

[2017] 9 S.C.R. 1

K. S. VARGHESE & ORS.

v.

ST. PETER'S & PAUL'S SYRIAN ORTH. & ORS.

(Civil Appeal No. 3674 of 2015)

JULY 03, 2017

[ARUN MISHRA AND AMITAVA ROY, JJ.]

*Constitution of India:*

*Arts.25 and 26 – Malankara church – Management of affairs of Malankara church – Perpetual fight between Patriarch faction and Catholicos faction – Historical background discussed in \*Most Rev. P.M.A. Metropolitan case popularly known as \*1995 judgment – Whether the 1995 Judgment is binding on the appellants – In the 1995 judgment, the Supreme Court referring to the Year 1654 events, observed that the authority of the Patriarch extended only to spiritual affairs but not to the temporal affairs of the Malankara Church – The Court also observed that the Patriarch in the year 1972 could not have exercised the power of appointment of getting ordaining the priests and deacons through his delegate – The Court clearly held that even if it is held that by Kalpana's A-13 and A-14, the Patriarch is not denuded of the powers delegated by him to the Catholicos, he could not have unilaterally exercised those powers which were delegated and he could have exercised those powers thereafter in consultation with the Catholicos and the Malankara Sabha (Association) and of course in accordance with the 1934 Constitution – The Court also found that it was not open to the Patriarch or his followers to contend that revival of Catholicate was not in accordance with the religious tenets and faith of the Syrian Jacobite Christian Church; that the Constitution of 1934 was not duly and validly passed and that the revival of Catholicate reduced the power of Patriarch to a vanishing point – The power and authority of the Catholicos as per Kalpanas A-13 and A-14 were affirmed, re-enforced and enlarged in the 1934 Constitution – The said findings and the declaration in the decree that was passed in the 1995 judgment, in a representative suit, is binding – As per the mandate of the Or.1 r.8(6), CPC, the finding that was recorded in the earlier suit that was decided in 1958 as well as in 1995 is*

A *binding insofar as the questions were decided in a representative character – This Court has decided the issue in 1995 suit to the extent that the parties were having the common interest as contemplated in Or.1 r.8 and left open issues with respect to temporal matters in the absence of Parish Churches – The decree in the 1995 judgment is completely in tune with the judgment – There is no conflict between the judgment and the decree – Code of Civil Procedure, 1908 – Or.1 r.8.*

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D *Arts.25 and 26 – Church – Parish church – Appointment of Vicar – Whether Parishioners have a right to follow their own faith under Art.25 and appointment of Vicar, priest and Deacons and manage affairs under Art.26 – When the Church is a Parish Church and since time immemorial it is a Parish Church and is a part of Malankara Church, it has to perpetually remain as such – Under the garb of pursuing their faith of the Patriarch being superior, they cannot create a parallel system of appointing a Vicar for performing spiritual/religious ceremonies conforming to that faith, as an appointment of Vicar is not a spiritual matter – It is a secular matter – It is open to any Parishioner to have faith in the spiritual superiority of the Patriarch – Church.*

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F *Arts.19, 25 and 26 – Right to freedom of religion – A right to freedom of professing one's faith and religion is enshrined in Art.25 of the Constitution which gives freedom of faith and worship, subject to public order, morality and health and other provisions of Part III of the Constitution – The freedom is guaranteed to 'persons' as opposed to 'citizens' as in Art.19 – Therefore, each Parishioner has a right to freedom of religion – The 1934 Constitution cannot be said to be in violation of Arts.25 and 26 of the Constitution of India.*

*Church:*

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H *1934 Constitution – Power of Diocesan Metropolitan – Held: The Diocesan Metropolitan has the authority to appoint, remove or transfer the Vicar and other priests – He has been given the authority to appoint a Vicar for a wholesome purpose in the 1934 Constitution as the Patriarch of Antioch abroad cannot exercise the deep and pervasive control over the management of churches such as the appointment of Vicar which is a secular matter and not a spiritual one.*

*1934 Constitution – Power of the Patriarch of Antioch or his delegate – Malankara Metropolitan enjoys all the temporal, ecclesiastical and spiritual administration powers – Thus the power of the Patriarch of Antioch has reached a vanishing point and he cannot exercise those powers which are lying with various authorities under the Constitution as per the historical background noted in the 1995 judgment since time immemorial – Obviously, the Patriarch of Antioch cannot manage the day to day affairs in India sitting abroad – It is not contemplated nor he is supposed to do so in view of his Kalpana's – The powers of appointment of Vicar and priests etc. to the local Malankara church, have rightly been given to the concerned authorities in the 1934 Constitution on the basis of prevalent practices – A religious denomination or organization enjoys a complete autonomy in the matter of deciding as to rites and ceremonies essential according to their tenets of religion they hold and no outside authority has any jurisdiction to interfere with their decisions in such matters – At the same time, secular matters can be controlled by the secular authorities in accordance with the law laid down by the competent legislature – Spiritual power is also with various authorities like Catholicos, Malankara Metropolitan etc. – Thus it is too far fetched an argument that the Patriarch of Antioch or his delegate should appoint a Vicar or Priest – The spiritual power of Patriarch has been set up by the appellants clearly in order to violate the mandate of the 1995 judgment of this Court which is binding on the Patriarch, Catholicos and all concerned.*

*Art.25 – Spiritual power – The spiritual power cannot be the monopoly of any particular individual howsoever high he may be – Appointment of Vicar and Priests is a secular matter and there can be legislation also in this regard by sovereigns and can be dealt with by secular authorities also – There is no question of blessings of Jesus Christ not flowing to a person who confesses before a Vicar not appointed by the Patriarch – The spiritual competence of Vicar depends on his own attainments – The dispute appears to be for fulfillment of desire to manage Church for the reasons which are not related to spiritualism.*

*1934 Constitution – It is a Diocesan Metropolitan as per s.40 of the Constitution who has the power to appoint Vicar, priests etc. and there is other hierarchy provided – Even Catholicos, Malankara*

- A *Metropolitan has the spiritual powers – It is not that they have temporal powers only – They have spiritual status too that has to be respected equally – No office is either superior or inferior in the matter of relationship between the two heads, the Catholicos and the Patriarch – Both are independent spiritual authorities – However, the Patriarch occupies the higher post in the hierarchy i.e. he has,*
- B *an honour or precedence if he is present that is in a sense he is the first among equals – “primus inter parties”.*

- Properties of Parish church – Ownership rights – Held: The Parish properties would always remain to be Malankara Church properties – Only Office holders have to subscribe to the 1934*
- C *Constitution – The Parishioners can take no church property away, neither Catholicos faction by majority – Neither the Church nor the cemetery can be confiscated by anybody – When the Church has been created and is for the benefit of the beneficiaries, it is not open for the beneficiaries, even by a majority, to usurp its property*
- D *or management – The Malankara Church is in the form of a trust in which, its properties have vested – As per the 1934 Constitution, the Parishioners though may individually leave the Church, they are not permitted to take the movable or immovable properties out of the ambit of 1934 Constitution without the approval of the Church hierarchy.*

- E *1934 Constitution – Power of the Patriarch of Antioch or his delegate – Once office of the Catholicos has been re-established, Patriarch could not exercise the powers which have been dealt with in the 1934 Constitution, and conferred on various authorities in hierarchy of church, that too unilaterally to create another centre*
- F *of power and thereby the Patriarch cannot be permitted to create parallel system of administration by appointing Vicars, Priests and Deacon or another authority of Church – He is bound to act within the four corners of the 1934 constitution for the sake of peace in the church – In the temporal matters, Patriarch has no power and*
- G *the spiritual power had also come to the vanishing point by his own acts as noticed by this Court in the 1995 and other judgments – Submission to the contrary on behalf of the appellants that he can exercise the powers after informing the Catholicos, cannot be accepted – The Malankara Metropolitan has to be of local area –*
- H *Logically also for proper management of the affairs of Churches*

*power cannot be exercised from abroad – Such a scenario is neither conceived nor feasible or permissible – The spiritual supremacy of one holy authority over the other, also cannot per se mean exclusion and subordination of the other religious authority – When there is delegation and delimitation of the territorial and other powers, concerned authorities however high they may be, spiritually or otherwise, have to follow the discipline and strictly act as per delimitation of zones and powers – It is absolutely necessary for survival of the Church and for proper administration.*

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*1934 Constitution – Unilateral exercise of power by the Patriarch of Antioch or his delegate – Permissibility – Held: As per the historical background and the practices which have been noted, the Patriarch is not to exercise the power to appoint Vicar, Priests, Deacons, Prelates etc. – Such powers are reserved to other authorities in the Church hierarchy – The Patriarch, thus, cannot be permitted to exercise the power in violation of the 1934 Constitution to create a parallel system of administration of Churches as done in 2002 and onwards – This Court has held in 1995 judgment that the unilateral exercise of such power by the Patriarch was illegal – The said decision has also been violated – It was only in the alternative this Court held in the 1995 judgment that even if he has such power, he could not have exercised the same unilaterally.*

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*1934 Constitution – The declaration given that the Parish Churches are governed by the 1934 Constitution is just and proper – In the instant case, the Patriarch faction is more to be blamed for disorder in the churches than the Catholicos faction – They ought to have followed 1995 judgment and other decisions – That they have not done and have insisted upon their own system of management that is not permissible.*

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*Udampady – 1934 and 2002 Constitution – Enforceability and binding nature of Udampady – Held: The submission that the Udampady will prevail over 1934 Constitution cannot be accepted in view of the provisions made in s.132 of the 1934 Constitution that all agreements which are not consistent with the provisions of 1934 Constitution are made ineffective and annulled and also in view of the finding in the 1958 Samudayam matter that the Constitution had been validly adopted and is applicable – The question cannot be re-agitated and reopened under the guise of*

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A *Udampady – Udampady cannot hold the field for administration of such Parish Churches – Udampady is not a document by which the Church came to be established – It is with respect to its management only – Udampady cannot prevail over the Constitution that has been adopted for all the Malankara Churches and is holding the field.*

B *Udampady – Registration of – 1934 Constitution – Would registration of Udampady make it a superior document over 1934 Constitution – Held: The registration of the Udampady cannot make it superior than the Constitution and the latter will prevail.*

C *1934 Constitution – Binding effect of – Held: If the effort of certain group of Patriarch otherwise is to form a new Constitution 2002 to appoint Vicars, Priests etc., giving a go by to the 1934 Constitution and to form a new Church under the guise of same Malankara Church, it is not permissible – The Malankara Church, its properties and other matters are to be governed by the 1934 Constitution and even majority of parishioners has no right to take away and usurp the church itself or to create new system of management contrary to 1934 Constitution – As per the 1934 Constitution, it is clear that while individual Parishioners may choose to leave the Church, there is no question of even a majority of the Parishioners in the Parish Assembly by themselves being able to take the movable or immovable properties out of the ambit of the 1934 Constitution, without the approval of the Church hierarchy.*

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F *1934 Constitution – It is not open to the beneficiaries even by majority to change the nature of the Church, its property and management – The only method to change management is to amend the Constitution of 1934 in accordance with law – It is not open to the Parish Churches to even frame bye-laws in violation of the provisions of the 1934 Constitution.*

G *Malankara Church – Formation of new church by majority – Permissibility – Held: In existing system of Malankara Church, a Parish Church that is a part of Malankara Church cannot be usurped even by majority in Church under the guise of formation of new Church – The Malankara Church is Episcopal to the extent it is so declared in the 1934 Constitution as held in the 1995 judgment – The 1934 Constitution governs the affairs of Parish Malankara Churches and shall prevail – Otherwise also, property cannot be*

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*taken away by the majority or otherwise and it will remain in Trust as it has been for the time immemorial for the sake of beneficiaries – It is for the benefit of beneficiaries – No one can become owners by majority decision or permitted to usurp Church itself – It has to remain in perpetual succession for the purpose it has been created a Malankara Church – Though it is open to the individual member to leave a Church in exercise of the right not to be a member of any Association and as per Art.20 of the Universal Declaration of Human Rights, the Parish Assembly of the Church by majority or otherwise cannot decide to move church out of the Malankara Church – Once a trust, is always a trust.*

*Mannathur Church – It was not necessary, after amendment of the plaint in Mannathur Church matter, to adopt the procedure once again of representative suit under Or.1 r.8 CPC – It remained a representative suit and proper procedure was followed – It was not necessary to obtain fresh leave.*

*2002 Constitution – Binding effect of – Held: The Parish Assembly by majority cannot take away the property and divert it to a separate and different church that is not a Malankara Church administered as per the 1934 Constitution, though it is open to amend the 1934 Constitution – The 2002 Constitution cannot hold the field to govern the appellant churches and the 1934 Constitution is binding – As the 1934 Constitution is valid and binding upon the Parish Churches, it is not open to any individual Church, to decide to have their new Constitution like that of 2002 in the so-called exercise of right under Arts.25 and 26 of the Constitution of India – It is also not permissible to create a parallel system of management in the churches under the guise of spiritual supremacy of the Patriarch.*

*Udampady of 1913 – Effect of – Held: The Udampady of 1913 is not a document of creation of the Trust – The then in-charge person executed it just for the management of the church – The 1934 Constitution after being adopted in 1959 by the Church is binding – The Udampady of 1913 has lost its efficacy and utility – The Udampady stands annulled by s.132 of the Constitution – It cannot be revived.*

*1934 Constitution – Purport of – Effect of non-registration of 1934 Constitution and effect of registered Udampady – Held:*

- A *The 1934 Constitution does not create, declare, assign, limit or extinguish, whether in present or future, any right, title or interest, whether vested or contingent, in the Malankara church properties – It provides a system of administration as such and not required to be registered, and moreover the question of effect of non-registration of the 1934 Constitution cannot be raised in view of the findings recorded in the 1959 and the 1995 judgments – It is not open to question the validity of the 1934 Constitution on the ground that it cannot be looked into for want of its registration – Udampady itself is not a document of creation of Trust – It related to the management only – Thus, by its registration no legal superior right is acquired to prevail over the Constitution – No registered document was required for administration of the Church – Document of creation of a Trust may require registration and not a document like the 1934 Constitution.*

- D *Two factions – The plea that in face of the prevailing dissension between the two factions and the remote possibility of reconciliation, the religious services may be permitted to be conducted by two Vicars of each faith cannot be accepted as that would amount to patronizing parallel systems of administration – Both the factions, for the sake of the sacred religion they profess and to pre-empt further bickering and unpleasantness precipitating avoidable institutional degeneration, ought to resolve their differences if any, on a common platform if necessary by amending the Constitution further in accordance with law, but by no means, any attempt to create parallel systems of administration of the same Churches resulting in law and order situations leading to even closure of the Churches can be accepted – Constitution of India – Arts.25, 26.*

*Code of Civil Procedure, 1908:*

- G *s.92 – Framing of scheme under – Management of the Parish Churches – Held: The 1934 Constitution is appropriate and adequate for management of the Parish Churches – There is no necessity of framing any scheme under s.92 – Constitution of India – Arts.25, 26.*

- H *Or.1 r.8 – Object of – Exception to general rule that all persons interested in the suit are to be made parties thereto – The object of Or.1 r.8 is to provide an exception to the ordinary procedure in a case where common rights of community or members of such*

*association or large section are involved – The rule entitles one party to represent many and the action is maintainable without joinder of other parties – Or. 1 r.8 pre-supposes that there are numerous persons having the same interest – One or more such persons with permission of the court may sue or be sued or may defend such suit on behalf of the persons so interested – It is provided in Or.1 r.8(6) that the decree in a suit under this rule shall be binding on all the persons on whose behalf or for whose benefit the suit is instituted or defended, as the case may be – Suit – Representative suit – Party.*

*Words and Phrases:*

*“spiritual” and “spirituality” – Meaning of – Held: The word ‘spiritual’ has been defined to mean in Black’s Law Dictionary as of or relating to ecclesiastical rather than secular matters – Spiritualism is alien to temporalism – One whose desire is for temporal gains, cannot be said to be on the spiritual path – They are aliens to each other – One who is really spiritual is far away from the temporal desires – It can also be said that spirituality is a form of religion but a private and personal form of religion – Spirituality is more personal and private while religion tends to incorporate public rituals and organised doctrines.*

*Concept of denomination in religion – Connotation of – Discussed.*

*“congregationalism” and “episcopal” – Meaning of – Discussed.*

**Dismissing the appeals, the Court**

**HELD: 1. IN RE: WHETHER THE 1995 JUDGMENT IS BINDING ON THE APPELLANTS? IF YES, TO WHAT EXTENT?**

**1.1 The representative suit was decided in 1995 and the judgment is binding even on those who were not parties to the case. All the Parishioners are bound by the judgment to the extent it has decided the matter. There is no conflict in the decree as well as the observations that have been made by this Court. The majority opinion has left open the question that the property whether it is held by the Parish Churches or vested in the Catholicos and Para 155(8) deals with other rights and nature of**

A the Church to be episcopal and with respect to the applicability  
of the 1934 Constitution the judgment is final, conclusive and  
binding in these cases. The decree is wholly in tune with the  
judgment and the issues which were effectively decided by this  
Court and what was left open is absolutely in no conflict with the  
findings recorded in the judgment and in the decree. The decree  
B is in accordance with the aforesaid dictum of this Court.  
[Para 65][101-H; 102-A-D]

\**Most Rev. P.M.A. Metropolitan v. Moran Mar  
Marthoma* (1995) Supp. 4 SCC 286 : [1995] 1 Suppl.  
SCR 542; *Bhikki Lal v. Tribeni* AIR 1965 SC 1935 –  
C relied on.

1.2 In the 1995 judgment, this Court referring to the Year  
1654 events, observed that the authority of the Patriarch  
extended only to spiritual affairs but not to the temporal affairs of  
the Malankara Church. There was the revival of Catholicate in  
D 1912 by Patriarch Abdul Messiah, and that brought a qualitative  
change in the situation. A-14, the Kalpana was issued which fact  
was not disputed by the Patriarch group, and A-13 which was  
preceded by A-14 empowered the Catholicos to ordain  
Metropolitans and other officials of the Church in accordance  
with the canons of the Church and also to consecrate holy Moron.  
E The powers of consecrating holy Moron that vested in Patriarch,  
came to be vested in the Catholicos by the Patriarch himself.  
The third Catholicos was elected as the Malankara Metropolitan  
and thus the powers of both i.e. the spiritual and temporal powers  
were concentrated in one person. This Court also observed that  
F the Patriarch in the year 1972 could not have exercised the power  
of appointment of getting ordaining the priests and deacons  
through his delegate as observed in Para No.134 of the 1995  
judgment. This Court clearly held that even if it is held that by  
Kalpana's A-13 and A-14 the Patriarch is not denuded of the  
G powers delegated by him to the Catholicos, he could not have  
unilaterally exercised those powers which were delegated and  
he could have exercised those powers thereafter in consultation  
with the Catholicos and the Malankara Sabha (Association) and  
of course in accordance with the 1934 Constitution. This Court  
also held that it was necessary for the reason (i) to avoid creating  
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parallel authorities leading to conflict and confusion and (ii) the acceptance by the local people. This Court also held that when the Patriarch had recognized the Catholicos, he did so with the full knowledge. It was also held that Kalpana's A-19 and A-20 were not issued in an abrupt fashion. Under Kalpana Ex. A-20 the Catholicos accepted the Patriarch subject to the Constitution passed by the Malankara Association. The members of the Patriarch group swore loyalty to the 1934 Constitution. The Patriarch abandoned whatever objection he had by his acts and declarations in the year 1964 when he came to India on invitation from the Malankara Synod and consecrated and duly installed the new Catholicos who was elected by the Malankara Association in accordance with the 1934 Constitution. Before that, the Patriarch also took care to define the territorial jurisdictions of the Patriarchate and the Catholicate. The Middle East that was supposed to be under the jurisdiction of the Catholicos was excluded from his jurisdiction confining his authority to India and East alone. This defining of the territorial jurisdiction also recognized the power of the Catholicos both in spiritual as well as temporal matters. This Court had also found that it was not open to the Patriarch or his followers to contend that revival of Catholicate was not in accordance with the religious tenets and faith of the Syrian Jacobite Christian Church; that the Constitution of 1934 was not duly and validly passed. This Court also found that the revival of Catholicate reduced the power of Patriarch to a vanishing point. The power and authority of the Catholicos as per Kalpanas A-13 and A-14 were affirmed, re-enforced and enlarged in the 1934 Constitution. This Court has clearly held that the Patriarch could not have unilaterally appointed priests etc. through his delegate. It is one thing to say that the Patriarch could do these things in cooperation with the Catholicos but the ordaining of the priests and Metropolitans by him and his delegate without reference to and over the protestations of the Catholicos, was certainly not the right thing to do since it purported to create a parallel administrative mechanism for the church in spiritual/temporal matters. The said findings and the declaration in the said decree that was passed in the 1995 judgment, in a representative suit, is binding. [Paras 66-70][103-A-H; 104-A-F]

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- A *R. Venugopala Naidu & Ors. v. Venkatarayulu Naidu Charities & Ors.* (1989) Suppl. 2 SCC 356 : [1989] 1 Suppl. SCR 760 – relied on.

1.3 Order 1 Rule 8 is an exception to the general rule that all persons interested in the suit are to be made parties thereto.

- B The object for which the provision is enacted is to provide an exception to the ordinary procedure in a case where common rights of community or members of such association or large section are involved. It will be practically difficult to institute the suit under the ordinary procedure by impleading every person in which every individual has to maintain account by a separate suit and to avoid numerous suits being filed for a decision on the common question. Order 1 Rule 8 had been enacted so as to simplify the procedure. The rule entitles one party to represent many and the action is maintainable without joinder of other parties. Order I Rule 8 pre-supposes that there are numerous persons having the same interest. One or more such persons with permission of the court may sue or be sued or may defend such suit on behalf of the persons so interested. In such a case notice has to be given as per Order I Rule 8(2) by way of public advertisement and then any person on whose behalf or whose benefit the suit is instituted or defended has a right to apply to the court to be made a party to such a suit. It is provided in Order I Rule 8(6) that the decree in a suit under this rule shall be binding on all the persons on whose behalf or for whose benefit the suit is instituted or defended, as the case may be. As per the mandate of the Order 1 Rule 8(6), the finding that was recorded in the earlier suit that was decided in 1958 as well as in 1995 is binding insofar as the questions decided in a representative character. This Court has decided the issue in 1995 suit to the extent that the parties were having the common interest as contemplated in Order 1 Rule 8 and left open issues with respect to temporal matters in the absence of Parish Churches. Moreover, in the suit culminating into 1995 judgment the relief was not sought inter parties, it was not *in personam*. The reliefs that were sought were common to Malankara Church. Thus the provisions of section 35 cannot come to the rescue of the appellants so as to prevent the bar of *res judicata*. The

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Parishioners were parties in the previous suit decided in 1958 and 1995 and earlier thereto. The question cannot be reopened again and again by them on the ground that they were not parties individually, otherwise the representative suit and issues as well as the right of suing in representative capacity, would lose entire significance. [Paras 71-72][105-E-H; 106-A-C, E, G]

*Kumaravelu v. Ramaswami* AIR 1933 PC 183; *Deoki Nandan v. Muralidhar* [1956] SCR 756; *Veruareddi Ramaraghava Reddy v. Konduru Seshu Reddy* [1966] Suppl. SCR 270; *Bishwanath v. Shri Thakur Radhaballabhji* [1967] 2 SCR 618 – relied on.

1.4 It was submitted that in case the declaration in the 1995 judgment that the 1934 Constitution is binding on the Parish Churches even in their absence as parties, it would amount to the violation of the principle of natural justice. The submission cannot be made successfully as it ignores and overlooks the mandate of Explanation 6 to section 11 and provision of Order 1 Rule 8(6) CPC. The previous suit was a representative suit and the present appellants/churches are deemed to be parties in the representative suit as they could have applied for defending their rights or to sue as the case may be in the previous suits which had been decided by this Court. Thus there is no question of violation of the principle of natural justice in the case in hand. [Paras 74-75][107-H; 108-A-C]

*National Textile Workers v. P.R. Ramkrishnan* (1983) 1 SCC 228 : [1983] 1 SCR 922; *Institute of Chartered Accountants v. L.K. Ratna* (1986) 4 SCC 537 : [1986] 3 SCR 1048 – referred to.

*John v. Rees* (1969) 2 AER 274 – referred to.

1.5. It is not open to the Parishioners to contend that they can have their independent Constitution and not bound by the 1934 Constitution. The 1995 judgment cannot be misconstrued so as to confer the aforesaid right upon the Parishioners. The judgment is clear, unequivocal and unambiguous with respect to binding nature of the 1934 Constitution. It would not be open to any faction or group to adopt any particular system of management of Churches and to have a parallel system of managing authorities

A under the guise of spiritual supremacy. The mismanagement of  
 Church and chaos cannot be permitted to be created for temporal  
 gains or otherwise. There is a system of management, and the  
 spiritual aspect which has been claimed under the guise of spiritual  
 B supremacy in the instant case, is an effort to illegally take over  
 the management of the Churches by rival factions in derogation  
 of delegation of powers. The power with respect to Orthodox  
 Syrian Church of the East is the Primate *i.e.* Catholicos. Though  
 the Primate of the Orthodox Syrian Church is the Patriarch of  
 Antioch. Certain spiritual powers have also been vested in  
 Malankara Metropolitan, as per section 94 of the 1934  
 C Constitution. The prime jurisdiction regarding the temporal,  
 ecclesiastical and spiritual administration of the Malankara Church  
 is vested with the Malankara Metropolitan subject to provisions  
 of the Constitution and under the guise of spiritual supremacy an  
 effort is being made to obtain the appointments of Vicars and  
 D Priests as parallel authorities so as to manage the churches and  
 to render religious services under the guise of Patriarch. On the  
 other hand, there are already Vicars and other authorities  
 appointed as per the 1934 Constitution. Thus under the garb of  
 spiritual supremacy which had reached a vanishing point due to  
 the establishment of Catholicos and Kalpana, and the 1934  
 E Constitution which has been accepted and is binding, a parallel  
 system of governance of churches would not be in the interest of  
 the church and would destroy it.[Para 76][108-G-H; 109-C-H]

*Sital Das v. Sant Ram Das* AIR 1954 SC 606; *Shrinivas  
 Krishnarao Kango v. Narayan Devji Kango* [1955] 1  
 F SCR 1; *Tirumala Tirupati Devasthanams v. K.M.  
 Krishnaiah* (1998) 3 SCC 331 : [1998] 2 SCR 9 –  
 referred to.

2. IN RE: ABANDONMENT OF PLEAS/OBJECTIONS  
 AS TO THE REVIVAL OF THE CATHOLICATE, THE  
 G VALIDITY OF THE 1934 CONSTITUTION.

2.1 When the Church is a Parish Church and since time  
 immemorial it is a Parish Church and is a part of Malankara  
 Church, it has to perpetually remain as such. Under the garb of  
 pursuing their faith of the Patriarch being superior, they cannot  
 H create a parallel system of appointing a Vicar for performing

spiritual/religious ceremonies conforming to that faith, as an appointment of Vicar is not a spiritual matter. It is a secular matter. [Para 78][110-G] A

*Sha Mulchand & Co. Ltd. v. Jawahar Mills [1954] SCR 351; S.H. Rangappa v. State of Karnataka & Ors. (2002) 1 SCC 538 : [2001] 3 Suppl. SCR 545 – referred to.* B

2.2 A man who has a vested interest and in whom the legal title lies does not, and cannot, lose that title by mere laches or by saying that he has abandoned his right, unless there is something more, namely inducement of another party by his words or conduct to believe the truth of that statement and so as to make him act upon it to his detriment. Then such a person would be bound by *estoppel*. It is not abandonment or waiver, which prevents him from asserting that the legal forms were not duly observed. In the instant case, the discussion which has been made in the 1995 judgment is too elaborate and is based primarily on various historical facts and background which clearly indicate that the Patriarch at no point of time had exercised temporal control and it was considered necessary to establish the office of the Catholicos so as to manage the Malankara Church which is a division of the Orthodox Syrian Church. The Malankara Church was founded by St. Thomas the Apostle and is included in the Orthodox Syrian Church of the East and the Primate of the Church is the Catholicos. It is apparent from Kalpana's, establishment of the office of Catholicos and other historical facts discussed in the judgments referred to in the 1995 judgment that once having created the office, it is not the plea of waiver or abandonment but the Kalpana issued by the Patriarch is binding upon him also. Thus it is a positive act and once having done so, the Patriarch is bound by it and cannot wriggle out of it and make the entire Parish Church system topsy-turvy. The Parishioners can have faith in the spiritual supremacy of the Patriarch but not in all the matters. They have to give equal importance in the matter of management of the 1934 Constitution and cannot be permitted to commit regular breach and device ways to circumvent the judgment of this Court by one way or the other and under the garb of spiritual fight wrest the temporal control of the Churches. That the spiritual C  
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A power of the Patriarch has reached to a vanishing point, has to be  
 given the full meaning and it cannot mean that the powers can be  
 exercised under the umbrella of spirituality to interfere in the  
 administration of the Church and creating a parallel system of  
 appointing Vicars and Priests etc. which will paralyze the  
 B functioning of the Churches for which they have been formed  
 and it would be against the very spirit of creation of trust from  
 time immemorial which inheres the concept that once a Trust  
 always a Trust. Once any Parishioner wants to change the 1934  
 Constitution, it is open to them to amend it as per the procedure.  
 C It is right that it therefore is not a Bible or holy book of Quran or  
 other holy books which cannot be amended. The 1934  
 Constitution has been amended in the form of bye-laws or  
 regulations applicable for governance of Parish churches a  
 number of times, and it can still be amended to take care of the  
 legitimate grievances, if any, but there appears to be none for  
 D which the fight has been going on unabated in the instant cases.  
 [Para 79][112-G-H; 113-A-D, F-H; 114-B-C]

3. IN RE: PARISHIONERS HAVE A RIGHT TO FOLLOW  
 THEIR OWN FAITH UNDER ARTICLE 25 AND  
 APPOINTMENT OF VICAR, PRIEST AND DEACONS ETC.  
 AND MANAGE AFFAIRS UNDER ARTICLE 26 OF THE  
 E CONSTITUTION OF INDIA:

3.1 It is apparent that the Syrian Orthodox Church of  
 Malankara accept and acknowledge the theory of apostate's  
 succession. The Church of Rome is Episcopalian in its  
 constitution, and acknowledges the Pope as Universal Bishop,  
 F to whom all the various orders of clergy, cardinals, primates, and  
 patriarchs, archbishops and bishops are subordinate. The  
 Armenian Church is similar in government. [Para 90][121-C-D]

*Ram Manohar Lohia v. State of Bihar* [1966] 1 SCR  
 709; *S.P. Mittal v. Union of India*, AIR 1983 SC 1:  
 G [1983] 1 SCR 729 – referred to.

Halsbury's Laws of England, 5<sup>th</sup> Edn., vol. 34; "The  
 Encyclopedia of Religion", edited by Mircea Eliade, vol. 3,  
 "Church Polity"; 'The Encyclopedia of Religion' by

Macmillan Publishing Co., New York, Vol. 3; *Black Law Dictionary* – referred to.

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3.2 A spiritual person is one who seeks to value and connect himself to higher power or simply his higher self. The word 'spiritual' has been defined to mean as of or relating to ecclesiastical rather than secular matters. Spiritualism is alien to temporalism. One whose desire is for temporal gains, cannot be said to be on the spiritual path. Some are aliens to each other. One who is really spiritual is far away from the temporal desires. Mere spiritual knowledge (gyan) is not enough. Religion is a manifestation of the flesh. But spirituality as defined by the God as manifestation of his nature. True spirituality is something which is found deep within oneself. It can also be said that spirituality is a form of religion but a private and personal form of religion. Spirituality is more personal and private while religion tends to incorporate public rituals and organised doctrines. A twilight zone. Religion and spirituality are two distinct terms associated with faith. Spirituality is more abstract than religion. Religion usually promote a creed and define code of ethics. Spirituality exists in the nebulous realm of the undefinable. Spirituality is a supernatural form of transformation.[Paras 100-102][132-E-G; 133-A-C]

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*Bhuri Nath & Ors. v. State of J&K & Ors.* (1997) 2 SCC 745 : [1997] 1 SCR 138 – relied on.

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*Pannalal Bansilal Patil & Ors. Etc. v. State of Andhra Pradesh & Anr.* AIR 1996 SC 1023 : [1996] 1 SCR 603; *Commissioner of Police & Ors. v. Acharya Jagadishwarananda Avadhuta & Anr.* (2004) 12 SCC 770 : [2004] 2 SCR 1019; *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay* (1962) SCR Suppl. 496; *N. Adithayan v. Travancore Devaswom Board & Ors.* (2002) 8 SCC 106 : [2002] 3 Suppl. SCR 76; *A.S. Narayana Deekshitulu v. State of A.P. & Ors.* (1996) 9 SCC 548 : [1996] 3 SCR 543; *Adi Saiva Sivachariyargal Nala Sangam & Ors. v. Government of Tamil Nadu & Anr.* (2016) 2 SCC 725 : [2015] 11 SCR 1110 – referred to.

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A Black Law Dictionary; “Encyclopaedia of Religion and  
Ethics” by James Hastings – referred to.

**3.3 The Patriarch of Antioch has not exercised the power earlier with respect to the appointment of priests etc. Be that as it may. He has re-established the Throne of Catholicos in 1912 under a Kalpana in which he has dedicated the power to the 1934 Constitution which has been accepted by the issuance of Kalpana and by establishing Catholicos-III in 1964 by consecrating Malankara Metropolitan. It is apparent that the 1934 Constitution has to hold the field and it is not the spiritual right within the spiritual domain even if the Patriarch of Antioch is supreme to appoint Vicars/priests. The provisions in 1934 Constitution are binding. Section 1 thereof provides that the Primate of the Orthodox Syrian Church is the Patriarch of Antioch. However section 2 takes care that the Malankara Church which is a division of the Orthodox Syrian Church, was founded by St. Thomas the**

**Apostle and is included in the Orthodox Syrian Church of the East, and the “Primate” of the Orthodox Syrian Church of the East is the “Catholicos”. The appointment of Vicar is dealt with in section 38 of the Constitution. There shall be a Vicar for every Parish Church; other Priests, if any, shall be assistants of the Vicar. The Vicar shall be the joint steward with the Kaisthani of the assets of the Parish. The Diocesan Metropolitan has the authority to appoint, remove or transfer the Vicar and other priests. It is apparent from section 40 that the Diocesan Metropolitan has the authority to appoint, remove or transfer the Vicar and other priests. Section 43 as amended in 2011 contains the provision that the Baptism Register, the Marriage Register, the Burial Register, the Parish Assembly Register and Confession Register shall be maintained by the Vicar and kept in his custody and the Diocesan Metropolitan when on a visit to the church, these shall be got signed by him. The Vicar shall also keep the files of Kalpana’s. [Paras 115-118][151-C-F, H; 152-A, D-E]**

**3.4 The prime jurisdiction with respect to the temporal, ecclesiastical and spiritual administration of the Malankara Church is vested in the Malankara Metropolitan and other authorities. It is intended for proper administration of the church and does not run against the concept of the spiritual authority of the**

Patriarch of Antioch but at the same time, Malankara Metropolitan enjoys all the temporal, ecclesiastical and spiritual administration powers. Thus the power of the Patriarch of Antioch has reached a vanishing point and he cannot exercise those powers which are lying with various authorities under the Constitution as per the historical background noted in the 1995 judgment since time immemorial. It passes comprehension how the Patriarch of Antioch can manage the day to day affairs in India sitting abroad. It is not contemplated nor he is supposed to do so in view of his Kalpana's. The historical facts also indicate otherwise that he had not been managing the churches and it is better that the churches are left for the purpose of day to day administration. The powers of appointment of Vicar and priests etc. to the local Malankara church, have rightly been given to the concerned authorities in the 1934 Constitution on the basis of prevalent practices. A religious denomination or organization enjoys a complete autonomy in the matter of deciding as to rites and ceremonies essential according to their tenets of religion they hold and no outside authority has any jurisdiction to interfere with their decisions in such matters. At the same time, secular matters can be controlled by the secular authorities in accordance with the law laid down by the competent legislature. Spiritual power is also with various authorities like Catholicos, Malankara Metropolitan etc. Thus it is too far fetched an argument that the Patriarch of Antioch or his delegate should appoint a Vicar or Priest. There is no violation of any right of Articles 25 or 26 of the Constitution of India. Neither any of the provisions relating to appointment of the Vicar can be said to be in violation of any of the rights under Articles 25 and 26 of the Constitution of India. The 1934 Constitution cannot be said to be in violation of Articles 25 and 26 of the Constitution of India. It was suggested that the faith involved in the present case refers to apostolic succession from Jesus Christ, viz., the blessings and grace of Christ descends through an apostle i.e. St. Peter or St. Thomas as the case may be, and from the said apostle to the Pope/Patriarch who appoints a Vicar. The argument ignores and overlooks other offices that are in-between like Catholicos, Malankara Metropolitan, and Diocesan Metropolitan etc. It is not necessary for the Pope and the Patriarch to appoint Vicar because management of a Church

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A is not a religious ritual. [Paras 121-122][154-H; 155-A-H; 156-A]

*Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* AIR 1954 SC 282 : [1954] SCR 1005 – relied on.

B 3.5 The spiritual powers vest in other functionaries also and obviously spiritual power cannot be the monopoly of any particular individual howsoever high he may be. Others are in hierarchy viz. Diocesan Metropolitan has power to appoint Vicar, Priests etc. as per Section 40. In the matter of ordination of  
 C Deacons and Priests by Diocesan Metropolitan or Malankara Matropolitan, a candidate for ordination should have a degree qualification. Power to appoint high Priests (Prelates) is by Catholicos in co-operation with Synod. Bishop and Metropolitan can be consecrated by the Catholicos in conjunction with Synod,  
 D Bishop or Metropolitan has to be elected by the Association after approval by Synod to be consecrated by Catholicos. Person for ordination has to study theology, and on being found fit can be ordained. It is not that only blessing of a spiritual person makes him qualified to perform duties of such posts. Appointment of  
 E Vicar and Priests is a secular matter and there can be legislation also in this regard by sovereigns and can be dealt with by secular authorities also. There is no question of blessings of Jesus Christ not flowing to a person who confesses before a Vicar not appointed by the Patriarch. The spiritual competence of Vicar depends on his own attainments. The dispute appears to be for fulfillment of  
 F desire to manage Church for the reasons which are not related to spiritualism. [Para 123][156-B-E]

*American Express Bank Ltd. v. Calcutta Steel Co.* (1993) 2 SCC 199 : [1992] 3 Suppl. SCR 833 – held inapplicable.

G Halsbury's Laws of England, vol. 14, para 562 – referred to.

H 3.6 The contention that the Parishioners own the property of the Parish Church and the Cemetery and they cannot be deprived of that right by reason of the office holders of the Parish Churches by not subscribing to the 1934 Constitution is not at

all plausible. The properties would always remain to be Malankara Church properties. Only Office holders have to subscribe to the 1934 Constitution as held by this Court. The Parishioners can take no church property away, neither Catholicos faction by majority and the submission is based on the misconception as to the nature of rights in such property. It has to remain in Malankara Church. Neither the Church nor the cemetery can be confiscated by anybody. It has to remain with Parishioners as per the customary rights and nobody can be deprived of right one enjoys being a Parishioner in the church or to be buried honourably in the cemetery, in case he continues to have faith in Malankara Church. It passes comprehension as to how irreconcilable differences in faith have been sought to be created in flimsy manner to and divide Church into the Patriarch and Catholicos factions whereas they are part of the Malankara Church, whereas the dominant faith is the common, Malankara church is one, and Orthodox Syrian Church is the same. Only intention differs. Hence, law and order situation has arisen which cannot be scenario for spiritual attainments with embodiment of tolerance and equality of all human beings and living creatures. The depth in sight beyond the sensual eye sight is required for spiritual gains. For the reasons best known to the parties, fight is going on regarding the management which is wholly uncalled for. If church has to survive, obviously this must stop and let the blessings of the Christ fall upon the believers, actual followers of his teaching. This is the only way peace will come to the Church. For the unrest and ugly situation no reason, good, bad or otherwise exist which can be legally recognized. [Paras 126-127][159-C-H; 160-A]

3.7 There is no force in the submission that if services and ceremonies conducted by only those Vicars and priests who are appointed in accordance with the 1934 Constitution, would be violative of the basic object of the Parish Church. Diocesan Metropolitan appoints Vicar under the 1934 Constitution. It does not impinge upon the object of the Parish churches. The Catholicos or the Patriarch, as the case may be, are not supposed to deal with such matters which are reserved for Diocesan Metropolitan. This is the position prevailing since long. Vicars

A or Priests can also be appointed by secular authorities of sovereign. The appointment made by Diocesan Metropolitan cannot be said to be suffering from any illegality or affecting the spiritual rights of the Parishioners. Deacons and Priest for ordination are required to undergo successfully, theological studies and principle has to certify as to their fitness. For  
 B ordination as Korooyo (Reader) successfully clearing of 3 years study is required. How Patriarch from abroad can exercise such powers is beyond comprehension and that would amount to unnecessary interference which is not supported by any Kalpana or historical document. The 1934 Constitution provides  
 C appointment of Vicar by Diocese in the area of its operation. In the absence of anything having been provided in Udampady, the 1934 Constitution would hold the field. [Paras 128-129][160-B-F]

3.8 Faith is tried to be unnecessarily divided *vis a vis* the  
 D office of Catholicos and the Patriarch. Faith of church is in the Jesus Christ. An effort is being made to take over the management and other powers by such an action just to gain control of temporal matters under the garb of spirituality. Even if Vicar performs the functions, which are religious, there would not be infringement of the rights under Article 25 and 26 of  
 E Constitution of India in case the Diocesan Metropolitan appoints Vicar as provided in the Constitution and it is clear the Patriarch of Antioch has not reserved this power to himself. The 1995 judgment settled such disputes, between the parties. The Diocesan Metropolitan as per the Constitution of 1934 appoints  
 F vicar. The submission that Vicar of a Catholicos group cannot be thrust on a worshipper of Patriarch faith against his will, is totally unsound and is simply a ploy to take over the control of the management of the Church by putting faith in a Vicar who is running a parallel governance at the cost of Church by creating factionalism within the Churches. It is settled proposition of law  
 G that when a mode is prescribed for doing a thing, it can be done only in that manner and not otherwise. This Court in 1995 Judgment made it clear that the Patriarch has no such authority, he could not exercise any such spiritual power unilaterally as done in 1972 which became the cause of unrest in Church. The  
 H appointment of Vicar, Priest by the Patriarch or through delegate

unilaterally was held to be not permissible in the decision of 1995 even if he has such powers. He has no such power to interfere in the management of the church and now that question is agitated again and under the same guise of supremacy such an uncalled for attempt has to be thwarted and not to be countenanced for a moment. There is no violation of constitutional provisions or authority of Patriarch. Thus there is no question of violation of Parishnors rights. [Para 130][160-G-H; 161-A-E]

*Olga Tellis v. Bombay Municipal Corporation* (1985) 3 SCC 545 : [1985] 2 Suppl. SCR 51; *Bashesar Nath v. I. T. Commissioner* AIR 1959 SC 149 : [1959] Suppl. SCR 528; *Nar Singh-Paul v. Union of India* 2000 (3) SCC 588 : [2000] 2 SCR 752; *L & T McNeil Ltd. v. Govt. of T. N.* (2001) 3 SCC 170 : [2001] 1 SCR 701; *State of Gujarat & Anr. v. Justice R. A. Mehta (Retired) & Ors.* (2013) 3 SCC 1 : [2013] 1 SCR 1; *Samsher Singh v. State of Punjab & Anr.* (1974) 2 SCC 831: [1975] 1 SCR 814 – referred to.

#### 4. IN RE: REPUDIATION OF THE SPIRITUAL SUPREMACY OF THE PATRIARCH BY THE CATHOLICOS :

Once office of the Catholicos has been re-established, Patriarch could not exercise the powers which have been dealt with in the 1934 Constitution, and conferred on various authorities in hierarchy of church, that too unilaterally to create another centre of power and thereby the Patriarch cannot be permitted to create parallel system of administration by appointing Vicars, Priests and Deacon or another authority of Church. He is bound to act within the four corners of the 1934 constitution for the sake of peace in the church. In the temporal matters, Patriarch has no power and the spiritual power had also come to the vanishing point by his own acts as noticed by this Court in the 1995 and other judgments. Submission to the contrary on behalf of the appellants that he can exercise the powers after informing the Catholicos, cannot be accepted. The Malankara Metropolitan has to be of local area. Logically also for proper management of the affairs of Churches power cannot be exercised from abroad. Such a scenario is neither conceived nor feasible or permissible. The spiritual supremacy of one holy authority over the other,

A also cannot per se mean exclusion and subordination of the other religious authority. When there is delegation and delimitation of the territorial and other powers, concerned authorities however high they may be, spiritually or otherwise, have to follow the discipline and strictly act as per delimitation of zones and powers.  
 B It is absolutely necessary for survival of the Church and for proper administration. [Para 140][170-F-H; 171-A-C]

**5. IN RE : THE 1934 CONSTITUTION IS IN THE NATURE OF A CONTRACT, ENFORCEABLE AT PRESENT:**

C The High Court has rightly granted the declaration sought for in the facts and circumstances of the case, projected in the case. The declaration given that the Parish Churches are governed by the 1934 Constitution is just and proper. In the instant the Patriarch faction is more to be blamed for disorder in the churches than the Catholicos faction. They ought to have followed 1995 judgment and other decisions. That they have not  
 D done and have insisted upon their own system of management that is not permissible. [Paras 142, 143][173-G; 174-A-B]

*Mohammadia Cooperative Building Society Ltd. v. Lakshmi Srinivasan Cooperative Building Society Ltd.*  
 (2008) 7 SCC 310 : [2008] 7 SCR 762 – referred to

E **6. IN RE: UDAMPADY – ENFORCEABILITY, OF BINDING NATURE AND 2002 CONSTITUTION:**

F 6.1 The 1934 Constitution is applicable to the Parish Churches under the Malankara Church. The submission that the Udampady will prevail cannot be accepted in view of the provisions made in section 132 of the 1934 Constitution to the effect that all agreements which are not consistent with the provisions of this Constitution are made ineffective and annulled and also in view of the finding in the 1958 Samudayam matter that the Constitution had been validly adopted and is applicable.  
 G The question cannot be re-agitated and reopened under the guise of Udampady. Udampady cannot hold the field for administration of such Parish Churches. Udampady is not a document by which the Church came to be established. It is with respect to its management only. The registration of the Udampady cannot  
 H make it superior than the Constitution and the latter will prevail

as found by this Court in earlier decisions. The finding is binding, conclusive and has to be respected. Even otherwise, Udampady cannot hold the field. No one can deny the right under Article 20 of the Universal Declaration of Human Rights. No one may be compelled to belong to an association. There is no compulsion with any of the Parishioners to be part of the Malankara Church or Parish Church. There can be an exercise of unfettered volition not to be a part of an Association but the question in the case is whether one can form another Association within the same Association and to run a parallel system of management of the same very church which is not permissible. Leaving a Church is not the right denied but the question is whether the existing Malankara Church can be regulated otherwise than by the 1934 Constitution. If the effort of certain group of Patriarch otherwise is to form a new Constitution 2002 to appoint Vicars, Priests etc., giving a go by to the 1934 Constitution and to form a new Church under the guise of same Malankara Church, it is not permissible. The Malankara Church its properties and other matters are to be governed by the 1934 Constitution and even majority of parishioners has no right to take away and usurp the church itself or to create new system of management contrary to 1934 Constitution. It was a trust created as Malankara church that is supreme, for once a trust always a trust. [Paras 144, 146][174-E-F; 175-G-H; 176-A-C]

*Bijoe Emmanuel & Ors. v. State of Kerala & Ors.* (1986) 3 SCC 615 : [1986] 3 SCR 518; *Smt. Damyanti Naranga v. The Union of India & Ors.* (1971) 1 SCC 678 : [1971] 3 SCR 840; *O.K. Ghosh v. E.X. Joseph* [1963] Suppl. 1 SCR 789; *Suryapalsingh v. U.P. Government* AIR 1951 All 674; *Sitharamachary v. Sr. Dy. Inspector of Schools* AIR 1958 AP 78 – referred to.

*Cheall v. APEX* (1983) 1 All ER 1130 – referred to.

6.2 Various provisions of the Constitution make it clear that there is a hierarchy of control and Parish Church properties cannot be dealt with otherwise, the provisions contained in section 23 as to the written consent of the Diocesan Metropolitan and

A the detailed system of management, appointment of Vicar and  
the Kaisthani, Parish Assembly, as also the power to spend certain  
amounts as provided in section 22 of the Constitution. The  
accounts are supervised and to be signed by the Diocesan  
Metropolitan. Similarly the acquisition of any immovable property  
B for the Diocese can be with the written consent of the Malankara  
Metropolitan. It is apparent from the aforesaid provisions that  
there is a hierarchy of control that is provided with respect to the  
Church properties also. The community trustees are also  
provided for the Vattipanam that is Trust Fund. Section 94  
C provides for the temporal, ecclesiastical and spiritual control of  
the Malankara Metropolitan. Catholicos can also hold the office  
of Malankara Metropolitan. The Episcopal Synod has the power  
to consecrate Catholicos. Whatever autonomy is there, is provided  
in the Constitution for the Churches for necessary expenditure  
as provided in section 22, otherwise it is Episcopal nature of the  
D Church and once the property vests in Malankara Church, it  
remains vested in it and cannot be taken away and in case there  
is any dispute with respect to faith etc. as is raised in the present  
case, it has to be decided by the Episcopal Synod and in case any  
bye-law is to be changed, its remedy is available under the  
provisions of sections 126, 127 and 129. Faction of Parish cannot  
E decide against Constitution. Byelaws must conform to  
Constitution. The income has to be distributed as per sections  
120 to 123. [Para 163][186-A-E]

6.3 The submission raised that by majority, decision can  
be taken to opt out of the 1934 Constitution by the Parish  
F Assembly and to form a new church under a new name, as has  
been done in 2002. Constitution prohibits such a course. Even  
bye-laws that do not conform to Constitution cannot be framed  
and that has to be placed before Rule Committee under sections  
126, 127 and 129. In existing system of Malankara Church, a  
G Parish Church that is a part of Malankara Church cannot be  
usurped even by majority in Church under the guise of formation  
of new Church. The majority view in the 1995 judgment refused  
to give declaration with respect to property in the absence of  
Parish churches. However, it was observed that the 1934  
Constitution shall govern and regulate the affairs of the Parish

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Churches insofar as the Constitution provides for the same. The 1934 Constitution shall govern the affairs of the Parish Churches in respect of temporal matters also insofar as it so provides. The Malankara Church is Episcopal to the extent it is so declared in the 1934 Constitution as held in the 1995 judgment. The 1934 Constitution governs the affairs of Parish Malankara Churches and shall prevail. No one can become owners by majority decision or permitted to usurp Church itself. It has to remain in perpetual succession for the purpose it has been created a Malankara Church. [Paras 164-166][186-G-H; 187-A-D]

*Craigdallie v. Aikma* 3 ER 561; *Attorney General v. Pearson* (1817) 3 Mer 353; *General Assembly of the Free Church of Scotland v Overtoun* (1904) AC 515; *Shergill v. Khaira* (2014) 3 All ER 243 – referred to.

6.4 The Parish Assembly by majority cannot take away the property and divert it to a separate and different church that is not a Malankara Church administered as per the 1934 Constitution, though it is open to amend the Constitution of 1934. As the basic documents of creation of church have not been placed on record, usage and custom for determining the competing claims of rival factions becomes relevant. Thus, the 2002 Constitution cannot hold the field to govern the appellant churches and the 1934 Constitution is binding. Finding recorded by the High Court that the Kolencherry Church was not administered by the 1913 Udampady and was administered in accordance with the 1934 Constitution is correct at least after the Constitution was adopted. General body meeting of 8.3.1959 has adopted the 1934 Constitution. Udampady cannot hold the field by virtue of section 132 of the Constitution and there is other oral evidence that had been assessed by the High Court including the documentary evidence and the Udampady cannot be taken to govern. Moreover in view of the findings in the 1958 Samudayam suit and the 1995 judgment, the Constitution of 1934 is binding which has been held to be valid and Malankara Church has to be administered as per the provisions contained therein. Thus Udampady of 1913 cannot be set up or used as ploy to avoid the provisions of 1934 Constitution. Thus the main plank of submissions is also barred by the principle of *res judicata*. [Paras

A 169, 171][188-E; 189-D-F]

Hill in the book “Law of Trusts and Trustees” – referred to.

6.5 The church was created way back in the 7th century. The Udampady of 1913 is not a document of creation of the Trust. The then in-charge person executed it just for the management of the church in question. The 1934 Constitution after being adopted in 1959 by the Church is binding. The Udampady of 1913 has lost its efficacy and utility. The Udampady stands annulled by Section 132 of the Constitution. It cannot be revived. Thus it is not open to the church or parishioners by majority to wriggle out of 1934 Constitution. In view of the findings recorded in the Samudayam suit also by the 1995 judgment, the question operates, as res judicata and the administration on the basis of Udampady cannot be claimed. The inconsistent provisions in the Udampady shall stand annulled as per section 132 of the 1934 Constitution. [Para 173][196-C-E]

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6.6 There are inconsistencies between the 1934 Constitution and 1913 Udampady as such the latter cannot prevail. In terms of Section 132, any Udampady (agreement) which is inconsistent with the provisions of 1932 constitution stands annulled and is ineffective. In view of the inconsistencies, as well as in light of the findings of the Supreme Court in 1959 judgment and the 1995 judgment regarding the validity and the binding character of the 1934 constitution, the 1913 Udampady would, in any event, no longer survive and Parish Church would be governed in accordance with the 1934 Constitution. [Paras 174, 175][196-F; 199-E]

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#### 7. IN RE: EFFECT OF NON REGISTRATION OF 1934 CONSTITUTION AND EFFECT OF REGISTERED UDAMPADY

The Udampadies were for administration of the Church at the relevant time and lost their efficacy due to efflux of time and cannot hold the field in view of the system of administration provided in the 1934 Constitution. The 1934 Constitution was not required to be registered document as the Udampadies are not documents of creation of Trusts, the Udampadies were not required to be registered. Udampady cannot prevail over the 1934

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**Constitution. The 1934 Constitution does not create, declare, assign, limit or extinguish, whether in present or future, any right, title or interest, whether vested or contingent, in the Malankara church properties. It provides a system of administration as such and not required to be registered, and moreover the question of effect of non-registration of the 1934 Constitution cannot be raised in view of the findings recorded in the 1959 and the 1995 judgments. The question could, and ought to have been raised but was not raised at the time of authoritative pronouncement made by this Court. Otherwise also, facts have not been pleaded nor any provision of the constitution pointed out that may attract the provisions of section 17(1)(b) of the Registration Act. Thus, it is not open to question the validity of the 1934 Constitution on the ground that it cannot be looked into for want of its registration. Udampady itself is not a document of creation of Trust. It related to the management only. Thus, by its registration no legal superior right is acquired to prevail over the Constitution. No registered document was required for administration of the Church. Document of creation of a Trust may require registration and not a document like the 1934 Constitution. [Paras 177, 178][199-H; 200-A-G]**

*Vinodkumar M. Malavia v. Maganlal Mangaldas Gameti & Ors.* (2013) 15 SCC 394 : [2013] 14 SCR 396;  
*Chandrakant Shankarrao Machale v. Parubai Bhairu Mohite* (2008) 6 SCC 745 : [2008] 4 SCR 1003;  
*S. Saktivel (Dead) by LRs. v. M. Venugopal Pillai & Ors.* (2000) 7 SCC 104 : [2000] 2 Suppl. SCR 361 – held inapplicable.

*ITC Ltd. v. State of U.P.* (2011) 7 SCC 493 : [2011] 7 SCR 66 – distinguished.

*Kashinath Bhaskar Datar v. Bhaskar Vishweshwar* [1952] SCR 491 – referred to.

## **8. MAINTAINABILITY OF MANNATHUR CHURCH SUIT :**

**The Mannathur Church matter suit was clearly representative in character and was contested in that manner. [Para 180][205-D]**

A           **9. FRAMING OF SCHEME UNDER SECTION 92 OF  
THE CIVIL PROCEDURE CODE**

There is no necessity of framing any scheme under section 92. [Para 182][206-C]

B           *Mohd. Ismile Ariff v. Ahmed Moolla Dowood* 43 IA 127 (PC); *Ram Dularey v. Ram Lal* AIR 1946 PC 34 – referred to.

**10. WHETHER IN THE FACTS, INTERIM ARRANGEMENT TO CONTINUE :**

C           It was submitted that as reconciliation does not appear to be possible between both factions, as such the religious services in the St. Mary's Orthodox Church, Varikoli may be permitted to be conducted by two Vicars of each faith, Patriarch and Catholics, in accordance with the faith of each denomination. The submission cannot be accepted as it would tantamount to patronizing parallel system of administration and would not be a legally permissible mode hence prayer is rejected. [Para 183][206-E-F]

D           *Moran Mar Basselios Catholicos v. Thukalan Paulo Avira & Ors.*, AIR 1959 SC 31; *Most Rev. P.M.A. Metropolitan & Ors. v. Moran Mar Marthoma Mathews & Anr.* (1996) 8 SCC 470 : [1996] 3 SCR 857; *Manakchand v. Manoharlal* AIR 1994 PC 46; *Razia Begum v. Sahebzadi Anwar Begum* [1959] SCR 1111; *Moran Mar Basselios Catholicos & Anr. v. Most Rev. Mar Poulouse Athanasius & Ors.* AIR 1954 SC 526 : [1955] SCR 520; *Mathan Malpan v. Oolahannan Geevarghese* 45 TLR 116; *Chhatra Kumari Devi v. Mohan Bikram Shah & Ors.* AIR 1931 PC 196 – referred to.

Case Law Reference

G           [1995] 1 Suppl. SCR 542           relied on           Para 4  
AIR 1959 SC 31                   referred to           Para 18  
[1996] 3 SCR 857               referred to           Para 34

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AIR 1965 SC 1935	relied on	Para 65	A
AIR 1994 PC 46	referred to	Para 52	
[1959] SCR 1111	referred to	Para 52	
[1956] SCR 756	relied on	Para 52	
[1966] Suppl. SCR 270	relied on	Para 52	B
[1967] 2 SCR 618	relied on	Para 52	
[1983] 1 SCR 922	referred to	Para 52	
[1986] 3 SCR 1048	referred to	Para 52	
AIR 1954 SC 606	referred to	Para 52	C
[1955] 1 SCR 1	referred to	Para 52	
[1998] 2 SCR 9	referred to	Para 52	
[1954] SCR 351	referred to	Para 52	
[2001] 3 Suppl. SCR 545	referred to	Para 52	D
[1966] 1 SCR 709	referred to	Para 52	
[1954] SCR 1005	relied on	Para 122	
[1955] SCR 520	referred to	Para 53	E
45 TLR 116	referred to	Para 53	
AIR 1931 PC 196	referred to	Para 59	
AIR 1965 SC 1935	referred to	Para 65	
[1989] 1 Suppl. SCR 760	relied on	Para 70	F
AIR 1933 PC 183	relied on	Para 71	
[1954] SCR 351	referred to	Para 78	
[1985] 2 Suppl. SCR 51	referred to	Para 86	
[1983] 1 SCR 729	referred to	Para 99	G
[1997] 1 SCR 138	referred to	Para 106	
[1996] 3 SCR 543	referred to	Para 106	
[1996] 1 SCR 603	referred to	Para 107	

A	[2004] 2 SCR 1019	referred to	Para 111
	[1962] SCR Suppl. 496	referred to	Para 112
	[2002] 3 Suppl. SCR 76	referred to	Para 113
	[2015] 11 SCR 1110	referred to	Para 114
B	[1954] SCR 1005	referred to	Para 122
	[1992] 3 Suppl. SCR 833	held inapplicable	Para 125
	[1959] Suppl. SCR 528	referred to	Para 130
C	[2000] 2 SCR 752	referred to	Para 130
	[1975] 1 SCR 814	referred to	Para 133
	[2001] 1 SCR 701	referred to	Para 133
	[2013] 1 SCR 1	referred to	Para 133
D	[2008] 7 SCR 762	referred to	Para 143
	[1986] 3 SCR 518	referred to	Para 145
	[1971] 3 SCR 840	referred to	Para 145
	[1963] Suppl. 1 SCR 789	referred to	Para 145
E	AIR 1951 All 674	referred to	Para 145
	AIR 1958 AP 78	referred to	Para 145
	[1952] SCR 491	referred to	Para 178
F	[2008] 4 SCR 1003	referred to	Para 178
	[2000] 2 Suppl. SCR 361	referred to	Para 178
	[2011] 7 SCR 66	referred to	Para 178
	[2013] 14 SCR 396	referred to	Para 179
G	AIR 1946 PC 34	referred to	Para 181

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3674  
of 2015.

From the Judgment and Order dated 04.10.2013 of the High Court of Kerala at Ernakulam, in RFA No. 589 of 2011 A

WITH

C. A. Nos. 3681, 3682, 3683, 8790 and 8789 of 2015.

C. A. Nos. 5408, 5409, 5411 and 5410 of 2017. B

C. A. Sundaram, K. V. Vishwanathan, Shyam Diwan, C. U. Singh, K. Parasaran, Mohan Parasaran, K. K. Venugopal, S. Sreekumar, Krishnan Venugopal, Sr. Advs., S. Udaya Kumar Sagar, Ms. Bina Madhavan, Ms. Swati Bhardwaj, Ms. Ramandeep Kaur (For M/s. Lawyer's Knit & Co.), E.M.S. Anam, P. J. Philip, P. K. Manohar, Radha Shyam Jena, Ms. Maneesha Dhir, Abhishek Kumar, Ashwin Rakesh, Ritesh Kumar, A. Raghunath, Vishnu Sharma, Ms. Anupama Sharma, Ms. Sonali Negi, Rohit Memman Alex, P. S. Sudheer, Rishi Maheshwari, Ms. Anne Mathew, Ms. Shruti Jose, V. K. Biju, Roy Isaak, Abhay Pratap Singh, N. Livingstone, N. P. R. Panickker, K. J. Kuriakose, P.V. Elias, S. Varghese, Ms. Yogmaya M. G., Rajhans Rajeev Pandey, R. Issac, Ashwin Kumar D. S., Ms. Aditi Dani, V. E. Gayathri, Kuriakose Varghese, V. Shyamohan, Ms. Saumya Sharma, Ms. Taniya Pandey, Surya Prakash, A. Phukan, Ankur Talwar, Mathew P. Paul, Sanjay Jain, Advs. for the appearing parties. C D

The Judgment of the Court was delivered by E

**ARUN MISHRA, J. 1.** The appeals relating to Kolencherry Church have been filed against judgment and decree passed by the High Court of Kerala on 4.10.2013 in Regular First Appeal and against order passed in Review application arising out of Suit No.43 of 2006 and Suit No.47 of 2006 by the District Judge on 11.4.2014. The Patriarch faction filed suit No.43 of 2006 to declare that the defendant No.1 (D-1) Church, its assets, including the educational institutions are liable to be administered only in accordance with Udampady executed on 30.12.2013. Prayer was also made to settle a scheme for administration of the church and its assets, to appoint a Receiver, conduct elections after preparing proper voters list irrespective of their factional affiliations and to entrust management to them. Permanent injunction be issued against 3<sup>rd</sup> defendant restraining him from receiving the key of the church. F G

2. With respect to Varikoli Church the appeals have been preferred as against judgment and decree dated 21.8.2015 passed in Regular First H

- A Appeal by the High Court of Kerala arising out of O.S. No.10 of 2003. O.S. No.10 of 2003 had been filed by the Catholics group in which prayer had been made to declare that the church is governed by the 1934 Constitution as upheld by the Supreme Court and defendant Nos. 1 and 3 have no right to claim the status of trustees of the church. Permanent prohibitory injunction to restraint defendant Nos.2 and 3 from functioning as trustees of the church had been prayed in addition to mandatory injunction directing defendant No. 4 to call for immediate pothuyogam of D-1 church and to hold election of new Managing Committee including Trustees and Secretary in accordance with the 1934 Constitution. Counter claim was also raised by impleaded defendant Nos. 13 to 15 to cause a referendum to ascertain the allegiance of the Parishioners of the church; to declare that the church and its assets are to be governed in accordance with the faith and will professed by majority of the Parishioners of the church; to pass a final decree declaring that church and its assets be administered in accordance with the decision of majority of the Parishioners; and permanent injunction restraining the third defendant.
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- D agents and religious dignitaries and those who are not accepting spiritual supremacy of Patriarch of Antioch and all the East.

3. With respect to Mannathur Church the appeals have been preferred against judgment and decree dated 20.5.2015 passed by the High Court of Kerala in R.F.A. No.320 of 2014 arising out of O.S. No.41 of 2003 filed by the Catholicos faction to declare that the church is administered by 1934 Constitution. Further declaration that defendant Nos.3 to 5 had no right or authority to act as its trustees, permanent prohibitory injunction against them for functioning as trustees, direction be issued to defendant No.2 to call general body for holding elections. Injunction had also been prayed against changing name of the church.
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4. It appears that there is perpetual fight for managing the affairs of Malankara Church between the Patriarch faction and the Catholicos faction for control of spiritual and temporal management of affairs of the Parish Church. Malankara Church is division of the Orthodox Syrian Church. Before coming to dispute it is necessary to consider historical matrix. The Malankara church was founded by St. Thomas, the Apostle, and is included in the Orthodox Syrian Church of the East. The prophet of the Syrian Church is the Patriarch of Antioch whereas the Primate of the Syrian Church of the East is the Catholicos. The Malankara Church was earlier known as the Malankara Orthodox Syrian Church. Its
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misnomer was the Jacobite church. The approved Canon of the Church is the Hudaya Canon written by Bar Hebraeus printed in Paris in the year 1898. In 52 A.D. St. Thomas came to Malabar to spread his message. Between 325 and 628 AD at the first General Meeting held at Nicea in 325 AD, four Parishioners were established at Rome, Constantinople, Alexandria and Antioch, each headed by a Patriarch. Within the jurisdiction of Patriarch of Antioch, another office was established viz., the great Metropolitan of the East also known as 'Catholicos'. The office of Catholicate fell into disuse and was revived in 628 AD. The historical background is noted by this Court in its judgment in *Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma* (1995) Supp. 4 SCC 286 (hereinafter referred to as "the 1995 judgment").

5. In 16<sup>th</sup> century Christianity gained a substantial foothold in the area now comprised in Kerala. The dominant faith was of the Syrian Orthodox Church. With the rise of the Portuguese political power on the West Coast, the Portuguese (Roman Catholics) compelled local Christians to accept Roman Catholic faith. Christians of Malabar affirmed their loyalty to the Syrian Orthodox Christian Church headed by the Patriarch by taking an oath *en masse* at Mattancherry, known as the "Koonan Cross Oath". Since then the Patriarch of Antioch exercised ecclesiastical supremacy over what may be called the "Malankara Syrian Christian Church". With the rise of the British power in Southern India, they pressurised the Malarikara Syrian Christian community to embrace Protestant faith, succeeding to some extent. In the year 04.04.1840 disputes arose between the two groups (one embracing Protestant faith and the other adhering to Orthodox faith), which was settled by the "Cochin Award" rendered on 4.4.1840. As per this award, the Church properties were divided between the Church Mission Society (Protestants) and the Malankara Jacobite Syrian Church (Orthodox faith). The amount of 3000 Star Pagodas deposited by Mar Thoma VI (Dionysius the Great) with the East India Company at 8 % interest came to be allotted to Malankara Jacobite Syrian Church. On account of disputes between the members of Malankara Jacobite Syrian Church, Partairch Peter III of Antioch came to Malabar in 1876. He called a meeting of the accredited representatives of all Churches in Malabar which is known as the "Mulanthuruthy Synod". At this Synod, Malankara Syrian Christian Association (viz. Malankara Association) was formed to manage the affairs of the church and the community.

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A The Malankara Metropolitan was made its ex-officio President. Until 1876, the entire Malabar was comprised in one Diocese. Thereafter, it was divided into seven Dioceses, each Diocese headed by a Metropolitan. One of them was to be designated as Malankara Metropolitan who exercised spiritual and temporal powers over all the Dioceses.

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**SEMINARY SUIT:**

6. "Seminary Suit" was filed on 4.7.1879 by Mar Joseph Dionysius claiming to be the properly consecrated Metropolitan of Malankara Jacobite Syrian Church and the President of Malankara Association against Mar Thomas Athanasius. The main dispute between them was while the plaintiff claimed supremacy of the Patriarch, the defendants denied such supremacy. The suit was disposed of by Travancore Royal Court of Final Appeal in the year 1889. The Court found : (i) that the ecclesiastical supremacy of the Patriarch of Antioch over Malankara Syrian Christian Church in Travancore had all along been recognized and acknowledged by Jacobite Syrian Christian community and their Metropolitans; (ii) the exercise of supreme power consisted in ordaining, either directly or through duly authorized delegates, Metropolitans from time to time to manage the spiritual matters of the local Church, in sending Morone to be used in the churches for baptismal and other purposes and in general exercising supervision over the spiritual government of the Church. (iii) the authority of Patriarch never extended to temporal affairs of the Church which in that behalf was an independent Church; (iv) the Metropolitan of the Syrian Christian Church in Travancore should be a native of Malabar consecrated by the Patriarch or by his duly authorized delegate and accepted by the people as their Metropolitan; (v) the plaintiff was so consecrated by Patriarch and accepted by the majority of the people and therefore entitled to be recognized and declared as the Malankara Metropolitan and as the trustee of the Church properties.

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**ARTHAT SUIT:**

7. On 15.8.1905 there was Arthat suit. The Patriarch of Antioch did not relish the aforesaid judgment in seminary suit inasmuch as it declared that he had no control over the temporal affairs of Malankara church. Some local Christians supported him which led to the institution of a suit in 1877 in which judgment of Court of Appeal of Cochin was rendered affirming the findings of the Travancore Royal Court. It was

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found that though the Patriarch of Antioch is the spiritual head of Malankara Syrian Jacobite Christian Church, the churches and their properties are subject to the spiritual, temporal and ecclesiastical jurisdiction of the Malankara Metropolitan. In other words, the Patriarch's claim of control over the temporal affairs of the Malankara Church was negated once again. The recognition given to Abdul Messiah as the Patriarch of Antioch was withdrawn by the Sultan of Turkey and he recognized Abdulla II as the Patriarch of Antioch. It was noted by this Court in 1995 judgment that whereas the effect of withdrawal of recognition, as per one view, was that Abdul Messiah ceased to exercise any and all the powers of Patriarch; the other view was that said withdrawal did not affect the spiritual authority of Abdul Messiah. This Court noted that the dispute between Abdul Messiah and Abdulla-II led to the formation of two groups in the Malankara church.

8. As stated above, the Sultan of Turkey withdrew the recognition given to Abdul Messiah as the Patriarch of Antioch and recognized Abdulla II as the Patriarch. Mar Geecarghese Dionysius was ordained as Metropolitan by Patriarch Abdulla II at Jerusalem. Mar Geecarghese Dionysius became the Malankara Metropolitan on the death of Mar Joseph Dionysius. Due to differences between Mar Geevarghese Dionysius and Abdulla II, the latter excommunicated the former on 31.3.1911. Few months later, Abdulla II appointed Paulose Mar Kurilos as the Malankara Metropolitan. Mar Geevarghese Dionysius convened a meeting of the Malankara Syrian Christian Jacobite Church which declared his excommunication as invalid.

#### REVIVAL OF CATHOLICATE IN 1912:

9. In 1912 revival of Catholicate was effectuated by Abdul Messiah by consecrating one Mar Ivanios as the Catholicos. Two Kalpanas Ex. A-13 and A-14 were put forward as the Kalpana of Abdul Messiah reviving the Catholicate as referred in 1995 judgment. The Patriarch group disputed Ex. A-13. According to them Ex. A-14 was the only version while Catholicos group say that Ex. A-14 was preceded by A-13 dated 17.9.1912 by virtue of the order of the office of the Shepherd, entrusted to Simon Peter by Lord Jesus Messiah, whereby they were prompted to perpetuate Catholicos or Mapriyana to serve all spiritual requirements that are necessary for the conduct of the order of the holy true Church in accordance with its faith.

A 10. Discussion made by this Court in 1995 judgment with respect  
to establishment of Catholicos is as under:

B “106. Two documents are put forward as the Kalpana of Abdul  
C Messiah reviving the Catholicate, namely, Exs. A-13 and A-14.  
The Patriarch group (who are the appellants before us) dispute  
Ex. A-13. They say that Ex. A-14 is the only version while  
D Catholicos group (who are respondents before us) say that Ex.  
A-14 was preceded by Ex. A-13 and that without Ex. A-13 there  
could not have been Ex. A-14. We may notice the contents of  
both the documents. Ex. A-13 which is dated 17-9-1912, says  
inter alia, “by virtue of the order of the office of the Shepherd,  
entrusted to Simon Peter by our Lord Jesus Messiah, *we are*  
E *prompted to perpetuate for you Catholicos or Mapriyana to*  
*serve all spiritual requirements that are necessary for the*  
*conduct of the order of the holy true Church in accordance*  
*with its faith....* With Geevarghese Mar Dionysius Metropolitan,  
who is the head of the Metropolitans in Malankara and with other  
Metropolitans, Ascetics, Deacons and a large number of faithfuls,  
we have ordained in person our spiritually beloved Evanios in the  
name of Baselius as Mapriyana, i.e., as the *Catholicos on the*  
*Throne of St. Thomas in the East, i.e., in India and other places*  
at the St. Mary’s Church, Niranam on Sunday, 2nd Kanni, 1912  
AD as per your request” (emphasis added). Ex. A-13 then sets  
out the authority and the jurisdiction of Catholicos so revived in  
the following words:

F “The authority to serve all spiritual elements in public, which  
are necessary for protecting the tradition of the Holy Church  
has been given to him (Evanios) by the Holy Ghost as was  
given to the Holy Apostles by our Lord Jesus Messiah. Authority  
means the authority to ordain Metropolitans, Episcopas and to  
consecrate Holy Morone and to serve all the other spiritual  
items and also to administer the Kandanadu Diocese as he was  
earlier.... You must respect and love him properly and suitably  
G because he is your head, Shepherd and spiritual father. He who  
respects him, respects us. He who receives him, receives us.  
Those who do not accept his right words and those who stand  
against his opinions which are in accordance with the Canon of  
the Church, defy him and quarrel with him, will become  
H guilty....”

107. Coming to Ex. A-14, which is dated 19-2-1913, the third paragraph starts by saying: A

“After bestowing on you our blessings *a second time*, we desire to make known to you our true affection that ever since your letters reached our weakness in midiat, we have been deeply grieved at the dissensions sown by Abdulla Effendi among our spiritual children in all our churches in Malabar.” B

A little later A-14 says:

“Accordingly, we, by the Grace of God, in response to your request, *ordained a Maphrian, that is, Catholicos* by name Poulouse Basselios and three new Metropolitans, the first being Gheevarghese Gregorius, the second Joachim Evanios and the third, Gheevarghese Philexinos. It appears to us that, unless we do instal a Catholicos, our Church, owing to various causes, is not likely to stand firm, in purity and holiness. And, now, we do realise that by the might of our Lord, *it will endure unto Eternity, in purity and holiness, and more than in times past, be confirmed in the loving bond of communion with the Throne of Antioch.* The joy of our heart is herein realised. Our children, abide ye now in peace. As for ourselves, we leave you. Rest assured that though we leave you, we shall never be unmindful of you. We shall incessantly lift up our eyes unto heaven and offer our prayers and intercessions for the guileless lambs, redeemed by the previous blood of our Saviour Jesus Christ. Pray ye for us, and for our entire community. Abide ye in love, peace and concord. Pray ye for your enemies, and, for those that revile you without cause. Be not afraid of the uncanonical and unjustifiable interdicts and curses of the usurper. Heed not those who create dissensions. God will reward them for their action, be they good or bad. We commend you into the hands of Jesus Christ, our Lord, the Great Shepherd of the flock. May he keep you. *We rest confident that the Catholicos and Metropolitans — your shepherds — will fulfil all your wants.* The Catholicos, aided by the Metropolitans, will ordain melpattakkars, in accordance with the Canons of our Holy fathers and consecrate Holy Morone. *In your Metropolitans is vested the sanction and authority to instal a Catholicos, when a Catholicos died.* No one can H

A resist you in the exercise of this right and, do all things properly,  
and in conformity with precedents with the advice of the  
committee, presided over by Dionysius, Metropolitan of  
Malankara. We beseech your love, and counsel you in the name  
of our Lord Jesus that ye faint not in your true faith of Saint  
Peter, on which is built, the Holy Catholic and Apostolic Church.  
B What we enjoin your true love is that the unlawful conduct of a  
usurper, may not induce you to sever that communion which is  
the bond of love connecting you with the Apostolic Throne of  
Antioch.”

(emphasis added)

C **108.** The main difference between Ex. A-13 and Ex. A-14 is  
twofold: Firstly, A-13 speaks of “Catholicos on the Throne of St.  
Thomas in the East”, which words are not to be found in A-14.  
Secondly, A-14 contains the following words: “in your Metropolitans  
is vested the sanction and authority to install a Catholicos, when a  
D Catholicos dies. No one can resist you in the exercise of this right  
and do all things properly, and in conformity with precedents with  
the advice of the committee, presided over by Dionysius,  
Metropolitan of Malankara”, which are not found in Ex. A-13.  
More about these documents later.”

E **VATTIPANAM SUIT**

F 11. Dispute arose as to the persons entitled to the interest on 3000  
Star Pagodas aforementioned. It was converted to a representative  
suit. Patriarch and Catholicos factions were parties. Withdrawal of  
recognition of Abdul Messiah came in question. Excommunication of  
first defendant by Abdulla II was held to be invalid. District Judge upheld  
the claim of Catholicos group, Defendant Nos. 1 to 3, for interest. Election  
for the post of Malankara Metropolitan was held to be void at law. It  
was also held that withdrawal of recognition by the Sultan of Turkey did  
not deprive Abdul Messiah from his functional powers of supervision.

G 12. In 1923 patriarch group filed appeal before the High Court of  
Travancore since reported in 41 TLR 1. A Full Bench of the High Court  
allowed the appeal and reversed the judgment and decree of the District  
Court. However defendants 1 to 3 filed review. The appeal was reheard  
by another Full Bench vide judgment pronounced on 4.7.1928. It upheld  
the decision of the District Judge and confirmed the decree. The Full  
H Bench held –

“(i) The excommunication of Mar-Geevarghese Dionysius (the first defendant) was invalid because of the breach of the rules of natural justice in that he was not apprised of the charges against him and had not been given a reasonable opportunity to defend himself. In other words, he remains the Malankara Metropolitan;

(ii) That Defendants 1 to 3 had not become heretics or aliens or had not set up a new Church by accepting the establishment of the Catholicate by Abdul Messiah with power to the Catholicos for the time being to ordain Metropolitans and to consecrate Morone and thereby reducing the power of the Patriarch over the Malankara Church to a vanishing point;

(iii) That the Defendants 4 to 6 had not been validly elected.”

13. This Court also took note of the fact that in Vattipanam suit, whereas the Patriarch contended that the members of the Catholicos group had become aliens to the faith by repudiating the supremacy of the Patriarch by recognizing the authority and the power of the Catholicos, the Catholicate group contended that they have not repudiated the Patriarch and that by recognizing the Catholicos, they have in no manner denied the ecclesiastical superiority of the Patriarch. There was the excommunication of the Malankara Metropolitan and not of the Catholicos. This Court also noted that it was Patriarch group which was saying that by espousing the cause of and the revival of Catholicos, Defendants 1 to 3 had in effect reduced the power of the Patriarch over the Malankara Church to a vanishing point — which in their view amounted to repudiation of the power and authority of the Patriarch whereas the Catholicos contended that they had no such intention to do so. The excommunication was held invalid on the ground of violation of principles of natural justice. In Vattipanam suit it was also found that the church to which defendants 1 to 3 that is Catholicos, belong is a different church from that for which the endowment now in dispute was made.

**Post Vattipanam Suit Events :**

14. After Vattipanam suit, both the sides tried to consolidate their respective positions. On 16.8.1928 the Managing Committee of the Malankara Association was formed for drawing a constitution for the church and the association. Dispute also arose with respect to the person who is entitled to receive interest. On 21.8.1928 civil suit was filed in the District Court of Kottayam belonging to Patriarch group against Mar

- A Geevarghese Dionysius and two others including the then Catholicos Mar Geevarghese Philixinos. The suit was dismissed due to non-compliance with certain orders regarding payment of monies to Commissioner appointed in the suit. The restoration application was dismissed against the Catholicos which was filed in the High Court. In 1931, Patriarch Elias I at the instance of Lord Irwin, the then Viceroy of India, visited Malabar in order to solve the dispute between two rival groups in the Malankara church but he died at Malabar before he could effect any settlement. In his place one Ephraim was elected as the Patriarch of Antioch in 1933, allegedly without notice to the Malabar community. Therefore, Mar Geevarghese Dionysius and his supporters did not recognize him as duly elected Patriarch.

15. In February, 1934 Mar Geevarghese Dionysius died and the trust properties passed into possession of his co-trustees. Thereafter draft constitution was prepared and published in the shape of a pamphlet. On 3.12.1934 notices were issued convening a meeting of all the churches to be held on 26.12.1934 M D Seminary at Kottayam inter alia, for electing the Malankara Metropolitan and adopting the draft Constitution. Notices were also published in two leading Malayalam newspapers. Proceedings were drawn which was exhibited as Ex. 64 in Samudayam suit, at which the third Catholicos, Mar. Basselios Geevarghese-II was elected as Malankara Metropolitan. Importantly, the draft Constitution was also adopted at the said meeting.

16. The Constitution was adopted by Malankara Association on 26.12.1934. It contained certain declaration in Part 1. Part 2 deals with the Parish church which consists of:

- F A. - The Parish Assembly;  
 B. - Parish Managing Committee;  
 C. - Kaisthani (lay-steward);  
 D. - Vicar.
- G Part 3 deals with Diocese with following sub-heads:  
 A. - Diocesan Assembly,  
 B. - Diocese Council,  
 C. - Diocesan Metropolitan.

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Part 4 deals with Malankara Arch-Diocese with sub-heads: A

- A. - Association;
- B. - Association Managing Committee;
- C. - The Community Trustees;
- D. - Malankara Metropolitan. B

Part 5 deals with Catholics.

Part 6 with Patriarch.

Part 7 deals with Episcopal Synod.

Part 8 – with Ordination with sub-headings: C

(A) Deacons and Priests;

(B) High priests (Prelates);

Part 9 deals with Complaints and Decisions.

Part 10 : Income; D

Part 11 – Monasteries;

Part 12 – Rule Committee; and

Part 13 – Miscellaneous. E

Thereafter Constitution has been amended a number of times.

**SAMUDAYAM SUIT:**

17. After framing of the Constitution, the Metropolitan of the Patriarchal party issued notices on 5.7.1935 summoning meeting of the church representatives for 22.8.1935 to elect the Malankara Metropolitan. The notice stated that none of the persons belonging to Catholicos party should be elected. In that meeting Mar Poulouse Athanasius was elected as the Malankara Metropolitan. The meeting purported to remove the trustees elected at the meeting held on 26.12.1934 (i.e. Mani Poulouse Kathanar and E.J. Joseph, belonging to Catholicos group) and appointed two other persons in their place. F G

18. The patriarch group in the year 1938 filed Samudayam suit in the District Court, Kottayam for a declaration of their title as trustees of Samudayam properties (common properties of the Malankara Church) and for a further declaration that defendants to that suit belonging to H

A Catholicos group, were not lawful trustees. Other incidental reliefs were also prayed for. The suit was dismissed by the trial court on 18.1.1943 against which plaintiff filed an appeal which was allowed on 8.8.1946 and the suit was decreed by majority of Judges by 2 : 1. Matter was carried to this Court. This Court directed the High Court to re-hear the appeal on all the points. Thereafter appeal was re-heard and was allowed vide judgment dated 13.12.1956 The suit was decreed. The defendants, Catholicos group, filed an appeal in this Court which was allowed on 12.9.1958 as per *Moran Mar Basselios Catholicos v. Thukalan Paulo Avira & Ors.*, AIR 1959 SC 31.

C It was found by this Court in Samudayam suit that the plaintiff's election at a meeting held on 22.8.1935 in which original plaintiff is said to have been elected the Malankara Metropolitan and plaintiffs 2 and 3 as Kathanar, and lay trustees was invalid. Since the meeting was held without notice to the members of the Catholicos party, the defendants and their partisans had not become ipso facto heretics or aliens or had not gone out of the Church; that the meeting 22.8.1935 had not been held on due notice to all churches interested. It was held that consequently it was not a valid meeting, and that therefore, the election of the plaintiffs was not valid and suit must fail for want of their title as trustees. The suit was taken on behalf of all the members of the said community. The following issues were framed in the aforesaid case as noted by this Court in the said judgment:

F "28. Not less than 37 issues were raised on the pleadings. Of them issues 1 and 3 raise the question of the validity of the respective titles of the three plaintiffs, that is to say, title of the first plaintiff as Malankara Metropolitan and of the second and third plaintiffs as the trustees of the church properties and the validity of the Karingasserai meeting in August 1935. Issues 6 to 9 concern the validity of the M. D. Seminary meeting in December 1934 at which the first defendant is alleged to have been elected as Malankara Metropolitan, the second and third defendants having been previously elected trustees as the Kathanar and the lay trustees. Issues Nos. 10, 11, 13, 14, 15, 16, 17, 19 and 20 are as follows :-

G "10. Has the 1st defendant been duly and validly installed as Catholicos in 1104? If so by whom? And was it done with the co-

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operation and consent of Mar Geevarghese Dionysius and the other Metropolitans of Malankara? A

(a) Were his two immediate predecessors in that office also duly and validity installed in the same manner and did they function as such?

(b) Has the institution of the Catholicate for the East exercising jurisdiction over Malankara ever existed at any time before 1088? B

(c) Was the institution of the Catholicate for the East with jurisdiction in Malankara, purported to be brought into existence in 1088 for the first time? Or had it only been in abeyance for some time? And was it only revived and re-established in 1088? C

(d) Was such a re-establishment effected by Abdul Messiah with the co-operation of the late Malankara Metropolitan Mar Geevarghese Dionysius and the other Metropolitans of Malankara and the Malankara Church? If so, is it valid and lawful? Was Abdul Messiah competent to do so? D

(e) Did Mar Geevarghese Dionysius submit himself to the authority of the Catholicate from 1088 till his death?

(f) Have the Malankara Jacobite Syrian Association the Association Committee, and the Churches and people of Malankara also accepted the Catholicate and have submitted themselves to its authority from 1088? E

(g) Are the plaintiffs estopped from contending that the Catholicate was not validly re-established in 1088 or that its authority was not accepted or recognised by the Malankara Jacobite Syrian Church? F

(h) Whether after the revival of the Catholicate the powers of the Patriarch, if any, as regards ordination or appointment of the Malankara Metropolitan and the Metropolitans of Malankara have become vested in the Catholicos?

(j) Cannot the offices of Catholicos and Malankara Metropolitan be combined in one and the same person? G

11. Is the Patriarch of Antioch the ecclesiastical head of the Malankara Jacobite Syrian Church or is he only the supreme spiritual head? H

- A (a) What is the nature, extent and scope of the Patriarch's ecclesiastical or spiritual authority, jurisdiction, or supremacy over the Malankara Jacobite Syrian Church?
- (b) Is the Patriarch acting by himself or through the Delegate duly authorised by him in that behalf, the only authority competent to consecrate Metropolitans for Malankara? Or is the consecration a Synodical Act in which the Patriarch acts and can act only in conjunction with a Synod of two or more Metrans?
- B (c) Whether "Kaivappu" or "the laying on of hands" which is a necessary and indispensable item in the consecration of a Metropolitan should be by the Patriarch or his duly appointed Delegate alone or can it be done by the Catholicos also?
- C (d) Is the Patriarch alone entitled to and competent to consecrate "Morone" for use in the Malankara Church? Or is the Catholicos also entitled to do it?
- D (e) Whether by virtue of long-standing custom accepted by the Malankara Church and rulings of Courts, the Holy Morone for use in the Malankara Churches has to be consecrated by the Patriarch?
- (f) Is the allocation of Dioceses or Edavagais in Malankara a right vesting solely in the Patriarch and whether before exercising jurisdiction in any Diocese the Metropolitan ordained and appointed by the Patriarch (by issuing a Staticon) has only to be accepted by the People of the Diocese? Or is the allocation of Edavagais, so far as Malankara is concerned, not a right which the Patriarch or Catholicos or Malankara Metropolitan has or has ever had, but a right which vests and has always vested in the Malankara Jacobite Syrian Association? Whether a Metropolitan, before he can exercise jurisdiction in any Diocese in Malankara, must have been either elected for the office before ordination by the Malankara Jacobite Syrian Association duly convened for the purpose or accepted by the same after ordination?
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- G (g) Is the Patriarch the sole and only authority competent to ordain and appoint the Malankara Metropolitan? Is the issue of a Staticon or order of appointment by the Patriarch either before selection or election by the meeting of the church representatives or after such election or selection essential? Or is such order unnecessary
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and the election, or acceptance by the Jacobite Syrian Association sufficient? A

(h) What is Ressissa? Is it a contribution which the Patriarch and Patriarch alone is entitled to levy as a matter of right? Or is it only in the nature of a voluntary gift which may be made to or received by the Patriarch and Catholicos? B

(i) Has the Patriarch no temporal authority or jurisdiction or control whatever over the Malankara Jacobite Syrian Church? or whether, as the ecclesiastical head, he could exercise and has all along exercised temporal authority by awarding such spiritual punishment as he thinks fit in cases of mismanagement or misappropriation of church assets? C

13. Which is the correct and genuine version of the Hoodaya Canons compiled by Mar Hebraeus? Whether it is the book marked as Ex. A or the book marked as Ex. XVIII in O. S. 94 of 1088?

14. Do all or any of the following acts of the 1st defendant and his partisans amount to open defiance of the authority of the Patriarch? Are they against the tenets of the Jacobite Syrian Church and do they amount to heresy and render them ipso facto heretics and aliens to the faith? D

(i) Claim that the 1st defendant is a Catholicos? E

(ii) Claim that he is the Malankara Metropolitan?

(iii) Claim that the 1st defendant has authority to consecrate Morone and the fact that he is so consecrating?

(iv) Collection of Ressissa by the 1st defendant? F

15. (a) Have the 1st defendant and his partisans voluntarily given up their allegiance to and seceded from the Ancient Jacobite Syrian Church?

(b) Have they established a new Church styled the Malankara Orthodox Syrian Church? G

(c) Have they framed a constitution for the new church conferring authority in the Catholicos to consecrate Morone to ordain the higher orders of the ecclesiastical hierarchy, to issue Stations allocating Dioceses to the Metropolitan and, to collect Ressissa? H

- A (d) Do these functions and rights appertain solely to the Patriarch and does the assertion and claim of the 1st defendant to exercise these rights amount to a rejection of the Patriarch?
- (e) Have they instituted the Catholicate for the first time in Malankara? Do the above acts, if proved, amount to heresy?
- B 16. (a) Have the defendants ceased to be members of the Ancient Jacobite Syrian Church?
- (b) Have they forfeited their right to be trustees or to hold any other office in the Church?
- C (c) Have they forfeited their right to be beneficiaries in respect of the trust properties belonging to the Malankara Jacobite Syrian community?
- D 17. Have defendants 2 and 3 by helping and actively co-operating with the 1st defendant in the above acts and pretensions become heretics or aliens to the faith or gone out of the fold? .
19. (a) Have the plaintiffs and their partisans formed themselves into a separate Church in opposition to Mar Geevarghese Dionysius and the Malankara Jacobite Syrian Church?
- (b) Have they separated themselves from the main body of the beneficiaries of the trust from 1085?
- E 20. (i) Do the following acts and claims of the plaintiffs constitute such separation?
- (a) (i) The claim that Patriarch alone can consecrate Morone?
- F (ii) That the Canon of the Church is Ex. XXIII in O. S. 94?
- (iii) That the Catholicate is not established?
- (iv) That the Patriarch by himself can ordain and excommunicate Metropolitans?
- G (b) Have the plaintiffs been, claiming that the Patriarch has temporal powers over the Church?
- (c) Have they been urging that Mar Geevarghese Dionysius was not the Malankara Metropolitan?
- (d) Have they made alterations in the liturgy of the church?
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(e) Has the 1st plaintiff executed an Udampady to the Patriarch conceding him temporal powers over the Jacobite Syrian Church and its properties?

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(f) Have the plaintiffs and their partisans by virtue of the above acts and claims become aliens to the church and disentitled to be trustees or beneficiaries of the Church and its properties?

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The pleadings, in which may be included the replication and the issue papers and the actual issues raised in this case, quite clearly indicate that the principal contention of the plaintiffs in the present suit is that the defendants had become heretics or aliens to the Church or had voluntarily gone out of the Church only by reason of certain conduct definitely particularised in paragraphs 19 to 26 of the plaint, namely, (i) the acceptance of Abdul Messiah as a validly continuing Patriarch; (ii) the acceptance of the establishment of the Catholicate with power to the Catholicos for the time being (a) to ordain Metropolitans. (b) to consecrate Morone (c) to issue Staticons, (d) to allot Edavagais and (e) to receive Ressissa. These are the specific acts on which is founded the charge of heresy or going out of the Church by setting up a new Church. It has not been disputed that the power to issue Staticons and to allot Edavagais are not independent powers but are incidental to and flow from the power to ordain Metropolitans. The question is whether these contentions are concluded by the final decision, (Ex, 256) pronounced on July 4, 1928 in the interpleader suit (O. S. No. 94 of 1088) which is reported in 45 Trav. L. R., 116. (A-1). This leads us to scrutinise the matters which were in issue in that suit.

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19. This Court has held in Samudayam Suit, thus:

"35. It must, therefore, be held that the contentions put forward in paragraphs 19 to 26 of the plaint in the present suit on which issues Nos. 14, 15, 16 and 19 have been raised were directly and substantially in issue in the interpleader suit (O.S. 94 of 1088) and had been decided by the Travancore High Court on review in favour of Mar Geevarghese Dionysius and his two co-trustees (defendants 1 to 3) and against defendants 4 to 6. In short the question whether Mar Geevarghese Dionysius and his two co-trustees (defendants Nos. 1 to 3) had become heretics or aliens

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A or had gone out of the Church and, therefore, were not qualified  
 for acting as trustees was in issue in the interpleader suit (O.S.  
 No.94 of 1088) and it was absolutely necessary to decide such  
 issue. That judgment decided that neither (a) the repudiation of  
 Abdulla II, nor (b) acceptance of Abdul Messiah who had ceased  
 B to be a Patriarch, nor (c) acceptance of the Catholicate with  
 powers as hereinbefore mentioned, nor (d) the reduction of the  
 power of the Patriarch to a vanishing point, 'ipso facto' constituted  
 a heresy or amounted to voluntary separation by setting up a new  
 Church and that being the position those contentions cannot be  
 re-agitated in the present suit."

C 33. Learned counsel appearing for the respondents seek to get  
 out of this position by contending that, apart from the grounds set  
 up in the interpleader suit (O. S. No. 94 of 1088) the plaintiffs in  
 the present suit also rely on a cause of action founded on new  
 charges which disqualify the defendants in the present suit from  
 D acting as trustees of the Church properties. Shri T. N. Subramania  
 Aiyar appearing for the third respondent who has been elected  
 Malankara Metropolitan by the Patriarchal party and made a party  
 to the proceedings under the order of the court aforementioned  
 formulates the new charges as follows :

E (i) By adopting the new constitution (Ex. A. M.), which takes  
 away the supremacy of the Patriarch, the defendants have set up  
 a new church;

(ii) By inserting Cl. (5) in the constitution (Ex. A. M.) the  
 F defendants have repudiated the canons which have been found to  
 be the true canons binding on the Church (Ex. BP - Ex. 18 in O.  
 S. No. 94 of 1088) and have thereby gone out of the Church;

(iia) The privilege of the Patriarch alone to ordain Metropolitans  
 and to consecrate Morone has been taken away as a consequence  
 of the adoption of wrong canon (Ex. 26 - Ex. A in O, S. No. 94 of  
 G 1088) indicating that the defendants have set up a new church;

(iib) The privilege of the perquisites of the Ressissa has been  
 denied to the Patriarch by the new constitution in breach of the  
 true canons;

(iii) That there has been a complete transfer of the trust properties  
 H from the beneficiaries, namely, Malankara Jacobite Syrian Church

to an entirely different institution, the Malankara Orthodox Syrian Church; A

(iv) The re-establishment of the institution of the Catholicate of the East in Malabar having jurisdiction over India, Burma, Ceylon and other countries in the East is different from the institution of Catholicate that was the subject-matter of the interpleader suit (O. S. No. 94 of 1088). It is necessary now to discuss these contentions separately. B

34. Re. (I) : In support of the first charge learned counsel has drawn our attention to paragraphs 18, 22 and 26 of the plaint, paragraphs 29 and 38 of the written statement, paragraphs 18 and 27 of the replication and to issues Nos. 6, 14, 15 and 16. We do not think the pleadings and the issues are capable of being construed in the way learned counsel would have us do. The supremacy of the Patriarch has indeed been alleged to have been taken away, but that is not a general averment founded on Ex. A. M. - indeed there is no specific mention of Ex. A. M. in paragraph 26 of the plaint - but it is based on certain specific matters which appear to be incorporated as rules of the new constitution (Ex. A. M.). Therefore, what are pleaded as disqualifying the defendants from being trustees are those specific matters and not the general fact of adoption of the constitution. There is no charge in the plaint that for the incorporation in the constitution (Ex. A. M.) of any matter other than those specifically pleaded in the plaint the defendants have incurred a disqualification. The plaintiffs came to court charging the defendants as heretics or as having gone out of the church for having adopted a constitution (Ex. A. M.) which contains the several specific matters pleaded in the plaint and repeated in the replication and made the subject-matter of specific issues. Those self-same matters were relied on as entailing disqualification in the earlier suit. The plaintiffs themselves contend that some of these matters are 'res judicata' against the defendants in this suit by reason of the conditions subject to which their application for review was admitted. On the pleadings as they stand and on the issues as they have been framed, it is now impossible to permit the plaintiff-respondent to go outside the pleadings and set up a new case that the supremacy of the Patriarch has been taken away by the mere fact of the adoption C  
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- A of the new constitution (Ex. A. M.) or by any particular clause there of other than those relating to matters specifically referred to in the pleadings. The issues cannot be permitted to be stretched to cover matters which are not, on a reasonable construction, within the pleadings on which they were founded.
- B 35. Re: (ii) and (ii a): Same remarks apply to these two grounds formulated above. There is no averment anywhere in the pleadings that by accepting the Hudaya canon compiled by Bar Hebraeus (Ex. 26 - Ex. A in O.S. No. 94 of 1088) as the correct canon governing the church, the defendants have gone out of the Church.
- C Learned counsel draws our attention first to issue No. 13 and then to issue No. 16 and contends that the loss of status as members of the Church by acceptance of the wrong canon is within the scope of those two issues and that the parties to this suit went to trial with that understanding. We do not consider this argument to be well founded at all. A reference to the pleadings will indicate how and why the Hoodaya canon came to be pleaded and discussed in this case. The plaintiffs impute certain acts and conduct to the defendants and contend that by reason thereof the defendants have become heretics or aliens or have gone out of the Church. These imputations form the subject-matter of issues
- E 14 and 15 and the conclusions to be drawn from the findings on those issues are the subject-matter of issues Nos. 16 and 17. The defendants, on the other hand, impute certain acts and conduct to the plaintiffs as a result of which, they contend, the plaintiffs have separated from the Church and constituted a new Church. Issues
- F 19 and 20 are directed to this counter charge. In order to decide these charges and counter charges it is absolutely necessary to determine which is the correct book of canons, for the plaintiffs founded their charges on Ex. B. P. - Ex. 18 in O. S. No. 94 of 1088 and the defendants took their stand on Ex. 26 - Ex. A in O. S. No. 94 of 1088. Issue No. 13 was directed to determine that question. Issue No. 16 is concerned with the conclusions to be
- G drawn from the findings on issues Nos. 14 and 15. The plaintiffs cannot be permitted to use issue No. 16 as a general issue not limited to the subject-matter of issues 14 and 15, for that will be stretching it far beyond its legitimate purpose.
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36. Re. (ii b) : This ground raises the question of the Patriarch's right to Ressissa. Ressissa is a voluntary and not a compulsory contribution made by the parishioners. Ex. F. O., which records the proceedings of the Mulunthuruthu Synod held on June 27, 1876, refers to a resolution providing, 'inter alia', that the committee, that is to say, the Committee of the Malankara Association, will be responsible to collect and send the Ressissa due to His Holiness the Patriarch. This may suggest that some Ressissa was due to the Patriarch. But in paragraph 218 of Ex. DY which is the judgment pronounced by the Travancore Royal Court of Final Appeal on July 12, 1889, it is stated that no. satisfactory evidence had been adduced before the court as to the payment of Ressissa to the Patriarch by the committee in Malankara that the evidence on record was very meagre and inconclusive and that it was open to doubt whether it was payable to the Metropolitans in this country or to the Patriarch in a foreign country. Ex. 86, which records the proceedings of the meeting of the Malankara Association held on September 7, 1911, refers to a resolution forbidding maintaining any connection with Patriarch Abdulla II and presumably in consequence of this resolution the payment of the Ressissa to the Patriarch was stopped. The interpleader suit (O. S. No. 94 of 1088) was filed in 1913. If non-payment of Ressissa could be made a ground of attack, it should have been taken in that suit and that not having been, done, it cannot now be put forward according to the principles of constructive 'res judicata'. Besides, the provisions of Paragraph 115 of the impugned constitution (Ex. A. M.) require every Vicar in every parish church to collect only two chukrums from every male member who has completed 21 years of age and to send it to the Catholicos. This does not forbid the payment of Ressissa to the Patriarch, if any be due to him and if any parishioner is inclined to pay anything to the Patriarch who is declared in Cl. (1) of this very constitution to be the supreme head of the Orthodox Syrian Church. In any case, according to the canons relied upon by each of the parties, namely, Ex. B. P. - Ex, 18 of O. S. No. 94 of 1088 produced by the plaintiffs or Ex. 26 - Ex. A in O. S. No. 94 of 1088 insisted upon by the defendants, the non-payment of Ressissa does not entail heresy. Even if the question involved in ground (ii b) is not covered by the previous

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A decision in the interpleader suit (O. S. No. 94 of 1088) the question has, on the foregoing grounds, to be decided against the plaintiff-respondent.

B 38. Re. (iv) : An attempt is made by learned counsel for the respondents to make out that what was referred to in the interpleader suit (O. S. No. 94 of 1088) was the ordination of a Catholicos whereas in the present suit reference is made to the establishment of a Catholicate and further that in any case the Catholicate of the East referred to in the plaint in the present suit is an institution quite different from the Catholicate which was the subject-matter of discussion in the interpleader suit (O. S. No. C 94 of 1088.). We do not think there is any substance whatever in this contention. A reference to paragraphs 30 and 31 of the written statement clearly indicates that the institution of Catholicate, which is relied upon by the defendants, is no. other than the Catholicate D established in Malabar in 1088 by Patriarch Abdul Messiah. This position is accepted by the plaintiffs themselves in their grounds of appeal Nos. 13, 15, 17, 18 and 27 to the High Court of Travancore from the decision of the District Judge of Kottayam in this case. Issues Nos. 14 and 15 as well as the judgment of the District E Judge in this case also indicate that the subject-matter of this part of the controversy centred round the Catholicate which had been established by Abdul Messiah in the year 1088. Before the argument advanced before us there never was a case that the impugned constitution (Ex. A. M.) had established a Catholicate of the East. The purported distinction sought to be drawn between the ordination of Catholicos and the establishment of a Catholicate and a Catholicate established by Abdul Messiah in 1088 and the F Catholicate of the East created by the impugned constitution (Ex. A. M.) and which is sought to be founded upon as a new cause of action in the present suit, appears to us to be a purely fanciful afterthought and is totally untenable.

G 39. For reasons stated above we have come to the conclusion and we hold that the case with which the plaintiffs have come to court in the present suit is that the defendants had become heretics or aliens or had gone out of the Church by establishing a new church because of the specific acts and conduct imputed to the defendants in the present suit and that the charges founded on H those specific acts and conduct are concluded by the final judgment

(Ex. 256) of the High Court of Travancore in the interpleader suit (O. S. No. 94 of 1088) which operates as 'res judicata'. The charge founded on the fact of non-payment of Ressissa, if it is not concluded as constructive 'res judicata' by the previous judgment must, on merits, and for reasons already stated, be found against the plaintiff-respondent. We are definitely of the opinion that the charges now sought to be relied upon as a fresh cause of action are not covered by the pleadings or the issues on which the parties went to trial, that some of them are pure afterthoughts and should not now be permitted to be raised and that at any rate most of them could and should have been put forward in the earlier suit (O. S. No. 94 of 1088) and that not having been done the same are barred by 'res judicata' or principles analogous thereto. We accordingly hold, in agreement with the trial court, that it is no longer open to the plaintiff-respondent to re-agitate the question that the defendant appellant had 'ipso facto' become heretic or alien or had gone out of the church and has in consequence lost his status as a member of the Church or his office as a trustee."

This Court has approved the conclusion of the District Court that the suit was barred by *res judicata* and was founded on the same cause of action as that of O.S. No.2 of 1104. Finding of the District Court has been affirmed by this Court. This Court found that M.D. Seminary meeting 26.12.1934 was properly held and the first defendant was validly appointed as the Malankara Metropolitan and as such became the ex officio trustee of the church properties. The decree of the trial court dismissing the suit was restored. It was found M.D. Seminary meeting adopted the Constitution on 26.12.1934.

**EFFECT OF RECONCILIATION:**

20. During the pendency of the appeal in Samudayam Suit the then Patriarch issued a Kalpana dated 30.11.1957 to settle all pending disputes in the Malankara Church. It was reciprocated by the Catholicos group. On 9.12.1958, the Patriarch issued a Kalpana dated 9.12.1958 referred to in 1995 judgment thus :

"121. On 9-12-1958, the Patriarch issued a Kalpana dated 9-12-1958 (Ex. A-19) stating inter alia:

"It is no secret that the disputes and dissensions that arose in the Malankara Church prevailing for a period of 50 years have in

A several ways weakened and deteriorated it. Although right from the beginning several persons who loved the Church and devout of God desired peace and unity putting an end to the dissension, they departed in sorrow without seeing the fulfilment of their desire. We also were longing for peace in the Malankara Church and the unity of the organs of the one body of the Church. We have expressed this desire of ours very clearly in the apostolic proclamation (reference is to the proclamation dated 11-11-1957) we issued to you soon after our ascension on the Throne. This desire of ours gained strength with all vigour day by day without in any way slackened and the Lord God has been pleased to end the dissension through us. Glory be to him. To bring forth the peace in the Malankara Church we hereby accept with pleasure Mar Baselious Gheevarghese as Catholicose. Therefore we send our hearty greetings....”

(emphasis added)”

D 21. On 16.12.1958, the Catholics responded by issuing Kalpana describing himself to be seated on the Throne of the East of Apostle St. Thomas, and for the sake of peace, in the Church, accepted Moran Mar Ignatius Yakub III as Patriarch of Antioch and also accepted the Metropolitans under Patriarch in Malankara subject to the provisions of the Constitution of 1934. It appears that there was truce meeting of Bishops of both the groups. Malankara Association meeting was held on 26.12.1958 and thereafter the group meeting was held. Synod meeting was held on 21.2.1959. It was decided to send the copies of the Constitution to all the Parishioners with a direction to obey the same. Three dioceses were allotted to Metropolitans belonging to Patriarch group. The Catholicos issued the Kalpana affirming the allotment of dioceses on 25.2.1959. The Patriarch wrote a letter dated 8.4.1959, referring to the judgment *Moran Mar Basselios Catholicos* (supra) and mentioning that he had been accepted in accordance with the terms of 1934 Constitution. However, such terms were not specified. The use of the expression ‘holiness’ with the name of Catholicos was objected to observing that this expression can be used only by the Patriarch and the assertion of sitting at the Throne of St. Thomas is not acceptable. Without his authority, Catholicos could not have assumed the administration of the said churches.

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22. On 8.6.1959 the Catholicos replied to the Patriarch to the effect that the use of the expression 'holiness' was justified and the claim of the Throne of St. Thomas is used not only by Patriarchs but also by Metropolitans and Bishops alike and is also evident from the Hudaya Canon and other books; Kalpana Ex. A-13 and A-14 reviving the Catholicate referred to the "Throne" of St. Thomas in India, and thus, the expression 'the Throne of St. Thomas' is not a new thing, and further the judgment of the Supreme Court had affirmed the 1934 Constitution.

However the Patriarch again objected to Catholicos on 16.7.1960. Correspondence went on between the Patriarch and Catholicos. On 22.5.1964 the Patriarch installed new Catholicos in India. A day before installation of Catholicos, with respect to demarcation of jurisdiction of Catholicos, Malankara Synod resolved, that the Patriarch shall agree to continue the present system of sending priests to Arabian Gulf countries from Malankara for ministering to the spiritual needs of the Malayali Parishioners as long as Malayalis stayed there. It was also noted in Most Rev. P.M.A. Metropolitan & Ors. v. *Moran Mar Marthoma & Anr.*, (1995) Supp. 4 SCC 286 referred to as the judgment of 1995 and the various documents Ex. A-48, A-49, A-52, A-178, A-179 and A-189 that the new Managing Committee was elected for the Malankara Association composed of representatives of both the groups and duly elected members took oath, affirming the 1934 Constitution. It appears that up to 1972 things went on well and both the groups wholly subscribed to the 1934 Constitution without any reservations.

**1995 JUDGMENT AND ITS BACKGROUND:**

23. In the year 1972 dispute again arose due to nomination of a delegate to Malankara Sabha by the Patriarch. The nomination implied the exercise of active spiritual supremacy by the Patriarch the Malankara Church, and his intervention in the temporal affairs of which was not relished by the Catholicos and other members. Request was made on 16.2.1972 by Catholicos and nine Metropolitans including the members of the said Patriarch group not to send the delegate as it could disturb the peace and spread dissensions among the Malankara Church. The Patriarch did not pay heed to it and wrote back that he was not aware of such Sabha or of the Malankara Association, and his delegate arrived in Malankara and started ordaining priests and deacons which was objected to by the Catholicos by writing a letter on 7.8.1973.

A           24. The first defendant in OS No.4 of 1979 (as would be referred  
to hereinafter) was ordained as Metropolitan of the Evangelistic  
Association of the East on 1.9.1973 by the Patriarch. In a series of  
letters written between Patriarch and Catholicos each accusing the other  
of several ecclesiastical violations, the Catholicos asserted that the  
B           Catholicate of the East is autocephalous, which consecrates its own  
Bishops and its own Morone; this autocephaly is a fact quite independent  
of the name of their Throne; the autonomy exercised by the Catholicate  
over Malankara has been well established that is why the Patriarch in  
May, 1964 desired to delimit the geographical jurisdiction of the hierarchy.  
In response thereto, Patriarch communicated several charges to the  
C           Catholicos on 30.1.1974 and required him to show cause. On 9.3.1974  
the Catholicos replied stating that the Patriarch had no jurisdiction to  
level charges against him or to ask for his explanation. On 10.1.1975 the  
Patriarch suspended the Catholicos from his office until further orders.  
On 22.5.1975 meeting of Malankara Episcopal Synod was held reiterating  
the independent nature of Malankara Church and disputing the authority  
D           of the Patriarch. On 16.6.1975 the Universal Synod met at Damascus to  
consider the charges against the Catholicos. Pursuant thereto, a bull of  
excommunication was issued by the Patriarch excommunicating the  
Catholicos from the Syrian Orthodox Church which led to filing of the  
suit which was decided vide judgment of 1995. O.S. No.2 of 1979 was  
E           filed by the Catholicos challenging the authority of the Patriarch to ordain  
Bishops and Metropolitans. O.S. No.6 of 1979 was filed by the Catholicos  
against the Patriarch pertaining to the ordaining of priests in certain  
dioceses. O.S. No.4 of 1979 was treated as the main suit. To reiterate,  
same matters were decided in 1995 judgment. Prayer was made in the  
F           main suit to declare the Malankara Church as episcopal in character. It  
was also prayed that Malankara Church is not a union or federation of  
autonomous church units and is governed in its administration by the  
constitution of the Malankara Church. Further a declaration was also  
sought that defendant Nos.1 to 3 were not legally consecrated  
Metropolitans of the Malankara Church and they had no right to ordain  
G           the priests or deacons; secondly, defendant Nos.4 to 8 were not legally  
ordained priests or deacons of the Malankara Church. In the main suit  
following reliefs were asked for as noted in para 145 of the judgment of  
1995 and the same is extracted hereunder:

H           “145. It is relevant to notice the reliefs sought for in the suit.  
They are:

A. To declare that the Malankara Church is episcopal in character and is not a union or federation of autonomous church units and is governed in its administration by the constitution of the Malankara Church; A

B. To declare that Defendants 1 to 3 are not competent to ordain priests and deacons for Malankara Church; B

C. To declare that Defendants 1 to 3 are not legally consecrated Metropolitans of the Malankara Church and Defendants 4 to 8 are not legally ordained priests or deacons of the Malankara Church;

D. To declare that no Metropolitan, priest or deacon unless validly ordained and appointed under the provisions of the Constitution of the Malankara Church can officiate in any of the churches or its institutions in the Malankara Church; C

E. To declare that any priest who refuses to recognise the authority of the first plaintiff and other Metropolitans under him is not entitled to minister in any of the churches or its institutions in Malankara; D

F. To prohibit Defendants 1 to 3 by an order or permanent injunction from ordaining priests or deacons or performing any other sacraments, service, etc. for the Malankara Church or its institutions; E

G. To prohibit Defendant 4 onwards from performing any religious service or sacraments whatsoever in or about any of the church of Malankara and for the Malankara Church or its constituent churches or institutions; F

H. To prohibit the defendants from interfering in any manner with the administration of the Malankara Church.”

25. Learned Single Judge of the High Court dismissed the suits. On appeal Division Bench of the Kerala High Court reversed the same and upheld the claim of the Catholicos group to a large extent. The main suit had been decreed, as prayed for, against defendant Nos.1 to 17 without costs and dismissed against defendant No.18 (Evangelical Association of the East). With respect to Knanaya Samudayam the suit had been decreed but with certain qualifications. G

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A            26. In 1995 judgment this Court has given the findings in para 148  
and the same are extracted hereunder :

B            **“148. The following facts, in our considered view, are of  
fundamental significance. Once they are kept in view, it would be  
unnecessary to go into many of the issues agitated before the  
learned Single Judge and the Division Bench of the High Court.  
The fundamental facts which decide the fate of the main dispute  
are:**

C            (a) The Patriarch of Antioch was undoubtedly acknowledged  
and recognised by all the members of the Malankara Church as  
the supreme head of their Church. In the year 1654, they took the  
oath known as the “Koonan Cross Oath” reaffirming their loyalty  
to the Syrian Orthodox Christian Church-headed by the Patriarch.  
It was the Patriarch who convened the Mulanthuruthy Synod at  
which the Malankara Syrian Christian Association was formed.  
However, the authority of the Patriarch extended only to spiritual  
D            affairs — the Syrian Christians in Malankara believed in the  
efficacy of ‘Kaivappu’ (laying of hands by Patriarch on the head)  
while consecrating the Metropolitan and considered it essential to  
a proper ordaining — but not to the temporal affairs of the  
Malankara Church as declared finally by the Travancore Royal  
E            Court of Final Appeal in the year 1889 in the Seminary suit. The  
Royal Court declared that the authority of the Patriarch never  
extended to temporal affairs of the Church which in that behalf  
was an independent Church. The Royal Court further declared  
that the Metropolitan of the Church in Travancore should be a  
native of Malabar consecrated by the Patriarch or his duly  
F            authorised delegate *and* accepted by the people as their  
Metropolitan, as decided by the Mulanthuruthy Synod. This  
declaration was affirmed by the Cochin Court of Appeal in the  
Arthat suit in 1905.

G            (b) The revival of Catholicate in 1912 by Patriarch Abdul  
Messiah made a qualitative change in the situation. Under Ex. A-  
14, the Kalpana issued by the Patriarch Abdul Messiah, (which  
document was produced in several earlier suits and whose  
authenticity is not disputed by the Patriarch group before us) and  
A-13 which precedes A-14, empower the Catholicos to ordain  
H            Metropolitans and other officials of the Church in accordance

with the canons of the Church and also to consecrate holy Morone. A-14 states expressly that the power to instal a Catholicos on the death of the incumbent is vested in the Metropolitan. It is in this manner that the powers of ordaining Metropolitans and melpattakars and consecrating holy Morone, which hitherto vested in Patriarch, came to be vested in the Catholicos by the Patriarch himself. Further, the power to instal a Catholicos on the death or disability of the incumbent was also vested in the Metropolitans of Malankara Church and it is in exercise of this power that on the death of the first Catholicos installed by Patriarch Abdul Messiah in 1913, the second Catholicos Basselios Geevarghese I (Mar Geevarghese Philexinos) was installed in the year 1924 by the Malankara Synod without reference to the Patriarch. Again in 1929, Basselios Geevarghese II was elected as the third Catholicos by the Association and was installed as such. In the M.D. Seminary meeting held on 26-12-1934 the third Catholicos was elected as the Malankara Metropolitan, thus combining both the posts in one person. In other words, the spiritual and temporal powers over the Malankara Church came to be concentrated in one person. It may be that by this act of revival of Catholicate and the Kalpanas A-13 and A-14, the Patriarch is not denuded of the powers delegated by him to the Catholicos — assuming that these powers were not already possessed by the Catholicos and that they came to be conferred upon him only under A-13 and A-14 — yet, reasonably speaking, the Patriarch was, and is, expected to exercise those powers thereafter in consultation with the Catholicos and the Malankara Sabha (Association) — and, of course, in accordance with the 1934 Constitution. This was necessary for the reason (i) to avoid creating parallel authorities leading to conflict and confusion and (ii) the acceptance by the local people was a sine qua non for any Metropolitan or melpattakar in Malankara Church as provided in the Mulanthuruthy Synod (convened and presided over by the then Patriarch himself) and given a judicial sanction by the judgment of the Travancore Royal Court of Appeal aforementioned. Without removing the Catholicos in accordance with the canon law and the principles of natural justice, the Patriarch could not have purported to exercise unilaterally the powers delegated by him to the Catholicos under A-14.

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A (c) It is significant to notice that the Catholicos-cum-Malankara  
Metropolitan, Basselios Geevarghese II, was accepted and  
recognised as the Catholicos by the Patriarch Yakub under his  
Kalpana Ex. A-19 dated 9-12-1958. Basselios Geevarghese II  
was elected as Catholicos by the local Metropolitans and installed  
B as such by the local melpattakars without reference to the Patriarch  
and which Catholicos was all through fighting against the Patriarch  
group in the Samudayam suit. It is no less significant that Patriarch  
Yakub, who issued the Kalpana A-19, was, before his installation  
as the Patriarch, the delegate of the Patriarch in India and was  
prosecuting the Samudayam suit for a number of years. If so, it is  
C reasonable to infer that when he accepted and recognised the  
Catholicos as such under Ex. A-19, he did so with the full knowledge  
that he was thereby recognising the Catholicos as revived by Abdul  
Messiah in 1912 under A-14 and as described and affirmed in the  
1934 Constitution. Moreover, the Kalpanas A-19 and A-20 were  
D not issued in an abrupt fashion — they could not have been — but  
were preceded by a good amount of discussion and negotiations  
between members of both the groups. Under his Kalpana Ex. A-  
20 dated 16-12-1958, from the Catholicos to the Patriarch, the  
Catholicos accepted the Patriarch subject to the Constitution passed  
by the Malankara Association and as then in force. The  
E Metropolitans ordained by Patriarch duly accepted the authority  
of Catholicos and participated in several proceedings. There was  
reallotment of dioceses among the Metropolitans of both the  
groups. The members of the erstwhile Patriarch group swore  
loyalty to the 1934 Constitution. (These events have been detailed  
F hereinabove). After all these developments, and after a lapse of  
four months after A-20, the Patriarch raised an objection to the  
use of certain expressions employed in Ex. A-20, viz., the Catholicos  
claiming to be seated on the Throne of St. Thomas and also to the  
qualification added by the Catholicos to his acceptance to the  
Patriarch, viz., “subject to the constitution...”. But even this  
G objection which is reflected in the correspondence which passed  
between them during the years 1959 to 1962 (referred to *supra*)  
must be deemed to have been given up and abandoned by the  
Patriarch by his acts and declarations in the year 1964. As stated  
*supra*, the Patriarch came to India pursuant to a canonical invitation  
from the Malankara Synod and consecrated and duly installed the  
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new Catholicos (Mar Ougèn), who was elected by the Malankara Association in accordance with the 1934 Constitution. Before he did so, the Patriarch took care to see that the respective territorial jurisdictions of the Patriarchate and the Catholicate are duly defined and demarcated. The Middle East which was supposed to be hitherto under the jurisdiction of the Catholicos was excluded from his jurisdiction confining his authority to India and East alone.

27. This Court accepted the revival of the Catholicate on a threadbare scrutiny of the recorded facts and held that it was no longer open to the Patriarch or his followers to contend that the revival of Catholicate was not in accordance with the religious tenets and faith of the Syrian Jacobite Christian Church, and that the power of the Patriarch was reduced to a vanishing point due to revival of Catholicate. It was ruled that the power and authority of the Catholicos was affirmed in Kalpana A-13 and A-14 issued by the Patriarch and was re-enforced and enlarged in the 1934 Constitution. It was however noted that the Catholicos did at the same time not repudiate the spiritual supremacy of the Patriarch. It reaffirmed that he is the primate of the Orthodox Syrian Church. This Court held thus :

“149. Now what do the above facts signify? Do they not show that Patriarch had, by 1964, recognised and accepted the revival of the Catholicate A-13, A-14 and the 1934 Constitution? Do they not show that the Patriarch had also given up his objections to the use of the words “seated on the throne of St. Thomas in the East” and to the “qualification” added by Catholicos in A-20? We think, they do. Once this is so, it is no longer open to the Patriarch or his followers to contend that the revival of Catholicate was not in accordance with the religious tenets and faith of the Syrian Jacobite Christian Church, that the Constitution of 1934 was not duly and validly passed or that the power and authority of the Patriarch as obtaining prior to 1912 remains and continues unaffected and undiminished. In this connection, it is relevant to remind ourselves that it was the contention of the Patriarch group in Vattipanam suit that the Catholicos group had, by espousing the cause of and the revival of Catholicate, reduced the power of the Patriarch to a vanishing point and have thereby become aliens to the faith. The power and authority of the Catholicos under A-13 and A-14 was affirmed, re-enforced and enlarged in the 1934 Constitution

A (as amended in 1951) and yet under Ex. A-19 the Patriarch  
accepted with pleasure Mar Basselios Geevarghese as the  
Catholicos. At the same time, it is equally significant to note that  
the 1934 Constitution does not repudiate the Patriarch. On the  
contrary, it reaffirms that he is the primate of the Orthodox Syrian  
Church of which the Malankara Church is said to be a part —  
B though it is true, all the effective powers exercised by the Patriarch  
prior to 1912 were vested in the Catholicos under Ex. A-13 and  
Ex. A-14.”

28. It was also held that the submission of the Patriarch group  
that the 1934 Constitution was not put forward by the Catholicos group  
as the basis of their claim in the Samudayam suit or their objection as to  
C validity of the Constitution was untenable as they cannot make a legitimate  
grievance to all these. This Court laid down thus:

“150. In this view of the matter, the submissions of the Patriarch  
group that the 1934 Constitution was not put forward by the  
D Catholicos group as one of the bases of their claim in Samudayam  
suit or that no finding as such was recorded by this Court in the  
said suit regarding the validity of the Constitution are of little  
consequence. We are not relying upon the rule of estoppel in this  
behalf but are only pointing out that having conceded, recognised  
and affirmed all the above things, the Patriarch group cannot make  
E a legitimate grievance of these very things. They cannot be heard  
to say so. Nor have they made any effort to explain the said acts  
and conduct of the Patriarch and of the persons owing allegiance  
to him. They must be deemed to have given up and abandoned all  
their objections to the aforesaid events and documents.”

F 29. With respect to the validity of the excommunication of the  
Catholicos in the Vattipanam suit, it was held that it was not open to the  
Patriarch to seek excommunication of the Catholicos on the charges  
which were leveled; Kalpanas A-13 and A-14 specifically vested the  
Catholicos with the power to consecrate Metropolitans and other officials  
of the Church and to consecrate Morone; A-14 empowered the  
G Metropolitans to elect their own Catholicos, and as such, the expression  
“holiness” or the assertion of being seated at the Throne of St. Thomas  
in the East or the claim that the Malankara Church was an autocephalus  
church could be treated as hearsy. This Court also disapproved the act  
H of the Patriarch of sending a delegate over the protestations of all the

Metropolitans of Malankara including those belonging to Patriarch group as totally uncalled for vis-a-vis the action of the delegate in ordaining priests and the Patriarch himself ordaining the first defendant in O.S. No.4 of 1979, this Court said that all this certainly could not have been done unilaterally. It observed that it is one thing to say that the Patriarch could do these things in cooperation with the Catholicos but the ordaining of the priests and Metropolitans by him and his delegate without reference to – indeed over the protestations of the Catholicos – was certainly not the right thing to do since it purported to create a parallel administrative mechanism for the Church in spiritual and temporal matters. Therefore this Court opined that the charges were not available as grounds of excommunication and could not constitute valid grounds therefor. Accordingly it was held that excommunication of Catholicos was not valid and legal. This Court has laid down thus:

“151. In the Vattipanam suit, the High Court found that of the two versions of Hudaya Canon put forward by the Patriarch group and Catholicos group, the version put forward by the Patriarch group (Ex. 18 in that suit) is the correct one. The very same version was put forward by the Patriarch group as the true version in the Seminary suit. Of course, at that time, both the groups concerned herein were comprised in Patriarch group and were fighting against the renegade group of Mar Athanasius. It is really pointless to go into the question whether the judgment in Vattipanam suit operates as *res judicata*. Even if it is assumed that it does not, yet its value as a precedent — a finding arrived at by the High Court after a full enquiry — cannot be denied. According to the first judgment of the High Court, the Patriarch has the power to excommunicate the Metropolitans. It does not say anything about the power of the Patriarch to excommunicate Catholicos and if so according to what procedure. We have seen *supra* that while granting the review of the said judgment, the High Court specified that three findings recorded by it in the judgment under review should not be reopened. The three findings *inter alia* included the finding relating to the authenticity of Ex. 18. According to the said version of the Hudaya Canon, the Catholicos “shall act according to the orders of (be subject to) the Patriarch of Antioch. He shall not defy (act against) his superiors.” It repeatedly says that the Catholicos is subject to the authority of Patriarch and that the Patriarch is the “head or superior” of the Catholicos. Though the

A canon does not say so, we shall proceed on the assumption for the purpose of this case — without recording any finding to that effect — that the Patriarch has the power to excommunicate the Catholicos. Yet the question remains whether the grounds on which the excommunication of the Catholicos has been effected are valid and permissible grounds. A perusal of the charges communicated to the Catholicos by the Patriarch in his letter dated 30-1-1974 makes it clear that charges related to the use of the word ‘Holiness’ along with his name by the Catholicos, his assertion of being “seated on the Throne of St. Thomas in the East” and his assertion of “cordial relationship” with the Patriarch instead of admitting his subordinate — all objections which were raised by Patriarch during the years 1959 to 1961 but given up and abandoned in May 1964, as explained supra. It is also alleged that the Catholicos did not accept the delegate sent by Patriarch to Malankara and has also changed the oath administered to the members of the Church wherein he substituted himself for the Patriarch. The proceedings of the Malankara Association were also cited as one of the charges. Having revived the Catholicos with the powers under Exs. A-13 and 14 and having accepted (by necessary implication) the Constitution of 1934 under his Kalpana Ex. A-19 and having installed the Catholicos in 1964 notwithstanding his objections raised in his letters written during the years 1959 to 1962, it was not open to the Patriarch to seek to excommunicate the Catholicos on those very grounds. Ex. A-13 speaks of Throne of St. Thomas. Ex. A-13 and Ex. A-14 specifically vest the Catholicos with the power to consecrate Metropolitans and other officials of the Church and to consecrate Morone. A-14 empowers the Metropolitans to elect their own Catholicos. In these circumstances, it is difficult to understand how could the use of the expression ‘Holiness’ or the assertion of being seated at the Throne of St. Thomas in the East or the claim that the Malankara Church is an autocephalus church can be treated as heresy when the very Constitution by which the Catholicos and his group were swearing affirmed in clear terms that the Patriarch is the supreme head of the Malankara Church. As a matter of fact, some of the charges in the letter dated 30-1-1974 can also be termed as vague. For example, Charge No. 9 reads thus:

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“The books taught in the Sunday Schools there contain uncanonical and wrong teachings and fallacious historical facts especially with a view to inject wrong ideas into the tender minds regarding the fundamentals and history of the Church.” A

The letter does not set out or refer to the alleged uncanonical or wrong teachings and fallacious historical facts taught in the books in the Sunday Schools. Similarly, Charge No. 8 says that in the ordinations administered by the Catholicos, the heretical two-nature theory propounded by Pope Leo is not repudiated. It is not stated under what canonical law such an assertion is obligatory. So far as the non-acceptance of the delegate sent by Patriarch is concerned, it can hardly be considered to be a ground for excommunication. After all that has happened between 1912 and 1964, the sending of a delegate over the protestations of all the Metropolitans of Malankara including those belonging to Patriarch group was totally uncalled for. The delegate started ordaining priests here and the Patriarch himself ordained the first defendant in OS No. 4 of 1979. All this certainly could not have been done unilaterally. It is one thing to say that the Patriarch could do these things in cooperation with the Catholicos but the ordaining of the priests and Metropolitans by him and his delegate without reference to — indeed over the protestations of the Catholicos — was certainly not the right thing to do since it purported to create a parallel administrative mechanism for the Church in spiritual/temporal matters. We are, therefore, of the opinion that the charges, at any rate the main charges, on which the excommunication is based were not available as grounds of excommunication and could not constitute valid grounds therefor. Accordingly, it is held that the excommunication of Catholicos is not valid and legal. B C D E F

Plaintiffs' claim that Malankara Church is episcopal in character and not a union or federation of autonomous units”

30. Ultimately this Court found that the Catholicate was revived and re-established by Patriarch Abdul Messiah in the year 1912; the powers and functions of the Catholicos are set out in Kalpana Ex. A-14; the Patriarch cannot dispute the validity of revival of Catholicate or of Ex. A-14; Patriarch himself has created a centre of power in India i.e. Catholicate with the said powers, and it would be reasonable to hold that G H

A thereafter the Patriarch cannot exercise those powers unilaterally, *i.e.* without reference to the Catholicos and that he can exercise those powers only in consultation with the Catholicos. Moreover the person to be appointed as Metropolitan or Malankara Metropolitan has to be accepted by the people as held in Seminary Suit. This Court ruled that the Patriarch's  
B power to ordain the Metropolitans now is subject to the Constitution of 1934, and by revival of Catholicate and by issuing the Kalpana Ex. A-14 and also by accepting the 1934 Constitution, though the power of the Patriarch may have been reduced to a vanishing point, but all the same he remains the supreme head of the Syrian Church of which the Malankara Church is a division. The 1934 Constitution was approved at  
C a validly convened meeting of Malankara Association, and the Patriarch cannot question its legality and validity in view of the acts and conduct of the Patriarch and the members of his group subsequent to the judgment of this Court in *Moran Mar Basselios* (supra). It was emphasized that the Patriarch had accepted the validity of the revival of Catholicate vide  
D Kalpana A-14 and the 1934 Constitution and abandoned and gave up all or any objections they had in that behalf; several members of the group including some of the defendants also accepted the Constitution and took oath to abide by it, and therefore they cannot now turn around and question the same. This Court also found that territorial jurisdiction of Catholicate was duly defined in 1964 and was delimited by excluding  
E certain areas in the Middle East from the jurisdiction of the Catholicos. It was held that Malankara Church is Episcopal to the extent it is so declared in the 1934 Constitution. The said Constitution governs the affairs of the Parish Churches and shall prevail. It was observed that due to mutual bickering in the Patriarch and the Catholicos, it cannot be said that Catholicos or his followers have become apostates or that they  
F have deviated from the tenets of the faith. Similarly Patriarch cannot be said to have lost his spiritual supremacy in accordance with the 1934 Constitution. The common Samudayam properties held by the Malankara Church are vested in Malankara Metropolitan as declared in the judgment of 1995 of this Court in *Moran Mar Basselios* (supra). This Court  
G summarized its conclusions thus :

“155. The result of the above discussion may be summarized thus:

H (1) The Vattipanam judgment has held that the version of Hudaya Canon put forward by Patriarch group as Ex. 18 in the suit is the correct version and not the version put forward by the

Catholicos group. However, in Samudayam suit, the District Judge (trial court) accepted the version of Canon put forward by the Catholicos group as against the version put forward by Patriarch group. It is suggested by the learned counsel for the respondent that this finding of the District Judge must be deemed to have been restored by this Court in *Moran Mar Basselios*. It is really unnecessary for us to go into this question since it has lost all significance in view of the subsequent developments and their effect, as accepted by us.

(2) The Catholicate was revived and re-established by Patriarch Abdul Messiah in the year 1912. The powers and functions of the Catholicos are set out in Ex. A-14. Moreover by virtue of their acts and conduct subsequent to the judgment of this Court (in *Moran Mar Basselios*), the defendants in the present suit (i.e., the members of the Patriarch group) cannot now dispute the validity of the revival of the Catholicate or of Ex. A-14.

(3) It may be that by conferring upon the Catholicos the powers of ordaining Metropolitans, consecrating Morone and to exercise other spiritual powers over Malankara Church, the Patriarch may not have denuded himself completely of the said powers which he enjoyed until then. But in view of the fact that he had himself created another centre of power in India with the aforesaid powers, it would be reasonable to hold that thereafter the Patriarch cannot exercise those powers *unilaterally*, i.e., without reference to the Catholicos. He can exercise those powers only in consultation with the Catholicos. Moreover, the person to be appointed as Metropolitan or Malankara Metropolitan has to be accepted by the people as has been affirmed in the judgment in Seminary suit. The Patriarch's power to ordain the Metropolitans now is subject to the Constitution of 1934.

(4) It may be that by virtue of the revival of Catholicate and by issuing the Kalpana Ex. A-14 — and also by accepting the 1934 Constitution (as to be mentioned presently) — the power of the Patriarch may have been reduced to a vanishing point, but all the same he remains the supreme head of the Syrian Church of which the Malankara Church is a division. He is spiritually superior to the Catholicos though he does not, and indeed never did, enjoy any temporal powers over the Malankara Church or its properties.

A (5) The 1934 Constitution was approved at a validly convened  
meeting of Malankara Association, which Association was created  
by the Patriarch himself under the Resolutions of Mulanthuruthy  
Synod. The defendants in the present suits (Patriarch group) cannot  
question its legality and validity in view of the acts and conduct of  
B the Patriarch and the members of his group subsequent to the  
judgment of this Court in *Moran Mar Basselios*<sup>1</sup>.

C (6) Ex. A-19, Kalpana, was issued by Patriarch Yakub with  
the full knowledge of revival of Catholicate, Ex. A-14 and the  
1934 Constitution and the various claims and contentions of both  
the parties put forward in Samudayam suit and the decision of  
this Court in *Moran Mar Basselios*<sup>1</sup>. It must, therefore, be held  
that the Patriarch has thereby accepted the validity of the revival  
of Catholicate Ex. A-14 and the 1934 Constitution, and abandoned  
and gave up all or any objections they had in that behalf. Several  
D members of his group including some of the defendants also  
accepted the Constitution and took oath to abide by it. They cannot  
now turn round and question the same.

E (7) Though the Patriarch raised objections to the honorifics  
(e.g., use of 'Holiness' with the name of the Catholicos and his  
assertion that he was seated "on the Throne of St. Thomas in the  
East") and to the qualification added by the Catholicos in his  
Kalpana Ex. A-20 (i.e. accepting the Patriarch subject to the  
Constitution), the Patriarch must be deemed to have given up and  
abandoned all those objections when he came to India, pursuant  
to a canonical invitation from the Malankara Synod and installed  
and consecrated the new Catholicos on 22-5-1964. It is also worth  
F noticing that a day before such installation/consecration, the  
Patriarch took care to have the territorial jurisdiction of Catholicate  
duly defined and delimited by excluding certain areas in the Middle  
East from the jurisdiction of the Catholicos.

G (8) So far as the declaration of the Malankara Church being  
Episcopal in character is concerned, all we need hold is that it is  
episcopal to the extent it is so declared in the 1934 Constitution.  
The said Constitution also governs the affairs of the Parish  
Churches and shall prevail.

H (9) The excommunication of Catholicos by the Patriarch and/  
or by the Universal Synod is invalid for the reason that the grounds/

charges on which the excommunication has been effected are not permissible or relevant grounds. The denial of Patriarch's spiritual authority by the Catholicos and his group and similarly the Patriarch's refusal to recognise the Catholicos or the 1934 Constitution in the correspondence that passed during the years 1972 to 1975 are attributable to the personal differences and the mutual bickering between the two dignitaries and their respective groups. On that basis, it can neither be said that the Catholicos or his followers have become apostates or that they have deviated from the tenets of the faith. Similarly, Patriarch cannot be said to have lost his spiritual supremacy over the Malankara Church (on account of his accusations and declarations) which he enjoyed prior to the commencement of the said correspondence, i.e., according to the 1934 Constitution.

(10) The common properties (Samudayam properties) held by the Malankara Church are vested in Malankara Metropolitan and others as declared in the judgment of this Court in *Moran Mar Basselios*."

31. This Court also issued certain directions for amendment of the Constitution and the Constitution was accordingly amended, as approved by this Court. It was also observed by this Court that election to Malankara Church shall have to be held so as to keep its character alive and effective. At the same time the majority opinion expressed in the 1995 judgment, that no declaration could be granted affecting the rights of Parish Churches in their absence nor could it be declared that the properties held by Malankara Parish Churches vests in the Catholicos or the Malankara Metropolitan or the Metropolitan of the diocese concerned, as the case may be. However this Court also observed that the 1934 Constitution shall govern and regulate the affairs of Parish Churches too insofar as the said Constitution provides for the same.

32. This Court also observed that with respect to spiritual control, Church was episcopal and there was no difficulty in holding that Catholicos and the Malankara Metropolitan have spiritual control over the Parish Churches, but if it means control over temporal affairs of, or title to or control over the properties of the Parish Churches beyond what is provided for in the Constitution, a declaration to that effect can be obtained only after hearing and in the presence of Parish Churches concerned.

A        **AMENDMENT OF CONSTITUTION AS PER 1995  
JUDGMENT:**

B        33. This Court directed the amendment of Section 68 for the democratic functioning of the Malankara Church. Sections 46 and 71 had been inserted to bring about proportional representation based on the size of congregation of each Parish Church. This Court also observed that the Association so elected shall be the Association for all purposes within the meaning of and for the purposes of the 1934 Constitution, as amended from time to time.

C        34. Amendment proposals were considered by this Court in *Most Rev. P.M.A. Metropolitan & Ors. v. Moran Mar Marthoma Mathews & Anr.* (1996) 8 SCC 470. This Court permitted the amendment and directed substitution of Section 68 corresponding to Section 71 and also directed that the election shall take place within three months on the basis of Articles 71 and 46 as amended. This Court further directed status quo to be maintained until the new Managing Committee was elected.

D        **AMENDMENT OF DECREE OF 1995:**

E        35. Subsequently the matter came up again before this Court pursuant to the 1995 judgment and a revised decree was passed in *Most Rev. P.M.A. Metropolitan* (supra). This Court directed certain modifications in paras 2, 3 and 4. However in paras 2, 3, 6 and 7, this Court inserted before the last sentence “The above direction is subject to the condition that any and every person claiming to hold any office or post in this church shall be bound by and shall swear allegiance to the 1934 Constitution.” This Court held thus :

F        “5. The decree shall then say that the decree passed by the High Court (decree under appeal) shall stand modified to the extent indicated above.

G        PART II

H        6. In Part II of the order dated 25-3-1996, the following sentence shall be inserted before the last sentence: “The above direction is subject to the condition that any and every person claiming to hold any office or post in this church shall be bound by and shall swear allegiance to the 1934 Constitution.”

PART III

A

7. In Part I of the order dated 25-3-1996, we had directed that Articles 71 and 46, as drafted by us shall stand substituted in the place of the existing Articles 71 and 46 in the 1934 Constitution with effect from the date of the said order. In Articles 71 and 46, which were directed to be so substituted, an error has crept in. Instead of mentioning "members of the Parish Assembly", the word "families" is used. We, therefore, direct that wherever the word "family" or "families" occur in the said two articles, as drafted by us, they shall be substituted by the words "member" or "members", as the case may be. It is made clear that when we speak of the "members" in the said articles, we refer to members as contemplated by and as mentioned in clause (7) of the 1934 Constitution (which deals with Parish Church and Parish Assembly).

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8. The first proviso in Article 71 is deleted.

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PART IV

9. In view of the aforementioned controversies, it is submitted by the counsel for the parties, no elections could so far be held as contemplated and directed by the judgment of this Court. In Part I of the order dated 25-3-1996, it was directed by this Court that the election of members of the Association and the Diocesan Assemblies shall take place within three months therefrom on the basis of the amended/substituted Articles 71 and 46. The time for conducting the said elections is extended up to and inclusive of 30-4-1997."

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(Emphasis added by us)

This Court also extended time to hold elections till 30.4.1997.

**IMPLEMENTATION OF 1995 JUDGMENT:**

36. C.M.P. No.2079 of 1997 was filed in A.S. No.331 of 1980 in execution proceedings before the Kerala High Court. The Catholicos group claimed that elections had already been held and hence the execution was completed. The fact was, however, disputed by Patriarch group. Kerala High Court did not go into the question whether the decree stood complied with by holding elections. However it concluded that

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A Moran Mar Thoma Mathews of the Catholicos group had not been elected as the Malankara Metropolitan. The matter was taken up to this Court in C.A. No. 8185 of 2001 in which the order passed by the Kerala High Court was questioned and by consent order dated 28.11.2001, this Court set aside the Kerala High Court judgment dated 6.4.2001 and directed fresh elections to be conducted to the Malankara Association under the supervision of Justice V.S. Malimath, retired Chief Justice of Kerala High Court.

37. In C.A. No.8185 of 2001 further order was passed on 12.7.2002 in which this Court observed that the Association so elected pursuant to the judgment dated 20.6.1995 and the consent order dated 28.11.2001 shall be the Association for all purposes within the meaning of and for the purpose of the 1934 Constitution, as amended. The Malankara Association as constituted by the order of this Court having decided vide majority that Moran Mar Baselious Mar Thoma Mathews II is the Malankara Metropolitan, this decision is final and binding and not subject to challenge in any court or other forum.

38. The Patriarch group was still not satisfied. The Patriarch faction tried to form its own Constitution and the same was registered on 15.7.2002 with retrospective effect from 5.7.2002. As this Court had passed the orders on 12.7.2002 the Patriarch then proceeded to consecrate his own Malankara Metropolitan and Catholicos, and they abstained from participating in the elections held as per the orders of this Court pursuant to the 1995 judgment.

### **PRESENT CONTROVERSY – KOLENCHERRY CHURCH**

39. Civil Suit No.43 of 2006 relating to Kolencherry Church had been filed under Order 1 Rule 8 and sections 26 and 92 of the Civil Procedure Code, 1908 (for short, “the CPC”) by K.S. Varghese and two others. Defendant No.1 being St. Peters’ and St. Pauls’ Syrian Orthodox Church, Kolencherry Church and 11 other defendants. Prayer had been made to declare that D-1 Church, its assets including the educational institutions are liable to be administered only in accordance with the terms of the Udampady dated 13.12.1913. Other reliefs were also sought as per the plaint, viz., to settle a scheme for the administration; to appoint a court receiver; and to conduct elections to the Managing Committee. In the plaint it was averred that defendant No.1 is a Parish Church established by Jacobite Christian Community at Kolencherry.

There are two factions – the Orthodox faction and the Patriarch faction. Defendant No.2 is a Vicar of the Patriarch faction. Defendant No.3 is the priest offering services on behalf of the Orthodox faction. Plaintiffs and defendant Nos.2, 5 and 7 belong to the Patriarch faction and other defendants belong to the Catholicos faction. On 13.12.1913 Udampady was executed regarding the manner in which its affairs are to be administered, to which five priests and 15 lay trustees were parties in which specific provisions for the priests to render services in turns and the trustees to administer the assets of the Church were made. The Church was being administered as per the 1913 Udampady. As the factional fights in the Church erupted, O.S. No.19 of 1980 was filed by the Orthodox faction under section 92 CPC. An Advocate-Receiver was appointed to manage the assets of the Church. Suit was dismissed vide judgment dated 27.2.1997. The judgment directed the said Receiver appointed to hand over possession of the assets to the survivors among the defendants to that case. The first plaintiff and defendant Nos.4 to 9 were also parties to the said suit. Other members of the Committee in 1980 were also parties. The Receiver handed over the keys of the Church to first plaintiff and the first defendant in the said O.S. Thereafter, the services of the Church were being conducted by the priests in turns of the two factions. The orthodox faction had two priests conducting services for two successive weeks. Father E.P. Zacharia was performing the services on behalf of the Patriarch faction. While so, Father E.P. Zacharia was transferred by the Metropolitan of the Orthodox faction which resulted into protests from the Patriarch faction. Due to law and order problems the Church was closed by the Executive Magistrate, 1<sup>st</sup> Class. Moovattupuzha.

40. The Church remained closed from the year 1998. However, later on Church was opened during day time and the priests of the two factions were conducting services at their usual turns. When the first defendant Church was under closure, separate prayer centres were established by the two factions. Writ petition was filed in 2005 in which High Court of Kerala passed order on 9.12.2005 that the S.D.M. shall return the keys of the Church to Fr. M.V. Abraham. In writ appeal, Division Bench on 8.12.2006 directed that the keys of the Church will remain with S.D.M. for 15 days, thereafter, matter to abide by the orders of the civil court; parties may approach the civil court within 15 days to obtain further orders.

A Thus the plaintiffs averred that the affairs are to be managed as  
per Udampady dated 13.12.1913 which is a registered document. There  
had been no fresh elections to the Managing Committee of the Church  
for the last several years. There is no administration of the assets to the  
Church. Income was also not properly collected, accounted, preserved  
or utilised. One set of keys is with the plaintiff and the other set of keys  
B could be with the Orthodox faction. There is an approved Constitution  
for management of the educational institutions. The first defendant  
Church has about 2500 families and 10,000 Parish members on its  
membership. O.S. No.30 of 1997 which was filed was dismissed on  
14.6.2005. It was observed that two parties were claiming to be governed  
C by different Constitutions *i.e.* Catholicos by 1934 Constitution and  
Patriarch by 2002 Constitution and such a dispute can be settled by  
calling upon general body meeting of the entire Parishioners. It was  
further averred that the defendant Church had not accepted the 1934  
Constitution. It is governed by Udampady of 1913. Defendants 3, 10  
and 11 were trying to obtain the keys as to when the suit was filed.

D 41. Defendant Nos.1, 3 and 9 in their written statement contended  
that the first defendant is a Malankara Orthodox Syrian Church founded  
centuries ago. The origin and establishment of the Church is in obscurity.  
The Church was initially administered under an Udampady registered in  
1913 AD. Thereafter, Malankara Association framed the Constitution in  
E 1934. Thus, Udampady of 1913 ceased to exist by virtue of Section 132  
of the 1934 Constitution which provides that provisions in Udampadi  
inconsistent with the provisions of said Constitution shall be void. After  
promulgation of the 1934 Constitution, D-1 Church is being administered  
in accordance with the provisions of the 1934 Constitution. After the  
F decision of the Supreme Court in 1958, peace and tranquility prevailed in  
Church. In pursuance of Kalpana No.20 of 59 dated 20.2.1959 of the  
Diocesan Metropolitan, the Annual General Meeting held on 8.3.1959,  
was presided over by Augen Mar Thimothiose, in which Parish Church  
Assembly unanimously resolved to adopt and accept the 1934 Constitution.  
After the decision of the Parish Assembly dated 8.3.1959 the D-1 Church,  
G its assets and educational institutions are being administered under the  
1934 Constitution as is evident from the Pothuyogam Dairy of the Church.  
In the Annual General Meeting of Parish Assembly dated 16.12.1973,  
15 members were elected to the Managing Committee in accordance  
with the 1934 Constitution. Parish Assembly also sent the representatives  
H of the Church to the Malankara Association. In 1974 again dispute arose

which led to filing of the suits. One such suit being O.S. No.19 of 1980. Subsequently, two Parishioners of first defendant Church filed O.S. No.31 of 1998 against Fr. E.P. Zacharia. This Court held in 1998 that first defendant is a constituent of Malankara Church and is administered under the 1934 Constitution, and the Diocesan Metropolitan was competent to transfer the priest and issued an interim order of temporary injunction which was affirmed by the High Court in appeal and by this Court on 12.7.2000. Later Fr. M.V. Abraham was appointed as Vicar of the D1 Church by the Diocesan Metropolitan.

42. The first defendant Church is a constituent Church of Malankara Church governed and administered under the 1934 Constitution. This Court in the 1995 judgment has upheld the validity of the 1934 Constitution and declared all the Parish Churches of Malankara Church to be episcopal and are to be governed by the 1934 Constitution, due to which proceedings under section 144(1) Cr. PC were resorted to. On 11.7.2005 Church was closed down by the S.D.M. The keys were ordered to be returned to Fr. M.V. Abraham. In writ appeal, the Division Bench dismissed the appeal as withdrawn but at the same time directed that the civil court may decide the custody of the keys in the suit to be filed within 15 days from the date of the order. The Annual General Meeting of first defendant Church was periodically held from 2008 to 2010 and the Committee so elected was continuing with the administration of the Church. Church was under management of the trustees and the Committees so elected. Prof. T.P. Peter and Sri Paul Mathai were the lay trustees. There was proper administration and management of the Church. It was not the big Trust of religious nature but was established to meet the religious needs of the faithfuls of the Malankara Orthodox Syrian Christian community. The plaintiffs have deviated from Malankara Orthodox Syrian faith for which the Church was established and formed a new Sabha called Yakobava Suriyani Christian Association in the year 2002. They have no right or authority to interfere in the temporal and ecclesiastical affairs of the Church, D-1. It was true that two priests of two factions were conducting services in turns by way of interim arrangement. First defendant is in possession of the keys as per order dated 2.10.2010 passed by the trial court.

43. Another written statement was filed by defendant Nos.1, 2 and 5 supporting the Patriarch states that it was governed as per the Udampady and not by the 1934 Constitution. Additional written statement

- A was also filed by additional defendants 13 and 15 supporting the plaintiff. It was contended that the religious services in the church can only be performed by those religious dignitaries who accept the supreme spiritual headship of his holiness of Patriarch of Antioch. Church was subservient to the ecclesiastical supremacy of the Patriarch of Antioch and governed by the Udampady and not by the 1934 Constitution. Additional written statement had been filed by defendant Nos. 1, 3 and 9 resisting the claim. Defendant Nos. 13 and 15 also have prayed that referendum be held to ascertain the allegiance of the Parishioners of the Church and for declaration that the Parish Church and its assets are to be governed according to the faith and will professed by the majority of the Parishioners. A decree be passed that the Church and its assets are to be administered as per the decision of majority of the Parishioners and to restrain the third defendant, his men or agents and the religious dignitaries who have not accepted the spiritual supremacy of Patriarch of Antioch. Additional written statement was filed by defendant Nos. 1, 3 and 9 resisting the counter claim raised by defendant Nos. 13 and 15.
- D In their written statement they re-asserted the supremacy of the 1934 Constitution and submitted that the counter claim be rejected.

**VARIKOLI CHURCH CASE:**

- E 44. O.S. No.10 of 2003 was filed by Mathai Varghese and nine others in the District Court, Ernakulam as against 10 orthodox Churches. St. Mary's Orthodox Church, Varikoli, defendant Nos.1 and 9 others. It was also a representative suit under Order I Rule 8 and under section 92 of the CPC. It was averred that defendant No.1 Church is under Kundanadu Diocese and is a public trust. It is for the benefit of innumerable Parishioners. Defendant Nos.2 to 4 are claiming to be trustees and Vicar of said D-1 Church. Parishioners are too many and thus the suit was instituted in a representative capacity under Order I Rule 8 CPC. Plaintiffs averred that administration and management of the D1 Church has to be carried out as per the provisions of the 1934 Constitution as held by the Supreme Court in the 1995 judgment. It has also held that whatever be the status of the parties, whether he is a Catholicos, Bishop, priest, trustee or Parishioner, he shall swear allegiance to the 1934 Constitution to get the benefit of status quo ordered by it. Kandandu Diocese Dr. Thomas Mar Athanasius, being the Metropolitan of the Kandandu Diocese including the D1 Church and has been discharging all the functions of the Diocesan Metropolitan in respect of
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all Churches including D-1 Church falling under the Diocese. The Vicars including the fourth defendant were appointed by said Diocesan Metropolitan in accordance with Section 40 of the 1934 Constitution. Elections to the Managing Committee were held on 20.3.2002 and was affirmed by the Supreme Court. After bifurcation of the Diocese into East and West, fresh Kalpana 58/2002 was issued confirming the appointment of fourth defendant as Vicar of D-1 Church. Defendants 2 and 3 were claiming to be trustees of first defendant Church. They were elected as trustees for a period of one year only by the Pothuyogam dated 17.1.1999. Thereafter, no Pothuyogam had been convened. No other appointment was extended further by the Diocesan Metropolitan. As per Article 12 of 1934 Constitution, fourth defendant Vicar had to call for Pothuyogam in respect of D1 Church which has to be convened twice every year. The Secretary, trustee and managing committee members were elected as per Section 17 for a period of one year so as to write and keep the minutes of the Church and get signatures of Diocesan Metropolitan. Accounts have to be maintained and submitted. Defendant No.4 was asked to take steps for conducting Pothuyogam.

45. The Defendants have taken a position that they were not bound to obey decision of the apex Court as well as the 1934 Constitution. Defendants 2 and 3 have no right or authority to claim as trustees of the first defendant Church. As per the 1934 Constitution Vicar had been appointed by Diocesan Metropolitan and was conducting religious ceremonies in the D-1 Church. Cause of action arose on 20.1.2000 when the term of the defendant expired as per the decree and declaration that D-1 Church was governed by the 1934 Constitution as upheld by the Supreme Court and that D-2 and D-3 have no right or authority to claim as trustees of D-1 Church. Permanent prohibitory injunction was claimed against D-2 and D-3, their men or agents or anybody claiming under them from bringing any Vicar/priest for conducting religious ceremonies who are not appointed by the Diocese Metropolitan in accordance with the 1934 Constitution. Prayer was also made to restrain such persons from conducting religious ceremonies in D-1 Church and the cemetery attached thereto; D-2 and D-3 be restrained from being trustees of D-1 Church. A decree of mandatory injunction to direct D-4 was prayed for to call for an immediate Pothuyogam of D-1 Church and to conduct elections of new Managing Committee including trustees and other office bearers in accordance with the 1934 Constitution.

A 46. In the written statement filed by defendant Nos.1 to 3 it was  
contended that D-1 Church is not a Church constituent of Malankara  
Orthodox Church. Suit is not maintainable. The Church was established  
in 1928 by the people of the locality for the religious worship as per  
Jacobite faith and traditions. They are always loyal to the Patriarch of  
Antioch and believe in the Apostolic succession of St. Peter Thomas  
through Patriarch of Antioch. The Church and its Parishioners ever since  
its establishment had only accepted and approved the hierarchy of priests  
ordained or loyal to the Patriarch of Antioch which is their fundamental  
faith. Church is not governed by the 1934 Constitution. Meeting dated  
30.6.2002 adopted the 2002 Constitution of Jacobite Syrian Christian  
Church and D-1 Church as a member of the Jacobite Syrian Christian  
Association. The Church and the Parishioners have the freedom to adopt  
the 2002 Constitution in view of Articles 19 (1)(c), 25 and 26 of the  
Constitution of India. The plaintiffs or the fourth defendant have no  
authority or right to question the decisions and resolutions of the Parish  
Assembly dated 30.6.2002. The 1995 judgment has no relevance to the  
administration of the Church in the light of adoption of the 2002  
Constitution. Since the 4<sup>th</sup> defendant had deviated from the fundamental  
faith of the Church the present Diocesan Metropolitan of the Jacobite  
Church H.G. Kuriakose Mar Divascorous as per his Kalpana No.KND  
35 of 2003 removed him from the post and appointed Fr. Thomas Murikkal  
as Vicar of the Church. Defendant Nos.2 and 3 were elected as trustees  
on 17.1.1999 but the annual General Body Meeting of the Church on  
9.2.2003 elected new trustees namely P.A. George Padiyil and Paul  
Varghese Keelppillil. They were not impleaded in the suit, thus it suffered  
from non-joinder of necessary parties. Since defendant No.4 had  
abdicated the faith, he could not continue as Vicar of the Church.  
Membership of the Church is open to those who are obedient and loyal  
to the Holy Throne of Antioch. The Church is not governed by the 1934  
Constitution. The Church or the Parishioners have no right or authority  
to deviate from the fundamental faith of Jacobite Syrian Community.  
There is no cause of action for the suit. Additional written statement has  
also been filed by defendant Nos.1 to 3. Contentions raised in paragraph  
6A of plaint were denied. The trustees and Vicar working at the time of  
filing the amendment application have not been impleaded. The other  
defendant Nos.6 to 10 also filed their separate written statements. They  
have supported the stand taken by defendant Nos.1 to 3. Defendant

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No.5 endorsed in the aforesaid written statement dated 30.11.2010 as he could not sign it when it was filed being away in the USA. A

**IN RE: MANNATHUR CHURCH**

47. With respect to St. George Jacobite Syrian Church at Mannathur, O.S. No.41 of 2003 was filed by Ouseph Cheriyan and two others, as against D-1 Church and 25 others in the form of a representative suit. Plaintiffs were the Parishioners belonging to the Catholicos faction. They have relied upon the 1995 judgment of the Constitution of 1934. Father Elias was appointed as Vicar of the Church and had been discharging the duties of D-1 Church. D-3, D-4 and D-5 were claiming to be trustees and Secretary respectively of the Church. Suit O.S. No.16 of 1977 was filed before the 1<sup>st</sup> Additional District Court, Ernakulam with respect to D-1 Church. The Court vide judgment and decree dated 27.9.1996 held that the D-1 Church is governed and administered by the 1934 Constitution. Thereafter OS No.11/1997 was filed which was dismissed for want of compliance under section 92 CPC. Other averments were more or less the same as in the aforesaid case. As Pothuyogam was not called, it became necessary to file suit. Declaration was prayed that defendant Nos.3 to 5 have no right or authority to claim the status of trustees and Secretary and be removed from the posts of D-1 Church. Declaration also be granted that Vicar of the 1934 Constitution have right to conduct "holiness". Declaration be granted as well that Parishioners who do not give written oath of allegiance to the 1934 Constitution, have no right to continue as Parishioners of D-1 Church. Permanent prohibitory injunction was sought against D-4 and D-5 from functioning as trustees and Secretary of the Church. Mandatory injunction to call for Pothuyogam for holding elections as per the 1934 Constitution was also prayed. B  
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48. Defendant Nos.1, 3, 4 and 5 contended that D-1 Church was governed by the Udampady of 1890 registered with SRO, Muvattupuzha. They are not governed by the 1934 Constitution. An Association was convened on 20.3.2002 and Yacobaya Suriyani Christiyani Sabha promulgated the Constitution in the year 2002. The Patriarch faction association never participated in the elections held as per the 1995 judgment. Pothuyogam was held on 30.3.2003 in tune with the Udampady of 1890. Other similar pleas as in the aforesaid case have been raised. There was excommunication of Metropolitan Dr. Thomas Mar G

- A Athanasious. First defendant Church never accepted the 1934 Constitution. Defendant Nos.7 to 27 also filed their additional written statements. A.S. No.176 of 2002 was pending, the suit was not maintainable. They also relied upon Udampady of 1890 and 2002 Constitution.
- B 49. The High Court vide judgment and decree dated 4.10.2013 dismissed RFA Nos.589 and 655 of 2011 arising out of OS No.43 of 2006 filed by the appellants. Review petition filed before the High Court was dismissed vide order dated 11.4.2014. The appeals arising therefrom are CA Nos.3682 of 2015 and 3683 of 2015. The High Court has upheld the judgment of the trial court dismissing the suit filed by the plaintiff and the counter claim filed by defendants 13 and 15. It has been held that the 1934 Constitution is binding and Udampady of 1913 cannot be enforced. The High Court has found that from 1959 to 1973 there was total unity among the two factions of the Church. The 1934 Constitution has been accepted by the Church in the meeting dated 8.3.1959. The High Court has also found that the Parish Churches are constituent units of Malankara Church. They have a fair degree of autonomy subject to supervisory powers vested in the Managing Committee of the Malankara Association as per the 1934 Constitution which is binding on the Malankara Association, Community, Diocese as well as Parish Churches and Parishioners.
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- E 50. In C.A. Nos.8789 of 2015 & 8790 of 2015 Varikoli Church matters arise out of OS No.10 of 2003. The trial court has found that the Church is to be administered as per the 1934 Constitution and only the Vicars and priests appointed under the 1934 Constitution can conduct the ceremonies in the Church. The trial court dismissed the suit on the ground that there were two factions of the Parishioners and as the D-1 Church and the plaintiff did not recognize the Patriarch of Antioch as the supreme religious head of Malankara Church in whom many of the Parishioners reposed faith therefore they were not entitled to the discretionary relief prayed for in the suit. The High Court vide impugned judgment and decree dated 21.8.2015 has reversed the judgment and decree of the trial court, allowing the appeal and the suit has been decreed, that the D-1 Church is governed by the 1934 Constitution of the Malankara Church and that only Vicars and priests appointed in accordance with the 1934 Constitution of the Malankara Church are competent to conduct religious services in the D-1 Church. Permanent prohibitory injunction
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has also been granted in favour of the plaintiff restraining the defendants and their supporters from causing obstruction to the continuation of religious ceremonies in the Church by Vicars and priests appointed in accordance with the 1934 Constitution. Mandatory injunction has been granted, directing 4<sup>th</sup> respondent, the Vicar of the Church to convene fresh Parish Assembly to elect Managing Committee including Trustees and Secretary of the Church in accordance with the 1934 Constitution. Aggrieved thereby the appeals have been preferred.

51. With respect to Church at Mannathur, the trial court has passed similar decree as passed by the High Court in the Varikoli Church matter, upholding 1934 Constitution and similar directions have been issued. The High Court has affirmed the judgment and decree of the trial court hence the four civil appeals have been preferred arising out of S.L.P. [C] Nos.35599 of 2015, 28797 of 2015, 35211 of 2015 and C.C. No.22129 of 2015 which arise out of R.F.A. No.320 of 2014 and O.S. No.41 of 2003.

**SUBMISSIONS ON BEHALF OF APPELLANTS:**

52. Shri K. Parasaran, learned senior counsel appearing on behalf of appellants has urged in Varikoli Church matter various submissions.

I. First one centering around whether the Church is governed by the 1934 Constitution; whether Vicar to be appointed in accordance therewith is entitled to perform the religious functions/ceremonies in the Church; whether elections to the Managing Committee is required to take place in accordance with the 1934 Constitution? It was submitted by learned senior counsel that the 1995 judgment is not binding upon the appellant-Church. The appointment of Vicar is not to be governed by the 1934 Constitution. He has referred to historical background noted by this Court in the 1995 judgment. The main contention was that the 1995 judgment is not binding upon the appellants as this Court has declined to grant any declaration affecting the rights of Parish Churches in their absence nor was it declared in their absence that the properties held by Malankara Parish Churches vested in Catholicos. Aforesaid finding recorded in Para 154 of the 1995 judgment has been relied upon. He further submitted that the conclusions arrived in para 155(8) of the 1995 judgment has to be gauged in the light of the decision in *Bhikhi Lal v. Tribeni* AIR 1965 SC 1935 and *Manakchand v. Manoharlal* AIR 1994 PC 46. The spiritual aspect was predominant in the aforesaid suit which was required to be decided in the presence of the Parishioners.

A A declaration granted under section 35 of the Specific Relief Act, 1963 binds only the parties and the appellants were not parties to the 1995 judgment. In the light of decision in *Razia Begum v. Sahebzadi Anwar Begum* (1959) SCR 1111 the declaration acts only in personam thus cannot bind the other parties. It was further urged that the dispute as to faith and worship in Church have to be decided in their presence if the decision is to bind the Parishioners, irrespective of the dispute as to the person entitled to be in charge of administration of the Church. The beneficiaries are the worshippers as held in *Deoki Nandan v. Muralidhar* (1956) SCR 756. In *Veruareddi Ramaraghava Reddy v. Konduru Seshu Reddy* (1966) Supp. SCR 270 and *Bishwanath v. Shri Thakur Radhaballabhji* (1967) 2 SCR 618 the said principle has been reiterated and in the latter decision it has been observed that the persons who go only for the purpose of devotion have .... a greater and deeper interest in temples than mere servants who serve there for some pecuniary advantage. Though the cases are of Hindu religion the principle is one of law applicable to all religious institutions of a public character.

D It was further urged by learned senior counsel that as impleadment of Parish Churches was opposed in the suit resulting in 1995 judgment, plaintiffs who opposed the application thus must suffer the consequences. Suits against Simhasana Churches and Evangelistic Association were dismissed by the trial court as they were impleaded as parties which was confirmed by this Court. With respect to Knanaya Church, this Court has observed that when a particular people say that they believe in the spiritual superiority of the Patriarch and that it is an article of faith with them, the Court cannot say “no; your spiritual superior is the Catholicos”. The guarantee of Article 25 of the Constitution has also got to be kept in view. The aforesaid observations made in para 151 of the judgment of 1995 of this Court have been relied upon. Thus, it is open to a Parish Church with majority to claim that their spiritual superior is Patriarch or Catholicos as the case may be. No particular canon can be followed. In case it is held on the basis of 1995 judgment then 1934 Constitution is binding on Parish Churches even in their absence as parties, it would amount to violation of principles of natural justice. In this regard learned senior counsel has relied upon *John v. Rees* (1969) 2 AER 274; *National Textile Workers v. P.R. Ramkrishnan* (1983) 1 SCC 228 and *Institute of Chartered Accountants v. L.K. Ratna* (1986) 4 SCC 537.

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Shri K. Parasaran, learned senior counsel has further submitted that the property rights have to be decided as per the civil law and not as per ecclesiastical law and there has to be a specific plea with regard to properties of each Parish Church by giving particulars of such properties. There was no such plea in the present matter or in the 1995 judgment. The 1995 judgment may have evidentiary value under section 13 of the Evidence Act, 1872 but cannot operate as *res judicata* as it was not inter partes. He has relied upon the principle of estoppel referred to *Sital Das v. Sant Ram Das* AIR 1954 SC 606, *Shrinivas Krishnarao Kango v. Narayan Devji Kango* (1955) 1 SCR 1 and *Tirumala Tirupati Devasthanams v. K.M. Krishnaiah* (1998) 3 SCC 331. As the Catholicos group invited a decision in the 1995 case in a representative capacity under Order I Rule 8 CPC, they are estopped from contending contrary to those findings in the present proceedings.

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It was further submitted that Parish Churches though party to the 1934 Constitution and a constituent of the Malankara Association are entitled to have their own Constitution for both secular and temporal matters as followers of the faith of the superiority of the Patriarch and that the St. Mary's Orthodox Church, Varikoli had its own Constitution of 2002 and Udampady. Thus, it is open to the Parish Churches, even after 1934 to decide and to make their own Constitution in exercise of their fundamental right to freedom of conscience and religion under Article 25 so as to follow the faith of spiritual supremacy of the Patriarch. The 1934 Constitution is only an agreement or contract and cannot be elevated to the level of the Constitution of India.

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He further urged that in the present case a defective declaration has been sought to the effect that the appellant-Church is governed by the 1934 Constitution as upheld by the Supreme Court. Such declaration could not have been sought as the courts below were over influenced by such declaration sought with reference to Supreme Court judgment which could not have been granted and prayer has virtually curtailed the discretion of the courts below as it had influenced the minds of the Judges of the courts while appreciating the evidence and considering the causes. Thus this Court has to appreciate the evidence afresh and to consider the entire factual matrix independent of the 1995 judgment and to record the conclusions *de novo*.

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II. As the second limb of his arguments, Shri K. Parasaran, learned senior counsel has submitted that the 1995 judgment is not binding upon

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A the appellants that abandonment of pleas/objections to the revival of the Catholicate, the validity of the 1934 Constitution, the Catholicos being seated on the Throne of St. Thomas, etc. cannot bind the appellant in perpetuity to remain a part of the Malankara Association. He made the following submissions in this regard:

B (i) In the 1995 judgment, Hon. Jeevan Reddy, J. has observed about the abandonment of the objections in regard to the revival of the Catholicate, validity of the 1934 Constitution, Catholicos being seated on the Throne of St. Thomas in the East and acceptance of the Patriarch by the Catholicos subject to the Constitution. It has been urged that the  
 C appellant cannot be disabled from pursuing their faith i.e. the Patriarch being the spiritual superior having authority to appoint a Vicar for performance of spiritual ceremonies, conforming to that faith.

(ii) The finding as to abandonment, as observed in the 1995 judgment, runs contrary to the decision of this Court in *Sha Mulchand & Co. Ltd. v. Jawahar Mills* (1954) SCR 351 a decision of Four Judges, in which it has been laid down thus:

D “14 ....Unilateral act or conduct of a person that is to say act or conduct of one person which is not relied upon by another person to his detriment, is nothing more than mere waiver, acquiescence or laches, while act or conduct of a person amounting to an  
 E abandonment of his right and inducing another person to change his position to his detriment certainly raises the bar of estoppels.

.... Whatever be the effect of mere waiver, acquiescence or laches on the part of a person on his claim to equitable remedy to enforce his rights under an executor contract, it is quite clear, on  
 F the authorities, that mere waiver, acquiescence or laches which does not amount to an abandonment of his right or to an estoppels against him cannot disentitle that person from claiming relief in equity in respect of his executed and not merely executor interest.

....  
 G A man who has a vested interest and in whom the legal title lies does not, and cannot lose that title by mere laches, or mere standing by or even by saying that he has abandoned his right, unless there is something more, namely inducing another party by his words or conduct to believe the truth of that statement and to  
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act upon it to his detriment; that is to say, unless there is an estoppels, pure and simple. It is only in such a case that the right can be lost by what is loosely called abandonment or waiver, but even then it is not the abandonment or waiver as such which deprives him of his title but the estoppels which prevents him from asserting that his interest in the shares has not been legally extinguished, that is to say, which prevents him from asserting that the legal forms which in law bring about the extinguishment of his interest and pass the title which resides in him to another, were not duly observed.

Fazal Ali, J. and I endeavoured to explain this in *Dhiyan Singh v. Judgal Kishore* – What happens is this. The person stopped is not allowed to deny the existence of facts, namely the actings of the parties and so forth which would in law bring about the change in legal status, namely, the extinguishment of his own title and the transfer of it to another, for estoppels is no more than a rule of evidence which prevents a man from challenging the existence or noexistence of a fact. Once the facts are ascertained, or by a fiction of law are deemed to exist, then it is those facts which bring about the alteration in legal status; it is not the estoppels as such nor is it the abandonment or waiver per se.”

(iii) The plea of estoppel was not raised. The decision of Four Judges is binding on Three Judges as held in *S.H. Rangappa v. State of Karnataka & Ors.* (2002) 1 SCC 538 thus :

“11. While referring to the decisions of this Court in *Bachhittar Singh v. State of Punjab* AIR 1963 SC 395 as well as *Krishi Utpadan Mandi Samiti v. Makrand Singh* (1995) 2 SCC 497 and *Eugenio Misquita v. State of Goa* (1997) 8 SCC 47 Mr Sanghi, learned Senior Counsel contended that the observations of this Court in *Khadim Hussain* case Z(1076) 1 SCC 843 require reconsideration. With respect, we are unable to agree with this for more than one reason. Firstly, the decision in *Khadim Hussain* case was rendered by four Judges and the said decision is binding on us, apart from the fact that on the interpretation of the provisions of Section 6 we are in agreement with the views expressed by the Bench in that case. Secondly, as far as *Bachhittar Singh* case is concerned that related to notings on the file made by a Minister and the

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A question which arose was whether that was an order which could have been regarded to have been passed. By referring to the provisions of Article 166 of the Constitution of India, this Court held that the said decision would not be regarded as an order of the Government. In *Krishi Utpadan* case and *Eugenio* case there was no reference made to the binding decision of this Court in *Khadim Hussain* case. Even otherwise, in both these cases, declaration under Section 6 had been published within one year of the notification under Section 4 and the question in the form in which it has arisen for consideration in the instant case did not arise there.”

C Thus, the observations contrary thereto made in the 1995 judgment are in conflict with the aforesaid decision which is binding on this Court. Thus the issue of estoppel and the question of abandonment will not arise.

D (iv) In *Vattipanam Suit* when the *Catholicos* group sought a review of the decision of the High Court, review was permitted on the ground that the following findings will not be reopened :

“(a) as to authenticity of Ex.A-18, the version of Canon Law produced by Defendants 5, 6 and 42.

E (b) as to the power of Patriarch to excommunicate without the intervention of the Synod; and

(c) as to the absence of an indirect motive on the part of the Patriarch which induced him to exercise his power of excommunication.”

F The aforesaid findings were prior to the 1934 Constitution. In the 1995 judgment the excommunication of the *Catholicos* by the Patriarch was held to be invalid since there were no permissible grounds for the same as held by this Court in para 155(9). However the spiritual superiority of the Patriarch in both the instance to excommunicate remains unaltered. This Court has observed in the 1995 judgment that the Patriarch cannot be said to have lost spiritual supremacy over Malankara Church.

G (v) The spiritual superiority of the Patriarch cannot be denied by the *Catholicos* group. Such denial would result in altering the fundamental faith of the Patriarch followers who have been forced to form their own association for safeguarding their spiritual and religious interests.

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(vi) The power of the Patriarch may have reached a vanishing point as observed in Vattipanam Suit and in the 1995 judgment at Para 155(4). However they have not yet vanished and the Patriarch continues to remain a spiritual head of Syrian Church of which the Malankara Church is a division. A

III. Third limb of the argument of Shri K. Parasaran, learned senior counsel is that Parishioners have a right under Article 25 of the Constitution of India. Article 25 guarantees to all persons the freedom of conscience and free profession, practice and propagation of religion. Article 26 guarantees to all religious denominations, the freedom to manage its own affairs in matters of religion. Spiritual superiority of Patriarch is an article of faith guaranteed under Article 25 of the Constitution. The section of people who do not believe in spiritual supremacy of Catholicos cannot be forced to have faith in him. Each Parishioner has a right to freedom of religion. The freedom is guaranteed to persons as opposed to citizens as in Article 19. He has also relied upon the term 'public order' as examined by this Court in *Ram Manohar Lohia v. State of Bihar* (1966) 1 SCR 709 thus: B C D

"The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. ... It will thus appear that just as 'public order' in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting 'security of State', 'law and order'. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State." E F

This Court in *Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (1954) SCR 1005 at 1022 held thus: G

"... The word 'denomination' has been defined in the Oxford Dictionary to mean 'a collection of individuals classed together under the same name; a religious sect. or body having a common faith and organization and designated by a distinctive name' .... After Sankara, came a galaxy or religious teachers and H

A philosophers who founded the different sects and sub-sects of  
 the Hindu religion that we find in India at the present day. Each  
 one of such sects or sub-sects can certainly be called a religious  
 denomination, as it is designated by a distinctive name, - in many  
 cases it is the name of the founder, - and has a common faith and  
 common spiritual organization. The followers of Ramanuja, who  
 B are known by the name of Shri Vaishnabas, undoubtedly constitute  
 a religious denomination; and so do the followers or  
 Madhwacharya and other religious teachers.”

(Emphasis supplied)

C He has also referred to the definition of ‘apostolic’, ‘Patriarch’,  
 ‘Pope’ and ‘Vicar’.

IV. It has been argued as well that time after time, the spiritual  
 supremacy of the Patriarch has been repudiated by the Catholicos, in  
 breach of the 1934 Constitution. He has submitted that the spiritual  
 D supremacy of the Patriarch has been repudiated by the Catholicos, in  
 breach of the 1934 Constitution. Thus the Constitution cannot bind the  
 Church.

V. He has next contended that the 1934 Constitution is in the  
 nature of a contract. It stands discharged and cannot bind the appellant.  
 E He has submitted that the 1995 judgment was rendered with a view to  
 reconcile the two rival factions which is not a possibility. Thus the plaintiffs  
 Catholicos were not entitled to any declaratory relief.

VI. He has submitted that the 1959 Samudayam case has no  
 bearing on the present proceedings. Lastly the High Court in the instant  
 F case has not assigned any reason why the judgment of trial court is  
 erroneous.

53. Shri C.A. Sundaram, learned senior counsel appearing on behalf  
 of appellants in C.A. Nos.3674 of 2015 and 3682 of 2015 has submitted  
 that the idea behind the formation of a trust has to be judged on as to  
 what has been followed by a long series of years. He has relied upon  
 G Cochin Royal Court judgment dated 15.8.1905. The 1913 Udampady is  
 consistent with the declarations and decisions of Mulanthuruthy Synod  
 dated 27.6.1876 and the usage and practice that was being followed  
 from the 7th Century till 1913. Said judgment deals with the basic  
 formation of the Church. The 1913 Udampady also governed affairs of

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Church during the time period of 1913 to 1959. When the Parish Assembly can adopt the 1934 Constitution in 1959, it can also decide at present to go by the 1913 Udampady. The Catholicos do not have the spiritual grace of Apostolic Throne of St. Peter through Patriarch of Antioch. Following the 1934 Constitution from 1959 to 1970 will not amount to estoppel or waiver of fundamental rights. After 1974 the parties have not been able to reconcile. It is an article of faith that the religious dignitaries conducting prayers or the religious services in the Church should have a spiritual grace of the Patriarch of Antioch. The Vicar put forward under the 1934 Constitution has no right to function in the Church. Reference has been made to the *Moran Mar Basselios Catholicos & Anr. v. Most. Rev. Mar Poulouse Athanasius & Ors.*, AIR 1954 SC 526, the 1995 judgment, and the Vattipanam Suit. In 2004 and 2008, the Catholicos faction challenged the then Patriarch's visit to India by way of filing writ petitions in the High Court. The functions of Vicar are both spiritual and managerial in nature as per the 1934 Constitution. He has referred to various provisions of the 1934 Constitution. Kolencherry Church is not bound by the amendments made in 2011. Due to closure and the ongoing litigations, Catholicos are making deliberate attempts to create law and order problems through goons. The Canon referred to in section 5 of the 1934 Constitution has not been accepted in *Mathan Malpan v. Oolahannan Geevarghese* 45 TLR 116.

54. Shri C.S. Vaidyanathan, learned senior counsel appearing in Civil Appeal Nos.3681 and 3683 of 2015 has additionally submitted that the Patriarch of Antioch is the spiritual head. The Catholicos who is a creature under the Patriarch of Antioch, cannot dictate terms. The persons in management cannot alter the object of the Trust. He has referred to *Cochin Royal Court* judgment (*supra*) and other decisions. He has also relied upon the Udampadies and has contended that the same being registered documents, would prevail. The Kolencherry Church representatives did not attend the meeting of 1934. The 1934 Constitution is the byelaw or rules regulating the affairs of a voluntary organization or Association. It cannot be said to be binding at all times. It can be amended or altered. Constitution of 1934 has been amended more than once in 1951, 1967, 1997, 2006 and 2011. It is not Bible. This Court has also ordered the amendment of the 1934 Constitution in the judgment of 1995. In case the theory of finality of an ecclesiastical tribunal is upheld as to the validity of ex-communication of the Catholicos, this Court could

A not have gone into the question of the validity of ex-communication in the judgments of 1958 or 1995. He has referred to the decision of the US Supreme Court in 15 Lawyers Edition 2D 155. This Court adopted the neutral principles of law while examining the question of ex-communication.

B In view of Articles 19 and 25 of the Constitution, this Court has not construed it appropriate to hold that the 1934 Constitution would apply to all the Parish Churches in the Malankara Jacobite/Orthodox Churches. The consequence of not subscribing to the 1934 Constitution can only be that cessation of all privileges as priests of Sabha and in respect of the Samudayam property. The Parishioners own the property of Parish Church and the Cemetery and they cannot be deprived of that right by not subscribing to the 1934 Constitution. The Jacobite Church is not an Episcopal church and the Parish properties do not vest in the Episcopa.

D It is difficult to accept the supremacy of Catholicos. There were umpteen instances when burial of dead had been obstructed. Registration of Udampady is equivalent to possession of the property. The Kolencherry Church is a Public Trust of religious and charitable nature. There is no waiver or estoppel. Malankara Church is neither completely Episcopal nor a congregational unit. The declaration sought, with respect to religious services/ceremonies to be performed by a particular Vicar or priests appointed under the 1934 Constitution would violate the basic object of the Church and would be in violation of Articles 25 and 26 and of the provisions in the Udampady, and there is no justification for a court to pass on the spiritual or temporal authority to Catholicos faction of the Malankara Orthodox Church. An attempt is being made to exclude Patriarchs from spiritual and temporal affairs, resulting in law and order problems.

G 55. Shri Mohan Parasaran, learned senior counsel, in addition, has referred to the historical background, framing of the statutes, and effect of various judgments. He has submitted that it is not necessary that Church is to be administered only on the basis of the 1934 Constitution. He has relied upon registered Udampady of 1890. The ultimate faith of the Church is in the Patriarch of Antioch. No such binding declaration as prayed could have been granted in view of section 35 of the Specific Relief Act. The 1934 Constitution cannot hold good in view of provisions made in the Constitution of India. The appellant Church, a member of

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the Malankara Church has a right to come out and join any association in view of provisions of Article 25 of the Constitution. He has also relied upon Article 20 of the Universal Declaration of Human Rights whereby no one would be compelled to belong to an association. It was further urged by him that formation of an association under Article 19(1)(c) carries with it the negative right, *i.e.* the right not to be a part of an association. If the right to come out is not recognized it would be infringing the fundamental rights of the majority of the worshippers/Parishioners. The 1934 Constitution cannot be interpreted so as to take away the identity of a Parish church. Without prejudice to the submission that the 1934 Constitution does not bind the appellants, it was submitted that the conduct of the Catholicos was highly objectionable and disentitles them from claiming discretionary relief of declaration as sought for. They have not come to the court with clean hands. The argument that Catholicos being considered as heretics for denying the supremacy of the Patriarch has been put to rest in the Samudayam suit, cannot hold the field. The Catholicos has altogether erased the Patriarch from the already reduced vanishing point. The suit was not maintainable on behalf of the plaintiffs and defendants were also not made *eo nomine* representatives of other Parishioners. As such the 1995 judgment does not bind the appellants. The Episcopal character is to the extent so declared in the 1934 Constitution. It was not mentioned which Patriarch Churches are to be governed by the 1934 Constitution. This Court has decided differently about Kananaya Churches. On that parity of reasonings, this Court should hold that Malankara Churches are also to be governed by their own Constitution or Udampady. The right to come out has to be given because fundamental faith has been breached which they reposed in the supremacy of Patriarch of Antioch. When two factions are there and the community is divided, it is not the function of the court to compel the divided community to have single leadership against the will of one of the two factions. If there is a divided religious community to accept one particular leader would constitute an infringement of freedom of religion. The principle of *ex debito justitiae* cannot convert itself into an instrument of injustice or vehicle of oppression. He has buttressed the point in additional written submissions also. Things have reached a point of no return and they have adopted a different Constitution of 2002. Catholicos faction and patriarch faction are irreconcilable. They are different in faith, in affairs and one faction cannot overreach the other. Church be allowed to administer under the 2002 Constitution.

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A 56. Shri Shyam Divan, learned senior counsel, appearing on behalf  
 or respondent No.14 supporting the appellants in CA No.3674 of 2015,  
 relying upon various decisions urged that the respondent Church is a  
 public Trust of religious nature. Its administration is under registered  
 Udampady dated 13.12.1913. As per section 92, CPC, the court was  
 B required to frame a scheme of administration of Trust by enforcing the  
 binding terms of 1913 Udampady. The Udampady has not been altered  
 or overridden by any subsequently registered document. The 1934  
 Constitution is not a registered document. It does not in any manner  
 impinge, affect or touch upon much less override the 1913 Udampady.  
 C None of the provisions of the 1934 Constitution divests the property  
 from trustees as per 1913 Udampady.

57. It was submitted by Shri V.K. Biju, learned counsel in C.A.  
 No.5410 of 2017 that the High Court has erred in relying on minority  
 view of the 1995 judgment. The religious rights and temporal rights of  
 the Parishioners are intertwined as per custom and faith. Therefore  
 D cannot be separated. An essential part of religion is a complete dedication  
 to belief and the same cannot be changed. Spirituality also forms part of  
 the religion and cannot be separated so rights under Articles 25 and 26  
 cannot be curtailed. Provisions of Order 1 Rule 8 CPC have not been  
 followed. The illegal amendment could not have been allowed. The 2002  
 E Constitution of the Patriarch group holds the field. The same is in  
 consonance with Articles 25 and 26 of the Constitution.

58. Shri Philip John, learned counsel appearing in C.A. Nos.3674  
 of 2015 and 3682 of 2015 has relied upon the 1913 Udampady, and has  
 urged that the Catholicos has breached the Constitution of 1934 by filing  
 a writ petition against the entry of Patriarch in Malankara Church. The  
 F Parish Church is an independent and autonomous Trust. He has referred  
 to various judgments and submitted that apostate's succession from St.  
 Peter to Patriarch of Antioch is the basic faith of Malankara Church.  
 He has also questioned the amendment made in sections 7, 8 and 43 of  
 the 1934 Constitution and in the year 2011. Vicar has to do both religious  
 G and spiritual functions as per the 1934 Constitution. On behalf of  
 intervenor Shri Ritesh Kumar has supported the case set up by appellants.

#### **CONTENTIONS ON BEHALF OF RESPONDENTS:**

59. Shri K.K. Venugopal, learned senior counsel appearing on  
 behalf of respondent No.1 in Kolenchery Church matter has submitted

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that the present appeal arises out of the civil suit and the same be confined to the issues raised in the suit, i.e., whether the Church in question is to be governed by the 1934 Constitution or the Udampady of 1913. It was further urged by him that certain issues are covered by *Moran Mar Basselios v. T. Paulo Avira* AIR 1959 SC 31 (*supra*) and the 1995 judgment. They are:

- (a) The 1934 Constitution of the Malankara Church was validly adopted at the M.D. Seminary meeting held on 26.12.1934.
- (b) Malankara Orthodox Syrian Church is Episcopal to the extent declared by the 1934 Constitution. The said Constitution governs the affairs of the Parish Churches and shall prevail.
- (c) The 1934 Constitution was accepted by the persons belonging to the Patriarch faction.
- (d) The power of the Patriarch does not extend to the governance of the temporalities of the Malankara Orthodox Syrian Church.
- (e) The Patriarch in the year 1964 took care to have the territorial jurisdiction of the Catholicos duly defined and delimited by excluding certain areas in the Middle East from the jurisdiction of the Catholicos.

Learned senior counsel has also pointed out certain significant developments that have taken place after the 1995 judgment.

This Court has approved certain amendments to the 1934 Constitution vide the judgment of 1996 and has passed the consequential decree and modified it in the year 1997. Justice V.S. Mälmath had conducted the elections under orders of this Court that has been upheld by this Court. The Malankara Association by the majority elected Marthoma Mathews II (Catholicos of the East) as the Malankara Metropolitan. This Court has declared the same to be final and binding and was not subjected to any challenge in any court or before any other forum. The Patriarch faction initiated the execution proceedings, pursuant to which elections were held in 2002. It was stated in the execution petition filed by the Patriarch faction that they had accepted the 1934 Constitution. The Metropolitans have also affirmed affidavits to the said effect. Thus, the members of the Patriarch faction accepted 1934 Constitution and the 1995 judgment as binding. Learned senior counsel further submitted that in view of section 132 of the 1934 Constitution all

A agreements, offices, and practices that are not inconsistent with the provisions of the Constitution are made ineffective and annulled. The Udampady of 1913 being inconsistent with the provisions of the 1934 Constitution stands annulled and is ineffective. He has submitted a comparative chart indicating inconsistencies between the two to bring home the submissions. It was further submitted by him that formation of

B new Church and Constitution in 2002 was a subterfuge to bypass the decision rendered in 1995. The Patriarch faction ought to have participated in the elections directed by this Court as per the 1995 judgment. The cause of action was initiated in 2002 and the Patriarch faction also framed a new Constitution in 2002 just to get rid of the

C judgment of this Court. The 2002 Constitution is inconsistent with the 1934 Constitution and cannot prevail. Learned senior counsel has further pointed out the role of the Patriarch and the Catholicos under the 1934 Constitution. He has attracted our attention to sections 1, 2, 94, 98, 100 and 101. He has submitted that the prime jurisdiction regarding the

D temporal, ecclesiastical and spiritual administration of the Malankara Church is vested with the Malankara Metropolitan as per section 94. As per section 98, Catholicos may also hold the office of the Malankara Metropolitan. Section 100 declares that the powers of the Catholicos include the consecration of Prelates, presiding over the Episcopal Synod, declaring its decisions and implementing them, conducting the

E administration as the representative of the Synod and consecrating the Holy Moron. It was further urged that as per section 101 Malankara Church shall recognize the Patriarch, canonically consecrated with the co-operation of the Catholicos. It was further submitted by him that the present proceedings are an attempt to reopen the issues that stand

F concluded by the earlier judgments. This Court in the 1959 judgment and also in the 1995 judgment has affirmed adoption of the 1934 Constitution. The 1934 Constitution contains the provisions dealing with properties of the Parish Churches as well in sections 23, 27, 39 and 40. In view of the 1934 Constitution that contains a scheme of administration, there is no question of framing of a scheme under section 92 CPC. By framing a

G new Constitution in the year 2002 the persons concerned had abandoned and repudiated the Malankara Church but also the Trust that exists with regard to each Parish Church. Having done so they are not entitled to relief under section 92 CPC. It is open to any member of the Church in an exercise of his/her rights under Article 25 of the Constitution of India to leave the Malankara Church to follow any other faith of his/her choice.

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However, the contention that a majority of the Parishioners are free to decide to leave the Malankara Church and to take away or continue to enjoy the properties of the Parish Churches is wholly untenable. The properties of the Parish Churches do not vest in the Parishioners. The properties held in Trust vest in the trustees and not in the beneficiaries as laid down in *Chhatra Kumari Devi v. Mohan Bikram Shah & Ors.* AIR 1931 PC 196. The trustees as per the 1934 Constitution are Vicar and lay steward or alternatively the trustees of the Malankara Church. The Parishioners cannot by the majority or otherwise, claim any title to the properties of the Parish Churches and that would be defeating the trust itself. Section 125 of the 1934 Constitution deals with a situation where members of the Malankara Church leave the church and provides that in such a case the departing members have no right over the properties. The same will remain the church property. Thus frequent disputes arose due to the refusal of the Patriarch faction to abide by the 1934 Constitution. The only manner of maintaining amity and harmony in the Malankara Church is to direct all parties to abide by the letter and spirit of the Constitution and to create peace and harmony.

60. Shri Krishnan Venugopal, learned senior counsel appearing on behalf of respondent No.2 in C.A. No.3682 of 2015 urged that the dispute concerns one of the oldest Christian churches in the world, the Malankara Church also known as the Syrian Orthodox Church of the East founded in India in 52 A.D. The appellants have travelled beyond their pleadings in the arguments. The majority cannot take away the property of the Church in an exercise of a right under Article 25. In the 1995 judgment, this Court has held that the 1934 Constitution shall govern and regulate the affairs of the Parish Churches insofar as it provides for the same. He has taken this Court to various provisions of the 1934 Constitution. As per the Constitution, even a majority of the Parishioners in the Parish Assembly by themselves are not able to take the movable or immovable properties out of the ambit of the 1934 Constitution without the approval of the church hierarchy. He has referred to sections 23, 37, 124, 125 of the 1934 Constitution. He has also referred to certain decisions of House of Lords etc. Since there is no declaration of trust available on record the Court may go by the usage or custom prevalent in the church to determine the competing claims made by rival factions. The Kolenchery Church had been administered only under the 1934 Constitution and not by the 1913 Udampady. The judgments of 1959 and 1995 have upheld the 1934 Constitution. By swearing allegiance to the

- A 2002 Constitution, the Parishioners cannot take away the assets of the Kolenchery Church. It was further submitted that the cooperation and consultation between Malankara Association and Patriarch of Antioch are possible only if the Patriarch is willing for it but he cannot act unilaterally as held by this Court in the 1995 judgment. The Patriarch can only be canonically consecrated with the cooperation of the Catholicos.
- B The Parish Churches that have participated in the Elections of Malankara in 2002 within the framework of the 1934 Constitution will remain bound by it and that their assets will remain with their respective endowments and cannot be taken away by the Parishioners. The Parish Churches are bound by the 1934 Constitution. The High Court has recorded a
- C finding that the Kolenchery Church was never administered as per the Udampady of 1913 for which various reasons have been given. Evidence has been relied upon. There is cogent, oral and documentary evidence that the Kolenchery Church was governed by the 1934 Constitution. The 1913 Udampady is not a trust deed and it does not govern the
- D administration of the Church. The plea that it governs the administration of the Church is barred by constructive res judicata in view of the 1959 and 1995 judgments. The trust has not been created by the document. It was created in the 7th Century. It was a pre-existing trust not created by the 1913 Udampady. There are no specific averments in the plaint of
- E mismanagement and maladministration of the Church, which is a condition precedent for framing a scheme under section 92. No declaration as to rights of property can be given in a suit under section 92 CPC. The Patriarch faction boycotted the elections conducted pursuant to the judgment of this Court in 1995 in March 2002 and cannot seek any indulgence from this Court having violated the dictum of this Court. The
- F report of Justice Malimath has been accepted as such. The appellants are not entitled to any relief.

61. Shri E.M.S. Anam, learned counsel appearing on behalf of the respondents in C.A. Nos. 3674 of 2015, 3681 of 2015 & 3683 of 2015 has addressed on the scope of the suit. The Church is governed by the 1934 Constitution. Plaint is silent with respect to the properties. There
- G is no pleading regarding the acquisition of the properties, when and how they were acquired, what was the purpose of the acquisition, from where did the consideration come, and from whom the properties were purchased. Title deeds have not been produced. No evidence with respect to a payment of taxes, revenue, income etc. has been filed. The
- H Parishioners have no right to walk out of the church along with properties

by a referendum or election. There is no pleading that Parish properties vest with the Parishioners. Thus the courts below had no occasion to consider this question. No Parishioner or any person who made the dedication can claim a right or a share in the property of the church. Properties are to be administered as per the 1934 Constitution. A group of Parishioners cannot claim any right, title or interest in the Parish property. They cannot take away the property by forming of the new Church and the Constitution of 2002. Learned counsel has relied upon sections 23, 37 and 39 of the 1934 Constitution with respect to acquisition, vicar and lay steward and properties and he has also referred to sections 54, 61, 62, 68, 85 and 94 regarding effective control and management of Parish properties by the hierarchy of authorities like Vicar, lay trustee, Parish Managing Committee, Secretary, Metropolitan, Diocesan Assembly, Diocesan Council, Malankara Metropolitan etc. The question raised is beyond the scope of the civil suit. Appointment and transfer of Vicars are temporal matters and not spiritual. The Patriarch never had the power of appointment of Vicars of Parish Churches as provided in section 40 of the 1934 Constitution. The Patriarch has himself accepted the 1934 Constitution and revival of Catholicos by Kalpanas A-13 and A-14. The power which stood vested in him was reduced to a vanishing point has been held by this Court. There are more than 2000 Parish Churches, only in less than 1% of Parish churches, the Patriarch group could cause disputes by resorting to violence. Patriarch group apparently convinced in 2002 that they constitute a minuscule minority, boycotted the election and convened a parallel meeting and formed a new Church under a new Constitution of 2002. Udampady does not create, declare, assign, limit or extinguish any right over the immovable property and as such its registration is of no consequence. Udampady cannot prevail over the Constitution. The contention is barred by Order 2 Rule 2 and by virtue of Explanation 6 to section 11 CPC. The educational institutions are governed by Kerala Education Act, 1959. Section 6 of the said Act imposes restrictions on alienation of properties of school. The school is governed by bye-laws which are statutorily made and approved by the said Act and the Rules. Thus Udampady of 1913 does not govern educational institutions. Elections have been duly held as held by two courts. The reliefs claimed in the suit are not bona fide. Parish properties do not vest in the Parishioners. The assets of the Parish Churches are to be governed by the 1934 Constitution and that of educational institutions as per the Act of 1959 and not by Udampady of 1913.

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A 62. Shri Chander Uday Singh, learned senior counsel appearing  
on behalf of the respondent in CA No.8789 of 2015 has submitted that  
the 1934 Constitution vests the power of appointment of Vicars in the  
Diocesan Metropolitan. In addition, he submitted about the Seminary  
Suit, Arthat Suit, Samudayam Suit, the 1995 judgment and subsequent  
B position up to 2002 till holding of elections pursuant to the judgment of  
1995. It was contended that certain matters stood concluded. The  
appellants have violated the mandate of the 1995 judgment of this Court,  
having dodged the elections as directed in the consent orders of this  
Court. The patriarch faction tried to overreach the court by framing a  
new Constitution even while this Court was hearing Justice Malimath  
C report and thus they are not entitled to any indulgence in the appeals.  
The approved Canon of the Church is the Hudaya Canon written by Bar  
Hebraeus i.e. the Canon as the one printed in Paris in the year 1898  
wherein it is stated that the Patriarch of Antioch shall not enter the  
eparchy of Tigris by way of administration, except when invited. The  
D creation of Catholicos in 1912 in Malankara conferring jurisdiction over  
India, Ceylon, and Burma was neither against the scriptures nor faith as  
held by this Court in the 1995 judgment. He has also referred to certain  
provisions of the Constitution. This Court has laid down in 1997 that  
every person claiming to hold any office or post in the church shall be  
bound by and shall swear allegiance to the 1934 Constitution.

E 63. In the case of Syrian Church at Mannathur, it was submitted  
by Shri E.M.S. Anam, learned counsel that certain dispute which took  
place in 2011 have been pointed out as to the performance of ceremonies  
of the Church and due to law and order problem created, the Sub-  
Divisional Magistrate took possession of the D-1 Church on 25.12.2011.  
F Udampady of 1890 does not hold the field. The Church had been  
administered under the 1934 Constitution as reflected from accounts  
etc. The Patriarch faction illegally conducted a parallel meeting on  
20.3.2002 at Puthencruz and formed a new Sabha called Jacobite Syrian  
Christian Church and framed the 2002 Constitution to bypass the judgment  
of this Court and to create pandemonium and chaos and the pothuyogam  
G dated 30.3.2003 was convened by the Vicar, and the members of the  
erstwhile Patriarch faction demanded adoption of the 2002 Constitution  
which was refused by the Vicar and the majority of Parishioners. The  
2002 Constitution has never been adopted or accepted. Udampady was  
not required to be compulsorily registered. It was not the document of  
H the creation of a Church but only for its administration.

64. Following questions arise in the matter:

A. Whether 1995 judgment is binding the appellants? If yes, to what extent?

B. Abandonment of pleas/objections to revival of Catholicate, the validity of 1934 Constitution.

C. In Re: Parishioners have right to follow own faith under article 25 of the Constitution of India and manage affairs under Article 26 of Constitution of India.

D. Repudiation of spiritual authority/ supremacy of Patriarch by the Catholicos.

E. In Re: 1934 Constitution is in terms of a contract, enforceable at present.

F. In Re: Udampady – Enforceability, of binding nature and 2002 Constitution

G. Effect of non registration of the 1934 Constitution and of registered Udampady.

H. Maintainability of Mannathur Church suit.

I. Framing of Scheme under Section 92 of CPC

J. Whether in the facts interim arrangement to continue.

**IN RE: WHETHER THE 1995 JUDGMENT IS BINDING ON THE APPELLANTS? IF YES, TO WHAT EXTENT?**

65. It was submitted by Shri K. Parasaran, learned senior counsel and other learned counsel appearing on behalf of the appellants that the findings recorded in para 158(8) of the 1995 judgment which became part of the decree, that so far as the declaration to the effect that the Malankara Church is Episcopal in character is concerned, this Court had held that it is Episcopal to the extent it is so declared in the 1934 Constitution. The said Constitution also governs the affairs of the Parish Churches and shall prevail. It was submitted by learned senior counsel that the decree runs contrary to the observations made in Para 154 of the judgment in which it has been mentioned that in the absence of the Parish Churches it cannot be declared that the properties held by Malankara Parish Churches vest in the Catholicos. In our opinion, the submission is wholly untenable. The representative suit was decided in

A 1995 and the judgment is binding even on those who were not parties to the case. All the Parishioners are bound by the judgment to the extent it has decided the matter. There is no conflict in the decree as well as the aforesaid observations that have been made by this Court. The majority opinion has left open the question that the property whether it is held by the Parish Churches or vested in the Catholicos and Para 155(8) deals with other rights and nature of the Church to be episcopal and with respect to the applicability of the 1934 Constitution the judgment is final, conclusive and binding in these cases.

C Though on the basis of *Bhikhi Lal v. Tribeni* AIR 1965 SC 1935 it was submitted that the decree has to be in accordance with the judgment, we find that the decree is wholly in tune with the judgment and the issues which were effectively decided by this Court and what was left open is absolutely in no conflict with the findings recorded in the judgment and in the decree. The decree is in accordance with the aforesaid dictum of this Court.

D 66. Learned senior counsel also urged that as per section 35 of the Specific Relief Act, 1963 the declaration made by this Court is binding only on the parties to the suit or persons claiming through them respectively. The appellants were not parties to the suit nor they are claiming through the parties therein. Relying on *Razia Begum v. Sahebzadi Anwar Begum*, 1959 SCR 1111, it was urged that the declaration operates only in persona. We are unable to accept the submission. The relief which was sought in the main suit and led to the 1995 judgment was to declare the Malankara Church to be Episcopal in character and is not a union or federation of autonomous church units and is governed in its administration by the Constitution of the Malankara Church. It was also prayed that defendants 1 to 3 has no competence to ordain priests and deacons for Malankara Church and that they were not legally consecrated Metropolitans of the Malankara Church and defendants 4 to 8 were not legally ordained priests or deacons of the Malankara Church. Prayer was also made to declare that any priest who refuses to recognize the authority of the first plaintiff and other Metropolitans under him was not entitled to administer in any of the Malankara churches or its institutions. Permanent prohibitory injunction was claimed against defendant Nos.1 to 3 from ordaining priests or deacons or performing any other sacraments, service etc. for the Malankara Church or its institutions. The Division Bench had decreed

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the main suit. In the 1995 judgment this Court referring to the Year 1654 events, observed that the authority of the Patriarch extended only to spiritual affairs but not to the temporal affairs of the Malankara Church. There was the revival of Catholicate in 1912 by Patriarch Abdul Messiah, and that brought a qualitative change in the situation. A-14, the Kalpana was issued which fact was not disputed by the Patriarch group, and A-13 which was preceded by A-14 empowered the Catholicos to ordain Metropolitans and other officials of the Church in accordance with the canons of the Church and also to consecrate holy Moron. The powers of consecrating holy Moron that vested in Patriarch, came to be vested in the Catholicos by the Patriarch himself.

67. The third Catholicos was elected as the Malankara Metropolitan and thus the powers of both were concentrated in one person i.e. the spiritual and temporal powers. This Court also observed that the Patriarch in the year 1972 could not have exercised the power of appointment of getting ordaining the priests and deacons through his delegate as observed in Para No. 134 of the 1995 judgment. This Court clearly held that even if it is held that by Kalpana's A-13 and A-14 the Patriarch is not denuded of the powers delegated by him to the Catholicos, he could not have unilaterally exercised those powers which were delegated and he could have exercised those powers thereafter in consultation with the Catholicos and the Malankara Sabha (Association) and of course in accordance with the 1934 Constitution. This Court also held that it was necessary for the reason (i) to avoid creating parallel authorities leading to conflict and confusion and (ii) the acceptance by the local people. Thus this Court clearly held that the Patriarch could not have purported to exercise unilaterally the powers delegated by him to the Catholicos under A-14.

68. This Court also held that when the Patriarch had recognized the Catholicos, he did so with the full knowledge. Reliance was placed on Kalpana Ex. A-19 dated 9.12.1958. It was also held that Kalpana's A-19 and A-20 were not issued in an abrupt fashion. Under Kalpana Ex. A-20 the Catholicos accepted the Patriarch subject to the Constitution passed by the Malankara Association. The members of the Patriarch group swore loyalty to the 1934 Constitution. The Patriarch abandoned whatever objection he had by his acts and declarations in the year 1964 when he came to India on invitation from the Malankara Synod and consecrated and duly installed the new Catholicos who was elected by the Malankara Association in accordance with the 1934 Constitution.

A Before that, the Patriarch also took care to define the territorial jurisdictions of the Patriarchate and the Catholicate. The Middle East that was supposed to be under the jurisdiction of the Catholicos was excluded from his jurisdiction confining his authority to India and East alone. In our opinion this defining of the territorial jurisdiction also recognized the power of the Catholicos both in spiritual as well as temporal matters.

69. This Court had also found that it was not open to the Patriarch or his followers to contend that revival of Catholicate was not in accordance with the religious tenets and faith of the Syrian Jacobite Christian Church; that the Constitution of 1934 was not duly and validly passed. Thus this Court also found that the revival of Catholicate reduced the power of Patriarch to a vanishing point. The power and authority of the Catholicos as per Kalpanas A-13 and A-14 were affirmed, re-enforced and enlarged in the 1934 Constitution.

70. This Court has clearly held that the Patriarch could not have unilaterally appointed priests etc. through his delegate. It is one thing to say that the Patriarch could do these things in cooperation with the Catholicos but the ordaining of the priests and Metropolitans by him and his delegate without reference to and over the protestations of the Catholicos, was certainly not the right thing to do since it purported to create a parallel administrative mechanism for the church in spiritual/temporal matters.

The aforesaid findings and the declaration in the aforesaid decree that was passed in the 1995 judgment extracted above, in a representative suit, is binding. This Court in *R. Venugopala Naidu & Ors. v. Venkatarayulu Naidu Charities & Ors.* (1989) Supp 2 SCC 356 has dealt with the suit under section 92 and Order 1 Rule 8 of CPC and it was held that such a suit is the representative action of a large number of persons who have a common interest. The suit binds not only the parties named in the suit but all those who are interested in the trust. It is for that reason Explanation 6 to section 11 CPC constructively bars by res judicata the entire body of interested persons from re-agitating the matters directly in issue in an earlier suit under section 92 CPC. This Court has laid down thus:

“11. It is not necessary to go into the finding of the High Court that two of the appellants being Muslims can have no interest in

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the trust as the other two appellants claim to be the beneficiaries of the trust and their claim has not been negatived. Moreover, the trust has been constituted to perform not only charities of a religious nature but also charities of a secular nature such as providing for drinking water and food for the general public without reference to caste or religion.”

Section 11 read with Explanation 6 is extracted hereunder:

“Section 11: No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation VI- Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.”

71. Order 1 Rule 8 is an exception to the general rule that all persons interested in the suit are to be made parties thereto. The object for which the provision is enacted is to provide an exception to the ordinary procedure in a case where common rights of community or members of such association or large section are involved. It will be practically difficult to institute the suit under the ordinary procedure by impleading every person in which every individual has to maintain account by a separate suit and to avoid numerous suits being filed for a decision on the common question. Order 1 Rule 8 had been enacted so as to simplify the procedure. In case parties have bona fide litigated the question and there had been no collusion in such a suit, the decision would bind the others. The rule entitles one party to represent many and the action is maintainable without joinder of other parties. Order I Rule 8 pre-supposes that there are numerous persons having the same interest. One or more such persons with permission of the court may sue or be sued or may defend such suit on behalf of the persons so interested. In such a case notice has to be given as per Order I Rule 8(2) by way of public advertisement and then any person on whose behalf or whose benefit the suit is instituted or defended has a right to apply to the court to be made a party to such a

A suit. It is provided in Order I Rule 8(6) that the decree in a suit under this rule shall be binding on all the persons on whose behalf or for whose benefit the suit is instituted or defended, as the case may be. As per the mandate of the Order I Rule 8(6), the finding that was recorded in the earlier suit that was decided in 1958 as well as in 1995 is binding insofar as the questions decided in a representative character. The provision to Exception 6 of Section 11 applies to such a suit as held in *Kumaravelu v. Ramaswami*, AIR 1933 PC 183. This Court has decided the issue in 1995 suit to the extent that the parties were having the common interest as contemplated in Order I Rule 8 and left open issues with respect to temporal matters in the absence of Parish Churches. To that extent only, we can decide the issues and other issues have to be taken as barred by the principle of *res judicata* as per Explanation 6 to section 11 and Order I Rule 8 CPC.

The submission that declaration under section 35 of the Specific Relief Act since *in personam* and the 1995 judgment has to be considered in that spirit, cannot be accepted in view of the aforesaid discussion.

Moreover, in the suit culminating into 1995 judgment the relief was not sought inter parties, it was not *in personam*. The reliefs that were sought were common to Malankara Church. Thus the provisions of section 35 cannot come to the rescue of the appellants so as to prevent the bar of *res judicata*. This Court in *Razia Begum* (supra) has also observed that section 43 of the old Specific Relief Act which is corresponding to section 35 of the Act of 1963 is not exactly of *res judicata*. It was open to the appellants to become party in the earlier representative suit to defend the common rights which were agitated. Thus, they cannot escape the rigour of the aforesaid provisions and *res judicata*.

72. It was submitted that disputes as to faith and worship in the church have to be decided in their presence so as to bind the Parishioners. In our opinion, the Parishioners were parties in the previous suit decided in 1958 and 1995 and earlier thereto. The question cannot be reopened again and again by them on the ground that they were not parties individually, otherwise the representative suit and issues as well as the right of suing in representative capacity, would lose entire significance. No doubt it is true as held in *Deoki Nandan v. Muralidhar* 1956 SCR 756 that the true beneficiaries of religious endowments are not the idols but the worshippers. This principle has also been reiterated in *Veruareddi*

*Ramaraghava Reddy v. Konduru Seshu Reddy* 1966 Supp SCR 270 and *Bishwanath v. Shri Thakur Radhaballabhji* (1967) 2 SCR 618. There is no dispute with the proposition that the persons who go in only for the purpose of devotion have a greater and deeper interest in temples than mere servants who serve there for some pecuniary advantage. The decisions are based on Hindu religion. However, the principle is one of law applicable to all religious institutions including the churches having a public character. A B

73. Much was sought to be extracted from following observations made by this Court in Para 163 of the 1995 judgment:

"... When a particular people say that they believe in the spiritual superiority of the Patriarch and that it is an article of faith with them, the Court cannot say "no; your spiritual superior is the Catholicos". The guarantee of Article 25 of the Constitution has also got to be kept in view. ... In all the facts and circumstances of the case, it would be enough to declare that by their acts and conduct, D-19 has accepted that they are an integral unit within the Malankara Church and that therefore, the 1934 Constitution of the Malankara Church shall govern them but subject to their own Knanaya Constitution until such time the Knanaya Church Samudayam decides otherwise." C D E

[Emphasis supplied]. E

This Court with respect to Knanaya Church has made the aforesaid observations. There is no dispute with the aforesaid observation about the spiritual superiority of the Patriarch and that it is an article of faith with certain Parishioners and if for certain purpose, certain people may believe in the spiritual superiority of Catholicos, this is not for this Court to say that your spiritual superior is not the Catholicos. The question of appointment of Vicar and priests etc. is a secular matter and not a spiritual one as discussed hereinafter. Nothing prevents the Parishioners having faith in the Patriarch to believe in his spiritual superiority. The question in the instant case is how the Malankara Church is to be managed. As per the individual faith, they can have their own management or management has to be separated from the spiritual faith that is protected in the right as enshrined under Article 25 of the Constitution of India. F G

74. It was submitted that in case the declaration in the 1995 judgment that the 1934 Constitution is binding on the Parish Churches H

A even in their absence as parties, it would amount to the violation of the principle of natural justice. For this reliance has been placed on: *John v. Rees* [1969] 2 All ER 274, *National Textile Workers v. P.R. Ramkrishnan* (1983) 1 SCC 228 and *Institute of Chartered Accounts v. L.K. Ratna* (1986) 4 SCC 537

B 75. The submission cannot be made successfully as it ignores and overlooks the mandate of Explanation 6 to section 11 and provision of Order 1 Rule 8(6) CPC. The previous suit was a representative suit and the present appellants/churches are deemed to be parties in the representative suit as they could have applied for defending their rights or to sue as the case may be in the previous suits which had been decided

C by this Court. Thus there is no question of violation of the principle of natural justice in the case in hand. It was submitted on the other hand by Shri K. Parasaran, learned senior counsel, that in a case of dispute as to property right which has to be decided as per civil law only and not ecclesiastical law, and there has to be a specific plea with regard to

D properties of each Parish Church by giving particulars of such properties and no such plea is made by the plaintiffs in the suit out of which the appeal arises nor it was so raised in the 1995 case. We find that the aforesaid submission is of no use to the present appellants. On one hand, they have submitted that the previous 1995 judgment has left certain

E issues open as to properties of Parish Church, and on the other hand, they are raising the aforesaid submission. However, the aforesaid submission does not affect the declaration so granted in the instant case.

76. It was submitted that the 1995 judgment has no binding effect. It would be having only the evidentiary value under section 13 of the Indian Evidence Act. Reliance has been placed on the decision of this

F Court in *Sital Das v. Sant Ram Das* AIR 1954 SC 606, *Shrinivas Krishnarao Kango v. Narayan Devji Kango* 1955 1 SCR 1 and *Tirumala Tirupati Devasthanams v. K.M. Krisnaiah* (1998) 3 SCC 331. We are unable to accept the submission. The finding of this Court which operates as *res judicata* is about the binding nature of the 1934

G Constitution on the Parishioners and Parish Churches. This Court has made an exception under the aforesaid judgment with respect to Knanaya Church. It is not open to the Parishioners to contend that they can have their independent Constitution and not bound by the 1934 Constitution. The 1995 judgment cannot be misconstrued so as to confer the aforesaid right upon the Parishioners. The judgment is clear, unequivocal and

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unambiguous with respect to binding nature of the 1934 Constitution. It was submitted that the Parish Churches even after the 1934 Constitution, can decide to make their own Constitution in the exercise of their fundamental right to freedom of religion under Article 25 so as to follow the faith of spiritual supremacy of the Patriarch. The submission is attractive but is not acceptable as what is the meaning of spiritual supremacy, what is, inter alia, the effect of establishment of Catholicos and what is the delegation of power as per Kalpana made by the Patriarch, what he has accepted subsequently in 1958 and 1964 and the respective rights of management of Parish Church would have to be decided. In our opinion, it would not be open to any faction or group to adopt any particular system of management of Churches and to have a parallel system of managing authorities under the guise of spiritual supremacy. The mismanagement of Church and chaos cannot be permitted to be created for temporal gains or otherwise. There is a system of management, and the spiritual aspect which has been claimed under the guise of spiritual supremacy in the instant case, is an effort to illegally take over the management of the Churches by rival factions in derogation of delegation of powers, as would be apparent from the discussion to be made hereinafter with reference to the provisions of the Constitution and Kalpanas. The power with respect to Orthodox Syrian Church of the East is the Primate *i.e.* Catholicos. Though the Primate of the Orthodox Syrian Church is the Patriarch of Antioch. Certain spiritual powers have also been vested in Malankara Metropolitan, as per section 94 of the 1934 Constitution. The prime jurisdiction regarding the temporal, ecclesiastical and spiritual administration of the Malankara Church is vested with the Malankara Metropolitan subject to provisions of the Constitution and under the guise of spiritual supremacy an effort is being made to obtain the appointments of Vicars and Priests as parallel authorities so as to manage the churches and to render religious services under the guise of Patriarch. On the other hand, there are already Vicars and other authorities appointed as per the 1934 Constitution. Thus under the garb of spiritual supremacy which had reached a vanishing point due to the establishment of Catholicos and Kalpana, and the 1934 Constitution which has been accepted and is binding, a parallel system of governance of churches would not be in the interest of the church and would destroy it. It is not the fight for spiritual gains but for other purposes as is apparent from the discussion made hereinafter.

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A           77. Shri K. Parasaran, learned senior counsel is right in his  
 submission that the declaration sought in the form that the Church is  
 governed by the 1934 Constitution as upheld by the Supreme Court,  
 should not have been prayed in the form as if this Court had declared it  
 as it could be a ground and a legal aspect. The declaration ought to have  
 B           been sought that the Church is governed by the 1934 Constitution only  
 and not adding prayer as upheld by this Court. He is right that the  
 declaration in such form ought not to have been sought but in our opinion  
 further submission is not correct that the declaration so sought, has  
 adversely affected the decision of the trial court as well as the High  
 Court. We have gone through the decision and have found that we have  
 C           not been influenced by the declaration caused in the aforesaid form and  
 no prejudice has been caused to the appellants.

**IN RE: ABANDONMENT OF PLEAS/OBJECTIONS TO  
 THE REVIVAL OF THE CATHOLICATE, THE VALIDITY OF  
 THE 1934 CONSTITUTION.**

D           78. The appellants, Patriarch faction contend that the Catholicos  
 being seated on the Throne of St. Thomas, etc. cannot bind them in  
 perpetuity. It was submitted by Shri Parasaran, learned senior counsel  
 that at paras 155(6) and (7) in the majority opinion, Hon. Jeevan Reddy,  
 J. had observed that the Patriarch and the Patriarch group are deemed  
 E           to have given up or abandoned all or objections with regard to the revival  
 of the Catholicate, validity of the 1934 Constitution, Catholicos seat on  
 the Throne of St. Thomas in the East and acceptance of the Patriarch  
 by the Catholicos 'subject to the Constitution'. He has vehemently  
 contended that this, however, will not mean that the appellant is perpetually  
 bound to remain part of the Malankara Association for all times to come.  
 F           Nor can they be disabled from pursuing their faith i.e. the Patriarch  
 being the spiritual superior and appointing a Vicar, performing spiritual  
 ceremonies, conforming to that faith. Firstly we are unable to accept the  
 aforesaid submission. When the Church is a Parish Church and since  
 time immemorial it is a Parish Church and is a part of Malankara Church,  
 G           it has to perpetually remain as such. Under the garb of pursuing their  
 faith of the Patriarch being superior, they cannot create a parallel system  
 of appointing a Vicar for performing spiritual/religious ceremonies  
 conforming to that faith, as an appointment of Vicar is not a spiritual  
 matter. It is a secular matter. Thus the submission so as to dilute the  
 finding at para 155(6) and (7) of the 1995 judgment cannot be accepted.  
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The decision in *Sha Mulchand & Co. Ltd. v. Jawahar Mills* 1954 SCR 351, a decision of 4-Judge Bench, has been relied upon and the same is reproduced below: A

“... Unilateral act or conduct of a person that is to say act or conduct of one person which is not relied upon by another person to his detriment, is nothing more than mere waiver, acquiescence or laches, while act or conduct of a person amounting to an abandonment of his right and inducing another person to change his position to his detriment certainly raises the bar of estoppels. ... whatever be the effect of mere B

Waiver, acquiescence or laches on the part of a person on his claim to equitable remedy to enforce his rights under an executory contract, it is quite clear, by the authorities, that mere waiver, acquiescence or laches which does not amount to an abandonment of his right or to an estoppel against him cannot disentitle that person from claiming relief in equity in respect of his executed and not merely executory interest... C D

A man who has a vested interest and in whom the legal title lies does not and cannot lose that title by mere laches or mere standing by or even by saying that he has abandoned his right, unless there is something more, namely inducing another party by his words or conduct to believe the truth of that statement and to act upon it to his detriment; that is to say, unless there is an estoppel, pure and simple. It is only in such a case that the right can be lost by what is loosely called abandonment or waiver, but even then it is not the abandonment or waiver as such which deprives him of his title but the estoppels which prevents him from asserting that his interest in the shares has not been legally extinguished, that is to say, which prevents him from asserting that the legal forms which in law bring about the extinguishment of his interest and pass the title which resides in him to another, were not duly observed. E F

Fazl Ali., J. and I endeavoured to explain this in *Dhiyan Singh v. Jugal Kishore* - What happens is this. The person estopped is not allowed to deny the existence of facts, namely the actings of the parties and so forth which would in law bring about the change in legal status, namely, the extinguishment of his own title G

A and the transfer of it to another, for estoppel is no more than a rule of evidence which prevents a man from challenging the existence or nonexistence of a fact. Once the facts are ascertained or by a fiction of law are deemed to exist, then it is those facts which bring about the alteration in legal status; it is not the estoppel as such nor is it the abandonment or waiver per se”.

B 79. It was further submitted that the decision of 4-Judge Bench is binding on a Bench of 3 Hon. Judges as laid down in *S.H. Rangappa v. State of Karnataka & Ors.* (2002) 1 SCC 538. The decision of 1995 is in conflict with the observations in *Sha Mulchand & Co. Ltd.* (supra).  
 C If *estoppel* was not pleaded the question of abandonment will not arise. It was also submitted that in Vattipanam Suit, the review was permitted on the ground that the following findings would not be reopened:

“(a) As to the authenticity of Ex.A-18, the version of Canon Law produced by Defendants 5,6 and 42.

D (b) As to the power of Patriarch to excommunicate without the intervention of the Synod; and

(c) As to the absence of an indirect motive on the part of the Patriarch which induced him to exercise his power of excommunication.”

E In the 1995 judgment, the ex-communication of the Catholicos was held to be invalid since there was no permissible or relevant ground for the same. Thus it was submitted that the supremacy of Patriarch cannot be denied by Catholicos group. Such a denial would alter the fundamental faith of the Patriarch followers who have been forced to  
 F form their own association for safeguarding their spiritual and religious interests. We find no merit in the aforesaid submission as the decision in *Sha Mulchand & Co.* (supra), is that the question of waiver, acquiescence or laches may sometime not amount to an abandonment of the right or create an *estoppel* in certain circumstances. A man who has a vested interest and in whom the legal title lies does not, and cannot,  
 G lose that title by mere laches or by saying that he has abandoned his right, unless there is something more; namely inducement of another party by his words or conduct to believe the truth of that statement and so as to make him act upon it to his detriment. Then such a person would be bound by *estoppel*. It is not abandonment or waiver, which prevents

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him from asserting that the legal forms were not duly observed. In the instant case the discussion which has been made in the 1995 judgment is too elaborate and is based primarily on various historical facts and background which clearly indicate that the Patriarch at no point of time had exercised temporal control and it was considered necessary to establish the office of the Catholicos so as to manage the Malankara Church which is a division of the Orthodox Syrian Church. The Malankara Church was founded by St. Thomas the Apostle and is included in the Orthodox Syrian Church of the East and the Primate of the Church is the Catholicos. It is apparent from Kalpana's, establishment of the office of Catholicos and other historical facts discussed in the judgments referred to in the 1995 judgment that once having created the office, it is not the plea of waiver or abandonment but the Kalpana issued by the Patriarch is binding upon him also. Thus it is a positive act and once having done so, the Patriarch is bound by it and cannot wriggle out of it and make the entire Parish Church system topsy-turvy. Thus the 3-Judge Bench decision in the 1995 judgment cannot be said to be contrary to the 4-Judge Bench decision in *Sha Mulchand* (supra) but on a closer scrutiny, *Sha Mulchand* (supra) does not buttress the plea of the appellants but negotiates against it. Too much cannot be made out of the observations made by this Court that the Patriarch cannot be said to have lost his spiritual supremacy over the Malankara Church but the fact that remains is that it has reached a vanishing point and the Church is to be managed as per the historical background, in accordance with the 1934 Constitution which has also the force behind it of the Patriarch himself in the form of Kalpana. The Parishioners can have faith in the spiritual supremacy of the Patriarch but not in all the matters. They have to give equal importance in the matter of management of the 1934 Constitution and cannot be permitted to commit regular breach and device ways to circumvent the judgment of this Court by one way or the other and under the garb of spiritual fight wrest the temporal control of the Churches. That the spiritual power of the Patriarch has reached to a vanishing point, has to be given the full meaning and it cannot mean that the powers can be exercised under the umbrella of spirituality to interfere in the administration of the Church and creating a parallel system of appointing Vicars and Priests etc. which will paralyze the functioning of the Churches for which they have been formed and it would be against the very spirit of creation of trust from time immemorial which inheres

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- A the concept that once a Trust always a Trust. No person under the guise of spiritual faith can be permitted to destroy a system which is prevailing for the management of such Churches and go on forming Constitution as per his will time and again. There is no need in case of any such Constitution as is framed in the year 2002. What is the guarantee that there would not be any other Constitution created by any other faction
- B for the administration of same Churches any day hereafter or in future? Once any Parishioner wants to change the 1934 Constitution, it is open to them to amend it as per the procedure. It is right that it therefore is not a Bible or holy book of Quran or other holy books which cannot be amended. The 1934 Constitution has been amended in the form of bye-
- C laws or regulations applicable for governance of Parish churches a number of times, as aforesaid, and it can still be amended to take care of the legitimate grievances, if any, but there appears to be none for which the fight has been going on unabated in the instant cases.

**IN RE: PARISHIONERS HAVE A RIGHT TO FOLLOW THEIR OWN FAITH UNDER ARTICLE 25 AND APPOINTMENT OF VICAR, PRIEST AND DEACONS ETC. AND MANAGE AFFAIRS UNDER ARTICLE 26 OF THE CONSTITUTION OF INDIA:**

80. It was submitted that the Parishioners have a right to follow their own faith under Article 25 of the Constitution of India and that the Preamble to the Constitution of India guarantees the liberty of thought, expression, belief, faith, and worship. Article 25 guarantees to all persons, the freedom of conscience and to profess, practice and propagate religion. Article 26 guarantees to all religious denominations the freedom to manage its own affairs in matters of religion. Again reliance has been placed upon the observations made by this Court in the 1995 judgment at para 163 that when a particular people say that they believe in the spiritual superiority of the Patriarch and that it is an article of faith with them, the Court cannot say “no, your spiritual superior is Catholicos”. As Article 25 permits a person to have such a faith, there is no dispute with the aforesaid proposition. It is open to any Parishioner to have faith in the spiritual superiority of the Patriarch. A right to freedom of professing one’s faith and religion is enshrined in Article 25 of the Constitution which gives freedom of faith and worship, subject to public order, morality and health and other provisions of Part III of the Constitution. The freedom is guaranteed to ‘persons’ as opposed to ‘citizens’ as in Article 19.

Therefore, each Parishioner has a right to freedom of religion. It was submitted by Shri K. Parasaran, learned senior counsel, that 'public order' was examined by this Court in *Ram Manohar Lohia v. State of Bihar* (1966) 1 SCR 709 wherein it was observed:

"The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. ... It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order". One has to imagine three concentric circles. Law and order represent the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not the security of the State."

81. It was further submitted by him that those who believe in apostolic succession through St. Peter forms one denomination (*viz.* Patriarch group) and those who believe in apostolic succession through St. Thomas forms another denomination (*viz.* Catholicos group) within the same religion (*viz.* Christianity). As to the concept" of denomination, this Hon'ble Court in *Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* 1954 SCR 1005 at 1022 held as follows:

"...The word "denomination has been defined in the Oxford Dictionary to mean "a collection of individuals classed together under the same name: a religious sect or body having a common faith and organisation and designated by a distinctive name". ...After Sankara, came a galaxy of religious teachers and philosophers who founded the different sects and sub-sects of the Hindu religion that we find in India at the present day. Each one of such sects or sub-sects can certainly be called a religious denomination, as it is designated by a distinctive name – in many cases it is the name of the founder – and has a common faith and common Spiritual organisation. The followers of Ramanuja, who are known by the name of Shri Vaishnabas, undoubtedly constitute a religious, denomination; and so do the followers of Madhwacharya and other religious teachers."

[Emphasis supplied] H

A This Court further observed (at pgs. 1028-1029) that:

“... Freedom of religion in our Constitution is not confined to religious beliefs only; it extends to religious practices as well subject to the restrictions, which the Constitution itself has laid down. Under Article 26(b), therefore, a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters. Of course, the scale of expenses to be incurred in connection with these religious observances would be a matter of administration of property belonging to the religious denomination and can be controlled by secular authorities in accordance with any law laid down by a competent legislature; for it could not be the injunction of any religion to destroy the institution and its endowments by incurring wasteful expenditure on rites and ceremonies. It should be noticed, however, that under Article 26(d), it is the fundamental right of a religious denomination or its representative to administer its properties in accordance with law; and the law, therefore, must leave the right of administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose. A law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under clause (d) of Article 26.”

[Emphasis supplied]

F 82. It was urged that the Vicar holds a very important position in the Church; he conducts the Holy Mass, the Confession, Anointing of the Holy Moron and other sacraments and ceremonies. He also collects the donations made to a particular Church. When the majority of the Parishioners who contribute to such donations belong to the Patriarch group, the use of such contribution to further the cause of Catholicos by the trustee would result in a breach of trust of the donors and beneficiaries.

G Appointment of the Vicar in a Patriarch-majority Church by the Catholicos who believes in apostolic succession through St. Thomas is also not in consonance with the faith of the Patriarch followers who believe in apostolic succession through St Peter. Confession is one of the most important sacraments. Those who believe in the superiority of Patriarch

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cannot be asked to make confession to a Catholicos Vicar. It conflicts with the faith of apostolic succession through St. Peter and not through St. Thomas.

83. On the strength of the aforesaid judgment, it was further urged by Shri K. Parasaran, learned senior counsel that the Patriarch group forming a religious denomination has a fundamental right to decide what rites should be performed in their Parish Churches, who would perform them and how they should be performed in accordance with their faith. It was further submitted by him that the Vicar holds a very important position in the Church; he conducts the Holy Mass, the Confession, Anointing of the Holy Moron and other sacraments and ceremonies. He also collects the donations made to a particular Church. When the majority of the Parishioners who contribute to such donations belong to the Patriarch group, the use of such contribution to further the cause of Catholicos by the trustee would result in a breach of trust of the donors and beneficiaries. It was further submitted by him as to the issue of 'faith', it is not relatable to a particular Canon, but to the mode of apostolic succession. The faith involved in the present case refers to apostolic succession from Jesus Christ viz. the blessings and Grace of Christ descend through an apostle viz. St. Peter or St. Thomas, as the case may be, and from the said apostle to the Pope/Patriarch who appoint a Vicar.

84. It was further submitted by Shri K. Parasaran, learned senior counsel that the Patriarch of Antioch is a Pope. Following apostolic succession, through Jesus Christ and St. Peter, the sacrament descends on the Patriarch. The Vicar primarily holds a religious office and represents the Patriarch, as if the Patriarch himself is present when confession is made to the Vicar. The definition of 'apostolic', as found in Ramanatha Aiyar's Law Lexicon (Vol.IV), is:

- Having full powers to represent the Pope as if he were present

The definition of 'Patriarch', as found in the Oxford Dictionary, is:

- A bishop of one of the most ancient Christian sees (Alexandria, Antioch, Constantinople, Jerusalem, and formerly Rome).
- The head of an autocephalous or independent Orthodox Church.

- A
- A Roman Catholic bishop ranking above primates and metropolitans and immediately below the Pope, often the head of a Uniate community.

The definition of Pope, as found in the Oxford Dictionary, is:

- B
- The Bishop of Rome as head of the Roman Catholic Church.
  - The head of the Coptic Church, the Bishop or Patriarch of Alexandria.

The definition of Vicar, as found in the Oxford Dictionary, is:

- C
- (in other Anglican Churches) a member of the clergy deputizing for another.
  - (in the Roman Catholic Church) a representative or deputy of a bishop.
  - (in the US Episcopal Church) a member of the clergy in charge of a chapel.
- D
- A cleric or choir member appointed to sing certain parts of a cathedral service.

85. Shri K.Parasaran, learned senior counsel, further submitted that the act of appointment of the Vicar may be a secular act but the office he holds is of a religious nature. The faith is that when confession is made to him it is transmitted to the Patriarch, then St. Peter, ultimately reaching Jesus Christ, and then the sinner is forgiven. If the Vicar does not owe his appointment or faith to the Patriarch, the flow of religious efficacy and blessings flowing through Jesus Christ, through St. Peter and then through the Patriarch are snapped. If confession is made to a Vicar who does not follow the Patriarch faith, it is not deem to be made in the presence of the Patriarch. Merely because the appointment of the Vicar may be a secular act, which does not lead to an inference that the functions exercised by him are also secular. The Vicar in order to be appointed has to meet the required spiritual qualification of owing allegiance to the Patriarch. It is for this reason that the District Collector thought it fit to make an interim arrangement, which is approved by this Court vide order dated 14.10.2015, under which two Vicars are appointed – one who follows the Patriarch faith and the order who follows the Catholicos faith. It is a sacrament for the reason that it flows through apostolic succession as if the Patriarch himself is present when the Vicar

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performs religious acts. That is why in the 1995 judgment, the majority declares the law, which is applicable to all Churches whether Malankara Church or Parish Church at Para 163, reproduced earlier. A

86. It was urged that a Vicar of a Catholicos group could not be thrust on a worshipper of Patriarch faith against his will. The freedom guaranteed under Article 25 of the Constitution of India will prevail over anything contained to the contrary in the 1934 Constitution. Fundamental rights guaranteed under Part III of the Constitution cannot be waived, nor can the principle of *estoppel* operate against an assertion of such rights as held in *Olga Tellis v. Bombay Municipal Corporation* (1985) 3 SCC 545. B

87. Shri Anam, learned counsel, urged that as per section 101 of the Constitution and relying on the Canon of 1898 the Patriarch has no right to interfere; C

“The relevant provision in the Canon is extracted below :

“The Patriarch shall not be consecrated without the agreement of the Maphrian, if he is alive. Otherwise, the Easterners have authority to consecrate themselves the Maphrian.”“ D

The canon law is an express bar from any person being consecrated as Patriarch ‘without the agreement of the Maphrian’. “Maphrian” is the Catholicos of the East as evident from Chapter VII of the same Canon. The said provision is extracted below :- E

“Henceforward the Great Metropolitan of the East has been granted authority to consecrate metropolitans in the East, like the patriarch and he shall be proclaimed Catholicos. When he is present in a synod of the westerners, his seat shall be placed above all metropolitans, along with the patriarch of Jerusalem.” F

That Maphrian is the Catholicos of the East is found in the judgment of this Hon’ble Court in 1995 Suppl (4) SCC 286. Thus any person NOT consecrated in accordance with the Canon approved under Sec. 5 of the 1934 Constitution is not a Patriarch recognized under Sec. 101 of the 1934 Constitution.” G

88. It was also submitted by Shri Anam, learned counsel, that the Malankara Orthodox Church was established as early as 52 A.D. by St. H

- A Thomas, an apostle of Jesus Christ, the Patriarch came to the Indian Church much later only in 1654. The events for more than a century indicate that he created dissension in the Indian church and ultimately re-established the office of the Catholicate. He submitted that by a limitation of the jurisdiction and delegation there was divestiture of the powers by the Patriarch and he could not have exercised those very powers in view of the Kalpana issued by him and the 1934 Constitution.

89. It is necessary to have a look into the episcopal nature of the Church and its history.

- C Meaning of the word “Episcopal” has been considered in para 79 of 1995 judgment with reference to various dictionaries by this Court thus:

“Episcopal’ is defined in *Webster’s Comprehensive Dictionary* to mean “of or pertaining to bishops. Having a government vested in bishops; characterised by episcopacy”, whereas ‘episcopacy’ is defined as under:

“Government of a church by bishops.”

*New English Dictionary of Historical Principles* by Sir John Murray, Vol. III, explains it to mean:

“Theory of Church Polity which places the supreme authority in the hands of episcopal or pastoral orders.”

‘Episcopacy’ is explained in the *Faiths of the World* by James Gardner, Vol. I, at p. 836 at under:

“[T]hat form of church government which recognises a distinction of ranks among the ministers of religion, having as its fundamental article that a bishop is superior to a presbyter.”

‘Bishop’ in the same book is defined as under:

“[O]ne who in episcopalian churches has the oversight of the clergy of a diocese or district.”

‘Metropolitan’ is defined in the same book at p. 445 as under:

“The bishop who presides over the other bishops of a province. In the Latin church it is used as synonymous with an archbishop. In England, the archbishops of Canterbury and York are both Metropolitans.... The title was not in use before the Council of

Nicea in the fourth century.... The rise of the authority of Metropolitans seems to have taken place without any distinct interference on the part of the church. The Council of Nicea was the first to give an express deliverance on the subject, particular with reference to the Alexandrian Church. The sixth canon of that council ran in these terms: 'Let the ancient custom which has prevailed in Egypt, Libya and Pentapolis, that the bishop of Alexandria should have authority over all these places, be still maintained; since this is the custom also with the Roman bishop. In like manner, at Antioch, and in the other provinces, the churches shall retain their ancient prerogatives.'

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90. It is apparent that the Syrian Orthodox Church of Malankara accept and acknowledge the theory of apostate's succession. In *Faiths of the World*, the word 'episcopalians' is explained and it is stated that it is a name given to those who hold that peculiar form of church government that is called 'episcopacy'. The Church of Rome is Episcopal in its constitution, and acknowledges the Pope as Universal Bishop, to whom all the various orders of clergy, cardinals, primates, and patriarchs, archbishops and bishops are subordinate. The Armenian Church is similar in government.

91. 'Congregationalism', how it is defined in various dictionaries has been quoted by this Court in the 1995 judgment in para 78 thus:

'78. 'Congregationalism' is defined in *New English Dictionary of Historical Principles* (by Sir John Murray, Vol. III, Part I, p. 245) as under:

"A system of ecclesiastical polity which regards all legislative disciplinary and judicial functions as vested in the individual church or local congregation of believers."

'Congregationalism' is defined in *Chambers Encyclopaedia*, Vol. IV, p. 13 as under:

"Congregationalism is the doctrine held by churches which put emphasis on the autonomy of the individual congregations. Congregationalism has for its sign manual the words of Jesus:

'Where 2 or 3 are gathered together in my name, there am I in the midst of them.' "

A In *Black's Law Dictionary* 'Congregation' is explained thus:  
 "An assembly or gathering; specifically, an assembly or society of persons who together constitute the principal supporters of a particular parish, or habitually meet at the same church for religious exercises."

B The word is explained in the *Faiths of the World*, Vol. 1, at p. 589 thus:

C "This word, like the term Church (which see) is sometimes used in a more extended and at other times in a more restricted sense. In its widest acceptation, it includes the whole body of the Christian people. It is thus employed by the Psalmist when he says, 'Let the congregation of saints praise Him.' But the word more frequently implies an association of professing Christians, who regularly assemble for divine worship in one place under a stated pastor. In order to constitute a congregation in this latter sense of the term, among the Jews at least ten men are required, who have passed the thirteenth year of their age. In every place in which this number of Jews can be statedly assembled, they procure a synagogue. Among Christians, on the other hand, no such precise regulation is found, our Lord himself having declared, 'Wherever two or three are met together in my name, there am I in the midst of them.' Guided by such intimations of the will of Christ, Christian sects of all kinds are in the habit of organising congregations though the number composing them may be much smaller than that fixed by the Jewish Rabbis."

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 F The definitions of 'congregationalism' and 'episcopal' have been discussed in para 80 of the 1995 judgment thus:

G "80. These definitions of 'congregationalism' and 'episcopal' have been extracted to give an idea how the expressions are understood as the entire submission of autonomy of the churches is based on whether the parishes are congregational or episcopal. The basic or essential characteristic as appears from the above definitions and explanation of 'congregationalism' and 'episcopal' is that in the former the authority vests in the congregation whereas in the latter it is controlled by the bishop as he is deemed to be successor of the apostle. That the Syrian Orthodox Church of Malankara accept and acknowledge the theory of apostle  
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succession is beyond doubt. In *Faiths of the World*, the word 'episcopalians' is explained and it is stated that it is a name given to those who hold that peculiar form of church government which is called 'episcopacy'. The Church of Rome is Episcopalian in its constitution, and acknowledges the Pope as Universal Bishop, to whom all the various orders of clergy, cardinals, primates, and patriarchs, archbishops and bishops are subordinate.... The Armenian Church is similar in government to the Greek Church, their Catholicos being equivalent in rank and authority to the Greek Patriarch.... All the ancient Eastern Churches, including the Copts, Abyssinians, and others, are Episcopalian. The Church of England is strictly Episcopalian in its ecclesiastical constitution. The claim, therefore, that they are congregational cannot be accepted."

The property of the church as per the aforesaid discussion of Halsburys' Laws of England vests in the endowment and not in the Parishioners. Thus the proposition that the Parish Churches are totally autonomous and independent in temporal matters, cannot be accepted.

92. 'Congregationalism' and 'episcopal' have also been considered in the 1995 judgment in paragraph 152 thus :

"152. Though in para (1) of the plaint in OS No. 4 of 1979 an assertion is made that "the Malankara Orthodox Syrian Church ... is an autocephalous division of the Orthodox Syrian Church which traces its origin to Jesus Christ and his apostles", the relief asked for in the plaint is for a declaration "that the Malankara Church is Episcopal in character and is not a union or federation of autonomous church units...". The expression 'Episcopal' appears to have been used in contrast to the expression 'congregational'. In the absence of any material brought to our notice with respect to the meaning of these expressions, we may refer to para 66 of the judgment under appeal where the meaning of these expressions has been explained. It reads thus:

"Episcopatism is defined in the New English Dictionary of Historical Principles — By Sir John Murray, Vol. III as 'Theory of Church Polity which places the supreme authority in the hands of episcopal or pastoral orders'. The same dictionary defines the word congregationalism as: 'A system of ecclesiastical polity which regards all legislative disciplinary and judicial functions as vested

A in the individual church or local congregation of believers.’  
Chambers Dictionary, Vol. 4, defines congregationalism as ‘the  
doctrine held by churches which put emphasis on the autonomy  
of the individual congregations’. Congregationalism has for its sign-  
manual the words of Jesus ‘Where two or three are gathered  
together in my name, there am I in the midst of them.’ “

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153. The Division Bench also referred to the judgment of the  
Kerala High Court in *John v. Rev. Thomas Williams*<sup>48</sup> on the  
meaning and content of the expression ‘congregationalism’. The  
judgment describes ‘congregationalism’ as one of the non-  
conformist Protestant denominations. Relying upon the  
C Encyclopaedia Britannica, it says that the congregationalism is  
the name given to that type of church organisation in which the  
autonomy of the local church or body of persons assembling in  
Christian fellowship is fundamental. It constitutes one of the three  
main types of ecclesiastical polity, the others being Episcopacy  
and Presbyterianism. It regards church authority as inherent in  
D each local body of believers, as a miniature realisation of the whole  
church which can itself have only an ideal corporate being on  
earth. While in practice it is religious democracy, in theory it claims  
to be a theocracy since it assumes that God himself rules directly  
through Christ. It springs from the religious principle that each  
E body of believers in actual church fellowship must be free of all  
external human control, in order the more fully to obey the Will of  
God as conveyed to conscience by His Spirit. The essential features  
of congregationalism are stated to be the autonomy or  
independence of the individual churches or organisations, though  
F in matters in which the individual charges are interested as a whole  
and in order to enable the churches to effectively fulfil their  
responsibilities, they may enter into unions. Congregationalism is  
stated to be the opposite of Episcopacy which means Government  
of the Church by the Bishops on the theory of apostolic succession.  
G In other words, the Bishops are supposed to be the successors of  
the apostles of the Christ. The congregationalists believe that every  
Christian has the right to perform all functions pertaining to the  
priestly office and permits the laymen to celebrate sacraments  
whereas in Episcopal Churches only the ordained priests can  
celebrate sacraments.

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154. On a consideration of the relevant material placed before it, the Division Bench has held that while the Orthodox Syrian Church including the Malankara Church is Episcopal in spiritual matters, in temporal matters it is not Episcopal. It referred, in our opinion rightly, to the judgment of the Royal Court of Final Appeal of Travancore in Seminary suit where it is observed:

“Parties agree that head of Syrian Church in this country or its Metropolitan should be a properly ordained Bishop and that regarding temporal affairs acceptance of Malankara Metropolitan as such by the community is necessary.”

It was further held in the said judgment that “while the ecclesiastical supremacy of the Patriarch has all along been recognised, authority of Patriarch never extended to Government of temporalities of the Church”. The Division Bench at the same time clarified that it does not mean to hold that the Metropolitan has the jurisdiction over the day-to-day management of temporal affairs of Parish Churches. The Division Bench has also referred to the Mulanthuruthy Synod resolutions which say that the Parish Churches have a degree of autonomy with certain supervisory powers alone being vested in the Managing Committee of the Association or Catholicos or the Malankara Metropolitan, as the case may be. The Division Bench has held that:

“Malankara Church though it has some episcopal characteristics is not a purely episcopal church. But we are not able to agree that the individual Parish Churches are independent churches or churches with independent status.... The Parish Churches are constituent parts of the Malankara Church and enjoy a degree of autonomy and the administration of the day-to-day affairs vests in the Parish Assembly and committee elected by the Parish Assembly subject to supervisory powers of the Metropolitan — and the provisions of the constitution of the Malankara Sabha do not affect this position.”

We are, however, of the opinion that in this suit no declaration can be granted affecting the rights of Parish Churches in their absence nor can it be declared that the properties held by Malankara Parish Churches vest in the Catholicos or the Malankara Metropolitan or the Metropolitan of the diocese

A concerned, as the case may be. Indeed, no such specific relief  
has been asked for in the suit and without impleading the affected  
parties, no declaration can be claimed by the plaintiffs that their  
church is episcopal in nature, if that declaration means that it gives  
the Catholicos/Malankara Metropolitan/the Metropolitan of the  
Diocese any title to or any control over the properties held by the  
Parish Churches. We have pointed out hereinbefore that the only  
place in the plaint where a reference is made to the properties of  
the Parish Churches is in para 24 where all that it is alleged is that  
the defendants and their partisans are trying to intermeddle in the  
affairs of individual churches and are attempting to make use of  
the properties of the church to further their illegal and unlawful  
objects. No list of parish properties is enclosed nor are the  
particulars of the alleged intermeddling mentioned in the plaint. In  
the state of such a pleading, the only observation that can be  
made herein is that the 1934 Constitution shall govern and regulate  
the affairs of the Parish Churches too, insofar as the said  
Constitution provides for the same. In this connection, the learned  
counsel for the appellants has brought to our notice the following  
facts: Inasmuch as the plaintiffs asked for a declaration that  
Malankara Church is an Episcopal Church and appended a list of  
more than one thousand churches to their plaint, several Parish  
Churches came forward with applications under Order I Rule  
10(2) of the Civil Procedure Code to implead themselves as  
defendants to the suit. All the applications were dismissed by the  
trial Judge against which a batch of civil revision petitions was  
filed before the Kerala High Court being CRPs Nos. 1029 of  
1975 and batch. It was contended by the revision petitioners (Parish  
Churches who were seeking to be impleaded in the suit) that if  
the first relief prayed for in OS No. 142 of 1974 (OS No. 4 of  
1979) is granted, it will affect the autonomy and individuality of  
the individual Parish Churches and, therefore, they should be  
impleaded as defendants to the suit. This argument was repelled  
by Khalid, J. (as he then was) in the following words:

H “I do not think that this apprehension is well-founded. Even  
under Order I Rule 10 a party does not have any inherent right to  
get himself impleaded; that lies in the discretion of the court on  
being satisfied that the petition is well-founded on merits. The  
counsel for the contesting respondents (plaintiffs) would contend

that all that the plaintiffs want is for a declaration of the supervisory and spiritual control over the Church." A

(Emphasis supplied)

Accordingly, the revision petitions were dismissed. If the plaintiffs mean merely spiritual control by saying episcopal, probably there may be no difficulty in holding that Catholicos and the Malankara Metropolitan have spiritual control over the Parish Churches, but if it means control over temporal affairs of, or title to or control over the properties of the Parish Churches beyond what is provided for in the Constitution, a declaration to that effect can be obtained only after hearing and in the presence of the Parish Churches concerned. It also appears that each of these Parish Churches/Associations has its own constitution, whereunder the general body of the Parishes is declared to be the final authority in temporal matters. All this is mentioned only to emphasise that in the absence of the Parish Churches and proper pleadings and proof, no declaration touching the Parish Churches can be granted in these suits. In para 103 of its judgment, the Division Bench has held that while the Malankara Metropolitan has supervisory jurisdiction over the Parish properties as provided in the 1934 Constitution, it cannot be said that the administration of the Parish properties vests in him. *It held that the administration vests in Parish Assemblies or Parish Churches, subject again to the provisions of the Constitution. In sum, we observe that the 1934 Constitution governs the affairs of the Parish Churches too insofar as it does.* The power of the Malankara Metropolitan or the Metropolitan in temporal affairs must be understood in these suits too in the same manner as has been declared in Samudayam judgment, i.e., with respect to the common properties of the Malankara Church as such." B C D E

(emphasis supplied)

93. In "The Encyclopedia of Religion", edited by Mircea Eliade, vol. 3, "Church Polity" has been discussed, its origin and system of appointment of deacons etc. Eventually all the dioceses and provinces of the Roman empire are subject to one of the five Patriarchs ("father-ruler), namely, the bishops of Rome, Antioch, Alexandria, Jerusalem, and Constantinople. Relevant portion is extracted hereunder: F G

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A “The governance of the Christian churches has assumed a variety of forms based on historical factors as well as on theological positions regarding the origin or root of ministerial functions. In a descending degree of local autonomy these forms are broadly classified as congregational, presbyter, or Episcopal, but within each category significant modifications exist. After a historical survey of church governance from its beginnings through the middle Ages, the organization of the major denominations will be considered individually.

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E One cannot speak with precision or certitude about ministry in the early church because it is difficult to date and evaluate the documentary evidence, including the New Testament writings, and because of differences of organization in the primitive local communities. At the conclusion of an eighty-year evolutionary process there emerged, apparently first at Antioch around AD 110, a threefold hierarchical leadership that gradually became normative throughout the Christian world. The hierarchy (“sacred rule”) consisted of three grades: a single bishop charged with the “supervision or over-sight” (episcopo) of the community; a group of consultors called presbyters (“elders”); and a subordinate group of deacons, who assisted in the administration of property. Certain functions, such as presiding at the Eucharist, were ordinarily reserved to the bishop. The distinction was thus made between the people and their leaders, soon called “clergy,” who were ordained, that is, set apart for the ministry by the imposition of the bishop’s hands. The local church presided over by the bishop was in time known as a “diocese” or “eparchy”.

F  
G Church organization gradually accommodated itself to the political divisions of the Roman Empire. The local churches in a Roman province constituted an ecclesiastical province under the presidency of an archbishop or metropolitan who was the bishop of the capital city of the province. By the fourth century the beginnings of a patriarchal system could be detected in the large regional groupings of provinces. Eventually all the dioceses and provinces of the empire were subject to one of five patriarchs (“father-rule”), namely, the bishops of Rome, Antioch, Alexandria, Jerusalem, and Constantinople. The prominence of these

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bishoprics may be accounted for on grounds partly theological and partly political." A

[emphasis supplied]

94. In 'The Encyclopedia of Religion' by Macmillan Publishing Co., New York, Vol. 3, Orthodox and other Eastern churches have been dealt with at page 475. The relevant portion is extracted hereunder : B

"Orthodox and other Eastern churches. The Eastern Orthodox and other Eastern churches are firmly committed to apostolic succession and the episcopacy. The Eastern Orthodox churches accept the first seven ecumenical councils (through the Second Council of Nicaea in 787), as do Roman Catholics. The smaller Eastern churches, refusing to recognize the third (Ephesus, 432) and fourth (Chalcedon, 451) ecumenical councils, are divided into two Nestorian churches and four others known collectively as non-Chalcedonian Orthodox. [See Nestorian Church; Armenian Church; Coptic Church; Ethiopian Church; and Syriac Orthodox Church of Antioch] C D

The Eastern Orthodox church is not centrally organized but is a federation composed of fourteen autocephalous, or self-governing, churches and seven others, which are known as autonomous. "Autocephaly" connotes the right possessed by a group of eparchies (dioceses) to settle all internal matters on their own authority and to elect their own bishops, including the head of the church. The boundaries of autocephalies are usually coterminous with those of a state or nation. Four of these autocephalies (Constantinople, Alexandria, Antioch, and Jerusalem) are based upon ancient Christian tradition, as has already been noted. The remaining ten have resulted from modern political developments: Russia, Romania, Serbia, Greece, Bulgaria, Georgia, Cyprus, Czechoslovakia, Poland, and Albania. The autonomous churches, while to a large degree self-governing, have not yet achieved full independence: Finland, China, Japan, Macedonia, and three jurisdictions among Russians outside the Soviet Union. (The head of the monastery of Saint Catherine has the rank of archbishop of Sinai; his jurisdiction over the immediate neighbourhood constitutes an autonomous church.) [See also Eastern Christianity.]" E F G

[emphasis supplied] H

A It is apparent that the Eastern and other churches are Episcopal and there is a right possessed by a group of eparchies (dioceses) to settle all internal matters on their own authority and to elect their own bishops, including the head of the church.

B 95. In Halsbury's Laws of England, 5<sup>th</sup> Edn., vol. 34 relating to ecclesiastical law, the Constitution of Church of England has been dealt with elaborately. Para 140 deals with appointment of archbishops. The appointment is by election pursuant to the licence granted by the Sovereign under the Great Seal. An Archbishop has authority to visit and inspect the Bishops and inferior clergy of his province. The appointment of bishops is by the Crown. It has been dealt with in para 179 and para 183 deals with election of bishop by college of canons. Upon the avoidance of a bishopric, the Crown grants to the college of canons of the cathedral a licence under the Great Seal to proceed to the election of a bishop, with a letter containing the name of the person to be elected. The person nominated must be elected and chosen by the college of canons to the void bishopric within 12 days. The consecration of bishop is by archbishop as provided in Para 189 and it is only a bishop who can ordain priests or deacons as provided in para 197.

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E 96. In England in Parish Churches also it is the bishop or diocese that sets in the procedure for appointment of priests. The Diocese appears to be the in charge within the territory diocese operates with respect to such matters. There can be in future process also. Such procedure is detailed in the booklet for Diocese of Exeter.

F 97. As per '*Diocese of Southwark*' a Parish church in England the priests are again appointed by the procedure initiated by Diocese. Diocese appoints a designated officer to act as contact person between the interested parties and to fill the vacancy of a priest. In Udampady also which have been placed on record of 1913 and 1890 procedure for appointment of Vicar and priests etc. has not been provided. On the other hand, it appears that at no point of time the appointment of Vicar/priests, deacons has been made by the Patriarch. There is no such material placed on record indicating that the Patriarch at any point of time prior to has exercised such a power.

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H 98. Before dilating further on the issue, it is also necessary to discuss about the meaning of religious rights, spiritual rights, temporal and secular rights.

The word 'religion' has been defined in Oxford dictionary thus: A

Religion: the belief in and worship of a superhuman controlling power, especially a personal God or gods: ideas about the relationship between science and religion.

▣ details of belief as taught or discussed: children should be taught religion in schools. ▣ a particular system of faith and worship: the world's great religions. ▣ a pursuit or interest to which someone ascribes supreme importance: consumerism is the new religion. B

The word 'religion' has been defined in *Black Law Dictionary* as:

"A system of faith and worship usu. involving belief in a supreme being and usu. containing a moral or ethical code; esp. such a system recognised and practiced by a particular church, sect, or denomination. C

• In construing the protections under the Establishment Clause and the Free Exercise Clause, courts have interpreted the term *religion* quite broadly to include a wide variety of theistic and nontheistic beliefs." D

99. Religion is a very wide expression. With the virtue, as founded on reverence of God, is a system of Divine Faith and Worship as opposed to others. As observed in *Tomlins Law Dictionary* religion is a habit of reverence towards the Divine nature, whereby we are enabled and inclined to serve and worship after such a manner as have conceived most acceptable is called religion. Religion is ordinarily understood to mean some system of faith and practice resting on the idea of the existence of God that creates and rules. Religion in generic means the religion of man and not the religion of any class of men. In *Commissioner of H.R.E. v. Sri Lakshmindra Thirtha Swamiar, Sri Shrirur Mutt.* AIR 1954 SC 282, it has been observed that religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions which do not believe in God or any intelligent first cause. A religion undoubtedly has its basis in a system of beliefs and doctrines which are regarded by those who propose that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine of belief. There are teachings also which differs from religion. The teachings of *Shri Aurbindo* are only philosophy and not religion as observed by this Court in *S.P. Mittal v. Union of India*, AIR 1983 SC 1. E F G H

A 100. Religion is a collection of cultural system, belief systems that establishes symbols which relate humanity to spirituality and sometimes to moral values. There are 19 major religious groupings in the world and from them a total of 10,000 distinct religions exists. Although only about 270 of those have half a million or more followers. In the US alone over 2500 different religious faith entities can be observed. Religion is an institution established by man for various reasons.

B The word 'spiritual' has been defined in *Oxford dictionary* thus:

C "1. of, relating to, or affecting the human spirit or soul as opposed to material or physical things: I'm responsible for his spiritual welfare | the spiritual values of life.

□ (of a perso\*n) not concerned with material values or pursuits.

D 2. of or relating to religion or religious belief; Iran's spiritual leaders.

(also **negro spiritual**) A religious song of a kind associated with black Christians of the southern US, and thought to derive from the combination of European hymns and African musical elements by black slaves.

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A spiritual person is one who seeks to value and connect himself to higher power or simply his higher self.

F The word 'spiritual' has been defined to mean in *Black's Law Dictionary* as of or relating to ecclesiastical rather than secular matters.

G 101. Spiritualism is alien to temporalism. One whose desire is for temporal gains, cannot be said to be on the spiritual path. Some are aliens to each other. One who is really spiritual is far away from the temporal desires. Mere spiritual knowledge (gyan) is not enough. Spiritual wisdom is necessary to be really a spiritual person as said by Lord Krishna in the Gita. Shri Ram Krishna Paramhans, the Indian mystic, has given a simple comparison to distinguish between the two, i.e. gyan and vigyan. Gyan is knowledge and wisdom is vigyan. A person who has only heard of milk, is ignorant. One who has seen the milk has gyan. But one who has drunk milk and become strong has attained vigyan.

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102. Spirituality is born and develops in a person. It may be kick started by religion or revelation. Religion is a manifestation of the flesh. But spirituality as defined by the God as manifestation of his nature. True spirituality is something which is found deep within oneself. It can also be said that spirituality is a form of religion but a private and personal form of religion. Spirituality is more personal and private while religion tends to incorporate public rituals and organised doctrines. A twilight zone. Religion and spirituality are two distinct terms associated with faith. Spirituality is more abstract than religion. Religion usually promote a creed and define code of ethics. Spirituality exists in the nebulous realm of the undefinable. Spirituality is a supernatural form of transformation.

103. In "Encyclopaedia of Religion and Ethics by James Hastings 'spirituality has been defined as :

"The term 'spirituality' has been used in a great variety of ways. The French have appropriated it as the name for the finer perceptions of life; by the American transcendentalists it is used as a special mark of superior intellects; it is often applied to those mediums through whom communications from departed spirits are said to reach common earth; Evangelical Christianity reserves the term to describe the warmer religious emotions; and it has its peoper and peculiar application as the distinguishing quality of NT believers."

The substantive 'spirituality' does not occur in Scripture, but the adjective 'spiritual' is frequently employed to describe the character of the man who has entered the Kingdom of God. Such a man has the Holy Spirit as the vital, determining principle of his life. Such usage does not permit us to apply the epithet to any one who has been moved in some vague way by holy impulses, for a definite and well-marked character as indicated by this description. Of spiritual persons Newman writes: He [the holy Spirit] pervades us (if it may be so said) as light pervades a building, or as a sweet perfume the folds of some honourable robe; so that, in Scripture language, we are said to be in Him, and He in us."

Swamy Chidanand Saraswatiji has defined spirituality in "the Essence of Spirituality – Service of Others" as:

"The essence of spirituality is service. As one goes deeper and

A deeper on a spiritual path and as one gets closer to Realisation and Enlightenment, one realises that the Divine resides in all. One begins to see God's presence in every person, every animal, and every plant."

The first line in the Ishopanishad says:

B *Isha vaasyamidam sarvam  
Yat kincha jagatyaam jagat  
Tena tyaktena bhunjeethaa  
Maa gradhah kasya svid dhanam*

C This mantra tells us that God is manifest in everything in the universe. All is Him and all is pervaded by Him. There is nothing which is not God.

D In the Bhagvat Gita, Bhagwan Krishna says, "*I am the Self, O Gudakesha, seated in the hearts of all beings; I am the Beginning, the Middle and also the End of all beings.*" When we embark on a spiritual path, or as we walk the path, we must dedicate ourself to cultivating the divine vision and awareness with which we can see the Divine in all.

E Eytmologically, the English word 'spirituality' is a derivative of the word 'spirit' which means "animating or vital principle in man and animals". The term 'spiritual' means "concerning the spirit", which is derived from Latin *spiritualis*, which comes from "spiritus" or "spirit". Spirituality was meant to imply the mental aspect of life, as opposed to the material and sensual aspects.

F Vedantic philosophy lies at the core of Hindu spirituality from the hoary past down to present. According to the tradition, is the process of realisation of this axiomatic truth. The obvious corollary is that one who has realised this truth does not make any distinction between man and any sub-human species and also does not discriminate one man from another, given the fact that God is at core of every evolved form including human.

G 104. In Words and Phrases, Permanent Edition, 39A. 'Spiritualism' and 'spiritualist' have been defined on the strength of the decisions referred therein thus :

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**“SPIRITUALISM**

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The word “spiritualism” immediately suggests mediums. In re Lockwood’s Estate, 25 A.2d 168, 169, 344 Pa, 293.

A belief in communication with dead people by letters ad telephone and other physical and material means goes beyond a normal belief in spiritualism, since the words “spiritualism” or “spirit” would indicate that such communication, if at all possible, would be by spiritual inspirations through a higher power rather than by natural or physical materials, such as letters and telephone invented and controlled by man. Compton V. Smit, 150 S.W.2d 657, 660, 286 Ky. 179.

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A guaranty of \$15 to remunerate a medium for conducting spiritualistic séance as religious ceremony in the worship of God and creation of the fund by voluntary contributions of communicants of Spiritualistic Church do not constitute “gain” within statute forbidding public séances for gain. Comp. St.1929,\$ 28-1111. A “medium” is one whose organism is sensitive to vibration from the spirit world and through whose instrumentality intelligences in that world are able to convey messages and produce the phenomena of “spiritualism”. A “séance” is the form of worship designated by the ordinance and cannons of the Spiritualistic Church and constitutes one of the most formal and solemn religious services of the church. Dill v. Hamilton, 291 N.W. 62, 65, 137 Neb. 723.

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“Spiritualism” may be denied as a belief in the power of some departed spirits to communicate with the living by means of mediums. City of Chicago v. Payne, 160 Ill. App. 641,642.

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“Spiritualism” is a form of religious belief which should not be inquired into in a judicial proceedings, and undue influence of a donor is not to be inferred merely from the fact that he and the done were Spiritualists. Watson v. Holmes, 140 N.Y.S. 727, 731, 80 Misc. 48.

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**SPIRITUALIST**

A spiritualist is a believer in spiritualism; or one claiming to have some power, through intercourse with the spirit world, or the hidden power of occultism, to divine the thoughts of others; or who holds

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A communications with departed and disembodied spirits; also one who professes a regard for spiritual things only. *Johnson v. State*, 65 So.218, 220, 107 Miss. 196, 51 L.R.A., N.S., 1183.”

105. The word ‘temporal’ has been defined in *Oxford dictionary* thus:

B “1. Relating to worldly as opposed to spiritual affairs; secular.  
2. of or relating to time.  
□ relating to or denoting time or tense.”

Temporal means worldly, earthly. In *Black Law Dictionary* the word ‘temporal’ is defined to mean civil or political power as distinguished from ecclesiastical power.

C 106. Thus, we are unable to accept the submissions raised by Shri K. Parasaran, learned senior counsel for various reasons. The appointment of Vicar is not a spiritual matter but is a secular matter. This Court has in *Bhuri Nath & Ors. v. State of J&K & Ors.* (1997) 2 SCC 745 considered the question for the appointment of priests and the nature of the right of appointment of priests in Shri Mata Vaishno Devi Shrine Board. The priests were performing Puja as per the customary rites and section 2 of the Jammu & Kashmir Shri Mata Vaishno Devi Shrine Act, 1988 gave overriding effect to the Act over any contrary custom, usage or instrument. It declared that the Act shall have the overriding effect thereon. This Court referred to *A.S. Narayana Deekshitulu v. State of A.P. & Ors.* (1996) 9 SCC 548 where section 144 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 abolished the right of the appellants to receive offerings with the abolition of the hereditary rights of Archaka service.

D The question arose whether it offended the religion or protection of Articles 25 and 26. It was held that the word ‘religion’ used in Articles 25 and 26 of the Constitution is personal to the person having faith and belief in the religion. The Religion is that which binds a man with his Cosmos, his Creator or super force. Essentially religion is a matter of personal faith and belief or personal relations of an individual with what he regards as The Cosmos, his Maker or his Creator that, he believes, regulates the existence of insentient beings and the forces of the universe. Religion is not necessarily theistic. A religion undoubtedly has its basis in a system of beliefs and doctrine that are regarded by those who profess religion to be conducive to their spiritual well being. The right to religion guaranteed under Article 25 or 26 is not an absolute or unfettered right

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but is subject to legislation by the State limiting or regulating any activity – economic, financial, political or secular which is associated with the religious belief, faith, practice or custom. They are subject to reform as social welfare by appropriate legislation by the State. Though religious practices and performance of acts in pursuance of religious belief are as much as a part of religion, as faith or belief in a particular doctrine, that by itself is not conclusive or decisive. What are essential parts of religion or religious belief or matters of religion and religious practice is essentially a question of fact to be considered in the context in which the question has arisen and the evidence – actual or legislative or historic – presented in that context is required to be examined and a decision reached. In secularizing the matters of religion that are not essentially and integrally parts of religion, secularism, therefore, consciously denounces all forms of supernaturalism or superstitious beliefs or actions and acts that are not essentially or integrally matters of religion or religious belief or faith or religious practice. A balance, therefore, has to be struck between the rigidity of right to religious belief and faith and their intrinsic restrictions in matters of religion, religious beliefs or religious practices guaranteed under the Constitution. This Court has distinguished between religious service and the person who performs the service; in the aforesaid decision. The performance of the religious service according to the tenets, Agamas, customs, and usages prevalent in the temple etc. is an integral part of the religious faith and belief and to that extent, the legislature cannot intervene to regulate. But the service of the priest or Archaka is a secular part. The hereditary right as such is not an integral part of the religious practice but a source to secure the services of a priest independent of it. Though the performance of the ritual ceremonies is an integral part of the religion, the person who performs the ceremonies is not a part of spiritual ceremonies itself. With respect to spiritual ceremonies right can be claimed but not with respect to the person who performs it or associates himself with the performance of spiritual ceremonies which is not a right under Article 25. This is a secular right. The custom or usage in that behalf was held not as an integral part of religion. It was held that the legislature has the power to regulate the appointment of Archaka, emoluments, and abolition of customary share in the offerings to the Deity. This Court has held thus:

“There is a distinction between religious service and the person who performs the service; performance of the religious service

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A according to the tenets, Agamas, customs, and usages prevalent  
 in the temple etc. is an integral part of the religious faith and belief  
 and to that extent, the legislature cannot intervene to regulate.  
 But the service of the priest (Archaka) is a secular part. The  
 hereditary right as such is not an integral part of the religious  
 B practice but a source to secure the services of a priest independent  
 of it. Though the performance of the ritual ceremonies is an integral  
 part of the religion, the person who performs it or associates  
 himself with the performance of ritual ceremonies is not.  
 Therefore, when the hereditary right to perform service in the  
 temple can be terminated or abolished by the sovereign legislature,  
 C it can equally regulate the service conditions sequel to the abolition  
 of the hereditary right of succession in the office of an Archaka.  
 Though an Archaka integrally associates himself with the  
 performance of ceremonial rituals and daily pooja to the Deity, he  
 is the holder of an office of priest in the temple. He is subject to  
 the discipline on a par with other members of the establishment.  
 D Abolition of emoluments attached to the office of the Archaka,  
 therefore, cannot be said to be invalid. The customs or usages in  
 that behalf were held not an integral part of the religion. It was,  
 therefore, held that the legislature has the power to regulate the  
 appointment of the Archaka, emoluments, and abolition of  
 E customary share in the offerings to the Deity. The same ratio  
 applies to the facts in this case.”

107. In *Pannalal Bansilal Patil & Ors. Etc. v. State of Andhra  
 Pradesh & Anr.*, AIR 1996 SC1023, Section 144 of Andhra Pradesh  
 Charitable and Hindu Religious Institutions and Endowments Act ( Act  
 F 30 of 1987) was questioned, which dealt with abolition of shares of  
 trustees etc. This Court held that abolition of system of payment is a  
 matter of legislative wisdom and policy and by this there is no violation  
 of rights under Articles 25 and 26 of the Constitution of India.

108. In *A.S. Narayana Deekshitulu* (supra), this Court considered  
 G the concept of religion under Article 25 of the Constitution of India. This  
 Court considered the rituals of various types and made a distinction as  
 follows:

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

"Experience is the only source of knowledge. In the word, 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."

**In Volume II, Ninth Edn. At page 432, Swamiji said that:**

"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."

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

A            109. This Court in *A.S. Narayana Deekshitulu* (supra) has also held that religion in Articles 25 and 26 has to be construed in its strict and etymological sense. Every aspect of religion is not safeguarded by the Constitution. This Court held as follows:

B            “89. A religion undoubtedly has its basis in a system of beliefs and doctrine which are regarded by those who profess religion to be conducive to their spiritual well-being. A religion is not merely an opinion, doctrine or belief. It has outward expression in acts as well. It is not every aspect of religion that has been safeguarded by Articles 25 and 26 nor has the Constitution provided that every religious activity cannot be interfered with. Religion, therefore, 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 principles 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, amity, fraternity and equality of all persons which find their foothold 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            90. In pluralistic society like India, as stated earlier, there are numerous religious groups who practise diverse forms of worship or practise religions, rituals, rites etc.; even among Hindus, different 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 definition of

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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 predominant in the matter of religion; to others, rituals or ceremonies may be predominant facets of religion; and to yet another class of persons a code of conduct or a mode of life may constitute religion. Even to different persons professing the same religious faith some of the facets of religion may have varying significance. It may not be possible, therefore, to devise a precise definition of universal application as to what is religion and what are matters of religious belief or religious practice. That is far from saying that it is not possible to state with reasonable certainty the limits within which the Constitution conferred a right to profess religion. Therefore, the right to religion guaranteed under Article 25 or 26 is not an absolute or unfettered right to propagating religion which is subject to legislation by the State limiting or regulating any activity — economic, financial, political or secular which are associated with religious belief, faith, practice or custom. They are subject to reform on social welfare by appropriate legislation by the State. Though religious practices and performances of acts 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.”

110. This Court also dealt with the proposition whether abolition of hereditary right to appointment was violative of Articles 25 and 26 of the Constitution. It was held that hereditary right is not essential part of religion or matter of religion or religious practice in *A.S. Narayana Deekshitulu* (supra), this Court held as under:

“119. The real question, therefore, is whether appointment of an archaka is governed by the usage and whether hereditary succession is a religious usage? If it is religious usage, it would fall squarely under Article 25(1)(b) of the Constitution. That question was posed in *Seshammal's* case wherein this Court considered and held that though archaka is an accomplished person,

A 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* the Madras High Court had held that status of hereditary archaka

B 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

C institution and he receives emoluments and perks according to the procedure therein. This Court had further held that the act of his appointment is essentially a secular act. He owes his appointment to a secular authority. Any lay founder of a temple may appoint an archaka. The Shebait or Manager of temple exercises essentially a secular function in choosing and appointing the archaka. Continuance of an archaka by succession to the office from generation to generation does not make any difference to the principle of appointment. No such hereditary archaka can claim any right to the office. Though after appointment the archaka

D performs worship, it is no ground to hold that the appointment is either religious practice or a matter of religion. It would thus be clear that though archaka is normally a well-versed and accomplished person in the Agamas and rituals necessary to be performed in a temple, he is the holder of an office in the temple. He is subject to the disciplinary power of a trustee or an appropriate authority prescribed in the regulations or rules or the Act. He owes his existence to an order of appointment — be it in writing or otherwise. He is subject to the discipline on a par with other members of the establishment. Though after appointment, as an integral part of the daily rituals, he performs worship in accordance

E with the Agama Shastras, it is no ground to hold that his appointment is either a religious practice or a matter of religion. It is not an essential part of religion or matter of religion or religious practice. Therefore, abolition of the hereditary right to appointment under Section 34 is not violative of either Article 25(1) or Article 26(b)

F of the Constitution.

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120. It is true that the position of the office of Pedda Jeengar or Chinna Jeengar as a religious head in the context of mathadhipathi 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 Shri 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 Article 26(b) of the Constitution.

124. A conjoint reading thereof preserves the existing customs, performances, religious worships, ceremonies and poojas according to Sampradayams and Agamas followed in such institutions. Section 142 issues an injunction against an 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 of 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 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

A in law. As held earlier, being secular actions they are not integral parts of the religion or religious matters.”

This Court held that with the abolition of the hereditary right, the right to a share in collections, as per custom also stands abolished. Prescription of the qualifications for appointment under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 was held to be valid and legal and not arbitrary, unjust and unfair. The provision of transfer of Archaka (Priest) from one temple to another was also upheld and not declared arbitrary or *ultra vires* or unjust.

C 111. Shri V.K. Biju, learned counsel has relied upon *Commissioner of Police & Ors. v. Acharya Jagadishwarananda Avadhuta & Anr.* (2004) 12 SCC 770 in which it was held :

D “9. ....What is meant by ‘an essential part or practices of a religion’ is now the matter of elucidation. Essential part of religion means the core beliefs upon which a religion is founded. Essential practice means those practices means those that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practices the super structure of religion is built. Without which, a religion will be no religion. Test to determine whether a part or practice is essential to the religion is – to find out whether the nature of religion will be hanged without that part or practice. If taking away that part or practice could result in fundamental change in character of that religion or in its belief, then such part could be treated as an essential or integral part. There cannot be additions or subtractions to such part. Because it is the very essence of that religion and alterations will change its fundamental character. It is such permanent essential parts is what is protected by the Constitution. No body can that that essential part or practice of one’s religion has changed from a particular date or by an event, Such alterable parts or practices are not the “core” of religion where the beliefs is based and religion is founded upon. It could be treated as meme embellishments to non-essential part or practices”

G 112. Reliance was also placed on *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay* (1962) SCR Supp 2 at 496 on observation that the protection of Articles 25 and 26 is not limited to the matters of H doctrine, and extends to acts done in pursuance of religion and therefore

contained a guarantee for rituals and observances, ceremonies and modes of worships which are integral parts of religion. There is no dispute with respect to the aforesaid proposition but the said guarantee does not extend to appointment of Vicars/priests, deacons etc. Reliance was also placed on *S.P.Mittal v. Union of India* (1983) 1 SCC 51 thus:

"12. It is readily seen that the several provisions of the Constitution where the expressions "religion" and "religious denomination" are used are either those which are concerned with equality and equal opportunity or those which are concerned with freedom of religion. Article 15(1), Article 16(2), Article 23(2), Article 29(2) are the several equality and equal opportunity clauses of the Constitution which bar discrimination on the ground of religion, and they place religion in equation with race, caste, sex, place of birth, residence and language for the purposes of the various aspects of equality dealt with by them. Article 30 recognises the existence of minority groups based on religion along with minority groups based on language. Articles 25 to 28 deal with the Right to Freedom of Religion which, as we said earlier is traceable to the idea of "Liberty of thought, expression, belief, faith and worship" in the Preamble to the Constitution. Article 25 guarantees freedom of conscience and the right freely to profess, practise and propagate religion, but saves laws regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice. Reading Article 25 in the background of the proclamation regarding Liberty in the Preamble to the Constitution, we may safely conclude that the Constitution views religion, as comprising thought, expression, belief, faith or worship, as involving the conscience and as something which may be professed, practised and propagated and which is any man's attribute in the same manner as race, sex, language, residence etc. We also see that economic, financial, political or other secular activity may be associated with religious practice though such activity is not covered by the guarantee of freedom of conscience and the right freely to profess, practise and propagate religion. So, the Constitution considers religion as a matter of thought, expression, belief, faith and worship, a matter involving the conscience and a matter which may be professed, practised and propagated by anyone and which may even have some secular activity associated with it. We have already said that any freedom

A or right involving the conscience must naturally receive a wide interpretation and the expressions “religion” and “religious denomination” must, therefore, be interpreted in no narrow, stifling sense but in a liberal, expansive way.”

B There is no dispute with the aforesaid proposition but the decision has no application.

113. Reliance has been placed on *N. Adithayan v. Travancore Devaswom Board & Ors.* (2002) 8 SCC 106 thus:

C “7. This Court in *Commr., HRE v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (known as Shirur Mutt case) observed that Article 25 secures to every person, subject to public order, health and morality, a freedom not only to entertain such religious belief, as may be approved of by his judgment and conscience but also to exhibit his belief in such outward acts as he thinks proper and to propagate or disseminate his ideas for the edification of others. It was also observed that what is protected is the propagation of belief, no matter whether the propagation takes place in a church or monastery or in a temple or parlour meeting. While elaborating the meaning of the words, “its own affairs in matters of religion” in Article 26(b) it has been observed that in contrast to secular matters relating to administration of its property the religious denomination or organization enjoys complete autonomy in deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters. In *Venkataramana Devaru v. State of Mysore*<sup>2</sup> it has been held that though Article 25(1) deals with rights of individuals, Article 25(2) is wider in its contents and has reference to rights of communities and controls both Articles 25(1) and 26(b) of the Constitution, though the rights recognized by Article 25(2)(b) must necessarily be subject to some limitations or regulations and one such would be inherent in the process of harmonizing the right conferred by Article 25(2)(b) with that protected by Article 26(b).

G 8. In *Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan* dealing with the nature and extent of protection ensured under Articles 25(1) and 26(b), the distinction between a practice which is

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religious and one which is purely secular, it has been observed as follows: (SCR pp. 621-23) A

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

It is true that the decision of the question as to whether a certain practice is a religious practice or not, as well as the question as to whether an affair in question is an affair in matters of religion or not, may present difficulties because sometimes practices, religious and secular, are inextricably mixed up. This is more particularly so in regard to Hindu religion because as is well known, under the provisions of ancient Smritis, all human actions from birth to death and most of the individual actions from day to day are regarded as religious in character. As an illustration, we may refer to the fact that the Smritis regard marriage as a sacrament and not a contract. Though the task of disengaging the secular from the religious may not be easy, it must nevertheless be attempted in dealing with the claims for protection under Articles 25(1) and 26(b). If the practice which is protected under the former is a religious practice, and if the right which is protected under the latter is the right to manage affairs in matters of religion, it is necessary that in judging about the merits of the claim made in E F G

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A that behalf the Court must be satisfied that the practice is religious  
and the affair is in regard to a matter of religion. In dealing with  
this problem under Articles 25(1) and 26(b), Latham, C.J.'s  
B observation in *Adelaide Co. of Jehovah's Witnesses Incorporated*  
*v. Commonwealth* that 'what is religion to one is superstition to  
another', on which MrPathak relies, is of no relevance. If an  
obviously secular matter is claimed to be a matter of religion, or if  
an obviously secular practice is alleged to be a religious practice,  
C the Court would be justified in rejecting the claim because the  
protection guaranteed by Article 25(1) and Article 26(b) cannot  
be extended to secular practices and affairs in regard to  
denominational matters which are not matters of religion, and so,  
D a claim made by a citizen that a purely secular matter amounts to  
a religious practice, or a similar claim made on behalf of the  
denomination that a purely secular matter is an affair in matters  
of religion, may have to be rejected on the ground that it is based  
on irrational considerations and cannot attract the provisions of  
Article 25(1) or Article 26(b). This aspect of the matter must be  
borne in mind in dealing with the true scope and effect of Article  
25(1) and Article 26(b)."

E 114. In *Adi Saiva Sivachariyargal Nala Sangam & Ors. v.*  
*Government of Tamil Nadu & Anr.* (2016) 2 SCC 725 the question of  
appointment of Archakas came up for consideration before this Court.  
This Court held that Archakas can be appointed in terms of Agama for  
the temples but such Agamas have to qualify the test of Article 14 which  
should not be contrary to the constitutional mandate. This Court has laid  
down thus :

F "43. That the freedom of religion under Articles 25 and 26 of the  
Constitution is not only confined to beliefs but extends to religious  
practices also would hardly require reiteration. Right of belief and  
practice is guaranteed by Article 25 subject to public order, morality  
and health and other provisions of Part III of the Constitution.  
G Clause (2) is an exception and makes the right guaranteed by  
clause (1) subject to any existing law or to such law as may be  
enacted to, inter alia, provide for social welfare and reforms or  
throwing or proposing to throw open Hindu religious institutions  
of a public character to all classes and sections of Hindus. Article  
H 26(b) on the other hand guarantees to every religious denomination

or section full freedom to manage its own affairs insofar as matters of religion are concerned, subject, once again, to public order, morality and health and as held by this Court subject to such laws as may be made under Article 25(2)(b). The rights guaranteed by Articles 25 and 26, therefore, are circumscribed and are to be enjoyed within constitutionally permissible parameters. Often occasions will arise when it may become necessary to determine whether a belief or a practice claimed and asserted is a fundamental part of the religious practice of a group or denomination making such a claim before embarking upon the required adjudication. A decision on such claims becomes the duty of the constitutional court. It is neither an easy nor an enviable task that the courts are called to perform. Performance of such tasks is not enjoined in the court by virtue of any ecclesiastical jurisdiction conferred on it but in view of its role as the constitutional arbiter. Any apprehension that the determination by the court of an essential religious practice itself negatives the freedoms guaranteed by Articles 25 and 26 will have to be dispelled on the touchstone of constitutional necessity. Without such a determination there can be no effective adjudication whether the claimed right is in conformity with public order, morality and health and in accord with the indisputable and unquestionable notions of social welfare and reforms. A just balance can always be made by holding that the exercise of judicial power to determine essential religious practices, though always available being an inherent power to protect the guarantees under Articles 25 and 26, the exercise thereof must always be restricted and restrained.

49. The difficulty lies not in understanding or restating the constitutional values. There is not an iota of doubt on what they are. But to determine whether a claim of State action in furtherance thereof overrides the constitutional guarantees under Articles 25 and 26 may often involve what has already been referred to as a delicate and unenviable task of identifying essential religious beliefs and practices, sans which the religion itself does not survive. It is in the performance of this task that the absence of any exclusive ecclesiastical jurisdiction of this Court, if not other shortcomings and inadequacies, that can be felt. Moreover, there is some amount of uncertainty with regard to the prescription contained in the Agamas. Coupled with the above is the lack of easy availability

A of established works and the declining numbers of acknowledged  
and undisputed scholars on the subject. In such a situation one is  
reminded of the observations, if not the caution note struck by  
Mukherjea, J. in Shirur Mutt<sup>6</sup> with regard to complete autonomy  
of a denomination to decide as to what constitutes an essential  
B religious practice, a view that has also been subsequently echoed  
by this Court though as a “minority view”. But we must hasten to  
clarify that no such view of the Court can be understood to be an  
indication of any bar to judicial determination of the issue as and  
when it arises. Any contrary opinion would give rise to large-  
scale conflicts of claims and usages as to what is an essential  
C religious practice with no acceptable or adequate forum for  
resolution. That apart the “complete autonomy” contemplated in  
Shirur Mutt (AIR 1954 SC 282) and the meaning of “outside  
authority” must not be torn out of the context in which the views,  
already extracted, came to be recorded (p. 1028). The exclusion  
D of all “outside authorities” from deciding what is an essential  
religious practice must be viewed in the context of the limited role  
of the State in matters relating to religious freedom as envisaged  
by Articles 25 and 26 itself and not of the courts as the arbiter of  
constitutional rights and principles.

E 50. What then is the eventual result? The answer defies a  
straightforward resolution and it is the considered view of the  
Court that the validity or otherwise of the impugned G.O. would  
depend on the facts of each case of appointment. What is found  
and held to be prescribed by one particular or a set of Agamas for  
a solitary or a group of temples, as may be, would be determinative  
F of the issue. In this regard it will be necessary to re-emphasise  
what has been already stated with regard to the purport and effect  
of Article 16(5) of the Constitution, namely, that the exclusion of  
some and inclusion of a particular segment or denomination for  
appointment as Archakas would not violate Article 14 so long as  
G such inclusion/exclusion is not based on the criteria of caste, birth  
or any other constitutionally unacceptable parameter. So long as  
the prescription(s) under a particular Agama or Agamas is not  
contrary to any constitutional mandate as discussed above, the  
impugned G.O. dated 23-5-2006 by its blanket fiat to the effect  
that, “Any person who is a Hindu and possessing the requisite  
H qualification and training can be appointed as a Archaka in Hindu

temples" has the potential of falling foul of the dictum laid down in Seshammal (1972) 2 SCC 11. A determination of the contours of a claimed custom or usage would be imperative and it is in that light that the validity of the impugned G.O. dated 23-5-2006 will have to be decided in each case of appointment of Archakas whenever and wherever the issue is raised. The necessity of seeking specific judicial verdicts in the future is inevitable and unavoidable; the contours of the present case and the issues arising being what has been discussed."

115. As a matter of fact from the discussion made in the 1995 judgment and the various documents referred to therein, it is apparent that the Patriarch of Antioch has not exercised the power earlier with respect to the appointment of priests etc. Be that as it may. He has re-established the Throne of Catholicos in 1912 under a Kalpana in which he has dedicated the power to the 1934 Constitution which has been accepted by the issuance of Kalpana and by establishing Catholicos-III in 1964 by consecrating Malankara Metropolitan. It is apparent that the 1934 Constitution has to hold the field and it is not the spiritual right within the spiritual domain even if the Patriarch of Antioch is supreme to appoint Vicars/priests.

116. The provisions in 1934 Constitution are binding. Section 1 thereof provides that the Primate of the Orthodox Syrian Church is the Patriarch of Antioch. However section 2 takes care that the Malankara Church which is a division of the Orthodox Syrian Church, was founded by St. Thomas the Apostle and is included in the Orthodox Syrian Church of the East, and the "Primate" of the Orthodox Syrian Church of the East is the "Catholicos". Sections 1 and 2 are extracted hereunder:

"1. The Malankara Church is a division of the Orthodox Syrian Church. The Primate of the Orthodox Syrian Church is the Patriarch of Antioch.

2. The Malankara Church was founded by St. Thomas the Apostle and is included in the Orthodox Syrian Church of the East and the Primate of the Orthodox Syrian Church of the East is the Catholicos."

117. The appointment of Vicar is dealt with in section 38 of the Constitution. There shall be a Vicar for every Parish Church; other Priests, if any, shall be assistants of the Vicar. The Vicar shall be the joint steward

A with the Kaisthani of the assets of the Parish. The Diocesan Metropolitan has the authority to appoint, remove or transfer the Vicar and other priests. Sections 38 to 40 of the 1934 Constitution are extracted hereunder:

38. There shall be a Vicar for every Parish Church; other Priests, if any shall be assistants of the Vicar.

B 39. The Vicar shall be the joint steward with the Kaisthani of the assets of the Parish. The monies of the Parish shall be deposited in joint names of the Vicar and the Kaisthani or in the name of any one of them with the consent of each other. But an amount as fixed by the Managing Committee can be retained with the Kaisthani.

C 40. The Diocesan Metropolitan has authority to appoint, remove or transfer the Vicar and other priests. When the Vicar is so removed or transferred, his stewardship will also terminate.

D 118. It is apparent from section 40 that the Diocesan Metropolitan has the authority to appoint, remove or transfer the Vicar and other priests. Section 43 as amended in 2011 contains the provision that the Baptism Register, the Marriage Register, the Burial Register, the Parish Assembly Register and Confession Register shall be maintained by the Vicar and kept in his custody and the Diocesan Metropolitan when on a visit to the church, these shall be got signed by him. The Vicar shall also keep the files of Kalpana's. Section 43 is extracted hereunder:

E "43. In addition to the Baptism Register, the Marriage Register, the Burial Register, the Parish Assembly Register and Confession Register, there shall be a Parish Register containing the names and other particulars of all men and women of the Parish entered regularly under the responsibility of the Vicar and kept in his custody. When the Diocesan Metropolitan comes to the Church on his Parish visit these shall be got signed by him. The Vicar shall keep also the files of Kalpana's (orders) and other documents received from higher authorities of the Church."

F G 119. There are several managerial duties which a Vicar has to perform under section 9, of reporting to the respective Diocesan Metropolitan about leaving and joining of a Parishioner of a church. Section 10 deals with payment of subscription and name to be removed from the Parish Assembly Register. In the case of default, Vicar has to write to the Metropolitan of the Diocese as to what shall be done

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thereafter with that member. Other such managerial rights are given in sections 11 to 13. Vicar has to convene the meeting twice in a year of the Parish Assembly. In case Vicar fails to convene it, a request can be made to the Diocesan Metropolitan to convene it. The Vicar shall be the President and other Parish Priests, if any, shall be Vice-Presidents of the Assembly as pointed out in section 15. Under section 18 it is the duty of the Vicar to send or cause to be sent by the Secretary the decisions of the Parish Assembly to the Diocesan Metropolitan. An appeal lies to the Metropolitan against the decision of the Parish Assembly. Vicar has to inform about the appeal. The Vicar has to be the President of Parish Managing Committee as per section 26. As per section 27, the Vicar shall report to the Diocesan Metropolitan about the election of the Kaisthani, the Secretary and other members of the Parish Managing Committee. The Vicar or on his direction the Secretary, shall convene the meeting of the Parish Managing Committee as provided in section 28. The Vicar has to convene the meeting of the Parish Managing Committee at the request of Kaisthani or one-third of the members of the Parish Managing Committee as provided in section 29. It is his duty to send summarized statement of accounts passed at the Parish Assembly to the Diocesan Metropolitan as per section 36 and to maintain a register of movable and immovable properties of the church as provided in section 37. A Vicar has to perform certain religious duties as well as managerial duties. The Diocesan Metropolitan has to control the Vicar as per the scheme of the Constitution. The Diocesan Metropolitan has been given the authority to appoint a Vicar for a wholesome purpose in the 1934 Constitution as the Patriarch of Antioch abroad cannot and is not supposed to exercise the deep and pervasive control over the management of churches such as the appointment of Vicar which is a secular matter and not a spiritual one. Section 94 of the 1934 Constitution deals with the Malankara Metropolitan. Section 94 confers prime jurisdiction regarding the temporal ecclesiastical and spiritual administration is with the Malankara Metropolitan. It is provided that in case there is no Diocesan Metropolitan in any Diocese, such Diocese shall be under the direct administration of the Malankara Metropolitan. As per section 98, it is open to the Catholicos to hold the office of the Malankara Metropolitan also. Sections 94 and 98 are extracted hereunder:

“94. The Prime jurisdiction regarding the temporal, ecclesiastical and spiritual administration of the Malankara Church is vested

A with the Malankara Metropolitan subject to provisions of this constitution.

B 98. The Catholicos may also hold the office of the Malankara Metropolitan. As the Malankara Metropolitan, he shall be the President of the Association and the Managing Committee and the Metropolitan Trustee of the Community properties. The Malankara Metropolitan may officially visit all the Parish Churches of the Malankara Church and if found necessary, he may convene the Parish Assembly and the Diocesan Assembly after giving information to the Diocesan Metropolitan. When the Catholicos and the Malankara Metropolitan happens to be two individuals regulations needed shall be made about their respective rights and powers.”

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With respect to Catholicos provisions are contained in sections 99 and 100 which are extracted hereunder:

D “99. The throne of Catholicos was re-established in AD 1912 in the Orthodox Syrian Church of the East, which includes the Malankara Church, and this institution has been functioning ever since in the Orthodox Syrian Church of the East.

E 100. The powers of the Catholicos include the consecration of Prelates, presiding over the Episcopal Synod, declaring its decisions and implementing them, conducting administration as representative of the Synod and consecrating the Holy Mooron.”

F 120. The Throne of Catholicos was re-established in 1912. He has the power of consecration of Prelates, presiding over the Episcopal Synod, declaring its decisions and implementing them, conducting administration as representative of the Synod and consecrating the Holy Moron. The Patriarch is dealt with in section 101 which is extracted hereunder:

G “101. The Malankara Church shall recognize the Patriarch, canonically consecrated with the cooperation of the Catholicos.”

121. The prime jurisdiction with respect to the temporal, ecclesiastical and spiritual administration of the Malankara Church is vested in the Malankara Metropolitan and other authorities. It is intended for proper administration of the church and does not run against the

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concept of the spiritual authority of the Patriarch of Antioch but at the same time, Malankara Metropolitan enjoys all the temporal, ecclesiastical and spiritual administration powers. Thus the power of the Patriarch of Antioch has reached a vanishing point and he cannot exercise those powers which are lying with various authorities under the Constitution as per the historical background noted in the 1995 judgment since time immemorial. It passes comprehension how the Patriarch of Antioch can manage the day to day affairs in India sitting abroad. It is not contemplated nor he is supposed to do so in view of his Kalpana's and historical facts also indicate otherwise that he had not been managing the churches and it is better that the churches are left for the purpose of day to day administration. The powers of appointment of Vicar and priests etc. to the local Malankara church, have rightly been given to the concerned authorities in the 1934 Constitution on the basis of prevalent practices.

122. The submission as to the violation of faith and violation of a right under Article 25 is to be rejected. No doubt about it that a religious denomination or organization enjoys a complete autonomy in the matter of deciding as to rites and ceremonies essential according to their tenets of religion they hold and no outside authority has any jurisdiction to interfere with their decisions in such matters. At the same time, secular matters can be controlled by the secular authorities in accordance with the law laid down by the competent legislature as laid down in the *Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* 1954 SCR 1005. Spiritual power is also with various authorities like Catholicos, Malankara Metropolitan etc. Thus it is too far fetched an argument that the Patriarch of Antioch or his delegate should appoint a Vicar or Priest. There is no violation of any right of Articles 25 or 26 of the Constitution of India. Neither any of the provisions relating to appointment of the Vicar can be said to be in violation of any of the rights under Articles 25 and 26 of the Constitution of India. The 1934 Constitution cannot be said to be in violation of Articles 25 and 26 of the Constitution of India. It was suggested that the faith involved in the present case refers to apostolic succession from Jesus Christ, viz., the blessings and grace of Christ descends through an apostle i.e. St. Peter or St. Thomas as the case may be, and from the said apostle to the Pope/Patriarch who appoints a Vicar. The argument ignores and overlooks other offices that are in-between like Catholicos, Malankara Metropolitan, and Diocesan Metropolitan etc. It is not

A necessary for the Pope and the Patriarch to appoint Vicar because management of a Church is not a religious ritual.

123. The spiritual powers vest in other functionaries also and obviously spiritual power cannot be the monopoly of any particular individual howsoever high he may be. Others are in hierarchy viz. Diocesan Metropolitan has power to appoint Vicar, Priests etc. as per Section 40. In the matter of ordination of Deacons and Priests by Diocesan Metropolitan or Malankara Matropolitan, a candidate for ordination should have a degree qualification. Power to appoint high Priests (Prelates) is by Catholicos in co-operation with Synod. Bishop and Metropolitan can be consecrated by the Catholicos in conjunction with Synod, Bishop or Metropolitan has to be elected by the Association after approval by Synod to be consecrated by Catholicos. Person for ordination has to study theology, and on being found fit can be ordained. It is not that only blessing of a spiritual person makes him qualified to perform duties of such posts. Appointment of Vicar and Priests is a secular matter and there can be legislation also in this regard by sovereigns and can be dealt with by secular authorities also. There is no question of blessings of Jesus Christ not flowing to a person who confesses before a Vicar not appointed by the Patriarch. The spiritual competence of Vicar depends on his own attainments. The dispute appears to be for fulfillment of desire to manage Church for the reasons which are not related to spiritualism. Spiritual person is supposed to leave all such desires as laid down in Bhagavad Gita by Lord Krishna thus:

“Chapter 4, Verse 39:

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श्रद्धावान् लभते ज्ञानं तत्परः संयतेन्द्रियः ।  
ज्ञानं लब्ध्वा परां शान्तिमचिरेणाधिगच्छति ॥ ३९ ॥

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*shraddhāvān labhate jñānam tat-parah sanyatendriyah  
jñānam labdhvā parāṁ śhāntim achirenādhigachchhati*

[The person, whose highest goal is spiritual wisdom, has abiding faith and controls the senses, attains wisdom quickly and experiences the Supreme Peace]”

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124. Shri Mohan Parasaran, learned senior counsel, urged that granting the reliefs as sought for in the plaint would result in a situation favoring one party over another and bringing religious imbalance also. In this regard he relied on observations of European Court of Human Rights (ECtHR) in the case of Supreme Holy Council of the Muslim Community v. Bulgaria, wherein ECtHR while considering a claim by one of two rival groups claiming leadership of Muslim community in Bulgaria held that there had been violation as the state actions had the effect of compelling the divided community to have a single leadership against the will of one of the two factions. It stated that the role of the authorities in a situation of conflict between or within religious group was not to remove the cause of tension by elimination of pluralism, but to ensure that the competing groups tolerated each other. State measures favoring a particular leader of a divided religious community would constitute infringement of freedom of religion.”

125. The question is whether on the division of community, there is devision of control and management and property of church. Supremacy issue of Patriarch of Catholicos has been raised unnecessarily. It is a Diocesan Metropolitan as per Section 40 of the Constitution who has the power to appoint Vicar, priests etc. and there is other hierarchy provided. Even Catholicos, Malankara Metropolitan has the spiritual powers. It is not that they have temporal powers only. They have spiritual status too that has to be respected equally. Shri C.V. Singh, learned counsel, is right in contending that no office is either superior or inferior in the matter of relationship between the two heads, the Catholicos and the Patriarch. Both are independent spiritual authorities. However, the Patriarch occupies the higher post in the hierarchy i.e. he has an honour or precedence if he is present that is in a sense he is the first among equals – “primus inter parties”. The Church functioning is based on division of responsibilities at various levels.

The division of power is for the purpose of management and does not militate against the basic character of the church being Episcopal in character. In Halsbury's Laws of England, vol. 14, para 562, right of Parishioners has been described thus :

“to enter the church, remain there for purpose of participating in divine worship to have a seat and to obey the reasonable directions of the church to ordain.”

- A The highest authority of Malankara church of the east is Catholicos being its primate as recognised in Section 2 of 1934 Constitution. What is sought for and intended is wholly uncalled for, wholly unnecessary and unpalatable. Community may divide but churches and places of worship cannot be divided. They have to be respected for the sake of religion and to exercise their coveted rights under Articles 25 and 26 and
- B for preservation of such rights. We are not oblivious of the fact that still there may not be truce and peace in the church which cannot be helped. A person interested in spirituality may attain it by karma, dedication to deity, concentration and controlling senses as stated in Gita by Lord Krishna;

- C “Chapter 7, Verse 4:

भूमिरपोऽनलो वायुः खं मनो बुद्धिरेव च ।  
अहङ्कार इतीयं मे भिन्ना प्रकृतिरष्टधा ॥ 4॥

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*bhūmir-āpo 'nalo vāyuh kham mano buddhir eva cha  
ahankāra itīyam me bhinnā prakṛtir aṣṭadhā*

- E [Earth, water, fire, air, mind, intellect and the ego – these are the 8 divisions of My separated matter (Prakriti) that is Prakriti comprises not only the material world of matter of energy but also the inner world of thoughts, emotions and the ego.]”

“Chapter 3, Verse 29:

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प्रकृतोगुणसम्मूढाः सज्जन्ते गुणकर्मसु ।  
तान्कृत्स्नविदो मन्दान्कृत्स्नविन्नविचालयेत् ॥ 29॥

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*prakṛiter guṇa-sammūdhāḥ sajjante guṇa-karmasu  
tān akṛtsna-vido mandān kṛtsna-vin na vichālayet*

[People who are influenced by the senses, remain attached to sense objects and the material aspects of the world. The wise should not disturb these ignorant people, whose knowledge is incomplete.]

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For persons who are professing the religion for temporal gains, no one can show them spiritual way. They are free to have their pursuit and excel in that too but not at the cost of the very deity and church or religious place itself. The 1934 Constitution cannot be said to be an instrument of injustice or vehicle of oppression. Thus the decision of *American Express Bank Ltd. v. Calcutta Steel Co.* (1993) 2 SCC 199 is of no avail.

126. It was urged by Shri C.S. Vaidyanathan, learned senior counsel, that the Parishioners own the property of the Parish Church and the Cemetery and they cannot be deprived of that right by reason of the office holders of the Parish Churches by not subscribing to the 1934 Constitution. The attempt by Catholicos is to take away ancient churches and bar the Parishioners from entry to the churches and cemetery. The submission is not at all plausible. The properties would always remain to be Malankara Church properties. Only Office holders have to subscribe to the 1934 Constitution as held by this Court. The Parishioners can take no church property away, neither Catholicos faction by majority and the submission is based on the misconception as to the nature of rights in such property. It has to remain in Malankara Church. Neither the Church nor the cemetery can be confiscated by anybody. It has to remain with Parishioners as per the customary rights and nobody can be deprived of right one enjoys being a Parishioner in the church or to be buried honourably in the cemetery, in case he continues to have faith in Malankara Church.

127. It passes comprehension as to how irreconcilable differences in faith have been sought to be created in flimsy manner to and divide Church into the Patriarch and Catholicos factions whereas they are part of the Malankara Church, whereas the dominant faith is the common, Malankara church is one, and Orthodox Syrian Church is the same. Only intention differs. Hence, law and order situation has arisen which cannot be scenario for spiritual attainments with embodiment of tolerance and equality of all human beings and living creatures. The depth in sight beyond the sensual eye sight is required for spiritual gains. For the reasons best known to the parties, fight is going on regarding the management which is wholly uncalled for. If church has to survive, obviously this must stop and let the blessings of the Christ fall upon the believers, actual followers of his teaching. This is the only way by which we can expect that peace will come to the Church. For the unrest and ugly

A situation no reason, good, bad or otherwise exist which can be legally recognized.

128. In our opinion, there is no force in the submission of Shri Vaidyanathan, learned senior counsel, that if services and ceremonies conducted by only those Vicars and priests who are appointed in accordance with the 1934 Constitution, would be violative of the basic object of the Parish Church. As already discussed we find no force in the submission. Diocesan Metropolitan appoints Vicar under the 1934 Constitution. It does not impinge upon the object of the Parish churches. The Catholicos or the Patriarch, as the case may be, are not supposed to deal with such matters which are reserved for Diocesan Metropolitan as apparent from various decisions and provisions in the 1934 Constitution. This is the position prevailing since long. As already discussed, Vicars or Priests can also be appointed by secular authorities of sovereign. The appointment made by Diocesan Metropolitan cannot be said to be suffering from any illegality or affecting the spiritual rights of the Parishioners. Deacons and Priest for ordination are required to undergo successfully, theological studies and principle has to certify as to their fitness. For ordination as Korooyo (Reader) successfully clearing of 3 years study is required. How Patriarch from abroad can exercise such powers is beyond comprehension and that would amount to unnecessary interference which is not supported by any Kalpana or historical document.

129. The 1934 Constitution provides appointment of Vicar by Diocese in the area of its operation. Other provisions that we have discussed with respect to appointment detailed out in the 1934 Constitution. In the absence of anything having been provided in Udampady, the 1934 Constitution would hold the field.

130. Faith is tried to be unnecessarily divided *vis a vis* the office of Catholicos and the Patriarch. Faith of church is in the Jesus Christ. An effort is being made to take over the management and other powers by such an action just to gain control of temporal matters under the garb of spirituality. Even if Vicar performs the functions, which are religious, there would not be infringement of the rights under article 25 and 26 of constitution of India in case the Diocesan Metropolitan appoints Vicar as provided in the Constitution and it is clear the Patriarch of Antioch has not reserved this power to himself. Why there is such dispute is most unfortunate and is for inexplicable reasons. There is no good or

genuine cause for it. As a matter of fact the 1995 judgment settled such disputes, between the parties. This court has tried its best to take care of the prevailing situation while passing the decree. It was observed in utter breach during its execution itself. We are unable to accept and appreciate why for the Patriarch himself should appoint Vicar, Priest etc. The Diocesan Metropolitan as per the Constitution of 1934 appoints vicar. The submission that Vicar of a Catholicos group cannot be thrust on a worshipper of Patriarch faith against his will, is totally unsound and is simply a ploy to take over the control of the management of the Church by putting faith in a Vicar who is running a parallel governance at the cost of Church by creating factionalism within the Churches. It is settled proposition of law that when a mode is prescribed for doing a thing, it can be done only in that manner and not otherwise. This Court in 1995 Judgment made it clear that the Patriarch has no such authority, he could not exercise any such spiritual power unilaterally as done in 1972 which became the cause of unrest in Church. The appointment of Vicar, Priest by the Patriarch or through delegate unilaterally was held to be not permissible in the decision of 1995 even if he has such powers. It appears he has no such power to interfere in the management of the church and now that question is agitated again and under the same guise of supremacy such an uncalled for attempt has to be thwarted and not to be countenanced for a moment. There is no violation of constitutional provisions or authority of Patriarch. Thus there is no question of violation of Parishnors rights and applicability of decisions in *Olga Tellis v. Bombay Municipal Corporation* AIR 1986 SC 180; *Bheshwar Nath v. I.T. Commissioner* AIR 1959 SC 149 and *Nar Singh Paul v. Union of India* 2000 (3) SCC 588.

**IN RE : REPUDIATION OF THE SPIRITUAL SUPREMACY OF THE PATRIARCH BY THE CATHOLICOS :**

131. It was submitted by Shri K. Parasaran, learned senior counsel appearing for the appellants, that as far back as 1889 in Seminary suit, it was established that the authority of the Patriarch had never extended to the government of temporalities of the Church. It was reiterated in the Arthat suit in 1905. Therefore any reference made thereafter to the power of the Patriarch being reduced to a "vanishing point", is with reference to his spiritual power. In O.S. No.4 of 1979, the relief prayed was that the Church was autocephalous which means independent of Patriarchal authority and there are instances where Catholicos have

A repudiated the supremacy of the Patriarch as discussed by this Court in the 1995 judgment.

B “134. At this stage, what appears to have triggered the dispute again is the nomination of a delegate to Malankara Sabha by the Patriarch in the year 1972. This nomination implied the exercise of active spiritual supremacy by the Patriarch over Malankara Church which was evidently not relished by the Catholicos and other members. Under a letter dated February 16, 1972 (Ex.A.76) the Catholicos and nine Metropolitans including the members of the erstwhile Patriarch group requested the Patriarch not to send the delegate. They pointed out that sending such delegate will lead to disturbance of peace and to dissensions among the Malankara Church. The Patriarch did not pay heed to this request. On the contrary, he wrote back to the Secretary to the Malankara Association (Ex.A.192 dated July 9, 1973) that he is not aware of any such Sabha or of the Malankara Association. His delegate arrived in Malankara and started ordaining priests and deacons. The Catholicos objected to this activity of the delegate by his letter Ex.A.79 dated August 7, 1973 addressed to the Patriarch. Nothing happened. On September 1, 1973, the Patriarch himself ordained the first defendant in O.S.4 of 1979 (the main suit now before us) as Metropolitan of the Evangelistic Association of the East. Then started a series of correspondence between the Patriarch and the Catholicos each accusing the other of several ecclesiastical violations.

F EXCOMMUNICATION OF CATHOLICOS BY PATRIARCH:

135. On August 7, 1973 the Catholicos sent a telegram to Patriarch to the following effect:

G “Local newspapers report your holiness intention to consecrate one of our priests as Bishop. We unequivocally object to such action if contemplated by your Holiness as uncanonical and as a clear violation of 1958 peace agreement. (Letter follows).”

H In the confirmatory letter, the Catholicos stated that there was no necessity for the Patriarch to send a delegate to Malankara and added further:

"The Catholicate of the East is an autocephalous which consecrates its own Bishops and its own Morone. This autocephaly is a fact quite independent of the name of our Throne. The autonomy exercised by the Catholicate over Malankara has been well established. It was for no other reason that your Holiness in May, 1964 expressed a desire to delimit the geographical jurisdiction of this heirarchy".(Emphasis added)

136. The Catholicos then referred to the re-definition of the geographical jurisdictions of both the Patriarch and the Catholicos prior to installation and to the installation of the new Catholicos by the Patriarch on May 22, 1964. He also referred to the activities of Mar Thimotheos, the delegate of Patriarch whom the Catholicos described as a troublemaker. The Catholicos stated that the activities of the delegate would have constituted a sufficient ground, normally speaking, for him to protest against his actions with the Patriarch but that he has not taken such action only because he considers his link with Patriarchate as valuable. Finally, he protested against any proposal to conserate Metropolitans for India by Patriarch and stated that any such action would be treated as an uncanonical action.

137. After receiving the above letter of the Catholicos, the Patriarch communication a list of chages to the Catholicos on January 30, 1974 (Es.A.80). This letter is in the nature of a show-cause notice calling upon the Catholicos to answer the charges levelled against him within one month. It is unnecessary to detail the charges herein. The main grievance of the Patriarch was the attempt of Catholicos to style himself as the head of an independent Church of Malankara and repudiation of the Patriarchal authority. The letter also complained of the "most discourteous and impudent manner which is unbecoming from the Catholicos" in which the letter dated August 7, 1973 was addressed to him.

138. On March 9, 1974 the Catholicos replied to the Patriarch stating that the Patriarch has no jurisdiction to level any charges against him or to ask for his explanation. He stated that the only authority to do so is the Malankara Episcopal Synod. He stated that the charges communicated by the Patriarch have been forwarded to the said Synod for consideration and appropriate action and that the Synod has assumed jurisdiction in the matter.

A A similar letter was addressed by the Secretary of the Malankara Synod on March 5, 1974 to the Patriarch. This letter also asked the Patriarch to prove his charges against Catholicos before the Malankara Synod. This exchange went on with the language and tone of each letter becoming more and more discourteous towards each other. Suffice it to mention that on July 5, 1974 the Malankara Synod met and not only justified the actions of the Catholicos but found the Patriarch guilty of several ecclesiastical violations. A copy of the proceedings was forwarded to the Patriarch.”

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C 132. It was pointed out that writ petitions were filed before the Kerala High Court in the years 2004 and 2008. A writ petition was filed in the year 2008 by representatives of the Catholicate before the Kerala High Court to restrain the Patriarch from indulging in prohibited religious activities on the ground that it will violate the Foreigners Act and the Visa Manual. The said writ petition was dismissed. In view of repeated repudiation of the supremacy of the Patriarch, the followers of the Patriarch have framed a new Constitution for themselves in 2002 and disassociated themselves from the Association. It has been urged that the framing of the 2002 Constitution is in conformity with the 1995 judgment as observed by this Court with respect to Knanaya Church, and now they are functioning for the last 15 years under the Constitution of 2002.

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E 133. It was further urged that even though the Patriarch’s power may have been reduced to a vanishing point, the Patriarch may not be a mere ‘glorified cipher’. In this regard the decision of this Court in *Samsher Singh v. State of Punjab & Anr.* (1974) 2 SCC 831 with respect to the power of the President of India has been referred to. It was also submitted that section 101 of the 1934 Constitution which provides that the Malankara Church shall recognize the Patriarch, canonically consecrated with the cooperation of Catholicos, cannot be interpreted to mean that Catholicos can dictate as to who can be appointed as the Patriarch. The Patriarch is appointed by the Universal Synod in accordance with the applicable Canon and has to be recognized by the Catholicos if he is canonically consecrated. The cooperation of the Catholicos was sought presumably to avoid a situation similar to the time when the Sultan of Turkey withdrew the ‘firman’ recognizing Abdul Messiah as Patriarch and instead Abdullah II was recognized as the Patriarch. Therefore when there is a dispute as to the legitimacy of a

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person claiming to be the Patriarch, only, then Section 101 comes into play and the canonically consecrated Patriarch with cooperation of catholicos can be recognized as legitimate. There is no pleading in the present suit as to legitimacy of the Patriarch currently holding the office. As per information available from 14.9.1980 till 21.3.2014, Ignatius Zakka II was the Roman Patriarch of Antioch. He was the same Patriarch who was in office during the 1995 judgment against whom the Catholicos group had filed a writ petition in the Kerala High Court. In the absence of pleadings they cannot refuse to recognize him and take shelter of Section 101 of 1934 Constitution. The expression 'cooperation' appearing in section 101 of the 1934 Constitution must be interpreted to mean only a formal acknowledgement on the part of the Catholicos in recognizing the Patriarch canonically consecrated. Further it was submitted that this Court has laid down that in Para 155(3) of the 1995 judgment that the Patriarch could exercise the power in consultation with the Catholicos. Consultation does not mean concurrence as held in *L & T McNeil Ltd. v. Govt. of T.N.* (2001) 3 SCC 170 and *State of Gujarat & Anr. v. Justice R.A. Mehta (Retired) & Ors.* (2013) 3 SCC 1. Only intimation would be required in this case. There is nothing to prevent the Patriarch from exercising the powers even if the Catholicos disagree, as the Patriarch of Antioch is spiritually superior. No consent or permission is required of the Catholicos. The observations made at Para 158 of the 1995 judgment of this Court with respect to the Constitution of a representative body have been relied upon. The same is extracted hereunder:

"158. ... It is thus clear that the Malankara Association was formed not only to manage the temporal affairs of the Church but also its religious affairs and that the appointment of Metropolitans was subject to acceptance by the people of Malankara. The emphasis is upon the people of Malankara and not upon the individual Churches/ Parish Churches. ... It thus appears that while the membership of the Malankara Association is limited to one priest and two laymen elected by each Parish Assembly, the membership of the Malankara Church as such consists of all men and women, who accept the tenets and the faith. ... if the Malankara Association is to be vested with the control over the religious and communal affairs of the entire Malankara Christian community, it must truly and genuinely reflect the will of the entire spectrum of

A the community. A powerful body having control over both  
 reasonable and fair manner. ... It may, therefore, be necessary to  
 substitute clause (68) [now clause (71)] and other relevant clauses  
 of the Constitution to achieve the aforesaid objective which would  
 also affirm the democratic principle, which appears to be one of  
 the basic tenets of this Church..."

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134. It was also urged by Shri K Parasaran, learned senior counsel  
 that the interpretation of the above observations is not sustainable. The  
 Malankara Association though was entrusted with the management of  
 religious and communal affairs, the exercise of spiritual function was  
 not entrusted to the Catholicos to the exclusion of the Patriarch. This  
 Court held in the 1995 judgment that the even if he has power to do so  
 Patriarch cannot exercise the power unilaterally. The observation made  
 by this Court with reference to the democratic principle has to be  
 understood in the context of representing the entire spectrum of the  
 community relating to governance and administration. Religion and faith  
 are not governed by democracy. Subsequent orders were passed. They  
 were related to administration and management and did not touch upon  
 the exercise of spiritual functions.

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135. None of the aforesaid submissions are acceptable for various  
 reasons. It is apparent from *M M B Catholicos v. T. Paulo Avira* (supra)  
 and the 1958 judgment rendered by this Court that similar issues with  
 respect to repudiation of powers of the Patriarch by the Catholicos group  
 were raised. As apparent from the aforesaid extracted texts.

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136. In 1879, Seminary suit OS No.439/1054 was filed. While the  
 plaintiff asserted the supremacy of Patriarch in consecrating and  
 appointing Metropolitans from time to time to govern and rule over the  
 Malankara Edavagai, sending Moron (the sanctified oil) for baptismal  
 purposes, receiving the Ressissa from the community to maintain his  
 dignity and in generally controlling the ecclesiastical and temporal affairs  
 of the Edavagai, the defendant denied such Patriarchal supremacy. Suit  
 was decided by the judgment of Travancore Royal Court of Final Appeal  
 in 1889. The conclusions inter alia arrived at were that the ecclesiastical  
 supremacy of the Patriarch of Antioch over Malankara Syrian Christian  
 Church in Travancore had all along been recognized and acknowledged  
 by Jacobite Syrian Christian community and their Metropolitans. However,  
 the authority of Patriarch never extended to the government of  
 temporalities of the church. It was also held that the Metropolitan of the

Jacobite Syrian Church in Travancore shall be a native of Malabar and accepted by the people as their Metropolitan. A

137. Arthat suit was also filed in 1877. The Patriarch of Antioch did not relish he judgment of the Royal Court of Travancore. The judgment in Arthat suit was passed on 15.8.1905. The Cochin Court of Appeal reaffirmed the findings of the Travancore Royal Court in which it was declared by the Cochin Court of Appeal "while the Patriarch of Antioch is the spiritual head of Malankara Syrian Jacobite Christian Church, the church and their properties are subject to the spiritual, temporal and ecclesiastical jurisdiction of the Malankara Metropolitan. In other words the Patriarch's claim of control over the temporal affairs of the Malankara Church was rejected once again." The revival of the Catholicate took place in 1912. It was by two Kalpana i.e. Ex. A13 and Ex. A14. On 16.4.1913, Mar Ivanios who was consecrated as the Catholicos died. The post of Catholicos remained vacant from 1913 till 1925. In 1925 one Mar Geevarghese Philixinos of Vakathanam was installed as the second Catholicos. On 17.12.1928, Geevarghese Gregorius was installed as the third Catholicos. Second and third Catholicos were appointed without reference to the Patriarch. Vattipanam suit was filed as the dispute arose with respect to the interest on 3000 Star Pagodas. Suit was filed in 1913, which was converted into a representative suit. Defendants 1 to 3 represented the Catholicos group. Defendants 4 to 6 represented the Patriarch group. The District Judge held that the first defendant belonging to Catholicos is a validly appointed Malankara Metropolitan, having been accepted by the community at the installation meeting held in 1084. It was also held that the withdrawal of recognition by the Sultan of Turkey did not deprive Abdul Messiah of his purely spiritual functions and powers and that the ex-communication of the first defendant by Abdulla II was invalid. Patriarch group filed an appeal before the High Court of Travancore. Full Bench of the High Court allowed the appeal and reversed the judgment and decree of the trial court in 1923. However defendants 1 to 3 applied for review of judgment and the appeal was re-heard by the Full Bench that was decided on 4.7.1928 and the decision of the District Judge was upheld and the decree was affirmed. It was held that Malankara Metropolitan was validly appointed. Thus the Patriarch faction had lost in the aforesaid suit also. Thereafter, the 1934 Constitution had been passed in M.D. Seminary meeting dated 26.12.1934 that was held after issuing notices to all churches. B C D E F G

A The Metropolitans of the Patriarchal faction issued notice summoning a meeting of the church representatives for 22.8.1935 to elect the Malankara Metropolitan. The notice stated that none of the persons belonging to Catholicos faction should be elected. Meeting was held on 22.8.1935 and Mar Poulouse Athanasius was elected as the Malankara Metropolitan, and the trustees appointed on 26.12.1934 in B M.D. Seminary Meeting were removed. C.M.A. No.74 of 1107 was dismissed for non-prosecution. Thereafter the Patriarch group instituted Samudayam suit on 10.3.1938 which this court decided finally on 12.8.1958.

C 138. Issue No.14 was framed in Samudayam Suit as to defiance of the authority of the Patriarch. The submission that the defendants by placing reliance on the authority of the Catholicos had become heretics or had voluntarily gone out of the church was not accepted as that had been concluded by the decision of Vattipanam suit. The plea was barred by the principle of *res judicata*. It was held that defendants 1 to 3 had D not become heretics or had not set up a new church by accepting the establishment of the Catholicate by Abdul Messiah with power to the Catholicate for the time being to ordain Metropolitans and to consecrate Moron and thereby reducing the power of the Patriarch over the Malankara church to a vanishing point. It was also held that defendants E 4 to 6 of patriarch faction had not been validly elected in the aforesaid meeting convened in 1935. This Court held in the Samudayam suit that issues 14, 15, 16 and 19 were directly and substantially in issue in the interpleader suit (OS No.94/1088) i.e. Vattipanam suit, and thus, these questions could not have been re-agitated in the Samudayam suit. With respect to the supremacy of the patriarch it was held that the averment F was based on the new Constitution. It could not be said that the defendant had incurred any disqualification. Assertion of the power of the Catholicos would not mean repudiation of power of patriarch. In the instant case also we find that due to Patriarch's action in the year 1972 of appointment of Vicar and priests etc. unilaterally, created unrest in the church. It again happened in 2002 onwards. It is in that context writ petitions came G to be filed when Patriarch faction was not following the decision of this Court of 1995 and did not participate in the election and in 2002 created a new Constitution of 2002 and a parallel administration. The aforesaid writ petitions came to be filed in the High Court. The patriarch and his H faction ought to have accepted the judgment of this Court. At the same

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time Catholicos ought to have respected the authority of the Patriarch. However the level at which the differences reached in spite of the judgment of 1995 which was binding on all concerned, the action of the Catholicos faction cannot be said to be wholly illegal as an effort was made by Patriarch to divide the church, and therefore they cannot be said to have incurred any disqualification or can be termed as heretics. The writ petitions were ultimately dismissed but the unpleasant events which happened in the case after 1995 judgment were wholly unwarranted and ought not to have been resorted to by the Patriarch faction. When this Court had appointed Justice Malimath by consent to hold the elections, the decision of 1995 ought to have been respected by the parties. It was the bare minimum respect to the judgment that was expected of the rival factions. Both the factions ought to resolve their differences, if any, on a common platform and in case of necessity to amend the Constitution further, if it became necessary but they could not have taken at all a recourse to create the parallel system for administration of the very churches, creating law and order problem, resulting into closure of the church for substantial time and having two Vicars in the same church, serving in the church at different times each day as per the interim order. The situation where the church has reached is neither expected nor tolerable and church is not meant to be a place for such a masculine culture. The matter was decided in the Vattipanam suit, Samudayam suit and the 1995 judgment and the Patriarch faction ought not to have violated the judgment of this Court in the method and manner in which it has been done. In the 1958 judgment also this court has laid down by an elaborate reasoning process that the 1934 Constitution is binding on the Parish Churches. M.D. Seminary meeting was properly held in which the 1934 Constitution was adopted. It was clearly held in Samudyam Suit by this Court:

“43. Learned counsel for the respondent has tried to find fault with the notices in minor details. For instance, it has been argued that in the notices other than Ex.59 no agenda was mentioned. Apart from the fact that no such objection was taken in the plaint, it is clear that those notices by a clear reference to Ex.59, specially because they had all been sent together, did incorporate the agenda set out in full in Ex.59. In our opinion, the M.D. Seminary meeting was properly held and the first defendant, who is now the sole appellatant before us, was validly appointed as the Malankara

A Metropolitan and as such became the ex-officio trustee of the church properties. There is no question that the defendants 2 and 3 who are now dead had been previously elected by a meeting of the Malankara Association duly convened and held and were properly constituted trustees. In this view of the matter it must follow that the plaintiffs can not, even in their individual or representative capacity, question the title of the defendants as validly appointed trustees.”

139. The same issue had been re-agitated in 1995 and again the aforesaid questions have been raised about 1934 Constitution, authority of Patriarch and Catholicos, appointment of Vicar/priests etc. which has been dealt with in the 1995 judgment also.

140. The principle enunciated by this Court in respect of Knanaya Church is not at all applicable with respect to Parish Churches where the finding of this Court is otherwise to the effect that they are bound by the 1934 Constitution. The spiritual supremacy of the Patriarch has not been put into question by the Catholicos faction it was not pleaded that his appointment is not recognized by the Catholicos faction. The Universal Synod in accordance with the applicable Canon appoints the Patriarch. We are of the opinion that in the absence of any dispute as to the identity who is the Patriarch, there is no question of not recognizing Patriarch by the Malankara Church hence. Rightly it has not been pleaded, but that does not help the appellants with respect to appointment of Vicar and Priests etc. However, what is the extent of authority of the Patriarch has to be seen and gazed in the light of historical background – Kalpanas – and what has been held in various representative suits from time to time which are binding to the extent the issues decided. We are of the considered opinion that once office of the Catholicos has been re-established, Patriarch could not exercise the powers which have been dealt with in the 1934 Constitution, and conferred on various authorities in hierarchy of church, that too unilaterally to create another centre of power and thereby the Patriarch cannot be permitted to create parallel system of administration by appointing Vicars, Priests and Deacon or another authority of Church. He is bound to act within the four corners of the 1934 constitution for the sake of peace in the church. In the temporal matters, Patriarch has no power and the spiritual power had also come to the vanishing point by his own acts as noticed by this Court in the 1995 and other judgments. Submission to the contrary on behalf of

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the appellants that he can exercise the powers after informing the Catholicos, cannot be accepted. The Malankara Metropolitan has to be of local area. Logically also for proper management of the affairs of Churches power cannot be exercised from abroad. Such a scenario is neither conceived nor feasible or permissible. The spiritual supremacy of one holy authority over the other, also cannot per se mean exclusion and subordination of the other religious authority. When there is delegation and delimitation of the territorial and other powers, concerned authorities however high they may be, spiritually or otherwise, have to follow the discipline and strictly act as per delimitation of zones and powers. It is absolutely necessary for survival of the Church and for proper administration.

**IN RE : THE 1934 CONSTITUTION IS IN THE NATURE OF A CONTRACT, ENFORCEABLE AT PRESENT:**

141. It was urged by Shri K. Parasaran, learned senior counsel appearing on behalf of the appellants that the 1934 Constitution is in the nature of a contract and it can be discharged in 3 ways – by performance, frustration and breach. Since the Catholicos have breached the Constitution by repudiating the supremacy of the Patriarch, it stands discharged and no longer binds the appellants. Under section 37 of the Indian Contract Act, 1872 the parties to the contract must either perform or offer to perform their respective promises unless such performance is dispensed with or excused by law. The Catholicos group disallows the Patriarch group to follow their faith as provided in the 1934 Constitution by repudiating the supremacy of the Patriarch. Once they are in breach of the 1934 Constitution and not adhering to the contract, they are not entitled to rely on the same. It is worse to comprehend that the Parish churches where the Patriarch group is in majority, should even confess to a Vicar owing allegiance to the Catholicos, and if they want to follow their faith of supremacy of the Patriarch then the management of the Parish Church properties vesting in trust will be forfeited in favour of the Catholicos of the Malankara Church which would be in violation of the provisions contained in Article 25 of the Constitution. We find that the source of the entire problem is that the Patriarchs faction is not ready to accept Vicar and priests and the management which vests not only in Catholicos but also in Malankara Metropolitan, Diocesan Metropolitan. They want to have their own system of management by creating parallel managing groups as noted by this Court in the 1995

A judgment also. In 1972 genesis of entire problem in the Churches was  
appointment of Vicar etc. made unilaterally on behalf of the Patriarch.  
Thereafter this Court had rendered the judgment and held that it was not  
open to the Patriarch to do it in the method and manner that it was done.  
Even assuming for a moment that Patriarch was having those powers,  
B he could not exercise them unilaterally and the 1934 Constitution prevails  
in the churches, is a clear finding of this Court. Thus the Patriarch has  
also acted against the 1934 Constitution as well as the Canon by which  
Catholicos have been re-established in 1912 and after delimitation of  
areas. The Patriarch faction for no good cause is ready to accept the  
ecclesiastical and spiritual powers of the Catholicos and others as provided  
C in the Constitution and Kalpana's and as held by this Court in the previous  
judgments. It was held in 1905 in the Arthat Suit that the Churches and  
their properties are subject to spiritual, temporal and ecclesiastical  
jurisdiction of Malankara Metropolitan. The Patriarch's claim of control  
D over the temporal affairs of the Malankara Church was rejected. It  
was also rejected in the Seminary Suit filed in 1879. The effort made by  
the Patriarch faction appears to be for the temporal gains under the  
guise of supremacy of the Patriarch as the Vicar and priests have the  
power of management in addition to performing the religious duties. The  
submission that the 1934 Constitution has been breached by the Catholicos  
cannot be accepted. There is not only violation of binding judgment 1995  
E of this Court by the Patriarch faction but of other binding precedents  
too.

It was vigorously urged by Shri K.Parasaran, learned senior  
counsel that the 1995 judgment was rendered to reconcile the two warring  
factions. Observations made by this Court at Para 157 of the 1995  
F judgment have been relied upon in which it has been observed that the  
directions were issued to bring about reconciliation between the two  
warring groups and establish peace in Malankara Church which should  
be desired by every well-meaning member of the Church. The learned  
senior counsel urged that the conduct of the Catholicos in refusing to  
recognize the Patriarch undermines the 1995 judgment of this Court. As  
G a matter of fact when execution of 1995 judgment was pending, in spite  
of appointment of Justice Malimath with consent of the parties to hold  
the elections, the Patriarch faction took up different stance in the gross  
violation of dictum, and there was breach of constitution on its part. It  
was bent upon to circumvent 1995 judgment and created illegally a parallel  
H system of administration and also formed the Constitution 2002 which

was totally uncalled for and an impermissible action. After formation of the Constitution of 2002 they held separate meetings of Patriarch groups, and entire system was usurped. This resulted in various law and order problems as projected in the case and Parish Churches remained closed for quite some time. Once there is a Malankara Church it has to remain as such. No group or denomination can take away the Church and form another group for its management as that would virtually tantamount to usurping its properties and the Church itself. When the Church has been created and is for the benefit of beneficiaries, in our opinion, it is not open for beneficiaries even by majority to usurp its property or management.

142. Shri K.Parasaran, learned senior counsel, next urged that the Samudayam case has no bearing on the present proceeding. It was submitted that the Samudayam suit was with respect to the common trust property of the Malankara Church. No doubt about it that the dispute in Samudayam Suit was with respect to community property but considering the rival claims, various issues which were raised, had been gone into and the findings had been recorded thereupon in order to decide the said controversy, are binding as suit was representative suit. Thus the issues which have been decided in the suit, cannot be re-opened, including the question of adoption of the 1934 Constitution, its validity and binding nature. The applicability and legality of 1934 Constitution was questioned in the Samudayam suit. A ground was raised that by formation of the 1934 Constitution, supremacy of the Patriarch has been taken away. This Court in 1995 judgment construed Samudayam judgment and there is no scope to differ with the same.

Shri K.Parasaran, learned senior counsel, urged that the High Court has not assigned any reason why the judgment of the trial court was erroneous. We have gone through the judgment and examined the entire case. In our opinion the High Court has rightly granted the declaration sought for in the facts and circumstances of the case, projected in the case. The declaration given that the Parish Churches are governed by the 1934 Constitution is just and proper.

143. It was also submitted that as the Catholicos have repudiated the supremacy of the Patriarch, they have not come to the Court with clean hands. Relying upon *Mohammadia Cooperative Building Society Ltd. v. Lakshmi Srinivasan Cooperative Building Society Ltd.* (2008) 7 SCC 310, it was submitted that the discretionary relief in a suit for

A specific performance cannot be granted to a plaintiff who has come to the court with a pair of dirty hands. We find that in the instant the Patriarch faction is more to be blamed for disorder in the churches than the Catholicos faction. They ought to have followed 1995 judgment and other decisions. That they have not done and have insisted upon their own system of management that is not permissible.

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**IN RE: UDAMPADY – ENFORCEABILITY, OF BINDING NATURE AND 2002 CONSTITUTION:**

144. In Mannathur Church matter, Shri Mohan Parasaran, learned senior counsel, urged that the Church is having its own Constitution in the form of Udampady of 1890 that was a registered document. The High Court has found that in fact the Church had been administered by the 1934 Constitution. The 1934 Constitution is applicable to the Parish Churches under the Malankara Church. The submission that the Udampady will prevail cannot be accepted in view of the provisions made in section 132 of the 1934 Constitution to the effect that all agreements which are not consistent with the provisions of this Constitution are made ineffective and annulled and also in view of the finding in the 1958 Samudayam matter that the Constitution had been validly adopted and is applicable. The question cannot be re-agitated and reopened under the guise of Udampady. Udampady cannot hold the field for administration of such Parish Churches. Udampady is not a document by which the Church came to be established. It is with respect to its management only. Udampady cannot prevail over the Constitution that has been adopted for all the Malankara Churches and is holding the field. The registration of the Udampady cannot make it superior than the Constitution and the latter will prevail as found by this Court in earlier decisions. The finding is binding, conclusive and has to be respected. Even otherwise, in our opinion, Udampady cannot hold the field.

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145. Shri Mohan Parasaran, learned senior counsel, has also relied upon the Universal Declaration of Human Rights which recognizes the right to form an association, and further goes on to state that no one can be compelled to be part of an association. Article 20 is extracted hereunder:

***“Article 20.***

(1) Everyone has the right to freedom of peaceful assembly and association.

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(2) No one may be compelled to belong to an association.

(Emphasis supplied)

It was submitted by him that the right to form an association under Article 19(1)(c) also carries with it the negative right, i.e. the right not to be part of an association which can be inferred from the principle laid down in the case of *Bijoe Emmanuel & Ors. v. State of Kerala & Ors.* (1986) 3 SCC 615 at paras 14-15 which are extracted hereunder:

“14. Apart from the fact that the circulars have no legal sanction behind them in the sense that they are not issued under the authority of any statute, we also notice that the circulars do not oblige each and every pupil to join in the singing even if he has any conscientious objection based on his religious faith, nor is any penalty attached to not joining the singing. On the other hand, one of the circulars (the first one) very rightly emphasise the importance of religious tolerance. It is said there, “All religions should be equally respected.”

15. If the two circulars are to be so interpreted as to compel each and every pupil to join in the singing of the National Anthem despite his genuine, conscientious religious objection, then such compulsion would clearly contravene the rights guaranteed by Article 19(1)(a) and Article 25 (1).”

He also relied upon *Cheall v. APEX* (1983) 1 All ER 1130; *Smt. Damyanti Naranga v. The Union of India & Ors.* (1971) 1 SCC 678; *O.K. Ghosh v. E.X. Joseph* (1963) Supp 1 SCR 789; *Suryapalsingh v. U.P. Government* AIR 1951 All 674; and *Sitharamachary v. Sr. Dy. Inspector of Schools* AIR 1958 AP 78. He urged that the 1995 judgment cannot be read as if the appellant Church cannot leave the Malankara Association as the same would result in infringement of fundamental rights of the majority of the Parishioners who are beneficiaries in this case belong to the Patriarch faction.

146. We are unable to accept the arguments by Shri Mohan Parasaran, learned senior counsel for various reasons. Firstly, no one can deny the right under Article 20 of the Universal Declaration of Human Rights. In our opinion, counsel is right that no one may be compelled to belong to an association. There is no compulsion with any of the Parishioners to be part of the Malankara Church or Parish Church. There

A can be an exercise of unfettered volition not to be a part of an Association but the question in the case is whether one can form another Association within the same Association and to run a parallel system of management of the same very church which is not permissible. Leaving a Church is not the right denied but the question is whether the existing Malankara Church can be regulated otherwise than by the 1934 Constitution. If the effort of certain group of Patriarch otherwise is to form a new Constitution 2002 to appoint Vicars, Priests etc., giving a go by to the 1934 Constitution and to form a new Church under the guise of same Malankara Church, it is not permissible. The Malankara Church its properties and other matters are to be governed by the 1934 Constitution and even majority of parishioners has no right to take away and usurp the church itself or to create new system of management contrary to 1934 Constitution. It was a trust created as Malankara church that is supreme, for once a trust always a trust.

D As per the 1934 Constitution, it is clear that while individual Parishioners may choose to leave the Church, there is no question of even a majority of the Parishioners in the Parish Assembly by themselves being able to take the movable or immovable properties out of the ambit of the 1934 Constitution, without the approval of the Church hierarchy.

E 147. It is necessary to look into the various provisions provided in the 1934 Constitution to deal with the aforesaid aspect. Part 1 contains the Declaration. Sections 1, 2, 3 and 5 are extracted hereunder:

F “ 1. The Malankara Church is a division of the Orthodox Syrian Church. The Primate of the Orthodox Syrian Church is the Patriarch of Antioch.

G 2. The Malankara Church was founded by St. Thomas the Apostle and is included in the Orthodox Syrian Church of the East and the Primate of the Orthodox Syrian Church of the East is the Catholicos.

H 3. The ancient and the real name of the Malankara Church is the Malankara Orthodox Syrian Church although it is also wrongly called ‘The Jacobite Church’, for the same reasons for which the Orthodox Syrian Church has been also called so.

5 The approved Canon of this Church is the Hudaya Canon written by Bar Hebraeus (the same Canon book as the one printed in Paris in the year 1898.)”

148. As per section 6, every Parish Church shall have a Parish Assembly and there would be one Parish Register. Entry of each member shall be made in the Parish Register. It is open to become a permanent member or a temporary member of the Parish Church as provided in section 9. The Vicar has to convene the Parish Assembly meeting as provided in section 12. As per section 13, Parish Assembly shall meet at least twice in a year. As per section 15 the Vicar shall be the President. As per section 16 there shall be a Secretary for the Parish Assembly. Section 17 provides the duties of the Parish Assembly which shall include the election of the Kaisthani (Lay Steward), the Secretary and the members of the Managing Committee; and as per section 18 the Vicar shall send the decisions of the Parish Assembly to the Diocesan Metropolitan. Appeal lies against the decision of the Parish Assembly to the Diocesan Metropolitan under section 19.

Section 22 of the 1934 Constitution deals with apportionment of money. It is extracted hereunder:

"22. After setting apart the portion referred to in Section 122 \*\* hereunder, the balance shall be spent on the following items, in the following order of priority and only any balance remaining over may be spent for other needs of the Parish and the Church in general:-

(a) Day-to-day expenses in connection with the Holy Qurbana, festivals and other ministrations of the Church.

(b) Expenses in connection with the maintenance and upkeep of the Parish Church and other Parish buildings.

(c) Salary of the Vicar, the other Priests, the Sexton etc;

(d) Payments due to the Church Centre and the Diocesan Centre.

(e) Expenses for the Schools, Charitable Hospitals, Orphanages, Sunday Schools, Prayer meetings, Gospel work and the like conducted by the Parish Church.

Section 122. Out of the annual gross income of a Church including its properties, 10% for the first Rs 500/-; and 5% for the remaining Rs 500/- to Rs 1500/- and 2.5% for the amount above Rs 1500/- shall be sent every year to the Malankara Metropolitan. If the percentage as stated above of any church is less than Rs 10/-, not

A less than Rs 10/- shall be sent from that Church to the Malankara Metropolitan under this item.”

B 149. Section 23 deals with acquisition of immovable property or sale or creation of any charge on immovable property of the Parish church for which decision shall be made by the Parish Assembly with the previous written consent of the Diocesan Metropolitan and shall be executed by the Vicar and the Kaisthani. Section 23 is extracted hereunder:

C “23. The acquisition of any immovable property for the Parish Church or the sale or creation of any charge on the immovable property of the Parish Church, shall be in pursuance of the decision made by the Parish Assembly and the written consent of the Diocesan Metropolitan and shall be executed by the Vicar and the Kaisthani (Lay – Steward).”

D For every Parish Assembly there has to be a Parish Managing Committee as provided in section 24. Its membership is dealt with in section 25. The Vicar and Secretary are the members. The Vicar shall be president of the Parish Managing Committee as per section 26. The Vicar shall report to the Diocesan Metropolitan about the election of the Kaisthani, the Secretary and other members of the Parish Managing Committee. Section 28 deals with calling of the Parish Managing Committee meeting by the Vicar. As per section 31, the Parish Managing Committee shall prepare the yearly budget. Kaisthani (lay-steward) is also a part of the Parish Church and is elected by the Parish Assembly as provided in section 33. He shall maintain correct accounts as provided in section 35 and when the Diocesan Metropolitan comes to the Church, he shall get the books of accounts signed by Diocesan Metropolitan and sealed. As per section 36, the Vicar has to send two copies of the summarized statement of accounts passed at the Parish Assembly to the Diocesan Metropolitan for his approval. As per section 37 the movable and immovable properties of the Parish Church shall be entered into a register.

G There shall be a Vicar for every Parish Church; other priests, if any shall be assistants of the Vicar as per section 38. The Vicar and other priests shall be appointed, removed or transferred by the Diocesan Metropolitan as per section 40.

H The Vicar has to maintain various registers as provided in section 43.

150. Part 3 of the 1934 Constitution deals with Diocese. There shall be a Diocesan Assembly as provided in section 45. Its constitution is provided in section 46 which is extracted hereunder: A

“46. The following shall be the members of the Diocesan Assembly, viz

a) A priest from each Parish Church elected by the Parish Assembly, provide that if in any Parish Church, there is only one priest, he shall be the priest representative of the Parish Church without the need of an election. B

b) Men alone who are elected by the Parish Assembly in the manner specified hereunder on the basis of the number of members in the Parish Assembly shall be members of the Diocesan Assembly. C

- |                              |   |                    |   |
|------------------------------|---|--------------------|---|
| 1. Up to 200 members         | - | 1 representative   |   |
| 2. From 201 to 500 members   | - | 2 representatives  | D |
| 3. From 501 to 1000 members  | - | 3 representatives  |   |
| 4. From 1001 to 1500 members | - | 4 representatives  |   |
| 5. From 1501 to 2000 members | - | 5 representatives  |   |
| 6. From 2001 to 2500 members | - | 6 representatives  | E |
| 7. From 2501 to 3000 members | - | 7 representatives  |   |
| 8. From 3001 to 3500 members | - | 8 representatives  |   |
| 9. From 3501 to 4000 members | - | 9 representatives  |   |
| 10. Above 4000 members       | - | 10 representatives | F |

Members in this Article refer to the members as contemplated and mentioned in the amended Clause (7) of the 1934 Constitution.

c) By any reason, if a vacancy arises in the membership of the Diocesan Assembly from any Parish, that Assembly shall elect another person for the remaining period alone and such election shall be reported to the Diocesan Metropolitan in writing.” G

Section 46 was amended as per 1995 Judgment. There has to be election of Diocesan Secretary and appointment of auditor to examine the accounts of the income and expenditure as per section 47. The H

A Secretary shall have to maintain the correct accounts of the income and expenditure under section 51. Section 53 provides that funds of the Diocese shall be deposited in the name of the Diocesan Metropolitan. Section 54 deals with acquisition of immovable property or the disposal of or creation of any charge. Section 54 of the Constitution is extracted hereunder:

B “54. The acquisition of any immovable property for the Diocese or the disposal of or creation of any charge on any immovable property of Diocese shall be done by the Diocesan Metropolitan and the Diocesan Secretary jointly and in pursuance of a decision thereto made by the Diocesan Assembly and written consent of the Malankara Metropolitan.”

C For every Diocese there shall be Diocesan Council. Decisions of the Diocesan Metropolitan are appealable to the Malankara Metropolitan as provided in section 62. There shall be a Diocesan Metropolitan as provided in section 63. Section 64 provides the Catholicos in consultation with the Malankara Association Managing Committee and according to the recommendation of the Malankara Episcopal Synod allocate Dioceses to the Metropolitans which is extracted hereunder:

D “64. The Catholicos in consultation with the Malankara Association Managing Committee and according to the recommendation of the Malankara Episcopal Synod allocate Dioceses to the Metropolitans.”

E Section 65 deals with power of Diocesan Metropolitan and the matters concerning faith, order and discipline etc. same is reproduced below :

F “65. Matters concerning faith, order and discipline shall, subject to the decisions of the Malankara Episcopal Synod, be under the control of the Diocesan Metropolitan “

G As per section 66 the Diocesan Metropolitan shall carry on the administration subject to the supervision of the Malankara Metropolitan. Same is extracted hereunder:

H “66. The Diocesan Metropolitan shall carry on the administration of the Dioceses under their charge subject to the supervision of the Malankara Metropolitan.”

Section 67 provides that the expenses of the Diocesan Metropolitan on his visit to the churches of his Diocese shall be borne by such churches. A

151. Part 4 of the Constitution deals with Malankara Arch-Diocese. It will have an Association by the name of "Malankara Syrian Christian Association" as provided in section 70. Section 71 provides for membership in representative capacity with term of five years. Section 76 deals with the registers of movable and immovable properties of the community. Section 76 is extracted hereunder: B

"76. There shall be a register for the movable and immovable properties of the Community and it shall be kept by the Secretary up to date and signed every year by the Malankara Metropolitan and two members of the Committee." C

For every Malankara Syrian Christian Association (Malankara Association), there shall be a Managing Committee as provided in section 78. The Malankara Metropolitan shall be the President of the Managing Committee as provided in section 80. Section 83 deals with the expenditure from the funds of the Malankara Diocese which is extracted hereunder: D

"83. If any expenditure from the monies funds of the Malankara Diocese is to be made the majority of the Malankara Episcopal Synod and the majority of the Managing Committee members other than the Prelates shall agree." E

Property acquisition is dealt with in section 85. It is extracted hereunder:

"85. If any property is to be purchased for the Community or if any property of the Community is to be alienated or any liability created over the same, it shall be so decided by the majority of the Managing Committee and the Malankara Episcopal Synod and the deed therefore shall be executed by the Malankara Metropolitan and the Associate Trustees if the property belongs to the Joint Trust properties and by the Malankara Metropolitan alone if it belongs to the Malankara Metropolitan Trust." F G

152. There shall be community trustees for the Vattipanam (Trust Fund) and the Kottayam Syrian Seminary with the Malankara Metropolitan as per section 91. It is extracted hereunder:

A           “91. With the Malankara Metropolitan there shall be two persons, a priest and a layman who shall be the Trustees for the Vattipanam(Trust Fund) and the Kottayam Syrian Seminary and the income which have accrued or shall be accruing therefrom.”

B           Section 92 provides the Malankara Metropolitan shall be the trustee for the rest of the community properties. It is extracted hereunder:

          “92. The Malankara Metropolitan shall be the Trustee for the rest of the Community properties if they are not subject to other special provisions.”

C           For Malankara archdiocese there shall be Malankara Metropolitan who shall have jurisdiction regarding temporal, ecclesiastical and spiritual administration of the Malankara church. The provision of section 94 which is significant is reproduced above.

D           Section 95 provides that in case there is no Diocesan Metropolitan in any Diocese; such Diocese shall be under the direction administration of the Malankara Metropolitan. The Association shall elect Malankara Metropolitan to that office. The Catholicos may also hold the office of the Malankara Metropolitan as provided in section 98 which is extracted above.

E           153. Part 5 of the Constitution deals with the Catholicos. Sections 99 and 100 afore-extracted deal with them.

          The Catholicos has the powers of the consecration of Prelates, presiding over the Episcopal Synod, conducting administration as representative of the Synod and consecrating the Holy Moron.

F           154. “Patriarch” is dealt with in Part 6 of the Constitution in section 101 which provides that the Malankara Church shall recognize the Patriarch, canonically consecrated with the cooperation of the Catholicos.

G           155. Episcopal Synod for Malankara Church shall be there as per section 102 contained in Part 7. All Prelates in Malankara Orthodox Syrian Church shall be the members of the Synod. Catholicos shall be the President as per section 104. The Catholicos shall convene the Synod and preside over it as provided in section 105. In case there is no Catholicos, Senior Metropolitan shall convene the Synod and preside over the same. As per section 107 the Episcopal Synod shall have the authority to decide matters concerning faith, order and discipline. Same is extracted hereunder:

H

"107. The Episcopal Synod shall have the authority to decide matters concerning faith, order and discipline. When the Synod shall meet for this purpose the Synod may select such persons as the Synod may deem needed for consultation." A

No one shall have the right to alter the faith of the Church. Section 108 is extracted hereunder: B

"108. No one shall have the right to alter the faith of the Church. But in case there may arise any dispute as to what is faith, the Episcopal synod above said may decide the matter and the final decision about this shall vest with the Ecumenical Synod." A

156. Ordination is dealt with in Part 8 of the 1934 Constitution. Deacons and priests should have passed the degree examination for ordination as provided in sections 110 and 111. With respect to high priests, as provided in section 112, Catholicos shall consecrate with the cooperation of the Episcopal Synod, the required number of Bishops and Metropolitans for the Malankara Church. Sections 110, 111 and 112 are extracted hereunder: C D

"110. A candidate for ordination should have at least passed the Degree Examination." D

111. Those desiring to be ordained shall on the recommendation of the Parish Assembly or on their own apply to the Diocesan Metropolitan and he after due inquiry if he feels no objection shall send them to the Malankara Metropolitan and he according to the convenience shall send them to the Theological Seminary of the community and if needed theological study the Principal of the Seminary certifies that they are fit for ordination; the Diocesan Metropolitan or the Malankara Metropolitan will at their discretion ordain them. But after three years of theological studies if a certificate is issued by the Principal the ordination of Korooya (Reader) may be administered. B, High Priests (Prelates) E F

112. The Catholicos shall consecrate with the co-operation of the Episcopal Synod the required number of Bishops and Metropolitans for the Malankara Church. On the occasion of consecration of a Bishop or a Metropolitan such Bishop or Metropolitan shall submit a statement regarding faith and submission (Salmoosa) to the Catholicos, the President of the Synod. The Catholicos shall give a certificate of consecration (Sthathicon) to the Prelate so consecrated." G H

A 157. If any one shall be consecrated as Catholicos, the Association shall elect him to that office. The Synod shall consecrate the person as Catholicos and there shall be invitation to Patriarch when the Catholicos is to be consecrated and if the Patriarch arrives, he shall consecrate the Catholicos with the cooperation of the Synod. Section 114 is extracted hereunder :

B “114. If any one shall be consecrated as Catholicos he shall be elected to that office by the Association. If such election is approved by the Episcopal Synod, the Synod shall consecrate the person as Catholicos. If there be a Patriarch recognized by the Malankara Church the Patriarch shall be invited when the C  
Catholicos shall be consecrated and if the Patriarch arrives he shall as the President of the Synod consecrate the Catholicos with the co-operation of the Synod.”

D If it is necessary to consecrate a Catholicos then invitation is to be sent to Patriarch. In case he attends, he shall, as the President of the Synod, consecrate the Catholicos with the cooperation of the Synod otherwise Synod shall consecrate the Catholicos.

E 158. Complaints and decisions are dealt with in Part 9 with which we are not much concerned. ‘Income’ is dealt with in Part 10 of the Constitution. Sections 122 and 123 are relevant and they are extracted hereunder;

F “122. Out of the annual gross income of a church including income from its properties, 10% on the first Rs 500/-; and 5% for the remaining Rs 500/- to Rs 1500/- and 2 ½% for the amount above Rs 1500/- shall be sent every year to the Malankara Metropolitan. If the percentage as stated above of any church is less than Rs 10/-, not less than Rs 10/- shall be sent from that Church to the Malankara Metropolitan under this item.

G 123. The Malankara Metropolitan shall allot the income derived as above at the rate of 4 out of ten to the Diocesan Bishop, 2 to the Diocesan Fund, 1 to the Malankara Metropolitan and 3 to the Malankara Diocesan Fund.”

159. Monastries are dealt with in Part 11 in sections 124 and 125. The provisions are extracted hereunder:

H

“124. Monasteries or similar institutions shall be established only with the approval of the Episcopal Synod and all such institutions shall be subject to the authority of the Episcopal Synod. A

125. If any or all members of any of the above institutions leave this Church for another, all rights of such in the institutions or over other assets shall thereupon lapse and the institutions and their assets shall remain for ever in the ownership of this Church.” B

160. Rule Committee is dealt with in Part 12 in sections 126 and 127. Section 128 provides that the Parish Assembly, the Parish Managing Committee, the Diocesan Assembly, the Diocesan Council or the Association Managing Committee shall have no authority to pass any resolution concerning faith, order or discipline. Section 128 is extracted hereunder: C

“128. The Parish Assembly, the Parish Managing Committee, the Diocesan Assembly, the Diocesan Council the Malankara Association or the Association Managing Committee shall have no authority to pass any resolution concerning faith, order or discipline.” D

161. The Parish Assembly can pass byelaws that are not inconsistent with the principles contained in the Constitution. The Diocesan Assembly or the Diocesan Council can also suggest and submit to the Managing Committee through the Rule Committee for consideration as provided in section 129 that is extracted hereunder: E

“129. Byelaws which are not inconsistent with the principles contained in this Constitution may be passed from time to time by the Parish Assembly, the Diocesan Assembly or the Diocesan Council and submitted to the Managing Committee through the Rule Committee and brought in to force with the approval of the Managing Committee.” F

162. All agreements, offices and practices which are not consistent with the provisions of the Constitution are made ineffective and have been annulled as provided in Section 132 contained in Part 13 ‘Miscellaneous’, and the same is reproduced hereunder: G

“132. All agreements, offices and practices which are not consistent with the provisions of this Constitution are hereby made ineffective and are annulled.” H

A 163. Various provisions of the Constitution make it clear that there is a hierarchy of control and Parish Church properties cannot be dealt with otherwise, the provisions contained in section 23 as to the written consent of the Diocesan Metropolitan and the detailed system of management, appointment of Vicar and the Kaisthani, Parish Assembly, as also the power to spend certain amounts as provided in section 22 of the Constitution. The accounts are supervised and to be signed by the Diocesan Metropolitan. Similarly the acquisition of any immovable property for the Diocese can be with the written consent of the Malankara Metropolitan. It is apparent from the aforesaid provisions that there is a hierarchy of control that is provided with respect to the Church properties also. The community trustees are also provided for the Vattipanam that is Trust Fund. Section 94 provides for the temporal, ecclesiastical and spiritual control of the Malankara Metropolitan. Catholicos can also hold the office of Malankara Metropolitan. The Episcopal Synod has the power to consecrate Catholicos. Whatever autonomy is there, is provided in the Constitution for the Churches for necessary expenditure as provided in section 22, otherwise it is Episcopal nature of the Church and once the property vests in Malankara Church, it remains vested in it and cannot be taken away and in case there is any dispute with respect to faith etc. as is raised in the present case, it has to be decided by the Episcopal Synod and in case any bye-law is to be changed, its remedy is available under the provisions of sections 126, 127 and 129. Faction of Parish cannot decide against Constitution. Byelaws must conform to Constitution. The income has to be distributed as per sections 120 to 123.

F 164. The submission raised that by majority, decision can be taken to opt out of the 1934 Constitution by the Parish Assembly and to form a new church under a new name, as has been done in 2002. In our opinion Constitution prohibits such a course. Even bye-laws that do not conform to Constitution cannot be framed and that has to be placed before Rule Committee under sections 126, 127 and 129. In existing system of Malankara Church, a Parish Church that is a part of Malankara Church cannot be usurped even by majority in Church under the guise of formation of new Church. In this regard Shri K. Venugopal, learned senior counsel has urged that the existing majority at a given time in any Parish Church cannot be permitted to take away the assets of the church at the expense of those who adhere to the original Trust.

H

165. The majority view in the 1995 judgment refused to give declaration with respect to property in the absence of Parish churches. However it was observed that the 1934 Constitution shall govern and regulate the affairs of the Parish Churches insofar as the Constitution provides for the same. In the absence of any further prayer made, suffice it to hold that the 1934 Constitution shall govern the affairs of the Parish Churches in respect of temporal matters also insofar as it so provides and discussed by us. The Malankara Church is Episcopal to the extent it is so declared in the 1934 Constitution as held in the 1995 judgment. The 1934 Constitution governs the affairs of Parish Malankara Churches and shall prevail.

166. In our opinion, otherwise also, property cannot be taken away by the majority or otherwise and it will remain in Trust as it has been for the time immemorial for the sake of beneficiaries. It is for the benefit of beneficiaries. No one can become owners by majority decision or permitted to usurp Church itself. It has to remain in perpetual succession for the purpose it has been created a Malankara Church. Learned counsel has relied upon a decision in *Craigdallie v. Aikma* 3 ER 561 thus:

“With respect to the doctrine of the English law on this subject, if property was given in trust for A,B,C, etc. forming a congregation for religious worship; if the instrument provided for the case of a schism, then the court would act upon it; but if there was no such provision in the instrument, and the congregation happened to divide, he did not find that the law of England would execute the trust of a religious society, at the expense of a forfeiture of their property by the cestuique trusts, for adhering to the opinions and principles in which the congregation had originally united. He found no case which authorized him to say that the court would endorse such a trust, not for those who adhered to the original principles of the society, but merely with a reference to the majority; and much less, if those who changed their opinions, instead of being a majority, did not form one in ten of those who had originally contributed; which was the principle here. He had met with no case that would enable him to say, that the adherents to the original opinions should, under such circumstances, for that adherence forfeit their rights.”

A 167. In *Attorney General v. Pearson* (1817) 3 Mer 353, Lord Eldon LC again held that “where a congregation become dissentient among themselves, the nature of the original institution must alone be looked to, as the guide for the decision of the Court – and that to refer to any other criterion – as to the sense of the exiting majority – would be to make a new institution, which is altogether beyond the reach, and inconsistent with the duties and character, of this court.”

B  
C 168. In *General Assembly of the Free Church of Scotland v Overtoun* (1904) AC 515, Earl of Halsbury, LC, held that after discussing the judgments cited above, that “the principles for decision thus propounded have been recognized and acted upon ever since, and it would seem that it may be laid down that no question of the majority of persons can affect the question, but the original purposes of the trust must be the guide.”

D In *Shergill v. Khaira* (2014) 3 All ER 243 (Supreme Court of the United Kingdom), the above judgments were all cited with approval and relied upon by the Court.

E 169. From the aforesaid it is apparent that the Parish Assembly by majority cannot take away the property and divert it to a separate and different church that is not a Malankara Church administered as per the 1934 Constitution, though it is open to amend the Constitution of 1934. As the basic documents of creation of church have not been placed on record, usage and custom for determining the competing claims of rival factions becomes relevant. In *Pearson* (supra), it was held thus:

F “But there is another view in which the case should be considered – and it is this – that, where an institution exists for the purpose of religious worship, and it cannot be discovered from the deed declaring the trust what form or species of religious worship was intended, the court can find no other means of deciding the question, than through the medium of an inquiry into what has been the usage of the congregation in respect to it; and, if the usage turns out upon inquiry to be such as can be supported, I take it to be the duty of the Court to administer the trust in such a manner as best to establish the usage, considering it as a matter of implied contract between the members of that congregation.”

H

170. Hill in the book "Law of Trusts and Trustees" has discussed the concept of law. It is not open to members of private or public trusts to appropriate trust property for themselves. Hill had been quoted in the 1995 judgment thus: A

"However, the crucial difference surely is that no absolutely entitled members exist if the gift is on trust for future and existing members, always being for the members of the association for the time being. *The members for the time being cannot under the association rules appropriate trust property for themselves for there would then be no property held on trust as intended by the testator for those persons who some years later happened to be the members of the association for the time being.*" B  
C  
(emphasis supplied).

171. Thus, we have no hesitation to hold that the 2002 Constitution cannot hold the field to govern the appellant churches and the 1934 Constitution is binding. Finding recorded by the High Court that the Kolencherry Church was not administered by the 1913 Udampady and was administered in accordance with the 1934 Constitution, in our opinion, is correct at least after the Consitution was adopted. General body meeting of 8.3.1959 has adopted the 1934 Constitution. Udampady cannot hold the field by virtue of section 132 of the Constitution and there is other oral evidence that had been assessed by the High Court including the documentary evidence and the Udampady cannot be taken to govern. Moreover in view of the findings in the 1958 Samudayam suit and the 1995 judgment, the Constitution of 1934 is binding which has been held to be valid and Malankara Church has to be administered as per the provisions contained therein. Thus Udampady of 1913 cannot be set up or used as ploy to avoid the provisions of 1934 Constitution. Thus the main plank of submissions is also barred by the principle of *res judicata*. D  
E  
F

172. Shri Shyam Divan learned senior counsel raised the submission on the basis of 1913 Udampady saying that Church was governed as per Udampady from 1913 to 1959. He urged that once the Parish Assembly decided in 1959 to go by the 1934 Constitution, it could also take a decision to go by the Udampady of 1913. It was further submitted that the 1913 Udampady operates as the Constitution of individual Parish Church. 1913 Udampady is a registered document and has to prevail over unregistered Constitution. G

A We propose to extract both Udampadies of 1890 and 1913 hereunder. The Udampady of 1890 is extracted below :

“Translation of the regd. Udampady of 1890 AD of St. George Jacobite Syrian Church, Mannathoor.

Face value – Rs.5

B In the year 1890 AD, on the day of 4<sup>th</sup> Karkidakom of 1065 M.E., before Your Grace Paulose Mar Ivanios, our Metropolitan of Kandanadu church and others (Kandanad Diocese) in Malankara, we Nazranis (Christians) and farmers who are the members of Mannathoor Church situated in Mannathoor kara, Koothattukulam Pravarthy, Muvattupuzha Mandapathuvathukkal-

C

1. Chacko Kora aged 65, Kuzhalanattu, Mannathoor
2. Ulahannan Skaria aged 32, Padinjarekkara, Mannathoor
3. Varky Mani aged 37, Peringattuparambilputhenpurayil Mannathoor,

D

4. Iype Iype aged 36, Kalarikkal, Mannathoor,
5. Mani Varky aged 49, Madathikudiyil, Mannathoor,
6. Cheria Pothen aged 50, Pallithazhathuputhenpurayil, Mannathoor

E

7. Mani Adai aged 47, Puthenpurayil Mannathoor
8. Itti Iype Iype aged 38, Vadakkemandolil, Mannathoor
9. Chummar Thomman aged 37, Nellithanathu Puthenpura, Mannathoor,

F

10. Cheria Chacko aged 51, Chemmankuzha, Mannathoor
11. Pothen Paily aged 30, Iliyammel Naduvilayikkal, Mannathoor
12. Paily Varky aged 39, Naranattu, Mannathoor
13. Ulahannan Chacko aged 54, Kozhayikkal Karikkattu, Mannathoor

G

14. Uthup Vaqrky aged 24, Kattayil, Mannathoor
15. Ulahannan Paily aged 59, Perimbara, Mannathoor and
16. Varky Chacko aged 28, Pulinthanathu, Iliyapram kara, Koothattukulam pravarthi together submitting this udambady as below.

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In Mannathoor church, we the 16 members are the parish assembly and trustees as consented by Your Grace. Amongst us the persons numbered as 1, 3, 5, 7 Chacko Kora, Varky Mani, Mani Varky and Mani Adai bought the land from Fr. Adai Pallippattu Puthenpurayil by paying 10,000 chakrams and got the deed registered as No.903 of 1062 M.E. Out of this amount, Rs.100 paid by Chacko Kora, Rs.31 by Varky Mani and Rs.44 each by Mani Varky and Mani Adai have dedicated these amounts to the church and Rs.36 and 10 chakrams received from the remaining members. Balance amount of Rs.95 and 15 chakrams to be paid to Chacko Kora from the church and the registered documents to be kept by the trustees as decided and agreed. Hence till the administrative period of Your Grace as the Metropolitan of Kandanad Diocese, the decisions of this udampady shall be in force and to continue as below we wholeheartedly agree and reinforce this udampady.

1. Within the Jacobite Syrian Church and under the Holy See (hrone) of Antioch, we who belong to your Grace's Diocese and spiritual powers shall not defect/deviate or allow to defect/deviate against the Supremacy of His Holiness the Patriarch who is seated on the Petrine Throne of Antioch and the administrative orders from Your Grace as the Metropolitan of Kandanad Diocese.

2. From 19<sup>th</sup> of Chingam 1066 M.E. to Karkidakom 31<sup>st</sup>, the trustees are Chacko Kora and Ulahannan Skaria numbered above as 1 and 2. They shall keep the keys of trust and will be responsible for collecting all the receivables and offerings from members as decided (as per padiyola) and spend for day to day expenditure. They shall keep records for all receipts and expenses. The statements to be read out in the parish assembly at the year end. They shall make two copies of the annual statements and get Your Grace's markings on one copy. This copy along with the keys, net balances as per the statement, assets and records plus the funds arising during the period between 1067 Chingam 1<sup>st</sup> and Chingam 15<sup>th</sup> shall be read out in the parish assembly and then handed over to the new trustees on the day of Chingam 15<sup>th</sup> Perunnal (feast of ascension of St. Mary). Like the above every

A year two members will be elected as trustees and this will continue.

B 3. All the movable assets of the church including silver, bronze and other metals all with a proper list, documents, registered deeds, records etc. shall be kept with the trustees which they will safeguard and they shall meet all the requirements of the church in an order.

C 4. The trustees if not handing over the keys, records and assets as per the list to the newly elected trustees on time, the new trustees can complain to Your Grace and if required they shall engage in legal case and shall settle if any.

D 5. Resheessa (offerings) to the Holy Throne of Anitoch and Your Grace shall be handed over to Your Grace and get acknowledged. We will follow the faith and clauses stated above and others and the Canon laws and the kalpanas from time to time. Any one named above if found not following this Udampady or found disqualified, they and anybody who become members of the church parish in future but found deviated from the faith they all shall be removed from the parish assembly and the rest shall continue to follow in the true faith and according to Your Grace's kalpanas. No one shall question or disagree with all the above decisions and Your Grace's kalpanas but shall accept them. If any one found otherwise we will abide Your Grace's decision.

E Chacko Kora (Sign), Ulahannan Skaria (Sign), Varky Mani (jSign), Iype Iype (sign), Mani Varky (sign), Cheria Pothen (sign), Mani Adai (sign), Itti Iype Iype (sign), Chummar Thomman (sign), F Cheria Chacko (sign), Pothen Paily (sign), Paily Varky (sign), Ulahannan Chacko (sign) Uthup Varkey (sign), Ulahannan Paily (sign), Varky Chacko (sign).

G Witness 1. Mani Devassia, Moolamattathil Peringazha Kara (sign)

Witness 2. Mathai Mathai, Palakkaran, Muvattupuzha Angadi (sign)

Witness 3. Neelakandan Ayyappan, Pattarumadathil (Sign)"

Similarly, Udampady of 1913 is as under :

H "This deed of Udampady (Agreement) is executed on this the

13<sup>th</sup> day of Adimonth of 1088 M.E. corresponding to 1913 AD by A  
1 Fr. Ouseph aged 60 S/o Chacko Christian Thenungal house, Pancode Kara, 2) Fr. Paulose aged 30 S/o Fr. Pathrose Christian Kunnathu Vadakkakkara puthen purayil kinginimattom kara 3) Fr. Gheevarghese aged 28 S/o Fr. Ouseph Christian, Thenungal, pancode kara 4) Fr. Gheerasese aged 28 S/o Paulose Christian Murimattathil Ompalayil Elamkulam kara 5) Fr. Pathrose aged 22 B  
S/o Paily Christian Chennakkattu padinjare Kunnathu, Peringole kara all are Parish priests of Kolenchery church and priesthood, Elamkulam karara, Aykkaranadu village, do desom, Kunnathunadu taluk and 6) chacko aged 45 S/o Varkey Thenungal Alackal Puthenpurayil Pancodekara 7) Cheriya aged 68 S/o Varkey, Pallikkakkudi, Elamkulam kara 8) Ittiavira aged 53 S/o Varkey Chiramattathil do kara do desom 9) Mathu aged 32 S/o Ittoopp Ayinadu Chirama Halip Puthenpurayil Kinginimattom kara 10) Pathrose aged 36 S/o Thomman, Chennakkattu Kalangamari Puthenpurayil Kadayiruppu kara 11) Mathulla aged 32 S/o Mani Eloor, Elamkulam kara 12) Paulo aged 42 S/o Mathulla Eloor Pannikkuzhiyil do kara 13) Paily aged 42 S/o Paily Olikkuzhi Thathyaril residing at Cheruthottil Puthenpurayil, Vadayampadikara 14) Varkey aged 60 S/o Puravathu, Puthukkedy Puthenpurayil, Pariyarom kara 15) Ithappiri aged 44 S/o Paily, Thuruthumariyl Puthenpurayil called as Kallanikkal, Kingini mattom kara 16) Poulo aged 50 S/o Aypu, Murimattathil Ompala Elamkulam kara 17) Kuruvila aged 54 S/o Varkey Cheladu residing at Paramurickan Puthenpurayil, Peringole kara 18) Chacko aged 39 S/o Fr. Ouseph thenungal Pallippurathu Puthenpurayil do kara 19) Paily aged 41 S/o Varkey, Thamarachalil Elamkulam kara all are residing Aykkaranadu Desom 20) Paily aged 37 s/o Uthuppan, vailayil Puthen purayil, Ezhakkaranadu kara, Ramamangalam Desom, Moovattupuzha taluk 21) Ittan aged 36 S/o Fr. Pathrose, Kunnathu Vadakkekara Puthenpurayil, Kinginimattom kara, Aykkaranadu desom, Kunnathunadu taluk all are farmers Christian and Trustees for the future administration of the do church 1) We are members of Jacobite trust and are under the Throne of Antioch” and hence we shall not do anything contrary to this 2) We shall be abide by the Bulls and orders of his Holinoss Moran Mor Ignatious Patriarch who is called as second Abdaloho who is our supreme head AND sitting in the throne of Antioch, and, of his Grace Mar Kuriakose H

A Koorilose Metrapolitan accepted by the church as appointed and  
ordained as the Metropolitan of Kandanadu Diocess, Association  
Committee President and Malankara Metropolitan in Aluva Synod  
by his Holiness. We shall pay the Ressissa to his Holiness Patriarch  
and donation to the metropolitan, we shall obey his successor in  
B that place appointed from the Throne of Antioch 3). This deed of  
Udampady (agreement) is executed as per the dairy of meeting  
convened on 11<sup>th</sup> day of month and it was decided to execute an  
udampady by the now existing 5 priests and the 16 trustees in the  
church out of the eighteen trustees and 4 four priests excluding  
C the 1<sup>st</sup> among us Fr. Ouseph Thenungal due to his old age shall do  
the duties of the trustees. Out of the 18 trustees Kurian  
Murimattathil is on bail and paily pulliattel is sick and hence they  
are not joined in this Udampady and when their turn comes, duties  
are to the performed after obtaining special kalpana. The 5 priests  
among us shall do the spiritual duties in accordance with the  
D respective order and can take reasonable remuneration. Parties 2  
to 5 shall hold the key of the trustee along with the Thannadu  
Trustees every year in accordance with their turns as vicars and  
shall do all the things of the church along with the trustees 5) The  
trustees shall perform their duties in accordance with the  
E Udampady executed on 84 Chingam 9<sup>th</sup> and executed in the sub-  
Registry Office Aykkaranadu as document No. 3. Fr.  
Gheevanghese Murimattathil Ompala, paily Ithappiri Thuruthumari  
Puthenpurayil and Puravath Paily Poothenpurayil shall hold the  
keys of trusteeship for the turn coming from 89 Chingam 1 to 31<sup>st</sup>  
F Karkkidakom and shall take the income and keep the same to pay  
the interest and dues of the assets, spent the amounts without any  
failure, keep the properties of the church under the lock and key  
of trusteeship, keep the day book for the income and expenditure  
and complete the accounts every month end and year end and  
submit the same in the meeting every year before 30<sup>th</sup> of  
G Karkkidalom every year. Two sets of accounts shall be prepared  
along with a report and submit the same before his grace and to  
get the endorsement of the metropolitan in one copy, along with  
the same shall obtain a Kalpana allowing it and submit the accounts  
at properties, documents, keys along with a list in the meeting and  
release the trusteeship and entrust the trusteeship keys to the  
H vicar and trustees of next turn. One vicar and two trustees shall

do this trusteeship job every year as afore mentioned for four years and after 31<sup>st</sup> Karkkidak of 92, the first turn as afore mentioned shall repeat. Pattom, interest, rice, paddy etc. due to the church shall be collected and accounted the same in the assets of the church the debts such as jenmi michavarom, tax etc. shall be paid and obtain receipt for the same, the further dues to the church shall be collected and recovered either through clerks or managers so appointed for salary or through any person feels good among the trustees with the kalpana of metropolitan after discussing the matter in the meeting 6) since the kottoor church sits in Elamkulam kara do Desom has been renovated with the funds of this church and the same has been functioning under this church and income and expenditure of the said church also had been taken, by the church, the income from the said church also shall be accounted in the accounts of this church and shall function as per the precedents. The spiritual functions shall be performed by the 5 priests together on turn basis ends in this church and they can receive their share also.

There are 8 keys for the locker and the same is within the custody of Fr. Poulouse Kunnathu Vadakke Puthenpurayil and Fr. Ghevarghese Murimatthil Ompala among priests and Puravathu Varkey Puthukudy Puthenpurayil, Varkey Ittiavira Thamarachalil, Paily Ithappiry, Thuruthumari Puthenpara Mani Mathulla Elocr, Thoma Puthrose Chennakkatu Kalongamoriyil and Ittoop Mathu, Chiramattathil Puthenpurayil among trustees. The income from Nadavaravu, hundiees etc. on 29<sup>th</sup> Midhunam after deducting the expenses, the income of every year after deducting the expenses and silver crosses as per the list trusteeship shall be kept in the above safe custody, the silver crosses and other things can be used in the reasonable occasions and the same shall be put in locker after the use. If the contribution in the current year found to be insufficient to meet the expenses for special needs, the same can be taken from the locker, and separate list and accounts shall be maintained for the funds and things kept in the safe locker 8) In case any unexpected obstruction comes to any of us for complying with above said Udampady or declared to be disqualified or disobedient or acted against clause 2 of this deed, those persons shall do according to the Kalpana of the Metropolitan on the basis

A of submission made by the remaining parties. The General body  
 have the power to remove the trustees or to substitute them, and  
 to discuss and decide the special things arising with respect to the  
 church. The said things shall be written in a diary and in case of  
 any difference of opinion, the same shall be resolved by the kalpana  
 B of the metropolitan on the basis of majority decision. As agreed  
 above this Udampady is written and signed with our full consent.  
 By do name of 1 to 21 witnesses 1 Varkey pally Akampillil  
 (signature) 2. Varkey Varkey Chettikkuzhi scribe (signature)  
 (Remaining portion are the names of 21 persons afore  
 mentioned.)”

C 173. In our opinion, none of submission of Shri Divan is legally  
 tenable. The church was created way back in the 7th century. The  
 Udampady of 1913 is not a document of creation of the Trust. The then  
 in-charge person executed it just for the management of the church in  
 D question. The 1934 Constitution after being adopted in 1959 by the Church  
 is binding. The Udampady of 1913 has lost its efficacy and utility. The  
 Udampady stands annulled by Section 132 of the Constitution. It cannot  
 be revived. Thus it is not open to the church or parishioners by majority  
 to wriggle out of 1934 Constitution. In view of the findings recorded in  
 the Samudayam suit also by the 1995 judgment, the question operates.  
 E as res judicata and the administration on the basis of Udampady cannot  
 be claimed. The inconsistent provisions in the Udampady shall stand  
 annulled as per section 132 of the 1934 Constitution.

F 174. There are inconsistencies between the 1934 Constitution and  
 1913 Udampady as such the latter cannot prevail. In terms of Section  
 132, any Udampady (agreement) which is inconsistent with the provisions  
 of 1932 constitution stands annulled and is ineffective. The following  
 among others, are the important inconsistencies between the provisions  
 of 1913 Udampady and the 1934 Constitution.

1934 Constitution	1913 Udampady
G Section 1. The Malankara Church is a division of Orthodox Syrian Church. The Primate of the Orthodox Syrian Church is Patriarch of Antioch	(Clause 2) We are Members of Jaobite trust and are under the Throne of Antioch and hence we shall not do anything contrary to this
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<p>Section 2. The Malankara Church was founded by St. Thomas the Apostle and is included in Orthodox Syrian Church of the East and the Primate of the Orthodox Syrian Church of the East is Catholicos</p>	<p>(Clause 2) We shall abide the Bulls and orders of his Holiness Moran Mor Ignatious Patriarch who is called as the second Abdalohoo who is our supreme head AND sitting in the throne of Antioch and of his Grace Mar Kuriakose Koorilos Metropolitan accepted by the church as appointed and ordained as the Metropolitan of Kandanadu Diocess Association Committee President and Malankara Metropolitan in Aluva Synod by his Holiness.</p>
<p>Section 120. The Vicar of every Parish Church shall collect "Ressisa" at the rate of two annas every year from every male member who has passed the age of twenty one years, and shall send the same to Catholicos</p>	<p>(Clause 2) We shall pay Ressisa to his Holiness Patriarch and donation to the metropolitan, we shall obey his successor in that place appointed from the Throne of Antioch.</p>
<p>S. 94. The Prime jurisdiction regarding the temporal, ecclesiastical and spiritual administration of the Malankara Church is vested in the Malankara Metropolitan subject to provisions of this constitution</p> <p>Section 111. Those desiring to be ordained shall on the recommendation of the Parish Assembly or on their own apply to the Diocesan Metropolitan and he after due inquiry if he feels no objection shall send them to the Malankara Metropolitan and he according to the convenience shall send them to the Theological Seminary of the Community and if needed theological study the Principle of the Seminary certifies that they are fit for ordination the Diocesan Metropolitan or the Malankara Metropolitan will at their discretion ordain them. But after three years of theological studies if a certificate is issued by the Principal the ordination of Korooya (Reader) may be administered.</p>	<p>The 5 priests among us shall do the spiritual duties in accordance with the respective order and can take reasonable remuneration.</p> <p>6. . . . The spiritual functions will be performed by the five priests together on tum basis in this Church and they can receive their share also.</p>

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A	<p>31. The duties of the Parish Managing Committee shall include the preparation of the yearly budget and the presentation of it to the Parish Assembly, the execution of the matters authorized by the Parish Assembly, the consideration and recommendation too the Parish Assembly of matters necessary of the parish and the examination of the accounts presented by the Kaisthani</p>	<p>The Trustees shall perform their duties in accordance to the Udampady executed on 84 Chingam 9<sup>th</sup> and executed in the sub registry Office Aykkaranadu as document no. 3 Fr. Gheevanghese Murimattathil Ompala Paly Ithappiri Thuruthumati Puthenpurayil Puravath Paily Poothepurayil shall hold keys of the trusteeship for the turn coming from 89<sup>th</sup> Chingam 1-31<sup>st</sup> karkkdakom and shall take the income and keep the same to pay the interest and dues of the assets, spent the amounts without any failure, keep the properties of the church under the lock and key if trusteeship, keep the day book for the income and expenditure and complete the accounts every month and year end and submit the same in the meeting every year before 30<sup>th</sup> of the karkkdakom. Two sets of accounts shall be prepared along with the report and submit the same before his grace and to get the endorsement of the Metropolitan in one copy, along with the same shall obtain a Kalpana allowing it and submit the accounts at properties, documents, keys along with the list in the meeting and release the trusteeship and entrust the trusteeship keys to the Vicar and trustees of the next turn. One vicar and two trustees shall do this trusteeship jon every year as aforementioned for four years and after 31<sup>st</sup> karkki dak of 92, the first turn as aforementioned shall repeat.</p>
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C	<p>35. The duties of Kaisthani shall include recording and maintaining correct accounts of the Parish, receiving the income and making the expenditure of the Parish according to the direction of the Parish Assembly and the Parish Managing Committee; preparing the yearly accounts of the Parish every six months and presenting the same to the Parish Managing Committee and thereafter presenting the same to the Parish Assembly. When the Diocesan Metropolitan comes to the Church on his Parish visit the account books of the Parish shall be got signed by him</p>	
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F	<p>36. The Vicar shall send or cause to be sent by the Secretary two copies of the summarized statement of accounts passed at the Parish Assembly to the Diocesan Metropolitan for his approval.</p>	
G	<p>47. Election of the Diocesan Secretary and the members of the Diocesan Council appointment of auditor to examine the accounts of the income and expenditure of the Diocese consideration of the auditors report, adoption of the Annual Accounts and consideration and the decision of matters necessary for Diocesan are within the functions of the Diocesan</p>	
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51. The duties of the Secretary include the recording and maintaining the correct accounts of the income and the expenditure of the Diocese, preparing the statement of accounts of the Diocesan Council at least twice a year and thereafter presenting the said Statement of Accounts to the Diocesan Assembly and the recording and keeping the minutes of the Diocesan Assembly and Diocesan Council.

52. The Secretary shall get printed the Statement of Accounts passed by the Diocesan Assembly and forward the copy of such accounts to every church within Diocese and one copy to Malankara Metropolitan

77. The duties of the Secretary include the recording and maintaining the correct accounts of the income and the expenditure from the asset of the Community and the revenue of the Malankara Arch Diocese, preparing and presenting up to date Statement of Accounts at the meetings of the Association and the Managing Committee.

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175. In view of the above inconsistencies, as well as in light of the findings of the Supreme Court in 1959 judgment and the 1995 judgment regarding the validity and the binding character of the 1934 constitution, the 1913 Udampady would, in any event, no longer survive and Parish Church would be governed in accordance with the 1934 Constitution.

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176. Shri Anam, learned counsel, was right in submitting that educational institutions have to be run in accordance with the provisions of the Kerala Education Act. Educational institutions cannot be governed by the Udampady of 1913 as per sections 6 and 7 of the Kerala Education Act, 1959.

**IN RE: EFFECT OF NON REGISTRATION OF 1934 CONSTITUTION AND EFFECT OF REGISTERED UDAMPADY**

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177. The Udampadies were for administration of the Church at the relevant time and lost their efficacy due to efflux of time and cannot hold the field in view of the system of administration provided in the

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- A 1934 Constitution. The 1934 Constitution was not required to be registered document as the Udampadies are not documents of creation of Trust/s, the Udampadies were not required to be registered. Udampady cannot prevail over the 1934 Constitution for various reasons discussed in the judgment.
- B 178. Reliance was placed upon section 17(1)(b) of the Registration Act regarding effect of non-registration of the 1934 Constitution. In our opinion, the 1934 Constitution does not create, declare, assign, limit or extinguish, whether in present or future, any right, title or interest, whether vested or contingent, in the Malankara church properties. It provides a system of administration as such and not required to be registered, and
- C moreover the question of effect of non-registration of the 1934 Constitution cannot be raised in view of the findings recorded in the 1959 and the 1995 judgments. The question could, and ought to have been raised but was not raised at the time of authoritative pronouncement made by this Court. Otherwise also, facts have not been pleaded nor any provision of
- D the constitution pointed out that may attract the provisions of section 17(1)(b) of the Registration Act. Thus, it is not open to question the validity of the 1934 Constitution on the ground that it cannot be looked into for want of its registration. Reliance was placed upon *Kashinath Bhaskar Datar v. Bhaskar Vishweshwar* 1952 SCR 491 in which it has been laid down that when a document restricting or expanding the
- E interest in an immovable property requires compulsory registration, otherwise it cannot be admitted in evidence. Udampady itself is not a document of creation of Trust. It related to the management only. Thus, by its registration no legal superior right is acquired to prevail over the Constitution. Reliance was placed upon decision of this Court in
- F *Chandrakant Shankarrao Machale v. Parubai Bhairu Mohite* (2008) 6 SCC 745 to contend that the terms of a registered document could be varied or altered only by another registered document. The court was dealing with the mortgage deed dated 28.2.1983. When there is such a deed of mortgage, its terms could not have been varied or altered by an
- G unregistered document so as to change its status from that of a mortgage to that of a lease. The decision has no application as the Udampady pertained only to administration. No registered document was required for administration of the Church. Document of creation of a Trust may require registration and not a document like the 1934 Constitution. Reliance was also placed upon *S. Saktivel (Dead) by LRs. v. M. Venugopal Pillai & Ors.* (2000) 7 SCC 104 and *ITC Ltd. v. State of*
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U.P. (2011) 7 SCC 493. The decision in *S. Saktivel* (supra) deals with the terms of the registered document whereas the decision in *ITC Ltd.* (supra) is also in a different context. *S. Saktivel* (supra) was a case where property itself was registered by a registered settlement deed dated 26.3.2015. It was held that it could not be modified or altered or substituted in 1941 by unregistered document. The decision has no application for the aforesaid reasons.

179. Shri Divan, learned senior counsel, relied on the decision in *Vinodkumar M. Malavia v. Maganlal Mangaldas Gameti & Ors.* (2013) 15 SCC 394, wherein this Court held that when the property of churches vests in trusts regulated by the law relating to public trusts, mere resolution passed by such trusts will not cause a transfer of the property of the trust and the law regulating transfer of property will have to be followed and complied with. This Court in *Vinodkumar* (supra) held that as far as the unification of churches for spiritual matters is concerned, the same may be effected by resolutions passed by the church trusts, however, for transfer of trust property, provisions regulating the transfer of property under the general law will have to be followed. In *Vinodkumar* (supra) there was unification of public religious society viz., First District Church of Brethren registered under Societies Registration Act and later registered as a public trust along with five other churches, which was formed into a single entity viz. Church of North India (CNI). CNI was founded under the Companies Act, 1956. The properties of First District Church of Brethren which vested in a public religious trust governed by the Bombay Public Trusts Act, was sought to be divested of the title to CNI merely on the basis of unification effected pursuant to deliberation and resolutions without following provisions regarding dissolution of society, merger etc. laid down under the Societies Registration Act and Bombay Public Trusts Act. The unification of the churches/church properties had no legal foundation. It was not justified on the ground of Articles 25 and 26 of the Constitution of India. In the aforesaid backdrop of the fact and the factual matrix, this Court has laid down the aforesaid decision. It is not a case of transfer of property. The property remains where it was and there is no effort to assign, limit, create, declare or extinguish, in present or in the future, any right, title or interest whether vested or contingent in the instant case. The Court dealt with the provisions of the Bombay Public Trusts Act in the aforesaid case. There is no such Act in force in the

A instant matter that holds the field. Since we have held that there is no transfer of property or vesting or other transaction took place for attracting provision of section 17 of the Registration Act by virtue of the 1934 Constitution, it did not require registration. The property of church continues with Malankara Church as it was. It contained a system of management and there was a fight going on since long for management of properties of Malankara Church. Malankara church is Episcopal in nature as held by this Court in the 1995 judgment and there are complete safeguards in the Constitution related to property. Reliance was placed on Paras 16, 20, 24 and 30 of *Vinodkumar* (supra) extracted hereunder:

C “16. The property of a society under Section 5 of the SR Act, if not vested in trustees, then only shall vest for the time being with the governing body of such society. The properties of FDCB vested in a public trust, being No. E-643/Bharuch. It was also recognised by this Court in *Church of North India v. Lavajibhai Ratanjibhai* wherein it was observed thus: (SCC p. 783, para 60)

D “60. We are not oblivious of the fact that the resolution adopted in the meeting held on 17-2-1970 allegedly fulfilled all the requirements for such resolution as provided in the Societies Registration Act but it is now beyond any controversy that the society having not owned any property, their transfer in favour of a new society was impermissible in law. In terms of Section 5 of the Societies Registration Act, all properties would vest in the trustees and only in case in the absence of vesting of such properties in the trustees would the same be deemed to have been vested for the time being in the governing body of such property. In this case, it is clear that the properties have vested in the trustees and not in the governing body of the society.”

F 20. Therefore, we are of the opinion that the claim of the appellants that following unification of FDCB with CNI after the purported resolution resulted in the dissolution of FDCB making CNI its legal successor and controller of its properties, does not hold good and cannot be accepted. The High Court has rightly observed that:

G “... The trust which has been created as public trust for a specific object and the charitable or the religious nature or for the bona fide of the society or any such institution managed by such trusts

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for charitable and religious purpose shall continue to exist in perpetuity and it would not cease to exist by any such process of thinking or deliberation or the resolution, which does not have any force of law.” A

24. We are of the opinion that the appellants' reliance on the abovementioned two judgments is misplaced. In *Commr., Hindu Religious Endowment* this Court while adjudicating upon the validity of Sections 21, 30(2), 31, 55, 56 and 63 to 69 of the Madras Hindu Religious and Charitable Endowments Act, 1951 against Articles 19(1)(f), 25 and 26 of the Constitution of India and examining the distinction between tax and fee, held that the sections were ultra vires and Section 76(1) of the Madras Hindu Religious and Charitable Endowments Act, 1951 was void. It was also held that a levy under this section does not attract Article 27 as it was for the maintenance of the religious trust despite being a tax. While deciding on the above, this Court delved into many questions regarding the scope of religion and recognised the reservations to the freedom of religion under Article 25(2) and that the State is empowered to legislate on the secular activities ancillary to practice of religion and that the courts are empowered to decide whether the same is an integral part of religious practice or a secular part. In *Ratilal Panachand Gandhi*, the validity of Section 44 and levy under Section 58 of the BPTA was questioned against Articles 25 and 26. As per this Court, Section 44 was held to be unconstitutional. However, the levy under Section 58 was termed as a fee and was allowed. While deciding on the same, this Court once again reiterated on the power of the Government to legislate on regulating the secular aspects of religious practice as allowed under clause (2) of Article 25. In light of the same, the High Court while disregarding the unification procedure, has rightly observed that: B  
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“... it will amount to accepting that such resolutions or deliberations are above the law and the law that any such resolution passed anywhere will have more binding force than (sic) the law created by the Sovereign Authority of India like the Bombay Public Trusts Act as well as the provisions of the Constitution under Articles 25 and 26 of the Constitution of India. In fact, Article 26 which provides for the freedom of the religious faith and Article 26 which provides G

A for the freedom of acquiring and administering the property or the  
Trust in accordance with law, meaning thereby, the provisions of  
the Bombay Public Trusts Act, which has been created, would  
have no application again in the guise of such resolution. Even the  
Transfer of Property Act will have no bearing and properties of  
B various trusts or the churches would get automatically transferred  
or vested without any requirement of law being fulfilled, without  
any document, without any registration, stamp, etc. therefore, it  
would be rather over simplification to accept the submission that  
it was merely a resolution for a merger or unification of various  
C churches for better understanding and advancement of cause of  
religion and faith and the Court should not examine this aspect  
even though there is a strong protest which has led to repeated  
round of litigations before the courts up to the Hon'ble Apex Court.  
The underlying object or the purpose even if it assumed that it is  
only for better administration, still it cannot have any predominance  
or the constitutional provision or the law of land.”

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30. After analysing the facts and the law in the matter, we have  
noticed that it is the duty of the society to take steps in accordance  
with Section 13 of the SR Act for its dissolution. We have further  
noted that unless the properties vested in the Trust are divested in  
accordance with the provisions of the SR Act and in accordance  
E with the BPTA, merely by filing the change report(s), CNI cannot  
claim a merger of churches and thereby claim that the properties  
vested in the Trust would vest in them. In our opinion, it would  
only be evident from the steps taken that the passing of resolutions  
is nothing but an indication to show the intention to merge and  
nothing else. In fact, the City Civil Court has correctly held, in our  
F opinion, which has been affirmed by the High Court, that there  
was no dissolution of the society and further merger was not carried  
out in accordance with the provisions of law. In these  
circumstances, we hold that the society and the Trust being  
G creatures of statute, have to resort to the modes provided by the  
statute for its amalgamation and the so-called merger cannot be  
treated or can give effect to the dissolution of the Trust. In the  
matrix of the facts, we hold that without taking any steps in  
accordance with the provisions of law, the effect of the resolutions  
or deliberations is not acceptable in the domain of law. The question

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of estoppel also cannot stand in the way as the High Court has correctly pointed out that the freedom guaranteed under the Constitution with regard to the faith and religion, cannot take away the right in changing the faith and religion after giving a fresh look and thinking at any time and thereby cannot be bound by any rules of estoppel. Therefore, the resolution only resolved to accept the recommendation of joint unification but does not refer to dissolution.”

The decision is wholly inapplicable and does not espouse the cause of the appellants.

**MAINTAINABILITY OF MANNATHUR CHURCH SUIT :**

180. It was also submitted by Shri Mohan Parasaran, learned senior counsel that the Mannathur Church matter suit was not maintainable. It was not of a representative character and in view of Order I Rule 8 CPC; fresh leave was not sought when the reliefs were amended and enlarged. We are not satisfied with the submissions raised. The suit was clearly representative in character and has been contested in that manner. It was not necessary to adopt the procedure as suggested after amendment as the amended relief was traceable from the main relief. It was not at all necessary to obtain fresh leave.

**H. FRAMING OF SCHEME UNDER SECTION 92 OF THE CIVIL PROCEDURE CODE**

181. We are also not impressed by the submission that the court should direct framing of a scheme under section 92 CPC in view of the decision of the Privy Council in *Mohd. Ismile Ariff v. Ahmed Moolla Dowood* 43 IA 127 (PC) in which it has been held that the court has the power to give direction and lay down rules that may facilitate the work of management and the appointment of trustees in the future. The primary duty of the Court is to consider the interest of the general body of the public for whose benefit the trust is created. Reliance has been placed by Shri S. Divan, learned senior counsel on *Acharya Shri Shreepati Prasadji Barot Laxmidas* 33 CWN 352 (PC) that the institutional trust must be respected by the sect and the body of worshippers for whose benefit it was set up to have the protection of the court against their property being subject to abuse, speculation and waste. Reliance was also placed on *Ram Dularey v. Ram Lal* AIR 1946 PC 34 in which it has been laid down thus:

A           “Even if there were an inconsistency in that judgment, their Lordships would be very slow to disturb the safeguards which are provided in that scheme, if their Lordships found it necessary to reconsider the scheme; but in their view the scheme has been definitely approved by the Chief Court and they see no reason for interfering with the judgment. *It has to be remembered that in these cases the Court has a duty, once it finds that it is a trust for public purposes to consider what is best in the interests of the public. That is made abundantly clear by the judge met of this Board, delivered by Mr. Ameer Ali, in Mahomed Ismail Ariff and others v. Ahmed Moolla Dawood and another* [43 IA 127: 43 Cal. 1085: 4 LW 269 (P.C.).]” (Emphasis supplied)

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182. In our opinion there is no necessity of framing any scheme under section 92. There are adequate provisions and safeguards provided in section 92 for managing the Malankara Church and its properties. There is no dispute with the proposition laid down in the aforesaid decisions but we find no such necessity for framing such scheme under section 92 CPC in view of detailed wholesome provisions of 1934 Constitution.

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**I. WHETHER IN THE FACTS, INTERIM ARRANGEMENT TO CONTINUE :**

E           183. Lastly, it was submitted by Shri K. Parasaran, learned senior counsel, that as reconciliation does not appear to be possible between both factions, as such the religious services in the St. Mary’s Orthodox Church, Varikoli may be permitted to be conducted by two Vicars of each faith, Patriarch and Catholicos, in accordance with the faith of each denomination. The submission cannot be accepted as it would tantamount to patronizing parallel system of administration and would not be a legally permissible mode hence prayer is rejected.

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184. Resultantly, based on the aforesaid findings in the judgment, our main conclusions, inter alia, are as follows :

G           (i) Malankara Church is Episcopal in character to the extent it is so declared in the 1934 Constitution. The 1934 Constitution fully governs the affairs of the Parish Churches and shall prevail.

(ii) The decree in the 1995 judgment is completely in tune with the judgment. There is no conflict between the judgment and the decree.

H           (iii) The 1995 judgment arising out of the representative suit is

binding and operates as *res judicata* with respect to the matters it has decided, in the wake of provisions of Order 1 Rule 8 and Explanation 6 to section 11 CPC. The same binds not only the parties named in the suit but all those who have interest in the Malankara Church. Findings in earlier representative suit, i.e., *Samudayam* suit are also binding on Parish Churches/Parishioners to the extent issues have been decided.

(iv) As the 1934 Constitution is valid and binding upon the Parish Churches, it is not open to any individual Church, to decide to have their new Constitution like that of 2002 in the so-called exercise of right under Articles 25 and 26 of the Constitution of India. It is also not permissible to create a parallel system of management in the churches under the guise of spiritual supremacy of the Patriarch.

(v) The Primate of Orthodox Syrian Church of the East is *Catholicos*. He enjoys spiritual powers as well, as the Malankara Metropolitan. Malankara Metropolitan has the prime jurisdiction regarding temporal, ecclesiastical and spiritual administration of Malankara Church subject to the riders provided in the 1934 Constitution.

(vi) Full effect has to be given to the finding that the spiritual power of the Patriarch has reached to a vanishing point. Consequently, he cannot interfere in the governance of Parish Churches by appointing Vicar, Priests, Deacons, Prelates (High Priests) etc. and thereby cannot create a parallel system of administration. The appointment has to be made as per the power conferred under the 1934 Constitution on the concerned Diocese, Metropolitan etc.

(vii) Though it is open to the individual member to leave a Church in exercise of the right not to be a member of any Association and as per Article 20 of the Universal Declaration of Human Rights, the Parish Assembly of the Church by majority or otherwise cannot decide to move church out of the Malankara Church. Once a trust, is always a trust.

(viii) When the Church has been created and is for the benefit of the beneficiaries, it is not open for the beneficiaries, even by a majority, to usurp its property or management. The Malankara Church is in the form of a trust in which, its properties have vested. As per the 1934 Constitution, the Parishioners though may individually leave the Church, they are not permitted to take the movable or immovable properties out of the ambit of 1934 Constitution without the approval of the Church hierarchy.

A (ix) The spiritual power of Patriarch has been set up by the appellants clearly in order to violate the mandate of the 1995 judgment of this Court which is binding on the Patriarch, Catholicos and all concerned.

B (x) As per the historical background and the practices which have been noted, the Patriarch is not to exercise the power to appoint Vicar, Priests, Deacons, Prelates etc. Such powers are reserved to other authorities in the Church hierarchy. The Patriarch, thus, cannot be permitted to exercise the power in violation of the 1934 Constitution to create a parallel system of administration of Churches as done in 2002 and onwards.

C (xi) This Court has held in 1995 that the unilateral exercise of such power by the Patriarch was illegal. The said decision has also been violated. It was only in the alternative this Court held in the 1995 judgment that even if he has such power, he could not have exercised the same unilaterally which we have explained in this judgment.

D (xii) It is open to the Parishioners to believe in the spiritual supremacy of Patriarch or apostolic succession but it cannot be used to appoint Vicars, Priests, Deacons, Prelates etc. in contravention of the 1934 Constitution.

E (xiii) Malankara Church is Episcopal to the extent as provided in the 1934 Constitution, and the right is possessed by the Diocese to settle all internal matters and elect their own Bishops in terms of the said Constitution.

F (xiv) Appointment of Vicar is a secular matter. There is no violation of any of the rights encompassed under Articles 25 and 26 of the Constitution of India, if the appointment of Vicar, Priests, Deacons, Prelates (High Priests) etc. is made as per the 1934 Constitution. The Patriarch has no power to interfere in such matters under the guise of spiritual supremacy unless the 1934 Constitution is amended in accordance with law. The same is binding on all concerned.

G (xv) Udampadis do not provide for appointment of Vicar, Priests, Deacons, Prelates etc. Even otherwise once the 1934 Constitution has been adopted, the appointment of Vicar, Priests, Deacons, Prelates (high priests) etc. is to be as per the 1934 Constitution. It is not within the domain of the spiritual right of the Patriarch to appoint Vicar, Priests etc.

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The spiritual power also vests in the other functionaries of Malankara Church. A

(xvi) The functioning of the Church is based upon the division of responsibilities at various levels and cannot be usurped by a single individual howsoever high he may be. The division of powers under the 1934 Constitution is for the purpose of effective management of the Church and does not militate against the basic character of the church being Episcopal in nature as mandated thereby. The 1934 Constitution cannot be construed to be opposed to the concept of spiritual supremacy of the Patriarch of Antioch. It cannot as well, be said to be an instrument of injustice or vehicle of oppression on the Parishioners who believe in the spiritual supremacy of the Patriarch. B C

(xvii) The Church and the Cemetery cannot be confiscated by anybody. It has to remain with the Parishioners as per the customary rights and nobody can be deprived of the right to enjoy the same as a Parishioner in the Church or to be buried honourably in the cemetery, in case he continues to have faith in the Malankara Church. The property of the Malankara Church in which is also vested the property of the Parish Churches, would remain in trust as it has for the time immemorial for the sake of the beneficiaries and no one can claim to be owners thereof even by majority and usurp the Church and the properties. D

(xviii) The faith of Church is unnecessarily sought to be divided vis-à-vis the office of Catholicos and the Patriarch as the common faith of the Church is in Jesus Christ. In fact an effort is being made to take over the management and other powers by raising such disputes as to supremacy of Patriarch or Catholicos to gain control of temporal matters under the garb of spirituality. There is no good or genuine cause for disputes which have been raised. E F

(xix) The authority of Patriarch had never extended to the government of temporalities of the Churches. By questioning the action of the Patriarch and his undue interference in the administration of Churches in violation of the 1995 judgment, it cannot be said that the Catholicos faction is guilty of repudiating the spiritual supremacy of the Patriarch. The Patriarch faction is to be blamed for the situation which has been created post 1995 judgment. The property of the Church is to be managed as per the 1934 Constitution. The judgment of 1995 has not been respected by the Patriarch faction which was binding on all G H

A concerned. Filing of writ petitions in the High Court by the Catholicos faction was to deter the Patriarch/his representatives to appoint the Vicar etc. in violation of the 1995 judgment of this Court.

(xx) The 1934 Constitution is enforceable at present and the plea of its frustration or breach is not available to the Patriarch faction. Once there is Malankara Church, it has to remain as such including the property. No group or denomination by majority or otherwise can take away the management or the property as that would virtually tantamount to illegal interference in the management and illegal usurpation of its properties. It is not open to the beneficiaries even by majority to change the nature of the Church, its property and management. The only method to change management is to amend the Constitution of 1934 in accordance with law. It is not open to the Parish Churches to even frame bye-laws in violation of the provisions of the 1934 Constitution.

(xxi) The Udampadies of 1890 and 1913 are with respect to administration of Churches and are not documents of the creation of the Trust and are not of utility at present and even otherwise cannot hold the field containing provisions inconsistent with the 1934 Constitution, as per section 132 thereof. The Udampady also cannot hold the field in view of the authoritative pronouncements made by this Court in the earlier judgments as to the binding nature of the 1934 Constitution.

(xxii) The 1934 Constitution does not create, declare, assign, limit or extinguish, whether in present or future any right, title or interest, whether vested or contingent in the Malankara Church properties and only provides a system of administration and as such is not required to be registered. In any case, the Udampadis for the reasons already cited, cannot supersede the 1934 Constitution only because these are claimed to be registered.

(xxiii) In otherwise Episcopal church, whatever autonomy is provided in the Constitution for the Churches is for management and necessary expenditure as provided in section 22 etc.

(xxiv) The formation of 2002 Constitution is the result of illegal and void exercise. It cannot be recognized and the parallel system created thereunder for administration of Parish Churches of Malankara Church cannot hold the field. It has to be administered under the 1934 Constitution.

(xxv) It was not necessary, after amendment of the plaint in Mannathur Church matter, to adopt the procedure once again of

representative suit under Order 1 Rule 8 CPC. It remained a representative suit and proper procedure has been followed. It was not necessary to obtain fresh leave. A

(xxvi) The 1934 Constitution is appropriate and adequate for management of the Parish Churches, as such there is no necessity of framing a scheme under section 92 of the CPC. B

(xxvii) The plea that in face of the prevailing dissension between the two factions and the remote possibility of reconciliation, the religious services may be permitted to be conducted by two Vicars of each faith cannot be accepted as that would amount to patronizing parallel systems of administration. C

(xxviii) Both the factions, for the sake of the sacred religion they profess and to preempt further bickering and unpleasantness precipitating avoidable institutional degeneration, ought to resolve their differences if any, on a common platform if necessary by amending the Constitution further in accordance with law, but by no means, any attempt to create parallel systems of administration of the same Churches resulting in law and order situations leading to even closure of the Churches can be accepted. D

185. In view of the aforesaid discussion, we find no ground to make interference. The appeals are hereby dismissed. Parties to bear their own costs. E