

# High Court of Judicature at Allahabad

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## **Shyammal Ranjan Mukerjee v. Nirmal Ranjan Mukerjee And Others - WRIT - C No. - 56447 of 2003 [2007] INUPHC 14725 (30 August 2007)**

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### HIGH COURT OF JUDICATURE AT ALLAHABAD

Reserved

Civil Misc. Writ Petition No. 56447 of 2003

Shyamal Ranjan Mukherjee.....Petitioner

Vs.

Nirmal Ranjan Mukherjee & Others.....Respondents

Hon'ble S.N. Srivastava, J.

After hearing learned counsel for the parties, learned Amicus Curai and Sri I.N. Singh, learned counsel appearing for Kashi Vidhwat Parishad, following questions arises to be decided in the present Case.

- (i) If Deed of Dedication to Deity for religious purposes prohibits any alienation by way of sale or mortgage whether the Shebait could alienate the property vested in Deity?
- (ii) Whether the Temple which is abode of the Deity is alienable even if there is no such prohibition in the Deed of Dedication?
- (iii) Whether the properties other than Temple vested in the Deity are alienable?
- (iv) Whether considering the historical background of attacks on Temples and Religious Institutions of Hindus for about more than 1200 years, whether the Temples and Religious Institutions require any protection from the State, if so, who are Hindus and whether Hinduism is religion or Dharm and are entitled to get protection under Articles 25 and 26 of the Constitution of India and if so what protection is required to safeguard Hindu Temples and Religious Institutions?
- (v) As the matter relates to Temple of Lord Krishna who has given Bhagvad Geeta to the man kind, whether Bhagvad Geeta propounds any thought or belief or Dharm common to all faiths, beliefs, way of worship (all religions born in India and part of Hinduism)?

Facts of the case are as follows:-

Premises No. B-17/34, 35, 36 and 38, situated at Mohalla Til Bhandeshwar, Varanasi City which was renumbered in Municipal Record as House No. B-17/57, 58, 59 and 60 was the property dedicated to the Deity Sri Shaligram Shila (Sri Gopal Thakur). Kalidas Mukherji, Girja Prasann Mukherji, both sons of Babu Gopal Charan Mukherji and Nalini Ranjan Mukherji, Ramini Ranjan Mukherji, Kamini Ranjan Mukherji alias Chando minor under the guardianship of his mother Smt. Santoshini Debi, all sons of late Shivadas Mukherjee, Residents of Til Bhandeshwar, Benaras City executed a Deed of Dedication to family Deity Sri Shaligram Shila (Gopal Thakur) through a registered deed dated 5th March, 1928 and also appointed Kali Das Mukherji and Girija Prasann Mukherjee as Shebaitts of the said Deity jointly with the condition that they would work jointly and after the death of one of them, the survivor shall be Shebait and perform Rag, Bhog and Pooja etc. and after the death of both the Shebaitts Ramini Ranjan Mukherjee, son of late Shivadas Mukerjee and Profulla Kumar Mukerjee, sons of Kalidas Mukerjee, both or any one of them whomay be alive at the time would work as Shebaitts and after their death the eldest grand-son of Kalidas Mukerjee and eldest grand-son of Shivadas Mukerji and the eldest male member in succession would work as Shebaitts.

Indisputably, Shyamnal Ranjan Mukerjee and Nalini Ranjan Mukerjee were recorded in the Municipal records as Shebaitts of Sri Shaligram Shila (Gopal Thakur) before the dispute arose.

There was a specific condition in the Deed of Dedication dated 5/3/10/1920 that the properties cannot be transferred by Shebaitts. Paragraphs 1, 3, 4 and 5 of the Deed of Dedication are relevant in this regard and the same are being reproduced below:-

(1) That from today the said diety "Sree Saligram Sila" (Gopal Thakur) shall be the absolute owner of the said premises No. B.17/34, 35, 36 and 38 Tilbhandeshwar, Benaras, and all our rights, title and interests in the said properties cease from the date hereof. Neither we nor our heirs or legal representatives shall have any right to challenge or disregard this Deed of Gift or raise any claim in respect of the said properties. If any one of us or our heirs do so that would be considered as invalid.

x x x

(3) That out of the income of the said properties hereby dedicated the expenses for the daily Sheba and Puja of the said diety and the annual festivals of the said diety would be met and the repairs of the said properties and the payment of taxed or other dues would also be met out of the said income.

(4) That none of the Shebaitts would be entitled to sell, mortgage or otherwise transfer any of the properties hereby dedicated and if any of them do so that would be null and void and the dedicated properties aforesaid shall not be liable to be sold in execution of any decree against the Shebaitts.

(5) That the Shabeits shall have full and absolute right to invest the surplus income derived from the said properties in safe and profitable investments and the said surplus income and the investments made thereof or any improvements made by the said Shebaitts in the aforesaid properties shall be considered as the property of the said diety."

Shaymal Ranjan Mukherjee (Petitioner) shifted to Gujrat for some time in connection with his service.

A Suit No.391 of 1990 was filed by Nirmal Ranjan Mukherji-Opp. Party no.1 for declaration that he is exclusive Shebait of Temple \_Sree Shaligram Shila (Gopal Thakur) situated in Old House No. B-17/35, New No. B.17/57, Mohalla Til Bhandeshwar, Varanasi. This Suit was decreed on 29.9.1991 ex parte and he was declared exclusive Shebaitts entitled to manage the affairs of Temple and other properties vested in the deity including Raj, Bhog and worship. It further transpires from the record that Nirmal Ranjan Mukherji-Opp. party no.1 executed a registered sale deed in favour of one Smt. Shashi Devi in respect of House No. B.17/56, Mohalla Til Bhandeshwar, Varanasi on 19.6.1995 as well as with regard to House No. B.17/55, Mohalla Tilbhandeshwar, Varanasi.

Petitioner-Shyamal Ranjan Mukherji also executed a registered confirmation deed of sale deed dated 19.6.1995 on 13.2.2004 in favour of Smt. Shasi Devi as regards House No. B.17/56.

The main ground on which sale deed was executed was that for last several years Mohalla Tilbhandeshwar, Varanasi was affected by communal violence due to which family of Opp. Party no.1 felt insecurity in the said Mohalla and thought it appropriate to shift to Allahabad for the security reasons and also decided to shift the Deity at Allahabad. As certain properties were very old, there was also a legal necessity to sell other properties vested in Deity for making arrangements of Rag, Bhog and Pooja of Sree Shaligram Shila (Gopal Thakur). Nirmal Ranjan Mukherji-Opp. Party no.1 also executed a registered sale deed dated 19.6.1995, in favour of Bhaganu @ Bhaggan Yadav as regards House No.B.17/58 and executed another sale deed dated 4.7.1996 as regards House No. B.17/57, Mohalla Tilbhandeshwar, Varanasi to Bhagnu. In Paragraph-17 of the counter affidavit of Opp. Party no.1, it has been averred that during pendency of writ proceeding Shyamal Ranjan Mukherji also executed another sale deed in favour of Sanjay Kumar, Anoop Kumar, Raj Kumar and Sita Devi on 10.2.2004 for a sale consideration of Rs. 2,52,000/-. The main consideration for execution of sale deed was to meet out expenses of marriage of his daughter and to invest money in business. Another sale deed was also executed by Shyamal Ranjan Mukherjee in favour of Moti Lal son of Prahlad Das in respect of House No. B.17/58, Mohalla Tilbhandeshwar, Varanasi on 10.2.2004, House No. B-17/57, Mohalla Til Bhandeshwar to Smt. Nirmala Devi, wife of Laxmi Narain and House No. B-17/60 to Janki Devi, wife of Badri Prasad on 5.5.2004.

Transferees also moved applications for mutation of their names on the said properties in dispute vested in Deity on the basis of the sale deeds to Nagar Nigam, Varanasi. In the meantime on the basis of a decree passed on 29.10.1991, name of one of brother of petitioner was expunged by the order dated 20.6.1994 of Up Nagar Adhikari, Nagar Nigam, Varanasi against which an Appeal No. 8 preferred by Opp. Party no.1 was decreed ex parte on 15.3.1996 and a Restoration Application of petitioner was dismissed on 6.12.2003.

Since all the properties vested in Deity were sold to the transferees, they were also pursuing their Mutation Application before Nagar Nigam, Varanasi.

Transferees moved application for Impleadment in this writ petition also and were impleaded in writ petition on their applications.

Sri A.K. Singh, learned counsel for petitioner, Sri V.S. Rastogi and Sri Tarun Tiwari, learned counsel for Opp. Party No.1 and some of Transferees, Sri Shesh Kumar, Sri M.C. Dwivedi and Sri M.M. Sahai, learned counsel for other transferees were also heard.

Sri M.C. Chaturvedi, learned Chief Standing Counsel, State of U.P., assisted by Sri Bhola Nath Yadav, learned Standing Counsel, State of U.P. were heard on behalf of State. This Court by an order dated 3.7.2007 appointed Sri Sanjay Goswami, Advocate, to assist the Court as Amicus Curaei on the questions of public interest involved in this case which are also questions of vital importance in present scenario.

Sri I.N. Singh, learned counsel for Kashi Vidwat Parishad, Varanasi was also heard as Kashi Vidwat Parishad through an Impleadment Application prayed for impleadment to intervene in the matter and thus Sri I.N. Singh, learned Counsel was allowed to address the Court on behalf of Kashi Vidwat Parishad, Varanasi as intervenor.

Heard learned counsel for the parties.

Order of the Court on 30.3.2007 is being quoted below:-

"Counter Affidavit filed by Sri C.K. Parekh, learned counsel for Nagar Nigam, Varanasi, is taken on record.

The disputed properties are situated Mohalla Til Bhandeshwar, Varanasi. It transpires from the Deed of creation of Endowment of Dubuttur executed on 5th March, 1928 that the Saviets were created to look after the properties in dispute which vested in Sri Shaligram Shila (Gopal Thakur) which has been installed in House No.B-17-35, Til Bhandeshwar, Varanasi (known as Gopal Dham) entire property vested in the Deity.

It is urged by the learned counsel for the parties that for the reasons disclosed in the sale deeds that Mohalla Til Bhandeshwar situated in the heart of the City Varanasi is affected by the perpetual communal tension and Gopal Dham in question is unsafe. For the aforesaid reasons, Savits executed sale deeds in favour of several transferees. It was also brought to the notice of the Court that Varanasi as well as Society is suffering a great and irreparable attack on communal basis due to which temples and various other religious places are being shifted or sold.

In the facts of the case, learned counsel for the parties and transferees as well as learned Standing Counsel for the State of Uttar Pradesh are required to assist the Court on following questions.

(i) In view of the specific terms and conditions in the Deed that Savits will have no right of transfer, whether any transfer could be made and if made whether it could be recognised in law,

(ii) Whether there is any law governing public or private endowments/Trusts by which prior permission/approval for such transfer by Savits is essential,

(iii) It has also come on record that the Shaligram Shila (Gopal Thakur) was installed at Premises No.B-17-35, Til Bhandeshwar, Varanasi (known as Gopal Dham) whether the said premises or any party thereof could be transferred and the Deity installed in a Temple could be shifted on any ground whatsoever and

(iv) Whether any steps have been taken by the State of Uttar Pradesh to protect such religious places/Temples/Endowments in the areas affected by the communal tension and whether such religious places are insecure due to antisocial elements.

Arguments of Sri Vijay Shanker Rastogi, learned counsel appearing on behalf of Nand Lal Yadav, one of the transferee are inconclusive.

As prayed, put up on 2nd April, 2007 to complete arguments by Sri V.S. Rastogi and other counsels of the transferees/parties.

Office is directed to supply a certified copy of this order learned Standing Counsel for the State of Uttar Pradesh without any charge and will issue certified copy to learned counsel for the parties on payment of usual charges on usual charges within 24 hours."

Heard learned counsel for the parties.

Sri M.C. Chaturvedi, learned Chief Standing Counsel, State of U.P. made a statement that there is no separate legislation in the matter of protection of Hindu religious places, temples or endowment trust affected by the communal tension and if such religious places or temples are insecure due to communal tension or due to activities of anti social elements, it is a law and order problem and if any problem arises of which a written complaint is received by the police authorities, the local Police looks into the matter of law and order problem and takes steps accordingly, but there is no law, i.e., the Act, Rule, Statute, Circular, Government Order or any other document having force of law to provide such protection continuously. He further urged that as there is no such Legislation on the subject, in case the Court gives any appropriate direction or frame a scheme for protection of such Hindu religious places, the State will take appropriate steps accordingly. He also urged that in case this Court considers it appropriate and appoints any Body/Commission to look after the matter and submits a comprehensive report to take steps by the State Government, the State Government will proceed accordingly.

Learned counsel for the petitioner urged that the order passed by the Additional District Judge, Varanasi in Appeal No. 8 of 1989 under Section 476 of the Nagar Maha Palika Adhinyam was an ex parte order and the Additional District Judge erred in law in refusing to set aside the ex parte order. He further urged that any property vested in Deity, Shebait has every right to alienate the same. In instant case Shebait has exclusive right to alienate the property for a legal necessity. It was further urged that the sale deeds executed by Nirmal Ranjan Mukerji were nonest and void and are liable to be set aside. In view of the terms and conditions in the Deed of dedication, the two families would

continue as joint Shebait and Opp. Party no.1 had no exclusive right to alienate properties as sole Shebait. It was also urged that Shebait was fully competent to execute sale deeds in the facts of the case in spite of prohibition in the Deed of Dedication. Lastly, he prayed that the impugned orders may be quashed and/or any suitable writ may be issued.

During the course of hearing of the case, Sri Nirmal Ranjan Mukerji died and he was substituted by his son Amal Ranjan Mukerji who is also represented through Sarvasri V.S. Rastogi and Tarun Tiwari, Advocates. Sri V.S. Rastogi, Advocate, also represents Smt. Durga Devi, Transferee-Respondent no.6.

Learned counsel appearing on behalf of transferees and Respondent no.1, Sri V.S. Rastogi urged that the condition of prohibition of transfer of property in question mentioned in the Deed of Dedication is void being violative of Section 10 of the Transfer of Property Act. He urged that in spite of prohibition in the Deed of Dedication, the Shebait was competent to execute the sale deeds for legal necessities. He further urged that as the house was very old and in dilapidated condition as is clear from the sale deed and constantly affected by communal violence and for security reasons it was rightly sold for legal necessity with the intention to protect the deity. No restriction or prior permission of any other authority approval is required under any provision of law. He relied upon AIR 1959 Patna, 305 in support of his case.

Sri Shesh Kumar, learned counsel appearing for other transferees, relying upon AIR 1959 Patna, 305, Ram Chandraj Maharaj and others Vs. Lalji Singh and another urged that the restriction/prohibition of transfer of property in the Deed of Dedication vested in Deity is void and urged that it is not a public trust and Shebait and members of same family are performing Rag, Bhog and Pooja do not require any permission or prior approval of sale deed was executed for legal necessity. He further urged that whether there was any legal necessity or not, it will be adjudicated in the Suit not by this Court.

Sri M.C. Dwivedi, learned counsel appearing for one of the transferee also reiterated the same arguments and urged that restriction provided in the Deed of Dedication does not affect the right of alienation if property vested in Deity is managed by Shebait, whether it is public or private trust, but admitted that property is normally unalienable, but for legal necessity property could be alienated.

Sri C.K. Parekh, learned counsel appearing for Respondent-Nagar Nigam Varanasi urged that the Deed of Dedication specifically prohibits alienation of any Devottar property in question. The sale deed executed in violation of the terms and condition of the Deed of Dedication would not confer any right on transferees and Nagar Nigam, Varanasi is competent to refuse to acknowledge such transfer deeds. He further urged that Section 10 of the Transfer of Property Act is not applicable to the Deed of Dedication to Deity which is not a transfer and petitioner or Opp. Party no.1 cannot be saved under Section 10 of the Transfer of Property Act. He further urged that a Donor executing a Deed of Dedication was fully competent to prohibit alienations of the property of Deity by Shebait.

Sri Bhola Nath Yadav, learned Standing Counsel, while supporting the arguments advanced by Sri C.K. Parekh, learned counsel appearing on behalf of Nagar Nigam, Varanasi and urged that the sale deeds were executed on the ground that the property in dispute is frequently affected by communal violence and for marriage of daughter apart from other grounds. This could not constitute legal necessity. He further urged that restriction on right to alienate in the Deed of Dedication was valid and the arguments of learned counsel for the petitioner and transferees that transfers are valid cannot be accepted.

Sri Sanjay Goswami, learned Amicus Curiae, urged that entire State of Uttar Pradesh is suffering from such problem and the property of Hindu Religious Institutions vested in Deities managed by the private Shebait/Managing Bodies of Temples and other properties of public or private Trusts though vested Deity are being transferred purporting it to be for legal necessity. He urged that so far as Charitable Societies are concerned they are protected under Section 5-A of the Societies Registration Act and the prior permission from the District Judge is necessary before any alienation. He further urged that since Deity is a minor and minor under the Hindu Minority and Guardianship Act is also given protection as no transfer of property of a minor could be made without prior permission of the District Judge under Section 8 (2) of the Hindu Minority and Guardianship Act. He further urged that under the Trust Act, there are various restriction, but so far as the properties and Temple vested in Deity are

concerned , there is no such legislation for such protection. As a large number of illegal transfers, misfeasance, misuse of funds from property of Temple vested in Deity and abuse of powers by Shebaites in alienating and mismanagement of such properties of Deity are being reported, some scheme should be framed in this regard in absence of any legislation. He urged that there are different ways of protection such such properties of Deity such as :-

1. A Board may be created to look after and ensure proper Management in accordance with Deed of Dedication/Trust Deed should be ensured in order to curb mismanagement.

2. In the State of Uttar Pradesh there is no record of such religious institutions, temples and its property vested in deity and as such there must be some scheme for registration of such religious institutions with specific details

3. If there is any registered deed of creation of such Religious Institutions or its properties vested in Deity, it is duty of the State of U.P. to take appropriate steps to look after such properties to ensure proper management, security and safety of Religious rights of Hindus from communal violence, grabbing by anti social or communal elements to protect religious rights under Articles 25 & 26 of the Constitution of India.

He urged that there must be some Board/Body to look after all the matters relating to Temples and other properties in order to stop misuse, misappropriation of funds, safety and security of such religious institutions by Shebaites, antisocial and communal elements alongwith connected matters. He urged that in the present case, the property was sold on the ground that it is situated in area affected by communal violence. He urged that if no protection is given by the State to such religious Institutions throughout the State of U.P., a time may come when properties of Temples or religious Institutions will go in the hands to anti social elements or communal elements and anti Hindu forces and communal forces will be encouraged to create communal tension who would engineer atmosphere of communal violence to grab Hindu Religious Institutions. It was also urged that in the absence of any legislation, Rule, Statute, Circular or Government Order in this matter, a scheme may be framed by this Court to provide safeguard and protection to all such Religious places and its properties.

Kashi Vidwat Parishad, India, Head Office-Varanasi through its counsel Sri I.N. Singh, learned counsel was also heard at length. He urged that in view of importance of Lord Krishna, a Deity in Temple Gopal Dham whose abode was alienated illegally, who had given us 'Gita' which is a Dharmashastra not only for the Hindus, but for the entire human being which propounded 'Dharma' including 'Karma Yog', 'Gyan Yog' and 'Bhakti Yog'. He urged that 'Gita' should be declared as a 'National Dharma Shastra' of India as it has nothing to do with any particular religion, but it propounded theory of duties of human beings. He also urged that the followers of all religions talk about Duty of man kind. Message of Gita is relevant for all religions of the world and is not only for any particular religion. As the property in question is vested in Sri Gopal Thakur (Lord Krishna) situated in Gopal Dham Temple, it is also necessary to consider relevance of Lord Krishna and the Dharm Shastra 'Gita' dedicated to humanity. He further urged that the State of U.P. may be directed to take all steps to protect temples, Mutth, (public or private) Religious Institutions and its properties vested affected by communal violence created by anti social and communal elements and this Court may frame certain appropriate scheme to protect all such religious Institutions of all Beliefs and Thoughts (religions) within the fold of Hinduism. He relied upon 2007 (3) ADJ SC, p. 83, Chhedi Lal Misra (Dead) v. Civil Judge, Lucknow and urged that once the property is dedicated to a Deity, it is dedicated to the Almighty and any person, whether Manager/Shebaites or Management Body is incompetent to alienate the property vested in Deity on any ground whatsoever and in case such religious place and its property is situated in an area affected by the communal violence or affected by the activities of antisocial elements or group of such persons who are instrumental in creating law and order problem affecting right to profess, practise, propagate religion and religious rights of Raj, Bhog and Pooja and its properties, a Board may be constituted.

In view of the submissions made by the learned counsel for the petitioners, learned counsel for the transferees, Sri M.C. Chaturvedi, learned Chief Standing Counsel, State of U.P. assisted by Sri Bhola Nath Yadav, learned Standing Counsel, Sri C.K. Parekh, learned Counsel for Nagar Nigam, Varanasi, Sri Sanjay Goswami, learned Amicus Curaei and Sri I.N. Singh, learned counsel appearing on behalf of Kashi Vidyapeeth, the following points are necessary to be decided in the present case.

This Court is considering the first question whether the property vested in Deity is alienable.

It is urged by Sri C.K. Parekh, learned counsel for Nagar Nigam, Varanasi that Section 10 of the Transfer of Property Act, is not applicable to properties dedicated to the Deity as it could not be a transfer. He further urged that it cannot be said to be a gift under Section 122 of the Transfer of the Property Act inasmuch as there is no living person to accept the gift. Once the property is dedicated to Sri Gopal Thakur (Sri Shaligram Shila), it is dedicated to the God (Almighty), it is not alienable by Manager, Sarvakar or Shebait on any ground and in the instant case there is a prohibition under Terms and Conditions of Deed of Dedication.

Learned counsel for the petitioners urged that Sarvakar is fully competent to transfer the property and any term or condition in the deed restraining Sarvakar/Manager of which temple or property vested in deity is void under Section 10 of the Transfer of Property Act and a Manager is fully competent to alienate a Debuttra property for legal necessity or for the benefit of the Deity (Almighty).

Sri Shesh Kumar and Sri M.C. Dwivedi, learned counsel for the transferees also supported the view that the Debuttar property is transferable and supported the petitioners' view and urged that the idol of Lord Krishna installed in the 'Gopal Dham' was rightly removed and was reinstalled at Allahabad and for performing Pooja, Rag and Bhog of the deity, the property was rightly sold, which is permissible under law.

Sri I.N. Singh, learned counsel appearing for Kashi Vidwat Parishad on the first question urged that once the property is dedicated to Lord Krishna who is incarnation of God (Almighty), the property is not transferable by the Manager/Sarvakar/Shevaita. He urged that dedication to Deity finally vests in the Almighty and a person appointed to look after interest of Deity is appointed to facilitate religious right is incompetent to alienate the property. Any such transfer is void ab initio and does not bind Deity being in violation of terms and conditions of the Deed of Dedication.

Sri Sanjay Goswami, learned Amicus curie on first question also urged that Debuttar property is unalienable in law and urged that whole thing will be guided by the terms and conditions of Deed of Dedication by which the property was dedicated to Deity and Shebait were appointed.

From perusal of the the terms and condition of Deed of Dedication to the Deity, it is clear that there is a specific restriction on transfer by way of sale or mortgage.

Now the Court is considering whether the prohibition clause contained in the Deed of Dedication is void as urged by the learned counsel for transferees as well as learned counsel for the Transferors under Section 10 of the Transfer of Property Act.

Section 10 of the Transfer of Property Act is quoted below:

"10. Condition restraining alienation.- Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him; provided that property may be transferred to or for the benefit of a women (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein."

Section 10 of the Transfer of Property Act makes it clear that if property is subject to a condition absolutely restraining the transferee or any person claiming under him from parting or disposing of his interest in property, such condition is void, except in case of lease.

The further question arises what is transfer.

It is necessary to refer Section 5 of the Transfer of Property Act in order to understand the controversy. Section 5 of the Transfer of Property Act, is quoted as follows:-

5. "Transfer of property" defined. - In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more than living persons, or to himself, (or to himself) and one or more other living persons; and "to transfer property" is to perform such act.

4 (In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals)".

According to Section 5 of the Transfer of Property Act, transfer of property means an act by which a living person conveys property, in present or in future, to one or more than living persons, or to himself, (or to himself) and one or more other living persons; and "to transfer property" is to perform such act. Living person has been defined which includes a company or association or body of individuals whether incorporated or not.

This question came up for consideration by Apex Court in the case of Shiromani Gurudwara Prabandhak Committee, Amritsar v. Shri Som Nath Das & others, AIR 2000 SC 1421 where 'Guru Granth Sahab' was recorded in the revenue record and question arose whether 'Guru Granth Sahab' is a juristic person or not.

'Juristic Person' has been dealt with in Paragraph 11 of the judgment of the Apex Court which says that 'Juristic Person' connote recognition of an entity to be in law a person which otherwise it is not. In other words, it is not an individual natural person but an artificially created person which is to be recognised to be in law as such.

The Apex Court in Paragraph 13 of the said judgment has dealt with 'Natural person' and 'Legal person'.

Paragraphs 13 and 14 of the judgment of the Apex Court in Shiromani Gurudwara Prabandhak Samiti (supra) are being reproduced below:-

"13. With the development of society, 'where an individual's interaction fell short, to upsurge social development, co-operation of a larger circle of individuals was necessitated. Thus, institutions like corporations and companies were created, to help the society in achieving the desired result. The very Constitution of State, municipal corporation, company etc. are all creations of the law and these "Juristic Persons" arose out of necessities in the human development. In other words, they were dressed in a cloak to be recognised in law to be a legal unit.

Corpus Juris Secundum, Vol. LXV, page 40 says:

Natural person. A natural person is a human being; a man, woman, or child, as opposed to a corporation, which has a certain personality impressed on it by law and is called an artificial person. In the C.J.S. Definition 'Person' it is stated that the word "person," in its primary sense, includes natural persons and artificial, conventional, or juristic persons.

Corpus Juris Secundum Vol. VI, page 778 says:

Artificial persons. Such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic.

Salmond on Jurisprudence, 12th Edn., 305 says:

A legal person is any subject-matter other than a human being to which the law attributes personality. This extension, for good and sufficient reasons, of the conception of personality beyond the class of human being is one of the most noteworthy feats of the legal imagination....

Legal persons, being the arbitrary creations of the law, may be of as many kinds as the law pleases. Those which are actually recognised by our own system, however, are of comparatively few types. Corporations are undoubtedly legal persons, and the better view is that registered trade unions and friendly societies are also legal persons though not verbally regarded as corporations.

...If, however, we take account of other systems than our own, we find that the conception of legal personality is not so limited in its application, and that there are several distinct varieties, of which three may be selected for special mention.

1. The first class of legal persons consists of corporations, as already defined, namely, those which are constituted by the personification of groups or series of individuals. The individuals who thus form the corpus of the legal person are termed its members.....1

2. The second class is that in which the corpus, or object selected for personification, is not a group or series of persons, but an institution. The law may, if it pleases, regard a church or a hospital, or a university, or a library, as a person. That is to say, it may attribute personality, not to any group of persons connected with the institution, but to the institution itself....

(3) The third kind of legal person is that in which the corpus is some fund or estate devoted to special uses - a charitable fund, for example or a trust estate.....

Jurisprudence by Paton, 3rd Ed., page 349 and 350 says

It has already been asserted that legal personality is an artificial creation of the law. Legal persons are all entities capable of being right-and-bearing units - all entities recognised by the law as capable of being parties to legal relationship. Salmond said: 'So far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties.....

....Legal personality may be granted to entities other than individual human beings, e.g. a group of human beings, a fund, an idol. Twenty men may form a corporation which may sue and be sued in the corporate name. An idol may be regarded as a legal persona in itself, or a particular fund may be incorporated. It is clear that, neither the idol nor the fund can carry out the activities incidental to litigation or other activities incidental to the carrying on of legal relationship, e.g., the signing of a contract: and, of necessity, the law recognises certain human agents as representatives of the idol or of the fund. The acts of such agents, however (within limits set by the law and when they are acting as such), are imputed to the legal persona of the idol and are not the juristic acts of the human agents themselves. This is no mere academic distinction, for it is the legal persona of the idol that is bound to the legal relationships created, not that of the agent. Legal personality then refers to the particular device by which the law creates or recognizes units to which it ascribes certain powers and capacities." Analytical and Historical Jurisprudence, 3rd Edn. At page 357 describes "person";

We may, therefore, define a person for the purpose of jurisprudence as any entity (not necessarily a human being) to which rights or duties may be attributed.

14. Thus, it is well settled and confirmed by the authorities on jurisprudence and Courts of various countries that for a bigger thrust of socio-political-scientific development evolution of a fictional personality to be a juristic person became inevitable. This may be any entity, living inanimate, objects or things. It may be a religious institution or any such useful unit which may impel the Courts to recognise it. This recognition is for subserving the needs and faith of the society. A juristic person, like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law. When an idol, was recognised as a juristic person, it was known it could not act by itself. As in the case of minor a guardian is appointed, so in the case of idol, a Shebait or manager is appointed to act on its behalf. In that sense, relation between an idol and Shebait is akin to that of a minor and a guardian. As a minor cannot express himself, so the idol, but like a guardian, the Shebait and manager have limitations under which they have to act. Similarly, where there is any endowment for charitable purpose it can create institutions like a church hospital, gurdwara etc. The entrustment of an endowed fund for a purpose can only be used by the

person so entrusted for that purpose in as much as he receives it for that purpose alone in trust. When the donor endows for an idol or for a mosque or for any institution, it necessitates the creation of a juristic person. The law also circumscribes the rights of any person receiving such entrustment to use it only for the purpose of such a juristic person. The endowment may be given for various purposes, may be for a church, idol, gurdwara or such other things that the human faculty may conceive of, out of faith and conscience but it gains the status of juristic person when it is recognised by the society as such."

Learned counsel for the petitioners as well as the learned counsel for the transferee and Sri V.S. Rastogi, learned counsel appearing for the opposite party no. 1, relied upon the judgment reported in AIR 1959 Patna 305, Ramchandraj Maharaj and others Vs. Lalji Singh and another (DB). The relevant paragraph 11 of the said judgment is quoted below:-

"The primary, nay, the sole object, of this dedication is performance of services and worship of the deities. As a necessary corollary to this paramount object of dedication is the power of a shebait or a mahant in charge of the dedicated property to alienate wholly or in part such property for the purpose of keeping up the religious worship and for the benefit and preservation of the property. It is well-settled law that a mahant or shebait has power to incur debts and alienate the dedicated property either by sale or mortgage "in a case of need or for the benefit of the estate.

If the shebait is given no power to make any alienation even in the case of existing necessity, it is easy to see that the very object of dedication will be frustrated and the worship of the deities may suffer. It is plain, therefore, a gift to a deity with no power of alienation even where pressing necessity or benefit to the estate demands it will render ineffectual the entire dedication since its consequence will be that the preservation of the property meant to subserve the interest of the deity will prevail over the legitimate interest of the deity a fact hardly consistent with the intention of the donor and the interest sought to be created by the instrument.

...Having in view the primary object of the dedication it is only reasonable to assume that while imposing limitation on the power of a donee or shebait to alienate the donor had in his mind the ordinary restriction upon alienation as recognized by law, which would apply independently of any such condition in the deed.

It will be wrong to assume that by generally restricting the power of alienation he intended to abrogate the well established principle of Hindu Law, namely, that a shebait can alienate a debutter property for legal necessity or the benefit of the estate. As pointed out in the case of Ram Bahadur referred to above, the fact is that in a case of this kind it is very easy to use the words "without the power of alienation" in a loose sense, that is to say, to use them in the sense without power of alienation except in the case of recognized legal necessity.

It must be held, therefore, that restriction on the power of the shebait to alienate the dedicated property is void and inoperative and was, therefore, legally ineffectual to invalidate the perpetual lease in favour of the defendants. The condition of Mr. Das, therefore, fails."

The same view was reiterated in AIR 1986 Punjab, 355.

The transfer is made by a living person in present or in future to one or more living persons or to himself or more living persons and to transfer property is to perform such act. In this connection, living persons include a company or association or body or individual whether it is incorporated or not but thing herein contain shall affect any law relating to Transfer of Property Act through any company or body of the individual.

In the case of Tangella Narasimhaswami, Dharma Kartha of Sri Kodanda Ramchandra Moorthy v. Madini Venkatalingam and others, AIR 1927 Madras 636, the question was for the purposes of Section 5 and Section 123 of the Transfer of Property Act whether gift to a God could be a gift to a living person. The Full Bench of the Madras High Court at page 638 of the judgment held that a "juristic person is not necessarily a living person and the fact that for some purposes the law by a fiction invests non-animate bodies with the rights of persons would not make juristic persons living

persons for all purposes. It is unnecessary to pursue this point further as the document is a gift to Sri Kodanda Ramachandra Moorti the Almighty and by no stretch of imagination, legal or otherwise, can it be said that the Almighty is a living person within the meaning of the Transfer of Property Act."

According to the Full Bench judgment of the Madras High Court, Section 5 of the Transfer of Property Act will not be attracted so far as dedication of property to Almighty is concerned.

In the case of *Mt. Brij Devi v. Shiva Nanda Prasad and others*, AIR 1939 Allahabad 221, the question to be considered was whether the donor who made a gift of certain properties could revoke deed and resume possession of the gifted property which was conveyed to the Defendant no.2 (Deity). The Court in such a situation held that such condition or clause of suspension or revocation of the gift is void under Section 10 of the Transfer of Property Act.

In the case of *Irshad Husain v. Bakshish Husain and others*, AIR (33) 1946 Oudh 254, the question arose whether a Deity is living a person. The Court in this case held that "I am of opinion that the transfer of property to the idol is not bad if it is not covered by S. 5 T.P. Act. Such transfer of property will not, therefore, be subject to the provisions of the Transfer of Property Act. The case referred to shows that a gift to God is not a gift to a living person and that, therefore such a gift does not require registration."

Judgment of the Division Bench of the Calcutta High Court in the case of *Champa Bibi v. Panchiram Nahata Siva Bigraha and others*, AIR 1963 Calcutta 551 (V 50 C 104) also supports case put-forth by Sri C.K. Parekh, learned counsel appearing on behalf of Nagar Nigam that "a dedication of property to a Hindu deity may be described as a gift of property in a secondary or figurative sense. The dedication is a gift for a religious purpose, and in a figurative sense is a gift to the deity as the ideal embodiment and symbol of the religious purpose. The Hindu law recognizes juristic persons, see *Manohar Ganesh v. Lakshmiram*, ILR 12 Bom 247 at pp. 263-5. The deity is a juridical person with the power of suing and being sued, see *Prematha Nath v. Pradyumna Kumar*, ILR 52, Cal. 809: Cal WN 25: (AIR 1925 PC 139), and of owning properties in an ideal sense, see ILR 37 Cal 128, 140, 145 and 168 IFB."

The judgments of the Apex Court reported in AIR 1980 SC 312, *The Controller of Estate Duty, West Bengal, Calcutta Vs. Usha Kumar and others*, 1974 SC 663, In AIR 2000 SC 1421, *Shriomani Gurudwara Prabandhak Committee, Amritsar Vs. Shri Som Nath Dass & others* make it clear that Deity is a juristic person and a gift to the juristic person is perfectly valid in accordance with law, but Deity cannot be treated as a living person like Shebait and, therefore, Section 5 of the Transfer of Property Act will not apply. It has been further held in the judgments of the Apex Court that affairs of the Deity could be managed through Shebait/Sarvakars/Managers appointed in accordance with the Deed of Dedication, who are simply managers to manage the properties vested in the Deity (Almighty). Shebait is a person, who is appointed according to Deed of Dedication, to give effect to the terms and conditions contained therein and to perform Rag, Bhog and Worship and other connected affairs and to protect the properties vested in Deity (Almighty) not to alienate the same. Gift once made to the Deity is irrevocable on any ground.

It has been held in (1988) ILR 12 Bom 247 *Manohar Ganesh v. Lakshmiram* (approved in *Yogendra Nath Naskar's case* MANU/SC/0252/1969, AIR 1969 SC 1089, (1969) 74 ITR 33 (SC), (1969) 1 SCC 555 that in case there is a Shebait to manage the affairs in the interest of Deity and in case there is no surviving Shebait under the Deed of Dedication, it is the Court representing the sovereign could appoint management to any specific body recognized in law according to the will of the endowment by a donor dedicated to the Deity in the Deed of Dedication for religious purpose, whether family Deity or Deity worshiped by the general public. It is an entrustment to the juristic person of the Deity. The Shebait, who is creation of the Deed of Dedication or a person appointed by the Court to manage the affairs of the Deity could only work in the interest of Deity and cannot deal with the property of his own or claim any adverse right to Idol as held in AIR 1954 SC 69, *Sree Sree Ishwar Sridhar Jew Vs. Sushila Bala Dasi and others*.

In AIR 1985 SC 905, *Shambhu Charan Shukla Vs. Shri Thakur Ladli Radha Chandra Madan Gopalji Maharaj and another*, it has been held that a sale by a shebait or mohunt authorised to manage debuttar property is void, even though the transfer may be coupled with an obligation to manage the affairs.

The Waqf under the Muslim Law is a dedication to the Almighty and in Hindu Law also a dedication to Deity is a dedication to the Almighty and once the Waqf or Trust is created or property is dedicated to the Hindu Deity, no one either Shebait/Mahant/Sarvakar or Manager or any one else in the garb of right to manage the property vested in Deity or dedicated to the Deity (Almighty) has right to alienate the property against the interest of the Deity and, therefore, if there is term and condition under the Deed of Dedication imposing a restriction on the transfer of property by way of sale and mortgage is perfectly valid and is not in contravention of any of the provision of Transfer of Property Act.

In Shriomani Gurudwara Prabandhak Committee, Amritsar Vs. Shri Som Nath Dass & others (supra), Apex Court held that "In that sense, relation between an idol and Shebait is akin to that of a minor and a guardian. As a minor cannot express himself, so the idol, but like a guardian, the Shebait and manager have limitations under which they have to act. Similarly, where there is any endowment for religious and charitable purpose it can establish religious and charitable institutions like hospital, gurdwara etc. The entrustment of an endowed fund for Religious purpose can only be used by the person so entrusted for that purpose only in as much as he receives it for that purpose alone. When the donor endows in favour of any Deity or for religious institution, it necessitates the creation of a juristic person. The law also circumscribes the rights of a person authorised under such entrustment to work only for the benefit of such a juristic person."

If there is no restriction on alienation in the Deed of Dedication whether there should be any restriction or prior permission of any authority so far as Debuttar property vested in Deity/Almighty/Religious/Trust/Mutth or any other religious institution are concerned. As held above, such properties are unalienable. In case in the Deed of Dedication there is any restriction on alienation, sale or mortgage, no alienation is permissible. In the present case transfer of property is permissible only by way of lease as title of the property continues with the Deity. Even in a case where there is no such restriction in the Deed of Dedication, the transfer could be made for legal necessity only.

From the perusal of the petition and the affidavit filed by the petitioner as well as the opposite party no. 1, it is apparent that no averment has been made that the Deity (Gopal Thakur) was shifted from Gopal Dham, Mohalla- Til Bhandeshwar, Varanasi to Allahabad in accordance with the Hindu rites. A Shebait cannot deprive a deity from his abode on his sweet will. Admittedly, in the present case, the Lord Krishna (Gopal Thakur) has his own temple situated in House No. B-17/57, Til Bhandeshwar, Varanasi. There was no occasion for shifting the Deity from Varanasi to Allahabad taking a plea that the area was affected by communal violence. Execution of sale deed of the temple and other properties vested in the Deity. In a case where situation is beyond the control of Shebait, Deity may be shifted in accordance with the Hindu rites. Neither there is no averment of performing any Hindu rites before shifting the Deity nor any material is on record. Thus, shifting of Deity for convenience of Shebait is illegal and unsustainable in law. Idol of Sri Shaligram Shila (Lord Krishna) (Gopal Thakur) installed in Gopal Dham at Til Bhandeshwar, Varanasi is entitled to be reinstated in the temple where Deity was installed by the dedicator(founder)of the property on 5.3.1928. The Deity was installed by the founder in the Temple through Deed of Dedication prohibiting shifting of Deity from Temple. Alienation of the property vested in Deity was also prohibited by Deed of Dedication. This Court is of the view that Shebait acted against the interest of the deity and are liable to be removed in accordance with law.

It is apparent from the material on record that all the properties dedicated to Lord Krishna (Gopal Thakur) were alienated/transferred through various sale deeds on the ground which could not be considered for legal necessity on receiving huge amount from the transferees by the Shebait treating it their own property and as such the Shebait may not be entitle to continue as Shebait. In case Shebait acted against the Deed of Dedication, they may be dealt with according to law.

It is now well settled that the Court in exercise of sovereign powers could appoint a Shebait or Manager to look after the affairs of Temple of Deity or its other property. In case Shebait or Manager acting in violation of the terms and conditions of the Deed of Dedication alienated the properties vested in Deity, the Court is of the view that the deity is not bound by such sale deed. Such Sale deeds executed by the Shebait in contravention to the terms and conditions of Deed of Dedication cannot confer any right to transferees and as such all the sale deeds and confirmation deeds by petitioner and Opp. Party no.1 are void and Deity is not bound by the same.

Whether Prior Permission is necessary

before transferring any property vested

in Deity/Almighty/Religious Body:

The law has already created a restriction on transfer of charitable and Trust properties and made certain provisions so far as the charitable societies are concerned. So far as societies established for charitable purposes which are governed by the Societies Registration Act are concerned, Section 5A of the Societies Registration Act makes it clear that no transfer is permissible without prior approval of the District Judge. Section 5A of the Society Registration Act is quoted below:-

"5A, Restriction on transfer of property- (1) Notwithstanding anything contained in any law, contract or other instrument to the contrary, it shall not be lawful for the governing body of a society registered under this Act or any of its members to transfer without the previous approval of the Court, any immovable property belonging to such society.

(2) Every transfer made in contravention of sub-section (1) shall be void.

Explanation I. - The word "Court" shall have the meaning assigned to it in Section 13.

Explanation II- The expression "transfer" shall for the purposes of this section mean-

(a) a mortgage, charge, sale gift, or exchange;

(b) lease for a term exceeding five years; or

(c) "irrevocable licence."

In the Hindu Minority and Guardianship Act, Section 8(2) is also there which says that if the property is vested in Hindu Minor, it could be transferred with the prior permission of the District Judge. So far as the deity is concerned, it is always considered a minor 'a juristic person' who is represented through Shebait/Sarvakar/Manager and in case of a minor in the Hindu Law protection has been given to minor to the effect that the property cannot be sold without permission of the District Judge. The question under consideration is whether such protection could also be available to deity who is also minor or whether there could be such restriction on the Shebait who manages the affairs of the deity a 'minor'.

In this regard, Section 8(1), (2) and (4) of the Hindu Minority and Guardianship Act, 1950 is also very relevant in the controversy involved in the present case. The same is being quoted below:-

"8. Power of natural guardian.- (1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate, but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,-

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor, or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor."

The Apex Court in *Shriomani Gurudwara Prabandhak Committee, Amritsar Vs. Shri Som Nath Dass & others* and other cases (supra), has held that the Deity is a minor and if the property is dedicated for the religious purposes, welfare of the Deity could be looked into by the Shebait/Sarvakar/Manager appointed in accordance with the Deed of Dedication or by the Management as Guardian as Deity never attains majority and always remains minor. Any transfer made against the interest of the Deity will be void as other minors may attain majority, but Deity cannot.

This Court, after considering the matter in its entirety, is also taking note of transfers made by Shebait treating the property vested in Deity as their private property and is of the firm view that the prior permission from the District Judge in the event of alienation of any property vested in Deity or Religious Institution is necessary. In case the District Judge is not Hindu, as defined under Articles 25 and 26 of the Constitution of India, the Additional District Judge next to the District Judge in rank shall be treated to be competent Authority for according permission. After constitution of the Board, the Board may be assigned the appellate power against the order of District Judge by any aggrieved party even by a devotee.

Whether Temple could be alienated:

In view of the discussions made above, in case any dedication to the Deity is made under some Deed of Dedication, Shebait, who is creation of same Deed of Dedication, is estopped to plead that the terms and conditions of the deed prohibiting any transfer in the Deed of Dedication is void.

There are two kinds of dedication of properties (i) Temple and (ii) the other properties vested in Deity and other religious Institutions.

Though the matter has been discussed above, but at the cost of repetition, this Court is of the firm view that a Temple where Idol of the Deity was installed and other property endowed for the purposes of Idol are unalienable, if it is restricted in Deed of Dedication. My view is supported by the judgment in *Mukundji Mahraj v. Persotam Lalji Mahraj*, AIR 1957 Allahabad 77 that the first and foremost duty of a Mahant or a Shebait of an Idol is to preserve and maintain the Idol, that is to say, as an object of worship inasmuch as a Temple, the abode of the Idol is to be preserved and maintained at any cost. Property other than the Temple endowed for the purposes of the Idol may have to be alienated if it is absolutely legally necessary for the purpose of preservation of the Idol and its Temple and there is no restriction. No Shebait or Mahant/Manager can, therefore, have the right of alienating the Temple itself. As the Temple has a special sanctity distinct from other endowed property, to alienate the temple itself is to cut root of the very existence of the Idol in the habitation intended by the founder. Hindu sentiment views the alienation of a Temple as a sacrilege.

Shebait also did not make any averment that why and how the Deity was shifted from Temple without performing any Hindu rites. In the present case the Temple 'Gopal Dham' is the abode of Lord Krishna (Gopal Thakur). No shifting of Idol is permissible and if any contingency arises and Deity had no other place and if it was necessary to shift the Deity due to any emergent situation of collapse of Temple, for the time being it may be done in accordance with law after performing ritual rites and in accordance with law. Shifting of Deity to Allahabad without any such reason and sale of the Temple in the present case is without any authority in law and Temple is liable to be maintained on all cost and Idol of Lord Krishna is liable to be re-installed in the Temple.

Abandonment of Temple in fact is void and does not bind the Deity. So far as other properties vested in the Deity other than Temple, i.e., House No.17/57, 'Gopal Dham' are concerned they also vested in Deity and could not be alienated in view of prohibition in the Deed of Dedication. If there was legal necessity and there is no restriction in the Deed of Dedication, the properties could be alienated with prior permission of the District Judge who shall record a finding in case of every transfer for legal necessity before according permission. In the present case, shifting of the Deity and transfer of property vested in Deity on the ground of insecurity of family of Shebait due to communal violence could not be considered as legal necessity and such alienation is unsustainable in law in view of prohibition in the Deed of Dedication.

Even if there is no restriction in the Deed of Dedication, alienation of Temple of Gopal Thakur (Sri Shaligram Shila) is impermissible, even if the area was affected by communal violence and even the

family of Shebait was insecure. This Court is of the view that this ground could not be considered to be a legal necessity to the benefit of Deity (Almighty). In case area was affected by the communal violence, all effective steps should have been taken for the security and safety of the Temple by Shebait, rather to run away by transferring the properties vested in Deity. Both Shebait have not taken any such step to protect the Temple and other properties vested in Deity, rather they appear to be interested in selling the properties vested in Deity by executing sale deeds and deed of confirmations in competition with each other after receiving substantial money treating property of their own.

It further appears that there was a dispute between two Shebait and the transferees taking benefit of such dispute got the entire property of Deity transferred through transfer alienating properties and Temples by Opp. Party no.1 as well as by petitioner. Petitioner and Opp. Party nos.1 were litigating for exclusion of each other from the office of Shebait. In the subsequent sale deeds the reason disclosed was that the the property is being sold for the marriage of daughter and for investment of sale consideration in the business. Dilapidated condition of the property could not be ground to sell Temple and other properties of Deity. Therefore, this Court is of the view that sale deed executed by the Shebait of the Temple and other properties dedicated to Deity 'Gopal Thakur' (Lord Krishna) is void and could not confer any right to transferees or binds Deity (Almighty).

Whether the Hindu Temples (private or public), Religious Endowments, Mutths, Religious Trusts etc. affected by communal violence, activities of anti social elements and anti religious activities are entitled to get protection for Shebait under Articles 25 and 26 of the Constitution of India?

On the argument of learned counsel for the parties following question also arises to be considered.

1. Whether the Temples (private or public), religious endowments, Mutths, public and private Religious Institutions etc. affected by communal riots and activities of antisocial elements are entitled to get protection under Articles 25 and 26 Constitution of India?

2. Who are Hindus, which Temples and Religious Institutions are entitled to get protection under Articles 25 and 26 Constitution of India?

3. Whether Hinduism is religion?

It was urged that this question is of general importance and according to Sri C.K. Parekh, learned Counsel for Nagar Nigam, Varanasi, Sri I.N. Singh, learned counsel appearing for Kashi Viddhwat Parishad and learned Amicus Curiae this matter may also be gone into and may be decided by this Court.

On the arguments of learned counsel for the parties, whether this Court is competent to go into these questions arising in this case on arguments of parties is also relevant to be considered.

I have gone through the judgment of the Apex Court reported in 2003 (7) SCC 546, Guruvayoor Devaswom Managing Committee and another v. C.K. Rajan and others and I am of the view that according to the law laid down by the Apex Court in this judgment, the Court can try this issue.

In the judgment of Guruvayoor Devaswom Managing Committee and another Vs. C.K. Rajan and others (supra), the Apex Court observed as follows:

VIII. However, in an appropriate case, although the petitioner might have moved a court in his private interest and for Redressal of personal grievances, the court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. (See Shivajirao Nilangekar Patil Vs. Dr. mahest Madhav Gosavi).

This view was further reiterated by the Apex Court in (2005) 5 SCC 298, Ashok Lanka and another vs. Rishi Dixit and others, relevant paragraph 42 of which is being quoted below:

"Furthermore it is well settled that even in a case where a petitioner might have moved the Court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice (see Guruyayoo Devaswom Managing Committee v. C.K. Rajan, SCC para 50 and Prahlad Singh versus Col. Sukhdev Singh (1987) 1 SCC 727)."

The same view was again settled by the Apex Court in AIR 2003 SC 4531, General Manager, Kisan Sahkari Chini Mills Limited, Sultanpur, U.P. versus Satrughna Nishad. Again similar matter came up for consideration before this Court in 2006 (4) A.D.J. 106 (All.) (Full Bench), Suo Moto Action Taken by the Court Versus I.C.I.CI. Bank Ltd. Allahabad and others. The Division Bench of this Court dealing with the habeas corpus petition framed certain issues of public importance involved in the case and referred the matter to Hon. The Chief Justice to register as P.I.L. to be decided by the appropriate court. The Chief Justice, Allahabad High Court, treating it as a Public Interest Litigation constituted a Full Bench. The Full Bench considering the case of Ashok Lanka and another (Supra) held that it was within the domain of the Court even to enquire the facts of public importance suo moto if exigency so requires and the matter was returned to the same Bench to decide the issue of public importance.

In view of the law laid down by the Apex Court as well as by this Court, the Court is of the view that this Court is fully competent to enquire into the matter of public importance.

Fundamental Rights guaranteed to all Religions including religions within the fold of Hinduism

Fundamental rights guaranteed under Articles 25 and 26 of the Constitution of India are being referred as follows:-

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

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

regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

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

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

Explanation II. - In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

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

1.to establish and maintain institutions for religious and charitable purposes;

2.to manage its own affairs in matters of religion;

3.to own and acquire movable and immovable property; and

to administer such property in accordance with law.

The Constitution of India has guaranteed all persons equally entitled to freedom of conscience and the right to freely profess, practise and propagate religion subject to public order, morality and health. Since all the persons have been given fundamental right to profess, practise and propagate their religions subject to public order, morality and health, in case a Temple or any other religious Institutions belonging to Hinduism are affected by frequent communal violence/tension, it is the duty of the State to maintain public order so that a person may exercise his right to freedom to practise and profess religion guaranteed under the Constitution of India without any fear or without feeling any insecurity. In case right to practise, profess and propagate religion freely guaranteed under the Constitution of India is infringed, it is the duty of the State to protect such fundamental right. As we are governed by Rule of Law and fundamental right to profess, practise and propagate religion is available to Hindus also. Hindu Religious Institutions (Public or Private) are entitled to protection from the State. In case there is any violation of right to profess, practise and propagate religion due to public order problem, the State has to take action to protect every citizen's fundamental rights guaranteed under the Constitution of India available to all the religions including Hindus.

Historical background of continuous attack on Temples belonging to Hindus:

Attack demolition and construction of Mosques and Madrsas in place of Temples and Religious Institutions had taken place for the last about 1100 years and is a part of Indian History from 712 A.D. In 712 A.D. Mohd Bin Qasim an Invador from Iraq attacked Sindh. King Dahir was defeated and forceful conversion of Hindus into Muslims took place and various Hindu religious institutions were demolished. History makes it clear that foreign Muslim invaders demolished thousands of Hindu Temples. In 1000 A.D. Mahmood Gazanavi attacked India and defeated Raja Jaipal. In 1008 A.D., he won Kangra, in 1011 A.D., Thaneshwar and demolished a number of Hindu Temples including Chakra Swami Temple and a large number of Hindu Idols were broken. In 1013 A.D. he also damaged Nandana, in 1016 A.D., Bulandshahr, Mathura and Kannauj and demolished a number of Hindu Temples. He also demolished Som Nath Temple in 1025 A.D. and broken main Idol in pieces and sent those pieces of Temple to be placed in foot stairs of Jama Masjid at Gazni. After Mahmood Gazni, Mohd. Gori also destructed Hindu Temples and Idols at Azmer and constructed Mosques and Madrsas in place of Hindu Temples. At Benaras, he demolished a large number of Temples and constructed Mosques in place of Temples. In 1194 A.D., Quttubuddin Aibak attacked Delhi. He demolished 27 Jain Temples at Delhi and constructed Qubbatul Islam Mosque. In 1196 A.D., he attacked Gujrat and in 1202 A.D., Kalinjar where he demolished a large number of Hindu Temples. Mohd Bakhtiyar Khilji attacked Bihar in 1200 A.D. and demolished a large number of Buddhist Temples at Udantpur and Nadia (Bengal) in 1202 A.D. and demolished a large number of Buddhist Temples and constructed Mosques and other religious places of Muslims in places of Hindu Temples. After Qutubuddin Aibak, Shamsuddin Iltutmish attacked Malva in 1234 A.D. and Vidisha. He demolished a old Hindu Temple of Mahakal, destroyed statute of Vikrmajeet and took away Brass Idols of Hindu Gods and placed at the foot step of stairs of a Mosque at Old Delhi and asked the people to pass through these Idols of Hindu Gods. After Iltutmish, Balban ruled parts of India. He also attacked Hindus and Hindu Temples in 1254 A.D. In 1321 A.D. Jalaluddin Khilji attacked Fort of Ran Thambore and enroute he damaged and demolished several Hindu Temples. In 1292 A.D., his nephew Allauddin Khilji attacked Bhelsa and he too demolished a large number of Hindu Temples and thrown Idols of Hindu Gods. He also proposed to make a Minar taller than the Qutubminar by using materials of demolished Hindu Temples. He also ordered his cousin Ulugh Khan to demolish reconstructed Somnath Temple of Gujrat, who also damaged and demolished a number of Hindu Temples. He also attacked Ujjain and demolished several Hindu Temples at Ujjain. Likewise, he attacked Malva and Chittaur (Rajasthan) where he demolished a large number of Hindu Temples. In 1360 A.D. Firozshah Tughlak another Muslim Sultan attacked and damaged Jagannathpuri Temple (Orissa) by broking Idol of Bhagwan Jagannath and thrown at the foot stairs of Muslim Mosques and demolished Jwalamukhi Temple at Nagarkot, Kangra and damaged Temple's Idol. Taimur attacked India in 1399 A.D and started war against Hindus on religious basis. He demolished a large number of Hindu Temples. In 1392 A.D., Muzaffarshah, Governor of Gujrat demolished reconstructed Somnath Temple again and constructed a Mosque within the Temple, but after some time Hindus reconstructed same Temple. In 1401 A.D., Ahmad, grand son of Muzaffarshah, who took over as Governor of Gujrat appointed a Daroga (Inspector) for demolishing all Hindu Temples of Gujrat. In 1415 A.D., Ahmad attacked and demolished Sidhpur Temple (Rudra Mahalaya) and in its place he constructed a Mosque. From 1389 A.D. to 1431 A.D., Sikandar (Boot Shikan) attacked and demolished a large number of Hindu Temples and Idols, who was known for his pleasure by breaking Idols of Hindus. Between 1389 A.D. to 1431 A.D., he demolished Temples of Martand, Vishnu, Ishan, Chakravarti and

Tripureshwar. There were no places in his Empire where his Mantri Suha had not demolished Hindu Temples. Babar, who established Moghul Empire, attacked India and demolished Ram Janma Bhumi Temple at Ayodhya and constructed a Mosque on the same place. After Babar, Humiaun ruled India. It is described in history that Chchatri Temple at Zehanabad was demolished by Humaun and in place of Temple a Mosque was constructed. During the period of Jehangir Sikh Guru Sri Arjun Singhjee was killed, Hindu Durg Temple of Kangra and cows were slaughtered in the Temple. Shahjehan got demolished about 76 Temples of Benaras in 1633 A.D. by ordering to demolish all the newly constructed Hindu Temples. Demolition of Hindu Temples by Aurangjeb is also well known to everyone. When he was only Prince, he demolished Chintamani Temple at Gujrant and in place of Temple he constructed Qubbatul Islam Mosque in 1645 A.D. In 1648 A.D., he sent Mir Jumla to Kooch Bihar, who demolished several Hindu Temples there and constructed Mosques in place of Hindu Temples. In 1670 A.D., in Mathura, Krishna Janma Bhoomi Temple was demolished by Aurangjeb and a Mosque was constructed in place of Temple. Idols of Temple were placed at the stairs of Janhaara Mosque, Agra. Temple of Ram Chandra in Soron, Devi Patan Temple of Gonda, Temples of Ujjain and all the Hindu Temples of Mednipur, Bengal were destroyed and ruined during the period of Aurangjeb. Hindu Temples and Idols of Jodhpur were also broken and broken parts of Idols and the Temples were taken away to Delhi. He also demolished Hindu Temples and Idols at Udaipur in 1680 A.D., 62 Temples of Chittaurgarh, 66 Temples of Amber, Someshwar Temple of Mewar, Khanderao Temple of Satara. In 1690 A.D., he demolished Temples of Elora, Trayambakeshwar, Narsingpur, Pandarpur and Bijapur. In 1669 A.D. He also demolished several Hindu Temples at Tattha, Multan and Benaras including famous Kashi Vishwanath Temple at Benaras . Aurangjeb crossed all the limits of communalism and re-imposed Zazia Tax on Hindus if wanted to live as Hindus. Tipu Sultan also got converted Hindus and Christians into Muslims and demolished several Hindu Temples and other religious institutions.

Above facts have been taken from the Books of various various Muslim Historians including Book "Tarikhen Yamini" written by Utabi, Historian and Secretary of Mahmood Gaznavi, from the Asarul Bilad of Muslim Historian of Zakaria Al-Qazwani, Muslim Historian Nizami and Muslim Historian Ibn Assar at the time of Mohd. Gori, Muslim Historian Hasan Nizami, from Book Mutkhabat-Tavarikh of Muslim Historian Budauini, Book written by Muslim Invador Imad Jan Tuzuk Taimuri of Taimur, from the Auto Biography of Babar "Tuzuke Babri", from Zuvadutul-Tavarikh of Muslim Historian Shekh Nurul Haq, from Book Atharuye Sanadid written by Sir Syed Ahmad, from the Book "Heroes of Islam" of Prof. Fazal Ahmad, from the Book Badshahname of Muslim Historian Abdul Hamid Lahori, from the Book Voice To East Indies written by Barithailomeo, from the Book Bhasha Poshani of Historian Sardar K.M. Panikkar, from the Book of Bil Durent, from the Book Story of 'Islamic Imperialism in India' written by Historian Sri Sitaram Goyal, published by Voice of India. All aforesaid Historical Books are relied upon by Sri Purshottam in his Book 'Muslim Rajnitik Chintan Aur Akanchayen, published by Sumit Prakashan, Maushambagh, Sitapur Road, Lucknow and from other Books of History.

Even after Independence also, State of U.P. as well as other States of India had been continuously affected by communal riots. Recent riots of Mau District in Uttar Pradesh on the eve of Dashehara in the function of Bharat Milap, riot of Meerut, riot of Moradabad and the riots of other places in the State of U.P. are some of such examples. Book "Riots After Riots" written by M.J. Akbar about the Trauma of Riots makes it clear that the communal elements after taking inspiration from the past history some of them are detailed above. Transfer of Temple and other properties vested in Gopal Thakur situated in Gopal Dham Temple, Mohalla Til Bhandeshwar, Varanasi due to insecurity of communal riots is nothing but continuing effect of communal and anti-Hindu forces to create an atmosphere of communal tension and insecurity in Hindus so that the Temples and other properties vested in Deity may somehow be grabbed by communal forces. This situation is prevailing in some of other Districts of State of U.P. where population of the members of Hindu community has reduced and population of other religious community has increased manifold. Hindu population is worst affected in these Districts due to communal tension.

In the Constituent Assembly while considering Articles 19 and 22 of the Draft Constitution which are now Articles 25 and 30 of the Constitution of India, some of members were apprehensive for such situation and were not in favour of making propagation as fundamental right. They were of the view that this right could be misused by some of the religious groups. Proceedings of Constituent Assembly dated 3.12.1948-6.12.1948-8.12.1948 in regard to Articles 19 and 22 (Articles 25 and 30 of the Constitution of India make it clear.

In view of the historical background of attacks on Hindu Temples and other religious institutions of Hindus coupled with the present attacks on Temples and transfer of Temples due to communal riots resulting in transfer of other properties attached with the Temples also due to insecurity in Hindus and safety at places where population of members of Hinduism are reduced and the population of members of non-Hindu communities has increased. In those places/Districts antisocial and communal elements of other religious community are now a dominant force affecting religious rites of worship and maintenance of Temples of Hindus and they have no other option, but to leave the Temples and transfer the properties attached with the Temple to antisocial and communal elements.

In such a situation, it is the duty of the State of U.P. to protect the right of Hindus to profess, practise and propagate their religious rights guaranteed under the Constitution of India and as such all the Temples of Religions within the fold of Hinduism require protection.

After Independence also according to learned counsel appearing on behalf of Kashi Vidhwat Parishad, Varanasi, that though Varanasi is known as City of Temples where Jyotirling Kashi Vishwanath Temples and various other Temples including Sankat Mochan Temple etc. are situated had been worst affected by communal violence. In historical background of Varanasi and other places in the State of U.P. are also affected by antisocial elements and communal forces who are making all efforts to deprive the citizens of their fundamental right to freely practise, profess and propagate religion guaranteed under the Constitution of India. The past experience of India prior to and after independence and taking into consideration history of riot on community lines speaks volumes about insecurity of Temples and other Religious Institutions of Hindus.

Under Schedule VII (II), List II State List, Entry I of the Constitution of India, Public Order is State subject, the same is reproduced below:-

"Public order (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof) in aid of the civil power.

'Public Order'. 1. 'Public order' is a most comprehensive term and subject to the exception mentioned, viz., use of the armed forces in aid of the civil power, the State Legislature is given plenary authority to legislate on all matters which relate to or are necessary for the maintenance of public order, including the prevention of insult to national honour.

2. Public order implies absence of violence and an orderly state of affairs, in which citizens can peacefully pursue their normal avocation of life. Anything which disturbs public tranquillity disturbs 'public order'. This entry also includes 'public safety' in its relation to the maintenance of public order. In short, 'public order' is synonymous with public peace, safety and tranquillity, and would, therefore, cover legislation to regulate the use of sound amplifiers, or to prevent forcible and fraudulent conversion or to prevent and social activities."

As is clear from the statement made by Sri M.C. Chaturvedi, learned Chief Standing Counsel, U.P., that there is no special Legislation enacted by the State to protect Temple or Hindu Religious places to allow citizens to exercise fundamental rights to profess, practise and propagate the religion freely and to provide protection and the State takes it as normal law and an order problem and not the matter affecting public order and in view of the fact that the State of U.P. was regularly affected by such communal tensions frequently in different parts of the State of U.P. and India and persons affected are the persons belonging to different religious communities. Recent attacks on Sankat Mochan Mandir in Varanasi and other Temples are self-explanatory. In the present case, Shebait of Sri Shaligram Shila (Gopal Thakur), a Temple of Lord Krishna, due to insecurity as a result of communal violence and serious threat to public peace and tranquillity in order to secure himself, his family and the Temple of Lord Krishna abandoned the Temple by sealing the same and other properties to other persons to secure him and his family from such communal violence is only an example of situation prevailing in State of U.P.

Til Bhandeshwar Mohalla of Varanasi is situated in the heart of the City of Varanasi which is affected by constant communal violence and as such alienation was made for safety and security of the 'Gopal Thakur' (Deity) Temple (Gopal Dham) and its by the Shebait of the Deity. As all such persons are

entitled to freedom of conscience and right to freely profess, practise and propagate religion, the persons belonging to Hinduism are also entitled to get full protection under the Constitution of India to get their person and property and Temple including Deity protected.

Articles 25 and 26 of Constitution of India introduced by Constituent Assembly to provide protection to all religious communities as this Article was introduced in historical background of the pre-independent Indian history which makes it clear that Hindu temples continuously remained under attack and were demolished during these 1300 years right from the time of invasion of Meer Kasim from 712 A.D. upto independence and thousands of Hindu temples were demolished by Anti Hindu and communal Forces in India. India was partitioned on the ground of two nations theory in the hope that communal violence would come to an end and all the religious communities will live in peace that is why Constituent Assembly protected rights of all the religious communities under Articles 25 and 26 of the Constitution of India. This fundamental right guaranteed to every citizen of India is subject to public order. In spite of such protection the Hindu Temples and Temples of other religions within the fold of Hinduism would continue to be shifted being affected by communal violence and threat of safety and security. These incidents are affecting public order and it is the duty of the state to take appropriate steps accordingly to ensure that there is no violation of any right guaranteed to citizens of India under the Constitution of India. This problem of communal riot is not a law and order problem as simply urged by the learned Chief Standing Counsel taking note of historical background detailed above. It cannot be treated as simple law and order problem taking note of historical background detailed above particularly of Hindu temples and Religious Institutions which suffered at the hands of communal forces prior to independence during Islamic and British Rules and even after independence in 1947 at the time of partition and thereafter and as such Hindus are also entitled to get protection guaranteed under Articles 25 and 26 of Constitution of India.

As discussed above, Constitution framers, i.e., the Constituent Assembly protected the interests of all the religions under Articles 25 and 26 of the Constitution of India. Compelling a religious group to leave Temples due to communal violence or activities of anti social or communal elements amounts to violation of fundamental rights guaranteed by the Constitution of India. Anti social elements and communal elements are still continuing attacks on Hindu Temples and Religious places. In Recent attacks on Raghunath Temple situated in Jammu, Akshardham Temple in Gujrat, Sankat Mochan Temple at Varanasi, Uttar Pradesh and Ram Janma Bhoomi Temple at Ayodya, Uttar Pradesh are the examples that the Temples are at present are one of main target of such communal or anti social elements who are taking inspiration from past history. In such a scenario, this Court is of the view that it is the responsibility of the State to take all effective steps to maintain public order by enacting a Legislation or Executive Order to protect all temples situated in Uttar Pradesh in order to protect rights to profess, practise and propagate of Hindus under Articles 25 and 26 of the Constitution of India by making proper security arrangements of Temples by establishing a separate force or a separate section in Police force.

The detailed discussion made above and the historical back ground of the problem of Hindu religious Institutions makes it clear that all the Temples and religious institutions belonging to Hinduism are still under the serious attack of such anti national and communal forces. The society or nation which does not take lesson from History and does not take appropriate measures accordingly for preservation and protection of nation and does not crush such elements to protect its citizens cannot save future disaster of reducing the nation and society at the verge of extinct.

Who are Hindus and whose religious places required protection under Articles 25 and 26 of Constitution of India:

Hindu Marriage Act, Hindu Adoption and Maintenance Act, Hindu Minority and Guardianship Act, Hindu Succession Act or any other Act governing Hindus detailed above are applicable to all the Hindus. Section 2 of Hindu Marriage Act runs as follows:-

2. Application of Act. - This Act applies-

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or followers of the Brahmo, Prarthana or Arya Samaj;

(b) to any person who is a Buddhist, Jaina or Sikh by religion; and

(C) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

The following persons are Hindus, Buddhists, Jainism or Sikhs by religion, as the case may be:-

(a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhists, Jain or Sikhs by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs; and

(C) any person who is a converted or re-converted to the Hindu, Buddhist, Jainism or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless a person to whom this Act applies by virtue of the provisions contained in this section.

The same provision is available in other Acts detailed above also and judgments pronounced also makes it clear that all thoughts and beliefs (religions) born in India are part of Hinduism and other thoughts and beliefs like Muslims, Christians, Jews and Parsis are not part of Hinduism.

The Constitution Bench of the Apex Court in the judgment reported in AIR 1966 SC 1119, *Sastri Yagnapunushadji v. Muldas Bhudardas Vaishya*, relevant part of which is being quoted below:-

"The Encyclopedia 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.686). As Dr. Radhakrishnan has observed, "The Hindu civilization is so called, since its original founders earliest followers occupied the territory drained by the Sindhu the (the Indus )river system corresponding to the North West Frontier Province and the Punjab. This is recorded in the Rig which give their name to this period 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".

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 religion 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 feature of any religion or creed. It may broadly be described as a way of life and nothing more.

.....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 (Kurma Purana) (Ibid p.12)

Monier Williams has observed that "it must be borne in mind that Hinduism is far more than a mere form of theism vesting 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 every-increasing area of country and finally resolving itself into an intricate Delta of tortuous streams and jungly marshes...The Hindu religion is reflection of the composite character of the Hindus, who are not people but many. It is based on the idea of universal receptivity. It has ever aimed to accommodate its 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).

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 . ("Indian Philosophy" by Dr. Radhakrishnan. Vol. I, pp.22-23). 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..... "In all the fleeting centuries of history", says Dr. Radhakrishnan, "in all the vicissitudes through which India 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.(...) 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 interrelation between the individual and the 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 monastic idealism, though this tendency is so plastic, living and manifold that it takes many forms and expresses itself in even mutually hostile teachings."(..)

.....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." (..) 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.

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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 superstition and that led to the formation of different sects. Buddha started Buddhism; Mahavir founded Jainism; Basava became the founder of Lingayat religion; Dnyaneshwar and Tukaram initiated the Varakari cult; Guru Nanak inspired Sikhism, Dayananda founded Arya Samaj, and Chaitanya 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.

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.....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 not only compatible with Day Experiment in Western Civilisation" by Toynbee, pp. 48-49).

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

In order to consider what is the Hinduism, the judgment of the Apex Court reported in AIR 1996 SC 1113, Dr. Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte and others is very relevant. Paragraphs 38, 39 and 40 of the judgment are being quoted below:-

"38. These Constitution Bench decisions, after a detailed discussion, indicate that no precise meaning can be ascribed to the terms 'Hindu', 'Hindutva' and 'Hinduism'; and no meaning in the abstract can confine it to the narrow limits of religion alone, excluding the content of Indian culture and heritage. It is also indicated that the term 'Hindutva' is related more to the way of life of the people in the sub-continent. It is difficult to appreciate how in the face of these decisions the term 'Hindutva' or 'Hinduism' per se, in the abstract, can be assumed to mean and be equated with narrow fundamentalist Hindu religious bigotry, or to be construed to fall within the prohibition in sub-section 3 and/or (3A)of S. 123 of the R.P. Act.

39. Bharucha, J. in Dr. M. Ismaili Faruqui v. Union of India, (1994) 6 SCC 360: (1994 AIR SCW 4897), (Ayodya case), in the separate opinion for himself and Ahmadi, J. (as he then was), observed as under:

".....Hinduism is a tolerant faith. It is that tolerance that has enabled Islam, Christianity, Zoroastrianism, Judaism, Buddhism, Jainism, and Sikhism to find shelter and support upon this land...."

(at page 442) (of SCC): (at p. 4971, para 159 of AIR)

40. Ordinarily, the Hindutva is understood as a way of life or a state of mind and it is not to be equated with, or understood as religious Hindu fundamentalism. In "Indian Muslims - The Need For A Positive Outlook" by Maulana Wahiduddin Khan, (1994), it is said:

"The strategy worked out to solve the minorities problem was, although differently worded, that of Hindutva or Indianisation. This strategy, briefly stated, aims at developing a uniform culture by obliterating the differences between all the cultures co-existing in the country. This was felt to be the way of communal harmony and national unity. It was thought that this would put an end once and for all to the minorities problem".

(at page 19)

The above opinion indicate that the word 'Hindutva' is used and understood as a synonym of 'Indianisation', i.e., Development of uniform culture by obliterating the differences between all the cultures co-existing in the country."

A judgment reported in 1993 ALL.L.J., 1379, Smt. Indumatee Koorichh v. The Family Court, Lucknow and another of the learned Single Judge of this Court has also 'Hindu' religion. Relevant party of Paragraph 27 of the judgment is being reproduced below:-

"27.....expression 'Hindu' under the acts has been taken to mean and include in itself every person man or woman or child who is not a Muslim, Christian, Parsi or Jew and also such person, who being Muslim, Christian, Parsis or Jew when, he gets himself converted into the Hindu way of life either as a Vaishnavait, Shivait, Buddhist, Sikh or the like cults of Hindu faith and religion. Those religions, as

have got their origination in foreign land or lands other than mother India, the great Hindustan, and, as such, their followers are not included in phrase Hindu. Thus considered in wider horizon or sense of connotation a person born in India or Hindustan or whose parents have taken birth in India or Hindustan the land surrounded by Himalayan range on the north and Sindhu the Sea known as Indu sarovar in the south and having faith and allegiance with this land and its culture may be called a Hindu irrespective of difference of approach towards one truth and one goal."

This definition of Hindu has further been defined by a Constitution Bench judgment of the Apex Court reported in AIR 1971, 1737, D.A. V. College, Jullundur etc. v. The State of Punjab and others. Paragraphs 12, 13 and 16 of the said judgment are being reproduced below:-

"12. For the purposes of Art. 29(1) even though it may not be necessary to enquire whether all the Hindus of Punjab as also the Arya Samajis speak Hindi as a spoken language, nonetheless there can be no doubt that the script of the Arya Samajis is distinct from that of Sikhs who form the majority. It is claimed that while the Sikhs have Gurmukhi as their script the Arya Samajis have their own script which is the Devnagri script. Their Claim to be a religious minority with distinct script of their own seems to us to be justified as would appear from the following:

13. The Arya Samaj is a reformist movement, believes in one God and in the Vedas as the books of true knowledge. It holds that it is the duty of every Arya Samaji to read the Vedas and have them read, to teach or preach them to others. It has a distinct organisation, the membership of which is open to all those who subscribe to its aims and objects. The Arya Samajis worship before the vedic fire and it begins with the burning of incense (the homa 'sacrifice') accompanied by the chanting of Vedic verses.

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16. The passage read above show beyond doubt that the Arya Samaj by "rejecting the manifold absurdities found in Smriti and in tradition and in seeking a basis in the early literature for a purer and more rational faith" can be considered to be a religious minority, at any rate as part of the Hindu religious minority in the State of Punjab.

In the case of P.M.A. Metropolitan v. Moran Mar Marthoma, AIR 1995 SC 200, the Apex Court in Paragraph-31 of the judgment has observed about religion as follows:-

"Religion is the belief which binds spiritual nature of men to super-natural being.' It includes worship, belief, faith, devotion etc. and extends to rituals. Religious right is the right of a person believing in a particular faith to practice it, preach it and profess it....."

In this regard, what is Hindu religion has been considered by the Apex Court in Bal Patil v. Union of India case (supra). Paragraphs 26, 27, 28 and 30 of the Judgment are being reproduced below:-

"26.....Sikhs and Jains, in fact, have throughout been treated as part of the wider Hindu community which has different sects, sub-sects, faiths, modes of worship and religious philosophies. In various codified customary laws like Hindu Marriage Act, Hindu Succession Act, Hindu Adoptions and Maintenance Act and other laws of pre and post Constitution period, definition of 'Hindu' included all sects, sub-sects of Hindu religions including Sikhs and Jains."

"27. The word 'Hindu' conveys the image of diverse groups of communities living in India. If you search for a person by name Hindu, he is unidentifiable. He can be identified only on the basis of his caste as upper caste Brahmin, Kshatriya or Vaish or of lower caste described in ancient India as Shudras. Those who fall in the Hindu class of 'Shudras' are now included in the Constitution in the category of Scheduled castes with special privileges and treatment for their upliftment. This was found necessary to bring them at par with upper castes in Hindu society. The aboriginals, who have no caste were considered as distinct from four castes or Varnas of Hindu society. They have been treated favourably in the Constitution as Scheduled Tribes. For them also there are provisions for special treatment and grant of special privileges to bring them on level with the other castes from the main advanced streams of Indian society."

"28. There is a very serious debate and difference of opinion between religious philosophers and historians as to whether Jains are of Hindu stock and whether their religion is more ancient than the vedic religion of Hindus. Spiritual philosophy of Hindus and Jains in many respect is different but the quintessence of the spiritual thought of both the religions seems to be the same. The influence of Hindu vedic religion is quite apparent in the custom, style of living belief and faith of Jains. Jains do not worship images or idols of Gods but worship their Tirathankars meaning their ideal personalities who have attained human perfection and excellence by a process of self-improvement. The literal meaning of the word 'Jain' is one who has attained 'victory'. It signifies a person who has attained victory over himself by the process of self-purification. 'Jain' is a religious devout who is continuously striving to gain control over his desires, senses and organs to ultimately become master of his ownself."

"30. Thus, 'Hinduism' can be called a general religion and common faith of India whereas 'Jainsim' is a special religion formed on the basis of quintessence of Hindu religion. Jainism places greater emphasis on non-violence ('Ahinsa') and compassion ('Karuna'). Their only difference from Hindus is that Jains do not believe in any creator like God but worship only the perfect human-being whom they called 'Tirathankar'. Lord Mahavir was one in the generation of Tirathankars. The Tirathankars are embodiments to perfect human-beings who have achieved human excellence at mental and physical levels. In philosophical sense, Jainism is a reformist movement amongst Hindus like Brahamsamajis, Arasamajis and Lingayats. The three main principles of Jainsim are Ahinsa, Anekantvad and Aparigrah. (See:-1) Encyclopedia of Religion and Ethcis, Vol. 7 pg.465;2) History of Jains by A.K.Roy, pgs. 5 to 23: and Vinoba Sahitya, Vol.7 pg. 27 to 284)."

Articles 25 and 26 of the Constitution of India also defines the Hindu. Explanation II of Article 25 of the Constitution of India also includes Sikhism, Jainism and Buddhism. Considering the above definition and the law laid down by the Apex Court as well as the intention of the Constituent Assembly and the provisions mentioned above of Hindu Law takes Hinduism and other matter which includes all the persons who are not Muslims, Christians and Parsis are Hindus and are entitled to get protection of their Temple and Religious places under Articles 25 and 26 of the Constitution of India to profess, practise and propagate their religion freely.

#### Religion/Dharma and Hinduism

Religion and Dharma are two different words. The first case of the Apex Court in which religion has been defined is reported in AIR 1996 SC 1765, A.S. Nariayana Deekshitulu v. State of Andhra Pradesh and others. Relevant Paragraphs of the judgment are being reproduced below:-

"142...The same is the difference between "religion", a word used in Arts. 25 and 26, and "dharma" known to our psyche. I wish to put on record the difference in my own way and to say that our constitution makes had used the word "religion" in these two articles in the sense conveyed by the word "dharma".

143. Very often the words "religion" and "dharma" are used to signify one and the same concept or notion; to put it differently, they are used inter-changeably. This, however, is not so, as would become apparent from what is being stated later, regarding our concept of dharma. I am of the considered view that the word religion in the two articles has really been used, not as is colloquially understood by the word religion, but in the sense of it comprehending our concept of dharma. The English language having had no parallel word to dharma, the word religion was used in these two articles. It is a different matter that the word dharma has now been accepted even in English language, as would appear from Webster's New Collegiate Dictionary which has defined it to mean : "Dharma : n. (Skt. fr. Dharayati he holds;) akin to L firmus firm : custom or law regarded as duty : the basic principles of cosmic or individual existence : nature : conformity to one's duty and nature." The Oxford Dictiony defines dharma as : "Right behaviour, viture; the law (Skt. A decree, custom)."

144. The difference between religion and dharma is eloquently manifested when it is remembered that this Court's precept is

It is apparent that the word dharma in this canon or, for that matter, in our saying, does not mean religion, but the same has been used in the sense defined in the aforesaid two dictionaries. This is how the President of India, Dr. Shanker Dayal Sharma, understood the word dharma in his address at

the First Convocation of the National Law School of India University delivered on 25th September, 1993 at Bangalore.

145. Our dharma is said to be 'Sanatan' i.e. one which has eternal values; one which is neither time bound nor space-bound. It is because of this that Rg-veda has referred to the existence 'Sanatan Dharmani'. The concept of 'dharma', therefore, has been with us for time immemorial. The word is derived from the root 'Dh. R' - which denotes : 'upholding', 'supporting', 'nourishing' and 'sustaining'. It is because of this that in Karna Parva of the Mahabharat, Verse-58 in Chapter 69 says :

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

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

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

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

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

149. Ashoka mentioned about victory of dharma in his rock edict at Kalsi which proclaimed his achievement in terms of the moral and ethical imperatives of dharma, and exemplified the ancient dictum : "Yato Dharmstato Jai:" (where there is Law, there is Victory).

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

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

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

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

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

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

Dr. Sarvapalli Radha Krishnan in his Book 'Indian Religion' has observed as follows:-

"The complex of institutions and influences, which shape the moral feeling, and character of the people is called the dharma which is a fundamental feature of the Hindu religion. Hinduism does not believe in enforcing creeds, but calls upon all Hindus to conform to the discipline. It is a culture more than a creed. If ye do the will or the dharma, ye shall know of the doctrine or the truth. The dharma helps the smouldering fire, which is in every individual to burst into flame.

The dharma is a code of conduct supported by the general conscience of the people. It is not subjective in the sense that the conscience of the individual imposes it, nor external in the sense that the law enforces it. It is the system of conduct, which the general opinion or the spirit of the people supports, that the Germans call Sittlichkeit. Fichte defines the latter as "those principles of conduct which regulate people in their relations to each other, and have become a matter of habit and second nature at the stage of culture reached and of which therefore we are not explicitly conscious.

Dharma is that which holds together all living beings in a harmonious order. Virtue is conduct contributing to social welfare, and vice is its opposite. It is frequently insisted that the highest virtue consists in doing to others as we would be done by. Both the individual and the social virtues are included in that are called nitya karmas, or obligatory duties, which are cleanliness or saucam, good manners or acharam, social service or panchamahyajnas, and prayer and worship or sandhyavandanam..".

Dharma is inherent as law in the very nature of all existing phenomena, that which supports and holds universe together. It is not merely a set of beliefs having no connection with the living, but rather a set of principles for a harmonious and beneficent life. It is practical doctrine. The etymological meaning of Dharma is also "that which binds together".

The goal of world unity is to be achieved by ahimsa which is insisted on by Hinduism, Buddhism and Jainism and other religions within the fold of Hinduism.

The great philosopher, S. Radhakrishnan in the book 'Indian Religions', Indian Religious Thought has described the fundamental concepts of the Indian religion. Religion reflects both God and man. As religion is a life to be lived, not a theory to be accepted or a belief to be adhered to it allows scope and validity to varied approaches to the Divine. There may be different revelations of the Divine but they are all forms of the Supreme. If we surround our souls with a shell, national pride, racial superiority, frozen articles of faith and empty presumption of castes and classes, we stifle and suppress the breath of the spirit.

"Buddhism which arose in India was an attempt to achieve a purer Hinduism. It may be called a heresy of Hinduism or a reform within Hinduism. The formative years of Buddhism were spent in the Hindu religious environment. It shares in a large measure the basic presuppositions of Hinduism. It is a product of the Hindu religious ethos. But soon it established itself as a distinctive religious tradition."

The nature of Godhead which has developed in the Mahayana is analogous to the Hindu conception.

"Hindu system of philosophy and religion recognize the periodical evolution and involution of the world representing the systole and diastole of the one universal heart, which is ever at rest and ever active.

The whole world is a manifestation of God. Sayana observes that all things whatsoever are vehicles for the manifestation of the Supreme Spirit."

It is clear that Hinduism is a process, not a result; a growing tradition, not a fixed revelation. It never shut off by force wisdom from anywhere, for there are no distinctions of mine and thine in the Kingdom or Spirit.

"The term 'dharma' is one of complex significance. It stands for all those ideals and purposes, influences and institutions that shape the character of man both as an individual and as a member of society. It is the law of right living, the observance of which secures the double object of happiness on earth and salvation. It is ethics and religion combined. The life of a Hindu is regulated in a very detailed manner by the laws of dharma. His fasts and feasts, his social and family ties, his personal habits and tastes are all conditioned by it."

"While the spiritual perfection of man is the aim of all endeavour, the Hindu dharma does not insist on any religious belief or form of worship. The utmost latitude is allowed in the matter of addressing and approaching the Supreme. The Hindu thinkers were good students of philosophy and sociology and never felt called upon to enforce religious belief."

The Hindu dharma inculcates respect for life and tenderness towards all forms of animal creation. "Thou shalt not kill" applies to the animals as well.

"The Buddha did not feel that he was announcing a new religion. He was born, grew up, and died a Hindu. He was restating with a new emphasis the ancient ideals of the Indi-Aryan civilization. "Even so have I, monks seen an ancient way, an ancient road followed by the wholly awakened ones of olden times..... Along that have I gone, and the matters that I have come to know fully as I was going along it, I have told to the monks, nuns, men and women lay-followers, even monks, this Brahmafaring, Brahma-kriya that is prosperous and flourishing, widespread and widely known, become popular- in short, well made manifest for gods and men."

Considering the various judgments of the Apex Court and High Court and concept of Dharma, Hinduism represents all religions of India which includes Sikhism, Jainism, Buddhism, Arya Samaj, Kabir Panth, Radha Swamy, Dhan Nirankar and Lingayats etc., the philosophy and thoughts and belief in which Lord, Ram, Lord Krishna, Shaivism were considered God and a number of other Religions founded by a number of Saints, Acharyas or Panths and several other Philosophers. Each and every tribal, castes, sub-castes have their own God or Goddess, different beliefs and thoughts and most of them have different way of worship, all Tribals have different religion with different God and Goddess. Bhaktimarg, Philosophy of Swami Rama Krishna and Swami Vivekanand, Shaivists, and several Religions founded by Philosophers and Thinkers such as OSO by Acharya Rajnish, ISCON, who believes in Lord Krishna only. The propounders in the Gyan Yog founded by Saints, philosophers and religious thoughts, Kabirpanthis, Sat Sain Babaand thousands of such thoughts, way of worship and beliefs are religion.

Basic concept of Hinduism is the way of reaching to the eternal truth and to the Almighty is manifold and has given freedom to all the members of the Hindu society to reach to the Almighty through their own thoughts, belief and the way of worship. Such freedom in the field of religion on Indian soil is derived from thousands of philosophies, Thoughts and different ways of worship and beliefs born in India from the time immemorial. Combination of such religion, thought, belief or way to reach to the eternal truth born in India is Hinduism. Hinduism cannot be equated with any particular religion, but it is combination of all religions born and grown up in India.

Considering arguments of learned counsel for the parties and the matter in its entirety, this Court is of the view that all the beliefs, faith and thoughts (religions) born in India are part of Hinduism and the followers of such beliefs, faiths and thoughts are Hindus. They all are governed by Dharma which is common to all. This was also followed by all sections of Hindu Society, though all such faiths, beliefs and thoughts (religions) may have separate rituals, rites, theology, methodology and way of worship. The concept of Dharma has been discussed in this judgment and Hinduism represents all such beliefs, faiths and thoughts and way of worship (religions) born in India.

Fundamental duties and its relevance:

The Constitution of India was amended by adding Article 51-A in the Constitution which speaks about fundamental duties. In Part IV-A of the Constitution fundamental duties have been defined.

Articles 51-A(b) and (f) are relevant for the purposes of this case, the same are being reproduced below:-

"51A. It shall be the duty of every citizen of India-

.....

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(f) to value and preserve the rich heritage of our composite culture;"

The Apex Court has decided the relevance of Article 51-A of the Constitution (Fundamental duties) in a number of cases. The Apex Court in a judgment of Seven Judges' Bench reported in JT 2005 (12) SC 580 Shree Ahimsa Army Manav Kalyan Jeev Daya Charitable Trust v. Mirsapur Moti Kureshi Kassab Jamat, Ahmedabad and others has made certain observations about Fundamental Rights, the same are being reproduced below:-

"57. In *AIIMS Students' Union v. AIIMS and Ors.*, a three-Judge Bench of this Court made it clear that fundamental duties, though not enforceable by writ of the court, yet provide valuable guidance and aid to interpretation and resolution of constitutional and legal issues. In case of doubt, peoples' wish as expressed through Article 51A can serve as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the courts. The fundamental duties must be given their full meaning as expected by the enactment of the Forty-second Amendment. The Court further held that the State is, in a sense, 'all the citizens placed together' and, therefore, though Article 51A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is collectively speaking, the duty of the State."

"63. It is thus clear that faced with the question of testing the constitutional validity of any statutory provision or an executive act, or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the Directive Principles of State Policy and Fundamental Duties as enshrined in Article 51A of the Constitution play a significant role."

Relying upon three Judges' Bench judgment of the Apex Court in *AIIMS Students' Union v. AIIMS and Ors*, JT 2001(7) SC 12: (2002) 1 SCC 428, the Apex Court held that "State is, in a sense, 'all the citizens placed together'" and, therefore, the fact remains that the duty of every citizen of India is collectively speaking, the duty of the State.

It is, thus, clear that the constitutionality, validity of any statutory provision and executive action or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the Directive Principles of State Policy and Fundamental Duties as enshrined in Article 51A of the Constitution play a significant role.

Importance of Lord Krishna in Indian Society:

Lord Krishna and the Geeta (Dharma Shashtra) given by Lord Krishna to man kind is part of our rich heritage. Contribution of Lord Krishna to the man kind and the human society is manifold which include theory of Karma which defines duty to be performed by Human being. It is the duty of every citizen and the State to value and preserve the Dharm propounded by Bhagvad Geeta. Judgment of the Apex Court in *Shree Ahimsa Army Manav Kalyan Jeev Daya Charitable Trust v. Mirsapur Moti Kureshi Kassab Jamat, Ahmedabad and others* (Supra) fully supports the view of this Court. The importance and influence of Lord Krishna in the Indian Society and the Dharm propounded by him for the mankind in Geeta also inspired our national struggle for freedom since very beginning.

Though India (Bharat) was always one culturally, religiously and politically and was governed by concept of Dharma from the time immemorial inspite of the fact there were a number of States governed by different Kings, but in the War of 'Mahabharat' all the Kings of India participated in the war known as 'Mahabharat' which also reaffirmed our political entity of Indian limits as 'Bharat' and that is why this War said as 'Mahabharat' in which people from every part of India participated from one side or the other and inspite of efforts made by Lord Krishna to settle dispute to avoid said War, the War of 'Mahabharat' took place for protection of Dharm and Rights. Significance and importance of Lord Krishna in the Indian history and History of mankind is well known. In the War of 'Mahabharat' at Kurkshetra 'Bhagvad Geeta was given to mankind by Lord Krishna.

Significance of Lord Krishna and His Bhagvad Geeta could be conceded from this fact that only that inspite of invasion of foreign Muslim Rulers by Mir Qasim in 712 A.D and thereafter subsequent invasions by Mohd Gaznavi, Mohd. Gori, Babar, Taimur, Ahmad Shahs Abdali and Britishers, Hindu Society was never defeated and continued its struggle for freedom throughtout entire period of about 1300 years. The Hindu Society fought these foreign rulers throughtout this period politically, socially and on the basis of religion. Theory of Dharma given by Lord Krishna in Bhagvad Geeta always inspired the entire national struggle for freedom throughtout this entire period of foreign rulers. It inspired the entire Indian Society in order to re-establish Dharma through any of the three ways, that is, Karma Youg, Bhakti Yog and Gyan Yog. Dharma of Bhagvad Geeta which was binding force for the entire Indian Society at that time is still a guiding force for the Indian Society. Indian Society fought politically from foreign rulers under the leadership of King Dahir, Prithvi Raj Chauhan, Raja Suhail Dev of Bahraich, Rana Sanga, Maha Rana Pratap, Vir Shivaji, Guru Govind Singh, Rani Durgavati, Rani Ahilya, Rani Rajmani, Rani Lakshmi Bai, Rani Avanti Bai, Taty Tope, Kunwar Singh, Mangal Pandey and lakhs and lakhs of freedom fighters who fought the war of Independence from 712 A.D. To 1857 and thereafter under the leadership of Gopal Krishna Gokhale, Lok Manya Bal Ganga Dhar Tilak, Sardar Vallabh Bhai Patel, Subhash Chandra Bose, Sardar Bhagat Singh, Chandra Shekhar Azad, Ram Prasad Bismil, Dr. Rajendra Prasad, Pt. Jawahar Lal Nehru, Raj Gopalachari and Mahatma Gandhi coming from each and every State and region of India who were inspired by theory of Karma Yog of Bhagvad Geeta and fought this war of Independence without caring for the result and during the period of about 1300 years, in certain parts of India, Indian Society never conceded defeat from these foreging elements. Hindu Society also fought freedom struggle socially and religiously to uphold Dharma and they fought the war to save Dharm in which various Saints, Intellectuals, Poets and Philosophers played vital to keep the Indian Society united while fighting from foreign Islamic and Christian invaders during this period of about 1300 years. The list of such Saints is unending, but names of some of the Saints who kept morale of the Indian Society higher are necessary to be mentioned such as Saint Trivalluvar, Mahant Raman, Jagadguru Shankaracharya, Nimbarkacharya, Andal Rangnayaki, Yamunacharya, Ramanujacharya, Yogi Bhartuhari, Saint Vasheveshwar, Acharya Madhv, Saint Jaidev, Swami Vidyaranya, Mahatma Ramanand Swami, Saint Nam Dev, Saint Gyaneshwar, Yoginin Lalleshwari, Saint Vilvmangal, Saint Raidas, Yogi Gorakhnath, Saint Kabir, Saint Peepa, Saint Sen, Saint Vemana, Saint Param Vaishnav Narsinh Mehta, Saint Dharamdas, Saint Vaishnav Chandi Das, Mahatma Shanker Dev, Saint Nanak, Mahaprabhu Vallabhacharya, Saint Haridas, Chaitanya Maha Prabhu, Mahatma Sanatan Goswami, Mahatma Roop Goswami, Mahatma Kumbhandas, Saint Soordas, Mahatma Srish Chandra, Goswami Tulsidas, Mahatma Madhusudan Sarswati, Saint Mirabai, Mahatma Vyasdas, Saint, Parmanand Das, Saint Krishna Das, Goswami Vitthal Nath, Saint Govind Das, Saint Nand Das, Mahatma Chaturbhujdas, Saint Singa Ji, Mahatma Jiv Swami, Saint Gadadhar Bhatt, Mahatma Nabhadas, Mahatma Ek Nath, Saint Dadu, Mahatma Sundur Das, Saint Malukdas, Saint Hari Rai, Saint Arva, Saint Ramdas, Saint Tukaram, Mahatma ailang, Saint Dariya Sahab, Mahatma Dharani Das, Saint Jagjivan Shah, Saint Dulandas, Mahatma Charandas, Saint Moraipant, Saint Sahajobai, Saint Gulal Sahab, Saint Bhikha Sahab, Saint Nagari Das, Saint Mahipati, Saint Garibdas, Saint Naga Nirankari, Saint Ram Prasad, Saint Ravi Sahab, Saint Kathiya Baba, Saint Palatu Das, Saint Prayagraj, Mahatma, Vankhandi, Saint Baba Kinaram, Saint Pritamdas, Mahatma Ram Sukh Das, Saint Dayaram Bhai, Mahatma Ram Charan, Mahatma Saryu Das, Yogiraj Gambhirnath, Mahatma Rama Lingam, Swami Dayanand Sarswati, Ram Krishna Paramhans, Saint Vamasepa, Mahatma Roopkala, Mahatma Vijay Krishna Goswami, Saint Lalit Kishori, Saint Sain Baba, Swami Vivekanand, Mahayogi Arvind, Swami Ram Tirtha, Saint Uriya Baba, Maharishi Raman, Saint Sachchal, Saint Harihar Baba. Mahatma Chandrashekhar Bharati and swami Sharnanand, Maharaj of Manav Seva Sangh. They played a vital role in keeping Hindu Society united and strengthened the Indian Society to fight anti Hindu forcees detailed above in all the regions and States of India and inspite of lack political will and non-availability of any assistance Saints and Philosophers of Hindu Society fought foreign invaders and are still fighting to save Hindu Society from

such elements, particularly, in the fact that Hindu population is reduced to minority at least in eight States.

As discussed above, guiding force of the Indian Society during the entire period of 1300 years of foreign rulers was Dharma and Bhagvad Geeta gave us three ways to achieve Dharma which includes Karma Yog, Bhakti Yog and Gyan Yog. Dharma propounded by Bhagvad Geeta is soul of all the faiths and beliefs (religions) within the fold of Hinduism and the Hindus of all the faiths and beliefs (religions) born in India follow any of three ways to achieve Almighty, salvation or achieve the Goal by discharging their duty, that is, Karma Yog.

Gita Rasamrit written by Shivanand and published by Sarva Seva Sangh Prakashan, Raj Ghat, Varanasi, in which the Adi Guru Shankaracharya had described Gita. "leLrosnkFkZ IkJlaxzgHkwre~] leLriq:"kkFkZff)e~ -A Ramanujacharya propounded the theory of Vishwadwaitwad, Madhwacharya, Dwaitwad, Nimbarkacharya, principles of Dwaitwad and Radha Madhav, Vallabhacharya and Sudhadaitwadi and various other theories. The Gita was also followed by Buddhist in Mahayan sect Buddhism.

Shekh Abdul Rahman Chisti translated the Gita in Parsi and Dara Shikoh written the Preface in the name of "Shere Akbar". Gita was translated in English in 1785. Sir Villiam Jons, a Judge of Calcutta High Court, who founded the Asiatic Society of Bengal and got it translated in German in 1784. It was also translated in Greek Latin, German, Kaltic and various other languages.

1.The Bhagwad Gita is "the most beautiful and profound philosophical work in the world" -W.Von Humbold

2. "In the morning I bathe my intellect in the stupendous and cosmogonical philosophy of the Bhagwad Gita..in comparison with which our modern world and its literature seem puny and trivial."- Henry David Thoreau

3.I owed a magnificent debt to the Bhagwad Gita. It was the first of books; it was as if an empire spoke to us, nothing small or unworthy, but large, serene, consistent, the voice of an old intelligence which in another age and climate had pondered and thus disposed of the same questions which exercise us." Ralph Waldo Emerson

Mahrishi Dayanand in his book "Satyarth Prakash' also followed the Gita. In heading "Bhumika' written by Swami Dayanand Sarswati by saying that ";g cM+k n` <+ fu'p; gS fd ??;Rnrxzs fo"kfeo ifj.kkesve` rksiee~?? ;g xhrk dk opu gSA bldk vfHkizk; ;g gS fd tks&tkS fojk vkSj /keZizkfI r ds deZ gSa os izFke djus esa fo`k ds rqY; vkSj i'pkr ve`r ds ln`k gksrs gSa A ,slh ckrksa dks fpRr esa /kj ds eSaus bl xzUFk dks jpkA Jksrk ok ikBdx.k Hkh izFke izse ls ns[k ds bl xzUFk dk IR;&IR; rKRi;Z tku dj ;Fks"V djSaA"

S/Sri Lok Manya Bal Ganga Dhar Tilak, Ram Prasad Bismil, Lala Lajpat Rai, Chandra Shekhar Azad, Sardar Bhagat Singh, Subash Chandra Bose and other thousands of great men, who created history and participated in national struggle for freedom who under the leadership of Mahatma Gandhi fought for independence of India followed Geeta. Sant Vinobhave in his book "Gita Pravachan' followed Bhagwad Gita through out their life.

Sri Bal Gandadhar Tilak- a great man, freedom fighter and a great leader of our national struggle for freedom for the first time inspired by the theory of Geeta propounded the concept of Independence "Independence is our Birth Right". In the Preface of Book 'Geeta Rahasya' of Lok Manya Tilak the Author has described impact of Geeta on Lok Manya Bal Gangadhar Tilak, which is reproduced below:-

"The late Lokmanya Bal Gangadhar Tilak was a spiritual and intellectual giant. He was a monumental figure in the history of India, and it is a question whether he was more a philosopher than a politician and statesman, in as much as his statesmanship and his political activities would appear to have been based on the Karma-Yog and the principles of Ethics, which he believed to have been expounded in the Gita. In fact, the Gita and its teachings would seem to have been the guiding beacon of his life;

and if one considers what he did for India, and compares it with what he has preached in the Gita-Rahasya, one will come to believe that he has practised what he preached, (which few people do), and that his political activities were a concrete example of that 'universal welfare' (lokasamgraha), which according to him, was preached by the Gita to be the basis of Karma-Yog, And, one will not be far wide of the mark, if one looks upon him as a maharisi in an age of National regeneration."

Acharya Sri Ram Sharma and his disciple Dr. Pranav Pandya in his Book Yug Geeta has described importance of Gita in the spiritual world and in the Indian Society representing Hinduism.

Dr. Sarvapalli Radhakrishnan at Pages 11 and 12 in his Book "The Bhagavad Gita" has observed as follows:-

"The Gita has exercised an influence that extended in early times to China and Japan and latterly to the lands of West. The two chief works of Mahayana Buddhism, Mahayanasradhotpatti (The Awakening of Faith in the Mahayana) and Saddharmapundarika o (The Lotus of the True Law) are deeply indebted to the teaching of the Gita. It is interesting to observe that the official exponent of "the German Faith," J. W. Hauer, a Sanskrit scholar who served for some years as a missionary in India, gives to the Gita a central place in the German faith. He calls it 'a work of imperishable significance.'" He declares that the book "gives us not only profound insights that are valid for all times and for all religious life, but it contains as well the classical presentation of one of the most significant phases of Indo-Germanic religious history.....It shows us the way as regards the essential nature and basal characteristic of Indo-Germanic religion. Here Spirit is at work that belongs to our spirit." He states the central message of the Gita in these words: "We are not called to solve the meaning of life but to find out the Deed demanded of us and to work and so, by action, to master the riddle of life." (Quoted in the Hibbert Journal, April 1940, p.341) The Gita, however, bases its message of action on a philosophy of life. It requires us to know the meaning of life before we engage in action. It does not advocate a fanatical devotion to the practical to the disparagement of the dignity of thought. Its philosophy of life is a derivative from its philosophy of spirit, brahmvidya-ntargatakarmayogasastra. Ethical action is derived from metaphysical realization. S. urges that the essential purpose of the Gita is to teach us a way out of bondage and not merely enjoin action, sokamohadi-samsarakarmanivrttyartham gitasastram, na pravartakam."

"The teaching of the Gita is not presented as a metaphysical system thought out by an individual thinker or school of thinkers. It is set forth as a tradition which has emerged from the religious life of mankind. It is articulated by a profound seer who sees truth in its many-sidedness and believes in its saving power. It represents not any sect of Hinduism but Hinduism as a whole, not merely Hinduism but religion as such, in its universality, without limit of time or space, embracing within its synthesis the whole gamut to the creative affirmations of the saint. The suggestions set forth in the Gita about the meaning and value of existence, the sense of eternal values and the way in which the ultimate mysteries are illumined by the light of reason and moral intuition provide the basis for agreement in mind and spirit so very essential for keeping together the world which has become materially one by the universal acceptance of the externals of civilization."

Maharshi Arvind Ghosh a great freedom fighter, thinker and philosopher in his Book "Essays on the Gita" has given the importance and need of the Gita.

"In the Gita there is very little that is merely local or temporal and its spirit is so large, profound and universal that even this little can easily be universalized without the sense of the teaching suffering any diminution or violation; rather by giving an ampler scope to it than belonged to the country and epoch, the teaching gains in depth, truth and power. Often indeed the Gita itself suggests the wider scope that can in this way be given to an ideal in itself local or limited."

In his Book "Essays on Gita", 'a divine teacher' he has also described that Gita is for human discipline. A paragraph of the Book is being reproduced below:-

"The first step is Karmayoga, the selfless sacrifice of works, and here the Gita's insistence is on action. The second is Jnanayoga, the self realization and knowledge of the true nature of the self and the world, and here the insistence is on knowledge; but the sacrifice of works continues and the path of works becomes one with but does not disappear into the path of Knowledge. The last step is

Bhaktiyoga, adoration and seeking of the supreme Self as the divine Being, and here the insistence is on devotion; but the knowledge is not subordinated, only raised, vitalized and fulfilled, and still the sacrifice of works continues; the double path becomes the triune way of knowledge, works and devotion. And the fruit of the sacrifice, the one fruit still placed before the seeker, is attained, union with the divine Being and oneness with the supreme divine Nature."

Mahatma Gandhi in "Bhagavad-Gita The Song of God has described Gita as mother. He in 'Young India' publication written as follows:-

"When doubts haunt me, when disappointments stare me in the face, and I see not one ray of hope on the horizon, I turn to Bhagavad-gita and find a verse to comfort me; and I immediately begin to smile in the midst of overwhelming sorrow. Those who meditate on the Gita will derive fresh joy and new meaning from it every day."

Mahatma Gandhi in his Book 'Bhagwat Gita' made following observations:-

"...The object of the Gita appears to me to be that of showing the most excellent way to attain self-realisation. That which is to be found, more or less clearly, spread out here and there in Hindu religious books, has been brought out in the clearest possible language in the Gita even at the risk of repetition."

.....

"Gita has the least to do with the externals. A devotee may use, if he likes, rosaries, forehead marks, make offerings, but these things are no test of his devotion. He is the devotee who is jealous of none, who is a fount of mercy, who is without egotism, who is selfless, who treats alike cold and heat, happiness and misery, who is ever forgiving, who is always contented, whose resolutions are firm, who has dedicated mind and soul to God, who causes no dread, who is not afraid of others, who is free from exultation, sorrow and fear, who is pure, who is versed in action and yet remain unaffected by it, who renounce all fruit, good or bad, who treats friend and foe alike, who is untouched by respect or disrespect, who is not puffed up by praise, who does not go under when people speak ill of him who loves silence and solitude, who has a disciplined reason. Such devotion is inconsistent with the existence at the same time of strong attachment."

.....

"But the Gita says: No one has attained his goal without action. Even men like Janaka attained salvation through action. If even I were lazily to cease working, the world would not perish. How much more necessary then for the people at large to engage in action."

Pt. Jawahar Lal Nehru in his Book "Discovery of India" also written about Bhagwat Gita. Some relevant portion from pages 109 and 110 of the Book are being reproduced below:-

"...Every school of thought and philosophy looks up to it and interprets it in its own way. In times of crisis, when the mind of man is tortured by doubt and is torn by the conflict of duties, it has turned all the more to the Gita for light and guidance. For, it is a poem of crisis, of political and social crisis and, even more so, of crisis in the spirit of man. Innumerable commentaries on the Gita have appeared in the past and they continue to come out with unfailing regularity. Even the leaders of thought and action of the present day-Tilak, Aurobindo Ghose, Gandhi- have written on it, each giving his own interpretation. Gandhiji bases his firm belief in non-violence on it, others justify violence and warfare for a righteous cause."

.....

"The message of the Gita is not sectarian or addressed to any particular school of thought. It is universal in its approach for everyone. Brahmin or outcaste: "All paths lead to Me, it says. It is because of this universality that it has found favour with all classes and schools. There is something in it which seems to be capable of being constantly renewed, which does not become out of date with

the passing of time-and inner quality of earnest inquiry and search, of contemplation and action, of balance and equilibrium in spite of conflict and contradiction There is a poise in it and a unity in the midst of disparity, and its temper is one of supremacy over the changing environment, not by seeking escape from it but fitting in with it. During the 2,500 years since it was written, Indian humanity has gone repeatedly through the processes of change and development and decay; experience has succeeded experience, thought has followed thought, but it has always found something livings in the Gita, something that fitted into the developing thought and had a freshness and applicability to the spiritual problems that afflict the mind."

Swami Adgadanand, a great Saint of India in his Book Yatharth Geeta has given Concept of Dharma propounded by Geeta, the same is being reproduced below:-

#### "UNIFORM DHARM PRINCIPLES"

##### 1. EVERY ONE, CHILDREN OF GOD:

"The immortal soul in the body is a part of mine and it is HE who draws the five senses and the sixth the mind that dwell in nature."

All human beings are children of God.

##### 2. PURPOSE OF THE HUMAN BODY:

"It hardly needs saying that since pious Brahmin and royal sages (rajarshi)attain to salvation, you should also renounce this miserable, ephemeral, mortal body and always engage in my worship."

"Although devoid of money and comforts, yet rare to gain, while you are in the human body worship me. The right for such worship is granted to all those in human body."

##### 3. ONLY TWO CASTES IN HUMAN BEINGS:

"There are in the world, O' Parth, two kinds of beings, the pious, on whom I have already dwelt at length, and the devilish of whom you will now hear from me.

There are only types of human beings, the 'Deva' (divine) of whom the heart is dominated by the noble traits, and the 'Asura' (devil) whose evil traits dominate the hearts. In this entire creation, there are no other types of human beings."

##### 4. FULFILMENTS OF EVERY DESIRE THROUGH

GOD:

"Men who do pious deeds enjoined by the three Vedas, who have tasted nectar and freed themselves from sin, and who wish for heavenly existence through worshipping me by Yagya, go to heaven (Indralok), and enjoy godly pleasures as a reward for their virtuous acts."

Though worshipping me, people aspire to reach the heaven and I grant it to them. Therefore, everything can be easily attained through the grace of Supreme Being.

##### 5. ELIMINATION OF EVERY SIN BY TAKING

REFUGE IN THE SUPREME BIENG:

"Even if you are the most heinous sinner, the ark of knowledge will carry you safely across all evils."

Even the worst of all sinners can undoubtedly gain access to the Supreme Being by using the boat of wisdom.

#### 6. KNOWLEDGE:

"Constantly resting is the awareness that is called adhyatmya and perception of the Supreme spirit who is the end of realization of truth are all knowledge and whatever is contrary to them is ignorance."

Dedication to the wisdom of the supreme soul, and the direct perception of Eternal Wisdom, which is the manifestation of the Supreme Soul, constitute the components of the real wisdom. Any thing, other than these is ignorance. Thus direct perception of God is wisdom.

#### 7. EVERY ONE IS ENTITLED TO WORSHIP:

"Even if a man of the most depraved conduct worships me incessantly, he is worthy of being regarded as a saint because he is a man of true resolve. Thus he shortly becomes pious and achieves eternal peace, and so, O Son of Kunti, you should know beyond any doubt that my worshipper is never destroyed."

A great sinner even, if worships ME with onepointedness and single mindedness shall be transformed into a noble soul and shall attain the everlasting peace within. Therefore, a noble soul is the one who has dedicated himself to the Supreme Being.

#### 8. EVERLASTING SEED IN DIVINE PATH:

"Since selfless action neither wears out the seed from which it sprang nor has any adverse consequence, even a partial observance of this dharm liberates (one) from the dire terror (of repeated birth and death)."

Even a small amount of action performed with a goal of self realization shall elevate the seeker from the terrible fear of birth and death cycles.

#### 9. THE ABODE OF THE SUPREME BEING:

"Propelling all living things that bestride a body which is but a contrivance by the maya, O Arjun, God abides in the hearts of all beings. Seek refuge with all your heart, O Bharat, in that God by whose grace you will attain to repose and the everlasting, ultimately bliss."

God reside within the heart of every living being. Therefore, one must surrender himself totally to this Supreme Being with complete detachment. Through his compassion, one shall attain the ultimate bliss.

#### 10. YAGYA:

"Yet other Yogis offer the functions of their senses and operations of their life breaths to the fire of Yog (self control)kindled by knowledge. As some offer their exhalation to inhalation, others offer their inhaled breath to the exhaled breath, while yet others practise serenity of breath by regulating their incoming and outgoing breath."

The entire activities of the sense organs and mental turmoils are offered as oblations to the soul that is illuminated by wisdom, into the fire of yog. Meditators, on the self, sacrifice the vital air to apan and similarly apan to pran. Going even higher than this, a Yogi restrain all life forces and take refuge in the regulation of breath (pranayam). The procedure of such practises is Yagya. To perform this action is "ORDAINED ACTION" i.e. Karm.

#### 11. PERFORMER OF YAGYA:

"O the best of Kuru, the yogis who have tested the nectar flowing from Yagya attain to the eternal Supreme God, but how can the next life of men bereft of Yagya be happy, when even their life in this world is miserable?"

For the men, who do not possess the attitude of yagya, it is very difficult to obtain human form in the transmigratory existence. Therefore, everyone, in a human body is entitled to perform Worshipful Meditation (Yagya).

#### 12. GOD CAN BE SEEN:

"O Arjun, mighty armed one a worshipper can know this form of mine directly, acquire its essence, and even become one with it by a total and unswearing dedication."

It is easy to see Him face to face, know Him and even gain entry into Him through intense devotion.

"Only a seer, views the soul as a marvel, another one describes him as a marvel, and yet another hears him as a marvel, while there are some who hear him and yet know Him not."

An enlightened sage could see this SOUL as a rare wonder. This is direct perception.

#### 13. SOUL IS ETERNAL AND TRUE:

"The self, which cannot be pierced or burnt or made wet or faded is uninterrupted all pervasive, constant, immovable and eternal."

Soul alone is true. Soul alone is eternal.

#### 14. CREATOR AND HIS CREATIONS ARE MORTAL:

"All the worlds from Brahmlok downwards are, O Arjun, of a recurrent character, but, O son of Kunti, the soul which realizes me is not born again."

Brahma (the creator) and his creations, dev and demons are full of grief, momentary and mortal.

#### 15. WORSHIP OF OTHER GODS:

Driven by the properties of their nature, they who fall from knowledge desire worldly pleasures and in imitation of the prevailing customs, worship other gods instead of one single God."

Those whose intellect has been robbed through enjoyment of worldly comforts, such foolish persons tend to worship other gods than the Supreme Being."

Although even covetous devotees indeed worship me in worshipping other gods, their worship is against the ordained provisions and therefore enveloped by ignorance."

Those who worship other gods, are worshipping Supreme Being under influence of ignorance and their efforts go in vain.

"Mark you that they who undergo terrible self mortification without spiritual sanction and are afflicted with hypocrisy and arrogance besides lust, attachment, and vanity of power and who wear out not only the elements that constitute their bodies but also me who dwells in their souls are ignorant men with evil disposition."

#### 16. THE IGNOBLE:

Those who, after forsaking the prescribed way of performing Yagya, but adopt ways without scriptural sanction, are cruel, sinful and ignorable among the human being.

#### 17. ORDAINED PROCEDURES:

"He who departs from the body intoning OM, which is GOD in word, and remembering me, attains to salvation."

The intoning of OM, which is the synonym for eternal Brahm, remembering only the sole Supreme Being and worshipful meditation is guidance of enlightened sage.

#### 18. SCRIPTURE:

"I have thus instructed you, the sinless, in the most subtle of all knowledge because, Bharat, by knowing its essence a man gains wisdom and accomplishes all his tasks."

#### GEETA IS SCRIPTURE

"So scripture is the authority on what ought and ought not to be done, and having learnt that you have the ability to act according to the provisions laid down by the scripture.

Scripture is only a base to take perfect decision in case of performance or avoidance of DUTY. Hence one should act as per prescribed task elaborated in GEETA.

#### 19. DHARM:-

"Grieve not, for I shall free you from all sins if you abandon all other obligations (dharm) and seek refuge in me alone."

After giving up all the confusing ups and downs, and interpretations (he who shall take refuge in ME, means who shall completely surrender to the sole Supreme Being), the ordained action to achieve ultimate bliss is the real conduct of DHARMA (2/40) and even if man of the most depraved conduct if performs, is worthy of being regarded as a Saint (9/30).

#### 20. PLACE OF ATTAINMENT:

"For I am the one in whom the eternal GOD, immortal life, the imperishable Dharm, and the ultimate bliss all abide."

He is the dwelling of immortal GOD, of everlasting life, of eternal DHARM and of the unblemished pure joy of attaining the Supreme goal. In other words, a GOD-oriented saint, an enlightened GURU is this bliss, personified.

(THE TRUE ESSENCE OF ALL THE RELIGIONS IN WORLD ARE ECHOS OF GEETA)"

#### Importance and Impact of Bhagvad Geeta- A Dharma Shastra

Since the present dispute relates to Deity Gopal Thakur installed at Gopal Dham, Mohalla Til Bhandeshwar, Varanasi, that is, Temple of Lord Krishna. The significance and importance of Lord Krishna and Gita in World as well as in respect of India and the Indian spiritual world and social and political field can be understood from the fact discussed above that Lord Krishna has given to the man kind a new concept of Dharma (Duty) through Geeta.

It has come in Geeta that the God has given the theory of Karmayog to Surya (Sun) and from Sun to the Manu and from Manu to other highly revered Saints. It is now settled that the Sun is the source of

all human being and also that entire world and also source of energy to all creations of man kind and source of life on earth.

In Chapter IV of "Yatarth Geeta" of Swami Argadanand, The Lord said

1. "it was I who taught the eternal yog to the Sun-(Vivaswat), who then taught it to Manu, who taught it to Ikshwaku.'

JhHxokuqokp

" bea fooLors ;ksxa izksDroku~geO;;e~ A

fooLokUeuos izkg euqfj{okdosMczohr~ AA (1)

This has now being established by modern science also that sun supports of life of human being and main source of energies is Sun. A human being gets everything for his body, mind, heart etc. through energy only.

Following paragraph of Book "Ecology Environment and Resource Conservation" written by J.S. Singh published by Anomaya Publisheres, New Delhi is very relevant, the same is being reproduced below:-

"Sun, the only important source of energy, supports life on earth and energizes most of the atmospheric processes. Solar radiation is the driving force for the functioning of ecosystems."

Another Book "The Origin of Life" written by Carl O.Dunbar published by John Wiley & Sons also talks source of energy of Sun. Relevant paragraph of the Book is being reproduced below:-

" The first great source of such energy was sun-light, which is still the means by which plants build up organic matter through photosynthesis; and when free oxygen began to appear in the atmosphere a still more effective source of energy was available in the oxidation of proteins. This is the present source of energy in animal metabolism."

Following Paragraph of the Book "Biology : The World of Life" (Vth ed.) 1990 written by Rober A. Wallace is also very relevant:-

"The cells that were able to chemically manufacture

their own food are now called autotrophs (self-feeders). As time passed, the autotrophs became quite efficient at manufacturing their food. The biochemical chains became long, complex, and refined. Today, the result is most evident in our silent partners on the planet, the green plants. As we will see, they actually use the energy of sunlight to power their intricate food- making machinery. They obviously had an advantage in the early days."

Theory of Bhagwat Geeta speaks about internal and eternal truth. It is not meant to any particular religion, but it is a guiding force for all the religions. Teachings of Lord Krishna in Bhagvad Geeta which says about Dharma Shastra for eternal, truth and does not speak about any religion based on rituals or theology. It also teaches us what duty should be done or what should not be done in a any situation.

The concept of Dharma as defined in Bhagwat Geeta gives message to all religion within the fold of Hinduism, some of which are reproduced below:-

19. "They are both ignorant, he who believes that the Self slays and he who thinks that he is slain, for he neither slays nor he is slain."

" ;,ua osfRr gUrka ;'pSua eU;rs gre~ A

mHkkS rkS u fotkuhrks uk;a gfUr u gU;rs AA

"He who thinks that this slays and he who thinks that this is slain;

both of them fail to perceive the truth; this one neither slays nor is

slain."

20. "Neither (ever) born nor dying, neither at any time coming into being nor ceasing to be, the Self is birthless, perpetual, unchanging, and timeless, and he is not destroyed when the body is destroyed."

"u tk;rs fez;rs ok dnkfr~ uk;a HkwRok Hkfork ok u Hkw;% A

vtks fuR;% 'kkJorksM;a iqjk.kks u gU;rs gU;ekus 'kjhjs AA

"He never born, nor does he die at any time, nor having

(once) come to be will he again cease to be. He is unborn,

eternal, permanent and primeval. He is not slain when the body

is slain."

22. "Like a man who puts on new garments after discarding his worn out clothes, the embodied Self, also, casts off tattered bodies and transmigrates into other bodies that are new."

"oklaf th.kkZfu ;Fkk fogk; uokfu x`gfr ujksMijkf.k A

rFkk 'kjhjfk.k fogk; th.kkZU;U;kfu la;kfr uokfu nsgn" AA

" Just as a person casts off worn-out garments and puts on

others that are new, even so does the embodied soul cast off worn

out bodies and take on others that are new.

The eternal does not move from place to place but the

embodied soul moves from one abode to another. It takes birth

each time and gathers to itself a mind, life and body formed out of

the materials of nature according to its past evolution and its need

for the future. The psychic being is the vijnana which supports the

triple manifestation of body (anna), life (prana) and mind (manas).

When the gross physical body falls away, the vital and mental

sheaths still remain as the vehicle of the soul. Rebirth is a law of nature. There is an objective connection between the ripens and like corn is he born again."

23. "This Self is neither pierced by weapons, nor burnt by fire, nor made damp by water, nor dried up by wind."

uSua fNUnfUr 'kL=kkf.k uSua ngfr ikod% A

u pSua Dysn;R;kiks u 'kks" k;fr ek:r AA

"Weapons do not clave this self, fire does not burn him; waters do not make him wet; nor does the wind make him dry.

30. Since the Self dwelling in all bodies is unslayable, O

Bharat, it does not befit you to grieve for living beings."

nsgf fuR;eo;/ksM;a nsgs loZzL; Hkkjr A

rLekRlokZf.k Hkwrkfu u Ooa 'kksfprqegZfgl AA

"The dweller in the body of every one, O Bharata (Arjuna), is eternal and can never be slain, Therefore thou shouldst not grieve for any creature.

Man is a compound of Self which is mortal. Even if we accept this position that body is naturally mortal, still as it is the means of furthering the interests of the Self it has to be preserved. This is not by itself a satisfactory reason. So Krsna refers to Arjuna's duty as a warrior."

31. " In view of your own dham, too, it is unworthy of you

to fear, for there is nothing more propitious for a Kshatriya than a righteous war."

"Lo/keZefi pkos{; u fodfEirqwegZfl

/kE;kZzf<;q}kPNw;ksMU;r~ {kf=k;L; u fo/krs" AA

"Further, having regard for thine own duty, thou shouldst not falter, there exists no greater good for a Ksatriya than a battle enjoined by duty.

His svadharma or law of action, requires him to engage in battle. Protection of right by the acceptance of battle, if necessary, is the social duty of the Ksatriya, and not renunciation. His duty is to maintain order by force and not to become an ascetic by " shaving off the hair." Krsna tells Arjuna that for warriors there is no more ennobling duty than a fair fight. It is a privilege that leads to heaven."

32. "Blessed indeed, O parth, are the Kshatriy who, without seeking, come upon such a war which is like an open door to heaven."

";NPN;k pksiiUua LoxZ}kjeiko`re~ A

lqf[ku% {kf=k;k% ikFkZ yHkUrs ;q}ehn`ke~ AA"

"Happy are the Ksatriyas, O Partha (Arjuna), for whom

such a war comes of its own accord as an open door to heaven.

A Ksatriya's happiness consists not in domestic pleasures a

Comfort but in fighting for the right."

33. "And if you do not engage in this righteous war, you will lose the dham of your Self and glory, and be guilty or sin."

"vFk psRofeea /kE;Z laxzkea u dfj";fl A

rr% Lo/keZ dhfrZ p fgRok ikieokIL;fl AA

"O thou best of men, there are only two types who can

pierce the constellation of the Sun (and reach the sphere of

Brahman); the one is the samnyasin who is steeped in Yoga and

the other is the warrior who falls in the battlefield while

fighting."

34. "And all will for ever speak of your disgrace and such disgrace is worse than death itself for a man of honour."

"vdhfrZ pkfi Hkwrkfu dFk";fUr rsMO;ke~ A

IEHkforL; pkdhfrZeZj.knfrfjP;rs AA

"Besides, men will ever recount thy ill-fame and for one who has been honoured, ill- fame is worse than death."

35. "Even the great warriors who have a high regard for you will then scorn you for having turned your back upon the war out of fear."

"Hk;knz.kknqwijra eaL;Urs Roka egkjFkk A

;s"kkk p Roa cgqerks HkwRok ;kL;fl yk?koe~

" The great warriors will think that thou hast abstained

from battle through fear and they by whom thou wast highly esteemed will make light of thee."

The relevant Shlokas of these principles of different Chapters are being reproduced below:-

"The immortal Soul in the body is a part of mine and it is he who attracts the five senses and the sixth- the mind that dwell in nature."

eesoka'kks thoyksds thoHkwr% lukru% A

eu%"k"BkuhfUnz;kf.k izd`frLFkkfu d"kZfr" AA 15@7

" It hardly needs saying that since pious Brahmin and royal sages (rajarshi) attain to salvation, you should also renounce this miserable, ephemeral, mortal body and always engage in my worship."

fda iquczKZg` .kk% iq.;k HkDrk jkt"KZ;LrFkk A

vfUR;elq[ka ykxdfeea izkl; HktLo eke~" AA 9@33

"There are in the world, O parth, two kinds of beings, the pious, on whom I have already dwelt at length, and the devilish of whom you will now hear from me."

JKS HkwrlxkSa ykdsMfLeu~ nSo vklqj ,o p A

nSoks foLrj'k% izksDr vklqja ikFkZ es J` .kq" AA 16@6

"Men who do pious deeds enjoined by the three Ved, who have tasted nectar and freed themselves from sin, and who wish for heavenly existence through worshiping me by yagya, go to heaven (indriok) and enjoy godly pleasures as a reward for their virtuous acts."

"=kSfojk eka lkseik% iwrikik ;KSfj"V~ok LoxZfra izkFkZ;Urs A

rs iq.;eklk| lqjsUnzyksd& e'ufUr fnO;kfUnfo nsoHkksxku~" AA 9@20

"Sacrifice through wisdom is, O Parantap, in every way superior to sacrifices made with material objects, because ( O Parth) all action ceases in knowledge, their culmination."

"Js ;kUnzO;e;k|KkTKku;K% ijari A

loZ dekZf[kya ikFkZ Kkus ifjlek;rs" AA 4@33

" O Arjun, a man of great penance, a worshipper can know this form of mine directly, acquire its essence, and even become one with it by a total and unswerving dedication."

"HkDR;k RouU;;k 'kD; vgesofo/kksMtqZu A

Kkrq nz"Vqa p rRosu izos"Vqa p ijari" AA 11@54

"Only a seer views the Soul as a marvel, another one describes him as a marvel, and yet another one hears him as marvel. While there are some who hear him and yet know him not."

"vkJ;ZoRi';fr dfJnsuekJ;Zo}nfr rFkSo pkU;% A

vkJ;ZoPpSueU;% J` .kksfr J` Rokl;sua osn u pSo df'pr~" AA 2@29

"The Self, which cannot be pierced or burnt or made wet or faded, is uninterrupted, all-pervasive, constant, immovable, and eternal."

"vPNs|ksM;enkgksM;eDys|ksM'kks"; ,o p A

fuR;% loZxr% LFkk.kqjpyksM;a lukru%" AA 2@24

"All the worlds from Brahmiok downwards are, O Arjun, of a recurrent character, but, O Son of Kunti, the soul which realizes me is not born again."

"vkcZgkHkqoukYyksdk% iqujkofrZuksMtqZu A

ekeqisR; rq dkSUrS; iqtZUe u fo|rs" AA 8@16

"Driven by the properties of their nature, they who fall from knowledge desire worldly pleasures and, in imitation of the prevailing customs, worship other gods instead of the one single God."

"dkeSLrSLrSgZrKkuk% izi|UrsMU;nsork% A

ra ra fu;eekLFkk; izd`R;k fu;rk% Lo;k" AA 7@20

"Mark you that they who undergo terrible self-mortification without scriptural sanction and are afflicted with hypocrisy and arrogance besides lust, attachment, and vanity of power, and who wear out not only the elements that form their bodies but also me who dwells in their Souls, are ignorant men with evil disposition."

"v'kkL=kfofgra ?kksja rl;Urs ;s riks tuk% A

nEHkkgadkja;qDrk% dkejkxcykfUork% AA" 17@5

"d'kZ;Ur% 'kjhjLFka Hkwrzxkeepsrl% A

eka pSokUr% 'kjhjLFka rkfUon~/;klqjfuJ;ku~ AA" 17@6

"While some worship me by gyan-yagya as the all-encompassing Supreme Spirit with the feeling that I am all, some worship me with a sense of identity, some with a sense of being separate from me (regarding me as master and themselves as servants), while yet others worship me in many a different fashion."

"Kku;Ksu pkl;U;s ;tUrks ekeqiklrs A

,dRosu i`FkDRosu cgq/kk foJrkseq[ke~" AA 9@15

"I am the action that is undertaken, the yagya, the fulfillment of earlier resolutions, the heater, the sacred prayer, the oblation as well as the sacred fire, and I am also the sacrificial act of oblation."

"vga dzrqjga ;K% Lo/kkgegekS"k/ke~ A

eU=kksMgegesokT;egefxzjga gqre~" AA 9@16

"Men who do pious deeds enjoined by the three Ved, who have tasted nectar and freed themselves from sin, and who wish for heavenly (Indrllok) and enjoy godly pleasures as a reward for their virtuous acts."

"=kSfojk eka lkseik% iqwrikik ;Ksfj"V~ok LoxZfra izkFkZ;Urs A

rs iq.;eklk| lqjsUnzyksd&e'ufUr fnO;kfUnfo nsoHkksxku~" AA 9@20

"I am the supreme goal, the sustainer and Lord of all, the maker of good and evil, the abode and shelter of all, the benefactor who wants nothing in return, the beginning and the end, the fountainhead as well as that in whom all beings are dissolved, and also the indestructible primal energy."

"xfrHkZrkZ izHkq% lk{kh fuokl% 'kj.ka lqg~r~ A

izHko% izy;% LFkkua fu/kkua chteO;;e~" AA 9@18

"They have to undergo rebirth because they are ignorant of the reality that I am the enjoyer as well as the master of all yagya."

"vga fg loZ;Kkuka HkksDrk p izHkqjso p A

In a Book on Sardar Vallabh Bhai Patel 'THE PEERLESS SARDAR' written by Gunvant Shah, impact of Geeta on Sardar Vallabh Bhai Patel which is very relevant Some important paragraphs of the Book are being reproduced below:-

".....Mercy shown in punishing a goonda amounts to leaving many innocents to the mercy of such a goonda. Never would Sardar show such mercy because his compassion was not short-sighted."

".....One suspects that the dominance of goondas in some states of the country is perhaps due to the lack of such harshness. Is Krishna harsh when he advises Arjuna to fight the battle for the preservation of dharma? If Sardar's harshness is not viewed in this wide perspective, we will be doing him a gross injustice....."

Dharma is the soul of Bhagvad Geeta to be achieved from any of the three ways, that is, Bhakti Yog, Karma Yog and Gyan Yog. All the religions born in India follow any of the three ways. Buddhism and Jainism stressed more on soul which has been given in Bhagvad Geeta. The duty to fight for Dharma without caring for the result is the theory of Bhagvad Geeta. In case anyone invades anyone's rights and in order to defend rights (Dharma) anyone refuses to perform his duty is also responsible for sin committed by such elements is one of the principles of Bhagvad Geeta.

According to Seven Judges' Bench judgment of the Apex Court in Shree Ahimsa Army Manav Kalyan Jeev Daya Charitable Trust v. Mirsapur Moti Kureshi Kassab Jamat, Ahmedabad (supra) it is the fundamental duty of every citizen to cherish and follow the noble ideals which inspired our national struggle for freedom. In view of discussions made above, Hinduism was always governed by one Dharma and all beliefs or thoughts (religions) are within the fold of Hinduism. As our national struggle for freedom was inspired by Dharma Shastra 'Bhagvad Geeta' given by Lord Krishna, this Court is of the view that Bhagvad Geeta is a Dharma Shastra of India and it is also the duty of State to recognise Bhagvad Geeta as Rashtriya (National) Dharma Shastra which inspired our national struggle for freedom and all walks of life and it is the duty of every citizen of India under Articles 51-A of the Constitution of India irrespective of caste, creed or religion to follow Dharm propounded by 'Bhagvad Geeta'. As India has recognised National Flag, National Bird, National Anthem and National Flower, 'Bhagvad Geeta' may also be considered as National (Rashtriya) Dharma Shastra.

Thus, after considering each and every aspect and the materials brought to the notice of this Court during arguments of learned counsel for the parties, this Court is of the firm view that Dharma which could be any of the three ways of Bhakti Yog, Karmayog and Gyan Yog to attain eternal truth and for duties of is universally applicable to mankind and represents not any particular section of Religion, but Hinduism as a whole in its universality, without limit of time or space, embracing within its synthesis the whole gamut to the creative affirmations of the Saints and, therefore, Hinduism is Dharm which common to all faith and beliefs (religions) born in India and are part of Hinduism. The Court agrees with the views of various Philosophers including Sarvapalli Radha Krishnan detailed above to that effect and, therefore, all Hindus are entitled to get protection under this judgment.

Constitution of Board to look after the affairs of the Hindu Temples, Mutths, public and private Charitable Trusts and other religious places:-

In view of the discussions made above, this Court is of the view that for proper protection, preservation, regulation, management and for proper observance of religious and secular activities and other activities of the Temples and other religious institutions of all sections of Hinduism, an Autonomous Board should be constituted which shall have superintendence over all the religious institutions of all sections of Hindu Dharma. Religious Institutions means a Mutth, Temple, Specific Endowment, Samadhi or any other Institution established and maintained for Hindu Religious purposes. Temple means a place used as place for public or private worship dedicated to or for benefit of Hindu community or any part thereof which also includes a Sub-Shrine, Utsav Mandap and appurtenant structure including land and other properties attached thereto.

Various State Governments have already enacted Charitable & Hindu Religious Institutions & Endowments Act to look after the Hindu Temples and other Religious Institutions. Maharashtra, Gujrat and Andhra Pradesh and some other State Governments have already having Legislation to regulate functioning of Hindu Temples and other Religious Institution, but so far as the State of U.P. is concerned, at present, there is no such Legislation and as such this Court is of the view that a State Board for Religious Institutions of all sections of Hindu Society at the State level consisting of 21 Members may be constituted consisting of a retired Supreme Court Judge or a retired High Court Judge as its Chairman and Principal Secretary/Secretary, Ministry of Endowment, Government of U.P., who must be a Hindu, may be the Secretary of the Board and other 19 Members of the Board may be nominated from all the religions within the fold of Hinduism to represent all the religions. The Board so constituted shall frame a Scheme and also co-opt representative of all the sections of Hindu Society and devotees belonging to different sects such as Lord Krishna, Lord Rama, God Ganesha, Lord Shiva, followers of Kabir, followers of Radhaswamis, followers of Sain Baba, followers of Raidas, Aryasamj, Sikkhs, Jains, Buddhists, and all other members of different faith, beliefs and thoughts born and followed in India which are part of Hinduism.

The functions of the Autonomous Board so constituted shall be as follows:-

(i) To register each and every religious institution which means Temples, Mutths, specified Endowments, Samadhis, Religious Trusts and all the Institutions established for religious purpose.

(ii) The Board shall take steps to constitute a Force for safety and security of Temples throughout the State of Uttar Pradesh. For this purpose, Board may take assistance from State of Uttar Pradesh,

(iii) The Board shall formulate a Scheme for protection of Hindu Religious Institutions which means Mutths, Temples, specified Endowments which also includes Samadhis and other Religious Institutions established and maintained for religious purpose including establishment of orphanage, Asram for Widows and disabled people and for registration of each and every public and private religious institutions mentioned above from the surplus money of the Temple or other religious institutions attached with the Temple,

(iv) The Board may constitute sub Boards at State as well as District Levels for different sections of Hindu Dharm consisting of a member of Higher Judicial Officer, District Magistrate, one Member nominated by the Central Board from State Level and five Members representing different religious groups within the fold of Hinduism.

(v) The Board shall also take all effective steps for regulating the management of all the religious institutions of all the sections of Hinduism by (a) recognising the existing Committee constituted in accordance with the Deed of Dedication or Religious Trust, (b) shall regulate financial matters to check mismanagement, (c) in case there is no Deed of Dedication, the Board shall constitute/reconstitute a new Committee of Management to look after the affairs of such Religious Institutions and in case any Religious Institution is regulated by any Legislation, the Board shall ensure that the Legislation relating to such religious right is duly followed and take all necessary steps to coordinate with such Bodies, (d) the Board shall also take steps to establish Gaushala of all kinds of cows in every religious institution, arrange for marriages of poor and helpless Girls belonging to Hinduism and take steps in other matters which the Board may consider proper to safeguard all Religious Institutions of Hinduism and (e) the Board shall also made efforts to establish orphanage, helpless widows and other old people, disabled persons and other helpless persons of Hinduism.

(vi) The Board shall also constitute/evolve its own security system by recruiting Security Guards throughout the State of Uttar Pradesh in addition to the Special Cell, if constituted by the State Government.

Conclusion:

On discussions made above, the conclusion of this Court is as follows:-

(i) Property dedicated to and vested in Deity is unalienable if there is restriction in the Deed of Dedication and any alienation made in contravention of such restriction is not binding on the Deity.

(ii) The Temple which is abode of the Deity is unalienable on any condition and the other properties vested in Deity may be alienable in the event of legal necessity if there is no restriction in the Deed of Dedication with the prior permission of the concerned District Judge.

(iii) All the citizens of India who are not Muslims, Christians, Jews and Parsis are Hindus and all are entitled to get protection of their religious institutions under Articles 25 and 26 of the Constitution of India.

(iv) The history of India prior to Independence and after Independence makes it clear that religious institutions which includes Temples were always subject to attacks and demolitions and constructions of Mosques and Madarasas in their places for the last more than 1200 years and such attacks are still continuing by such forces. Recent attacks on different Temples in India confirms the fact that the communal elements and anti Hindu forces are taking inspiration from invasion by foreign Muslims invaders on communal lines and, therefore, Hindu Religious Institutions are entitled to get full protection, safety and security from the State of Uttar Pradesh. For preservation of Hindu Religious Institutions to ensure religious and secular activities a Board of Hindu Religious Institutions may be constituted as detailed in foregoing paragraphs of the judgment.

(v) Under Article 51-A(b) and (f) of the Constitution of India, Bhagvad Geeta and its principles is synthesis and Dharma which inspired our national struggle for freedom right from the day of invasion of Mir Quasim on India in 712 upto 1947, it is the fundamental duty of every citizen and the State as a whole to cherish and follow the noble ideals of Bhagvad Geeta and, thus, it is the duty of every citizen of India to protect our rich heritage.

(vi) Petitioner and Opp. Party no. 1 are Shebaites of Sri Shaligram Shila, Gopal Thakur, created through Deed of Dedication dated 5.3.1928. They shall perform worship, Rag, Bhog and Pooja of Deity (Lord Krishna) according to the terms and condition of Deed of Dedication till they are continuing as Shebaites.

(vii) Hinduism is combination of all faiths, beliefs, thoughts and way of worship (Religions) born in India and represents Karmayog, Gyanyog and Bhaktiyog Dharma propounded by Bhagvad Geeta which is common to all faiths, beliefs and thoughts of all sections of Hindu Society (Hinduism) and is Dharshastra and represents all the sections of Hinduism. It has given us universal and eternal truth to maintain a social order and moral obligation for all times to come and for all the societies and as such 'Bhagvad Geeta' may be recognised as National (Rashtriya) Dharma Shashtra.

(viii) This Court is of the view that a Board for Hindu Religious Institutions, U.P. consisting of 21 members Headed by a retired Supreme Court or High Court Judge with the Principal Secretary, Endowments, Government of Uttar Pradesh as Member Secretary be constituted and the remaining members will be representatives of all sections of Hindu society representing different faith and beliefs (Religions) which are part of Hinduism.

(ix) Offering to the Deity or Endowment is an offering to the Almighty or for religious purposes and a person attached with the management of a religious Institution is entitled to get from the offering only in accordance with the Deed of Dedication or in accordance with law. This Court is of the view that as the offering by the Society is the property of the society, individuals at the helm of affairs whether Mahant/Shebait/Manager/Archak/Sevadar or other persons attached to the Temple are not entitled to get exclusively, but only remuneration according to their work and duties and the remaining part of the offering should be used for religious work for practise and propagation of such (sect) religion, for maintenance of such religious Institution to provide benefit to such section of Hindu society, particularly, poor and down trodden section of Hindu society by establishing Educations Institutions, Hospitals and orphanage etc. or in any other form which may help Hindus.

(x) In view of the findings recorded by this Court, petitioner and Opp. Party no.1 shall continue to remain as Co-Shebaites of the Temple Sri Shaligram Shila 'Gopal Thakur' installed in Gopal Dham, Til

Bhandeshwar, Varanasi and they shall take all effective steps to maintain the Temple and other properties attached thereto, unless they are removed in accordance with law.

(xi) The State of U.P. shall constitute a Special Force or a Special Wing in the Police Force for preservation, protection and prevention of attacks on Temples and Religious Institutions of all the faiths and beliefs (religions) of all the sections of religions relating to Hinduism from communal and antisocial elements.

(xii) The Board shall take such other steps which it may consider necessary for proper maintenance, preservation, to check misfeasance and for safety and security of Temples, Mutths and public & private Religious Trusts and other Religious Institutions.

(xiii) As the properties in question vested in the Almighty, the similar protection like provided for Waqf property is also provided to the Temples and other Religious Institutions of Hindus whether (public or private) which means Mutths and other religious institutions.

(xvii) This Court on consideration of the materials on record is fully satisfied that the State Government should take other effective steps to protect all such religious places. Till any Legislation is enacted on the point, this Court considers it appropriate to command the State of Uttar Pradesh to (a) constitute a Security Cell for Temples and other Religious Institutions of all the sections of Hinduism in every area of every District, (b) religious institutions affected by communal violence or affected by anti social elements and (c) The State Government may frame Rules, Guide Lines in this regard to be circulated to all the District Magistrates to take appropriate steps to protect the Temples and other religious institution.

#### Reliefs

With the result, writ petition succeeds and is allowed.

(i) Impugned orders dated 6.12.2003 and 15.3.1996 (Annexures- 4 and 1 to the writ petition), passed by the Additional District Judge, Varanasi are quashed. Petitioner as well as Opp. Party no.1 are recognised as Co-Shebaites of Sri Shaligram Shila 'Gopal Thakur' installed in Gopal Dham, Til Bhandeshwar, Varanasi according to Deed of Dedication and they are further directed to maintain Temple and other properties of Sri Shaligram Shila 'Gopal Thakur' installed in Gopal Dham in accordance with the Deed of Dedication being all alienations void in view of the discussions made in the judgment and Government of Uttar Pradesh is commanded to provide all assistance to Shebaites to get the Deity (Gopal Thakur) reinstated in Temple - 'Gopal Dham' (House No. B-17/57, Mohalla Til Bhandeshwar, Varanasi) and also provide all assistance in performance of Rag, Bhog and Pooja of the Deity of the Temple in question.

(ii) A writ of mandamus is issued commanding State of Uttar Pradesh to constitute a Board of Hindu Temple and other Hindu Religious Institutions, U.P. for registration, maintenance, management, protection and preservation of all the Temples and Religious Institutions of all the sections of Hindus for the reasons disclosed in the body of the judgment and for performing functions indicated therein and till any regular Board is constituted, the Adhoc Board shall be Chaired by Mr. Justice R.M. Sahai, a retired Supreme Court Judge, of which Mr. Justice Giridhar Malaviya shall be the Member and Principal Secretary, Endowment, Government of Uttar Pradesh shall be the Member Secretary. Adhoc Board shall frame a scheme for protection of Hindu Religious Institution and submit the same to the State Government within four months from the date of constitution of the Adhoc Board. The Judges nominated in the Board as Chairman and Member shall be entitled to Perks according to their status.

(iii) A writ of mandamus is issued commanding the State of Uttar Pradesh to constitute a special Force for protection of Temples and other Religious Institutions or a special wing in the Police Force for protection of the Temples and religious Institutions affected by communal tension and by activities of antisocial elements within three months from the date of receipt of a certified copy of this order.

(iv) A writ of mandamus is further issued commanding State of Uttar Pradesh not to permit any alienation of any property attached with any Temple and other Religious Institutions (Mutths, Temples, specified Endowments which also includes Samadhis and other Religious Institutions) etc. without prior permission of the District Judge concerned.

Registry is directed to send a copy of this order to Chief Secretary, Uttar Pradesh, for information and necessary action.

Copy of this order shall be supplied to Sri M.C. Chaturvedi, Learned Chief Standing Counsel, State of Uttar Pradesh, for compliance.

August 30,2007

Reserved

Civil Misc. Writ Petition No. 56447 of 2003

Shyamal Ranjan Mukherjee.....Petitioner

Vs.

Nirmal Ranjan Mukherjee & Others.....Respondents

Hon'ble S.N. Srivastava, J.

After hearing learned counsel for the parties, learned Amicus Curaei and Sri I.N. Singh, learned counsel appearing for Kashi Vidhwat Parishad, following questions arises to be decided in the present Case.

(i) If Deed of Dedication to Deity for religious purposes prohibits any alienation by way of sale or mortgage whether the Shebait could alienate the property vested in Deity?

(ii) Whether the Temple which is abode of the Deity is alienable even if there is no such prohibition in the Deed of Dedication?

(iii) Whether the properties other than Temple vested in the Deity are alienable?

(iv) Whether considering the historical background of attacks on Temples and Religious Institutions of Hindus for about more than 1200 years, whether the Temples and Religious Institutions require any protection from the State, if so, who are Hindus and whether Hinduism is religion or Dharm and are entitled to get protection under Articles 25 and 26 of the Constitution of India and if so what protection is required to safeguard Hindu Temples and Religious Institutions?

(v) As the matter relates to Temple of Lord Krishna who has given Bhagvad Geeta to the man kind, whether Bhagvad Geeta propounds any thought or belief or Dharm common to all faiths, beliefs, way of worship (all religions born in India and part of Hinduism)?

Facts of the case are as follows:-

Premises No. B-17/34, 35, 36 and 38, situated at Mohalla Til Bhandeshwar, Varanasi City which was renumbered in Municipal Record as House No.B-17/57, 58, 59 and 60 was the property dedicated to the Deity Sri Shaligram Shila (Sri Gopal Thakur). Kalidas Mukherji, Girja Prasann Mukherji, both sons of Babu Gopal Charan Mukherji and Nalini Ranjan Mukherji, Ramini Ranjan Mukherji, Kamini Ranjan Mukherji alias Chando minor under the guardianship of his mother Smt. Santoshini Debi, all sons of late Shivadas Mukherjee, Residents of Til Bhandeshwar, Benaras City executed a Deed of Dedication to family Deity Sri Shaligram Shila (Gopal Thakur) through a registered deed dated 5th March, 1928 and also appointed Kali Das Mukherji and Girija Prasann Mukherjee as Shebaitts of the said Deity

jointly with the condition that they would work jointly and after the death of one of them, the survivor shall be Shebait and perform Rag, Bhog and Pooja etc. and after the death of both the Shebait Ramini Ranjan Mukherjee, son of late Shivadas Mukerjee and Profulla Kumar Mukerjee, sons of Kalidas Mukerjee, both or any one of them whom may be alive at the time would work as Shebait and after their death the eldest grand-son of Kalidas Mukerjee and eldest grand-son of Shivadas Mukerji and the eldest male member in succession would work as Shebait.

Indisputably, Shyamnal Ranjan Mukerjee and Nalini Ranjan Mukerjee were recorded in the Municipal records as Shebait of Sri Shaligram Shila (Gopal Thakur) before the dispute arose.

There was a specific condition in the Deed of Dedication dated 5/3/10/1920 that the properties cannot be transferred by Shebait. Paragraphs 1, 3, 4 and 5 of the Deed of Dedication are relevant in this regard and the same are being reproduced below:-

(1) That from today the said diety "Sree Saligram Sila" (Gopal Thakur) shall be the absolute owner of the said premises No.B.17/34, 35, 36 and 38 Tilbhandeshwar, Benaras, and all our rights, title and interests in the said properties cease from the date hereof. Neither we nor our heirs or legal representatives shall have any right to challenge or disregard this Deed of Gift or raise any claim in respect of the said properties. If any one of us or our heirs do so that would be considered as invalid.

x x x

(3) That out of the income of the said properties hereby dedicated the expenses for the daily Sheba and Puja of the said diety and the annual festivals of the said diety would be met and the repairs of the said properties and the payment of taxed or other dues would also be met out of the said income.

(4) That none of the Shebait would be entitled to sell, mortgage or otherwise transfer any of the properties hereby dedicated and if any of them do so that would be null and void and the dedicated properties aforesaid shall not be liable to be sold in execution of any decree against the Shebait.

(5) That the Shebait shall have full and absolute right to invest the surplus income derived from the said properties in safe and profitable investments and the said surplus income and the investments made thereof or any improvements made by the said Shebait in the aforesaid properties shall be considered as the property of the said diety."

Shaymal Ranjan Mukherjee (Petitioner) shifted to Gujrat for some time in connection with his service.

A Suit No.391 of 1990 was filed by Nirmal Ranjan Mukherji-Opp. Party no.1 for declaration that he is exclusive Shebait of Temple \_Sree Shaligram Shila (Gopal Thakur) situated in Old House No. B-17/35, New No. B.17/57, Mohalla Til Bhandeshwar, Varanasi. This Suit was decreed on 29.9.1991 ex parte and he was declared exclusive Shebait entitled to manage the affairs of Temple and other properties vested in the diety including Raj, Bhog and worship. It further transpires from the record that Nirmal Ranjan Mukherji-Opp. party no.1 executed a registered sale deed in favour of one Smt. Shashi Devi in respect of House No. B.17/56, Mohalla Til Bhandeshwar, Varanasi on 19.6.1995 as well as with regard to House No.B.17/55, Mohalla Tilbhandeshwar, Varanasi.

Petitioner-Shyamal Ranjan Mukherji also executed a registered confirmation deed of sale deed dated 19.6.1995 on 13.2.2004 in favour of Smt. Shasi Devi as regards House No.B.17/56.

The main ground on which sale deed was executed was that for last several years Mohalla Tilbhandeshwar, Varanasi was affected by communal violence due to which family of Opp. Party no.1 felt insecurity in the said Mohalla and thought it appropriate to shift to Allahabad for the security reasons and also decided to shift the Deity at Allahabad. As certain properties were very old, there was also a legal necessity to sell other properties vested in Deity for making arrangements of Rag, Bhog and Pooja of Sree Shaligram Shila (Gopal Thakur). Nirmal Ranjan Mukherji-Opp. Party no.1 also executed a registered sale deed dated 19.6.1995, in favour of Bhaganu @ Bhaggan Yadav as regards House No.B.17/58 and executed another sale deed dated 4.7.1996 as regards House No. B.17/57, Mohalla Tilbhandeshwar, Varanasi to Bhagnu. In Paragraph-17 of the counter affidavit of Opp. Party

no.1, it has been averred that during pendency of writ proceeding Shyamal Ranjan Mukherji also executed another sale deed in favour of Sanjay Kumar, Anoop Kumar, Raj Kumar and Sita Devi on 10.2.2004 for a sale consideration of Rs. 2,52,000/-. The main consideration for execution of sale deed was to meet out expenses of marriage of his daughter and to invest money in business. Another sale deed was also executed by Shyamal Ranjan Mukherjee in favour of Moti Lal son of Prahlad Das in respect of House No. B.17/58, Mohalla Tilbhandeshwar, Varanasi on 10.2.2004, House No. B-17/57, Mohalla Til Bhandeshwar to Smt. Nirmala Devi, wife of Laxmi Narain and House No. B-17/60 to Janki Devi, wife of Badri Prasad on 5.5.2004.

Transferees also moved applications for mutation of their names on the said properties in dispute vested in Deity on the basis of the sale deeds to Nagar Nigam, Varanasi. In the meantime on the basis of a decree passed on 29.10.1991, name of one of brother of petitioner was expunged by the order dated 20.6.1994 of Up Nagar Adhikari, Nagar Nigam, Varanasi against which an Appeal No. 8 preferred by Opp. Party no.1 was decreed ex parte on 15.3.1996 and a Restoration Application of petitioner was dismissed on 6.12.2003.

Since all the properties vested in Deity were sold to the transferees, they were also pursuing their Mutation Application before Nagar Nigam, Varanasi.

Transferees moved application for Impleadment in this writ petition also and were impleaded in writ petition on their applications.

Sri A.K. Singh, learned counsel for petitioner, Sri V.S. Rastogi and Sri Tarun Tiwari, learned counsel for Opp. Party No.1 and some of Transferees, Sri Shesh Kumar, Sri M.C. Dwivedi and Sri M.M. Sahai, learned counsel for other transferees were also heard.

Sri M.C. Chaturvedi, learned Chief Standing Counsel, State of U.P., assisted by Sri Bhola Nath Yadav, learned Standing Counsel, State of U.P. were heard on behalf of State. This Court by an order dated 3.7.2007 appointed Sri Sanjay Goswami, Advocate, to assist the Court as Amicus Curaei on the questions of public interest involved in this case which are also questions of vital importance in present scenario.

Sri I.N. Singh, learned counsel for Kashi Vidwat Parishad, Varanasi was also heard as Kashi Vidwat Parishad through an Impleadment Application prayed for impleadment to intervene in the matter and thus Sri I.N. Singh, learned Counsel was allowed to address the Court on behalf of Kashi Vidwat Parishad, Varanasi as intervenor.

Heard learned counsel for the parties.

Order of the Court on 30.3.2007 is being quoted below:-

"Counter Affidavit filed by Sri C.K. Parekh, learned counsel for Nagar Nigam, Varanasi, is taken on record.

The disputed properties are situated Mohalla Til Bhandeshwar, Varanasi. It transpires from the Deed of creation of Endowment of Dubuttur executed on 5th March, 1928 that the Saviets were created to look after the properties in dispute which vested in Sri Shaligram Shila (Gopal Thakur) which has been installed in House No.B-17-35, Til Bhandeshwar, Varanasi (known as Gopal Dham) entire property vested in the Deity.

It is urged by the learned counsel for the parties that for the reasons disclosed in the sale deeds that Mohalla Til Bhandeshwar situated in the heart of the City Varanasi is affected by the perpetual communal tension and Gopal Dham in question is unsafe. For the aforesaid reasons, Saviets executed sale deeds in favour of several transferees. It was also brought to the notice of the Court that Varanasi as well as Society is suffering a great and irreparable attack on communal basis due to which temples and various other religious places are being shifted or sold.

In the facts of the case, learned counsel for the parties and transferees as well as learned Standing Counsel for the State of Uttar Pradesh are required to assist the Court on following questions.

(i) In view of the specific terms and conditions in the Deed that Sevaitis will have no right of transfer, whether any transfer could be made and if made whether it could be recognised in law,

(ii) Whether there is any law governing public or private endowments/Trusts by which prior permission/approval for such transfer by Sevaitis is essential,

(iii) It has also come on record that the Shaligram Shila (Gopal Thakur) was installed at Premises No.B-17-35, Til Bhandeshwar, Varanasi (known as Gopal Dham) whether the said premises or any party thereof could be transferred and the Deity installed in a Temple could be shifted on any ground whatsoever and

(iv) Whether any steps have been taken by the State of Uttar Pradesh to protect such religious places/Temples/Endowments in the areas affected by the communal tension and whether such religious places are insecure due to antisocial elements.

Arguments of Sri Vijay Shanker Rastogi, learned counsel appearing on behalf of Nand Lal Yadav, one of the transferee are inconclusive.

As prayed, put up on 2nd April, 2007 to complete arguments by Sri V.S. Rastogi and other counsels of the transferees/parties.

Office is directed to supply a certified copy of this order learned Standing Counsel for the State of Uttar Pradesh without any charge and will issue certified copy to learned counsel for the parties on payment of usual charges on usual charges within 24 hours."

Heard learned counsel for the parties.

Sri M.C. Chaturvedi, learned Chief Standing Counsel, State of U.P. made a statement that there is no separate legislation in the matter of protection of Hindu religious places, temples or endowment trust affected by the communal tension and if such religious places or temples are insecure due to communal tension or due to activities of anti social elements, it is a law and order problem and if any problem arises of which a written complaint is received by the police authorities, the local Police looks into the matter of law and order problem and takes steps accordingly, but there is no law, i.e., the Act, Rule, Statute, Circular, Government Order or any other document having force of law to provide such protection continuously. He further urged that as there is no such Legislation on the subject, in case the Court gives any appropriate direction or frame a scheme for protection of such Hindu religious places, the State will take appropriate steps accordingly. He also urged that in case this Court considers it appropriate and appoints any Body/Commission to look after the matter and submits a comprehensive report to take steps by the State Government, the State Government will proceed accordingly.

Learned counsel for the petitioner urged that the order passed by the Additional District Judge, Varanasi in Appeal No. 8 of 1989 under Section 476 of the Nagar Maha Palika Adhiniyam was an ex parte order and the Additional District Judge erred in law in refusing to set aside the ex parte order. He further urged that any property vested in Deity, Shebaitis have every right to alienate the same. In instant case Shebaitis had exclusive right to alienate the property for a legal necessity. It was further urged that the sale deeds executed by Nirmal Ranjan Mukerji were nonest and void and are liable to be set aside. In view of the terms and conditions in the Deed of dedication, the two families would continue as joint Shebaitis and Opp. Party no.1 had no exclusive right to alienate properties as sole Shebait. It was also urged that Shebaitis were fully competent to execute sale deeds in the facts of the case inspite of prohibition in the Deed of Dedication. Lastly, he prayed that the impugned orders may be quashed and/or any suitable writ may be issued.

During the course of hearing of the case, Sri Nirmal Ranjan Mukerji died and he was substituted by his son Amal Ranjan Mukerji who is also represented through Sarvasri V.S. Rastogi and Tarun Tiwari,

Advocates. Sri V.S. Rastogi, Advocate, also represents Smt. Durga Devi, Transferee-Respondent no.6.

Learned counsel appearing on behalf of transferees and Respondent no.1, Sri V.S. Rastogi urged that the condition of prohibition of transfer of property in question mentioned in the Deed of Dedication is void being violative of Section 10 of the Transfer of Property Act. He urged that in spite of prohibition in the Deed of Dedication, the Shebaitis were competent to execute the sale deeds for legal necessities. He further urged that as the house was very old and in dilapidated condition as is clear from the sale deed and constantly affected by communal violence and for security reasons it was rightly sold for legal necessity with the intention to protect the deity. No restriction or prior permission of any other authority approval is required under any provision of law. He relied upon AIR 1959 Patna, 305 in support of his case.

Sri Shesh Kumar, learned counsel appearing for other transferees, relying upon AIR 1959 Patna, 305, Ram Chandrajai Maharaj and others Vs. Lalji Singh and another urged that the restriction/prohibition of transfer of property in the Deed of Dedication vested in Deity is void and urged that it is not a public trust and Shebaitis are members of same family are performing Rag, Bhog and Pooja do not require any permission or prior approval of sale deed was executed for legal necessity. He further urged that whether there was any legal necessity or not, it will be adjudicated in the Suit not by this Court.

Sri M.C. Dwivedi, learned counsel appearing for one of the transferee also reiterated the same arguments and urged that restriction provided in the Deed of Dedication does not affect the right of alienation if property vested in Deity is managed by Shebaitis, whether it is public or private trust, but admitted that property is normally unalienable, but for legal necessity property could be alienated.

Sri C.K. Parekh, learned counsel appearing for Respondent-Nagar Nigam Varanasi urged that the Deed of Dedication specifically prohibits alienation of any Devottar property in question. The sale deed executed in violation to the terms and condition of the Deed of Dedication would not confer any right on transferees and Nagar Nigam, Varanasi is competent to refuse to acknowledge such transfer deeds. He further urged that Section 10 of the Transfer of Property Act is not applicable to the Deed of Dedication to Deity which is not a transfer and petitioner or Opp. Party no.1 cannot be saved under Section 10 of the Transfer of Property Act. He further urged that a Doner executing a Deed of Dedication was fully competent to prohibit alienations of the property of Deity by Shebaitis.

Sri Bhola Nath Yadav, learned Standing Counsel, while supporting the arguments advanced by Sri C.K. Parekh, learned counsel appearing on behalf of Nagar Nigam, Varanasi and urged that the sale deeds were executed on the ground that the property in dispute is frequently affected by communal violence and for marriage of daughter apart from other grounds. This could not constitute legal necessity. He further urged that restriction on right to alienate in the Deed of Dedication was valid and the arguments of learned counsel for the petitioner and transferees that transfers are valid cannot be accepted.

Sri Sanjay Goswami, learned Amicus Curiae, urged that entire State of Uttar Pradesh is suffering from such problem and the property of Hindu Religious Institutions vested in Deities managed by the private Shebaitis/Managing Bodies of Temples and other properties of public or private Trusts though vested Deity are being transferred purporting it to be for legal necessity. He urged that so far as Charitable Societies are concerned they are protected under Section 5-A of the Societies Registration Act and the prior permission from the District Judge is necessary before any alienation. He further urged that since Deity is a minor and minor under the Hindu Minority and Guardianship Act is also given protection as no transfer of property of a minor could be made without prior permission of the District Judge under Section 8 (2) of the Hindu Minority and Guardianship Act. He further urged that under the Trust Act, there are various restriction, but so far as the properties and Temple vested in Deity are concerned, there is no such legislation for such protection. As a large number of illegal transfers, misfeasance, misuse of funds from property of Temple vested in Deity and abuse of powers by Shebaitis in alienating and mismanagement of such properties of Deity are being reported, some scheme should be framed in this regard in absence of any legislation. He urged that there are different ways of protection such such properties of Deity such as :-

1. A Board may be created to look after and ensure proper Management in accordance with Deed of Dedication/Trust Deed should be ensured in order to curb mismanagement.

2. In the State of Uttar Pradesh there is no record of such religious institutions, temples and its property vested in deity and as such there must be some scheme for registration of such religious institutions with specific details

3. If there is any registered deed of creation of such Religious Institutions or its properties vested in Deity, it is duty of the State of U.P. to take appropriate steps to look after such properties to ensure proper management, security and safety of Religious rights of Hindus from communal violence, grabbing by anti social or communal elements to protect religious rights under Articles 25 & 26 of the Constitution of India.

He urged that there must be some Board/Body to look after all the matters relating to Temples and other properties in order to stop misuse, misappropriation of funds, safety and security of such religious institutions by Shebaites, antisocial and communal elements alongwith connected matters. He urged that in the present case, the property was sold on the ground that it is situated in area affected by communal violence. He urged that if no protection is given by the State to such religious Institutions throughout the State of U.P., a time may come when properties of Temples or religious Institutions will go in the hands to anti social elements or communal elements and anti Hindu forces and communal forces will be encouraged to create communal tension who would engineer atmosphere of communal violence to grab Hindu Religious Institutions. It was also urged that in the absence of any legislation, Rule, Statute, Circular or Government Order in this matter, a scheme may be framed by this Court to provide safeguard and protection to all such Religious places and its properties.

Kashi Vidwat Parishad, India, Head Office-Varanasi through its counsel Sri I.N. Singh, learned counsel was also heard at length. He urged that in view of importance of Lord Krishna, a Deity in Temple Gopal Dham whose abode was alienated illegally, who had given us 'Gita' which is a Dharmashastra not only for the Hindus, but for the entire human being which propounded 'Dharma' including 'Karma Yog', 'Gyan Yog' and 'Bhakti Yog'. He urged that 'Gita' should be declared as a 'National Dharma Shastra' of India as it has nothing to do with any particular religion, but it propounded theory of duties of human beings. He also urged that the followers of all religions talk about Duty of man kind. Message of Gita is relevant for all religions of the world and is not only for any particular religion. As the property in question is vested in Sri Gopal Thakur (Lord Krishna) situated in Gopal Dham Temple, it is also necessary to consider relevance of Lord Krishna and the Dharm Shastra 'Gita' dedicated to humanity. He further urged that the State of U.P. may be directed to take all steps to protect temples, Mutth, (public or private) Religious Institutions and its properties vested affected by communal violence created by anti social and communal elements and this Court may frame certain appropriate scheme to protect all such religious Institutions of all Beliefs and Thoughts (religions) within the fold of Hinduism. He relied upon 2007 (3) ADJ SC, p. 83, Chhedi Lal Misra (Dead) v. Civil Judge, Lucknow and urged that once the property is dedicated to a Deity, it is dedicated to the Almighty and any person, whether Manager/Shebaites or Management Body is incompetent to alienate the property vested in Deity on any ground whatsoever and in case such religious place and its property is situated in an area affected by the communal violence or affected by the activities of antisocial elements or group of such persons who are instrumental in creating law and order problem affecting right to profess, practise, propagate religion and religious rights of Raj, Bhog and Pooja and its properties, a Board may be constituted.

In view of the submissions made by the learned counsel for the petitioners, learned counsel for the transferees, Sri M.C. Chaturvedi, learned Chief Standing Counsel, State of U.P. assisted by Sri Bhola Nath Yadav, learned Standing Counsel, Sri C.K. Parekh, learned Counsel for Nagar Nigam, Varanasi, Sri Sanjay Goswami, learned Amicus Curaei and Sri I.N. Singh, learned counsel appearing on behalf of Kashi Vidyapeeth, the following points are necessary to be decided in the present case.

This Court is considering the first question whether the property vested in Deity is alienable.

It is urged by Sri C.K. Parekh, learned counsel for Nagar Nigam, Varanasi that Section 10 of the Transfer of Property Act, is not applicable to properties dedicated to the Deity as it could not be a transfer. He further urged that it cannot be said to be a gift under Section 122 of the Transfer of the

Property Act inasmuch as there is no living person to accept the gift. Once the property is dedicated to Sri Gopal Thakur (Sri Shaligram Shila), it is dedicated to the God (Almighty), it is not alienable by Manager, Sarvakar or Shebait on any ground and in the instant case there is a prohibition under Terms and Conditions of Deed of Dedication.

Learned counsel for the petitioners urged that Sarvakar is fully competent to transfer the property and any term or condition in the deed restraining Sarvakar/Manager of which temple or property vested in deity is void under Section 10 of the Transfer of Property Act and a Manager is fully competent to alienate a Debuttra property for legal necessity or for the benefit of the Deity (Almighty).

Sri Shesh Kumar and Sri M.C. Dwivedi, learned counsel for the transferees also supported the view that the Debuttar property is transferable and supported the petitioners' view and urged that the idol of Lord Krishna installed in the 'Gopal Dham' was rightly removed and was reinstalled at Allahabad and for performing Pooja, Rag and Bhog of the deity, the property was rightly sold, which is permissible under law.

Sri I.N. Singh, learned counsel appearing for Kashi Vidwat Parishad on the first question urged that once the property is dedicated to Lord Krishna who is incarnation of God (Almighty), the property is not transferable by the Manager/Sarvakar/Shevaita. He urged that dedication to Deity finally vests in the Almighty and a person appointed to look after interest of Deity is appointed to facilitate religious right is incompetent to alienate the property. Any such transfer is void ab initio and does not bind Deity being in violation of terms and conditions of the Deed of Dedication.

Sri Sanjay Goswami, learned Amicus curie on first question also urged that Debuttar property is unalienable in law and urged that whole thing will be guided by the terms and conditions of Deed of Dedication by which the property was dedicated to Deity and Shebait were appointed.

From perusal of the the terms and condition of Deed of Dedication to the Deity, it is clear that there is a specific restriction on transfer by way of sale or mortgage.

Now the Court is considering whether the prohibition clause contained in the Deed of Dedication is void as urged by the learned counsel for transferees as well as learned counsel for the Transferors under Section 10 of the Transfer of Property Act.

Section 10 of the Transfer of Property Act is quoted below:

"10. Condition restraining alienation.- Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him; provided that property may be transferred to or for the benefit of a women (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein."

Section 10 of the Transfer of Property Act makes it clear that if property is subject to a condition absolutely restraining the transferee or any person claiming under him from parting or disposing of his interest in property, such condition is void, except in case of lease.

The further question arises what is transfer.

It is necessary to refer Section 5 of the Transfer of Property Act in order to understand the controversy. Section 5 of the Transfer of Property Act, is quoted as follows:-

5. "Transfer of property" defined. - In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more than living persons, or to himself, (or to himself) and one or more other living persons; and "to transfer property" is to perform such act.

4 (In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals)".

According to Section 5 of the Transfer of Property Act, transfer of property means an act by which a living person conveys property, in present or in future, to one or more than living persons, or to himself, (or to himself) and one or more other living persons; and "to transfer property" is to perform such act. Living person has been defined which includes a company or association or body of individuals whether incorporated or not.

This question came up for consideration by Apex Court in the case of Shiromani Gurudwara Prabandhak Committee, Amritsar v. Shri Som Nath Das & others, AIR 2000 SC 1421 where 'Guru Granth Sahab' was recorded in the revenue record and question arose whether 'Guru Granth Sahab' is a juristic person or not.

'Juristic Person' has been dealt with in Paragraph 11 of the judgment of the Apex Court which says that 'Juristic Person' connote recognition of an entity to be in law a person which otherwise it is not. In other words, it is not an individual natural person but an artificially created person which is to be recognised to be in law as such.

The Apex Court in Paragraph 13 of the said judgment has dealt with 'Natural person' and 'Legal person'.

Paragraphs 13 and 14 of the judgment of the Apex Court in Shiromani Gurudwara Prabandhak Samiti (supra) are being reproduced below:-

"13. With the development of society, 'where an individual's interaction fell short, to upsurge social development, co-operation of a larger circle of individuals was necessitated. Thus, institutions like corporations and companies were created, to help the society in achieving the desired result. The very Constitution of State, municipal corporation, company etc. are all creations of the law and these "Juristic Persons" arose out of necessities in the human development. In other words, they were dressed in a cloak to be recognised in law to be a legal unit.

Corpus Juris Secundum, Vol. LXV, page 40 says:

Natural person. A natural person is a human being; a man, woman, or child, as opposed to a corporation, which has a certain personality impressed on it by law and is called an artificial person. In the C.J.S. Definition 'Person' it is stated that the word "person," in its primary sense, includes natural persons and artificial, conventional, or juristic persons.

Corpus Juris Secundum Vol. VI, page 778 says:

Artificial persons. Such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic.

Salmond on Jurisprudence, 12th Edn., 305 says:

A legal person is any subject-matter other than a human being to which the law attributes personality. This extension, for good and sufficient reasons, of the conception of personality beyond the class of human being is one of the most noteworthy feats of the legal imagination....

Legal persons, being the arbitrary creations of the law, may be of as many kinds as the law pleases. Those which are actually recognised by our own system, however, are of comparatively few types. Corporations are undoubtedly legal persons, and the better view is that registered trade unions and friendly societies are also legal persons though not verbally regarded as corporations.

...If, however, we take account of other systems than our own, we find that the conception of legal personality is not so limited in its application, and that there are several distinct varieties, of which three may be selected for special mention.

1. The first class of legal persons consists of corporations, as already defined, namely, those which are constituted by the personification of groups or series of individuals. The individuals who thus form the corpus of the legal person are termed its members.....1

2. The second class is that in which the corpus, or object selected for personification, is not a group or series of persons, but an institution. The law may, if it pleases, regard a church or a hospital, or a university, or a library, as a person. That is to say, it may attribute personality, not to any group of persons connected with the institution, but to the institution itself....

(3) The third kind of legal person is that in which the corpus is some fund or estate devoted to special uses - a charitable fund, for example or a trust estate.....

Jurisprudence by Paton, 3rd Ed., page 349 and 350 says

It has already been asserted that legal personality is an artificial creation of the law. Legal persons are all entities capable of being right-and-bearing units - all entities recognised by the law as capable of being parties to legal relationship. Salmond said: 'So far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties.....

....Legal personality may be granted to entities other than individual human beings, e.g. a group of human beings, a fund, an idol. Twenty men may form a corporation which may sue and be sued in the corporate name. An idol may be regarded as a legal persona in itself, or a particular fund may be incorporated. It is clear that, neither the idol nor the fund can carry out the activities incidental to litigation or other activities incidental to the carrying on of legal relationship, e.g., the signing of a contract: and, of necessity, the law recognises certain human agents as representatives of the idol or of the fund. The acts of such agents, however (within limits set by the law and when they are acting as such), are imputed to the legal persona of the idol and are not the juristic acts of the human agents themselves. This is no mere academic distinction, for it is the legal persona of the idol that is bound to the legal relationships created, not that of the agent. Legal personality then refers to the particular device by which the law creates or recognizes units to which it ascribes certain powers and capacities." Analytical and Historical Jurisprudence, 3rd Edn. At page 357 describes "person";

We may, therefore, define a person for the purpose of jurisprudence as any entity (not necessarily a human being) to which rights or duties may be attributed.

14. Thus, it is well settled and confirmed by the authorities on jurisprudence and Courts of various countries that for a bigger thrust of socio-political-scientific development evolution of a fictional personality to be a juristic person became inevitable. This may be any entity, living inanimate, objects or things. It may be a religious institution or any such useful unit which may impel the Courts to recognise it. This recognition is for subserving the needs and faith of the society. A juristic person, like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law. When an idol, was recognised as a juristic person, it was known it could not act by itself. As in the case of minor a guardian is appointed, so in the case of idol, a Shebait or manager is appointed to act on its behalf. In that sense, relation between an idol and Shebait is akin to that of a minor and a guardian. As a minor cannot express himself, so the idol, but like a guardian, the Shebait and manager have limitations under which they have to act. Similarly, where there is any endowment for charitable purpose it can create institutions like a church hospital, gurdwara etc. The entrustment of an endowed fund for a purpose can only be used by the person so entrusted for that purpose in as much as he receives it for that purpose alone in trust. When the donor endows for an idol or for a mosque or for any institution, it necessitates the creation of a juristic person. The law also circumscribes the rights of any person receiving such entrustment to use it only for the purpose of such a juristic person. The endowment may be given for various purposes, may be for a church, idol, gurdwara or such other things that the human faculty may conceive of, out

of faith and conscience but it gains the status of juristic person when it is recognised by the society as such."

Learned counsel for the petitioners as well as the learned counsel for the transferee and Sri V.S. Rastogi, learned counsel appearing for the opposite party no. 1, relied upon the judgment reported in AIR 1959 Patna 305, Ramchandrajai Maharaj and others Vs. Lalji Singh and another (DB). The relevant paragraph 11 of the said judgment is quoted below:-

"The primary, nay, the sole object, of this dedication is performance of services and worship of the deities. As a necessary corollary to this paramount object of dedication is the power of a shebait or a mahant in charge of the dedicated property to alienate wholly or in part such property for the purpose of keeping up the religious worship and for the benefit and preservation of the property. It is well-settled law that a mahant or shebait has power to incur debts and alienate the dedicated property either by sale or mortgage "in a case of need or for the benefit of the estate.

If the shebait is given no power to make any alienation even in the case of existing necessity, it is easy to see that the very object of dedication will be frustrated and the worship of the deities may suffer. It is plain, therefore, a gift to a deity with no power of alienation even where pressing necessity or benefit to the estate demands it will render ineffectual the entire dedication since its consequence will be that the preservation of the property meant to subserve the interest of the deity will prevail over the legitimate interest of the deity a fact hardly consistent with the intention of the donor and the interest sought to be created by the instrument.

...Having in view the primary object of the dedication it is only reasonable to assume that while imposing limitation on the power of a donee or shebait to alienate the donor had in his mind the ordinary restriction upon alienation as recognized by law, which would apply independently of any such condition in the deed.

It will be wrong to assume that by generally restricting the power of alienation he intended to abrogate the well established principle of Hindu Law, namely, that a shebait can alienate a debutter property for legal necessity or the benefit of the estate. As pointed out in the case of Ram Bahadur referred to above, the fact is that in a case of this kind it is very easy to use the words "without the power of alienation" in a loose sense, that is to say, to use them in the sense without power of alienation except in the case of recognized legal necessity.

It must be held, therefore, that restriction on the power of the shebait to alienate the dedicated property is void and inoperative and was, therefore, legally ineffectual to invalidate the perpetual lease in favour of the defendants. The condition of Mr. Das, therefore, fails."

The same view was reiterated in AIR 1986 Punjab, 355.

The transfer is made by a living person in present or in future to one or more living persons or to himself or more living persons and to transfer property is to perform such act. In this connection, living persons include a company or association or body or individual whether it is incorporated or not but thing herein contain shall affect any law relating to Transfer of Property Act through any company or body of the individual.

In the case of Tangella Narasimhaswami, Dharma Kartha of Sri Kodanda Ramchandra Moorty v. Madini Venkatalingam and others, AIR 1927 Madras 636, the question was for the purposes of Section 5 and Section 123 of the Transfer of Property Act whether gift to a God could be a gift to a living person. The Full Bench of the Madras High Court at page 638 of the judgment held that a "juristic person is not necessarily a living person and the fact that for some purposes the law by a fiction invests non-animate bodies with the rights of persons would not make juristic persons living persons for all purposes. It is unnecessary to pursue this point further as the document is a gift to Sri Kodanda Ramachndra Moorti the Almighty and by no stretch of imagination, legal or otherwise, can it be said that the Almighty is a living person within the meaning of the Transfer of Property Act."

According to the Full Bench judgment of the Madras High Court, Section 5 of the Transfer of Property Act will not be attracted so far as dedication of property to Almighty is concerned.

In the case of *Mt. Brij Devi v. Shiva Nanda Prasad and others*, AIR 1939 Allahabad 221, the question to be considered was whether the donor who made a gift of certain properties could revoke deed and resume possession of the gifted property which was conveyed to the Defendant no.2 (Deity). The Court in such a situation held that such condition or clause of suspension or revocation of the gift is void under Section 10 of the Transfer of Property Act.

In the case of *Irshad Husain v. Bakshish Husain and others*, AIR (33) 1946 Oudh 254, the question arose whether a Deity is living a person. The Court in this case held that "I am of opinion that the transfer of property to the idol is not bad if it is not covered by S. 5 T.P. Act. Such transfer of property will not, therefore, be subject to the provisions of the Transfer of Property Act. The case referred to shows that a gift to God is not a gift to a living person and that, therefore such a gift does not require registration."

Judgment of the Division Bench of the Calcutta High Court in the case of *Champa Bibi v. Panchiram Nahata Siva Bigraha and others*, AIR 1963 Calcutta 551 (V 50 C 104) also supports case put-forth by Sri C.K. Parekh, learned counsel appearing on behalf of Nagar Nigam that "a dedication of property to a Hindu deity may be described as a gift of property in a secondary or figurative sense. The dedication is a gift for a religious purpose, and in a figurative sense is a gift to the deity as the ideal embodiment and symbol of the religious purpose. The Hindu law recognizes juristic persons, see *Manohar Ganesh v. Lakshmiram*, ILR 12 Bom 247 at pp. 263-5. The deity is a juridical person with the power of suing and being sued, see *Prematha Nath v. Pradyumna Kumar*, ILR 52, Cal. 809: Cal WN 25: (AIR 1925 PC 139), and of owning properties in an ideal sense, see ILR 37 Cal 128, 140, 145 and 168 IFB."

The judgments of the Apex Court reported in AIR 1980 SC 312, *The Controller of Estate Duty, West Bengal, Calcutta Vs. Usha Kumar and others*, 1974 SC 663, In AIR 2000 SC 1421, *Shriomani Gurudwara Prabandhak Committee, Amritsar Vs. Shri Som Nath Dass & others* make it clear that Deity is a juristic person and a gift to the juristic person is perfectly valid in accordance with law, but Deity cannot be treated as a living person like Shebait and, therefore, Section 5 of the Transfer of Property Act will not apply. It has been further held in the judgments of the Apex Court that affairs of the Deity could be managed through Shebait/Sarvakars/Managers appointed in accordance with the Deed of Dedication, who are simply managers to manage the properties vested in the Deity (Almighty). Shebait is a person, who is appointed according to Deed of Dedication, to give effect to the terms and conditions contained therein and to perform Rag, Bhog and Worship and other connected affairs and to protect the properties vested in Deity (Almighty) not to alienate the same. Gift once made to the Deity is irrevocable on any ground.

It has been held in (1988) ILR 12 Bom 247 *Manohar Ganesh v. Lakshmiram* (approved in *Yogendra Nath Naskar's case* MANU/SC/0252/1969, AIR 1969 SC 1089, (1969) 74 ITR 33 (SC), (1969) 1 SCC 555 that in case there is a Shebait to manage the affairs in the interest of Deity and in case there is no surviving Shebait under the Deed of Dedication, it is the Court representing the sovereign could appoint management to any specific body recognized in law according to the will of the endowment by a donor dedicated to the Deity in the Deed of Dedication for religious purpose, whether family Deity or Deity worshiped by the general public. It is an entrustment to the juristic person of the Deity. The Shebait, who is creation of the Deed of Dedication or a person appointed by the Court to manage the affairs of the Deity could only work in the interest of Deity and cannot deal with the property of his own or claim any adverse right to Idol as held in AIR 1954 SC 69, *Sree Sree Ishwar Sridhar Jew Vs. Sushila Bala Dasi and others*.

In AIR 1985 SC 905, *Shambhu Charan Shukla Vs. Shri Thakur Ladli Radha Chandra Madan Gopalji Maharaj and another*, it has been held that a sale by a shebait or mohunt authorised to manage debuttar property is void, even though the transfer may be coupled with an obligation to manage the affairs.

The Waqf under the Muslim Law is a dedication to the Almighty and in Hindu Law also a dedication to Deity is a dedication to the Almighty and once the Waqf or Trust is created or property is dedicated to the Hindu Deity, no one either Shebait/Mahant/Sarvakar or Manager or any one else in the garb of

right to manage the property vested in Deity or dedicated to the Deity (Almighty) has right to alienate the property against the interest of the Deity and, therefore, if there is term and condition under the Deed of Dedication imposing a restriction on the transfer of property by way of sale and mortgage is perfectly valid and is not in contravention of any of the provision of Transfer of Property Act.

In *Shriomani Gurudwara Prabandhak Committee, Amritsar Vs. Shri Som Nath Dass & others* (supra), Apex Court held that "In that sense, relation between an idol and Shebait is akin to that of a minor and a guardian. As a minor cannot express himself, so the idol, but like a guardian, the Shebait and manager have limitations under which they have to act. Similarly, where there is any endowment for religious and charitable purpose it can establish religious and charitable institutions like hospital, gurdwara etc. The entrustment of an endowed fund for Religious purpose can only be used by the person so entrusted for that purpose only in as much as he receives it for that purpose alone. When the donor endows in favour of any Deity or for religious institution, it necessitates the creation of a juristic person. The law also circumscribes the rights of a person authorised under such entrustment to work only for the benefit of such a juristic person."

If there is no restriction on alienation in the Deed of Dedication whether there should be any restriction or prior permission of any authority so far as Debuttar property vested in Deity/Almighty/Religious/Trust/Mutth or any other religious institution are concerned. As held above, such properties are unalienable. In case in the Deed of Dedication there is any restriction on alienation, sale or mortgage, no alienation is permissible. In the present case transfer of property is permissible only by way of lease as title of the property continues with the Deity. Even in a case where there is no such restriction in the Deed of Dedication, the transfer could be made for legal necessity only.

From the perusal of the petition and the affidavit filed by the petitioner as well as the opposite party no. 1, it is apparent that no averment has been made that the Deity (Gopal Thakur) was shifted from Gopal Dham, Mohalla- Til Bhandeshwar, Varanasi to Allahabad in accordance with the Hindu rites. A Shebait cannot deprive a deity from his abode on his sweet will. Admittedly, in the present case, the Lord Krishna (Gopal Thakur) has his own temple situated in House No. B-17/57, Til Bhandeshwar, Varanasi. There was no occasion for shifting the Deity from Varanasi to Allahabad taking a plea that the area was affected by communal violence. Execution of sale deed of the temple and other properties vested in the Deity. In a case where situation is beyond the control of Shebait, Deity may be shifted in accordance with the Hindu rites. Neither there is no averment of performing any Hindu rites before shifting the Deity nor any material is on record. Thus, shifting of Deity for convenience of Shebait is illegal and unsustainable in law. Idol of Sri Shaligram Shila (Lord Krishna) (Gopal Thakur) installed in Gopal Dham at Til Bhandeshwar, Varanasi is entitled to be reinstalled in the temple where Deity was installed by the dedicator(founder)of the property on 5.3.1928. The Deity was installed by the founder in the Temple through Deed of Dedication prohibiting shifting of Deity from Temple. Alienation of the property vested in Deity was also prohibited by Deed of Dedication. This Court is of the view that Shebait acted against the interest of the deity and are liable to be removed in accordance with law.

It is apparent from the material on record that all the properties dedicated to Lord Krishna (Gopal Thakur) were alienated/transferred through various sale deeds on the ground which could not be considered for legal necessity on receiving huge amount from the transferees by the Shebait treating it their own property and as such the Shebait may not be entitled to continue as Shebait. In case Shebait acted against the Deed of Dedication, they may be dealt with according to law.

It is now well settled that the Court in exercise of sovereign powers could appoint a Shebait or Manager to look after the affairs of Temple of Deity or its other property. In case Shebait or Manager acting in violation of the terms and conditions of the Deed of Dedication alienated the properties vested in Deity, the Court is of the view that the deity is not bound by such sale deed. Such Sale deeds executed by the Shebait in contravention to the terms and conditions of Deed of Dedication cannot confer any right to transferees and as such all the sale deeds and confirmation deeds by petitioner and Opp. Party no.1 are void and Deity is not bound by the same.

Whether Prior Permission is necessary

before transferring any property vested

in Deity/Almighty/Religious Body:

The law has already created a restriction on transfer of charitable and Trust properties and made certain provisions so far as the charitable societies are concerned. So far as societies established for charitable purposes which are governed by the Societies Registration Act are concerned, Section 5A of the Societies Registration Act makes it clear that no transfer is permissible without prior approval of the District Judge. Section 5A of the Society Registration Act is quoted below:-

"5A, Restriction on transfer of property- (1) Notwithstanding anything contained in any law, contract or other instrument to the contrary, it shall not be lawful for the governing body of a society registered under this Act or any of its members to transfer without the previous approval of the Court, any immovable property belonging to such society.

(2) Every transfer made in contravention of sub-section (1) shall be void.

Explanation I. - The word 'Court' shall have the meaning assigned to it in Section 13.

Explanation II- The expression 'transfer' shall for the purposes of this section mean-

(a) a mortgage, charge, sale gift, or exchange;

(b) lease for a term exceeding five years; or

(c) "irrevocable licence."

In the Hindu Minority and Guardianship Act, Section 8(2) is also there which says that if the property is vested in Hindu Minor, it could be transferred with the prior permission of the District Judge. So far as the deity is concerned, it is always considered a minor 'a juristic person' who is represented through Shebait/Sarvakar/Manager and in case of a minor in the Hindu Law protection has been given to minor to the effect that the property cannot be sold without permission of the District Judge. The question under consideration is whether such protection could also be available to deity who is also minor or whether there could be such restriction on the Shebait who manages the affairs of the deity a 'minor'.

In this regard, Section 8(1), (2) and (4) of the Hindu Minority and Guardianship Act, 1950 is also very relevant in the controversy involved in the present case. The same is being quoted below:-

"8. Power of natural guardian.- (1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate, but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,-

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor, or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor."

The Apex Court in Shriomani Gurudwara Prabandhak Committee, Amritsar Vs. Shri Som Nath Dass & others and other cases (supra), has held that the Deity is a minor and if the property is dedicated for the religious purposes, welfare of the Deity could be looked into by the Shebait/Sarvakar/Manager

appointed in accordance with the Deed of Dedication or by the Management as Guardian as Deity never attains majority and always remains minor. Any transfer made against the interest of the Deity will be void as other minors may attain majority, but Deity cannot.

This Court, after considering the matter in its entirety, is also taking note of transfers made by Shebait treating the property vested in Deity as their private property and is of the firm view that the prior permission from the District Judge in the event of alienation of any property vested in Deity or Religious Institution is necessary. In case the District Judge is not Hindu, as defined under Articles 25 and 26 of the Constitution of India, the Additional District Judge next to the District Judge in rank shall be treated to be competent Authority for according permission. After constitution of the Board, the Board may be assigned the appellate power against the order of District Judge by any aggrieved party even by a devotee.

Whether Temple could be alienated:

In view of the discussions made above, in case any dedication to the Deity is made under some Deed of Dedication, Shebait, who is creation of same Deed of Dedication, is estopped to plead that the terms and conditions of the deed prohibiting any transfer in the Deed of Dedication is void.

There are two kinds of dedication of properties (i) Temple and (ii) the other properties vested in Deity and other religious Institutions.

Though the matter has been discussed above, but at the cost of repetition, this Court is of the firm view that a Temple where Idol of the Deity was installed and other property endowed for the purposes of Idol are unalienable, if it is restricted in Deed of Dedication. My view is supported by the judgment in *Mukundji Mahraj v. Persotam Lalji Mahraj*, AIR 1957 Allahabad 77 that the first and foremost duty of a Mahant or a Shebait of an Idol is to preserve and maintain the Idol, that is to say, as an object of worship inasmuch as a Temple, the abode of the Idol is to be preserved and maintained at any cost. Property other than the Temple endowed for the purposes of the Idol may have to be alienated if it is absolutely legally necessary for the purpose of preservation of the Idol and its Temple and there is no restriction. No Shebait or Mahant/Manager can, therefore, have the right of alienating the Temple itself. As the Temple has a special sanctity distinct from other endowed property, to alienate the temple itself is to cut root of the very existence of the Idol in the habitation intended by the founder. Hindu sentiment views the alienation of a Temple as a sacrilege.

Shebait also did not make any averment that why and how the Deity was shifted from Temple without performing any Hindu rites. In the present case the Temple 'Gopal Dham' is the abode of Lord Krishna (Gopal Thakur). No shifting of Idol is permissible and if any contingency arises and Deity had no other place and if it was necessary to shift the Deity due to any emergent situation of collapse of Temple, for the time being it may be done in accordance with law after performing ritual rites and in accordance with law. Shifting of Deity to Allahabad without any such reason and sale of the Temple in the present case is without any authority in law and Temple is liable to be maintained on all cost and Idol of Lord Krishna is liable to be re-installed in the Temple.

Abandonment of Temple in fact is void and does not bind the Deity. So far as other properties vested in the Deity other than Temple, i.e., House No.17/57, 'Gopal Dham' are concerned they also vested in Deity and could not be alienated in view of prohibition in the Deed of Dedication. If there was legal necessity and there is no restriction in the Deed of Dedication, the properties could be alienated with prior permission of the District Judge who shall record a finding in case of every transfer for legal necessity before according permission. In the present case, shifting of the Deity and transfer of property vested in Deity on the ground of insecurity of family of Shebait due to communal violence could not be considered as legal necessity and such alienation is unsustainable in law in view of prohibition in the Deed of Dedication.

Even if there is no restriction in the Deed of Dedication, alienation of Temple of Gopal Thakur (Sri Shaligram Shila) is impermissible, even if the area was affected by communal violence and even the family of Shebait was insecure. This Court is of the view that this ground could not be considered to be a legal necessity to the benefit of Deity (Almighty). In case area was affected by the communal violence, all effective steps should have been taken for the security and safety of the Temple by

Shebait, rather to run away by transferring the properties vested in Deity. Both Shebait have not taken any such step to protect the Temple and other properties vested in Deity, rather they appear to be interested in selling the properties vested in Deity by executing sale deeds and deed of confirmations in competition with each other after receiving substantial money treating property of their own.

It further appears that there was a dispute between two Shebait and the transferees taking benefit of such dispute got the entire property of Deity transferred through transfer alienating properties and Temples by Opp. Party no.1 as well as by petitioner. Petitioner and Opp. Party nos.1 were litigating for exclusion of each other from the office of Shebait. In the subsequent sale deeds the reason disclosed was that the the property is being sold for the marriage of daughter and for investment of sale consideration in the business. Dilapidated condition of the property could not be ground to sell Temple and other properties of Deity. Therefore, this Court is of the view that sale deed executed by the Shebait of the Temple and other properties dedicated to Deity 'Gopal Thakur' (Lord Krishna) is void and could not confer any right to transferees or binds Deity (Almighty).

Whether the Hindu Temples (private or public), Religious Endowments, Mutths, Religious Trusts etc. affected by communal violence, activities of anti social elements and anti religious activities are entitled to get protection for Shebait under Articles 25 and 26 of the Constitution of India?

On the argument of learned counsel for the parties following question also arises to be considered.

1. Whether the Temples (private or public), religious endowments, Mutths, public and private Religious Institutions etc. affected by communal riots and activities of antisocial elements are entitled to get protection under Articles 25 and 26 Constitution of India?

2. Who are Hindus, which Temples and Religious Institutions are entitled to get protection under Articles 25 and 26 Constitution of India?

3. Whether Hinduism is religion?

It was urged that this question is of general importance and according to Sri C.K. Parekh, learned Counsel for Nagar Nigam, Varanasi, Sri I.N. Singh, learned counsel appearing for Kashi Viddhwat Parishad and learned Amicus Curai this matter may also be gone into and may be decided by this Court.

On the arguments of learned counsel for the parties, whether this Court is competent to go into these questions arising in this case on arguments of parties is also relevant to be considered.

I have gone through the judgment of the Apex Court reported in 2003 (7) SCC 546, Guruvayoor Devaswom Managing Committee and another v. C.K. Rajan and others and I am of the view that according to the law laid down by the Apex Court in this judgment, the Court can try this issue.

In the judgment of Guruvayoor Devaswom Managing Committee and another Vs. C.K. Rajan and others (supra), the Apex Court observed as follows:

VIII. However, in an appropriate case, although the petitioner might have moved a court in his private interest and for Redressal of personal grievances, the court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. (See Shivajirao Nilangekar Patil Vs. Dr. mahest Madhav Gosavi).

This view was further reiterated by the Apex Court in (2005) 5 SCC 298, Ashok Lanka and another vs. Rishi Dixit and others, relevant paragraph 42 of which is being quoted below:

"Furthermore it is well settled that even in a case where a petitioner might have moved the Court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of

justice (see Guruyayoo Devaswom Managing Committee v. C.K. Rajan, SCC para 50 and Prahlad Singh versus Col. Sukhdev Singh (1987) 1 SCC 727)."

The same view was again settled by the Apex Court in AIR 2003 SC 4531, General Manager, Kisan Sahkari Chini Mills Limited, Sultanpur, U.P. versus Satrughna Nishad. Again similar matter came up for consideration before this Court in 2006 (4) A.D.J. 106 (All.) (Full Bench), Suo Moto Action Taken by the Court Versus I.C.I.CI. Bank Ltd. Allahabad and others. The Division Bench of this Court dealing with the habeas corpus petition framed certain issues of public importance involved in the case and referred the matter to Hon. The Chief Justice to register as P.I.L. to be decided by the appropriate court. The Chief Justice, Allahabad High Court, treating it as a Public Interest Litigation constituted a Full Bench. The Full Bench considering the case of Ashok Lanka and another (Supra) held that it was within the domain of the Court even to enquire the facts of public importance suo moto if exigency so requires and the matter was returned to the same Bench to decide the issue of public importance.

In view of the law laid down by the Apex Court as well as by this Court, the Court is of the view that this Court is fully competent to enquire into the matter of public importance.

Fundamental Rights guaranteed to all Religions including religions within the fold of Hinduism

Fundamental rights guaranteed under Articles 25 and 26 of the Constitution of India are being referred as follows:-

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

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

regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

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

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

Explanation II. - In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

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

1. to establish and maintain institutions for religious and charitable purposes;

2. to manage its own affairs in matters of religion;

3. to own and acquire movable and immovable property; and

to administer such property in accordance with law.

The Constitution of India has guaranteed all persons equally entitled to freedom of conscience and the right to freely profess, practise and propagate religion subject to public order, morality and health. Since all the persons have been given fundamental right to profess, practise and propagate their religions subject to public order, morality and health, in case a Temple or any other religious

Institutions belonging to Hinduism are affected by frequent communal violence/tension, it is the duty of the State to maintain public order so that a person may exercise his right to freedom to practise and profess religion guaranteed under the Constitution of India without any fear or without feeling any insecurity. In case right to practise, profess and propagate religion freely guaranteed under the Constitution of India is infringed, it is the duty of the State to protect such fundamental right. As we are governed by Rule of Law and fundamental right to profess, practise and propagate religion is available to Hindus also. Hindu Religious Institutions (Public or Private) are entitled to protection from the State. In case there is any violation of right to profess, practise and propagate religion due to public order problem, the State has to take action to protect every citizen's fundamental rights guaranteed under the Constitution of India available to all the religions including Hindus.

Historical background of continuous attack on Temples belonging to Hindus:

Attack, demolition and construction of Mosques and Madrasas in place of Temples and Religious Institutions had taken place for the last about 1100 years and is a part of Indian History from 712 A.D. In 712 A.D. Mohd Bin Qasim an Invader from Iraq attacked Sindh. King Dahir was defeated and forceful conversion of Hindus into Muslims took place and various Hindu religious institutions were demolished. History makes it clear that foreign Muslim invaders demolished thousands of Hindu Temples. In 1000 A.D. Mahmood Gazanavi attacked India and defeated Raja Jaipal. In 1008 A.D., he won Kangra, in 1011 A.D., Thaneshwar and demolished a number of Hindu Temples including Chakra Swami Temple and a large number of Hindu Idols were broken. In 1013 A.D. he also damaged Nandana, in 1016 A.D., Bulandshahr, Mathura and Kannauj and demolished a number of Hindu Temples. He also demolished Som Nath Temple in 1025 A.D. and broken main Idol in pieces and sent those pieces of Temple to be placed in foot stairs of Jama Masjid at Gazni. After Mahmood Gazni, Mohd. Gori also destroyed Hindu Temples and Idols at Azmer and constructed Mosques and Madrasas in place of Hindu Temples. At Benaras, he demolished a large number of Temples and constructed Mosques in place of Temples. In 1194 A.D., Qutubuddin Aibak attacked Delhi. He demolished 27 Jain Temples at Delhi and constructed Qubbatul Islam Mosque. In 1196 A.D., he attacked Gujrat and in 1202 A.D., Kalinjar where he demolished a large number of Hindu Temples. Mohd Bakhtiyar Khilji attacked Bihar in 1200 A.D. and demolished a large number of Buddhist Temples at Udantpur and Nadia (Bengal) in 1202 A.D. and demolished a large number of Buddhist Temples and constructed Mosques and other religious places of Muslims in places of Hindu Temples. After Qutubuddin Aibak, Shamsuddin Iltutmish attacked Malwa in 1234 A.D. and Vidisha. He demolished a old Hindu Temple of Mahakal, destroyed statue of Vikramjeet and took away Brass Idols of Hindu Gods and placed at the foot step of stairs of a Mosque at Old Delhi and asked the people to pass through these Idols of Hindu Gods. After Iltutmish, Balban ruled parts of India. He also attacked Hindus and Hindu Temples in 1254 A.D. In 1321 A.D. Jalaluddin Khilji attacked Fort of Ran Thambore and enroute he damaged and demolished several Hindu Temples. In 1292 A.D., his nephew Allauddin Khilji attacked Bhelsa and he too demolished a large number of Hindu Temples and thrown Idols of Hindu Gods. He also proposed to make a Minar taller than the Qutubminar by using materials of demolished Hindu Temples. He also ordered his cousin Ulugh Khan to demolish reconstructed Somnath Temple of Gujrat, who also damaged and demolished a number of Hindu Temples. He also attacked Ujjain and demolished several Hindu Temples at Ujjain. Likewise, he attacked Malwa and Chittaur (Rajasthan) where he demolished a large number of Hindu Temples. In 1360 A.D. Firozshah Tughlak another Muslim Sultan attacked and damaged Jagannathpuri Temple (Orissa) by breaking Idol of Bhagwan Jagannath and thrown at the foot stairs of Muslim Mosques and demolished Jwalamukhi Temple at Nagarkot, Kangra and damaged Temple's Idol. Taimur attacked India in 1399 A.D and started war against Hindus on religious basis. He demolished a large number of Hindu Temples. In 1392 A.D., Muzaffarshah, Governor of Gujrat demolished reconstructed Somnath Temple again and constructed a Mosque within the Temple, but after some time Hindus reconstructed same Temple. In 1401 A.D., Ahmad, grand son of Muzaffarshah, who took over as Governor of Gujrat appointed a Daroga (Inspector) for demolishing all Hindu Temples of Gujrat. In 1415 A.D., Ahmad attacked and demolished Sidhpur Temple (Rudra Mahalaya) and in its place he constructed a Mosque. From 1389 A.D. to 1431 A.D., Sikandar (Babur's ancestor) attacked and demolished a large number of Hindu Temples and Idols, who was known for his pleasure by breaking Idols of Hindus. Between 1389 A.D. to 1431 A.D., he demolished Temples of Martand, Vishnu, Ishan, Chakravarti and Tripureswar. There were no places in his Empire where his Mantri Suha had not demolished Hindu Temples. Babar, who established Moghul Empire, attacked India and demolished Ram Janma Bhumi Temple at Ayodhya and constructed a Mosque on the same place. After Babar, Humayun ruled India. It is described in history that Chhatra Temple at Zehanaabad was demolished by Humayun and in place of

Temple a Mosque was constructed. During the period of Jehangir Sikh Guru Sri Arjun Singhjee was killed, Hindu Durg Temple of Kangra and cows were slaughtered in the Temple. Shahjehan got demolished about 76 Temples of Benaras in 1633 A.D. by ordering to demolish all the newly constructed Hindu Temples. Demolition of Hindu Temples by Aurangjeb is also well known to everyone. When he was only Prince, he demolished Chintamani Temple at Gujrant and in place of Temple he constructed Qubbatul Islam Mosque in 1645 A.D. In 1648 A.D., he sent Mir Jumla to Kooch Bihar, who demolished several Hindu Temples there and constructed Mosques in place of Hindu Temples. In 1670 A.D., in Mathura, Krishna Janma Bhoomi Temple was demolished by Aurangjeb and a Mosque was constructed in place of Temple. Idols of Temple were placed at the stairs of Janhaara Mosque, Agra. Temple of Ram Chandra in Soron, Devi Patan Temple of Gonda, Temples of Ujjain and all the Hindu Temples of Mednipur, Bengal were destroyed and ruined during the period of Aurangjeb. Hindu Temples and Idols of Jodhpur were also broken and broken parts of Idols and the Temples were taken away to Delhi. He also demolished Hindu Temples and Idols at Udaipur in 1680 A.D., 62 Temples of Chittaurgarh, 66 Temples of Amber, Someshwar Temple of Mewar, Khanderao Temple of Satara. In 1690 A.D., he demolished Temples of Elora, Trayambakeshwar, Narsingpur, Pandarpur and Bijapur. In 1669 A.D. He also demolished several Hindu Temples at Tattha, Multan and Benaras including famous Kashi Vishwanath Temple at Benaras . Aurangjeb crossed all the limits of communalism and re-imposed Zazia Tax on Hindus if wanted to live as Hindus. Tipu Sultan also got converted Hindus and Christians into Muslims and demolished several Hindu Temples and other religious institutions.

Above facts have been taken from the Books of various various Muslim Historians including Book "Tarikhen Yamini" written by Utabi, Historian and Secretary of Mahmood Gaznavi, from the Asarul Bilad of Muslim Historian of Zakaria Al-Qazwani, Muslim Historian Nizami and Muslim Historian Ibn Assar at the time of Mohd. Gori, Muslim Historian Hasan Nizami, from Book Mutkhabat-Tavarikh of Muslim Historian Budauini, Book written by Muslim Invador Imad Jan Tuzuk Taimuri of Taimur, from the Auto Biography of Babar "Tuzuke Babri", from Zuvadutul-Tavarikh of Muslim Historian Shekh Nurul Haq, from Book Atharuye Sanadid written by Sir Syed Ahmad, from the Book "Heroes of Islam" of Prof. Fazal Ahmad, from the Book Badshahname of Muslim Historian Abdul Hamid Lahori, from the Book Voice To East Indies written by Barithailomeo, from the Book Bhasha Poshani of Historian Sardar K.M. Panikkar, from the Book of Bil Durent, from the Book Story of 'Islamic Imperialism in India' written by Historian Sri Sitaram Goyal, published by Voice of India. All aforesaid Historical Books are relied upon by Sri Purshottam in his Book 'Muslim Rajnitik Chintan Aur Akanchayen, published by Sumit Prakashan, Maushambagh, Sitapur Road, Lucknow and from other Books of History.

Even after Independence also, State of U.P. as well as other States of India had been continuously affected by communal riots. Recent riots of Mau District in Uttar Pradesh on the eve of Dashehara in the function of Bharat Milap, riot of Meerut, riot of Moradabad and the riots of other places in the State of U.P. are some of such examples. Book "Riots After Riots" written by M.J. Akbar about the Trauma of Riots makes it clear that the communal elements after taking inspiration from the past history some of them are detailed above. Transfer of Temple and other properties vested in Gopal Thakur situated in Gopal Dham Temple, Mohalla Til Bhandeshwar, Varanasi due to insecurity of communal riots is nothing but continuing effect of communal and anti-Hindu forces to create an atmosphere of communal tension and insecurity in Hindus so that the Temples and other properties vested in Deity may somehow be grabbed by communal forces. This situation is prevailing in some of other Districts of State of U.P. where population of the members of Hindu community has reduced and population of other religious community has increased manifold. Hindu population is worst affected in these Districts due to communal tension.

In the Constituent Assembly while considering Articles 19 and 22 of the Draft Constitution which are now Articles 25 and 30 of the Constitution of India, some of members were apprehensive for such situation and were not in favour of making propagation as fundamental right. They were of the view that this right could be misused by some of the religious groups. Proceedings of Constituent Assembly dated 3.12.1948-6.12.1948-8.12.1948 in regard to Articles 19 and 22 (Articles 25 and 30 of the Constitution of India make it clear.

In view of the historical background of attacks on Hindu Temples and other religious institutions of Hindus coupled with the present attacks on Temples and transfer of Temples due to communal riots resulting in transfer of other properties attached with the Temples also due to insecurity in Hindus and

safety at places where population of members of Hinduism are reduced and the population of members of non-Hindu communities has increased. In those places/Districts antisocial and communal elements of other religious community are now a dominant force affecting religious rites of worship and maintenance of Temples of Hindus and they have no other option, but to leave the Temples and transfer the properties attached with the Temple to antisocial and communal elements.

In such a situation, it is the duty of the State of U.P. to protect the right of Hindus to profess, practise and propagate their religious rights guaranteed under the Constitution of India and as such all the Temples of Religions within the fold of Hinduism require protection.

After Independence also according to learned counsel appearing on behalf of Kashi Vidhwat Parishad, Varanasi, that though Varanasi is known as City of Temples where Jyotirling Kashi Vishwanath Temples and various other Temples including Sankat Mochan Temple etc. are situated had been worst affected by communal violence. In historical background of Varanasi and other places in the State of U.P. are also affected by antisocial elements and communal forces who are making all efforts to deprive the citizens of their fundamental right to freely practise, profess and propagate religion guaranteed under the Constitution of India. The past experience of India prior to and after independence and taking into consideration history of riot on community lines speaks volumes about insecurity of Temples and other Religious Institutions of Hindus.

Under Schedule VII (II), List II State List, Entry I of the Constitution of India, Public Order is State subject, the same is reproduced below:-

"Public order (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof) in aid of the civil power.

'Public Order'. 1. 'Public order' is a most comprehensive term and subject to the exception mentioned, viz., use of the armed forces in aid of the civil power, the State Legislature is given plenary authority to legislate on all matters which relate to or are necessary for the maintenance of public order, including the prevention of insult to national honour.

2. Public order implies absence of violence and an orderly state of affairs, in which citizens can peacefully pursue their normal avocation of life. Anything which disturbs public tranquillity disturbs 'public order'. This entry also includes 'public safety' in its relation to the maintenance of public order. In short, 'public order' is synonymous with public peace, safety and tranquillity, and would, therefore, cover legislation to regulate the use of sound amplifiers, or to prevent forcible and fraudulent conversion or to prevent and social activities."

As is clear from the statement made by Sri M.C. Chaturvedi, learned Chief Standing Counsel, U.P., that there is no special Legislation enacted by the State to protect Temple or Hindu Religious places to allow citizens to exercise fundamental rights to profess, practise and propagate the religion freely and to provide protection and the State takes it as normal law and order problem and not the matter affecting public order and in view of the fact that the State of U.P. was regularly affected by such communal tensions frequently in different parts of the State of U.P. and India and persons affected are the persons belonging to different religious communities. Recent attacks on Sankat Mochan Mandir in Varanasi and other Temples are self-explanatory. In the present case, Shebait of Sri Shaligram Shila (Gopal Thakur), a Temple of Lord Krishna, due to insecurity as a result of communal violence and serious threat to public peace and tranquillity in order to secure himself, his family and the Temple of Lord Krishna abandoned the Temple by selling the same and other properties to other persons to secure him and his family from such communal violence is only an example of situation prevailing in State of U.P.

Til Bhandeshwar Mohalla of Varanasi is situated in the heart of the City of Varanasi which is affected by constant communal violence and as such alienation was made for safety and security of the 'Gopal Thakur' (Deity) Temple (Gopal Dham) and its by the Shebait of the Deity. As all such persons are entitled to freedom of conscience and right to freely profess, practise and propagate religion, the persons belonging to Hinduism are also entitled to get full protection under the Constitution of India to get their person and property and Temple including Deity protected.

Articles 25 and 26 of Constitution of India introduced by Constituent Assembly to provide protection to all religious communities as this Article was introduced in historical background of the pre-independent Indian history which makes it clear that Hindu temples continuously remained under attack and were demolished during these 1300 years right from the time of invasion of Meer Kasim from 712 A.D. upto independence and thousands of Hindu temples were demolished by Anti Hindu and communal Forces in India. India was partitioned on the ground of two nations theory in the hope that communal violence would come to an end and all the religious communities will live in peace that is why Constituent Assembly protected rights of all the religious communities under Articles 25 and 26 of the Constitution of India. This fundamental right guaranteed to every citizen of India is subject to public order. In spite of such protection the Hindu Temples and Temples of other religions within the fold of Hinduism would continue to be shifted being affected by communal violence and threat of safety and security. These incidents are affecting public order and it is the duty of the state to take appropriate steps accordingly to ensure that there is no violation of any right guaranteed to citizens of India under the Constitution of India. This problem of communal riot is not a law and order problem as simply urged by the learned Chief Standing Counsel taking note of historical background detailed above. It cannot be treated as simple law and order problem taking note of historical background detailed above particularly of Hindu temples and Religious Institutions which suffered at the hands of communal forces prior to independence during Islamic and British Rules and even after independence in 1947 at the time of partition and thereafter and as such Hindus are also entitled to get protection guaranteed under Articles 25 and 26 of Constitution of India.

As discussed above, Constitution framers, i.e., the Constituent Assembly protected the interests of all the religions under Articles 25 and 26 of the Constitution of India. Compelling a religious group to leave Temples due to communal violence or activities of anti social or communal elements amounts to violation of fundamental rights guaranteed by the Constitution of India. Anti social elements and communal elements are still continuing attacks on Hindu Temples and Religious places. In Recent attacks on Raghunath Temple situated in Jammu, Akshardham Temple in Gujrat, Sankat Mochan Temple at Varanasi, Uttar Pradesh and Ram Janma Bhoomi Temple at Ayodya, Uttar Pradesh are the examples that the Temples are at present are one of main target of such communal or anti social elements who are taking inspiration from past history. In such a scenario, this Court is of the view that it is the responsibility of the State to take all effective steps to maintain public order by enacting a Legislation or Executive Order to protect all temples situated in Uttar Pradesh in order to protect rights to profess, practise and propagate of Hindus under Articles 25 and 26 of the Constitution of India by making proper security arrangements of Temples by establishing a separate force or a separate section in Police force.

The detailed discussion made above and the historical back ground of the problem of Hindu religious Institutions makes it clear that all the Temples and religious institutions belonging to Hinduism are still under the serious attack of such anti national and communal forces. The society or nation which does not take lesson from History and does not take appropriate measures accordingly for preservation and protection of nation and does not crush such elements to protect its citizens cannot save future disaster of reducing the nation and society at the verge of extinct.

Who are Hindus and whose religious places required protection under Articles 25 and 26 of Constitution of India:

Hindu Marriage Act, Hindu Adoption and Maintenance Act, Hindu Minority and Guardianship Act, Hindu Succession Act or any other Act governing Hindus detailed above are applicable to all the Hindus. Section 2 of Hindu Marriage Act runs as follows:-

2. Application of Act. - This Act applies-

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or followers of the Brahmo, Prarthana or Arya Samaj;

(b) to any person who is a Buddhist, Jaina or Sikh by religion; and

(C) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have been

governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

The following persons are Hindus, Buddhists, Jainism or Sikhs by religion, as the case may be:-

(a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhists, Jain or Sikhs by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs; and

(c) any person who is a converted or re-converted to the Hindu, Buddhist, Jainism or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless a person to whom this Act applies by virtue of the provisions contained in this section.

The same provision is available in other Acts detailed above also and judgments pronounced also makes it clear that all thoughts and beliefs (religions) born in India are part of Hinduism and other thoughts and beliefs like Muslims, Christians, Jews and Parsis are not part of Hinduism.

The Constitution Bench of the Apex Court in the judgment reported in AIR 1966 SC 1119, *Sastri Yagnapurushadji v. Muldas Bhudardas Vaishya*, relevant part of which is being quoted below:-

"The Encyclopedia 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.686). As Dr. Radhakrishnan has observed, "The Hindu civilization is so called, since its original founders earliest followers occupied the territory drained by the Sindhu the (the Indus) river system corresponding to the North West Frontier Province and the Punjab. This is recorded in the Rig which give their name to this period 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".

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 religion 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 feature of any religion or creed. It may broadly be described as a way of life and nothing more.

.....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 (Kurma Purana) (Ibid p.12)

Monier Williams has observed that "it must be borne in mind that Hinduism is far more than a mere form of theism vesting 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 every-increasing area of country and finally resolving itself into an intricate Delta of tortuous streams and jungly marshes...The Hindu religion is reflection of the composite character of the

Hindus, who are not people but many. It is based on the idea of universal receptivity. It has ever aimed to accommodate its 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).

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 . ("Indian Philosophy" by Dr. Radhakrishnan. Vol. I, pp.22-23). 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..... "In all the fleeting centuries of history", says Dr. Radhakrishnan, "in all the vicissitudes through which India 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.(...) 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 interrelation between the individual and the 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 monastic idealism, though this tendency is so plastic, living and manifold that it takes many forms and expresses itself in even mutually hostile teachings."(..)

.....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." (..) 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.

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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 superstition and that led to the formation of different sects. Buddha started Buddhism; Mahavir founded Jainism; Basava became the founder of Lingayat religion; Dnyaneshwar and Tukaram initiated the Varakari cult; Guru Nanak inspired Sikhism, Dayananda founded Arya Samaj, and Chaitanya 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.

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.....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 not only compatible with Day Experiment in Western Civilisation" by Toynbee, pp. 48-49).

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

In order to consider what is the Hinduism, the judgment of the Apex Court reported in AIR 1996 SC 1113, Dr. Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte and others is very relevant. Paragraphs 38, 39 and 40 of the judgment are being quoted below:-

"38. These Constitution Bench decisions, after a detailed discussion, indicate that no precise meaning can be ascribed to the terms 'Hindu', 'Hindutva' and 'Hinduism'; and no meaning in the abstract can confine it to the narrow limits of religion alone, excluding the content of Indian culture and heritage. It is also indicated that the term 'Hindutva' is related more to the way of life of the people in the sub-continent. It is difficult to appreciate how in the face of these decisions the term 'Hindutva' or 'Hinduism' per se, in the abstract, can be assumed to mean and be equated with narrow fundamentalist Hindu religious bigotry, or to be construed to fall within the prohibition in sub-section 3 and/or (3A) of S. 123 of the R.P. Act.

39. Bharucha, J. in Dr. M. Ismail Faruqui v. Union of India, (1994) 6 SCC 360: (1994 AIR SCW 4897), (Ayodya case), in the separate opinion for himself and Ahmadi, J. (as he then was), observed as under:

".....Hinduism is a tolerant faith. It is that tolerance that has enabled Islam, Christianity, Zoroastrianism, Judaism, Buddhism, Jainism, and Sikhism to find shelter and support upon this land...."

(at page 442) (of SCC): (at p. 4971, para 159 of AIR)

40. Ordinarily, the Hindutva is understood as a way of life or a state of mind and it is not to be equated with, or understood as religious Hindu fundamentalism. In "Indian Muslims - The Need For A Positive Outlook" by Maulana Wahiduddin Khan, (1994), it is said:

"The strategy worked out to solve the minorities problem was, although differently worded, that of Hindutva or Indianisation. This strategy, briefly stated, aims at developing a uniform culture by obliterating the differences between all the cultures co-existing in the country. This was felt to be the way of communal harmony and national unity. It was thought that this would put an end once and for all to the minorities problem".

(at page 19)

The above opinion indicate that the word 'Hindutva' is used and understood as a synonym of 'Indianisation', i.e., Development of uniform culture by obliterating the differences between all the cultures co-existing in the country."

A judgment reported in 1993 ALL.L.J., 1379, Smt. Indumatee Koorichh v. The Family Court, Lucknow and another of the learned Single Judge of this Court has also 'Hindu' religion. Relevant part of Paragraph 27 of the judgment is being reproduced below:-

"27.....expression 'Hindu' under the acts has been taken to mean and include in itself every person man or woman or child who is not a Muslim, Christian, Parsi or Jew and also such person, who being Muslim, Christian, Parsi or Jew when, he gets himself converted into the Hindu way of life either as a Vaishnavait, Shivait, Buddhist, Sikh or the like cults of Hindu faith and religion. Those religions, as have got their origination in foreign land or lands other than mother India, the great Hindustan, and, as such, their followers are not included in phrase Hindu. Thus considered in wider horizon or sense of connotation a person born in India or Hindustan or whose parents have taken birth in India or Hindustan the land surrounded by Himalayan range on the north and Sindhu the Sea known as Indu

sarovar in the south and having faith and allegiance with this land and its culture may be called a Hindu irrespective of difference of approach towards one truth and one goal."

This definition of Hindu has further been defined by a Constitution Bench judgment of the Apex Court reported in AIR 1971, 1737, D.A. V. College, Jullundur etc. v. The State of Punjab and others. Paragraphs 12, 13 and 16 of the said judgment are being reproduced below:-

"12. For the purposes of Art. 29(1) even though it may not be necessary to enquire whether all the Hindus of Punjab as also the Arya Samajis speak Hindi as a spoken language, nonetheless there can be no doubt that the script of the Arya Samajis is distinct from that of Sikhs who form the majority. It is claimed that while the Sikhs have Gurumukhi as their script the Arya Samajis have their own script which is the Devnagri script. Their Claim to be a religious minority with distinct script of their own seems to us to be justified as would appear from the following:

13. The Arya Samaj is a reformist movement, believes in one God and in the Vedas as the books of true knowledge. It holds that it is the duty of every Arya Samaji to read the Vedas and have them read, to teach or preach them to others. It has a distinct organisation, the membership of which is open to all those who subscribe to its aims and objects. The Arya Samajis worship before the vedic fire and it begins with the burning of incense (the homa 'sacrifice') accompanied by the chanting of Vedic verses.

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16. The passage read above show beyond doubt that the Arya Samaj by "rejecting the manifold absurdities found in Smriti and in tradition and in seeking a basis in the early literature for a purer and more rational faith" can be considered to be a religious minority, at any rate as part of the Hindu religious minority in the State of Punjab.

In the case of P.M.A. Metropolitan v. Moran Mar Marthoma, AIR 1995 SC 200, the Apex Court in Paragraph-31 of the judgment has observed about religion as follows:-

"Religion is the belief which binds spiritual nature of men to super-natural being.' It includes worship, belief, faith, devotion etc. and extends to rituals. Religious right is the right of a person believing in a particular faith to practice it, preach it and profess it....."

In this regard, what is Hindu religion has been considered by the Apex Court in Bal Patil v. Union of India case (supra). Paragraphs 26, 27, 28 and 30 of the Judgment are being reproduced below:-

"26.....Sikhs and Jains, in fact, have throughout been treated as part of the wider Hindu community which has different sects, sub-sects, faiths, modes of worship and religious philosophies. In various codified customary laws like Hindu Marriage Act, Hindu Succession Act, Hindu Adoptions and Maintenance Act and other laws of pre and post Constitution period, definition of 'Hindu' included all sects, sub-sects of Hindu religions including Sikhs and Jains."

"27. The word 'Hindu' conveys the image of diverse groups of communities living in India. If you search for a person by name Hindu, he is unidentifiable. He can be identified only on the basis of his caste as upper caste Brahmin, Kshatriya or Vaish or of lower caste described in ancient India as Shudras. Those who fall in the Hindu class of 'Shudras' are now included in the Constitution in the category of Scheduled castes with special privileges and treatment for their upliftment. This was found necessary to bring them at par with upper castes in Hindu society. The aboriginals, who have no caste were considered as distinct from four castes or Varnas of Hindu society. They have been treated favourably in the Constitution as Scheduled Tribes. For them also there are provisions for special treatment and grant of special privileges to bring them on level with the other castes from the main advanced streams of Indian society."

"28. There is a very serious debate and difference of opinion between religious philosophers and historians as to whether Jains are of Hindu stock and whether their religion is more ancient than the vedic religion of Hindus. Spiritual philosophy of Hindus and Jains in many respect is different but the quintessence of the spiritual thought of both the religions seems to be the same. The influence of

Hindu vedic religion is quite apparent in the custom, style of living belief and faith of Jains. Jains do not worship images or idols of Gods but worship their Tirathankars meaning their ideal personalities who have attained human perfection and excellence by a process of self-improvement. The literal meaning of the word 'Jain' is one who has attained 'victory'. It signifies a person who has attained victory over himself by the process of self-purification. 'Jain' is a religious devout who is continuously striving to gain control over his desires, senses and organs to ultimately become master of his ownself."

"30. Thus, 'Hinduism' can be called a general religion and common faith of India whereas 'Jainsim' is a special religion formed on the basis of quintessence of Hindu religion. Jainism places greater emphasis on non-violence ('Ahinsa') and compassion ('Karuna'). Their only difference from Hindus is that Jains do not believe in any creator like God but worship only the perfect human-being whom they called 'Tirathankar'. Lord Mahavir was one in the generation of Tirathankars. The Tirathankars are embodiments to perfect human-beings who have achieved human excellence at mental and physical levels. In philosophical sense, Jainism is a reformist movement amongst Hindus like Brahamsamajis. Arasamajis and Lingayats. The three main principles of Jainsim are Ahinsa, Anekantvad and Aparigrah. (See:-1) Encyclopedia of Religion and Ethcis, Vol. 7 pg.465;2) History of Jains by A.K.Roy, pgs. 5 to 23: and Vinoba Sahitya, Vol.7 pg. 27 to 284)."

Articles 25 and 26 of the Constitution of India also defines the Hindu. Explanation II of Article 25 of the Constitution of India also includes Sikhism, Jainism and Buddhism. Considering the above definition and the law laid down by the Apex Court as well as the intention of the Constituent Assembly and the provisions mentioned above of Hindu Law takes Hinduism and other matter which includes all the persons who are not Muslims, Christians and Parsis are Hindus and are entitled to get protection of their Temple and Religious places under Articles 25 and 26 of the Constitution of India to profess, practise and propagate their religion freely.

#### Religion/Dharma and Hinduism

Religion and Dharma are two different words. The first case of the Apex Court in which religion has been defined is reported in AIR 1996 SC 1765, A.S. Nariayana Deekshitulu v. State of Andhra Pradesh and others. Relevant Paragraphs of the judgment are being reproduced below:-

"142...The same is the difference between "religion", a word used in Arts. 25 and 26, and "dharma " known to our psyche. I wish to put on record the difference in my own way and to say that our constitution makes had used the word "religion" in these two articles in the sense conveyed by the word "dharma".

143. Very often the words "religion" and "dharma" are used to signify one and the same concept or notion; to put it differently, they are used inter-changeably. This, however, is not so, as would become apparent from what is being stated later, regarding our concept of dharma. I am of the considered view that the word religion in the two articles has really been used, not as is colloquially understood by the word religion, but in the sense of it comprehending our concept of dharma. The English language having had no parallel word to dharma, the word religion was used in these two articles. It is a different matter that the word dharma has now been accepted even in English language, as would appear from Webster's New Collegiate Dictionary which has defined it to mean : "Dharma : n. (Skt. fr. Dharayati he holds;) akin to L firmus firm : custom or law regarded as duty : the basic princples of cosmic or individual existence : nature : conformity to one's duty and nature." The Oxford Dictiony defines dharma as : "Right behaviour, viture; the law (Skt. A decree, custom)."

144. The difference between religion and dharma is eloquently manifested when it is remembered that this Court's precept is

It is apparent that the word dharma in this canon or, for that matter, in our saying, does not mean religion, but the same has been used in the sense defined in the aforesaid two dictionaries. This is how the President of India, Dr. Shanker Dayal Sharma, understood the word dharma in his address at the First Convocation of the National Law School of India Universtiy delivered on 25th September, 1993 at Bangalore.

145. Our dharma is said to be 'Sanatan' i.e. one which has eternal values; one which is neither time bound nor space-bound. It is because of this that Rg-veda has referred to the existence 'Sanatan Dharmani'. The concept of 'dharma', therefore, has been with us for time immemorial. The word is derived from the root 'Dh. R' - which denotes : 'upholding', 'supporting', 'nourishing' and 'sustaining'. It is because of this that in Karna Parva of the Mahabharat, Verse-58 in Chapter 69 says :

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

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

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

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

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

149. Ashoka mentioned about victory of dharma in his rock edict at Kalsi which proclaimed his achievement in terms of the moral and ethical imperatives of dharma, and exemplified the ancient dictum : "Yato Dharmstato Jai:" (where there is Law, there is Victory).

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

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

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

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

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

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

Dr. Sarvapalli Radha Krishnan in his Book 'Indian Religion' has observed as follows:-

"The complex of institutions and influences, which shape the moral feeling, and character of the people is called the dharma which is a fundamental feature of the Hindu religion. Hinduism does not believe in enforcing creeds, but calls upon all Hindus to conform to the discipline. It is a culture more than a creed. If ye do the will or the dharma, ye shall know of the doctrine or the truth. The dharma helps the smouldering fire, which is in every individual to burst into flame.

The dharma is a code of conduct supported by the general conscience of the people. It is not subjective in the sense that the conscience of the individual imposes it, nor external in the sense that the law enforces it. It is the system of conduct, which the general opinion or the spirit of the people supports, that the Germans call Sittlichkeit. Fichte defines the latter as "those principles of conduct which regulate people in their relations to each other, and have become a matter of habit and second nature at the stage of culture reached and of which therefore we are not explicitly conscious.

Dharma is that which holds together all living beings in a harmonious order. Virtue is conduct contributing to social welfare, and vice is its opposite. It is frequently insisted that the highest virtue consists in doing to others as we would be done by. Both the individual and the social virtues are included in that are called nitya karmas, or obligatory duties, which are cleanliness or saucam, good manners or acharam, social service or panchamahyajnas, and prayer and worship or sandhyavandanam..".

Dharma is inherent as law in the very nature of all existing phenomena, that which supports and holds universe together. It is not merely a set of beliefs having no connection with the living, but rather a set of principles for a harmonious and beneficent life. It is practical doctrine. The etymological meaning of Dharma is also "that which binds together".

The goal of world unity is to be achieved by ahimsa which is insisted on by Hinduism, Buddhism and Jainism and other religions within the fold of Hinduism.

The great philosopher, S. Radhakrishnan in the book 'Indian Religions', Indian Religious Thought has described the fundamental concepts of the Indian religion. Religion reflects both God and man. As religion is a life to be lived, not a theory to be accepted or a belief to be adhered to it allows scope and validity to varied approaches to the Divine. There may be different revelations of the Divine but they are all forms of the Supreme. If we surround our souls with a shell, national pride, racial superiority, frozen articles of faith and empty presumption of castes and classes, we stifle and suppress the breath of the spirit.

"Buddhism which arose in India was an attempt to achieve a purer Hinduism. It may be called a heresy of Hinduism or a reform within Hinduism. The formative years of Buddhism were spent in the Hindu religious environment. It shares in a large measure the basic presuppositions of Hinduism. It is a product of the Hindu religious ethos. But soon it established itself as a distinctive religious tradition."

The nature of Godhead which has developed in the Mahayana is analogous to the Hindu conception.

"Hindu system of philosophy and religion recognize the periodical evolution and involution of the world representing the systole and diastole of the one universal heart, which is ever at rest and ever active. The whole world is a manifestation of God. Sayana observes that all things whatsoever are vehicles for the manifestation of the Supreme Spirit."

It is clear that Hinduism is a process, not a result; a growing tradition, not a fixed revelation. It never shut off by force wisdom from anywhere, for there are no distinctions of mine and thine in the Kingdom or Spirit.

"The term 'dharma' is one of complex significance. It stands for all those ideals and purposes, influences and institutions that shape the character of man both as an individual and as a member of society. It is the law of right living, the observance of which secures the double object of happiness on earth and salvation. It is ethics and religion combined. The life of a Hindu is regulated in a very detailed manner by the laws of dharma. His fasts and feasts, his social and family ties, his personal habits and tastes are all conditioned by it."

"While the spiritual perfection of man is the aim of all endeavour, the Hindu dharma does not insist on any religious belief or form of worship. The utmost latitude is allowed in the matter of addressing and approaching the Supreme. The Hindu thinkers were good students of philosophy and sociology and never felt called upon to enforce religious belief."

The Hindu dharma inculcates respect for life and tenderness towards all forms of animal creation. "Thou shalt not kill" applies to the animals as well.

"The Buddha did not feel that he was announcing a new religion. He was born, grew up, and died a Hindu. He was restating with a new emphasis the ancient ideals of the Indi-Aryan civilization. "Even so have I, monks seen an ancient way, an ancient road followed by the wholly awakened ones of olden times..... Along that have I gone, and the matters that I have come to know fully as I was going along it, I have told to the monks, nuns, men and women lay-followers, even monks, this Brahmafaring, Brahma-kriya that is prosperous and flourishing, widespread and widely known, become popular- in short, well made manifest for gods and men."

Considering the various judgments of the Apex Court and High Court and concept of Dharma, Hinduism represents all religions of India which includes Sikhism, Jainism, Buddhism, Arya Samaj, Kabir Panth, Radha Swamy, Dhan Nirankar and Lingayats etc., the philosophy and thoughts and belief in which Lord, Ram, Lord Krishna, Shaivism were considered God and a number of other Religions founded by a number of Saints, Acharyas or Panths and several other Philosophers. Each and every tribal, castes, sub-castes have their own God or Goddess, different beliefs and thoughts and most of them have different way of worship, all Tribals have different religion with different God and Goddess. Bhaktimarg, Philosophy of Swami Rama Krishna and Swami Vivekanand, Shaivists, and several Religions founded by Philosophers and Thinkers such as OSO by Acharya Rajnish, ISCON, who believes in Lord Krishna only. The propounders in the Gyan Yog founded by Saints, philosophers and religious thoughts, Kabirpanthis, Sat Sain Baba and thousands of such thoughts, way of worship and beliefs are religion.

Basic concept of Hinduism is the way of reaching to the eternal truth and to the Almighty is manifold and has given freedom to all the members of the Hindu society to reach to the Almighty through their own thoughts, belief and the way of worship. Such freedom in the field of religion on Indian soil is derived from thousands of philosophies, Thoughts and different ways of worship and beliefs born in India from the time immemorial. Combination of such religion, thought, belief or way to reach to the eternal truth born in India is Hinduism. Hinduism cannot be equated with any particular religion, but it is combination of all religions born and grown up in India.

Considering arguments of learned counsel for the parties and the matter in its entirety, this Court is of the view that all the beliefs, faith and thoughts (religions) born in India are part of Hinduism and the followers of such beliefs, faiths and thoughts are Hindus. They all are governed by Dharma which is common to all. This was also followed by all sections of Hindu Society, though all such faiths, beliefs and thoughts (religions) may have separate rituals, rites, theology, methodology and way of worship. The concept of Dharma has been discussed in this judgment and Hinduism represents all such beliefs, faiths and thoughts and way of worship (religions) born in India.

Fundamental duties and its relevance:

The Constitution of India was amended by adding Article 51-A in the Constitution which speaks about fundamental duties. In Part IV-A of the Constitution fundamental duties have been defined.

Articles 51-A(b) and (f) are relevant for the purposes of this case, the same are being reproduced below:-

"51A. It shall be the duty of every citizen of India-

.....

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(f) to value and preserve the rich heritage of our composite culture;"

The Apex Court has decided the relevance of Article 51-A of the Constitution (Fundamental duties) in a number of cases. The Apex Court in a judgment of Seven Judges' Bench reported in JT 2005 (12) SC 580 Shree Ahimsa Army Manav Kalyan Jeev Daya Charitable Trust v. Mirsapur Moti Kureshi Kassab Jamat, Ahmedabad and others has made certain observations about Fundamental Rights, the same are being reproduced below:-

"57. In AIIMS Students' Union v. AIIMS and Ors., a three-Judge Bench of this Court made it clear that fundamental duties, though not enforceable by writ of the court, yet provide valuable guidance and aid to interpretation and resolution of constitutional and legal issues. In case of doubt, peoples' wish as expressed through Article 51A can serve as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the courts. The fundamental duties must be given their full meaning as expected by the enactment of the Forty-second Amendment. The Court further held that the State is, in a sense, 'all the citizens placed together' and, therefore, though Article 51A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is collectively speaking, the duty of the State."

"63. It is thus clear that faced with the question of testing the constitutional validity of any statutory provision or an executive act, or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the Directive Principles of State Policy and Fundamental Duties as enshrined in Article 51A of the Constitution play a significant role."

Relying upon three Judges' Bench judgment of the Apex Court in AIIMS Students' Union v. AIIMS and Ors, JT 2001(7) SC 12: (2002) 1 SCC 428, the Apex Court held that "State is, in a sense, 'all the citizens placed together'" and, therefore, the fact remains that the duty of every citizen of India is collectively speaking, the duty of the State.

It is, thus, clear that the constitutionality, validity of any statutory provision and executive action or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the Directive Principles of State Policy and Fundamental Duties as enshrined in Article 51A of the Constitution play a significant role.

Importance of Lord Krishna in Indian Society:

Lord Krishna and the Geeta (Dharma Shastra) given by Lord Krishna to man kind is part of our rich heritage. Contribution of Lord Krishna to the man kind and the human society is manifold which include theory of Karma which defines duty to be performed by Human being. It is the duty of every citizen and the State to value and preserve the Dharm propounded by Bhagvad Geeta. Judgment of the Apex Court in Shree Ahimsa Army Manav Kalyan Jeev Daya Charitable Trust v. Mirsapur Moti Kureshi Kassab Jamat, Ahmedabad and others (Supra) fully supports the view of this Court. The importance and influence of Lord Krishna in the Indian Society and the Dharm propounded by him for the mankind in Geeta also inspired our national struggle for freedom since very beginning.

Though India (Bharat) was always one culturally, religiously and politically and was governed by concept of Dharma from the time immemorial inspite of the fact there were a number of States governed by different Kings, but in the War of 'Mahabharat' all the Kings of India participated in the war known as 'Mahabharat' which also reaffirmed our political entity of Indian limits as 'Bharat' and that is why this War said as 'Mahabharat' in which people from every part of India participated from one side or the other and inspite of efforts made by Lord Krishna to settle dispute to avoid said War, the War of 'Mahabharat' took place for protection of Dharm and Rights. Significance and importance of Lord Krishna in the Indian history and History of mankind is well known. In the War of 'Mahabharat' at Kurkshetra 'Bhagvad Geeta was given to mankind by Lord Krishna.

Significance of Lord Krishna and His Bhagvad Geeta could be conceded from this fact that only that inspite of invasion of foreign Muslim Rulers by Mir Qasim in 712 A.D and thereafter subsequent invasions by Mohd Gaznavi, Mohd. Gori, Babar, Taimur, Ahmad Shahs Abdali and Britishers, Hindu Society was never defeated and continued its struggle for freedom throughtout entire period of about 1300 years. The Hindu Society fought these foreign rulers throughtout this period politically, socially and on the basis of religion. Theory of Dharma given by Lord Krishna in Bhagvad Geeta always inspired the entire national struggle for freedom throughtout this entire period of foreign rulers. It inspired the entire Indian Society in order to re-establish Dharma through any of the three ways, that is, Karma Youg, Bhakti Yog and Gyan Yog. Dharma of Bhagvad Geeta which was binding force for the entire Indian Society at that time is still a guiding force for the Indian Society. Indian Society fought politically from foreign rulers under the leadership of King Dahir, Prithvi Raj Chauhan, Raja Suhail Dev of Bahraich, Rana Sanga, Maha Rana Pratap, Vir Shivaji, Guru Govind Singh, Rani Durgavati, Rani Ahilya, Rani Rajmani, Rani Lakshmi Bai, Rani Avanti Bai, Tatyia Tope, Kunwar Singh, Mangal Pandey and lakhs and lakhs of freedom fighters who fought the war of Independence from 712 A.D. To 1857 and thereafter under the leadership of Gopal Krishna Gokhale, Lok Manya Bal Ganga Dhar Tilak, Sardar Vallabh Bhai Patel, Subhash Chandra Bose, Sardar Bhagat Singh, Chandra Shekhar Azad, Ram Prasad Bismil, Dr. Rajendra Prasad, Pt. Jawahar Lal Nehru, Raj Gopalachari and Mahatma Gandhi coming from each and every State and region of India who were inspired by theory of Karma Yog of Bhagvad Geeta and fought this war of Independence without caring for the result and during the period of about 1300 years, in certain parts of India, Indian Society never conceded defeat from these foreging elements. Hindu Society also fought freedom struggle socially and religiously to uphold Dharma and they fought the war to save Dharm in which various Saints, Intellectuals, Poets and Philosophers played vital to keep the Indian Society united while fighting from foreign Islamic and Christian invaders during this period of about 1300 years. The list of such Saints is unending, but names of some of the Saints who kept morale of the Indian Society higher are necessary to be mentioned such as Saint Trivalluvar, Mahant Raman, Jagadguru Shankaracharya, Nimbarkacharya, Andal Rangnayaki, Yamunacharya, Ramanujacharya, Yogi Bhartuhari, Saint Vasheveshwar, Acharya Madhv, Saint Jaidev, Swami Vidyaranya, Mahatma Ramanand Swami, Saint Nam Dev, Saint Gyaneshwar, Yoginin Lalleshwari, Saint Vilvmangal, Saint Raidas, Yogi Gorakhnath, Saint Kabir, Saint Peepa, Saint Sen, Saint Vemana, Saint Param Vaishnav Narsinh Mehta, Saint Dharamdas, Saint Vaishnav Chandi Das, Mahatma Shanker Dev, Saint Nanak, Mahaprabhu Vallabhacharya, Saint Haridas, Chaitanya Maha Prabhu, Mahatma Sanatan Goswami, Mahatma Roop Goswami, Mahatma Kumbhandas, Saint Soordas, Mahatma Srish Chandra, Goswami Tulsidas, Mahatma Madhusudan Sarswati, Saint Mirabai, Mahatma Vyasdas, Saint, Parmanand Das, Saint Krishna Das, Goswami Vitthal Nath, Saint Govind Das, Saint Nand Das, Mahatma Chaturbhujdas, Saint Singa Ji, Mahatma Jiv Swami, Saint Gadadhar Bhatt, Mahatma Nabhadas, Mahatma Ek Nath, Saint Dadu, Mahatma Sundur Das, Saint Malukdas, Saint Hari Rai, Saint Arva, Saint Ramdas, Saint Tukaram, Mahatma ailang, Saint Dariya Sahab, Mahatma Dharani Das, Saint Jagjivan Shah, Saint Dulandas, Mahatma Charandas, Saint Moraipant, Saint Sahajobai, Saint Gulal Sahab, Saint Bhikha Sahab, Saint Nagari Das, Saint Mahipati, Saint Garibdas, Saint Naga Nirankari, Saint Ram Prasad, Saint Ravi Sahab, Saint Kathiya Baba, Saint Palatu Das, Saint Prayagraj, Mahatma, Vankhandi, Saint Baba Kinaram, Saint Pritamdas, Mahatma Ram Sukh Das, Saint Dayaram Bhai, Mahatma Ram Charan, Mahatma Saryu Das, Yogiraj Gambhirnath, Mahatma Rama Lingam, Swami Dayanand Sarswati, Ram Krishna Paramhans, Saint Vamasepa, Mahatma Roopkala, Mahatma Vijay Krishna Goswami, Saint Lalit Kishori, Saint Sain Baba, Swami Vivekanand, Mahayogi Arvind, Swami Ram Tirtha, Saint Uriya Baba, Maharishi Raman, Saint Sachchal, Saint Harihar Baba. Mahatma Chandrashekhar Bharati and swami Sharnanand, Maharaj of Manav Seva Sangh. They played a vital role in keeping Hindu Society united and strengthened the Indian Society to fight anti Hindu forcees detailed above in all the regions and States of India and inspite of lack political will and non-availability of any assistance Saints and Philosophers of Hindu Society fought foreign invaders and are still fighting to save Hindu Society from

such elements, particularly, in the fact that Hindu population is reduced to minority at least in eight States.

As discussed above, guiding force of the Indian Society during the entire period of 1300 years of foreign rulers was Dharma and Bhagvad Geeta gave us three ways to achieve Dharma which includes Karma Yog, Bhakti Yog and Gyan Yog. Dharma propounded by Bhagvad Geeta is soul of all the faiths and beliefs (religions) within the fold of Hinduism and the Hindus of all the faiths and beliefs (religions) born in India follow any of three ways to achieve Almighty, salvation or achieve the Goal by discharging their duty, that is, Karma Yog.

Gita Rasamrit written by Shivanand and published by Sarva Seva Sangh Prakashan, Raj Ghat, Varanasi, in which the Adi Guru Shankaracharya had described Gita. "leLrosnkFkZ IkJlaxzgHkwre~] leLriq:"kkFkZff}e~ -A Ramanujacharya propounded the theory of Vishwadwaitwad, Madhwacharya, Dwaitwad, Nimbarkacharya, principles of Dwaitwad and Radha Madhav, Vallabhacharya and Sudhadaitwadi and various other theories. The Gita was also followed by Buddhist in Mahayan sect Buddhism.

Shekh Abdul Rahman Chisti translated the Gita in Parsi and Dara Shikoh written the Preface in the name of "Shere Akbar". Gita was translated in English in 1785. Sir Villiam Jons, a Judge of Calcutta High Court, who founded the Asiatic Society of Bengal and got it translated in German in 1784. It was also translated in Greek Latin, German, Kaltic and various other languages.

1. The Bhagwad Gita is "the most beautiful and profound philosophical work in the world" -W.Von Humbold

2. "In the morning I bathe my intellect in the stupendous and cosmogonical philosophy of the Bhagwad Gita..in comparison with which our modern world and its literature seem puny and trivial."- Henry David Thoreau

3. I owed a magnificent debt to the Bhagwad Gita. It was the first of books; it was as if an empire spoke to us, nothing small or unworthy, but large, serene, consistent, the voice of an old intelligence which in another age and climate had pondered and thus disposed of the same questions which exercise us." Ralph Waldo Emerson

Mahrishi Dayanand in his book "Satyarth Prakash' also followed the Gita. In heading "Bhumika' written by Swami Dayanand Sarswati by saying that ";g cM+k n` <+ fu'p; gS fd ??;Rrnxs fo"kfeo ifj.kkesve` rksiee~?? ;g xhrk dk opu gSA bldk vfHkizk; ;g gS fd tks&tkS fojk vkSj /keZizkflr ds deZ gSa os izFke djus esa fo`k ds rqY; vkSj i'pkr ve`r ds ln`k gksrs gSa A ,slh ckrksa dks fpRr esa /kj ds eSaus bl xzUFk dks jpkA Jksrk ok ikBdx.k Hkh izFke izse ls ns[k ds bl xzUFk dk IR;&IR; rKRi;Z tku dj ;Fks"V djSaA"

S/Sri Lok Manya Bal Ganga Dhar Tilak, Ram Prasad Bismil, Lala Lajpat Rai, Chandra Shekhar Azad, Sardar Bhagat Singh, Subash Chandra Bose and other thousands of great men, who created history and participated in national struggle for freedom who under the leadership of Mahatma Gandhi fought for independence of India followed Geeta. Sant Vinobhave in his book "Gita Pravachan' followed Bhagwad Gita through out their life.

Sri Bal Gandadhar Tilak- a great man, freedom fighter and a great leader of our national struggle for freedom for the first time inspired by the theory of Geeta propounded the concept of Independence "Independence is our Birth Right". In the Preface of Book 'Geeta Rahasya' of Lok Manya Tilak the Author has described impact of Geeta on Lok Manya Bal Gangadhar Tilak, which is reproduced below:-

"The late Lokmanya Bal Gangadhar Tilak was a spiritual and intellectual giant. He was a monumental figure in the history of India, and it is a question whether he was more a philosopher than a politician and statesman, in as much as his statesmanship and his political activities would appear to have been based on the Karma-Yog and the principles of Ethics, which he believed to have been expounded in the Gita. In fact, the Gita and its teachings would seem to have been the guiding beacon of his life;

and if one considers what he did for India, and compares it with what he has preached in the Gita-Rahasya, one will come to believe that he has practised what he preached, (which few people do), and that his political activities were a concrete example of that 'universal welfare' (lokasamgraha), which according to him, was preached by the Gita to be the basis of Karma-Yog, And, one will not be far wide of the mark, if one looks upon him as a maharisi in an age of National regeneration."

Acharya Sri Ram Sharma and his disciple Dr. Pranav Pandya in his Book Yug Geeta has described importance of Gita in the spiritual world and in the Indian Society representing Hinduism.

Dr. Sarvapalli Radhakrishnan at Pages 11 and 12 in his Book "The Bhagavad Gita" has observed as follows:-

"The Gita has exercised an influence that extended in early times to China and Japan and latterly to the lands of West. The two chief works of Mahayana Buddhism, Mahayanasradhotpatti (The Awakening of Faith in the Mahayana) and Saddharmapundarika o (The Lotus of the True Law) are deeply indebted to the teaching of the Gita. It is interesting to observe that the official exponent of "the German Faith," J. W. Hauer, a Sanskrit scholar who served for some years as a missionary in India, gives to the Gita a central place in the German faith. He calls it 'a work of imperishable significance.'" He declares that the book "gives us not only profound insights that are valid for all times and for all religious life, but it contains as well the classical presentation of one of the most significant phases of Indo-Germanic religious history.....It shows us the way as regards the essential nature and basal characteristic of Indo-Germanic religion. Here Spirit is at work that belongs to our spirit." He states the central message of the Gita in these words: "We are not called to solve the meaning of life but to find out the Deed demanded of us and to work and so, by action, to master the riddle of life." (Quoted in the Hibbert Journal, April 1940, p.341) The Gita, however, bases its message of action on a philosophy of life. It requires us to know the meaning of life before we engage in action. It does not advocate a fanatical devotion to the practical to the disparagement of the dignity of thought. Its philosophy of he practical is a derivative from its philosophy of spirit, brahmvidya-ntargatakarmayogasastra. Ethical action is derived from metaphysical realization. S. urges that the essential purpose of the Gita is to teach us a way out of bondage and not merely enjoin action, sokamohadi-samsarakarmanivrttyartham gitasastram, na pravartakam."

"The teaching of the Gita is not presented as a metaphysical system thought out by an individual thinker or school of thinkers. It is set forth as a tradition which has emerged from the religious life of mankind. It is articulated by a profound seer who sees truth in its many-sidedness and believes in its saving power. It represents not any sect of Hinduism but Hinduism as a whole, not merely Hinduism but religion as such, in its universality, without limit of time or space, embracing within its synthesis the whole gamut to the creative affirmations of the saint. The suggestions set forth in the Gita about the meaning and value of existence, the sense of eternal values and the way in which the ultimate mysteries are illumined by the light of reason and moral intuition provide the basis for agreement in mind and spirit so very essential for keeping together the world which has become materially one by the universal acceptance of the externals of civilization."

Maharshi Arvind Ghosh a great freedom fighter, thinker and philosopher in his Book "Essays on the Gita" has given the importance and need of the Gita.

"In the Gita there is very little that is merely local or temporal and its spirit is so large, profound and universal that even this little can easily be universalized without the sense of the teaching suffering any diminution or violation; rather by giving an ampler scope to it than belonged to the country and epoch, the teaching gains in depth, truth and power. Often indeed the Gita itself suggests the wider scope that can in this way be given to an ideal in itself local or limited."

In his Book "Essays on Gita", 'a devine teacher' he has also described that Gita is for human discipline. A paragraph of the Book is being reproduced below:-

"The first step is Karmayoga, the selfless sacrifice of works, and here the Gita's insistence is on action. The second is Jnanayoga, the self realization and knowledge of the true nature of the self and the world, and here the insistence is on knowledge; but the sacrifice of works continues and the path of works becomes one with but does not disappear into the path of Knowledge. The last step is

Bhaktiyoga, adoration and seeking of the supreme Self as the divine Being, and here the insistence is on devotion; but the knowledge is not subordinated, only raised, vitalized and fulfilled, and still the sacrifice of works continues; the double path becomes the triune way of knowledge, works and devotion. And the fruit of the sacrifice, the one fruit still placed before the seeker, is attained, union with the divine Being and oneness with the supreme divine Nature."

Mahatma Gandhi in "Bhagavad-Gita The Song of God has described Gita as mother. He in 'Young India' publication written as follows:-

"When doubts haunt me, when disappointments stare me in the face, and I see not one ray of hope on the horizon, I turn to Bhagavad-gita and find a verse to comfort me; and I immediately begin to smile in the midst of overwhelming sorrow. Those who meditate on the Gita will derive fresh joy and new meaning from it every day."

Mahatma Gandhi in his Book 'Bhagwat Gita' made following observations:-

"...The object of the Gita appears to me to be that of showing the most excellent way to attain self-realisation. That which is to be found, more or less clearly, spread out here and there in Hindu religious books, has been brought out in the clearest possible language in the Gita even at the risk of repetition."

.....

"Gita has the least to do with the externals. A devotee may use, if he likes, rosaries, forehead marks, make offerings, but these things are no test of his devotion. He is the devotee who is jealous of none, who is a fount of mercy, who is without egotism, who is selfless, who treats alike cold and heat, happiness and misery, who is ever forgiving, who is always contented, whose resolutions are firm, who has dedicated mind and soul to God, who causes no dread, who is not afraid of others, who is free from exultation, sorrow and fear, who is pure, who is versed in action and yet remain unaffected by it, who renounce all fruit, good or bad, who treats friend and foe alike, who is untouched by respect or disrespect, who is not puffed up by praise, who does not go under when people speak ill of him who loves silence and solitude, who has a disciplined reason. Such devotion is inconsistent with the existence at the same time of strong attachment."

.....

"But the Gita says: No one has attained his goal without action. Even men like Janaka attained salvation through action. If even I were lazily to cease working, the world would not perish. How much more necessary then for the people at large to engage in action."

Pt. Jawahar Lal Nehru in his Book "Discovery of India" also written about Bhagwat Gita. Some relevant portion from pages 109 and 110 of the Book are being reproduced below:-

"...Every school of thought and philosophy looks up to it and interprets it in its own way. In times of crisis, when the mind of man is tortured by doubt and is torn by the conflict of duties, it has turned all the more to the Gita for light and guidance. For, it is a poem of crisis, of political and social crisis and, even more so, of crisis in the spirit of man. Innumerable commentaries on the Gita have appeared in the past and they continue to come out with unfailing regularity. Even the leaders of thought and action of the present day-Tilak, Aurobindo Ghose, Gandhi- have written on it, each giving his own interpretation. Gandhiji bases his firm belief in non-violence on it, others justify violence and warfare for a righteous cause."

.....

"The message of the Gita is not sectarian or addressed to any particular school of thought. It is universal in its approach for everyone. Brahmin or outcaste: "All paths lead to Me, it says. It is because of this universality that it has found favour with all classes and schools. There is something in it which seems to be capable of being constantly renewed, which does not become out of date with

the passing of time-and inner quality of earnest inquiry and search, of contemplation and action, of balance and equilibrium in spite of conflict and contradiction There is a poise in it and a unity in the midst of disparity, and its temper is one of supremacy over the changing environment, not by seeking escape from it but fitting in with it. During the 2,500 years since it was written, Indian humanity has gone repeatedly through the processes of change and development and decay; experience has succeeded experience, thought has followed thought, but it has always found something livings in the Gita, something that fitted into the developing thought and had a freshness and applicability to the spiritual problems that afflict the mind."

Swami Adgadanand, a great Saint of India in his Book Yatharth Geeta has given Concept of Dharma propounded by Geeta, the same is being reproduced below:-

#### "UNIFORM DHARM PRINCIPLES"

##### 1. EVERY ONE, CHILDREN OF GOD:

"The immortal soul in the body is a part of mine and it is HE who draws the five senses and the sixth the mind that dwell in nature."

All human beings are children of God.

##### 2. PURPOSE OF THE HUMAN BODY:

"It hardly needs saying that since pious Brahmin and royal sages (rajarshi)attain to salvation, you should also renounce this miserable, ephemeral, mortal body and always engage in my worship."

"Although devoid of money and comforts, yet rare to gain, while you are in the human body worship me. The right for such worship is granted to all those in human body."

##### 3. ONLY TWO CASTES IN HUMAN BEINGS:

"There are in the world, O' Parth, two kinds of beings, the pious, on whom I have already dwelt at length, and the devilish of whom you will now hear from me.

There are only types of human beings, the 'Deva' (divine) of whom the heart is dominated by the noble traits, and the 'Asura' (devil) whose evil traits dominate the hearts. In this entire creation, there are no other types of human beings."

##### 4. FULFILMENTS OF EVERY DESIRE THROUGH

GOD:

"Men who do pious deeds enjoined by the three Vedas, who have tasted nectar and freed themselves from sin, and who wish for heavenly existence through worshipping me by Yagya, go to heaven (Indralok), and enjoy godly pleasures as a reward for their virtuous acts."

Though worshipping me, people aspire to reach the heaven and I grant it to them. Therefore, everything can be easily attained through the grace of Supreme Being.

##### 5. ELIMINATION OF EVERY SIN BY TAKING

REFUGE IN THE SUPREME BIENG:

"Even if you are the most heinous sinner, the ark of knowledge will carry you safely across all evils."

Even the worst of all sinners can undoubtedly gain access to the Supreme Being by using the boat of wisdom.

#### 6. KNOWLEDGE:

"Constantly resting is the awareness that is called adhyatmya and perception of the Supreme spirit who is the end of realization of truth are all knowledge and whatever is contrary to them is ignorance."

Dedication to the wisdom of the supreme soul, and the direct perception of Eternal Wisdom, which is the manifestation of the Supreme Soul, constitute the components of the real wisdom. Any thing, other than these is ignorance. Thus direct perception of God is wisdom.

#### 7. EVERY ONE IS ENTITLED TO WORSHIP:

"Even if a man of the most depraved conduct worships me incessantly, he is worthy of being regarded as a saint because he is a man of true resolve. Thus he shortly becomes pious and achieves eternal peace, and so, O Son of Kunti, you should know beyond any doubt that my worshipper is never destroyed."

A great sinner even, if worships ME with onepointedness and single mindedness shall be transformed into a noble soul and shall attain the everlasting peace within. Therefore, a noble soul is the one who has dedicated himself to the Supreme Being.

#### 8. EVERLASTING SEED IN DIVINE PATH:

"Since selfless action neither wears out the seed from which it sprang nor has any adverse consequence, even a partial observance of this dharm liberates (one) from the dire terror (of repeated birth and death)."

Even a small amount of action performed with a goal of self realization shall elevate the seeker from the terrible fear of birth and death cycles.

#### 9. THE ABODE OF THE SUPREME BEING:

"Propelling all living things that bestride a body which is but a contrivance by the maya, O Arjun, God abides in the hearts of all beings. Seek refuge with all your heart, O Bharat, in that God by whose grace you will attain to repose and the everlasting, ultimately bliss."

God reside within the heart of every living being. Therefore, one must surrender himself totally to this Supreme Being with complete detachment. Through his compassion, one shall attain the ultimate bliss.

#### 10. YAGYA:

"Yet other Yogis offer the functions of their senses and operations of their life breaths to the fire of Yog (self control)kindled by knowledge. As some offer their exhalation to inhalation, others offer their inhaled breath to the exhaled breath, while yet others practise serenity of breath by regulating their incoming and outgoing breath."

The entire activities of the sense organs and mental turmoils are offered as oblations to the soul that is illuminated by wisdom, into the fire of yog. Meditators, on the self, sacrifice the vital air to apan and similarly apan to pran. Going even higher than this, a Yogi restrain all life forces and take refuge in the regulation of breath (pranayam). The procedure of such practises is Yagya. To perform this action is "ORDAINED ACTION" i.e. Karm.

#### 11. PERFORMER OF YAGYA:

"O the best of Kuru, the yogis who have tested the nectar flowing from Yagya attain to the eternal Supreme God, but how can the next life of men bereft of Yagya be happy, when even their life in this world is miserable?"

For the men, who do not possess the attitude of yagya, it is very difficult to obtain human form in the transmigratory existence. Therefore, everyone, in a human body is entitled to perform Worshipful Meditation (Yagya).

#### 12. GOD CAN BE SEEN:

"O Arjun, mighty armed one a worshipper can know this form of mine directly, acquire its essence, and even become one with it by a total and unswearing dedication."

It is easy to see Him face to face, know Him and even gain entry into Him through intense devotion.

"Only a seer, views the soul as a marvel, another one describes him as a marvel, and yet another hears him as a marvel, while there are some who hear him and yet know Him not."

An enlightened sage could see this SOUL as a rare wonder. This is direct perception.

#### 13. SOUL IS ETERNAL AND TRUE:

"The self, which cannot be pierced or burnt or made wet or faded is uninterrupted all pervasive, constant, immovable and eternal."

Soul alone is true. Soul alone is eternal.

#### 14. CREATOR AND HIS CREATIONS ARE MORTAL:

"All the worlds from Brahmlok downwards are, O Arjun, of a recurrent character, but, O son of Kunti, the soul which realizes me is not born again."

Brahma (the creator) and his creations, dev and demons are full of grief, momentary and mortal.

#### 15. WORSHIP OF OTHER GODS:

Driven by the properties of their nature, they who fall from knowledge desire worldly pleasures and in imitation of the prevailing customs, worship other gods instead of one single God."

Those whose intellect has been robbed through enjoyment of worldly comforts, such foolish persons tend to worship other gods than the Supreme Being."

Although even covetous devotees indeed worship me in worshipping other gods, their worship is against the ordained provisions and therefore enveloped by ignorance."

Those who worship other gods, are worshipping Supreme Being under influence of ignorance and their efforts go in vain.

"Mark you that they who undergo terrible self mortification without spiritual sanction and are afflicted with hypocrisy and arrogance besides lust, attachment, and vanity of power and who wear out not only the elements that constitute their bodies but also me who dwells in their souls are ignorant men with evil disposition."

#### 16. THE IGNOBLE:

Those who, after forsaking the prescribed way of performing Yagya, but adopt ways without scriptural sanction, are cruel, sinful and ignorable among the human being.

#### 17. ORDAINED PROCEDURES:

"He who departs from the body intoning OM, which is GOD in word, and remembering me, attains to salvation."

The intoning of OM, which is the synonym for eternal Brahm, remembering only the sole Supreme Being and worshipful meditation is guidance of enlightened sage.

#### 18. SCRIPTURE:

"I have thus instructed you, the sinless, in the most subtle of all knowledge because, Bharat, by knowing its essence a man gains wisdom and accomplishes all his tasks."

#### GEETA IS SCRIPTURE

"So scripture is the authority on what ought and ought not to be done, and having learnt that you have the ability to act according to the provisions laid down by the scripture.

Scripture is only a base to take perfect decision in case of performance or avoidance of DUTY. Hence one should act as per prescribed task elaborated in GEETA.

#### 19. DHARM:-

"Grieve not, for I shall free you from all sins if you abandon all other obligations (dharm) and seek refuge in me alone."

After giving up all the confusing ups and downs, and interpretations (he who shall take refuge in ME, means who shall completely surrender to the sole Supreme Being), the ordained action to achieve ultimate bliss is the real conduct of DHARMA (2/40) and even if man of the most depraved conduct if performs, is worthy of being regarded as a Saint (9/30).

#### 20. PLACE OF ATTAINMENT:

"For I am the one in whom the eternal GOD, immortal life, the imperishable Dharm, and the ultimate bliss all abide."

He is the dwelling of immortal GOD, of everlasting life, of eternal DHARM and of the unblemished pure joy of attaining the Supreme goal. In other words, a GOD-oriented saint, an enlightened GURU is this bliss, personified.

(THE TRUE ESSENCE OF ALL THE RELIGIONS IN WORLD ARE ECHOS OF GEETA)"

#### Importance and Impact of Bhagvad Geeta- A Dharma Shastra

Since the present dispute relates to Deity Gopal Thakur installed at Gopal Dham, Mohalla Til Bhandeshwar, Varanasi, that is, Temple of Lord Krishna. The significance and importance of Lord Krishna and Gita in World as well as in respect of India and the Indian spiritual world and social and political field can be understood from the fact discussed above that Lord Krishna has given to the man kind a new concept of Dharma (Duty) through Geeta.

It has come in Geeta that the God has given the theory of Karmayog to Surya (Sun) and from Sun to the Manu and from Manu to other highly revered Saints. It is now settled that the Sun is the source of

all human being and also that entire world and also source of energy to all creations of man kind and source of life on earth.

In Chapter IV of "Yatarth Geeta" of Swami Argadanand, The Lord said

1. "it was I who taught the eternal yog to the Sun-(Vivaswat), who then taught it to Manu, who taught it to Ikshwaku.'

JhHxokuqokp

" bea fooLors ;ksxa izksDroku~geO;;e~ A

fooLokUeuos izkg euqfj{okdosMczohr~ AA (1)

This has now being established by modern science also that sun supports of life of human being and main source of energies is Sun. A human being gets everything for his body, mind, heart etc. through energy only.

Following paragraph of Book "Ecology Environment and Resource Conservation" written by J.S. Singh published by Anomaya Publisheres, New Delhi is very relevant, the same is being reproduced below:-

"Sun, the only important source of energy, supports life on earth and energizes most of the atmospheric processes. Solar radiation is the driving force for the functioning of ecosystems."

Another Book "The Origin of Life" written by Carl O.Dunbar published by John Wiley & Sons also talks source of energy of Sun. Relevant paragraph of the Book is being reproduced below:-

" The first great source of such energy was sun-light, which is still the means by which plants build up organic matter through photosynthesis; and when free oxygen began to appear in the atmosphere a still more effective source of energy was available in the oxidation of proteins. This is the present source of energy in animal metabolism."

Following Paragraph of the Book "Biology : The World of Life" (Vth ed.) 1990 written by Rober A. Wallace is also very relevant:-

"The cells that were able to chemically manufacture

their own food are now called autotrophs (self-feeders). As time passed, the autotrophs became quite efficient at manufacturing their food. The biochemical chains became long, complex, and refined. Today, the result is most evident in our silent partners on the planet, the green plants. As we will see, they actually use the energy of sunlight to power their intricate food- making machinery. They obviously had an advantage in the early days."

Theory of Bhagwat Geeta speaks about internal and eternal truth. It is not meant to any particular religion, but it is a guiding force for all the religions. Teachings of Lord Krishna in Bhagvad Geeta which says about Dharma Shastra for eternal, truth and does not speak about any religion based on rituals or theology. It also teaches us what duty should be done or what should not be done in a any situation.

The concept of Dharma as defined in Bhagwat Geeta gives message to all religion within the fold of Hinduism, some of which are reproduced below:-

19. "They are both ignorant, he who believes that the Self slays and he who thinks that he is slain, for he neither slays nor he is slain."

" ;,ua osfRr gUrka ;'pSua eU;rs gre~ A

mHkkS rkS u fotkuhrks uk;a gfUr u gU;rs AA

"He who thinks that this slays and he who thinks that this is slain;

both of them fail to perceive the truth; this one neither slays nor is

slain."

20. "Neither (ever) born nor dying, neither at any time coming into being nor ceasing to be, the Self is birthless, perpetual, unchanging, and timeless, and he is not destroyed when the body is destroyed."

"u tk;rs fez;rs ok dnkfr~ uk;a HkwRok Hkfork ok u Hkw;% A

vtks fuR;% 'kkJorksM;a iqjk.kks u gU;rs gU;ekus 'kjhjs AA

"He never born, nor does he die at any time, nor having

(once) come to be will he again cease to be. He is unborn,

eternal, permanent and primeval. He is not slain when the body

is slain."

22. "Like a man who puts on new garments after discarding his worn out clothes, the embodied Self, also, casts off tattered bodies and transmigrates into other bodies that are new."

"oklaf th.kkZfu ;Fkk fogk; uokfu x`gfr ujksMijkf.k A

rFkk 'kjhjfk.k fogk; th.kkZU;U;kfu la;kfr uokfu nsgn" AA

" Just as a person casts off worn-out garments and puts on

others that are new, even so does the embodied soul cast off worn

out bodies and take on others that are new.

The eternal does not move from place to place but the

embodied soul moves from one abode to another. It takes birth

each time and gathers to itself a mind, life and body formed out of

the materials of nature according to its past evolution and its need

for the future. The psychic being is the vijnana which supports the

triple manifestation of body (anna), life (prana) and mind (manas).

When the gross physical body falls away, the vital and mental

sheaths still remain as the vehicle of the soul. Rebirth is a law of nature. There is an objective connection between the ripens and like corn is he born again."

23. "This Self is neither pierced by weapons, nor burnt by fire, nor made damp by water, nor dried up by wind."

uSua fNUnfUr 'kL=kkf.k uSua ngfr ikod% A

u pSua Dysn;R;kiks u 'kks" k;fr ek:r AA

"Weapons do not clave this self, fire does not burn him; waters do not make him wet; nor does the wind make him dry.

30. Since the Self dwelling in all bodies is unslayable, O

Bharat, it does not befit you to grieve for living beings."

nsgf fuR;eo;/ksM;a nsgs loZzL; Hkkjr A

rLekRlokZf.k Hkwrkfu u Ooa 'kksfprqegZfgl AA

"The dweller in the body of every one, O Bharata (Arjuna), is eternal and can never be slain, Therefore thou shouldst not grieve for any creature.

Man is a compound of Self which is mortal. Even if we accept this position that body is naturally mortal, still as it is the means of furthering the interests of the Self it has to be preserved. This is not by itself a satisfactory reason. So Krsna refers to Arjuna's duty as a warrior."

31. " In view of your own dham, too, it is unworthy of you

to fear, for there is nothing more propitious for a Kshatriya than a righteous war."

"Lo/keZefi pkos{; u fodfEirqwegZfl

/kE;kZzf<;q}kPNw;ksMU;r~ {kf=k;L; u fo/krs" AA

"Further, having regard for thine own duty, thou shouldst not falter, there exists no greater good for a Ksatriya than a battle enjoined by duty.

His svadharma or law of action, requires him to engage in battle. Protection of right by the acceptance of battle, if necessary, is the social duty of the Ksatriya, and not renunciation. His duty is to maintain order by force and not to become an ascetic by " shaving off the hair." Krsna tells Arjuna that for warriors there is no more ennobling duty than a fair fight. It is a privilege that leads to heaven."

32. "Blessed indeed, O parth, are the Kshatriy who, without seeking, come upon such a war which is like an open door to heaven."

";NPN;k pksiiUua LoxZ}kjeiko`re~ A

lqf[ku% {kf=k;k% ikFkZ yHkUrs ;q}ehn`ke~ AA"

"Happy are the Ksatriyas, O Partha (Arjuna), for whom

such a war comes of its own accord as an open door to heaven.

A Ksatriya's happiness consists not in domestic pleasures a

Comfort but in fighting for the right."

33. "And if you do not engage in this righteous war, you will lose the dham of your Self and glory, and be guilty or sin."

"vFk psRofeea /kE;Z laxzkea u dfj";fl A

rr% Lo/keZ dhfrZ p fgRok ikieokIL;fl AA

"O thou best of men, there are only two types who can

pierce the constellation of the Sun (and reach the sphere of

Brahman); the one is the samnyasin who is steeped in Yoga and

the other is the warrior who falls in the battlefield while

fighting."

34. "And all will for ever speak of your disgrace and such disgrace is worse than death itself for a man of honour."

"vdhfrZ pkfi Hkwrkfu dFk";fUr rsMO;ke~ A

IEHkforL; pkdhfrZeZj.knfrfjP;rs AA

"Besides, men will ever recount thy ill-fame and for one who has been honoured, ill- fame is worse than death."

35. "Even the great warriors who have a high regard for you will then scorn you for having turned your back upon the war out of fear."

"Hk;knz.kknqwijra eaL;Urs Roka egkjFkk A

;s"kkk p Roa cgqerks HkwRok ;kL;fl yk?koe~

" The great warriors will think that thou hast abstained

from battle through fear and they by whom thou wast highly esteemed will make light of thee."

The relevant Shlokas of these principles of different Chapters are being reproduced below:-

"The immortal Soul in the body is a part of mine and it is he who attracts the five senses and the sixth- the mind that dwell in nature."

eesoka'kks thoyksds thoHkwr% lukru% A

eu%"k"BkuhfUnz;kf.k izd`frLFkkfu d"kZfr" AA 15@7

" It hardly needs saying that since pious Brahmin and royal sages (rajarshi) attain to salvation, you should also renounce this miserable, ephemeral, mortal body and always engage in my worship."

fda iquczKZg` .kk% iq.;k HkDrk jkt"KZ;LrFkk A

vfUR;elq[ka ykxdfeea izkl; HktLo eke~" AA 9@33

"There are in the world, O parth, two kinds of beings, the pious, on whom I have already dwelt at length, and the devilish of whom you will now hear from me."

JKS HkwrlxkSa ykdsMfLeu~ nSo vklqj ,o p A

nSoks foLrj'k% izksDr vklqja ikFkZ es J` .kq" AA 16@6

"Men who do pious deeds enjoined by the three Ved, who have tasted nectar and freed themselves from sin, and who wish for heavenly existence through worshiping me by yagya, go to heaven (indriok) and enjoy godly pleasures as a reward for their virtuous acts."

"=kSfojk eka lkseik% iwrikik ;KSfj"V~ok LoxZfra izkFkZ;Urs A

rs iq.;eklk| lqjsUnzyksd& e'ufUr fnO;kfUnfo nsoHkksxku~" AA 9@20

"Sacrifice through wisdom is, O Parantap, in every way superior to sacrifices made with material objects, because ( O Parth) all action ceases in knowledge, their culmination."

"Js ;kUnzO;e;k|KkTKku;K% ijari A

loZ dekZf[kya ikFkZ Kkus ifjlek;rs" AA 4@33

" O Arjun, a man of great penance, a worshipper can know this form of mine directly, acquire its essence, and even become one with it by a total and unswerving dedication."

"HkDR;k RouU;;k 'kD; vgesofo/kksMtqZu A

Kkrq nz"Vqa p rRosu izos"Vqa p ijari" AA 11@54

"Only a seer views the Soul as a marvel, another one describes him as a marvel, and yet another one hears him as marvel. While there are some who hear him and yet know him not."

"vkJ;ZoRi';fr dfJnsuekJ;Zo}nfr rFkSo pkU;% A

vkJ;ZoPpSueU;% J` .kksfr J` Rokl;sua osn u pSo df'pr~" AA 2@29

"The Self, which cannot be pierced or burnt or made wet or faded, is uninterrupted, all-pervasive, constant, immovable, and eternal."

"vPNs|ksM;enkgksM;eDys|ksM'kks"; ,o p A

fuR;% loZxr% LFkk.kqjpyksM;a lukru%" AA 2@24

"All the worlds from Brahmiok downwards are, O Arjun, of a recurrent character, but, O Son of Kunti, the soul which realizes me is not born again."

"vkcZgkHkqoukYyksdk% iqujkofrZuksMtqZu A

ekeqisR; rq dkSUrS; iqtZUe u fo|rs" AA 8@16

"Driven by the properties of their nature, they who fall from knowledge desire worldly pleasures and, in imitation of the prevailing customs, worship other gods instead of the one single God."

"dkeSLrSLrSgZrKkuk% izi|UrsMU;nsork% A

ra ra fu;eekLFkk; izd`R;k fu;rk% Lo;k" AA 7@20

"Mark you that they who undergo terrible self-mortification without scriptural sanction and are afflicted with hypocrisy and arrogance besides lust, attachment, and vanity of power, and who wear out not only the elements that form their bodies but also me who dwells in their Souls, are ignorant men with evil disposition."

"v'kkL=kfofgra ?kksja rl;Urs ;s riks tuk% A

nEHkkgadkja;qDrk% dkejkxcykfUork% AA" 17@5

"d'kZ;Ur% 'kjhjLFka Hkwrxzkeepsrl% A

eka pSokUr% 'kjhjLFka rkfUon~/;klqjfuJ;ku~ AA" 17@6

"While some worship me by gyan-yagya as the all-encompassing Supreme Spirit with the feeling that I am all, some worship me with a sense of identity, some with a sense of being separate from me (regarding me as master and themselves as servants), while yet others worship me in many a different fashion."

"Kku;Ksu pkl;U;s ;tUrks ekeqiklrs A

,dRosu i`FkDRosu cgq/kk foJrkseq[ke~" AA 9@15

"I am the action that is undertaken, the yagya, the fulfillment of earlier resolutions, the heater, the sacred prayer, the oblation as well as the sacred fire, and I am also the sacrificial act of oblation."

"vga dzrqjga ;K% Lo/kkgegekS"k/ke~ A

eU=kksMgegesokT;egefxzjga gqre~" AA 9@16

"Men who do pious deeds enjoined by the three Ved, who have tasted nectar and freed themselves from sin, and who wish for heavenly (Indrllok) and enjoy godly pleasures as a reward for their virtuous acts."

"=kSfojk eka lkseik% iqwrikik ;Ksfj"V~ok LoxZfra izkFkZ;Urs A

rs iq.;eklk| lqjsUnzyksd&e'ufUr fnO;kfUnfo nsoHkksxku~" AA 9@20

"I am the supreme goal, the sustainer and Lord of all, the maker of good and evil, the abode and shelter of all, the benefactor who wants nothing in return, the beginning and the end, the fountainhead as well as that in whom all beings are dissolved, and also the indestructible primal energy."

"xfrHkZrkZ izHkq% lk{kh fuokl% 'kj.ka lqg~r~ A

izHko% izy;% LFkkua fu/kkua chteO;;e~" AA 9@18

"They have to undergo rebirth because they are ignorant of the reality that I am the enjoyer as well as the master of all yagya."

"vga fg loZ;Kkuka HkksDrk p izHkqjso p A

In a Book on Sardar Vallabh Bhai Patel 'THE PEERLESS SARDAR' written by Gunvant Shah, impact of Geeta on Sardar Vallabh Bhai Patel which is very relevant Some important paragraphs of the Book are being reproduced below:-

".....Mercy shown in punishing a goonda amounts to leaving many innocents to the mercy of such a goonda. Never would Sardar show such mercy because his compassion was not short-sighted."

".....One suspects that the dominance of goondas in some states of the country is perhaps due to the lack of such harshness. Is Krishna harsh when he advises Arjuna to fight the battle for the preservation of dharma? If Sardar's harshness is not viewed in this wide perspective, we will be doing him a gross injustice....."

Dharma is the soul of Bhagvad Geeta to be achieved from any of the three ways, that is, Bhakti Yog, Karma Yog and Gyan Yog. All the religions born in India follow any of the three ways. Buddhism and Jainism stressed more on soul which has been given in Bhagvad Geeta. The duty to fight for Dharma without caring for the result is the theory of Bhagvad Geeta. In case anyone invades anyone's rights and in order to defend rights (Dharma) anyone refuses to perform his duty is also responsible for sin committed by such elements is one of the principles of Bhagvad Geeta.

According to Seven Judges' Bench judgment of the Apex Court in Shree Ahimsa Army Manav Kalyan Jeev Daya Charitable Trust v. Mirsapur Moti Kureshi Kassab Jamat, Ahmedabad (supra) it is the fundamental duty of every citizen to cherish and follow the noble ideals which inspired our national struggle for freedom. In view of discussions made above, Hinduism was always governed by one Dharma and all beliefs or thoughts (religions) are within the fold of Hinduism. As our national struggle for freedom was inspired by Dharma Shastra 'Bhagvad Geeta' given by Lord Krishna, this Court is of the view that Bhagvad Geeta is a Dharma Shastra of India and it is also the duty of State to recognise Bhagvad Geeta as Rashtriya (National) Dharma Shastra which inspired our national struggle for freedom and all walks of life and it is the duty of every citizen of India under Articles 51-A of the Constitution of India irrespective of caste, creed or religion to follow Dharm propounded by 'Bhagvad Geeta'. As India has recognised National Flag, National Bird, National Anthem and National Flower, 'Bhagvad Geeta' may also be considered as National (Rashtriya) Dharma Shastra.

Thus, after considering each and every aspect and the materials brought to the notice of this Court during arguments of learned counsel for the parties, this Court is of the firm view that Dharma which could be any of the three ways of Bhakti Yog, Karmayog and Gyan Yog to attain eternal truth and for duties of is universally applicable to mankind and represents not any particular section of Religion, but Hinduism as a whole in its universality, without limit of time or space, embracing within its synthesis the whole gamut to the creative affirmations of the Saints and, therefore, Hinduism is Dharm which common to all faith and beliefs (religions) born in India and are part of Hinduism. The Court agrees with the views of various Philosophers including Sarvapalli Radha Krishnan detailed above to that effect and, therefore, all Hindus are entitled to get protection under this judgment.

Constitution of Board to look after the affairs of the Hindu Temples, Mutths, public and private Charitable Trusts and other religious places:-

In view of the discussions made above, this Court is of the view that for proper protection, preservation, regulation, management and for proper observance of religious and secular activities and other activities of the Temples and other religious institutions of all sections of Hinduism, an Autonomous Board should be constituted which shall have superintendence over all the religious institutions of all sections of Hindu Dharma. Religious Institutions means a Mutth, Temple, Specific Endowment, Samadhi or any other Institution established and maintained for Hindu Religious purposes. Temple means a place used as place for public or private worship dedicated to or for benefit of Hindu community or any part thereof which also includes a Sub-Shrine, Utsav Mandap and appurtenant structure including land and other properties attached thereto.

Various State Governments have already enacted Charitable & Hindu Religious Institutions & Endowments Act to look after the Hindu Temples and other Religious Institutions. Maharashtra, Gujrat and Andhra Pradesh and some other State Governments have already having Legislation to regulate functioning of Hindu Temples and other Religious Institution, but so far as the State of U.P. is concerned, at present, there is no such Legislation and as such this Court is of the view that a State Board for Religious Institutions of all sections of Hindu Society at the State level consisting of 21 Members may be constituted consisting of a retired Supreme Court Judge or a retired High Court Judge as its Chairman and Principal Secretary/Secretary, Ministry of Endowment, Government of U.P., who must be a Hindu, may be the Secretary of the Board and other 19 Members of the Board may be nominated from all the religions within the fold of Hinduism to represent all the religions. The Board so constituted shall frame a Scheme and also co-opt representative of all the sections of Hindu Society and devotees belonging to different sects such as Lord Krishna, Lord Rama, God Ganesha, Lord Shiva, followers of Kabir, followers of Radhaswamis, followers of Sain Baba, followers of Raidas, Aryasamj, Sikkhs, Jains, Buddhists, and all other members of different faith, beliefs and thoughts born and followed in India which are part of Hinduism.

The functions of the Autonomous Board so constituted shall be as follows:-

(i) To register each and every religious institution which means Temples, Mutths, specified Endowments, Samadhis, Religious Trusts and all the Institutions established for religious purpose.

(ii) The Board shall take steps to constitute a Force for safety and security of Temples throughout the State of Uttar Pradesh. For this purpose, Board may take assistance from State of Uttar Pradesh,

(iii) The Board shall formulate a Scheme for protection of Hindu Religious Institutions which means Mutths, Temples, specified Endowments which also includes Samadhis and other Religious Institutions established and maintained for religious purpose including establishment of orphanage, Asram for Widows and disabled people and for registration of each and every public and private religious institutions mentioned above from the surplus money of the Temple or other religious institutions attached with the Temple,

(iv) The Board may constitute sub Boards at State as well as District Levels for different sections of Hindu Dharm consisting of a member of Higher Judicial Officer, District Magistrate, one Member nominated by the Central Board from State Level and five Members representing different religious groups within the fold of Hinduism.

(v) The Board shall also take all effective steps for regulating the management of all the religious institutions of all the sections of Hinduism by (a) recognising the existing Committee constituted in accordance with the Deed of Dedication or Religious Trust, (b) shall regulate financial matters to check mismanagement, (c) in case there is no Deed of Dedication, the Board shall constitute/reconstitute a new Committee of Management to look after the affairs of such Religious Institutions and in case any Religious Institution is regulated by any Legislation, the Board shall ensure that the Legislation relating to such religious right is duly followed and take all necessary steps to coordinate with such Bodies, (d) the Board shall also take steps to establish Gaushala of all kinds of cows in every religious institution, arrange for marriages of poor and helpless Girls belonging to Hinduism and take steps in other matters which the Board may consider proper to safeguard all Religious Institutions of Hinduism and (e) the Board shall also made efforts to establish orphanage, helpless widows and other old people, disabled persons and other helpless persons of Hinduism.

(vi) The Board shall also constitute/evolve its own security system by recruiting Security Guards throughout the State of Uttar Pradesh in addition to the Special Cell, if constituted by the State Government.

Conclusion:

On discussions made above, the conclusion of this Court is as follows:-

(i) Property dedicated to and vested in Deity is unalienable if there is restriction in the Deed of Dedication and any alienation made in contravention of such restriction is not binding on the Deity.

(ii) The Temple which is abode of the Deity is unalienable on any condition and the other properties vested in Deity may be alienable in the event of legal necessity if there is no restriction in the Deed of Dedication with the prior permission of the concerned District Judge.

(iii) All the citizens of India who are not Muslims, Christians, Jews and Parsis are Hindus and all are entitled to get protection of their religious institutions under Articles 25 and 26 of the Constitution of India.

(iv) The history of India prior to Independence and after Independence makes it clear that religious institutions which includes Temples were always subject to attacks and demolitions and constructions of Mosques and Madarasas in their places for the last more than 1200 years and such attacks are still continuing by such forces. Recent attacks on different Temples in India confirms the fact that the communal elements and anti Hindu forces are taking inspiration from invasion by foreign Muslims invaders on communal lines and, therefore, Hindu Religious Institutions are entitled to get full protection, safety and security from the State of Uttar Pradesh. For preservation of Hindu Religious Institutions to ensure religious and secular activities a Board of Hindu Religious Institutions may be constituted as detailed in foregoing paragraphs of the judgment.

(v) Under Article 51-A(b) and (f) of the Constitution of India, Bhagvad Geeta and its principles is synthesis and Dharma which inspired our national struggle for freedom right from the day of invasion of Mir Quasim on India in 712 upto 1947, it is the fundamental duty of every citizen and the State as a whole to cherish and follow the noble ideals of Bhagvad Geeta and, thus, it is the duty of every citizen of India to protect our rich heritage.

(vi) Petitioner and Opp. Party no. 1 are Shebaites of Sri Shaligram Shila, Gopal Thakur, created through Deed of Dedication dated 5.3.1928. They shall perform worship, Rag, Bhog and Pooja of Deity (Lord Krishna) according to the terms and condition of Deed of Dedication till they are continuing as Shebaites.

(vii) Hinduism is combination of all faiths, beliefs, thoughts and way of worship (Religions) born in India and represents Karmayog, Gyanyog and Bhaktiyog Dharma propounded by Bhagvad Geeta which is common to all faiths, beliefs and thoughts of all sections of Hindu Society (Hinduism) and is Dharshastra and represents all the sections of Hinduism. It has given us universal and eternal truth to maintain a social order and moral obligation for all times to come and for all the societies and as such 'Bhagvad Geeta' may be recognised as National (Rashtriya) Dharma Shashtra.

(viii) This Court is of the view that a Board for Hindu Religious Institutions, U.P. consisting of 21 members Headed by a retired Supreme Court or High Court Judge with the Principal Secretary, Endowments, Government of Uttar Pradesh as Member Secretary be constituted and the remaining members will be representatives of all sections of Hindu society representing different faith and beliefs (Religions) which are part of Hinduism.

(ix) Offering to the Deity or Endowment is an offering to the Almighty or for religious purposes and a person attached with the management of a religious Institution is entitled to get from the offering only in accordance with the Deed of Dedication or in accordance with law. This Court is of the view that as the offering by the Society is the property of the society, individuals at the helm of affairs whether Mahant/Shebait/Manager/Archak/Sevadar or other persons attached to the Temple are not entitled to get exclusively, but only remuneration according to their work and duties and the remaining part of the offering should be used for religious work for practise and propagation of such (sect) religion, for maintenance of such religious Institution to provide benefit to such section of Hindu society, particularly, poor and down trodden section of Hindu society by establishing Educations Institutions, Hospitals and orphanage etc. or in any other form which may help Hindus.

(x) In view of the findings recorded by this Court, petitioner and Opp. Party no.1 shall continue to remain as Co-Shebaites of the Temple Sri Shaligram Shila 'Gopal Thakur' installed in Gopal Dham, Til

Bhandeshwar, Varanasi and they shall take all effective steps to maintain the Temple and other properties attached thereto, unless they are removed in accordance with law.

(xi) The State of U.P. shall constitute a Special Force or a Special Wing in the Police Force for preservation, protection and prevention of attacks on Temples and Religious Institutions of all the faiths and beliefs (religions) of all the sections of religions relating to Hinduism from communal and antisocial elements.

(xii) The Board shall take such other steps which it may consider necessary for proper maintenance, preservation, to check misfeasance and for safety and security of Temples, Mutths and public & private Religious Trusts and other Religious Institutions.

(xiii) As the properties in question vested in the Almighty, the similar protection like provided for Waqf property is also provided to the Temples and other Religious Institutions of Hindus whether (public or private) which means Mutths and other religious institutions.

(xvii) This Court on consideration of the materials on record is fully satisfied that the State Government should take other effective steps to protect all such religious places. Till any Legislation is enacted on the point, this Court considers it appropriate to command the State of Uttar Pradesh to (a) constitute a Security Cell for Temples and other Religious Institutions of all the sections of Hinduism in every area of every District, (b) religious institutions affected by communal violence or affected by anti social elements and (c) The State Government may frame Rules, Guide Lines in this regard to be circulated to all the District Magistrates to take appropriate steps to protect the Temples and other religious institution.

#### Reliefs

With the result, writ petition succeeds and is allowed.

(i) Impugned orders dated 6.12.2003 and 15.3.1996 (Annexures- 4 and 1 to the writ petition), passed by the Additional District Judge, Varanasi are quashed. Petitioner as well as Opp. Party no.1 are recognised as Co-Shebait of Sri Shaligram Shila 'Gopal Thakur' installed in Gopal Dham, Til Bhandeshwar, Varanasi according to Deed of Dedication and they are further directed to maintain Temple and other properties of Sri Shaligram Shila 'Gopal Thakur' installed in Gopal Dham in accordance with the Deed of Dedication being all alienations void in view of the discussions made in the judgment and Government of Uttar Pradesh is commanded to provide all assistance to Shebait to get the Deity (Gopal Thakur) reinstated in Temple - 'Gopal Dham' (House No. B-17/57, Mohalla Til Bhandeshwar, Varanasi) and also provide all assistance in performance of Rag, Bhog and Pooja of the Deity of the Temple in question.

(ii) A writ of mandamus is issued commanding State of Uttar Pradesh to constitute a Board of Hindu Temple and other Hindu Religious Institutions, U.P. for registration, maintenance, management, protection and preservation of all the Temples and Religious Institutions of all the sections of Hindus for the reasons disclosed in the body of the judgment and for performing functions indicated therein and till any regular Board is constituted, the Adhoc Board shall be Chaired by Mr. Justice R.M. Sahai, a retired Supreme Court Judge, of which Mr. Justice Giridhar Malaviya shall be the Member and Principal Secretary, Endowment, Government of Uttar Pradesh shall be the Member Secretary. Adhoc Board shall frame a scheme for protection of Hindu Religious Institution and submit the same to the State Government within four months from the date of constitution of the Adhoc Board. The Judges nominated in the Board as Chairman and Member shall be entitled to Perks according to their status.

(iii) A writ of mandamus is issued commanding the State of Uttar Pradesh to constitute a special Force for protection of Temples and other Religious Institutions or a special wing in the Police Force for protection of the Temples and religious Institutions affected by communal tension and by activities of antisocial elements within three months from the date of receipt of a certified copy of this order.

(iv) A writ of mandamus is further issued commanding State of Uttar Pradesh not to permit any alienation of any property attached with any Temple and other Religious Institutions (Mutths, Temples, specified Endowments which also includes Samadhis and other Religious Institutions) etc. without prior permission of the District Judge concerned.

Registry is directed to send a copy of this order to Chief Secretary, Uttar Pradesh, for information and necessary action.

Copy of this order shall be supplied to Sri M.C. Chaturvedi, Learned Chief Standing Counsel, State of Uttar Pradesh, for compliance.

August 30,2007