Shri Gopinathji Dev Mandir and ITS Subordinate Temples Public Trust Gadhada

  Respondents: Janakbhai Mohan Patel

- **Factually**

  The appellants in their arguments stressed on the following appeals:

  1. First, the appellants had already announced the date of the year 2018's scheduled election by a public notice on February 1, 2018. Whereas, the impugned order consisting of the modifications in the election rules of the scheme was passed on February 17, 2018 and hence, in no way can the modifications of the election rules in the said order be made applicable to the scheduled 2018 election.
  2. Secondly, the CMA No. 140 of 2011 filed by the Respondents seeking modifications in the election rules under clause-48 of the scheme is not maintainable in law.
  3. Thirdly, the District Court has went well out of its way in its given order to direct the appointment of the District Collector, Botad as the Election Officer of the 2018 elections despite the fact that this modification of the 1978 scheme was not prayed for by the Respondents herein. Also, no notice has been passed with regard to this modification to either of the parties.

  However, these claims were eventually contested against by the counsel for the respondents while they supported the impugned decision of the lower Court. The Respondents contended that they were well within their rights to approach the District Court under clause-48 of the scheme to seek modifications or alterations in the scheme or in the rules framed thereunder. It was the only remedy available to them as it is clearly mentioned in clause-48 that among other mentioned persons any two Satsangis can approach the District Court directly to seek modifications. Moreover, if the Appellants are contesting the maintainability of CMA No. 140 of 2011, then the CMA No. 116 of 2011 filed by them is also in no clear as their application was also filed under the same clause i.e. clause-48 of the 1978 Scheme.

- **Procedurally**

  In 2011, the CMA No. 116 of 2011 came to be filed by the appellants herein before the DC under clause-48 of the Election Scheme for modification in Rule 12(3)(A)(B) to enhance the amount of Dharmada from Rs. 25/- per year to Rs. 250/- per year and from Rs. 50/- per year to Rs/- 300 per year, respectively, for a continuous period of 5 years. In

2011, the CMA No. 140 of 2011 came to be filed by the respondents under Clause-48 of the scheme, seeking various modifications in the election rules of the 1978 scheme. The District Judge upon receiving CMA No. 140 of 2011 directed publication of a public notice under the provisions of Order-1 Rule-8 of the CPC, inviting suggestions and/or objections. In response to the public notice issued by the DC, various Satsangis preferred applications for being heard and/or for being impleaded as respondent party in the CMA No.'s 140 of 2011 and also 116 of 2011. The Joint Charity Commissioner, passed a bipartite order in the Application No. 41/18/2011. The JCC directed the Trust to produce the original records including the receipts issued as against the payment of Dharmada so as to check the genuineness of the acts and omissions in regard to the preparation of the voters list. The above order of the JCC came to be challenged by the Trust along with its office bearers by the SCA No. 11706 of 2012 before the HC. The Trust questioned the jurisdiction of the JCC under section 41-A of the Act. The SCA No. 11706 of 2013 came to be rejected by the HC. Aggrieved by this decision of the HC the Trust moved on to file LPA No.479 of 2013. The Trust thereafter, preferred the CMA No. 38 of 2013 before the Principal DJ, Bhavnagar, seeking directions for publication of the list of voters, without joining the JCC and also without complying with the directions issued by it in the Application No. 41/18/2011 as was previously affirmed by the judgement of the HC.

The trust despite getting its application rejected against the JCC's order under the Application No. 41/18/2011 before the HC, didn't comply with the order and went a foot forward to get a provisional list of voters published in the Local Daily "Saurashtra Samachar". The Principal DJ in consideration of the CMA No. 38 of 2013 issued ad-interim directions on this date without notice to the JCC and to all the concerned persons permitting the trust to receive objections on the preliminary list of voters. The aggrieved respondents (Bharatbhai Lavjibhai Gabhu & one another Satsangi) by this decision of the Principal DJ preferred the SCA No. 3278 of 2018 and the SCA No. 3556 of 2013 before the HC. In response to the aforementioned SCA's a learned Single Judge of the HC quashed and set aside the order dated March 16, 2013 passed by the Principal DJ in consideration of the CMA No. 38 of 2013. The HC was of the view that without seeking appropriate modification of the scheme from the DJ, it was not open for the trust to publish any programme as such.

The Trust aggrieved by the judgement and order passed by the learned Single Judge of the HC preferred the Letters Patent Appeal No. 608 of 2013 and the Letters Patent Appeal No. 609 of 2013. On this date, the two LPAs referred to above came to dismissed by the order

and judgement of the Division Bench of the HC. Aggrieved by this judgement of the Division Bench of the HC, the Trust further went on to knock the doors of the SC by filing SLP (Civil) Nos. 22298 and 22299 of 2015 respectively and also the SLP (Civil) No. 22307 of 2015. The SC agreeing with the judgement of the HC above, disposed of all the 3 SLP's filed by the Trust. Mavjibhai Devjibhai and Anr. Preferred the SCA No. 22862 of 2017 before the HC, challenging the order of the Charity Commissioner in the Application No. 41/18/2011. The SCA was heard before the HC and the judgement was reserved. On this date, the impugned order came to be passed by the District Court Judge, Bhavnagar, giving rise to a number of First Appeals filed by the Appellants all filed in the name and on behalf of the Trust. Since all the First Appeals are filed pursuant to the same Civil Application i.e., Civil Application No. 1 of 2018 and are filed challenging the same judgement and order i.e., the order dated February 17, 2018 passed by the District Court, the First Appeal No. 765 of 2018 is taken as the lead matter in this case for the sake of convenience.

3. ISSUES INVOLVED IN THE CASE

I. Whether the original applicants' (2 Satsangis) desideration before the District Court seeking directions and modifications in the election rules of the scheme by invoking clause-48 of the said scheme is maintainable in law?
II. Whether section 50 of the Act has any application?
III. Whether the directions issued by the District Court in the impugned order with regard to holding the elections is just and tenable in law?
IV. Whether the directed modification by the District Court is violative of Articles 25 and 26 of the Constitution of India?
V. Whether the impugned order appealable under section 76 of the Act, 1950 read with section 96 of the CPC?

4. ARGUMENTS OF THE PARTIES

- **Appellants**

The arguments on behalf of the Appellants are as under:

CMA 140 of 2011 (seeking amendment in election rules of 1994) isn't maintainable under clause 46 of the scheme because as per the scheme only the Temple or Trust Board is empowered to bring amendment in the election rules. The only option left to the applicants of the CMA for seeking amendment in the election rules was to file a suit under section 50 of the Act, 1950. Even though the appeal under clause 48 of the scheme has to

be considered, the Court must take into account that remedy under clause 48 was wrongly invoked by the applicants as clause 48 only allows the amendment of the scheme not the election rules therein. The scheme and the election rules hold two distinct identities. Clause 46 provides that no rules including election rules can be inconsistent with the scheme and that's because the scheme is the basic foundation for the lay out of the election rules and not vice versa. The impugned order makes an amendment in the election rules which is inconsistent with the Scheme. Where on one hand, clause 19€ of the scheme says that the four constituencies (Grahasti, Brahmachari, Sadhu and Pala) shall elect their representatives for the board on the other hand Direction 3 (F) of the impugned order allows the four constituencies to vote trans-constituently. The impugned order goes a notch above the actual prayers made by the respondents herein. The respondents had prayed for an independent person, such as a district judge to be appointed as the election officer but the impugned order goes on to make the district collector, Botad, election officer. In fact, during the hearing of the CMA No. 140 of 2011 no party was even put to notice about the possibility of the district collector being appointed as the election officer. Hence, the replacement of the temple board under clause 33(f) of the Scheme with the district collector, Botad, under the impugned order results in a variation of the scheme. The election of 2018 was already announced through the issuance of a public notice dated February 1, 2018 by the temple board and the impugned order being passed on February 17, 2018 and the modifications therein with regard to the election rules cannot be made applicable to the 2018 election with retrospective effect whatsoever. At last, it was submitted by the appearing senior advocates of all the first appeals on behalf of the Appellants that there being merit in the first appeals, the impugned order be quashed. It was also prayed that the court may remit the matter to the court below for fresh consideration of all the issues in accordance with law.

- **<u>Respondents</u>**

  The arguments on behalf of the Respondents are as following:

  As per Clause 48 of the scheme 2 Satsangis (respondents no. 1 & 6) were well within their rights to approach the District Court for directions or modification, alteration or variation of the scheme. Therefore, if there was remedy available for any directions to be sought by the Board or the Charity Commissioner or the Satsangis, it had to be only under Clause-48 of the Scheme. Further, where, Clause-46 contains an enabling power in favour of the Trust Board for it to frame rules including the election rules, which can be affected only by way of sanction by the District Court, the application for the

consideration of the same by the District Court is to be made under Clause-48 of the Scheme only. In such circumstances, it has been vehemently submitted for any modification even in the election rules, the remedy is to invoke clause-48 of the scheme. It was also argued that while the Trust Board had the liberty to frame or alter the rules subject to the sanction by the District Court, the other persons described in Clause-48 can move the District Court directly and propose the modifications in the scheme or the rules. It was requested that the Court should read the election rules as part of and within the ambit of the Scheme because the scheme including the election rules was approved as a whole by the District Judge back in 1978 giving it the effect of a decree. Moreover, the non-consideration or exclusion of the rules from the ambit of the scheme would make the rules nugatory. Therefore, the scheme and the rules framed thereunder are necessary for the administration of the trust and it is necessary to read both the instruments within the ambit of clause-48. Even if it be assumed that the rules are not part of the scheme, then in that case, an application seeking modification of the scheme would fall within the ambit of "directions" under clause-48. It wasn't permissible for the appellants to contend that the CMA No. 40 of 2011 could not have been entertained by the District Judge under clause-48 because the CMA No. 116 of 2011 filed by the appellants was also filed under the same clause of the scheme. The CMA No. 140 of 2011 filed on behalf of the Satsangis wasn't only for the modification of the election rules, but was also for the purpose of guidance and clarification of the District Court in respect of fair and transparent election. At last, it was submitted that the issue with regard to the maintainability of the CMA No. 140 of 2011 under clause-48 of the scheme was not raised before the District Court at any point of time but the contention was sought to be canvassed for the first time before the High Court.

5. LEGAL ASPECTS INVOLVED IN THE CASE

In this case most of the conflicts arose with regard to the conflicting interpretations of various provisions of the Scheme of 1978. One of the most frequently debated provisions of the Scheme was Clause-48 which allows a number of privileged persons from amongst the members of the Trust Board, to apply for changes in the Scheme directly to the District Court without the involvement of the Trust itself. On the other hand, the Trust Board is bestowed with the power of amendment of the Scheme under Clause-46. The other provisions which were brought forth and raised by the Appellants to be deliberated upon for the District Judge were Article 227, 25 & 26 of the Indian Constitution. The High Court Judge first had to consider the maintainability of all the first appeals filed by the Appellants

within the ambit of section 76 of the Act, 1950 as well as Article 227 of the Constitution. The Appellants' contention that the modification of the election rules especially with regard to direction 3(f) of the impugned order was in violation of Articles 25 & 26 both of which, deal with religious freedom, was cancelled out by the Court on the statement that no freedom is absolute in nature but has to be restrictive to some degree to ensure fairness for all. Moreover, Article 25 & 26 is meant to deal only with the freedom of religious practices and not administration practices.

6. JUDGEMENT IN BRIEF

The CMA No. 140 of 2011 filed by the original applicants before the District Court, Bhavnagar, seeking appropriate directions and modifications in the election rules, invoking clause-48 of the scheme, was maintainable in law. It was not necessary for the original applicants to file a suit under section 50 of the Bombay Public Trusts Act, 1950. Section 50 of the Act has no application in the present case. The modification in the election rules or any direction with regard to the election can be read into clause 48 of the scheme. The rules are framed under the scheme. They are a part of the scheme. Clause 46 of the scheme is just an enabling power vested with the trust board. However, clause 46 of the scheme will not act as an embargo for the purpose of invoking clause 48 of the scheme as regards modification in the election rules. The impugned directions issued by the District Court are, in no manner, violative of Articles 25 and 26 of the Constitution of India. The directions issued by the Court, are just, proper and tenable except one and that is with regard to the election officer. Instead of the District Collector, Botad, the trust board shall appoint a retired judicial officer of the rank of the District Judge or a retired City Civil Judge as the election officer. The impugned order passed by the Court below could be termed as a decree and is an appealable order. In such circumstances, the appeals are maintainable in law.

7. COMMENTARY

In this case the only relevant legal provisions circulate around the 1978 Scheme which is followed like a Bible by the Board members of the Trust for the sole purpose of its administration. As the case developed it was seen that whatever decisions were taken by the District Court, they were taken only with the intention of conducting free and fair elections so the Judge did whatever had to be done to avoid biasness. It was found by the evidences on record that there was manipulation with regard to the creation of the voter list by the Trustees of the Trust and thereby the Sadhus and Satsangis fought tooth and nail to protect

their rights and the rights of that of the other devotees'. There was a lot of highs and lows in the case but ultimately, both the parties were brought to justice and the case was disposed of accordingly by the High Court of Gujarat.

8. IMPORTANT CASES REFERRED

- *Zileysingh & Ors. v. The Registrar, Can Co-operative Society (Can Commissioner) Lucknow [AIR 1972 SC 758]*
- *Khanodar (Old) Milk Producers' Co. Op. Society Ltd. &Ors. v. State of Gujarat & Ors. 2012 [MANU/GJ/1435/2011]*

CASE NO. 15

ARJUN GOPAL & ORS.

V.

UNION OF INDIA & ORS.

(2017) 16 SCC 280

THE GREEN FIRECRACKERS CASE

ABSTRACT

The following is a case summary of the landmark case, '*The Green Firecrackers Case*', that brought change in the fireworks scenario connected to the celebrities. The National Capital Region and Delhi suffered from the worst air quality in the Diwali/Wedding season. The change that occurred to the air quality affected the infants and children in the worst possible ways. Chronic respiratory diseases became a part of their life and when the smog covered the city, the citizens' life was brought to a standstill. Often the cases of air pollution have been bought forth before the Hon'ble Supreme Court and the National Green Tribunal ('NGT'), though guidelines have been passed regarding the curbing measures, not much has improved in the air quality. In this case a series of land mark directions were passed and the concept of 'green firecrackers' were introduced thereby not creating an uproar in the society in terms of hindrance and violation of both religion and livelihood.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition (Civil) 728 of 2015
Jurisdiction	:	Supreme Court of India
Case Filed On	:	September 24, 2015
Judges	:	Justice Dr. T. S Thakur, Justice A. K Sikri, Justice S. A. Bobde, Justice Ashok Bhushan
Legal Provisions Involved	:	Constitution of India, Article 19(1)(g), 21 ,25, 32
Case Summary Prepared By	:	Serafina Illyas, Mar Gregorios College of Law, Kerala

2. BRIEF FACTS OF THE CASE

- **Parties**

  Learned Counsels, Mr. K. K. Venugopal and Ms. Vibha Datta Makhija for the petitioners and learned Senior Counsel, Mr. C. A. Sundaram for the respondents.

- **Factual**

  This case involved the major issue of the deterioration of the atmosphere in the National Capital Region and city of Delhi due to the pollution from the firecrackers, especially during Diwali. On November 7, 2017, the residents of Delhi woke up to an uneasy and disastrous morning. In this case, three toddlers, Arjun Gopal, Aarav Bhandari and Zoya Rao Bhasin moved the Supreme Court of India with their parents acting on their behalf. The parents of the newly born infants were concerned and disturbed by the fact that the air quality in the area was worsening due to several factors, the main components being the firecrackers and other such things used during Diwali. Though there were several toxic substances looming in contributing to the air pollution, it was during the Diwali night that things took a turn to bottom in terms of air quality in Delhi. It was stated by the petitioners after a thorough study that the air pollution reached the peak in Delhi and the National Capital Region (hereinafter referred to as "NCR") after Diwali and other festivities due to the unnecessary use of crackers that in turn proved to be hazardous to health. The air quality affected every citizen alike, but children were more vulnerable to it, which could result as asthma, bronchitis, retarded nervous system and so on.

- **Procedural**

  The petitioners have, thus, prayed through a writ of mandamus under Article 32 of the Constitution for direction to the official respondents to take possible measures for checking the pollution by striking at the causes of the pollution, which includes seasonal crop burning, indiscriminate dumping of dust and other pollutants, etc. The prayer also includes banning the use, in any form, of firecrackers, sparkles and minor explosives, in any form, during festivals or otherwise. The Public Interest Petition also asked for ban on the dumping of pollutants, the implementation of more stringent Bharat-V emission norms and an independent body to review the government's anti-pollution work.

3. ISSUES INVOLVED IN THE CASE

I. Whether banning the bursting of firecrackers during Diwali violate the religious customs of a community?
II. Whether the banning of usage of firecrackers would violate the Fundamental Rights of the manufacturers and distributors of firecrackers?
III. Whether the banning of firecrackers make a change in the declining air quality and also prevent further health deterioration among the residents?

4. ARGUMENTS OF THE PARTIES

- **Petitioners**

The petitioners put forth their concerns as to how the fireworks in festival and wedding seasons posed an environmental threat. According to the evidences, they put forth, the Air Quality Index was affected drastically after the Diwali/wedding season and they also admitted it was not only the firecrackers in those season that contributed to the pollution but there were several other factors too. But the noticeable change occurred after the usage of firecrackers and it dropped the Air Quality really low. According to official report in a reputed daily, the air quality standards in early November of that year were the worst in the world. The day after Diwali, these levels were twice as high as the day after Diwali night of 2015, crossing the levels 26 times above the WHO's standards or levels considered safe. The petitioners then brought to notice yet other matters related to this, which involved several studies of the atmosphere in India.

The Central Pollution Control Board's (CPCB) report on ambient air quality during Diwali period projected the unpleasant and intolerable level of air pollution. This rose to 4-5 times the air pollution levels during the Diwali season. The petitioners also acknowledged the fact that they are dealing with time honoured ways of celebration but pointed out that when it harmed the citizens' lives in an obvious manner, it had to be altered and the situation had to be such that nobody is hurt sentimentally or physically, without affecting the environment. When the Air Quality Index is at a threatening level the Fundamental Rights of the citizens granted under Part III of the Constitution is being violated, by justifying such harmful manner of celebrations and the allowing free trade and availability of such fireworks.

The Petitioners also put forth certain suggestions:

(a) Restricting the licenses to low hazard fireworks
(b) Restricting the timing of fireworks from 7pm to 9pm
(c) Directions to Government to create awareness about the ill effects of fireworks and encourage restraint on responsible use of firecrackers
(d) Teachers to give awareness to students against excessive usage of firecrackers.

The petitioners also argued that manufacturing of firecrackers was generating immense waste and that child labour was occurring extensively leading to violation of several lives. The petitioner's relied majorly on *Vellore Citizens' Welfare Forum Case***,** to prove their point that burning of firecrackers was not a religious right.

- **Respondents**

The Indic Collective advocated that the ban on firecrackers would violate the cultural and religious rights of the Indic community across country. While the ICT does agree with sound limits being put on firecrackers, it is of the view that the Apex Court ought to have referred to authoritative texts before arriving at such a conclusion given that it has had far-reaching consequences on the public's perception of Diwali. The root of the problem was traced by the ICT to the *Noise Pollution* Judgement's approach to the nexus between Diwali and bursting of firecrackers, in particular Paragraphs 156-157 of the said judgment, wherein the Hon'ble Court proceeded to summarily hold that there was no nexus between the celebration of the festival of Diwali and the use of fireworks. Reliance was placed on the following texts:

I. Extracts from Kartika Mahatmya of Hari Bhakti Vilasa II. Extracts from Smriti Kaustubha of Anant Deva, edited by Wasudev Laxman Sastri Pansikar III. Extracts from Festivals, Sports and Pastimes of India by Dr. V. Raghavan, Vachaspati, Professor of Sanskrit, University of Madras IV. Extracts from History of Fireworks in India between A.D 1490 and 1900 by P. K. Gode V. Extracts from Studies in Indian Cultural History, Volume 2, P. K. Gode VI. Extracts from The Cultural Heritage of India, Volume IV by The Institute of Culture of The Ramakrishna Mission VII. Extracts from Concise Encyclopaedia of India by K. R. Gupta and Amita Gupta On the basis of the above texts, it was argued that the *Noise Pollution* judgement is a fit case for reference to a Constitution Bench under Article 145(3) since the Judgement had dismissed the existence of a nexus between Diwali and firecrackers in mere eight lines.

It was also argued that in the judgements dated September 12, 2017 and October 9, 2017 the Hon'ble Court itself had recognized that there are multiple factors which cause pollution in the National Capital Region, with use of fireworks being but one of them, and which admittedly was not the biggest contributor. In fact, crop burning was identified as the biggest contributor around the Diwali season. Therefore, the ICT expressed its objection to the entire exercise of addressing pollution in the National Capital Territory being limited to a discussion relating to fireworks and that too only with respect to the celebration of Diwali without there being even a remote discussion on the rights of Indic communities under Article 25(1).

It was argued that the Precautionary Principle cannot be invoked arbitrarily by taking an alarmist position which does not in any manner address the year-round high average

baseline/datum of pollution in the NCR and by limiting the enquiry to a specific occasion and a specific cause which admittedly is neither the sole nor the biggest cause of pollution either during the time of Diwali or the rest of the year. It was further submitted that by making Diwali the focal point of the discussion on the issue of air pollution especially in schools, without addressing the year-round causes which have contributed to increase in the baseline of pollution in NCR, Government Circulars and campaigns have effectively led to creating a negative perception about the festival of Diwali, which has a bearing on the rights of Indic communities under Article 25(1) since such a lopsided discussion has stigmatized the celebration of Diwali.

5. LEGAL ASPECTS INVOLVED IN THE CASE

I. Article 19(1)(g)

This Article confers the citizens with the right to practice any trade, business, profession and occupation. It is a general right available to all the citizens to satisfy their livelihood needs provided it is not against public interest and morality and is not lawful. The freedom to do business includes the freedom to carry out any commerce, activity, trade or profession which is in benefit of the general public and is a legal activity as per the prevailing laws of the country. Also, **one cannot claim his right to do business if by carrying out his business it hinders the human or fundamental rights of any other individual.**

II. Article 21

Article 21 is the heart of the Constitution that forms a part of the 'Golden Triangle'. It is a crucial one that guarantees two rights – Right to life and right to personal liberty. Under Article 21 of the Indian Constitution, the right to shelter, growth, and nourishment are mentioned. Because it is the bare necessity, minimum and basic requirements that are essential and unavoidable for a person for the right to life and other rights. This Article has the widest possible interpretation. The right includes right to breathe fresh air, live in healthy surroundings, live with dignity and protection and so on.

III. Article 25

This Article guarantees freedom to practice, profess and propagate the religion, a person prefers. It is subject to the restrictions such as public peace, order and moral.

Until and unless, the freedom doesn't infringe others' rights and nothing unlawful occurs, practices and any other matters related to one's religion can be carried out. There have

been several instances when practices connected to religion has been questioned, in such cases the interests of both the sides are weighed and the integral part of the religion is analysed.

IV. Article 32

This Article provides the individual to seek remedy with regards to restoring their Fundamental Rights by moving the Supreme Court. The Supreme Court is vested with the authority to issue writs and other directions in protecting and preserving the rights. This is a Fundamental Right to seek the enforcement of the other Fundamental Rights.

V. Article 48-A

This Article deals with the protection and improvement of environment and safeguarding of forests and wildlife. It states about the duty of the Government to provide the citizens with clean and decent environment. It is a directive principle.

VI. Article 51-A

The Constitution provides the citizens with certain Fundamental Duties, there are 11 of them enlisted. One of them is protecting the environment and not causing hindrance to fellow beings in their atmosphere.

VII. Precautionary Principle

There are many versions of this principle known in International Treaties. The Rio Declaration is the most cited. It is as follows: “In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Considering that the SC has the responsibility to protect the fundamental right to environment under the fundamental right to life under Article 21, the exercise of the precautionary principle very often pitches the ‘right to health and environment’ against the ‘right to livelihood’ and the ‘right to freedom of trade and occupation’. In such a situation, where the courts are a balancing arbiter, clarity and consistency in how the

courts may balance such rights, is perhaps as important as it is with respect to the normative and procedural application of the 'precautionary principle'.

6. JUDGEMENT IN BRIEF

- **Ratio Decidendi**

The Supreme Court stated that Articles 21 and 25 had to be balanced and an equilibrium though couldn't be achieved through completely banning the use of firecrackers and the custom couldn't be forgone as whole, the next reasonable measure was, the pragmatic approach of cutting down on the excessive use and to opt for an eco-friendly method.

The Hon'ble Court passed several interim orders as the case was pending considering the seriousness and depth of the issue and the need to maintain a constitutional balance on such an issue. The Court also issued several guidelines and mandates that had to be followed thereafter for every festival season. The highlights of the guidelines are as follows:

a. Only 'Green Crackers' (those with reduced emissions) could be manufactured and sold.
b. Any other form of crackers shall not be permitted to be manufactured or sold.
c. The sale of crackers shall be done only by licensed traders.
d. The manufacture and sale of joint crackers shall not be permitted.
e. No online platforms shall be permitted to conduct online sales of crackers.
f. Barium salts in the crackers are hereby banned.
g. All the officials and Police were directed to ensure that fireworks take place only in designated places at designated time.

A complete ban of firecrackers or celebrations with that was stated to be too radical so was the suspension of the licenses of the manufacturers and dealers. Thus, that was stated to be analysed in depth. Several departments and officers were ordered to conduct studies and prepare report. Care was taken that the religious sentiments were not offended. To reiterate, a 'neutralizing device' or a 'balancing measure' is a court decision where the court attempts to harmonize two conflicting, but equivalent fundamental rights. While it has been acknowledged that there cannot be a one-size-fit-all formula in applying such a device, a general set of principles can be derived from *Sahara India Corporation v. SEBI*. Even as Courts very often engage in balancing equivalent rights, especially in the application of precautionary principle, no normative requirements of how such rights may be balanced are laid down

The Court ruled that a blanket ban on the sale or use of firecrackers would lead to a lethal situation and it would create unnecessary uproar in the society, hence the petition in this regard, was dismissed. The Court, however, directed the Government to spread awareness among the citizen about the use of firecrackers.

7. COMMENTARY

This case turned out to be a landmark in the matter of environmental protection and bringing about a change in the perception of celebrations. For years, several celebration seasons have included time honoured customs. Most of them have historic roots whereas some cropped in somewhere along the short span of time. Some customs have a rational nexus to the festival or occasion but some customs were adopted suiting to the preference of individuals. The bursting of firecrackers was not a custom from time immemorial. Diwali, the expressly mentioned festivity in the case did not mean a festival of firecrackers, rather, it is the 'festival of light'. The freedom of religion guarantees one, the right to pursue, follow and celebrate one's religion in any manner preferred provided it does not obstruct or hurt the public health, morality and order. When balancing the freedom to celebrate as one wishes to, with the impact of it on the surroundings the rights on each side had to be protected in such a way that it did not bring any disharmony among the community. In the book, 'A History of Fireworks in India (1953)', academician P K Gode, wrote that the earliest mention of firecrackers in Sanskrit texts was in 16th century and earlier people only lit lamps and diyas. The usage of firecrackers during Diwali could be traced back to Peshwa Period (1700s) whereby fireworks were setoff to display for the King. Thus, the evidences suggest the custom to be around 300 years old. Though the incorporation of fireworks were made in a symbolic sense, the rapid growth and excessive usage of the same has led to deterioration of the health of aged and young citizens alike, the exploitation of child labour in the manufacturing industry and so forth. A right to breathe clean air is more fundamental to the lives of the citizens than the right to burst the firecrackers and celebrate in such a manner that causes a drastic drop in air quality from worse to worst affecting a lot of lives. But a point to be noted is that, firecrackers alone do not cause this, there are several other factors contributing to the air pollution. But what is plausible to be cut down should be done by the Government and citizens on their part. Under the garb of customs, the rationale actions are not thought out thoroughly and the former are observed no matter what the consequences are. The freedom guaranteed under Article 21, which forms the part of the 'Golden Triangle', the soul of the Constitution, is prioritised when the freedom of religion under Article 25 also subjected to question over a practice that shall violate the life, liberty and

security of a person. Also, the application of precautionary principle was a much needed one, it sealed the core matter of the case without hurting its purpose and through this international tool of environment law, it could be stated with utmost urgency that the atmosphere around people turned hostile and that required immediate acknowledgment.

Traditions have to be preserved, but it should not be at the cost of the health and development of the people, fauna and flora. When the Court looked into its Fundamental Duties as stated in the Articles 48-A and 51-A, it is notable that every citizen has a moral and legal duty to maintain so. There are laws regulating the explosions and fireworks like 'Environment Protection Act, 1986 and Environment Protection Rule, 1986 and 1999 (Amendment) Rules', The Explosives Rules, 2008 and so forth. But the regulations and mandates are not followed as stated and are twisted to suit the needs of individuals stating personal reasons. These are to be regulated and directions are to be strictly put forth as was the issue in the landmark case of 2005 *'Prevention of Envn. & Sound Pollution v. Union of India (2005) 5 SCC 733.'*

Even amidst the orders, there were recurrent violations and discord stating that the years old custom could not be modified to suit the needs of few and it was targeting the religious feelings and practices. The perspective should be changed, the environmental concerns should be given priority and alternatives should be looked into so that the air quality improves and the rate of respiratory diseases in people decrease.

8. IMPORTANT CASES REFERRED

- *A. P. Pollution Control Board v. (Retd.) Prof. M.V. Nayudu, (1994) 3 SCC 1*
- *M. C. Mehta v. Union of India, (1998) 6 SCC 60*
- *M.C. Mehta v. Union of India, (1998) 8 SCC 206*
- *Noise Pollution (V) in Re, (2005) 5 SCC 733*
- *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat, (2005) 8 SCC 534*
- *Vellore Citizens' Welfare Forum v. Union of India and Ors., (1996) 5 SCC 6*

CASE NO. 16

REV. STAINISLAUS

V.

STATE OF MADHYA PRADESH AND ORS.

AIR 1977 SC 908

RELIGIOUS FREEDOM CASE

ABSTRACT

The following is a case summary of the case *Rev. Stainislaus v. State of Madhya Pradesh & Ors.* which is focused on right to freedom of religion is a fundamental right under the Constitution of India. The concept of religious freedom can be found under Article 25 and 26 of the Indian Constitution. Conversion of one religion to another has been an integral problem in the history of the Indian subcontinent. In this case Supreme Court addressed the question of whether the fundamental right to practice and propagate religion incorporates right to convert, held that the right to propagate does not include the right to convert. As a result, it maintained the constitutional validity of the laws passed by Madhya Pradesh and Odisha legislatures forbidding conversion by force, fraud or allurement. This case brought to light the conversion argument, which resulted in a dispute about Christian's status in society.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal Nos. 1489 & 1511 of 1974
Jurisdiction	:	Supreme Court of India
Case Decided On	:	January 17, 1977
Judges	:	Justice A. N. Ray, Justice Raja Jaswant Singh, Justice M. Hameedullah Beg, Justice P. N. Shinghal, Justice R. S. Sarkaria
Legal Provisions Involved	:	Constitution of India, Article 25 (1)
Case Summary Prepared By	:	Akanksha Bhattarai, Symbiosis Law School, Pune

2. BRIEF FACTS OF THE CASE

- **Parties**

  Petitioner: Rev. Stainislaus

  Respondent: State of Madhya Pradesh & Ors.

- **Factually**

  By refusing to register conversions, Reverend Stanislaus (Petitioner) of Rajpur challenged the Madhya Pradesh Dharma Swatantrya Act. The Act was upheld by the Madhya Pradesh High Court, which states that religious freedom must be granted to all, even those who are subjected to conversion by force, deception or allurement. When the Orissa Freedom of Religion Act was challenged in the Orissa High Court, the decision went the other way, stating that the term "inducement" was too wide and that only the parliament of India had the authority to create such laws, and the state legislature has no such authority.

- **Procedurally**

  The constitutionality Madhya Pradesh Dharma Swantantraya Adhiniyam Act, 1968 which outlaws' forcible conversions and penalises such conversions, was challenged in the Madhya Pradesh High Court and the Court upheld the validity of the Act. The Orissa Freedom of Religion Act, 1967 similar anti-conversion Act known as the Orissa Freedom of Religion Act, 1967 was challenged in the Orissa High Court. The Court held that because Article 25(2) of the Indian Constitution provides for religious propagation and conversion is an intrinsic aspect of Christianity, the State Legislature lacks the authority to implement this legislation.

3. ISSUES INVOLVED IN THE CASE

I. Whether the two Acts were in violation of the fundamental right guaranteed under Article 25(1) of the Indian Constitution?

II. Whether the State Legislatures were competent to enact these two Acts?

4. ARGUMENTS OF THE PARTIES

- **Petitioner**

  It was argued by counsel that the Legislatures of Madhya Pradesh, and Orissa States did not have legislative competence to pass the Madhya Pradesh Act and the Orissa Act respectively, because their laws regulate 'religion' and fall under the Residuary Entry 97 in List 1 of the Seventh Schedule to the Constitution.

- **Respondent**

  It is not in controversy that the Madhya Pradesh Act provides for the prohibition of conversion from one religion to. another by use of force or allurement, or by fraudulent means, and matters incidental thereto. The expressions "allurement" and 'fraud' have

been defined by the. Act. Section 3 of the Act prohibits conversion by use of force or by allurement or by fraudulent means and section 4 penalises such forcible conversion. Similarly, section 3 of the Orissa Act prohibits forcible conversion by the use of force or by inducement or by any. fraudulent means, and section 4 penalises such forcible conversion. The Acts therefore dearly provides for the maintenance of public order for, if forcible conversion had not been prohibited, that would have created public disorder in the States. The expression "Public order" is of wide connotation. It must have the connotation which it is meant to provide as the very first Entry in List II. It has been held by this Court in *Ramesh Thapper v. The State of Madras* that "public order" is an expression of wide connotation and signifies state of tranquillity which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established".

5. LEGAL ASPECTS INVOLVED IN THE CASE

I. **Article 25 (1), Indian Constitution**

"Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion."

II. **Section 3 of M. P. Dharma Swatantrya Adhiniyam 1968**

Prohibition of forcible conversion. - No person shall convert or attempt to convert, either directly or otherwise, any person from one religious' faith to another by the use of force or by allurement or by any fraudulent means nor shall any person abet any such conversion.

III. **Section 4 of M. P. Dharma Swatantrya Adhiniyam 1968**

Punishment for contravention of the provisions of Section 3. - Any person contravening the provisions contained in Section 3 shall, without prejudice to any civil liability, be punishable with imprisonment which may extend to one year or with fine which may extend to five thousand rupees or with both:

Provided that in case the offence is committed in respect of a minor, a woman or a person belonging to the Scheduled Castes or Scheduled Tribes the punishment shall be imprisonment to the extent of two years and fine up to ten thousand rupees.

IV. **Section 5 of M. P. Dharma Swatantrya Adhiniyam 1968**

Intimation to be given to District Magistrate with respect to conversion. –

(1) Whoever converts any person from one religious' faith to another either by performing himself the ceremony necessary for such conversion as a religious priest or by taking part directly or indirectly in such ceremony shall, within such period after the ceremony as may be prescribed, send an intimation to the District Magistrate of the district in which the ceremony has taken place of the fact of such conversion in such form as may be prescribed.

(2) if any person fails with sufficient cause of comply with the provisions contained in sub-section (1), he shall be punishable with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.

6. JUDGEMENT IN BRIEF

I. Ratio decidendi

- **Right to Propagate**

The right to 'promote' one's religion entails the ability to convert others to one's religion. Article 25(1) of the Constitution guarantees the right to convert a person to one's own religion as a basic right. The case's appellants argued that because the freedom to disseminate includes the right to convert, the freedom to convert falls within fundamental rights.

- **State Legislature's Competence**

The appellants argued that the legislatures of Madhya Pradesh and Orissa lacked legislative authority to adopt the Madhya Pradesh Act and the Orissa Act, respectively, since they govern "religion" and fall under Residuary Entry 97 of List I of the Constitution's Seventh Schedule.

The Madhya Pradesh Act prohibits conversion from one religion to another via coercion, allurement, or fraudulent means, as well as things related to it. The Act establishes definitions for the terms "allurement" and "fraud." Conversion by force, allurement, or fraudulent methods is prohibited by Section 3 of the Act, and such forced conversion is punishable under Section 4. Similarly, the Orissa Act forbids forceful conversion by force, inducement, or other fraudulent methods, and Section 4 punishes such forceful conversion. As a result, the Act clearly provides for the protection of public order, as forceful conversion would have resulted in public disorder in the States if it had not been forbidden.

The term "public order" has a wide range of meanings. It must explain the message that it is intended to convey as the first entry in List II. In *Ramesh Thappar v. The States of Madras,* this Court declared that "public order" is a broad term that refers to a condition of tranquillity that exists among members of a political society as a result of internal restrictions enacted by the government.

II. Obiter dicta

- **Right to Propagate**

The Supreme Court rules that the right to propagate is the right to spread one's religion's teachings rather than the right to convert, since if it isn't, the basic freedom to conscience granted to all citizens will be violated. In the case of *Ratilal Panachand Gandhi v. The State of Bombay and Ors,* the meaning of guarantee in Article 25 was brought up stating "Thus, subject to the restrictions which this Article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edifications of others."

As a result, the Supreme Court held that it must be understood that the freedom of religion inherent in the Article does not apply to one religion exclusively, but to all religions equally, and that it can be fully enjoyed by a person if he exercises his right in a way equivalent with that of people who practice other faiths. There can be no such thing as a fundamental right to convert someone to one's own faith since what is freedom for one is also freedom for the other.

- **State Legislature's Competence**

The Supreme Court ruled that because these Acts sought to prevent conversion via deception, force, or allurement, they amounted to maintaining public order and so fell under the jurisdiction of the State Legislature, and that the Constitution's provision of freedom of religion was subject to maintaining public order. The Supreme Court held that public order will be breached should communal tensions arise over conversions.

The decision rendered in *Ramjilal Modi v. State of U.P.* where this Court has held that the right to freedom of religion guaranteed by Articles 25 & 26 of the Constitution is expressly made subject to public order, morality and health, and that "it cannot be predicted that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any

circumstances be said to have been enacted in the interest of public order". It has been decided that the provisions of these two Articles foresee that limit on the rights secured by them may be applied in the public or national interest. It is also worth mentioning the ruling in *Arun Ghosh v. State of West Bengal*, which stated that if anything affects the current of the community's life, rather than just one person, it is considered a disruption of the public order.

7. COMMENTARY

The Supreme Court dismissed the challenge as unconstitutional in grounds of legislative competence and Article 25 (1) of the Indian Constitution. Any interference with the right of another person by force, deception, or allurement cannot be deemed to be in violation of Article 25 (1) of the Indian Constitution, which provides religious freedom subject to public order, morality, and health.

This judgment expands on the concept that conversion should only be done for the goal of edifying, since it strives to distinguish between propagation and conversion. One has the right to propagate without the intent of converting another. When seen in this light, the problem isn't just about law and order; it's also about freedom of conscience. The desire to convert infringes on this liberty. In this view, conversion cannot be claimed as a right if everyone's freedom of conscience is respected equally. Because certain religious organizations do not consider conversion to be a responsibility, conversion cannot or should not be the purpose of propagation, even if another community or tradition calls on its followers to convert others.

8. IMPORTANT CASES REFERRED

- *Arun Ghosh v. State of West Bengal, AIR 1970 SC 1228*
- *Ramesh Thappar v. The States of Madras, 1950 AIR 124*
- *Ramjilal Modi v. State of U.P., 1957 AIR 620*
- *Ratilal Panachand Gandhi v. The State of Bombay and Ors, 1954 AIR 388*

CASE NO. 17

M SIDDIQ (D) THR. LRS

V.

MAHANT SURESH DAS & ORS.

AIR 2018 SC 5134

RAM JANMABHOOMI CASE

ABSTRACT

The following is the case summary of one of the landmarks historical cases *M Siddiq (D) Thr Lrs. v. Mahant Suresh Das & Ors.* This Case is popularly known as "*Ayodhaya Dispute Case*." In India, people have strong feelings and respect for their religion and religious ceremonies. This case is the true example of 'Unity in Diversity' by maintain peace and harmony. The case initially started as a property dispute between the two community's i.e., Hindus and Muslims, and in the later stage developed as a case of national importance due to a lot of politics involved in the case.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal Nos 10866-10867 of 2010
Jurisdiction	:	Supreme Court of India
Case Decided On	:	November 9, 2019
Judges	:	Justice Ranjan Gogoi, Justice S A Bobde, Justice Ashok Bhushan, Justice D Y Chandrachud, Justice S. Abdul Nazeer
Legal Provisions Involved	:	Cr.PC Sec 145; Land Acquisition Act 1894, Sec4(1), 6, 17(4); Constitution of India, Article 142
Case Summary Prepared By	:	Jiya Kalra, DME Law School, New Delhi

2. BRIEF FACTS OF THE CASE

- **Parties**

  Petitioner:

  M. Siddiq (Deceased); Maulana Assad Rashidi; Sunni Central Board of Waqfs;

  Respondents:

Mahant Suresh Das and Others; Nirmohi Akhara; Bhagwan Shri Ram Virajman; The State of Uttar Pradesh

- **Factually**

  The Muslim party used the Historical material primarily to establish their legal tittle to disputed site, rather than to assert their right to religious freedom. They claimed that Mir Baqi, a general in the army of Mughal Emperor Babur, construed a mosque at the site in 1528 and that the tittle over it rested at the mosque ever since at that time. After the first instance case entered in the legal arena in 1885, the Muslims challenged the suits by claiming that the entire disputed land belonged to mosque

- **Procedurally**

  Hindu parties claimed that the disputed stop in the Janamsthan or Birth place of Ram, that they have a right of worship at the site, and that the tittle and the possession of the site itself belongs to Hindu deities.

  Hindu parties relied heavily on Archaeological survey of India's findings produced through its court mandated excavations in 2003.

  Other groups such as Nirmohi Akhara used the Historical material to claim that no mosque existed at the site and that the Akhara had been the sole custodian of it ever since the time of Ram Lalla.

  While the Historical and the Archaeological documentation was used by the Hindu Parties Primarily to demonstrate the tittle and ownership of the disputed land.

3. ISSUES INVOLVED IN THE CASE

I. Whether suit no. 3, 4 and 5 or any among them are barred by Limitation Act, 1908?
II. Whether the Ram Janmabhoomi is a juristic entity?
III. Whether the temple exist beneath the disputed structure? If yes, whether existence give title to the Hindu parties?
IV. Whether Shebaits have an exclusive right to sue?

4. ARGUMENTS OF THE PARTIES

The learned counsels for both the Petitioner and Defendant very effectively argued on their standpoints. But still there is loads of confusion, After the long hearing of 14 days, the

Supreme Court has given 3 days to all the parties of this case to give written submission and clear what are they actually praying.

Nirmohi Akhara: the event that the verdict comes in favour of one of the Hindu parties, the Akhara should retain the right to serve the deity. The court should order the government to provide land to the Muslim side to build a mosque outside the conflict area.

Ram Lalla Virajman: The written submission on behalf of Ram Lalla Virajman says that the court should give all of the lands in dispute to Ram Lalla. The statement stated that no part of the disputed land should be given to the Nirmohi Akhara or the Muslim parties.

Gopal Singh Visharad: whose ancestors would have performed rituals on the temple site for centuries, argued that it is his constitutional right to offer prayers to Ram Janmabhoomi. His statement said that there should be no compromise in the Ram Janmabhoomi case.

Sunni Waqf Board: The Commission has stated that it wishes to obtain the same remedy as that invoked at the hearings. During the hearings, Commission counsel, Rajeev Dhawan, requested that the Babri Masjid regain its form before being destroyed on December 6, 1992.

Hindu Mahasabha: The Supreme Court is expected to form a trust to oversee the management of the Ram temple to be built on the disputed site in Ayodhya. The Supreme Court should appoint an administrator to deal with this trust.

SUIT 1: The suit 1 was instituted by Gopal Singh Visharad by which the worshipper of Lord Ram for enforcement of his Right to worship at the Ramjanmabhoomi.

SUIT 2 : Suit 2 was filed by the Nirmohi Akhara for handing over the management and charge of the Janmabhumi temple to it.

SUIT 3: Suit 3 was filed by the Sunni Central Waqf Board is for a declaration that the entire site including the mosque and surrounding graveyard is a public mosque and should be in the Board's possession.

SUIT 4: Suit 4 is an interesting one as it is filed by the deity Lord Ram and the Janmasthan (both of whom are judicial persons) via a next friend as a third plaintiff. The suit is instituted for declaration that the whole disputed site is Ram janmabhoomi. The suit also pleads for an injunction against the interference of construction of a new temple after the demolition of the existing building.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- **Section 75 and Order XXVI, CPC, Sec 145 Cr.PC , Sec4(1), 6, 17(4) of Land Acquisition Act 1894 , Article 142 of Indian Constitution**

  Waqf is a permanent and irrevocable dedication of property and once the waqf is created, the dedication cannot be rescinded at a later date. Muslim law does not require an express declaration of a Waqf in every case. Doctrine of Preponderance of Probabilities, standard of proof is for the prosecution to prove the claim beyond reasonable doubt. Places of Worship (Special Provisions) Act of 1991

- **Article 15**

  This very provision upholds that no citizen shall be discriminated by the State on the grounds of caste, religion, sex, race and place of birth. 'Discrimination', here refers to the adverse distinctions from others. This Article is subject to certain exceptions and one such is that the State is permitted to make any special provisions for women and children as under clause 3 of the Article.

- **Article 21**

  Iyer, J. characterized Article 21 as "the procedural magna carta protective of life and liberty". So did Bhagwati, J. emphasize that "Article 21 embodies a constitutional value of supreme importance in a democratic society". The right under this Article has been held to be the soul of the Constitution which can be claimed only when a person is deprived of his "life" or "personal liberty" by the 'State' as defined under Article 12. Hence, violation of rights by private individuals will not come under the purview of Article 21.

6. JUDGEMENT IN BRIEF

- **Ratio Decidendi**

  The bench of five judges of the Supreme Court heard the litigation cases on the title from August to October 2019. On November 9, 2019, the Supreme Court, led by Chief Justice Ranjan Gogoi, announced its verdict; he quashed the previous ruling and ruled that the land belonged to the government on the basis of the tax records. He further ordered that the land be turned over to a trust for the construction of the Hindu temple. He also ordered the government to donate another five-acre piece of land to the Waqf Sunni Council to build the mosque.

The Supreme Court granted the entire 2.77 acres of disputed land in Ayodhya to the deity Ram Lalla.

The Supreme Court ordered the government of Central and Uttar Pradesh to allocate 5-acre alternative land to Muslims in a prominent location to build a mosque.

The Supreme Court rejected the plea of Nirmohi Akhara, who sought to control all of the disputed lands, claiming that it was its custodian.

The Supreme Court ordered the Union government to create a trust in 3 months for the construction of the Ram Mandir on the disputed site where Babri Masjid was demolished in 1992.

The Supreme Court said that the structure below the disputed site in Ayodhya was not an Islamic structure, but the Assistant Sub-Inspector (ASI) did not establish whether a temple was demolished to build a mosque.

The court also declared that the Hindus regard the disputed site as the birthplace of Lord Ram while the Muslims also say the same thing about the site of Babri Masjid.

The court also declared that the Hindus' belief that Lord Rama was born on the disputed site where Babri Masjid was once, cannot be challenged.

The Supreme Court also declared that the 1992 demolition of the 16th-century Babri Masjid Mosque was a violation of the law.

While reading its judgment, the Supreme Court declared that the UP's Waqf Central Sunni Council had not established its cause in the Ayodhaya dispute and that the Hindus had established that they were in possession of the outer courtyard of the site in dispute.

- **<u>Dissent</u>**

  Judges have the power to provide doctrines, re-examine old ones and establish precedents which are as good as any parliamentary passed law. Judges are appointed by different authorities such as President and Governor according to the post, while taking the oath the judges swear to protect and uphold the constitution and laws and should bear this in his mind. Under Article 13 if a judge thinks any legislation is against the spirit of constitution, then he can declare it *ultra vires.* The judge has to fill gaps which are caused by the inconsistencies.

7. COMMENTARY

This case is important because this is a prolonged case in the history of the Indian Judiciary and witnessed all the Prime Minister of India, from Jawaharlal Nehru to Narendra Modi. It is second longest case after Keshav Nanda Bharti case it took 40 days daily hearing. The Supreme Court tried to approach this case in a harmonious way and tried to establish a balance between both the religion.

In my opinion it is an ideal verdict. These types of cases where decision making is very difficult. when we file case one part is winner and one will lose but this is first and foremost case where both the parties are well satisfied. We have to keep in mind what is right Factually and Historically. It secures India unity and Secularism for its future. “Nae bharat mein bhay, katuta, nakaaraatmakta ka koi sthaan nahi hai (There is no place for fear, bitterness and negativity in the new India,” PM Modi said addressing the nation in light of the historic Ayodhya verdict. At last government work for the welfare of people and when the people are completely happy with the decision of judiciary. The Supreme Court has yet again proved that it is an institution that has always come to the rescue at the times of crisis. The people of the country have also shown solidarity with the order of Supreme Court. On one side where the whole world was expecting communal violence in our country after the verdict, the people of India have presented a true example of unity in diversity by maintain peace and harmony.

8. IMPORTANT CASES REFERRED

- *Karnataka Board of Waqf v. Government of India, (2004) 10 SCC 779.*
- *M Ismail Faruqui v. Union of India, (1994) 6 SCC 1.*
- *Promod Chandra Deb v. State of Orissa, 1962 Supp (1) SCR 405.*
- *SR Bommai v. Union of India, (1994) 3 SCC 1.*

CASE NO. 18

R. MURALI & ORS

V.

KANYAKA P. DEVASTHANAM & ORS

AIR 2005 SC 3096

RELIGIOUS DENOMINATION CASE

ABSTRACT

The following is a case summary of the infamous *R. Murali & Ors vs Kanyaka P. Devasthanam* (2005), also commonly known as *"Religious Denomination Case"/"Hindu Religious Endowment and Charitable Trust Case."* This case was filed by the appellant aggrieved by the impugned order of division bench of Madras High Court where leave granted u/s – 92 of the Code of Civil Procedure to file suit for reframing scheme of administration of institution has been revoked. The trustee filed a suit in civil court of Madras and claimed that Kanyaka Parameshwari temple is denominational temple guaranteed with fundamental freedom from interference in the administration of the institution, the civil court grant a decree in favour of trust and trustee. Such a judgement is binding on the trust and they are estopped from taking contrary plea in the subsequent suit instituted against them.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No 4467 of 2005
Jurisdiction	:	Supreme Court
Case Filed On	:	March 2004
Case Decided On	:	July 25, 2005
Judges	:	Justice D. M. Dharmadhikari, Justice Arun Kumar
Legal Provisions Involved	:	Constitution of India, Article 26; Code of Civil Procedure, Section 92; Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, Section 5, 64, 107
Case Summary Prepared By	:	Arti Khaitan, Veer Narmad South Gujarat University, Surat

2. BRIEF FACTS OF THE CASE

- **Parties**

  Appellants: S. Murali& Ors.

Respondents: Kanyaka P. Devasthanam.

- **Factually**

  That the Respondent Shri Kanyaka Parameshwari Devasthanam and Charities is religious endowment and charitable trust admittedly carrying out various activities which include running of high schools for girls and boys, maintaining three choultries, hostel for college students, Annachatram for feeding poor students and pilgrims, cremation ground, gardens and maintaining market in the vicinity of the temple.

- **Procedurally**

  That the respondent filed a suit in Madras civil court and pleaded that Kanyaka Parameswari temple is a denominational temple, fundamental freedom guaranteed under Article 26 of the Constitution of India restraining from interfering of the Commissioner and Deputy Commissioner under the Tamil Nadu Hindu Religious and Charitable Endowments Act in the administration of the institution. The city civil court granted a decree of declaration in favour of the trust and its trustees.

  That the appellant approach before single judge of High Court u/s 92 of Code of Civil Procedure for institution a suit for seeking relief of modifying/reframing a scheme for administration of the institution. The learned single Judge granted leave and reject the objection raised by respondent trustee. The Division bench reversed the judgment of the learned single judge and came to the conclusion that decree granted by the city civil court in the year 1976 is 'incidental'. It is 'not part of the ratio–decidendi'. It is 'obiter dicta' and 'not authoritative.' The said part of the decree is contrary to section 64 of the Tamil Nadu Act revoked the leave granted u/s -92 of the CPC by the learned single judge.

  The Supreme Court held that the respondent himself obtained the decree of declaration and injunction against authorities from interference in the administration of the institution from civil court of Madras and such judgment is valid and it is binding on the respondent as the respondent himself obtained the decree. So, the present appellant they are estopped from raising contrary plea in the subsequent suit instituted against them by the appellant u/s -92 of the CPC. For the aforesaid reason, the impugned order of the Division Bench of the High Court deserves to be set aside and that of the learned single judge restored.

3. ISSUES INVOLVED IN THE CASE

I. Whether the respondents allowed to approbate and reprobate in the two suits in which the subject matter and issue of jurisdiction of civil court involved are same?

II. Whether the leave granted u/s 92 of the CPC to file suits for reframing scheme of administration is valid or not?

4. ARGUMENTS OF THE PARTIES

- **Appellant**

The appellant argued that the Institution is carrying on multifarious activities of religious and charitable nature. It is not purely a Hindu Religious institution or Endowment. The appellant seeking leave to file suit on various act of mismanagement by the Board of Trustee and also seeking relief for modifying and reframing scheme of the administration of the institution.

The appellant also argued that decree passed by the city civil court has restrained from interfering with the management or administration of the institution. He further argued that clause 3 of the decree, save the right of authorities from exercising such power vested on them by law in regard to the administration of the institution.

- **Respondent**

The respondent argued on the ground that institution is governed by the Tamil Nadu Hindu Religious and Charitable Endowment Act and under Section 5(e) thereof, so the provisions of Section 92 & 93 of CPC are inapplicable to the institution. Respondent also submitted that Jurisdiction to settle or modify a scheme of administration of the religious and charitable institution vests in the Joint Commissioner or Deputy Commissioner, u/s -64 of the Act.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The court has discussed the following Sections & Articles of the

I. **Tamil Nadu Hindu Religious and Charitable Endowment Act**

- **Section 5 with its opening part and clause (e) reads thus:-**

Certain Acts not to apply to Hindu Religious Institutions and Endowments. - The following enactments shall cease to apply to Hindu religious institutions and endowments, namely :-

(a) to (d) .....

(e) Section 92 & 93 of the Code of Civil Procedure, 1908 (Central Act V of 1908)

- **S. 64. Power of [Joint Commissioner or Deputy Commissioner] to settle schemes. —**

(1) When the Joint Commissioner or the Deputy Commissioner, as the case may be], has reason to believe that in the interest of the proper administration of an institution, a scheme should be settled for the institution, or when not less than five persons having interest make an application, in writing, stating that in the interest of the proper administration of an institution a scheme should be settled for it, the Joint Commissioner or the Deputy Commissioner, as the case may be, shall consult in the prescribed manner the trustee and the persons having interest and if, after such consultation, he is satisfied that it is necessary or desirable to do so, he shall, by order, settle a scheme of administration for the institution.

Explanation.— For the purposes of this section, "institution" means a temple or a specific endowment attached to a temple.

- **S. 107. Act not to affect rights under Article 26 of the Constitution.—**

Nothing contained in this Act shall, save as otherwise provided in section 106 and in clause (2) of Article 25 of the Constitution, be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by article 26 of the Constitution.

II. Indian Constitution

- **Article 26. Freedom to manage religious affairs subject to public order, morality and health, every religious denomination or any section thereof shall have the right**

(a) to establish and maintain institutions for religious and charitable purposes;

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

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

(d) to administer such property in accordance with law

6. JUDGEMENT IN BRIEF

The court held that respondent himself filed a suit before civil court for decree of declaration that the institution is of religious denomination of Arya Vysya Community, it had protection under Article 26 of the Constitution of the India from interference in its administration by the authority under Tamil Nadu Hindu Religious and Charitable Endowment Act. So, such judgement and decree are valid and binding on the respondent by their own conduct. They are estopped from raising contrary plea in the subsequent suit instituted against them u/s –

92 of the CPC. The right guaranteed under Article 26 of the Constitution has been expressly protected under section 107 of Tamil Nadu Act by making inapplicable the other provision of the Act including section 64 to institution.

Therefore, it is not open to the present appellants to approach the authorities under section 64 of the Tamil Nadu Act for modification or reframing the scheme of the administration of the trust. As decree of declaration and injunction is operative against the authorities under Tamil Nadu Act, civil court alone could have been approached by obtaining leave under section 92 of CPC for seeking modification or reframing of scheme of administration of the trust.

For the aforesaid reasons, the impugned order of the Division Bench of the High Court deserves to be set aside and that of the learned single judge restored.

7. COMMENTARY

That the Sri Kanyaka Parameshwari Devasthanam and charitable trust file a suit before the civil court obtained the decree of declaration and injunction against the commission from interference in the administration of the institution. That the said trust carrying on various activities include running of high school, hostel for college student, maintaining three choulteries, etc. by the Board of Trustee and the decree of civil court restrained the authorities under Sec. 64 of the Act for modifying the scheme of the administration of the institution. That there is various act of mismanagement against the Board of trustee alleged, and for the modification and re-framing scheme of the administration of the institution leave is granted to the commission under section 92 of the CPC by the Supreme Court as the trust is bar from raising a contrary plea at the subsequent suit instituted against them.

CASE NO. 19

STATE OF ORISSA & SHRI JAGANNATH TEMPLE PURI MANAGEMENT COMMITTEE REPRESENTED THROUGH ITS ADMINISTRATOR & ORS.

V.

CHINTAMANI KHUNTIA & ORS.

AIR 1997 SC 3839

SHRI JAGANNATH TEMPLE CASE

ABSTRACT

The following is a case summary of the most important places of pilgrimages for the Hindus i.e., Shri Jagannath Temple, Puri. The civil appeal was filed against judgement of High Court in favour of Attendants (*Sevaks*) of temple contending that placement of the Hundis made serious encroachment upon the religious practice and rights of property of the *Sevaks*. Rights of the *Sevaks* to get a share in the offerings made by the pilgrims constituted 'property' and was an integral part of the religious rite of performing *'Seva'* to Lord Jagannath. These religious rites could not be interfered with in any manner without violating Articles 25 and 26 of the Constitution of India. The Supreme Court held that Shri Jagannath Temple (Amendment) Act, 1983 provides for the management of the secular affairs of the temple and does not interfere, with the religious affairs of sevaks.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No. 3978 of 1995
Jurisdiction	:	Supreme Court of India
Case Filed On	:	1995
Judges	:	Justice J. S. Verma, Justice Suhas C. Sen, Justice S. P. Kurdukar
Legal Provisions Involved	:	Constitution Of India, Article 25(1), 26,300-A; Shri Jagannath Temple Act, 1954, Section 28-B and sub section (9) of Section 28-C
Case Summary Prepared By	:	Ayushi J Kankariya, Veer Narmad South Gujarat University, Surat

2. BRIEF FACTS OF THE CASE

- **Parties**

  The parties involved were State of Orissa and Sri Jagannath Temple Puri Management Committee Represented through Its Administrator and Ors. as Petitioner and Respondent was the Chintamani Khuntia & Ors.

- **Factual**

  Shri Jagannath Temple, Puri is one of the important places of pilgrimage for the Hindus. People from all over India come in thousands daily for Puja and Darshan. The Sevaks of various kinds have tried to run the Temple to their advantage. Religious considerations have been farthest to their thoughts and activities. Various measures have been taken by the Government about the superintendence, control and management of the affairs of the Temple to ensure that religious practices are properly carried out and the pilgrims can worship the deities in a proper manner.

- **Procedural**

  This case was brought before the Supreme Court of India in form of civil appeal. The judges for the petition were Chief Justice Mr. J. S. Verma, Justice Suhas C. Sen & Justice S. P. Kurdukar

  The Respondent argued that they are entitled to a share out of the collections of the offerings made by the devotees inside the Jagannath temple at Puri. They are traditionally entitled to the offerings made by the devotees (Veta and Pindika). This traditional method of collection of Veta Pindika and also of getting a portion of the same cannot be interfered with because that will amount to violation of guarantee of religious freedom under Articles 25 and 26 of the Constitution of India. Along with right to property under Article 300-A of the Constitution of India.

  The Petitioner argued that Collection and distribution of money even though given as offerings to the deity cannot be a religious practice. The offerings whether of money, fruits, flowers or any other thing are given to the deity. It has been said in the Gita that "whoever offers leaf, flower, fruit or water to me with devotion I accept that". The religious practice ends with these offerings. Collection and distribution of these offerings or retention of a portion of the offerings for maintenance and upkeep of the temple are secular activities. These activities belong to the domain of management and administration of the temple.

It was held by court that the installation of the Hundis for collection of offerings made by the devotees inside the Jagannath Temple at Puri did not violate the religious rights of the Sevaks of the Temple in any manner even though the sevaks were denied any share out of the offerings made in the Hundis. Section 28-B of the Act cannot be struck down as violative of religious or property rights of the sevaks along with The Sevaks could not claim any share out of the donations or contributions made to the Foundation Fund as of right. Sub-section (9) of Section 28-C was validity enacted.

The Supreme Court held that the amended Section 28-B ad sub-section (9) of section 28-C of Shri Jagannath Temple Act, 1954 do not contravene the provisions of Articles 25(1), 26 or 300-A of the Constitution of India.

3. ISSUES INVOLVED IN THE CASE

I. Whether the amended section 28-B ad sub-section (9) of section 28-C of Shri Jagannath Temple Act, 1954 is contravene to the provisions of Articles 25(1), 26 or 300-A of the Constitution of India in any manner?
II. Whether the right of the Sevaks to get a share of the Veta and Pindika as recognized in the Record of Rights is a religious right or not?

4. ARGUMENTS OF THE PARTIES

- **Petitioner**

  The Petitioner argued that Collection and distribution of money even though given as offerings to the deity cannot be a religious practice. The offerings whether of money, fruits, flowers or any other thing are given to the deity. It has been said in the Gita that "whoever offers leaf, flower, fruit or water to me with devotion I accept that". The religious practice ends with these offerings. Collection and distribution of these offerings or retention of a portion of the offerings for maintenance and upkeep of the temple are secular activities. These activities belong to the domain of management and administration of the temple.

- **Respondent**

  The Respondent argued that they are entitled to a share out of the collections of the offerings made by the devotees inside the Jagannath temple at Puri. They are traditionally entitled to the offerings made by the devotees (*Veta* and *Pindika*). This traditional method of collection of *Veta Pindika* and also of getting a portion of the

same cannot be interfered with because that will amount to violation of guarantee of religious freedom under Articles 25 and 26 of the Constitution of India. Along with right to property under Article 300-A of the Constitution of India.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Many crucial legal aspects are involved in this case. A brief mention of all of them is mandatory to provide a gist of the legality involved in this landmark case:

I. Constitution of India

- **Article 25 Freedom of conscience and free profession, practice and propagation of religion.-**

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

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

(b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I- The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II- In sub-clause (b) of clause 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.

- **Article 26 Freedom to manage religious affairs.-**

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

(a) to establish and maintain institutions for religious and charitable purposes;

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

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

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

- **Article 300-A.**

Persons not to be deprived of property save by authority of law.-

No person shall be deprived of his property save by authority of law.

II. Shri Jagannath Temple Amendment Act, 1983

- **Section 28-B**

  (1) The Committee may, with the approval of the State Government install one or more receptacles (hereinafter referred to as Hundi) at such place or places in the Temples as it may think fit for placing of offerings by the pilgrims and devotes visiting the Temple.

  (2) The Hundi shall be operated by such person and in such manner as the State Government may, from time to time, determine.

  (3) Such portion of the offerings placed in a Hundi as State Government may, from time to time, direct shall be credited to the Foundation Fund.

  (4) No person shall, without being authorized by the Administrator in that behalf go near or interfere in any manner with any Hundi installed in the Temple: Provided that no such authorization shall be required for going near any Hundi for the bona fide purpose of placing any offering therein. For the Bill, see Orissa Gazette Extraordinary, dated the 26th March 1983 (No.359) Short title and commencement Amendment of section 28. Installation of Hundi Orissa Act, 11 of 1955. Insertion of new section 28-B and 28-C. 2

  (5) Notwithstanding anything to the contrary contained in any law, custom usage or agreement or in the record of-rights, no sevak shall be entitle to any share in the offering placed in any Hundi installed after the commencement of Shri Jagannath Temple (Amendment) Act, 1983.

- **Section 28-C(9)**

  Notwithstanding anything to the contrary contained in any law, custom, usage or agreement or in the record-of-rights, no *Sevak* shall be entitled to any share out of the amount of donations or contributions to the Foundation Fund made under sub-section (2) after the commencement of Shri Jagannath Temple (Amendment) Act, 1983"

6. JUDGEMENT IN BRIEF

- The Hon'ble court held that although the State cannot interfere with freedom of a person to profess, practice and propagate his religion, the State, however, can control the secular matters connected with religion. All the activities in or connected with a temple are not religious activities. The management of a temple or maintenance of discipline

and order inside the temple can be controlled by the State. If any law is passed for management of a temple, it cannot be struck down on ground of Article 25 or Article 26 of the Constitution. As the management of the temple is a secular activity.

- The temple authority may also control the activities of various servants of the temple. The disciplinary power over the servants of the temple, including the priests, may be given to the Temple Committee appointed by the state. The Temple Committee can decide the quantum and manner of payment of remuneration to the servants. Merely because a system of payment is prevalent for a number of years, is no ground for holding that such system must continue for all times. The payment of remuneration to the temple servants was not a religious action but was of purely secular nature.

- In view of these principles laid down in the aforesaid case, it was held by court that the installation of the Hundis for collection of offerings made by the devotees inside the Jagannath Temple at Puri did not violate the religious rights of the Sevaks of the Temple in any manner even though the sevaks were denied any share out of the offerings made in the Hundis. Section 28-B of the Act cannot be struck down as its not violating of right of religious and rights of property the sevaks along with The *Sevaks* could not claim any share out of the donations or contributions made to the Foundation Fund as of fundamental right. Sub-section (9) of Section 28-C was validity enacted.

- The Supreme Court held that the amended Section 28-B ad sub-section (9) of section 28-C of Shri Jagannath Temple Act, 1954 do not contravene the provisions of Articles 25(1), 26 or 300-A of the Constitution of India.

7. COMMENTARY

Basic structure doctrine is an integral part of the Indian Constitution. In the most historic Kesavananda Bharati case in 1973 the supreme court of India has define basic structure as an integral part of Indian constitution which define some essential features of constitution which contains supremacy of the constitution, rule of law, secular character etc. along with in Preamble of the Indian Constitution has the word "secular" and Article 25 to 28 implying that the State will not discriminate in the profession of any religion except public order, morality and health with gives equal weight age to rule of law.

Now, the manner of collection and distribution of a portion of the offerings among the temple staff may have a history of long usage but all usage cannot be a religious right.

Collection and distribution of these offerings in temple are secular activities. These activities are beyond the preview of right to religion stated in Article 25 to 28 of Indian Constitution.

8. IMPORTANT CASES REFERRED

- *A. S. Narayana Deekshitulu v. State of A.P. and Others, (1996) 9 SCC 548.*
- *Bairagi Mekap &Anr. v. Shri Jagannath Temple Managing Committee, AIR 1972 Orissa 10.*
- *Bhuri Nath &Ors. v. The State of Jammu & Kashmir & Ors., JT 1997 (1) S.C. 456.*
- *Seshammal & Ors. v. State of Tamil Nadu, (1972) 3 SCR 815.*
- *Pannalal Bansilal Pitti and Others v. State of A.P. and Another, (1996) 2 SCC 498.*
- *P.V. Bheemsena Rao v. Sirigiri Pedda Yella Reddi & Ors., (1962) 1 SCR 339.*
- *Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan & Ors., (1964) 1 SCR 56.*
- *Minerva Mills v. Union of India, 1980 AIR 1789, 1981 SCR (1) 206.*

CASE NO. 20

EWANLANGKI-E-RYMBAI

V.

JAINTIA HILLS DISTRICT COUNCIL

(CIVIL APPEAL NOS. 9561-9562 OF 2003, SC)

CHRISTIANS EXCLUDED FROM CONTESTING ELECTION

ABSTRACT

The following is the case summary of the judgment pronounced by the Supreme Court in *Ewanlangki-e-Rymbai v. Jaintia Hills District Council* in accordance with the writ petition filed in the apex court challenging the constitutional validity of Section 3 of the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 leading to wrongful election and appointments of Chiefs and Headmen in accordance with the customs prevailing in the Elaka concerned. A notice was circulated by the Secretary of the Executive Committee of the Jaintia Hills Autonomous District, Jowai that the people who will be elected for the post of Dolloiship ought to be only from the Non–Christians. The petitioners then filed the writ petition in High Court of Guwahati on the basis that only the members of the clans mentioned therein could contest the aforesaid election and thereby the persons belonging to the Christian faith were excluded from contesting the said election and that the exclusion of the Christians from contesting the election for the post of Dolloi in Elaka Jowai was discriminatory and therefore resulting in the violation of fundamental right guaranteed under Article 14, 15, & 16 of the Constitution of India. It was in view of the discrimination against the Christian community that an appeal was filed in the apex Court.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal Nos. 9561-9562 of 2003
Jurisdiction	:	Supreme Court of India
Case Filed On	:	July 21, 2003
Case Decided On	:	March 28, 2006
Judges	:	Justice B. P. Singh, Justice Arun Kumar
Legal Provisions Involved	:	United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959, Section 3; Constitution of India, Article 14, 15, 16, 25, 26, 29, 244(b)

Case Summary Prepared By	:	Yash Patil, Bharati Vidyapeeth New Law College, Pune

2. BRIEF FACTS OF THE CASE

- **Parties**

  The parties in the present case are:

  Appellant Ewanlangki-e Rymbai, a Christian by faith is a Member of the Jaintia Scheduled Tribe. The other appellant, namely Elaka Jowai Secular Movement is represented by its Vice Chairman and Executive Member. The respondent were Jaintai Hills District Council and Others.

- **Factual**

  The United Khasi - Jaintia Hills District was assemble as one of the Tribal Areas of Assam by combining the Khasi States with the other areas of the Khasi-Jaintia Hills. A notice was issued on August 28, 2001 by the Returning Officer for the post of Dolloiship, declaring programme for election of Dolloi in the Elaka Jowai. On September 4, 2001 the Secretary of the Executive Committee of Jaintia Hills Autonomous District Council, Jowai issued another public notice, which announced that those who can contest for the Dolloiship should be only those who are from the Niam Tynrai Niamtre (Non-Christians) who will practice the indigenous religion within the Raij Jowai, and thereby, the persons belonging to the Christian faith were excluded from contesting the said election; both these notices were challenged by the petitioner. The Appendix III of United Khasi - Jaintia Hills District Council Jowai has been specified as an Elaka which was supposed to be headed by a Chief who would be a Dolloi. It was a core and essential aspect of the tribal culture that Dolloi who is appointed must perform administrative functions as well as religious functions which involve performance of religious ceremonies. The appellants contend that exclusion of Christians from contesting the election was in violation of Articles 14, 15, 16 of the Constitution of India since they were excluded on the ground of religion.

- **Procedural**

  The High Court negatived the dispute and held that the Executive Committee in exercise of its assigned forces can issue such a notification for public arrangement by appointment of Dolloiship in Elaka Jowai without rules, guidelines or institutions accommodating such political decision and arrangement. The High Court, further continued to consider the accommodation encouraged before them and in doing as such,

high court saw Articles 25 and 26 of the Constitution of India and eventually inferred that there was no penetrate of Article 14, 15, 16 of the Constitution of India and indeed it secured the rights ensured under Articles 25 and 26 of the Constitution of India. The appellants subsequently offered under the watchful eye of the Supreme Court testing the accuracy of the choice of High Court.

3. ISSUES INVOLVED IN THE CASE

I. Whether the exclusion of Christians from contesting the post of Dolloi violating the Articles 14, 15, & 16 of Constitution of India?

II. Whether Section 3 of the Election and Appointment of Dollai in accordance with the customs of the Dolloi violates the fundamental rights?

4. ARGUMENTS OF THE PARTIES

- **<u>Petitioner</u>**
  - The learned council for the petitioner contended that the exclusion of Christians from contesting the election is in violation of Articles 14, 15 and 16 of the Constitution of India since they are excluded only on the ground of religion. They also argued that Article 3 of the 1959 Act stipulated that the appointment of chiefs or chiefs should conform to the prevailing practice regarding Elak, which is also not good. It gave legal sanctity to a custom which itself was in breach of Articles 14 to 16 of the Constitution of India. A custom must give way to a fundamental right, and any custom that violates a citizen's fundamental rights must be considered invalid.
  - The petitioner argued that the Supreme Court in the case of *John Vallamattom and anr. v. Union of India (2003 6 SCC 611)* the constitutional validity of Section 118 of the Succession Act, 1925 was challenged. The aforesaid provision was struck down by the apex Court on the ground of arbitrariness violating Article 14 of the Constitution. It turns out that even if we classify Christians into one category, it does not support a clear distinction and has nothing to do with the intended goal. As a result, it is regarded as discriminatory and arbitrary.
  - The petitioner relied on the decision of the Supreme Court in the case of *Madhu Kishwar and others v. State of Bihar and others (1996 5 SCC 125)* where the constitutional validity of Sections 7, 8, 76 of the Chotanagar Tenancy Act, 1908 was challenged on the grounds that these provisions violated Articles 14, 15 and 21 of the Constitution of India.

- Furthermore, the council for the petitioner argued in the case of *State of Kerala and another v. Chandramohnan (2004 3 SCC 429)* that mere conversion to Christianity one does not cease to be a Scheduled Tribe if despite conversion he continues to follow the tribal traits and customs.

- **Respondent**
  - The learned council appearing for the respondents contended that there is no violation of Articles 14, 15 and 16 of the Constitution of India since reasonable classification is permissible in law and the exclusion of Christians from contesting the election is not only on the ground of religion, but on the ground that they are unable to perform religious functions of the office of Dolloi. It was argued that the nature of the office of Dolloi, the notice excluding Christians from contesting for the post of Dolloi was 'fully justified'. It was argued that it was the tribal custom of the Elaka that the Dolloi of the Elaka Jowai must perform both administrative and religious functions of his office.
  - The learned senior council argued in the case of *Air India v. Nergesh Meerza and others (1981 4 SCC 335)* that what Articles 15(1) and 16(2) prohibits is that discrimination should not be made only and only on the ground of sex. These articles of the Constitution do not prohibit the State from making discrimination on the ground of sex coupled with other considerations.
  - The learned council further relied on the decision of the Supreme Court in the case of *Clarence Pais and others v. Union of India (2001 4 SCC 325)* that challenge to section 213 and 57 of the Succession Act, 1925 was considered and repelled. The apex court in this case held that the basis of the challenge, namely that Sec. 213(1) of the Act was applicable only to Christians and not to any other religion.
  - The learned senior council next relied on the decision of the Supreme Court in the case of *R.C. Poudyal v. Union of Indian and Others (1994 Supp. (1) SCC 324).* In this case the court observed that the people of the Sangha community belong to the Buddhism religion and are the worshippers of Lord Buddha and hence, the reservation for the community is a reservation for those who are Buddhists.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The case revolves around the interpretation of clauses of the seven articles i.e., Article 14, 15, 16, 25, 26, 29 and Article 244(2) of the Constitution of India and interpretation of

Section 3 of the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959.

Section 3: Election or Nomination and Appointment of Chief and Headmen,

"Subject to the provisions of this Act and the Rules made thereunder, all elections or nominations and appointment of Chiefs and Headmen shall be in accordance with the existing custom or prevailing in the Elaka concerned and or in accordance with the orders as the Executive Committee may issue from time to time."

Article 14: Equality before law,

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth."

Article15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

"The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

Article 16: Equality of opportunity in matters of public employment**,**

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

Article 25: Freedom of conscience and free profession, practice and propagation of religion

"(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."

Article 26: Freedom to manage religious affairs.

"Subject to public order, morality and health, every religious denomination or any section thereof shall have the right; (a) to establish and maintain institutions for religious and charitable purposes."

Article 29: Protection of interests of minorities

"(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same."

6. JUDGEMENT IN BRIEF

- **<u>Ratio Decidendi</u>**

I. The High Court distinction between "Service land" and "Puja land"

According to the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 the "Service land" and "Puja land" were allotted to Dolloi who was appointed as the "Chief" of Dolloi to carry out his duties as a Dolloi of Elaka Jowai. The Chief or Headman held and cultivated "Service land," which was revenue-free land, in lieu of monetary remuneration for services rendered. "Puja land" was revenue-free land he owned and cultivated, with the proceeds used to cover expenses associated with religious performances in accordance with Elaka customs. The various rituals and observances, practises, poojas, ceremonies, and customary religious functions that the Dolloi is required to perform in the discharge of his duties as the Dolloi formed an integral part of their religious customs. For a long time, there was a tradition that the "Chief," namely the Dolloi, had to perform both administrative and religious duties. There were no customs to employ two Dolloi one for the overall performance of administrative obligations and the alternative for the overall performance of spiritual functions.

II. Interpretation of Articles 14, 15, 16, 25, 26 & 29 of the Constitution of India

The learned senior council appearing for the respondents analysed the provisions contained in Articles 14, 15, 16, 25, 26 and 29 of the Constitution of India. Article 14 guarantees equality before the law, which means that only people in similar situations shall be treated similarly. Treating individuals who are not equal equally would be a violation of Article 14, which contains an anti-arbitrariness requirement. Article 14 allowed for appropriate classification based on well-established grounds. Article 15 forbids the state from discriminating against citizens solely on the basis of religion, race, caste, sex, or place of birth, or any combination of these factors. The learned council emphasized the use of the words "on the ground only of religion". As a result, discrimination against a citizen "on the basis of religion alone" may be unconstitutional. That was not the case here, however. The exclusion is based on the fact that a Christian cannot execute the religious responsibilities of a Dolloi, which is a well-known reality. Article 16 guarantees equality of opportunity in matters of public employment but clause (5) thereof expressly provides that nothing within the article shall affect the operation of any law which provides that the incumbent of an office in reference to the affairs of any religious or denominational institution or any member of the

administration thereof shall be an individual professing a specific religion or belonging to a specific denomination. The right guaranteed under Article 25 of the Constitution was subject to other provisions of Part III of the Constitution of India but thus far as Article 26 was concerned, it had been only subject to public order, morality and health. thus far as Article 29 cares it's an absolute right guaranteed for the conservation of a language, script or culture. The rights protected are those guaranteed under Article 26(b) and 29(1) of the Constitution. Therefore, that election of a tribal head with all concomitants thereof was a part of the tribal culture. The Constitution ensures consistency in variety.

III. The exclusion of the Christians was justified

The material leaves little question that the office of Dolloi with its dual functions, administrative and non-secular, may be a part of the tribal religion and culture, governed by custom since time out of mind. It logically follows that the Dolloi must be one who is conversant with the indigenous religious practices of the inhabitants of the Elaka. It's not disputed that a Christian cannot perform the indigenous religious functions which a Dolloi is required to perform, aside from his administrative functions. By long standing custom, the Dolloi must perform both administrative and non-secular functions, and such duties can't be bifurcated by appointing one other to perform the religious functions only. there's no such custom prevalent within the Elaka. In its long history, such a thing happened only twice, and on both occasions, there was a public outcry leading to dismissal of the Dolloi in one case and his resignation within the other. The custom can't be said to be discontinued or destroyed by such aberrations. The exclusion is justified by good reason, since admittedly the religious duties of a Dolloi of Elaka Jowai can't be performed by a Christian. Thus, the bottom for exclusion of Christians isn't solely the bottom of faith, but on account of the admitted incontrovertible fact that a Christian cannot perform the religious functions attached to the office of Dolloi.

In the final judgment it was held that the reason for the exclusion of Christians from participating in elections were neither arbitrary nor reasonable. As a result, the Apex Court agrees with the High Court that Section 3(1) of the Act of 1959, as well as the notices challenged in the Writ Petitions, cannot be upheld on the basis of violations of Article 14, 15, and 16 of the Indian Constitution. In addition, the court stated that because the challenge to the impugned provisions and notifications was determined to be unsustainable on the basis of violations of Article 14, 15, 16, it was not essential to address the concerns raised by Article

25, 26, and 29 of the Indian Constitution. As a result, the appeals were denied and rejected. As a result, the Supreme Court upheld and endorsed the Guwahati High Court's decision.

- **Obiter Dicta**

  In this case, the Court opined thus:

  - The preclusion against challenging for the post of Dolloiship on the ground of religion ex-facie added up to segregation on the ground of religion. The avoidance, along these lines, is neither discretionary nor unreasonable. It is proverbial that one who can't play out the obligations connected to the workplace should be held to be ineligible to hold the workplace. The prohibition, in this way, can't be considered as either outlandish or self-assertive or prejudicial.
  - After the coming into the presence of Jowai District as an independent District the Jowai Autonomous District Act, 1967 was established. The arrangements of this Act were made pertinent to the Jowai Autonomous District and the Rules of 1951, as altered now and again, were made material. The Act, Rules and Regulations outlined under the United Khasi-Jaintia Hills District Council as recorded in Appendix I were likewise made appropriate to the Jowai Autonomous District till such time the Jowai Autonomous District Council made its own laws. Reference Section I incorporates the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 which was made relevant to the Jowai District Council.

7. COMMENTARY

The judgment of this Case is one of the landmark judgments delivered by the Supreme Court of India. The way the Supreme Court explained and applied the concept of customary laws in the matters of administration as well in following religious faith was remarkable. We have prior seen the discoveries of the High Court such that it is the ancestral custom of the Elaka that the Dolloi of the Elaka Jowai should perform both the regulatory and strict elements of his office. The High Court has comprehensively thought to be the proof on record and thought about the different customs and observances, rehearses, poojas, services, standard strict capacities which are viewed as fundamental piece of strict traditions, and which the Dolloi should act in the release of his obligations as the Dolloi. Such customs, observances, functions and so on are numerous in number. The material on record rules out question that the workplace of Dolloi with its double capacities, authoritative and strict, is a piece of the ancestral religion and culture, represented by custom since days of yore. It sensibly follows that the Dolloi should be one who is acquainted with the native strict acts

of the occupants of the Elaka. He should be one who ought to have the option to lead individuals of the Elaka in the strict functions as indicated by their custom, and should likewise be equipped to play out the ceremonies, rehearses, poojas, services and so forth which he is needed to proceed as an obligation connected to his office. It isn't questioned that a Christian can't play out the native strict capacities which a Dolloi is needed to perform, aside from his authoritative capacities. By long standing custom, the Dolloi should perform both managerial and strict capacities, and such obligations can't be bifurcated by designating one other to play out the strict capacities as it were. There was no such custom predominant in the Elaka. In its long history, something like this happened just twice, and on the two events there was a public objection bringing about excusal of the Dolloi in one case and his renunciation in the other. The custom can't be supposed to be ceased or annihilated by such variations. The High Court has additionally seen the legal acknowledgment given to the standard practice in the Khasi and Jaintia Hills that a Dolloi can't be a Christian. All in all, it very well may be said that Supreme court through its judgment has laid before the residents to demonstrate the legitimacy for infringement of their major rights with regards to some other lawful laws winning in the public arena. It likewise portrays that for offers, understanding the fundamental construction of Constitution of India is important for its lawful utilization.

8. IMPORTANT CASES REFERRED

- *Air India v. Nergesh Meerza and others, (1981) 4 SCC 335*
- *Cazula Dasaratha Rama Rao v. State of Andhra Pradesh and others, AIR 1961 SC 564*
- *Clarence Pais and others v. Union of India, (2001) 4 SCC 325*
- *Government of A. P. v. P.B. Vijayakumar and another, (1995) 4 SCC 520*
- *John Vallamattom and another v. Union of India, (2003) 6 SCC 611*
- *Madhu Kishwar and others v. State of Bihar and others, (1996) 5 SCC 125*
- *R. C. Poudyal s. Union of India and others, 1994 Supp. (1) SCC 324*
- *State of Kerala and another v. Chandramohnan, (2004) 3 SCC 429*

CASE NO. 21

RAMESH SHARMA

V.

STATE OF HIMACHAL PRADESH

2014 SCC ONLINE HP 4679

ANIMAL SACRIFICE CASE

ABSTRACT

The following is the case summary of the case *Ramesh Sharma v. State of Himachal Pradesh* which deals with the slaughtering of animals in the name of religion by devotees in the state of Himachal Pradesh. This case revolves around the practice of '*bali'* or sacrificing animals in exchange for humans and also how the innocent animals are beaten up mercilessly and dragged to the mountain tops for sacrifice. Here the petitioner, Ramesh Sharma claims that these practices are not in conformity with Article 51A(h) of the Indian Constitution and has sought direction to the State to stop the illegal animal killing practices in temple and public places. This issue had gained greater attention and was also published in the Times of India dated October 23, 2010. The petitioner has sought direction to the Deputy Commissioners of all the district of Himachal Pradesh to prevent animal sacrifice in temples and public places and ensure complete ban on these practices. An action is sought to be taken against the persons, who are encouraging, promoting and indulging in this practice. This is a case which reveals such a practice being followed in the present world and also the governments inefficiency to prevent them.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	CWP No. 9257 of 2011 and CWP Nos. 4499 and 5076 of 2012
Jurisdiction	:	High Court of Himachal Pradesh
Case Filed On	:	2012
Case Decided On	:	September 26, 2014
Judges	:	Justice Rajiv Sharma, Justice Sureshwar Takur
Legal Provisions Involved	:	Constitution of India, Article 25, 26, 28; Prevention of Cruelty to Animals Act, 1960.
Case Summary Prepared By	:	Shreya S Palely, Christ University, Bengaluru

2. BRIEF FACTS OF THE CASE

- **Parties**

  Petitioner: Mr. Ramesh Sharma, an activist who fights for animal rights.

  Respondent: State of Himachal Pradesh

- **Factually**

  The petitioner Ramesh Sharma works for animal rights for ten years as a state representative in "People for Animals" at Kasauli. It came into notice of the petitioner that certain temples and public places of the state of Himachal Pradesh have been sacrificing innocent animals.

  The petitioner has also captured the photographs of the animal sacrifice being performed in certain places. According to the petitioner the practice is prevalent in the Chamunda Devi temple in Kangra district, Hadimba Devi temple in Manali, Chamunda Nandi Keshawar Dham in Kangra, Malana in Kullu district, Dodra Kwar (Mahasu), Shikar I Devi temple in Mandi district and Shri Bhima Kali temple in Sarahan, Ani and Nirmand in Kullu district, Shilai in Sirmaur District and Chopal in Shimla District. Animals are cruelly dragged and beaten up and later killed in the name of religion.

- **Procedurally**

  Petitioner claimed that this practice is not in conformity with Article 51A(h) of the Constitution of India. Petitioner has also filled representation before the Deputy Commissioner, Kullu requesting to prevent the animal sacrifice at the places of Dhalpur, Maidan and Kullu. Petitioner has sought direction to the State to stop illegal animal slaughtering in the public places and temples and also a file is presented before the Deputy Commissioners of all the District of Himachal Pradesh to ensure complete ban on animal sacrifice at temples and public places. An action is sought against those who are indulging in this practice.

3. ISSUES INVOLVED IN THE CASE

I. The core issue involved in this petition is whether the practice of animal sacrifice is an essential / central theme and integral part of Hindu religion or not?
II. Whether the practice can be considered as inimical?
III. Can the animal rights be violated in the name of religion?

4. ARGUMENTS OF THE PARTIES

- **Petitioner**

  The petitioner, the State representative at "People for Animals", Kasauli is working for animal rights for the past ten years. The core issue in the case is slaughtering of hundreds and thousands of animals at temples and public places as a ritual by the devotees across the State of Himachal Pradesh. Petitioner also contains a record of photographs of animal sacrifice being performed in different places of the State. The petitioner claims this is happening because the state has not taken certain preventive measures to prevent the killing/ sacrifice of innocent animals. According to the petitioner this is not in conformity with Article 51 A (h) of the Indian constitution.

  The petitioner has named certain places where this act is performed- the Chamunda Devi temple in Kangra district, Hadimba Devi temple in Manali, Chamunda Nandi Keshawar Dham in Kangra, Malana in Kullu district, Dodra Kwar (Mahasu), Shikar I Devi temple in Mandi district and Shri Bhima Kali temple in Sarahan, Ani and Nirmand in Kullu district, Shilai in Sirmaur District and Chopal in Shimla District. In these areas animals are beaten up mercilessly, chilies are thrown into their eyes when they try to run away. The petitioner argued that it takes 25 minutes to kill a buffalo. This innocent animal has to go through so much pain and also, they are dragged to the mountain hill and are being killed there in the name of religious rituals. The petitioner has also reported the issue to the Deputy Commissioners of all the Districts of Himachal Pradesh to put a break to these illegal practices and has sought the law to enforce preventive measures to stop such practices and take necessary action against people involved in this.

- **Respondent**

  Respondent claimed before the court that animal sacrifice in these areas were in practice but suitable actions were taken against the people engaged in these practices and there is also a record of suitable legal actions taken against the people who were engaged in slaughter of buffalo calves in Kamshaha Temple on the occasion of Sharad Navarathri and eve of Ashtami. The Counsel of the respondent further stated that in Shillai of Sirmur District animal sacrifice widespread for many years. The Superintendent of Police of Shimla revealed that in some places of the areas – Rampur, Jhakri, Rohru, Chirgaon and Kotkhai animals (sheep, goat) are sacrificed to the Devta as a thanksgiving offer by the devotees. The meat of the animal is later distributed among the people attending the event.

Though the practice is not completely abolished but the tradition has been decreased. The respondent stated before the court that this religious ceremony, the "Bhunda" and "Shand" are celebrated in 25 to 30 years gap and only during this period animals are sacrificed and offered to the Devta.

The respondent stated before the court that this is a traditional practice which is followed in the society for social sanction and this is accepted by the people attending this event. The respondent made a reference to Section 28 of the Prevention of Cruelty of Animal Act 1960 which states that "nothing contained in the Act shall render it an offence to kill away the animal in the manner of religious beliefs and community" and thereby presented before the honourable court that this cannot be an offence.

5. LEGAL ASPECTS INVOLVED IN THE CASE

I. Constitution of India

- **Article 48 A** of the constitution of India ensures protection and improvements of environment and safety of forests and wild life.

- **Article 51 A (g)** of the Indian constitution, it is the fundamental duty of every citizen to protect the environment including wildlife. Article 51 A (i) talks about non-violence or ahimsa.

- Even after the above legal aspects the court always considers the religious right of an individual as per **Article 25 and 26**. Every citizen of the country has a right and freedom to profess, practice and propagate religion and to manage the affairs of one's religion. The right of freedom of religion to practice, profess and propagate one's religion would not be affected if the practice of animal sacrifice is disconnected. The court observed that disconnecting the practice of animal sacrifice will not violate Article 25 and 26 of citizens in any manner.

II. Prevention of Cruelty Animals Act, 1960

- Section 11 and 28 of the Prevention of cruelty of Animals Act, 1960 are to be interpreted as per Article 48, 48-A, 51 A(g) and 51 A (I) of the Constitution of India. The principle as per Section 28 of the constitution states that killing of any animal in the manner required by the religion of any community would not be considered as an offense. But it is to be noted that the law does not permit killing of animals in the temple. This is considered after analysing the pain that the

animal has to undergo while killing which causes immense pain, strain and suffering to the animal.

- According to **Rule 3 of the Prevention of Cruelty of Animals (Slaughter House) Rules, 2001**, no person is authorized to slaughter any animal within aa municipal area except in a slaughter house recognized or licensed by the concerned authority. No animal which is pregnant or has an offspring less than three months or has not been certified by a veterinary doctor that it is in a condition to be slaughtered, unless then the animal cannot be killed or slaughtered.

- According to sub-**rule (1) of Rule 6**, no animal can be slaughtered in a slaughter house in sight of other animals and as per **sub rule (3) of Rule 6** slaughter house shall provide separate section of adequate dimensions sufficient for slaughter of Individual animals to ensure that the animal to be slaughtered is not within the sight of other animals. Sub rule (5) of rule 6 states that the slaughter house should be such that it suits the animal slaughter and particularly the ritual slaughter.

6. JUDGEMENT IN BRIEF

In court after analysing the arguments made held that with regard to judgement by the Hon'ble Supreme Court in the case of *Sardar Syedna Taher Saifuddin Sahib v. State of Bombay*[16], held that human and animal sacrifice is inimical.

The court specified that the constitution is above any of the personal, religious values and laws. Animals share same feelings and emotions like humans. No person has the right to disturb the peace and tranquillity of humans by violating the basic rights of human beings. In the same way no person is given rights to violate animals. The court stated that religion should never turn to a source of trouble, cruelty to others including animals. It then further said that if animals cannot be slaughtered/ killed in the presence of other animals, then how can people be able to see killing them in the name of religion in the temples or other holy places?

The court in order protect the animals/birds imposed mandatory rules and directions to the state.

[16] AIR (1962) SC 853

i. Throughout the State of Himachal Pradesh, no person has the right to sacrifice/ slaughter any animal or bird in any place of religious worship, adoration or any congregation or procession or precincts connected with religious worship, on any public street, way or place, whether a thoroughfare or not, to which the public are granted access to or over which they have a right to pass;

ii. No person shall officiate or offer to officiate at, or perform or offer to perform, or serve, assist or participate, or offer to do so, in any sacrifice or slaughter of animals/ birds in any place of public religious worship or adoration or its precincts or in any congregation or procession, including all lands, buildings near such places which are ordinarily used for the purposes connected with religious or adoration, or in any congregation or procession connected with any religious worship in a public street, way or place;

iii. No person shall knowingly allow any sacrifice to be performed at any place which is situated within any place of public religious worship, or adoration, or is in his possession or under his control;

iv. It is the responsibility of the state government to caution and create awareness among the public by circulating pamphlets, exhibit boards or through any other means like the newspapers, audio and video visuals on the need for protection of animals and the government should ensure that sacrificing animals in religious places must be completely banned;

v. All the duty holders in the State of Himachal Pradesh are directed to punctually and faithfully comply with the judgment. It is made clear that the responsibility of prohibiting and preventing animal sacrifice in the state lies in the hands of the Deputy Commissioners and Superintendents of Police of all the Districts.

vi. The expression 'temple' would mean a place by whatever designation known, used as a place of public worship and dedicated to, and for the benefit of, or used as a right by the Hindu community or any section thereof, as a place of public religious worship. The temple premises shall also include building attached to the temple, land attached to the temple, which is generally used for the purposes of worship in the temple, whether such land is in the property of temple area or place attached to the temple or procession is performed.

7. COMMENTARY

The present case puts before us the group of society who appear to be uneducated and highly superstitious. The practice of animal sacrifice has been seen since the time of Vedas but as the civilization took place even people started moving from these practices. It is sad to see how people try to please God. We all believe that God is a symbol of peace, non-violence and love. Any God could of any religion does not want a life to be sacrificed to be please the God. The only thing God looks upon is the purity of heart of his believer and not the life of an innocent animal who has to undergo so much in order to fulfil the selfish desires of humans. The judgement made by the court is completely acceptable. In the case of *Dr. Praveen Bhai v. State of Karnataka*[17], the said that the core of religion is based upon spiritual values which the Vedas, Upanishads and Puranas were said to reveal to the mankind, is to "*love others, serve others, help ever, hurt never*". This is what all religion must follow. The judgement given by the High Court of Himachal Pradesh best suits in all manner.

It is to be noted that the court did not violate any of the rights enjoyed by the citizen as per Article 25 and 26 of the constitution nor preventing animal slaughter is against their religious rights. One thing every human being must understand is that unlike the human beings, even the animals have emotions, pain, sufferings, feelings. The law has analysed the freedom of animals and no person has the right to harm any of their rights.

8. IMPORTANT CASES REFERRED

- *Dr. Praveen Bhai v. State of Karnataka, AIR (2004) 4 SC 684*
- *Sardar Syedna Taher Saifuddin Sahib v. State of Bombay, AIR 1962 SC 853*
- *Ramesh Sharma v. State of Himachal Pradesh, CWP No. 9257 of 2011 and CWP Nos. 4499 and 5076/2012*

[17] AIR (2004) 4 SC 684

CASE NO. 22

DR. NOORJEHAN SAFIA NIAZ

V.

STATE OF MAHARASHTRA

2016 SCC ONLINE BOM 5394

GENDER DISCRIMINATION IN RELIGIOUS INSTITUTIONS

ABSTRACT

The following is a case summary of the landmark case *Dr. Noorjehan Safia Naz v. State of Maharashtra, 2016 SCC OnLine Bom 5394*. In this case the respondents had under the guise of protecting women totally discriminated them from entering the religious buildings like the dargah, mosque and so. The reason for placing a steel barricade barring women from entering the dargah were based on claims like their inappropriate attires, their safety and security and that there was an ignorance of the Shariat law. However, imposing such a ban that prohibits women from entering the sanctum sanctorum of the Haji Ali Dargah contravened Article 14, 15 and 25 of the Constitution and the Court accordingly instructed restoration of status-quo ante. Both the state and the respondent were to take effective steps to ensure the safety and security of women at the said place of worship.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	PIL No. 106 of 2014
Jurisdiction	:	High Court of Bombay
Case Filed On	:	January 28, 2015
Case Decided On	:	August 26, 2016
Judges	:	Justice V. M. Kanade, Justice Revati Mohite Dere
Legal Provisions Involved	:	Constitution of India, Article 226, 25, 26, 13, 14, 15, 44(2)
Case Summary Prepared By	:	Simi Varghese Tharakan, Mar Gregorios College of Law, Kerala

2. BRIEF FACTS OF THE CASE

- **Parties**

  Petitioner: Dr. Noorjehan Safia Niaz, Zakia Soman

  Respondents: Haji Ali Dargah Trust (Through its Board of Trustees)

- **Factually**

  Ever since their childhood the petitioners had been visiting the Haji Ali Dargah, the Dargah of Pir Haji Ali Shah Bukhari (R.A.), the patron S Q Pathan and during their visits, were permitted to enter the sanctum sanctorum where the saint lied buried, through a separate entry earmarked only for women to enable them to offer prayers. In March 2011, the petitioners along with other activists the Haji Ali Dargah and were allowed to enter the sanctum sanctorum to offer prayers. According the petitioners, in June 2012 when they revisited the Dargah to offer prayers, they discovered that a steel barricade was put up at the entry of the sanctum, preventing women devotees in the sanctum sanctorum of the Haji Ali Dargah.

- **Procedurally**

  Owing to the ban imposed on woman on the various grounds claimed the petitioners initially approached the respondents and sought answers for such ban. And after receiving answers that the ban was imposed to: protect woman; many wore wide neck blouses which when they bend over the Mazzar would show their breasts; and that they were not aware of the earlier Shariat provisions and made a mistake hence took steps to rectify the same. Subsequent to these claims of the Trust the petitioners approached various State Authorities including State Minority Commission, National Commission for Women, State Commission for Women, Chief Minister of Maharashtra, Trustee of Makhdhoom Shah Baba Trust and few Ministers too. A meeting between the petitioners and Dargah Trustees were arranged for which the latter never turned up. Despite several follow up letters, the Haji Ali Dargah committee had sent a reply letter that did not answer the matter in question by the petitioner, i.e., women are not being allowed at the shrine. The petitioners thereafter, again requested the respondent No. 2 Trust to discuss the issue and come to a consensus and also requested the then State Minister of Women and Child and the State Minority Commission to facilitate a dialogue and to amicably resolve the said issue. Owing to the several futile attempts by the petitioners through authorities concerned they approached the High Court through a Public Interest Litigation seeking a writ of mandamus and to declare that the female devotees have equal right to enter and access to all parts including the sanctum sanctorum of Haji Ali Dargah.

3. ISSUES INVOLVED IN THE CASE

I. Whether the Trust has been able to show that the entry of women in the close proximity to the grave of the male Muslim Saint was sin in Islam?

II. Whether there is any conflict between Art(s). 14 & 15 on the one hand and Art. 26 on the other?

III. Whether the practice to ban women from entering the sanctum sanctorum is essential and an integral part of Islam?

4. ARGUMENTS OF THE PARTIES

- **Petitioner**

Mr. Raju Z. Moray with Mr. Sagar Rane and Mr. Dishan Kukreja for Petitioners submitted that they filed the PIL after exhausting all the alternative remedies available. According to the petitioners the Scheme framed nowhere authorizes the Trustees to ban entry of woman at the Haji Ali Dargah. The ban imposed is ex-facie contrary both to the Scheme framed by the Court and also the Constitution of India. He said that the Trust is amenable to the writ jurisdiction under Article 226 and he also pointed out that the per the Scheme the Trustees to the Haji Ali Dargah could be appointed only with the permission of the Advocate General which clearly indicate the absence of autonomy of the Trust. He submitted that the said ban is contrary to Art(s). 14 and 15 of the Constitution. He also submitted that Article 26 of the Constitution of India expressly laid down that a Trust can only manage the affairs of the Trust and cannot regulate the same by imposing conditions or rules that are contrary to the Constitution of India. He also emphasized how the Quran has not expressly prohibited entry of woman into mosques or dargahs. He submitted how Islam believes in gender equality and as such the banning of devotees from entering the sanctum sanctorum was uncalled for.

The learned Advocate General submitted that it is the duty of the State to uphold the Constitution of India, so far it extends to upholding the citizens fundamental right to equality under Art(s). 14 & 15 and the right to practice religion under Article 25. It was submitted that unless the impugned ban is shown to be an essential or integral practice of Islam it could not be set up as the permissible abridgement of the fundamental rights guaranteed under Art(s). 14 and 15. He submitted that in interpreting the Constitution, it was important to adopt the doctrine of harmonious construction and that no part of the Constitution can be interpreted in such manner, as would result in curtailing or destroying any part of the Constitution. The interpretation shall always be that it upholds the fundamental rights of the citizens.

- **Respondent**

  Mr. Shoaib Memon appearing for the respondents opposed the grant of any relief in the PIL and disputed the issues raised in the PIL. He quoted verses from the Quran to support his submissions by showing how Islam had discouraged free mixing between men and women and the intention of the said restriction is to keep interaction at a modest level between them. Reliance was placed on guidelines laid down by the Apex Court in The *Deputy General of Police and Anr. v. S. Samuthiam*[18] According to him the petitioners had adopted the said remedy to gain publicity and that the present PIL has been filed for their own vested interest. He also submitted that under Article 26 the Trust had the right to manage its own affairs.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- **Article 13**

  This article of the Constitution is relevant here as this is the one which recognizes customs or usages. It says that laws which are inconsistent with or in derogation of the fundamental rights shall be void. Similarly, State shall not make any law that abridges or takes away the rights conferred by Part III of the Constitution.

- **Article 14**

  According to Prof. Dicey, the Rule of Law says that no person is beyond or above law rather they are equal in front of law. Evils like discrimination is combatted by this Article 14, which makes part of the golden triangle along with Article 19 and 21 of the Constitution. The framers of Constitution of India with a foresight embedded this Article under Part III of the Constitution which envisages the Fundamental Rights. Article 14 ensures that, irrespective of being citizen or foreign national, every individual enjoys equality under law and equal protection of law which is the basic concept of liberalism. Equality of law basically means that all persons should be treated equally without regards to their economical or societal status or even gender. State cannot provide special privileges to any community or people. By equality before law, it means that everyone has access to justice and no one can be barred from the same. Similarly, equal protection under law emphasizes that every individual must be protected against arbitrariness of the State.

[18] Civil Appeal No. 8513 of 2012 (Arising out of SLP(C) No. 31592 of 2008).

- **Article 15**

  This very provision upholds that no citizen shall be discriminated by the State on the grounds of caste, religion, sex, race and place of birth. 'Discrimination', here refers to the adverse distinctions from others. This Article is subject to certain exceptions and one such is that the State is permitted to make any special provisions for women and children as under clause 3 of the Article.

- **Article 25**

  This Article provides to all citizens the freedom of conscience to profess, practice and propagate their belief or religion; subject to public order, health and morality. The provision also gives State the power to regulate and restrict any financial, economic, political or other secular activity associated with any religious practice. Further, it also provides for the social welfare and reform or opening of Hindu religious institutions of a public character to all sections of Hindu religious institutions of a public character to all sections and classes of Hindus. And that people of the Sikh faith wearing and carrying the kirpan shall be considered as included in the profession of Sikh religion.

- **Article 26**

  This Article gives freedom to every religious denomination or any section thereof to manage their religious affairs subject to conformity with public order, morality and health. They have the right to establish and maintain institutions for charitable purposes. Thus, this becomes complementary to Article 25.

6. JUDGEMENT IN BRIEF

- **Ratio Decidendi**

  There is nothing in the Quranic verses which expressly banned women from entering the mosque. The respondent themselves could not show how entry of women in the sanctum sanctorum of the Haji Ali Dargah was sinful in Islam, on the basis of the verses relied upon by them, and reproduced in para 25. Only those practices which are "integral part of faith", can get exemption from State intervention.

  Under Article 25(1) subject to public order, morality and health and to other provisions under Part III, all persons are equally entitled to freedom of conscience and their right freely to profess, practise and propagate religion. This freedom guarantees to every citizen not only the right to entertain such religious beliefs as may appeal to his conscience but also affords him the right to exhibit his belief in his conduct by such outward acts as may appear to him proper in order to spread his ideas for the benefit of

others. Article 26 provides that subject to public order, morality and health, every religious denomination or any section thereof shall have the right to establish institutions for religious purposes, it is entitled to manage its own affairs in the matters of religion, it is entitled to own and acquire moveable property and to administer such property in accordance with law.

Essential part of a religion means the core beliefs upon which a religion is founded without which a religion is no religion. The test to determine whether a part of practice is essential to the religion is to find out whether the nature of the religion will be changed without the part or practice. Nobody can say that the essential part of that religion has changed from a particular date or by an event. Such alterable 'parts' are definitely not 'core' of the religion where belief is based and religion is founded upon. It could only be treated as non-essential part or practices." Thus, such kind of changes could only be considered as add-ons to the non-essential part of the practices. And such non-essential practices will not have the protection of Article 25 and 26.

In this instant case reference must be made to Quran, the fundamental Islamic text, to determine whether a practice is essential to Islam. And looking at the facts the respondents have not been able to justify the ban to be legal or otherwise restricting entry to the sanctum sanctorum.

Further, it is to be noted that the respondent Trust is a public charitable trust registered under the provisions of the Bombay Public Trust and the land on which the dargah is situated is one that has been leased out by the Government through a lease deed. And the trust was entitled to regulate only the maintenance of the institution and the charities and nothing else. Therefore, it is clear that the question merely relating to administration of properties belonging to religious group or institution are not maters of religion.

The guarantee under our Constitution not only protects the freedom of religious opinion but it protects also acts done in pursuance of a religion. Article 25 reserves the right of the State to regulate or restrict any economic, financial, political and other secular activities which may be associated with religious practice and there is a further right given to the State by which State can legislate for social welfare and reform even though by so doing it might interfere with religious practices.

The Trust is a liberty to take steps to prevent sexual harassment of women, not by banning or preventing women from entering the sanctum sanctorum of the dargah but by taking effective steps and making provisions for their safety and security. The State is equally

under an obligation to ensure that the fundamental rights guaranteed under Article 14, 15 and 25 of the Constitution.

Hence, the Court held the ban imposed by the respondent to be in contravention of Article 14, 15 and 25 of the Constitution and the petition be allowed. Rule is made absolute.

7. COMMENTARY

It can be understood, from the above judgement that despite the fact that there exists Constitutional Provisions that guarantee freedom to religious institutions it shall never contradict the fundamental rights that guarantee welfare of the people in all possible manner. Thus, it can be seen that welfare of the people stands above all other law to which includes both constitutional and statutory provisions.

Religion is personal belief and it is not something which can be imposed abruptly. If those responsible for propagating and regulating a religion and those managing the religious were provided immense freedom without subjecting them to restriction would have given them the power to abuse the freedom in the most unacceptable manner that would affect the internal harmony in our nation. Hence, it is appropriate that the State is vested with the power to intervene at the right moment in order to keep the public order intact. And as our law believes no one is above law even when it is a matter that is spiritually regulated.

Thus, I am in agreement with the decision of the Court wherein it has ensured fair hearing and emphasized on treating equally both men and women who wished to follow their beliefs.

8. IMPORTANT CASES REFERRED

- *The Deputy General of Police & Anr. v. S. Samuthiram, (2013) 1 SCC 598.*
- *C. Masilamani Mudliar v. Idol of Shri Swaminathaswami Thirukoil, AIR 1996 SC 1697.*
- *The Dargah Committee, Ajmer v. Syed Hussain Ali, 1961 AIR 1402.*
- *Commissioner of Police v. Acharya Jadgishwarananda Avadhut, AIR 2004 SC 2984.*
- *Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.*
- *Syedna Taher Saifuddin Saheb v. State of Bombay, 1962 AIR 853.*
- *Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan, AIR 1963 SC 1638.*
- *Dr. Subramanium Swamy v. State of Tamil Nadu & Ors., (2014) 5 SCC 75.*
- *Shri A. S. Narayana Deekshitulu v. State of Andhra Pradesh & Ors., AIR 1996 SC 1765.*

- *Indira Dattaram Patil v. Executive Officer, Shree Siddhi Vinayak Ganapati Temple Trust Management Committee, 2005 (3) BomCR1.*
- *Vishwa Lochan Madan v. Union of India & Ors., (2014) 7 SCC 707.*
- *Shri Anandi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust and Ors. v. V.R. Rudani & Ors., 1989 AIR 1607.*
- *Board of Control for Cricket v. Cricket Association of Bihar & Ors., (2016) 8 SCC 535.*
- *Seshammal v. State of Tamil Nadu, (1972) 2 SCC 11.*
- *Minersville School District Board of Education etc. v. Gobitis, (1939) 310 US 586 (I).*
- *West Viginia State Board of Education v. Barrette, 1942 – 319 US 624 (J).*
- *Mohd. Wasi & Anr. v. Bachchan Sahib & Ors., AIR 1955 All 68.*
- *Adelaide Company of Jehovah's Witnesses v. Commonwealth, 1943-67 Com-WLR 116.*

CASE NO. 23

CHANDANA DAS (MALAKAR)

V.

THE STATE OF WEST BENGAL & ORS.

2019 (3) ESC 783 (SC)

LINGUISTIC INSTITUTIONS ENTITLED TO ADMINISTER SELF

ABSTRACT

The following is a case summary of *Chandana Das (Malakar) v. The State of West Bengal & Ors.* (2019). It emphasizes on Article 30 of the Constitution of India, which lays down that minorities based on religion or language have the right to establish and administer their own educational institutions. Under this article, words establish and administer educational institution are used whereby 'establish' means to achieve permanent acceptance and recognition of an institution and the phrase 'to administer' means to manage and be responsible for the running of the institution. Every now and then question has been raised whether state interference should be allowed when it comes to Article 30. The same issue was raised in the impugned judgment namely *Chandana Das v. State of West Bengal* wherein the full bench of Supreme Court re-iterating various landmark precedents held that the reason for enacting Article 30 was to provide administration independence to minority institutions and therefore such interferences should be very much limited.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No 2858 of 2007; Civil Appeal No 2859 of 2007
Jurisdiction	:	Supreme Court of India
Case Filed On	:	May 5, 2007
Case Decided On	:	September 25, 2019
Judges	:	Justice R. F. Nariman, Justice R. Subhash Reddy, Justice Surya Kant
Legal Provisions Involved	:	Constitution of India; West Bengal Minorities' Commission Act, 1996; Rules for Management of Recognised Non-Government Institutions (Aided and Unaided), 1969; West Bengal Board of Secondary Education Act, 1963
Case Summary Prepared By	:	Rakshita Shah, Advocate, Surat District Court

2. BRIEF FACTS OF THE CASE

- **Parties**

  Appellant: Chandana Das (Malakar)

  Respondent: The State of West Bengal & Ors.

- **Factually**

  The appellants were appointed as teachers on temporary basis in Khalsa Girls High School, Paddapukur Road, Bhowanipore, Calcutta. However, the District Inspector of Schools, Calcutta, disapproved such appointment since it could be made only on the recommendations of the School Service Commission established under the Rules for Management of Recognized Non-Government Institutions (Aided and Unaided), 1969 hereinafter referred to as "the Rules"). In his order dated January 29, 2004 it was held that the appointing institution being a linguistic minority institution was entitled to select and appoint its teachers. The Single Bench accordingly directed the respondents in the writ petitions to approve the appointment of the appellants as whole-time teachers with effect from July 28, 1999 and release the arrears of salary and other service benefits in their favour with effect from the said date.

- **Procedurally**

  Aggrieved by the order passed by the District Inspector, the appellants approached the High Court of Calcutta in Writ Petitions Nos. 16256 and 16255 of 2003 which were allowed by a learned Single Judge of the High Court.

  The High Court held that the Institution being a recognised aided Institution, the management of the Institution was bound make appointments against a permanent post only if the candidate was recommended for any such appointment by the School Service Commission. The Division Bench further held that the appointment was beyond the sanctioned staff strength and lacked prior permission of the Director. The court also noted that absent the Institution's claim of being a minority institution it was not open to the employee writ petitioners to claim any such status on its behalf.

  Aggrieved by the judgment and order of the Division Bench of that Court, the appellant of this petition approached Supreme Court of India in the appeal named *Chandana Das (Malakar) v. State of West Bengal* whereby there was a disagreement between the Judges as well as amongst the separate Benches. The main grounds for disagreement were two. Firstly, there was difference of opinion as to whether said school being aided institution can claim a minority status and secondly, school having accepted the special

constitution in terms of Rule 8(3) of the Rules, the school is estopped from contending that it is a minority institution.

3. ISSUES INVOLVED IN THE CASE

I. Whether the judgment and order of the learned Single Judge of the Calcutta High Court is correct and that of the Division Bench of the Calcutta High Court should be set aside, or vice versa?

4. ARGUMENTS OF THE PARTIES

- **Plaintiff**

  The appellant argued based on several judgements produced, that the fundamental right under Article 30 of the Constitution of India cannot be waived. The appellant presented citing various judgments that though Respondent No. 4 school was an aided institution, Rule 28 qua appointment of teachers would not be applicable to it as it is a minority institution. The appellant showed that since the institution was set up for the minority community by the minority community it was unnecessary to first obtain a declaration from the competent authority as any such declaration would merely be recognition of a pre-existing right.

  The appellant read Rules 6, 8(3), 28 and 33 of the Rules together with the request dated April 19, 1976 of the Khalsa Girls School in which it was clearly stated that it was formed on behalf of the Sikh religious and linguistic minority in the State of West Bengal and to accord it the status of a minority institution. He then relied upon an order dated May 7, 1982 of the West Bengal Board of Secondary Education, in which, despite approving of a special constitution for future management of the school, was done in deviation of Rule 6 in recognition of the fact that it was a minority institution. It was also brought to notice the -fact that since 2008, Rule 32(c) is now substituted (to be seen under next head "legal aspects involved"). Lastly, he mentioned Section 2(c) of the West Bengal Minorities' Commission Act, 1996 whereby the term "minority" has been defined.

- **Respondent**

  The learned Senior Advocate appearing on behalf of Respondent No. 4 school, supporting the prayer of the teachers (appellant) also went through the letter dated April 19, 1976 to show that the school was set up purely as a linguistic minority school in the State of West Bengal.

The learned Senior Advocate appearing on behalf of the State, strongly relied upon the judgment of Banumathi, J. (of division bench) and, argued that Article 350B would make it clear that in order to avail the fundamental right under Article 30 the institution must first be declared to be a minority institution. He added that since the medium of instruction was Hindi, being the national language, the institution could not be said to cater to the needs of the minority community.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- **Constitution of India**
    - **Article 26** gives freedom to manage religious affairs
    - **Article 30** mentions right of minorities to establish and administer educational institutions
    - **Article 350B** talks about the duty of the Special Officer for Linguistic Minorities.

- **Rules for Management of Recognised Non-Government Institutions (Aided and Unaided), 1969**
    - **Rule 6** talks about composition of the Committee of an Institution other than that sponsored by the State Government.
    - **Rule 8** talks about the power of Executive Committee. Accordingly, when the executive committee is of an opinion that a school enjoying special constitution has not been functioning properly, it has the power to approve and Supersede Committee, to appoint Administrator or Ad-hoc Committee and to grant special constitution.
    - **Rule 28** talks about powers of Committee to appoint on the recommendation of the West Bengal Regional School Service Commission teachers on permanent or temporary basis against vacancies and within the sanctioned strength of teachers; subject to the provisions of any Grant-in-aid Scheme or Pay Revision Scheme or any order or direction or guide-lines issued by the State Government or the Director.
    - **Rule 32** states that the aforementioned rules shall not to apply to Institutions maintained and managed by the State Government, the Union Government or the Railway Board or the schools managed under the provisions of the St. Thomas' School Act, 1923, or to any other Institution as may be specified by the State Government by order, made in this behalf from time to time.

- **Rule 33** talks about Power of the State Government to frame further rules for any Institution or class of Institution to which the provisions of Article 26 or Article 30 of the Constitution of India may apply.

  These Rules have since been amended by a notification dated August 29, 2008, as has been noticed hereinabove. And Rule 33 has been omitted altogether.

  Rule 32(c) is now substituted as follows:
  Rule 32 Rules not to apply to certain Institutions such as the non-Government aided Educational Institution established and administered by a Minority referred to in clause (c) of Section 2 of the West Bengal Minorities' Commission Act, 1996 (West Bengal Act XVI of 1996);

  Explanation :- For removal of any doubt, it is thereby declared that the State Government may, for the purpose of ensuring quality education, access and equity, on an application made by any non-Government aided Educational Institution referred to in clause (c), make rules under the provisions of the said Act for the composition, powers, functions etc of the Committee of such Institution;"

  As a consequence, Rule 33 has been omitted.

- **<u>West Bengal Minorities' Commission Act, 1996</u>**

  I. **Section 2** defines minority whereby minority based on language within the purview of Article 29 of the Constitution of India can be recognized by the State Government by notification.

6. JUDGEMENT IN BRIEF

- Examining the arguments forwarded, the court stated that under the West Bengal Board of Secondary Education Act, 1963 no part of the powers and duties of the Board or of any authority set up therein confers authority to declare that a particular institution is, or is not, a minority institution and in regards to recognition of such legal right, referred to precedents like *N. Ammad v. Emjay High School*[19], *Corporate Educational Agency v. James Mathew*[20].

[19] (1998) 6 SCC 674
[20] (2017) 15 SCC 595

- The court abided by the settled law that the fundamental right cannot be waived by referring to *Ahmedabad St. Xavier's College Society v. State of Gujarat*[21]; *Olga Tellis v. Bombay Municipal Corporation*[22] and the recent judgment of *K. S. Puttaswamy v. Union of India*[23]. (Para 26). A mere acceptance of letter cannot be said in any manner an unequivocal waiver on part of the school. (Para 15)

- The apex court perused various landmark precedents whereby the historical reasons for enacting Article 30(1) have been set out in some detail. Such include *Kesavananda Bharati v. State of Kerala*[24], *Ahmedabad St. Xavier's College Society v. State of Gujarat*[25] and *T. M .A. Pai Foundation v. State of Karnataka*[26] and derived the conclusion that if Respondent No. 4 is a minority institution, Rule 28 of the Rules for Management of Recognized Non-Government Institutions (Aided and Unaided) 1969, cannot possibly apply as there would be a serious infraction of the right of school to administer the institution with teachers of its choice. (Para 23)

- The court held that medium of instruction, whether it be Hindi, English, Bengali or some other language would be wholly irrelevant to discover as to whether said institution/school was founded by linguistic minority the purpose of imparting education to members of its community. (Para 31)

- Conclusively the court affirmed the judgment of Thakur, J. (of division bench) as correct in law and consequently, the judgment and order of the learned Single Judge of the Calcutta High Court was held correct, and that of the Division Bench of the Calcutta High Court was set aside. (Para 34).

7. COMMENTARY

Khanna, J. in *Ahmedabad St. Xavier's College Society v. State of Gujarat* stated,

"A liberal, generous and sympathetic approach is reflected in the Constitution in the matter of the preservation of the right of minorities so far as their educational institutions are concerned… The same generous, liberal and sympathetic approach should weigh with the courts in construing Articles 29 and 30 as marked the deliberations of the Constitution-makers in drafting those articles and making them part of the fundamental rights."

[21] (1975) 1 SCR 173
[22] (1985) 3 SCC 545 and 569 to 571
[23] (2017) 10 SCC 1
[24] (1973) 4 SCC 225
[25] (1975) 1 SCR 173
[26] (2002) 8 SCC 481

"Right to freedom of religion" as guaranteed under Constitution of India as a fundamental right is like a charter of rights for minority and thus every now and then efforts have been done to optimally construe the same. As seen above the court has cited numerous landmark judgments wandering from fundamental rights of linguistic institutions to whether such a right could be waived or even is at mercy of legal recognition. Interestingly, the court refrained from much ado in analysing the scope and ambit of Article 30 of the Constitution and abided by the cited judgments whereby the question of minority institutions having right of administering their institutions without any external interference, whether government or otherwise, has been discussed in detail. To sum up, we can say that this case is yet another attempt of quashing the totalism and safeguard the fundamental rights.

8. IMPORTANT CASES REFERRED

- *Ahmedabad St. Xavier's College Society v. State of Gujarat, (1975) 1 SCR 173*
- *Corporate Educational Agency v. James Mathew, (2017) 15 SCC 595*
- *Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225*
- *K. S. Puttaswamy v. Union of India, (2017) 10 SCC 1*
- *N. Ammad v. Emjay High School, (1998) 6 SCC 674*
- *Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545 and 569 to 571*
- *T. M .A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481*

CASE NO. 24

MATHEWS MAR KOORILOS (DEAD)

V.

M. PAPPY (DEAD) AND ANR. ETC.

AIR 2018 SC 4033

RELIGION AND RESTRANING CASE

ABSTRACT

The following content is the summary of the case *Mathews Mar Koorilos (Dead) & M. Pappy (Dead) and Anr. Etc.* The case is related to composition of restraining embodied with the religious rights. The issue between the two sets of people regarding exercising the religious rights popped up in the said case. Article 25 and 26 of Indian Constitution has also been under the vigilance of this case. The exclusive right to practice religious services has been come into the radar of the case. Management of the churches also came into the picture to the indulging of various parties. The questioning on religious ambiguity took a major attention of the case.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal Nos. 6263-6265 of 2001
Jurisdiction	:	Supreme Court of India
Case Decided On	:	August 28, 2018
Judges	:	Justice Ranjan Gogoi, Justice R. Banumathi, Justice Navin Sinha
Legal Provisions Involved	:	Constitution of India, Article 25 and 26
Case Summary Prepared By	:	Joncy Lakhani Parul University, Vadodara

2. BRIEF FACTS OF THE CASE

- **Parties**

  Petitioner: Mathews Mar Koorilos (Dead)

  Defendant: M. Pappy (Dead) and Anr.

- **Factually**

  The appellant No.1 i.e., Metropolitan of Quilon Diocese of the Malankara Orthodox Syrian Church and appellant No.2 i.e., Vicar appointed by him for St. Mary's Church,

Kattachira filed the suit O.S. No. 187 of 1977.

The respondents or defendants in this suit signifies the Parishioners of the Church. Plaintiff or appellant inter alia pleaded for the statement that the Quilon Metropolitan and the Vicars appointed by them should have the exclusive right to conduct religious services in the plaint church, cemetery and Kurisumthotty.

The issue of spiritual and temporal authority between Malankara Church and the Patriarch of Antioch has been the subject matter of several rounds of litigations in variousmatters right from the year 1879. In this particular case, the matter relates to the Parish Church- St. Mary's Church, Kattachira.

- **Procedurally**

  Plaintiffs/appellants inter alia prayed for a declaration that the Quilon Metropolitan and the Vicars appointed by him have exclusive right to conduct religious services in the plaint church, Cemetery and Kurisumthotty and prayed for prohibitory injunction restraining the defendants and others who do not obey the plaintiffs/appellants from entering the plaint church and plaint schedule properties. Case of the appellants is that asper Ext.-A3 (original of which is Ext.-B19) assignment-cum-gift deed dated June 29, 1972, the first defendant C. K. Koshy assigned the plaint properties along with the church and cemetery etc. situated thereon, to the Metropolitan, Quilon Diocese and that they areentitled to conduct religious services and to manage the church and its properties.

  Defendants/respondents who are said to be the representatives of the Parishioners contended that the Church was founded with the object of conducting religious services by religious dignitaries who possess the spiritual grace transmitted from the Patriarch of Antioch and the entire East, for the benefit of the Parishioners. The respondents/defendants contended that the plaintiffs/appellants have repudiated and defied the spiritual powers of the Patriarch and the appellants/plaintiffs are not entitled toconduct any religious services in the plaint church. According to them, the plaint church is administered under the Constitution framed by the Parishioners marked as Ext.-B9 dated January 23, 1959 and no priest can function in the church without the consent of the Parishioners.

  The trial court vide common judgment dated March 6, 1986 dismissed the suit O.S. No.17 of 1976 filed by the respondents and decreed the appellant's suit O.S. No. 187 of 1977, declaring that the appellants have the right to conduct religious services in the plaint church and cemetery. The trial court granted permanent injunction

restraining the respondents/defendants and persons who do not obey the plaintiffs/appellants from entering the church and the plaint schedule properties and conducting religious services, and obstructing others who obey the plaintiffs/appellants.

Being aggrieved, the respondents/defendants filed appeals A.S. Nos. 140 and 142 of 1986 in O.S. No. 187 of 1977 before the High Court of Kerala challenging the common judgment dated March 6, 1986. The Single Judge dismissed both the appeals and held that inview of the unambiguous terms in Ext. A3, the parishioners are not entitled to question the right of Metropolitan over the plaint church and its properties and its right to conductreligious services.

Being aggrieved, the defendants/respondents filed appeals A.F.A. Nos.26-27 of 1997 before the Division Bench. The Division Bench vide common judgment dated April 4, 2000 allowed CRP No. 1314 of 1998 and disposed of AFA Nos.26-27 of 1997 and set aside the findings of Single Judge. The Division Bench recorded its conclusions that though the title of the properties vest with the Quilon diocese, the properties including church, cemetery etc. under Ext.-A3 are still under the control and management of the parishioners of St. Mary's Syrian Church, Kattachira. The court observed that the provisions of the 1934 Constitution sufficiently establish that the Parishioners havepower to hold movable and immovable items of properties.

Thus, an appeal was filed to the Supreme Court by the Metropolitan of the Malankara Orthodox Syrian Church and the Vicar appointed by him for St. Mary's Church, Kattachira.

3. ISSUES INVOLVED IN THE CASE

I. Whether the Quilon metropolitan and the Vicars appointed by him have exclusive right to conduct religious services in the plaint Church and manage its properties or if it is to be administered by the Parishioners?

4. ARGUMENTS OF THE PARTIES

- **Petitioner**

Plaintiffs/appellants inter alia prayed for a declaration that the Quilon Metropolitan and the Vicars appointed by him have exclusive right to conduct religious services in the plaint church, Cemetery and Kiurisumthotty and prayed for prohibitory injunction restraining the defendants andothers who do not obey the plaintiffs/appellants from

entering the plaint church and plaint schedule properties.

Case of the appellants is that as per Ext.-A3 (original of which is Ext.-B19) assignment-cum- gift deed dated June 29, 1972, the first defendant C. K. Koshy assigned the plaint properties along with the church and cemetery etc. situated thereon, to the Metropolitan, Quilon Diocese and that they are entitled to conduct religious services and to manage the church and its properties. The Parishioners who question such authority are not entitled to hold any office as members of the Church Committee or to enter the church.

- **Defendants**

Defendants/respondents who are thought to be the representatives of the Parishioners contended that the Church was established with the object of conducting religious services by religious dignitaries who hold the spiritual grace conveyed from the Patriarch of Antioch and all the East, for the assistance of the Parishioners. The church and its properties constitute a trust and can be used only for the purpose for which it was established. The respondents/defendants contended that the plaintiffs/appellants have repudiated and defied the spiritual powers of the Patriarch and the appellants/plaintiffs are not entitled to conduct any religious services in the plaint church. According to them, the plaint church is controlled under the Constitution framed by the Parishioners marked as Ext.-B9 dated January 23, 1959 and no priest can function in the church withoutthe consent of the Parishioners.

The Parishioners/respondents have filed a separate suit in O. S. No. 17 of 1976 challenging the validity of Ext.-A3-Sale-cum-Gift Deed (dated June 29, 1972) in favour of Quilon Metropolitan. On the same grounds taken by them in the other suit, they alleged that as beneficiaries of the Church and as its Managing Committee Members, they are entitled to see that its properties are not lost. They prayed for a decree declaring that Ext.-A3-Sale-cum-Gift Deed is ab initio void and for a perpetual injunction restraining the Metropolitan from implementing any of the provisions in the said document.

5. LEGAL ASPECTS INVOLVED IN THE CASE

I. Constitution of India, Article 25 & 26

- **Article 25 (Freedom of conscience and free profession, practice and propagation of religion)**

Article 25 guarantees the freedom of conscience, the freedom to profess, practice

and propagate religion to all citizens.

The above-mentioned freedoms are subject to public order, health and morality.

This article also gives a provision that the State can make laws:

That regulates and restricts any financial, economic, political or other secular activity associated with any religious practice.

That provides for the social welfare and reform or opening up of Hindu religious institutions of a public character to all sections and classes of Hindus. Under this provision, Hindus are construed as including the people professing the Sikh, Jain or Buddhist religions and Hindu institutions shall also be construed accordingly.

People of the Sikh faith wearing & carrying the kirpans shall be considered as included in the profession of the Sikh religion.

- **Article 26 (Freedom to manage religious affairs)**

  This Article provides that every religious denomination has the following rights, subject tomorality, health and public order.

  1. The right to form and maintain institutions for religious and charitable intents.
  2. The right to manage its own affairs in the matter of religion.
  3. The right to acquire immovable and movable property.
  4. The right to administer such property according to the law.

6. JUDGMENT IN BRIEF

The Court referred to the conclusions arrived at in K. S. Varghese case which settled disputes between the Patriarch and Malankara. K. S. Varghese held that the 1934 Constitution is valid and binding upon the Parishioners. It is not open to any individual church to have a parallel system of management in the churches under the guise of spiritual supremacy in the Patriarch. As per the consistent findings in the above judgments (*P.M.A. Metropolitan v. Moran Mar Martoma and Moran Mar Baselios v. Thukalan Paulo Avira*), the prime jurisdiction with respect to the temporal, ecclesiastical and spiritual administration of the Malankara Church is vested with Malankara Metropolitan and other authorities appointed by Malankara Metropolitan.

The Supreme Court observed that the recitals in Ext.-A3 make it clear that C. K. Koshy executed the Sale-cum-Gift Deed in favour of Metropolitan of Quilon Diocese intending that it may be treated as Bhadrasanam properties. Ext.-A3 provided that the Metropolitan may directly administer the said properties or through his representatives. Ext. - A3 further provided that the Parishioners and the Managing Committee should abide by the dictates

of the Metropolitan from time to time.

The Court thus held that the Division Bench was not right in holding that the Metropolitan had no power to appoint Vicar, Priests etc. The conclusion of the Division Bench that the Parishioners have the right to make all such appointments and to manage the affairs of St. Mary's Church is directly contrary to the express provisions of the 1934 Constitution and the findings of the Supreme Court in the cases referred. Thus, the impugned judgment was set aside and appeals were allowed.

Respondents also contended that the issue regarding the interpretation of Articles 25 and 26 of the Constitution of India ought to be determined by a Bench comprising at least five Judges of the Supreme Court under Article 145(3) of the Constitution of India. The Court held that it is not tenable. The matter had already been raised and elaborately argued by different senior counsels in K. S. Varghese case and it was held that the 1934 Constitution cannot be said to be in violation of Articles 25 and 26 of the Constitution of India. The same was endorsed in the current case.

7. COMMENTARY

Whenever the property is joint, all member has got right to enjoy unless and until the division takesplace. Suit for Declaration of their rights along with defendants in the church and parish as the bifurcation is not compulsory and for permanent injunction.

The Spiritual power is possessed by several authorities like Catholicos, Malankara Metropolitan, etc. Hence, it is too far-fetched an argument that the Patriarch of Antioch or his delegate should appoint a Vicar or priest. There is no violation of any right of Articles 25 or 26 of the Constitutionof India. Neither any of the provisions linking to appointment of the Vicar can be held to be in violation of any of the rights under Articles 25 and 26 of the Constitution of India. The 1934 Constitution cannot be held to be in violation of Articles 25 and 26 of the Constitution of India.

8. IMPORTANT CASES REFERRED

- *K.S. Varghese and others v. Saint Peter's and Saint Paul's Syrian Orthodox Church andothers, (2017) 15 SCC 333 K.S*
- *Most Rev. P.M.A. Metropolitan and others v. Moran Mar Marthoma and another, 1995 Supp (4) SCC 286*
- *Moran Mar Baselios Catholicos v. Thukalan Paulo Avira, AIR 1959 SC 31*

CASE NO. 25

STATE OF GUJARAT

V.

ISLAMIC RELIEF COMMITTEE OF GUJARAT

(2018) 13 SCC 687

TAXES TO PROMOTE RELIGIOUS AFFAIRS

ABSTRACT

The following is a case summary of the dispute that arose between the State of Gujarat and the Islamic Relief Committee of Gujarat in the year 2012. This case mainly arises in the background of the communal riots that broke out in the State of Gujarat in the year 2002 and as a result led to desecration of many religious hubs, places and institutions such as mosques, dargahs, graveyards, khankahs, temples and etc. It was the Islamic Relief Committee of Gujarat (IRCG) that being grieved by the sense of loss of religious structures of public importance first approached the High Court by way of a Public Interest Litigation (PIL). The Committee wanted to be compensated from the State funds for the charges they had to incur to rebuild those religious structures up from their present devastated existence ever since the 2002 State riots. However, it was not long before the matter had to brought in before the Supreme Court also to be deliberated upon and serve justice to the two parties involved.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	CA No. 3249 of 2016
Jurisdiction	:	Supreme Court of India
Case Filed On	:	2016
Case Decided On	:	August 29, 2017
Judges	:	Justice Dipak Misra, Justice Prafulla C. Pant
Legal Provisions Involved	:	Constitution of India, Article 21, 27, 136, 226
Case Summary Prepared By	:	Tuhupiya Kar, Department of Law, University of Calcutta

2. BRIEF FACTS OF THE CASE

- **Parties**

  Appellant: State of Gujarat

  Respondent: Islamic Relief Committee of Gujarat

- **Factually**

  The Appellant in the *State of Gujarat v. Islamic Relief Committee of Gujarat* have approached the Supreme Court of Gujarat by way of SLP (C) No. 15730 of 2012 as against the order and judgement of the Gujarat High Court dated February 8, 2012. The petitioner's prayer being therein that the fixing expenditures of the religious structures crushed under the 2002 riots simply be paid for and that for the purpose a detailed structure be made by the State under the supervision and guidance of the said High Court.

  It was with respect to the above matter that the High Court had ruled in favor of the petitioning party i.e., IRCG and thereby had ordered the State of Gujarat to give adequate compensation to the persons in charge of the damaged religious places as they had stood and existed on the date of destruction. The High Court also mentioned that the State was not liable for paying anything extra for the additional renovation work that had already been done and paid for by the in charges or that they were planning to get done anytime in future. Owing to this order the High Court directed the manner in which the compensation had to be determined.

  This case which was brought within the purview of the Supreme Court by the State of Gujarat had the prospect of deciding that whether High Courts can use their power of issuing writs as provided to them under Article 226 of the Constitution of India to direct the State to use their State funds (consisting of several taxes paid by public for the sake of general welfare) for religious purposes and its structures' constructions.

  As the validity of the writ issued by the High Court under Article 226 was being deliberated upon, the questions that arose from the Appellant's side with regard to the extent of the 'Right to Freedom of Religion' and the underlying articles also had to be interpreted by the learned Senior Counsel Mr. Tushar Mehta who appeared on behalf of the State Government and who didn't leave a single stone unturned in reasoning the non-liability of the State to extract funds from its treasury for the sole purpose of funding the reconstruction of the riot-damaged religious structures.

- **Procedurally**

  The Supreme Court

  - Placed reliance on para 3 of the judgement of the case *Archbishop Raphael Cheenath S.V.D. (3) v. State of Orissa [(2009) 17 SCC 90]*.
  - Ordered placing its basis on the aforementioned case to let the Senior Counsel appearing on behalf of the Appellant to inform the Court of any schemes that may

be contemplated or is underwork for the repair of the religious structures that were demolished by the 2002 State communal riots.

- Declares the submission made by Mr. Tushar Mehta (Senior Additional Advocate General) that the said scheme is underwork and the same would be filed by State in about 4 weeks' time.
- Therefore, Court maintained Status quo on the case for a period of one month.
- (Owing to the above order the final scheme was put up on October 1, 2013)
- Sets aside the order and judgement that was passed by the High Court on this matter and the Court also disposes of the appeal in the present case and orders that there shall be no order as to the matter and subject of costs.

3. ISSUES INVOLVED IN THE CASE

I. Whether the State is liable to compensate for the rebuilding of the destroyed religious structures as a result of the 2002 State communal riots?
II. Whether the High Court has breached its writ jurisdiction as under Article 226?
III. Whether the destruction of religious structures cripples any citizen of their fundamental right or 'Right to Life' benefits as under Article 21.

4. ARGUMENTS OF THE PARTIES

- **Appellant**

Argued that the State funds cannot be directed to be spend for the restoration of any religious place/structure especially by a High Court by way a writ under Article 226 in as much under the provisions of Article 25, 26, 27 and 28 as provided under the 'Right to Freedom of Religion' because the State Fund is a collection of taxes taken from the public for the general welfare. Also, the Right to Freedom of Religion provides the freedom to propagate and practice religion but it nowhere provides that that should be done so from any particular designated place for religion.

Argued that the High Court ought not to have exercised its power of writ jurisdiction for the reconstruction of religious properties because the award of damages for any kind of property falls within the ambit of the 'Right to Property' which stands a non-fundamental right though a constitutional one as under Article 300-A.

Argued that the issue of any writ which having the effect of the use of the taxpayer' money (State Fund) for the sake of repair/restructuring/construction of any "religious place" would adversely affect the spirit and object of Article 27 of the Constitution. In

other words, State funds cannot be to be used for maintenance of religious sites until and unless they have been recognized under some State institution or State Trust.

Argued that the High Court, in exercise of its constitutional writ jurisdiction under Article 226 of the Constitution of India can grant compensation only when there is an established violation of Article 21.

Argued that granting of compensation or damages is a genesis of the Law of Torts and as per the consistent view of the Supreme Court that the remedy of damages by way of writ jurisdiction by the Court for any breach of fundamental rights would only be exercisable by the aggrieved party and a stranger such as the IRCG just because it takes the burden of representing all the aggrieved parties does not have any right to enforce against the State.

Therefore, it is also asserted that a 'Special forum' created by the Court not availed of by the 'aggrieved parties' for the purpose of carrying out its order of the quantification of money to be compensated by the State is by default not viable. Also, the religious places for whose benefit this forum seems to have been ordered to be created are not recognized to managed under any particular administration body of the State.

Asserted, that the statutory period of limitation for the affected parties that are being represented on behalf of the IRCG to take recourse to legal remedy of any kind had expired years back but still under the High Court's order and judgement now they are provided with all the rights to make monetary claims under the 'Special Forum' by approaching the District Judge.

- **<u>Respondent</u>**

  Argued that there is a clear violation of Article 21 by the State as destruction of religious places of the weaker sections of the society inflicts humiliation upon them. Also, Article 14 implies that the State is to provide equal protection of laws to all citizens and thereby the State is necessarily obligated to protect religious places of minorities also.

  Argued that in case of failure of law and order in any State i.e., Communal Riots in case of State of Gujarat, the High Court is legally justified in invoking actions of 'Public Law Remedy'. Stated that the State had specifically accepted to restore the crippled places of worship before the National Huan Rights Commission (NHRC).

Argued that the failure of law and order in the State allows the petitioners to sought relief against the State Government as it stands the responsibility of the State to protect the breach of fundamental rights but the failure to adhere to such responsibility amounts to violation of public law owing to which the writ issued by the High Court under Article 226 wherein it asks the State to compensate the respondent is quite feasible in nature.

Argued that the plea of the petitioner to ask for compensation for rebuilding of the religious places is erroneous in nature and moreover the nobody specifically has been compelled to pay any sort of religious tax but only the State has been asked to pay compensation from its treasury which consists of tax from the public and moreover the claims by the respondent for expenses incurred or that may incur in future are in no way for promotional activities of any sort.

Argued that the contention of the Appellant of the High Court creating a 'Special Forum' is without any substance is absurd as the State is allowed to declare a religious place as unauthorized by way of plea to the District Judge.

Argued that the State is fundamentally obligated to protect all places of worship (Article 14) without making a distinction between a collective or an individual property. Primarily, the principle on which the State is obligated to compensate any property damage is that it has failed in fulfilling its fundamental constitutional obligation. Put forward the belief that no two fundamental rights can be compartmentalized in a straitjacket manner and that one fundamental right draws its sustenance from another and therefore all fundamental rights are complementary to one another. The 'Relief Scheme' and the 'Special Forum' under it to lay out the process of quantifying and the payment of compensation to the aggrieved is in consonance with many decisions and guidelines that have been laid out by this Court (SC) time and again in many cases.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- In this case we find that the while many constitutional Articles concerned with the fundamental right of the **'Right to Freedom of Religion' (Articles 25-28)** were raised by the Appellant side of the case, it was Article 27 that was contended by the Appellant of lacking meaningful interpretation and was thereby interpreted by the Senior Learned Counsel Mr. Tushar Mehta. The Court also took relevance in this interpretation and decided while keeping in view the huge role of the State in spending judiciously decided

that it was indeed inappropriate to direct the State to compensate from the aid of its State exchequer.

- Not only that but **Article 226** of the Indian Constitution also which deals with the writ jurisdiction of the High Court was raised in great contention by the Appellant side because as per the counsel the High Court had wrongly invoked the writ jurisdiction because there was allegedly no violation of any fundamental right or of **Article 21 (Right to Life)** and hence the matter at hands of the High Court in no way could have called for a 'Public Law Remedy' such as the issuance of a writ jurisdiction under the present case.

- In fact, it was also taken by the Appellant's Counsel that the claim for the damages of property should have come only by way of **Article 300-A** which deals with the 'Right to Property' and which happens to be a non-fundamental right at present.

- It was seen in this case that while the Appellant side explored every possible Constitutional provision, they could have fallen trapped to the Respondent on the other side while denying and equally opposing all these contentions, it based reliance on **Article 14 (Equality before Law)** for much of a significant portion of its arguments.

6. JUDGEMENT IN BRIEF

The Supreme Court in this case definitely took its time to analyze the different contentions and defenses of both the parties. A significant portion of the Court's analysis was made on previously cases that were decided by it of like nature i.e., it based its reliance on precedents. One of the cases the Supreme Court referred to was the *Destruction of Private and Public Properties v. State of A.P. [(2009) 5 SCC 212],* where acting upon the reports of the Committees the Court commented on the matter of the liability of the State. The Court espoused the reasoning that a remedy of compensation under Article 21 can only be availed of if the aggrieved party can directly and clearly show a violation of any kind of bodily autonomy. The Court further relied upon the *Common Cause v. Union of India (1999)* only to interpret the scope of compensation under Article 21. The Court finally reiterated that any sort of deviation of public-paid-taxes towards the upkeep of religious structures is a violation of Article 27. The Court also found the scheme of the Gujarat State Government which was put up on October 1, 2013 to be reasonable where the State stipulated a provision for recompensating of a maximum amount of Rs. 50,000 /- to legitimate claims based on certain conditions cited in the scheme itself.

The Court at last, ordered for the Gujarat High Court Order to be set aside and directed the State Government to carry out the implementation of the scheme proposed by it as effectively as possible.

7. COMMENTARY

The case background is set amidst the 2002 Godhra riots that had taken place in the State of Gujarat. The turmoil between the State of Gujarat and the Islamic Relief Committee of Gujarat mainly dealt around the matter concerning the reconstruction or renovation of the religious structures that were destroyed or demolished as a result of the riots. As much as the Supreme Court was in full support of the Scheme mandated by the State Government to take responsibility for the law-and-order failure that had taken place within its premises, the Supreme Court also believed that the religious trusts and committees had to paid for their loss but in the manner as was laid out by the State. Moreover, the interpretation of Article 27 put forth by the Appellant's Advocate was also nodded over by the Court as it believed that the tax deviation in favour of the reconstruction of religious places was a total violation of Article 27 and that the State couldn't be forced to do so. At last, it was seen that the decision of the Supreme Court rightly served the wheels of justice as both the parties had arrived at a mutual negotiation by cutting down some of their high-ended claims but it cannot be said that all the claimants that were being represented by the IRCG were equally satisfied as the Supreme Court did happen to be receiving pleas for a review of its decision with regard to the case at hand but which were eventually struck down and the decision therefore stood as it was.

8. IMPORTANT CASES REFERRED

- *Archbishop Raphael Cheenath S.V.D. (3) v. State of Orissa, (2009) 17 SCC 90*
- *Common Cause v. Union of India, (1999) 6 SCC 667*
- *Destruction of Private and Public Properties v. State of A.P., (2009) 5 SCC 2.*
- *Prafull Goradia v. Union of India, (2011) 2 SCC 568*
- *S.R. Bommai v. Union of India, (1994) 3 SCC 1*

CASE NO. 26

SANTOSH SINGH

V.

UOI & ANR.

AIR 2016 SC 3456

COURTS CANNOT REGULATE SUBJECTS IN SCHOOL

ABSTRACT

The following is a case summary of the case *Santosh Singh v. UOI & Anr*. The court has no authority to determine whether or not children in grades one through twelve should be required to take a separate moral science course. The question of whether a value-based educational system would be better served by developing a separate topic on moral science or whether value-based training should cover the entirety of a regulated curriculum cannot be answered using present judicial review criteria. These are issues that are outside the scope of the court's Article 32 jurisdiction to resolve. Article 32 authority of the Court is a cure for violations of basic rights, not a panacea for all ills. Treatments for concerns such as the petitioner's apparent objections to materialism's strong presence must be found elsewhere, and those with the financial resources to do so are responsible for doing so. The ability to develop and implement educational initiatives to address such issues, as well as the constitutional requirement to do so. Individuals who bemoan civilization's decline, such as the well-intentioned petitioner, appear to be drawn to the moral argument.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	W. P. (C) 1028 of 2014
Jurisdiction	:	Supreme Court of India
Case Filed On	:	February 2, 2015
Case Decided On	:	July 22, 2016
Judges	:	Justice Dr. D Y Chandrachud, Justice T S Thakur
Legal Provisions Involved	:	Constitution of India, Article 25, 32, 51A(f)
Case Summary Prepared By	:	Rupam Banerjee, Noida International University, Greater Noida

2. BRIEF FACTS OF THE CASE

- **Parties**

  Petitioner: Santosh Singh

Respondents: Union of India and Anr.

- **Factually**

  The petitioner is an attorney-at-law who practices before this Court regularly. The petitioner claims that she is "seriously troubled with the rapidly declining moral principles in the society touching every part of life were making money, anyhow has become the primary motto of society," invoking Article 32 of the Constitution.

- **Procedurally**

  The petitioner effectively seeks this Court's Article 32 jurisdiction to obtain a mandamus requiring the addition of moral science as a separate subject to the school curriculum. There is no denying that moral principles are an important part of value-based education. Education's goal is to instil in children a spirit of inquiry, a thirst for information, and a sense of values. The essential values on which our constitutional core is built include liberty, equality, and the dignity of each individual.

  Education is a key tool for personal development, as well as a critical tool for nation-building. Traditional borders have been obliterated by technology, and the globe has become a worldwide networked community of information ideas. The issues that our educational system faces have changed quickly, possibly too quickly for our educational system to develop practical ways to address them.

3. ISSUES INVOLVED IN THE CASE

I. Whether the Court can issue a mandamus of this sort in the public interest while exercising its jurisdiction?

4. ARGUMENTS OF THE PARTIES

- **Petitioner**

  Today's educational system, according to the petitioner, fails to instil the actual aim of education, which is to generate good human beings. The petitioner claims that the state owes a duty to elementary and secondary school students to make every effort to provide educational opportunities that foster moral values. It has been stated that CBSE course curriculum and the NEP do not give "moral education" due weight.

  Article 25 which recognizes religious freedom and the fundamental right to profess, practise, and transmit religion, is allegedly violated by the petitioner's omission to include

moral science as a mandatory topic. As a result, filing claims is a violation of Article 51A(f) of the Constitution's fundamental duties.

The petitioner is seeking a mandamus to compel the addition of moral science as a required subject in school from grades I to XII "to teach moral principles and foster national character in the national interest."

Under this Court's Article 32 jurisdiction, the petitioner effectively seeks a mandamus requiring the addition of moral science as a separate subject to the school curriculum. Moral principles are indisputable elements of value-based education.

Our constitutional framework is founded on fundamental ideals such as liberty, equality, and the dignity of each individual.

- **Respondent**

CBSE has filed a counter-affidavit with this Court in response to the notice issued by this Court on February 2, 2015. According to the learned ASG, the Union of India has approved the reply submitted by CBSE.

These educational objectives have been interlaced across the curriculum to convey constitutional ideas as well as basic universal human values that are affirmed across all civilizations, according to CBSE's statement.

According to CBSE, value-based education is emphasised through a three-pronged approach that includes bringing all stakeholders into the school community; (ii) permeating the school climate throughout the curriculum; and (iii) incorporating value-based education into all aspects of the curriculum; and (iv) incorporating a wide range of principles into its resources, such as a positive, just, and empathetic attitude; and (v) incorporating value-based education into all aspects of the curriculum

In 2009, the CBSE revised the evaluation scheme for grades IX and X, focusing on co-curricular problems such as life skills, attitudes and values, sports and games, and co-curricular activities.

In 2009, the CBSE revised the evaluation scheme for grades IX and X, focusing on co-curricular problems such as life skills, attitudes and values, sports and games, and co-curricular activities.

To promote democratic values, the Board has focused on Article 51A of the Constitution.

The Board has chosen an interdisciplinary approach to the aforementioned Summative Assessments, deciding to assess students with around a 5% weightage in each area utilizing questions that are interwoven with the subject's content.

Other steps made by CBSE include “A Manual on Environmental Education and Adolescence Education; Initiation of an ‘Awakened Citizens Programme' with Ramakrishnan Mission.”

An Educator's Manual for Gender-Sensitive Pedagogy in Primary, Middle, Secondary, and Senior Secondary Classes.

The curriculum has been updated to include a new elective course in human rights and gender studies.

The CBSE counter-claim highlights the important features of its gender sensitization and equality education system, which includes a human rights and gender studies option.

The CBSE also observed that NCERT's new integrated approach textbooks include content that helps students to focus on personal, social, constitutional, and humanistic concepts.

After working with numerous stakeholders including as administrators, teachers, and educationists, NCERT created a framework "Education for Values in Schools" in December 2012.

The Board has focused on Article 51A since these goals are reflected in student performance.

They must be taught through curricular and cross-curricular group activities and projects in schools.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- **Article 32**

  It is one of the fundamental rights guaranteed by the Constitution to all citizens. Article 32 deals with "Right to Constitutional Remedies," or right to petition SC for needful actions to enforce rights given in Part III of Constitution. The Article is found in Part III along with other rights such as equality, etc. If one of these fundamental rights is violated, a person can only go to the Supreme Court directly under Article 32.

- **Article 25**

  This article guarantees all citizens the right to proclaim, practice, and disseminate their religious beliefs, as long as they do it following public order, health, and morality. The article also grants the government the authority to regulate and limit any financial, economic, political, or other secular activity affiliated with any religious practice. And those persons of the Sikh faith who wear and carry the kirpan are believed to be practicing Sikh religion.

  In *Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan*, the SC declared that standard for determining what is an integral part of a religion is whether or not it is considered as integral by the religious community.

- **Article 51(A)f**

  It is every citizen's duty, according to our Constitution's Fundamental Duties, to respect and adhere to rightful ideas that inspired our nation's freedom struggle; to promote harmony and spirit of common brotherhood among all people; to value and preserve our composite culture's rich heritage, and to work for excellence in various aspects of life - be it social or private. Clause (f) of Article 51A requires us to treasure and protect our country's heritage and culture.

  As a result, we may not desecrate other's worship place, burning religious publications, assault priests from different religion, or obstruct persons exercising their Fundamental Right to profess, practice, and propagate their religion. Education, in its broadest and finest sense, can once again provide a corrective to the aforementioned deviations.

6. JUDGEMENT IN BRIEF

The court's assumption that it could provide solutions to thorny challenges involving balancing conflicting elements that extend beyond the legal plane was unrealistic. Concerns about constitutionality and legality are addressed by the courts. It's difficult to see how this court can exercise authority over matters like ideology, social theory, policy making, and experimentation, like issuing a mandamus to compel a plan for teaching in a topic in school.

It is not for the court to decide whether a different technique would serve the goal of providing value-based education better. These are perplexing topics for which more than one solution may appear to be appropriate. That is precisely why people who are responsible for teaching and governing in the field of education must be the ones to resolve such issues.

The court cannot compel any good that is deemed to be in the best interests of society. The court system is thus not a panacea for every societal issue that a public interest petitioner sees. A problem like the one we're dealing with now can't be solved using judicially controllable standards because the answer isn't based on a legal or constitutional foundation.

In any event, we've referred to the CBSE declaration, which the Union of India has adopted as a reflection of its position We believe the Writ Petition is lacking merit for these reasons. As a result, the Petition has been thrown out. This is how applications for impalement and intervention are handled.

7. COMMENTARY

It can be understood, from the above judgement that A situation like the one we're dealing with currently can't be handled using judicially regulated standards because the answer isn't built on a legal or constitutional foundation, in any event, we've referred to the CBSE declaration, which the Union of India has adopted as a reflection of its position. We believe the Writ Petition is lacking merit for these reasons. As a result, the Petition has been thrown out. This is how applications for impalement and intervention are handled.

"We need to reaffirm our commitment to the principle of equality, within the panorama of cultural and socio-economic diversity from which children enter the portals of the school," the National Curriculum Framework of 2005 stated.

In a competition driven economy, individual desires make education equivalent to a tool for gaining financial prosperity. As a result of this worldview, which throws children in strictly competitive situations, distorting their values, they are subjected to extreme stress. CBSE emphasizes value-based education through a three-pronged approach that includes bringing all stakeholders into school groups, permeating school environment throughout the syllabus, and incorporating value-based education into all aspects of the curriculum, incorporating a wide range of principles into its resources, such as an optimistic educational environment, according to CBSE. Since these objectives are reflected in student performance, the Board has concentrated on Article 51A. They must be taught through curricular and cross-curricular group activities and projects in schools.

CASE NO. 27

T. WILSON

V.

DIST. COLLECTOR, KANYAKUMARI DIST. & ANR.

(W.P. (MD) No. 5226 of 2016 & W.P.(MD) Nos 4683 of 2016 & 6124 of 2021, MADRAS HIGH COURT)

STANDARDIZED DEFINITION OF RELIGIOUS PRACTICES

ABSTRACT

India has a wide array of religious practices and customs belonging to each sect or community of a religion. Such practices have been observed not only in accordance with the religious laws but also keeping in view the fundamental rights guaranteed by the Constitution. The deep-rooted concept in any religion is "truth" and "principles of faith and trust". Circumstances and evolution of these practices have been traced back to the ancient period, and with the passage of time, the Indian Constitution posits a separation between a secular domain regulated by the State, and a religious domain in which it must not interfere. However, courts of law are regularly called upon to resolve a multiplicity of issues related to religion, and their decisions may have a far-reaching impact on religious conceptions and practices. The judicial process requires that standardized, clear-cut definitions of many notions (such as "religion" itself, or "worshipper," "custom," "usage," "religious service," "religious office," "religious honour," etc.) be established in order for them to be manageable within a legal context. The following analysis provides a reminder and an insight into till what extent the fundamental right to practice one's own religion, is laid down.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	WP No. 5226 of 2016, & 4683, 6124 of 2021
Jurisdiction	:	Madras High Court
Case Filed On	:	2016
Case Decided On	:	April 29, 2021
Judges	:	Justice N. Anand Venkatesh
Legal Provisions Involved	:	Constitution of India Article 25, 26, 226
Case Summary Prepared By	:	Serafina Illyas, Mar Gregorios College of Law, Kerala

2. BRIEF FACTS OF THE CASE

- **Parties**

  Counsel for Petitioner: Adv. J. Maria Roseline.

  Counsel for Respondent: Adv. Sricharan Rangarajan, Additional Advocate General; assisted by Mr. K.P. Narayanakumar Special Government Pleader

- **Factual**

  The petitioner and his family members are devoted and pious Christians, who fervently practice their religious faith as per the scriptures. They used to conduct prayer meetings in the premises belonging to the petitioner in communion with other fellow men as an integral part of Christianity.

  According to the petitioner, his activities have been extremely peaceful and there has been no disturbance at all to any of the persons in the neighbourhood; since it took place within his house.

  However, some vested interests lodged false complaints against the activities of the petitioner with a view to hinder their religious activities which according to them are well within the Constitutional scheme and recognised as the part of Fundamental Rights enshrined within Part III. The respondents had been constantly threatening the petitioner to not carry out his activities.

- **Procedural**

  Hence the petitioner, filed the Writ Petition under Article 226, before the Madurai Bench of Madras High Court, asserting that prayer meetings within subject premises is a right inherent to Christianity for practicing his religion.

3. ISSUES INVOLVED IN THE CASE

I. Whether the petitioner's Fundamental Rights have been violated?
II. Whether the petitioner has rightfully used the building?

4. ARGUMENTS OF THE PARTIES

- **Petitioners**

  The Counsel contended that the prayer meet was conducted in a personal residence, therefore, no prior permission was required as the complaint stated.

  The learned counsel for the petitioner, in order to impress upon this Court, the importance of group prayer, brought to the notice of this Court certain Verses from

the Bible. Upon going through these verses, it is seen that praying to God as a group is encouraged in Christianity, and it forms part of the integral practice of the Christian religion.

- **Respondents**

  The Counsel for the respondent stated that the petitioner had converted the place of residence to a place of worship by conducting public prayers. The prior permission for the same was not obtained from the concerned authorities as stated in the guidelines under the appropriate Act. Pursuant to a preliminary Order, the first respondent conducted an enquiry and submitted a report wherein, it was clearly stated that the plaintiff had not obtained any permission to construct a church and was conducting prayers as in a public place of worship opposing the neighbours. The land and building of the petitioner's younger brother was registered as a trust under the name of "Word of Ministries", wherein public congregation occurred more than five years from 9 am to 12 pm using mike and speakers.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- **Article 25**

  This Article confers the 'Right to Freedom of Religion' to an individual. It is inclusive of both the 'right to practice, propagate and profess' as well as 'freedom of conscience'. This right also comes with the responsibility towards public health, order and morality. Though the right to perform rituals is protected under this Article, yet the state retains the power to formulate laws to regulate "economic, financial, political" and other activities which are not directly related to a religion. The term "essential practice" has been a complex concept that has been construed according to the facts of each case. It generally covers the concept of the practice that is the core need of the religion and the spirituality associated with the religion.

- **Article 26**

  This Article confers upon the religious groups or an individual, the freedom to establish and manage their own religious affairs. This article talks about every religious faction taking an institutional approach. It grants recognition to a legally well-defined entity of any and every religion whilst investing the constitutional claim to religious freedom with it.

- **Article 226**

  This Article empowers the High Court to issue writs in the nature of Habeas Corpus, Mandamus, Quo Warranto, Prohibition and Certiorari each enforcing the Fundamental Rights. The Court exercises original jurisdiction under this Article. It is a constitutional right that a citizen or non-citizen (in certain cases) can exercise when there is a violation of their said Fundamental Rights as imparted in Part III of the Constitution. The scope of this Article is much wider than that of Article 32.

6. JUDGEMENT IN BRIEF

The Court observed that the 'Right of one person should be in harmony with the rights of another person'. The Court stated that 'a religious meeting on a private property requires a prior permission of the District Magistrate'. Also, the Bench stated that, *"The moment the exercise of a right affects the rights of others, it must be subjected to reasonable restriction. The rights enjoyed by the citizens, including the fundamental rights, must co-exist in harmony." The Court perused the reports submitted by Tehsildar and the District Magistrate and placed reliance on them. It was also expressed that:* Under the guise of conducting prayer meeting- used the hall for religious purpose where huge congregations took place and it was necessary to obtain the District Collector's permission to use hall for religious purpose prescribed under Rule 4(3) of The Tamil Nadu Panchayats Building Rules, 1997 and opined that: *"The fulcrum of any religious faith is "the truth", and no religion tolerates any act which takes a person away from the truth. In the present case, the petitioner who claims himself to be a devout Christian has travelled far away from the truth".*

The petition was dismissed without any cost imposed, and the petitioner was instructed to come up with a statement that the building will only be used for conducting prayer meetings.

7. COMMENTARY

Religion, religious practice and the freedom of each individual and community to practice and follow it in a society, has always been in the delicate threads of the legal system as it did not just include a single entity but different entities, matters, customs and so forth. Even though in the instant case, the petitioner relied upon certain cases that affirmed the prayer meetings to be an integral part of Christianity. The Court held that the facts of such case did not apply in this case as the circumstances were entirely different.

The integral part of religion has not been denied in this case, but the affidavit filed by the petitioner in reply to the report submitted by the first respondent proved that the personal space was put to use as a place for public worship defying the objections from the neighbours and without obtaining permission from the concerned authorities. Nobody should be denied the opportunity of the religious or spiritual phase of their life even though some vested interest might oppose it out of their preferences. But the harmony that should exist among people, which are even proclaimed in every religion shouldn't be disturbed.

The Court acknowledged the rights of the petitioner, but the religious right is not an absolute one. The order and law regarding the religion was not followed in the case as the petitioner did say that the prayer was of private nature but the large scale gathering and use of mike and speakers spoke otherwise. The land in this case came under 'non-planning area' that required mandatory permissions for whatsoever constructions or establishments, which the petitioner did not seek to obtain. The rights have not been denied but the writ was dismissed only upon the facts stated by the petitioner with regards to authorised usage of the building.

8. IMPORTANT CASES REFERRED

- *Bijoe Emmanuel and others v. State of Kerala and others, 1987 AIR 748.*
- *The Commissioner of Police v. Acharya Jagadishwarananda Avadhuta and another, (2004) 12 SCC 770.*
- *Sadhu C Selvaraj v. The Collector of Kanyakumari, CDJ 2007 MHC 5279.*
- *Paul Thankom v. The State of Tamil Nadu represented by the Secretary to Government, Home Department and others, W. P. (MD) No.10782 of 2006.*

CASE NO. 28

RAMASAMY UDAYAR

V.

THE DISTRICT COLLECTOR & ORS.

2021 SCC ONLINE MAD 1779

RELIGIOUS RIGHT TO TAKE OUT PROCESSION

ABSTRACT

The following is the case summary of the judgment articulated by the Madras High Court in *Ramasamy Udayar v. The District Collector and Ors*., in light of the writ petition documented by Ramasamy Udayar in the year 2016 prompting another discernment on strict practice only clarified by the appointed authorities with a reasoning that revived the ground breaking constitutionalism. The Court was hearing a supplication against the lead of Hindu celebrations along specific stretches of government land on the ground that these regions were dominated by Muslims. Such prohibitive opinionated practices have abused the central right to religion and uniformity as ensured by the Indian Constitution. India has such countless religions, ranks, dialects, ethnic gatherings, societies, and so on consequently, the solitary arrangement which will work in our country and hold it together and take us to the way of flourishing is the approach of secularism and equivalent regard to all networks. The Hon'ble Madras High Court observed on April 30, 2021, in the case of *Ramasamy Udayar v. The District Collector and Ors*, that any procession, including religious procession, cannot be prohibited or curtailed simply because another religious group resides or does business in the area predominantly.

1. PRIMARY DETAILS OF THE CASE

Case No	:	W. A. Nos. 743 & 2064 of 2019
Jurisdiction	:	Madras High Court
Case Decided On	:	April 30, 2021
Judges	:	Justice Mr. N. Kirubakaran, Justice P. Velmurugan
Legal Provisions Involved	:	Districts Municipalities Act 1920, Sec. 3(21) & 180-A; Constitution of India, Article 25, 26
Case Summary Prepared By	:	Yash Patil, Bharati Vidyapeeth New Law College, Pune

2. BRIEF FACTS OF THE CASE

- **Parties**

  The petitioner in this case was Ramasamy Udayar.

  The respondents are:

  - The District Collector
  - The Sub Divisional Executive Magistrate and Revenue Divisional Officer
  - The Deputy Superintendent of Police
  - Sunnath Val Jamath V. Kalathur
  - R. Srinivasa Rao

- **Factual**

  Since the year 1951, there has been a dispute between the Hindus and Muslims of V. Kalathur village with respect to the utilization of 96 cents of Government Poramboke land. Muslims needed the regular use of land be that as it may, the Hindus protested something very similar. There have been numerous conflicts between both the gatherings in regards to something very similar and they documented numerous cases previously and police grumblings. In any case, till the year 2011, there were no issues regarding the parade of certain Hindu celebrations and the three-day celebration of three temples occurred each year till 2011. Yet, from 2012, the Muslims began having a problem for certain Hindu Festivals and called them Sins. They additionally fought that the Area was a Muslims Majority region. Between the years 2012 to 2015, however the Hindu Festival occurred there were sure limitations advanced by the Court considering every one of the petitions documented having a problem with the celebrations. In the year, 2018, the Revenue Divisional Officer, allowed to lead the Festivals with specific conditions under area 144 of the Cr. P.C and thusly this award was tested in the High Court.

- **Procedural**

  The Madras High Court also allowed the conduct of these festivals with certain conditions; however, the decision was again challenged and finally reached before the present bench.

3. ISSUES INVOLVED IN THE CASE

I. Whether roads could be communal?

4. ARGUMENTS OF THE PARTIES

- **Petitioner**

  The learned counsel argued that there cannot be any restriction for having procession on the roads or streets which are meant for common passage. Further the learned counsel expressed that simply in light of the fact that a specific segment of individuals or gathering are claiming properties in a street or a road, it can't be a factor to restrict the festival of some other strict parade.

  If at all any power if available with the police or revenue authorities, it is only the power to regulate and not to prohibit.

  - As far the permission granted by the learned Single Judge for the primary day festival was concerned, there was no problem and therefore the petitioner was only aggrieved with reference to the restricted permission granted for the primary procession on the second day only through the most roads.
  - The learned counsel stated that the petitioner required the first procession on the second day to follow the same route as the second procession on the first and second days, namely, via Periyakadai Veedhi, Pallivasal Street, and Agraharam Street, and return on the same route to halt at Mariamman Koil, and that it could not be limited to only main roads.

  The learned counsel relied on *Mohamed Gani v. The Superintendent of Police & Ors reported in (CDJ 2005 MHC 1276), Pooja Samiti Fulwaria v. State of Bihar reported in (CDJ 1985 HC 018)* and argued that the procession could not be prohibited from using the roads, and that the petitioner would seek permission for the first procession of the temple festival's second day to use all of the streets for which permission had already been granted for the second procession of the first and second days.

- **Respondent**

  The learned counsel argued that the learned Single Judge in spite of the objections raised by the third respondent erroneously granted permission to conduct two processions on the primary two days. The third respondent had only agreed for conduct of two processions during a single day and further objected for conduct of procession after 9-00 pm because the same would affect peace and tranquillity within the area, especially those which are occupied by Muslim. Hence, there shouldn't be any procession beyond 9-00 pm

- The learned counsel stated that a number of the areas viz., Periakadai Veedhi, Post Office Street, Pallivasal street were occupied only by the Muslim people and not even one Hindu family resided in those areas and hence there was no reason to insist upon removing the procession in those Muslim areas.
- Further the learned counsel contended that the petitioner's intention to require out the procession in those Muslim dominated areas was only to make the law-and-order problem.
- He further stated that in the previous year's viz., 2016 and 2017, only two processions were permitted on one day through Muslim area with police protection.
- Therefore, the permission granted by the learned Single Judge for removing procession on the primary day also because the second day beyond 9-00 pm had to be put aside and only two processions during a single day viz., the second day of the temple festival would be permitted.
- The learned Special Government Pleader appearing on behalf of the State submitted that restrictions are made by the authorities only to take care of the law and order within the interest of peace and harmony among the general public. He further submitted that the authorities would abide by any order gone by this Court.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- **Sec. 3(21) of the District Municipalities Act 1920**

"(21) 'Public street' means any street, road, square, court, alley, passage or riding-path [over which the public have a right of way] whether a thoroughfare or not, and include

(a) the roadway over any public bridge or causeway;

(b) the footway attached to any such street, public bridge or causeway; and

(c) the drains attached to any such street, public bridge or causeway and the land, whether covered or not by any pavement, veranda, or other structure, which lies on either side of the roadway up to the boundaries of the adjacent property whether that property is private property or property belonging to the Government"

- **Sec. 180-A of the District Municipalities Act 1920**

"All streets vested in or to be vested in or maintained by a Municipal Counsel shall be open to persons of whatever caste or creed."

- **Article 25 of the Indian Constitution:**

Freedom of conscience and free profession, practice and propagation of religion

1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

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

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

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus Explanation I The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion Explanation II In sub clause (b) of clause 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.

- **Article 26 of the Indian Constitution**

Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

(a) to establish and maintain institutions for religious and charitable purposes;

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

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

(d) to administer such property in accordance with law

6. JUDGEMENT IN BRIEF

- **Ratio Decidendi**

I. The history of journey of processions in the year 2012 – 2015

After perusing the records, the Court noticed that the main community residing within the village are Hindus and Muslims which there was no problem till the year 2011 for conduct of festivals within the four major temples. Further, the counter affidavit filed by the police authorities during this case also because the previous orders passed showed that temple festivals also as processions are being conducted years together. Therefore, the conduct of temple's processions through the roads/streets can't be prohibited. Rightly the police authorities within the year 2012 had only imposed conditions which was also approved by this Court. The Court noticed that before the year 2012, Temple's processions were conducted through all the streets within the

village and there was no problem. Even from the year 2012 to 2015, processions were conducted through all the streets and roads. Therefore, it's evident that removing Temple's processions through all the streets and roads in V. Kalathur village are the custom and practice of the Hindus for the past many decades. It seems from the year 2012 onwards, when the Muslims started objecting, the matter seems to possess started.

II. The Explanation of Sec. 180-A of the District Municipalities Act 1920

It is also pertinent to notice that Section 180-A of the District Municipalities Act 1920, states as follows: "All streets vested in or to be vested in or maintained by a Municipal Counsel shall be hospitable persons of whatever caste or creed." Hence, merely because one religious group is dominating during a particular locality, it can't be a ground to ban from celebrating religious festivals or taking processions of other religious groups through those roads. If it is approved, a day will come when a certain religious group that dominates the region will refuse to let individuals from other religious organisations to use the roadways for anything other than movement, transit, or routine access. Even wedding and funeral processions would be prohibited/prevented, which would be detrimental to our culture.

III. Merits of the case

The Court noticed that the temples are there for many years together. Merely because a spiritual group got settled during a locality and has become vociferous, they can't object to the custom of taking Temple's procession through all the streets within the Village and consequent upon their objections, the customary and traditional practices can't be prevented or prohibited. If the private respondent's argument is accepted, it will result in a situation in which minorities in India will be unable to participate in any celebration or procession. If one religious group shows opposition and the other religious groups responds, there will be turmoil, riots, and religious conflicts, resulting in the deaths of people and the damage of property. As a result, our country's secular character will be harmed or eliminated.

In the final judgment the criminal cases filed against both the parties were directed to be withdrawn. The appeal in W. A. No.743 of 2019 and the appeal in W. A. No. 2064 of 2019 were dismissed. Consequently, connected miscellaneous petitions were also closed.

- **<u>Obiter Dicta</u>**

In this case, the Court opined thus:

During this case, intolerance of a specific religious group is exhibited by objecting for the festivals which are conducted for many years together and thus the procession through the streets and roads of the village are sought to be prohibited stating that the world is dominated by Muslims and therefore, there can't be any Hindu festival or procession through the locality.

- **Dissenting opinion of Justice N. Kirubakaran and Justice P. Velumurugan**

  All along there had been religious tolerance and therefore the religious festivals were conducted very smoothly and non-secular procession were conducted with none problem through all the streets and roads of the village. If religious intolerance goes to be allowed, it's not good for a secular country. Intolerance in any form by any religious group has got to be curtailed and prohibited.

7. COMMENTARY

The expression “Secular State” is generally utilized in the present-day India to depict the relationship which exists, or which should exist between the state and the religion. Unavoidably, India is a secular country and makes a decent attempt to depict itself as such however the latest things, particularly, in the huge field of its territorial and public governmental issues dependent on revolutionary revaluations of its set of experiences and culture mirror a country loaded with an open showcase of enmity and aggression against non-Hindutva strict and political groupings. India is a free, popularity based and mainstream country. In our nation individuals, all things considered, standings and networks are equivalent under the Constitution, vide Articles 14 to 18, and they have a privilege openly to rehearse their religion, vide Article 25. This nation doesn't have a place with Hindus alone. It has a place similarly with Muslims, Christians, Buddhists, Jains, Parsis, Sikhs, Jews, and so forth, and all are equivalent under the law. Likewise, it isn't that no one but Hindus can live in this country as top-notch residents while others can live just as peasants. In our country all residents are, and are qualified for live, as top-notch residents. The assurance ensured under Articles 25 and 26 of the Constitution isn't kept to issue of precept or conviction however stretches out to acts done in compatibility of religion and, consequently, contains an assurance for customs, observances, services and methods of love which are fundamental or basic piece of religion. What comprises a necessary or fundamental piece of religion must be resolved concerning its regulations, rehearses, principles, verifiable foundation, and so on of the given religion. Fundamental piece of a religion implies the centre convictions whereupon a religion is established. Fundamental

practice implies those practices that are crucial to follow a strict conviction. It is upon the foundation of fundamental parts or practices that the superstructure of a religion is worked, without which a religion will be no religion. Test to decide if a section or practice is vital for a religion is to see if the idea of the religion will be changed without that part or practice. On the off chance that the removing of that part or practice could bring about a central change in the personality of that religion or in its conviction, at that point such part could be treated as a fundamental or necessary part. As effectively expressed above, Muslims are as much top-notch residents of this country as Hindus, Christians, Parsis, Sikhs, Buddhists, Jains, and so on, and they have the privilege under Article 25(1) of the Constitution to rehearse their religion unreservedly which incorporates the option to play out their strict rituals and services including covering of their dead, as per their conventional ceremonies. When such is the legitimate situation, there can't be any request disallowing the strict celebrations and Temple's parades through every one of the roads and streets of the town/town, when the equivalent is being led for quite a long time together. In the event that by any means, there can be a few guidelines and there can't be any preclusion.

8. IMPORTANT CASES REFERRED

- *Chandu Sajan Patil and others v. Kyahalchand Panamchand and others, CDJ BHC 009.*
- *Commissioner., H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282: 1954 SCR 1005.*
- *Gulam Abbas v. State of Uttar Pradesh and Ors., AIR 1981 SC 218.*
- *Mohamed Gani v. The Superintendent of Police and Ors., CDJ 2005 MHC 1276.*
- *Pooja Samiti, Fulwaria v. State, CDJ 1985 Bihar HC 018.*
- *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay, AIR 1962 SC 853.*
- *Seshammal v. State of T.N., (1972) 2 SCC 11: AIR 1972 SC 1586.*
- *The Commissioner of Police and others v. Acharya Jagdishwarananda Avadhuta and Anr., 2004 (12) SCC 770.*

CASE NO. 29

SATYA RANJAN MAJHI & ANR.

V.

STATE OF ORISSA

2003 SUPP (2) SCR 994

CONVERSION OF A PERSON TO ONE'S OWN RELIGION

ABSTRACT

The following is a case summary of the case *Satya Ranjan Majhi & Anr. v. State of Orissa*. In this case the petitioners through a writ petition under Article 226 of the Constitution had challenged Ss. 2 & 7 of the Orissa Freedom of Religion Act, 1967 and also Rules 4 & 5 of the Orissa Freedom of Religion Rules, 1989. The petition in the event being dismissed by the Orissa High Court was challenged by means of Special Leave Petition at the Supreme Court of India. Article 25 was referred to and it was observed that "What freedom for one is freedom for other, in equal measure, and there can therefore, be no such thing as a fundamental right to convert any person to one's own religion." Merely because an inquiry is contemplated under Rule 5, it does not ipso facto make the Rule invalid and therefore the special leave petition did not have any merit and was dismissed accordingly.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	SLP (C) 16428 of 2003
Jurisdiction	:	Supreme Court of India
Case Decided On	:	August 25, 2003
Judges	:	Justice V. N. Khare, Justice S. B. Sinha
Legal Provisions Involved	:	Constitution of India, Article 25; Orissa Freedom of Religion Act, 1967 – Section 7
Case Summary Prepared By	:	Simi Varghese Tharakan, Mar Gregorios College of Law, Kerala

2. BRIEF FACTS OF THE CASE

- **Parties**

  Petitioner: Satya Ranjan Majhi & Anr.

  Respondents: State of Orissa & Ors.

- **Factually**

  The Orissa Freedom of Religion Act, 1967 was enacted by the State Legislature under Entry I, List II of the Seventh Schedule to the Constitution of India. Two gentlemen from the Christian Community had decided to challenge the impugned Act.

- **Procedurally**

  A writ petition is filed by the aforementioned two gentlemen at the Orissa High Court seeking to challenge the constitutional validity and legality of the provision in S. 2 of the impugned Act and the Rules 4 & 5 of the Orissa Freedom of Religion Rules, 1989 and thereafter the Rules inserted as Rules 2 & 3 by the Orissa Freedom of Religion (Amendment) Rules, 1999.

3. ISSUES INVOLVED IN THE CASE

I. Whether Sections 2(a), 2(b), 2(c), 2(d) 4, 8 of the impugned Act and Rules 3, 4, 5 and 6 of the Orissa Freedom of Religion and Rules are ultra vires the Constitution?
II. Whether the freedom to propagate religion under Article 25(1) includes the right to convert another?
III. Whether Section 2 of the Act and Rules 4 & 5 affect the fundamental rights of those seeking conversion?

4. ARGUMENTS OF THE PARTIES

- **Petitioner**

  The petitioners submitted that the State legislature had no competency to enact the impugned Act and Rules. Further they also submitted that the impugned Act and Rules otherwise also violated the fundamental right guaranteed under Article 25 of the Constitution of India which grants freedom to profess, practice and propagate religion to all citizens. They submitted that there was a grave suppression of their freedom since the Act had come in place to stop conversion of others into what they believed in. Moreover, it was argued by the petitioner that the inquiry as mentioned by the provision was intended to violate freedom of others to convert into Christianity and also to purposefully put the followers to punishment.

- **Respondent**

  It was submitted by the respondent that they were vested with the power to make the impugned legislation since this was regulated by Entry I, List II of the Seventh Schedule to the Constitution of India. This provision under the schedule clearly speaks for itself

(res ipsa loquitor) of how the State Government is competent enough to enact laws in the interests of maintaining public order by Entry I, List II of the Seventh Schedule as aforementioned.

Further it was submitted that the State Government was also competent enough to make Rules as the power was again conferred by S. 7 of the impugned Act for the purpose of carrying out the provisions of the Act. The intention behind the enactment is to prevent conversions by force, by inducement or by any other fraudulent means. And the inquiry that has been inserted via sub-rule 2 of r.5 is to ensure that there was no objection from any quarter and that the conversion at the free will of the prospective person converting or the one already converted. Moreover, the provision for declaration to be made before conversion is to affirm that the person converting intends to himself and that the conversion is not one hit by the Act.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- **Article 25**

  This Article provides to all citizens the freedom of conscience to profess, practice and propagate their belief or religion; subject to public order, health and morality. The provision also gives State the power to regulate and restrict any financial, economic, political or other secular activity associated with any religious practice. Further, it also provides for the social welfare and reform or opening of Hindu religious institutions of a public character to all sections of Hindu religious institutions of a public character to all sections and classes of Hindus. And that people of the Sikh faith wearing and carrying the kirpan shall be considered as included in the profession of Sikh religion.

  In this instant case the word ‘propagate’ was construed ‘not as a fundamental right’ to convert another person to one’s own religion.

6. JUDGEMENT IN BRIEF

- **Ratio Decidendi**

  I. Article 25 – ‘Propagation’ does include the meaning ‘Conversion’.

  The Court relied on the judgement provided in *Rev. Stainslaus v. State of Madhya Pradesh*, it was held that the State Government is vested with the power to create the impugned legislation by means of Entry I, List II of the Seventh Schedule to the Constitution. Further, it can be understood prima facie that there has been no violation of any fundamental right especially he one guaranteed under Article 25 since the word

‘propagate’ must not be taken to mean ‘conversion’ of another person to one’s own religion.

Again, in the background of this special leave petition what needs to be asked is whether any of the rights of the petitioner herein have been violated. However, at the threshold it is clearly concluded against them by this Court that the petitioners herein are not the persons who wants themselves to get converted into any religion and that the Act and the Rules stand in their way.

The right to convert another person to one’s own religion was not covered by Article 25(1) of the Constitution of India and there was no fundamental right in any one to convert another person to one’s own religion. The argument that no legislation like the one is possible under cover of Article 25(2) of the constitution raised by the learned counsel for the petitioners cannot also be accepted since it has already been proved beyond doubt that the State Legislature is competent enough to enact laws in the interest of maintaining public order covered under Entry I, List II of the Seventh Schedule to the Constitution of India.

Obviously, the intention behind the Act challenged here in this SLP is to ensure that preventive measures are in place to halt any sort of conversion or attempted conversions that is by use of force, by inducement, or by any fraudulent means. And it is to carry out this avowed object of the Act that Rules have been framed and Rules 3 to 7 are merely intended to ensure that the conversions prohibited by the Act do not take place. The insertion of sub-rule (2) to Rule 5 by the notification dated November 26, 1999 is also merely to ensure that the conversion or attempted conversion is not one prevented by the Act or sought to be curbed by the Act. The provisions for local enquiry and for ascertaining whether there is any objection from any quarter, are also intended only to ensure that a conversion is out of the free will by the follower and that no force, inducement, or fraud has been practised on the follower. The Court did not find any infirmity with the Rules and nor could it be said that the Rules are beyond the Rule making power conferred by Section 7 of the Act.

Further, according to the Court’s understanding the petitioners are people who merely do not want to follow the steps prescribed by the Rules before converting another person into their religion. Hence, the court was inclined to hold that their instance there is no occasion for finding the Rules invalid.

Thus, the Court found no reason to entertain this Writ Petition. It stood dismissed.

7. COMMENTARY

It can be understood, from the above judgement that despite the fact that there exists Constitutional Provisions that guarantee freedom to religious institutions it shall never go unchecked as the words within the Article can be twisted to ones on subjective notions.

Religion is personal belief and it is not something which can be imposed abruptly. If those responsible for propagating and regulating a religion and those managing the religious were provided immense freedom without subjecting them to restriction would have given them the power to abuse the freedom in the most unacceptable manner that would affect the internal harmony in our nation. Hence, it is appropriate that the State is vested with the power to intervene at the right moment in order to keep the public order intact. And as our law believes no one is above law even when it is a matter that is spiritually regulated.

In this instant case we can clearly see that the issue arose because the State Government took the initiative to intervene to ensure that they maintain the public order as against the conversion that was being conducted by the Christian missionaries. The conversions could have been mostly done by giving lucrative offers and also making believe that the other person's God never did anything and that true God is only amongst Christians. And this could be termed as fraudulent means or undue influence that is being penetrated into the mind of the ignorant. This can definitely create rifts within families and also amongst relatives. On several instances we know how India has had religious riots and this conversion poses a plausible greatest threat when it comes to internal harmony and integrity. Hence, the State did do the right thing to intervene and it is not expressly or impliedly stating that the laws laid down are rigid or strictly forbids conversion. Rather, to be understood as a whole it is only laying down provisions, with rules read together, that emphasizes that the conversion must be at the free will of the other person and not because there was some kind of force or threat or undue influence, etc.

This is a welcome decision in my opinion as law cannot be interpreted on its own but it has to be interpreted within the context read along with associated and surrounding provisions and rules.

8. IMPORTANT CASES REFERRED

- *Mrs. Yulitha Hyde v. State of Orissa, AIR 1973 Orissa 116.*

- *Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388.*
- *Rev. Stainislaus v. State of Madhya Pradesh & Ors., AIR 1977 SC 908.*
- *The Commissioner, Hindu Religious Endowments, Madaras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.*

CASE NO. 30

N. ADITHAYAN

V.

THE TRAVANCORE DEVASWOM BOARD & Ors.

AIR 2002 SC 3538

CASTE PRACTICE IN APPOINTMENT OF TEMPLE PRIEST

ABSTRACT

The following is a case summary of the case *N. Adithayan v. The Travancore Devaswom Board & Ors*. "Worshippers lay great store by the rituals and whatever other people, not of faith, may think about these rituals and ceremonies, they are a part of the Hindu Religious faith and cannot be dismissed as either irrational or superstitions." The idea most prominent in the minds of the worshippers is that a departure from the traditional rules would result in the pollution or defilement of the image which must be avoided at all costs. That is also the rationale for preserving the sanctity of the Garbhangriha or the sanctum sanctorum. The invalidation of a provision empowering the Commissioner and his subordinates as well as person authorized by him to enter any religious institution or place of worship in any unregulated manner by even persons who are not connected with spiritual functions as being considered to violate rights secured under Article 25 and 26 of the Constitution of India, cannot help the appellant to contend that even persons duly qualified can be prohibited on the ground that such person is not a Brahman by birth or pedigree.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Appeal (Civil) 6965 of 1996
Jurisdiction	:	Supreme Court of India
Case Decided On	:	October 3, 2002
Judges	:	Justice S. Rajendra Babu, Justice Doraiswamy Raju
Legal Provisions Involved	:	Constitution of India Article 14, 15(1), 25(1)
Case Summary Prepared By	:	Simi Varghese Tharakan, Mar Gregorios College of Law, Kerala

2. BRIEF FACTS OF THE CASE

- **Parties**

  Petitioner: N. Adithayan

  Respondents: The Travancore Devaswom Board & Ors.

- **Factually**

The appellant claims himself to be a Malayala Brahmin by community and a worshipper of the Siva Temple in question. The Administration of the Temple vests with Travancore Dewaswom Board, a statutory body created under the Travancore Cochin Hindu Religious Institutions Act, 1950. One Shri. K. K. Mohanan Poti was working as temporary Santhikaran at this Temple, but due to complaints with reference to his performance and conduct, his services were not regularized and came to be dispensed with, by an order dated August 6, 1993. In his place the third respondent, who was at rank no. 31 in the list prepared on April 28, 1993, was ordered to be appointed as a regular Santhikaran and the Devaswom Commissioner also confirmed the same on September 20, 1993. The second respondent did not allow him to join in view of a letter said to have been received from the head of Vazhaperambu Mana for the reason that the third respondent was a non-Brahmin as a Santhikaran, the appointment was in order and directed the second respondent to allow him to join and perform his duties.

The Travancore Devaswom Board had formulated a Scheme and opened a Thanthra Vedantha School at Tiruvalla for the purpose of training Santhikarans and as per the said Scheme prepared by Swami Vyomakesananda and approved by the Board on May 7, 1969 the School was opened to impart training to students, irrespective of their caste/community. While having Swami Vyomakesananda as the Director Late Thanthri Thazhman Kandarooru Sankaru and Thanthri Maheswara Bhattathiripad, Keezhukattu Illam were committee members. On being duly and properly trained and on successfully completing the course, they were said to have been given `Upanayanam' and `Shodasa Karma' and permitted to wear the sacred thread. Consequently, from 1969 onwards persons, who were non-Brahmins but successfully passed out from the Vendantha School, were being appointed and the worshippers Public had no grievance or grouse whatsoever. Instances of such appointments having been made regularly also have been disclosed.

The third respondent was said to have been trained by some of the Kerala's leading Thanthris in performing archanas, conducting temple ritual, pooja and all other observances necessary for priesthood in a Temple in Kerala and elsewhere based on Thanthra system. Nothing was brought on record to substantiate the claim that only Malayala Brahmins would be `Santhikaran' in respect of Siva Temple or in this particular Temple. In 1992 also, as has been the practice, the Board seems to have published a Notification inviting applications from eligible persons, who among other things

possessed sufficient knowledge of the duties of Santhikaran with knowledge of Sanskrit also, for being selected for appointment as Santhikaran and inasmuch as there was no reservations for Brahmins, all eligible could and have actually applied. They were said to have been interviewed by the Committee of President and two Members of the Board, Devaswom Commissioner and a Thanthri viz., Thanthri Vamadevan Parameswaram Thatathiri and that the third respondent was one among the 54 selected out of 234 interviewed from out of 299 applicants.

Acceptance of claims to confine appointment of Santhikarans in Temples or in this temple to Malayala Brahmins, would, according to the respondent-State, violate Articles 15 and 16 as well as 14 of the Constitution of India. As long as appointments of Santhikars were of persons well versed, fully qualified and trained in their duties and Manthras, Thanthras and necessary Vedas, irrespective of their caste, Articles 25 and 26 cannot be said to have been infringed, according to the respondent-State.

- **Procedurally**

  A writ petition was filed in the High Court claiming that the appointment of a non-Brahmin Santhikaran for the temple in question offends and violates the alleged long followed mandatory custom and usage of having only Malayala Brahmins for such jobs of performing poojas in the Temples and this denies the right of the worshippers to practice and profess their religion in accordance with its tenets and manage their religious affairs as secured under Articles 25 and 26 of the Constitution of India. The Tanthri of a temple is stated to be the final authority in such matters and the appointment in question was not only without his consultation or approval but against his wish too.

  The High Court stayed the appointment of the third respondent and one Sreenivasan Poti came to be engaged on duty to perform the duties of Santhikaran, pending further order.

3. ISSUES INVOLVED IN THE CASE

I. Whether appointment of a person, who is not a Malayali Brahmin, as “Santhikaran” or Poojari (Priest) of the Temple in question Kongorpilly Neerikode Siva Temple at Alangad Village in Ernakulam District, Kerala State, is violative of the constitutional and statutory rights of the appellant?

4. ARGUMENTS OF THE PARTIES

- **Petitioner**

  Shri R. F. Nariman, learned Senior Counsel, contended that the appellant failed to properly plead or establish by usage as claimed and this being disputed question of fact cannot be permitted to be agitated in the specific finding of the Kerala High Court to the contrary. It was also urged that the rights and claims based upon Article 25 have to be viewed and appreciated in proper and correct perspective in the light of Article 15, 16 and 17 of the Constitution of India and the provisions contained in The Protection of Civil Rights Act, 1955, enacted pursuant to the constitutional mandate, which also not only prevents and prohibits but makes it an offence to practice 'untouchability' in any form. Accordingly, it is claimed that no exception could be taken to the decision of the Full Bench of the High Court in this case.

- **Respondent**

  Mr. K. Rajendra Choudhary, learned Senior Counsel for the appellant, while reiterating the stand before the High Court, contended that only Namboodri Brahmins alone are to perform poojas or daily rituals by entering into the Sanctum Sanctorum of Temples in Kerala, particularly the Temple in question, and that has been the religious practice and usage all along and such a custom cannot be thrown over Board in the teeth of Article 25 and 26, which fully protect and preserve them. Section 31 of the 1950 Act was relied upon for the same purpose. It was also contended for the appellant that merely because such a religious practice, which was observed from time immemorial, involve the appointment of a Santhikar or Priest, it would not become a secular aspect to be dealt with by the Devaswom Board dehors the wishes of the worshippers and the decisions of the Thanthri of the Temple concerned.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- **Article 25**

  This Article provides to all citizens the freedom of conscience to profess, practice and propagate their belief or religion; subject to public order, health and morality. The provision also gives State the power to regulate and restrict any financial, economic, political or other secular activity associated with any religious practice. Further, it also provides for the social welfare and reform or opening of Hindu religious institutions of a public character to all sections of Hindu religious institutions of a public character to all

sections and classes of Hindus. And that people of the Sikh faith wearing and carrying the kirpan shall be considered as included in the profession of Sikh religion.

In this case it was noted that Article 25 is subjected to the provisions of Part III of the Constitution of India.

6. JUDGEMENT IN BRIEF

- **Ratio Decidendi**

I. Article 25 – 'Subject to Provisions of Part III of the Constitution of India".

The Court noted that the rights under Article 25 are subject to the provisions of Part III of the Constitution and the Court held that the vision of the founding fathers of the Constitution was to liberate society from the blind and ritualistic adherence to mere traditional superstitious beliefs without reason or rational basis and this has found an expression in the form of Article 17 dealing with the abolition of untouchability and stated that any custom or usage irrespective of any proof of their existence in the pre-constitutional days cannot be countenanced as a source of law to claim any rights if such as a claim is found to violate human rights, dignity, social equity and special mandate of the constitutions of law made by the parliament.

No usage which is found to be pernicious or considered to be in derogation of the Law of the Land or opposed to public policy or Social decency can be accepted and upheld by the court in the country. Meaning to say thereby even if there had been a custom or a usage that only a Malayali Brahmin can be appointed this will have to yield to the other provisions of this part and decency and Morality and appointment of priest irrespective of caste is something which is built in the mandate of Part III of the Constitution, the only requirement is that such a person should have got training or how to do the Puja and that has already been complied with by the Rules made by the Dewaswom Board.

The Court also pointed out that temple does not belong to any denominational category with its specialized forms of worship peculiar to such a denomination and there was no question of violation of article 26, it is a question falling under Article 25 alone.

The Supreme Court made it crystal clear that any Hindu irrespective of caste can be appointed as a priest in the temple provided, he is well versed and trained how to the pooja etc. can alone perform pooja in the temples.

7. COMMENTARY

Religion is a matter of belief or faith; however, it needs to be understood that what is protected under articles 25 and 26 are strictly religious practices and the right to manage affairs in matters of religion.

In this case the arbitrary practise of the Board taking the immunity under Article 25 and 26 has been rightfully intervened by the Court. This was an instance wherein an implied practice of caste system coupled with untouchability is obvious to any normal person. In India untouchability has been abolished and its practice is forbidden in any manner. Untouchability refers to the social practice which looks down upon certain depressed classes solely on account of their birth and makes any discrimination against them on this ground.

Further, Article 25 and 26 which protects fundamental right to profess, propagate one's own religion and religious affairs though comes under guaranteed rights it should also be understood that when there is a statutory provision that is laid down with regards to the practices of a religion then that has the aforementioned articles need to be read along with the provisions laid down in the legislation and not alone.

In this matter the court has taken a wise decision that any person who is a Hindu and who knows how to perform rituals can become the priest of the temple irrespective of the fact to which caste or creed he belongs. Though people still hold on to their castes since it has been a time immemorial practice it has been put down through Constitutional provisions and through several judgements by our Apex Court that indirect practices to suppress people based on their castes amounts to untouchability and the same shall be punishable if proved prima facie.

8. IMPORTANT CASES REFERRED

- *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005.*
- *Sri Venkataramana Devaru & Ors. v. The State of Mysore & Ors., 1958 SCR 895.*
- *Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan & Ors., 1964 (1) SCR 561.*
- *Seshammal & Ors. Etc. v. State of Tamil Nadu, 1972 (3) SCR 815.*
- *A.S. Narayana Deekshitulu v. State of A.P. & Ors., (1996)9 SCC 548.*
- *Mannalal Khetan Etc. v. Kedar Nath Khetain & Ors. Etc., 1977(2) SCR 190.*
- *Bhuri Nath & Ors. v. State of J&K & Ors., 1997(2) SCC 745.*

- *Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi, & Ors. v. State of U.P. & Ors., (1997)4 SCC 606.*

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JONCY LAKHANI is pursuing BBA., LL.B. from Parul University, Vadodara. She at present is the EDC (Entrepreneurship Development Cell) coordinator at her University. She has published several Blogs and Articles on the legal platforms like ProBono India and is

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MANISHA GUPTA is a second year Law student at National Law University Odisha. She is exploring various fields of law by participating in different competitions and volunteering for the same. She is keenly interested in improving her legal research skills and looks for every opportunity that can help her write good research papers. This project has been a starting journey for the same. Thanks to the amazing co-ordinators who have guided me throughout.

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SONALIKA NIGAM is a second year BA., LLB. student at Parul Institute of Law, Parul University, Vadodara. She has emerged as the Gold Medallist for BA., LL.B. in first year.

She has astounding oratory skills, which made her win Debates, Elocutions and other allied competitions. She has won the 'Best Speaker' Award in BBANYP 2021 organized by Chandigarh University and second position in National Debate Competition organized by USTM, Meghalaya. She is getting the experience of online legal internship and is presently considered as the best intern. Her passion is to read and write articles on socio-legal issues and has got her article published at ProBono India platform, followed by another article at Lex Explore. She has sharp interest in public administration policies along with the National and International politics. She has hosted some great events of Parul Institute of Law. In the very first year, she has been accorded with the responsibility of a Student Coordinator at various instances and she has fulfilled them with great zeal and sincerity. She is an enthusiastic and emerging student who considers herself as an intrinsic part of this global society and is indulged in many extra-curricular activities at the University level.

TUHUPIYA KAR, a fourth Year BA., LL.B.(Hons.) student of the Department of Law, University of Calcutta is always on the look for opportunities bigger than her reach until she has finally reached them while always polishing the skills she already has. She has done a number of internships and wishes to excel in every field possible but her recent prime interest of legal study resides in Maritime Law and the wonders and troubles of the sea such as the management of piracy by the IMO and the Indian Navy in cooperation with the Naval forces of Seychelles and Kenya took her by awe when for the first time introduced to the inner workings of the Navy by her Father while preparing for a Moot Court Competition which she and her team very diligently managed to win. She has recently also contributed to the development of open-source AI by getting involved in the OpenNyAI Micro-course on Legal AI and Annotations.

YASH PATIL is a second year law student pursuing LL.B from Bharati Vidyapeeth New Law College, Pune. His focus of areas includes IP Laws, Securities Law, Criminal Law, Contract Law, Corporate Law & ADR. He is currently a Legal Associate with more than a year of extensive experience in the field of litigation at Adv. Sujay Joshi & Associates, Law Firm based in Pune. He has handled heavy caseloads and assisted with all aspects of the litigation cycle including trial preparation. Aside from that, he is a content writer and copywriter, which requires him to write in a variety of niches.

RUPAM BANERJEE is pursuing BBA, LL.B from Noida International University. He is an avid reader and loves to research on topics that interest him. He has won Best Speaker Award

in a National Environmental Law Moot Court Competition organised by ICFAI Dehradun in September 2021 and he has also won Best Researcher Award in National Hindi Moot Court Competition at Amity Noida in the year 2020. He has done several Internships in the IPR Laws, Criminal Laws and Family Laws. He is also working with ProBono India for previous 1 Year in several projected undertaken by the organization time to time.

About ProBono India

Founded in October 2016 with an aim to integrate legal aid and awareness initiatives – ProBono India has ventured into different avenues viz. legal aid, legal awareness, legal intervention, legal journalism, legal activism etc. – all with the underlying objective of contributing to the positive development of the society with a strong socio-legal approach.

The activities at ProBono India include an active dissemination of legal information via the medium of its official website, rolling internship programmes for law students to help them develop a holistic personality with a socio-legal approach to their professional personality, interviews with eminent personalities working at the ground-level offering insights into their successful projects, providing a platform to promote and publish the art of research and legal writing, amongst many others.

The team of ProBono India works to promote legal activism as we believe that law and society are two sides of the same coin. Law and society are so inextricably interdependent that to both need to be equally improved in order to lead the world into the desired new order. We at ProBono India believe in a better and brighter tomorrow. We believe not just in being passengers on this drive to change – rather, we aim to drive towards the change.

Vision

Integrate Legal Aid and Legal Awareness Initiatives.

Mission

To provide the legal aid, conduct legal awareness activities, disseminate legal aid, legal awareness activities of various organizations of the world and conduct research on overall aspects of legal aid and legal awareness.

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