IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-PIL-52-2020 (O&M)

Date of decision : 22.05.2020

Mubeen Farooqi

.... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Rajvinder Singh Bains, Advocate,
for the petitioner.

Mr. Satya Pal Jain, Additional Solicitor General of India, with
Mr. Sunil Kumar Sharma, Senior Standing Counsel,
for Union of India-respondent No.4.

Mr. Atul Nanda, Advocate General, Punjab, with
Ms. Diya Sodhi, Assistant Advocate General, Punjab,
for respondent No.1.

Mr. Baldev Raj Mahajan, Advocate General, Haryana, with
Mr. Deepak Balyan, Additional Advocate General, Haryana,
for respondent No.2.

Mr. Pankaj Jain, Senior Standing Counsel,
for UT Chandigarh-respondent No.3.

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RAJIV SHARMA, J.

1. The case has been taken up for hearing through video conferencing.

2. This Public Interest Litigation is instituted by the petitioner, who is Advocate by profession and the President of Muslim Federation of

Punjab, Malerkotla.

3. According to the averments made in the petition, the respondents have imposed curfew/lock-down to avoid the spread of Corona virus. The petitioner has placed on record various notifications issued by the Union of India from time to time. The restrictions imposed by the Ministry of Home Affairs vide order dated 24.03.2020 were relaxed from time to time. No relaxation has been provided qua religious places. It is also averred that Ramadan is the most sacred month of the year in Islamic culture. Muslims observe the month of Ramadan**,** to mark that Allah or God gave the first chapter of the Quran to the Prophet Muhammad in 610. According to the petitioner, Mosque/Idgah is the best place to offer prayer during Ramadan and the period can be restricted to one hour for offering Jamaat/Namaz of Eid-Ul-Fitr and Dua. The petitioner has also made a prayer to respondent No.1 on 19.05.2020, but no response has been received by him. There is reference to martyrdom day of Guru Arjan Dev Ji on 26.05.2020. It is further averred that the places of worship i.e. Mosques/Idgahs, Gurudwaras and Temples, can also be opened since the shops and markets have been permitted to open by maintaining social distancing. The petitioner has prayed that all the religious places be ordered to be opened.

4. Learned counsel appearing on behalf of the petitioner has vehemently argued that the restrictions imposed by the Union of India qua religious places of worship are unconstitutional. He submits that the respondents be directed to open the religious places of worship. He also argued that the fundamental rights of the petitioner have been violated and the imposed restrictions are excessive and unreasonable.

5. Learned counsel appearing on behalf of the respondents have vehemently opposed the writ petition. According to them, there is no violation of fundamental rights of the petitioner and the restrictions have been imposed in larger public interest.

6. We have heard learned counsel for the parties at length.

7. The Parliament has enacted the Disaster Management Act, 2005 (hereinafter referred to as `the Act' for sake of brevity) for the effective management of disasters and for matters connected therewith or incidental thereto. Section 2 of the Act is a dictionary clause. Section 2 (a) defines `affected area'. Section 2 (d) defines `disaster' as under :-

> *"(d) "disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area."*

Section 2 (e) defines `disaster management' as under :-

> *"(e) "disaster management" means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for—*
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> *(i) prevention of danger or threat of any disaster;*
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> *(ii) mitigation or reduction of risk of any disaster or its severity or consequences;*
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> *(iii) capacity-building;*
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> *(iv) preparedness to deal with any disaster;*

(v) prompt response to any threatening disaster situation or disaster;

(vi) assessing the severity or magnitude of effects of any disaster;

(vii) evacuation, rescue and relief;

(viii) rehabilitation and reconstruction."

Section 3 provides for establishment of an authority to be known as `National Disaster Management Authority'. Section 6 deals with the powers and functions of National Authority. Section 8 provides for constitution of National Executive Committee. The powers and functions of National Executive Committee are provided under Section 10 of the Act. Chapter III deals with the State Disaster Management Authorities. Chapter IV deals with the District Disaster Management Authority. Chapter V provides for measures by the Government for Disaster Management. Section 35 of the Act reads as under :-

"35. Central Government to take measures *— (1) Subject to the provisions of this Act, the Central Government shall take all such measures as it deems necessary or expedient for the purpose of disaster management.*

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), the measures which the Central Government may take under that sub-section include measures with respect to all or any of the following matters, namely :—

(a) coordination of actions of the Ministries or Departments of the Government of India, State Governments, National Authority, State Authorities, governmental and non-governmental organisations in relation to

disaster management;

(b) ensure the integration of measures for prevention of disasters and mitigation by Ministries or Departments of the Government of India into their development plans and projects;

(c) ensure appropriate allocation of funds for prevention of disaster, mitigation, capacity-building and preparedness by the Ministries or Departments of the Government of India;

(d) ensure that the Ministries or Departments of the Government of India take necessary measures for preparedness to promptly and effectively respond to any threatening disaster situation or disaster;

(e) cooperation and assistance to State Governments, as requested by them or otherwise deemed appropriate by it;

(f) deployment of naval, military and air forces, other armed forces of the Union or any other civilian personnel as may be required for the purposes of this Act;

(g) coordination with the United Nations agencies, international organisations and governments of foreign countries for the purposes of this Act;

(h) establish institutions for research, training, and developmental programmes in the field of disaster management;

(i) such other matters as it deems necessary or expedient for the purpose of securing effective implementation of the provisions of this Act.

(3) The Central Government may extend such support to other countries affected by major disaster as it may deem appropriate."

Section 38 of the Act provides the measures required to be taken by the State Government. It reads as under :-

***"38. State Government to take measures** — (1) Subject to the provisions of this Act, each State Government shall take all measures specified in the guidelines laid down by the National Authority and such further measures as it deems necessary or expedient, for the purpose of disaster management.*

(2) The measures which the State Government may take under sub-section (1) include measures with respect to all or any of the following matters, namely: —

(a) coordination of actions of different departments of the Government of the State, the State Authority, District Authorities, local authority and other non-governmental organisations;

(b) cooperation and assistance in the disaster management to the National Authority and National Executive Committee, the State Authority and the State Executive Committee, and the District Authorities;

(c) cooperation with, and assistance to, the Ministries or Departments of the Government of India in disaster management, as requested by them or otherwise deemed appropriate by it;

(d) allocation of funds for measures for

prevention of disaster, mitigation, capacity-building and preparedness by the departments of the Government of the State in accordance with the provisions of the State Plan and the District Plans;

(e) ensure that the integration of measures for prevention of disaster or mitigation by the departments of the Government of the State in their development plans and projects;

(f) integrate in the State development plan, measures to reduce or mitigate the vulnerability of different parts of the State to different disasters;

(g) ensure the preparation of disaster management plans by different departments of the State in accordance with the guidelines laid down by the National Authority and the State Authority;

(h) establishment of adequate warning systems up to the level of vulnerable communities;

(i) ensure that different departments of the Government of the State and the District Authorities take appropriate preparedness measures;

(j) ensure that in a threatening disaster situation or disaster, the resources of different departments of the Government of the State are made available to the National Executive Committee or the State Executive Committee or the District Authorities, as the case may be, for the purposes of effective response, rescue and

relief in any threatening disaster situation or disaster;

(k) provide rehabilitation and reconstruction assistance to the victims of any disaster; and

(l) such other matters as it deems necessary or expedient for the purpose of securing effective implementation of provisions of this Act."

Section 39 of the Act lays down the responsibilities of departments of the State Government.

8. In the case of **The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt,** reported in **AIR 1954 SC 282**, their Lordships of the Hon'ble Supreme Court have held that “religion” is a matter of faith with individuals or communities and it is not necessarily theistic. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being. It will not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship, which are regarded as integral parts of religion and the forms and observances might extend even to matters of food and dress. Their Lordships have further held that what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. Their Lordships have further held that the language of Articles 25 and 26 is sufficiently clear to enable the Court to determine without the aid of foreign authorities as to what matters come within the

purview of religion and what do not. Freedom of religion in the Constitution of India is not confined to religious beliefs only, it extends to religious practices as well, subject to the restrictions which the Constitution itself has laid down. Their lordships have held as under:

> *"17. It will be seen that besides the right to manage its own affairs in matters of religion which is given by clause (b), the next two clauses of Article 26 guarantee to a religious denomination the right to acquire and own property and to administer such property in accordance with law. The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The latter is a fundamental right which no Legislature can take away, where as the former can be regulated by laws which the legislature can validly impose. It is clear, therefore, that questions merely relating to administration of properties belonging to a religious group or institution are not matters of religion to which clause (b) of the Article applies.*
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> *What then are matters of religion? The word "religion" has not been defined in the Constitution and it is a term which is hardly susceptible of any rigid definition. In an American case --- -'Vide Davis v. Beason', (1888) 133 US 333 at p. 342 (G), it has been said :*
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> > *"that the term 'religion' has reference to one's views of his relation to his Creator and to the obligations they impose of reverence for His Being and character and of obedience to His will. It is often*

confounded with 'cultus' of form or worship of a particular sect, but is distinguishable from the latter."

We do not think that the above definition can be regarded as either precise or adequate. Articles 25 and 26 of our Constitution are based for the most part upon Art 44(2), Constitution of Eire and we have great doubt whether a definition of 'religion' as given above could have been in the minds of our Constitution-makers when they framed the Constitution.

Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in ay Intelligent First Cause. A religion undoubtedly has its basis in a system of belief or doctrines which are regarded by those who profess that religion as conductive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.

18. The guarantee under our Constitution not only protects the freedom of religious opinion but it protects also acts done in pursuance of a religion and this is made clear by the use of the expression "practice of religion' in Art. 25. Latham, C. J. of the High Court of Australia while

dealing with the provision of S. 116, Australian Constitution which 'inter alia' forbids the Commonwealth to prohibit the 'free exercise of any religion' made the following weighty observations ---- 'Vide Adelaide Company v. The Commonwealth', 67 CLR 116 at p. 127 (H) :

> *"It is sometimes suggested in discussions on the subject of freedom of religion that, though the civil government should not, interfere with religious 'opinions', it nevertheless may deal as it pleases with any 'acts' which are done in pursuance of religious belief without infringing the principle of freedom of religion. It appears to me to be difficult to maintain this distinction as relevant to the interpretation of S. 116. The Section refers in express terms to the 'exercise' of religion, and therefore it is intended to protect from the operation of any Commonwealth laws acts which are done in the exercise of religion. Thus the Section goes far beyond protecting liberty of opinion. It protects also acts done in pursuance of religious belief as part of religion".*

These observations apply fully to the protection of religion as guaranteed by the Indian Constitution. Restrictions by the State upon free exercise of religion are permitted both under Arts. 25 and 26 on grounds of public order, morality and health. Clause (2) (a) of Art. 25 reserves the right of the State to regulate or restrict any economic, financial, political and other secular activities which may be associated

with religious practice and there is a further right given to the State by sub-clause (b) under which the State can legislate for social welfare and reform even though by so doing it might interfere with religious practices. The learned Attorney-General lays stress upon clause (2) (a) of the Article and his contention is that all secular activities, which may be associated with religion but do not really constitute an essential part of it, are amenable to State regulation.

19. The contention formulated in such broad terms cannot, we think be supported, in the first place, what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Art. 26(b).

What Art. 25(2)(a) contemplates is not regulation by the State of religious practices as such, the freedom of which is guaranteed by the Constitution except when they run counter to

public order, health and normality but regulation of activities which are economic, commercial or political in their character though they are associated with religious practices.

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

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

activities though arising out of religious belief entertained by a particular community.

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

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22. It is to be noted that both in the American as well as in the Australian Constitution the right to freedom of religion has been declared in unrestricted terms without any limitation whatsoever. Limitations, therefore, have been introduced by courts of law in these countries on grounds of morality, order and social protection, An adjustment of the competing demands of the interests of Government and constitutional liberties is always a delicate and difficult task and that is why we find difference of judicial opinion to such an extent in cases decided by the American courts where questions of religious freedom were involved.

Our Constitution-makers, however, have embodie the limitations which have been evolved by judicial pronouncements in America or Australia in the Constitution itself and the language of Arts. 25 and 26 is sufficiently clear to enable us to determine without the aid of foreign authorities as to what matters come within the purview of religion and what do not. As we have already

indicated, freedom of religion in our Constitution is not confined to religious beliefs only, it extends to religious practices as well subject to the restrictions which the Constitution itself had laid down. Under Art. 26(b), therefore a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters.

Of course, the scale of expenses to be incurred in connection with these religious observances would be a matter of administration of property belonging to the religious denomination and can be controlled by secular authorities in accordance with any law laid down by a competent legislature, for it could not be the injunction of any religion to destroy the institution and its endowments by incurring wasteful expenditure on rites and ceremonies. It should be noticed, however, that under Art. 26 (d), it is the fundamental right of a religious denomination or its representative to administer its properties in accordance with law, and the law, therefore, must leave the right of administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose.

A law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under cl. (d) of Art 26."

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

> *"10. Article 25 of the Constitution guarantees to every person and not merely to the citizens of India the freedom of cnscience and the right freely to profess, practise and propagate religion. This is subject, in every case to public order, health and morality. Further exceptions are engrafted upon this right by clause (2) of the Article. Sub-cl. (a) of cl. (2) saves the power of the State to make laws regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; and sub-cl. (b) reserves the State's power to make laws providing for social reform and social welfare even though they might interfere with religious practices.*
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> *Thus, subject to the restrictions which this Article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or*

sanctioned by his religion and further to propagate his religious views for the edification of others. It is immaterial also whether the propagation is made by a person in his individual capacity or on behalf of any church or institution. The free exercise of religion by which is meant the performance of outward acts in pursuance of religious belief, is, as stated above, subject to State regulation imposed to secure order, public health and morals of the people.

What sub-cl. (a) of cl. (2) of Article 25 contemplates is not State regulation of the religious practices as such which are protected unless they run counter to public health or morality but of activities which are really of an economic, commercial or political character though they are associated with religious practices.

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12. The moot point for consideration, therefore, is where is the line to be drawn between what are matters of religion and what are not? Our Constitution-makers have made no attempt to define what religion' is and it is certainly not possible to frame an exhaustive definition of the word' religion' which would be applicable to all classes of persons. As has been indicated in the Madras case referred to above, the definition of 'religion' given by Fields, J. in the American case of - 'Davis v. Beason', (1888) 133 US 333 (B), does not seem to us adequate or precise.

"The term 'religion', thus observed the learned Judge in the case mentioned above, "has reference to one's views of his relations to His

Creator and to the obligations they impose of reverence for His Being and Character and of obedience to his will. It is often confounded with 'cultus' or form of worship of a particular sect, but is distinguishable from the latter".

It may be noted that 'religion' is not necessarily theistic and in fact there are well-known religions in India like Buddhism and Jainism which do not believe in the existence of God or of any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs and doctrines which are regarded by those who profess that religion to be conducive to their spiritual well being, but it would not be correct to say, as seems to have been suggested by one of the learned Judges of the Bombay High Court, that matters of religion are nothing but matters of religious faith and religious belief. A religion is not merely an opinion, doctrine or belief. It has its outward expression in acts as well.

We may quote in this connection the observations of Latham, C. J. of the High Court of Australia in the case of - 'Adelaide Co. v. The Commonwealth', 67 Com- W. L. R. 116 at p. 124 (C) where the extent of protection given to religious freedom by S. 116 of the Australian Constitution came up for consideration.

> *"It is sometimes suggested in discussions on the subject of freedom of religion that, though the civil government should not interfere with religious 'opinions', it nevertheless may deal as it pleases with any 'acts which are done in pursuance of religious belief without infringing the*

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

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

13. Religious practices or performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrines. Thus if the tenets of the Jain or the Parsi religion lay down that certain rites and ceremonies are to be performed at certain times and in a particular manner, it cannot be said that these are secular activities partaking or commercial or economic, character simply because they involve expenditure of money or employment of priests or the use of marketable commodities. No outside authority has any right to say that these are not essential parts of religion and it is not open to the secular authority of the State to restrict or prohibit them in any manner they like under the guise of administering the trust estate.

Of course, the scale of expenses to be incurred in

connection with these religious observances may be & is a matter of administration of property belonging to religious institutions; and if the expenses on these heads are likely to deplete the endowed properties or affect the stability of the institution, proper control can certainly be exercised by State agencies as the law provides. We may refer in this connection to the observation of Davar, J. in the case of - 'Jamshed Ji. V. Soonabai', 33 Bom 122 (D), and although they were made in a case where the question was whether the bequest of property by a Parsi testator for the purpose of perpetual celebration of ceremonies like Muktad bai. Vyezashni, etc. which are sanctioned by the Zoroastrian religion were valid charitable gifts, the observations, we think are quite appropriate for our present purpose.

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

These observations do, in our opinion, afford an indication of the measure of protection that is given by Art. 26(b) of our Constitution.

14. The distinction between matters of religion and those of secular administration of religious

properties may, at times, appear to be a thin one. But in cases of doubt, as Chief Justice Latham pointed out in the case - 'vide 67 Com - WLR 116 at p. 129 (C)', referred to above, the court should take a commonsense view and be actuated by considerations of practical necessity. It is in the light of these principles that we will proceed to examine the different provisions of the Bombay Public Trusts Act, the validity of which has been challenged on behalf of the appellants."

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

"7. We are unable to accept this argument as correct. Article 26 of the Constitution, so far as it is relevant for our purpose, says-

"Art. 26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

(a) .....

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

(c)

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

The distinction between Cls. (b) and (d) strikes one at once. So far as administration of its property is concerned, the right of a religious denomination is to be exercised in "accordance

with law", but there is no such qualification in Cl. (b). In The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005 at pp. 1023, 1026: (AIR 1934 SC 282 at pp. 289, 290) this distinction was pointed out by this Court and it was there observed: "The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The latter is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly impose." Secondly, the expression used in Cl. (b) is 'in matters of religion'. In what sense has the word 'religion' been used? This was considered in two decisions of this Court: 1954 SCR 1005: (AIR 1954 SC 282), and Sri Venkataramana Devaru v. State of Mysore, 1958 SCR 895: (AIR 1958 SC 255) and it was held that freedom of religion in our Constitution is not confined to religious beliefs only, but extends to essential religious practices as well subject to the restrictions which the Constitution has laid down. In 1954 SCR 1005: (AIR 1954 SC 282) (Supra) it was observed at p. 1026 (of SCR): (at p. 290 of AIR) that under Art. 26(b), a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold (we emphasise here they word 'essential'). The same emphasis was laid in the later decision of 1958 SCR 895: (AIR 1958

> *SC 255), where it was said that matters of religion in Art. 26(b) include practices which are regarded by the community as part of its religion. Two questions, therefore, arise in connection with the argument of learned counsel for the petitioners: (1) does S. 148-B added to the principal Act by the amending Act of 1959 have reference only to administration of property of 'Sikh gurdwaras and, therefore, must be judged by Cl. (d) of Art. 26 or (2) does it affect 'matters of religion' within the meaning of Cl. (b) of the said Article?"*

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

> *"14. With regard to Art. 26, cls. (a) and (b), the position is the same. There is no provision of the Act which interferes with the right of any religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes; nor do the provisions of the Act interfere with the right of any religious denomination or any section thereof to manage its own affairs in matters of religion. Learned consel for the appellants has drawn our attention to Venkataramana Devaru v. State of Mysore, AIR 1958 SC 255, where following the earlier decision in 1954 SCR 1005 : (AIR 1954 SC 282),*

it was observed that matters of religion included even practices which are regarded by the community as part of its religion. Our attention has also been drawn to Ratilal Panachand v. State of Bombay, 1954 SCR 1055 : (AIR l954 SC 388), in which it has been held that a religious sect or denomination has the right to manage its own affairs in matters of religion and this includes the right to spend the trust property or its income for religion and for religious purposes and objects indicated by the founder of the trust or established by usage obtaining in a particular institution. It was further held therein that to divert the trust property or funds for purposes which the charity commissioner or the court considered expedient or proper, although the original objects of the founder, could still be carried out, was an unwarranted encroachment on the freedom of religious institutions in regard to the management of their religious affairs. We do not think that the aforesaid decisions afford any assistance to the appellants. Granting that 'matters of religion' include practices which a religious denomination regards as part of its religion, none of the provisions of the Act interfere with such practices; nor do the provisions of the Act seek to divert the trust property or funds for purposes other than those indicated by the founder of the trust or those established by usage obtaining in a particular institution. On the contrary; the provisions of the Act seek to implement the purposes for which the trust was created and prevent mismanagement and waste by the trustee. In other words, the Act

> *by its several provisions seeks to fulfil rather than defeat the trust. In our opinion, there is no substance in the argument that the provisions of the Act contravene Arts. 25 and 26 of the Constitution."*

12. In the case of **Durgah Committee, Ajmer and anr. Vs. Syed Hussain Ali and others**, reported in **AIR 1961 SC 1402**, their Lordships have held that matters of religion in Article 26 (b) include even practices which are regarded by the community as part of its religion in order that the practices in question should be treated as part of religion, they must however, be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices. Similarly, even practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. Unless such practices are found to constitute an essential and integral part of a religion, their claim for the protection under Article 26 may have to be carefully scrutinized. In other words, the protection must be confined to such religious practices as are an essential and integral part of it and no other. Their lordships have held as under:

> *"33. We will first take the argument about the infringement of the fundamental right to freedom of religion. Articles 25 and 26 together safeguard the citizen's right to freedom of religion. Under Art. 25 (1), subject to public order, morality and health and to the other provisions of Part III, all persons are equally entitled to freedom of conscience and their right freely to profess,*

practise and propagate religion. This freedom guarantees to every citizen not only the right to entertain such religious beliefs as may appeal to his conscience but also affords him the right to exhibit his belief in his conduct by such outward acts as may appear to him proper in order to spread his ideas for the benefit of others. Article 26 provides that subject to public order, morality and health every religious denomination or any section thereof shall have the right-

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

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

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

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

The four clauses of this article constitute the fundamental freedom guaranteed to every religious denomination or any section thereof to manage its own affairs. It is entitled to establish institutions for religious purposes, it is entitled to manage its own affairs in the matters of religion, it is entitled to own and acquire movable and immovable property and to administer such property in accordance with law. What the expression "religious denomination" means has been considered by this Court in Commr., Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar, 1954 SCR 1005: (AIR 1954 SC 282). Mukherjea, J., as he then was, who spoke for the Court, has quoted with approval the dictionary meaning of the word "denomination"

which says that a "denomination" is "a collection of individuals classed together under the same name, a religious sect or body having a common faith and organisation and designated by a distinctive name." The learned Judge has added that Art. 26 contemplates not merely a religious denomination but also a section thereof. Dealing with the questions as to what are the matters of religion, the learned Judge observed that the word "religion" has not been defined in the Constitution, and it is a term which is hardly susceptible of any rigid definition. Religion, according to him, is a matter of faith with individuals or communities and, it is not necessarily theistic. It undoubtedly has its basis in a system of pleas or doctrines which are regarded by those who profess that religion as conducive to their spiritual well-being, but it is not correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress (pp. 1023, 1024)((of SCR): (p. 290 of AIR). Dealing with the same topic, though in another context, in Venkataramana Devaru v. State of Mysore, 1958 SCR 895: (AIR 1958 SC 255), Venkatarama Aiyar, J. spoke for the Court in the same vein and observed that it was settled that matters of religion in Art. 26(b) include even practices which are regarded by the community as part of

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

13. In the case of **Sardar Syedna Taher Saifuddin Sahib vs. State of Bombay**, reported in **AIR 1962 SC 853**, their Lordships have held that as the right guaranteed by Article 25 (1) is not confined to freedom of conscience in the sense of the right to hold a belief and to propagate that belief, but includes the right to the practice of religion, the consequences of that practice must also bear the same complexion and be the subject of a like guarantee. Their lordships have also held that for example, there may be

religious practices of sacrifice of human beings, or sacrifice of animals in a way deleterious to the well being of the community at large. It is open to the State to intervene, by legislation, to restrict or to regulate to the extent of completely stopping such deleterious practices. Their lordships have held as under:

> *"17. It is not disputed that the petitioner is the head of the Dawoodi Bohra community or that the Dawoodi Bohra community is a religious denomination within the meaning of Art. 26 of the Constitution. It is not even disputed by the State, the only respondent in the case, that the petitioner as the head of the community had the right, as found by the Privy Council in the case of 75 Ind App 1 : (AIR 1948 PC 66) to excommunicate a particular member of the community for reasons and in the manner indicated in the judgment of their Lordships of the Privy Council. But what is contended is that, as a result of the enactment in question, excommunication has been completely banned by the Legislature, which was competent to do so, and that the ban in no way infringes Arts. 25 and 26 of the Constitution. I have already indicated my considered opinion that the Bombay Legislature was competent to enact the Act. It now remains to consider the main point in controversy, which was, as a matter of fact, the only point urged in support of the petition, namely, that the Act is void in so far as it is repugnant to the guaranteed rights under Arts. 25 & 26 of the Constitution. Article 25 guarantees the right to every person, whether citizen or non-citizen, the freedom of conscience and the right freely to profess, practise and propagate religion.*

But this guaranteed right is not an absolute one. It is subject to (1) public order, morality and health, (2) the other provisions of Part III of the Constitution, (3) any existing law regulating or restricting an economic, financial, political or other secular activity which may be associated with religious practice, (4) a law providing for social welfare and reform, and (5) any law that may be made by the State regulating or restricting the activities aforesaid or providing for social welfare & reform. I have omitted reference to the provisions of Explanations I & II and other parts of Art. 25 which are not material to our present purpose. It is noteworthy that the right guaranteed by Art. 25 is an individual right, as distinguished from the right of an organised body like a religious denomination or any section thereof, dealt with by Art. 26. Hence, every member of the community has the right, so long as he does not in any way interfere with the corresponding rights of others, to profess, practise and propagate his religion, and everyone is guaranteed his freedom of conscience. The question naturally arises : Can an individual be compelled to have a particular belief on pain of a penalty, like excommunication ? One is entitled to believe or not to believe a particular tenet or to follow or not to follow a particular practice in matters of religion. No one can, therefore, be compelled, against his own judgment and belief, to hold any particular creed or follow a set of religious practices. The Constitution has left every person free in the matter of his relation to his Creator, if he believes in one. It is thus, clear

that a person is left completely free to worship God according to the dictates of his conscience, and that his right to worship as he pleased is unfettered so long as it does not come into conflict with any restraints, as aforesaid, imposed by the State in the interest of public order etc. A person is not liable to answer for the verity of his religious views, and he cannot be questioned as to his religious beliefs, by the State or by any other person. Thus, though, his religious beliefs are entirely his own and his freedom to hold those beliefs is absolute, he has not the absolute right to act in any way he pleased in exercise of his religious beliefs. He has been guaranteed the right to practice and propagate his religion, subject to the limitations aforesaid. His right to practice his religion must also be subject to the criminal laws of the country, validly passed with reference to actions which the Legislature has declared to be of a penal character. Laws made by a competent legislature in the interest of public order and the like, restricting religious practices, would come within the regulating power of the State. For example, there may be religious practices of sacrifice of human beings, or sacrifice of animals in a way deleterious to the well-being of the community at large. It is open to the State to intervene, by legislation, to restrict or to regulate to the extent of completely stopping such deleterious practices. It must, therefore, be held that though the freedom of conscience is guaranteed to every individual so that he may hold any beliefs he likes, his actions in pursuance of those beliefs may be liable to restrictions in the

interest of the community at large, as may be determined by common consent, that is to say, by a competent legislature. It was on such humanitarian grounds, and for the purpose of social reform, that so called religious practices like immolating a widow at the pyre of her deceased husband, or of dedicating a virgin girl of tender years to a god to function as a devadasi, or of ostracising a person from all social contacts and religious communion on account of his having eaten forbidden food or taboo, were stopped by legislation.

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56. I am unable to accept any of these contentions as correct. (1) First I do not agree that the readings do not sufficiently raise the point at if excommunication was part of the "practice of a religion" the consequences that flow therefrom were not also part of the "practice of religion". The position of the Dai as the religious head of the denomination not being disputed and his power to excommunicate also not being in dispute and it also being admitted that places of worship and burial grounds were dedicated for the use of the members of the denomination, it appears to me that the consequence of the deprivation of the use of these properties by persons excommunicated would be logical and would flow from the order of excommunication. It could not be contested that the consequence of a valid order of excommunication was that the person excommunicated would cease to be entitled to the benefits of the hosts created or founded for the

denomination or to the beneficial use or enjoyment of denominational property. If the property belongs to a community and if a person by excommunication ceased to be a member of that community it is a little difficult to see how his right to the enjoyment of the denominational property could be divorced from the religious practice which resulted in his ceasing to be a member of the community. When once it is conceded that the right guaranteed by Art. 25 (1) is not confined to freedom of conscience in the sense of the right to hold a belief and to propagate that belief, but includes the right to the practice of religion, the consequences of that practice must also bear the same complexion and be the subject of a like guarantee.

57. (2) I shall reserve for later consideration the point about the legislation being saved as a matter of social reform under Art. 25 (2) (b), and continue to deal with the argument that the impugned enactment was valid since it dealt only with the consequences on the civil rights, of persons excommunicated. It has, however, to be pointed out that though in the definition of "excommunication" under S. 2 (b) of the impugned Act the consequences on the civil rights of the excommunicated persons is set out, that is for the purpose of defining an "excommunication". What I desire to point out is that it is not as if the impugned enactment saves only the civil consequences of an excommunication not interfering with the other consequences of an excommunication falling within the definition. Taking the case of the

> *Dawoodi Bohra community, if the Dai excommunicated a person on the ground of forswearing the basic tenets of that religious community the Dai would be committing an offence under S. 4, because the consequences according to the law of that religious denomination would be the exclusion from civil rights of the excommunicated person. The learned Attorney-General is therefore not right in the submission that the Act is concerned only with the civil rights of the excommunicated person. On the other hand, it would be correct to say that the Act is concerned with excommunications which might have religious significance but which also operate to deprive persons of their civil rights."*

14. In the case of **Tilkayat Shri Govindlalji Maharaj etc. vs. State of Rajasthan and others**, reported in **AIR 1963 SC 1638**, their Lordships have held that religious practice to which Article 25 (1) refers and affairs in matters of religion to which Article 26(b) refers, include practices which are an integral part of the religion itself and the protection guaranteed by Article 25 (1) and Article 26(b), extends to such practices. In deciding the question as to whether a given religious practice is an integral part of the religion or not, the test always would be whether it is regarded as such by the community following the religion or not. This question will always have to be decided by the Court and in doing so, the Court may have to enquire whether the practice in question is religious in character and if it is, whether it can be regarded as an integral or essential part of the religion, and the finding of the Court on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the

tenets of its religion. Their lordships have held as under:

> *"57. In 1958 SCR 895 at p. 909: (AIR 1958 SC 255 at p. 264) Venkatarama Aiyar J. observed*
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> > *"that the matters of religion in Art. 26(b) include even practices which are regarded by the community as part of its religion."*
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> *It would thus be clear that religious practice to which Art. 25(1) refers and affairs in matters of religion to which Art. 26(b) refers, include practices which are an integral part of the religion itself and the protection guaranteed by Article 25(1) and Art. 26 (b) extends to such practices.*
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> *58. In deciding the question as to whether a given religious practice is an integral part of the religion or not the test always would be whether it is regarded as such by the community following the religion or not. This formula may in some cases present difficulties in its operation. Take the case of a practice in relation to food or dress. If in a given proceeding, one section of the community claims that while performing certain rites white dress is an integral part of the religion itself, whereas another section contends that yellow dress and not the white dress is the essential part of the religion, how is the Court going to decide the question? Similar disputes may arise in regard to food. In cases where conflicting evidence is produced in respect of rival contentions as to competing religious practices the Court may not be able to resolve the dispute by a blind application of the formula that the community decides which practice is an integral part of its religion, because the community may speak with*

> *more than one voice and the, formula would, therefore, break down. This question will always have to be decided by the Court and in doing so, the Court may have to enquire whether the practice in question is religious in character and if it is, whether it can be regarded as an integral or essential part of the religion, and the finding of the Court on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its religion. It is in the light of this possible complication which may arise in some cases that this Court struck a note of caution in the case of Durgah Committee Ajmer v. Syed Hussain Ali, 1962-1 SCR 383 at p. 411: (AIR 1961 SC 1402 at p. 1415) and observed that in order that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices within the meaning of Art. 26."*

15. In the case of ***Shastri Yagnapurushdasji and others vs. Muldas Bhundardas Vaishya and another,*** reported in ***AIR 1966 SC 1119***, their lordships have held that it is difficult to explain/ define Hindu religion. Unlike other religions in the world, the Hindu religion does not claim any one prophet; it does not worship any one God; it does not subscribe to any one dogma; it does not believe in any philosophic concept; it does not follow any one set of religious rites or performance; in fact, it does not appear

to satisfy the narrow traditional features of any religion or creed. It may broadly be described as a way of life and nothing more. Their lordships have held as under:

> *"27. Who are Hindus and what are the broad features of Hindu religion, that must be the first part of our enquiry in dealing with the present controversy between the parties. The historical and etymological genesis of the word "Hindu" has given rise to a controversy amongst indologists; but the view generally accepted by scholars appears to be that the word "Hindu" is derived from the river Sindhu otherwise known as Indus which flows from the Punjab. "That part of the great Aryan race", says Monier Williams, "which immigrated from Central Asia, through the mountain passes into India, settled first in the districts near the river Sindhu (now called the Indust). The Persians pronounced this word Hindu and named their Aryan brethren Hindus. The Greeks, who probably gained their first ideas of India from the Persians, dropped the hard aspirate, and called the Hindus 'Indoi ("Hinduism by Monier Williams, p.1.)*
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> *28. The Encyclopaedia of Religion and Ethics, Vol. VI, has described "Hinduism" as the title applied to that form of religion which prevails among the vast majority of the present population of the Indian Empire (p. 636). As Dr. Radhakrishnan has observed: "The Hindu civilization is so called, since its original founders or earliest followers occupied the territory drained by the Sindhu (the Indust) river*

system corresponding to the North-West Frontier Province and the Punjab. This is recorded in the Rig Veda, the oldest of the Vedas, the Hindu scriptures which give their name to this period of Indian history. The people on the Indian side of the Sindhu were called Hindu by the Persian and the later western invaders (The Hindu view of Life" by Dr. Radhakrishnan, P. 12). That is the genesis of the word "Hindu".

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

30. Confronted by this difficulty, Dr. Radhakrishnan realised that "to many Hinduism seems to be a name without any content. Is it a museum of beliefs, a medley of rites, or a mere map, a geographical expression (The Hindu View of Life" by Dr. Radhakrishnan, p. 11)?" Having posed these questions which disturbed foreigners when they think of Hinduism. Dr. Radhakrishnan has explained how Hinduism has steadily absorbed the customs and ideas of peoples with whom it has come into contract and has thus been able to maintain its supremacy and its youth. The

term 'Hindu', according to Dr. Radhakrishnan, had originally a territorial and not a credal significance. It implied residence in a well defined geographical area. Aboriginal tribes, savage and half-civilized people, the cultured Dravidians and the Vedic Aryans were all Hindus as they were the sons of the same mother. The Hindu thinkers reckoned with the striking fact that the men and women dwelling in India belonged to different communities, worshipped different gods, and practised different rites (The Hindu view of Life" by Dr. Radhakrishnan, p. 12) (Kurma Purana.).

31. Monier Williams has observed that "it must be borne in mind that Hinduism is far more than a mere form of theism resting on Brahmanism. It presents for our investigation a complex congeries of creeds and doctrines which in its gradual accumulation may be compared to the gathering together of the mighty volume of the Ganges, swollen by a continual influx of tributary rivers and rivulets, spreading itself over an ever-increasing area of country, and finally resolving itself into an intricate Delta of tortuous streams and jungly marshes.....The Hindu religion is a reflection of the composite character of the Hindus, who are not one people but many. It is based on the idea of universal receptivity. It has ever aimed at accommodating itself to circumstances, and has carried on the process of adaptation through more than three thousand years. It has first borne with and then, so to speak, swallowed, digested, and assimilated something from all creeds. (Religious Thought & Life in

India" by Monier Williams, p. 57)

32. We have already indicated that the usual tests which can be applied in relation to any recognised religion or religious creed in the world turn out to be inadequate in dealing with the problem of Hindu religion. Normally, any recognised religion or religious creed subscribes to a body of set philosophic concepts and theological beliefs. Does this test apply to the Hindu religion? In answering this question we would base ourselves mainly on the exposition of the problem by Dr. Radhakrishnan in his work on Indian Philosophy (6). Unlike other countries. India can claim that philosophy in ancient India was not an auxiliary to any other science or art, but always held a prominent position of independence. The Mundaka Upanisad speaks of Brahma-Vidya or the science of the eternal as the basis of all sciences, 'sarva-vidya-pratistha. According to Kautilya, "Philosophy" is the lamp of all the sciences, the means of performing all the works, and the support of all the duties "In all the fleeting centuries of history" says Dr. Radhakrishnan, "in all the vicissitudes through which Indian has passed, a certain marked identity is visible. It has held fast to certain psychological traits which constitute its special heritage and they will be the characteristic marks of the Indian people so long as they are privileged to have a separate existence". The history of Indian thought emphatically brings out the fact that the development of Hindu religion has always been inspired by an endless quest of the mind for truth*

based on the consciousness that truth has many facets Truth is one but wise men describe it differently (6-A). The Indian mind has, consistently through the ages, been exercised over the problem of the nature of godhead the problem that faces the spirit at the end of life, and the inter-relation between the individual and universal soul. "If we can abstract from the variety of opinion", says Dr. Radhakrishnan, "and observe the general spirit of Indian thought. We shall find that it has a disposition to interpret life and nature in the way of monistic idealism, though this tendency is so plastic, living and manifold that it takes many forms and express itself in even mutually hostile teachings (Indian Philosophy" by Dr. Radhakrishnan, Vol. I, pp. 22-23.)*

33. The monistic idealism which can be said to be the general distinguishing nature of Hindu Philosophy has been expressed in four different forms: (1) Nondualism or Advaitism; (2) Pure monism, (3) Modified monism, and (4) Implicit monism. It is remarkable that these different forms of monistic idealism purport to derive support from the same Vedic and Upanishadic texts. Shankar, Ramanuja, Vallabha and Madhva all based their philosphic concepts on what they regarded to be the synthesis between the Upanishads, the Brahmasutras and the Bhagwad Gita. Though philosophic concepts and principles evolved by different Hindu thinkers and philosophers varied in many ways and even appeared to conflict with each other in some particulars, they all had reverence for the past

> *and accepted the Vesas as sole foundation of the Hindu philosophy. Naturally enough, it was realised by Hindu religion from the very beginning of its career that truth was many-sided and different views contained different aspects of truth which no one could fully express. This knowledge inevitably bred a spirit of tolerance and willingness to understand and appreciate the opponent's point of view. That is how "the several views set forth in India in regard to the vital philosophic concepts are considered to be the branches of the self-same tree. The short cuts and blind alleys are somehow reconciled with the main road of advance to the truth(bid, p.48.)When we consider this broad sweep of the Hindu philosophic concepts, it would be realised that under Hindu philosophy,there is no scope for ex-communicating any notion or principle as heretical and rejecting it as such."*

Their lordships have further held that the development of Hindu religion and philosophy shows that from time to time saints and religious reformers attempted to remove from the Hindu thought and practices elements of corruption and superstitions and that led to the formation of different sects. Budha started Budhism; Mahavir founded Jainism; Basava became the founder of Lingayat religion. Their lordships have also held that all of them revolted against the dominance of rituals and powers of priestly class with which it came to be associated and all of them proclaimed

their teachings not in Sanskrit which was the monopoly of the priestly class, but in the languages spoken by the ordinary mass of people in their respective religions. Their lordships have held as under:

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

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

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

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40. Tilak faced this complex and difficult problem of defining door or at least describing adequately Hindu religion and he evolved a working formula which may be regarded as fairly adequate and satisfactory. Said Tilak: "Acceptance of the Vedas with reverence; recognition of the fact that the

means or ways to salvation are diverse; and realisation of the truth that the number of gods to be worshipped is large, that indeed is the distinguishing feature of Hindu religion (ilak's Gitarahasaya".). This definition brings out succinctly the broad distinctive features of Hindu religion. It is somewhat remarkable that this broad sweep of Hindu religion has been eloquently described by Toynbee. Says Toynbee: "When we pass from the plane of social practice to the plane of intellectual outlook. Hinduism too comes out well by comparison with the religions and ideologies of the South-West Asian group. In contrast to these Hinduism has the same outlook as the pre-Christian and pre-Muslim religions and philosophies of the Western half of the old world. Like them, Hinduism takes it for granted that there is more than one valid approach to truth and to salvation and that these different approaches are not only compatible with each other, but are complementary("The Present day experiment in Western Civilisation" by Toynbee, page 46-49.).

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48. It is necessary at this stage to indicate broadly the principles which Swaminarayan preached and which he wanted his followers to adopt in life. These principles have been succinctly summarised by Monier Williams. It is interesting to recall that before Monier Williams wrote his Chapter on Swaminarayan sect, he visited the Wartal temple in company with the Collector of Kaira on the day of the Purnima, or full moon of the month of Kartik which is regarded as the most popular

festival of the whole year by the Swaminarayan sect. On the occasion of this visit, Monier Williams had long discussions with the followers of Swaminarayan and he did his best to ascertain the way Swaminarayan's principles were preached and taught and they way they were practised by the followers of the sect. We will now briefly reproduce some of the principles enunciated by Swaminarayan.

> *"The killing of any animal for the purpose of sacrifice to the gods is forbidden by me. Abstaining from injury is the highest of all duties. No flesh meat must ever be eaten, no spirituous or vinous liquor must ever be drunk, not even as medicine. My male followers should make the vertical mark (emblematical of the footprint of Vishnu or Krishna) with the round spot inside it (symbolical of Lakshmi) on their foreheads. Their wives should only make the circular mark with red powder or saffron. Those who are initiated into the proper worship of Krishna should always wear on their necks two rosaries made of Tulsi wood, one for Krishna and the other for Radha. After engaging in mental worship, let them reverently bow down before be pictures of Radha and Krishna, and repeat the eight syllabled prayer to Krishna (Sri -Krishnan Saranam mama, 'Great Krishna is my soul's refuge') as many times as possible. Then let them apply themselves to secular affairs. Duty (Dharma) is that good practice which is*

enjoined both by the Veda (Sruti) and by the law (Smriti) founded on the Veda. Devotion (Bhakti) is intense love for Krishna accompanied with a due sense of his glory. Every day all my followers should go to the Temple of God, and there repeat the names of Krishna. The story of his life should be listened to with the great reverence, and hymns in his praise should be sung on festive days. Vishnu, Siva, Ganapati (or Genesa), Parvati, and the Sun: these five deities should be honoured with worship Narayana and Siva should be equally regarded as part of one and same Supreme Spirit, since both have been declared in the Vedas to be forms of Brahma. On an account let it be supposed that difference in forms (or names) makes any difference in the identity of the deity. That Being, known by various names-such as the glorious Krishna, Param Brahma, Bhagavan, Purushottama-the cause of all manifestations, is to be adored by us as our one chosen deity. The philosophical doctrine approved by me is the Visishtadvaita (of Ramanuja), and the desired heavenly abode is Goloka. There to worship Krishna and be united with him as the Supreme Soul is to be considered salvation. The twice-born should perform at the proper seasons, and according to their means, the twelve purificatory rites (sanskara), the (six) daily duties, and the Sraddha offerings to the spirits of departed ancestors. A pilgrimage to the Tirthas, or holy places, of which Dvarika

> *(Krishna's city in Gujarat) is the chief, should be performed according to rule. Alms giving and kind acts towards the poor should always be performed by all. A tithe of one's income should be assigned to Krishna; the poor should give a twentieth part. Those males and females of my followers who will act according to these directions shall certainly obtain the four great objects of all human desires-religious merit. Wealth, pleasure, and beatitude ("Religious Thought and Life in India" by Monier Williams, pp. 155-158."*

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

> *"8. We have already indicated that the claim that Ananda Marga is a separate religion is not acceptable in view of the clear assertion that it was not an institutionalised religion but was a religious denomination. The principle indicated by Gajendragadkar, C. J., while speaking for the Court in Sastri Yagnapurushadji v. Muldas Bhudardas Vaishya (1966) 3 SCR 242 : (AIR 1966 SC 1119), also supports the conclusion that Anand Marga cannot be a separate religion by itself. In that case the question for consideration was whether the followers of Swaminarayan belonged to a religion different from that of Hinduism. The learned Chief Justice observed :*

"Even a cursory study of the growth and development of Hindu religion through the ages shows that whenever a saint or a religious reformer attempted the task of reforming Hindu religion and fighting irrational or corrupt practices which had crept into it, a sect was born which was governed by its own tenets, but which basically subscribed to the fundamental notions of Hindu religion and Hindu philosophy."

The averments in the writ petition would seem to indicate a situation of this type. We have also taken into consideration the writings of Shri Ananda Murti in books like Carya-Carya, Namah Shivaya Shantaya, A Guide to Human Conduct, and Ananda Vachanamritam. These writings by Shri Ananda Murti are essentially founded upon the essence of Hindu philosophy. The test indicated by the learned Chief Justice in the case referred to above and the admission in paragraph 17 of the writ petition that Ananda Margis belong to the Shaivite order lead to the clear conclusion that Ananda, Margis belong to the Hindu religion. Mr. Tarkunde for the petitioner had claimed protection of Article 25 of the Constitution but in view of our finding that Ananda Marga is not a separate religion, application of Article 25 is not attracted.

8-A. The next aspect for consideration is whether Ananda Marga can be accepted to be a religious denomination. In the

Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt 1954 SCR 1005 at p. 1021 : (AIR 1954 SC 282 at p. 289), Mukherjea, J. (as the learned Judge then was) spoke for the Court thus :

"As regards Article 26, the first question is, what is the precise meaning or connotation of the expression 'religious denomination' and whether a Math could come within this expression. The word 'denomination' has been defined in the Oxford Dictionary to mean 'a collection of individuals classed together under the same name : a religious sect or body having a common faith and organisation and designated by a distinctive name'."

This test has been followed in The Durgah Committee, Ajmer v. Syed Hussain Ali, (1962) 1 SCR 393 : (AIR 1961 SC 1402). In the majority judgment in S. P. Mittal v. Union of India, (1983) 1 SCR 729 at p. 774 : (AIR 1983 SC 1 at Pp. 20-21) reference to this aspect has also been made and it has been stated :

"The words 'religious denomination' in Article 26 of the Constitution must take their colour from the word 'religion' and if this be so the expression 'religious denomination' must also satisfy the conditions :

(1) It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their

spiritual well-being, that is, a common faith;

(2) common organisation; and

(3) designation by a distinctive name."

9. Ananda Marga appears to satisfy all the three conditions, viz., it is a collection of individuals who have a system of beliefs which they regard as cunductive to their spiritual well-being; they have a common organisation and the collection of these individuals has a distinctive name. Ananda Marga, therefore, can be appropriately treated as a religious denomination, within the Hindu religion. Article 26 of the Constitution provides that subject to public order morality and health, every relgious denomination or any section thereof shall have the right to manage its own affairs in matters of religion. Mukherjea, J. in Lakshmindra Thirtha Swamiar's case (AIR 1954 SC 282) (supra) adverted to; the question as to what were the matters of religion and stated (at p. 290) :

"What then are matters of religion? The word 'religion' has not been defined in the Constitution and it is a term which is hardly susceptible of any rigid definition. In an American case (Davis v. Benson, (1888) 133 US 333 at p. 342), it has been said : "that the term 'religion' has reference to one's views of his relation to his Creator and to the obligations they impose of reverence for His Being and Character and of obedience to His will. It is often confounded with cultus of form or worship of a particular sect, but is distinguishable from the latter".

We do not think that the above definition can be regarded as either precise or adequate. Articles 25 and 26 of our Constitution are based for the most part upon Article 44 (2) of the Constitution of Eire and we have great doubt whether a definition of 'religion' as given above could have been in the minds of our Constitution-makers when they framed the Constitution. Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might, extend even to matters of food and dress ....."

"Restrictions by the State upon free exercise of religion are permitted both under Articles 25 and 26 on grounds of public order, morality and health. Clause (2) (a) of Article 25 reserves the right of the State to regulate or restrict any economic, financial,

political and other secular activities which may be associated with religious practice and there is a further right given to the State by sub-clause (b) under which the State can legislate for social welfare and reform even though by so doing it might interfere with, religious practices ....."

"The contention formulated in such broad terms cannot, we think, be supported. In the first place, what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Article 26 (b) ....."

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12. The question for consideration now, therefore, is whether performance of Tandava dance is a religious rite or practice essential to the tenets of

the religious faith of the Ananda Margis. We have already indicated that tandava dance was not accepted as an essential religious rite of Ananda Margis when in 1955 the Ananda Marga order was first established. It is the specific case of the petitioner that Shri Ananda Murti introduced tandava as a part of religious rites of Ananda Margis later in 1966. Ananda Marga as a religious order is of recent origin and tandava dance as a part of religious rites of that order is still more recent. It is doubtful as to whether in such circumstances tandava dance can be taken as an essential religious rite of the Ananda Margis. Even conceding that it is so, it is difficult to accept Mr. Tarkunde's argument that taking out religious processions with tandava dance is an essential religious rite of Ananda Margis. In paragraph 17 of the writ petition the petitioner pleaded that "Tandava Dance lasts for a few minutes where two or three persons dance by lifting one leg to the level of the chest, bringing it down and lifting the other." In paragraph 18 it has been pleaded that "when the Ananda Margis greet their spiritual preceptor at the airport, etc., they arrange for a brief welcome dance of tandava wherein one or two persons use the skull and symbolic knife and dance for two or three minutes." In paragraph 26 it has been pleaded that "Tandava is a custom among the sect members and it is a customary performance and its origin is over four thousand years old, hence it is not a new invention of Ananda Margis." On the basis of the literature of the Ananda Marga denomination it has been contended that there is prescription of the

performance of tandava dance by every follower of Ananda Marga. Even conceding that tandava dance has been prescribed as a religious rite for every follower of the Ananda Marga it does not follow as a necessary corollary that tandava dance to be performed in the public is a matter of religious rite. In fact, there is no justification in any of the writings of Shri Ananda Murti that tandava dance must be performed in public. At least none could be shown to us by Mr. Tarkunde despite an enquiry by us in that behalf. We are, therefore, not in a position to accept the contention of Mr. Tarkunde that performance of tandava dance in a procession or at public places is an essential religious rite to be performed by every Ananda Margi.

13. Once we reach this conclusion, the claim that the petitioner has a fundamental right within the meaning of Article 25 or 26 to perform tandava dance in public streets and public places has to be rejected. In view of this finding it is no more necessary to consider whether the prohibitory order was justified in the interest of public order as provided in Article 25.

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

17. In the case of **Abdul Jaleel and others vs. State of U.P. and others**, reported in **AIR 1984 SC 882**, their lordships have held that shifting

of graves is not unIslamic or contrary to Koran especially when ordered to be done for purpose of maintaining public order, their lordships have held as under:

> *"4. In our order dated 23rd September. 1983 it has been pointed out that the fundamental rights conferred on all persons and every religious denomination under Articles 25 and 26 of the Constitution are not absolute but the exercise thereof must yield to maintenance of public order and that the suggestion mooted by the Court to shift the graves was in the larger interest of the society for the purpose of maintaining public order on every occasion of the performance of their religious ceremonies and functions by the members of both the sects herein. It has been further pointed out that the ecclesiastical edict or a right not to disturb an interred corpse is not absolute as will be clear from Section 176 (3) of Cr. P.C. which permits its exhumation for the purpose of crime detection and that this provision is applicable to all irrespective of the personal law governing the dead. In particular reference was made to one of the Fatwas relied upon by Sunni Muslims to show that even according to a Hadis quoted in that Fatwa "unnecessary shifting of graves was not permissible" and as such the edict clearly implies that it may become necessary to shift the graves in certain situations and that exigencies of public order would surely provide the requisite situation. Moreover, during the present hearing we persistently inquired of counsel appearing on both the sides as to whether there was anything in the Holy Koran which*

prohibited shifting of graves and counsel for the Sunni Muslims was not able to say that there was any to be found in the Koran. On the other hand, Shri Ashok Sen appearing for Shia Muslims categorically stated that there is no text in the Holy Koran which prohibits removal or shifting of graves, he also stated that his clients (Shia Muslims) do not regard removal or shifting of a grave (whether of a Sunni Muslim or Shia Muslim) from one place to another as un-Islamic or contrary to Koran. That it is neither un-Islamic nor contrary to Koran is proved by two things. First, as pointed out in one of the affidavits, in a meeting convened by the Divisional Commissioner on 4-10-1983 Maulana Abdul Salam Nomani, Pesh Imam of Gyan-Vapi Masjid, Varanasi was present and when the Commissioner asked him regarding the shifting of the graves as directed by this Court, he replied that a grave can never be shifted except only in the circumstances when the graves are dug on the land belonging to others and the graves are set up illegally on others' land. (In our order dated 23rd September, 1983 we have pointed out that the two graves in question have come up on the land of Maharaja unauthorisedly and illegally in contravention of Court's injunction) Secondly, two historical instances of such removal have been placed on record before the Court, namely, the grave of Mumtaz Mahal was removed from Burhanpur and brought to Taj Mahal at Agra and the grave of Jahangir was removed from Kashmir and taken to Lahore. There is, therefore, no question of this Court's direction being un-Islamic or contrary to

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

18. In the case of **Bijoe Emmanuel and others vs. State of Kerala**

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

> *"17. Turning next to the Fundamental Right guaranteed by Art. 25, we may usefully set out here that article to the extent relevant :*
>
> > *"25.(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.*
> > *(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law -*
> > *(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;*
> > *(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."*
>
> *(Explanations I and II not extracted as unnecessary)*
>
> *Article 25 is an article of faith in the Constitution, incorporated in recognition of the principle that the real test of a true democracy is the ability of even an insignificant minority to find its identity under the country's Constitution. This has to be borne in mind in interpreting Art. 25."*

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

> *"77. It may be noticed that Article 25 does not contain any reference to property unlike Article 26 of the Constitution. The right to practise, profess and propagate religion guaranteed under Article 25 of the Constitution does not necessarily include the right to acquire or own or possess property. Similarly this right does not extend to the right of worship at any and every place of worship so that any hindrance to worship at a particular place per se may infringe the religious freedom guaranteed under Articles 25 and 26 of the Constitution. The protection under Articles 25 and 26 of the Constitution is to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice*

of that religion.

78. While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially."

20. In the case of **N.Adithayan vs. Travancore Devaswom Board and others**, reported in **(2002)8 SCC 106**, their Lordships have held that custom or usage, even if proved to have existed in pre-Constitution period, cannot be accepted as a source of law, if such custom violates human rights, human dignity, concept of social equality and the specific mandate of the Constitution and law made by the Parliament. Their lordships have further held that the vision of the founding fathers of the Constitution of liberating society from blind adherence to traditional superstitious beliefs sans reason or rational basis.

"16. It is now well settled that Article 25 secures to every person, subject of course to public order, health and morality and other provisions of Part-Ill, including Article 17 freedom to entertain and exhibit by outward Acts as well as propagate and disseminate such religious belief according to his judgment and conscience for the edification of others. The right of the state to impose such restrictions as are desired or found necessary on grounds of public order, health and morality is

> *inbuilt in Articles 25 and 26 itself. Article 25(2)(b) ensures the right of the state to make a law providing for social welfare and reform besides throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus and any such rights of the state or of the communities or classes of society were also considered to need due regulation in the process of harmonizing the various rights. The vision of the founding fathers of Constitution to liberate the society from blind and ritualistic adherence to mere traditional superstitious beliefs sans reason or rational basis has found expression in the form of Article 17. The legal position that the protection under Articles 25 and 26 extends a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion and as to what really constitutes an essential part of religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion or practices regarded as parts of religion, came to be equally firmly laid down."*

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

> *"43. A bare reading of this Article deprives the submission of all its force, vigour and charm. The freedom is subject to public order, morality and*

health. So the Article itself permits a legislation in the interest of social welfare and reform which are obviously part and parcel of public order, national morality and the collective health of the nation's people.

x x x x x x x x x

45. The meaning of religion - the term as employed in Article 25 and the nature of protection conferred by Article 25 stands settled by the pronouncement of the Constitution Bench decision in Dr. M. Ismail Faruqui and Ors. v. Union of India & Ors., (1994) 6 SCC 360. The protection under Articles 25 and 26 of the Constitution is with respect to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of the religion. The latter is not protected by Article 25.

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59. In our view, a statutory provision casting disqualification on contesting, or holding, an elective office is not violative of Article 25 of the Constitution."

22. The United States Supreme Court in the case of **Abraham Braunfeld vs. Albert N. Brown**, reported in **6 L. Ed. 2d 563**, have held that a State has power to provide a weekly respite from all labour and, at the same time, to get one day of the week apart from the others as a day of rest, repose, recreation, and tranquility. The Supreme Court has also held that the constitutional guarantee of the free exercise of religion is not violated by the Pennsylvania statute which penalizes the Sunday retail sale of certain enumerated commodities (18 Purdon's Pa Stat Ann (4699.10)), either on its

face or as applied to retail merchants who are members of the Orthodox Jewish faith, which requires the closing of their places of business and a total abstention of all manner of work from nightfall each Friday until nightfall each Saturday; this is so even tough enforcement of the statute would impair the ability of such a merchant to earn a livelihood or would render him unable to continue in his business, thereby losing his capital investment. The Supreme Court has further laid down the test to determine freedom of religion as under:

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

23. The United States Supreme Court in the case of **Employment Division, Department of Human Resources of the State of Oregon v. Galen W. Black**, reported in **99 L Ed 2d 753**, have held that the free exercise of religion clause of the Federal Constitution's First Amendment precludes any governmental regulation of religious beliefs as such; government may neither compel affirmation of a repugnant belief, nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities, nor employ the taxing power to inhibit dissemination of particular religious views; however, there is a distinction between the absolute constitutional protection against governmental regulation of religious beliefs, on the one hand, and the qualified protection against the regulation of religiously motivated conduct, on the other; the protection that the First Amendment provides to legitimate

claims to the free exercise of religion does not extend to conduct that a state has validly proscribed.

24. Justice Frankfurter in **Minersville School Dist. Bd. of Ed. V Gobitis, 310 US 586, 594-595, 84 L Ed 1375, 60 S Ct 1010 (1940)**: has held that "Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs. The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities."

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

26. According to the guidelines dated 24.03.2020, issued by the Ministry of Home Affairs, all places of worship shall be closed for public. No religious congregations will be permitted, without any exception. The restrictions qua religious places, as mentioned in the guidelines issued by the Ministry of Home Affairs on 24.03.2020 read as under :-

> "9. All places of worship shall be closed for public. No religious congregations will be permitted, without any exception."

The words used in the restrictions are pre-emptory and mandaotry, without

any exception. These restrictions apply to all the religions. The Ministry of Home Affairs has though relaxed the imposed restrictions from time to time, but the restrictions imposed qua religious places have not been relaxed. The imposition of restrictions on religious places is in larger public interest. There is reasonable nexus with the object sought to be achieved. The object sought to be achieved is that the persons should not gather in religious places to control the spread of Corona virus. The guidelines have been issued strictly in conformity with the Disaster Management Act, 2005. The opening of religious places and holding of religious congregations cannot be ordered to be relaxed on the analogy of opening of business establishments. The imposition of restrictions is not repugnant to Article 25 of the Constitution of India. Article 25 guarantees that every person shall have the freedom of conscience and right to profess, practice and propagate religion, subject to restrictions imposed by the State, namely on the ground of -

(a) public order, morality and health;

(b) to the other provisions of the Constitution;

(c) regulation of non-religious activity associated with the religious practice;

(d) social welfare and reform.

The freedom to religion is subject to public order, morality and public health. It is an extra ordinary situation. In order to safeguard the health of the society, restrictions have been imposed by closing down all the places of worship for public, including holding of religious congregations/gatherings. The restrictions imposed are reasonable based on objectivity. The restrictions do not amount to interference in the religious affairs of any

community. The restrictions have been imposed qua religious places of all the religions. Moreover, it is a public policy. The scope of judicial interference in the policy matters is very limited. The policy decision can be challenged only if it is unconstitutional, arbitrary or irrational. The closure of religious places of worship during the period of spread of Corona virus, that too as a temporary measure, is a regulation and not prohibition. The restrictions imposed by the Ministry of Home Affairs do not violate any fundamental or legal right of the petitioner or the similarly situated persons. The endeavour of the Ministry of Home Affairs is to break the cycle by maintaining social distancing. We will not substitute our wisdom for the wisdom of the Executive decision, which has been taken in the larger public interest. It would be appropriate to quote Woodrow Wilson's statement mentioned in book titled "Democracy" written by David A. Moss, as under :-

> *Woodrow Wilson had much the same thing in mind when he declared that "government is not a machine, but a living thing. It falls, not under the theory of the universe, but under the theory of organic life. It is accountable to Darwin, not to Newton. It is modified by its environment, necessitated by its tasks, shaped to its functions by the sheer pressure of life."*

This passage is extracted from Woodrow Wilson's book - The New Freedom : A Call for the Emancipation of the Generous Energies of a People (New York : Doubleday, Page, 1913), 47. Wilson described the book, as "the result of the editorial literary skill of Mr. William Bayard Hale, who has put together here in their right sequences the more suggestive portions of my campaign speeches [from 1912]" (vii). The State functionaries are bound to

implement the guidelines issued by the Ministry of Home Affairs from time to time punctually and in letter and spirit. The right of the State to impose restrictions, as are required or found necessary on the ground of public order, health and morality, is inbuilt under Articles 25 and 26 of the Constitution of India. It is reiterated that the restrictions imposed are neither arbitrary nor excessive. The imposition of restrictions constitutes "paternalistic act". The restrictions are in collective interest of the society at large. Merely that in certain areas restrictions have been relaxed cannot be a ground to relax the same qua religious places of worship. The discretion not to permit opening of all the places of worship for public and prohibiting holding of religious congregations/gatherings has been exercised judiciously. Accordingly, in view of the observations and discussion made here-in-above, we can not direct the State Government to relax the restrictions qua religious places of worship.

27. Accordingly, there is no merit in this petition and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(AJAY TEWARI)
JUDGE

May 22, 2020
ndj

Whether speaking/reasoned Yes/No
Whether reportable Yes/No