

**HIGH COURT OF TRIPURA**  
**\_A\_G\_A\_R\_T\_A\_L\_A\_**

**Writ Petition(C)(PIL) No.2/2018**

Sri Subhas Bhattacharjee, S/o Late Digendra Kumar Bhattacharjee, resident of Flat No.1B7, Dreamz Exotica, VIP road, P.O. – Kunjaban, PS – New Capital Complex, Kunjaban, Agartala, Tripura West, Pin – 799006.

---- *Petitioner(s)*.

Versus

1. The State of Tripura, to be represented by the Chief Secretary, Government of Tripura, Civil Secretariat, P.O & PS – NCC., Agartala, West Tripura.
2. The District Magistrate & Collector, (Sabait Tripureswari Temple), Udaipur, Gomati District Tripura, Pin – 799 120.
3. The Chairman, Advisory/Management Committee, Tripureswari Temple, Gomati District, Udaipur, Tripura Pin – 799120.
4. Sub-Divisional Magistrate, (Member Secretary, Tripureswari Temple), Gomati District, Udaipur, Tripura, Pin – 799120.
5. Union of India, to be represented by the Secretary, Ministry of Environment & Forest, Government of India, 3<sup>rd</sup> Floor, Prithivi wing, Indira Parvayaran Bhawan, Jorbagh Road, New Delhi – 110 003.

---- *Respondent(s)*.

**\_B\_E\_F\_O\_R\_E\_**

**HON'BLE THE CHIEF JUSTICE MR. SANJAY KAROL**  
**HON'BLE MR. JUSTICE ARINDAM LODH**

For the petitioner(s) : Mr. Subhas Bhattacharjee, Advocate.

For the respondent(s) : Mr. A K Bhowmik, Advocate General,  
Mr. Debalay Bhattacharya, Govt. Adv.,  
Mr. Karnajit Dey, Addl. Govt. Advocete.  
Mr. Bidyut Majumder, CGC.

Date of hearing : 19<sup>th</sup> September, 2019.

Date of & judgment : 27<sup>th</sup> September, 2019.

Whether fit for reporting :

Yes	No
√	x

## **J U D G M E N T**

**(Sanjay Karol, C.J.)**

This Court is called upon to answer the following questions:

“Whether act of the State in offering an animal for sacrifice in the Temples in Tripura, can be said to be a secular activity and as to whether prohibiting the same would infringe the Fundamental right, as envisaged under Article 25(1) of the Constitution of India?”

“Whether the age long practice of 500 years of sacrificing animals, after stoppage of practice of human sacrifice, in Tripureswari Devi Temple, Udaipur, Gomati District, Tripura can be construed as an essential and integral part of religion, as protected under Article 25(1) of the Constitution of India?”

And as a corollary, “Whether a religious practice based on a ritual, custom, tenet, tradition, not being an essential part of religion, can be allowed to continue notwithstanding the provisions of the Prevention of Cruelty to Animals Act, 1960 (*hereinafter referred to as 'the Prevention Act'*) and Article 21(Part - III) & Article 48, 48A and 51A(g) (Part IVA) of the Constitution of India?”

### **PETITIONER'S CONTENTION :**

[2] The instant petition filed by a retired judicial officer, in public interest, highlights the illegal practice of sacrifice of innocent animals, on the basis of a superstition, before the Goddess and other Gods & Goddesses and in particular, at two main temples i.e. Mata Tripureswari Devi Temple and Chatur Das Devata Temple, situate within the State of Tripura.

[3] It is specifically pleaded that at Mata Tripureswari Devi Temple, under the patronage of district administration, Government of Tripura, every day one goat is being sacrificed and on special occasions "substantial number of animals" are being sacrificed as "Bali"(offering to the Goddess) by general public. Such animals are buffalos, goats, pigeons etc. and orally argued that at the Chatur Das Devata Temple, there are such offerings by the State on particular days of the month.

[4] Mata Tripureswari is considered to be one of the 51(fifty one) 'Shakti Peethas' and animal sacrifice is not an essential and integral part of Hindu religion. Slaughtering of animal in the name of "Bali"(sacrifice) is a practice in the nature of social evil and against the Constitutional mandate and spirit. Such practice has a traumatic affect both on the animal and the viewer.

[5] The writ petitioner also highlights the events and the circumstances which lead to the installation of the said idol and construction of the temple way back in the 15<sup>th</sup> century, by the then King Maharaja Dhanyamanikya Bahadur.

[6] In none of the recognized works dealing with the installation of idol or practices required to be followed in worship thereof, there is reference of any necessity of carrying out the ritual of animal sacrifice. Such works being 'Pithamaala Tantra', 'Maha Pitha Nirupan' and 'Shiva Charita'; 'The Shakti Pitham'

authored by Dr. Dinesh Chandra Sakar; 'Rajmala and the History of Tripura' authored by Sri Kailash Chandra Singha; 'Human Sacrifices in Tripura' authored by Rev. James Long, works of Sir Jadunath Sarkar and 'Gazinama' authored by Sheik Manuhar.

[7] Being regarded as one of the holy shrines in Tripura, this temple attracts lots of visitors of different faith & belief for worshipping the deity. On the occasion of Diwali, worship of the Goddess is performed by way of slaughtering of huge number of goats, pigeons, and some buffaloes. This inhuman and barbaric act of slaughtering of animal, in the name of sacrifice, emerges with an act of "ulu-dhwani" (*howl-like sound/applause-sound*) and extreme beating of "dhaks" (*drums*) and lightening of candles, smokes of 'dhups' (*incense*) which makes the entire environment that of enhancement, superstitious sensitivity in the minds of devotees, in particular people having faith in Hinduism, that the Goddess was being satisfied with such sacrifice (slaughtering) of animals that takes place within the lounge of ("Nat Mandir") of Tripureswari Mandir.

[8] It is further highlighted that such practice based on superstition was being continued in different parts of India and Nepal. Now at Gudhima Temple, Nepal, this practice of animal sacrifice stands totally banned. Also, by a judicial order, the age old tradition of animal sacrifice in the Temples in Himachal

Pradesh stands prohibited. It must also be stopped in the State of Tripura, more so by the State Government.

**STATES RESPONSE AND CONTENTIONS :**

[9] The state by filing an affidavit in reply has stated that petition deserves to be dismissed at the threshold, owing to the fact that the petitioner herein, without approaching the Government of Tripura and without issuing any notice to the temple authorities, has filed the instant writ petition under Article 226 of the Indian Constitution.

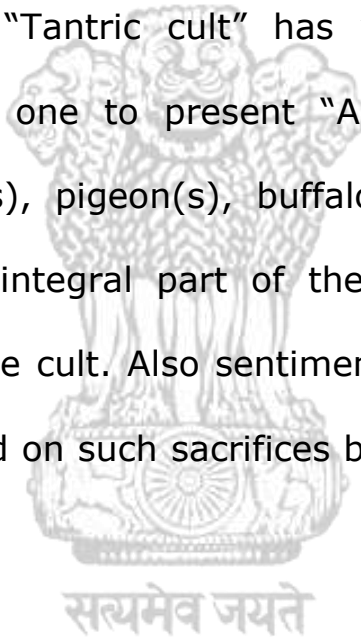
[10] Petitioner has got no *locus* and in any case, petition filed with a *mala fide* intent, is nothing but an abuse of judicial process.

[11] The terms and conditions of the Merger Agreement with the Indian Dominion prescribed that the State Government would worship Mata Tripureswari and other temples, in a traditional system. Since such practice was followed prior to the independence, from the regime of the Maharaja, that domestic animal sacrifice during worship, being an integral part of the worship and as such, is still continued and cannot be stopped.

[12] That since long Hinduism accepted such practice and sentiments of the sect of large Hindu culture involves such sacrifices of the goats, pigeons, buffaloes etc. before the Goddess. Petitioner has failed to consider such public sentiment of long

religious profess and practice. The practice of animal sacrifice, is as per the "long accepted procedure of Hindu rituals of the Tantrik method of worship of the Dash Maha Vidya", i.e. ten forms of the Goddess of the Hindus.

[13] Further it is accepted by the Hindu scriptures and various cults under Hinduism, that "Devi Tripura Sundari" (*Mata Tripureswari*) is one of the 51 shakti piths of Hindu mythology and one of the form of "Dash Maha Vidya" known as "shoroshi" form, which has been worshipped as per the Tantrik worship method of the Tantrik Cult. The "Tantric cult" has various steps of the worship, with the last one to present "Ahuti" in the form of sacrifices of the goat(s), pigeon(s), buffaloe(s) etc. before the Goddess, which is an integral part of the worship as per the accepted practices of the cult. Also sentiment of the sect of large Hindu culture is involved on such sacrifices before the Goddess for ages.



[14] That the petition is motivated inasmuch as petitioner has confined the issue of animal sacrifice only with regard to Hindu religion and not laid any challenge to the practice of animal sacrifice carried out by the Muslim community during their festival of 'Bakri Eid' and that petition has been filed "only to disturb the Hindu sentiment and presumably by anti Hindu elements" with a view to disturb public order and as such is politically motivated.

[15] It is further averred that in India, some religious practices are followed by animal sacrifices before the God/Goddess/Allah/Super Powers, following their cult of concerned religion, such as Hindus, Muslims and some Tribal sect of India as per their customs.

[16] To support his submission, that animal sacrifice is an integral and essential part of practice of tenets of the temples in the State of Tripura, during the course of hearing, learned Advocate General has placed on record 3(three) documents; (i) the works of W.W. Hunter termed as "A Statistical Account of Bengal" [Volume-VI, 1876 publication] relating to Chittagong Hill Tracts, Chittagong, Noakhali, Tipperah, Hill Tipperah; (ii) Imperial Gazetteer of India [Volume-IV] again works of W.W. Hunter and (iii) minutes of the meeting dated 18<sup>th</sup> June, 1982 in connection with the management of the public places of worship in Tripura.

[17] We now proceed to consider such contentions :

**PROVISIONS UNDER THE INDIAN CONSTITUTION :**

[18] Right to freedom of religion is one of the fundamental rights as envisaged in Part - III of the Constitution of India. The import of Article 25(1) of the Constitution is wide enough to ensure every individual to have belief, faith and worship in any religion according to the dictates of one's conscience. Inclusive of this, it also extends to acts done in furtherance of one's religious practices such as rituals, ceremonies in performing their religion

and their right to profess or propagate the same. However, such right is not absolute or unfettered, and is reasonably restricted subject to "public order, morality and health" and other provision of Part -III of the Constitution of India. Every human activity in the name of religion was not intended to be protected under Article 25 and Article 26 of the Constitution. Though every individual is entitled to freely perform its religious practices, but every religious practice cannot be safeguarded by Article 25 and only those practices which are integral and essential part of the religion are safeguarded. On this context, it stands pertinent in ascertaining as to what amounts to an essential and integral part of religion and whether sacrificing of animals in the temples can be considered to fall within the realm thereof or not.

[19] Effectively we shall be dealing with the provisions contained in Part III, Part IV and Part IVA of the Constitution of India.

[20] Insofar as Part III(*Fundamental rights*), the relevant Articles would be 21, 25 and 26.

[21] Insofar as Part IV (*Directive Principles of State Policy*), the relevant Articles would be 48 and 48A.

[22] Insofar as Part IVA (*Fundamental Duties*), the relevant Articles would be 51A, (g), (h) and (i).

[23] For correct reading, better appreciation and understanding, as also for the purpose of ready reference, we deem it appropriate to reproduce the same :-

Part – III (Fundamental Rights).

“21. **Protection of life and personal liberty** – No person shall be deprived of his life or personal liberty except according to procedure established by law.”

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

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

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

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

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

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

Explanation II : In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to

Hindu religious institutions shall be construed accordingly.]”

*(Emphasis supplied).*

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

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

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

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

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

Part - IV(Directive Principles of State Policy).

“48. **Organisation of agriculture and animal husbandry** - The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and drought cattle.”

*(Emphasis supplied).*

“48A. **Protection and improvement of environment and safeguarding of forests and wild life** - The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.”

*(Emphasis supplied).*

Part IV-A(Fundamental Duties).

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

.....

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence."

*(Emphasis supplied).*

[24] The understanding of careful reading of Article 25 reveals that all persons are equally entitled to freedom of conscience and have a right to freely profess, practise and propagate religion, but then, this is subjected to certain rigours and that being "public order", "morality", "health" and "other provisions of Part III of the Constitution". Thus, to our reading, though the right is exclusive in nature but is subjected to certain restrictions within the Constitutional framework.

[25] Insofar as Article 26 is concerned, again the freedom of every religious denomination or any section thereof, more specifically to manage its own affairs in matter of religion are subjected to public order, morality and health.

[26] In terms of Article 48, it is obligatory on the part of the State, for the expression used is "shall", to make an endeavour of organizing agriculture and animal husbandry on the

modern and scientific lines and take steps for preserving and improving breeds and prohibiting the slaughter of cows and calves and other milch and drought cattle. A restrictive meaning cannot be given to the words 'agriculture' and 'animal husbandry'. It is not restricted only to oxen which are traditionally used for agriculture. It would, in fact, include all types of animals put to use for such purpose depending upon several factors such as religion; practices followed and terrain, etc.. Agriculture and animal husbandry are wider concepts having different connotations e.g. father of the Nation "Mahatma Gandhi" laid emphasis on drinking goats milk for he found it to be extremely nourishing.

[27] The term "wildlife" has not been defined under the Constitution (48A) but perhaps, would include "any living being" necessary to form a chain of living organism.

[28] The Constitution calls upon every citizen of India to exhibit compassion for all living creatures and develop a temper of humanism towards all wildlife.

[29] An overall view of bare reading of the provisions would thus exhibit that the framers of the Constitution had desired to *inter alia*, develop a spirit of compassion and humanism, abjure violence and also exhibit the same towards all living beings.

[30] Conscious of the fact that all fundamental duties may not be enforceable, but then, as we consider, are to be promoted for achieving fulfillment of the constitutional goals. For then only, excellence in all spheres of individual and collective activity would result into the nation, constantly rising to higher levels of endeavour and achievement.

**COURTS INTERPRETATION OF ARTCILE 21 VIS-A-VIS LIFE OF ANIMALS :**

[31] Right to life, as has been held by the Apex Court in ***Animal Welfare Board of India Vs. A Nagaraja and Ors., (2014)7 SCC 547*** (2 Judge Bench) (hereinafter referred to as 'Jallikattu')[as affirmed in ***Chief Secretary to the Government, Chennai, Tamil Nadu and Ors Vs. Animal Welfare Board and Anr.,(2017) 2 SCC 144*** (2 Judge)], now stands extended to all living beings, thus the expression "person" has to be read contextually. Hence, insofar as the life of an animal with which we are concerned, cannot be deprived, save and except, in accordance with the procedure established by law. What is that procedure established by law, now stands succinctly explained by the Constitution Bench (7 Judges) in ***MsR. Maneka Gandhi Vs. Union of India & another, (1978) 1 SCC 248*** which means due process of law.

**COURTS INTERPRETATION OF ARTICLE 25 & 26 - RIGHT TO FREEDOM OF RELIGION:**

[32] In **Para – 18** (*supra*) we have already referred to the ambit and scope of the protected right under Article 25. It has to be an essential and integral part or practice of any religion.

[33] The question of essential integral practices of religion cropped up, perhaps for the first time, before the Constitution Bench (7 Judges) in ***The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282*** wherein the Court held that religion is certainly a matter of faith with individuals or communities, not necessarily theistic and that "A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else, but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress. What article 25(2)(a) contemplates is not regulation by the State of religious practices as such, the freedom of which is guaranteed by the Constitution except when they run counter to public order, health and morality, but regulation of activities which

are economic, commercial or political in their character though they are associated with religious practices.”

[Also in ***Ratilal Panchand Gandhi and Ors., Vs. State of Bombay and ors., AIR 1954 SC 388*** (5 Judges)].

[34] The principle stood expanded by yet another Constitution Bench(5 Judges) in ***Sardar Syedna Taher Saifuddin Saheb Vs. State of Bombay, AIR 1962 SC 853*** adding that the right guaranteed by Article 25 is an individual right as distinguished from the right of an organised body like a religious denomination or any section thereof dealt with by Article 26. Hence, every member of the community has the right, so long as he does not in any way interfere with the corresponding rights of others, to profess, practise and propagate his religion, and everyone is guaranteed his freedom of conscience. A person is left completely free to worship God according to the dictates of his conscience, and that his right to worship as he is pleased, is unfettered so long as it does not come into conflict with any restraints, imposed by the State in the interest of public order, etc. A person is not liable to answer for the verity of his religious views, and he cannot be questioned as to his religious beliefs, by the State or by any other person. His right to practise his religion must also be subject to the criminal laws of the country, validly passed with reference to actions which the Legislature has declared to be of a penal character. Laws made by a competent legislature in the interest of public order and the like, restricting

religious practices, would come within the regulating power of the State. The Court exemplified "that there may be religious practices of sacrifice of human beings, or sacrifice of animals in a way deleterious to the well being of the community at large. It is open to the State to intervene, by legislation, to restrict or to regulate to the extent of completely stopping such deleterious practices." It stood explained that it was on such humanitarian grounds, and for the purpose of social reform, that so called religious practices like immolating a widow at the pyre of her deceased husband, or of dedicating a virgin girl of tender years to a god to function as a devadasi, or of ostracising a person from all social contacts and religious communion on account of his having eaten forbidden food or taboo, were stopped by a legislation. Eventually, the twin principles, underlying the provisions of Articles 25 and 26 of the Constitution of India were explained, in the opinion authored by Das Gupta, J in the following manner:

"The content of Arts.25 and 26 of the Constitution came up for consideration before this Court in the *Commissioner, Hindu Religious Endowments Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Matt (1)*; *Mahant Jagannath Ramanuj Das v. The State of Orissa (2)*; *Sri Venkatamana Devaru v. The State of Mysore (3)*; *Durgah Committee, Ajmer v. Syed Hussain Ali (4)* and several other cases and the main principles underlying these provisions have by these decisions been placed beyond controversy. The first is that the protection of these articles is not limited to matters of doctrine or belief they extend also to acts done in pursuance of religion and

therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion. The second is that what constitutes an essential part of a religious or religious practice has to be decided by the courts with reference to the doctrine of a particular religion and include practices which are regarded by the community as a part of its religion."

(Emphasis supplied).

[35] The said principle stands reiterated by another Constitution Bench(5 Judges) in **Seshammal & others etc. etc. Vs. State of Tamil Nadu, (1972) 2 SCC 11.**

[36] That courts are duty bound to ascertain as to what practice is essential and integral part of the religion stands emphatically held by the Constitution Bench(5 Judges) in **Tilkayat Shri Govindlalji Maharaj Vs. State of Rajasthan, (1964) 1 SCR 561: AIR 1963 SC 1638**, in the following terms:

"58. In deciding the question as to whether a given religious practice is an integral part of the religion or not, the test always would be whether it is regarded as such by the community following the religion or not. This formula may in some cases present difficulties in its operation. Take the case of a practice in relation to food or dress. If in a given proceeding, one section of the community claims that while performing certain rites while dress is an integral part of the religion itself, whereas another section contends that yellow dress and not the white dress is the essential part of the religion, how is the Court going to decide the question? Similar disputes may arise in regard

to food. In cases where conflicting evidence is produced in respect of rival contentions as to competing religious practices the Court may not be able to resolve the dispute by a blind application of the formula that the community decides which practice is an integral part of its religion, because the community may speak with more than one voice and the formula would, therefore, break down. This question will always have to be decided by the Court and in doing so, the Court may have to enquire whether the practice in question is religious in character and if it is, whether it can be regarded as an integral or essential part of the religion, and the finding of the Court on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its religion. It is in the light of this possible complication which may arise in some cases that this Court struck a note of caution in the case of the *Durgah Committee, Ajmer v. Syed Hussain Ali*, and observed that in order that the practices in question should be treated as a part of religion they 'must be -regarded by the said religion as its essential and integral part ; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices within the meaning of Art.26.

(Emphasis supplied).

[37] Still further, as to what would constitute an essential integral part or practice of the religion stands succinctly explained in **Commissioner of Police & others Vs. Acharya**

**Jagdishwarananda Avadhuta & another, (2004) 12 SCC**

**770** (3 Judge Bench) in the following terms:

"9. The protection guaranteed under Articles 25 and 26 of the Constitution is not confined to matters of doctrine or belief but extends to acts done in pursuance of religion and, therefore, contains a guarantee for rituals, observances, ceremonies and modes of worship which are essential or integral part of religion. What constitutes an integral or essential part of religion has to be determined with reference to its doctrines, practices, tenets, historical background etc. of the given religion. (See generally the Constitution bench decisions in *The Commissioner vs. L.T. Swamiar of Srirur Mutt* 1954 SCR 1005, *SSTS Saheb vs. State of Bombay* 1962 (Supp) 2 SCR 496, and *Seshammal vs. State of Tamilnadu* (1972) 2 SCC 11, regarding those aspects that are to be looked into so as to determine whether a part or practice is essential or not). What is meant by 'an essential part or practices of a religion' is now the matter for elucidation. Essential part of a religion means the core beliefs upon which a religion is founded. Essential practice means those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practices the superstructure of religion is built. Without which, a religion will be no religion. Test to determine whether a part or practice is essential to the religion is - to find out whether the nature of religion will be changed without that part or practice. If the taking away of that part or practice could result in a fundamental change in the character of that religion or in its belief, then such part could be treated as an essential or integral part. There cannot be additions or subtractions to such part because it is the very essence of that religion and alterations will change its

fundamental character. It is such permanent essential parts which are protected by the Constitution. Nobody can say that an essential part or practice of one's religion has changed from a particular date or by an event. Such alterable parts or practices are definitely not the "core" of religion whereupon the belief is based and religion is founded upon. They could only be treated as mere embellishments to the non-essential (sic essential) part or practices."

(Emphasis supplied).

We notice that the very same paragraph stands reproduced and reiterated subsequently by another Constitution Bench (5 Judges) in ***Shayara Bano Vs. Union of India & others, (2017) 9 SCC 1.***

[38] What is the difference between a religious practice and essential and integral part of practice of a religion, stands considered by the Constitution Bench (5 Judges) of the Apex Court in ***Dr. M. Ismail Faruqi & others Vs. Union of India & others, (1994) 6 SCC 360*** as under:

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

a different footing and have to be treated differently and more reverentially.”

[39] The Constitution Bench (5 Judges) of the Apex Court in ***Durgah Committee, Ajmer & another Vs. Syed Hussain Ali & others, AIR 1961 SC 1402*** cautioned that even practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself.

[40] In ***N. Adithayan Vs. Travancore Devaswom Board & others, (2002) 8 SCC 106*** (2 Judge Bench) while holding that a non-Brahmin could be appointed as a priest in a particular temple and appointment of only Brahmins as pujari cannot be said to be an essential part of religion; that the vision of the founding fathers of Constitution to liberate the society from blind and ritualistic adherence to mere traditional superstitious beliefs sans reason or rational basis finds expression in the form of Article 17; the legal position that protection under Article 25 and 26 extend a guarantee for rituals and observances, ceremonies and modes of worship which are integral part of religion and as to what really constitutes an essential part of religion or religious practice has to be decided by the Courts and that "any custom or usage irrespective of even any proof of their existence in pre constitutional days cannot be countenanced as a source of law to claim any rights when it is found to violate human rights, dignity, social equality and the specific mandate of the Constitution and

law made by Parliament. No usage which is found to be pernicious and considered to be in derogation of the law of the land or opposed to public policy or social decency can be accepted or upheld by Courts in the country."

(Emphasis supplied).

[41] In **A. S. Narayana Deekshitulu Vs. State of A.P. & others, (1996) 9 SCC 548** (2 Judge Bench) the Court emphasized the need of co-existence and tolerance, the very spirit of ancient thought in the scriptures of taking care of and look upon all living beings as friends, "for in all of them there resides one soul. All are but a part of that universal soul." It took note of the reforms brought in by the society, changing old values, crumbling old social orders. With the change of the social order, religion itself has undergone several changes, by responding to the social system, in introducing corresponding changes both in the religion and the religious institutions. The issue as to whether right of the priest (Archaka) is hereditary or not stood answered in the negative by holding that though performance of the ritual ceremony is an integral part of the religion but the person who performs the same or associates himself with the performance of such ceremony, is not.

[42] On the issue in hand, we stand immensely benefited by the most recent decision rendered by the Constitution Bench (5 Judges-4:1) in **Indian Young Lawyers Association & others Vs. State of Kerala & others, (2018) 13 SCALE 75** (5 Judge)

(hereinafter referred to as '**Sabarimala**') with profit we extract the relevant portion of the separate opinion(s) rendered by the Hon'ble Members of the Bench. For determining what is an essential part of practice of one's religion, Hon'ble Dipak Mishra, CJI, as he then was, opined that :

"Nobody can say that essential part or practice of one's religion has changed from a particular date or by an event. Such alterable parts or practices are definitely not the 'core' of religion where the belief is based and religion is founded upon. It could only be treated as mere embellishments to the non-essential part or practices. This view of ours is further substantiated by the fact that where a practice changes with the efflux of time, such a practice cannot, in view of the law laid down in Commissioner of Police and Ors.(supra), be regarded as a core upon which a religion is formed. There has to be unhindered continuity in a practice for it to attain the status of essential practice."

(Emphasis supplied).

[43] And constitutionally what would "morality" mean stands explained, by him, that :

"The term 'morality' occurring in Article 25(1) of the Constitution cannot be viewed with a narrow lens so as to confine the sphere of definition of morality to what an individual, a Section or religious sect may perceive the term to mean. Since the Constitution has been adopted and given by the people of this country to themselves, the term public morality in Article 25 has to be

appositely understood as being synonymous with constitutional morality.”

[44] After discussion, Hon’ble R F Nariman, J in Para 21 of his opinion, *inter alia*, culled out, the following propositions:

“21. A conspectus of these judgments, therefore, leads to the following propositions:

21.1. Article 25 recognises a fundamental right in favour of - all persons which has reference to natural persons.

21.2. This fundamental right equally entitles all such persons to the said fundamental right. Every member of a religious community has a right to practice the religion so long as he does not, in any way, interfere with the corresponding right of his co-religionists to do the same.

21.3. The content of the fundamental right is the fleshing out of what is stated in the Preamble to the Constitution as "liberty of thought, belief, faith and worship". Thus, all persons are entitled to freedom of conscience and the right to freely profess, practice, and propagate religion.

21.4. The right to profess, practice, and propagate religion will include all acts done in furtherance of thought, belief, faith, and worship.

21.5. The content of the right concerns itself with the word "religion" - Religion in this Article would mean matters of faith with individuals or communities, based on a system of beliefs or doctrines which conduce to spiritual well-being. The aforesaid does not have to be theistic but can include persons who are agnostics and atheists.

21.6. It is only the essential part of religion, as distinguished from secular activities, that is the subject matter of the fundamental right. Superstitious beliefs which are extraneous, unnecessary accretions to religion cannot be considered as essential parts of religion. Matters that are essential to religious faith and/or belief are to be judged on evidence before a court of law by what the community professing the religion itself has to say as to the essentiality of such belief. One test that has been evolved would be to remove the particular belief stated to be an essential belief from the religion-would the religion remain the same or would it be altered? Equally, if different groups of a religious community speak with different voices on the essentiality aspect presented before the Court, the Court is then to decide as to whether such matter is or is not essential. Religious activities may also be mixed up with secular activities, in which case the dominant nature of the activity test is to be applied. The Court should take a common-sense view and be actuated by considerations of practical necessity.

21.7. The exceptions to this individual right are public order, morality, and health. "Public order" is to be distinguished from "law and order". "Public disorder" must affect the public at large as opposed to certain individuals. A disturbance of public order must cause a general disturbance of public tranquility. The term "morality" is difficult to define. For the present, suffice it to say that it refers to that which is considered abhorrent to civilized society, given the mores of the time, by reason of harm caused by way, inter alia, of exploitation or degradation. "Health" would include noise pollution and the control of disease.

21.8. Another exception to the fundamental right conferred by Article 25(1) is the rights that are conferred on others by the other provisions of Part III."

*(Emphasis supplied).*

[45] Hon'ble D Y Chandrachud, J, has held "morality" for the purposes of Article 25 and 26 to mean "that which is governed by a fundamental constitutional principles" (Para-11); he clearly opined that *"conversation with the Constitution must be restructured to evolve both with the broadening of the content of liberty and dignity and the role of the Court as an enforcer of constitutional doctrine"* (Para-17) and that it must be proved that *"Practice is essential to religion and inextricably connected with its fundamental character."*

[46] On the issue of "constitutional morality" he opined that the right of freedom of religion "is not a stand alone right". It is an integral element of the entire chapter of fundamental rights and constitutional Articles which recognize fundamental rights and have to be understood "as a seamless web". Together they build the edifice of constitutional liberty and fundamental human freedoms in Part - III are not disjunctive or isolated. They exist together. It is only in cohesion that they bring a realistic sense to the life of the individual as the focus of human freedoms. Further held that :

"The discourse of freedom in the Constitution cannot be denuded of its context by construing an Article in Part III detached from the part within

which it is situated. Even the right of a religious denomination to manage its own affairs in matters of religion cannot be exercised in isolation from Part III of the Constitution. The primacy of the individual, is the thread that runs through the guarantee of rights. In being located in Part III of the Constitution, the exercise of denominational rights cannot override and render meaningless constitutional protections which are informed by the overarching values of a liberal Constitution. The Constitution seeks to achieve a transformed society based on equality and justice to those who are victims of traditional belief systems founded in graded inequality."

[47] Here only we may also take note of the view expressed by Hon'ble Ms. Indu Malhotra, J, which though on the main issue is a minority view, but not dissented or differed by the majority in holding that *"It is the duty of this Court to strike, and balance and ensure that fundamental right of one person not existence to harmony to the fundamental right of one co-exist in harmony with the exercise of Fundamental Rights of others."*

[48] Dissentingly, on the issue of meeting the test of essentiality, Her Ladyship observed as under:

"13.6. Reference is required to be made to the doctrines and tenets of a religion, its historical background, and the scriptural texts to ascertain the 'essentiality' of religious practices. The 'essential practices test' in its application would have to be determined by the tenets of the religion itself. The practises and beliefs which are considered to be integral by the religious

community are to be regarded as "essential", and afforded protection Under Article 25. The only way to determine the essential practices test would be with reference to the practices followed since time immemorial, which may have been scripted in the religious texts of this temple. If any practice in a particular temple can be traced to antiquity, and is integral to the temple, it must be taken to be an essential religious practice of that temple."

### **CONCEPT AND MEANING OF -**

#### **(i) MORALITY - CONSTITUTIONAL MORALITY :**

[49] Apart from what stands held in ***Sabarimala***, opinion of Hon'ble Mishra,J Nariman,J and Chandrachud,J reproduced(*supra*) the expression "constitutional morality" stands explained by the Constitution Bench (5 Judges) of the Apex Court in ***State (NCT of Delhi) Vs. Union of India & another, (2018) 8 SCC 501*** in the following terms:

"294. Constitutional morality does not mean only allegiance to the substantive provisions and principles of the Constitution. It signifies a constitutional culture which each individual in a democracy must imbibe ....."

".....One of the essential features of constitutional morality, thus, is the ability and commitment to arrive at decisions on important issues consensually. It requires that "despite all differences we are part of a common deliberative enterprise. It envisages partnership and coordination between various institutions created by the Constitution ....."

Which stood reiterated by yet another Constitution Bench(5 Judges) in **Navtej Singh Johar & others Vs. Union of India & others, (2018) 10 SCC 1** in the following terms:

"130. In Government of NCT of Delhi v. Union of India and others<sup>52</sup>, one of us (Dipak Misra, CJI) observed:-

"Constitutional morality, appositely understood, means the morality that has inherent elements in the constitutional norms and the conscience of the Constitution. Any act to garner justification must possess the potentiality to be in harmony with the constitutional impulse. We may give an example. When one is expressing an idea of generosity, he may not be meeting the standard of justness. There may be an element of condescension. But when one shows justness in action, there is no feeling of any grant or generosity. That will come within the normative value. That is the test of constitutional justness which falls within the sweep of constitutional morality. It advocates the principle of constitutional justness without subjective exposition of generosity."

131. The duty of the constitutional courts is to adjudge the validity of law on well-established principles, namely, legislative competence or violations of fundamental rights or of any other constitutional provisions. At the same time, it is expected from the courts as the final arbiter of the Constitution to uphold the cherished principles of the Constitution and not to be remotely guided by majoritarian view or popular perception. The Court has to be guided by the conception of constitutional morality and not by the societal morality.

133. In this regard, we have to telescopically analyse social morality vis-à-vis constitutional morality. It needs no special emphasis to state that whenever the constitutional courts come across a situation of transgression or dereliction in the sphere of fundamental rights, which are also the basic human rights of a section, howsoever small part of the society, then it is for the constitutional courts to ensure, with the aid of judicial engagement and creativity, that constitutional morality prevails over social morality.”

(Emphasis supplied).

**(ii) PUBLIC ORDER :**

[50] We have already noticed what stands observed in *Sabarimala (supra)* but are embolden to extract the opinion of the Court explaining the difference between the law & order and public order stands explained in ***Gulab Mehra Vs. State of U.P. & others, (1987) 4 SCC 302 (2 Judge Bench)*** to mean:

“Thus from these observations it is evident that an act whether amounts to a breach of law and order or a breach of public order solely depends on its extent and reach to the society. If the act is restricted to particular individuals or a group of individuals it breaches the law and order problem but if the effect and reach and potentiality of the act is so deep as to affect the community at large and or the even tempo of the community that it becomes a breach of the public order .....

Also public tranquility is part of public order.”

It's a reiteration of the Constitution Bench (5 Judges) in ***The Superintendent, Central Prison, Fatehgarh & another Vs. Dr. Ram Manohar Lohia, AIR 1960 SC 633*** and in ***O.K. Ghosh & another Vs. E.X. Joseph, AIR 1963 SC 812*** (5 Judges). As also Constitution Bench (7 Judges) in ***Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr & others, 1970 (3) SCC 746.***

(iii) **HEALTH** :

[51] In ***C.E.S.C. Limited & others Vs. Subhash Chandra Bose & others, (1992) 1 SCC 441*** (3 Judge Bench) it stands held that "the term health implies more than an absence of sickness." [Para 32] and in reference to a workmen, the expression "health" stands reiterated in ***Kirloskar Brothers Ltd. Vs. Employees' State Insurance Corpn., (1996) 2 SCC 682*** (3 Judge Bench) to mean "a state of complete physical, mental and social well being and right to health, therefore, is a fundamental and human right of the workmen" and what Nariman, J held in ***Sabarimala*** would also include noise pollution and control of disease.

**CONCEPT OF HINDUISM** :

[52] Who are Hindus and what are the broad features of Hindu religion stands explained by the Constitution Bench (5 Judge) in ***Shastri Yagnapurushdasji & others Vs. Muldas Bhundardas Vaishya & another, AIR 1966 SC 1119***, which principles subsequently elaborated in ***Adi Saiva Sivachariyargal***

***Nala Sangam & others Vs. Government of Tamil Nadu & another, (2016) 2 SCC 725*** (2 Judge Bench) and what the Hon'ble Supreme Court itself observed that "*passages from the report are truly worthy of reproduction both for the purpose of recapitulation and illumination*", even though lengthy, prudently to follow the same and extract as under :

"30. ....

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

30. The Hindu thinkers reckoned with the striking fact that the men and women dwelling in India belonged to different communities, worshipped different gods, and practiced different rites (Kurma Purana).(Ibid p.12.)

31. ....It presents for our investigation a complex congeries of creeds and doctrines which in its gradual accumulation may be compared to the gathering together of the mighty volume of the Ganges, swollen by a continual

influx of tributary rivers and rivulets, spreading itself over an ever-increasing area of country and finally resolving itself into an intricate Delta of tortuous steams and jungly marshes ..... The Hindu religion is a reflection of the composite character of the Hindus, who are not one people but many. It is based on the idea of universal receptivity. It has ever aimed at accommodating itself to circumstances, and has carried on the process of adaptation through more than three thousand years. It has first borne with and then, so to speak, swallowed, digested, and assimilated something from all creeds." ("Religious Thought & Life in India" by Monier Williams, P.57.)

32. .... 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 monistic idealism, though this tendency is so plastic, living and manifold that it takes many forms and

expresses itself in even mutually hostile teachings".(Ibid, p.32.)

33. ....Though philosophic concepts and principles evolved by different Hindu thinkers and philosophers varied in many ways and even appeared to conflict with each other in some particulars, they all had reverence for the past and accepted the Vedas as the sole foundation of the Hindu philosophy. Naturally enough, it was realised by Hindu religion from the very beginning of its career that truth was many-sided and different views contained different aspects of truth which no one could fully express.

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36. Do the Hindus worship at their temples the same set or number of gods? That is another question which can be asked in this connection; and the answer to this question again has to be in the negative. Indeed, there are certain sections of the Hindu community which do not believe in the worship of idols; and as regards those sections of the Hindu community which believe in the worship of idols their idols differ from community to community and it cannot be said that one definite idol or a definite number of idols are worshipped by all the Hindu in general. In the Hindu Pantheon the first goods that were worshipped in Vedic times were mainly Indra, Varuna, Vayu and Agni. Later, Brahma, Vishnu and Mahesh came to be worshipped. In course of time, Rama and Krishna secured a place of pride in the

Hindu Pantheon, and gradually as different philosophic concepts held sway in different sects and in different sections of the Hindu community, a large number of gods were added, with the result that today, the Hindu Pantheon presents the spectacle of a very large number of gods who are worshipped by different sections of the Hindus.

37. The development of Hindu religion and philosophy shows that from time to time saints and religious reformers attempted to remove from the Hindu thought and practices elements of corruption and superstition and that led to the formation of different sects. Buddha stated Buddhism; Mahavir founded Jainism; Basava became the founder of Lingayat religion, Dnyaneshwar and Tukaram initiated the Varkari 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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40. Tilak faced this complex and difficult problem of defining or at least describing adequately Hindu religion and he evolved a working formula which may be regarded as fairly adequate and satisfactory. Said Tilak : "Acceptance of the Vedas with reverence; recognition of the fact that the means or ways to salvation are diverse and realisation of the truth that the number of gods to be worshipped is large, that indeed is the distinguishing feature of Hindu religion. This definition brings out succinctly the broad distinctive features of Hindu religion. It is somewhat remarkable that this broad sweep of Hindu religion has been eloquently described by Toynbee. Says Toynbee : "When we pass from the plane of social practice to the plane of intellectual outlook, Hinduism too comes out well by comparison with the religions and ideologies of the South-West Asian group. In contrast to these Hinduism has the same outlook as the pre-Christian and pre-Muslim religions and philosophies of the Western half of the old world. Like them, Hinduism takes it for granted that there is more than one valid approach to truth and to salvation and that these different approaches are not only compatible with each other, but are complementary".

34. The fact that reference to Hindus in the Constitution includes persons professing the Sikh, Jain and Buddhist religions and the statutory enactments like Hindu Marriage Act, Hindu Succession Act etc. also embraces

Sikhs, Jains and Buddhists within the ambit of the said enactments is another significant fact that was highlighted and needs to be specially taken note of.

35. What is sought to be emphasized is that all the above would show the wide expanse of beliefs, thoughts and forms of worship that Hinduism encompasses without any divergence or friction within itself or amongst its adherents. It is in the backdrop of the above response to the question posed earlier "what is Hinduism"? that we have to proceed further in the matter.

36. Image worship is a predominant feature of Hindu religion. The origins of image worship is interesting and a learned discourse on the subject is available in a century old judgment of the *Madras High Court in Gopala Mooppanar and Others Vs. Subramania Iyer and other*. In the said report the learned Judge (Sadasiva Aiyar, J.) on the basis of accepted texts and a study thereof had found that in the "first stage" of existence of mankind God was worshiped as immanent in the heart of everything and worship consisted solely in service to ones fellow creatures. In the second age, the spirit of universal brotherhood has lost its initial efficacy and notions of inferiority and superiority amongst men surfaced leading to a situation where the inferior man was asked to worship the superior man who was considered as a manifestation of God. Disputes arose about the relative superiority and inferiority which was resolved by the wise sages by introducing image worship to enable all men to worship God without squabbles about their relative superiorities. With passage of time there

emerged Rules regulating worship in temples which came to be laid down in the treatises known as Agamas and the Thantras. Specifically in Gopala Moopnar (supra), it was noticed that the Agamas prescribed rules as regards "what caused pollution to a temple and as regards the ceremonies for removing pollution when caused."

37. In the said judgment it is further mentioned that, "There are, it is well known Thantries in Malabar who are specialists in these matters of pollution. As the temple priests have got the special saivite initiation or dheeksha which entitles them to touch the inner most image, and as the touch of the persons who have got no such initiation, even though they be Brahmins, was supposed to pollute the image, even Brahmins other than the temple priest were in many temples not allowed to go into the garbhagraham."

The Agamas also contain other prescriptions including who is entitled to worship from which portion of the temple.

"In one of the Agamas it is said (as freely translated) thus : "Saivite Brahmin priests are entitled to worship in the anthrala portion. Brahmins learned in the Vedas are entitled to worship in the arthamantapa, other Brahmins in the front Mantapa, Kings and Vaisyas in the dwaramantapa, initiated Sudras in the Bahir Mantapa" and so on."

The legal effect of the above prescriptions need not detain us and it is the portion underlined which is of particular importance as the discussions that follow would reveal."

**ACTS WHICH DO NOT FORM AN ESSENTIAL PART OR PRACTICE OF A RELIGION :**

[53] In ***Mohd. Hanif Quareshi & others Vs. State of Bihar, AIR 1958 SC 731***, the Constitution Bench (5 Judges) held that “the sacrifice of a cow on the occasion of Bakr-id day is not an obligatory overt act for a Muslim to exhibit his religious belief and idea and consequently, there was no violation of the Muslim religious practice under Article 25 of the Indian constitution.”

[Also ***State of W.B. & others Vs. Ashutosh Lahiri & others, (1995) 1 SCC 189*** (3 Judges) and Constitution Bench (7 Judges) in ***State of Gujarat Vs. Mirzapur Moti Kureshi Kassab Jamat & others, (2005) 8 SCC 534***.]

[54] In ***N. Adithayan***(*supra*) the Apex Court held that a non-Brahmin could be appointed as a priest in a particular temple and appointment of only Brahmins as pujari cannot be said to be an essential part of religion.

[Also in ***Riju Prasad Sarma & others Vs. State of Assam & others, (2015) 9 SCC 461***(2 Judge Bench) and in ***Javed & others Vs. State of Haryana & others, (2003) 8 SCC 369*** (3 Judge Bench).]

[55] In ***Shayara Bano*** (*supra*), prevention of “triple talaq” was held illegal being contrary to the constitutional ethos. It violates the fundamental right of a Muslim woman as it irrevocably

ends marriage. "Triple Talaq" also not being a basic and integral part of Islam – religion practiced by Muslims.

[56] In ***Sabarimala***(supra) it was observed that religion is a way of life intrinsically linked to the dignity of an individual and patriarchal practices based on exclusion of one gender in favour of another could not be allowed to infringe upon the fundamental freedom to practice and profess one's religion. Ayyappana are Hindus and the practice of excluding women cannot be held to be an essential religious practice. Accordingly, Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules of 1965 was struck down as unconstitutional and ultra vires to sections 3, 4 of the Parent Act.

**BINDING EFFECT AND ENFORCEABILITY OF PART IV & IVA OF THE CONSTITUTION OF INDIA :**

[57] Insofar as Part IV of the Constitution is concerned, the Constitution Bench(5 Judges) in ***Mohd. Hanif Quareshi*** (supra), held that no doubt, directive principles are not enforceable by any Court of law, but nevertheless they are fundamental in the governance of the country and it is the duty of the State to give effect to them. A harmonious interpretation has to be placed upon the Constitution and so interpreted, to mean, that the State should certainly implement the directive principles in such a manner, that the laws, do not take away or abridge the

fundamental rights, for otherwise the protecting provisions of Chapter III will be "a mere rope of sand".

[58] However, subsequently in **Akhil Bharat Goseva Sangh Vs. State of A.P. & others, (2006) 4 SCC 162** (2 Judge Bench) in construing Part - III and Part - IV it held that "*both directive principles and fundamental duties must be kept in mind while assessing the reasonableness of legal restrictions placed upon fundamental rights*". The background being the use of cattle. It was observed that cattle formed the backbone of Indian agriculture; they remain useful throughout their life whether milch or drought; and that total prohibition of cow and cow progeny slaughter may be justified.

[59] The Constitution Bench (5 Judges) of the Apex Court in **Minerva Mills Ltd. and Ors. Vs. Union of India and Ors., AIR 1980 SC 1789** held as under :

".....When the State makes a law for giving effect to a Directive Principle, it is carrying out a constitutional obligation under Article 37 and if it were to be said that the State cannot make such a law because it comes into conflict with a Fundamental Right, it can only be on the basis that Fundamental Rights stand on a higher pedestal and have precedence over Directive Principles. But, as we have pointed out above, it is not correct to say that under our constitutional scheme, Fundamental Rights are superior to Directive Principles or that Directive Principles must yield to Fundamental Rights. Both are in fact equally

fundamental and the courts have therefore in recent times tried to harmonise them by importing the Directive Principles in the construction of the Fundamental Rights.....”

[60] In **Mirzapur**(*supra*) it was observed that changing factual conditions and State policy have to be considered and given weightage by the courts while deciding constitutional validity of legislative enactments. A restriction placed on any fundamental right, aimed at securing directive principles will be held as reasonable and hence *intra vires*, subject to two limitations: first, that it does not run in clear conflict with the fundamental right, and secondly, that it has been enacted within the legislative competence of the enacting legislature under Part XI Chapter I of the Constitution.

**STATUTE PREVENTING CRUELTY TO ANIMAL :**

[61] Noticeably prevention of cruelty to animals is listed in the 7<sup>th</sup> Schedule [*Concurrent List (List 3)*] of the Constitution of India and by virtue of Article 246, the Central Government has enacted the Prevention of Cruelty to Animals Act, 1960 (*hereinafter referred to as 'the Prevention Act'*). The object of this Act, *inter alia*, is to prevent infliction of unnecessary pain and suffering on animals.

[62] The prevention Act has been enacted with an object of safeguarding the welfare of the animals and to cure certain mischief and age old practices, so as to bring into effect certain

reforms, based on eco centric principles, recognizing the intrinsic value and worth of animals.

[63] Section 2(a) defines the animal to mean any "living creature other than a human being" and Section 3 confers duty on every person, having care or charge of animal to take all reasonable measures of ensuring well being of such animal and prevent infliction thereupon, of unnecessary pain or suffering. It reads as under :

**"3. Duties of persons having charge of animals** - Duties of persons having charge of animals.—It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering."

[64] Chapter II provides for the establishment of Animal Welfare Board and the functions of the Board, *inter alia*, being:

"9(b) to advise the Central Government on the making of rules under this Act with a view to preventing unnecessary pain or suffering to animals generally, and more particularly when they are being *transported* from one place to another or when they are used as performing animals or when they are kept in captivity or confinement;

.....

(d) to take all such steps as the Board may think fit for 11 [ameliorating of animals] by encouraging, or providing for, the construction of

sheds, water-troughs and the like and by providing for veterinary assistance to animals;

(e) to advise the Government or any local authority or other person in the design of slaughter-houses or in the maintenance of slaughter-houses or in connection with slaughter of animals so that unnecessary pain or suffering, whether physical or mental, is eliminated in the pre-slaughter stages as far as possible, as animals are killed, wherever necessary, in as humane a manner as possible;

(f) to take all such steps as the Board may think fit to ensure that unwanted animals are destroyed by local authorities, whenever it is necessary to do so, either instantaneously or after being rendered insensible to pain of suffering;

.....

(h) to co-operate with, and co-ordinate the work of, associations or bodies established for the purpose of preventing unnecessary pain or suffering to animals or for the protection of animals and birds.”

*(Emphasis supplied).*

[65] It is thus seen that it is the duty of the Board to advise the Government on the making of rules with a view to prevent unnecessary pain or suffering, whether physical or mental, to the animals generally; encourage construction of sheds, water-toughs etc. by providing for veterinary assistance to animals; advise the Government or any local authority or other person in designing slaughter houses and maintaining the same in

connection with the slaughter of animals. What is important that unnecessary pain or suffering, whether physical or mental, is to be eliminated in the pre-slaughter stage, to the extent possible and that animals are killed, wherever necessary, in a humane manner. Emphasis is laid to prevent infliction of any sort of pain, suffering or trauma on any animal, prior to it being slaughtered or killed.

[66] By virtue of Section 11, any person who tortures, treats or subjects the animal to unnecessary pain or suffering or mutilates or kills the animal, in any unnecessary manner, is liable to be tried and punished in accordance with law.

[67] However, Section 28 contained in Chapter VI, reproduced hereinafter carves out an exception :

"28. Saving as respects manner of killing prescribed by religion – Nothing contained in this Act shall render it an offence to kill any animal in a manner required by the religion of any community."

(Emphasis supplied).

[68] Its language is simple and unambiguously clear. It does not exempt applicability of any one of the provisions of the Act. All that is prescribed is that if an animal is killed in a manner required by the religion of any community, then such killing could not be construed to be an offence. It only exempts from the culpability of an offence. But that would not mean that provisions contained in Chapter I, II and III of the Prevention Act became

ineffective, inoperative or made redundant, when it comes to killing of an animal for a religious purpose, unless such religion requires such killing in a particular manner, the provision of Section 3 would stare in the face of the State.

[69] Which religion or community mandates infliction of unnecessary pain or suffering on an animal? Which religion prescribes that physical or mental pain or suffering should not be eliminated in the pre-slaughter stage? Which religion would want its followers not to treat animal with compassion, care or a humane approach? And above all, which religion would allow itself to be shackled to dogma, superstition and unfounded beliefs so as not to reform and be in tune with the changing times in pursuit of Constitutional goals and morality.

It is a matter of record that the State, pursuant to directions issued by the Supreme Court, has constituted Boards and Committees at different levels. All this is to pursue the object and implement the provisions of the Prevention Act.

[70] Significantly, under the rule making power (Section 38), the Central Government has notified the Prevention of Cruelty to Animals (Slaughter House) Rules, 2001 and by virtue thereof, slaughter houses are required to be constructed and maintained. Reference of the said rules is only to highlight the requirement of slaughtering the animals in isolation and not in the site of or visibility of another animal which is evident from Rule 6. Also only

such of those animals are to be slaughtered which are found fit and certified by a veterinary doctor. As per Rule 7, there has to be proper drainage system and the body parts or the blood of animal, are required to be treated and not allowed to flow openly so as to mix with common drains.

### **FINDINGS :**

[71] In the aforesaid backdrop we proceed to consider as to whether an Act of loud screaming of animals, severing of heads by sharp cutting "daos" (Ram Dao); flowing of live blood in the precincts of the temple also all along the drain; handing over the severed head of slaughtered animal to the priest for chanting mantras, etc. in the name of sacrifice, perhaps causing serious panic, touching human conscience and shocking the mind of certain devotees visiting the temple, is an essential part of religion or not.

[72] However prior thereto, certain other contentions need to be dealt with.

[73] Plea with regard to the *locus* is highly inappropriate and misplaced. If a retired Judicial Officer, well conversant with law, having an unblemished career record, would not have a locus, inviting attention of this Court to the alleged illegality perpetrated right by and under the nose of the State, then who else would have.

[74] Similarly, plea of the petition being motivated for having pursued the agenda of a minority community, to say the least is preposterous. The State cannot be allowed to take such a stand, more so, in the absence of any material, substantiating the same. The issue of animal sacrifice by the minority community (Muslims) on the occasion of *Bakr Id*, already stands settled in ***Mohd. Hanif Quareshi, Ashutosh Lahiri and Mirzapur***(*supra*) hence, such plea needs to be repelled at the threshold.

[75] It is a matter of fact and undisputed at that, that ritual of animal sacrifice of the offerings of the State and by the devotees is being carried out in the temples managed by the State in Tripura. Hence, onus to continue with such practice, in the context of constitutional provisions would rest not upon the petitioner but the alleged perpetrator of an illegality against an animal and in violation of the settled principles of law.

[76] The State defends such pernicious and deleterious action on two grounds; first – “necessity and authorization in terms of and by the document of merger” and the second – “the established long accepted procedure of Hindu rituals of the Tantrik method of worship of the Dash Maha Vidya”.

[77] In the advancement of the first plea, we notice the State not to have placed on record any agreement of merger. However, it is the petitioner who placed an agreement dated 9<sup>th</sup>

September, 1949 entered into between the Governor General of India and His Highness the Maharaja of Tripura. Noticeably, the said agreement does not refer to performance of any practice, custom, tradition, tenets, ceremony or a ritual of animal sacrifice, within the State of Tripura, much less in the temples highlighted by the petitioner.

[78] Here only we refer to another document placed by the State, i.e. the minutes of the meeting dated 18<sup>th</sup> June, 1982 in connection with the management of public places of worship in Tripura. Even in the said document, we find no reference of ritual, custom, tradition, tenets or practice of animal sacrifice in the State of Tripura.

[79] In any event, we are of the considered view that in the light of **N. Adithayan** (*supra*), any custom or usage irrespective of any proof of their existence in the pre-constitutional days cannot be construed to be a source of law to claim any right when it is found to be violative of human rights which, in our considered view, would also include the right of animal to live with dignity. Further, no usage found to be pernicious and considered to be in derogation of law or opposed to public policy or social decency can be accepted or upheld by the courts under the Indian Constitution.

[80] Any customs, usages and traditions contrary to the constitutional spirit, cannot be a source of law. Equally, its

sanctification has to be as per law. Doctrine, belief or tradition which is extraneous, redundant accretions to religion, holds no place to be adhered to in the name of religion, more so in the light of Article 13 of the Constitution of India which reads as under :

**“13. Laws inconsistent with or in derogation of the fundamental rights -**

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires -

(a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usages having in the territory of India the force of law;

(b) “laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

[(4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368].”

And here we may only remind the State what message Sri Rabindra Nath Tagore conveyed to the then Raja and this citizenry through his famous work – “Bishorjan”.

[81] Insofar as second plea of performance of a ritual under the Tantrik method of worship is concerned, we find, except for a bald assertion, the State not to have placed any material on record. However, we shall deal with this part of the ground a little later.

[82] Here only we may state that this stage, we are neither impressed nor inclined to accept the State’s plea of referring the matter for its consideration afresh, after inviting objections or obtaining material from the general public. Notice in the petition was issued on 11<sup>th</sup> April, 2018 and admitted for hearing on 19<sup>th</sup> September, 2018. Post admission the matter was taken up on several occasions and commencing from 8<sup>th</sup> August, 2019, heard on several times. Having afforded adequate opportunity, State did file its response through the affidavit of the Under Secretary to the Government of Tripura, Revenue Department and as has been observed by R.F. Nariman, J in **Sabarimala** (*supra*), which passage we reproduce hereinafter, that would suffice the purpose of adjudication of the issues with which we are concerned:

“31. A fervent plea was made by some of the counsels for the Respondents that the Court should not decide this case without any evidence

being led on both sides. Evidence is very much there, in the form of the writ petition and the affidavits that have been filed in the writ petition, both by the Petitioners as well as by the Board, and by the Thanthri's affidavit referred to supra. It must not be forgotten that a writ petition filed under either Article 32 or Article 226 is itself not merely a pleading, but also evidence in the form of affidavits that are sworn. [See *Bharat Singh and Ors. v. State of Haryana and Ors.*, MANU/SC/0047/1988 : 1988 Supp (2) SCR 1050 at 1059]."

[83] No separate notice to general public is required to be issued for the simple reason that the affairs of management of the temples are in the hands of the State.

[84] In *Jallikattu* (*supra*) while discussing the concept of humanism and speciesism, the Court observed that every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding the rights of humans, protects "life" which expression has been given an expanded definition of any disturbance from the basic environment which includes all forms of life, including animal life. The Court categorically held that "*so far as animals are concerned, in our view, "life" means something more than mere survival or existence or instrumental value for human-beings, but to lead a life with some intrinsic worth, honour and dignity.....*" and that "Animals' well-being and welfare have been statutorily recognised

and right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Sections 3 and 11 of the Prevention Act read with Article 51A(g) of the Constitution. And most importantly "Right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well".

[85] The word "life" in Article 21 of the Indian Constitution is wide enough to include every living organism be it humans, animals, insects or bird. Deprivation of life has to be as per procedure established by law. Thus it is pertinent in this regard that sacrificing of animal and taking away of their life also has to be in accordance with due process of law. Sacrifice of animal in the manner and nature with which we are concerned, in the garb of religion, of which we are of the opinion, is nowhere allowed by law. Only such practices can avail protection under Article 25(1) which amounts to an essential and integral part of religion. In *Jallikatu* (*supra*) it stands observed that animals also have life which also has to be protected under the purview of the said Article.

[86] The Hon'ble Supreme Court has time and again reminded that, the provisions in Part IV and Part IVA are to be given due importance in achieving the constitutional goals. In *Mirzapur* (*supra*), that by enacting Article 51A(g) and giving it a

status of a fundamental duty, one of the objects sought to be achieved by the parliament is to ensure that the spirit and message of Articles 48 and 48A are honored as fundamental duty of every citizen. Article 51A(g) therefore enjoins that it was a fundamental duty of every citizen "to have compassion for living creatures", i.e. concerns for suffering, sympathy, kindness etc., to be read along with the provisions of the Prevention Act.

[87] Apart from rights which are fundamental in nature, Part IVA of the Indian Constitution casts duty upon every citizen under Art 51A(g) with a moral obligation to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures. Human owe a duty to exhibit love and compassion towards animals, with an empathy and understanding of the sufferings of animals who are speechless and voiceless. This definitely are signs of a civilized society. Animals also breathe as humans and are sometimes said to have the same soul as humans. In our considered view, sacrifice of an animal, based on superstition or not being an essential part of practice of religion in a temple is absolutely an antithesis to compassion.

[88] Article 51A(h) urges every citizen to develop scientific temper, humanism and spirit of enquiry and reform. Every individual is duty bound to adopt a rational and logical thinking and not to be carried away by superfluous religious dogmas. The

framers of the constitution had the desire to achieve transformation of society. Duty is casted upon every individual to participate in bringing social transformation, yielding in compassion and humanism. Progressive society cannot be achieved when one is confined to religious dogmas. Also one has to adopt measures to inculcate scientific temper in a society ridden with superstitions.

[89] Article 51A(i) further mandates humanism to abjure violence, which sense of duty would only be against human, but in ones considered view against every living creature on this earth. A child witnessing continuous violence towards animals may fail to inculcate moral values of showing an act of love, kindness and compassion towards animals. Sacrifice of animals in temples is not pleasing to the eyes and this inhuman religious practice in the name of religion has a definite impact on the psyche of a child.

[90] In ***Hanif Quareshi, Akhil Bharat Goseva Sangh and Mirzapur***(*supra*) as we have noticed, the Court has observed that both directive principles and fundamental duties must be kept in mind while assessing the reasonableness of legal restrictions placed upon fundamental rights.

[91] We repeat, which religion or community mandates infliction of unnecessary pain or suffering on an animal? Which religion prescribes that physical or mental pain or suffering should not be eliminated in the pre-slaughter stage? Which religion would

want its followers not to treat animal with compassion, care or a humane approach? And above all, which religion would allow itself to be shackled to dogma, superstition and unfounded beliefs so as not to reform and be in tune with the changing times in pursuit of Constitutional morality.

[92] In considering whether religious practice followed for more than 500 years forms an essential part of religion, this Court refers to the document "Statistical Account of The Hill Tipperah (Tripura) And Statistical Account of The District of Tipperah (For belief History) produced by the state before this court. We do not find textual evidence in it stating that sacrifice of animal is obligatory in performing puja at the Mata Tripureswari temple. The text only states that "in the month of Agrahayan when the winter paddy is being cut and gathered, a festival is held in honour of the new wine from the species of paddy called manui, the fermented product of which is the Hills man favourite drink. During the celebration of the festival, new rice is eaten and also offered up to the deities, goats, fowls, and pigs are killed for the entertainment of guests, and wine is drunk to excess".

Further the document mentions that during ker pujas "pigs and goats" are sacrificed in large numbers. However, it does not state as to whether the sacrifices are made in the temple and/or as a part of essential practice.

[93] From the text it is evident that sacrifices of humans were prevalent, but effectually prohibited about 200 years ago. It is said that the number of victims of human sacrifice till 1407 was 1000 (thousand) per year. It only signifies changing times of the society towards social reforms by valuing life of humans. Every religion now condemns human sacrifice and is no longer followed as a part of rituals. Thus it is only logical that when human sacrifice could be stopped then nothing can impede a ban on sacrifice of animals as part of religious practice, for life of both humans and animals are legally required to be valued and protected.

[94] Another document "The imperial Gazetteer of India" states that the Tipperahs, Jamatiyas, Nowatias and Riangs are all of the same religion. Their divinities are the gods of fire and water, of the forest and the earth; and "sacrifices form an important part of their religion—buffaloes, pigs, goats, and fowls being the animals ordinarily used for the purpose. At the present day, they are showing some symptoms of a tendency to conform in many respects to the religious observances of the Hindus, especially with regard to caste. They are superstitious and timid, but capable of committing great cruelties when their passions are roused. The Political Agent, writing in 1873 of the Tipperahs, thus describes the result of their contact with the Bengalis:—'The people were very simple, truthful, and honest, until corrupted by the evil influences arising from closer intercourse with the inhabitants of

the plains, and also by bad government. ... Every advantage was taken of their ignorance and credulity, till at length they perceived this themselves, and they now no longer hesitate to meet death with its own weapons."

[95] Importance cannot be construed to be an essentiality, meeting the twin test; being core; inextricably connected with its fundamental character. Aside the documents as aforementioned and placed by the state none of the recognized works dealing with the installation of idol or practices required to be followed in worship thereof, as argued by the petitioner, has quoted the reference of any essentiality of carrying out of the ritual of animal sacrifice. Such works being 'Pithamala Tantra', 'Maha Pitha Nirupan' and 'Shiva Charita'; The 'Shakti Pitham' authored by r. Dinesh Chandra Aakar; 'Rajmala and the History of Tripura' authored by Sri Kailash Chandra Singha; 'Human Sacrifices in Tripura' authored by Rev. James Long, works of Sir Jadunath Sarkar and 'Gazinama' authored by Sheik Manuhar.

[96] Significantly, temple of Devi Tripureswari is one amongst the 51 shakti pithas. It is believed that the temple was set up owing to the fact that the right limb of sati fell into the place where the Mata Tripureswari temple was established. Practice of sacrificing animal in most other Shakti pithas is not seen or carried out.

[97] The Mata Tripureswari Temple does not have any connection with the then Maharajas of Tripura but was founded on the lineage and linkage of Sati. Thus it will not be wrong in coming to an unambiguous conclusion that though the sacrifice of animal in temple was traditionally carried out since 500 years but there is no scriptural or textual evidence establishing the fact that the sacrifices of animals in worshipping the deity were prevalent since time immemorial forming an essential and integral part of the religion in worshipping the deity and antiquity has no basis for determination of essential practice.

[98] Applying the principles culled out in **Swamiar of Shirur Mutt, Sardar Syedna Taher, Tilkayet, Acharya Jagadishwarananda and Durgah Committee** as examined and explained in **Sabarimala** (*supra*) (by Hon'ble Dipak Mishra, CJI, as he then was, Hon'ble R.F. Nariman, J and Hon'ble D.Y. Chandrachud, J), it cannot be said that the practice of animal sacrifice is essential to the core of the tenets rituals, ceremonies, ceremonies, beliefs observances or the practice of religion within the temple of Mata Tripureswari or other temples managed by the State within the State of Tripura. Can it be said that if 'ahuti' of animal is not offered to Goddess Tripureswari or other Gods or Goddesses, the religion itself would stand altered. Certainly, the answer cannot be in the affirmative for the idol is worshiped by the people belonging to all faiths, beliefs and religion including Hindus. Testing the argument of sacrifice being core to the

worship of the said deity/idol, can it be said that after stoppage of human sacrifice, almost 200 years ago, the deity, temple or the place, stood defiled having lost its relevance, significance or importance? or the people having suffered any consequential wrath as stoppage of such observance? Most certainly not. In fact, with each passing day, since then its glory, popularity and influence has ever increased, more so, for it is perceived to be the place where one of the body parts of Goddess Sati fell. If the substratum of the ritual of animal sacrifice is taken away, the ceremony of performance of puja cannot be said to have been defiled or the right to practice and profess religion, obstructed, hindered or diminished in any manner.

[99] In the instant case, sacrifice of animal in temples is not done out of necessity but merely on the unsighted conviction and credence that such activity would please the deity, who in return would bestow them with blessings and wellbeing.

[100] Had it been such, that the sacrifice of animal in temple is mandatory in nature, which remain inseparable from the tradition and religion being so deeply rooted to the people then there would have been no occasion of offering prasads with fruits and sweets to the deity, asides animals by way of sacrifice. Not every devotee goes on to worship the deity in these temples by sacrificing animals. Evidently this particular practice by tradition is merely optional and cannot be figured as an essential and integral

part of religion. For sacrificing innocent, helpless and voiceless animals does not conquer constitutional morality. Perhaps, such practices can only be said to be rooted in fallacy.

[101] The ban on sacrifice of animal in Temples of Mata Tripureswari Devi Temple, Chaturdash Devata temple or any other temple either managed by the State or otherwise does not infringe the fundamental right as enshrined in Part III under Art 25(1) of the constitution for the reason that such practice is contrary to constitutional morality and health and this activity carried in the name of religion is not intended to be protected.

[102] It is only those practices which are fundamental and removing of which, will change the very foundation of the religion which is protected under the umbrella of Art 25 (1) of the Constitution. This practice of sacrifice of animal fails to succeed the doctrine of "essential test". Hence, Courts are duty bound to remove such rudimentary practice which holds no value in today's society to bring in positive reforms for betterment. Disengaging sacrifice of animal in temple, from the way of worshipping the Goddess will bring no change in the religion.

[103] Devotees are not only restricted to the locals, It also attracts huge visitors both from within and outside the State either for the purpose of pilgrimage or tourism. Not every visitor to this temple believes in such sacrifice of animal in the temple. To them violence to an open eye would only be abhorrent.

[104] Hinduism includes Buddhist, Sikhs, Jainism and not every religion of Hinduism considers sacrifice of an animal to be an integral and essential part of the religion. Buddhist and jains do not believe in killings as they believe in preaching "Ahimsa"- non violence towards all living beings. Hence it stands contrary to the view taken by the State where it says that sacrifice of animal is part and parcel of the religion of Hinduism which involves tantric method of worship, as, not every sect or follower of religion of Hinduism follows sacrifice of animals in worshipping the deity.

[105] Major section of the community may believe in carrying out such practice in the name of religion but simultaneously, rights of co-religionists must be protected so as ensure that it does not hurt their sentiments. Rights of all have to be construed and harmonised as stands explained in **Sabarimala** and **Tilkayat** (*supra*). Here majoritarian view confined to the people of the region cannot be allowed to prevail upon the principle of constitutional morality—an act not sanctified by law, itself being based on a belief, abhorrent and violent in the changing times of a civilized society.

[106] It is expected from the courts as the final arbiter of the Constitution to uphold the cherished principles of the Constitution and not to be remotely guided by majoritarian view or popular perception. The Court has to be guided by the conception

of constitutional morality and not by the societal morality [**Navtej Singh** (*supra*)].

[107] In fact the State should have intervened by bringing in a legislation to stop "sacrifice of animals in a way deleterious to the community at large" as stood observed by the Apex Court in **Sardar Syedna** (*supra*).

[108] The State is empowered to regulate secular activities associated with religious practices. However, State is not entitled to as such, regulate or indulge in religious practices. What the state can regulate under Article 25(2)(a) are the activities which really of an economic , commercial, political or secular in character though these may be associated with religious practices. [**Ratilal Panachand** (*supra*)]

[109] A question would however arise whether the activity sought to be regulated is 'religious' or 'secular'. This distinction is important for what is religious cannot be regulated. This again raises the question whether the activity sought to be regulated is regarded as an essential and integral part of the religion in question. If so, it is religious in nature.

[110] In **Sardar Syedna**(*supra*) and **Tilkayat** (*supra*), the Hon'ble Apex Court held that the administration of the property by a religious denomination is placed on a different footing from the right to manage its own affairs in the matter of religion. The latter

is a fundamental right which no legislature can take away, where as the former can be regulated by law.

[111] In our considered view, and also taking note of the constitutional mandate and sanctity, the role of Govt. in regular activities of Tripureswari temple as other temples is limited, and aiding the temple with funds to sacrifice one goat each day from the Govt. money does not fall within the ambit of a secular activity as provided under Article 25(2)(a) in the Indian Constitution.

[112] State's interference to ban such practices will not in any way bring any fundamental change to the religion. And it is the duty of the state to bring changes by eradicating all ill practices to bring reforms in the society. Instead of participating in such practices, State should enact a law banning slaughter of animals in temples as it runs against public order, morality and health.

[113] Also discontinuing of assistance of state in slaughtering of one goat in the temple on everyday basis does not in manner amounts to breach of any agreement of merger.

[114] Unless it being essential, sacrifice of an animal for religion cannot be considered to be a moral act. All religions call for compassion and no religion requires killing. Sacrifice of animal in the temple with which we are concerned, is seriously morally wrong, for it is an act of illegally taking away of life. Animals are

also made of flesh and blood; they also breathe as humans; and when hurt suffer pain which would be no less than what humans suffer. Violence by way of sacrifice of an animal, open to public gore has a traumatic effect on a viewer, more so innocent and sensitive minds of grooming children, who in any event are required to be sensitized.

[115] Religious freedom is subject to health. One cannot deny the fact that sacrifice of animal in temple does affect mental and physical health of an individual. It is the duty of a State to provide legal safeguards to protect individuals' life and to maintain good health of the community. The blood of the animals are allowed to flow in the open drains as a result causing foul smells. Also it gets contaminated in the open drain, resulting into increase of diseases thus adversely affecting the health of the public at large, more so the residents of the area. Places of worship are considered as most sacred, holiest and cleanliest where people can peacefully connect to its creator. With blood of animals sprinkled around on the ground and the severed heads of the animals stocked in front of the deity, the view remains frighteningly dirty, leaving an impression of deficiency of holiness and peacefulness.

[116] In ***State of Karnataka and anr. V. Dr Praveen Bhai Thogadia (2004) 4 SCC 684*** Court observed that the core of religion is based upon spiritual values, which the Vedas,

Upanishad and Puranas were said to reveal the mankind seem to be -"Love others, serve others, help ever, hurt never" and "Sarvae Jana Sukhino Bhavantoo". Rig Veda also states "Behave with others as you would with yourself. Look upon all the living beings as your friends, for in all of them there resides one soul. All are but a part of that universal soul. A person who believes that all are his soulmates and loves them all alike never feels lonely. Divine qualities of such a person such as forgiveness, compassion and service, will make him lovable in the eyes of his associates. He will experience intense joy throughout his life".

[117] Section 28 does not in any way allow sacrifice of animal in temple. The word "as required by the religion" poses a question as to when will the religion require to inflict such pain on the animal? Can it be said that such manner of killing can be exempted under sec. 28 of PCA Act only when such killing is an integral and essential part of the religion. Most certainly yes, for the Prevention Act does not define religion, which in our view certainly has to be understood in reference to Article 25. Religious practice based on a tradition cannot have an overriding effect of the Prevention Act so enacted. With an object of safeguarding the welfare of the animal and to cure some mischief and old age practices, so as to bring into effect some type of reform, based on eco centric principles, recognizing the intrinsic value and worth of animals. The prevention of cruelty Act is a welfare legislation which overshadows or overrides the so called traditions.

[118] Mahatma Gandhi once rightly said “the greatness of a nation is judged by the way it treats its animal”. Co-existence and tolerance, the very spirit of ancient thought in the scriptures of taking care of and look upon all living beings as friends, “*for in all of them there resides one soul. All are but a part of that universal soul*” as what we are reminded of as held in **A.S. Narayana Deekshitulu** (*supra*).

[119] The animals have basic rights and we have to recognise and protect them. The animal and bird breath like us. They are also creation of God. They have also a right to live in harmony with human beings and the nature. Animal sacrifice is one of the most diabolical form of cruelty inflicted on animal can be no rationalization behind sacrificing animals in full public view and several time it has been seen that untrained and unskilled butchers give blows to animals. Many a times the animal is not even killed in one blow, thereby leaving the animal smock and in extreme pain and suffering. सत्यमेव जयते

[120] Bodies constituted pursuant to **Gauri Maulekhi** (*supra*), have failed to fulfil its role, obligation and constitutional mandate of promoting health, safety and general welfare of the animals.

In view of the aforesaid discussion, we answer the questions.

[121] **“Whether act of the State in offering an animal for sacrifice in the Temples in Tripura, can be said to be a secular activity and as to whether prohibiting the same would infringe the fundamental right, as envisaged under Article 25(1) of the Constitution of India?”**

In our considered view, the State by an enactment can only regulate or restrict any economic, financial, political or secular activity which may be associated with a religious practice. The role of the Government in regular activities of the temple is limited to such religious activities which are secular in nature. Act of the State of offering one goat every day, for a sacrifice in the Mata Tripureswari temple and other temples on certain occasions, lacks the essence of economic, commercial, political or secular character and hence, the action of the State in offering such an animal for sacrifice is neither permissible under the Indian Constitution nor any statute.

The right of offering an animal for sacrifice is not an integral and essential part of the religion, protected under Article 25(1) of the Constitution. As such, no right of the freedom of professing any religion by the State can be said to have been violated. State has no religion other than constitutionalism and the expression ‘person’ under Article 25 has to be in reference to natural person (**Sabarimala**). Withdrawal of such practice would not tantamount to any change, fundamental in character of the religion.

[122] **“Whether the age long practice of 500 years of sacrificing animals, after stoppage of practice of human sacrifice, in Tripureswari Devi Temple, Udaipur, Gomati District, Tripura can be construed as an essential and integral part of religion, as protected under Article 25(1) of Constitution of India?”**

The age long practice of a sacrifice of animal, either by the State or by an individual, cannot be said to be an essential part of the religion and as such, is not protected under Article 25(1) for it being against the principle/doctrine of morality and health, as also provisions of the Prevention of Cruelty to Animal Act, 1960.

Right to freedom of religion is subject to the rigours of public order, morality, health and the other provisions of Part-III. Sacrifice of an animal in a temple, not being an essential part of religion, is also violative of Article 21 of the Constitution of India.

[123] **“Whether a religious practice based on a ritual, custom, tenet, tradition, not being an essential part of religion, can be allowed to continue notwithstanding the provisions of the Prevention of Cruelty to Animals Act, 1960 and Article 21(Part – III) & Article 48, 48A and 51A(g) (Part IVA) of the Constitution of India?”**

In our view, Constitutional values are to be embraced and not to be superseded by personal beliefs. Religious practice,

not being an integral and essential part of religion cannot override the provisions, specifically Section 3 of Prevention of Cruelty to Animal Act and other provisions of Part III, Part IV and Part IVA of the Constitution. Section 28 of the Prevention Act merely makes killing for a religious purpose not a punishable crime and more so in the light of the Article 25 does not make it permissible to commit such acts in the temple. Section 28 of the Prevention Act has to be interpreted in the light of Article 21, 48, 48A, 51A(g), 51A(h) and 51(A)(i) of the Constitution.

Questions of law are thus answered accordingly.

[124] Having held thus, we allow the petition by issuing the following mandatory directions, prohibiting and banning animal/birds sacrifice in the temples :

- (a) No person including the State shall be allowed to sacrifice of any animal/bird within the precincts of any one of the temples within the State of Tripura;
- (b) No person shall sacrifice such animal within the precincts of any of the temples within the State of Tripura;
- (c) Government of Tripura has proposed development of Devi Tripureswari temple as a favourite international tourist destination. People of all beliefs and faiths are likely to visit in large number. Anyone of the devotees desirous of offering any animal out of personal faith, belief or desire, may do so, but, shall take back the animal

and under no circumstance any activity of animal sacrifice shall be permitted to be carried out. Prudently, the Government can earmark land for opening shelter home for rearing such livestock.

- (d) The District Magistrate & Collectors of the respective districts and more specifically, District Magistrate & Collector, Gomati District, Udaipur as also District Magistrate & Collector, West Tripura District, Agartala under whose jurisdictions Devi Tripureswari temple and Chatur Das Devata temple are situate, respectively, shall forthwith take action for ensuring implementation of the orders; The Superintendent of Police of all the districts shall also ensure strict implementation of the order. Such officers shall be personally liable for implementing the orders;
- (e) The Chief Secretary, Government of Tripura shall also ensure compliance of the order. Also he shall ensure that at least in two temples i.e Devi Tripureswari temple and Chatur Das Devata temple in Tripura, where act of animal sacrifice is carried out profusely, CC TV cameras are installed forthwith; every month he shall have a soft copy of such video recording placed on this file;
- (f) Such video recording of the temple(s) shall form part of record of the present petition and shall be constituted as part of the record of the appeal preferred, if any, by any person, including the State;
- (g) District Magistrate & Collectors of all the districts shall initiate all measures of educating and sensitizing the general public of the constitutional

mandate and its importance, relevance and significance, more so, of adopting an attitude of love, humanism and compassion towards all animals/birds;

(h) The State Government shall give due publicity and also sensitize the general public of the constitutional values and passing of the order and implementation thereof.

**(ARINDAM LODH), J.**

**(SANJAY KAROL), CJ.**

*Sukhendu/Pulak.*



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