

SH. A.S. NARAYANA DEEKSHITULU ETC. ETC.

A

v.

STATE OF ANDHRA PRADESH AND ORS.

MARCH 19, 1996

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

B

The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 :

Sections 34 and 35—Mirasidars, Archakas and other office holders—Abolition of hereditary rights—Held not unconstitutional—Hereditary succession of Archakas held not a religious usage and thus not covered by Article 25—Power conferred on Commissioner to make appointment after abolition of hereditary office—Held not without guidelines.

C

Sections 36—Archakas—Prescription of qualifications for—Held not arbitrary.

D

Sections 39 and 142—Office holders and servants—Transfer—Power of provision held not ultra vires or unjust.

Section 144—Right to shares in Hundi and other Rusums—Abolition of—Held not violative of Articles 25 and 26.

E

Constitution of India, 1950 : Articles 25 and 26.

Right to freedom of religion—Extent and scope of—Protection of Articles 25 and 26 held not limited to doctrine—Also extends to rituals and ceremonies which are integral part of religion—Difference between 'Religion' and 'Dharma'—Between secularism and secularisation discussed.

F

In these writ petitions and transfer cases the constitutionality of Sections 34, 35, 37, 39 and 144 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 has been challenged.

G

Dismissing the petitions and upholding the validity of the impugned provisions, this Court

HELD : (*Per Ramaswamy, J.*)

H

A 1. Articles 25 and 26 deal with and protect religious freedom. Religion as used in those Articles must be construed in its strict and etymological sense. Religion is that which binds a man with his Cosmos, his creator or super force. It is difficult and rather impossible to define or delimit the expressions "religion" or "matters of religion" used in Articles
B 25 and 26. Essentially, religion is a matter of personal faith and belief of personal relations of an individual with what he regards as Cosmos, his Maker or his Creator which, he believes, regulates the existence of insentient beings and the forces of the universe. Religion is not necessarily theistic. [607-G-H]

C 2. A religion undoubtedly has its basis in a system of beliefs and doctrine which are regarded by those who profess religion to be conducive to their spiritual well-being. A religion is not merely an opinion, doctrine or belief. It has outward expression in acts as well. It is not every aspect of religion that has been safe-guarded by Articles 25 and 26 nor has the
D Constitution provided that every religious activity cannot be interfered with. Religion, therefore, cannot be construed in the context of Articles 25 and 26 in its strict and etymological sense. Every religion must believe in a Conscience and ethical and moral precepts. Therefore, whatever binds a man to his own conscience and whatever moral or ethical principle regulate the lives of men believing in that theistic, conscience or religious belief
E that alone can constitute religion as understood in the Constitution which fosters feeling of brotherhood, amenity, fraternity and equality of all persons which find their foot-hold in secular aspect of the Constitution. Secular activities and aspects do not constitute religion which brings under its own cloak ever human activity. There is nothing which a man
F can do, whether in the way of wearing clothes or food or drink, which is not considered a religious activity. Every mundane or human activity was not intended to be protected by the Constitution under the guise of religion. The approach to construe the protection of religion or matters of religion or religious practices guaranteed by Articles 25 and 26 must be viewed with pragmatism since by the very nature of things, it would be
G extremely difficult, if not impossible, to define the expression religion or matters of religion or religious belief or practice. [608-B-F]

3. The right to religion guaranteed under Article 25 or 26 is not an absolute or unfettered right to propagate religion which is subject to
H legislation by the State limiting or regulating any activity-economic, finan-

cial, political or secular which are associated with religious belief, faith, practice or custom. They are subject to reform on social welfare by appropriate legislation by the State. Though religious practices and performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in a particular doctrine, that by itself is not conclusive or decisive. What are essential parts of religion or religious beliefs or matters of religion and religious practice is essentially a question of fact to be considered in the context in which the question has arisen and the evidence-factual or legislative or historic-presented in that context is required to be considered and a decision reached. The Court, therefore, while interpreting Articles 25 and 26 strikes a careful balance between the freedom of the individual or the group in regard to religion, matters or religion, religious belief, faith or worship, religious practice or customs which are essential and integral part and those which are not essential and integral and the need for the state to regulate or control in the interest of the community. [609-C-F]

4. The religious freedom guaranteed by Articles 25 and 26 is intended to be a guide to community-life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order. Articles 25 and 26, therefore, strike a balance between the rigidity or right to religious belief and faith and their intrinsic restrictions in matters or religion, religious beliefs and religious practices and guaranteed freedom of conscience to commune with his Cosmos, Creator and realise his spiritual self. Sometimes, practices-religious or secular are inextricably mixed up. This is more particularly so in regard to Hindu religion because under the provisions of ancient Samriti, human actions from birth to death and most of the individual actions from day to day are regarded as religious in character in one facet or the other. They sometimes claim the religious system or sanctuary and seek the cloak of constitutional protection guaranteed by Articles 25 and 26. One hinges upon constitutional religious model and another diametrically more on traditional point of view. The legitimacy or the true categories is required to be adjudged strictly within the parameters of the right of the individual and the legitimacy of the State for social progress, well-being and reforms, social intensification and national unity. [610-C-F]

5. All secular activities which may be associated with religion but which do not relate or constitute an essential part of it may be amenable

- A to State regulations but what constitutes the essential part of religion may be ascertained primarily from the doctrines of that religion itself according to its tenets, historical background and change in evolved process etc. The concept of essentiality is not itself a determinative factor. It is one of the circumstances to be considered in adjudging whether the particular matters of religion or religious practices or belief are an integral part of the religion. It must be decided whether the practices or matters are considered integral by the community itself. Though not conclusive, this is also one of the facets to be noticed. The practice in question is religious in character and whether it could be regarded as an integral and essential part of the religion and if the Court finds upon evidence adduced before it that it is an integral or essential part of the religion. Article 25 accords protection to it. Though the performance of certain duties is part of religion and the person performing the duties is also part of the religion or religious faith or matters of religion, it is required to be carefully examined and considered to decide whether it is a matter of religion or a secular management by the State, whether the traditional practices are matters of religion or integral and essential part of the religion and religious practice protected by Articles 25 and 26 is the question. [611-A-E]

6. The protection of Articles 25 and 26 of the constitution is not limited to matters of doctrine. They extend also to acts done in furtherance of religion and, therefore, they contain a guarantee for rituals and observances, ceremonies and modes of worships which are integral parts of the religion. [621-H; 622-A]

- F *Seshammal & Ors. Etc. Etc. v. State of Tamil Nadu*, [1972] 3 SCR 815, *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Math*, [1954] SCR 1005. *Ganpat v. Returning Officer & Ors.*, [1975] 1 SCC 589, *Sri Venkataramana Davaru & Ors. v. The State of Mysore & Ors.*, [1958] SCR 895, *The Durgah Committee, Ajmer & Anr. v. Syed Hussain Ali & Ors.*, [1962] 1 SCR 383, *Sardar Syedna Taher Saifuddin Saheb v. The Estate of Bombay*, [1962] Supp. 2 SCR 496, referred to.

- H 7. There is a difference between secularism and secularisation. Secularisation essentially is a process of decline in religious activity, belief, ways of thinking and in restructuring the institution. Though secularism is a political ideology and strictly may not accept any religion as the basis

of State action or as the criteria of dealing with citizens, the Constitution of India seeks to synthesise religion, religious practice or matters of religion and secularism. In secularising the matters of religion which are not essentially and integrally parts of religion, secularism, therefore, consciously denounces all forms of super-naturalism or superstitious beliefs or actions and acts which are not essentially or integrally matters of religion or religious belief or faith or religious practices. In other words, non-religious or anti-religious practices are anti-thesis to secularism which seeks to contribute in some degree to the process of secularisation of the matters of religion or religious practices. [609-G-H; 610-A-B]

S.R. Bommai & Ors. v. Union of India & Ors., [1944] 3 SCC 1, referred to.

8. There is a distinction between religious service and the person who performs the service; performance of the religious service according to the tenets, Agamas, custom and usages prevalent in the temple etc. is an integral part of the religious faith and belief and to that extent the legislature cannot intervene to regulate it. But the service of the priest (archaka) is a secular pert. The right to perform religious service has appointment by the owner of the temple or king as its source. The legislature is competent to enact the law taking away the hereditary right to succeed to an office in the temple and equally to the office of the priest (archaka). The hereditary right as such is not integral part of the religious practice but a source to secure the services of a priest independent of it. Though performance of the ritual ceremonies is an integral part of the religion, the person who performs it or associates himself with performance of ritual ceremonies, is not. Therefore, when the hereditary right to perform service in the temple is terminable by an owner for bad conduct, its abolition by sovereign legislature is equally valid and legal. Regulation of his service conditions is sequenced to the abolition of hereditary right of succession to the officer of an archaka. [622-H; 623-A-C]

K. Seshadri Aiyangar v. Ranga Bhattar, I.L.R. 35 Med. 631, approved.

9. In a pluralistic society like India, there are numerous religious groups who practise diverse forms of worship or practise religions, rituals, rites etc. It may not be possible to devise a precise definition of universal application as to what is religion and what are matters of religious belief or religious practice. That is far from saying that it is not possible to state

A with reasonable certainty the limits within which the Constitution conferred a right to profess religion. [608-G; 609-A-C]

B 10. A very careful distinction is required to be drawn between real and unreal religion at any stage in the development and preservation of religion as protected by the Constitution. Within religion, there is an interpretation of reality and unreality which is completely different experience. It is the process in which ideal is made rule. Thus perfection of religious experience can take place only when free autonomy is afforded to an individual and worship of the infinite is made simpler, direct communion, the cornerstone of human system. Religion is personal to the individual. Greater the law bringing an individual closer to this freedom, the higher is its laudable and idealistic purpose. Therefore, in order that religion becomes mature internally with the human personality it is essential that mature self-enjoyment must be combined with conscious knowledge. Religious symbols can be contra-distinguished from the scientific symbols and both are as old as man himself. Through scientific symbols there can be repetition of dogmatism and conviction of ignorance. True religion reaching upto the full reality of all knowledge, believes in God as the unity of the whole. [579-D-G]

E Swami Vivekananda, "*The Complete Works*" Vol. I p. 124, Shri Aurobindo, "*The Human Cycle, the Ideal of Human Unity War end Self-Determination*" Chapter XVII, Shri Aurobindo, "*Magnum opus Life Divine*", Mircea Eliade, "*Encycloepadia of Religion*" Vol. 12, John Macmurray, "*Reason and Emotion*" (*Faber and Faber Publication*) p. 40, Julian Huxley, "*Evolution After Darwin*" Vol. III p. 259, Robert Ernest Hume, "*The Thirteen Principal Upanishads*" p. 30, Swami Vivekananda, *Lecture on "Religion and Science"* Incorporated in "*The Complete Works*" Vol. VI, Sixth Edition) p. 81, Frederick Copleston, S.J. "*A History of Philosophy*" Vol. VI, Shri Acharya Pada "*Sarva Vedantha Sindhanta Shlokas*" 857-862, Richard Dawkins "*The Blind Watchmaker*", referred to.

G 11. To one who is devoted to the pursuit of knowledge, the observance of rituals is of no use since the observance of rituals and the devotion of knowledge cannot co-exist. There is considerable incompatibility between knowledge and rituals inasmuch as their natures are entirely antithetical. [587-C-D]

H 12. It is essential that the value of law must be tested by its certainty in reiterating the Core of Religious Experience and if a law seeks to

separate the non-essential from the essential so that the essential can have a greater focus of attention in those who believe in such an experience, the object of such a law cannot be described as unlawful but possibly somewhat visionary. [604-G-H] A

13. Law is a social engineering and an instrument of social changes evolved by a gradual and continuous process. History and customs, utility and the accepted standards of right conduct are the forms which singly or in combination shall be the progress of law. Which of these forces shall dominate in any case depends largely upon the comparative importance or value of the social interest that will be, thereby, impaired. There shall be symmetrical development with history or custom when history or custom has been the motive force or the chief one in giving shape to the existing rules and with logic or philosophy when the motive power has been theirs. One must get the knowledge just as the legislature gets it from experience and study and reflection in proof from life itself. [610-F-H; 611-A] B C

Banjamin Cardozo, "*Judicial Process*" referred to. D

14. The word 'Dharma' or 'Hindu Dharma' denotes upholding, supporting, nourishing that which upholds, nourishes or supports the stability of the society, maintaining social order and general well-being and progress of mankind; whatever conduces to the fulfilment of these objects is Dharma, it is Hindu Dharma and ultimately "Sarva Dharma Sambhava". Dharma is that which approves oneself or good consciousness or springs from due deliberation for one's own happiness and also for welfare of all beings free from fear, desire, disease, cherishing good feelings and sense of brotherhood, unity and friendship for integration of Bharat. This is the core religion which the Constitution accords protection. [605-A-C] E F

15. Dharma, according to the old concept, is a purely secular institution. Dharma is that which sustains the society. Dharma is that by which people at large are held together. Therefore, Dharma embraces every type of righteous conduct covering every aspect of life essential for the sustenance and welfare of the individual and the society and includes those rules which guide and enable those who believe in God and heaven to attain moksha (eternal bliss). Rules of Dharma are meant to regulate the individual conduct, in such a way as to restrict the rights, liberty, interest and desires of an individual as regards all matters to the extent necessary in the interest of other individuals, i.e. the society and at the same time making it H

A obligatory for the society to safeguard and protect the individual in all respects through its social and political institutions. Shortly put, Dharma regulates the mutual obligations of individual and the society.

[602-E-F; 591-G-H; 592-A]

Justice M. Rama Jois, "*Legal and Constitutional History of India* (Vol.I) pages 1 to 4, Prof. Om Prakash, "*Religion and Society in Ancient India* "1985 Edn., Dr. Shankar Dayal Sharma, "*Dharma—A Legal Discipline—Select Speeches and Writings*, (*Indian Bar Review Vol. XX (3 & 4) 1993 Special Issue*), Dr. S.D. Sharma, "*Dr. Zakir Hussain Memorial Lecture delivered at Visva Bharati Shanti Niketan on 29th April, 1989*, Dr. S.D. Sharma, "*Law and Morality Sustain the World*" address delivered on 25th September, 1993 at the First Convocation of the National Law School of India University, Bangalore, Valmiki Ramayana, Ayodhya-kanda versa-10, Sarga- 109, Markandeya Purana Swamy Ranganathananda, lecture on 'Science, Democracy and Religion' delivered on August 28, 1954 in Ramakrishna Mission Institute of Culture, Calcutta, published under the title 'Eternal Values for a Changing Society', p. 637; V.D. Mahajan, "*Chief Justice Gajendragadhar*" - His life, ideas, papers and addresses in Chapter on "Secularism, its impact on law and life in India; V.R. Krishana Iyer "*Religion and Politics*" 1991 Edition; B.K. Mukherjee, *Tagore Law Lectures on Hindu Law of Religious and Charitable Trust*, page 1; Shri Suniti Kumar Chatterje, "*The Cultural Heritage of India*, Institute of Culture, Vol. IV at page xv; Dr. V. Vardacharyamaharshya, "*Sri Pancharatraparamyam* page 21; E. Krishnamacharya, "*Jayakhyasamhita of Pancaratra Agna*, p.22; Pandi V. Krishnamacharya, "*Lakshmi-tantra*", a Pancharatr Agama, p. 1, referred to.

16. Though after appointment the archaka performs worship, it is no ground to hold that the appointment is either religious practice or a matter of religion. Though an archaka is normally a well-versed and accomplished person in the Agamas and rituals necessary to be performed in a temple, he is the holder of an office in the temple. He is subject to the disciplinary power of a trustee or an appropriate authority prescribed in the regulations or rules of the Act. He owes his existence to an order of appointment-be it in writing or otherwise. He is subject to the discipline at par with other members of the establishment. Though after appointment, as an integral part of the daily rituals, he performs worship in accordance with the Agamas Sastras, it is no ground to hold that his appointment is either a religious practice or a matter of religion. It is not an essential part of religion or matter of religion or religious practice. Therefore, abolition of

the hereditary right to appointment under Section 34 of the A.P. Charitable and Hindu Religious Institutions and enduments is not violative of either Article 25(1) or 26(b) of the Constitution. [624-A-D] A

17. Article 25(2) permits regulation of any secular activity associated with the religious practice. Appointment of an archaka is a secular activity. Hereditary right which governs the appointment of archaka is a secular usage which could be regulated by law. The mere fact that in some temples elsewhere the hereditary principle is being followed would not denude the power of the legislature to enact the Act abolishing hereditary rights and emoluments attached thereto. [566-D, F-G] B

18. A conjoint reading of Sections 13 and 142 of the Act preserves the existing customs, performances, religious worships, ceremonies and poojas according to Sampradyamas and Agamas followed in such institutions. Section 142 issues an injunction against an officer from interfering with such observance. Yet it would not, by operation thereof, amount to revival of what has been expressly abolished under Section 34(1)(b) of the Act. Abolition of hereditary principle on the basis of custom or usage to a holder of an office for continuance in that office is one facet, and performance of ceremonies, practices, customs or usages is another. Both cannot be mingled in the same water. Both are distinct and separate from each other. It would, therefore, be incongruous to accept the contention of petitioners that the right to continuance in office on the basis of custom and usage independently survives. The further contention that interference with matters based on custom or usage relating to 'religious institution, as defined in Section 2(23) amounts to interference with the freedom of conscience and free practice of religion and, therefore, it is violative of Article 25(1) and is untenable in law. Being secular actions they are not integral part of the religion or religious matters. [626-H; 627-A-D] C D E F

19. The contention that as per rules laid down in Agamas, the archaka of particular denomination alone is entitled to enter *sanctum sanctorum* and touch the image of God and therefore, persons belonging to that particular family, sect or denomination alone are entitled to perform pooja or ceremonial rituals of daily worship and that the abolition of hereditary right amounts to interference with the religion offending Article 25(1) cannot be acceded to. What is relevant is not that the candidate who seeks to serve as archaka must be from that family etc., but must be an ac- H

A completed person in Agama rules having faith and devotion in that form of worship and also proficiency to perform rituals and rites, ceremonial rituals appropriate to the temple according to its customs, usages, Sampradayams etc. In other words, the faith and belief in the religion, customs, usages or Sampradayams in that particular Agamas and proficiency in performance of the rituals to the image of God in those particular rituals are conditions precedent to be eligible to hold office of the archaka. One who fulfils those pre-conditions is eligible to be considered and appointed to the office of archaka or other similar offices. The regulation of this secular activity, therefore, does not offend any faith or belief in the performance of those duties by a person other than one hailing from the family, sect/sub-sect or denomination hitherto performing the same. Earlier, the field of choice to appoint a particular archaka was confined and limited to that family, sect/sub-sect or denomination, but after the statutory regulation the field of choice is widened and all eligible candidates including those available from the family etc. will be considered, competency is tested and when one is found qualified, appointment is made to the office of archaka according to the prescribed procedure. The abolition of hereditary principle under Section 34 is not violative of either Article 25(1) or 26(b) of the Constitution. [627-E; 628-A-E]

E 20. It is true that the position of the office of Pedda Jeeyanagar or Chinna Jeeyanagar as a religious head in the context of methadhipathi of Ramanuja Sect was upheld by the Privy Council, yet as regards his right in the Lord Venkataramana temple, he performs the office as a nominee and, therefore, he also owes his existence to the nomination which is entithesis to hereditary succession. Every Mirasidar or Gamekar equally cannot claim hereditary right to continue to perform the duties from generation to generation. They all are servants or members of the establishment liable to disciplinary jurisdiction. Consequently, they stand along with the priest (archaka) of the temple of Sri Balaji. It is true that hereditary rights of archaka or other office-holders are in vogue in most of the State Act and no attempt therein appears to have been made to abolish them, yet their inaction or omission to amend the law is no ground to hold that the legislature lacks the power to do so or that they are in violation of the Constitution. Therefore, the abolition of their rights do not violate either Article 25(1) or 26(b) or the Constitution. [624-E-G]

H 21. The abolition of the emoluments attached to the office is not

invalid in law. So long as the statute did not intervene regulating the secular appointment of an archaka, the appointment according to prevailing usage or custom was upheld by the courts. Consequently, the right to succession or appointment remained valid. But with the statutory intervention, unless the custom or usage is held an integral part of the religion, the legislature has power to regulate the appointment of an archaka or other office-holder. In view of the settled legal position that the appointment of an archaka is a secular act, the previous custom or practice or usage in making an appointment to office of an archaka is regulated under the Act. As an object in that behalf the hereditary right or custom or usage, prevalent in that behalf, was statutorily abolished. [624-H; 625-A, C-E]

Gazula Dasaratha Rama Rao v. State of Andhra Pradesh & Ors., AIR (1961) SC 564, referred to.

22. As a corollary to the abolition, legislature is competent to prescribe qualifications for archakas in Section 36 supplemented by the rules made in that behalf. So, the prescribed qualifications are valid qualifications for appointment. [566-H; 567-B]

23. There is no force in the contention that prescription of the qualifications to the archaka is arbitrary, unjust and unfair. It is true that prior to the Act came into force, the succession to the office was based on hereditary principles. But Section 37 of the predecessor Act 17 of 1966 prescribes qualifications of archaka which are in *pari materia* with those prescribed in Section 36 of the Act. It is common knowledge that many an archaka are not highly educated but have working knowledge in the performance of ritual and daily pooja to the presiding Deity of the temple and other Deities installed in the temple. To obviate deficiency in learning etc., Agama training schools in the respective regions, viz., Andhra Telen-gana and Rayalseema were established and training in fact is imparted to the candidates. The recognition of the qualifications by the Commissioner is one of the conditions, but the rules have been made in this behalf. Rules provide elaborate procedure. Competent persons having specialised knowledge in the respective subjects set the question papers and evaluation thereof is done by equally competent persons on the subjects. As regards the recitation and clarity of pronounciation of Vedic mantras, the candidates are adjudged by the expert persons well-versed in Vedic mantras and Agama sastras. A pandit in that branch of speciality is in

A service of the department. With his assistance and of other persons, the Commissioner would adjudge the suitability of respective candidates. Similarly the word 'Sapthavyanams' i.e. seven bad habits, has been clarified in the Explanation of Appendix to Section 36. Therefore, the authority would have no difficulty in adjudging whether a candidate is free from seven vices or any of them. If there is any error of judgment or denial of appointment on that basis in any individual case that would be a matter for consideration in an appropriate forum. The provisions, therefore, are not arbitrary, unjust or unfair. [631-B-G]

24. The Act regulates administration and maintenance of charitable and Hindu religious institutions and endowments in their secular administration. There is no force in the contention that there are no proper guidelines in the Act to exercise the power and wide discretion has been conferred on secular authority, i.e. the Commissioner to decide as to who should be appointed to the offices abolished under Section 34. It is settled law that existence of rules is not a condition for the Act to become operative. The rules made under the predecessor Act 17 of 1966 are in vogue. Section 35 prescribes procedure for appointment of office-holders and servants. Section 36 prescribes qualifications. Section 37 regulates disciplinary conduct. The rules have been made in exercise of the power under Section 155 to supplement these provisions. Three schools to impart education in Agama Sastras etc. are established one each in Andhra, Telengana and Rayalseema regions. Thus, apart from the provisions in the Act, there are rules which elaborately provide for training facilities and conducting examinations in the prescribed manner. The Act, therefore, is not arbitrary. The procedure prescribed therefore is neither vague nor arbitrary. [628-F-H; 629-A-B]

25. Section 144 abolishes only shares in hundi collections and other rusums but not Nitya Naivadyam, i.e. cooked rice etc. offered to the Deity as per Dittam. The said section was enacted keeping in view the provision of payment of salary to the archakas and other servants. The provisions, therefore, are not violative either of Article 25 or 26. [567-E]

26. Chapter VIX of the Act exclusively deals with the management of TTD. So long as hereditary archakas, mirasidars or office-holders had their hereditary right, as a part of their rendering service they were entitled to a share in the Prasadam or collections offered to the presiding Deity or

other Deities of the temple as per the custom or usage prevailing in the particular temple or agreement between the management and the office-holders. But on abolition thereof, as a corollary, the right to a share in collections, Prasadam etc. also ceased to operate and also stood abolished. Apart from the hereditary right, they have no independent right to a share in the offerings etc. Therefore, with the abolition of the hereditary right, the right to receive customary payment associated with an office equally stood abolished under Section 144. Section 144 is consequential to Section 34 and other similar rights like Section 16 of the Act. Resultantly, the right to receive a share in the Prasadam etc. stood abolished. Holder of an office is entitled to payment of salary prescribed under the rules for services rendered by an archaka etc. Consequently, the right to a share by customary practices or usages or under a contract with management also stood abolished. They are regulated by making payment of the monthly salary to the holder of an office in accordance with the scales prescribed under the rules made thereunder. [630-C-F]

27. The gamekars (who prepare food items offered to God including Laddus) are species of mirasiders doing service to Lord Deity on hereditary principle. Though they perform the duty of preparing food etc. according to Agama prescription, usages and practices obtaining in each temple, their rights being founded on hereditary principle stood abolished. This abolition, in respect of Archaka and other service holders having been upheld, the case of gamekars cannot independently stand on any higher footing. Therefore, abolition of their rights under Sections 34 and 144 is equally valid in law. [630-H; 631-A-B]

28. There is no force in the contention that the power of transfer under Section 39 is within the grinding teeth of Article 25(1) of the Constitution. Section 13 and 142 would take care of the apprehended catastrophe. On mere apprehension, Section 39 cannot be declared to be *ultra vires*. If in any individual case any transfer was effected of a person who had no accomplishment of Agamic rules, customs, practices or sampradayams applicable to that particular temple, it would be considered and dealt with accordingly. It cannot be expected that the Commissioner would act in violation thereof and would act in a way inconsistent with Sections 13 and 142. Each case would be considered on its own merits and correctness of such transfer would be tested in appropriate proceedings. Therefore, on that score alone, Section 39 cannot

A be declared arbitrary or *ultra vires* or unjust. [631-H; 632-B-D]

B 29. The principles in fixing the scales of pay and method of payment of salary introduced by the rules are required to be adjudge. In the absence of any material it is difficult for this Court to give any finding in that behalf. However, liberty is given to place necessary material evidence before the Government which would constitute a Committee to go into the question to rationalise the pay-scales of all the archakas in different temples and the modality for payment of salary to them. After approval of the rules by the State Government, the respondents should place the same before the Court for further approval. [632-F-H]

C 30. The State exercising its secular power regulates appointment of archakas. Equally the Archaka along with his family, is required to be kept with daily comfort so that he would continue to dedicate himself to perform the ritual worship of the Deity. The State is required to determine his service conditions, scale of pay and other emoluments according to the grade of the temple in which he works and to regulate the period of duty and of service. That apart, welfare measures in addition should be initiated as a measure of social welfare to the archaka and other employees of the temple and pandits working in the temple and under the supervision of the Commissioner. Therefore, the State should come forward with a scheme to provide the archakas, other employees and their family members like suitable accommodation, education by way of refresher courses and courses in Agamas in the respective region, medical facilities, educational facilities to their children, loans for construction of their own houses, and wherever accommodation in the temple is available letting the same to them on reasonable rent, group insurance scheme, unforeseen contingencies like accident, death etc., rehabilitation of the widow or educated unemployed youth or such other measures as may be incidental and part of economic welfare. For other items appropriate scheme should be formulated. Accordingly the State Government is directed to constitute a Committee. It would be open to the representatives of the archakas etc. to place their views and material before the Committee in the formulation of the scheme. After the scheme is formulated, the Government would take a decision thereon and would place the duly approved scheme before this Court within six months from the date of this judgment for further action thereon. [633-B-H; 634-A]

H 31. To effectuate the scheme, tentatively a consolidated fund of Rs. 75 crores should be set up as corpus and procedure should be evolved by the

Government as to in which nationalised Bank or income yielding Government Securities the same would be deposited; as to who would operate and disburse the income accrued from the fund from time to time. Subject to further revision, if any, in the above consolidated fund, the TTD is directed to deposit a sum of Rs. 20 crores into the fund during the financial year 1996-97 by end of June, 1996. In each financial year, a sum of Rs. 10 crores be deposited till the corpus of Rs. 75 crores is reached. The Government is also directed to call upon other major temples with annual income of Rs. 20 lakhs or more, to contribute to the said fund of Rs. 75 crores. During the financial year 1996-97, a sum of Rs. 5 crores by each of the major temple may be directed to be deposited and in subsequent four years, a sum of Rs. 1 crore every may be directed to be deposited. It would also be open to the Government to seek donations from other charitable institutions within or outside the State of Andhra Pradesh or from non-resident Indians. The State Governments would also approach the Income-Tax Department and the Government of India to exempt from income-Tax the said donation as well as the income derived by way of interest or otherwise on the corpus of or further amounts deposited into the fund. [634-A-F]

Per Hansaria, J. (Concurring) :

1. This concurring note is only to highlight one facet of this case which has its own importance. The same is the difference between "religion", a word used in Articles 25 and 26 and "Dharma" known to our psyche. Very often the words "religion" and "Dharma" are used to signify one and the same concept or notion; to put it differently, they are used inter-changeably, This, however is not so. The word "religion" as used Articles 25 and 26 of the Constitution cannot be confined, cabin crabbed to what is generally thought to be religion. The word religion in the two articles has really been used, not as is colloquially understood by the word religion, but in the sense of it comprehending out concept of dharma. The English language having had no parallel word to dharma, the word religion was used in these two articles. It is a different matter that the word dharma has now been accepted even in English language. [635-H; 636-A-D]

Webster's New Collegiate Dictionary; Oxford Dictionary; referred to.

2. The word "religion" in Articles 25 and 26 has to be understood not in a narrow sectarian sense but encompassing our ethos of "Serve Bhawan-tu Sukhinah". Let us strive to achieve this; let us spread the message of

A our dharma by availing and taking advantage of the freedom guaranteed by Articles 25 and 26 of our Constitution. [639-G]

B 3. The essential aspect of our ancient though concerning law was the clear recognition of the supremacy of dharma and the clear articulation of the status of 'dharma', which is somewhat akin to the modern concept of the rule of law, i.e. of all being sustained and regulated by it. [637-E]

C 4. Having love for all human beings is dharma. Helping others ahead of one's personal gain is the dharma of those who follow the path of selfless service. Defending one's nation and society is the dharma of soldiers and warriors. In other words, any action, big or small, that is free from selfishness is part of dharma. The signs and symptoms of dharma are that which has no room for narrow-mindedness, sectarianism, blind faith, and dogma. The purity of dharma, therefore, cannot be compromised with sectarianism. A sectarian religion is open to a limited group of people whereas dharma embraces all and excludes none. This is the core of our
D dharma, our psyche. [639-B, E-F]

Rig. Ved, Karna Parva of the Mahabharata Chapter 69, Verse-58, Bhadaranyakopanisad; Ashrama Vasika Parva of the Mahabharata Chapter-5, Verse-9, Yoga Science and Philosophy of the U.S.A. in 1988, referred to.

E CIVIL ORIGINAL JURISDICTION : Writ Petition No. 638 of 1997
Etc. Etc.

(Under Article 32 of the Constitution of India.)

F K. Parasaran, R. Venugopal Reddy, Dr. V. Gaurishankar, P.P. Rao,
A. Raghuvir, Ms. Mridula Ray Bharadwaj, Dr. Sumant Bhardwaj, Mohan Parasaran, V. Balachandran, P.N. Ramalingam, A.P.N. Rao, T.V. Ratnam, Subodh Markandeya, Ajay Singh, Mrs. Chitra Markandeya, (Sunil Kumar Jain) for Jain Hansaria & Co., G. Prabhakar, B. Kanta Rao, S. Rajappa, Mrs. H. Wahi, R. Ashok, B. Parthasarathi, K. Rajendra Chowdhary, Y. Prabhakar Rao, M. Dorairaj, V. Balaji, A.T.M. Sampath, A. Subba Rao,
G A. Raghunath, K. Swami, Ms. Thilagavathy, R.D.B. Raju, N. Ganpathy, K. Ram Kumar, Ms. Asha Nair, C. Balasubramaniam, Adinarayana Raju, (T.V.S.N. Chari) (NP), P.K. Pillai, G. Prabhakar, G. Venkatesh Rao and Ms. Sadhana Ramachandran for the Appearing Party.

H The Judgment of the Court was delivered by

K. RAMASWAMY, J. This and connected writ petitions and transfer cases concerned the constitutionality of Sections 34, 35, 37, 39 and 144 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act (for short, the 'Act') abolishing hereditary rights of archaka, mirasidars, gamekars and other office-holders and servants like hereditary Karnam of Dwarka Thirumalai Temple in West Godavari District. The facts in Writ Petition No. 638/87 are sufficient for consideration of questions raised in this batch of cases.

The petitioner is one of the Chief Priests (archaka) in an ancient and renowned Hindu temple at Thirumala Tirupathi known in entire south-Asia and abroad as Venkateswaraswamy temple and in north-India as Balaji temple in whose praise saint Annamacharya spent his life in singing devotional songs - a practice devolved by custom and usage from over a century. According to the petitioner, the office of archaka is succeeded from forefathers in accordance with the Vaikhanasa Agama Shastra rules which govern the temple on the principles of "heirs in line of succession" among four families, viz., Paidapally family, Gollapalli family, Pethainti family and Thirupahanna Garu family. The petitioner belongs to the Paidapally family. According to the petitioner, being Hindu vaishnavas, they render Archaktwam service in the holy temple of Lord Venkateswara situated on the top of seven hills or Saptagiri, Thirumalai. The temple is presided over by Lord Venkateswaraswamy known by different names.

Religion is inspired by ceaseless quest for truth which has many facets to release and free the soul from ceaseless cycle of birth and death to attain salvation. Hindus believe that worship consists of four forms of which idol worship is one such form. Mode of worship varies among persons of different faiths. It is an assimilation of the individual soul with the infinite. For its attainment diverse views and theories have been propounded and one of them is idol worship. Hindu creed believes that the Supreme Being manifests Himself with three aspects as Brahma, the Creator, Vishnu, the Preserver and Shiva, the Destroyer and Renovator. Those who believe and are devoted to the worship of Vishnu are known as Vaishnavas and those who worship Shiva are called Saivites.

Vaishnavas believe that God had manifested Himself in different incarnations. In other words, manifesting Himself into flesh and the very contrary of avatara which is expressive absolute and immaculate. The finite

A forms of His avatara are not forms of material impurity but imperium purity, the purity of Suddhasattva. Vaishnava believes in Deity Vishnu who has manifested Himself in 10 avataras. Lord Vishnu descends in one avatara 'Archavatar'. It is a Deity in the form of idols in the temple.

B The institution of temple should be in conformity with the Agamas co-existing with the institution of temple worship. Construction of the temple and the institution of archakas simultaneously came into existence. The temples are constructed according to the Agama Shastra. In accordance with the Agama Shastra, archaka as professional man, attends on

C idols. He is associated with existence of temple over centuries as part of its establishment. The authority of Agama is judicially recognised in several precedents of various courts including this Court. Agamas are treaties of ceremonial law dealing with matters such as construction of temples, installation of idols therein and conducting worship of the Deity. 28

D Agamas related to the Shiva temples. The Agamas of Vaishnavas are Pancharatra Agamas containing elaborate rules regulating how the temple should be constructed, whereat the principal Deity is to be consecrated, where the other Devatas (idols) are to be installed and place where worshippers should stand and worship the Deity. Though Agamas prescribed class discriminatory placement for worship in the temples, it

E became obsolete after the advent of the Constitution of India which, by Articles 14, 15, 17, 21, 25 and 26, prohibits discrimination on grounds only of caste, class, sect etc.

F The consecration of idol should be done by the priest according to elaborate and complicated rituals accompanied by chanting of mantras and devotional songs appropriate to the Deity. Hindu worshippers believe that the divine spirit has descended in the Deity's images and if efficacy and power of the Lord are transmitted into the Deity, the image of the Deity becomes fit to be worshiped. Rules have been provided to conduct periodical or daily worship for securing continuance of the divine spirit in the

G image. According to Marishi Maharishi in his discourse to his disciple on need for worship for salvation had ordained that worship of Deity in the temple will bring all the benefits. The purpose of the temple is to provide opportunity for public worship of the Deity. When congregation of worshippers participate in the worship, a particular attitude of aspiration of

H devotion gets developed and confers great spiritual benefit.

The priest preserves the image from pollution, defilement or desecration. By performing rituals, rites and reciting hymns he makes Lord present in definable and describable way and Vishnu manifests in the hearts of the devotees. It is the religious belief of Hindu worshippers that when the image is polluted or defiled, the divine spirit in the image is diminished or even vanished. According to the Agamas, an image becomes, defiled if there is any departure or violation of any of the rules relating to worship. It would then become necessary to perform purificatory ceremonies to restore the sanctity of the shrine. The performance of rituals thus plays a great role to sustain the faith of the layman in the deity. Therefore, the Agama rules are part of Hindu religious faith. Any departure from the traditional rules of worship would result in pollution.

Only qualified archaka is entitled to step inside the *sanctum sanctorum* (Garbhagriha) after observing daily discipline imposed upon him by the Agamas. It is his sole duty to perform daily rituals and ceremonies according to Agama prescriptions touching the Deity. Touch of the image of the Deity by any other person would defile the idol. Therefore, the Agama assigns that duty to the archaka alone as part of religious practice. He performs Archana and other services on behalf of the "Sevarthies" or worshippers. The services of archaka, therefore, are integrally and inseparably connected with the performance of daily rituals in pooja (worship) to the Deity.

Consequently, devotees of the respective Vaishnavite or Saivite temples alone are entitled to be archakas in the respective temples. In a Saivite temple, a Vaishnavite cannot be an archaka and vice versa, though there is no bar for them worshipping either Deity as a lay worshipper. Therefore, any other archaka is not competent to do pooja in Vaishnavite temple according to Vaikhanasa Agama Shastra. This is the general rule applicable to all the temples. Even among Vaishnavites there is further distinction between pancharatra and valikhanasa system of performing rites. It is, therefore, clear that archaka of a temple, besides being proficient in the rituals appropriate to the worship of the particular Deity according to Agamas, must also belong to a particular denomination. Thereby, archaka occupies an important place in religious part of temple worship.

Unlike other temples, Thirumalai Lord Venketeswaraswamy temple

- A has peculiar feature of its own, namely, certain special ceremonies and rites distinct for this temple should be done strictly, as mandated by the Vedas and Agamas by the archakas who profess and practise Vaikhanasa Agamas and succeed to the office of archaka hereditarily and are governed by the Vaikhanasa Agama and are of Vaishnavite faith. The principle of heredity thereby became part of usage.

B

- The management of the temple prior to the statutory intervention was in the hands of Dharmakartas (Padda Jeengar). Equally other classes of persons like Chinna Jeengar, Acharya, Purrushas and Gamekars were in charge of making prasadams, like Laddu and doing other forms of services like maintenance of the temple by shepherd community and other local communities, are part of the hereditary system.

C

- All of them are given certain rights known as "Mirasi rights". They earn their livelihood through these mirasi rights which include lands given by the temple for performance of services. Besides, archakas have shares out of the offerings made to the temple, while persons in charge of preparing prasadams will get percentage of share out of the sale of parasadams. All persons in charge of various activities of the temple succeed hereditarily. The right of management was acquired by birth and every person born in the respective classes is entitled to a share in the perquisites incidental to management. The temple is managed by these persons by turns among them. Dharamkarthas and archakas had framed rules for management of the temple, Even after the statutory take-over of the management by the Endowment Department or Government, custody of the properties, particularly jewels, remained with archakas and the custody changed hands to each family according to turns from time to time. Head priest remained in charge of doing pooja for a particular period; when his family got the charge once in four years or eight years, he would be in charge of all the valuables. Though the value of the jewellery and other valuables of the temple was of several crores, there was never any complaint of any sort regarding their custody and management of the jewellery and other valuables. All the functions done by archakas constitute an integral and inseparable part of the management of the temples and religious ritual practices and usages. Even the food offerings and preparation of prasadams, i.e., Dittam, are part of the religious practice evolved in the temple and are to be prepared by persons well versed in the Agama Shastras.

H

The State Government had constituted a commission headed by Justice Challa Kondaiah, former Chief Justice of Andhra Pradesh, as its Chairman; the composition thereof changed and ultimately a three-member Commission consisting of the Chairman, Dr. C. Annarao, former Chairman of Thirumala Tirupathis Depasthanams (for short, the 'TTD') for a decade having first-hand personal experience in the working of the system and management of TTD; and Shri A.V. Suryarao, an advocate, Joint Commissioner of Endowment Department having expert knowledge in working out the Madras Act, Telangana Act and the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (for short, 'predecessor Act 17 of 1966') and known for his devoted service, as Member Secretary, came in existence. The Commission submitted its report in three printed volumes which have been placed before us and copiously relied upon and referred to. It had recommended abolition of hereditary archakatwam service and trusteeship etc. On its basis, the Act was made, which has come into force w.e.f. May 23, 1987 after it received Presidential assent. It repealed its predecessor Act 17 of 1966.

Shri K. Parasaran, learned senior counsel, who addressed leading arguments on behalf of the petitioner and which were adopted by other learned counsel, contended that abolition of hereditary rights created by the founders in rendering services to the temples by archaka etc. in charitable or religious institutions and endowments is an interference with religious and customs which are part of religion. The Act should not look at archakas or other office-holders in isolation; they should be considered in its pragmatic whole whose impact would be to destroy the concept and content of Hindu religious belief itself. The scheme of the Act as such is an unwarranted and outrageous interference with the religion, that is to say, it aims to abolish all existing religious office, religious usages and practices and confers on the secular State power to decide as to who should be appointed as archaka, mirasider and other office-holders destroying the existing customs, usage and traditions which are integral part of religion. Article 25 and 26 of the Constitution deal with guarantee not only of matters of doctrine and beliefs but also the practices of it, to be ascertained with reference to the tenets and doctrine of the religion itself as is evidenced by custom and usage. Where the religious affairs and ceremonies are carried on in accordance with a particular Agama Shastra, deviation therefrom is impermissible. The archaka is part of the temple worship and the rights of an archaka are succeeded by heredity from generation to

A generation treating him as an original Acharya. As followed in Vaikhanasa Agama, the daily rites, rituals and ceremonies performed by them extend to daily worship, offerings of food and performance of special ceremonies in a particular way with all piety and devotion as integral part of religion.

B Archakatwam service would thus form part of religious service integrally connected with the religion. Therefore, Sections 16, 34 to 37, 39 and 144 of the Act are *ultra vires* Articles 25(1) and 26(b) of the Constitution. They do not relate to public order, morality, health or matters relating to economic, financial, political or other secular activities associated with religious practices nor do they relate to social welfare or reform. Therefore, C they are not saved either by Article 25(2) or 26 of the Constitution.

The emoluments attached to the office are for discharge of daily obligations by an archaka and the right to a share in the collections is beneficial interest attached to the office. The deprivation thereof denudes D the archaka or office-holders of the means to discharge the duties and would destroy the character of worship itself. The reimbursement by way of payment of salary is calculated to make archaka unfit to discharge his duties, integral to worship. The restrictions imposed are offensive of Article 25(1) and being arbitrary, unjust and unfair, violative of Article 14. Making the archaka a servant under the State Department is contrary to E the code of conduct laid down by Agamas for an archaka, an integral part of religious practice. Therefore, it cannot be a subject matter of any legislation. Even if a legislation comes under social welfare, public order, morality or health or any other field, it can only regulate and restrict the secular activity by cannot altogether or abolish or totally charge the system F which had formed an essential part of the religion. Therefore, the law taking away the hereditary right from the petitioners offends Articles 25(1) and 26.

The Commissioner who is a bureaucrat has no competence or G qualifications to judge or test the qualifications, merit or work of an archaka who learns the Agama Sutras by heart from childhood. Being born in the hereditary family, they would learn recitation of slokas and mode of performance of worship as per Agama. The Commissioner cannot regulate by law nor has he competence to test his qualification or suitability for appointment. Therefore, though being secular act, hereditary H right of an archaka may be abolished since qualification for appointment

flows from the Agamic rule, only descendants of particular family are competent to conduct worship and they alone have the right to appointment and they cannot be tested nor can their competence be determined by the Commissioner. A

Public interest requires that rites or rituals must be performed by an archaka and public duty towards the general worshippers demands that archaka who is interested in ritual form of worship would alone be appointed as priest. They would be available only in the families of archakas from generation to generation. Payment of share in the offerings is part of religious practice and usage. No question of money consideration or emoluments in that behalf for the performance of his duties, would arise. Archaka is entitled to the share in Parsadams, laddus and collections in the prescribed manner as part of religious customs and usages. The scheme under the Act and rules are wholly misconceived and repugnant to the established religious practice. B C

There is nothing in the Act to show that it was enacted in the interest of public order, morality and health, which alone are relevant factors to restrict freedom of religion or religious practices guaranteed by Article 25(1) of the Constitution. The State cannot, under the pretext of making secular law, regulate or restrict activities which are integrally associated with religious purposes. D E

Vaishnava archaka cannot be transferred to and posted even in another similar Vaishnava temple situated elsewhere as no two temples perform same ceremonies and rituals in the same order. The Pedda Jeengar and Chinna Jeengar are religious heads and importance of their office was judicially recognised by the Privy Council. Therefore, their offices are hereditary and cannot be abolished under the Act. A Brahmachari cannot be appointed as an archaka which is antithesis to the Agama Shastra. He cited the instance of performance of rituals by hereditary archakas in Padmawati and Lord Venkateswaraswamy temples. He placed voluminous evidence of prevalence of the hereditary system in different States and those Acts did not abolish the system. He placed strong reliance on the decision of this Court in *Seshammal and Ors. Etc. Etc. v. State of Tamil Nadu*, [1972] 3 SCR 815, apart from the leading judgment in *The Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Sri Shirur Math*, [1954] SCR 1005. F G H

- A Shri P.P. Rao, learned senior counsel for the State, contended that the Act made a clear distinction between matters of religion and religious practices and secular activities or a religious institution or endowments. Sections 13, 23, and 142 of the Act have taken care to preserve all the existing religious usages, practices and sampradayams as valid. Apart from preserving them, the Act mandates the officers not to violate their practice.
- B The Act seeks to regulate only the administration and maintenance of secular part of the religious institutions or endowments. The Act does not affect any honour to which any person including archaka or Jeengars are entitled by custom. The Act does not interfere with the performance of any religious worship or ceremony, nor does it object to any religious institution's functioning according to the Sampradayams and Agamas followed by them.
- C

- Article 25(2) permits regulation of any secular activity associated with the religious practice. Appointment of an archaka is a secular activity.
- D Archakas, Jeengars and others are employees of TTD. Though the Pedda Jeengars and Chinna Jeengars have the status of Mathadhipathi in relation to their Math, in relation to TTD, their status is only that of employees. The Commission had gone into these aspects and recommended for their abolition. There had been compromise with the TTD by hereditary archakas and mirasidars on May 30, 1979 to receive emoluments at certain rates which would establish that sharing of food offerings and laddus etc. is not part of religious practice. The archakas and gamekars have not been rendering any service personally but only through their deputies working for and on behalf of head priests for consideration. The hereditary nature of the right, therefore, became irrelevant. Vaikhanasa Agama nowhere mandates that the members of the families referred to in the writ petition alone are entitled to perform the service, though they belong to Vaikhanasa sect and are Srivaishnavites. Hereditary right which governs the appointment of archaka is a secular usage which could be regulated by law. The mere fact that in some temples elsewhere, the hereditary principle is being followed would not denude the power of the legislature to enact the Act abolishing hereditary rights and emoluments attached thereto.
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- As a corollary to the abolition, legislature is competent to prescribe qualifications for archakas (in Section 36) supplemented by the rules made in that behalf. The Commissioner of Endowment Department, with the guidance and assistance of scholars in the Agamas, discharges statutory
- H

functions. Training in those subjects as provided in the rules and recommended by the scholars in Vedas is imparted in schools established in three places in Andhra Rayalseema and Telengana regions; examinations are conducted as per questions set out by the scholars in the respective subjects and assessed by them. So, the prescribed qualifications are valid qualifications for appointment. The rules laid down only a preferential claim for Brahmachari while all others are treated alike in adjudging the claims of all qualified archakas. The power to transfer archakas is regulated by Section 39. It must be read in the light of the guidance found in Sections 13 and 142. Therefore, archakas who are competent and well-versed in rituals, rites, pooja as per existing religious usages and customs of that particular institution alone would be transferred. Rule 7 of the Rules made in the predecessor Act 17 of 1966 in this behalf expressly preserved and regulated the said safeguards. They would continue to be in force by operation of Section 155(2) of the Act, till new rules are made in that perspective. Since customary emoluments attached to the service have been abolished, regular salary and other allowances are admissible to them.

Independently, the archakas are entitled to what has been offered actually to the Deity and not to the Prasadams. Section 144 abolishes only shares in hundi collections and other rusums but not Nitya Naivadyam, i.e., cooked rice etc. offered to the Deity as per Dittam. Section 144 was enacted keeping in view the provision of payment of salary to the archakas and other servants. The provisions, therefore, are not violative either of Article 25 or 26.

With a view to appreciate the respective contentions, it is necessary to understand the scope, content and effect of the impugned provisions of the Act. Section 2(3) defines "charitable endowment", Section 2(4) "charitable institution" and "charitable purpose" has been defined under Section 2(5). Section 2(15) defines "hereditary office-holders". "Religious institution" has been defined under Section 2(23), "Temple" under Section 2(27) and "Thirumala Tirupathi Devasthanams" under section 2(28). Section 34 abolishes hereditary rights in mirasidars, archakas and other office-holders and servants and reads thus :

"34.(1)(a) Abolition of hereditary rights in Mirasidars, archakas, and other office-holders and servants :-

(1)(a). Notwithstanding anything in any compromise or agreement H

A entered into or scheme framed or sanad or grant made or judgment, decree or order passed by any Court, Tribunal or other authorities prior to the commencement of this Act and in force on such commencement, all rights, whether, hereditary, contractual or otherwise of a person holding any office of the Pedda Jeeyanagar, Chinna Jeeyanagar, a Mirasidar or an archaka or Pujari
 B or any other office or service or post by whatever name it is called in any religious institution or endowment shall on the commencement of this Act stand abolished.

(b). Any usage or practice relating to the succession to any office
 C or service or post mentioned in clause (a) shall be void;

(c) All rights and emoluments of any nature in cash or kind or both accrued to an appertaining to any office or service or post mentioned in clause (a) and subsisting on the date of commencement of this Act shall on such commencement stand extinguished.
 D

(2) Every office-holder and servant mentioned in clause (a) of sub-section (1) holding office as such on the date of commencement of this Act shall, notwithstanding the abolition of the hereditary rights, continue to hold such office or post on payment of only such emoluments and subject to such conditions of service referred to in sub-section (3) and (4) to Section 35."
 E

Section 35, consequently, provides procedure for appointment of office-holders and servants etc. and Section 36 prescribes qualifications for archakas. Section 37 deals with discipline among them and prescribes
 F disciplinary procedure for the office-holders and servants. Section 38 gives power to the Commissioner etc. in certain cases and Section 39 regulates transfer of office-holders and servants. Section 40 directs office-holders or servants not to be in possession of jewels etc. except under conditions mentioned thereunder. Section 144 abolishes shares in hundies and other rusums which reads thus :
 G

"144. Abolition of shares in Hundi and other rusums :- Notwithstanding any judgment, decree or order of any Court, Tribunal or other authority or any scheme, custom, usage or agreement, or in any manual prepared by any institution or in any Farmana or Sanad or any deed or order of the Government to the contrary
 H

governing any charitable or religious institution or endowment, all shares which are payable or being paid or given or allowed at the commencement of this Act to any Trustee, Dharmakartha, Mutawalli, any office-holder or servant including all offerings made in the premises of the Temple or at such places as may be specified by the Trustee, all Prasadams and Panyarams offered either by the Temple or devotee, and such other kinds of offerings, all shares in the lands of the institution or endowment allotted or allowed to be in possession and enjoyment of any archaka, office-holder or servant towards remuneration or otherwise for rendering service and for defraying the 'Paditharam' and other expenses connected with the service or management of the temple, shall stand abolished with effect on and from the commencement of this Act."

Chapter XIV deals with application of the Act to Thirumala Tirupathi Devasthanams, constitution of Board, powers and functions of the Board of Trustees etc., making the Act a complete code as regards the management and maintenance of the institutions or endowments belonging to Deity.

The concept of Hindu religious faith and practice referred to in the judgments in the narration of the facts needs preface with inner depth of religion as revealed by (1) Swami Vivekananda's scholastic concepts in his "The Complete Works", Vol. I, at page 124; and (2) broad spectrum of self-realisation by Sri Aurobindo, Swami Vivekananda had stated that :

"Each soul is potentially divine. The goal is to manifest this divinity within by controlling nature, external and internal. Do this either by work, or worship, or psychic control, or philosophy-by one, or more, or all of these- and be free. This is the whole of religion. Doctrines, or dogmas, or rituals, or books, or temples, or forms, are but secondary details.

Religion is based upon faith and belief, and, in most cases, consists only of different sets of theories, and that is the reason why there is difference in form."

Thereafter, at page 341 he had stated that :

"Get rid, in the first place, of all these limited ideas of God and

A see him in every person - working through all hands, walking through all feet, and eating through every mouth. He lives, through all minds of his thinking. He is self-evident, nearer unto us than ourselves. To know this is religion, is faith, and may it please the Lord to give us this faith."

B Shri Aurobindo, one of the illustrious revolutionary patriots and philosophers of Bharat, in his "The Human Cycle, the Ideal of Human Unity War and Self-Determination" had in Chapter XVII 'Religion as the Law of Life' elucidated its real content and purpose thus :

C "The absolute and transcendent, the universal, the One is the secret summit of existence and to reach the spiritual consciousness and the Divine the ultimate goal and aim of our being and therefore of the whole development of the individual and the collectivity in all its activities, reason cannot be the last and highest guide; culture as it is understood ordinarily, cannot be the directing light or find out the regulating and harmonising principle of all our life and action. For religion is that instinct, idea, activity, discipline in man which aims directly at the Divine, while all the rest seem to aim at it only indirectly and reach it with difficulty after much wandering and stumbling in the pursuit of the outward and imperfect appearances of things. The whole root of the historic insufficiency of religion as a guide and control of human society lies in confusion of religion with liberty, creed, sect, cult, religious society are such."

At page 166 he elaborated that :

F "It is true in a sense that religion should be dominant thing in life, its light and law, but religion as it should be and is in its inner nature, its fundamental law of being, a seeking after God, the cult of spirituality, the opening of the deepest life of the soul to the indwelling Godhead, the eternal Omnipresence. On the other hand, it is true that religion when it identifies itself only with a creed, a cult, a Church, a system of ceremonial forms, may well become a retarding force and there may therefore arise a necessity for the human spirit to reject its control over the varied activities of life. *There are two aspects of religion, true religion and religionism. True religion is spiritual religion, that which seeks to live in the spirit, in what is beyond the intellect, beyond the aesthetic and ethical and*

practical being of man, and to inform and govern these members of our being by the higher light and law of the spirit, Religionism, on the contrary, entrenches itself in some narrow pietistic exaltation of the lower members or lays exclusive stress on intellectual dogmas, forms and ceremonies, on some fixed and rigid moral code, on some religio-political or religio- social system. Not that these things are altogether negligible or that they must be unworthy or unnecessary or that a spiritual religion need disdain the aid of forms, ceremonies, creeds or systems. On the contrary, they are needed by man because the lower members have to be exalted and raised before they can be fully spiritualised, before they can directly feel the spirit and obey its law."

(Emphasis supplied)

At pages 168-69 he added that :

"Only by the light and power of the highest can the lower be perfectly guided, uplifted and accomplished. The lower life of man is in form undivine, though in it there is the secret of the divine, and it can only be divinised by finding the higher law and the spiritual illumination..... The spiritual man who can guide human life towards its perfection is typified in the ancient Indian idea of the Rishi, one who has lived fully the life of man and found the word of the supra-intellectual, supramental, spiritual truth. :

In Chapter XXXIV at pages 541-42, he opined that :

Humanitarianism has been its most prominent emotional result. Philanthropy, social service and other kindred activities have been its outward expression of good works. Democracy, socialism, pacificism are to a great extent its by-products or at least owe much of their vigour to its inner persence.

The fundamental idea is that mankind is the godhead to be worshipped and served by man and that the respect, the service, the progress of the human being and human life are the chief duty and chief aim of the human spirit. No other idol, neither the nation, the State, the family nor anything else ought to take its place; they are only worthy of respect so far as they are images of the human

A spirit and enshrine its presence and aid its self-manifestation. But where the cult of these idols seeks to usurp the place of the spirit and makes demands inconsistent with its service, they should be put aside. No injunctions of old creeds, religious, political, social or cultural, are valid when they go against its claim."

B At page 543, he mentioned that :

C "One has only to compare human life and thought and feeling a century or two ago with human life, thought and feeling in the pre-war period to see how great an influence this religion of humanity has exercised and how fruitful a work it has done. It accomplished rapidly many things which orthodox religion failed to do effectively, largely because it acted as a constant intellectual and critical solvent, an unsparing assailant of the thing that is and an unflinching champion of the thing to be, faithful always to the future, while orthodox religion allied itself with the powers of the present, even of the past, bound itself by its pact with them and could act only at best as a moderating but not as a reforming force. Moreover, this religion has faith in humanity and its earthly future and can therefore aid its earthly progress, while the orthodox religions looked with eyes of pious sorrow and gloom on the earthly life of man and were very ready to bid him bear peacefully and contentedly, even to welcome its crudities, cruelties, oppressions, tribulations as a means for learning to appreciate and for earning the better life."

E At pages 546-47, he concluded his thoughts on brotherhood thus :

F "Yet is brotherhood the real key to the triple gospel of the idea of humanity. The union of liberty and equality can only be achieved by the power of human brotherhood and it cannot be founded on anything else. But brotherhood exists only in the soul and by the soul; it can exist by nothing else. For this brotherhood is not a matter either of physical kinship or of vital association or of intellectual agreement. When the soul claims freedom, it is the freedom of its self-development, the self-development of the divine in man in all his being. When it claims equality, what it is claiming is that freedom equally for all and the recognition of the same soul, the same godhead in all human beings. When it strives for brother-

hood, it is founding that equal freedom of self-development on a common aim, a common life, a unity of mind and feeling founded upon the recognition of this inner spiritual unity. These three things are in fact the nature of the soul; for freedom, equality, unity are the eternal attributes of the Spirit. It is the practical recognition of this truth, it is the awakening of the soul in man and the attempt to get him to life from his soul and not from his ego which is the inner meaning of religion, and it is that to which the religion of humanity also must arrive before it can fulfil itself in the life of the race."

At page 594, he stated as under :

"Later religions gave a name and some body of form and quality to the one unknown Godhead and proclaimed an ideal law which they gave out as his word and scripture. But the dogmatism of a partial and un-lived knowledge and the external tendencies of the human mind darkened the illuminations of religion with the confusions or error and threw over its face strange masks of childish and cruel superstitions. Religion too by putting God far above in distant heavens made man too much of a worm of the earth, little and vile before his Creator and admitted only by a caprice of his favour to a doubtful salvation in super human words. Modern thought seeking to make a clear riddance of these past conceptions had to substitute something else in its place, and what it saw and put there was the material law of Nature and the biological law of life of which human reason was to be the faithful exponent and human science the productive utiliser and profiteer. But to apply the mechanical blindness of the rule of physical Nature as the sole guide of thinking and seeing man is to go against the diviner law of his being and main his higher potentiality. Material and vital Nature is only a first form of our being and to overcome and rise beyond its formula is the very sense of a human evolution. Another and greater Power than hers is the master of this effort, and human reason of human science is not that Godhead, but can only be at best one and not the greatest of its ministers."

Dr. S. Radhakrishnan, the philosopher - President of India, had stated, as quoted by this Court in *Shirur Math's* case, that religion is a

A specific attitude of self, itself no other, though it is mixed up generally with intellectual views, aesthetic forms and moral valuations. Religion is absolutely a matter of faith with individuals of communities and it is not necessarily theistic.

B Taittiriya Upanishad says in Brahmananda Valli, Serial No. 7, that in the beginning all this Universe was Non-Existent and Un-manifest, from which this Manifest Existence was born itself, none other created it. Therefore, they say that it was well and beautifully made, Shri Aurobindo says in his magnum opus Life Divine : World-existence is the ecstatic dance of Shiva which multiplies the body of the God numberlessly to the view; it leaves that while existence precisely where and what was, ever is and ever will be; its sole absolute subject is the joy of the dancing. In Rig Veda, the Hymns of Bharadwaja, spoke about universal Force that "The heights of heaven were measured into form by the eye of this universal Force they were shaped by the institution of the Immortal."

D The world is the creation of the braht conscient energy of the Supreme Spirit "apraketam salilam sarvam idam tapasas tan mahina ajayata ekam". (Out of all the ocean of inconscience it is that one spiritual Existent who is born by the greatness of his own energy). Braht Vedic thinkers, like ancient Greeks in their search for the first ground of all changing things, looked upon water, air, fire etc. as the ultimate elements out of which the variety of the world is composed. In the pluralistic stage several Gods like Pavana, Indra, Agni etc. were looked upon as the authors of universe. In monoistic philosophy there exist unsolved question whether God created world out of his own nature and its existence is an absolute reality which we cannot call it either as existent or non-existent. For to Deussen the central Upanishadic thought declares that the world in space and time is an appearance, an illusion, a show of God. To know God, we must reject the world of appearance. What inclines Deussen to this view in his own belief that the essence of every true religion is the repudiation of the reality of the world. Having come to that conclusion on independent grounds, he is anxious to find support, as Prof. S. Radhakrishnan argues, for his doctrine in the philosophic systems of ancient India, the Upanishads and Sankara, ancient Greece, Parmenides and Plato, and modern Germany, Kant and Schopenhauer. Shri Aurobindo conceived of the Absolute Reality, as a triune principle thus : "The Absolute Reality is the Satchidananda, that is, Existence-Consciousness Force-Bliss. The Absolute

as a Pure existent is no doubt the fundamental reality, but movement, energy, process is equally a reality". A

The fundamental desire of man to make peace with his inner-self and bring to bear an experience of transmutation of the current personality into a vibrant, Centre of energy of deep fulfilment and happiness. Article 25(1) of the Constitution guarantees freedom of conscience and right to freely profess, practise and propagate religion. To what extent inner layers of religion in the Hindu dharma are protected by Articles 25 and 26 is the core question from which a deduction could be drawn whether the Act interferes with them violating Articles 25(1) and 26. B

The very attempt to define religion to find some distinct or possible unique essence or set of qualities that distinguish religion from the remainder of human life, is primarily a Western speculative, intellectualistic and scientific disposition. It is also the product of the dominant Western religious mode or custom of religious people. Even the Western thinkers recognise their cultural bias in the concept of religious assumptions of theism permeating their thought. Encyclopedia of Religion by Mircea Eliade (Vol. 12) states that religion is the organization of life around the deep dimensions of experience - varied in form, completeness, and clarity in accordance with the enviroing culture. If religiousness is a depth-awareness coming to distinctive expression in the forms we call religion, how is religiousness distinguished from various other types of awareness such as the aesthetic and ecstatic - what Abraham Maslow (1964) calls "peak experiences" and Marghanita Laski (1961) terms "non-religious ecstasy" and the states of "altered consciousness" produced by various psychosomatic techniques or drugs ? On Hindu religion, at page 290 it is stated that "yet deep within ritualism there is inherent the concern for accuracy and faithfulness. This is the essentially sacramental nature of ritual that arises from its nature as an ordered symbol system. Thus both symbol and ritual are perceived as intrinsic embodiments of the sacred essence, the supersensible and indescribable ultimacy of a religion. Thus ritual and symbol bring the real presence of the religious depth-dimension into the lives of its experiments and in so doing become incredibly precious". C D E F G

At page 292, it is further stated under the caption "Religion and Modernity" that "the question whether religion, at least, in its traditional H

A forms, will survive the ongoing cultural changes of modern times is often discussed. Certainly many traditional and current formulations, and perhaps entire traditions, will radically change or even disappear, yet it also seems that as soon as one form of religion disappears, another rises to take its place". Without asserting a religious instinct in mankind, it may perhaps be said that man is incessantly religious in one way or another and that the human situation and human nature make it inevitably so. The immense mysteries and uncertainties of the world and man's own inquiring and evaluating self-consciousness make inevitable a reaching out for some sort of ultimate values and realities - which is yet another name for the religious quest.

C

Religion is thus eternal and in development is in search of God throughout history, building into a fuller religious life. The eternal religion remains unchanging but the form and content keep changing with the change of times with the experience of the past keeps to preserve to the fullest religious life. But as Shri Aurobindo put it the religiousness of man descends him into lower levels and due to confusion predominance is given to forms like rituals etc. So Join Macmurray in "Reason and Emotion" (Faber and Faber Publication) at page 40 states thus :

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"...religion is also the consciousness of life in God; that which we seek for is also there always eternally in us. It is this eternal aspect of religion which is expressed in the religious recognition of equality in all human life at any stage of its development; in the knowledge that all distinction of superiority and inferiority are relative distinctions; and that ultimately all persons and all personal experience are of equal, because of eternal or infinite, worth. Just so in love between two persons, if it is a real love, there is a sense in which it is always perfect and complete, and this, as we know very well, is not in contradiction with the fact of development in that love; it is indeed, the condition of the development".

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Julian Huxley in his "Evolution After Darwin" Vol. III page 259 under the subject "The Evolutionary Vision" has stated thus :

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"Once we truly believe...that man's destiny is to make possible greater fulfilment for more human beings and fuller achievements by human societies, utility in the customary sense become subordinate. Quantity of material production is, of course, necessary as

the basis for the satisfaction on elementary human needs-but only up to certain degree. More than a certain number of calories of cocktails or T.V. sets or washing machines per person is not merely unnecessary, but bad Quantity of material production is a means to a further end, not an end in itself. A

The Upanishads teach us that India has sought in religion not an absolute or finished dogma to believe in, but a method and means to pierce the veil that hides every present meaning and mystery of existence. Robert Ernest Hume in his "the Thirteen Principal Upanishads" at page 30 footnote states that "the earnestness of the search for truth is one of the delightful and commendable features of the Upanishads". B C

Swami Vivekananda in his lecture on "Religion and Science" incorporated in "The Complete Works" (Vol. VI, Sixth Edition) had stated at page 81 thus :

"Experience is the only source of knowledge. In the world, religion is the only science where there is no surety, because it is not taught as a science of experience. This should not be. There is always, however, a small group of men who teach religion from experience. They are called mystics, and these mystics in every religion speak the same tongue and teach the same truth. This is the real science of religion. As mathematics in every part of the world does not differ, so the mystics do not differ. They are all similarly constituted and similarly situated. Their experience is the same; and this becomes law." D E

In Volume II, Ninth Edn. at page 432, Swamiji said that : F

"There are two worlds : the microcosm and the macrocosm, the internal and the external. We get truth from both these by means of experience. The truth gathered from internal experience is psychology, metaphysics and religion; from external experience, the physical sciences. Now a perfect truth should be in harmony with experience in both these worlds. The microcosm must bear testimony to the macrocosm and the macrocosm to the microcosm; physical truth must have its counterpart in the internal world, and internal world must have its verification outside;" G

Swami Vivekananda in his "The Complete Works", Vol. 1, Eleventh H

A Edn. at page 366 said that :

"The foundations have all been undermined; and the modern man, whatever he may say in public, knows in the privacy of his heart that he can no more "believe", believing because it is written in certain books, believing because people like him to believe, the modern man knows it to be impossible for him. There are, of course, a number of people who seem to acquiesce in the so-called popular faith but we also know for certain that they do not think. Their idea of belief may be better translated as "non-thinking carelessness". This fight cannot last much longer without breaking to pieces all the buildings of religion".

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D "Is religion to justify itself by the discoveries of reason, through which every other science justified itself ? Are the same methods of investigation, which we apply to sciences and knowledge outside, to be applied to the science of religion ? In my opinion this must be so, and I am also of opinion that the sooner it is done the better. If a religion is destroyed by such investigation, it was then all the time unless, unworthy superstition; and the sooner it goes the better. I am thoroughly convinced that its destruction would be the best thing that could happen. All that is dross will be taken off, no doubt, but the essential parts of religion will emerge triumphant out of this investigation. Not only will it be made scientific-as scientific, at least, as any of the conclusions of physics or chemistry-but will have greater strength, because physics or chemistry has not internal mandate to vouch for its truth, which religion has."

Swami Vivekananda in his "The Complete Works", Vol. VI, Sixth Edn. at page 81 said that :

G "Religion deals with the truths of the metaphysical world just as chemistry and the other natural sciences deal with the truth of the physical world. The book one must read to learn chemistry is the book of (external) nature. The book from which to learn religion is your own mind and heart. The sage is often ignorant of physical science because he reads the wrong book-the book within; and the scientist is too often ignorant of religion because he, too, reads the

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wrong book-the book without." A

Again in his The Complete Works, (Vol. V, Eighth Edn.), pages 192-93, he says that :

"The basis of all systems, social or political, rests upon the goodness of men. No nation is greater or good because Parliament enacts this or that, but because its men are great and good. Religion goes to the root of the matter. If it is right, all is right ... One must admit that law, government, politics are phases not final in any way. There is a goal beyond them where law is not needed.... All great Masters teach the same thing. Christ saw that the basis is not law, that morality and purity are the only strength." B C

From that perspective, this Court is concerned with the concept of Hindu religion and dharma. Very often one can discern and sense political and economic motives for maintaining *status quo* in relation to religious forms masquerading it as religious faith and rituals bereft of substantial religious experience. As sure, philosophers do not regard this as religion at all. They do not hesitate to say that this is politics or economic masquerading as a religion. A very careful distinction, therefore, is required to be drawn between real and unreal religion at any stage in the development and preservation of religion as protected by the Constitution. Within religion, there is an interpretation of reality and unreality which is completely different experience. It is the process in which ideal is made rule. Thus perfection of religious experience can take place only when free autonomy is afforded to an individual and worship of the infinite is made simpler, direct communion, the cornerstone of human system. Religion is personal to the individual. Greater the law bringing an individual closer to this freedom, the higher is its laudable and idealistic purpose. Therefore, in order that religion becomes mature internally with the human personality it is essential that mature self-enjoyment must be combined with conscious knowledge. Religious symbols can be contra-distinguished from the scientific symbols and both are as old as man himself. Through scientific symbols there can be repetition of dogmatism and conviction of ignorance. True religion reaching upto the full reality of all knowledge, believes in God as the unity of the whole. D E F G

According to Hindu belief, Vishnu as preserver is stated to take five forms, viz., Para, Vyuha, Vibhava, Arca and Antaryamin. Para is the H

- A transcendental form. Vibhava includes the ten divine descends (avatara) and also thirty nine forms which He takes from time to time. Arca represents God in the form of idol, which He though formless, takes this finite form to show favour to His devotees. The form of Antaryamin is to remain within the self and control it by directing it to lead a virtuous way of life, in accordance with the residues of the deeds done by it. Temple, therefore, forms an integral part of Hindu religion and the idol installed therein forms the main symbol of religious worship manifesting the dignity of God.

- C The purpose of religious experience, as stated earlier, is to integrate human life, socially, materially and morally. It must, therefore, produce a share of material goods and bear a pinnacle for human experience. The dualism of Spirit and Matter, should be kept clear. John Macmurray has stated in this behalf thus :

- D "Worship is certainly specifically religious, and it is an attitude of mind which is not compatible with science. Science does not worship, It enquires, and analyses, classifies and does sums. On the other hand, religion is not merely worship; and worship may be merely superstitious. If superstitious worship is religion, then astrology and palmistry are sciences. Religion cannot simply sit down and worship anything and everything; it must claim reality for what it worships; and it must make some statement about this reality and assert not merely that it is true but that it is supreme truth. A religious temper which is indifferent to any truth, scientific or otherwise, it *ipso facto*, superstitious Religion is not merely the worship of God, but the knowledge of God, for if it does not know its God then God is a figment to the imagination and it worships it knows not what. All honest religion necessarily involves a strenuous effort to know the supreme reality, and the knowledge of God must involve all knowledge in its scope."

- G (John Macmurray : Reason & Emotion, Faber & Faber).

- H The ultimate experience of religious consciousness is described beautifully in Audi Shankara's Shri Dakshinamurti Stotram wherein the expression : "Darpanadrisyamnanagari" is used. The expression refers to the teacher showing a reflection of a city as seen in a mirror. In Panchadasi, XIII - 101, the sloka says :

निश्छिद्र दर्पणे भाति वस्तुगर्भं बृहज्जगत्।
सच्चित्सुखे तथा नानाजगद्गर्भमिदं विचत्॥

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Nishchhidra Darpne Bhati Bastugarbham Brihat-jagat,
Satchit Sukhe Tatha Nana jagadgarbhamidam Biyat.

(In a flawless mirror, the expansive space with all the things in it, is seen, Similarly, in this mass of Existence and Consciousness is seen this space comprising the variegated universe.)

B

Religious experience is a general nature. All manifestation of religious experience to whatever organised religion they belong are ultimately co-experiences by which the mind is stilled, purified, the prana controlled by which "pameshwarachaitanya" appears. In manasollasa (ix : 21-3-) it has been observed that :

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चित्ते निश्चलतां पाते प्राणो भवति निश्चलः
चित्तस्य निश्चलत्वाय योगं सध्यानमभ्यरोत्॥

D

Chitte nishchaltan yate prano bhawati nishchallah
Chittshya nishchaltwaya yogam sadhyamavyaset.

The above 'shloka' says that the signs such as the control over the five elements and the siddhi are indicative of the progress in the path leading upto the various ways in which the bimbarupa, i.e., the pamesvara-chaitanya appears.

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It is also useful to recollect the beautiful shloka in the Geeta where Lord Krishna says :

अनन्याश्चिन्तयन्तो मा ये जनाः पर्युपासते।
तेषां नित्याभियुक्तानां योगश्रेम तहाभ्यहम्॥

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Ananyash Chintayanto man ye janah paryupaste,
Tesham nityabhiyuktnam yogakshemam Bahamyaham.

(Those men, who, meditating on Me as non-separate, worship Me all round - to them who are ever devout, I secure gain and safety.)"

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Thus there can be no doubt that religious experience is an internal experience and the Deity in a temple is supposed to provoke that inner experience. The image of the Lord in a temple, after prana pratishtha is

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- A done, is a centre of reference, a symbol of the Great Consciousness whose attainment is ultimately the pinnacle of religious experience. The nature of a religious experience can be shadowgraphed by peace, tranquility and joy 'that passeth understanding'. It would also be relevant to note that a temple based upon any 'sampradaya' must resemble a true symbol of the Infinite Grace, the nature of which is rightly called as the amalgam of being, consciousness and bliss. That is why in Manasollasa (ix-47) it has been said:

सच्चिदानन्द रूपाय बिन्दुनादान्त नादान्तरात्मने।
आदिमध्यान्त शून्याय गुरूणां गुस्त्रे नमः॥

- C Sachchidanandraupai Bindunadantaratmane,
Adimadhyantshunyay Gurunam Gurbe Namah.

(Obeisance to Him, the Guru of the Gurus who is being, Consciousness and Bliss; who dwells in Bindu and Nada; who has no beginning, middle or end.)

- D Material fruits, namely, sons, grand sons, houses, lands, money, grain, all in plenty which accrue in Swaraga are considered to be lesser benefits and lesser lights to achieve in comparison to the true empire, namely, the identity of the Self with the Supreme Being (Slokas X-2, 3, 19 and 21 Manasollasa).

- E According to Hindu belief, worship of God is of four kinds, viz., Japa-chanting Gayatri mantras (sloka) or Asthakshara; Homa - giving oblation into the fire; Archana - worship of God in the form of Idol in the temple; and Dhyana concentration on God alone. Of these four, Archana gained an established form of worship in temple.

- F The reason for form adorning a Deity image in a temple, therefore, is to produce chitta suddhi generating and ensuring the necessary emotion for the sustenance as 'tatparata', the Supreme Devotion, parabhakti, which is the 'abhedhavana,' culminating in the attainment of 'sarvatmatva,' thus in itself becoming.

- G How does this great splendid religious experience transform the life of a man from a mere temporal pursuit of limited vision into an expansive pursuit of equality, seeing one's own self in the others and ultimately losing one's ego and dissolving it into the subaudited symphonic testament of love, joy and peace ? The ascent from an empirical experience of personal life

which is the first assertion of a religious experience is to be followed right up to the stage of mutual communion, i.e., of the individual self with relationship outside becomes inevitable. A

John Macmurray once again in "Reason and Emotion" says thus :

"There is, then, a definite field of empirical experience which is the field of religion. It is the field of personal life - not, of course, the field of individual isolation. When Professor Whitehead says that religion is what a man does with his solitariness he is saying what is almost the reverse of the truth; although he is, unlike many philosophers, moving in the right universe of discourse. Religion is what a man makes of his personal relationships. This field of personal relationships is the centre of every human life. That is a mere statement of fact. But it does not follow that every human life realises itself religious nature. In his personal relationships a man is in the field of religion. Whether he achieves reality in this field depends on whether he is able to achieve objectivity and mutuality. We may live in relation to other persons as if the relation were not a personal one, it always is personal, whatever we do about. But we may behave as if it were not. All failure of this kind is a failure to realize in action - and, consequently, in reflection - the real nature of the relationship between persons. It involves the loss of personal objectivity. In relationship to another person we isolate ourselves and so fall into subjectivity and become individualists. When that happens, the relationship is treated in action and in thought as of a sub-personal type. There are two possibilities. One is that the relation is treated as of the material type; in which case the other individual is treated as an instrument or a means. Slavery is the crudest form of this type of unreality in personal relationships, but it includes any relationship in which individuals use one another as instruments. The second type of unreality falsifies the personal relationship by making it organic. In that case the relationship is treated as functional and becomes a co-operation for the achievement of a common purpose. Any conception of human relationships which grounds them upon the existence of a common purpose which each serves in his own way involves unreality of this type. Such conceptions of human relationships are properly described as irreligious, because they deny the B
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A reality of the relationship as a communion of persons. It is not
enough to insist that human nature is essentially social, since
B society may take any of these forms. What makes the society real
is that the relations between the persons concerned are essentially
religious, that is to say, grounded in mutual communion, and the
equality which this implies. *For without equality, there can be no*
C *mutuality*. I do not mean, of course, that in a true society organic
and material relationships between persons are non-existent, but
only that they are dependent relations falling within and grounded
in the relation of friendship. The material and the organic are
unreal in independence. Their reality lies in their dependence upon
the personal and their inclusion within it."

The author very beautifully describes the experience of God thus :

D "The dualism of mind and matter reflects itself all too easily in the
dualism between secular and sacred, natural and supernatural, the
human and the divine. The result is that we think of God as isolated
E from the world and, therefore, that the religious life involves a
turning away from man to God, from this world to another world,
so that religion becomes something apart, instead of the fundamen-
tal activity of human life. But now, having made that point clear,
I should like to indicate in closing how essential to the view that I
F have outlined is the idea of God. All experience at any level is the
experience of the finite in the infinite. Even a triangle, as Spinoza
pointed out, can only be seen, or imagined, as a limitation of
infinite space. At the material level, we apprehended all material
G objects as finite and dependent upon the material infinite. This is
not matter of reflection but of immediate common experience.
Similarly we apprehend all organisms as finite dependents of
infinite life. And when we come to the personal field it is not
H different. I have already insisted that our apprehension of our
dependence upon what is not ourselves. We can now see that it is
an apprehension of our own dependence and the dependence of
all other finite persons upon infinite personality. God as infinite
personality is the primary natural experience of all persons. One
might almost say, if it were not for the traditional limitation of our
use of language, that God is the first perception."

The experience of God is not simply a transcendental doctrine (theologia transcendentalis), it is not simply an unregulated usage of satisfaction of the intellect but is an affirmative experience. Even Kantian believers who conceive God as supreme and absolute perfection, find in Indian philosophy that religion is not the subject matter of inclusion or exclusion by the process of rational psychology but the subject matter of human experience. On the conception of God as supreme and absolute perfection in a brilliant summary of Kant's philosophy Frederick Copleston, S.J. in Volume VI; (A History of Philosophy) says :

"We have, therefore, three principal Ideas of pure reason, namely, the soul as permanent substantial subject, the world as the totality of casually related phenomena, and God as absolute perfection, as the unity of the conditions of objects of thought in general. These three Ideas are not innate. At the same time they are not derived empirically. They arise as a result of the pure reason's natural drive towards completing the synthesis achieved by the understanding. This does not mean, as has already been mentioned that the pure reason carried further the synthesizing activity of the understanding considered as constituting objects by imposing the a priori conditions of experience known as the categories. The Ideas of pure reasons are not 'constitutive'. But the reason has a natural drive towards unifying the conditions of experience, and this it does by proceeding to the unconditioned, in the three forms already mentioned. In doing this it obviously passes beyond experience. Hence the Ideas of the pure reason are called by Kant 'transcendental Ideas', though he later goes on to speak of the third Idea, that of God, as the 'transcendental Ideal'. *For God is conceived as supreme and absolute perfection.*"

Johnson said rightly that sublimity is produced by aggregation and not by dispersion. In that lies a great truth. It must not be forgotten that all rituals ultimately are only means to the state of knowledge. Thus seers and thinkers have in fact reduced rituals to the bare minimum and sometimes even decried them because a non-essential adherence to them is only bound to be an obstacle or impediment in the attainment of true knowledge. It would be very useful to note that if religious experience is an internal experience, rituals beyond evoking the necessary environment and atmosphere and as it were painting sea scape of purity must yield to

A the unrelenting pursuit of true knowledge which is identical with true religious experience. The pursuit of knowledge, the knowing of the being, ever has been described by eminent philosophers as incapable of sustaining observance of rituals. The belief is that observance of rituals and the devotion to true knowledge cannot co-exist.

B Shri Acharya Pada in the Sarva Vandantha Sidhanta shlokas 857-862 says :

ज्ञाननिष्ठातत्परस्य नैव कर्मोपयुज्यते।
 कर्मणोज्ञाननिष्ठायान् न सिध्यति सहस्थितिः॥
 परस्पर विरुद्धत्वात् तयोर्भिन्न स्वभावयोः।
 कृतव्योभावनापूर्वं कर्म ज्ञानं विलक्षणम्॥
 देहात्मबुद्धौ विच्छेत्त्ये ज्ञानं कर्म विवृद्दये।
 अज्ञानमूलक कर्म ज्ञानान्तम्याना शकम्॥
 ज्ञानेन कर्मणो योगः कथं सिध्यति वैरिणा।
 सहयोगो न घटते यथा तिमिस्ते जसोः॥
 निमेषोन्मेषयोर्वापि तथैव ज्ञानकर्मणो॥
 प्रतीचीपश्यतः पुंसः कुतः प्राचिविलोकनम्।
 प्रत्यक प्रषण कुतः कर्मणि योग्यता॥

E Gyan nistha tatparasya nait karmopyujyate
 Karmano Gyan nishthatabaya na sahsthiteh
 Paraspas Birudhyatwat Tayor Bhinna Swabhbhaiyoh
 Kartitwa Bhawana Purbam karm gyanam vilakshanam
 Dehatma-bvudherbichhitye gyanam karm Bibridhayeh
 Agyanam Mulakam Karm Gyanantu bhavi nashkam.
 Gyanen karmano yogah katham sidhyati berina
 F Sahyogo na ghatate yatha timirtejsah
 Nimeshonmesyorwape tatheb gyan karmnoh
 Pratichi Pashyatah punshah kutah prachibeloknam
 Pratyam Pravamchittasya Kutah Karmani yogyata.

G (When the mind becomes motionless, in that case, the life also becomes unmovable. Hence the yoga with meditation should be practised for the control of chita (mind). One devoted to the pursuit of knowledge no longer remains fit for action. The co-existence of knowledge and action is not to succeed. Due to their being mutually contradictory in nature, involvement in action with a sense of self-performance causes the absence of knowledge. But

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the renouncement of the sense of bodily-self, goes for the promotion of knowledge. The action and knowledge emanating from the ignorance, are destroyers of both. How there can be the union of knowledge and action inasmuch as they are incompatible? It is impossible to conjure darkness and light together, one at the same time. The knowledge and action cannot be combined. Likewise one cannot keep one's eyes closed and open at the same time, one who is looking western side, cannot see towards eastern direction. Wherefrom there can be the competence for work or action when one's heart and soul is set on the devotion of knowledge in opposite direction.)

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

In the celebrated Gitabhashya (XVIII-55) Sri Acharyapada says :

न हि पूर्वसमुद्रं जिगमिषोः प्रतिलोभ्येन
 प्रत्यक्समुद्रं जिगमिषुणा समानर्भागत्वं संभवति।
 प्रत्यगात्म विषयप्रत्यथसन्तानकरणभिनिवेशश्चज्ञाननिष्ठा।।
 सा च प्रत्यक्समुद्रं गमनवत् कर्मणा सहभावित्वेन विरूढ्यते।
 पर्वतसर्षपयो रिवान्तरवान विरोधः प्रमाणविदां निश्चितः।
 तस्मात् सर्वकर्म-संन्या सनैव ज्ञाननिष्ठा कार्या इति सिद्धम्।

- A Na hi purbsamudram jigmisoh Pratilomyen
 Pratyaksamudram Jigmisuna Saman Margtwam Sambhati.
 Pratyagatma-bisai-Pratyaya santan karmabhinibeshashch Gyannistha,
 Sa cha Pratyaksamudragamanvat Karmana Sahvabitwen birudhyati.
 Parbat Sarsapyoribantarbani birodhak Pramanwidam Nishchitah.
- B Jasmat Sarbkarmsanyasenaib Gyananisthakarya iti sidham.

The meaning being :

- C "He who wishes to reach the eastern ocean should not indeed travel
 in the opposite direction i.e. by the same road as the one chosen
 by the person who wishes to go to the western ocean. And the
 devotion to knowledge consists in an intent effort towards main-
 taining a continuous stream of the consciousness of the Inner self.
 There would be contradiction if it were to be conjoined with ritual
 which is like going towards the western ocean. It is a firm convic-
 tion of experts in the pramanasastra that the difference between
 D the two is as wide as that between a mountain and a mustard seed.
 Hence the conclusion that the devotion to knowledge is to be
 adhered to only by renouncing all action."

- E The truth of religious experience is that true knowledge is an indica-
 tion of a complete understanding of contradictions, just as physics, which
 means study of simple things, yet appears to be a complicated subject. A
 beautiful illustration finds place in Richard Dawkins's passionate (Dar-
 wanian) book named "The Blind Watchmaker" :

- F "I said that physics is the study of simple things, and this too, may
 seem strange at first. Physics appears to be a complicated subject,
 because the ideas of physics are difficult for us to understand. Our
 brains were designed to understand hunting and gathering, mating
 and child-rearing; a world of medium sized objects moving in three
 dimensions at moderate speeds. We are ill-equipped to com-
 G prehend the very small and the very large things whose duration
 is measured in picoseconds or gigayears, particles that don't have
 position, forces and fields that we cannot see or touch, which we
 know of only because they affect things that can see or touch. We
 think that physics is complicated because it is hard for us to
 understand, and because physics books are full of difficult mathe-
 H matics. But the objects that physicists study are still basically simple

objects. They are clouds of gas or tiny particles, or lumps of uniform matter like crystals, with almost endlessly repeated atomic patterns. They do not, at least by biological standards, have intricate working parts. Even large physical objects like stars consists of a rather limited array of parts, more or less haphazardly arranged. The behaviour of physical, non-biological objects is so simple that it is feasible to use existing mathematical language to describe it, which is why physics books are full of mathematics." A B

No wonder, the concept of justice too based on a sense of equality, whether distributive or corrective, always carries with it a connotation of a sacred and religious dispensation. If ultimately the Atman which resides in all beings is that one auspicious and pure which alone remains over, there can be no manner of doubt that all beings are necessarily equal. The Atman, irrespective of the body and its temporal abode with attendant of earthly appellations, is the same for all. It is described by Shri Shri Acharyapada in the opening verse of the Dasasloki :

एवं सामान्यतोऽहंप्रत्यमसिद्धे चिदात्मनि वादि विप्रतिपत्तिभिः
सन्दिग्धे, अहंप्रत्ययस्यालम्बन विशेषनिर्णयायाह भगवानाचार्यः-

न भूमिर्न तोयं न तेजो न वायु-
न श्वं नेन्द्रिय वा ना तेषां समूहः।
अनेक्रान्ति कत्वात्पुष्पतये कासिद्ध -
स्तदेकोऽवशिष्टः शिवः केवलोऽहम्॥

Aibam Samanyatoahan Pratyayasidhe Chidatmani
vadivipratipattebhih samdidhe, aham pratyayasalambam
Visheshnirniayayah Vagwanacharyah :

Na Bhumirna Toyam Na Vayur na Kham Nendriyam
Na Tesham Samuhah. Anekantikawatsushuptyek Sidhah
Stadekkobashishtah Shivah Kewaloham.

"I am neither the earth, nor the water, nor the fire, nor the air, nor the space, nor any organ, nor their aggregate, because they are variable by nature, while Atman is that whose existence is proved by the unique experience of deep sleep. I am that One, Auspicious and Pure which alone remains over.

The concept of 'dharma' has been explained by Justice M. Rama Jois

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A in his Legal and Constitutional History of India (Vol. I) at pages 1 to 4 thus :

"Mahabharata contains a discussion of this topic. On being questioned by Yudhistira about the meaning and scope of Dharma, Bhishma stated :

B

ताहशोऽयमनुप्रश्नो यत्र धर्मः सुदुर्लभः।
दुष्करः प्रतिसंख्यातु तत्केनात्र व्यवस्यति॥
प्रभवार्थाय भूतानां धर्मं प्रवचनमं कृतम।
यः स्यात्प्रभवसंयुक्तः स धर्मइति निश्चयः॥
धारणाद्धम मित्याहुधर्मणे विधताः प्रजाः।
यः स्याद्धारण संयुक्तः स धर्म इति निश्चयः॥

C

Tadrishoayamanu Prashno yatra
Dharmah Sudurlabhah Duskarah
Pratisamkhyatum Jatkenatra Vyavasyati
D Prabhavarthai Bhutanam Dharmapravachanam Kritam.

Yah Syatpravabe Sanyuktah sa Dharma Iti Nishchayah.
Dharnatdharmamityahur Dharman Vidhritah Prajah.
Yah syatdharma sanyuktah Sa dharma Iti Nishchayah.

E

It is most difficult to define Dharma. Dharma has been explained to be that which helps the upliftment of living beings. Therefore that which ensures welfare (of living beings) is surely Dharma. The learned rishis have declared that which sustains is Dhrama.

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Taittiriya Samhita states :

धर्मो विश्रस्य जगतः प्रतिष्ठा।
लोके धर्मिष्ठं प्रजा उपसर्पन्ति।
धर्मेण पापमदनुदति।
धर्मं सर्वं प्रतिष्ठितम्।
G तस्माद्दर्ग परम वदन्ति॥

G

Dharma Vishwasya Jagatah Pratistha
Loke Dharmistham Praja upsarpanti
Dharman Papamapnudati
Dharme Sarban Pratisthitam
H Jasmad Dharman Param Badanti.

Dharma constitutes the foundation of all affairs in the world. A
People respect one who adheres to Dharma. Dharma insulates
(man) against sinful thoughts and actions. Everything in this world
is founded on Dharma. Dharma, therefore, is considered supreme.

Jaimini 1.2 :

स हि निः श्रेयसेन पुरुषं संयुनक्तीती प्रतिजानेमहे।
तदभिधीयते चोदनालश्रणोऽयो धर्मः॥ B

Sa hi Nihshraisen Purusam Sanyunakteeti
Pratijanimahē Tadabhidheeyate Chodana
Lakshanartho Dharmah. C

Dharma is that which is indicated by the Vedas as conducive to
the highest good.

Madhavacharya, the Minister to Hakka and Bukka, founder kings
of Vijayanager Empire, in his commentary on Parashara Smriti, D
has briefly and precisely explained the meaning of Dharma as
follows :

अभ्युदय निःश्रेयसे साधनत्वेन धारयति इति धर्मः।
स च लक्षण-प्रमाणाभ्यां चोदनासूत्रैर्व्यवस्थापतिः॥ E

Abhyudaya Nihshraise Sadhantwen Dharayate - Iti Dharmah.
Sa Cha Lakshan-Pramabhyam Chodanasutrairvyavasthapitah.

Dharma is that which sustains and ensures progress and welfare
of all in this world and eternal bliss in the other world. The Dharma F
is promulgated in the form of commands.

Therefore, Dharma embraces every type of righteous conduct cover-
ing every aspect of life essential for the sustenance and welfare of the
individual and the society and includes those rules which guide and enable
those who believe in God and heaven to attain moksha (eternal bliss). G
Rules of Dharma are meant to regulate the individual conduct, in such a
way as to restrict the rights, liberty, interest and desires of an individual as
regards all matters to the extent necessary in the interest of other in-
dividuals, i.e., the society and at the same time making it obligatory for the
-society to safeguard and protect the individual in all respects through its H

A social and political institutions. Shortly put, Dharma regulates the mutual obligations of individual and the society. Therefore, it was stressed that protection of Dharma was in the interest of both the individual and the society. A 'State of Dharma' was required to be always maintained for peaceful co-existence and prosperity of all.

B Though Dharma is a word of wide meaning as to cover the rules concerning all matters such as spiritual, moral and personal as also civil, criminal and constitutional law, it gives the precise meaning depending upon the context in which it is used. When Dharma is used in the context of duties of the individual and powers of the King (the State), it means constitutional law (Rajadharma). Likewise when it is said that Dharmarajya is necessary for the peace and prosperity of the people and for establishing an egalitarian society, the word Dharma in the context of the word Rajya only means law, and Dharmarajya means Rule of Law and not rule of religion or a theocratic State. Dharma in the context of legal and constitutional history only means Vyavahara-dharma and Rajadharma evolved by the society through the ages which is binding both on the king (the ruler) and the people (the ruled).

E In "Religion and Society in Ancient India" Prof. Om Prakesh (1985 Edition) has stated that the concept of dharma aims to maintain orderly society regarding every human being as the creation of God and treating him on a footing of equality. The last rhyme of the Rig Veda throws light on the Rig Veda concept of dharma laying down "that all human beings should move together, speak together and their minds be of one accord".

F संगच्छ्वं सर्वद्वं सवोमनासि जानताय। देवा भाग यथापूर्वं संजानाना उपास्ते (Samgachchhwam Sambaddwam Sambo Manasi Sanatnam Deva Bhagan Yathaturbe Sanjananam Upasate - Rv. X, 191, 2.) At page 5, he states that the concept of dharma was not static. Its content changes with the changing contexts of time, place and social environment. Dharma is that which holds together all living beings in a harmonious order. Virtuous conduct contribute to social welfare and vice is its bane. In the Sutra literature both these aspects of dharma are discussed under four sections which he elaborated in his book. At page 8, the author states that "the above discussion makes it clear that dharma in India does not force men into virtue but trains them for it. It is not a fixed Code of mechanical rules but a living spirit which grows and moves in response to the development of the society. Even the State

in India is a servant of dharma. It was not above morality. Its function is not to alter or annul dharma but only to administer it. Dharma is essential because it promotes individual security and happiness as well as the stability of the social order". A

In "Dharma - a Legal Discipline - Select Speeches and Writings of Dr. Shankar Dayal Sharma, the present President of India (Indian Bar Review Vol. XX (3 & 4) 1993 Special Issue) in his Centenary Speech of Swami Vivekananda in the Parliament of Religions, he emphasised "time-honoured philosophy of oneness and harmony within pluralism, the recognition of, respect for, and acceptance of different paths of logical and intuitive access to Absolute Truth". He reiterated what Swami Vivekananda had said one century ago at Chicago : "We believe not only in universal toleration, but we accept all religions as true" and concluded that "if India is to grow to her full potential as a strong, united; prosperous nation, a nation attuned to the highest moral and ethical values, true to the genius of her cultural and spiritual heritage, we shall all have to strive each day to build harmony, justice and creative endeavour. Indeed, in a very real way, it is our duty so to strive". He exhorted the youth of the country to be the vanguard of that mission. B C D

In his Dr. Zakir Hussain Memorial Lecture delivered at Visva Bharati Shanti Niketan on 29th April, 1989, Dr. S.D. Sharma stated thus : E

"We in India, however, understand Secularism to denote 'Sarva Dharma Samabhava' : an approach of tolerance and understanding of the equality of all religions". F

x x x x x x x

The Bhagwad Gita indicates this explicitly in the following Shlokas :

ये यथा मां प्रपद्यन्ते ताम्पतथैव भजाम्यहम्।
मम वर्तमानुवर्तन्ति मनुष्याः पार्थ सर्वशः॥ G

Ye yatha main prapadyante temptathaiva bhajamy- aham pama vartmuvartante manussyah nartha sarvasag

In whatever way men identify with Me, in the same way do I H

A carry out their; men pursue my path, in all ways. (Bh.G.IV.11)

यो यो यां यां तनुं भक्तः श्रद्धयार्चितुमिच्छति।
तस्य तस्याचलां श्रद्धां तामेव विदधाम्यहम्॥

B Yo yo yam yam tanum bhaktah Sraddhayarcitumicchati. Tasya tasyacalam sraddhan tam-eva vidhamy-aham)

Whatever from any devotee with faith wishes to worship. I make that faith steady. (Bh. G. : VII. 21)

C This philosophical approach of understanding, co-existence and tolerance is the very spirit of our ancient thought. The Rig Veda enjoins :

सद्गच्छध्वं सवदत्रं सं वो मनासिजानताम्।
देवो भागं यथा पूर्वं संजानाना उपासते॥

D Samgacchadhvam Samvedadhavam Sam Vo Manamsi Janatam Deva Bhagam Yatha Purve Samajanna Upasate.

(Reg. Veda 10.191.2)

E "Behave with others as you would with yourself. Look upon all the living beings as your friends, for in all of them there resides one soul. All are but a part of that universal soul. A person who believes that all are his soulmates and loves them all alike never feels lonely. Divine qualities of such a person such as forgiveness, compassion and service, will make him lovable in the eyes of his associates. He will experience intense joy throughout his life".

F

The Yajurveda states :

मित्रस्य मा चक्षुषा सर्वाणि भूतानि समीक्षन्ताम्।
मित्रस्याहं चक्षुषा सर्वाणि भूतानि समीक्षे।
मित्रस्य चक्षुषा महे॥

G

Mitrasaya ma caksusa Sarvani Bhutani Samiksantam.
Mitrasyacham caksua sarvani Bhutani samikse.
Mitrasya caksusa samiksamahe.

H

(Yaju. Veda 38.18)

"May all beings look on me with the eyes of a friend; May I look on all beings with the eyes of a friend. May we look on one another with the eyes of a friend." A

In his address "Law & Morality Sustain the world" delivered on 25th September, 1993 at the First Convocation of the Nation Law School of India University, Bangalore, Dr. S.D. Sharma expounded the meaning of 'dharma' thus : B

"What does Dharma mean ? The word is clearly derived from the root 'Dh.r' - which denotes : 'upholding', 'supporting', 'nourishing' - that which upholds is Dharma. In the Vana Parva of the Mahabharata, Verse-58 in Chapter 69 says : C

(Dharma is for the stability of society, the maintenance of social order and the general well-being and progress of humankind. Whatever conduces to the fulfilment of these object is Dharma; that is definite.) D

The Brhadaranyakopanisad identified Dharma with Truth, and declared its Supreme status :

स नैव व्यभवत्च्छ्रीयो रूपमत्य धर्मतदेतन्क्षत्र्यक्षत्रं
यद्दर्मस्तज्माद्धर्मतिपर नास्ति।
अथो अबलीयान्तलीयां समांशसते धर्मणे यथा राजा।
एवं यो वै स धर्मः सत्यं वै तत् तस्मात्सर्व्व्य
वदन्तमाहुर्धर्मं वदतीती धर्मं वा वदन्त सत्यं वदती
त्येतद्ध्येवैतमदमय भवति। E

Sa naib Vyabhawatchhreyo Rupamatyasrijat
Dharmam Jadetatkshtrasya Kshatram
Yaddharmastasmad Dharmat Param Nasti.
Atho Abaliyan Samashaste Dharmen Yatha Ragya.
Aidam yo bai sa Dharmah Satyam bai tat tasmad Saryam. G
Badantmahur Dharmam wa badntram.
Satyam badutiyetadhyai bai tadubhayam bhawati.

"(There is nothing higher than dharma. Even a very weak man hopes to prevail over a very strong man on the strength of dharma, just as (he prevails over a wrong-does) with the help of the King. H

A So what is called Dharma is really Truth. Therefore, people say about a man who declares the truth that he is declaring dharma and about one who declares dharma they say he speaks the truth. These two (dharma and truth) are this)"

B A similar thought is expressed in the Ayodhya-kanda of the Valmiki Ramayana, in verse-10, Sarga-109.

सत्यामेवा नृशंस च राजवृत्त सनातनम्।
तस्मात्सयात्मकं राजयं सत्यलोकः प्रतिष्ठतः॥

C Satyamebanrishamsam ch Raj Brittam Sanatanam.
Tasmat Satyatmakam Rajyam Satya Lokah Pratisthitah.

(From the ancient times the constitutional system depends on the foundation of Truth and social sympathy. Truth is the fundamental basis of the State; indeed the whole universe rests on Truth.)

D The Rig Veda states that the Law and Truth are eternal - born of sacrifice and sublimation :

ऋतः च सत्यं चाभी दधात तपसोऽध्यजायत

E Ritam cha Satyam Chabhidadhat Tapsodhyajayat.

The Niti Vakyamrit begins with the statement :

अथ धर्मार्थे फलैश्च राज्याय नमः

F Ath Dharmarth Falai Rajyaya Namah.

The Yajnavalkya Smriti states :

श्रुति स्मृति सदाचारः स्वस्थ च प्रियमात्मनः।
सम्यक्ताद् कल्पजः कामो धर्ममूलार्थं स्मृतम्॥

G Shrutih Smritih Sadacharah Swasya cha Priyamatmanah
Samyakam Kalpjah Kamo Dharmamulormidam Smritam.

(The Sruti, the Smriti, the approved usages, that which is agreeable to one's in most self or good conscience, and has sprung from due deliberation, are ordained as the foundation of Dharma.)

H

The Markandeya Purana expresses the purpose of Dharma as :

A

सर्वलोकप्रियो नित्यमुवाचैदह निर्शमा।
 नन्दन्तुसर्वं भूतानि स्निद्यन्तु विजनेत्यवपि।
 स्वस्त्यस्तु संभूतेषु निरन्तकानिसन्तु च।
 मा व्याधिस्तु भूतानामाध्योन भवन्तु च॥
 मैत्री मशेषभूतानि तुष्यन्तु सकले जने।
 शिवमस्तु द्विजातीनां प्रीतिस्तु परस्परम्॥

B

Sarblok Priyo Nityamubachaidahar Nisham
 Nandantu Sarb Bhutani Snidyantu Vijanepwapi
 Swastyastu Sarb Bhurtesu Nirantakani Santu cha
 Ma Vyadhirastu Bhutanamadhyon Bhawantu cha
 Maitrimashesh Bhutani Tushyantu Sakle Jane
 Shibmastu Dwijatinam Pritirastu Parasparam.

C

(Ch/188, Verse 12-17)

(That all persons may be happy, may express each other's happiness, that there may be welfare of all, all being free from fear and disease; cherish good feelings and sense of brotherhood, unity and friendship)

D

It is this stress on the identification of Dharma with truth and social well being, Duty and Service that impelled Yudhisthira to express his own ambition, as Dharmaraja, in the words :

E

नत्वहं कामये राज्यां न स्वर्गं न पुनर्भवम्।
 कागये दुःश्व तप्ताना प्राणिनां भाति नाशनम्॥

F

Na Twaham Kamaya Rajyam Na Swargam Na Punarbhawam
 Kamyē Dukh Taptanam Praninam Artnashnam.

(I seek no kingdoms nor heavenly pleasure nor personal salvation, since to relieve humanity from its manifold pains and distresses is the supreme objective of mankind).

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It is in this context that the phrase धर्म विजय Dharm Vijayah 'Victory of Dharma' could be understood, as employed by the the Mauryan Emperor, Ashoka, in his rock edict at Kalsi which proclaimed his achievement in terms of moral and ethical imperatives of Dharma, and exemplified

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A the ancient dictum यतो धर्मस्वतो जयः Yato Dharmastato Jayah (where there is Law, there is Victory).

B In the midst of unity in diversity among Indians having different religious and cultural hues, for their assimilation as integrated citizens, all endowed with human rights, dignity of person, equality of status, liberty of faith and worship with fraternity, the religious spirituality fosters them as a strong unifying social entity with personal identity. Swamy Ranganathananda, a noted philosopher, in his lecture on 'Science' Democracy and Religion' delivered on August 28, 1954 in Ramakrishna Mission Institute of Culture, Calcutta, published under the title 'Eternal Values for a Changing Society' had stated at page 637 that "With the intensification of the pace of industrialisation. our centuries-old static feudal society is being profoundly disturbed; social mobility is fast breaking down caste and other old forms of social relationships, and faster still, that social sanctions behind them. Virtues that sustained a static age are found to be utterly inadequate to the demands of a dynamic society". Everywhere, old values, old edifices and old social and economic groups are crumbling down. This is just the beginning of the industrialisation. Complacency is not a solution in the profound transition period. Indian spiritualism had responded successively to all changes on the strength of her tenacious loyalty to fundamental spiritual values, which India placed at the foundation of her national culture. It is this faith in ritual values, which has been tested in good and evil fortune. Science is characterised as a keen spirit of inquiry and deep passion for truth. Science has enabled the human mind to unravel secret after secret from nature and increase enormously man's knowledge of the world in which he lives. Speaking on democracy in India he said that democracy has come to stay. How does India proposes to assimilate the democratic value to her cultural heritage? Democracy should have a content of universal value which is something more than the merely political, social or national. The value is the ethical and spiritual content. Without that content, our democracy will be nothing more than a mere carbon copy of what happens in the democratic countries of the West. The science and democracy are shaping the growth and development of human culture and civilisation with the development of science, an amount of force and power, scientific and political is itching for a fight creating new tensions, creating instability and insecurity. The nation has to handle the force and the power in such a way as not to result in corruption in the wielders and in the confusion to harm the people at large. India holds science and spirituality/

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harmonious and hospitable co-existence fostering human values. Vedantha enables the Indians to digest the forces generated by science. The spiritual meaning of democratic living and fulfilment, i.e., spiritual oneness of humanity taught by ancient and modern Indian seers has to be received and reactivated in men's thinking and day to day living and its powerful influence brought to bear on these new and ever newer forms of scientific and social power, thereby giving them a higher direction and a loftier, spiritual and human purpose. This is the central message of religion. It is a message which requires to be specially emphasised.

Religion became identified with untested beliefs and dogmas and got shattered in the progress of scientific inquiry. But the mental make-up of Indians proceed from our long cultural experience; therefore, our spiritual religious experience is not hostile to scientific spirit but sympathetic and hospitable to it. Science will have no opposition from philosophy or religion in India. Human welfare partly depends upon the knowledge and control of human environment, natural and social. Vedantha has always given an honoured place to science as also to politics in this period of human welfare. Man is more than a political animal. He is also more than an intellectual being. He has depth and heights which cannot be compressed in a purely materialistic or positivistic philosopher. Swamy Ranganathananda further stated as under :

".....democracy should have a content of universal value which is something more than the merely political, social, or national. It is obvious that value is the ethical and spiritual content. Without that content, our democracy will be nothing more than a mere carbon copy of what obtains in the medocratic countries of the West."

"In the background of these agitating questions lies the great spiritual heritage of India. Those who are acquainted with its vitality hold the hope that India can yet show the world how to understand, assimilate, and express human values which form the theme of democracy everywhere. India's spirituality can enable Indians and the peoples of the world to digest the formidable forces that are being generated and placed in man's hands today. The spiritual meaning of democratic living and fulfilment, as taught by India's ancient and modern seers-in other words, the *religion of the spiritual oneness of humanity* has to be revived and reactivated

A in men's thinking and day to day living, and its powerful influence brought to bear on these new and ever newer forms of scientific and social power, thereby giving them a higher direction and a loftier spiritual and human purpose.

B This is the central message of religion. It is a message which requires to be specially emphasized in the world in which we are living today. The 'religion' carries to some at least of the modern world a bit of bad odor. It is unfortunate. It is due to the fact that religion became identified with untested beliefs and dogmas. And these got shattered in the progress of scientific inquiry. In the history of Europe, religion has often functioned as an 'enemy' of science. But that experience is not universal or invariable; it is a story with its background in the West only and not in India. Our entire mental make-up proceeding from our long cultural experience is not only hostile, but is very sympathetic and hospitable to; the scientific spirit. In his book, the Discovery of India, our Prime Minister, Shri Jawaharlal Nehru, has expressed the view that science, which has much leeway to make in India compared to Western countries, is bound to make increasing advances here in the future because of the hospitality of the Indian national heritage to science."

E "That science is a fundamental force and that it does have a great message for all men is understood in India, no less than elsewhere. Human welfare partly depends upon the knowledge and control of the human environment, natural and social. Vedanta has always given an honoured place to science, as also to politics, in this sphere of human welfare. But Vedanta has also taught India that these two do not constitute the whole scope of human welfare. Man is more than a political animal; he is also more than an intellectual being. He has depths and heights which cannot be compassed in a purely materialistic or positivistic philosophy. Indian thought recognizes no compartments or divisions in the human personality leading to mutual exclusion and hostility in human aspirations and values, such as pleasure and profit, science and art, morality and religion."

H "The unity of man emphasizes the synthesis of his interest. While

accepting the great importance of science and politics for man, Vedanta evaluates them in terms of his total needs and aspirations. Man seeks things of utility for the sake of things without utility. Science through technology can give and has given man things of utility in abundance; politics can give him things of utility of another order, a stable social order, the venue of his life's experiments. But neither science nor politics can give man peace or happiness, joy or a sense of fulfilment. These non-utilitarian values proceeds from religion and morality. Science and politics can create only conditions for their emergence, but cannot create them directly. Without this spiritual direction, the forces generated by science and politics nourish the low self of man and become sources of sorrow and discord, division and instability for man and society. A knowledge which leads to the increase of sorrow is not knowledge but ignorance, the offspring of spiritual blindness. It is spiritual awareness alone that transforms all knowledge into wisdom, and into forms of peace and happiness, love and service."

"The transformation of the world which science and politics seeks is powerless to ensure human welfare without the transformation of human nature itself, which religion seeks through a discipline of the whole personality, it is only such spiritually disciplined individuals and groups that can ensure for humanity at large the values of life, liberty, and the pursuit of happiness, of liberty, fraternity, and equality. The peace and happiness of man and the stability and ordered progress of civilizations depend entirely upon the intensification of the spiritual awareness of humanity. With this spiritual awareness for foundation, the structure of civilization raised by science and democracy becomes strong and steady; without it, it sways in periodic crises to topple down eventually. Without the inspiration of religion, civilization shall ever remain an unstable structure."

"Besides the integral unity of man and his interests, Vedanta also proclaims the unity and solidarity of all existence. The objective of Vedanta is the happiness and welfare of man; not man as divided into sects, creeds, castes, and classes, but man as man wherever he may be found. Based on this unitary and universal view of man upheld in her philosophy, religion in India taught that man, in the course of his development, in the course of his self-expression,

A *generates various forces, physical or mental, social or political, and that the development of these forces needs to be matched by a corresponding development of his inner spiritual resources, which alone can provide the factors of stability to an evolving personality or social system."*

B "True democracy is inconsistent with a narrow self-sufficient nationalism or sectarianism; it must tend to reach out to the universal. Breaking the barriers of caste and creed, race and sects, high and low, the democratic ideas, deriving its sustenance from the divinity in man, marches on, without obstruction, to the realization of the universal. Swami Vivekananda desired India to uphold this ideal of the universal in her religion and politics, science, and literature. He desires India to strive for the evolution of a Vedantic civilization where science and politics would be utilized to lead man to higher and higher levels of self-expression; not merely desired it, but he also demonstrated that India, among all the nations, had the requisite historically acquired capacity to make that contribution to world civilization."

E In "Chief Justice Gajendragadkar" - his life, ideas, papers and addresses - by V.D. Mahajan, in Chapter on "Secularism, its impact on law and life in India" it is stated that personal law is a secular institution and has to be based on rational and secular considerations. This position is consistent with the real, ancient, pristine view of Hindu law. Dharma, according to the old concept, is a purely secular institution. Dharma is that which sustains the society. Dharma is that by which people at large are held together. At page 234 the author quoted Dr. Gajendragadkar stating that though the Constitution guarantees freedom to all religions, it recognises that in certain aspects, and under certain conditions, religious practices may impinge upon socio-economic problems and the Constitution has made it clear that wherever socio-economic problems or relations are involved, the State will have a right to interfere in the interests of public good. Articles 25 and 26 of the Constitution provide for the right to freedom of religion and though the Indian Constitution is secular and does not interfere with religious freedom, it does not allow religion to impinge adversely on the secular rights of citizens or the power of the State to regulate socio-economic relations.

In "Religion and Politics" by Justice V.R. Krishana Iyer [1991 Edition] it is stated at page 204 that "secularism in India has a spiritual foundation not because of a profusion of competing religions and Gods but because of the realisation that the universal essence of all of them is that service of man is the worship of God and the reverence for all creation is compassion which springs from the recognition of the divinity imminent everywhere. Our composite cultural heritage conceives of a synthesis between these two great values. One does not contradict the other but complements the other. True secularism is humanism in action and perceives divinity in everyone. True spirituality is not refuge in other worldliness and has a factor of universality where even on the material plane every human being is seen as of equal value and potential as every other member of the human family. We have to steer clear of all narrow religious denominations and communal classifications by emphasising that in secular affairs all will be dealt with on the same footing, whether one belongs to the 'minority' or the 'majority' community". At page 205 the author has stated that "Equality and fraternity, basic to national unity and amity, is impossible without the broad base of Human Rights. So it is that today we have to be eclectic and accept not religion with the capital 'R' but soul force which resides in everyone's bosom..... We need a social order whose life-breath is secularism, whose dynamics is social and economic justice. It is our fundamental duty to be secular in politics, not in rhetoric nor in cosmetics, but in every fiber of our being and every manner of living. May be, we have promises to keep and miles to go before we sleep".

The Preamble of the Constitution sets out secularism, equity, fraternity, liberty of worship and faith and dignity of persons as integral scheme of the Constitution in its march to establish an egalitarian social order. Fundamental Rights and Directive Principles seek to resuscitate them. In *S.R. Bommai & Ors. v. Union of India & Ors.*, [1994] 3 SCC 1, larger Bench of nine Judges has held that secularism is basic structure of the Constitution. Religious tolerance and equal treatment of all religious groups and protection of life, property and place of worship are essential parts of secularism. Profession, actions and conduct of persons should be consistent with secularism and they need to be measured in that perspective.

Religion in development is man in search of God. Throughout the history man endeavours in building into a fuller religious life from the

- A experience of the past and also with the consciousness of life in God that he seeks for he is always eternally in him. It is the eternal aspect of religion which is expressed in the religious recognition in every human life, at any stage of its development in the pursuit of knowledge of self-consciousness or self-realisation and of personal experience of eternal or infinite worth,
- B there are two aspects of religion true-religion and religionism. True religion is spiritual religion that seeks to live in the spirit, in what is beyond the intellect, beyond the aesthetic and ethical and practical being of man and to inform and govern these members' life by higher light and law of the spirit. This is Vedantha. Religionism entrenches itself in some narrow priestic exaltation of the lower members, or lays exclusive stress on intellectual dogmas, forms and ceremonies on some fixed and rigid moral code on some religio-political or religio-social system, which are not always necessary or worthy for a spiritual religion and which disdain the aid of the forms, ceremonies, creeds or system. The fundamental desire of man is to make peace with his inner life. The spiritual religion is a form of the
- C fundamental desire of man to make peace with his innerself and bring to bear the experience of transplantation of his current personality into a vibrant ready sense of knowledge of fulfilment and happiness. The experience of the man has to be propelled and to be brightened rather than dimmed by the myriad tribulation of knowing the system of rituals or feelings of inferior and inaccessible or unnecessary to realise the Supreme
- D Being. The need to over-come this is the pursuit of spiritual religion.
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The importance of rituals in religious life is relevant for evocation of mystic and symbolic beginnings of the journey but on them the truth of a religious experience cannot stand. The truth of a religious experience is far

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

The word 'Dharma' or 'Hindu Dharma' denotes upholding, supporting, nourishing that which upholds, nourishes or supports the stability of the society, maintaining social order and general well-being and progress of man kind; whatever conduces to the fulfilment of these objects is Dharma, it is Hindu Dharma and ultimately 'Sarva Dharma Sambhava'. A

In contra distinction, Dharma is that which approves oneself or good consciousness or springs from due deliberation for one's own happiness and also for welfare of all beings free from fear, desire, disease, cherishing good feelings and sense of brotherhood, unity and friendship for integration of Bharat. This is the core religion which the Constitution accords protection. B C

In *Ganpat v. Returning Officer & Ors.*, [1975 1 SCC 589, this Court has held that religion is essentially a highly personal matter and Hinduism is so tolerant and Hindu religious practices so varied and eclectic that one would find it difficult to say whether a person is practising or professing Hindu religion or not. Religion has undergone several changes, but the fundamental, moral and religious ideas of the Hindus which lie at the root of religious and charitable institutions, remain substantially the same. The Hindu is inclined to believe the divine in every manifestation, whatever it may be, and is doctrinally tolerant. Therefore, the Hindu is disposed to think synthetically and to regard other forms of worship, strange Gods, and divergent doctrines as inadequate rather than wrong or objectionable; he tends to believe that the highest divine powers co-complement each other for the well-being of the world and mankind. Religion, therefore, is one of the personal beliefs, is more a cultural attitude towards a physical thinking in that way of life and is worship of the image of God in different manifestation. D E F

In *Shinur Matt's*, a locus classicus on constitutional religion and protection of Articles 25 and 26 of the Constitution, this court had laid down that a religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress. G

In *Sri Venkataramana Devaru & Ors. v. The State of Mysore & Ors.*, [1958] SCR 895, this Court surveyed the historical background in enacting H

A the Madras Religious and Charitable Endowment Act (29 of 1951) which is a pre-cursor to predecessor Act 17 of 1966. The question therein was : whether Sri Venkataramana of Moolky Petta was a private or a public temple or a denominational institution? This Court had held that with the growth and importance of temple and of worship therein more and more attention came to be devoted to the ceremonial law relating to construction of temple and conduct of worship of the Deity and numerous other trusts that came to be established for its existence. While explaining the expression "matters of religion" used in Article 26(b), this Court said that practices which are regarded by the community as part of its religion and under the ceremonial law pertaining to the temples, who are entitled to enter into them for worship and where they are entitled to stand for worship and how the worship is to be conducted are all matters of religion. In *The Durgah Committee, Ajmer and Anr. v. Syed Hussain Ali and Ors.*, [1962] 1 SCR 383 at 411-412, another Constitution Bench of this Court explained the connotation of the above statement of law thus :

D "While we are dealing with this point it may not be out of place incidentally to strike a note of caution and observe that in order that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices within the meaning of Art. 26. Similarly, even practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. Unless such practices are found to constitute an essential and integral part of a religion their claim for the protection under Art. 26 may have to be carefully scrutinised; in other words, the protection must be confined to such religious practices as are an essential and an integral part of it and no other."

G The Act regulates administration and maintenance of charitable and Hindu religious institutions and endowments in their secular administration. It lays emphasis on preserving Hindu dharma and performance of religious worship, ceremonies and poojas in religious institutions according to their prevailing Sampradayams and Agamas. Section 13 enjoins that the

Commissioner and every other functionary under the Act "shall not interfere with and shall observe the forms, usages, ceremonies and practices obtaining in and appropriate to the religious institution or endowment". Section 23(1) equally obligates the trustee that he "shall administer its affairs in accordance with the terms of the trust, the usage of the institution or endowment and all lawful directions" issued in respect thereof. Section 142 puts that "nothing in the Act shall affect the performance or interfere with religious worship, ceremonies and poojas in religious institutions" according to Sampradayams and Agama followed in such institution. Section 50(1) enjoins propagation of Hindu Dharma.

In *Sardar Syedna Taher Saifuddin Saheb v. The Estate of Bombay*, [1962] Supp. 2 SCR 496 at 521, Sinha, C.J had held, in his separate but concurring judgment, that what are matters of religion and what are not is not an easy question to decide. It must vary in each individual case according to the tenets of the religious denomination concerned. The expressions 'matters of religion' engrafted in Article 26(b) and 'activities associated with religious practice' do not cover exactly the same ground. What are exactly "matters of religion" are completely outside State interference, subject, of course, to public order, morality and health. But activities associated with religious practice may have many ramifications and varieties - economic, financial, political and other such activities as are contemplated in Article 25(2) covering a field much wider than that covered by either Article 25(1) or Article 26(b). No demarcation can be classified as to which are essentially and purely of a religious character and those which are not essentially such. Considering the question whether ex-communication is a part of religious practice, on the facts in that case, majority had held that it offends Article 25(1) and accordingly the provision was declared unconstitutional.

Articles 25 and 26 deal with and protect religious freedom. Religion as used in these Articles must be construed in its strict and etymological sense. Religion is that which binds a man with his Cosmos, his creator or super force. It is difficult and rather impossible to define or delimit the expressions "religion" or "matters of religion" used in Articles 25 and 26. Essentially, religion is a matter of personal faith and belief of personal relations of an individual with what he regards as Cosmos, his Maker or his Creator which, he believes, regulates the existence of insentient beings and the forces of the universe. Religion is not necessarily theistic and in

A fact there are well-known religions in India itself like Budhism and Jainism which do not believe in the existence of God. In India, Muslims believe in Allah and have faith in Islam; Christians in Christ and Christianity; Parsis in Zorastrianism; Sikhs in Gurugranth Sahib and teachings of Gurunanak Devji, its founder, which is a facet of Hinduism like Brahamo, Samaj B Aryasamaj etc.

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

G In pluralistic society like India, as stated earlier, there are numerous religious groups who practise diverse forms of worship or practise religions, rituals, rites etc.; even among Hindus, different denominants and sects residing within the country or abroad profess different religious faiths, beliefs practices, They seek to identify religion with what may in substance be mere facets of religion. It would, therefore, be difficult to devise a H definition of religion which would be regarded as applicable to all religions

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

The Court, therefore, while interpreting Articles 25 and 26 strikes a careful balance between the freedom of the individual or the group in regard to religion, matters of religion, religious belief, faith or worship, religious practice or custom which are essential and integral part and those which are not essential and integral and the need for the State to regulate or control in the interest of the community.

There is a difference between secularism and secularisation. Secularisation essentially is a process of decline in religious activity, belief, ways of thinking and in restructuring the institution. Though secularism is a political ideology and strictly may not accept any religion as the basis of State action or as the criteria of dealing with citizens, the Constitution of India seeks to synthesise religion, religious practice or matters of religion and secularism. In secularising the matters of religion which are not essentially and integrally parts of religion, secularism, therefore, conscious-

A ly denounces all forms of super-naturalism or superstitious beliefs or actions and acts which are not essentially or integrally matters of religion or religious belief or faith or religious practices. In other words, non-religious or anti-religious practices are anti-thesis to secularism which seeks to contribute in some degree to the process of secularisation of the matters of religion or religious practices. For instance, untouchability was believed to be the part of Hindu religious belief. But human rights denounce it and Article 17 of the Constitution of India abolished it and its practice in any form is a constitutional crime punishable under Civil Rights Protection Act. Article 15(2) and other allied provisions achieve the purpose of Article 17.

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The religious freedom guaranteed by Articles 25 and 26, therefore, is intended to be a guide to a community-life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order. Articles 25 and 26, therefore, strike a balance between the rigidity of right to religious belief and faith and their intrinsic restrictions in matters of religion, religious beliefs and religious practices and guaranteed freedom of conscience to commune with his Cosmos, Creator and realise his spiritual self. Sometimes, practices religious or secular, are intricably mixed up. This is more particularly so in regard to Hindu religion because under the provisions of ancient Samrity, human actions from birth to death and most of the individual actions from day to day are regarded as religious in character in one facet or the other. They sometimes claim the religious system or sanctuary and seek the cloak of constitutional protection guaranteed by Articles 25 and 26. One, hinges upon constitutional religious model and another diametrically more on traditional point of view. The legitimacy of the true categories is required to be adjudged strictly within the parameters of the right of the individual and the legitimacy of the State for social progress, well-being and reforms, social intensification and national unity. Law is a social engineering and an instrument of social change evolved by a gradual and continuous process. As Benjamin Cardozo has put it in his "Judicial Process", life is not a logic but experience. History and customs, utility and the accepted standards of right conduct are the forms which singly or in combination shall be the progress of law. Which of these forces shall dominate in any case depends largely upon the comparative importance or value of the social interest that will be, thereby, impaired. There shall be symmetrical development with history or custom when history or custom has been the motive force or the

chief one in giving shape to the existing rules and with logic or philosophy when the motive power has been theirs. One must get the knowledge just as the legislature gets it from experience and study and reflection in proof from life itself. All secular activities which may be associated with religion but which do not relate or constitute an essential part of it may be amenable to State regulations but what constitutes the essential part of religion may be ascertained primarily from the doctrines of that religion itself according to its tenets, historical background and change in evolved process etc. The concept of essentiality is not itself a determinative factor. It is one of the circumstances to be considered in adjudging whether the particular matters of religion or religious practices or belief are an integral part of the religion. It must be decided whether the practices or matters are considered integral by the community itself. Though not conclusive, this is also one of the facets to be noticed. The practice in question is religious in character and whether it could be regarded as an integral and essential part of the religion and if the Court finds upon evidence adduced before it that it is an integral or essential part of the religion, Article 25 accords protection to it. Though the performance of certain duties is part of religion and the person performing the duties is also part of the religion or religious faith or matters of religion, it is required to be carefully examined and considered to decide whether it is a matter of religion or a secular management by the State. Whether the traditional practices are matters of religion or integral and essential part of the religion and religious practice protected by Articles 25 and 26 is the question. Whether hereditary archaka is an essential and integral part of the Hindu religion is the crucial question?

Justice B.K. Mukherjea in his Tagore Law Lectures on Hindu Law of Religious and Charitable Trust, at page 1 observed :

"The popular Hindu religion of modern times is not the same as a religion of the Vedas though the latter are still held to be the ultimate source and authority of all those held sacred by Hindus. In course of its development, the Hindu religion did undergo several changes, which reacted on the social system and introduced corresponding changes in the social and religious institution. But whatever changes were brought about by time it cannot be disputed that they were sometimes of a revolutionary character - the fundamental, moral and religious ideas of the Hindu which lie at the

A route of their religion and charitable institution remained substantially the same and the system that we see around us can be said to be a evolutionary product of the spirit and genus of the belief passing through different ways of their cultural development".

B The basis of Hindu Dharma is two-fold. The first is the Vedas and the second are the Agamas. Vedas, in turn, consist of four texts, namely, Samhitas, Bramhanas, Aranyakas and Upanishads.

C Samhitas are the collections of mantras. Bramhanas explain the practical aspects of the rituals as well as their meanings. They explain the application of the mantras and the deeper meanings of the rituals. Aranyakas go deeper into the mystic meanings of the rituals, and Upanishads present the philosophy of the Vedas.

D From the point of view of content, they are viewed as Karma Kanda (sacrificial portion) and Jnana Kanda which explain the philosophical portion. The major portion of the Vedic literature enunciates the vedic sacrifices or the rituals which inevitably culminate in the philosophy of the Upanishads. That is why the Upanishads are called Vedantha or culmination of the Vedas.

E The essence of the Vedic religion lies in Vedic sacrifices which not only purify the mind and the heart of those who participate in the sacrifices but also reveal the true and unfragmented nature of the Karman (Action). Erroneously, Western scholars explained the Vedic sacrifices in terms of either sympathetic magic or an act of offering the fire to Gods emulating the mundane act of offering gifts. Thus, for them Vedic religion is a primitive religion and Vedic Gods are simply representing insentient departments of Nature; but it is not so. On the contrary, the term used for Vedic Gods is "Deva" which literally means "the shining ones". The adorable ones - bestowing grace on the worshippers. The root 'Div' also means that Devas are the embodiment of unfragmented consciousness, which is ultimately *one and non dual*. Likewise, the Vedic sacrifice is an act of re-enactment of the cosmic creation; in our mundane life, our life of action is simply a life of fragmented acts. This is because of Raga Dvesha whereby the perception is limited. The fragmented acts emanate from our deep rooted attraction and hatefulness. The Vedic sacrifice moves towards "Poorna", i.e., plenitude and thus overcoming the problem of fragmented

H action in our lives. Onwards, the seeker moves towards the knowledge of

self or the Brahaman. So many Upasanas are taught in the Vedas but not elaborated. The Agamas have elaborated these Upasanas such as Madhu Vidya and Dahra Vidya. A

Upanishads speak of Para Vidya and Aparā Vidya. Aparā Vidya deals with Jnana through various methods. Agamas explain these Para Vidyas. The Agamic texts contain four parts, namely, Vidya Pada, Kriya Pada, Charya Pada and Yoga Pada. B

Each text of the Agamas has the first portion, called 'Samhita' which contains the four parts namely the Vidya Pada, Kriya Pada, Charya Pada and Yoga Pada. Vidya Pada offers an elaborate enunciation of the philosophy, whereas Kriya Pada deals elaborately with the act of worship. C
Worship is viewed as Samurta Archana. In other words, the Gods are endowed with form and this form of worship culminates into Amurta or Nishkala Archana by which one worships and realises the formless. These are the steps to be treated upon one after another.

The temples are taken to be sanctified space where entire unfrag- D
mented Space and Time, in other words, the entire 'Universe' are deposited and the image of the Deity is worshipped symbolising the "Supreme". Although the Deities appear to be many, each and every Deity is again viewed as the Supreme One and, therefore, the Supreme Reality is one and non-dual. E
The multiplicity of the Gods has been effected in order to offer the paths which are required according to the entitlement and evolution of each and everyone. That is why the progress towards the ultimate evolutionary goal of man depends upon his level of comprehension and his capacity to learn. This is the whole concept of a Guru who knows precisely the extent of spiritual evolution of the seeker and would know F
what is the stage from which the seeker has to proceed.

Hinduism cannot be defined in terms of Polytheism or Hennotheism or Monotheism. The nature of Hindu religion ultimately is Monism/Ad- G
vaita. This in contra distinction to Monotheism which means only one God to the exclusion to all others. Polytheism is a belief of multiplicity of Gods. On the contrary, Monism is a spiritual belief of one Ultimate Supreme and manifests Himself as Many. This multiplicity is not contrary to Non- Dualism. This is the reason why Hindus start adoring any Deity either H
handed down by tradition or brought by a Guru or Swambhuru and seek to attain the Ultimate Supreme.

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

The entire life is thus woven around the temples and the rituals taking place all over the year. This is to symbolise the philosophy that these actions are religious.

- E Worship is a mystic act by which the devotee identifies himself with the Deity which in turn represents the Cosmic Supreme. Thus the form of worship varies from simple 'panchopachara' pooja to 'Shodhsaopchara' pooja. The offerings of articles is related to elements of nature identifying ourselves with the Cosmos. The entire basis of Agamas is to support the fundamental supposition of Hindu philosophy that there is the unity of external and internal as well as the Pinda and Bramhanda. Whatever appears as Darkness externally, is ignorance internally. Whatever is light externally, is knowledge internally. This is the reason why in the Agamic way of worship, there are practices identifying the limited self with the Cosmos, and internalising of the external image. This principle is reflected in :-

देवो भूतवा देवं यजेत

"Devobhootva devam Yajet"

- H In fact the devotee is first expected to transform himself into the Deity and then approach the Deity and the purificatory exercise is meant

to prepare one for being one with the Deity. A

'Nyasa' means depositing the entire Cosmos into one's own body. The entire Cosmos is invited into one's body. The devotee is becoming one with the Cosmos. Likewise, there is Antaryaga and Bahiryaga. Antaryaga means worshipping of the image which is externally present before people. From external worship, people move to internal worship and meditate upon Swarupa of the Deity in devotee's heart. Finally, people identify themselves with the Deity and realise the non-dual Supreme Reality. But this is all in a given order. There may be one *who does not need the external worship* but it cannot be dispensed with as a principle. External worship is the first and essential step through which a process of gradual Formless can be reached. B C

In the temple worship to the respective Deities, prescribed rituals should be conducted according to the aforesaid respective Agamas. The worship may be simplistic or elaborate. It is believed that the 'Kala' or the 'power' increases along with increase in investment of worship. The logic: "The increased worship is effected into the wider participation - individual as well as social. This is the gradual expansion of the grade bestowed on the greater number of the men and women as well as all the creatures. Therefore, right from Panchopchara to Devaupachara to Shodashaupchara and to Rajopachara, all forms of worship have got their own importance. It is a matter of only one's capability. There is a definite correspondence between Vedic and Agamic worship. Agamic worship is worship of image in or outside a temple. The Mandapa of the temple corresponds to the Vaidika in the Vedic rituals, the Yupa or the post outside the Mandapa corresponds to the "Dhuaja". Offerings of articles in the Agamic worship correspond to offering of the Ahuti in Vedic Sacrifice. D E F

Temple has become the most important centre of activities - religious, cultural and social among the people, in particular rural India, Temple is conceived in the likeness of human body. Parts of the temple are named accordingly, by which the organic unity of the temple is emphasised. Obviously, therefore, religious people endow their property for upkeep of temples or propagation of religion. Majority people in India are dedicated to Vishnu, Shiva, Shakti, Ganpathi and Hanuman of Hindu Gods. The cardinal principle underlying idol worship is one of the four modes for self-realisation. Daily routine life in performing rituals to Deity G H

- A will be gone through with minute accuracy of Abishek (bathing), changing of clothes, offering of food and the retirement (rest). Religion, therefore, has occupied a significant place and role in the public life in our country. Hindus, therefore, believe that religion is an essential and powerful factor in raising humanity to higher level of thought and being. The priest (archaka or by whatever name called) would conduct rituals to the Deity as per prescribed Agamas, forms, practices and sampradayams.

Shri Suniti Kumar Chatterji in his Preface to the Cultural Heritage of India, Institute of Culture, Vol. IV at page xv had stated thus :

- C "Men are equal on the basis of their common humanity, though no two individuals are the same in their intellectual and spiritual framework, as much as in their physical complexion. There are some people who are intellectually strong, and there are others who are easy to move emotionally. And there is a larger group which reacts to impulses and instincts more than to anything else.
- D To people of these three main types of outlook, and those of other types also, religion, both as an individual experience and practice and as a social vehicle carrying the individual members of a particular society in their progress in life, must *ipso facto* present a bewildering series of diversities. The scriptural religions like Islam and Christianity theoretically insist on dogmas and a uniform and unalterable creed. Yet we have in Christianity so many different sects, sometimes with notions and ideologies which go counter to one another. And Islam too recognizes the seventy-two firqahs or sectarian organisations. Christ is quoted to have said,
- E 'In my Father's house are many mansions'. Could we not legitimately take it to mean that a great latitude was allowed by him in the sum total of the faith and behaviour of the elect, all together forming the entire body of the faithful who believed in Christ? Similarly, in spite of the preachings in Islam of the path of orthodoxy as embodied in a literal interpretation of the Word of God, Kalam Ilahi, which is the Quran, one of the Hadith or traditional sayings as ascribed to the Prophet runs like this :
- F "Thruqu-Ilahi Ka-'adadi' anfasil-makhluaqi" - the ways of God are like unto the breathings of all created beings. There are many people who therefore consider that it would be nothing less than
- G blasphemy to assert that the ultimate Reality can be approached
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only by one path - and that path presumably is the one which the person making such an assertion believes in." A

On the 'Vaikhanasa Early History And Literature' at page 160-161, it is stated that the Vaikhanasa Sastra sets great store by purity of conduct, as is evident from Kalidasa's Sakuntala (I.22), where King Dusyanta inquires whether Sakuntala observes Vaikhanasa-Vrata. Vaikhanasas were entrusted with the management of temples and their land and property. they entered into agreements with the revenue officers and the assemblies in matters relating to the cultivation of assigned lands and sometimes also of unassigned lands. They were the hereditary trustees of Visnu temples, managed their properties, and conducted the divine service. Shrines of Ramanuja and the Alvars were added, and in the associated temples in Tirupati town and Tiruchanur, the pancharatra form of worship was introduced. Jiyars (monks of the Ramanuja school) took charge of the Balaji temple, where the services were performed by vaishnavas of that School. Yet pooja to Balaji (Sri Venkateswaraswamy) in the *sanctum sanctorum* continues to be done by the Vaikhanasa according to the Vaikhanasa Sastra which is purely in Sanskrit. There are more temples in South India today under the Vaikhanasa Agama than under the Pancharatra. Devotion (bhakti) and self-surrender (Prapatti) to His will are together the master keys to open the gates of divine grace. Vaikhanasa's chief contribution to spiritual life is the emphasis on the worship, service, and adoration of the Lord in the arca (image) form in which He 'descends with a non-material body', and in which He is present ever since as the surest means of liberation. Vaikhanasas place greater emphasis on arca worship. B C D E

Brighu Kriyaadhikaare states that according to Vaikhanasa Sastra. The Priest (Acharya) must be one who is well-versed in Vedic lore, of dharmic persuasion, thirsting for Jnana (wisdom), gentle having control over senses, pure and attached with total dedication to the worship of Lord alone. The priest shall carry on daily rituals of worship and all rites according to sastric injunctions. In Vaikhanasa Prakirnadhikara at page 443, it is stated that an Acharya (fully qualified man) alone should be appointed as the priest. It also indicates dismissal of a priest if he was found having deflected from his duty and appointment of another person in his place. At page 269 it states that the priest must be provided with Dakshina (money for officiating priest) for his sustenance and maintenance of himself and his family so as to keep the priest in comfort and free from F G H

- A want. It also speaks of employment of a archaka for life. At pages 302 and 303, it is stated that the owner of the temple should appoint one or two archakas according to his capacity. The archakas must be Vaikhanasa and having the qualities mentioned above and free from vices. He is enjoined to divide his earnings into three equal parts keeping for himself 2/3rd share for maintenance of himself and his family and 1/3rd share for carrying out dharmik purposes. He is also directed to enjoy the gifted land according to the stipulations.

- C In Prakirnadhikara, (para 12) it is mentioned that the income from property of the temple be divided into three parts - first part to be retained for himself and his family; the second part for the temple; and the third one for the construction of the temple - taking care of the residence of the archaka. In Kashayappa Jhanakanda, para 21 also mentions the same. The Agama text intended to avoid confusion in procedures of worship by insisting upon the hereditary character of priesthood (either in the family or through teacher pupil line). Prakiranadhikara (17 & 39) says that when a priest is already performing rituals no other priest must enter the *sanctum sanctorum*. Only one person must do all the things himself prohibiting others to participate. The order of Guru was described as binding as an order of a king. The right to live in comfort on the provisions made by the owner of the temples was intended to keep the priest above want so as to enable him to attend to his duty without worry and the same finds mention in Prakirnadhikar, paras 17, 84, and 86. It is also insisted that Guru (Priest) or in his absence his son or grandson or great grandson or brother or his disciple or his disciple's disciple or a Brahmachari should be chosen in succession. As is found in Prakirnadhikara, the selected priest must be well-versed in Vaikhanasa Sastra with qualities like gentleness controlling senses, purity, character and devotion to the worship of Shri Maha Vishnu etc. The idea is that one devoid of divinity cannot get into any association with divinity. Shri Paramapurush in Chapter II prescribes in para 35 appointment of archaka. The owner of the temple without executing a gift of land in the aforementioned manner fixes monthly salary to the archaka, failure thereof leads to ruination of the owner's life. The owner should not feel jealous of the earnings of the archaka and his prosperity. It does not specify that archaka should belong to the specific denomination or group of which the temple service is done traditionally according to Agamas. According to Brighu Kriyaadhikara (302-304) Viriti Kalpapnam, a permanent settlement has to be made for their maintenance and the worship

of Deities is done properly by qualified priest.

In 'Sri Panchratraparamyam' by Dr. V. Vardacharyamaharshya at page 21, he has stated that the Sanskaras like Niseha must be performed according to one's own sutra or by the method of Pancharatra as might have been followed by one's own family hierarchy. At page 70 he has further stated that in Lakshmitantra in Telugu manuscript all priests do not have the right to perform worship in temples. Only panchratra followers who know the kunna and madhyandina sahta are entitled to perform the worship in Vishnu temples; only such great Munis (Rishis) in the line of succession have right to perform rituals. In Jayakhasambhita of Pancaratra Agama by E. Krishnamacharya at page 22, it is stated that priest of Vaishnava cult has the right to perform worship by heredity. In Satvata-Sanihita at page 411, the way the abhiseka (the ablution) may be done by the principle priest, is mentioned. Others who had initiation (Diksha), disciple of Guru, or the son, or disciple with good qualities mentioned above are eligible to perform pooja. In this way the abhiseka would be done only by those who are born in the family of Acharyas. The right of karsana etc. vests only in such persons. In "Laksmi-tantra", a Pancharatra Agama by Pandi V. Krishnamacharya, it is stated at page 1 that in the Vaikhanasa system only those priests who by the tradition of heredity belong to the Vaikhanasa sutra perform the worship for sacraments like the birth ceremony, naming ceremony etc. and follow the rules prescribed therein, i.e., the Vaikhanasa sutras. At page 2, he has stated that in the Pancharatra system all priests have a right to worship the images (established in their houses) for their own benefits. But for conducting worship in the temple particularly in famous temples only the descendants of the priests properly initiated (Diksha) especially by family traditions, are entitled to be the priests. Others having only a secondary right. The special initiation to others is not prohibited. This is the current tradition. It is stated in Padma Samhita that for conducting worship for others, Brahmins only are entitled to perform worship. At page 165, he has stated that thereafter the text prescribed that in the matter of performing worship for others only the descendants of the family of Kashyapa etc. have the right, which is not universal. But that text is found only in the manuscript in Telugu script. There is some scope to conclude that this portion might have been contrived by some elements who wanted to establish their own exclusive right to perform worship for others in the temples. That portion is also against arrangements prevailing these days. In a narrative dialogue, he has stated that Rishi Marich is stated to have said that 'O Padma' only those who are

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- A initiated in the Diksha spoken by you have a right to do the worship of Vishnu. All others have no right in that worship. The worship for others should be performed by persons born in the best gotra of the Kashyap Muni etc. If the worship for others is done by other Bhagavatars on account of ignorance, there will be much fall of the kings and the country. Therefore, through all efforts one who is born in Kashayapa family duly initiated,
- B though illiterate, should be appointed as priest by the Bhagavatars. He who cultivates pure behaviour is the most deserving to perform worship.

- C The Agamas, thus, are a stream of traditions which have grown along with the tradition of the Vedas. Many earlier works of Agama literature are fairly ancient in times. They are not anti-Vedic but advocate the worship of God in the form of Idol. In the Vedic tradition, a very limited number of Brahmins were conversant with the ritualistic lore but under Agama they performed rituals visualising the Deity whom they invoked by Mantras. Vedas deprived others including women and Sudras of the opportunity to participate in the rituals. But Agamas provided opportunity to
- D all to perform worship of the God. Purity, good conduct, devotion and dedication is insisted upon. In Mahabharatha, it is ordained thus :

न जातिर्न कुलं तत न स्वाध्यायो न च श्रुतम्।
कारणानि द्विजव्यस्य वृत्तमेव हि कारणम्॥

- E Na Jatir na Kulam Tat na Swadhyayo Na cha Shrutam
Karnane Dwijatwasya Brittameb he Karnam.

"Not by caste, not by ancestry nor by scholarship nor by study of Vedas does one acquire the twice-born status. One acquires it only by virtue of his work".

- F As far as Vaishvanism is concerned, the Agamas are of two types - Vaikhanas and Pancharatra. While the former is based purely on Vedic traditions, the latter has Tantric character. Vaikhanasa and Pancharatra followers have been known to be attacking each other on the ground of acquiring more powers and emoluments in cash and kind from the temples.
- G The Vaikhanasa turned to the Pancharatra Agamas for information on several religious issues. The Vaishnavas is much indebted to the authority of the Pancharatra Agamas. The Agamas categories worship as Svarth, i.e., for self in one's own home and Parartha. i.e., one performed by the priest for others in a temple. The priests in order to be eligible have to undergo
- H Diksha, which is described elaborately in the Agamas. Some of the Agamas

state that while worship for oneself can be performed by any one who is initiated into the ritual but the worship to be performed for others in a temple has to be by the priest who has inherited authority of acting as priest by family succession. Krishnarcharya has rationalised the synthesis between Vaikhanasa and Pancharatra. A

From the Vaikanasa literature referred to above the following prominent features would emerge : B

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

The protection of Articles 25 and 26 of the Constitution is not limited to matters of doctrine. They extend also to acts done in furtherance of religion and, therefore, they contain a guarantee for rituals and observances, ceremonies and modes of worships which are integral parts of the H

A religion. In *Seshammal's* case (supra) on which great reliance was placed and stress was laid by the counsel on either side this Court while reiterating the importance of performing rituals in temples for the idol to sustain the faith of the people. insisted upon the need for performance of elaborate ritual ceremonies accompanied by chanting of mantras appropriate to the Deity. This Court also recognised the place of an archaka and had held that the priest would occupy place of importance in the performance of ceremonial rituals by a qualified archaka who would observe daily discipline imposed upon him by the Agamas according to tradition, usage and customs obtained in the temple. Sri P.P. Rao, learned senior counsel also does not dispute it.

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The main controversy is only of hereditary succession as an archaka. The question is : whether abolition of hereditary right to perform such service is an integral part of the religion? Sri Parasaran contended that since this Court in first *Shirur Math's* case had held that the doctrine of a particular religion or usages and practices would include food and dress, priest being an inseparable part of the Agamas without whom the ceremonial temple worship would not start, archaka becomes part of idol worship and a part of religions practice. Therefore, the abolition of hereditary right to perform ceremonial worship by the priest would be an affront to matters of religion offending Articles 25(1) and 26(b) of the Constitution. He contended that in *Seshammal's* case what was upheld by this Court was the doing away of the line of succession on hereditary basis but not hereditary right itself. This Court had upheld hereditary right as such and given acceptance to legislative sanction to doing away with the line of succession to hereditary descendant from the same family and gotra.

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On the other hand. Sri Rao contended that the office of archaka is not done away with. Archaka is an important employee of the temple to conduct daily ritual ceremonies in accordance with the Agamas, customs, practices or Sampradayamas prevalent in the concerned temple. His service is akin to that of any other employee of the temple. The hereditary right offends Articles 14, 15(1) & (2) and 16(1) of the Constitution.

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There is a distinction between religious service and the person who performs the service; performance of the religious service according to the tenets, Agamas, customs and usages prevalent in the temple etc. is an integral part of the religious faith and belief and to that extent the legislature cannot intervene to regulate it. But the service of the priest

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(archaka) is a secular part. As seen earlier the right to perform religious service has appointment by the owner of the temple or king as its source. The legislature is competent to enact the law taking away the hereditary right to succeed to an office in the temple and equally to the office of the priest (archaka). The hereditary right as such is not integral part of the religious practice but a source to secure the services of a priest independent of it. Though performance of the ritual ceremonies is an integral part of the religion, the person who performs it or associates himself with performance of ritual ceremonies, is not. Therefore, when the hereditary right to perform service in the temple is terminable by an owner for bad conduct, its abolition by sovereign legislature is equally valid and legal. Regulation of his service conditions is sequenced to the abolition of hereditary right of succession to the office of an archaka. Though an archaka integrally associates himself with the performance of ceremonial rituals and daily pooja to the Deity, he is an holder of the office of priest (archaka) in the temple. So are the other office-holders or employees of the temple. In *Seshammal's* case, this Court had upheld the legislative competence to take away the hereditary right as such.

The real question, therefore, is : whether appointment of an archaka is governed by the usage and whether hereditary succession is a religious usage? If it is religious usage, it would fall squarely under Article 25(1)(b) of the Constitution. That question was posed in *Seshammal's* case wherein this Court considered and held that though archaka is an accomplished person, well-versed in the Agamas and rituals necessary to be performed in a temple, he does not have the status of a head of the temple. He owes his appointment to Dharmakarta or Shebait. He is a servant of the temple. In *K. Seshadri Aiyangar v. Ranga Bhattar*, I.L.R. 35 Madras 631, the Madras High court had held that status of hereditary archaka of a temple is that of a servant, subject to the disciplinary power of the trustee who would enquire into his conduct as servant and would be entitled to take disciplinary action against him for misconduct. As a servant, archaka is subject to the discipline and control of the trustee. The ratio therein was applied and upheld by this Court and it was held that under Section 56 of the Madras Act archaka is the holder of an office attached to a religious institution and he receives emoluments and perks according to the procedure therein. This court had further held that the act of his appointment is essentially a secular act. He owes his appointment to a secular authority. Any lay founder of a temple may appoint an archaka. The Shebait or Manager of

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

- It is true that the position of the office of Pedda Jeeyanagar or Chinna Jeeyanagar as a religious head in the context of matadhipathi of Ramanuja sect was upheld by the Privy Council, yet as regards his right in the Lord Venkataramana temple, he performs the office as a nominee and, therefore, he also owes his existence to the nomination which is antithesis to hereditary succession. Every Mirasidar or Gamekar equally cannot claim hereditary right to continue to perform the duties from generation to generation. They all are servants or members of the establishment liable to disciplinary jurisdiction. Consequently, they stand along with the priest (archaka) of the temple of Sri Balaji. It is true that hereditary rights of archaka or other office-holders are in vogue in most of the State Acts and no attempt therein appears to have been made to abolish them, yet their inaction or omission to amend the law is no ground to hold that the legislature lacks the power to do so or that they are in violation of the Constitution. In fact, it is not the submission of Sri Parasaran that the legislature lacked competence to enact Sections 34 and 144 of the Act. Therefore, the abolition of their rights do not violate either Article 25(1) or 26(b) of the Constitution.

- H The next question is : whether abolition of the emoluments attached

to the office is invalid in law? Shri Parasaran has forcefully and with vehemence at his command repeatedly argued that appointment of archaka and right to receive emoluments or share in the offerings is an integral usage and practice prevalent in Madras Province from centuries. In *Seshammal's* case, the usage was not an issue since the hereditary right or usage or practice was not avoided in the Madras Act. Section 34(1) (b) has done away with the appointment on usage or custom; when the appointment is on the basis of usage and custom which acquired the status of law and is a part of religious practice, Section 34(1)(b) is unconstitutional. It is true that in *Seshammal's* case the issues whether appointment of an archaka should be made on the basis of custom or usage prevalent in an institution or whether such appointment is in contravention of Article 25(1) of 26 (b) of the Constitution were not directly addressed. So long as the statute did not intervene regulating the secular appointment of an archaka, the appointment according to prevailing usage or custom was upheld by the courts. Consequently, the right to succession or appointment remained valid. But with the statutory intervention, unless the custom or usage is held an integral part of the religion, the legislature has power to regulate the appointment of an archaka or other office-holder. In view of the settled legal position that the appointment of an archaka is a secular act, the previous custom or practice or usage in making an appointment to the office of an archaka is regulated under the Act. As an object in that behalf the hereditary right or custom or usage, prevalent in that behalf, was statutorily abolished.

In *Gazula Dasaratha Rama Rao v. State of Andhra Pradesh & Ors.* AIR (1961) SC 564 the question arose : whether the hereditary right to hold office of village Munsiff under the Madras Hereditary Village Offices Act, 1985 was constitutionally valid? A Constitution Bench of this Court held that the appointment on grounds of 'descent' violates the fundamental right under Articles 14, 15 and 16, (1) of the Constitution. In that context, after elaborate consideration, the Court had held that what goes with the office is its emoluments - whether in the shape of land, assignment of revenue, agricultural produce, money, salary or any other kind of remuneration. They are granted or continued in respect of or annexed to the office by the State. Apart from the office, there is no right to the emoluments. In other words, when a person is appointed as Village Munsiff, it is an appointment to the office by the State to be remunerated either by use of land or by money or salary etc. When the emoluments consisted

A of land, the land did not become the family property of the person appointed to the office whether by virtue of an hereditary claim to the office or otherwise. It was an appendage to the office, inalienable by the office-holder and designed to be the emoluments of the officer into the hands of whosoever the office might pass. It does not take out from the purview the office under clauses (1) and (2) of Article 16 of the Constitution.

B An office has its emoluments and it would be wrong to hold that though office is an office under the State, it is not within the ambit of Article 16 to take away the emoluments attached to the office, because prior to the Constitution the law recognised a custom by which there was a preferential right to the office in the members of a particular family. The customary pre-existing right of the family to the property in the shape of emoluments of the office is not independent of or irrespective of the office. There was no pre-existing right apart from the office. It was accordingly held that appointment on principle of descent was violative of Article 16 (1) and (2) of the Constitution.

D It deserves to be noted that Section 13 contains an injunction to the officer mentioned therein and every other person exercising the power or performing the functions under the Act that they shall not interfere with and shall observe the forum, usages, ceremonies and practices obtaining in and appropriate to the religious institution or endowment in respect of which such powers are exercised or functions are performed. In *Shirur Math's* case this Court had upheld similar State action whether the offending provision was in conformity with the rules, practices, usages or customs of the Math in dealing with the right of the head of the Math. Similarly, Section 142 preserves continuance of existing customs etc. by a savings clause as under :

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"Savings : Nothing in this Act shall -

(a) affect any honour to which any person is entitled by custom, the performance of or interference with the religious worship, ceremonies and poojas in religious institutions according to the sampradayams and Agams followed in such institutions ; or (b) authorise any interference with the religious or spiritual functions of the head of a math including those relating to the imparting of religious instructions or rendering of spiritual service."

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H A conjoint reading thereof preserves the existing customs, perfor-

mances, religious worships, ceremonies and poojas according to Sampradayams and Agamas followed in such institutions. Section 142 issues an injunction against officer from interfering with such observances. Yet it would not, by operation thereof, amount to revival of what has been expressly abolished under Section 34(1)(b) of the Act. Abolition of hereditary principle on the basis of custom or usage to a holder of an office for continuance in that office is one facet, and performance of ceremonies, practices, customs or usages in another. Both cannot be mingled in the same water. Both are distinct and separate from each other. It would, therefore, be incongruous to accept the contention of petitioners that the right to continuance in office on the basis of custom and usage independently survives. The further contention is that interference with matters based on custom or usage relating to religious institution' as defined in Section 2(23) amounts to interference with the freedom of conscience and free practice of religion. Therefore, it is violative of Article 25(1) and is untenable in law. As held earlier, being secular actions they are not integral part of the religion or religious matters.

It is next contended that as per rules laid down in Agmas, the archaka of particular denomination alone is entitled to enter *sanctum sanctorum* and touch the image of God. A touch by a person of different denomination defiles the image of God. Therefore, persons belonging to that particular family, sect or denomination alone are entitled to perform pooja or ceremonial rituals of daily worship and that the abolition of hereditary right amounts to interference with the religion offending Article 25(1). Ex-facie the argument being attractive, we had put a pointed question to Shri Parasaran that when with the advancement of education and the liberty of a person to pursue liberal higher education of his choice to improve his excellence, persons born in a particular sect or denomination acquire liberal education and migrate, as is usual, to a foreign country and settle themselves in profitable avocation, and no other person from that particular family, sect/sub-sect or denomination having knowledge, proficiency and accomplishment is available, what would happen to the performance of rituals in that particular temple. The counsel, after due consideration, was frank to submit that in that eventuality the management of the institution has to seek a suitable person from outside the family, seat/sub-sect or denomination. With increased modern facilities for liberal higher education and learning and ample opportunities to improve excellence to seek advantageous avocation, a child in traditional Vedic family

A may not fall in line with father to practise his archakatwam, avocation or services and no one can compel him to do so, Therefore, what would be relevant is not that the candidate who seeks to serve as an archaka must be from that family etc., but must be an accomplished person in Agama rules having faith and devotion in that form of worship and also proficiency to perform rituals and rites, ceremonial rituals appropriate to the temple according to its customs, usages, Sampradayams etc. In other words, the faith and belief in the religion, customs, usages or Sampradayams in that particular Agamas and proficiency in performance of the rituals to the image of God in those particular rituals are conditions precedent to be eligible to hold office of the archaka. One who fulfils those pre-conditions is eligible to be considered and appointed to the office of archaka or other similar offices. The regulation of this secular activity, therefore, does not offend any faith or belief in the performance of those duties by a person other than one hailing from the family, sect/sub-sect or denomination hitherto performing the the same. Earlier, the field of choice to appoint a particular archaka was confined and limited to that family, sect/sub-sect or denomination, but after the statutory regulation the field of choice is widened and all eligible candidates including those available from the family etc. will be considered; competency is tested and when one is found qualified, appointment is made to the office of archaka according to the prescribed procedure. We, therefore, hold that abolition of hereditary principle under Section 34 is not violative of either Article 25(1) or 26(b) of the Constitution.

It is next contended that there are no proper guidelines in the Act to exercise the power and wide discretion has been conferred on secular authority, i.e., the Commissioner to decide as to who should be appointed to the offices abolished under Section 34. The State has no jurisdiction either to exercise adjudicatory power or legislative power in matters relating to freedom of conscience. We find no force in the contention. It is settled law that existence of rules is not a condition for the Act to become operative. The rules made under the predecessor Act 17 of 1966 are in vogue. Section 35 prescribes procedure for appointment of office-holders and servants. Section 36 prescribes qualifications. Section 37 regulates disciplinary conduct. The rules have been made in exercise of the power under Section 155 to supplement these provisions. Three schools to impart education one Agama Sastras etc. are established in each in Andhra, H Telangana and Rayalseema regions. Vide GOMS 2920 dated December 19,

1958 Board of Examiners from Specialist Pandits was constituted to impart training and conduct examinations and papers were set out on each subject; GOMS No. 1252 dated November 30, 1971 prescribes rules to conduct examinations in Agamas; Vide GOMS No. 1051 dated September 20, 1976 Advisory Board, consisting of eminent Pandits in several Agama specialists, was constituted to regulate examination system. Thus, apart from the provisions in the Act, there are rules which elaborately provide for training facilities and conducting examinations in the prescribed manner. The Act, therefore, is not arbitrary. The procedure prescribed therefor is neither vague nor arbitrary.

Yet another serious contention of Sri Parasaran is that the archaka and other office-holders have a right to a share in the Prasadam offered to the Lord. It cannot be characterised either as an economic, political or secular activity associated with religious practice. Food offered to God becomes Prasadam. The devotee as well as office-holders are eligible and entitled to a share in the Prasadam. The archakas are entitled to remuneration from the worshippers for services rendered to the worshippers. For instance, 1/2 of each broken coconut is offered to the Deity as Neyvedyam. Similarly, in Anjitasawas, worshippers make payment for such services. Devasthanamas/temple charges fee from devotees, and from it archakas are entitled to their share as they render services to the Deity. They are entitled to separate remuneration for the services they render to the worshippers. The denial thereof, therefore, is unconstitutional, unjust and unfair. He placed strong reliance on a decision of the Madras High Court in *Tirumalai Tirupati Devasthanam Committee, by its Commissioner v. Archakam Seshachalam Dikshithulu & 2 Ors.*, (1990) 1 LW 34 at 37 - Journal Section, Shri Rao resisted the contention and pointed out that the archaka and other mirasidars and under a contract certain percentage of shares in the offering to the Lord Venkateswaraswamy. The statute has nullified the contract and introduced principle of payment of salary for services rendered. Prasadam is actually offered to the Lord at the time of worship and a part thereof is given for personal consumption. The archaka or other service holders have no right to a share in other collections. The decision of the Madras High Court has no application to the facts of this case.

Having given our anxious consideration to the respective contentions, we find that there is no force in the contentions of Sri Parasaran, Lord Venkateswaraswamy Temple of TTD has its centuries old history. It had its

A glory with the patronage of Cholla Kings, Pallava Kings, Vijayanagara Kings who donated large tracks of lands for its maintenance and upkeep. Equally, it supported the plunder by the French invaders and British empire who used its income as part of public exchequer. It has regained its resplendent glory with immense faith and devotion the people have in Lord Venkteswaraswamy who visit daily in lacs, wait in queue for a day for darshan for a few seconds. Its income grew from voluntary offering in Hundi and sale of Prasadams (food) and Laddus (Sweet-meat). Its administration and management is a systematised feature. The Act and the predecessor Act 17 of 1966 regulated the same in providing every facility to the pilgrims and devotees and cared to minimise inconvenience to devotees during darshan-stay in the precincts or outside-wait at Thirumalai and at Tirupathi down the hills. Chapter VIX of the Act exclusively deals with the management of TTD. It is seen that so long as hereditary archakas, mirasidars or office-holders had their hereditary right, as a part of their rendering service they were entitled to a share in the Prasadam or collections offered to the presiding Deity or other Deities of the temple as per the custom or usage prevailing in the particular temple or agreement between the management and the office-holders. But on abolition thereof, as a corollary, the right to a share in collections, Prasadam etc. also ceased to operate and also stood abolished. Apart from the hereditary right, they have no independent right to a share in the offerings etc. Therefore, with the abolition of the hereditary right, the right to receive customary payment associated with an office equally stood abolished under Section 144. Section 144 is consequential to Section 34 and other similar rights like Section 16 of the Act. Resultantly, the right to receive a share in the Prasadam etc. stood abolished. Holder of an office is entitled to payment of salary prescribed under the rules for services rendered by an archaka etc. Consequently, the right to a share by customary practices or usages or under a contract with management also stood abolished. They are regulated by making payment of the monthly salary to the holder of an office in accordance with the scales prescribed under the rules made thereunder. The Division Bench of the Madras High Court had gone into the question prior to the abolition of the rights. Therefore, principle laid therein no longer operates in view of the statutory interposition abolishing those entitlements.

H The gamekars (who prepare food items offered to God including Laddus) are species of mirasidars doing service to Lord Deity on hereditary principle. Though they perform the duty of preparing food etc.

according to Agama prescription, usages and practices obtaining in each temple, their right being founded on hereditary principle stood abolished. This abolition, in respect of archaka and other service holders having already been upheld, the case of gamekars cannot independently stand on any higher footing. Therefore, abolition of their rights under Sections 34 and 144 is equally valid in law.

It was next contended that prescription of the qualifications to the archaka is arbitrary, unjust and unfair. We find no force in the contention. It is true that prior to the Act came into force, the succession to the office was based on hereditary principles. But Section 37 of the predecessor Act 17 of 1966 prescribes qualifications of archaka which are in *pari materia* with those prescribed in Section 36 of the Act. It is common knowledge that many an archaka are not highly educated but have working knowledge in the performance of ritual and daily pooja to the presiding Deity of the temple and other Deities installed in the temple. To obviate deficiency in learning etc., Agama training schools in the respective regions, viz., Andhra, Telengana and Rayalseema were established and training in fact is imparted to the candidates. The recognition of the qualifications by the Commissioner is one of the conditions, but we have seen the rules made in this behalf. Rules provide elaborate procedure, Competent persons having specialised knowledge in the respective subjects set the question papers and evaluation thereof is done by equally competent on the subjects. As regards the recitation and clarity of pronunciation of Vedic mantras, the candidates are adjudged by the expert persons well-versed in Vedic mantras and Agamasastras. A pandit in that branch of speciality is in service of the department. With his assistance and of other persons, the Commissioner would adjudged the suitability of the respective candidates. Similarly, the word 'Sapthavyanam', i.e., seven bad habits, has been clarified in the Explanation of Appendix to Section 36. Therefore, the authority would have no difficulty in adjudging whether a candidate is free from seven vices or any of them. If there is any error of judgment or denial of appointment on that basis in any individual case that would be a matter for consideration in an appropriate forum. The provisions, therefore, are not arbitrary, unjust or unfair.

Yet another serious contention of Sri Parasaran is that the power of transfer under Section 39 is within the grinding teeth of Article 25(1) of the Constitution. It is his contention that each temple has its own rules laid

A down by Agamas, practices and customs prevalent in that temple; archakas will have special knowledge of working in the temple; an archaka transferred to another temple of transferee-substitute bereft of that knowledge in the performance of rituals defile the image of the presiding Deity, leading to serious repercussions and, therefore, Section 39 is *ultra vires* the Constitution. We find no force in the contention. It is seen that Sections B 13 and 142, which have already been adverted to, would take care of the apprehended catastrophe. On mere apprehension, Section 39 cannot be declared to be *ultra vires*. If in any individual case any transfer was effected of a person who had no accomplishment of Agamic rules, customs, practices or Sampradayams applicable to that particular temple, it would be C considered and dealt with accordingly. It cannot be expected that the Commissioner would act in violation thereof and would act in a way inconsistent with Sections 13 and 142. Each case would be considered on its own merits and correctness of such transfer would be tested in an appropriate proceedings. Therefore, on that score alone, Section 39 cannot D be declared arbitrary or *ultra vires* or unjust.

In Andhra Pradesh there are as many as 32, 201 temples out of which 7761 temples are assessable institutions; the remaining 24, 440 temples have income of less than Rs. 1,000 per annum, only 582 out of them have income of more than Rs.10,000 per annum. Only around 8 temples have income of more than Rs. 20,00,000 per annum. All the archakas or employees in these E categories of 24, 440 small temples would be deprived of their livelihood by abolition of their hereditary rights and introduction of graded scales of pay. This information has been furnished in the written arguments submitted by Shri Markandeya but we did not have the occasion to have them F verified during the course of hearing. It would be seen that the principles in fixing the scales of pay and method of payment of salary introduced by the rules are required to be adjudged. In the absence of any material it is difficult for us to give any finding in that behalf. Suffice to state that liberty is given to place those necessary and material evidence before the Government which would constitute a Committee consisting of Deputy Secretary, G Finance Department, Joint Secretary to the Government, Revenue (Endowment Department) and Joint Commissioner, Endowment Department. The Committee would go into the question to rationalise the pay-scales of all the archakas in different temples and the modality for payment of salary to them. After approval of the rules by the State Government, the respondents should place the same before the Court for further approval. H

Though we have upheld abolition of hereditary right to appointment as an archaka other office-holders, the evidence from Vaikhanasa literature and other material indicate that archaka should bestow his total dedication to the Deity in the performance of daily rituals; at the same time, he and his family members must be kept in comfort. That property endowed for his services of the income derived from the offerings of the payment of salary, if any, is identified as a source for his living in comfort. The State exercising its secular power regulates appointment of archakas, as upheld hereinbefore; equally, he, along with his family, is required to be kept with daily comfort so that he would continue to dedicate himself to perform the ritual worship of the Deity. As indicated earlier, the State is required to determine his service conditions, scale of pay and other emoluments according to the grade of the temple in which he works and to regulate the period of duty and of service. That apart, welfare measures in addition should be initiated as a measure of social welfare to the archakas and other employees of the temple and pandits working in the temples and under the supervision of the Commissioner. Therefore, the State should come forward with a scheme to provide the archakas, other employees and their family members like suitable accommodation, education by way of refresher courses and courses in Agamas in the respective region, medical facilities, educational facilities to their children, loans for construction of their own houses, and wherever accommodation in the temple is available letting the same to them on reasonable rent, group insurance scheme, unforeseen contingencies like accident, death etc., rehabilitation of the widow or educated unemployed youth or such other measures as may be incidental and part of economic welfare. The extent of the similar facilities already existing and provided for may be excluded from proposed scheme. For other items appropriate scheme should be formulated.

In that behalf the State Government is directed to constitute a Committee consisting of the Additional Commissioner, Endowments Department, a joint Secretary/Deputy Secretary (Endowment) Revenue Department; two representatives of the archakas to be nominated by their associations and one representative of other officer/servants of the temples. It would be open to the representatives of the archakas etc. to place their views and material before the Committee in the formulation of the scheme. The Committee will undertake an indepth study into the schemes and formulate the same. After the scheme is formulated, the Government would take a decision thereon and would place the duly approved scheme

A before this Court within six months from today for further action thereon.

We are of the view that to effectuate the scheme, tentatively a consolidated fund of Rs. 75 crores would be set up as corpus and procedure would be evolved by the Government as to in which nationalised Bank or income yielding Government Securities the same would be deposited; as to who would operate and disburse the income accrued from the fund from time to time. Subject to further revision, if any, in the above consolidated fund, the TTD is directed to deposit a sum of Rs. 20 crores into the fund during the financial year 1996-97 by end of June 1996. Each financial year, a sum of Rs. 10 crores be deposited till the corpus of Rs. 75 crores is reached. The Government is also directed to call upon other major temples like Narasimhaswamy temple, Yadagirigutta; Sri Malikarjunaswamy temple, Karimnagar; Ugra Narasimhaswamy temple, Visakhapatam; Satyanarayanaswamy temple, Annavamam; and Kanakaduragmba temple, Vijayawada etc. with annual income of Rs. 20 lakhs or more, to contribute to the said fund of Rs. 75 crores. These temples may deposit the amount in annual instalments spread over a period not exceeding five years. During the financial 1996-97, a sum of Rs. 5 crores by each of the major temple may be directed to be deposited and in subsequent four years, a sum of Rs. 1 crore every year may be directed to be deposited. In case of any difficulty, the Government would be at liberty to seek from this Court further directions or clarification or modification in that behalf. It would also be open to the Government to seek donations from other charitable institutions within or outside the State of Andhra Pradesh or from non-resident Indians. The State Government would also approach the Income-Tax Department and the Government of India to exempt from the income-tax the said donations as well as the income derived by way of interest or otherwise on the corpus of or further amounts deposited into the Fund.

When the matter has come up for admission, on June 22, 1987, this Court had directed *status quo* as to the rights of the hereditary archakas, trustees and mirasidars as on the date the Act had come into force. This Court had further directed that the archakas, trustees and mirasidars "shall keep an account of the offerings, both in case and in kind, and the value thereof as may be taken by the hereditary archakas, trustees, mirasidars as their remuneration, salary and perquisites as used to be taken by them immediately before the commencement of the Act and submit the same to

the Executive Officer or to the Commissioner of Religious Endowments, as the case may, every month by the 15th day of the next succeeding month. The first of such accounts shall be submitted by 15th July, 1987 for the month of June, 1987". On October 13, 1987, the said order was modified to the extent of archakas receiving more then Rs. 10,000 as monthly emoluments. Direction was given to furnish security either by way of bank guarantee or immovable property security as ordered for archakas and gamekars in the main case. By further order dated August 25, 1987, an order was made to protect the interests of the TTD and two working groups, viz., archakas and gamekars thus :

"Therefore, as an interim arrangement we direct that archakas shall furnish a consolidated security of Rs. 20,00,000 (Rupees twenty lakhs) either by way of bank guarantee or by way of property security to the satisfaction of the Additional District Judge, Tirupati within four weeks hence. Similarly, the other group who is incharge of preparing prasadams will furnish either bank guarantee or property security to the satisfaction of the same Additional District Judge of Tirupati of Rs. 20,00,000 (Rupees Twenty lakhs) within the same period. This amount has been fixed taking into consideration the possibility of this case being disposed of by this Court in course of 1988."

Though liberty was given to obtain further directions if the cases would not be disposed of by the year 1988, we do not find that any further directions were given by this Court. This Court had reiterated the interim direction dated June 22, 1987 referred to hereinabove.

In view of the fact that writ petitions and transfer cases are being disposed of, it would be open to the Executive Officer of TTD etc. to work out the payments made to the archakas, mirasidars and gamekars etc. and also the rights consistent with the law and would take action accordingly.

The writ petitions and the transfer cases are dismissed subject to the above directions. In the circumstances of the case, however, the parties are directed to bear their own costs.

HANSARIA, J. It may look pedantic to say anything more in the face of the very scholarly and erudite judgment of my learned brother with whom I am in respectful agreement on all counts. This concurring note is

A only to highlight one facet of this case, which had not been traversed earlier, but which has its own importance. The same is the difference between "religion", a word used in Articles 25 and 26, and "dharma" known to our psyche. I wish to put on record the difference in my own way and to say that our constitution makers had used the word "religion" in these two articles in the sense conveyed by the word "dharma".

B Very often the words "religion" and "dharma" are used to signify one and the same concept or notion; to put it differently, they are used inter-changeable. This, however, is not so, as would become apparent from what is being stated later, regarding our concept of dharma. I am of the

C considered view that the word religion in the two articles has really been used, not as is colloquially understood by the word religion, but in the sense of it comprehending our concept of dharma. The English language having had no parallel word to dharma, the word religion was used in these two articles. It is a different matter that the word dharma has now been

D accepted even in English language, as would appear from Webster's New Collegiate Dictionary which has defined it to mean : "Dharma : n. (Skt. fr. dharayati be holds;) akin to L firmus firm : custom or law regarded as duty : the basic principles of cosmic or individual existence : nature : conformity to one's duty and nature." The Oxford Dictionary defines dharma as : "Right behaviour, virtue; the Law (Skt = a decree, custom)".

E The difference between religion and dharma is eloquently manifested when it is remembered that this Court's precept is यतो धर्मस्वतो जयः . It is apparent that the word dharma in this canon or, for that matter, in our saying : धर्मो रक्षति रक्षितः does not mean religion, but the same has been

F used in the sense defined in the aforesaid two dictionaries. This is how the President of India, Dr. Shanker Dayal Sharma, understood the word dharma in his address at the First Convocation of the National Law School of India University delivered on 25th September, 1993 at Bangalore.

G Our dharma is said to be 'Sanatana' i.e. one which has eternal values; one which is neither time-bound nor space-bound. It is because of this that Rg. Veda has referred to the existence 'Sanatan Dharmani'. The concept of 'dharma', therefore, has been with us for time immemorial. The word is derived from the root 'Dh.r' - which denotes : 'upholding', 'supporting', 'nourishing' and 'sustaining'. It is because of this that in Karna Parva of the

H Mahabharata, Verse-58 in Chapter 69 says :

"Dharma is for the stability of the society, the maintenance of social order and the general well-being and progress of humankind. Whatever conduces to the fulfilment of these objects is Dharma; that is definite." A

(This is the English translation of the Verse) as finding place in the aforesaid Convocation Address by Dr. Shanker Dayal Sharma.) B

The Brhadaranyakopanisad identified Dharma with Truth, and declared its supreme status thus :

"There is nothing higher than dharma. Even a very weak man hopes to prevail over a very strong man on the strength of dharma, just as (he prevails over a wrong-doer) with the help of the King. So what is called Dharma is really Truth. Therefore people say about a man who declares the truth that he is declaring dharma and about one who declares dharma they say he speaks the truth. These two (dharma and truth) are this." C D

(English translation of the original text as given in the aforesaid convocation address).

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

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

Ashoka mentioned about victory of dharma in his rock edict at Kalsi which proclaimed his achievement in terms of the moral and ethical imperatives of dharma, and exemplified the ancient dictum : यतो धर्मस्ततो जयः (where there is Law, there is Victory), G

We may with profit refer to another learned speech given by the President of India at the valedictory session of Parliament of Religions held at Calcutta on 19th September 1993, Dr. Sharma was there principally speaking on the contributions of Swami Vivekananda to our religion and referred in this connection to the address of Swamiji given at the Interna- H

- A tional Conference of Religions held at Chicago in September 19, 1893, when he explained many salient features of the Vedic and Vedantic body of thought and defined the characteristics of a religion "whose whole, scope, whole force, will be centred in aiding humanity to realize its own true... nature." The President further quoted another thought of Swami Vivekananda where he had said : "Religion is neither word nor doctrine....It is *deed*. It is *to be* and *become*. It is the whole soul changed into that which is believed...."

- C Aforesaid was the Indian concept of religion of which the framers of the Constitution were aware and it is because of this that the word "religion", as used in Article 25 and 26 of the Constitution cannot be confined, cabined and crabbed, according to me, to what is generally thought to be religion.

- D Swami Rama in his book 'A Call to Humanity', published by the Himalayan International Institute of Yoga Science and Philosophy of the U.S.A. in 1988 has taken pains to demonstrate the difference between religion and dharma. It would be profitable to note what this great saint has said in this regard. The word religion, as presently understood, is comprised of rituals, customs, and dogmas surviving on the basis of fear and blind faith; whereas dharma encapsulates those great laws and disciplines that uphold, sustain, and ultimately lead humanity to the sublime heights of wordly and spiritual glory. Dharma shines in the form of truth, non-violence, love, compassion, forbearance, forgiveness, and mutual sharing.

- F Swami Rama mentioned in this connection what the great master, Krishna, stated to Arjuna about the essence of the Upanishads. He introduced a healthy lifestyle through which people could attain the state of peace here and now. But with the passage of time, people formed a cult around Krishna, giving birth to new religion with various branches.

- G The distinction between religion and dharma has also been explained by saying that religion is enriched by visionary methodology and theology, whereas dharma blooms in the realm of direct experience. Religion contributes to the changing phases of a culture; dharma enhances the beauty of spirituality. Religion may inspire one to build a fragile, mortal home for
H God; dharma helps one to recognise the immortal shrine in the heart.

The author goes on to say that the perennial truths, rules, and laws that help maintain peace and harmony in one's individual and in the community life constitute dharma. It applies for all times and in all places. Social laws and even national constitutions devoid of such a dharma will lead a society toward an inevitable decline. A

Thus, having love for all human beings is dharma. Helping others ahead of one's personal gain is the dharma of those who follow the path of selfless service. Defending one's nation and society is the dharma of soldiers and warriors. In other words, any action, big or small, that is free from selfishness is part of dharma. B

Swami Rama has further stated that dharma has been a great force in uplifting the human race. Dharma can help up today as it did in ancient times, but only if we start living by truth, not merely believing in truth. Turning away from dharma and distancing oneself from the Truth is not a desirable way of living. It ultimately leads to misery. In the practice of dharma, one is advised to shed the veil of ignorance and practice truthfulness in one's thoughts, speech, and actions. How can dharma be secret, having revelation as its source? Withholding nothing, all the great sages in the world shared their knowledge with humanity. In the Bhagavad Gita, the Bible, Koran, and Dharmapada - Knowledge, like the sun, shines for all. C D

It is because of the above that if one were to ask "What are the signs and symptoms of dharma?", the answer is : that which has no room for narrow-mindedness, sectarianism, blind faith, and dogma. The purity of dharma, therefore, cannot be compromised with sectarianism. A sectarian religion is open to a limited group of people whereas dharma embraces all and excludes none. This is the core of our dharma, our psyche. E F

Nothing further is required to bring home the distinction between religion and dharma; and so I say that the word "religion" in Articles 25 and 26 has to be understood not in a narrow sectarian sense but encompassing our ethos of " सर्वे भवन्तु सुखिनः ". Let us strive to achieve this; let us spread the message of our dharma by availing and taking advantage of the freedom guaranteed by Articles 25 and 26 of our constitution. G