

The third are called Arsha, or shrines of the great Rishis, men who by virtue of austerities and good works are in near proximity to the deity. [180] Their shrines are counted by thousands. Amongst them are Nimkhar (Nimishara), Pukhra (Pushkara), Khushab, and Badiri.

The fourth are called Manusha, or appertaining to men who by their power of good works are superior to mankind in general, though they do not obtain the rank of the third degree. Their shrines also are numerous. Among them is Kurkushetra, which for forty kos around is considered holy, and numerous pilgrims resort thither during eclipses of the sun and moon.

Ceremonies are laid down for each pilgrimage and their various meritorious results are declared.

O THOU! That seekest after divine knowledge, learn wisdom of these Hindu legends! Each particle among created atoms is a sublime temple of worship. May the Almighty deliver mankind from the wanderings of a vain imagination troubles over many things.” (Page 332-336)

“...taken from the letter which is therewith connected and a name of more than four letters is considered blameworthy. In the fourth month they bring it into the sun before which time it is never carried out of the house. In the fifth month they bore the lobes of the right ear. In the sixth month, if the child be a boy, they place various kinds of food around him, and feed him with that for which he shows a preference. If it be a girl, this is not done till the sixth or seventh month. When it is a year old, or in the third year, they shave his head, but by some this is delayed till the fifth year, by others till the seventh, and by others again

till the eighth year, when a festival is held. In the fifth year they send him to school and meet together in rejoicing.

They observe the birthday and annually celebrate it with a feast, and at the close of each year make a knot on a thread of silk. He is invested with the sacred string at the appointed time. At each of these occasions they perform certain works and go through some extraordinary ceremonies.” (Page 349)

1623. On page 349, the important religious festivals of Hindus are also discussed which include Rama-Navami on page 350. Sri Mishra says, while acknowledging Ayodhya at length on various aspects of the matter, Abul Fazal having not noticed any building said to have been constructed by or under the command of Babar in 1528 AD proves that the same was not actually built in that manner and did not exist till then also.

1624. Sri Mishra, when asked that the building in dispute ex facie appears to be a Mosque, then how it came into existence if not constructed in 1528, submitted that it was actually attacked and damaged at the time of Aurangzeb and attempt was made to give it shape of a Mosque and inscriptions on the said building were fixed by someone much thereafter. He placed before us **“Indian Texts Series-Storia Do Mogor or Mogul India 1653-1708”** by Niccolao Manucci translated in English by Milliam Irvine Vol. III pages 244/245 where it deals with the Hindu holy places and reference to destruction of chief temple of Ayodhya by Aurangzeb and reads as under :

“In this realm of India, although King Aurangzeb destroyed numerous temples, there does not thereby fail to be many left at different places, both in his empire and in the territories subject to the tributary princes. All of them

are thronged with worshippers; even those that are destroyed are still venerated by the Hindus and visited for the offering of alms. The Hindus assert that in the world there are seven principal places where it is possible to obtain what one has imagined and desired-that is to say, in cases where a person wishes to become emperor or king, wealthy, powerful, or to attain other positions of the same order. Now they ordinarily hold that on dying a person's soul is transferred according to the deeds he has done; if he has done good, his soul will pass into some one of consideration or of wealth, and should the deceased have done evil, his soul will be sent into some animal- an elephant, camel, buffalo, cow, tiger, wolf, a bird, a snake, a fish, et cetera. Now, some great sinner, deserving of hell, may be anxious for delivery therefrom, and want to become an emperor or great noble, or whatever he fancies; it can be done by sacrificing his life by drowning himself in a river or in the tanks found near temples at the foot of the gates.

The principal temples referred to above are these-that is to say:

- 1. The first, Maya, to be found among the mountains of the north.*
- 2. Matura (Mathura), which is near the city of Agrah.*
- 3. Caxis (Kashi), which is on the Ganges, in the city of Benaras.*
- 4. Canchis (Kanji), in the Karnatik*
- 5. Evantica, in the mountains of Tartary.*
- 6. Puris (Puri), on the borders of Cochin China.*
- 7. Darahotis (? Gangotri), at the source of the*

Ganges, as they suppose it to be [+5].

Bands of interested persons make these lengthy pilgrimages, enduring a thousand hardships on the way, only at the end to drown by their own choice, without considering where they are about to take up their abode.

The chief temples destroyed by King Aurangzeb within his kingdom were the following:

1. Maisa (? Mayapur),

2. Matura (Mathura),

3. Caxis (Kashi)'

4. Hajudia (Ajudhya),

and an infinite number of others; but, not to tire the reader, I do not append their names.” (Page 244-245)

1625. Niccolo Mauucci was a traveller, who came to India during the reign of Aurangzeb and had written his account of travel in the aforesaid book.

1626. Sri Mishra pointed out that the reign of Emperor Aurangzeb was a total Islamic reign and all actions to cause damage to Hindu religion and religious places were taken by him. He not only revived Jizya which was a tax payable by non-Islamic people but also caused damage to Hindu religious places at a large scale. Sri Mishra refers to **“India in the 17th Century (Social, Economic and Politician) Memoirs of Francois Martin (1670-1694)”** Volume II, Part I (1681/1688) translated by Lotika Varadarajan first published 1984 by Manohar Publications, New Delhi and on page 880 where it discusses about the rate of 'Jizya' increased by the Emperor in October 1683 AD and says :

“Towards the beginning of October, the principal bania merchants assembled to discuss the orders to

increase the rate of jizya which had been sent by the Emperor to the Governor. I have already spoken about this tax which is similar to the carage paid by Christians in Turkey. During the remaining part of the month, several more meetings took place but these met with small success. If the entire amount due from this tax had been properly collected and paid into the imperial exchequer, the amount obtained by the Emperor under this head alone would have been far larger than the entire revenue accruing to him from the many kingdoms which made up his vast empire.”
(Page 880)

1627. About the destruction of religious places, Sri Mishra referred to Page 914 which says :

*“When it had come to the knowledge of the Emperor that many rich Gujarati banias had built temples within their homes to perform their devotions, in his religious fervour, he ordered that the Governors of the province should carry out an inspection. **All the temples in the cities and villages had been destroyed. Now these inner sanctums were also to be laid low and the least sign of the practice of Hindu religion was to be wiped out.** The members of this community, particularly at Hyderabad and Cambay where they were to be found in large numbers, were greatly alarmed at these instructions. It was said that the banias managed to circumvent the Mughal orders by giving presents to the Governors who thereupon took their inspection tours very lightly.”* (Page 914)

1628. Volume II, Part II or **“India in the 17th Century (Social, Economic and Politician) Memoirs of Francois Martin (1670-1694)”** first published in 1985 page 1249 was

relied by Sri Mishra which reads as under :

“Following the Emperor's orders with regard to the destruction of temples, the Moors brought one down in the Carnatic. This incited the Hindus to revolt in an attempt to prevent this action. The two communities clashed openly and both sides sustained loss of life. As a result, the Moors were forced to postpone their demolition activities to a later date.”

1629. He also referred to footnote 31 on page 1249 which says :

“31. According to French archival sources, B.N., N.A., 6213 (16), the Emperor had ordered all Hindu temples to be destroyed including that of Jagannath at Puri. This had brought about a Hindu rebellion as a result of which the edict was not enforced.”

1630. He also referred to **“Mughal Documents (A.D. 1628-59) Volume II by S.A.I. Tirmizi** (first published 1995 by Manohar Publishers and Distributors, New Delhi). On page 142 at sl. no. 426 there is a reference of a *Farman* of Aurangzeb of 15th March 1659 AD, which reads as under :

“426. Manshur of Aurangzeb addressed to Abul Hasan states that it has been brought to the notice of the royal court that the Brahmins of Banaras are being removed from their ancient offices and that Hindus of Banaras and its neighbourhood are harassed. In accordance with the sharia the ancient temples, are not to be destroyed and new ones are not to be built and since our innate kindness of disposition and natural benevolence, the whole of our untiring energy and our upright intentions are engaged in promoting the public welfare and bettering the

condition of all classes, high and low, it is ordered that no person should interfere with or disturb the Brahmins and other Hindus so that they may, as before, remain in their ancient occupation and engage themselves with peace of mind in offering prayers for the continuance of our God-gifted empire so that it may last forever (JPHS, V(1)., pp. 247-48).

20 Jumada II/1069 A.H./15 March, 1659 A.D.”

1631. He contended that initially the existing policy of Akbar, Jahangir and Shahjahan was followed by Aurangzeb, i.e. neither to destroy existing Hindu religious places nor to allow them to construct any new religious building but later on he took a different stand and pursuant thereto demolished a large number of Hindu temples.

1632. The total change of heart in reversing the earlier policy said to have taken place almost after 10 years, i.e., with the start of 11th year of his reign in April 1669. It has been discussed in detail by **Stanley Lane Poole** in his book "**Aurangzib-and the decay of the Mughal Empire**", first published in 1890, reproduced in 1995, published by Low Price Publications, Delhi on page 135-137. The relevant extract is as under:

"It seems to have been 1669 that the storm began to gather. In April of that year Aurangzib was informed that the Brahmans of Banares and other Hindu centers were in the habit of teaching their 'wicked sciences,' not only to their own people but to Muslims. This was more than the orthodox Emperor could tolerate; but the severity of his measures shows that he had been only waiting for a pretext to come down like a thunderbolt upon the unfortunate 'heathen.' 'The Director of the Faith,' we are told, 'issued

orders to all the governors of provinces to destroy with a willing hand the schools and temples of the infidels; and they were strictly enjoined to put an entire stop to the teaching and practising of idolatrous forms of worship.' It is not for a moment to be supposed that these orders were literally carried out. Even the English Government would not dare to risk such an experiment in India. All that was done was to make a few signal examples, and thus to warn the Brahmans from attempting to make proselytes among the True Believers. With this object the temple of Vishnu at Benares was destroyed and a splendid shrine at Mathura was razed to the ground, to make room for a magnificent mosque. The idols found in the temples were brought to Agra and buried under the steps of the mosque, so that good Muslims might have the satisfaction of treading them under foot." (para 135-136)

"It is very difficult to trace the cause and effect of Aurangzib's successive steps in his reactionary policy towards the Hindus. In the eleventh year of his reign he suddenly put a stop to the system of official chronicles, which had been minutely recorded by historiographers royal since the time of Akbar. Now, it was strictly forbidden to write any chronicles at all, and those that have come down to us were recorded in secret, or merely treasured in the memory, and have all the confusion and fragmentary character of haphazard reminiscences. There are probably several links missing in the chain of events which connected the first destruction of Hindu temples in 1669 with the imposition of the hated jizya or poll-tax on unbelievers, a few years later. The revolt of the Satnamis is

one of the few links that have been preserved by the secret chroniclers, who were naturally disinclined to soil their pens with the doings of 'unclean infidels.' Another event is the rash interference of the Emperor in the matter of Jaswant Singh's children." (pages 137-138)

1633. Sri P.N.Mishra also tried to take help from the judgment of the District Judge Fyzabad in Suit 1885 since he himself has visited the disputed premises on 18th March, 1886. In para 7 and 8 of his written argument Sri Mishra formulated his argument based on the above as under:

7. The District Judge of Faizabad who visited Sri Ramjanmasthan/alleged Baburi Masjid on 18th March 1886 did not find any of the Inscriptions published by A. Fuhrer in 1989 and by A. S. Beveridge in 1921. Said Ld. Judge in his Judgment has recorded that the entrance to the enclosure was under a gateway which bore the superscription "Allah" immediately on the left as the platform or Chabootra of masonry occupied by the Hindus. His said finding is recorded in Judgment and Order dated 18th March 1889 passed in Civil Appeal No.27 of 1886 Mahanta Raghubardass, Mahant Janam Asthan City Oudh VS. Secretary of State of India, Court of Council and Mohd. Asghar by the said Judicial Officer Mr. F.E.A. Chamier, District Judge Faizabad which constitute pages 87 to 91 of the volume 10 of the Documents of O.O.S. No. 4 of 1989 being Volume I of the plaintiffs' documents. Relevant portion from page 89 of the said Volume being an extract of the said judgment reads as follows:

"I visited the land in dispute yesterday, in the presence

of all parties.

I found that the Masjid built by the Emperor Babar stands on the border of the town Ajudhia-that is to say to the west and south it is clean of inhabitations. It is most unfortunate that a Masjid should have been built on land specially held sacred by the Hindus, but as the event occurred 356 years ago it is too late now to remedy the grievance all that can be done is to maintain the parties in status quo. In such a case as the present one any (Sic) would cause more harm and damage (Sic) of order than benefit. The entrance to the enclosure is under a gateway which bears the superscription "Allah" immediately on the left as the platform or Chabootra of masonry occupied by the Hindus. On this is a small superstructure of wood in the form of a tent. This "Chabootra" is said to indicate the birthplace of Ram Chan deer. Infront of the gateway in the entry to masonry Platform of the Musjid. A wall pierced (illegible) and therewith railings divides the platform of the Musjid from the enclosure in which stands the "Chabootra".

Be it mentioned herein that said judgment is Judgment per Incuriam as it has been passed in ignoratum of law. Prior to annexation of Oudh to British Rule the Law of Shar was law in force which law neither had rule of Limitation nor did recognise adverse possession. Apart from this Hindu law in respect of Debutter property also did not recognise adverse possession. This principle of Law had already been laid down by the Indian Courts of Record as well as Privy Council, London as such said

judgment passed in ignoratum of those judicial pronouncement has no force of law. Moreover in the said Suit the Disputed Structure was not subject matter of that suit nor was declaration of title in respect thereof prayed for.

8. In the aforesaid judgment recording of the Ld. Judge the superscription “Allah” leaves no doubt that he had inspected the disputed premises and Structure very minutely and it is needless to say that if there would have been alleged Inscriptions that would not have gone unnoticed by him. Be it mentioned herein that according to Hindus’ sacred book “Allopanisad” “Allah” is one of the several names of the almighty. Be it mentioned herein that the “Allopanishad” has been reproduced by the founder of Arya Samaj Maharshi Dayanand Saraswati in his book “Satyarthaprakash” 2nd revised edition published in Vikram Samvat 1939 i.e. 1882 A.D.. According to him it was written during the reign of Emperor Akbar. The text of “Allopanishad” as published on pages 556-67 of ‘Satyarthaprakash’ in “Dayanand-Granthmala published by Srimati Paropakarini Sabha, Ajmer 1983 Edn. reads as follows:

“अथाल्लोपनिषद् व्याख्यास्यामः ।

अस्माल्लां इल्ले मित्रावरुणा दिव्यानि भत्ते ।

इल्लल्ले वरुणो राजा पुनर्द्दुः ।

हमा मित्रो इल्लां इल्लल्ले इल्लां वरुणो मित्रस्तेजस्कामः ॥1॥

होतारमिन्द्रो होतारमिन्द्र महासुरिन्द्राः ।

अल्लो ज्येष्ठं परमं पूर्णं ब्राह्मणं अल्लाम् ॥2॥

अल्लोरसूलमहामदरकबरस्य अल्लो अल्लाम् ॥3॥

आदल्लाबूकमेककम् । अल्लाबूक निखातकम् ॥4॥

अल्लो यज्ञेन हुतहुत्वा । अल्ला सूर्य्यचन्द्रसर्वनक्षत्राः ॥5॥

अल्ला ऋषीणां सर्वदिव्यां इन्द्राय पूर्व माया परममन्तरिक्षाः ।।6 ।।
 अल्लः पृथिव्या अन्तरिक्षं विश्वरूपम् ।।7 ।।
 इल्लां कबर इल्लां कबर इल्लां इल्लल्लेति इल्लल्लाः ।।8 ।।
 ओम् अल्लाइल्लल्ला अनादिस्वरूपाय अथर्वणाश्यामा हुं ह्रीं जनानपशूनसिद्धान्
 जलचरान् अदृष्टं कुरु कुरु फट् ।।9 ।।
 असुरसंहारिणी हुं ह्रीं अल्लोरसूलमहमदरकबरस्य अल्लो अल्लाम् इल्लल्लेति
 इल्लल्लाः ।।10 ।।

इत्यल्लोपनिषत् समाप्ता ।।

1634. Be that as it may, the above discussion and the material considered by us make it very clear that the foundation of the entire history regarding construction of disputed building by Babar in 1528 AD is based upon the inscriptions said to be fixed thereon. The original text of the said inscriptions is not available at all. At least it has not been produced before us from any authentic source. The text of the said inscriptions published in different books and historical work, we have discussed, show several crucial discrepancies therein. The historians, it appears being aware that Babar came to India in 1526 AD and visited Ayodhya in 1528 AD formed opinion in majority and read the text of the inscriptions that the date of construction of the building therein is 1528 AD i.e. 935 AH. However, in the earliest Journal of ASI, the text is not only different but the period mentioned is also different i.e. 930 AH.

1635. Interestingly there are some work written in Urdu in the 19th Century by some Muslim writers. Therein mostly they have mentioned the period of construction of the disputed building as 923 Hijri and further that it was constructed by the Babar at the instance of Syed Musa Ashikan. One of such document is titled as "**Ameer Ali Shaheed Aur Marka Hanuman Gari**" by Shekh Mohammad Ajmat Ali Alvi Kakoravi (written in 1886) revised by Dr. Zaki Kakoravi

published in 1987 and on page 9/10 it says:

“कुतुब (पुस्तकें) साबिका (पूर्व) से मालूम है कि बाद तसल्लुत (कब्जा) सय्यद सालार मसऊद गाज़ी के सलातीने इस्लामिया ने बिलाद (शहरों) हिन्दुस्तान जन्नत निशान में जहां कहीं नमूदी (अवसर) पाई वहां रुक्न (सदस्य) इस्लामी के तौर पर मस्जिद व खानकाह व मुसाफिर खाने बनवा दिए और मुअज़्ज़िन (बांगी) व मुदर्रिस रख कर दीने मोहम्मदी को शायी किया और सामान बिदअत (नया कार्य) . . . किया चुनांचे जिस तरह मथुरा बिन्दराबन वगैरह को खसोखासाक (घास फूस) बिदअत से साफ किया। इसी तरह फैज़ाबाद अवध में जो बड़ा . . . का मकाम था, तख्तागाह पियर लक्ष्मन व राम था बुतखाने जन्मस्थान में 923 हिजरी में सय्यद मूसा आशिकों के एहतमाम में मस्जिद सरबुलंद बाबरी तैयार हुई। पुरनूर रही। वह हिंदुओं में सीता की रसोई . . . मशहूर थी। तारीख बिना “खैर बाकी” (923 हिजरी) है हुज्जत यादगार से मिलाती है।”

1636. Thus the very basis of forming the view that the disputed building was constructed in 1528 AD by Babar or at his command by his agents founded solely on inscriptions whose authenticity itself is not creditworthy.

1637. Unlike the historians who without any further probe, Proceeded on the observations of Dr. Buchanan as published by Martin in 1838, we do not find it possible to record a finding that the building in dispute was constructed in 1528 AD by Babar or any of his agents.

1638. If we summarize our reasons, we find firstly that Babar in his chronological detail (to the extent it is available) in "Baburnama" has mentioned various buildings which he got constructed mainly at Agra where he stayed and made his headquarter and in the nearby areas or else. Obviously, if some

construction or alteration in an existing building was made by any of his army officer or non-army officer who accompanied him from Farghana, there could not have any occasion for him to mention about the same in a work in which he recorded his daily affairs. His period of rule in the then Hindustan is very short, i.e., slightly more than four years. He being the founder of the dynasty, later known as Mughal dynasty, obviously was more interested in expansion of his reigning territory and not to indulge in avoidable confrontation which strategically may have added to his agony. A careful study of Baburnama show that wherever possible he made friends among non-muslims also so as to lessen rebels. Of course this was subject to the acceptance of those non-muslim Rulers about his supremacy. Besides the fact that no army commander of the name of "Mir Baqi", as such is mentioned in Baburnama, we find that Baqi Shaghawal who was made incharge of Oudh (Ayodhya) territory did not have any rest at Ayodhya. From 28.03.1528 and onwards, for a sufficiently long time, he remain on his toes chasing Bayazid and others. He was granted leave in June 1529 AD by Babar. It is the admitted case of the muslim parties that in a legendary work of Goswami Tulsidas on Lord Rama, i.e. 'Ramcharitmanas' which came into existence in a very short time after Babar, there is no mention of construction of a huge mosque at Ayodhya by Babar or anyone else. We are using the term "huge mosque" in the context of the place where the disputed building was constructed.

1639. Then in two traveller's account of Finch and Tieffenthaler also, this conspicuous miss cannot be overlooked. The first reference of Ayodhya and in particular the fort of Lord Rama at Ayodhya in the travellers account just after about 75

years and more, i.e., of "William Finch" who visited India between 1608 to 1611 AD. It is nobody's case that besides the area which is known today as Mauja Ramkot there was any other place where it was ever believed or seen by anybody the alleged house or fort of Lord Rama. On the contrary, what has been pointed out that in the first settlement of 1861 the site in dispute was part of plot no. 161 which had a total area of more than 9 Bighas. William Finch did not mention about any recently constructed Islamic building or mosque in this area and instead has referred to a house or fort which according to him was constructed about 400 years ago and belief of Hindus as birthplace of Ramchandar (Lord Rama). The period he mention may be approximate, i.e., may or may not be very accurate but it carries the period of the then existing building to 11th or 12th century when Ayodhya was under the rule of Gaharwals. He also mentions about Pooja and worship being performed by Hindus (Brahmans) in the said area but there is no mention about the existence of muslims or their religious place of a recent construction in the said area. It is difficult to believe if such a huge construction was existing at that time, the same would have gone unnoticed by a person who has given so much details of the area he visited at Ayodhya.

1640. Then comes the next available version of Nicolo Minouchi who travelled India during the reign of Aurangzeb. On the one hand it cannot be disputed that he has mentioned about demolition of a temple at Ayodhya during the aforesaid period but further particulars have not been given. It gives an occasion to the learned counsels for the plaintiff (Suit-4) to contend that the travellers account of Minouchi does not throw any light that the alleged destruction of temple mention in his

travellers account relates to the alleged Janambhumi temple and none else. This argument is unexceptionable since Minouchi's travellers account does not pin point any building or the area but then there are some further material.

1641. Father Joseph Tieffenthaler, an Austrian traveller visited India and remain here for more than two decades. In fact he stayed in India till his death. His credentials which have been made available to us through an internet printout of Wikipedia site shows that he was a linguist and well conversant with the languages like Persian and Sanskrit. It is this account which for the first time mentions about the alleged temple at the birthplace as well as its demolition by a muslim Ruler, in particular Mughal Ruler and construction of a mosque thereat. Tieffenthaler, however, say when he visited, the people in locality said that the demolition caused by Emperor Aurangzeb though some people said that it was Babar. Had the inscriptions alleged to be fixed on the building in dispute at the time of its construction would have existed thereat when Tieffenthaler visited the site, it is difficult to conceive that he could have written in his work whether it was Aurangzeb or Babar since he himself could have noticed the correct facts by reading the inscriptions for which he did not require any external help. Tieffenthaler's work which though written like a travellers guide between 1740-1760 and onwards but could not be seen by subsequent historians or those who prepared historical data perhaps for the reason that it remain unpublished in English. It might have been published in the Latin itself, the language in which Tieffenthaler wrote his diary but the publically known work is the "French translation" which is said to have been published in 1786. To us it appears that the building in dispute

by the time Tieffenthaler came to Ayodhya had already been constructed but the inscriptions were not there. Besides, even at that time, inside the building in dispute, the Hindu religious structure in the form of a 'Vedi' existed which was being worshipped by Hindus. Here also it is remarkable that Tieffenthaler though has noticed worship by Hindus but is conspicuously silent about worship by Muslims in the disputed building.

1642. We tried to enquire from learned counsel for the plaintiffs (Suit-4) as to how it could happen that a mosque was constructed but inside the premises a Hindu religious structure was allowed to remain as to be worshipped by Hindu public. In the absence of any source material on this aspect no reply obviously was forthcoming but to us it appears that though the building in dispute was constructed but immediately thereafter or after sometime it stood deserted by Muslims. Hindus made their entry and raised a religious structure in order to continue with the sanctity of their belief that the place in dispute was the birthplace of Lord Rama and that is how their worship continued. It is inconceivable that at the time when the disputed building was constructed the people who did so would have allowed a Hindu religious structure inside the premises particularly when the building which they constructed was an Islamic religious place, i.e., mosque. We also find that Islamic religious scriptures clearly prohibit same place fit for worship by the persons of different faith and religion. We make it clear our use of the word mosque herein these issues be not treated as our finding since it being a separate issue shall be dealt with later.

1643. Though it amounts to delving into some kind of

conjectures but since here is a case which necessarily goes in history and particularly when for sufficiently long time the things are in dark, in the absence of anything contrary, we do not find it impermissible to think in this manner. It would come within the domain of preponderance of probability.

1644. The position appears to be that when the building in dispute was constructed, obviously the Islamic people, were in power who constructed the building in dispute. They did not allow or could not have allowed any Hindu religious structure to exist within the premises of the disputed building. If it was done after demolition of a Hindu religious structure, it is inconceivable while demolishing such structure, some part thereof would have been allowed to remain so as to be worshipped continuously by Hindu people after entering the premises of the mosque. Thus initially when it was constructed no such structure could have existed but as soon as the local Hindu people got opportunity, they created or made a symbolic structure to continue with the worship according to their belief with regard to the birthplace of Lord Rama and that is how structure in the form of Vedi was there and noticed by Tieffenthaler in his work which relates to the period of 1740-1760 AD.

1645. The building in dispute, therefore, not constructed in 1528 AD or during the reign of Babar, the preponderance of probability lie in favour of the period when Aurangzeb was the Emperor since it is again nobody's case that such an action could have been taken during the reign of Humayun, Akbar or Shahjahan. Without entering into the wild goose chase on this aspect suffice it to say that the building in dispute must have come into existence before 1707 AD when the reign of

Aurangzeb ended on his death. Tieffenthaler's visit to Ayodhya is 35-55 years thereafter and this gave sufficient time in which the things as we have indicated above could have happened. The inscription on the disputed building either inside or outside was not there otherwise there was no occasion that the same could not have been noticed and seen by Tieffenthaler who himself was quite conversant with the language in which these inscriptions were written and found subsequently.

1646. Then comes the person who for the first time noticed the above inscription, i.e., Dr. F. C. Buchanan. He was a medicine man and, as his autobiography says, worked as personal physician of Lord Wellesley at the end of 18th century. He was entrusted with the work of survey of the territory within the hold of East India Company in North-West provinces at the commencement of 19th century. Obviously this was not his field of expertise and, therefore, it can well be conceived that he actually functioned as an overall Observer or Supervisor but in effect must have been assisted/attended by a team of the persons knowing the work of survey and also quite conversant with the local tradition, languages etc. The survey continued for about 7 years, i.e., 1807-1814. The survey report said to have been submitted in more than one set. It appears that the record of the said survey sent to Calcutta office of East India Company as also to its main office in London. At the time he conducted survey, the area of Oudh as such was not within the reigning territory of East India Company but was part of the reigning territory of Nawab Vazir of Lucknow with whom East India company had a kind of agreement entered in 1801. The area towards Gorakhpur, Varanasi etc. was in the territory of East India Company and the demarkating land appears to be the bank

of river Saryu near Ayodhya as is evident from the observations of Buchanan where he said that he did not undertake the exercise of measurement etc. at Ayodhya as it would have offended Nawab Wazir of Lucknow who was the reigning authority of that area. It is Buchanan who for the first time referred to an inscription wherefrom he could notice that the disputed building was erected in 1528 AD at the command of Babar though local people still at that time believed and said that the same was constructed at the time of Emperor Aurangzeb after demolishing a Hindu temple. When Buchanan visited Ayodhya, i.e. between 1807-1814, the period of Aurangzeb was about 100 years back while the period of Babar was about 275 years and more. It is difficult to conceive that the local people were not conversant as to who was responsible for construction or during whose reign the construction was made particularly when the matter was comparably recent. The people's memory is not so short and fade away with such a pace that they cannot recollect the events of just 50-60 years back. During the period of Buchanan it was a matter of just 100 years or more. Comparatively period of Aurangzeb was quite recent. Therefore, Buchanan's approach to ignore local belief that the building in dispute was constructed during the reign of Aurangzeb, in the absence of any concrete material, and not to make any further probe cannot be appreciated. However some margin has to be given to him since he was not an expert historian. It may happen that on plain reading of text, the period mentioned therein found 923 AH or 930 AH but he, knowing the period of Babar took upon himself to correct it.

1647. Moreover, Buchanan also cannot be said at fault since he had a reason to contradict this local belief based on an

inscribed document which he found fixed on the building in dispute. To us it appears that this inscription must have been fixed in the building in dispute sometimes between the visit of Tieffenthaler and survey of Dr. Buchanan. In order to give importance and antiquity to the building so as to avoid local hatred and conflict the inscript writer or the person responsible for it tried to co-relate it with the reign of Babar but due to lack of information or mistake, the period got written wrongly, i.e., 923 A.H. or 930 A.H. and he also mention a name i.e. Mir Baki or Mir Khan which did not find mention in Babar's "Tuzuk-i-Babri".

1648. Whether Buchanan actually noticed 923 A.H. or 935 A.H., we find difficult to record any concrete finding in the absence of any authenticated text of such inscription as was available to Buchanan. To us it appears when he noticed the name of Babar mentioned in the inscription even if the period in the inscription would have written as 923 A.H. he might have got it corrected in the light of the known period of visit of Babar at Ayodhya. This part of our observation as to what Buchanan might have done at that time is obviously in the realm of conjecture and we are conscious about it, but for us it is suffice to mention that in the absence of an authenticated text of the inscription as noticed by Buchanan, the only thing relevant for us is that the inscription was noticed for the first time by Buchanan and at that time he tried to contact the local people with respect to the period and person who constructed the disputed building. He was told about Aurangzeb but he discarded it on the basis of inscription and said that it is Babar and not Aurangzeb as locally believed. It is again nobody's case that the inscription of the period of Buchanan was replaced or

changed at any later point of time atleast when it was so noticed and read by A. Fuhrer.

1649. In the meantime, we find that this text has been referred to in certain books written by muslim writers after 1855 AD. Without entering into the question whether those writers were well known Historians or merely story writers or whatever the case may be, for us suffice it to mention that in all these books they have mentioned the period of construction contained in the inscription as 923 A.H. Obviously it cannot be said that those writers who have written their books in Persian and Arabic were not capable of correctly reading the inscription and they committed a mistake in reading.

1650. In brief, we summarize the things and the position boils down as under:

i. Dr. Fransis C. Buchanan said to be first person who read and collect the transcription but this text duly proved in accordance with law is not available to us. However, this found the basis of contradicting the local belief as it prevail till then i.e. around 1810 AD that the building in dispute was constructed during the reign of Aurangzebe after demolition of a temple was wrong and it was actually Babar, as borne out from the inscription.

ii. Next is A. Fuhrer. He was the first archaeologist who read and translated in 1889/1891 and got published three inscriptions alleged to be fixed on Babari Masjid which was alleged to be built under command of Emperor Babur at the site of Sri Ramjanmasthan.

A. Fuhrer's translations and introductory notes thereto read as follows:

“Babar's- Masjid at Ayodhya was built in A.H. 930,

or A. D. 1523, by Mir Khan, on the very spot where the old temple Janamasthanam of Ramchandra was standing . The following inscriptions are of interest. Inscription No.XL written in Arabic character over the mihrab of the masjid it gives twice the Kalimah:-

“There is no God but’ Allah, Muhammad is His Prophet”

Inscription no.XLI is written in Persian poetry, the meter being Ramal, in six lines on the member, right-hand side of the masjid.

- “1.By order of Babar, the king of the world,
2. This firmament-like, lofty,
3. Strong building was erected.
4. By the auspicious noble Mir Khan.
5. May ever remain such a foundation,
6. And such a king of the world.”

Inscription No.XLII is written in Persian poetry ,the metre being Ramal, in ten lines, above the entrance door of the masjid. A few characters of the second and whole third lines are completely defaced.

- “1. In the name of God, the merciful, the clement.
2. In the name of him who...; may God perpetually keep him in the world.
3.
4. Such a sovereign who is famous in the world, and in person of delight for the world.
5. In his presence one of the grandees who is another king of Turkey and China.
6. Laid this religious foundation in the auspicious Hijra 930.

7. O God ! May always remain the crown, throne and life with the king.

8. May Babar always pour the flowers of happiness; may remain successful.

9. His counselor and minister who is the founder of this fort masjid.

10. This poetry, giving the date and eulogy, was written by the lazy writer and poor servant Fath-allah-Ghori, composer.”

The old temple of Ramachandra at Janamasthan must have been a very fine one, for many of its columns have been used by the Musalmans in the construction of Babar’s masjid. These are of strong, close-grained, dark- coloured or black stone, called by the natives Kasauti, “touch-stone slate,” and carved with different devices. They are from seven to eight feet long, square at the base, centre and capital, and round or octagonal intermediately.

(The Sharqi Architecture of Jaunpur by A.Fuhrer Ph.D. p 67-68)

ii. Third is Annette Susannah Beveridge was the second british scholar who in 1921 published texts of two Inscriptions purported to be of alleged baburi Mosque which were supplied by the Deputy- Commissioner of Fyzabad alongwith English Translation and Transliteration thereof done by a Muslim. In her said book A.S. Beveridge before giving Text and Translation of the alleged two Inscriptions writes as follows:

“ Thanks to the kind response made by the Deputy- Commissioner of Fyzabad to my husband’s enquiry

about two inscriptions mentioned by several Gazetteers as still existing on ‘Babur’s Mosque’ in Oudh, I am able to quote copies of both.”

After giving text and transliteration of an Inscription he gives Translation with her exaggerating value thereof as follows:

“The translation and explanation of the above, manifestly made by a Musalman and as such having special value, are as follows:-”

“The inscription inside the Mosque is as follows:-”

After giving its Text and Transliteration she translates the alleged First Inscription as follows:

- “1. By the command of the Emperor Babur whose justice is an edifice reaching up to very height of the heavens,
2. The good-hearted Mir Baqi built this alighting-place of angels;
3. Bavad khair baqi ! (May this goodness last for ever!) The year of building it was made clear likewise when I said Buvad khair baqi (=935).”

“The inscription outside the Mosque is as follows:-”

After giving its Text and Transliteration she translates the alleged Second Inscription as follows:

“The explanation of the above is as follows:-”

“In the first couplet the poet praises God, in the second Muhammad, in the third Babur - there is a peculiar literary beauty in the use of the word la-makani in the 1st couplet. The author hints that the mosque is meant to be the abode of God, although he has no fixed abiding-place. - In the first hemistich

of the 3rd couplet the poet gives Babur the appellation of qalandar, which means a perfect devotee, indifferent to all worldly pleasures. In the second hemistich he gives as the reason for his being so, that Babur became and was known all the world over as a qalandar, because having become Emperor of India and having thus reach the summit of worldly success, he had nothing to wish for on this earth.

The inscription is incomplete and the above is the plain interpretation which can be given to the couplets that are to hand. Attempts may be made to read further meaning into them but the language would not warrant it.”

1651. The text and translation of these above two authorities are evidently distinct and different. Beveridge's claim that the inscriptions were well existing on Baber's mosque in terms as to be understood about the existence of inscriptions and not for the text since admittedly she had not seen the inscriptions and its text but has collected the same as a secondary evidence.

1652. Then next comes the Civil Judge, Faizabad who has mentioned the text of the two inscriptions in his judgment dated 30.03.1946 in R.S. No.29 of 1945. He has also discussed the same as under:

"Lastly there are the two Inscription in the mosque which have been reproduced in my inspection notes. These are also referred to in the Gazettes and according to the date in the inscription on the pulpit it was built in 923 Hijri, while according to other it was in 935 H. corresponding with 1528 A.D. These inscriptions were the sheet-anchor

of the plff's case but I am of the opinion that they are inconclusive.

The 1st inscription contains three couplets in Persian and when translated runs as follows:

“By the order of Shah Babar, whose justice went up to the skies (i.e. was well known), Amir (Noble) Mir Baqi, of lofty grandeur, built this resting place of angels in 923 Hijri.”

The 2nd inscription is more elaborate and contains usual high flown language on eulogy of Babar & describe Mir Baqi of Isphahan as his adviser and the builder of the mosque. This inscription no doubt s the plff's case, because it does not say that it was by the order of Babar shah & it only refers to the reign of Babar but the 1st couplet in the 1st inscription near the pulpit, clearly supports the theory that Babar had ordered the building of the as stated in the Gazettes and the settlement report."

1653. By this time, damage of inscription in 1934 and its restoration is admitted to the parties. Whether the restoration was accurate and if so on what basis is not known.

1654. Then next come Dr. Z.A. Desai's edited work in "**Epigraphia Indica Arabic & Persian Supplement 1964-65**" which gives another story with much difference. Paras 17, 18 and 19 of written argument:

17. Dr. Z.A. Desai informs that Fuhrer's reading does not appear to be free from mistakes. But he does not specify the mistakes committed by Fuhrer in his reading of the texts and translations thereof. From the scrutiny of Dr Desai's translation it appears that Dr. Desai in 4th line has added "and" between 'Mir' and 'Khan' and "Baqi"

after 'Khan'. So he has converted 'Mir Khan' into 'Mir Khan Baqi'. And in the 3rd line he has added "of God" after 'this lasting house' to make it a mosque. He has neither given any rational explanation for his said conversion of 'Mir Khan' into 'Mir Baqi' nor He has exhibited as to how the Fuhrer's translation is different from the original text.

18. Dr. Z.A. Desai In his detailed discussion on all inscriptions of Babur's regime writes an introduction that a rough draft of an article of his predecessor Maulivi M. Asuraf Hussain who retired in 1953 was found amongst sundry papers in his office with a note that it might be published after revision by his successor. Consequently, he claims, that he has published these inscriptions with translation after extensive revision and editing, but nowhere has he mentioned that which portions of the reading of these inscriptions are his own revision and editing and on what ground these revisions have been made. About inscriptions at Ayodhya he writes that there are three inscriptions in the Babari Mosque out of which the two were completely destroyed by the Hindu rioters in 1934 A.D. However, he managed to secure an ink-stampage of one of them from Sayyid Badru'l - Hasan of Fyzabad. He writes that the present inscription restored by the Muslims Community "is also slightly different from the original owing perhaps to the incompetence of restorers in deciphering it properly." When Dr. Desai himself admits that the restored inscription is slightly different from the original, then his claim that the restored inscription fixed on Baburi mosque in or after 1934 is the

dextrously rebuilt of the original one alleged to be fixed on since the days of Babur becomes meaningless and untrustworthy. In fact, none of the Inscriptions was fixed on the Disputed Structure which has all along been sacred place of the Hindus known as Sri Ramajanmasthan Temple.

19. Dr. Desai informs that he has based his translation on the inscription of Fuhrer, although he says that Fuhrer must have been misinformed to affirm that; “few corrections of the second and the whole third line completely defaced”. Even if it is supposed that some words in the 2nd line and the whole third line are defaced, there is not much impact in the meaning of the text of the inscription. But here we do find that Dr. Desai has extensively changed the meaning of the translated passage. It is quite different from what Fuhrer had translated. Fuhrer had written that it is in ten lines, above the entrance door of the Masjid. He has made its translation in ten separate lines. Dr. Desai has considerably changed the meaning of the text without pinpointing how Fuhrer’s translation was wrong. Since beginning and the end of the text are the same and the inscription is said to be the same and there is no major variance in Fuhrer’s English translation from the Persian text, Dr. Desai’s translation appears to be arbitrary. He has changed the date of the inscription 930 H. (1523 A.D.) to 935A.H. Without assigning any reason. In Dr. Desai’s translation the name of Mir Baqi the second Asfaq appears where as in the original Persian text Mir Baqi’s name does not appear at all. Then Babar is called a Qalandar in this

inscription which is not found in Fuhrer's translation. After 4th line Dr. Desai does not follow the line system and at the end he mentions Fathu'llah Muhammad Ghori as the humble writer of this inscription. His name figures in the Fuhrer's translation too. He goes on expanding how Babar was called Qalandar but he does not explain how the changes have taken place in the inscription which was not in the text read by Fuhrer.

1655. Sri P.N.Mishra has also requested this Court to take judicial notice of the fact that almost in all the inscriptions, which have been recovered by ASI said to be of the period of Babar mentions his name with much honour and deference. This he has demonstrated from various inscriptions referred to in **"Epigraphia Indica Arabic & Persian Supplement 1964-65"** (**Supra**). He has summarized this part of argument in para 20 of written argument as under:

"In the above mentioned Inscriptions the Emperor's name Zahiru'd-Din Muhammad Babur Badshah Ghazi which has been recorded almost in all other available Inscription of his period, is missing from which it appears that the forgers of later days were not familiar with the correct name of the said Emperor.

In the Inscription, dated A.H. 933 i.e. 1526-27 A.D. found on the wall of a well from Fatehpur Sikri being Plate No. XV(a) in its 1st line his name has been recorded as follows:

“Zahiru'd-Din Muhammad Babur Badshah Ghazi”

(Epigraphia Indica Arabic & Persian Supplement 1964 and 1965 at page-51)

In the Inscription of A.H. 934 i.e. 1527-28 A.D. found on

a mosque from Panipat being Plate No. XVI(b) in its 1st line his name has been recorded as follows:

“Zahiru’ d-Din Muhammad Babur Badshah Ghazi”

(Ibid.p. 55)

In the Inscription dated A.H. 934 i.e. 1527-28 A.D. found on a mosque from Rohatak being Plate No. XVI(a) in its 2nd line his name has been recorded as follows:

“Zahiru’ d-Din Muhammad Babur Badshah Ghazi”

(Ibid.p. 56-7)

In the Inscription dated A.H. 934 i.e. 1528 A.D. found on a mosque from Rohtak being Plate No. XVII(a) in its 1st line his name has been recorded as follows:

“His Majesty Babur Badshah Ghazi”

(Ibid.p. 57)

In the Inscription of A.H. 935 i.e. 1528-29 A.D. found on a mosque from Palam(Delhi) being Plate No. XVIII(a) in its 1st and 2nd lines his name has been recorded as follows:

“Zahiru’ d-Din Muhammad Babur Badshah Ghazi”

(Ibid.p. 62)

In the Inscription of A.H. 935 i.e. 1528-29 A.D. found on a mosque from Pilakhna being Plate No. XVIII(c) in its 3rd line his name has been recorded as follows:

“Zahiru’ d-Din Muhammad Babur Ghazi”

(Ibid.p. 64)

In the Inscription dated A.H. 936 i.e. 1529 A.D. found on a mosque from Maham being Plate No. XIX(a) in its 1st and 2nd lines his name has been recorded as follows:

“Zahiru’ d-Din Muhammad Badshah Ghazi”

(Ibid.p. 65)

1656. Regarding transportation of inscription from one place to another and affixing the same to raise the claim with respect to building on the basis of certain facts, which actually did not exist, he pointed out that this kind of practice has been noticed on various occasions. He sought to fortify it by referring to certain incidents mentioned in para 21 and 22 of his written argument:

21. It is not uncommon for ruffians to fix old Inscriptions on newly built and / or converted mosques. **‘Epigraphia Indica Arabic & Persian Supplement 1964 and 1965’** at its pages 55 and 56 records that two Inscriptions dated 1934 fixed on two mosques at Rohtak did not belong to those mosques but have been fixed thereon. relevant extracts from said book read as follows:

“Among the historical buildings, two mosques, viz., Masjid-i-Khurd in the Fort² and Rajputon-ki-Masjid, a new mosque in the city area, bear inscriptions of the time of Babar. The one on the Masjid-i-Khurd consists of three lines inscribed on a tablet measuring 53 by 23cm. Which is fixed over the central archway outside³. The slab is badly damaged and considerable portion of the text has peeled off. It is, therefore, not possible to decipher it completely, but this much is certain that it refers to the construction of a mosque in the reign of ahiru’d-Din Muhammad Babur by one Qadi Hammad. If the Tughluq inscription occurring on the outer archway is in situ, this epigraph may not belong to this mosque.” (Ibid.p.56)

“The other epigraph of Babur in Rohtak is from the Rajputon-ki-Masjid. Fixed over its central arch, the

tablet, measuring 1.1 m. By 21 cm., does not belong to the mosque, but it was rather intended as the tombstone of Masnad-i-'Ali Firuz Khan. It is inscribed with two lines of Persian which are slightly affected by the weathering of the stone. The text records A.H. 934 (1528 A.D.) as the date of the construction of the tomb of Masnad-i-Ali Firuz Khan, son of Masnad-i-Ali Ahmed Khan and grandson of Masnad- i-Ali Jamal Khan and refers itself to the reign of Babur. The style of writing is ordinary Naskh. I have read it as follows:-

TEXT

Plate XVII(a)

.....

TRANSLATION

(1) Completed was in the reign of His Majesty Babur Badshah Ghazi, may Allah perpetuate his kingdom and sovereignty, this noble edifice, (viz.) the tomb of His Excellency Masnad-i-Ali³ Firuz Khan, son of Masnad-i-Ali Ahmad Khan, son of Masnad-i-Ali Jamal Khan, the deceased, all of them, on the 10th of the month of Rabi'u'l-Akhar, year (A.H.) four and thirty and nine hundred (10th Rabi'II A.H. 934 = 3rd January 1528 A.D.). (Ibid. P. 57)

22. In **'Epigraphia Indica Arabic & Persian Supplement 1964 and 1965'** at its pages 19 and 20 S.A. Rahim reports that at Fathabad near Chanderi in Guna district of Madhya Pradesh, stands the partially ruined palace known as Kushk-Mahal and Inscription fixed thereon are not dated back to its construction but have been affixed thereon from time to time either by the

visitors or by the Governors thereof. Relevant extracts from his said report read as follows:

“It would not be, however, wholly correct to say that the Kushk-Mahal does not bear any inscription. There are about a score of places on the walls enclosing the staircases, referred to above, which bear short inscriptions. The rubbings of some of these were found in the bundles of old estampages which were transferred to our office, from the Office of the Government Epigraphist for India, Ootacamund, South India, who in his turn seems to have received them quite some time back from the Archaeological Department of the erstwhile Gwalior state. I prepared fresh rubbings of these records when I toured some places in Madhya Pradesh, including Chanderi, in November 1962. Of these, some are mere repetitions of the same text and as such have been excluded from this purview. The remaining four inscriptions are edited here for the first time.

These inscriptions raise an important question, as to whether they are contemporary with the building or not. They do not appear to be so, because they are not inscribed on tablets set up on the walls, nor are they found incised on prominent places on the monument. A building of such magnificence would have had, if at all it was so planned, an inscription of proportionate prominence. This does not rule out the possibility, however, of the existence of an epigraph on the monument, for it is possible that it had one and may have disappeared since. Moreover, the texts of the

inscriptions under study are also vague on this point, for they do not make any explicit reference to the palace-building or its construction. In view of these facts, it appears more likely that these records are either visitors' etchings or some sort of mementos which the governors, the palace-guards or some other officials might have desired to leave on the stone.

Fortunately, one of these four records is dated, and since the same penmanship is employed in the other three records, they can also be safely taken as having been inscribed at about the same time or at short intervals. Their language is Persian and style of writing cursive Naskh. The wear and tear of time has affected the stone, resulting into partial obliteration of some of the letters, particularly in the first inscription.

The contents of these four epigraphs classify them into two groups: one, of the first inscription, and the other of the remaining three. The first refers itself to the governorship(amal) of Khan-i-A'zam Sharaf Khan Sultani and the superintendence (shahnagi) of one person whose name is not very legible; it seems to be Raja, (son of) Shams, (son of) Fath. The name of the writer which is also not clear, appears to be Shiv Sing(?) Gulhar. This inscription is dated 1489-90. The three records of the other group refer, between themselves, to the governorship of Malik Mallu Sultani and superintendence of Sarkhail Shariqi Mulki and quote Gulhar Jit(?) Dev, as the scribe. They are undated and hence, it is difficult to state positively if they are earlier than the above dated inscription or not." (Ibid. P.19-20)

1657. We may place on record that on this aspect of the matter the learned counsels appearing on behalf of the Muslim parties in their rejoinder arguments could not give any substantial reply. They said that the matter involves historical facts. The inscriptions, their text, have been noticed in various history books. They have no other material to support the plea that the building in dispute was constructed by Babar in 1528 AD or at his command by his commander or his agent Mir Baki. They also submit that since this historical event has not been doubted for the last more than one and a half century, this Court may not be justified in recording a finding disturbing the historically admitted and believed fact as the Court is not expert in the matter of history and therefore, there should not be any venture on the part of the Court on this aspect.

1658. The later part of the argument that for the last more than one and a half century, the documents, which are available to us, does not show that the Historians doubted about the building in dispute was constructed during the reign of Babar. But simultaneously this is also proved that all have proceeded mechanically and without properly scrutinizing the texts of the inscriptions, as reported from time to time. The things have been taken as granted. It is also true that the incident of destruction of the temple and construction of a mosque at the disputed place was first noticed by Tieffenthaler in the second half of 18th Century. By that time Aurungzebe's rule was much nearer than Babar's reign. The local belief in respect to recent event normally is more reliable than much older one. This belief was so strong that it continued thereafter for the last 50 years and around 1810 AD, when Dr. Buchanan visited Ayodhya he also found the same. It is he, who for the first time sought to

controvert the local belief by bringing into picture Babar as the person responsible for the demolition of the temple and construction of mosque at that site. Subsequent writers were mostly petty employees of East India Company i.e. Robert Montgommery Martin or the British Government i.e. H.H.Wilson etc.

1659. During the reign of British Government, names of Aurangzebe and Babar, both were taken for Ayodhya, but tried to be a justified in respect to different buildings. The Indian Historians basically have followed what was written as per the observations of Buchanan. Nobody made any detailed investigation whatsoever. At least none tried to find out the actual events which took place and the correct historical facts.

1660. Normally, this Court would be justified in following the opinion of Expert Historians particularly when it covers a sufficiently long time, but when directly a historical issue is raised before it and this Court, as a matter of necessity, has no option but to find out the correct historical events to the extent of accuracy as much as possible, we cannot proceed blindly to follow what has been written by earlier Historians ignoring all other aspects, some of which we have already discussed. In fact, it is for this reason that the biographical details of some of the alleged history writers, we have mentioned in the early part of this judgment. Had there been two views possible we would not have hesitated in following the view which has prevailed for such a long time but where we find, considering all the relevant material, that the view, which has prevailed for such a long time apparently unbelievable and unsubstantiable, followed by the concerned authors and Historians without a minute scientific investigation, we cannot shut our eyes to such glaring errors and

record a finding for which we ourselves are not satisfied at all.

1661. In fact the doubts created otherwise are so strong and duly fortified with relevant material that we have no hesitation in observing that they surpass the required test to become cogent evidence to prove a fact otherwise.

1662. Before concluding we may also deal with one aspect which has been raised though with caution from both the sites, i.e., the legal status and evidentiary value of the White Paper published by Government of India as well as various gazetteers.

1663. First we come to the White Paper issued in February, 1993 by the Government of India with the title "White Paper on Ayodhya".

1664. In Chapter I "Overview" paras 1.1 and 1.2 read as under:

“1.1. Ayodhya situated in the north of India is a township in District Faizabad of Uttar Pradesh . It has long been a place of holy pilgrimage because of its mention in the epic Ramayana as the place of birth of Shri Ram. The structure commonly known as Ram Janma Bhoomi-Babri Masjid was erected as a mosque by one Mir Baqi in Ayodhya in 1528 AD. It is claimed by some sections that it was built at the site believed to be the birth-spot of Shri Ram where a temple had stood earlier. This resulted in a long-standing dispute.”

“1.2. The controversy entered a new phase with the placing of idols in the disputed structure in December, 1949. The premises were attached under section 145 of the Code of Criminal Procedure. Civil suits were filed shortly thereafter. Interim orders in these civil suits restrained the parties from removing the idols or interfering with their

worship. In effect, therefore, from December, 1949 till December 6, 1992 the structure had not been used as a mosque.”

1665. In Chapter II "Background" para 2.13 and 2.15 read as under:

“2.13. As has been mentioned above, Hindu structures of worship already existed in the outer courtyard of the RJB-BM structure. On the night of 22nd/23rd December, 1949, however, Hindu idols were placed under the central dome of the main structure. Worship of these idols was started on a big scale from the next morning. As this was likely to disturb the public peace, the civil administration attached the premises under section 145 of the Code of Criminal Procedure. This was the starting point of a whole chain of events which ultimately led to the demolition of the structure. The main events of this chain have been summarised in Appendix-1.”

“2.15. The Hindu idols thus continued inside the disputed structure since 1949. Worship of these idols by Hindus also continued without interruption since 1949 and the structure was not used by the Muslims for offering prayers since then. The controversy remained at a low ebb till 1986 when the District Court of Faizabad ordered opening of the lock placed on a grill leading to the sanctum-sanctorum of the shrine. An organisation called the Babri Masjid Action Committee (BMAC), seeking restoration of the disputed shrine to the Muslims came into being and launched a protest movement. The Hindu organisations, on the other hand, stepped up their activities to mobilise public opinion for the construction of a Ram temple at the disputed site.”

1666. Similarly Chapter I para 1.14 refers to the excavations conducted by Prof. B.B. Lal at Ayodhya and Chapter II paras 2.6, 2.7, 2.8, 2.9 and 2.10 refers to certain more facts as under:

“1.14. The other controversy related to the excavations conducted by Prof. B.B. Lal at Ayodhya. His discovery of some pillar bases close to the disputed structure was cited by VHP to support its case. The authenticity of this finding was, however, disputed by AIBMAC which alleged that its historians had been denied the opportunity to examine the original record relating to this excavation. This was settled by making available material relating to Prof. Lal’s excavations to the experts of both sides.”

“2.6. There was a minor battle in this part of Ayodhya (Kot Ram Chandra) in 1855 in which a large number of casualties had taken place. A 3-man inquiry report of this incident is available on the records of the East India Company (and a copy is in the National Archives).”

“2.7. At some stage during the history of the RJB-BM structure a portion of its compound was occupied by Hindu structures of worship, viz Ram Chabutra and Kaushalya Rasoi. The presence of these structures is marked in court documents relating to a suit filed by Mahant Raghuvar Dass in 1885. These structures were in existence till December 6, 1992. There are indications that these structures were considerably older but the evidence on this point is not conclusive. Some Survey records of 1807-14 have come to notice in which the disputed site has been marked as ‘Yanmasthan’, i.e. Janmashtan.”

“2.8. It is also established that the dispute between Hindus

and Muslims over this structure led to communal riots in 1934 in which the structure suffered some damage which was later repaired.”

“2.9. The structure and its appurtenant land were notified as a Sunni Muslim Wakf in 1944. The validity of this notification has been called into question in court proceedings.”

“2.10. The Ram Janma Bhoomi-Babri Masjid structure contained some architectural elements, particularly fourteen black stone pillars that were said to be part of a non-Islamic religious structure of 11th -12th century AD. The VHP argued that this constituted evidence that the disputed structure was built after destruction of a temple. The AIBMAC, however, argued that there was nothing to suggest that all these architectural elements belonged to a single structure standing at this very site. These could have belonged to different structures in other areas.”

1667. Sri P.R. Ganpathi Ayer and Sri K.N. Bhat, Senior Advocates sought to rely on the above report to show the structures already existing in the disputed area and some other historical events.

1668. Similarly, the factum of construction of the disputed building in 1528 AD mentioned in para 1.1 of the said paper is referred by the other side. The question is, what is the legal status of the document, how far the contents thereof can be relied on by the parties in a Court of Law in respect to certain facts which are to be adjudicated and whether a historical or otherwise facts mentioned in a White Paper published by Government of India is binding and conclusive so far as that fact relating to occurrence or non-occurrence of an event etc. is

concerned.

1669. No provision has been shown to us which covers a White Paper issued by the Government.

1670. The word "White Paper" has been defined in "**Words and Phrases**" Permanent Edition, Vol. 45, published by St. Paul, Minn. West Publishing Co., at page 127 as under:

"White Paper: Ballots upon paper tinged with blue, which has ruled lines not placed there as marks to distinguish the ballots, are upon "white paper," within the meaning of Act 1849, p. 74, § 15, providing that no ballot shall be received or counted unless the same is written or printed upon white paper without any marks thereon intended to distinguish one ballot from another. People v. Kilduff, 15 Ill. 492, 501, 60 Am. Dec. 769."

1671. In "**DK Illustrated Oxford Dictionary**" published by Oxford University Press, at page 952:

"White Paper- Government report giving information or proposals on an issue."

1672. In "**The New Lexicon Webster's Dictionary of the English Language**" (1987), published by Lexicon Publications, Inc. at page 1122:

"White paper-an informative government report issued on a matter which has received official investigation."

1673. In "**The Layman's Dictionary of English Law**" by **Gavin McFarlane**" (1984), published by Waterlow Publishers Limited at page 314:

"White Paper-A governmental publication giving details of some topic which is to be laid before Parliament."

1674. On the one hand it is a public document issued by the Government of India and, therefore, no doubt it is true, that, it can be looked into by a Court of Law. Even if the parties have not referred to it, judicial cognizance of such a document can be taken. A Full Bench of Punjab High Court in **Sukhdev Singh Vs. Union Territory, Chandigarh, AIR 1987 Punjab and Haryana 5** has said:

"15. What the White Paper describes can judicially be taken note of on which there can be no two opinions...."

1675. However, there is no authority to show that the facts as given in White Paper are to be treated as correct in a Court of Law where those facts or related facts are disputed in a pending adjudication. No provision has been shown whereunder anything contained in a White Paper published by a Government may be taken to be a proved fact. We are not apprised of any authority whatsoever showing the legal status of a White Paper except that it is a public document under Section 74 of the Evidence Act. About the value of the facts or factual statements contained therein, to our mind, the things would depend on the nature of the facts stated in a White Paper and the context. Something concerning the governmental activities, if are mentioned in a White Paper which has been issued by that very Government, a presumption may lie that the facts relating to that body must have been correctly mentioned therein. This presumption also, however, is rebuttable and it is always open to anyone to contradict such a statement of fact and lead evidence to disprove it. Then there may be facts relating to history or historical events, the geographical position of the territories etc. as also the condition of the subject/people etc. The well known historical facts which are duly supported with other history

books may be taken to be correct. Similarly in respect to the geographical position of the State the concerned government is more competent to tell about its accuracy than any individual. However, the facts historical or otherwise in respect to individual or group of individuals, and/or about the property matters of the subject, we have no manner of doubt that in such cases, at the best, the Court will presume that the government has mentioned those facts based on the record available to it but in case of dispute such statement would have no relevance and shall not be used for the advantage/disadvantage to any party. The dispute has to be considered by the appropriate judicial authority in the light of the evidence led before it. The facts mentioned in White Paper, depending upon the nature, at the best, may be used as a corroborating evidence but not otherwise.

1676. Then comes the gazetteers in respect whereto some of the authorities we have already discussed and noticed above. At this stage suffice it to mention that the facts contained in a gazetteer do not represent the conclusive status and correctness of those facts but again they have to be looked into and decide by a Court of Law based on the evidence available before it. The gazetteer may be considered as a relevant evidence but the historical, cultural and other facts, which may have some reflection on the rights, privileges etc. of individual or group of individuals, there the matter has to be considered by a Court of Law in the light of the evidence made available to it and if corroborated by other reliable evidence, the facts of history etc. contained in a gazetteer may be looked into. Gazetteers, published under the authority of the Government, we have no hesitation in treating the same to be a "public document" under Section 74 of the Evidence Act but then the contents thereof

cannot be taken on their face value and cannot be relied to prove a particular aspect of the matter unless it is corroborated.

1677. Sri Ayer has relied on Section 87 of the Evidence Act to contend that the facts stated in a gazetteer may be presumed to be correct unless proved otherwise since the gazetteers are relevant for the purpose of Section 13 of the Evidence Act having noticed the faith of the people and the historical facts therein. To the extent that the gazetteer may be treated to be relevant and one of the piece of evidence, we may not have any objection but to suggest that the facts stated in a gazetteer may presume to be correct unless proved otherwise by applying Section 87 of the Evidence Act, we find it difficult to accept. Where the rights of the individuals or group of individuals pertaining to property dispute are under challenge, the facts mentioned in a gazetteer may be considered to be a relevant piece of evidence but not beyond that.

1678. In the light of the above we do not find that either the Government of India's White Paper published in 1993 or various gazetteers, merely for mentioning one or the other facts, can be taken to be correct on its face value unless corroborated with cogent evidence.

1679. In the above facts and circumstance, it is difficult to record a finding that the building in dispute was constructed in 1528 AD by or at the command of Babar since no reliable material is available for coming to the said conclusion. On the contrary the preponderance of probability shows that the building in dispute was constructed some later point of time and the inscriptions thereon was fixed further later but exact period of the two is difficult to ascertain.

1680. The onus to prove lies upon the party who has pleaded

these facts. We have no hesitation in saying that these parties have miserably failed to discharge this burden.

1681. In the absence of any concrete material to show the exact period and the reign of the concerned Mughal emperor or anyone else during which the above construction took place, we are refraining from recording any positive finding on this aspect except that the building in dispute, to our mind, may have been constructed much later than the reign of Emperor Babar and the inscriptions were fixed further thereafter and that is why there have occurred certain discrepancies about the name of the person concerned as also the period. The possibility of change, alteration or manipulation in the inscriptions cannot be ruled out.

1682. It is a matter of further probe by Historians and others to find out other details after making an honest and independent inquiry into the matter. The three issues, therefore, are answered as under:

(A) Issue no.6 (Suit-1) and Issue No.5 (Suit-3) are answered in negative. The defendants have failed to prove that the property in dispute was constructed by Shanshah/Emperor Babar in 1528 AD. Accordingly, the question as to whether Babar constructed the property in dispute as a 'mosque' does not arise and needs no answer.

(B) Issue No.1(a) (Suit-4) is answered in negative. The plaintiffs have failed to prove that the building in dispute was built by Babar. Similarly defendant no.13 has also failed to prove that the same was built by Mir Baqi. The further question as to when it was built and by whom cannot be replied with certainty since neither there is any pleadings nor any evidence has been led nor any material

has been placed before us to arrive at a concrete finding on this aspect. However, applying the principle of informed guess, we are of the view that the building in dispute may have been constructed, probably, between 1659 to 1707 AD i.e. during the regime of Aurangzeb.

(G) Issues relating to Deities, their status, rights etc.:

1683. In this category comes issues no. 12 and 21 (Suit-4); and, 1, 2, 3(a), 6 and 21 (Suit-5).

1684. Issues no. 12 (Suit-4) and 3(a) (Suit-5) involves common facts and consideration. Similarly issues no. 1 and 21 (Suit-5) and issues no. 2 and 6 (Suit-5) are common:

“Issue No. 1 (Suit-5):-

Whether the plaintiffs 1 and 2 are juridical persons?

Issue No. 21 (Suit-5):-

Whether the idols in question cannot be treated as Deities as alleged in paragraphs 1,11,12,21,22, 27 and 41 of the written statement of defendant no.4 and in paragraph 1 of the written statement of defendant no.5?

Issue No. 2 (Suit-5):-

Whether the suit in the name of Deities described in the plaint as plaintiffs 1 and 2 is not maintainable through plaintiff no.3 as next friend?

Issue No. 6 (Suit-5):-

Is the plaintiff no.3 not entitled to represent the plaintiffs 1 and 2 as their next friend and is the suit not competent on this account?

Issue No. 21 (Suit-4):-

Whether the suit is bad for non-joinder of alleged Deities?

Issue No. 12 (Suit-4):-

*Whether idols and objects of worship were placed **inside the building** in the night intervening 22nd and 23rd December 1949 as alleged in paragraph 11 of the plaint or they have been in existence there since before? In either case, effect?*

Issue No. 3 (Suit-5):-

*(a) Whether the idol in question was installed **under the central dome of the disputed building** (since demolished) in the early hours of December 23, 1949 as alleged by the **plaintiff in paragraph 27 of the plaint** as clarified in their statement under Order 10 Rule 2 C.P.C."*

1685. Pleadings in this respect are in para 11 of the plaint (Suit-4) and para 26 of the written statement dated 24th December, 1989 of defendant no. 13/1 (Suit-4); paras 1, 20 and 27 of the plaint (Suit-5) and paras 1, 11, 12, 21, 22, 27 and 41 of the written statement dated 26/29.08.1989 of defendant no. 4 (Suit-5) which read as under:

"11. That the Muslims have been in peaceful possession of the aforesaid mosque and used to recite prayer in it, till 23.12.1949 when a large crowd of Hindus, with the mischievous intention of destroying, damaging or defiling the said mosque and thereby insulting the Muslim religion and the religious feelings of the Muslims, entered the mosque and desecrated the mosque by placing idols inside the mosque. The conduct of Hindus amounted to an offence punishable under sections 147, 295 and 448 of the Indian Penal Code." (Plaint, Suit-4)

Para 26 of Written statement of defendant no. 13/1 (Suit-4):

26. That it is manifestly established by public records

and relevant books of authority that the premises in dispute is the place where, BHAGWAN SRI RAMA Manifested HIMSELF in human form as an incarnation of BHAGWAN VISHNU, according to the tradition and faith of the Hindus. Again according to the Hindu faith, GANGA originates from the nail of the toe of BHAGWAN VISHNU, and cleanses and purifies whatever is washed by or dipped into its waters. And BHAGWAN VISHNU having Manifested himself in the human form of Maryada Purushottam Sri Ramchandra Ji Maharaj at Sri Rama Janma Bhumi, those who touch the Earth or the footprints of BHAGWAN SRI RAMA symbolised by the CHARANS at that place, are cleansed of their sins and purified. The Earth at Sri Rama Janma Bhumi could not have acted differently **towards the Muslims who went there**. They were also cleansed and purified of the evil in them by the touch of BHAGWAN SRI RAMA'S footprints, which like the waters of the GANGA purify all without any discrimination. The place, like the waters of the GANGA, remains unsullied, and has been an object of worship, with a juridical personality of its own as a Deity, distinct from the juridical personality of the presiding Deity of BHAGWAN SRI RAMA installed in the Temple thereat, and has existed since ever even before the construction of the first temple thereat and installation of the Idol therein. Indeed, it is the VIDINE SPIRIT which is worshipped. An Idol is not indispensable. There are Hindu Temples without any Idol. **The ASTHAN SRI RAMA JANMA BHUMI has existed immovable through the ages, and has ever been a juridical person.** The actual and

continuous performance of Puja at Sri Rama Janma Bhumi was not essential for the continued existence or Presence of the Deities at that place. They have continued to remain Present, and shall continue to remain Present, so long as the place lasts, which, being land, is indestructible, for any one to come and invoke them by prayer. The Deities are Immortal, being the Divine Spirit or the ATMAN, and may take different shapes and forms as Idols or other symbols of worship according to the faith and aspiration of their devotees.

Paras 1, 20 and 27 of plaint (Suit-5):

*“1. That the Plaintiffs Nos. 1 and 2, namely, Bhagwan Sri Rama Virajman at Sri Rama Janma Bhumi, Ayodhya, also called Sri Rama Lala Virajman, and the Asthan Sri Rama Janma Bhumi, Ayodhya, with the other Idols and places of worship situate thereat, **are juridical persons with Bhagwan Sri Rama as the presiding Deity of the place.** The Plaintiffs No. 3 is a Vaishnava Hindu, and seeks to represent the Deity and the Asthan as a next friend.”*

*"20. That **the Place itself**, or the Asthan SRI RAMA JANMA BHUMI, as it has come to be known, **has been an object of worship as a Deity** by the devotees of Bhagwan Sri Rama, as IT personifies the spirit of the Divine worshipped in the form of SRI Rama LALA or Lord Rama the child. The Asthan was thus Deified and has had a juridical personality of its own even before the construction of a Temple building or the installation of the Idol of Bhagwan Sri Rama thereat.”*

27. That after independence from the British Rule, the Vairagis and the Sadhus and the Hindu public, dug up and

*levelled whatever graves had been left in the area surrounding Sri Rama Janma Bhumi Asthan and purified the place by Aknand Patha and Japa by thousand and thousands of persons all over the area. Ultimately, **on the night between the 22nd 23rd December, 1949, the Idol of Bhagwan Sri Rama was installed with due ceremony under the central dome of the building also.***

Paras 1, 11, 12, 21, 22, 27 and 41 of Written statement of defendant no. 4 (Suit-5):

*"1. That the contents of para 1 of the plaint are incorrect and hence denied as stated. Neither the plaintiffs no. 1 and 2 are the juridical persons and nor there is any Presiding Deity of Sri Ram Chandraji at the place in dispute and nor the plaintiff no. 3 has any locus standi or right to represent the co-called and alleged deity and Asthan as next friend. It is further submitted that the plaintiffs no. 1 and 2 are not at all legal personalities (and as such they have no right to file the instant suit). As a matter of fact there has never been any installation of deity within the premises of the disputed place of worship known as Babri Masjid and the **idol in question was stealthily and surreptitiously kept inside the mosque in the night of 22nd/23rd December, 1949** by some mischief-mongers against whom an F.I.R. had also been lodged at the Police Station Ayodhya on 23rd December, 1949.*

*11. That the contents of para 11 of the plaint are denied as stated and in reply thereto it is submitted that the **plaintiffs no. 1 and 2 cannot be treated as deities** and also there arises no question of their Sewa and Pooja. Rest of the contents of the para under reply may be verified from*

the record.

12. That the contents of para 12 of the plaint are also denied as stated and in reply thereto it is submitted that there arises no question of Sewa and Pooja of the said alleged deities as no such deities exist in the building in question and the idols kept therein could not be treated as deities. It is further submitted that the restricted Pooja as carried on on 16th January, 1950 could not be treated as Sewa and Pooja of the alleged deity. It is also incorrect to say that there has ever been any likelihood of the suits being decided in such a manner that any closer Darshan of the idols could be possible.

*21. That the contents of para 21 of the plaint are also denied as stated and in reply thereto it is submitted that the mythological concept of incarnation etc. is not at all relevant for the purposes of the instant case. (However, the averments of the para under reply are not correct and consistent with Hindu Law and the same being a matter of legal nature it will be dealt at the appropriate stage.) It is, however, relevant to mention here that **neither there has been any installation of any deity within the premises in dispute and nor the ritual of Pranpratishtha in respect of any idol surreptitiously and stealthily kept inside the mosque in question was ever performed or observed**; as such there arises no question of divine spirit having been created or manifested in the idol forcibly kept in the mosque in question in the night of 22nd-23rd December, 1949 about which an F.I.R. was lodged at the Police Station Ayodhya in the morning of 23.12.1949 by a Hindu Officer of the Police Station himself who had mentioned in*

the said F.I.R. that some mischievous element had kept the said idol in the preceding night in a stealthy and surreptitious manner by sheer use of force and on the basis of the said F.I.R. a Criminal case had also been registered against those persons who had kept the said idol and subsequently proceedings under section 145 Cr. Proc. Code had been drawn by the Magistrate and as a result of the communal tension arising and developing on account of the aforesaid incident of keeping the idol in the mosque, the said building had been attached on 29.12.1949 and Suprudgar/Receiver for the care and custody of the said building had also been appointed who had drawn up a Scheme of Management and the same was submitted on 5.1.1950.

*22. That the contents of para 22 of the plaint are also incorrect and hence denied as stated and in reply thereto it is submitted that the spirit of Sri Ramj Chandraji as the divine child cannot be said to reside at any place or in any idol kept inside the said mosque and as such no idol or place of the said mosque can be said to be deity. It is further submitted that there is no comparison of Kedranath or Vishnupad temple of Gaya with the Babri Masjid. It is also relevant to mention here that **there is no Charan or Sita Rasoe within the premises of Babri Masjid** and the place known as Sita Rasoe is **situated outside the premises of the said mosque**. It is also incorrect to say that Pooja in any form was ever performed inside the mosque in question at any time prior to 23.12.1949.*

27. That the contents of para 27 of the plaint are also incorrect and hence denied as stated. The graves existing

near the Babri Masjid were dug up and levelled mainly after 1949 and not just after Independence and in the night of 22nd-23rd December, 1949 some Bairagees had forcibly and illegally entered into the mosque and had kept the idol below the middle dome of the mosque about which an F.I.R. was lodged at the Police Station Ayodhya in the morning of 23rd December, 1949 and some of the culprits were even named in the FIR. It is absolutely incorrect to say that the idol of Bhagwan Sri Ram Chandraji was installed with due ceremony in the Central dome of the building in the 'aforesaid' night. It is also incorrect to say that any purification of the alleged Asthan was done by Akhand Ramyan and Jap by thousands of persons all over the area.

41. That the instant suit is not at all maintainable and the plaintiffs no. 1 and 2 are neither deities and nor they can be treated as juristic persons and the plaintiff no. 3 cannot claim himself to be the next friend of Bhagwan Sri Ram. As such none of the plaintiffs have any right to file the instant Suit."

1686. The defendant no. 5 (Suit-5) also in para 1 of his written statement has said:

"1. That the contents of para 1 of plaint are denied. Neither the plaintiff no. 1 nor plaintiff no. 2 are the deities within the meaning of Hindu Law nor they are juristic person to file the suit. Remaining contents of para are also denied. Kindly see additional pleas."

1687. We may mention at this stage that para 11 of the plaint (Suit-4) has also been denied by the defendants no. 1 and 2 in para 11 of their written statement dated 12.03.1962 and

thereafter in the additional pleas in paras 25, 28 and 29 they have pleaded that Hindu **Pooja is going on in the said temple since 1934, i.e., for about last 28 years and Muslims have never offered any prayer since 1934 therein.** It is also said that the plaintiffs (Suit-4) have falsely described the temple as Babari mosque. Same thing has been repeated in the written statement dated 25.01.1963 filed on behalf of defendant no. 2 in para 25.

1688. On behalf of Nirmohi Akhara defendants no. 3 and 4 also written statement has been filed wherein they have disputed the very assertion of construction of any building, i.e., Babari mosque by Emperor Babar 460 years ago as alleged in para 1 and it is also said that Babar did not make any conquest or occupation of any territory in India at that time. Similarly, any damage to the building in 1934 has been denied and consequently its rebuilding and reconstruction also denied. We may notice at this stage, in particular, para 13(C) of the written statement dated 22/24.08.1962 of defendants no. 3 and 4 which says:

"The said Temple Ram Chabutra has a history of Judicial scanning since 1885 A.D. and its existence and possession over temple Ram Chabutra was ever since in possession of Nirmohi Akhara and no other but Hindus allowed to enter and worship there and put offering in form of money, sweets, fruits, flowers etc....."

1689. Similarly in para 38 of their additional written statement dated 28/29.01.1963 the defendants no. 3 and 4 have categorically denied that Emperor Babar ever built a mosque as alleged by the plaintiffs or that the Muslims were ever in possession of the building in question. Therefore, the case of the

defendants no. 3 and 4 has all through been that the temple of Lord Rama at the disputed site exist from time immemorial and thereat neither any construction was made by Babar in 1528 AD nor any damage etc. caused in 1934 in the said temple and accordingly they also deny the allegation of placement of any idol in the disputed building on 22/23.12.1949. Para 11 of the plaint (Suit-4) has been denied alleging it to be false and concocted and in para 12 of the written statement it is said that no such incident ever took place. The report, if any, lodged by the constable is mischievous and in connivance of the plaintiffs.

1690. The arguments advanced by Sri Jilani, and as adopted by counsel appearing for other Muslim parties are, that, neither a place can be said to be a 'Deity' nor a Juristic person, nor every 'idol' will attain the status of a 'Deity' and thereby become a juristic person, unless it is installed by Shastric procedure i.e., by observing process of "Pran Pratishtha" (vivification). Neither idols in question placed at the disputed site are 'Deity' nor the place itself comes within the said notion recognised in law. The suit filed by plaintiffs no. 1 and 2 (Suit-5) is not maintainable. Non impleadment of Deity, i.e., idol and place makes Suit-4 untenable. Further submission is, the plaintiff 3 (Suit-5) is neither competent nor otherwise can represent plaintiffs 1 and 2 (Suit-5), he is not a proper person who can represent the plaintiffs 1 and 2, and even otherwise as a next friend. Therefore, Suit-5 is liable to be dismissed. Besides, plaintiffs 1 and 2 not being juridical person, Suit 5 is not maintainable in law.

1691. Sri Siddique also argued that *Pran Pratishtha* is necessary to make an idol 'deity' as held in **Jogendra Nath Naskar Vs. Commissioner of Income Tax, Calcutta AIR 1969**

SC 1089. He said that neither in 1949 nor thereafter, at any point of time, *Pran Pratishtha* of the idols, placed in the inner courtyard of the disputed structure, took place and, therefore, no right of worship of the idols placed therein is vested in or acquired by any Hindu. He said that plaintiff no. 2 is only a fictional deity and not a real deity. After construction of building more than 500 years ago, the deity cannot be said to have continued since then till date.

1692. With respect to Suit-3, contentions of all the learned counsels appearing on behalf of various Hindu parties, [except Sri R.L. Verma who is counsel for plaintiff (Suit-3)] is that the Deities being juristic personalities having not been impleaded as defendants in Suit-3, though they are necessary parties, hence in their absence suit cannot proceed.

1693. Responding to the objections of Sri Jilani, Sri Siddiqui and Sri Irfan Ahmad, Advocates, the other side, represented through Sri Ravi Shankar Prasad, Sri P.R. Ganesh Ayer and Sri K.N. Bhatt, Senior Advocates, Sri P.N. Mishra, Sri M.M. Pandey and other Advocates submit that in Hindu religious scriptures the concept of 'Deity' extremely vary. It includes a place or object, i.e. natural things like river, tree, stone, mountain, mound or even a part of earth connected with divine activities. Sri Ravi Shankar Prasad submitted that this aspect of the matter is also crucial and relevant to adjudicate issues no. 14 (Suit-4), 22 and 24 (Suit-5).

1694. Sri P.N.Mishra, Advocate, besides his oral submission, has also submitted written argument. In respect to the juridical personality of plaintiffs no.1 and 2 (Suit-5) and consecration etc., he has said:

"A. According to Shastric (Scriptural) injunctions Sri

Ramajanmasthan Sthandil, a Svayambhu Linga (Symbol) brought into existence and established by the Lord of Universe Sri Vishnu Himself. As such inspite of being decayed, or damaged, or destroyed it shall forever remain sacred place of Worship as it does not need purification or consecration or change. Pratistha is required only in respect of manmade Images/Idols/Symbols of Deities that can be done by chanting single Mantra XXXI.1 or II.13 of the Holy Divine Sri Yajurved (Vagasaneyee Samhita also known as "Sri Shukla Yajurved"). A deity needs to be worshipped by providing all things which are required for leading a healthy and excellent life.

B. Svayambhu i.e. Self-built or Self existent or Self-revealed Lingas (symbols) of Devatas (Gods) or the Lingas (Symbols) established by Gods, or by those versed in the highest religious truths, or by Asuras, or by sages, or by remote ancestors, or by those versed in the tantras need not to be removed though decayed or even broken. Only decayed or broken Pratisthita Images/Idols require to be replaced with new one. In respect of renewal of the images, **"Treatise on Hindu Law" by Golapchandra Sarkar, (Sastri)** reproduces the Shastric injunction (Scriptural law) as follows:

“Raghunanda’s Deva-Pratistha-Tantram, last paragraph reads as follows:

“8. Now (it is stated) the prescribed mode of Renewal of Decayed Images. Bhagwan says – ‘I shall tell you briefly the holy ordinance for renewing Decayed Images * * *’

“Whatever is the material and whatever size of the image of Hari (or the God, the protector) that is to be renewed; of

the same material and of the same size, and image is to be caused to be made; of the same size of the same form (and of the same material), should be (the new image) placed there; either on the second or on the third day (the image of) Hari should be established; if, (it be) established after that, even in the prescribed mode, there would be blame or censure or sin; in this very mode the linga or phallic symbol and the like (image) should be thrown away; (and) another should be established, of the same size (&c.) as already described, - Haya-Sirsha”.

“9. God said, -

‘I shall speak of the renewal in the prescribed mode of lingas or phallic symbols decayed and the like &c * * *. (Allinga) established by Asuras, or by sages or by remote ancestors or by those versed in the tantras should not be removed even in the prescribed form, though decayed or even broken.’

(Agnipurānam Chapter 103 Poona Edition of 1900 AD. p.143)

[There is a different reading of a part of this sloke noted in the foot-note of the Poona Edition of this Puran as one of the Anandashram series of sacred books: according to which instead of – “ or by remote ancestors or by those versed in the tantras” –

the following should be substituted, namely:

“Or by Gods or by those versed in the highest religious truths.”]

“10. Now Renewal of Decayed (images is considered); that is to be performed when a linga and the like are burnt or broken or removed (from its proper place). But this is

not to be performed with respect but a linga or the like which is established by a Siddha or one who has become successful in the highest religious practice, or which is anadi i.e. of which the commencement is not known, or which has no commencement. But their Mahabhisheka or the ceremony of great anointment should be performed:- this is said by "**Tri- Vikrama**" – **Nirnaya – Sindhu – Kamalakar Bhatta, Bombay Edition of 1900 p.264.**

The author of the Dharma-Sindhu says as above in almost the same words – see Bombay Edition of 1988 p.234 of that work.”

[**Treatise on Hindu Law by Golapchandra Sarkar, Sastri** (6th Edition, published by Easter Law House (1927) at p.745-748]

C. **Alberuni** who compiled his book "**India in or about 1030 A.D.**" on page 121 has written that the Hindus honour their Idols on account of those who erected them, not on account of the material of which they are, best example whereof is Linga of sand erected by Rama. In his book on pages 117, 209, 306-07 and 380 he has also narrated about the Lord of Universe Sri Rama. Relevant extract from page 121 of "**Alberuni's India**" **Translated by Dr. Edward C. Sachau** (Reprint 2007 of the 1st Edn. 1910) published Low Price Publications, Delhi reads as follows:

“The Hindus honour their idols on account of those who erected them, not on account of the material of which they are made. We have already mentioned that the idol of Multan was of wood, e.g. the linga which Rama erected when he had finished the war with the demons was of sand. Which he had heaped up with his own hand. But

then it became petrified all at once, since the astrologically correct moment for the erecting of the monument fell before the moment when the workmen had finished the cutting of the stone monument which Rama originally had ordered.” (ibid page 121)

D. According to the Hindus’ Divine Holy & Sacred Scriptures there are two types of images one Svayambhu (self-existent or self-revealed or self-built) and other Pratisthita (established or consecrated). **Where the Self-possessed Lord of Universe Sri Vishnu has placed himself on earth for the benefit of mankind, that is styled Svayambhu.** It does not require Pratistha. At Ramajanamasthan the Lord of Universe Sri Vishnu appeared and placed Himself on the said sacred place which itself became Svayambhu for the reason that invisible power of the Almighty remained there which confers merit and salvation to the devotees. Consecrated artificial manmade Lepya images i.e. moulded figures of metal or clay; and Lekhyas i.e. all kinds of pictorial images including chiselled figures of wood or stone not made by moulds are called Pratisthita. Sri Mishra then quoted para 4.5 of "**Hindu Law of Religious and Charitable Trusts' of B. K. Mukherjea 5th Edition**, Published by Eastern Law House at page 154.

E. According to the Holy Scripture "**Sri Narsingh Puranam**" (62.7-14 ½) Pratistha of the Lord of Universe Sri Vishnu should be done by chanting 1st Richa of the Purush Sukta of Shukla Yajurved [I.e **Vagasaneyee Samhita Chapter XXXI**] and be worshipped dedicating prescribed offerings by chanting 2nd to 15th Richas of the **Purush Sukta**. And if worshipper so wish after completion of

worship he may by chanting 16th Richas of the **Purush Sukta** pray to Sri Vishnu for going to his His own abode. Above-mentioned verses of **Sri Narsingh Puranam** and Hindi translation thereof reads as follows:

“तस्य सर्वमयत्वाच्च स्थण्डिले प्रतिमासु च ।
 आनुष्टम्भस्य सूक्तस्य, विष्णुस्तस्य च देवता ॥ 7
 पुरुषो यो जगद्धीजं श्रुषिनारायणः स्मृतः ।
 दद्यात्पुरुषसूक्तेनं यः पुष्पाण्यप एव च ॥ 8
 अर्चितं स्याज्जगत्सर्वं तेन वै सचराचरम् ।
 आद्ययाऽऽवाहयेद्देवमृचा तु पुरुषोत्तमम् ॥ 9
 द्वितीययाऽऽसनं दद्यात्पाद्यं दद्यात्तृतीयया ।
 चतुर्थार्घ्यः प्रदातव्यः पञ्चम्याऽऽचमनीयकम् ॥ 10
 षष्ठया स्नानं प्रकुर्वीत सप्तम्या वस्त्रमेव च ।
 यज्ञोपवीतमष्टम्या नवम्या गन्धमेव च ॥ 11
 दशम्या पुष्पदानं स्यादेकादश्या च धूपकम् ।
 द्वादश्या च तथा दीपं त्रयोदश्यार्चनं तथा ॥ 12
 चतुर्दश्या स्तुतिं कृत्वा पञ्चदश्या प्रदक्षिणम् ।
 षोडश्याद्वासनं कुर्याच्छेषकर्माणि पूर्ववत् ॥ 13
 स्नानं वस्त्रं च नैवेद्यं दद्यादाचमनीयकम् ।
 षण्मासात्सिद्धिमाप्नोति देवदेवं समर्चयन् ॥ 14
 संवत्सरेण तेनैव सायुज्यमधिगच्छति ।

अब पूजनका मन्त्र बताते हैं। शुक्ल यजुर्वेदीय रुद्राष्टायायीमें जो पुरुषसूक्त है, उसका उच्चारण करते छन्द है, जगत्के कारणभूत परम पुरुष भगवान् विष्णु देवता हैं, नारायण ऋषि हैं और भगवत्पूजन में उसका विनियोग है। जो पुरुषसूक्त से भगवान को फूल और जल अर्पण करता है, उसके द्वारा सम्पूर्ण चराचर जगत् पूजित हो जाता है। पुरुषसूक्त की पहली ऋचासे भगवान् पुरुषोत्तमका आवाहन करना चाहिये। दूसरी ऋचासे आसन और तीसरी से पाद्य अर्पण करे। चौथी ऋचा से अर्घ्य और पाँचवीं से आचमनीय निवेदित करें। छठी ऋचा से स्नान कराये और सातवीं से वस्त्र अर्पण करें। आठवीं से यज्ञोपवीत और नवमी ऋचासे गन्ध निवेदन करें। दसवीं से फूल चढ़ाये और ग्यारहवीं ऋचासे धूप दे। बारहवीं से दीप और तेरहवीं ऋचासे नैवेद्य, फल, दक्षिणा आदि अन्य पूजन—सामग्री निवेदित करे। चौदहवीं ऋचासे

स्तुति करके पंद्रहवींसे प्रदक्षिण करें। अन्तमें सोलहवीं ऋचासे विसर्जन करे। पूजन के बाद शेष कर्म पहले बताये अनुसार ही पूर्ण करें भगवान् के लिये स्नान, वस्त्र, नैवेद्य और आचमनीय आदि निवेदन करे। इस प्रकार देवदेव परमात्माका पूजन करनेवाला पुरुष छः महीनेमें सिद्धि प्राप्त कर लेता है। इसी क्रम से यदि एक वर्षतक पूजन करे तो वह भक्त सायुज्य मोक्षका अधिकारी हो जाता है।।7-14 1/2।।

(Sri Narsingh Puranam 62.7-14 1/2)

Be it mentioned herein that in the above **Sri Narsingh Puranam** 62.13 Sloke enumerates Pradakshina i. e. Parikrama (circumbulation) as 14th means of reverential treatment of the Deity and thereby makes it integral part of the religious customs and rituals of service and worship of a Deity.

F. 1st Holy Spell of **Purush Sukta** of the Holy Devine **Shukla Yajurved** [i.e **Vagasaneyee Samhita** Chapter XXXI] prescribed by the Holy **Sri Narsingh Puranam** for Pratistha of the Lord of Universe Sri Vishnu reads as follows:

“सहस्रशीर्षा पुरुषः सहस्राक्षः सहस्रपात् ।

स भूमि सर्वतः स्पृत्वाऽत्यतिष्ठाद्दशाङ्गुलम् ।।1।।

मन्त्रार्थ—सभी लोकों में व्याप्त महानारायण सर्वात्मक होने से अनन्त शिर वाले, अनन्त नेत्र वाले और अनन्त चरण (पैर) वाले हैं। ये पांच तत्वों से बने इस गोलकरूप समस्त व्यक्ति और समष्टि ब्रह्माण्ड को तिरछा, ऊपर, नीचे सब तरफ से व्याप्त कर नाभि से दस अंगुल परिमित देश, हृदय का अतिक्रमण कर अन्तर्यामी रूप से स्थित हुए थे।”

(ibid as translated by Swami Karpatriji and published by Sri Radhakrishna Dhanuka Prakasan Samsthanam, Edn. Vikram samvat 2048)

Simple English translation thereof reads:

‘The Almighty God who hath infinite heads, infinite eyes; infinite feet pervading the Earth on every side and

transgressing the universe installed Him in sanctum as knower of inner region of hearts’.

Be it mentioned herein in the **Mimamsa Darshan** as commented in Sanskrit by Sri Sabar Swami and in Hindi by Sri Yudhisthir Mimamsak and Mahabhasya, meaning of “Sahasra” has also been given “infinite” as also “one” apart from “thousand” and according to context one or other meaning is adopted.

G. **"Nitya Karma Puja Prakash"** has prescribed a Mantra of **Yajurved** [i.e **Vagasaneyee Samhita** Chapter II.13] for Pratistha of Lord Ganesh. Relevant portion of the said book reads as follows:

“अनन्तर सर्वप्रथम गणेशजी का पूजन करे। गणेश—पूजनसे पूर्व उस नूतन प्रतिमाकी निम्न—रीतिसे प्राण—प्रतिष्ठा कर लें—
 प्रतिष्ठा— बायें हाथमें अक्षत लेकर निम्न मन्त्रों को पढ़ते हुए दाहिने हाथसे उन अक्षतोंको गणेशजी की प्रतिमापर छोड़ता जाय—
 ॐ मनो जूतिर्जुषतामाज्यस्य बृहस्पतिर्यज्ञमिमं तनोत्वरिष्टं यज्ञा समिमं दधातु।
 विश्वे देवास इह मादयन्तामोऽ म्रतिष्ठ।
 ॐ अस्यै प्राणाः प्रतिष्ठन्तु अस्यै प्राणाः क्षरन्तु च।
 अस्यै देवत्वमर्यायै मामहेति च कश्चन।।

इस प्रकार प्रतिष्ठा कर भगवान् गणेशका षोडशोपचार पूजनं (पृ०सं० 174—185 के अनुसार) करे। तदनन्तर नवग्रह (पृ०सं० 210), षोडशमातृका (पृ०सं० 205) तथा कलश—पूजन (पृ०सं० 186) के अनुसार करें।”

[**Nitya Karma Puja Prakash** published by **Gita Press Gorakhpur** 32nd Edn. 2060 Vikram Samvat at page 244]

H. The Holy **"Sri Satpath-Brahman"** interpreting said Mantra II.13 of the Holy Sri **Shukla Yajurved** [i.e. **Vagasaneyee Samhita**] says that Pratistha of all Gods should be done by said Mantra. Be it mentioned herein that the Holy **Sri Satpath-Brahman** being Brahman part of Divine **Sri Shukla Yajurved**, interpreting Mantras of said

Vagasaneyee Samhita tells about application of those Mantras in Yajnas (Holy Sacrifices). Said Mantra II.13 of the Divine **Sri Shukla Yajurved (Vagasaneyee Samhita)** as well as **Sri Satpath-Brahman (I.7.4.22)** with original texts and translations thereof read as follows:

मनों जूतिर्जुषतामार्ज्यस्य बृहस्पतिर्यज्ञमिमं तनोत्वरिष्टं यज्ञं समिमं दधातु ।

विश्वे देवास इह मादयन्तामोऽम्प्रतिष्ठ ॥13 ॥

(44) (जूतिः मनः आज्यस्य जुघतां) तेरा वेगवानमन दृतका सेवन करे, (बृहस्पतिः इमं यज्ञं तनोतु) ज्ञानका स्वामी इस यज्ञको फैलाये, (इमं यज्ञं अरिष्टं सं दधातु) इस यज्ञको हिंसारहित करके सम्यक धारण करें। (विश्वे देवासः इह मादयन्तां) सब देव यहां आनन्दित हों, (ओं प्रतिष्ठ) ऐसा ही होवे, प्रतिष्ठित होंवे ॥13 ॥

(ibid Hindi Translation of Padmbhushan Sripad Damodar Satvalekar, 1989 Edn. Published by Swayadhyay Mandal pardi)

English Translation of the abovenoted Hindi Translation reads as follows:

“May your mind Delight in the gushing (of the) butter. May Brihaspati spread (carry through) this sacrifice ! May he restore the sacrifice uninjured. May all the Gods rejoice here. Be established/seated here.”

Sanskrit text of **Sri Satpath-Brahman (I.7.4.22)** as printed in ‘**Sri Shukla Yajurvediya Satpath Brahman**’ Vol. I on its page 150, Edn.1988 Published by Govindram Hasanand, Delhi 110006 is reproduced as follows:

“मनो जूतिर्जुषतामार्ज्यस्येति । मनसा वाज्द . . . सर्वमाप्तं तन्मनसवैतत्सर्वमाप्नोति बृहस्पतिर्यज्ञमिमं तनोवरिष्टं यज्ञं समिमं दधाविति यद्विवृहं तत्संदधाति विश्वे देवास इन्ह मादयन्तामिति सर्व वे विश्वे देवाः सर्वेणैवैतत्संदधाति स यदि कामयेत ब्रूयात्प्रतिष्ठेति पद्यु कामयेतापि नाद्रियेत ॥22 ॥ ब्राह्मणाम् ॥2. (7.4) ॥ अध्यायः ॥7 ॥”

English translation of **Sri Satpath-Brahman (I.7.4.22)** as

printed in Volume 12 of the series “**The Sacred Books Of The east**” under title ‘The Satpath - Brahmana’ Part I on its page 215, Edn. Reprint 2001 Published by Motilal Banarasidass, Delhi 110007 is reproduced as follows:

22. [He continues, Vag. S. II, 13]: 'May his mind delight in the gushing (of the) butter!' By the mind, assuredly, all this (universe) is obtained (or pervaded, aptam)): hence he thereby obtains this All by the mind.-'May Brhaspati spread (carry through) this sacrifice! May he restore the sacrifice uninjured!' - he thereby restores what was torn asunder.-'May all the gods rejoice here!'. 'all the gods,' doubtless, means the All : hence he thereby restores (the sacrifice) by means of the All. He may add, 'Step forward!' if he choose; or, if he choose, he may omit it. (Sri Satpath-Brahman I.7.4.22)

I. 19th Holy Spell of **Naradiya Sukta** of the Holy Divine **Shukla Yajurved** [i.e. **Vagasaneyee Samhita** Chapter XXIII] is also widely applied by the Knower of the Scriptures to invoke and establish a deity. Said Mantra reads as follows:

“गणानां त्वां गणपति हवामहे प्रियाणां स्वा प्रियपति हवामहे निधीनां
त्वा निधिपति हवामहे वसो मम।

आहमजानि गर्भधमा त्वमजासि गर्भधम।।”

English Translation of this Mantra based on Hindi Translation of Padmbhushan Sripad Damodar Satvalekar, 1989 Edn. Published by Swayadhyay Mandal pardi reads as follows:

“O, Lord of all beings we invoke Thee. O, Lord of beloved one we invoke Thee. O, Lord of Wealth we invoke Thee. O abode of all beings Thou are mine. O, Sustainer of Nature let me know Thee well because Thee

the sustainer of Universe as embryo are Creator of All.”

[**Shukla Yajurved** Chapter XXIII Mantra 19]

J. The vivified image is regained with necessities and luxuries of life in due succession. Change of clothes, offering of water, sweets as well as cooked and uncooked food, making to sleep, sweeping of the temple, process of smearing, removal of the previous day's offerings of flowers, presentation of fresh flowers and other practices are integral part of Idol-worship. In public temple, in olden days these were being performed by Brahmins, learned in Vedas & Agamas. (Para 4.7 **Hindu Law of Religious and Charitable Trusts of B. K. Mukherjea** 5th Edition, Published by Eastern Law House at page 156.)

1695. Sri Ravi Shankar Prasad, Senior Advocate elaborated the concept of “Deity” as per the notions of ancient Hindu scriptures and, that, how can it be ascertained as to whether the place of worship of Hindus is “Deity” within the term and understanding in Hindu Law, how the properties held by “Deity” is alienable and also the development of Hindu Law. He placed, in extention, certain excerpts from **B.K.Mukherjea's “The Hindu Law of Religious and Charitable Trusts”** (Tagore Law Lectures Fifth Edition revised by Sri A.C. Sen published by Eastern Law House in 1983 reprinted in 2003) pages 25, 26, 27, 38, 39, 40, 152 to 154, 156 to 163 besides several authorities of the Apex Court, this Court, Privy Council and various High Courts. The concept of deity, a very distinguishing feature of Hindu faith is one that, i.e., eternal, permanent and omnipresent wherein the deity is the image of the Supreme Being. The temple is the house of the deity and to constitute a temple it is enough if the people believe in its religious efficacy, i.e., there is

some supreme super power existing there whom they need to worship and invoke its blessings.

1696. It is contended that religious purpose under the Hindu law must be determined according to Hindu notions. In support of his submission, he placed reliance on para 2.27 on page 75 of “**The Hindu Law of Religious and Charitable Trusts**” by **B.K. Mukherjea (supra)**, which says:

*"These observations, if I may say so, apply with full force to trusts created by Hindus for religious purposes. Undoubtedly the court and not the donor is the judge, of whether an object is charitable or not, but the court cannot enter into the merits of particular religious doctrine, and therefore must remain neutral. The divine service of a particular religion is defined by the doctrines of the religion itself and no court can appreciate their spiritual efficacy, unless it knows these doctrines and hypothetically admits them to be true. In controversial matters the court cannot possibly decide whether the doctrines are beneficial to the community or not. **It has got to act upon the belief of the members of the community concerned, and unless these beliefs are per se immoral or opposed to public policy, it cannot exclude those who profess any lawful creed from the benefit of charitable gifts...**"*

1697. It is said that the right of a deity of being worshipped by its followers ought not to be compared with a secular law relating to management of deities for they are fundamentally distinct. The present case relates to the site/place of birth of Lord Rama, i.e., Ramjanambhumi which itself is a deity for the reason of the belief and faith of Hindu public since time immemorial that the Lord of Universe, the Supreme Being

Vishnu manifested thereat as an incarnation in human form making that place sacred and pious and mere visit and Darshan thereof would be sufficient to shower blessing, happiness and salvation to the worshippers. By the very nature, the deity in question is not only inalienable but cannot be possessed or owned by any individual, legal or natural. This deity, i.e., the place itself is a legal person, i.e. a juridical person possessing all the facets of a legal person as recognized in law.

1698. Sri Prasad submitted that a self created Deity i.e. *Sayambhu*, need not be in a particular shape or form and even a place can be said to be a Deity. It is *extra commercium*, non-destructible, inalienable, and even if there is no structure, it is a temple if has the sanctity of pious place being worshipped by the believers with a faith that the religious merits shall be gained by them on offering prayer or worship thereat.

1699. Sri Prasad relied on **Ram Jankijee Deities & Ors. Vs. State of Bihar & Ors. (1999) 5 SCC 50=AIR 1999 SC 2131** (para 13 to 28) and **Saraswathi Ammal & Anr. Vs. Rajagopal Ammal AIR 1953 SC 491** (para 6) to demonstrate as to what is the concept of deity in Hinduism. He submits that the religious issues pertaining to Hindu religion are to be considered and decided according to Hindu notions and referred to **Shiromani Gurdwara Prabandhak Committee, Amritsar Vs. Som Nath Dass & Ors. (Supra)** (para 30 to 42); **Poohari Fakir Sadavarthy Vs. Commissioner, H.R. & C.E. AIR 1963 SC 510** (at page 512); **Thayarammal Vs. Kanakammal & Ors. (2005) 1 SCC 457** (para 16); **Idol of Thakurji Shri Govind Deoji Maharaj, Jaipur Vs. Board of Revenue, Rajasthan, Ajmer & Ors. AIR 1965 SC 906** (para 6); **Mahant Ram Saroop Dasji Vs. S.P.Sahi, Special Officer-in-charge of Hindu Religious**

Trusts and others AIR 1959 SC 951 (para 10); Manohar Ganesh Tambekar & Ors. Vs. Lakhmiram Govindram & Ors. (1888) ILR 12 Bom 247.

1700. Once an idol is always an idol and it never dies. For the above proposition, he referred to the Madras High Court's decision in **Board of Commissioners for Hindu Religious Endowments, Madras Vs. Pidugu Narasimham & Ors. AIR 1939 Madras 134** (at page 135) and **T.R.K. Ramaswami Servai & Anr. Vs. The Board of Commissioners for the Hindu Religious Endowments, Madras, through its President AIR (38) 1951 Madras 473** (para 47). The meaning; definition and concept of Temple in general as well in legislative enactments must be read and understood in the light of the *Shastrik Law*, otherwise it would be ultra vires of the Constitution. He refers to **Gedela Satchidananda Murthy Vs. Dy. Commr., Endowments Deptt., A.P. & Ors. (2007) 5 SCC 677** (at page 685); **T.V. Durairajulu Naidu Vs. Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Madras AIR 1989 Madras 60** (para 18); **Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi & Ors. Vs. State of U.P. & Ors. (1997) 4 SCC 606** (para 30); **Gokul Nathji Maharaj & Anr. Vs. Nathji Bhogi Lal AIR 1953 All. 552; Pramath Nath Mullick Vs. Pradhyumna Kumar Mullick & Anr. AIR 1925 PC 139** (at page 143); **Bhupati Nath Smrititir the Bhattacharjee Vs. Ram Lal Mitra & Ors. 1909 (3) Indian Cases (Cal.) (FB) 642** (para 73).

1701. The manner in which a deity can hold property is illustrated cited before us the decision of the Apex Court in **Jogendra Nath Naskar Vs. Commissioner of Income-Tax (supra)** (para 5 and 6); **Deoki Nandan Vs. Murlidhar & Ors.**

AIR 1957 SC 133 (para 6); **Kalanka Devi Sansthan Vs. The Maharashtra Revenue, Tribunal Nagpur and Ors. AIR 1970 SC 439** (para 5 at page 442) and **Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak gosavi & Ors. AIR 1960 SC 100** (para 35 to 38).

1702. An idol is extra commercium and inalienable. He supported the above proposition by citing **Mukundji Mahraj Vs. Persotam Lalji Mahraj AIR 1957 Allahabad 77** (para 28 and 29); **Kasi Mangalath Illath Vishnu Nambudiri & Ors Vs. Pattath Ramunni Marar & Ors. AIR 1940 Madras 208**; **Smt. Panna Banerjee and Ors. Vs. Kali Kinkor Ganguli AIR 1974 Cal. 126** (para 65 and 66); **Kali Kinkor Ganguly Vs. Panna Banerjee & Ors. AIR 1974 SC 1932** (para 23 and 25); **Khetter Chunder Ghose Vs. Hari Das Bundopadhya (1890) 17 ILR Cal. 557** (at page 559).

1703. Sri Prasad refers to **State of West Bengal Vs. Anwar Ali Sarkar & Anr. AIR (39) 1952 SC 75** (para 85) and read the observations how Hindu Law has developed. He relied on the **History of Dharmashastra** by P.V. Kane Vol. 2, Part-2, Chapter XXVI page 911 and Vol. 3 page 327 and 328 and also **Bumper Development Corp. Ltd. Vs. Commissioner of Police of the Metropolis and others 1991 (4) All ER 638**; **Addangi Nageswara Rao Vs. Sri Ankamma Devatha Temple Anantavaram 1973 Andhra Weekly Report 379**.

1704. To illustrate the concept of deity, i.e., continued supernatural power, omnipotent, never dying, never changed, he cited **Maynes' Hindu Law & Usages**, 16th Edn. and the **“The Classical Law of India”** by Robert Lingat.

1705. Sri R.L.Verma, learned counsel appearing on behalf of Nirmohi Akhara defendant No.3 raised objection about the

maintainability of suits through next friend and contended that there is no averment in the entire plaint (Suit-5) as to why the plaintiff no.3 be allowed to file suit on behalf of plaintiffs no. 1 and 2 as their next friend. He submits that neither there is any averment that the already working Shebait is not looking after the Deity faithfully and religiously nor there is any averment that there is no Shebait at all of the Deities, plaintiffs no.1 and 2, nor there is any averment that plaintiff no.3 himself is a worshipper of the Deities (plaintiffs no.1 and 2) and therefore, is interested in the welfare and proper management of the property and daily care of Deity themselves. Sri Verma submits that Order XXXII, Rule 1 in terms has no application to Suit-5. The suit, as framed, is not maintainable through the next friend, hence, is liable to be rejected on this ground alone.

1706. Sri Verma further submits that O.P.W.-2 i.e. late D.N.Agarwal in his own statement under Order X, Rule 2 recorded on 20.4.1992 has admitted that the idols kept at Ram *Chabutara*, in the outer courtyard was shifted to the inner courtyard and kept under the central dome in the disputed building in the night of 22/23rd December, 1949. Further that it is also an admitted position that the idols while kept on Ram Chabutara in the outer courtyard were being looked after and managed by the priest of Nirmohi Akhara and the outer courtyard was in possession of Nirmohi Akhara. It means that the idols belong to Nirmohi Akhara, shifted from Ram Chabutara to the central dome of the disputed building and that being so, the idols cannot be held independent legal entity outside the religious endowment i.e. "Nirmohi Akhara".

1707. Sri M.M. Pandey, learned counsel for the plaintiffs (Suit-5), in respect to Issues No. 1 and 21 (Suit-5) has submitted

as under:

A. Existence of a Supreme Being which controls everything and possesses the capacity of conferring good on human beings, is admitted alike by Islam (Allah), Christianity (God) and Hindu Dharma (Bramhan or Onkar). This Supreme Being is outside the realm of Courts, hence is not a Juristic entity. According to Islam, a Messenger (Prophet Mohammad) pronounced the commands of Allah in the form of Quran and other spiritual edicts; according to Christianity too, a Messenger came earlier (Christ – Son of God) to deliver the Gospel of God. According to Hindus, Bramha manifests Himself in human form by 'Reincarnation' (Avatar) with all the powers of the Supreme Being subject to self-imposed human limitations. William Finch recorded this popular perception about Ram in early 17th Century. Bramha too is seen in many Forms: Bramha (the Creator), Vishnu (the Preserver), Mahesh (the Destroyer), Shakti (the Universal Energy) etc. Ram and Krishna are Reincarnations of Vishnu; In **Shrimad Bhagwat Gita** Chapter X, verse 31, Shri Krishna declared: "Among warriors, I am Ram."

B. This self-manifestation of the Supreme Being is known as SWYAMBHU reincarnation, and the place of reincarnation is treated to be sacred just as Islam holds Mecca (birthplace of Prophet Mohammad) or Christianity holds Bethlehem/Jerusalem (birthplace of Christ) as sacred. While Islam and Christianity do not have a concept of Deity, Hindu Dharma has elevated the concept of Sacredness into an object of Divinity fit for Worship and recognises it as a Deity in a physical form too with a Faith that its worship has the capacity of conferring well. At the same time, "a Hindu

does not worship the 'Idol or the material body made of clay or gold or other substance' as a mere glance of the mantras or prayers will show. They worship the eternal Spirit of the Deity, or certain attributes of the same, in a suggestive form, which is used for the convenience of contemplation as a mere symbol or emblem. It is the incantation of the mantras peculiar to a particular Deity that causes the manifestation or presence of the Deity or, according to some, the gratification of the Deity.

C. A mere birthplace without a physical outward shape may be a Deity. There is no question of consecration of Swyambhu Deity. (See **Addangi Nageswara Rao (supra)**)

D. In addition to Swyambhu Deities, Idols/Images are made of any material and are CONSECATED with the Spirit of Supreme Being through certain Vedic rites, known as Pran-Pratishtha whereby they become fit receptacles of Divinity; such Idols/Images too are recognised as Deities. In these Suits, the Plaintiffs of OOS 4 of 1989, Sunni Board & others, admitted in paras 11 and 23 of their plaint that on 23.12.1949, "a large crowd of Hindus.....entered the mosque and desecrated the mosque by placing Idols inside the mosque". This implies an admission that the Idols were Deities as known to Hindu law, otherwise mere images (like printed pictures) could not desecrate the mosque; Sunni Board and others are barred/estopped, by this admission, from urging that the Idols were not consecrated.

E. 'Images/Idols' are symbols of Supreme Being; in worshipping the Image, the Hindu purports to worship the Supreme Deity and none else. It is for the benefit of the worshippers that there is a concept of Images of Supreme

Being which is bodiless, has no attribute, is pure Spirit and has got no second (**B.K. Mukharjea, 1983 Edn. p.26**). The 'Self-revealed' Images are called SWYAMBHU where the Self-possessed Vishnu has placed himself on earth in stone or wood for the benefit of mankind. Thus 'Asthan Ram Janmabhumi', Plaintiff No. 2 in OOS 5 of 1989 is a Swyambhu Deity – the place where Lord Vishnu manifested Himself and was born as RAM, son of Kaushalya/King Dashrath.

F. The decisions of Indian Courts as well as Privy Council have held uniformly that Hindu Idol is a Juristic Person. Hindu Idol is according to long established authority founded upon the religious Customs of Hindus and recognition thereof by Courts of Law, a juristic entity. 'Deity has a juridical status with power of suing and being sued. Its interests are attended to by the person who has the Deity in his charge and who in law is his manager with all the powers which would in these circumstances, on analogy, be given to an infant heir. This doctrine is firmly established.

G. As a Juristic Person, the 'Hindu Deity' is a Class by Himself with no exact parallel. The Deity in short is conceived of as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of life is gone through with minute accuracy, the vivified Image is regaled with necessities and luxuries of life in due succession even to the changing of clothes, the offering of cooked and uncooked food and retirement to rest.

H. Endowment in favour of Deity is a perpetual estate; it is capable of receiving and holding property, but it does not

possess a power of alienation, hence endowment in favour of Deity is necessarily a tied up or perpetual estate; absolute gifts of lands or money perpetually to an Idol or for other religious purposes have been held to be valid in Hindu Law from early times. A religious endowment does not create title in respect of the dedicated property in any body's favour, and property dedicated for religious charitable purpose for which the owner of the property or donor has indicated no administrator or manager, a property dedicated for general public use is itself raised to the category of a Juristic Person and such a property vests in the property itself as a Juristic Person. This special legal status squarely applies to Asthan Ram Janma Bhumi, Plaintiff No.2 in OOS 5 of 1989; **the spot where Ram was born, and all properties appurtenant thereto belong to and vest in the spot itself as juristic person. No body else, not even the Shabait can become owner of the Deity or property of Deity.**

I. Since such vesting of the property is a perpetual estate and the Deity itself does not possess the power of its alienation, it follows that no law can divest the Deity of its property under any circumstance whatsoever. A Temple is the 'house' of the Deity. By destroying the house, neither the Deity nor Deity's property, on which the house stood, could cease to belong to Deity. Section 18 of Transfer of Property Act recognises that the rule against perpetuity under that Act, does not apply to transfer of property for the benefit of public; such exclusion is in-built in Hindu Law itself.

J. Vide, page 19-20 of **Mulla's "Principles of Hindu Law, 1958 Edn**, some of the important recognised

Dharmashastras are known as **Smritis of Manu** (200 BC), **Yajnavalkya** (1st Century AD –p. 24)), **Narad** (200 AD –p. 26)), **Parashara, Brihaspati, Katyayana** (4th-5th Century AD – p.32) etc; they are of universal application, not in substitution for another but all treated as supplementary to each other (-p.20).

K. At page 33, Mulla records: "Katyayana maintains unimpaired the distinctive qualities of Smriti of Brahaspati to which he freely refers. His exposition is authoritative and remarkable for its freshness of style and vigorous approach. There can be little doubt that this Smriti must have been brought into line with the current law. It must have commanded a wide appeal as may readily be gathered from the profuse manner in which it has been quoted in all leading commentaries. The arduous task of collecting all the available texts of Katyayana from numerous commentaries and digests was accomplished by Mahamahopadhyaya Kane who collated and published in 1933 about one thousand verses of the **Smrtiti on Vyavahara** (Procedure) with an English translation".

L. Statement of law in **Katyayana Smriti** is of special significance in these suits. The force, sanctity and King's duty relating to Temples has been strongly emphasised in the Hindu Law from ancient times. Apararka [held to be an Authority under Hindu Law by PC in **Buddha Singh Vs. Laltu Singh, 42 I.A. 208 = ILR (1915) 37 All 604**] (Mulla p.51-52 acknowledged by Banares School] says that King should not deprive Temples of their properties (**History of Dharam Shastra – Government Oriental Series - by P.V. Kane, Volume II Part II page 913**). At page 911 Kane

quotes Yagnavalkya that it is part of King's duty to prosecute and fine persons interfering with or destroying the property of Temples; he cites Manu (IX/280) requiring the King to pronounce death sentence on who breaks a Temple, and him who breaks an image to repair the whole damage and pay a fine of 500 pannas. The Deity and Temple not only served the object of Worship of Divine, but also served social purpose.

M. A significant recent decision of English Courts has recognised the concept of Hindu Idol's disability and representation by 'next friend', namely **Bumper Development Corporation Ltd Vs. Commissioner of Police of the Metropolis & Others (supra)** (including Union of India and other Indian Parties); a decision rendered by the Trial Court was upheld by Court of Appeal and House Lords refused Leave to Appeal against CA decision, popularly known as Nataraj Case. In Tamil Nadu, near a 12th Century Temple which had laid in ruins since 13th Century, (called Pathur Temple), and remained un-worshipped since centuries (at pages 643 & 640), a bronze Hindu Idol, known as Siva Nataraj, was found by a labourer, Ramamoorthi, in 1976 during excavation of the ruins. The Nataraj Idol was sold through several hands and ultimately reached London market; criminal investigation for offence of theft of Idol was started and London Metropolitan Police seized it. Bumper Development Corporation laid claim to it as purchaser and sued for its possession and damages. Several other Claimants were impleaded to the suit: these included Union of India, State of Tamil Nadu, Thiru Sadagopan (Claimant No 3) as "the fit person" of the Temple and

Temple itself (Claimant No. 4) through Claimant No3. (The concept of "fit person" is same as "Next Friend" at page 643). During pendency of the proceedings, a Sivalingam (which too was found buried in the ruins of the Temple) was reinstated as an object of worship at the site of the Temple. The Trial Judge, relying upon B.K.Mukherjea's Hindu Law of Religious and Charitable Trusts (page 646 of Report) held that Claimant No4 (Temple) suing through Claimant No. 3 as 'fit person, or custodian or next friend' (page 643 of Report) had proved his title superior to that of Bumper and 'the pious intention of 12th Century notable who gave the land and built the Pathur Temple remained in being and was personified by the Sivalingam of the Temple which itself had a title superior to that of Bumper'. The Court of Appeal upheld the finding of the Trial Court Judge that under Hindu Law, the Temple was a juristic entity and Claimant No. 3 (next friend Thiru Sadagopan) had the right to sue and be sued on behalf of the Temple. The right of the Temple through the Next Friend to possess the Nataraj Idol was upheld (page 648 of Report); House of Lords refused Leave to Appeal (page 649 of Report). This 20th Century decision of English Courts has striking similarity with the present Ram Janmabhumi case: 12th Century Temple remained in ruins & un-worshipped through centuries (in our case it was 11th-12th Century Vishnu-Hari Temple which was demolished in 1528 and Babri Mosque, DS was erected at its place, so that the Temple/Deity 'remained in ruins with existing foundations'). During the pendency of Bumper Development Corporation case, a Shivalingam, found buried in the ruins of the Temple was 'reinstated'. In our case, ASI

found an ancient 'Circular Shrine' embedded in disputed area, DS was destroyed on 6.12.1992, and at its place a make-shift Temple was erected at Ram Janma Bhumi with Bhagwan Shri Ramlala installed in it; so both Deities Plffs 1 & 2 of OOS 5 of 1989 got into position. In Bumper case, the 'pious intention of 12th Century' dedication was held by the Trial Court 'to remain in being' as personified by the Sivalingam of the Temple, a juristic entity, which was represented by 'Next Friend. The same concept is laid down in the case of **Adangi Nageswara Rao Vs. Sri Ankamma Devatha Temple (supra)** (paras 6 & 8 – see para 36 of these Arguments). So also, in our case, Vishnu-Hari Temple of 11th-12th Century must be deemed 'to remain in being' on erection of make-shift Temple coupled with Circular Shrine and the Deity/Temple – Plaintiffs 1 & 2 must be held to be duly represented through Plaintiff No. 3 in OOS 5 of 1989 as Next Friend.

N. As mentioned earlier, a Hindu Deity is a Class by itself (See Para 40), there is no exact analogy or parallel. Its affairs are managed by a Shebait, but the Shebait is neither owner nor trustee of the Deity or its property as known to Indian Trusts Act (Section 1). 'Beneficiary' of the dedication (actual or assumed) is the Deity and every Worshipper/Devotee; the latter has interest enough to force the Shebait to perform his functions duly even through a Court action, if necessary. Supreme Court has held in the case of **Bishwanath Vs. Sri Thakur Radha Ballabhji (AIR 1967 SC 1044)** that worshippers of an Idol are its beneficiaries, though only in a spiritual sense, and persons who go in only for the purpose of devotion have, according to Hindu Law and religion, a

greater and deeper interest in temples than mere servants who serve there for some pecuniary advantage; it goes on to say: "That is why decisions have permitted a worshipper in such circumstances to represent the Idol and to recover the property for the Idol". It is the duty of the State (King) to protect the Deity and its property – a shade of this duty is found in Section 92 CPC. [In para 40 of **Guruvayur Devasom Managing Committee Vs. C.K. Rajan, AIR 2004 SC 561**, the Supreme Court has held, "In any event, as a Hindu Temple is a juristic person, the very fact that S. 92 of the Code of Civil Procedure, seeks to protect the same, for the self-same purpose, Arts. 226 and 32 could also be taken recourse to."] Shebait cannot alienate the property of the Deity.

O. A religious endowment does not create title in respect of the dedicated property in any body's favour, and property dedicated for religious charitable purpose for which the owner of the property or donor has indicated no administrator or manager, a property dedicated for general public use is itself raised to the category of a Juristic Person and such a property vests in the property itself as a Juristic Person. This special legal status squarely applies to Asthan Ram Janma Bhumi, Plaintiff No.2 in OOS 5 of 1989; the spot where Ram was born, and all properties appurtenant thereto belong to and vest in the spot itself as juristic person.

P. An idol is in the position of a minor and when the person representing it leaves it in a lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest. [See **Bishwanath Vs. Shri Thakur Radha Ballabhji (supra)**].

Q. Temples are sancrosanct and there cannot be alienation of a public temple under any circumstance being *res extra commercium*. In this regard he placed reliance on **Mukundji Mahraj Vs. Persotam Lalji Mahraj (supra)** (Para 28-29); **Manohar Ganesh Tambekar Vs. Lakhmiram Govindram (supra)** (Para 88); **Kali Kinkor Ganguli Vs. Panna Banerji (supra)** (Paras 24-25, Page 1936); and, **Kasi Mangalath Nath Illath Vishnu Namboodiri (supra)** (Para 2).

R. **Smt. Panna Banerjee Vs. Kali Kinkar (supra)** (Para 65-66) cited to show that the deity cannot be sold. It is not a property and none can be its owner not even its founder.

S. **Khetter Chunder Ghosh Vs. Hari Das Bandopadhyay (supra)** (para 66, p. 559) is an authority for the proposition that the deity is not a property. None can own it. Idol is not a transferable property.

T. The fact is that the “disputed area” has always been considered to be the “Deity”. The deity in the present case is “Sri Ram Janmasthan”, being the place where “Sri Ram Lalla” is Virajman that is resident. The said “disputed area” has always been considered sacred by the Hindus before and even after the construction of the disputed structure. The extensive archaeological evidence found by excavation by the Archaeological Survey of India clearly shows that before the construction of the structure known as the “Babri Masjid” in 1528, there was an existent Hindu temple underneath it.

U. “**The Hindu Law of Religious and Charitable Trusts**” by **B.K. Mukherjea** also states at Page 160-162:

“Para 4.13. The Smriti writers have laid down that if

an image is broken or lost another may be substituted in its place; when so substituted it is not a new personality but the same deity, and properties vested in the lost or mutilated thakur become vested in the substituted thakur. Thus, a dedication to an idol is really a dedication to the deity who is ever-present and ever-existent, the idol being no more than the visible image through which the deity is supposed specially to manifest itself by reason of the ceremony of consecration.”

V. Presence of an idol is not the only consideration to determine whether the place is a temple or not; what is important is whether a certain group of Hindus consider it sacred or whether a certain group can feel “divine presence” in the place.

W. An Idol is not a precondition. If the public goes for worship and consider that there is a divine presence, then it is a temple. He relied on **Ram Janki Deity Vs. State of Bihar, 1999 (5) SCC 50** (Paras 13 to 19); **P.V. Durrairajulu Vs. Commissioner of Hindu Religious Trusts, AIR 1989 Madras 60** (Para 18).

X. Referring to **Poohari Fakir Sadavarthy of Bondilipuram (supra)** (Para 8) Sri Pandey contended that the institution will be a temple if two conditions are satisfied – one – it is a place of public religious worship – and the other – it is used as of right by the Hindu community or any section thereof as a place of worship. (See

Y. Existence of idol not necessary if the public which go there consider that there is a divine presence in a particular place and by offering worship at that place they are likely to be the recipient of the bounty or blessings of God, then you

have got the essential feature of a temple. The test is not the installation of an idol and the mode of its worship. Here Sri Pandey refers **T.R.K. Ramaswamy Servai and Anr. Vs. The Board of Commissioners (supra)** (Para 47); **Board of Commissioners of Hindu Endowment Vs. P. Narasimha (supra)** (Para 5 page 135); and **Gedela Satchidanand Murti (supra)** (Para 16, pages 684 and 685).

Z. The nature of Hindu religion is monism. It believes in one supreme-being who manifests himself in many forms. This is the reason why Hindus start adoring any deity either handed down by tradition or brought by a Guru, Swayambhu and seek to attain the ultimate supreme as held in **Sri Adi Vishweshara of Kashi Vishwanath Temple (supra)** (Para 30 page 631).

AA. According to Hindu notion what is worshipped in a temple is not the stone image or image made of wood. It is the God behind the image which is the object of worship. The real owner of the property dedicated to a temple is deemed to be God himself represented through a particular idol or deity which is merely a symbol. Property worshipped for more than 300 years, there can be no direct evidence of consecration. After the length of time it is impossible to prove by affirmative evidence that there was consecration. However, the idol was duly recognized by all who believed. [See **Gokul Nath Ji Maharaj Vs. Nathji Bhogilal (supra)** (para 4 and 5)].

AB. Not only the area where Sri Ram Lalla is Virajman and is believed to be his place of birth as a deity but the entire complex is elevated to the status of a deity because the dedicated property gets imbued with a sacred character.

AC. **Mahant Ram Saroop Dasji Vs. S.P. Sahi (supra)** (Pages 958-959, Paras 10 & 12) was cited and it is submitted that it is difficult to visualize that a Hindu private Debutter will fail for a deity is immortal. Even if the idol gets broken or lost or stolen another image may be consecrated and it cannot be said that the original object has ceased to exist. An idol which is a juridical person is not subject to death because the Hindu concept is that the idol lives for ever and placed reliance on **Idol of Thakur Sri Govind Dev Ji Maharaj (supra)** (Page 908, Para 6).

AD. Deity is a living being to be treated like a master. It is not a moving chattel. Hindu idol is not property. Custodian cannot destroy or cause injury. **Pramatha Nath Mullick Vs. Pradhyumna Kumar Mullick (supra)** (Para 9).

AE. Referring to Full Bench decision of Calcutta High Court in **Bhupati Nath Smrititirth Bhattacharjee (supra)** (Para 73) Sri Pandey contended that as per Shastric Hindu Law if the image is broken or lost another may be substituted in its place and when so substituted it is not a new personality but the same deity with properties previously vested in the lost or mutilated Thakur.

AF. The question as to what “portion” of the property is sacred is irrelevant since Hindus consider the entire area being the place of birth of Sri Ram as a deity in itself being the “ Sri Ram Janmasthan / Sri Ram Janmabhoomi”, being the Plaintiff No.2 .The presence of Sri Ram Lalla Virajman, being the Plaintiff No.1 on the said Sri Ram Janmasthan (being the Plaintiff No.2)does not detract from the fact that the entire disputed area is the place of birth of Sri Ram and therefore a deity in itself to the Hindus. The witnesses

including foreign travelers have repeatedly confirmed that the entire premises has been worshipped, “parikrama” was undertaken by the devotees, even after the construction of the disputed structure. He submitted that there has been no denial of the above statement by any of the parties . He referred to paras 20 and 22 of the plaint and pointed out that the same have not been denied.

AG. Any worshipper is entitled to act on behalf of the Idol if the idol is undefended by a Shebait and cannot look after itself. This view finds support in **Bishwanath Vs. Shri Thakur Radha Ballabhji, (supra)** (para 10 and 11) and **Veruareddi Ramaraghava Reddy Vs. Konduru Seshu Reddy, 1966 Supp SCR 270.**

AH. In the present case since the deities of Sri Ram Janmabhumi and Sri Ram Lalla Virajman were not being able to look after themselves and no one was acting to protect their interests and their premises were being occupied or was being attempted to be occupied by those who were intending to extinguish the very right to be worshipped of the deities and repeated attempts were being made to interfere with the possession and the right of being worshipped by the devotees , hence concerned worshippers compromising of eminent and spiritual men of the Hindu community being represented by the Plaintiff No.3 were forced to approach the Court to protect the right of the deities (being the Plaintiffs No.1 and 2) to be worshipped .

AI. In support of the contention that the place of worship itself and the Deities seated at the disputed site are juridical persons Sri M.M. Pandey relied on **Guruvayur Devaswom Managing Committee and anr. Vs. C.K. Rajan (Supra);**

Manohar Ganesh Tambekar Vs. Lakhmiram Govindram (supra); Avadh Kishore Dass Vs. Ram Gopal, 1979 SC 861; Angurbala Mullick Vs. D. Mullick, AIR 1951 SC 293; Kamaraju Venkata Krishna Rao Vs. Sub-Collector, Ongole, AIR 1969 SC 563; Thayarammal Vs. Kanakammal (supra); Krishna Singh Vs. Mathura Ahir, AIR 1972 Allahabad 273; Sarangadeva Periya Matam Vs. Ramaswami Goundar, AIR 1966 SC 1603; Vallabhacharya Swami Varu (Deity) of Swarna Vs. Deevi Hanumancharyulu, AIR 1979 SC 1147; Gollaleshwar Dev Vs. Gangawwa Kom Shantayya Math, AIR 1986 SC 231; Shiromani Gurudwara Prabandhak Committee Amritsar Vs. Shri Som Nath Dass (supra); Hindu Religious and Charitable Endowments, Mysore Vs. Ratnavarma Heggade, AIR 1977, SC 1848; Ram Jankijee Deities Vs. State of Bihar (supra) (p.50); Gokul Nathji Maharaj Vs. Nathji Bhogi Lal (supra); Bishwanath Vs. Shri Thakur Radhaballabhji, (supra); Kalanka Devi Sansthan (supra); Jogendra Nath Naskar Vs. Commissioner of Income-tax (supra); P.V. Sadavarty Vs. Commissioner of Income-tax, AIR 1963 SC 510; Gurudwara Prabandhak Committee Vs. Shiromani GPC, 2004 (4) SCC 146; Deoki Nandan Vs. Murlidhar (supra); Official Trustee of West Bengal Vs. Commissioner of Income-tax, AIR 1974 SC 1355; Idol of Thakurji Shri Govind Deoji Maharaj, Jaipur (supra); Vemareddi Ramaraghava Reddy Vs. Konduru Seshu Reddy, AIR 1967 SC 436; K. Manahunaitha Desikar Vs. Sundaralingam, AIR 1971 Madras 1 (FB).

1708. Sri K.N. Bhat, Senior Advocate answering the issues no. 1 and 2 (Suit-5), contended that Bhagwan Sri Ram of

Ayodhya is undoubtedly a deity as such a juristic person with capacity to sue and being sued. Referring to B.K. Mukherjea's **Hindu Law of Religious and Charitable Trusts (supra)** in his written arguments he says:

A. “A Hindu idol”, the Judicial Committee observed in one of its recent pronouncements, “is according to long established authority founded upon the religious customs of the Hindus and the recognition there of by Courts of Law, a juristic entity. It has a juridical status with the power of suing and being sued.” You should remember, however, that the juridical person in the idol **is not the material image**, and it is an exploded theory that the image itself develops into a legal person as soon as it is consecrated and vivified by the *Pran Pratistha* ceremony. It is not also correct that the Supreme Being of which the idol is a symbol or image is the recipient and owner of the dedicated property. (p.38.)

B. From the spiritual standpoint the idol might be to the devotee the very embodiment of Supreme God but that is a matter beyond the reach of law altogether. (p.39.)

C. The early Vedic hymns make no allusion to idol worship, and Max Muller held that idolatry did not exist among them. ‘The religion of the Vedas,’ he declared, ‘knows no idols.’ The Jabala Upanishad says, ‘Images are meant only as aids to meditation for the ignorant’. (p.149)

D. The image simply gives a name and form to the formless God and the orthodox Hindu idea is that conception of form is only for the benefit of the worshipper and nothing else. (p.153.)

E. “The idol, deity or religious object,” observed West

and Buhler in their *Digest on Hindu Law*, “is looked upon as a kind of human entity.” It is a sacred entity and ideal personality possessing proprietary rights. The Judicial Committee has pointed out on more occasions than one that it is only an ideal sense that property can be said to belong to an idol and the possession and management of it must, in the nature of things, be entrusted to some person as Shebait or manager. The legal principle has thus been summed up in one of the pronouncements of the Judicial Committee:

F. “A Hindu idol is, according to long-established authority, founded upon the religious customs of the Hindus, and the recognition thereof by courts of law, a ‘juristic entity.’ It has a juridical status, with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who in law is its manager, with all the powers which would, in such circumstances, on analogy, be given to the manager of the *estate of an infant heir*. It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established.”(pp.158)

G. **Existence of idol is not necessary for temple.-** While usually an idol is instituted in a temple, it does not appear to be an essential condition of a temple as such. In an Andhra case, it was held that to constitute a temple, it is enough **if it is a place of public religious worship** and if the people believe in its religious efficacy, irrespective of the fact **whether there is an idol or a structure** or other paraphernalia. *It is enough if the devotees or the pilgrims feel that there is one superhuman power which*

they should worship and invoke its blessings. (pp.158-159.)

H. Moreover, - and this was pointed out by Chatterjee, J., who was a member of the Full Bench – **the conception of Hindu jurists was not that the image of clay or stone constituted the juristic person.** The Smriti writers have laid down that if an image is broken or lost another may be substituted in its place; when so substituted it is not a new personality but the same deity, and properties vested in the lost or mutilated *thakur* become vested in the substituted *thakur*. Thus, a dedication to an idol is really a dedication **to the deity who is ever-present and ever-existent, the idol being no more than the visible image** through which the deity is supposed specially to manifest itself by reason of the ceremony of consecration. The decision in *Bhupati Smrititirtha v. Ramlal* has been followed by other High Courts in India, and it has been held by the Allahabad High Court in *Mohor Singh v. Het Singh* that a bequest to complete the building of a temple which was commenced by the testator and to install and maintain an idol therein was a valid bequest under the Hindu law.(pp.162-163)

I. A donor can certainly create a trust for the worship of an idol which is to be consecrated and established in future. The same principle applies if the deity is such as is worshipped periodically like Durga, and has no permanent image. The dedication of property for carrying on such periodical worship is perfectly valid, although every year a new clay image is prepared which is thrown into the river after the Puja is over. (p.163)

J. Where there is no deed, no question of construction arises, and the validity or otherwise of the endowment would have to be determined entirely on circumstantial evidence. In *Ram Ratan Lal v. Kashnath Tewari*, the Patna High Court has discussed the relevant considerations and the evidence needed for deciding the question how far the endowment is illusory. (p.167)

K. Reference may also be made to the judgments of the Supreme Court in **Idol of Thakurji Shri Govind Deoji Maharaj (supra); Bishwanath and Anr. Vs. Shri Thakur Radhaballabhji (supra); Jogendra Nath Naskar (supra); Kalanka Devi Sansthan Vs. Maharashtra Revenue Tribunal (supra); Official Trustee of West Bengal Vs. C.I.T., West Bengal (supra); Dr M. Ismail Faruqui (supra); and Ram Jankijee Deities (supra).**

L. Plaintiffs in paragraphs 19, 20 and 21 have specifically pleaded and given the reasons why the place believed to be the birth place of Lord Sri Rama itself is a deity. That a 'place' can be an object of worship is now beyond doubt on account of the decisions of the Supreme Court in Faruqi's case and in Ram Janki's case – (1999) 5 SCC p.50 also Mukherjea pp 158-9 quoted supra.

M. The extracts quoted above from Mukherjea's treatise clearly brings out the distinction between a physical object, namely, an idol and a deity, though the two are used occasionally as inter-changeable expressions. What emerges is that it is a mistake to consider that there must be a physical object, namely, an idol before there can be a deity.

N. There can be no doubt now that a deity is a juristic

person and can sue through a next friend appointed by courts - see AIR 1967 SC 1044 . The present plaintiff 3 Sri.Trilokinath Pandey was appointed by the order of the Hon'ble Supreme Court.

O. Issues Nos. 21 and 22 are also closely connected and stand answered. It is made clear that the plaintiffs are not claiming that the idols alleged to have been placed under the dome in December, 1949 are the plaintiff deities— the idols are for the benefit of the devotees.

1709. The case of defendant no.3 (Suit-4), i.e., Nirmohi Akhara has been/is that the temple at Ram Chabutara belong to Nirmohi Akhara since long, was its property including the idols. It is not in dispute that Hindu idol, after its due consecration, becomes a legal personality but in the case in hand, Nirmohi Akhara, a religious endowment was managing the said temple and worshipping the idol hence in any case it stood in the capacity of Shebait of the said idol. The said status of Nirmohi Akhara was never terminated at any point of time and therefore, no suit on behalf of such an idol could have been filed by ignoring defendant no.3 and that too in the absence of any allegation of inaction or mal-action on the part of the Shebait i.e. Nirmohi Akhara. In support Sri Verma also placed reliance on **Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (supra)** and **Kunwar Singh Vs. Sri Thakurji Mahraj, Birajman Mandir Gauntia Majra Dhamipur, Pargana and Tahsil Nawabganj, District Bareilly, 1992 (2) AWC 890.**

1710. The pleadings, argument etc. over these issues require us to consider the matter from two different angles:

(i) Whether plaintiff no.1 is a Deity in terms of Hindu

Law. Its effect,

(ii) Plaintiff no.2 is a place and therefore, first of all it has to be seen whether a place by itself can be a Deity and be conferred status of legal person in the light of principles of Hindu Law.

1711. If both these aspects about the Deities are decided in affirmance only then we will have to consider whether there was any Shebait of the said two plaintiffs and whether the plaintiff no.3 has rightly filed the suit in question as their next friend.

1712. First we first propose to consider, though in brief, as to how the idol worship came to exist, the concept form and the foundation etc., in the light of available ancient Hindu scriptures as also the judicial precedents.

1713. One of the oldest Aryan scripture i.e. the Rigveda refers to the worship of natural powers like sun, water, air etc. but according to Max Muller, “the religion of the Vedas knows of no idol”. He (Muller) says that the worship of idols in India is a secondary formation, a later degradation of the more primitive worship of ideal gods. B.K.Mukherjea in **Hindu Law of Religious and Charitable Trusts (supra)** on page 13 has said:

*“There is a difference of opinion amongst scholars as to whether the religion that is embodied in the Vedas was at all **polytheistic**. A **number of gods** indeed are named, but there are various passages in the Rigveda which expressly declare that the various gods are only different names of that “which is one”. Max Muller calls the religion, “henotheism”. The gods to whom the hymns of the Rigveda are addressed are idealised beings, who represent the beneficent and radiant powers of nature, e.g., sun, air, earth, sky, dawn, etc. But the Vedic seers had, from the*

beginning, a glimpse of the infinity behind these finite forces, as is shown by the conception of 'Aditi' the mother of the gods which, as Max Muller says, was the earliest name invented to express the infinite." (emphasis added)

1714. Similarly, about the existence of 'temple' or 'monastic institution' in Vedic age, B.K. Mukherjea in **Hindu Law of Religious and Charitable Trusts (supra)**, on page 13 and 15 has said :

"It is difficult to say to what extent the charitable and religious endowments as we see in modern times existed in the early Vedic period. The earliest Vedic literature which is known by the name of Samhitas throws very little light on this point. It seems fairly certain that at this period there were no temples for worship of idols as we find in subsequent time, and an institution like the mutt or monastery of later days was also unknown."

"There is also no mention of monastic institution in the Vedic literature. According to the Vedic Grihya Sutras, which regulated the life of man, there were the institutions of four Asramas prescribed for all persons belonging to the twice born castes. Man's life was divided according to this scheme into four Asramas or stages. The first stage was of Brahmachari or student who was to live in the house of his preceptor and study the Vedas living a life of utmost austerity and discipline. In the second stage he married and became a householder or Grihastha and his duty was to perform the religious and secular works that were prescribed for this stage of life. In the third which was the Banaprastha stage, he was to live the life of a recluse, and in the last stage he became a Jati or ascetic." (emphasis

added)

1715. Sri B.K. Mukherjea's above observation has come after his concurrence with the views of some historians at that time and particularly Europeans that Aryans migrated to India from elsewhere and Vedic literature is the scripture of Aryan culture. This is evident from what the learned author in para 1.11, page 10, has observed with respect to Rigveda; *“In the Rigveda, which is the earliest record of Aryan culture....”*

1716. In '**Development of Hindu Iconography**' by Jitendra Nath Banerjea (First Edition in 1941 and 5th Edition in 2002 published by Munshiram Manoharlal Publishers Pvt. Ltd.), the learned author opines:

*“The nature of the prehistoric remains just discussed cannot be determined with certainty on account of the absence of any literary data throwing clear light on them ; but with the help of certain passages occurring in the Rgveda, the earliest extant literature of the Indo-Aryans, it is possible to offer a tentative explanation about some of them. **It may be observed, however, that in India, prior to the advent of the Aryans, image-worship might have been practised by her original settlers. But it is still a matter of doubt and controversy when this was first introduced among the Aryans who migrated into India.** From the beginning of the scientific method of Vedic studies in India this question engaged the attention of scholars.”* (Page 42) *(emphasis added)*

1717. Thereafter, the learned author referred to the views of Max Muller, who said that the Vedic religion knew of no idols and it was a secondary formation. This has been reiterated by H.H. Wilson and Macdonell. Banerjea, then has also referred to

a contrary view expressed by Bollensen.

1718. Sri S.V. Venkateswara, after considering rival opinions of several authorities on the subject, expressed his opinion that Vedic evidence was not at all sufficient for deciding whether gods were iconically represented in earlier Vedic period or not. His later observations have been quoted by J.N. Banerjea in **The Development of Hindu Iconography (supra)** as under :

*“In a later contribution (Rupam, Nos.42-4, 1930), he was more definite, and he collected numerous additional passages from the Rgveda and other Vedas in support of his view ; he even used the term iconography in relation to the representation of the Vedic deities. He assigned the foremost place to the well-known verse in the Rgveda, IV. 24, 10, which was also noticed by Macdonell and others. The latter thought that it was a late passage probably containing an allusion to some concrete symbol of Indra. It is : Ka imam dasabhirnamendram krinati dhenubhih I Yada vrtrani jamghanadathainam me punardadat ('Who will buy this my Indra for ten cows? When he has slain his foes, he may give him back to me'). Venkateswara remarks about the passage thus : “The context shows that there were permanent images of Indra made and hired for what was in probability an Indra festival, and there were apparently images of Vrtra made for each occasion, whence the plural Vrtrani to be slain by Indra.” With regard to R.V., V. 52, 15, noticed above, Venkateswara makes this significant observation, “ this passage is also interesting in that it shows that **there was no idol worship, but that images were used as concrete representations of***

*gods whose real form and existence were conceived as different.” The existence of two forms of each god, one the concrete and finite and the other the abstract and infinite, is clear according to him in a Yajurveda passage (T.S., I. 7. 12; also A.V., VII. 31) which reads svaya tanva tanumairayata ('with your own, i.e., real, body enter this concrete body'). In his opinion, **the image is regarded in the Rgveda merely as a physical tenement of the real form of the god**, while in these texts we have two forms of the god mentioned- that **in the image being only an apparent and evanescent form**, and that **in the universe being the real and permanent form (sva tanuh)**. He finds reference to the relationship of these forms, finite and infinite, of the god even in the Rgveda (VII. 100, 6) which speaks of Visnu's assumption of another, the finite form in the battle with Vrtra, where he was a worthy companion of Indra (yadanyarupah samithe babhutha) ; Indra, who used Visnu as his vehicle (Visnvanusthitah), asked him to expand into the infinite space (sakhe Visno vitaram vikramasva) elbowing Vrtra out of existence till the latter begged to be received into the body of Indra himself. From this Venkateswara concluded that the belief was that the finite cabined in a particular form was not cribbed or confined by this fact but was capable of infinite expansion. He finds distinct references to the fashioning of images in such passages as R. V., VI. 28, 6 (asriram cit krnutha supratikam i.e., 'make that which was an ugly mass a beautiful image'); R.V., IV. 17, 4 (Indrasya karta svapastamo bhut, i.e., 'the maker of Indra was a most stalwart being, a most skilful workman'); casting of metal*

*images is also referred to in the Rgveda and other Vedas in such passages as R.V., VIII. 69, 12 (surmyam susiramiva, i.e., 'like a hollow tube'), R.V., X. 184, 1 (Visnuryonim kalpayatu tvasta rupani pimsatu I A sincatu prajapatirdhata garbham dadhatu te, i.e., 'May Visnu make the female organ fit ; may Tvasta fix the limbs ; may Prajapati sprinkle ; may Dhata hold your embryo'), R.V., I. 32, 2 (Tvastasmai vajram svaryam tataksa, i.e., 'Tvasta made the thunderbolt for Indra, which could be far flung'), etc. He further finds **references to temples (devagrhas) in such passages as R.V., VII. 56, 14 (Sahasriyam damyam bhagametam grhamedhiyam maruto jusadhvam, i.e., 'Oh! Maruts accept this your portion offered at the temple'), R.V., VII. 59, 10 (Grhamedhasa, i.e., the Maruts in the houses are munificent), etc. Venkateswara thinks that this inference from the passages is supported by the **finds of images of the storm gods in Babylonia**. He even finds allusion to processions of images in R.V., I. 10, 1 and III. 53, 5-6. "In the latest (Khila) Vedic texts, the goddess Sri is represented as a golden antelope adorned with garlands of silver and gold" (he obviously refers to the Sri Sukta in this statement)."*** (Pages 45 – 47) (emphasis added)

1719. B.K. Mukherjea in **Hindu Law of Religious and Charitable Trusts (supra)** refers to "Gautama's Dharmasutra" and says that there is some reference to idols but the age of the work is unknown, and it does not specify any particular idol or idols. It says that the gods that are popularly worshipped by the Hindus at the present day are, for the most part, Pauranic deities, descriptions of which occur in various Puranas. The "Puranas" literally mean ancient legends constitute a class of

epic literature, didactic in character, which deal with various matters including cosmogony, the genealogies and exploits of gods, sages and kings, accounts of the different Avatars or incarnations of Vishnu, as well as the rites of worshipping gods by prayers, fasting, votive offerings, pilgrimages, etc. On page 25 B.K. Mukherjea further says :

“ The Purans are sectarian, in the sense that some of them extol the merits of worshiping Vishnu, while many prefer Siva worship. The Upanishads which embody the philosophical concept of the Vedas describe Brahman or the Supreme Being as “that from which all things are born, that by which when born they live and into which they enter at death.” These creative, preservative and destructive functions or aspects of the divinity constitute the Trinity of the Puranas and are symbolised respectively by Brahma, Vishnu and Siva. The Puranas say expressly that Brahma, Vishnu and Siva though three in form really constitute one entity and there is no difference amongst them except that of attributes. The reason is that each of the functions of creation, preservation and destruction implies the others and contains the others in a latent form. The worship of Brahma is not very popular, and I am not aware of any temple being dedicated to this creative deity except one at Pushkar, seven miles to the north-west of Ajmer in Rajasthan. The images that are worshipped are generally those of Siva or Vishnu in their various forms or manifestations. The worship of Sakti or the female principle which is described as the consort of Siva in the different forms of Durga, Kali etc. is also popular and is the special feature of the Tantric system. Besides Siva,

Vishnu and Durga, the other deities, who are generally adored by the Hindus, are Ganesh and Surya (Sun), and the numerous temples that adorn the various sacred places of the Hindus are dedicated for the most part to one or other of these five gods or Pancha Devata as they are called.”

1720. It is said that the Vedic mythology was merely elaborated in Puranas. In this regard, **B.K. Mukherjea**, on **pages 152 and 153 Para 4.3B** has observed “

*“This is not wholly or even substantially true. The sources of some of the legendary stories occurring in the Puranas can, no doubt, be traced in the Vedas but **it would not be correct to say that the Pouranic gods were mere reproductions of the Vedic gods.** There is nothing in the Vedas corresponding to the Pouranic Trinity of Brahma, Vishnu and Siva. Brahma in the Vedic text signified the Sun, or was a synonym of prayer. Vishnu in the Rigveda occupied a rather subordinate position. He was also identified with the Sun, and his three strides encompassing the three spheres of existence, as suggestive of all pervasiveness constituted the foundation of the Pouranic legend of the three steps of Vishnu in his incarnation of the “Dwarf.” Siva hardly appears as the name of any deity in Vedic time. The expression “Siva” means propitious or benignant. Rudra, one of the Vedic deities, was in all probability, another name of Agni or fire, and the Puranas identified Siva with Rudra. We hear very little of Ganapati or Kartikeya in the Vedas. Kali, who is described in the Puranas as a consort of Siva, was spoken of in Mandukopanishad as one of the seven tongues of fire, while*

the name of “Uma” occurs in the Kenopanishad, where she is described as a resplendent lady who gave lessons in divine knowledge to the gods. Sri Krishna, who looms so large in the Pouranic literature, is mentioned only as a scholar and not as a deity in the Vedas, though many of the legendary stories attributed to him in the Purans are traceable to similar legends associated with Indra in the Vedic literature.

*It is not necessary for our present purpose to pursue these discussions any further. Though the Puranas are by no means uniform, the legends associated with the various gods are fairly well known and have been the basis of a considerable mass of poetic literature in later times. One cardinal principle underlying idol worship you would always bear in mind- and this has some bearing on the law relating to gift of property to idols- that **whichever god the devotee might choose for purposes of worship and whatever image he might set up and consecrate with that object, the image represents the Supreme God and none else. There is no superiority or inferiority amongst the different gods. Siva, Vishnu, Ganapati or Surya is extolled, each in its turn as the creator, preserver and supreme lord of the universe. The image simply gives a name and form to the formless God and the orthodox Hindu idea is that conception of form is only for the benefit of the worshipper and nothing else.**” (emphasis added)*

1721. Para 1.33 (page 26) of **B.K. Mukherjea's Hindu Law of Religious and Charitable Trusts (supra)** says that different images do not represent separate divinities; they are really symbols of the one Supreme Being, and in whichever name and

form the deity might be invoked, he is to the devotee the Supreme god to whom all the functions of creation, preservation and destruction are attributed. In worshipping the image the Hindu purports to worship the Supreme Deity and none else. The rationale of image worship is thus given in a verse which is quoted by “Raghunandan”:

“चिन्मयस्याद्वितीयस्य निस्कलस्याशरीरिण
साधकानां हिनाथयि ब्रह्मणी रूपकल्पना ।”

“It is for the benefit of the worshippers that there is conception of images of Supreme Being which is bodiless, has no attribute, which consists of pure spirit and has got no second.”

1722. Some of the aspects of image worship have been referred to by Sri P.N. Mishra, Advocate which we have already quoted in extention in para 1695 (A-J) which are also based on the Hindu scriptures against which nothing has been placed by the learned counsels appearing for pro-mosque parties and, therefore, we have no reason to doubt correctness thereof.

1723. The next step is the building and consecration of temples along with the establishment of idols worshipped in Hindu religion, elaborate rites and ceremonies. It appears to have been introduced by Brahminical writers. They have elaborated the procedure, steps regarding building of temples, consecration and purification of idols etc.

1724. A temple is the house of the deity and many of the rules of construction of a temple are practically the same as are prescribed for construction of a dwelling house, the additional rules being laid down to ensure greater sanctity of the structure that is meant for the abode of a deity. One who wants to built a temple has got to select proper time for building with reference

to astrological calculations. There are detailed rules relating to selection of the site which include examination of the nature and colour of the soil, its odour, taste, solidity, etc. After the site is selected, it is ploughed up and seeds are sown in it. As soon as the seeds germinate, the crop is allowed to be grazed over by cows. The cardinal points are then to be ascertained for giving this structure an auspicious aspect and there are rules to be observed regarding the materials to be used and the location of doors, windows, etc. The important religious ceremony is the “Vastu Jaga” in honour of “Vastu Purusha” or “Vastu Debata” who presides over dwelling house, with oblation of milk, rice and sugar.

1725. A temple, in the original sense of the Latin word 'templum', meant a rectangular place marked out by the augur for the purpose of his observations which were taken within a rectangular tent and gave it meaning of a consecrated place or building of rectangular shape 'inaugurated' by an augur. It may be applied in this sense to the house of a God. In its primitive sense 'templum' means a place marked off as a road to God. In ancient Hindu Religious Texts, the word 'प्रासाद' has been taken to mean and denote 'temple'. In **Matsya Purana**, it is written:

“एवमेव पुराणेषु तद्भागविधिरुच्यते,
कूपवापीसु सर्वासु तथा पुष्परिणीषु च ।
एषएव विधिदृष्टः प्रतिष्ठासु तथैव च,
मन्त्रतस्तु विशेषः स्यात् प्रसादोद्यानभूमिषु ॥

(The rules which are recognised for pratishtha and utsarga of tanks, water reservoirs, etc., should be observed in the case of garden and temples but with necessary variation in mantras.)

1726. The foundation of temples and consecration of an image in the temple are two different subjects. In Hindu system

of worship, temple is not merely a place of idol, but is also a place of worship. In '**Hindu temple**' by Cramerish, it is said :

“The surface of the Earth, in traditional Indian Cosmology, is regarded as demarcated by sunrise and sunset, by the points where the sun apparently emerges above and sinks below the horizon; by the East and West and also by the North and South points. It is therefore, represented by the ideogram or mandala of a square (F.N. 44- The square does not refer to the outline of the Earth). It connects the four points established by the primary pairs of opposites, the apparent sunrise and sunset points East and West; South and North. The Earth is therefore called 'Caturbhrsti' four cornered (Rv. X. 58. 3) and is symbolically shown as Prithvi-Mandala, whereas considered in itself, the shape of the Earth is circular. (Rv. X. 89. 4; S.B. VII. I. I. 37). The identification of the square with the vedi is in shape only and not in size and belongs to the symbolism of the Hindu temple. The vedi represents and is levelled Earth, a place of sacrifice or worship: 'No part of the ground should rise above it: for it was from there that the God ascended to heaven' (S.B. III. I.I.I-2). The site, the Earth should be even and firm for it is the starting place of the ascent (S.B. VIII 5.2.16). The link between the Earth and the end of the ascent stretches upwards into space. The intermediate region (antriksa) from it also leads downward and rests on Earth. In it the temple has its elevation. The Vastupurusamandala, the temple diagram and metaphysical plan is laid out on the firm and level ground; it is the intellectual foundation of the building, a forecast of its ascent and its projection on Earth.”

1727. About the construction of the temple, it has been said:

“कृत्वा प्रभूवं सीललभराभन्विनिवेश्य च ।

देवातयतनं कुर्याद्यशोधर्माभिवृद्धये ॥

इष्टापूर्तेन लभ्यन्तेये लोकास्तान् बुभूषता ।

देवानामालय कार्यो द्वयमप्यत्र दृश्यते ॥

(On the land where, sufficient source of water is available, beautiful gardens of flowers and fruits are also available only there a founder should build a temple for the sake of religion and fame. From building a temple one gets benefit of both ishta and purta.)

1728. The Sanskrit word 'प्रासाद' 'Prasad's origin is said as:

प्रकप्रेण सदनं सादनं वायस्मिन् सः प्रसादः

(A building made of stones with mantras and other.)

1729. It was the ancient Indian tradition that ordinary people's houses had no walls or pillars made of stones, or pukka bricks. It was said:

शिलाकुड् य शिला स्तम्भं नरावासेनयोजयेत नयोजयेत – (कामिकागम)

1730. Stone-made structures were reserved for worship and were known as mandir. With the lapse of time this restriction was given up. There is a separate branch of Temple Architecture for building temples. The shape of a temple must be like a man. It is said:

प्रसादं पुरुषं मत्वा पूजयेत मंत्रवित्तम ।

1731. A Book said to have been written by Maharajadhiraj Bhoj Deo, i.e., “**Samrangan Sutradhar**” is considered to be classic book of architecture on temples. The **Mareechi Samhita** provides the Code for the construction of a temple:

“The Garbagruha (Sanctum) is so constructed as to resemble a human body in its vertical form. The entire structure from the base to the top (called Vasstu Purusha) is divided into six units, corresponding to six parts to the

human body. Mareechi Samhita classifies the types of vimanas according to rituals, forms and materials used. Interestingly, the ritual-classification is based on the builder's mental attitude, health, success (pushti, shanthi, jayadam, adbhutam).

There are four types of temple architecture, the Nagara (North Indian), the Dravida (South Indian), the Vesara (a combination of both) and Kadamba Nagara (Pattadakal temples Chalukyan style). There is no difference between Saiva and Vaishnava temples either in style or plan or form. All temples consist of the following integral parts, arranged in various forms, depending upon the era to which they belong to.

The principal part, the actual temple, is called Vimana and it includes the shrine and the spire. The mantapas or porches precede the door leading to the inner shrine. Mahadwara or main gateway is the principal feature at the entrance to the quadrangular enclosures that surround the temples.”

1732. In “**Law of Hindu Religious Endowments**” by Ghosh, he stressed on the origin of temple:

"He has stated that during the Vedic times, offerings were made to various deities by placing them on the fire which was named Hutaraha or the conveyor of offerings. The Rig Veda speaks of the fire as carrying the Homa articles after making them fragrant to the Gods. He has also pointed out that this type of worship was common among Semitic races and also in Rome.

This was in the primitive stages of civilization. At later stages elaborate and complicated divination,

propitiation, sacrifice, prayer and other rites and ceremonies developed in Hinduism. This was not confined to Hinduism only. Parallel situations obtained in Shintoism, Confucianism, Roman, Greek slavic and German religions also. Different orders of priestly functionaries to perform different cultic acts came into existence. Words, formulae and rites had to be punctiliously pronounced and executed. Rituals in all their varieties and with all their paraphernalia had to be meticulously executed. The temple priests had to dedicate their lives to the service of God by solemn vows. This was the method of evolution of temple worship.

Out of the rituals for the establishment of endowments for Hindu temples, two stand out prominently. They are Pratishta and Sankalpa.”

1733. It has also been observed that the temples are also of two kinds. Ganapathi Iyer in his “**Law of Hindu Religious Endowments**” at page 214 said:

"Temples being the chief examples of Hindu religious endowments, they are of two kinds. Svayambhua Sthalams are temples in which the idol or deity is said to have self-revealed, i.e. not established by man. The other is Pratishta Sthalams, namely, temples in which the deity is established newly by observing certain set of rules (page 206). The images are of kinds; Lekhya consisting of pictures, paintings on walls, canvas or vessels and (2) chiselled figures of wood or stone. Lepya may be of two kinds (1) moulded figures of clay, (2) metallic figures cast in moulds (page 210). The place in which temples have to be built and the directions in which the images are to be

placed are also mentioned in the book."

1734. About the description and kinds of images, **B.K. Mukherjea's Hindu Law of Religious and Charitable Trusts (supra)**, page 154 para 4.5 says:

*"4.5. Images-their descriptions.- Image, according to Hindu authorities, are of two kinds: the first is known as **Sayambhu or self-existent or self-revealed**, while the other is **Pratisthita or established**. The Padma Puran says : "The **image of Hari (God)** prepared of stone, **earth**, wood, metal or the like and established according to the rites laid down in the Vedas, Smritis and Tantras is called the established;where the **self possessed Vishnu has placed himself on earth in stone or wood for the benefit of mankind, that is styled the self-revealed.**" A Sayambhu or self-revealed image is a product of nature, it is Anadi or without any beginning and the worshippers simply discover its existence. Such image does not require consecration of Pratistha. All artificial or man-made images require consecration. An image according to matsya Purana may properly be made of gold, silver, copper, iron, brass or bell metal or any kind of gem, stone or wood, conch shell, crystal or even earth.*

Some persons worship images painted on wall or canvas, says the Brihata Purana and some worship the spheroidal stones known as Salgram. Generally speaking, the Pauranic writers classify artificial images under two heads; viz. (1) Lepya and (2) Lekhya. Lepya images are moulded figures of metal or clay, while Lekhyas denote all kinds of pictorial images including chiselled figures of wood or stone not made by moulds. In the case of Goswami

Geeridhariji v Ramanlalji which went up to the Privy Council, the subject matter of dispute was the pictorial image of the head of the Ballavacharya Sect and not of any deity. Images again may be permanent or temporary. Temporary images which are set up for periodical Pujas like Durga, Saraswati, etc. are generally made of clay and are immersed in a river or tank after the Puja is over.”

1735. Worship of idol i.e., the procedure aspect, has been discussed in para 4.7 (page 156) of B.K. Mukherjea's **Hindu Law of Religious and Charitable Trusts (supra)** as under :

“4.7. Worship of the idol.- After a deity is installed, it should be worshipped daily according to Hindu Sastra. The person founding a deity becomes morally responsible for the worship of the deity even if no property is dedicated to it. This responsibility is always carried out by a pious Hindu The daily worship of a consecrated image includes the sweeping of the temple, the process of smearing, the removal of the previous day's offerings of flowers, the presentation of fresh flowers, the respectful oblation of rice with sweets and water and other practices. “The deity in short is conceived of as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of life is gone through, with minute accuracy, the vivified image is regaled with necessaries and luxuries of life in due succession even to the changing of clothes, the offering of cooked and uncooked food and the retirement to rest.”

(emphasis added)

1736. Existence of idol is not a necessary condition precedent for a temple. Para 4.10A [page 158] of B.K.

Mukherjea's **Hindu Law of Religious and Charitable Trusts** (**supra**) says:

*“While usually an idol is instituted in a temple, it does not appear to be an essential condition of a temple as such. In an Andhra case, it was held that **to constitute a temple, it is enough if it is a place of public religious worship and if the people believe in its religious efficacy, irrespective of the fact whether there is an idol or a structure or other paraphernalia. It is enough if the devotees or the pilgrims feel that there is one superhuman power which they should worship and invoke its blessings. However, in almost all cases the temple does possess an idol.**”(emphasis added)*

1737. We may notice at this stage that in **Mulla's Hindu Law, 15th Edn., page 527**, it is said that a temple is not a juridical person, so no suit relating to the temple property can be instituted in the name of the temple. It refers to a decision of Lahore High Court in **Thakardwara Sheru Mal Vs. Ishar Das AIR 1928 Lah. 375** questioning if the temple has no idol in whom the property shall vest.

1738. We, however, do not find that the above wide proposition can be said to be a correct law in presenti. A temple answering the requisites of Hindu religious endowment may be a juridical person and if that being so not only it can sue or being sued but it also entitled to hold property. It would be suffice to mention at this stage that a detailed discussion in the light of judicial precedents would follow hereafter and, therefore, we are not straightway giving any authority on this aspect just now as the matter would be clear from our subsequent discussion.

1739. The Apex Court in **Guruvayur Devasom Managing Committee Vs. C.K. Rajan (Supra)** in para 40 said, "*As a Hindu temple is a juristic person*". It also refers to Section 92 C.P.C. observing that it seeks to protect such juristic person and therefore power under Article 226 or 32 could also be taken recourse to.

1740. In **T.R.K. Ramaswami Servai Vs. H.R.E. Madras (supra)**, it was observed:

"The presence of an idol though an invariable feature of Hindu temples is not a legal requisite. If the public or a section of the public consider that there is Divine presence in a particular place, they are likely to be recipients of the bounty or blessings of God, then they are essential features of a temple."

1741. In **Venkataramana Moorthy Vs. Sri Rama Mandhiram (1964) 2 An.WR 457**, it was held that to constitute a temple, it is enough if it is a place of public religious worship and the people believe in its religious efficacy, irrespective of the fact there is no idol or structure or other paraphernalia. The Madras High Court reiterated the above view in **T.V. Durairajulu Naidu Vs. Commissioner (supra)** observing that for an institution to be a temple, it is not necessary that there should be *Dhwajasthambam, prakaram, hundi* or collection of *Kanikkai, utsava idols* and *utsavams*. A place which creates a sense of reverence in the belief that God resides there or an edifice devoted to divine worship is a temple. It was also held that the presence of idol is not a necessary ingredient to make an institution a temple.

1742. Relying upon several precedents, including a Supreme Court decision, it has however been held in **Adangi Nageswara**

Rao Vs. Sri Ankamma Devatha Temple (supra) in para 6: "To constitute a temple, it is enough if it is a place of public religious worship and if the people believe in its religious efficacy irrespective of the fact whether there is an Idol or a structure or other paraphernalia"; it was further observed in para 8 (last passage) that the fact that the temple has ceased to exist or ceased to be used as a place of religious worship either before or after the commencement of the Act under consideration, is absolutely of no consequence.

1743. Even when an image is broken or lost and is substituted by another, it is not a new personality but the same 'Deity' and in this regard reference be had to page 162 which says :

“the Smriti writers have laid down that if an image is broken or lost another may be substituted in its place; when so substituted it is not a new personality but the same deity, and properties vested in the lost or mutilated thakur become vested in the substituted thakur. Thus, a dedication to an idol is really a dedication to the deity who is ever-present and ever-existent, the idol being no more than the visible image through which the deity is supposed specially to manifest itself by reason of the ceremony of consecration.”

1744. Then there are temporary images, i.e., the images and deities prepared and destroyed periodically after worship, for example, Ganesha's image is prepared during Ganesh Chaturthi and after the festivities are over, the image is drowned in a holy river or in places like Maharashtra (Bombay) in the sea. Similarly, the images of *Durga*, *Kali* and other *Devatas* are also worshipped as temporary images during certain periods.

1745. A question arose as to whether there can be dedication of property to such deity, an image whereof has been created temporarily. The Calcutta High Court in **Purnachandra Chakrabarty Vs. Kaliopada Roy AIR 1942 Cal. 386** and **Asita Mohan Vs. Nivode Mohan AIR 1917 Cal 292** held that bequest made for worship of a deity by the name of *Sarat Kali*, which is the name of Goddess *Durga* and worshipped only once in a year and for whom there is no permanent image was valid. In fact a Full Bench of Calcutta High Court earlier took the view in **Bhupati Nath Vs. Ram Lal (supra)** that if a gift in favour of the deity whose image has to be prepared and destroyed periodically is valid, there is no reason why a gift in favour of a deity whose image is to be prepared once for all, except for any reason for reconstruction coming to pass, should be invalid. According to Hindu scriptures, the God, by whatever name adored, is ever existent and whether a particular image did or not did not exist at a particular time was not material. Temporary images are normally not consecrated images though Ganapathi Iyer in his "**Hindu Law of Endowment**" has said that even in the case of temporary images, consecration is observed but normally consecration or *Pratishtha* is done according to the texts only for images in temples. But that does not make the unconsecrated temporary images less sacred.

1746. There is another aspect. When there is a defilement, *Punah-pratishthan* (re-consecration of images in temples) has to be observed. The Brahmapurana says that "when a image is broken into two or is reduced to particles, is burnt, is removed from its pedestal, is insulted, had ceased to be worshipped, is touched by beasts like donkeys or falls on impure ground or is worshipped with mantras of other deities or is rendered impure

by the touch of outcasts and the like-in these then contingencies, God ceases to dwell therein.

1747. Then comes Chala and Sthira Vighrah. There are two forms of installation of idols in temples. The movable form is called Chala and the stationary form is called Sthira. In most of the consecrated temples, idols are found in both the forms. The Sthira idol should not be moved while Chala idol which is also called Utsava is to be taken out in procession etc. In the context of forms of idols besides the man made images which consist of pictures, paintings and chiselled figures of wood, stone etc., the another form of such idols, which is natural, are stones found in hills, river-beds or streams. One of such black stone is known as Saaligram and another as Lingam. They are not ordinary stones. The black Saaligraam stone symbolises Vishnu. Lingam represents Siva. There is another kind of Lingam, i.e., *Spatika Linga*, a white tiny crystal made of pure quartz. It is considered to be best representation of the Nirguna Brahman, attributeless all-pervading *Paramatma*. Then there are *Panchamukha Lingas* which are found in Nepal and Jambukeswaram in Tamil Nadu and Aihole in Western India. These stones etc. are a form of Chal Vighraha.

1748. In the context of the above, the concept of 'Deity' and 'juristic personality' in Hindu Law has to be considered to find out whether plaintiffs no.1 and 2 are "**juridical persons**".

1749. In legal terminology, the term 'person' normally signifies a human being. It is Human Being's personality which may possess the characteristics belong particularly to mankind, i.e., power of thought, speech and choice. In legal terminology, however, the concept of person or personality is not confined with the ordinary concept. Law is concerned basically with

rights and duties, both of which involves the notion of choice. They will naturally, under any system of law, be held to inhere primarily in those Being which enjoy the ability to choose, i.e., Human Beings. In law, the persons, who are not man are also sometimes treated as person. Well renowned Jurist 'Salmond' has sought to describe the word 'person' as: “persons are the substances of which rights and duties are the attributes.

1750. In legal theory a person is any Being whom law regards as capable of rights or duties. The persons, so defined, may be placed in two categories; (a) natural person, and (b) legal person. Obviously a natural person is a human being. Legal person means Beings, real or imaginary, who for the purpose of legal reasoning are treated in greater or lessor degree in the same way as Human Beings. Legal persons commonalty and loosely are also sometimes termed as fictitious person, juristic person, artificial person or moral person. In this category, we may place a joint stock company, a statutory or local body and in Hindu law, an 'Idol'.

1751. For our purposes, we need not to discuss in detail the concept of “natural person”, but confine ourselves to the term “legal person”. A legal person is any subject-matter other than a human being to which the law attributes personality. This extension, for good and sufficient reasons, of the conception of personality beyond the class of human being is one of the most noteworthy feat of the legal imagination. The law, in creating legal persons, always does so by personifying some real thing. The thing personified may be termed the corpus of the legal person so created, it is the body into which the law infuses the animus of a fictitious personality. **“Salmond on Jurisprudence”** Twelfth Edition by F.J. Fitzgerald, on page

306, says:

“Although all legal personality involves personification, the converse is not true. Legal personality is a definite legal conception; personification, as such, is a mere artifice of speech devised for compendious expression.”

1752. Serious objection has been raised with the concept of juristic personality though not in the context of idol but in the context of place, inasmuch as, it is contended that everything, as believed by any person, may not be given a legal status in order to confer certain rights and privileges upon him. It is said that like a human being it is conceived in Hindu Shastras that a Deity shall be taken care of in the same manner as that a natural person, for example arrangement of food, cloth, sleep etc. As a matter of fact, however it does not actually and cannot actually happen for the reason that an idol, made of some kind of substance or material, cannot infuse life for all the said purpose. It is only the perception and religious belief. Like a natural person, a Deity cannot claim citizenship under the Constitution of India, cannot participate in election either by contesting or by exercising the right of vote and so on.

1753. The above concept obviously is well embedded in the concept of Hindu Dharma. The form of observance of Dharma vide Hindu scriptures which also provides the procedure of worship in the form of Yagya. The Hindu scriptures also contain the procedure of worship in the form of "Yagya", sacrifices by chanting Mantras etc. and for the said purpose the existence of idol or temple may or may not be necessary.

1754. The Apex Court recognised the Hindu belief that worship consists of four forms of which idol worship is one

such form. In **A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh (supra)**, the Court observed that mode of worship varies among persons of different faith. It is an assimilation of the individual soul with the infinite. For its attainment diverse views and theories have been propounded and one of them is idol worship. In fact, the word "Dharma", which is normally read and misunderstood identifying the word "religion", has a different concept in Hindu vedic literature. According to "**Chhandogyopanishad**":

“त्रयो धर्म स्कन्धायज्ञजध्ययनं दानमिति प्रथमस्तप एवेति द्वितीयो
ब्रह्माचार्याचार्य कुलवासी तृतीयो त्यन्तमात्मानाचार्यकुलवसादयन् ।
सर्व एते पुण्यलोका भवन्ति ब्रह्मसंस्थो मतत्वमेति ।”

There are three branches of Dharma 1. Yagna, study and donation (गृहस्थधर्म) 2. Tapsaya (तापसधर्म) 3. Brihcharitya (living in the company of Acharya)."

However, according to "**Vaisheshik**":

“अथातो धर्म व्याख्यास्मयामरु ।
यतोयुदयनिरु श्रेयरु ससिद्धिरु सधर्मरु ।।”

(Dharma is that from which enjoyment (आनन्द) and Nishreyas is achieved.)

The "**Manusmriti**", defines "Dharma" as under:

“वेदरु स्मृतिरु सदाचाररु स्वस्थ च प्रियमात्मनरु ।
एतच्चतुर्विघं प्राहुरु साक्षद्धर्मस्य नक्षणम् ।।”

(Shruti, Smriti, Sadachar and satisfaction of one's soul are the four features of Dharma.)

1755. In **A. S. Narayana Deekshitulu (supra)**, the Apex Court observed that the basis of Hindu Dharma is two fold, first is the *Vedas* and the second are *Agamas*. *Vedas*, in turn, consist of four texts, namely, *Samhitas*, *Brahmanas*, *Aranyakas* and *Upanishads*. *Samhitas* are the collections of mantras. *Brahmans* explain the practical aspects of the rituals as well as their

meanings. They explain the application of the mantras and the deeper meanings of the rituals. *Aranyakas* go deeper into the mystic meaning of the rituals, and *Upanishads* present the philosophy of Vedas. In paras 95 to 100 of the judgment the Court said:

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

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

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

98. The essence of the Vedic religion lies in Vedic sacrifices which not only purify the mind and the heart of those participate in the sacrifices but also reveal the true and unfragmented nature of the Karman (Action). Erroneously, Western, scholars explained the Vedic sacrifice in terms of either sympathetic magic or an act of offering the fire to God emulating the mundane act of offering gifts. Thus, for them Vedic religion is a primitive

religion and Vedic Gods are simply representing insentient departments of Nature; but it is not so. On the contrary, the term used for Vedic Gods is “Deva” which literally means “the shining ones.” The adorable ones-bestowing grace on the worshippers. The root Div also means that Devas are the embodiment of unfragmented consciousness, which is ultimately one and non dual. Likewise, the Vedic sacrifice is an act of re-enactment of the cosmic creation; in our mundane life, our life of action is simply a life of fragmented acts. This is because of Raga Dvesha whereby the perception is limited. The fragmented acts emanate from our deep rooted attraction and hatefulness. The Vedic sacrifice moves towards “Poorna”, i.e., plenitude and thus overcoming the problems of fragmented action in our lives. Onwards, the seeker moves towards the knowledge of self or the Brahman. So many Upasanas are taught in the Vedas but not elaborated. The Agams have elaborated these Upasanas such as Madhu Vidya and Dahra Vidya.

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

100. *Each text of the Agams has the first portion, called 'Samhita' which contains the four parts namely the Vidya Pada, Kriya Pada, Charya Pada and Yoga Pada. Vidya Pada offers an elaborate enunciation of the philosophy, whereas Kriya Pada deals elaborately with act of worship. Worship is viewed as Samurta Archana. In other words, the God are endowed with form and this form*

of worship culminates into Amurta or Nishkala Archana by which one worships and realises the formless. These are the steps to be treated upon one after another."

1756. In **Acharya Jagadishwarananda Avadhuta Vs. Commissioner of Police AIR 1990 Cal. 336**, the Court observed that according to Hindu concept, the idea of religion is relating to God and form of His worship which in short is called as religion. Swami Vivekananda in "**Complete Works**", Vol. 2, page 396 said:

"Religion is realization; not talk, nor doctrine, nor theories... It is being and becoming, not hearing and acknowledging; it is the whole soul becoming changed into what it believes. That is religion."

1757. Religion, therefore, is a process which has two sides; from one point of view, it is a state of belief and feeling, and in a word "spiritual disposition"; from another point of view it is an expression of the subjective disposition in appropriate acts. Both aspects are essential to the nature of religion and they act and react on one another in the process of spiritual experience. The expression of belief and faith forms the worship and for this purpose it may take several aspects. Idol, deity, temple, religious endowments etc. are some of those objects through which the divine presence is felt, experienced, believed and enjoyed for fulfilment of one's wishes.

1758. God is omnipotent and omniscient. His presence is felt not by reason of a particular form or image but by reason of the presence of the omnipotent. He is formless and shapeless. According to Hindu belief, it is for the benefit of the worshippers that there is manifestation in the images of the Supreme Being. It is the human vision of the Lord of the Lords.

One can say that it is the human concept of the Lord of Lords. That is how a image and idol comes into picture. It may be anything in the form of metal, like gold, silver, copper, etc. or a simple piece of wood or stone may or may not be given a shape by artisan so as to become an image or idol and divinity is attributed to it.

1759. There are two forms of idols, one "Svayambhu" and another "Pratishta". "Svayambhu" or self-revealed idol are referred in Padma Purana (Uttara Khand) where the self possessed Vishnu has placed himself on earth in stone or wood for the benefit of mankind, that is styled as self-revealed. A Svayambhu image does not require consecration. In this category comes Saaligraam, certain stone forming Lingam, Earth (places) etc. In respect to the idols, i.e., image formed of wood, stone, metal etc. A procedure of securing divine spirit in the image is normally followed as provided in the Hindu scriptures that is called "consecration".

1760. In **Ram Jankijee Deities (supra)**, the Court observed that it is customary that the image is first carried to the Snan Mandap and thereafter the founder utters the Sankalpa mantra and upon completion thereof the images is given a bath with holy water, ghee, dahi, honey and rose water. Thereafter, the oblation to the sacred fire by which the pran pratistha takes places and eternal spirit is infused in that particular idol and the image is then taken to the temple itself and the same is thereafter formally dedicated to the deity.

1761. In **Sri Venkataramana Devaru Vs. State of Mysore (supra)**, Agamas are described as the ceremonial law dealing with matters like construction of the temples, installation of idols and conduct of worship. There are separate *Agamas* for the

Saiva temples and *Vaishanava* temples. The important *Saiva Agamas* are *Kamikagama*, *Karnagama* and *Suprabathagama*. The principal *Vaishanava Agamas* are *Vaikanasa* and *Pancharathra*. The purpose of this ritual came of be noticed by the Apex Court in **Seshammal Vs. State of T.N. AIR 1972 SC 1586**. It is said that the rituals have twofold object; one is to attract the lay worshippers to participate in the worship carried on by the Priest or *Archaka*. It is believed when a congregation of worshippers participate in the worship of a particular attitude, aspiration and devotion is developed and confers great spiritual merit. The second object is to preserve the image from pollution, defilement and desecration. Regarding a dispute arising as to whether *Prana Pratishta* of an idol installed in a temple was properly performed, the Court held that when an idol is installed, the presumption is that such ceremonies have properly been performed.

1762. In **Deoki Nandan (supra)**, the Court observed that no particular kind of ceremony and its performance is necessary to be shown to constitute or to demonstrate that there is a valid dedication or *Prana Pratishta*.

1763. The question of asking of evidence relating to *Prana Pratishta* ceremony is relevant only in the context of judging whether a temple is a public temple or a private temple. An idol gets conferred the spiritual and divine spirit if the believers or the worshippers visit for its *Darshan*, *Pooja* as a matter of right believing the existence of such divine presence and nothing more is required. Senior Sankaracharya of Kanchi Kamakoti Peeta in "**Aspects of our Religion, Bhavan's Book University**" has made observations on the manner and effect of the consecration as follows:

"Before an idol or image is worshipped, a process of divinising it is gone through. The image is made instinct with God. This is known as the process of Prana-pratishta. Every human being is a compendious expression of the cosmos. Man is a microcosm of the universe. He is made of the five physical elements, the pancha bhootas, which are also the substance of the universe. God in His cosmic form, inheres in the Pancha boothas, which are crystallised in the human body and expressed as the five sense organs each functioning in terms of those elements. Before an idol or image is worshipped, it has to be consecrated. The process of consecration is called as stated earlier Prana-pratishta. The devotee first performs aatma pooja; that is, he meditates on his inner aatman encased in his body. By appropriate mantras he first purifies his body including his pranas and his sense organs. The vital airs and the organs of perception and activity animating him as the microcosm of the universe which is the macrocosm are transferred by gestures to the accompaniment of mantras on to the idol or the image wherein the manifestation of the Supreme (the ishta devata) is devoutly invoked. The following prayer is uttered before the prana pratishta:

*svaatmasamsttham ajam suddham tvaamadya
paramesvara aranyaamiva havyaasam moortau
aavaahayaam-yaham*

'O Lord of the Worlds, you are unborn and pure. You are in my heart. I invoke You in this moorti. Make yourself visible to me in my concentration even as the agni comes out by friction.'
Thereupon it becomes instinct with divinity and

becomes fit for worship. After this is done the worshipper does not consider it any longer as a material object. It becomes God Himself. Then follow the sixteen items of ritualistic worship which are offered with fervour and devotion."

1764. "**Bhagavadgita**" says *"whatever may be the form in which each devotee seeks to worship with faith, I make their faith steadfast in that form alone."*

1765. It is believed by Hindus that worship consists of four forms of which idol worship is one of such form. Mode of worship varies amongst persons of different faith. It is an assimilation of the individual soul with the infinite. For its attainment diverse views and theories have been propounded and one of them is idol worship. Hindus believe that the Supreme Being manifests himself with three aspects as Brahma, the Creator, Vishnu, the Preserver and Shiva, the Destroyer. Those who believe and are devoted to the worship of Vishnu are called "Vaishnavas" and those who worship Shiva are called "Shaivites". Vaishnavas believe that God manifest himself in different incarnations. In other words, manifesting himself in the flesh which is also termed by Hindus as avatara, something which is expressive, absolute and immaculate. Vaishnavas believe in Deity 'Vishnu' who has manifested himself in 10 avatars. Further, according to Hindu belief, Vishnu as preserver exists in five forms, viz., Para, Vyuha, Vibhava, Arca and Antaryamin. Para is the transcendental form. Vibhav includes the ten divine descends (avatars) and also thirty nine forms which he takes from time to time. Arca represents God in the form of idol, which though formless, takes this finite form to show favour of His devotees. The form of Antaryamin is to

remain within the self and control it by directing it to lead a virtuous way of life in accordance with the residues of the deeds done by it.

1766. The purpose of religious experience is to integrate human life, socially, materially and morally. Worship is certainly specifically religious and it is an attitude of mind which is not compatible with science. Science does not worship. It enquires, analyses, classifies and does sums. Religion is not merely worship of God but knowledge of God, for if it does not know its God then God is a figment of imagination and it worships it knows not what. All honest religions necessarily involve a strenuous effort to know the supreme reality and the knowledge of God must involve all knowledge in its scope. It can thus be said that religious experience is an internal experience and the deity in Temple is supposed to provoke the inner experience. Temple, therefore, forms an integral part of Hindu religion and idol installed therein forms the main symbol of religious worship manifesting the dignity of God. The Image of Lord in a Temple after *Pran Pratishtha* is a centre of reference, a symbol of the Great Consciousness whose attainment is ultimately the pinnacle of religious experiences. According to Hindu belief, worship of God is of four kinds, viz., Japa-chanting of Mantras; Home- giving oblation into fire; Archana-worship of God in form of idol in temple; and Dhyana-concentration of God alone. Of these four, Archana gained an established form of worship in temple.

1767. The concept of conferring legal personality upon a Hindu idol/Deity has undoubtedly been developed and in fact established for the first time by the Courts of British India in 19th Century. With the expansion of East India Company

towards ruling this country, it followed the policy of non-interference with the personal laws of inhabitants and therefore the subject within the reigning territory of East India Company was allowed to be governed by their personal laws so long as the same were not inconsistent with the enacted statutes governing the East India Company and the subject under its reigning arena. The British Parliament also followed the same policy while enacting laws for Indian subcontinent under the reign of East India Company by laying down that a dispute between the parties belong to one particular religion may be decided according to their personal laws. For example where both the parties are Hindu, by the principles of Hindu Law and where both the parties are Muslim according to the principles of Muslim Law. No clear cut or uniform law was existing in a matter where both the parties belong to different religions and there the matter was left to be decided according to equity and good conscience by the concerned Courts. To the extent the matter was governed by statutory laws there was no problem as the same was followed over and above the personal laws. It is this policy which made it necessary for the judicial officers to learn the personal laws of the inhabitants i.e. Hindu Law and Muslim Law. No doubt, for better administration and to lay down their policies which may enable the Britishers to continue to rule for long, they studied and made several surveys etc. about the local administration, customs, traditions etc. but due to the requirement of knowledge of personal laws for deciding the disputes, it became utmost necessary for the Judges of the Courts to acquaint themselves with the two kinds of personal laws of this country. It is in this context we find the foremost name of Sir William Jones, the founder of Asiatic Society of

Bengal who ventured in translation of several Hindu ancient scriptures written in Sanskrit, into English. He was a Judge appointed to the Supreme Court of Fort William, Calcutta and came to India in the later part of 18th Century. The another well known name in this regard is F.E.Pargitor who was also a Judge of Calcutta High Court.

1768. The Britishers knew well and were fond of the system of Roman Laws. According to them, Roman Law was the most ancient, well drafted and planned system of law and therefore, they could not conceive of existence of any earlier ancient culture with well planned system of law having its own separate identity and principles. With this frame of mind, they studied ancient Hindu Law comparing it with Roman Law on each and every aspect thereof, even if the two were distinct and dissimilar, wherever possible, they compared it with Christianity and the rules of Church followed in England. Some such work was done by Col. Brook, West and Buhler and Sir Henry Maine. One of such earliest identification of Hindu Religious Endowment i.e. temple and idols with the corporate bodies as known in England and the legal personality i.e. juridical persons was made by West and Buhlor in their work "Hindu Law".

1769. In **Vidyapurna Tirtha Swami Vs. Vidyanidhi Tirtha Swami and others (supra)** Honble Justice Subrahmania Ayyar of Madras High Court said:

"It is to give due effect to such a sentiment, widespread and deep-rooted as it has always been, with reference to something not capable of holding property as a natural person, that the laws of most countries have sanctioned the creation of a fictitious person in the matter as is implied in the felicitous observation made in the work

already cited "Perhaps the oldest of all juristic persons is the God, hero or the saint" (Pollock and Maitland's History of English Law, Volume 1, 481)."

1770. One of the earlier cases in this regard came before the Bombay High Court in **Manohar Ganesh Tambekar & Ors. Vs. Lakhmiram Govindram (supra)**. The question arose about the title and use of the offerings made at the shrine or the temple of Shri Ranchhod Raiji at Dakor. The defendants frequently acted in contravention of the rules, set up a proprietary title to the offerings made at the shrine, appropriated part of the offerings to their own use, and refused to render an account of the property held as trustee for the idol. The suit was filed with the consent of the Advocate General under Section 539 CPC (Act X of 1877). The High Court dealt with the relationship of idol with such trustees and on pages 263-265 held:

"The Hindu law, like the roman law and those derived from it, recognizes, not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also the juridical persons or subjects called foundations (West and Buhler, H.L., 201, 185, 553, 555). A Hindu, who wishes to establish a religious or charitable institution, may, according to his law, express his purpose and endow it (West and Buhler, H.L., 99, 197, 216), and the ruler will give effect to the bounty, or at least protect it so far, at any rate, as it is consistent with his own dharma or conceptions of morality (West and Buhler, H.L., 33; Manu VIII, 41 ; Coleb, Dig., B.III, Ch. II, T.28). A trust is not required for this purpose: the necessity of a trust in such a case is indeed a peculiarity and a modern peculiarity of the English law

(Spence Eq. Juris., 440 ; Sav. Syst., s. 88). In early times a gift placed, as it was expressed, “ on the altar of God” sufficed to convey to the church the lands thus dedicated (See Elton's Ten. of Kent, 17, 18). Under the Roman law of pre-Christian ages such dedications were allowed only to specified national deities [W. & B., H.L., 185 (b) ; Ulpain Fr. XXII, s. 6. They were thus placed *extra commercium*. Sav. Syst., sec. 88 (c c)]. After Christianity had become the religion of the empire, dedications to particular churches or for the foundation of churches and of religious and charitable institutions were much encouraged (Sav. Syst., sec. 88 ; comp. W. & B., 197). The officials of the church were empowered specially to watch over the administration of the funds and estates thus dedicated to pious uses (Sav. Syst., sec.88), but **the immediate beneficiary was conceived as a personified realization of the church hospital or fund for ransoming prisoners from captivity** (Sav. Syst., sec. 88). Such a practical realism is not confined to the sphere of law; it is made use of even by merchants in their accounts, and by furnishing an ideal centre for an institution to which the necessary human attributes are ascribed- *Dhadphale v. Gurav* (I.L.R., 6 Bom., 122)- **it makes the application of the ordinary rules of law easy as in the case of an infant or a lunatic** (Sav. Syst., sec. 90 ; comp. *Kinlock v. Secretary of State for India in Council*, L.R., 15 Ch. Div., at p. 8). **Property dedicated to a pious purpose is, by the Hindu as by the Roman law, placed *extra commercium*, (W & B., H.L., 185, 197) with similar practical savings as to sales of superfluous articles for the payment of debts and plainly necessary purposes**

(See Cod. Lib. I, Tit. 2, Fr. 21 ; W. & B., H.L., 555, 557. See also Rupa Jagset v. Krishnaji Govind, I.L.R., 9 Bom., p. 169). Mr. Macpherson admitted for the defendants in this case that they could not sell the lands bestowed on the idol Shri Ranchhod Raiji. This restriction is like the one by which the Emperor forbade the alienation of dedicated lands under any circumstances (Vyav. May., Chap. IV, S. VII, p.23 ; Nov. 120, cap., 10). It is consistent with the grants having been made to the juridical person symbolized or personified in the idol at Dakor. It is not consistent with this juridical person's being conceived as a mere slave or property of the shevaks whose very title implied not ownership, but service of the god. It is indeed a strange, if not wilful, confusion of thought by which the defendants set up the Shri Ranchhod Raiji as a deity for the purpose of inviting gifts and vouchsafing blessings, but, as a mere block of stone, their property for the purpose of their appropriating every gift laid at its feet. But if there is a juridical person, the ideal embodiment of a pious or benevolent idea as the centre of the foundation, this artificial subject of rights is as capable of taking offerings of cash and jewels as of land. Those who take physical possession of the one as of the other kind of property incur thereby a responsibility for its due application to the purposes of the foundation-compare Griffin v. Griffin (1 Such. & Lef., 352); Mulhallen v. Marum (3 Dr. & War., 317) ; Aberdeen Town Council v. Aberdeen University (L.R., 2 Ap. Cas., 544). They are answerable as trustees even though they have not consciously accepted a trust, and a remedy may be sought

against them for mal-administration (comp. Ind. Trusts Act II of 1882, ss. 88, 95) by a suit open to any one interested, as under the Roman system in a like case by means of a popularis actio.” (emphasis added)

1771. In **Jogendra Nath Naskar (supra)** the Apex Court referred to both the aforesaid judgements of Bombay and Madras High Court and also observed in para 6 that same view has been expressed by the judicial committee in **Maharanee Shibessoureea Debia Vs. Mathooranath Acharjo, 13 MIA 270** and **Prosanna Kumari Debya Vs. Golab Chand Baboo, LR 2 IA 145.**

1772. In **Prosanna Kumari Debya (supra)** the judicial committee observed:

“It is only in an ideal sense that property can be said to belong to an idol and the possession and management must in the nature of things be entrusted with some person as shebait or manager. It would seem to follow that the person so entrusted must of necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property at least to as great a degree as the manager of an infant heir”-words which seem to be almost an echo of what was said in relation to a church in a judgment of the days of Edward I: “A church is always under age and is to be treated as an infant and it is not according to law that infants should be disinherited by the negligence of their guardians or be barred of an action in case they would complain of things wrongfully done by their guardians while they are under age’ (Pollock and Maitland's 'History of English Law', Volume 1, 483”.

1773. In **Khetter Chunder Ghose Vs. Hari Das Bundopadhya (supra)** it was found that *the household idol was made over to relatives, owing to the family, whose idol it was, being unable to carry on the worship on account of the paucity of profits of the endowed lands, and it was held that the transfer was justified in the interests of the idol. It was a proper and a pious act. The Shebait being charged fundamentally with the duty of seeing to the worship being carried on, and, having the concurrence of the entire family to the transaction, did have power to carry through the transaction "for the purpose of performing its worship regularly through generation to generation. The members of the family were thereby deprived of no right of worship. The interests of worshippers and idol were conserved. Their Lordships do not think that such cases form any ground for the proposition that Hindu family idols are property in the crude sense maintained, or that their destruction, degradation or injury are within the power of their custodian for the time being. Such ideas appear to be in violation of the sanctity attached to the idol, whose legal entity and rights as such the law of India has long recognised."* (emphasis added)

1774. In **Khetter Chunder Ghose (supra)** the Court also held that sale of an idol is prohibited in Hindu Law though in certain circumstances, gift of an idol is not prohibited. The Court on page 559 observed as under:

*"It is true that the **Hindu law prohibits the sale of an idol** (see the Padma Purana, Patalakhanda, Chapter 79), and also the partition of it (see Dayabhaga, Chapter VI, s. II, 26), though when there are several idols, partition is recognised by custom (see West and Buhler's Digest of*

Hindu Law, 2nd edition, page 396). But there is no absolute prohibition against the gift of an idol. An idol is not mentioned as an unfit subject of gift by Hindu lawyers in their enumeration of what are, and what are not, fit subjects of gift (see Colebrooke's Digest, Book II, Chapter IV); but on the contrary the gift of an idol under certain circumstances is considered a laudable act (see the Varaha Purana, Chapter 185; see also Hemadris, Chaturvarga Chintamani, Danakhanda, Chapter II).

1775. In **Avadh Kishore Dass v. Ram Gopal (supra)**, Plaintiffs instituted a suit for replacement of the Mahants of a temple. The suit was contested by the then Mahants on the ground that the suit property was the personal property of the Mahants, and not that of the temple. The suit was decreed by the District Judge, and his decree was substantially affirmed by High Court. Supreme Court accepted the findings, on the basis of certain exhibits, that the suit property belong to the temple as a juristic person:

*“Properly constructed, this Wajibularz shows that the entire revenue estate of village Bhawalpura vests in the Temple or the Math as a juristic person.”; and “**that the entire property in suit is the absolute property of the God, Thakurji as a juristic person**”; and the result “No extract from the revenue records to show that Bhumidhari rights were granted not to the idol or the Temple as a juristic person, but to the appellant personally.”*

1776. The right of a Shebait to institute a suit in his own name to recover property belonging to the deity was recognised in **Jagadindra Nath Vs. Hemanta Kumari, 31 Ind App 203 at p.210.**

1777. In **Bhupati Nath Smrititir the Bhattacharjee (supra)** in concurring judgment of Full Bench, Justice Mookerjee observed that *“The Hindu Law recognises dedications for the establishment of the image of a deity and for the maintenance and worship thereof. The property so dedicated to a pious purpose is placed extra commerciumIt is immaterial that the image of the deity has not been established before the death of the testator or is periodically set up and destroyed in the course of the year.”*

1778. Justice Chatterjee also in the concurring judgment (above) observed: *“Shastri's Hindu Law page 420 : shews the Hindu idea of the forms attributed to God for the convenience of worship : a particular image may be insentient until consecrated but the deity is not. If the image is broken or lost, another may be substituted in its place and when so substituted it is not a new personality but the same deity and properties previously vested in the lost or mutilated Thacoor become vested in the substituted Thacoor. A Hindu does not worship the “idol” or the material body made of clay or gold or other substance, as a mere glance at the mantras and prayers will show. They will have the eternal spirit of the deity or certain attributes of the same in a suggestive form which is used for the convenience of contemplation as a mere symbol or emblem. It is the incantation of the mantras peculiar to a particular deity that causes the manifestation or presence of the deity or, according to some, the gratification of the deity.”*
(emphasis added)

1779. However, we find from the judgment of Hon'ble Jenkins, C.J. in **Bhupati Nath (supra)** that he noticed a slightly different view based on **Saraswati's Hindu Law of Endowment**

on page 647 of the report but His Lordship declined to make any final comment thereon. The report says :

“ In favour of this view we have the doctrine of Medhatithi cited to us in the course of the argument that the primary meaning of property and ownership is not applicable to God, and the train of reasoning that is suggested by the teaching of the Aditya Purana that the gods cease to reside in images which are mutilated, broken, burnt and so forth (Sarswati's Hindu Law of Endowment, page 129).

But whatever may be the true view on this obscure and complex question, this at least seems clear that the rule which requires relinquishment should be to a sentient person does not forbid the gift of property to trustees for a religious purpose though that purpose cannot in strictness be called a sentient person.”

1780. The real question considered by the Full Bench in **Bhupati Nath (supra)** and decided unanimously was as under:

“The principle of Hindu Law, which invalidates a gift other than to a sentient being capable of accepting it, does not apply to a bequest to trustees for the establishment of an image and the worship of a Hindu deity after the testator's death, and does not make such a bequest void”

1781. In **Rambrahma Chatterjee Vs. Kedar Nath Banerjee AIR 1923 Cal 60** it was observed that a Hindu deity is treated in many respects certainly individual.

1782. In **Ananda Chandra Chakrabarti vs. Broja Lal Singha and others 1923 Calcutta 142** it was held:

*“ It is well-settled that **dedication vests the property in the idol, only when the founder has title.** The ceremony divests the proprietorship of the temple from the builder*

and vests it in the image, which by process of vivification has acquired existence as a juridical personage.”

1783. Observing that Hindu deity is a living being and is treated in the same way in **Rambrahama Chatterji Vs. Kedar Nath Banerji (supra)** the Court said:

“We need not describe here in detail the normal type of continued worship of a consecrated image—the sweeping of the temple, the process of smearing, the removal of the previous day's offering of flowers, the presentation of fresh flowers the respectful oblation of rice with flowers and water, and other like practices. It is sufficient to state that the deity is, in short, conceived as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of like is gone through with minute accuracy: the vivified image is regaled with the necessaries and luxuries of life in due succession even to the changing of clothes, the offering of cooked and uncooked food, and the retirement to rest.”

1784. In **Pramath Nath Vs. Pradyumna Kumar (supra)** the above observation of Hon'ble Mukherji J in **Rambrahama Chatterjee (supra)** were approvingly quoted.

1785. In **Tarit Bhusan Vs. Sri Iswar Sridhar Salagram Shila Thakur AIR 1942 Cal 99** a Division Bench of Calcutta High Court said that a Hindu idol although a juristic person but this juristic person is of a peculiar type. It is conceived by Hindus as a living being with its own interests apart from the interests of its worshippers, and it is recognised as a juristic person capable of being the subject of legal rights and duties but only in an ideal sense. Pal J. at page 532 observed:

“Though an idol is thus recognised as a juristic person

*capable of suing and being sued, strictly speaking it has no material interest of its own. The efficient subject of the rights ascribed to an Idol must ultimately be some human beings. It must be they who enjoy such rights and, if law protects such rights, it is because of the existence of such ultimate human concern. The Idol, as the juridical person only affords the technical means of developing the juristic relations between those ultimately interested in the endowed property and the strangers. **The so-called interest of the Idol is merely an ideal interest very different from the interest which an infant has in his property. The introduction of the Idol and its recognition as a juristic person are more a matter for the procedure and the procedure in India recognises the Idol as having a locus standi in judicio.***"

1786. In **Parmanand Vs. Nihal Chand AIR 1938 PC 195** it was held that where a property is dedicated to an idol for the object of performing its puja and other necessary ceremonies the person managing such property is only a shebait, **idol being a juristic person in Hindu Law capable of holding such property.** This decision has been followed by the Apex Court in **The Bihar State Board of Religious Trust Vs. Mahanth Sri Biseshwar Das AIR 1971 SC 2057.**

1787. In **Mahant Ram Saroop Dasji Vs. S.P. Sahi (supra)**, the effect of damage to the idol was considered and in para 10 of the judgment, the Court observed:

“Further, it is difficult to visualise that a Hindu private debutter will fail, for a deity is immortal. Even if the idol gets broken or is lost or stolen, another image may be consecrated and it cannot be said that the original object

has ceased to exist.” (Para 10)

1788. In **Narayan Bhagwantrao Gosavi Balajiwale (supra)** regarding the removal of the idol from one place to another, the Court held:

*“The case is an authority for the proposition that the **idol cannot be removed permanently to another place, because that would be tantamount to establishing a new temple.** However, if the public agreed to a temporary removal, it could be done for a valid reason.”* (para 36)

1789. Holding Hindu idol as juristic entity the Apex Court in **Jogendra Nath Naskar (supra)** in para 5 the Court said:

“5. It is well established by high authorities that a Hindu idol is a juristic person in whom the dedicated property vests.”

1790. In the context of above authorities the Apex Court in **Jogendra Nath Naskar (supra)** explained that any Hindu idol has a legal personality and is not the material image but it is like to be treated as a "natural person" and said:

“Such ascription of legal personality to an idol must however be incomplete unless it be linked to a natural person with reference to the preservation and management of the property and the provision of human guardians for them variously designated in different parts of the country.” (para 6)

“It should however be remembered that the juristic person in the idol is not the material image, and it is an exploded theory that the image itself develops into a legal person as soon as it is consecrated and vivified by the Pran Pratishta ceremony. It is not also correct that the supreme being of which the idol is A symbol or image is the

recipient and owner of the dedicated property. This is clearly laid down in authoritative Sanskrit Texts. Thus, in his Bhashya on the Purva Mimamsa, Adhyaya 9, Pada 1, Sabara Swami states :

“देवग्रामो, देवक्षेत्रमिति, उपचारमात्रम् । यो यदभिप्रेतं विनियोक्तर्महति, तत्तस्य स्वम् । न च ग्रामं क्षेत्रं वा यथाभिप्रायं विनियुक्तडे । तस्मान्न संप्रच्चातीति । देवपरिचार काणां तु ततो भूतिर्भवति, दवतामुदिदश्य यत् त्यक्तम् ।”

"Words such as 'Village of the Gods', 'land of the Gods' are used in a figurative sense. That is property which can be said to belong to a person, which he can make use of as he desires. God however, does not make use of the, village or lands, according to its desires". Likewise, Medhathithi in commenting on the expression 'Devaswam' in Manu, Chapter XI, Verse 26, writes:

“देवानुच्छिश्य, यागादि क्रियार्थं धनं यदुत्सृ टं, तच्छेवस्वम् मुख्यस्य स्वस्वामिसंबन्धस्य, देवाना असंभवात् ।”

"Property of the Gods, Devaswam, means whatever is abandoned for Gods, for purposes of sacrifice and the like, because ownership in the primary sense, as showing the relationship between the owner and the property owned, is impossible of application, to Gods". Thus, according to the texts, the Gods have no beneficial enjoyment of the properties, and they can be described as their owners only in a figurative sense (Gaunartha). **The correct legal position is that the idol as representing and embodying the spiritual purpose of the donor is the juristic person recognised by law and in this juristic person the dedicated property vests. As observed by Mr. Justice B. K. Mukherjea:**

"With regard to Debutter, the position seems to be somewhat different. What is personified here, is

not the entire property which is dedicated to the deity but the deity itself which is the central part of the foundation and stands as the material symbol and embodiment of the pious purpose which the dedicator has in view. "The dedication to deity", said Sir Lawrence Jenkins in Bhupati v. Ramlal, 10 CLJ 355 at 369, "is nothing but a compendious expression of the pious purpose for which the dedication is designed". It is not only a compendious expression but a material embodiment of the pious purpose and though there is difficulty in holding that property can reside in the aim or purpose itself, it would be quite consistent with sound principles of Jurisprudence to say that a material object which represents or symbolises a particular purpose can be given the status of a legal person, and regarded as owner of the property which is dedicated to it."

The legal position is comparable in many respects to the development in Roman Law. So far as charitable endowment is concerned Roman Law-as later developed recognised two kinds of juristic persons. One was a corporation or aggregate of persons which owed its juristic personality to State sanction. A private person might make over property by way of gift or legacy to a corporation already in existence and might at the same time prescribe the particular purpose for which the property was to be employed e.g. feeding the poor, or giving relief to the poor distressed. The recipient corporation would be in a position of a trustee and would be legally bound to spend the funds for the particular purpose. The other alternative

was for the donor to create an institution or foundation himself. This would be a new juristic person which depended for its origin upon nothing else but the will of the founder, provided it was directed to a charitable purpose. The foundation would be the owner of the dedicated property in the eye of law and the administrators would be in the position of trustees bound to carry out the object of the foundation. As observed by Sohm:

*"During the later Empire--from the fifth century onwards--foundations created by private individuals came to be recognised as foundations in the true legal sense, but only if they took the form of a *ipia cause*' (*'piumcorpus*') i.e. were devoted to 'pious uses', only in short, if they were charitable institutions. Wherever a person dedicated property--whether by gift *inter vivos* or by will--in favour of the poor, or the sick, or prisoners, orphans, or aged people, he thereby created *ipso facto* a new subject of legal rights--the poor-house, the hospital, and so forth--and the dedicated property became the sole property of this new subject; it became the sole property of the new juristic person whom the founder had called into being. Roman law, however, took the view that the endowments of charitable foundations were a species of Church property. *Piae causas* were subjected to the control of the Church, that is, of the bishop or the ecclesiastical administrator, as the case might be. A *pia causa* was regarded as an ecclesiastical, and consequently, as a public institution, and as such it shared that corporate*

capacity which belonged to all ecclesiastical institutions by virtue of a general rule of law. A pia causa did not require to have a juristic personality expressly conferred upon it. According to Roman law the act-whether a gift inter vivos or a testamentary disposition-whereby the founder dedicated property to charitable uses was sufficient, without more, to constitute the pia cause a foundation in the legal sense, to make it, in other words, a new subject of legal rights".

We should, in this context, make a distinction between the spiritual and the legal aspect of the Hindu idol which is installed and worshipped. From the spiritual standpoint the idol may be to the worshipper a symbol (pratika) of the Supreme God-head intended to invoke a sense of the vast and intimate reality, and suggesting the essential truth of the Real that is beyond all name or form. It is basic postulate of Hindu religion that different images do not represent different divinities, they are really symbols of One Supreme Spirit and in whichever name or form the deity is invoked, the Hindu worshipper purports to worship the Supreme Spirit and nothing else.

“इन्द्र मित्रं बरुणम् अग्निम् आहर्—

एकं सद् विप्रा बहुधा वदन्ति। “ (Rig Veda I-164)

(They have spoken of Him as Agni, Mitra, Varuna, Indra; the one Existence the sages speak of in many ways).

The Bhagavad Gita echoes this verse when it says:

“वायुर यमोअ ग्बिर वरुणः शशांक

प्रजापतिस् त्वं प्रपितामहश्च।” (Chap. XI-39)

(Thou art Vayu and Yama, Agni, Varuna and Moon;

Lord of creation art Thou, and Grandsire).

Samkara, the great philosopher, refers to the one Reality, who, owing to the diversity or intellects (matibheda) is conventionally spoken of (parikalpya) in various ways as Brahma, Visnu and Mahesvara. It is however possible that the founder of the endowment or the worshipper may not conceive on this highest spiritual plane but hold that the idol is the very embodiment of a personal God, but that is not a matter with which the law is concerned. Neither God nor any supernatural being could be a person in law. But so far as the deity stands as the representative and symbol of the particular purpose which is indicated by the donor, it can figure as a legal person. The true legal view is that in that capacity alone the dedicated property vests in it.” (pages 558-560)

1791. It is thus well established by high authorities that a Hindu idol is a "juristic person" in whom the dedicated property vests. In **Manohar Ganesh vs. Lakshmiram (supra)** called the Dakor temple case. West and Birdwood, JJ., state:

"The Hindu Law, like the Roman Law and those derived from it, recognises not only incorporate bodies with rights of property vested in the corporation part form its individuals members but also juridical persons called foundations. A Hindu who wishes to establish a religious or charitable institution may according to his law express his purpose and endow it and the ruler will give effect to the bounty or at least, protect it so far at any rate as is consistent with his own Dharma or conception of morality. A trust is not required for the purpose; the necessity of a trust in such a case is indeed a peculiarity and a modern

peculiarity of the English Law. In early law a gift placed as it was expressed on the altar of God, sufficed it to convey to the Church the lands thus dedicated. It is consistent with the grants having been made to the juridical person symbolised or personified in the idol". The same view has been expressed by the Madras High Court in Vidyapurna Tirtha Swami Vs. Vidyaniidhi Tirtha Swami, (1904) ILR 27 Mad 435, in which Mr. Justice Subramania Ayyar stated.

"It is to give due effect to such a sentiment, widespread and deep-rooted as it has always been with reference to something not capable of holding property as a natural person, that the laws of most countries have sanctioned the creation of a fictitious person in the matter, as is implied in the felicitous observation made in the work already cited "Perhaps the oldest of all juristic persons is the God, hero or the saint" (Pollock and Maitland's History of English Law, Volume I, p.481.)

That the consecrated idol in a Hindu temple is a juridical person has been expressly laid down in Manohar Ganesh's case (supra), Which Mr. Prannath Saraswati, the author of the Tagore Lectures on Endowments" rightly enough speaks of as one ranking as the leading case on the subject, and in which West J., discusses the whole matter with much erudition. And in more than one case, the decision of the Judicial Committee proceeds on precisely the same footing (Maharancee Shibessouree Debia vs. Mothooranath Acharjo, (1869-70) 13 Moo Ind App 270 (PC), and Prosunno Kumari Debya vs. Golab Chand Baboo, (1874-75) 2 Ind App 145 (PC). Such ascription of legal

*personality to an idol must however be incomplete unless it be likened to a natural person with references to the preservation and management of the property and the provision of human guardians for them variously designated in different parts of the country. In (1874-75) Ind App 145 (PC) the judicial Committee observed thus: "It is only in an ideal sense that property can be said to belong to an idol and the possession and management must in the nature of things be entrusted with some person as shebait or manager. It would seem to follow that the person so entrusted must of necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property at least to as great a degree as the manager of an infant heir" - words which seem to be almost an echo of what was said in relation to a church in a judgment of the days of Edward I: "**A church is always under age and is to be treated as an infant and it is not according to law that infants should be disinherited by the negligence of their guardians or be barred of an action in case they would complain of things wrongfully done by their guardians while they are under age**" (Pollock and Maitlands's 'History of English Law'. Volume I, p. 463)".*

1792. It should however be remembered that the juristic person in the idol is not the material image, and it is an exploded theory that the image itself develops into a legal person as soon as it is consecrated and vivified by the Pran Pratishtha ceremony. It is not also correct that the supreme being of which the idol is a symbol or image is the recipient and owner of the dedicated property. This is clearly laid down in authoritative Sanskrit

Texts. Thus, in his Bhashya on the Purva Mimamasa, Adhyaya 9, para 1, Sabara Swami states:

दैवग्रामो, दैवक्षेत्रमिति, उपचारमित्रम्, यो पदमभिप्रैतम्
विनयोक्तमहति, तत्रस्य स्वम् ।

न च ग्रामम् क्षेत्रम् वा यथाभिप्रायम् विनियुक्त दैवता, तस्मान्न
सम्प्रयच्छतोति ।

देवपरिचारकाणाम् तु ततो भतिर्भवति, देवतामुधिश्च यत्
त्यक्तम् ।

"Words such as 'village of the Gods,' 'land of the Gods' are used in a figurative sense. That is property which can be said to belong to a person, which he can make use of as he desires. God however does not make use of the village of lands, according to its desires".

1793. The legal position is comparable in many respects to the development in Roman Law. So far as charitable endowment is concerned, Roman Law, as later developed recognised two kinds of juristic persons. One was a corporation or aggregate of persons which owed its juristic personality to State sanction. A private person might make over property by way of gift or legacy to a corporation already in existence and might at the same time prescribe the particular purpose for which the property was to be employed e.g. feeding the poor, or giving relief to the poor or distressed/. The recipient corporation would be in a position of a trustee and would be legally bound to spend the funds for the particular purpose. The other alternative was for the donor to create an institution or foundation himself. This would be a new juristic person which depended for its origin upon nothing else but the will of the founder provided it was directed to a charitable purpose. The foundation would be the owner of the dedicated property in the eye of law and the administrators would be in the position of

trustees bound to carry out the object of the foundation. As observed by Sohm:

"During the later Empire - from the fifth century onwards - foundations created by private individuals came to be recognised as foundations in the true legal sense, but only if they took the form of a 'pia causa' ('Pium corpus') i.e., were devoted to 'pious uses', only in short, if they were charitable institutions. Wherever a person dedicated property - whether by gift inter vivos or by will - in favour of the poor, or the sick, or prisoners, orphans, or aged the dedicated property became the sole property of this new subject: it became the sole property of the new juristic person whom the founder had called into being. Roman law, however, took the view that the endowments of charitable foundations were a species of Church property, Piae causae were subjected to the control of the Church, that is, of the bishop or the ecclesiastical administrator, as the case might be. A pia causa was regarded as an ecclesiastical, and consequently, as a public institution, and as such it shared that corporate capacity which belonged to all ecclesiastical institutions by virtue of a general rule of law. A pia causa did not require to have a juristic personality expressly conferred upon it. According to Roman law the act - whether a gift inter vivos or a testamentary disposition - whereby the founder dedicated property to charitable uses was sufficient, without more to constitute the pia causa a foundation in the legal sense, to make it, in other words, a new subject of legal rights"

1794. We should in this context, make a distinction between the spiritual and the legal aspect of the Hindu idol which is

installed and worshipped. From the spiritual stand point the idol may be to the worshipper a symbol (Pratika) of the Supreme God-head intended to invoke a sense of the vast and intimate reality and suggesting the essential truth of the Reaj that is beyond all name of form, It is a basic postulate of Hindu religion that different images do not represent different divinities, they are really symbols of One Supreme Spirit and in which ever name or from the deity is invoked, the Hindu worshipper purports to worship the Supreme Spirit and nothing else.

(Rig Veda I. 164)

*They have spoken of Him as Agni, Mitra, Varuna, Indra, **the one Existence the sages speak of in many ways**). The Bhagavad Gita echoes this verse when it says:*

*(Thou art Vayu and Yama, Agni, Varuna and Moon: Lord of Creation art Thou, and Grandsire). Sankara - the great philosopher – **refers to the one Reality, who, owing to the diversity of intellects (Matibheda) is conventionally spoken of (Parikalpya) in various ways as Brahman, Visnu and Mahesvara. It is however possible that the founder of the endowment or the worshipper may not conceive on this highest spiritual plane but hold that the idol is the very embodiment of a personal God, but that is not a matter with which the law is concerned. Neither God nor any supernatural being could be a person in law. But so far as the deity stands as the representative and symbols of the particular purpose which is indicated by the donor, it can figure as a legal person. The true***

*legal view is that in that capacity alone the dedicated property vests in it. There is no principle why a deity as such a legal person should not be taxed if such a legal person is allowed in law to own property even though in the ideal sense and to sue for the property, to realise rent and to defend such property in a Court of law again in the ideal sense... **Our conclusion is that the Hindu idol is a juristic entity..** capacity of holding property and of being taxed through its shebaites who are constructed with the possession and management of its property.*

1795. In **Kalanka Devi Sansthan (supra)** reiterating that a Hindu idol is a juristic person, with respect to the vesting of property, it held:

*“The distinction between a manager or a Shebait of an idol and a trustee where a trust has been created is well recognised. The properties of the trust in law vest in the trustee whereas **in the case of an idol or a Sansthan they do not vest in the manager or the Shebait. It is the deity or the Sansthan which owns and holds the properties. It is only the possession and the management which vest in the manager**” (Para 5)*

1796. When property is given absolutely for the worship of an idol it vests in the idol itself as a juristic person. However, the idol cannot take advantage of the provision contained in the Act by which possession can be claimed from the tenant on the ground **that it is required for personal cultivation. The position of idol is not the same as minor and the idol does not fall within Explanation 1 to S.2 (12).**

1797. Physical or mental disability as defined by Section 2

(22) lays emphasis on the words "personal labour of supervision". The dominating idea of anything done personally or person is that the thing must be done by the person himself and not by or through some one else. It is true that the idol is capable of holding property in the same way as a natural person. It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would. In such circumstances, on analogy, be given to the manager of the estate of an infant heir. But the requirement of personal supervision under the third category of personal cultivation provided for in the definition under S. 2 (12) does not admit of an intermediary between the landlord and the laborers, who can act as agent of landlord, it cannot be said that it is possible in the case of another landlord merely because the landlord in the latter case is a juristic person. The cultivation of the land concerned must be by natural persons and not by legal persons. The provisions of the Berar Regulation of Agricultural Leases Act (C.P. Act 2 of 1951) which is already repealed, are of no help in deciding whether idol can cultivate personally within meaning of Explanation 1 to Section 2 (12) of the Bombay Act.

1798. In **Official Trustee of West Bengal Vs. Commissioner of Income-tax (supra)** the Hon'ble Apex Court referring number of decisions reached to a conclusion that *"a Hindu Deity is a juristic person is a well-established proposition and has been so for a long time."*

1799. In **Smt. Panna Banerjee and Ors. Vs. Kali Kinkor Ganguli (supra)** the Court held against sale of deity and paras 65 and 66 held:

“65. Moreover the alleged custom, if any, as to the sale of these deities is wholly void. An idol can never be the subject matter of commerce. The sale of an idol is prohibited by Hindu Law, (See *Khettar Chunder Ghose v. Haridas Bundopadhyay*, (1890) I.L.R.17 Cal. 557 at p. 559). **A deity is not a chattel but a juridical person. No custom can ever validate a sale of any deity.** The legal necessity of the deity cannot destroy the very existence of the deity by selling it in the open market. The very thought of it is opposed to the fundamental concept of the Hindu Jurisprudence. It is against public policy. It is wholly unreasonable. It is absolutely repugnant to the Hindu Law. It is so repulsive to the judicial mind that every Court is bound to strike it down in limine.

66. No one has ever heard that a deity can be served or be sold by bits and bits. The deity is indivisible. It is the supreme Being. **The deity is not a property and no one can be its owner not even its founder.** The shebait is the manager of the deities though in reality they are its glorified servants. **No shebait can ever be the owner of any deity.** He is the custodian of the idol but this custody does not nor can it ever confer any right on him to sell the deity.” (emphasis added)

1800. The Calcutta judgment went in appeal to the Apex Court. Affirming the judgment of the High Court, in **Kali Kinkor Ganguly Vs. Panna Banerjee (supra)**, the Apex Court in paras 24 and 25 said:

“24. Dr. B.K. Mukherjea in his *Tagore Law Lectures* has pointed out that the decision in *Prasanna Kumari's case (supra)* was that the rule of necessity extended only to an

alienation of the temporality of the idol and it does not and cannot apply to alienation to the spiritual rights and duties. Dr. Mukherjea illustrated this with reference to the decision in Nagendra Nath v. Rabindra I.L.R. 53 Cal. 132=(AIR 1926 Cal 490) and an earlier decision in Rajeswar v. Gopeswar (supra). The doctrine of alienation of shebaitship on the ground of necessity or benefit to the deity is said by Dr. Mukherjea to be of doubtful authority and based upon a misconception of certain pronouncements of the Judicial Committee.

*25. In the present case, the appellant cannot invoke the doctrine of transfer of shebaiti right for the benefit of the deity because the transfer by Pramila Debi to Upendra Nath Ganguli is illegal for the principal reason that **neither the temple nor the deities nor the shebaiti right can be transferred by sale for pecuniary consideration.** The transfer by sale is void in its inception.” (emphasis added)*

The Apex Court, however, expressed its disagreement with the reasons contained in the concurring judgment of the High Court.

1801. In **Ram Jankijee Deities Vs. State of Bihar (supra)** the concept of “idol” or “deity” in Hindu Law was considered and in paras 11, 13 and 14 the Court observed :

“11. “Hindu Law recognizes Hindu idol as a juridical subject being capable in law of holding property by reason of the Hindu Shastras following the status of a legal person in the same way as that of a natural person. It is not a particular image which is a juridical person but it is a particular bent of mind which consecrate the image. How

one sees the Deity : how one feels the deity and recognizes the deity and then establishes the same in the temple upon however performance of the consecration ceremony...”

13. *Divergent are the views on the theme of images or idols in Hindu Law. One school propagates God having Swayambhu images or consecrated images: the other school lays down God as omnipotent and omniscient and the people only worship the eternal spirit of the deity and it is only the manifestation or the presence of the deity by reason of the charm of the mantras.*

14. *Images according to Hindu authorities, are of two kinds: the first is known as **Swayambhu or self-existent or self-revealed**, while the other is **Pratisthita or established**. The Padma Purana says: "the image of Hari (God) prepared of stone earth, wood, metal or the like and established according to the rites laid down in the Vedas, Smritis and Tantras is called the established images.....where the self- possessed Vishnu has placed himself on earth in stone or wood for the benefit of mankind, that is styled the self-revealed." (B.K. Mukherjea - Hindu Law of Religious and Charitable Trusts: 5th Edn.) A Swayambhu or self-revealed image is a product of nature and it is Anadi or without any beginning and the worshippers simply discover its existence and such images do not require consecration or Pratistha but a manmade image requires consecration. This manmade image may be painted on a wall or canvas. The Salgram Shila depicts Narayana being the Lord of the Lords and represents Vishnu Bhagwan. It is a Shila - the shalagram form partaking the form of Lord of the Lords Narayana and*

Vishnu." (emphasis added)

1802. The concept of image and deity in Hindu Law has been told in para 16 to 19 of **Ram Jankijee Deities (supra)**:

*"16. The observations of the Division Bench has been in our view true to the Shastras and we do lend our concurrence to the same. If the **people believe in the temples' religious efficacy no other requirement exists as regards other areas** and the learned Judge it seems has completely overlooked this aspect of Hindu Shastras-In any event, Hindus have in Shastras "Agni" Devta; "Vayu" Devta-these deities are shapeless and formless but for every ritual Hindus offer their oblations before the deity. The Ahuti to the deity is the ultimate - the learned Single Judge however was pleased not to put any reliance thereon. **It is not a particular image which is a juridical person but it is a particular bent of mind which consecrate the image.***

17. One cardinal principle underlying idol worship ought to be borne in mind:

"that whichever god the devotee might choose for purposes of worship and whatever image he might set up and consecrate with that object, the image represents the Supreme God and none else. There is no superiority or inferiority amongst the different gods. Siva, Vishnu, Ganapati or Surya is extolled, each in its turn as the creator, preserver and supreme lord of the universe. The image simply gives a name and form to the formless God and the orthodox Hindu idea is that conception of form is only for the benefit of the worshipper and nothing

else." (B.K. Mukherjea - on Hindu Law of Religious and Charitable Trusts-5th Edn.).

18. In this context reference may also be made to an earlier decision of the Calcutta High Court in the case of *Bhupati Nath Smrititirtha v. Ram Lal Maitra*, wherein Chatterjee, J. (at page 167) observed:-

"A Hindu does not worship the "idol" or the material body made of clay or gold or other substance, as a mere glance at the mantras and prayers will show. They worship the eternal spirit of the deity or certain attributes of the same, in a suggestive form, which is used for the convenience of contemplation as a mere symbol or emblem. It is the incantation of the mantras peculiar to a particular deity that causes the manifestation or presence of the deity or according to some, the gratification of the deity." (emphasis added)

"19. God is Omnipotent and Omniscient and its presence is felt not by reason of a particular form or image but by reason of the presence of the omnipotent: **It is formless, it is shapeless and it is for the benefit of the worshippers that there is manifestation in images of the Supreme Being.** 'The Supreme Being has no attribute, which consists of pure spirit and which is without a second being, i.e. God is the only Being existing in reality, there is no other being in real existence excepting Him - (see in this context Golap Chandra Sarkar, *Sastri's Hindu Law: 8th Edn.*). It is the human concept of the Lord of the Lords - it is the human vision of the Lord of the Lords: How one sees the deity: how one feels the deity and recognises the deity and then

establishes the same in the temple (sic depends) upon however performance of the consecration ceremony. The Shastras do provide as to how to consecrate and the usual ceremonies of Sankalpa and Utsarga shall have to be performed for proper and effective dedication of the property to a deity and in order to be termed as a juristic person. In the conception of Debutter, two essential ideas are required to be performed: In the first place, the property which is dedicated to the deity vests in an ideal sense in the deity itself as a juristic person and in the second place, the personality of the idol being linked up with natural personality of the shebait, being the manager or being the Dharam karta and who is entrusted with the custody of the idol and who is responsible otherwise for preservation of the property of the idol. The Deva Pratistha Tatwa of Raghunandan and Matsya and Devi Puranas though may not be uniform in their description as to how Pratistha or consecration of image does take place but it is customary that the image is first carried to the Snan Mandap and thereafter the founder utters the Sankalpa Mantra and upon completion thereof, the image is given bath with Holy water, Ghee, Dahi, Honey and Rose water and thereafter the oblation to the sacred fire by which the Pran Pratistha takes place and the eternal spirit is infused in that particular idol and the image is then taken to the temple itself and the same is thereafter formally dedicated to the deity. A simple piece of wood or stone may become the image or idol and divinity is attributed to the same. As noticed above, it is formless, shapeless but it is the human concept of a particular divine existence which gives it the

shape, the size and the colour. While it is true that the learned Single Judge has quoted some eminent authors but in our view the same does not however, lend any assistance to the matter in issue and the Principles of Hindu Law seems to have been totally misread by the learned Single Judge.” (emphasis added)

1803. In **Shiromani Gurudwara Prabandhak Committee Amritsar Vs. Shri Som Nath Dass (supra)**, the question before the Hon'ble Apex Court was whether Guru Granth Sahib was a juristic person or not. While dealing with the issue, the Court observed that certain places of worship which were endowed and recognized by public, like a Gurudwara, a church etc. can also be juristic persons:

"Thus, it is well settled and confirmed by the authorities on jurisprudence and Courts of various countries that for a bigger thrust of socio-political-scientific development evolution of a fictional personality to be a juristic person became inevitable. This may be any entity, living, inanimate, objects or things. It may be a religious institution or any such useful unit which may impel the Courts to recognise it. Similarly, where there is any endowment for charitable purpose it can create institutions like a church, hospital, gurudwara, etc. The entrustment of an endowed fund for a purpose can only be used by the person so entrusted for that purpose in as much as he receives it for that purpose alone in trust. When the donor endows for an idol or for a mosque or for any institution, it necessitates the creation of a juristic person. The law also circumscribes the rights of any person receiving such entrustment to use it only for the purpose of such a juristic

person. The endowment may be given for various purposes, may be for a church, idol, gurdwara or such other things that the human faculty may conceive of, out of faith and conscience but it gains the status of juristic person when it is recognised by the society as such.”

1804. In the above case the Apex Court in para 30 and 35, also held:

*“30. An idol is a “juristic person” because it is adored after its consecration, in a temple. The offering are made to an idol. The followers recognise an idol to be symbol for God. Without the idol, the temple is only a building of mortar, cement and bricks which has no sacredness or sanctity for adoration. Once recognised as a “juristic person”, the idol can hold property and gainfully enlarge its coffers to maintain itself and use it for the benefit of its followers. On the other hand in the case of mosque there can be no idol or any images of worship, yet the mosque itself is conferred with the same sacredness as temples with idol, based on faith and belief of its followers. Thus the case of a temple without idol may be only brick, mortar and cement but not the mosque. Similar is the case with the church. As we have said, **each religion have different nuclei, as per their faith and belief for treating any entity as a unit.**” (Para 30)*

*“In our view, **no endowment or a juristic person depends on the appointment of a manager.** It may be proper or advisable to appoint such a manager while making any endowment but in its absence, it may be done either by the trustees or courts in accordance with law. Mere absence of a manager (sic. does not) negative the existence of a*

juristic person. As pointed out in Manohar Ganesh Vs. Lakhmiram (approved in Jogendra Nath Naskars case) referred to above, if no manager is appointed by the founder, the ruler would give effect to the bounty. (Para 35)

1805. The Court in **Shiromani Gurdwara Prabandhak Committee, Amritsar Vs. Som Nath Dass & Ors. (supra)** held ultimately Guru Granth Sahib a legal person and rules that a juristic person may be entity, living being, object or thing.

1806. The status of Hindu idol, therefore, as juridical person cannot be disputed in view of the aforementioned authority/pronouncement on this aspect. It is true that the initial verdict of Privy Council in **Vidya Varuthi Thirtha Vs. Baluswami Ayyar (supra)** and **Pramatha Nath Mullick (supra)** did attract some otherwise opinion from certain jurist like Dr.S.C. Bagchi in his Ashutosh Mookerjee Lectures, 1931 on Juristic Personality of Hindu Deities, has illustrated in Lecture III, pp. 51-78 and Sir Frederick Pollock in 41 Law Quarterly Review at page 421 but it is too late in the day. Now to admit of any exception in the matter in the case of an idol, therefore, answer is quite easy though in the context of requirement of consecration, as argued by the learned counsels for Muslim parties, it is yet to be seen as to when and in what circumstances an idol can be said to be a Deity having conferred with the juridical personality. It is no doubt true that every idol is not treated to be a Deity. Some Shastric procedure is provided for the said purpose but what is that procedure, how it is to be observed and in what manner rule travels in much wider plane.

1807. In **Damodar Das Vs. Adhikari Lakhan Das (1909-10) 37 IA 147**, debuttar property vested in an idol and managed by Mahant. On his death, his two Chelas, represented by plaintiff

and defendant settled a disputed right to succession by an ikrarnama in 1874 under which each chela obtained possession of the share of debottar properties allotted to him. The suit brought in 1901 to eject the defendant from the property allotted to him was held barred by limitation, treating his possession adverse to the idol and also to the plaintiff. It is a short judgment. The report of the judgment shows that it was not contested by the respondents before the Judicial Committee. The Privy Council though held that the property prior to the execution of Ikrarnama vested in idol, the legal entity and Mahant was only his representative and manager but then proceeded to hold that on execution of Ikrarnama the possession of junior Chela pursuant to the Ikrarnama became adverse to the right of the idol and of the senior chela, representing that idol and therefore, the suit was barred by limitation. (Subsequently the Apex Court in **Bishwanath Vs. Sri Thakur Radha Ballabhi (supra)** has held that an idol is a minor and that being so, it could not have filed a suit by itself.) In a case where two Chelas executed Ikrarnama themselves, it was unexpected that one of them would have filed suit for restoration of the possession of the property of the idol. Moreover, if both the chelas could have been treated to be co-shebaits of the idol's property, the possession of the property would be permissive and in case there was any trespass, the property being that of minor, the question of adverse possession would not come. The limitation would not commence as held subsequently by the Apex Court. It is well settled now that the judgments of the Privy Council are binding on the High Courts only if there is no otherwise judgments or authority of the Apex Court but where there is authority of the Apex Court otherwise, it being the law of the

land under the Constitution of India, the judgment of the Privy Council has not a binding precedent.

1808. A Full Bench of Bombay High Court in **State of Bombay Vs. Chhaganlal Gangaram Lavar, AIR 1955 Bom. 1** considered the question of binding nature of decisions of the Privy Council after independence and enforcement of Constitution on 26.01.1950 and held:

“So long as the Supreme Court does not take a different view from the view taken by the Privy Council, the decisions of the Privy Council are still binding upon us, and when we say that the decisions of the Privy Council are binding upon us, what is binding is not merely the point actually decided but an opinion expressed by the Privy Council, which opinion is expressed after careful consideration of all the arguments and which is deliberately and advisedly given.”

1809. This decision has been referred to with approval by the Apex Court in **Pandurang Kalu Patil and another Vs. State of Maharashtra, AIR 2002 SC 733**. It is thus clear that it is only an opinion expressed by the Privy Council after careful consideration of all the arguments and which is deliberately and advisedly given which is binding and not merely point actually decided. We, however, propose to consider the above judgment in **Damodar Das Vs. Adhikari Lakhn Das (supra)** in detail to show as to what actually was held therein while discussing issue no. 13 pertaining to limitation in Suit-5 and leave this as it is at this stage.

1810. A Full Bench in **Jodhi Rai Vs. Basdeo Prasad, 8 ALJ 817=(1911) ILR 33 Allahabad 735** held that a suit on behalf of an idol must be carried on by some person who represents the

idol usually a manager of the temple, in which the idol is installed.

1811. In **Darshan Lal and others Vs. Shibji Maharaj Birajman, AIR 1923 All. 120**, the question arose as to whether Swami Lachhmi Nand, priest of the temple was entitled to file a suit as a next friend of the idol. He said that he looks after the management of the temple which the Court understood as if he conducts the worshipped and dispensed such charities, if any, as are customary at the said shrine and held that Sri Lachhmi Nand was entitled to bring suit as a next friend of the idol. It said:

" The fact that he is not the manager or trustee under the particular deed of endowment which he desires to set up for the benefit of the aforesaid idol would not prevent him from having a right to act on behalf of the idol in this litigation, if he occupied a position of manager or trustee qua the performance of these ceremonies of worship or charities for the benefit of which the trust monies were directed to be applied."

1812. However, the Court further held that a person claiming a mere benevolent interest in the fortunes of an idol cannot be permitted to sue in the name and as next friend of the idol.

1813. In **Sheo Ramji Vs. Ridhnath Mahadeo Ji AIR 1923 All. 160** the Court permitted a suit brought by the idol through Sri Vivekanand as next friend to recover possession of the property said to be wrongly sold by a relative of one Ajudhia Puri who was the original manager of the temple property. The Court found that Ajudhia Puri was the original manager of the temple property and had died. His Chela and successor was a minor. Amongst others one Ram Kishna Das was appointed to

supervise the management who in his turn appointed one Sri Vivekanand as guardian of the property of the idol on behalf of the minor. Some property of the idol was sold by a relative of Ajudhia Puri and to recover its possession Vivekanand filed the suit. The Court held that Vivekanand has sufficient interest in the subject matter of the suit to bring the same in the name and on behalf of the idol.

1814. In **Pramatha Nath Mullick (surpa)**, on page 143, held that an idol is a juristic person and the Shebait is its representative. It is not movable property and cannot be willed away by the Shebait and observed:

*“There may be, in the nature of things, difficulties in adjusting the legal status of the idol to the circumstances and requirements of its protection and location and there may no doubt also be a variety of other contracts of such a persona with mundane ideas. But **an argument which would reduce a family idol to the position of a mere moveable chattel is one to which the Board can give no support. They think that such an argument is neither in accord with a true conception of the authorities, nor with principle.** The Board does not find itself at variance with the views upon this subject taken in the Appellate Court or with the analysis of the authorities there contained.*

1815. In **Pramatha Nath Mullick vs. Pradyumna Kumar Mullick (supra)** the Court also said that an idol may appear by its interested next friend. The Judicial Committee observed:

“One of the questions emerging at this point, is as to the nature of such an idol and the services due thereto. A Hindu idol is, according to long established authority,

founded upon the religious customs of the Hindus, and the recognition thereof by Courts of Law, a "juristic entity." It has a juridical status with the power of suing and being sued. Its into rests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir. It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established." (page 140)

"The person founding a deity and becoming responsible for those duties is de facto and in common parlance called shebait. This responsibility is, of course, maintained by a pious Hindu, either by the personal performance of the religious rites or—as in the case of Sudras, to which caste the parties belonged—by the employment of a Brahmin priest to do so on his behalf. Or the founder, any time before his death or his successor likewise may confer the office of shebait on another." (page 141)

"It must be remembered in regard to this branch of the law that the duties of piety from the time of the consecration of the idol are duties to something existing which, though symbolising the Divinity, has in the eye of the law a status as a separate persona. The position and rights of the deity must in order to work this out both in regard to its preservation, its maintenance and the services to be performed, be in the charge of a human being." (page 141)

9. *"A fortiori it is open to an idol acting through his*

guardian the Shebait to conduct its own worship in its own way at its own place always on the assumption that the acts of the Shebait expressing its will are not inconsistent with the reverent and proper conduct of its worship by those members of the family who render service and pay homage to it.” (page 145)

1816. It shows that a Hindu deity though treated as an individual but not an ordinary individual in all sense in all respects. A Deity is not only an individual but individual plus something else.

1817. In **Administrator General of Bengal Vs. Balkissen, ILR 51 Cal 953=AIR 1925 Cal 140** the Court held that after the appointment of Shebait the right to sue for possession of the property with which the idol is endowed, belongs to the Shebait and not to the idol. With great respect, we find that the observation that the right to sue belongs to Shebait and not the idol has to be read in the context of the dispute before the Court. It cannot be read that even though the property is debutter property, that belong to an idol yet idol itself has no right to sue or being sued but this would belong to Shebait. Such an understanding and interpretation of the judgement would reduce the status of idol qua Shebait who otherwise is not held to be the owner of the debutter property since idol being a juristic person is the owner. As usually happen, since a juristic person cannot act on its own, for the purpose of procedure the action on behalf of juristic person is initiated and taken by its manager, and, in the case of an idol by the Shebait, if any, otherwise the next friend but that does not mean that the idol itself is denuded of its right to protect its property by filing a suit at all.

1818. The case of **Gopalji Maharaj Vs. Krishna Sunder**

Nath Kaviraj AIR 1929 All. 887 was decided by an Hon'ble Single Judge of this Court in the peculiar facts of that case. A suit was filed by Sri Swami Keshwanandji in the name of Sri Gopalji Maharaj, an idol of a Hindu temple claiming himself as a Manager of the shrine. As a matter of fact, the Court found that the shrine was founded by one Jagdish Pandit and successors to him in his family were Madho Sudan Das Goswami, Narhari Das Goswami, Naudip Chand Goswami and then Brij Gopal Goswami. Shebaitship or Mutwalliship vests in the family of Jagdish Pandit the founder and Sri Brij Gopal Goswami, the sole surviving member of the founder's family and Swami Keshwanand had no right in the matter. He claimed himself to be the manager of the plaintiff idol through one Mt. Basant Kumari and the Court found that she had no right to appoint Swami Keshwanand as manager of the shrine. In these circumstances, the question arose whether the suit was properly framed having been filed on behalf of the plaintiff idol by a person who was neither Mutwalli nor Shebait of the temple nor was appointed Shebait or manager of the temple by or on behalf of Brij Gopal Goswami who was the sole surviving member of the founder's family. This question was answered against Swami Keshwanand and the suit was held not maintainable. This Court recorded a finding of fact that it was not shown what interest Swami Keshwanand had in the idol or in the property belonging to the idol.

1819. In **Manohar Mukherji Vs. Bhupendra Nath AIR 1932 Cal 791** a Full Bench observed:

"But this analogy of a human transfer need not be carried too far, for the deity is not in need of property, nor does it hold any; what is given to the deity becomes

available to all.

*The deity is the recipient of the gift only in an ideal sense; the dedicated property belongs to the deity in a similar sense; in reality the property dedicated is in the nature of an ownerless thing. In ancient times, except in cases of property dedicated to a brotherhood of sanyasis, all endowments ordinarily were administered by the founder himself and after him his heirs. **The idea of appointing a shebait is of more modern growth.** When a Hindu creates an endowment, its management is primarily in him and his heirs, and unless he appoints a shebait he himself fills that office and in him rests that limited ownership, - notwithstanding that, on the one hand, he is the donor and, on the other, the recipient on behalf of the deity, the juridical person, - which has to be exercised until the property offered to the deity has been suitably disposed of. The true principle of Hindu Law is what is mentioned in the Chhandogya Upanishada, namely, that the **offerings to the gods are offerings for the benefit of all beings** (Chap. 5, p. 24 K. 2-5). And Raghunandan has quoted a text of Matsya Sukta which says:*

Having made offerings to a God, the sacrificial fee also should be given to the God. The whole of that should be given to a Brahmin otherwise it is fruitless."

1820. In **Deoki Nandan Vs. Murlidhar (supra)** the Apex Court considered the question as to who are beneficiaries when the temple is built and idol installed therein and the property endowed therefor. In paragraph no.6 of the judgment the Court held that under the Hindu law an idol is a juristic person capable of holding property and the property endowed for the institution

vests in it but it is only in an ideal sense that the idol is the owner of the endowed property and it cannot itself make use of them; it cannot enjoy them or dispose of them, or even protect them. In short, the idol can have no beneficial interest in the endowment. In para 7 the Court held that the true beneficiaries of religious endowments are not the idols but the worshippers, and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshippers. It held:

“(7) When once it is understood that the true beneficiaries of religious endowments are not the idols but the worshippers, and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshippers, the question whether an endowment is private or public presents no difficulty. The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof. In accordance with this theory, it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family, and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers.”

1821. In **Angurbala Mullick v. Debabrata Mullick (supra)**, while examining the nature of Sevayatship as a property, Hon'ble Supreme Court distinguished between the English trust

and Hindu religious endowment as:

"It is settled by the pronouncement of the Judicial Committee in Vidya Varuti v. Balusami, 48 I.A. 302 that the relation of a Shebait in regard to debutter property is not that of a trustee to trust property under the English law. In English law the legal estate in the trust property vests in the trustee who holds it for the benefit of cestui que trust. In a Hindu religious endowment on the other hand the entire ownership of the dedicated property is transferred to the deity or the institution itself as a juristic person and the Shebait or Mahant is a mere manager."

1822. Distinction between right of the idol to file a suit itself or a suit filed by Shebait for the benefit of an idol has been noticed by a Division Bench of Bombay High Court in **Shree Mahadoba Devasthan Vs. Mahadba Romaji Bidkar & Others AIR 1953 Bombay 38**. There **Jagadindra Nath Vs. Hemanta Kumar Devi (supra)** was relied on to argue that the right to sue vested in the Shebait and not in the idol. This aspect has been dealt with in a lucid manner in paras 2 and 3 of the judgment, which says:

"2. ...The contention, however, which was urged by the defendants and which found favour with the learned trial Judge was that even though the image of Shree Mahadoba was a juridical person the whole management of the properties belonging to the image could be and was carried on by its shebait or its vahivatdar and the right to sue for the protection of the properties belonging to the image of Shree Mahadoba was vested in the shebait and not in the image or the idol. Reliance was placed in support of this contention on the observations of their Lordships of

the Privy Council in Jagadindra Nath v. Hemanta Kumari Debi, 32 Cal. 129 P.C. where Sir Arthur Wilson observed (p. 141) :

"But assuming the religions dedications to have been of the strictest character, it still remains that the possession and management of the dedicated property belongs to the shebait. And this carries with it the right to bring whatever suits are necessary for the protection of the property. Every such right of suit is vested in the shebait, not in the idol, and in the present case the right to sue accrued to the plaintiff when he was under age. The case therefore falls within the clear language of S.7, Limitation Act..."

These observations were particularly relied on for the purpose of shewing that the suit for setting aside the alienations complained of could not be filed in the name of Shree Mahadoba Devasthhan at all but could only be filed in the name of the shebait for the time being who was Waman Chimnaji Waghule, original defendant 3. These observations of their Lordships of the Privy Council were, however, made in a suit which was a suit for recovering possession of the property belonging to the idol against the persons who had dispossessed the idol of the same. The shebait of the idol was then a minor. The idol was no doubt a juridical person and capable of suing or being sued, but even there the suit could be brought in the name of the idol by the shebait and the shebait was a minor with the result that their Lordships of the Privy Council held that the right of possession and management of the dedicated property having belonged to the shebait whatever suits were

*necessary for the protection of the property could also be brought by the shebait. There is no doubt that the words "not in the idol" are a part of the sentence which was used by their Lordships: "Every such right is vested in the shebait, not in the idol." Their Lordships of the Privy Council were, however, concerned with a case where even if the idol being a juridical person capable of holding the property could have filed the suit for recovering possession of the property of which it was dispossessed, that suit could only have been filed though in the name of the idol by its shebait and the shebait being a minor, they had got to consider what the position would be if the shebait was the person who could and should have filed the suit in the name of the idol for recovering possession of the property. We are of the opinion that their Lordships had not their attention focussed on this aspect of the question, namely, whether a suit could have been filed in the name of the idol by the shebait apart from the shebait vindicating his right of possession and management of the dedicated property and filing a suit for the protection of the same. This dictum of their Lordships of the Privy Council was considered by a Division Bench of the Calcutta High Court in the case of **Jyoti Prosad v. Jahor Lal**, AIR 1945 Cal 268. In the course of the judgment Biswas J. observed as follows (p. 277) :*

*"On the first point, the appellants' sheet anchor is the dictum of Sir Arthur Wilson in the Privy Council case in **Jagadindra Nath Soy v. Hemanta Kumari Debi**, 81 Ind. App. 203, that the right of suit is vested in the*

*shebait, and not in the idol, but as has been explained in various decisions this does not and cannot mean that a Hindu idol is incapable of suing. The power of suing (as also being sued) undoubtedly resides in the idol, though ex necessitate rei the power must be exercised by and through a sentient being representing the idol. As was pointed out by Pal J. In. Tarit Bhusan v. Sri Iswaar Sridhar Salagram Shila Thakur, I.L.R. (1941) 2 Cal. 477 at page 531 where this question is discussed, **the suit in Jagadindra Nath Roy v. Hemanta Kumari Debi, 31 Ind. App. 203 (P.C.), was not by the idol represented by its shebait but by the shebait himself as such to enforce the proprietary right of the idol in certain properties. The High Court had dismissed the suit as barred by limitation on the ground that as the interest was admitted to be in the idol, there was nothing to prevent a suit being brought on behalf of the idol by the plaintiff's mother during his minority, but the Judicial Committee reversed the decision, holding that as the possession and management of the dedicated property belonged to the shebait and this carried with it the right to bring whatever suits were necessary for the protection of the property, the right to sue accrued to the plaintiff, and as he was a minor at the time, he could bring the suit within three years after he attained majority under Section 7 of Act 15 of 1877 (corresponding to S. 6 of the present Limitation Act). It is in this connection that Sir Arthur Wilson made the observation on which the appellants rely."***

The learned Judge then proceeded to quote the

observations of Lord Shaw in *Pramatha Nath Mullick v. Pradhyumna Kumar Mullick*, 52 Ind. App. 245 where their Lordships of the Privy Council dwelling on the nature of a Hindu idol expressly recognised it as a juristic entity and observed that it has a juridical status with the power of suing and being sued; and also the observations of the Judicial Committee in *Radha Benode Mandal v. Gopal Jiu Thakur*, 54 Ind. App. 238 P.C., where a clear distinction was drawn between a suit in which the idol itself was the plaintiff and the suit in which the plaintiffs were shebait of the idol. The learned Judge then observed (p. 277):

"It is quite true that a Hindu idol is a juridical person capable of holding legal rights only in an ideal sense, and it may also be, as was indicated by Sir George Rankin in the Privy Council decision in Masjid Shahid Ganj v. Shiromani Gurudwira Parbandhak Committee, Amritsar, 67 Ind. App. 251 at p.264 (P.C.), that the procedure of our Courts only allows for a suit in the name of an idol, but nevertheless the position remains incontestable that a Hindu idol may be a competent plaintiff in a suit in respect of property held or claimed by it, and that this is a right quite distinct from that which belongs to its shebait or shebait to sue on its behalf."

(3) Normally speaking, a manager or an agent would not be competent to file a suit in his own name in regard to the affairs of his principal and such a suit even if brought by the manager would have to be in the name of the principal. The principal in the case of an image or idol is not an

entity capable of acting on its own, with the result that it has of necessity got to act through its manager or an accredited agent, who under the circumstances is the only person capable of performing these functions in the name of the idol, The shebait is in possession and management of the property belonging to the image or idol, and laving such possession and management vested in him, it is only an extension of the principle of responsibility from the image or idol to the manager, or to use the other words, from the principal to the agent to vest the right of protection of the property which is incidental to the right of possession and management thereof by way of filing a suit in connection with the same, in the shebait. The extension of the right in the shebait however does not mean that the right which the image or the idol as a juridical person has by virtue of its holding the property to file a suit in regard thereto is by any process eliminated. Both these rights can exist simultaneously, so that if the suit is filed in the name of the image or idol, the image or the idol would be a proper plaintiff, though, as observed before, of necessity it would have to be represented in the suit by its manager or shebait. If the manager or the shebait on the other hand chooses in vindication of his right to sue for the protection of the properties to file a suit in his own name, he may just as well do so. But that would be no bar to the right of the image or the idol to file such a suit if it had chosen to do so. Of course these rights either by the image or the idol or by the manager or by the shebait could be exercised only by the one or the other and not by both; so that if the cause of action was prosecuted to judgment, it would be merged

in a decree properly passed in favour of the plaintiff and the defendant could not be proceeded against any more in respect of that very cause of action." (emphasis supplied)

1823. In **Sri Iswar Radha Kanta Jew Thakur and others V. Gopinath Das and others AIR 1960 Cal. 741** Hon'ble P.C. Mallick, J. in para 18 said:

*"According to Hindu Law, sebaait represents the deity and he alone is competent to institute a suit in the name of the deity. In exceptional circumstances, however, where the sebaait does not, or by his own act deprives himself of the power of representing the deity, a third party is competent to institute a suit in the name of the deity to protect the debutter property. Dr. Das contends that such a party must be a member of the family or a worshipper and that a total stranger, in law, is not competent to institute a suit in the name of the deity. I do not, however, consider this to be the correct view in law. A worshipper or a member of the family has no doubt his own right to institute a suit to protect his right to worship and for that purpose to protect the debutter property. That is, however, a suit by the member of the family or worshipper in his personal capacity and not a suit by the deity. **The deity has also a right of its own to have a suit instituted by a next friend. As I understand the law, the person entitled to act as next friend is not limited to the members of the family or worshipper. Anybody can act as such next friend, but the law requires that anybody other than sebaait instituting a suit in the name of the deity must be appointed as such by an order of the Court.**"*

(Para 18)

1824. In **Bishwanath & others Vs. Sri Thakur Radha Ballabhi (supra)** the Apex Court upheld the right of a deity to file a suit for declaration of its title and possession thereof. It also held that an idol of Hindu temple is a juridical person and when Shebait acts adversely to its interest, the idol being in the position of a minor, any person interested in the worship of idol can represent as its next friend to file a suit. The Court said :

"(9) Three legal concepts are well settled: (1) An idol of a Hindu temple is a juridical person; (2) when there is a Shebait, ordinarily no person other than Shebait can represent the idol; and (3) worshippers of an idol are its beneficiaries, though only in a spiritual sense....."

*"An idol is in the position of a minor and when the person representing it leaves it in a lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest. **It is a pragmatic, yet a legal solution to a difficult situation.** Should it be held that a Shebait, who transferred the property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of the Shebait's duty, for more often than not he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the transfer in a suit.....That is why decisions have permitted a worshipper in such circumstances to represent the idol and to recover the property for the idol." (Para 10)*

1825. A Single Judge in **Kishore Joo Vs. Guman Behari Joo Deo, AIR 1978 All.-1** also followed the ratio and in para 9 of the judgment observed:

"It is settled law that normally it is the Shebait alone who

can file a suit on behalf of the Idol, but it is also equally well settled that in exceptional circumstances persons other than a Shebait can institute a suit on behalf of an Idol."

1826. Now we come to some precedents about temple. In **N.C. Ramanatha Iyer Vs. Board of Commissioners for Hindu Religious Endowments, Madras AIR 1954 Madras 492** the Court observed:

"...The essential requirements of a temple are that it should be a place dedicated to, or founded for, the benefit of the Hindu community, or a section of it, and should be used as a place of worship. ..."

1827. The Apex Court in **Poohari Fakir Sadavarthy Vs. Commissioner (supra)** has laid down the requisite conditions for a religious institution to be a "temple" and observed as under:

"A religious institution will be a temple if two conditions are satisfied. One is that it is a place of public religious worship and the other is that it is dedicated to or is for the benefit of, or is used as of right by the Hindu Community, or any section thereof, as a place of religious worship."

To constitute a temple it is enough if it is a place of public religious worship and if the people believe in its religious efficacy irrespective of the fact whether there is an idol or a structure or other paraphernalia. It is enough if the devotees or the pilgrims feel that there is some super human power which they should worship and invoke its blessings." (Para 15) (emphasis added)

1828. In the above case the Court also considered Clause 12, Section 9 of Madras Hindu Religious Endowments Act, 1927

which defines 'temple' and held:

“The institution in suit will be a temple if two conditions are satisfied. One is that it is a place of public religious worship and the other is that it is dedicated to or is for the benefit of, or is used as of right by, the Hindu community, or any section thereof, as a place of religious worship. We are of opinion that the oral and documentary evidence fully establish the appellants’ case that it is not a temple as defined in the Act.” (Para 8)

1829. In **Tilkayat Shri Govindlalji Maharaj Vs. State of Rajasthan AIR 1963 SC 1638** the question when the existence of a public temple can be conceived, was considered and in para 23, it says:

"23. . . . Where evidence in regard to the foundation of the temple is not clearly available, sometimes, judicial decisions rely on certain other facts which are treated as relevant. Is the temple built in such an imposing manner that it may prima facie appear to be a public temple? The appearance of the temple of course cannot be a decisive factor; at best it may be a relevant factor. Are the members of the public entitled to an entry in the temple? Are they entitled to take part in offering service and taking Darshan in the temple,? Are the members of the public entitled to the take part in the festivals and ceremonies arranged in the temple? Are their offerings accepted as a matter of right? The participation of the member of the public in the Darshan in the temple and in the daily acts of worship or in the celebrations of festival occasions. may be a very important factor to consider in determining, the character of the temple.”

1830. Various authorities have held that public institutions can be treated as juristic person. Relationship between a temple and an institution was discussed in **Commissioner for Hindu Religious and Charitable Endowments, Mysore v. Ratnavarma Heggade (supra)**, wherein the Hon'ble Supreme Court was to decide whether the temple in dispute was a "temple" as well as a "religious endowment" under the T.N. Hindu Religious Endowments Act, 1927. While deciding the matter, Hon'ble Court observed in paragraph 45:

"If the temple as a place of worship, is an integral part of an Institution, so that it is not separable as an institution, in itself ... In such a case the "institution" is not the temple, although a temple can, by itself, be an institution."

1831. Construing the definition of "temple" under Section 6(20) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, Hon'ble Mohan, J. (as his Lordship then was) in **T.V. Durairajulu Naidu Vs. Commissioner, (supra)**, in para 18 of the judgment, observed:

"18. . . . If a sense of reverence is created by the place in the belief that God resides there or if an edifice devoted to divine worship, that would be enough to attract the definition of "Temple" under S. 6(20) of the Act. In other words, it is a sense of reverence that is very important.Nowhere the requirements as are ordinarily expected of a temple are insisted upon. It is a faith that it is the abode of God that matters. It is that compelling faith, that by offering prayers, one will be the object of bounty, that is important." (emphasis added)

1832. In **Bala Shankar Maha Shankar Bhattjee and others Vs. Charity Commissioner 1995 Suppl. (1) SCC 485** while

laying down certain principles of law, after considering the earlier decision in respect to private and public temple, it was held as under:

“18. From the aforesaid discussion the following principles of law would emerge.

*19. A place in order to be a temple, must be a place for public religious worship used as such place and must be either dedicated to the Community at large or any section thereof as a place of public religious worship. The **distinction between a private temple and public temple is now well settled.** In the case of former the beneficiaries are specific individuals; in the latter they are indeterminate or fluctuating general public or a class thereof. Burden of proof would mean that a party has to prove an allegation before he is entitled to a judgment in his favour. The one or the other of the contending parties has to introduce evidence on a contested issue. The question of onus is material only where the party on which it is placed would eventually lose if he failed to discharge the same. Where, however, parties joined the issue, led evidence, such evidence can be weighed in order to determine the issue. The question of burden becomes academic.*

*20. An idol is a juristic person capable of holding property. The property endowed to it vests in it but the idol has no beneficial interest in the endowment. The **beneficiaries are the worshippers.** Dedication may be made orally or can be inferred from the conduct or from a given set of facts and circumstances. There need not be a document to evidence dedication to the public. The consciousness of the manager of the temple or the devotees*

*as to the public character of the temple; gift of properties by the public or grant by the ruler or Govt.; and long use by the public as of right to worship in the temple are relevant facts drawing a presumption strongly in favour of the view that the temple is a public temple. The **true character of the temple may be decided by taking into consideration diverse circumstances.** Though the management of a temple by the members of the family for a long time, is a factor in favour of the view that the temple is a private temple it is not conclusive. It requires to be considered in the light of other facts or circumstances. Internal management of the temple is a mode of orderly discipline or the devotees are allowed to enter into the temple to worship at particular time or after some duration or after the head man leaves, the temple are not conclusive. The nature of the temple and its location are also relevant facts. The right of the public to worship in the temple is a matter of inference.*

*21. Dedication to the public may be proved by evidence or by circumstances obtainable in given facts and circumstances. In given set of facts, **it is not possible to prove actual dedication which may be inferred on the proved facts that place of public religious worship has been used as of right by the general public or a section thereof as such place without let or hindrance.** In a public debutter or endowment, the dedication is for the use or benefit of the public. But in a private endowment when property is set apart for the worship of the family idol, the public are not interested. The mere fact that the management has been in the hands of the members of the*

*family itself is not a circumstance to conclude that the temple is a private trust. In a given case management by the members of the family may give rise to an inference that the temple is impressed with the character of a private temple and assumes importance in the absence of an express dedication through a document. As stated earlier, consciousness of the manager or the devotees in the user by the public must be as of right. **If the general public have always made use of the temple for the public worship and devotion in the same way as they do in other temples, it is a strong circumstance in favour of the conclusiveness of public temple.** The origin of the temple, when lost in antiquity it is difficult to prove dedication to public worship. It must be inferred only from the proved facts and circumstances of a given case. No set of general principles could be laid.”*

1833. In **A.S. Narayana (supra)**, dealing this aspect the Court has observed:

“101. The temples are taken to be sanctified space where entire unfragmented Space and Time, in other words, the entire 'Universe' are deposited and the image of the Deity is worshipped symbolising the “Supreme.” Although the Deities appear to be many, each and every Deity is again viewed as the Supreme One and, therefore, the Supreme Reality is one and non-dual. The multiplicity of the Gods has been effected in order to offer the paths which are required according to the entitlement and evolution of each and everyone.”

“108. Temple has become the most important centre of activities-religious, cultural and social-among the

people, in particular rural India. Temple is conceived in the likeness of human body. Parts of the temple are named accordingly, by which the organic unity of the temple is emphasised. Obviously, therefore, religious people endow their property for upkeep of temples or propagation of religion. Majority people in India are dedicated to Vishnu, Shiva, Shakti, Ganpathi and Hanuman of Hindu Gods. The cardinal principle underlying idol worship is for one of four modes for self-realisation. Daily routine life in performing rituals to Deity will be gone through with minute accuracy of Abishek (bathing), changing of clothes, offerings of food and the retirement (rest). Religion, therefore, has occupied a significant place and role in the public life in our country. Hindus, therefore, believe that religion is an essential and powerful factor in raising humanity to higher level of thought and being. The priest (archaka or by whatever name called) would conduct rituals to the Deity as per prescribed Agamas, forms, practices and sampradayams.”

1834. In **Pritam Dass Mahant Vs. Shiromani Gurdwara Prabandhak Committee, AIR 1984 SC 858** the distinction between temple of Hindus and that of Sikhs came to be considered and the Apex Court held that temples are found almost in every religion but there are some differences between the sikh temples and those of other religions. The Apex Court thereafter pin pointed the distinctive features of Sikh Gurdwaras qua Hindu temples and held:

“(1) Sikh temples are not the place of idol worship as the Hindu temples are. There is no place for idol worship in a Gurdwara. The central object of worship in a Gurdwara is

Sri Guru Granth Sahib, the holy book. The pattern of worship consists of two main items: reading of the holy hymns followed by their explanation by some learned man, not necessarily a particular Granthi and then singing of some passages from the Holy Granth. The former is called Katha and the second is called Kirtan. A Sikh thus worships the Holy Words that are written in the Granth Sahib, the Words or Shabada about the Eternal Truth of God. No idol or painting of any Guru can be worshipped.

(2) Sikh worship in the Gurdwara is a congregational worship, whereas Hindu temples are meant for individual worship. A Sikh does the individual worship at home when he recites Gurbani daily. Some scriptures meant for this purpose are Japji, Jaap, Rahras, Kirtan Sohila. Sangat is the collective body of Sikhs who meet very day in the Gurdwara.”

1835. The above dictum was followed in **Shiromani Gurdwara Parbandhak Committee Vs. Mahant Harnam Singh and others (supra)** (para 13 of the judgement) and after referring to the above mentioned observations in para 14 the Court said:

“14. The sine qua non for an institution, to be treated as Sikh Gurdwara, as observed in the said case, is that there should be established Guru Granth Sahib, and the worship of the same by congregation, and a Nishan Sahib. There may be other rooms of the institution made for other purposes but the crucial test is the existence of Guru Granth Sahib and the worshippers thereof by the congregation and Nishan Sahib.”

1836. In **Mukundji Mahraj Vs. Persotam Lalji Mahraj**

(supra), holding that alienation of temple is not permissible, a Division Bench of High Court held in para 28 as under:

“28. Whatever may be said about a permanent alienation of endowed property other than a temple, in the very nature of things, having regard to the duties of a Manager or a Shebhait towards the idol or institution, there can be no necessity of alienating the temple or any portion of it in which the idol is installed. The maintenance of the entire building is the prime concern of the Manager or the Shebait.

The temple has a special sanctity distinct from other endowed property. To alienate the temple itself is to cut at the root of the very existence of the idol in the habitation intended by the founder Hindu Sentiment views the alienation of a temple as a sacrilege. Not until the idol has been removed from the temple in accordance with shastric rites and has assumed a new habitation and the temple abandoned as a place of worship may the temple be alienated or sold in execution of a decree.”

1837. On pointing out to Sri Ravi Shankar that in some of the judgment like that of Madras High Court, the observations are with reference to the particular statute and the definition of temple therein, Sri Prasad replied that the definition of temple in the above Acts has to be read in the light of Shastric Laws of Hindus and if any other view is taken or the definition of temple is taken otherwise then it would be illegal, ultra vires and violative of Article 25 of the Constitution which confer fundamental right of religious customs etc. according to the religious scriptures.

1838. In **Kasi Mangalath Illath Vishnu Nambudiri (supra)**

the Court held that a public temple is “res extra commercium” and says :

“.....Being a public temple and therefore res extra commercium it is not open to a private individual to acquire by prescription any private ownership in regard thereto. The character of the temple as a public temple cannot be taken away by any assertion of private right”

1839. In **Hari Raghunath Patvardhan Vs. Antaji Bhikaji Patvardhan & Others 1919 (XLIV) ILR Bombay 466** a dispute arose about removal of image from its position and to install it in a new building. The Court said :

“Taking the most liberal view of the powers of the manager, I do not think that as the manager of a public temple he can do what he claims the power to do, viz., to remove the image from its present position and to instal it in the new building. The image is consecrated in its present position for a number of years and there is the existing temple. To remove the image from that temple and to instal it in another building would be practically putting up a new temple in place of the existing temple. Whatever may be the occasions on which the installation of a new image as a substitute for the old may be allowable according to the Hindu law, it is not shown on behalf of the defendant that the ruinous condition of the existing building is a ground for practically removing the image from its present place to a new place permanently. We are not concerned in this suit with the question of the temporary removal which may be necessary when the existing building is repaired. The defendant claims the

right to instal it in the new building permanently, and I do not think that as a manager he could do so, particularly when he is not supported by all the worshippers of the temple in taking that step"

1840. In **Kalikanta Chatterjee & Ors. Vs. Surendra Nath Chakravarty & Ors. AIR 1925 Calcutta 648** an interesting question came to be considered. There was an old temple having the image of deity Tara. The image was broken about 40 years ago by some ruffians, fragments of which were subsequently recovered from a tank. The temple also fell down at that time. Thereafter the worship of the deity was carried out with a ghot (earthen pot) on an an adjoining piece of land. With the passage of time, the shrine lost its popularity. The defendant no.2 thereafter with an idea of restoring the glory of shrine, made efforts, as a result whereof a new temple was erected, and a new image was brought and installed therein. A question was raised whether there is restoration of old image by substituting a new one. The Calcutta High Court referred to a passage in a Nirnaya Sindhu and also said:

"With regard to the second contention viz., that there could be no restoration of the old image in the present case according to the Shastras, it is urged that the image is admitted in the plaint to be (Self-revealed) and reliance is placed upon a passage in the Nirnaya Sindhu (see also Dharma Sindhu) which runs as follows:

अथ जीर्णोद्धारः । स च लिंगादौ दग्धे भग्ने अलिते वा
कार्यः ।

अयञ्च अनादिसिद्ध प्रतिष्ठित लिंगादौ भंगादिदुष्टेपिन
कार्यः

तत्रतु महाभिषेकं कुर्यदिति विविक्रमः ।

10. Now renewal of Decayed (Image is considered) that

is to be performed when a Linga and the like are burnt or broken removed (from its proper place). But this is not to be performed with respect to a Linga or like which is established by a Sadhu or one who has become successful in the highest religious practices, or which is Anadi i.e., of which the commencement is not known or which has no commencement. But there Mahabhishika or the ceremony of great appointment should be performed. This is said by Tre-Vikrama:-Nirnaya Sindhu of Kamala-kara Bhatta, Bombay Edition of 1900, age 264 (See Golap Chandra sarkar's Hindu Law, 4th Edition 473). But according to the plaintiff the image was installed by some remote ancestor of his, while according to the defendants it was installed by one Jantridhar. The image therefore does not appear to be Anadi. It is then urged even if the image had a commencement, the restoration had not been made within the time prescribed. But the text from Haya Sirsha upon which reliance is placed, while laying down that the restoration after the prescribed period is blameworthy does not say that it is altogether invalid."

1841. The Court also held that it should be seen as to how the people concerned treat and if they believe and proceed that it is a restoration of old image and continue with the worship, nothing more is required.

1842. In **Purna Chandra Bysack Vs. Gopal Lal Sett & Ors. 1908 (VIII) Calcutta Law Journal 369**, Special bench of Calcutta High Court observed:

*"The image or idol is merely the symbol of the Deity, and the **object of worship is not the image but the God believed to be manifest in the image for the benefit***

of the worshipper who cannot conceive or think of the Deity without the aid of a perceptible form on which he may fix his mind and concentrate his attention for the purpose of meditation. If the image be cracked, broken, mutilated or lost, it may be substituted by a new one duly consecrated.”

1843. In **Idol of Thakurji Shri Govind Deoji Maharaj, Jaipur (supra)** the Apex Court observed in para 6 as under:

“It is obvious that in the case of a grant to the Idol or temple as such there would be no question about the death of the grantee and, therefore, no question about its successor. An Idol which is a juridical person is not subject to death, because the Hindu concept is that the Idol lives for ever, and so, it is plainly impossible to predicate about the Idol which is the grantee in the present case that it has died at a certain time and the claims of a successor fall to be determined.” (Para 6)

1844. In para 15 of the judgment in **Ram Jankijee Deities (supra)** it was held, while usually an idol is consecrated in a temple, it does not appear to be an essential condition. The Apex Court affirmed the Division Bench decision of Madras High Court in **Board of Commissioners for H.R.E. Vs. Pidugu Narasimham (supra)** and **T.R.K. Ramaswami Servai (supra)** reiterated:

"The test is not whether it conforms to any particular school of Agama Shastras. The question must be decided with reference to the view of the class of people who take part in the worship. If they believe in its religious efficacy, in the sense that by such worship they are making themselves the object of the bounty of some super-human

power, it must be regarded as "religious worship"..... If the public or that section of the public who go for worship consider that there is a divine presence in a particular place and that by offering worship there they are likely to be the recipients of the blessings of God, then we have the essential features of a temple as defined in the Act." (Para 15)

1845. A Division Bench of Andhra Pradesh High Court in **Venkataramana Murthi Vs. Sri Rama Mandhiram (supra)** observed that the existence of an idol and a dhvajasthambham are not absolutely essential for making an institution a temple and so long as the test of public religious worship at that place is satisfied, it answer the definition of a temple. This decision is also referred and approved in **Ram Jankijee Deities (supra)**.

1846. A Division Bench of Madras High Court in **Board of Commissioners for H.R.E. Vs. Pidugu Narasimham (supra)** on page 135 held :

"we think that the question must be decided with reference to the view of the class of people who take part in the worship. If they believe in its religious efficacy, in the sense that by such worship they are making themselves the object of the bounty of some super-human power, it must be regarded as "religious worship." (Page135)

1847. In **T.R.K. Ramaswami Servai Vs. Board of Commissioners (supra)** with reference to Section 9 (12) of Madras Hindu Religious Endowments Act, 1927, the Court in para 47 observed as under:

"Consecration, according to the ceremonial rites prescribed by the Agama Sastras, is not a legal requisite, though it is a sacredotal necessity according to the views of

*the orthodox. The test is not whether the installation of an idol and the mode of its worship conform to any particular school of Agama Sastras. **If the public or that section of the public who go for worship consider that there is a divine presence in a particular place and by offering worship at that place, they are likely to be the recipients of the bounty or blessings of God, then, you have got the essential features of a temple as defined in S. 9, cl. (12) of the Act. The presence of an idol, though an invariable feature of Hindu temples, is not a legal requisite under the definition of a temple in S. 9, cl. (12) of the Act. The word “institution” which is used in S. 84(1) of the Act is a term of very wide import, capable of different meanings according to the context in which it is used. It means, among other things, a foundation, a system, a constitution, an establishment, or organisation, a place designed for the promotion of some religious, charitable or other object of public utility and so on.**” (para 47) (emphasis added)*

1848. In **Saraswathi Ammal Vs. Rajagopal Ammal (supra)**, the Court while holding that, a “religious purpose” under Hindu Law must be determined according to Hindu notions, observed:

“(6) It was held in the Madras decisions above noticed that the building of a samadhi or a tomb over the remains of a person and the making of provision for the purpose of Gurupooja and other ceremonies in connection with the same cannot be recognised as charitable or religious purpose according to Hindu law. This is not on the ground that such a dedication is for a superstitious use and hence invalid. Indeed the law of superstitious uses as such has no application to India. The ground of the Madras decisions is

that a trust of the kind can claim exemption from the rule against perpetuity only if it is for a religious and charitable purpose recognised as such by Hindu law and that Hindu law does not recognise dedication for a tomb as a religious or charitable purpose. It is, however, strenuously argued by the learned counsel for the appellants that the perpetual dedication of property in the present case, as in the Madras cases above referred to, must be taken to have been made under the belief that it is productive of spiritual benefit to the deceased and as being some what analogous to worship of ancestors at a sradh.

It is urged, therefore, that they are for religious purposes and hence valid. The following passage in Mayne's Hindu Law, 11th Edition, at page 192, is relied on to show that

"What are purely religious purposes and what religious purposes will be charitable must be entirely decided according to Hindu law and Hindu notions."

It is urged that whether or not such worship was originally part of Hindu religion, this practice has now grown up and with it the belief in the spiritual efficacy thereof and that courts cannot refuse to accord recognition to the same or embark on an enquiry as to the truth of any such religious belief, provided it is not contrary to law or morality. It is further urged that unlike in English law, the element of actual or assumed public benefit is not the determining factor as to what is a religious purpose under the Hindu law.

*Now, it is correct to say that **what is a religious***

purpose under the Hindu law must be determined according to Hindu notions. This has been recognised by courts from very early times. Vide- 'Fatma Bibi v. Advocate-General of Bombay' , 6 Bom 42 (D). It cannot also be disputed that under the Hindu law religious or charitable purposes are not confined to purposes which are productive of actual or assumed public benefit. The acquisition of religious merit is also an important criterion. This is illustrated by the series of cases which recognise the validity of perpetual endowment for the maintenance and worship of family idols or for the continued performance of annual sradhs of an individual and his ancestors. See- 'Dwarkanath Bysack v. Burroda Persaud Bysack', 4 Cal 443 (E) and 'Rupa Jagashet v. Krishnaji', 9 Bom 169 (F). So far as the textual Hindu law is concerned what acts conduce to religious merit and justify a perpetual dedication of property therefor is fairly definite. As stated by the learned author Prananath Saraswathi on the Hindu Law of Endowments at page 18-

"From very ancient times the sacred writings of the Hindus divided work productive of religious merit into two divisions named 'ishta' and 'purтта', a classification which has come down to our own times. So much so that the entire object of Hindu endowments will be found included within the enumeration of 'ishta' and 'purтта'."

The learned author enumerates what are 'ishta' works at pages 20 and 21 and what are 'purтта' works at page 27. This has been adopted, by later learned authors on the law of Hindu Religious Endowments and accepted

by Subrahmania Ayyar J., in his judgment in '*Parthasarthy Pillai v. Thiruvengada Pillai*'. 30 Mad 340 at p. 342 (G). These lists are no doubt not exhaustive but they indicate that what conduces to religious merit in Hindu law is primarily a matter of Shastraic injunction. To the extent, therefore, that any purpose is claimed to be a valid one for perpetual dedication on the ground of religious merit though lacking in public benefit, it must be shown to have a Shastraic basis so far as Hindus are concerned. No doubt since then other religious practices and beliefs may have grown up and obtained recognition from certain classes, as constituting purposes conducive to religious merit. If such beliefs are to be accepted by courts as being sufficient for valid perpetual dedication of property therefore without the element of actual or presumed public benefit it must at least be shown that they have obtained wide recognition and constitute the religious practice of a substantial and large class of persons. That is a question which does not arise for direct decision in this case. But it cannot be maintained that the belief in this behalf of one or more individuals is sufficient to enable them to make a valid settlement permanently tying up property. The heads of religious purposes determined by belief in acquisition of religious merit cannot be allowed to be widely enlarged consistently with public policy and needs of modern society."

1849. The concept of idol, juristic personality and its correlation with consecration came to be considered before a Division Bench of this Court in **Gokul Nathji Maharaj and another Vs. Nathji Bhogi Lal (supra)**. The Court observed in

para 4 of the judgement:

“According to the traditions these idols that were handed over by Ballabhacharyaji to his seven grandsons were self-revealed idols of Lord Krishna and it is on that account that the learned Judge came to the conclusion that there could not have been due consecration according to law and it could not be said that the spirit of God ever came to reside in them. As it was pointed out by the learned Munsif in his very careful judgment that according to true Hindu belief the idol is not worshipped as such but it is the God behind the idol which is the object of worship.

The learned Munsif has pointed out that there are elaborate provisions in Hindu Law which enable a stone image or an image made of wood to be changed and replaced by another. It cannot be said that the stone image or image made of wood or of gold or other materials is the real object of worship or the real person owning the property. The real owner of the property is deemed to be God Himself represented through a particular idol or deity which is merely a symbol.

From the evidence it is clear that plaintiff 1 as such a symbol has been the object of worship by a large sect of people known as 'Nimar Yas' for over three hundred years and extensive properties are owned by and are in the possession of the said idol. In the circumstances, we think it was unreasonable for the learned Judge to expect that there would be any direct evidence of consecration, nor is it reasonable after such a length of time to require the plaintiffs to prove affirmatively that such ceremonies were performed as would entitle the plaintiff to claim to be a

juristic personality.” (para 4)

1850. Further with respect to consecration the Court said:

“5. From the fact that the idol was said to be self-revealed that learned Judge assumed that there could have been no consecration of it. It is impossible after this length of time to prove by affirmative evidence whether there was or there was no consecration and we have not been referred to any book of authority or any evidence which would go to show that in the cases of idols which were deemed by their followers to be self-revealed no consecration takes place. From the fact and circumstances, however, it is abundantly clear that the idol was duly recognised by all those who believed in it as an idol of Lord Krishna and was worshipped as such. Properties were dedicated to it and properties have been brought to its use through centuries that it has existed.

After all the question whether a particular idol is or is not duly consecrated must depend upon the religious faith and belief of its followers and we have no doubt that all that was necessary to deify it must have been done by those who believed in the said idol.”

1851. In **Ganpat Vs. Returning Officer (1975) 1 SCC 589**, the Court noticed varied religious practices of Hindus and observed that Hindu is inclined to believe the divine in every manifestation, whatever it may be, and is doctrinally tolerant. The Hindu is deposed to think synthetically. To regard other forms of worship of strange Gods and divergent doctrines as inadequate rather than wrong or objectionable; he (Hindu) tends to believe that the highest divine powers co-complement each other for the well-being of the world and mankind. Religion,

therefore, is one of the personal beliefs, is more a cultural attitude towards a physical thinking in that way of life and is worship of the image of God in different manifestation.

1852. In **Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi (supra)**, in para 30 of the judgment, it was held:

“30. Hinduism cannot be defined in terms of Polytheism or Henotheism or Monotheism. The nature of Hindu religion ultimately is Monism/Advaita. This is in contradistinction to Monotheism which means only one God to the exclusion of all others, Polytheism is a belief of multiplicity of Gods: On the contrary, Monism is a spiritual belief of one Ultimate Supreme and manifests Himself as many. This multiplicity is not contrary to on-dualism. This is the reason why Hindus stall adoring any Deity either handed down by tradition or brought by a Guru or Swambhuru and seek to attain the Ultimate Supreme.”

(emphasis added)

1853. In **Shastri Yagnapurushdasji & others Vs. Muldas Bhundardas Vaishya and another AIR 1966 SC 1119**, the Court considered the question as to whether Swaminarayan sect is a religion distinct and separate from Hindu religion or not:

“26. That takes us to the main controversy between the parties. Are the appellants justified in contending that the Swaminarayan sect is a religion distinct and separate from the Hindu religion, and consequently, the temples belonging to the said sect do no fall within the ambit of s. 3 of the Act ? In attempting to answer this question, we must inevitably enquire what are the distinctive features of Hindu religion? The consideration of this question, prima

facie, appears to be somewhat inappropriate within the limits of judicial enquiry in a court of law. It is true that the appellants seek for reliefs in the present litigation on the ground that their civil rights to manage their temples according to their religious tenets are contravened; and so, the Court is bound to deal with the controversy as best as it can. The issue raised between the parties is undoubtedly justiciable and has to be considered as such; but in doing so, we cannot ignore the fact that the problem posed by the issue, though secular in character, is very complex to determine; its decision would depend on social, sociological, historical, religious and philosophical considerations; and when it is remembered that the development and growth of Hindu religion spreads over a large period nearly 4,000 years, the complexity of the problem would at once become patent.

27. Who are Hindus and what are the broad features of Hindu religion, that must be the first part of our enquiry in dealing with the present controversy between the parties. The historical and etymological genesis of the word "Hindu" has given rise to a controversy amongst indologists; but the view generally accepted by scholars appears to be that the word "Hindu" is derived from the river Sindhu otherwise known as Indus which flows from the Punjab. "That part of the great Aryan race", says Monier Williams, "which immigrated from Central Asia, through the mountain passes into India, settled first in the districts near the river Sindhu (now called the Indus). The Persians pronounced this word Hindu and named their Aryan brethren Hindus. The Greeks, who probably gained

their first ideas of India from the Persians, dropped the hard aspirate, and called the Hindus "Indoi". ("Hinduism" by Monier Williams, p.1.)"

28. *The Encyclopaedia of Religion and Ethics, Vol. VI, has described "Hinduism" as the title applied to that form of religion which prevails among the vast majority of the present population of the Indian Empire (p. 686). As Dr. Radhakrishnan has observed; "The Hindu civilization is so called, since its original founders or earliest followers occupied the territory drained by the Sindhu (the Indus) river system corresponding to the North-West Frontier Province and the Punjab. This is recorded in the Rig Veda, the oldest of the Vedas, the Hindu scriptures which give their name to this period of Indian history. The people on the Indian side of the Sindhu were called Hindu by the Persian and the later western invaders". ("The Hindu View of Life" by Dr. Radhakrishnan, p. 12.) That is the genesis of the word "Hindu".*

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

30. *Confronted by this difficulty, Dr. Radhakrishnan realised that "to many Hinduism seems to be a name*

without any content. Is it a museum of beliefs, a medley of rites, or a mere map, a geographical expression?" ("The Hindu View of Life" by Dr. Radhakrishnan, p. 11.) Having posed these questions which disturbed foreigners when they think of Hinduism, Dr. Radhakrishnan has explained how Hinduism has steadily absorbed the customs and ideas of peoples with whom it has come into contact and has thus been able to maintain its supremacy and its youth. The term 'Hindu', according to Dr. Radhakrishnan, had originally a territorial and not a credal significance. It implied residence in a well-defined geographical area. Aboriginal tribes, savage and half-civilized people, the cultured Dravidians and the Vedic Aryans were all Hindus as they were the sons of the same mother. The Hindu thinkers reckoned with the striking fact that the men and women dwelling in India belonged to different communities, worshipped different gods, and practiced different rites ("The Hindu View of Life" by Dr. Radhakrishnan, p. 12) (Kurma Purana)

31. Monier Williams has observed that "it must be borne in mind that Hinduism is far more than a mere form of theism resting on Brahmanism. It presents for our investigation a complex congeries of creeds and doctrines which in its gradual accumulation may be compared to the gathering together of the mighty volume of the Ganges, swollen by a continual influx of tributary rivers and rivulets, spreading itself over an ever-increasing area of country and finally resolving itself into an intricate Delta of tortuous 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. *We have already indicated that the usual tests which can be applied in relation to any recognised religion or religious creed in the world turn out to be inadequate in dealing with the problem of Hindu religion. Normally, any recognised religion or religious creed subscribes to a body of set philosophic concepts and theological beliefs. Does this test apply to the Hindu religion? In answering this question, we would base ourselves mainly on the exposition of the problem by Dr. Radhakrishnan in his work on Indian Philosophy. ("Indian Philosophy" by Dr. Radhakrishnan, Vol. I, pp. 22-23.) Unlike other countries, India can claim that philosophy in ancient India was not an auxiliary to any other science or art, but always held a prominent position of independence. The Mundaka Upanisad speaks of Brahma-vidya or the science of the eternal as the basis of all sciences, 'sarva-vidya -pratishtha'. According to Kautilya, "Philosophy" is the lamp of all the sciences, the means of performing all the works, and the support of all the duties. "In all the fleeting centuries of history", says Dr. Radhakrishnan, "in all the vicissitudes through which India has passed, a certain marked identity is visible. It has held fast to certain psychological traits which constitute its*

special heritage, and they will be the characteristic marks of the Indian people so long as they are privileged to have a separate existence." The history of Indian thought emphatically brings out the fact that the development of Hindu religion has always been inspired by an endless quest of the mind for truth based on the consciousness that truth has many facets. Truth is one, but wise men describe it differently. The Indian mind has, consistently through the ages, been exercised over the problem of the nature of godhead the problem that faces the spirit at the end of life, and the inter-relation 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. The monistic idealism which can be said to be the general distinguishing feature of Hindu Philosophy has been expressed in four different forms : (1) Non-dualism or Advitism; (2) Pure monism; (3) Modified monism; and (4) Implicit monism. It is remarkable that these different forms of monistic idealism purport to derive support from the same vedic and Upanishadic texts. Shankar, Ramanuja, Vallabha and Madhva all based their philosophic concepts on what they regarded to be the synthesis between the Upanishads, the Brahmasutras and the Bhagavad Gita. Though philosophic concepts and principles evolved by different Hindu thinkers and philosophers varied in many

ways and even appeared to conflict with each other in some particulars, they all had reverence for the past and accepted the 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. This knowledge inevitably bred a spirit of tolerance and willingness to understand and appreciate the opponents point of view. That is how "the several views set forth in India in regard to the vital philosophic concepts are considered to be the branches of the self-same tree. The short cuts and blind alleys are somehow reconciled with the main road of advance to the truth." (Ibid p. 48.) When we consider this broad sweep of the Hindu philosophic concepts, it would be realised that under Hindu philosophy, there is no scope for ex-communicating any notion or principle as heretical and rejecting it as such.

34. Max Muller who was a great oriental scholar of his time was impressed by this comprehensive and all-pervasive aspect of the sweep of Hindu philosophy. Referring to the six systems known to Hindu philosophy, Max Muller observed : "The longer I have studied the various systems, the more have I become impressed with the truth of the view taken by Vijnanabhiksu and others that there is behind the variety of the six systems a common fund of what may be called national or popular philosophy, a large manasa (lake) of philosophical thought and language far away in the distant North and in the distant past, from which each thinker was allowed to draw for his

own purposes". ("Six Systems of Indian Philosophy" by Max Muller, p. xvii.)

35. Beneath the diversity of philosophic thoughts, concepts and ideas expressed by Hindu philosophers who started different philosophic schools, lie certain broad concepts which can be treated as basic. The first amongst these basic concepts is the acceptance of the Veda as the highest authority in religious and philosophic matters. This concept necessarily implies that all the systems claimed to have drawn their principles from a common reservoir of thought enshrined in the Veda. The Hindu teachers were thus obliged to use the heritage they received from the past in order to make their views readily understood. The other basic concept which is common to the six systems of Hindu philosophy is that "all of them accept the view of the great world rhythm. Vast periods of creation, maintenance and dissolution follow each other in endless succession. This theory is not inconsistent with belief in progress; for it is not a question of the movement of the world reaching its goal times without number, and being again forced back to its starting point..... It means that the race of man enters upon and retravals its ascending path of realisation. This interminable succession of world ages has no beginning". ("Indian Philosophy" by Dr. Radhakrishnan, Vol. II., p. 26) It may also be said that all the systems of Hindu philosophy believe in rebirth and pre-existence. "Our life is a step on a road, the direction and goal of which are lost in the infinite. On this road, death is never an end of an obstacle but at most the beginning of new steps". ("Indian Philosophy by Dr. Radhakrishnan, Vol. II, p. 27) Thus, it is

clear that unlike other religions and religious creeds, Hindu religion is not tied to any definite set of philosophic concepts as such.

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 Hindus in general. In the Hindu Pantheon the first gods that were worshipped in Vedic times were mainly Indra, Varuna, Vayu and Agni. Later, Brahma, Vishnu and Mahesh came to be worshipped. In course of time, Rama and Krishna secured a place of pride in the Hindu Pantheon, and gradually as different philosophic concepts held sway in different sects and in different sections of the Hindu community, a large number of gods were added, with the result that today, the Hindu Pantheon presents the spectacle of a very large number of gods who are worshipped by different sections of the Hindus.

37. The development of Hindu religion and philosophy shows that from time to time saints and religious reformers attempted to remove from the Hindu thought and practices elements of corruption and superstition and that led to the formation of different sects. Buddha started Buddhism; Mahavir founded Jainism;

Basava became the founder of Lingayat religion, Dnyaneshwar and Tukaram initiated the Varakari cult; Guru Nanak inspired Sikhism; Dayananda founded Arya Samaj, and Chaitanya began Bhakti cult; and as a result of the teachings of Ramakrishna and Vivekananda, Hindu religion flowered into its most attractive, progressive and dynamic form. If we study the teachings of these saints and religious reformers, we would notice an amount of divergence in their respective views; but underneath that divergence, there is a kind of subtle indescribable unity which keeps them within the sweep of the broad and progressive Hindu religion.

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

1854. Thereafter, the Court considered the teachings and followings of the Swaminarayan sect and upheld the decision of the High Court that it is not a sect distinct and separate from Hindu religion.

1855. Construing the right protected under Articles 25 and 26 of the Constitution, the Apex Court in para 31 **Sri Adi Visheshwara of Kashi Vishwanath Temple (supra)** said:

*31. The protection of Articles 25 and 26 of the Constitution is **not limited to matters of doctrine. They extend also to acts done in furtherance of religion and,***

therefore, they contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of the religion. . . . Religion undoubtedly has its basis in a system of beliefs which are regarded by those who profess religion to be conducive to the future well-being. It is not merely a doctrine. It has outward expression in acts as well. It is not every aspect of the religion that requires protection of Articles 25 and 26 nor has the Constitution provided that every religious activity would not be interfered with. Every mundane and human activity is not intended to be protected under the Constitution in the grab of religion. Articles 25 and 26 must be viewed with pragmatism. The right to observe and practice rituals and right to manage in matters of religion are protected under these Articles. But right to manage the Temple or endowment is not integral to religion or religious practice or religion as such which is amenable to statutory control. These secular activities are subject to State regulation but the religion and religious practices which are integral part of religion are protected. It is well settled law that administration, management and governance of the religious institution or endowment are secular activities and the State could regulate them by appropriate legislation. . . .”

1856. In **Sri Venkataramana Devaru Vs. State of Mysore (supra)** in reference to Article 26 (b) the Court said that practices which are regarded by the community as part of its religion and under the ceremonial law pertaining to temples, who are entitled to enter into them for worship and were they are entitled to stand for worship and how the worship is to be

conducted are all matter of religion.

1857. Construing the scope of Article 25 and 26 insofar as it confers fundamental right protecting religious freedom, the Apex Court in **A.S. Narayana (supra)** said that religion as used in these Articles must be construed in its strict and etymological sense. Religion is that which binds a man with his Cosmos, his creator or super force. It is different and rather impossible to define or delimit the expressions “religion” or “matters of religion” used in Article 25 and 26. Essentially, religion is a matter of personal faith and belief of personal relations of an individual with what he regards as Cosmos, his Maker or his Creator which, he believes, regulates the existence of insentient beings and the forces of the universe. Religion is not necessarily theistic and in fact there are well-known religions in India itself like Buddhism and Jainism which do not believe in the existence of God. In India. Muslims believe in Allah and have faith in Islam; Christians in Christ and Christianity; Parsis in Zorastrianism; Sikhs in Gurugranth Sahib and teachings of Gurunanak Devji, its founder, which is a facet of Hinduism like Brahamos, Aryasamaj etc. The Court in para 89 of the judgment further observed :

“89. A religion undoubtedly has its basis in a system of beliefs and doctrine which are regarded by those who profess religion to be conducive to their spiritual well-being. A religion is not merely an opinion, doctrine or belief. It has outward expression in acts as well. It is not every aspect of religion that has been safeguarded by Articles 25 and 26 nor has the Constitution provided that every religious activity cannot be interfered with. Religion, therefore, be construed in the context of Articles 25 and 26

in its strict and etymological sense. Every religion must believe in a conscience and ethical and moral precepts. Therefore, whatever binds a man to his own conscience and whatever moral or ethical principle regulate the lives of men believing in that theistic, conscience or religious belief that alone can constitute religion as understood in the Constitution which fosters feeling of brotherhood, amenity, fraternity and equality of all persons which find their foot-hold in secular aspect of the Constitution. Secular activities and aspects do not constitute religion which brings under its own cloak every human activity. There is nothing which a man can do. Whether in the way of wearing clothes or food or drink, which is not considered a religious activity. Every mundane or human activity was not intended to be protected by the Constitution under the guise of religion. The approach to construe the protection of religion or matters of religion or religious practices guaranteed by Articles 25 and 26 must be viewed with pragmatism since by the very nature of things, it would be extremely difficult, if not impossible to define the expression religion of matters or religion or religious belief or practice.”

1858. Again in para 90, the Court observed :

“Therefore, the right to religion guaranteed under Article 25 or 26 is not an absolute or unfettered right to propagating religion which is subject to legislation by the State limiting or regulating any activity-economic, financial, political or secular which are associated with religious belief, faith, practice or custom. They are subject to reform on social welfare by appropriate legislation by

the State. Though religious practices and performances of acts pursuance of religious belief are as much a part of religion as faith or belief in a particular doctrine, that by itself is not conclusive or decisive. What are essential parts of religion or religious belief or matters of religion and religious practice is essentially a question of fact to be considered in the context in which the question has arisen and the evidence- factual or legislative or historic-presented in that context is required to be considered and a decision reached.”

1859. It would also be useful to refer the observations made in para 91 of the judgment :

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

1860. In **Durgah Committee, Ajmer Vs. Syed Hussain Ali AIR 1961 SC 1402**, the Constitution Bench said :

“While we are dealing with this point it may not be out of place incidentally to strike a note of caution and observe that in order that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for

being treated as religious practices within the meaning of Art. 26. Similarly, even practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. Unless such practices are found to constitute an essential and integral part of a religion their claim for the protection under Art. 26 may have to be carefully scrutinised; in other words, the protection must be confined to such religious practices as are an essential and an integral part of it and no other.”

1861. In the above judgement, the Court also held:

“If the right to administer the properties never vested in the denomination or had been validly surrendered by it or has otherwise been effectively and irretrievably lost to it, Art. 26 cannot be successfully invoked.”

1862. The Court further held:

"It is obvious that Art. 26 (c) and (d) do not create rights in any denomination or its section which it never had; they merely safeguard and guarantee the continuance of rights which such denomination or its section had. In other words, if the denomination never had the right to manage the, properties endowed in favour of a denominational institution as for instance by reason of the terms on which the endowment was created it cannot be heard to say that it has acquired the, said rights as a result of Art. 26(c) and (d), and that the practice and custom prevailing in that behalf which obviously is consistent with the terms of the endowment should be ignored or treated as invalid and the administration and management should now be given to the denomination. Such a claim is plainly inconsistent

with the provisions of Art. 26."

"If the practice in question is purely secular or the affairs which is controlled by the statute is essentially and absolutely secular in Character, it cannot be urged that Art. 25(1) or Art. 26(b) has been contravened. The protection is given to the practice of religion and to the denomination's right to manage its own affairs in matters of religion."

"Art. 26(b) relates to affairs 754 in matters of religion such as the performance of the religious rites or ceremonies or the observance of religious festivals and the like; it does not refer to the administration of the property at all. Article 26(d), therefore, justifies the enactment of a law to regulate the administration of the denomination's property and that is precisely what the Act has purported to do in the present case. If the clause "affairs in matters of religion" were to include affairs in regard to all matters, whether religious or not the provisions under Art. 26(d) for legislative regulation of the administration of the denomination's property would be rendered illusory."

1863. Following the above decision in **State of Rajasthan Vs. Sajjanlal Panjawat and others, 1974 SCC (1) 500** the Court held:

"Bearing in mind the scope of clauses (b) and (d) of Art. 26 as expounded in the decisions of this Court, if, as we have held, the right of management of Rikhabdevji temple is lost as it is vested in the State. The respondents cannot complain of any infringement of their fundamental rights to manage and administer its affairs, and as such the High Court was in error in giving the impugned directions."

1864. Considering as to what "practices" would constitute part of "religion" in **Durgah Committee, Ajmer Vs. Syed Hussain Ali (supra)** a Constitution Bench of the Apex Court in para 33 of the judgment held:

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

1865. In para 37 with reference to the scope of Article 26 (c) and (d), the Court said:

“It is obvious that Art. 26(c) and (d) do not create rights in any denomination or its section which it never had; they merely safeguard and guarantee the continuance of rights which such denomination or its section had. In other words, if the denomination never had the right to manage the properties endowed in favour of a denominational institution as for instance by reason of the terms on which the endowment was created it cannot be heard to say that it

has acquired the said rights as a result of Art. 26(c) and (d), and that the practice and custom prevailing in that behalf which obviously is consistent with the terms of the endowment should be ignored or treated as invalid and the administration and management should now be given to the denomination. Such a claim is plainly inconsistent with the provisions of Art. 26. If the right to administer the properties never vested in the denomination or had been validly surrendered by it or has otherwise been effectively and irretrievably lost to it Art. 26 cannot be successfully invoked.

1866. Next comes **Gedela Satchidananda Murthy (supra)** where the Court reproduced the quotation from Madras High Court's judgment in **Pidugu Narasimham (supra)** in para 16. Further in para 17, the Apex Court held:

“Religious practices vary from State to State, region to region, place to place and sect to sect. When the legislature makes a legislation, the existing state of affairs and the basis on which such legislation has been made would be presumed to have been known to it. Whereas the property for construction of a samadhi or tomb by itself may not amount to a permanent dedication involving public character of such institution, a distinction must be borne in mind about a tomb constructed on the samadhi of an ordinary man and a saintly person. In a case falling within the latter category, the answer to the question, in our opinion, should be rendered in the affirmative.”

1867. In **Raja Muttu Ramalinga Setupati Vs. Perianayagum Pillai, 1 IA 209** (p. 234) the Privy Council held: *"The important principle to be observed by Courts in dealing*

with constitution and rules of religious brotherhoods attached to Hindu Temples is to ascertain, if possible, the special laws and usages governing the particular community whose affairs have become subject of litigation."

1868. It further observed: *"The subject of devastanum lands is of a great importance to the happiness of the people, and the attention paid to the interest of the pagodas has been attended with most beneficial consequences to the people in different parts of peninsula"* (i.e India).

1869. In **Sarangadeva Periya Matam v. Ramaswami Goundar (supra)**, relying on **Pramatha Nath Mullick v. Pradhyumna Kumar Mullick (supra)**, Counsel for the Respondents therein submitted that a math, like an idol, has a juridical status with the power of suing and being sued. Hon'ble Supreme Court accepted this contention and held:

"Like an idol, the math is a juristic person having the power of acquiring, owning and possessing properties and having the capacity of suing and being sued. Being an ideal person, it must of necessity act in relation to its temporal affairs through human agency." See *Babajirao v. Luxmandas, (1904) ILR 28 Bom 215 (223). It may acquire property by prescription and may likewise lose property by adverse possession."*

1870. In **Kamaraju Venkata Krishna Rao (supra)**, the controversy before the Hon'ble Apex Court was whether a tank can be considered as a charitable institution under Section 2 (E) of the Andhra Inams (Abolition and Conversion into Ryotwari Act) 1956. Hon'ble Court quoted from a DB judgment of the Mysore High Court, **V. Mariyappa Vs. B.K. Puttaramayya, ILR (1957) Mys 291: AIR 1958 Mys 93:**

“The maintenance of Sadavartas, tanks, seats of learning and homes for the disabled or the destitute and similar institutions is recognized by and well known to Hindu Law, and when maintained as public institutions they must be taken to have a legal personality as a Matha or the deity in a temple has, and the persons in charge of the Management would occupy a position of trust.”

1871. There Court also held, when maintained as public institutions, then, not only temples and mutts, but also sadavartas and tanks etc take up a legal personality. An excerpt:

*"It has been held that though Mutts and temples are the most common forms of Hindu religious institutions, dedication for religious or charitable purposes need not necessarily take one of these forms and **that the maintenance of Sadavartas, tanks, seats of learning and homes for the disabled or the destitutes and similar institutions** are recognised by and well known to Hindu Law and **when maintained as public institutions, they must be taken to have a legal personality as a Matha or the deity in a temple has, and the persons in charge of the management would occupy a position of trust.**"*

1872. In the above holding, there is a presumption that Mutts and temples, when maintained as public institutions, take up a legal personality - and this proposition is extended to the case of sadavartas and tanks etc.

1873. In **Pooranchand Vs. The Idol Shri Radhakrishnaji & another AIR 1979 MP 10**, a Division Bench considered and explained meaning of the term “religious endowment” and said that dedication of the property for religious purposes such as establishment and worship of an idol is a religious endowment

and consequently a trust. Regarding the capacity of filing suit by an idol through a next friend, it observed in para 8 of the judgment:

“In our opinion, the proposition, that an idol or deity is a juristic person and can sue as such admits of no doubt, as it has been established by a series of authorities that an idol as a juristic person, can sue through a next friend.”

1874. Considering the nature of property dedicated for use as “Dharamchatra”, resting place for the travellers and pilgrims, in **Thayarammal Vs. Kanakammal (supra)**, the Court in para 16 of the judgment said:

“16. A religious endowment does not create title in respect of the property dedicated in anybody's favour. A property dedicated for religious or charitable purpose for which the owner of the property or the donor has indicated no administrator or manager becomes res nullius which the learned author in the book (supra) explains as property belonging to nobody. Such a property dedicated for general public use is itself raised to the category of a juristic person. Learned author at p. 35 of his commentary explains how such a property vests in the property itself as a juristic persons. In Manohar Ganesh Tambekar v. Lakhmiram Govindram it is held that: (ILR p. 263)

“The Hindu law, like the roman law and those derived from it, recognises, not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also the juridical persons or subjects called foundations.”
(emphasis supplied)

*The religious institutions like mutts and other establishments obviously answer to the description of foundations in Roman law. The idea is the same, namely, when property is dedicated for a particular purpose, **the property itself upon which the purpose is impressed, is raised to the category of a juristic persons** so that the property which is dedicated would vest in the persons so created. And so it has been held in Krishna Singh v. Mathura Ahir that a mutt is under the Hindu law a juristic person in the same manner as a temple where an idol is installed.” (emphasis added)*

1875. In **Sri Iswar Dashabhuja Thakurani & others Vs. Sm. Kanchanbala Dutta & others** AIR 1977 Cal. 473, a Single Judge of Calcutta High Court in para 17 and 18 held:

“17. A Hindu deity is a juristic person and has the right to sue or be sued. There are preponderance of decisions to the effect that a shebait has a right on his own to institute and proceed with the suit on behalf of the deities making other shebait as parties to the suit. On the death of Hari Mohan Roy, Rash Behari Roy became one of the shebait jointly with other defendants. So on his own right Rash Behari Roy can, not only bring a suit but also proceed with the suit on behalf of the plaintiff deities as a prospective shebait in case of family endowment even though not appointed by Court as guardian, can maintain a suit on behalf of the deity. This is more so when a prospective shebait brings a suit on behalf of the idol making all other shebait as parties to the suit. (AIR 1966 Pat 235, Ram Ratanlal v. Kashinath Tewari). In a case reported in AIR 1931 Cal 776 (Girih Chandra v. Upendra

Nath) it has been held that a person interested in a private trust as a member of the family and who has further the prospect of holding the office of shebait, can maintain a suit challenging the alienation of debutter properties by a shebait. A future shebait can maintain a suit to have it declared that alienation made by a shebait is unauthorised and does not affect the deity.

18. *Rash Behari Roy is not only a shebait but also a member of the settlor's family. In Nirmal Chandra v. Jyoti Prosad reported in 45 Cal WN 709: (AIR 1941 Cal 562) it has been held that a shebait as a party interested in the endowment can bring an action. In the first place a co-shebait can bring a suit on the principle that a suit on behalf of the deity can be brought by some of the co-shebait that the rest are unwilling to join the plaintiff or have done acts precluding them from doing so. In the second place it can be justified on the ground that the deity can sue through a next friend who has no interest adverse to it and it is immaterial that such next friend happens to be one of the shebait.*

“In respect of a debutter in this country a founder or his heirs may invoke the assistance of a judicial Tribunal for the proper administration thereof on the allegation that the Trusts are not properly performed.”

1876. In **Profulla Chorone Requitte Vs. Satya Chorone Requitte AIR 1979 SC 1682** the Court said :

*“Property dedicated to an idol vests in it in an ideal sense only; ex necessitas, **the possession and management has to be entrusted to some human agent.** Such an agent of the idol is known as Shebait in Northern India. The legal*

character of a Shebait cannot be defined with precision and exactitude. Broadly described, he is the human ministrant and custodian of the idol, its earthly spokesman, its authorised representative entitled to deal with all its temporal affairs and to manage its property.”

1877. Hon'ble Bose J in **State of West Bengal Vs. Anwar Ali Sarkar (supra)**, about development of Hindu Law, observed in para 84:

“Much of the existing Hindu law has grown up in that way from instance to instance, the threads being gathered now from the rishis, now from custom, now from tradition. In the same way, the laws of liberty, of freedom and of protection under the Constitution will also slowly assume recognisable shape as decision is added to decision. They cannot, in my judgment, be enunciated in static form by hidebound rules and arbitrarily applied standards or tests.” (para 84)

1878. It was also observed that dedication in Hindu Law do not require acceptance of property dedicated for a religious or a public purpose.

1879. Learned counsels for the Muslim parties, however, submit that in view of plethora of legal authorities it is now beyond doubt that a Hindu idol, duly consecrated is a legal person, but they further submit that same thing would not apply to a place which has no such definite concept. The question raised obviously is not only interesting but important and has far reaching consequences. It has to be considered very cautiously and carefully.

1880. So the question now is, whether a place can be a Deity or not. Some of the authorities already referred, in our view,

answer this question. In **Ram Jankijee Deities & Ors. (supra)** the Apex Court in para 14 of the judgment referred to Padam Puran and observed that a *Swayambhu* or self-revealed image is a product of nature and it is Anadi or without any beginning and the worshippers simply discover its existence and it do not require consecration or Pratistha.

1881. Sri R.L.Verma, learned counsel for the defendant no.3 however submitted that a *Swayambhu* Deity is only one i.e. the Salgram Shila which depicts Lord Narayana i.e. Vishnu Bhagwan and nonelse. He could not dispute that Hindu worship several places like Kedarnath (State of Uttarakhand); Vishnupad temple at Gaya; rivers like "Sangam" at Allahabad (U.P.); natural formation of snow as "Linga" at Amarnath (State of Jammu and Kashmir); Fire Hills (Jawala Ji) in Himachal Pradesh;m Goverdhan (Mathura (U.P.); etc. as Swayambhu Deity.

1882. How and what manner the people should believe a place or an image having supreme power to cherish the wishes of worshipper has to be considered from the belief of the worshippers and cannot be placed in a straight jacket formula. In para 15 of the judgment in **Ram Jankijee Deities & Ors. (supra)**, the Apex Court said that the question must be decided with reference to the view of the class of people who take part in the worship. If they believe in its religious efficacy, in the sense that by such worship they are making themselves the object of the bounty of some super-human power, it must be regarded as "religious worship". It further says that if the public or that section of the public who go for worship consider that there is a divine presence in a particular place and that by offering worship there, they are likely to be recipients of the blessings of

God, it has the essential features of a temple. In para 16 of the judgment the Apex Court further observed that if the people believe in the temples' religious efficacy no other requirement exists as regards other aspects. The Court observed that it is not a particular image which is a juridical person but it is a particular bent of mind which consecrate the image. There is no apparent reason to deny the status of Deity to a place which is worshipped by a large section of people as sacred and pious being the birthplace or the place of manifestation which normally is the term used when according to Hindu belief the Lord of Universe takes natural form i.e. human being or otherwise for the benefit of the people at large. It is in this context ten incarnations of Lord Vishnu are treated.

1883. The above discussion and the authorities show the concept of idol, Deity, religious endowment, their legal status, manner in which they are worshipped as also the concept of temple etc., as it is written, preached and practised by Hindus as per their ancient scriptures, and also as considered and simplified by various Courts from time to time. This is how plethora of authorities are there, some of which, on various aspects, we have referred hereinabove. Various terms like "idol", "deity", "temples", "Math", "religious endowments" etc., though in one or the other manner have interconnection and sometimes integrally woven also but still they have different context, concept, meaning etc. altogether. Hindu law comprehends various notions of all the above concepts and much more. There are several shades and nuances of these terms. They are not mere terms of art but are living concept and a huge mass actually live and virtually has merged and absorbed itself therein. These terms are their identity, perception, source

of life, inspiration and zeal to live and what not. It is really very difficult to concise them in a few words or norms. While discussing Issue No. 17 (Suit-3), we have already dealt with the terms "religion" and "Math" but to some extent, it is true that confining the word "religion" in a definition is one of the most arduous and complicated task.

1884. One of the basic thing in religious experience is a unique feeling, a solemn reverend attitude. It denotes the insight conviction of human being that there is something entirely transcending everything human. Core of the religion is "belief", and, the manner of expressing that belief, i.e. overt performances, sometimes called "acts of worship". The acts of worship do vary. This variance is denoted sometimes in terms of different religions or faith like Hindu, Muslim, Christian etc. and sometimes different sects within the same group of religion.

1885. There is no certainty in the ancient Hindu scriptures as to whether the concept of worship in the religion commenced with the natural forces, like sun, air, water, sky etc. or it was contemporary with the image worship. One of the set of scholars believe that there was no idol worship in Vedic days, but there is another set of scholars who have their own reservations about the said opinion. We have referred to certain Brahmin literature which contain references of idols and temples even in Vedic days. This, however, is a tentative opinion and need not be taken as a final adjudication. We leave it for further research by scholars and geniuses to go in further details and find out correct version. For the present case, we do not find that this aspect will make any impact on issues concerned. For our purpose suffice it to hold that image (idol) worship exist since before Christ and sufficient evidence exist therefor.

1886. We do not find any parallel to the dispute before us where a particular 'Place' is claimed to be a deity, a juridical personality in the shape of an undefined idol, by itself a temple, for the reason of belief of Hindu public that Lord Rama, incarnation of Lord Vishnu, was born thereat and this divine manifestation of the Supreme Lord at a particular place make it sacred and due to belief of Hindu people that God resides there and the 'Place' possesses all such divine and supreme power so as to cherish the wishes of the people and salvation to those who come to worship and *Darshan* of such place. It is stressed that this itself is sufficient to make the 'Place' a deity and satisfy the requirement of the legal personality. The proposition appears to be quite simple but if we put on tests with the precedents, religious and legal, it become difficult to be answered simplicitor.

1887. What would be the meaning of word "Place" and what shall be its extent? Whether it would be a small place which normally is required for birth of a human being or whether it will cover an area of the entire room, house, locality, city or sometimes one can say even more than that. We know that Hindus worship rivers and lakes like, Ganga, Yamuna, Narmada, Mansarovar etc. They are very sacred and pious. At several places a number of temples etc. on the bank or near the said rivers have been constructed. The very origin of such sacred rivers is also a place of worship for Hindus like, Gangotri, Yamunotri (State of Uttaranchal) and Amarkantak (for river Narmada). Can it be said that the entire length these rivers cover would constitute and satisfy the requirement of a "juristic personality". It is not out of place that at several places, the temples of Ganga, Narmada, Yamuna etc. have been

constructed and they are religious endowments in their own rights, enjoy all such legal rights and obligations etc. as are available to such Endowments. Similarly certain hills or mountain or hilly terrains as such are treated to be the places of worship like, Kailash, Gobardhan, Kamathgiri etc.

1888. When asked these questions, learned counsels for Hindu parties also felt difficult to reply. Sri M.M.Pandey submitted that in the present dispute, it is the belief of the Hindu people that the fort of King Dashrath situated at Ayodhya included the part of the building wherein Lord Rama was born according to Hindu belief and the disputed area covered that house. It is believed that it is this place which is so pious and sacred for Hindu people being the birthplace of Lord Rama and, therefore, in this particular case, it is not necessary to go into larger question since it is not the claim of the Hindu parties that the entire city of Ayodhya or the entire locality is birthplace of Lord Rama. He was born at Ayodhya is a well known fact. In Ayodhya, it is the disputed place where the Lord of Lords was manifested in the form of natural person and, therefore, it is believed to be the birthplace of Lord Rama by Hindus for time immemorial and they visit it to worship and Darshan. This satisfy the requirement of a "deity". He submits that "deity" in the name of birthplace of Lord Rama is a legal person considering the concept of legal personality of Hindu deity as discussed above. It is evident that it is a place where the public visit it as a matter of right, offer *Darshan*, *Pooja* etc. continuously and from time immemorial.

1889. The submission is not wholly without substance. The relevant evidence need be analyzed in the light of the principles in general which discern from the discussions above, which in

brief may be culled out as follows.

1890. There exist a Supreme Being which controls everything and fulfills the wishes and salvation to the human beings. Hindus believe that the Supreme Being manifest himself in human form (incarnation) with all the powers of Supreme Being subject to self imposed human limitations. This reincarnation or manifestation is known as "Swayambhu". The place of reincarnation is treated sacred. This kind of belief that the place become sacred which relates to birth or some other activities of a Holy sole is common in other religions also like, Mekka in Islam, Bethlehem/Jerusalem in Christianity.

1891. The concept of deity is deeply embedded amongst Hindus. The Hindu Dharma has elevated the concept of sacredness into an object of divinity fit for worship. However, this is only symbolic. A Hindu does not worship the idol or the material body but it is the eternal spirit of the deity and the image is a mere symbol. The incarnation of Mantras peculiar to a particular deity causes manifestation of a deity. The idols or images which are man made are consecrated with the spirit of Supreme Being through Vedic rights. The process is known as "Pran Pratistha". The Supreme Being is bodyless, shapeless and, therefore, through the concept of images it is visualized and worshipped.

1892. The deity, i.e., the consecrated image or the Swayambhu deity has a juridical status. Law recognises its power of suing and being sued. This power can be exercised by the person who is entrusted with its care and management normally called "Shebait". In the context of Shebait the deity is treated to be an "infant heir" or "with the status of a minor" since it cannot act on its own.

1893. The deity is a class by himself conceived of a living being and is treated like a master of the house. The property dedicated to a deity belongs to it and not to Shebait though is managed by Shebait as a trustee or its manager who has no otherwise right into property except that it can be managed for the benefit of the deity.

1894. A temple is the house of the deity. Even if the image is broken or otherwise get damaged, the Supreme Being continued to exist and by replacement of the image that continuity is maintained symbolically. A temple and deity is *res extra commercium*. Presence of idol is not decisive to ascertain the status of a temple.

1895. The worshippers are the beneficiaries though in a spiritual sense.

1896. If the public goes for worship considering that there is a divine presence and offer worship thereat believing that they are likely to be the recipient of the bounty of God then it satisfy the test of a temple. Installation of an idol or the mode of worship are not the relevant and conclusive test.

1897. It leaves no doubt in our mind that according to the well recognised and accepted concepts of Hindu Law in regard to deity and idol, it cannot be disputed now that an idol is a juridical person, can sue and be sued, can acquire property and deal with it in a manner it likes though obviously this user is through a Shebait or the person who takes care of the idol since it cannot act on its own not being a natural person.

1898. Besides, to constitute an idol, a deity, the concept of Pran Pratishtha and that too in a particular manner is not always conclusive and is not the only test. In the case of a "Swayambhu deity", the Shastrik procedure of Pran Pratishtha as such is not at

all required. A deity can be in the form of an idol or even in natural form like stone, wood, earth, river, mountain etc. The only requirement in our view would be that in case of place, it must be ascertainable as to what place is believed to be sacred and pious by the worshippers.

1899. The pivotal requirement is that the Hindus must believe the existence of supreme power therein, must be worshipping it with the belief of getting of attainment and fulfillment of wishes due to the divine powers existing thereat and this belief must have continued for time immemorial and may be in the form of a continued custom, tradition etc.

1900. The learned counsels appearing for various Hindu parties unanimously contended that the place in dispute has always been believed to be the birthplace of Lord Rama where Lord Vishnu manifested himself in human form as incarnation and, therefore, it is a place which possess the supreme and divine powers capable of fulfilling of wishes of the worshippers of mere Darshan thereof and visit the place. They submit that since the place being the birthplace of Lord Rama is most pious and with full of divinities to Hindus, this has always been visited by Hindus for Darshan and worship as such, hence the requirement of any idol etc. thereat of Lord Rama cannot be insisted upon. Mere placement of an idol thereat is nothing but a symbolic act of Hindus to provide more concentration for worship etc. but the absence of an idol shall not destroy the status of deity to the "Place" being divine and holy to Hindus. The Place is a deity and it does not require observance of Shastrik procedure of 'Pran Pratishtha' since this divinity of 'Place' makes it a "Swayambhu deity" capable of worship by the believers. This status is non destructible, permanent, and can

neither be altered nor otherwise be damaged or diminished or extinguished by an act of human being. It is a perennial and continued status of the Place concerned.

1901. The evidence to show that the Hindu people used to visit the fort of Lord Rama and its nearby area believing it to be the birthplace of Lord Rama find mention with number of books of authorities, some of which we have already discussed in the course of discussing issues pertaining to "date of construction" etc. Much more we shall discuss while considering issue pertaining to birth place, existence of temple etc. But here some evidence necessary for the issues in question has to be seen.

1902. Goswami Tulsi Das in his "Ramcharitmanas" has referred the observance of a grand festival on the day of birth of Lord Rama at Ayodhya. The worship by Hindus in the place called fort of Lord Rama has been referred in the Travellers Account of William Finch.

1903. Tieffenthaler has specifically observed the manner in which the Hindu people used to worship at the place in dispute, i.e., by laying prostrate and making 'Parikrama' (circumambulation) around the building. This is a unique feature of this case. At the time of Tieffenthaler admittedly the disputed building had come into existence and was standing thereat. It was known as a mosque having been built by a muslim ruler. Tieffenthaler has termed it as "a muslim temple with triple domes". However, there existed a Bedi, i.e., the cradle for which the Hindus' believe that there was a house where Lord Vishnu manifested and reincarnated in the form of Ramlala. Then he mentioned, *"however, there still exists some superstitious cult in some place or other. For example, in the place where the native house of Ram existed, they go around 3 times and prostrate on*

the floor." After about hundred years by which time the premises in dispute was divided by an iron grilled wall with an indication that the muslims may worship in the inner courtyard and the Hindus may continue to worship in the outer courtyard, in actuality the Hindus continue with their practice of entering the inner courtyard and worshipping thereat in one or the other manner. This is evident from some documents which we are discussing hereinbelow. There is no evidence on record to show that from 1856 to 1949, at any point of time there was a restriction effected in such a manner that only the people of one faith would enter the inner courtyard and not all. It is the admitted case of muslims and their several witnesses had also admitted that till 22nd December, 1949 the doors of the iron grilled dividing wall were never locked. There is nothing on record to show that by posting a guard or otherwise the entry of Hindus was restricted in the inner courtyard. Even with respect to the contention of offering of Namaz, the evidence, which we will be discussing later on, will show that from 1855 till 1934 atleast there is no evidence whatsoever that Namaz was actually offered in the inner courtyard of the disputed site. So far as the outer courtyard is concerned, it is virtually admitted by the muslim parties that there existed atleast three non Islamic structures which were visited by Hindus and they also offered worship thereat. Tieffenthaler has specifically referred to the place in dispute observing the visit of Hindus thereat. Various gazetteers, survey reports etc. which we have referred earlier while discussing the issues pertaining to date of construction also are similarly worded.

1904. Let us proceed to ponder over some other evidence. One of the document is an application dated 30.11.1858, Exhibit

20 (Suit-1), submitted by Syed Mohammad, claiming himself to be Khatib of Janamsthan mosque, i.e., the disputed building. It says as under:

بمقام جنم استھان کا صدہا برس کے نشان پڑا رہتا تھا و اہل
ہنود پوجا کرتے تھے

“मुकाम जनम स्थान का सदहा बरस के निशान पड़ा रहता था व
अहले हुन्द पूजा करते थे” (Hindi Transliteration by the
Parties)

*"Previously the symbol of Janam had been there for
hundreds of years and Hindus did puja." (E.T.C)*

1905. This document refer the above creation in the premises inside the dividing wall. The existence of divided premises is clearly mentioned and one Chabutara in outer Courtyard was already there. The context shows that it talks of creation of a Chabutra under/near the dome structure and open land in its front. This document is admitted to plaintiffs (Suit-4) also. This is the oldest individual and private document which throws light on the spot situation as prevailed in November 1858 and prior thereto of the disputed site and building. There is nothing to contradict it. It is thus clear that even the inner courtyard had some Hindu religious signs/symbols therein and it used to be worshipped by Hindus for last several hundreds years.

1906. As already said, P.Carnegy in his report published in 1870 has observed that both worship in the disputed building. This also fortify the fact that Hindus not only used to go inside but were also worshipping in the disputed premises.

1907. The dispute pertaining to this place amongst the two communities is centuries old. Record, prior to 1860 AD, atleast fortify, continuance of such dispute. In fact, it could not have been disputed. Several witnesses of the plaintiffs (Suit-4) had

admitted that the Hindus used to come to the disputed place for worship believing it the birthplace of Lord Rama.

1908. Record of Suit-1885 shows that the defendant no. 2 therein, i.e., Mohd. Asghar, who contested the said suit in his capacity as Mutawalli of the disputed building (alleged waqf), in his own written statement admitted that the Chabutara constructed in the outer courtyard on south east side of the disputed building used to be attended by Hindus for worshipping, believing it to be the birthplace of Lord Rama. No doubt, he also pleaded simultaneously that the said construction was unauthorised and impermissible but the fact remains that existence of Chabutara, according to the pleadings, had continued at least since about 1855 and this position remain undisturbed till 6th December, 1992. The premises of Mosque, as depicted by letters ABCD in Suit-4, thus had a structure, non-Islamic which has been worshipped by Hindus for the last atleast one and half century.

1909. A place if identified by a name given to the deity by its worshippers/believers and if it can be shown that it relates to a divine or otherwise important phenomena related with religious matters making it a pious and important religious place, it can be held 'deity' and thereby satisfy the requirement of being a 'juridical person'. Whether such a place reflected by the known name of the deity is smaller one or larger one, or, what is its extent, is a different matter but a deity can be known by its name which its followers/worshippers have given to it. In the present case the plaintiff no. 2 (Suit-5) is known as "Asthan Sri Rama Janam Bhumi, Ayodhya". The Hindu believers and worshippers who go and worship the said place identify it by the name of Lord Rama's birthplace and this identity ascertain and

admits no doubt in the mind of those who belief, follow and worship. That being so, we find no reason in denying the status of deity to the said place and the consequential juridical personality upon it. It cannot be disputed that property can be dedicated in the name of the plaintiff no. 2 which can be utilized for the benefit of the said deity. This of course is subject to the issues decided in favour of Hindu parties which pertain to the site in dispute whether is or believed to be the birthplace of Lord Ram for time immemorial and is being worshipped accordingly.

1910. Whether the idol or deity, worshipped by Hindus, was consecrated or not, has to be seen from the point of view and belief of those who worship the idol and not others who had no such belief. If an idol is faithfully recognised by all those who believe the idol of a particular deity, it is a deity. In the present case idol of Lord Rama, and its worship as such satisfy the requirement of a validly consecrated deity. No further inquiry need be gone into. We agree with the views expressed by the Division Bench in **Gokul Nath Ji Maharaj (supra)** that the question whether a particular idol is or is not duly consecrated must depend upon the religious faith and belief of its followers. We are also fortified in taking the above view from the Apex Court's decision in **Ram Jankijee Deities (supra)** where in para 15 it has observed, while quoting and approving the two decisions of Madras High Court, that the test is not whether it conforms to any particular school of Agama Shastras. The question must be decided with reference to the view of the class of people who take part in the worship. If they believe in its religious efficacy, in the sense that by such worship they are making themselves the object of the bounty of some super-human power, it fulfill the requirement. If the public or that

section of the public who go for worship consider that there is a divine presence in a particular place and that by offering worship thereat they are likely to be the recipients of the blessings of God, it satisfy the requirement of a deity. In fact the Apex Court in para 16 of the judgment in **Ram Jankijee Deities (supra)** went to observe that the people, if believe in the religious efficacy, no other requirement exists as regards other areas. It is not a particular image which is a juridical person but it is a particular bent of mind which consecrate the image.

1911. In **Shiromani Gurdwara Prabandhak Committee, Amritsar Vs. Som Nath Dass (supra)** the Court virtually set out easier guidelines as to how an intangible image or institution or otherwise can be decided whether a juristic person or not particularly in religious matters. The Court observed that the very words "juristic person" cannot get recognition of an entity to be in law a person which otherwise it is not. In other words it is not an individual natural person but an artificially created person which is to be recognised to be in law as such. When a person is ordinarily understood to be a natural person, it only means a human person. Essentially every human person is a person but in the history of the world the concept of different notions had different times. In sub-countries even human beings were not treated person in law. Under the Ancient Roman Law a slave was not a person. He had no right to a family. He was treated like an animal or chattel. In French colonies also, before slavery was abolished, the slaves were not treated to be legal persons. They were later given recognition as legal persons. The recognition was given later on through an statute. In United States also African-Americans had no legal rights though they were not treated as chattel. The Court also quoted the following

passage from **Roscoe Pounce's Jurisprudence, Part, IV, 1959 Edition**, page 192-93:

“In civilized lands even in the modern world it has happened that all human beings were not legal persons. In Roman law down to the constitution of Antoninus Pius the slave was not a person. ‘He enjoyed neither rights of family nor rights of patrimony. He was a thing, and as such like animals, could be the object of rights of property.’ ... In the French colonies, before slavery was there abolished, slaves were ‘put in the class of legal persons by the statute of April 23, 1833’ and obtained a ‘somewhat extended juridical capacity’ by a statute of 1845. In the United States down to the Civil War, the free Negroes in many of the States were free human beings with no legal rights.”

1912. The evolutionary development of a socio-political-scientific system made it necessary to consider certain non-human beings as person which were termed as legal person or juristic person etc. Having said so, the Apex Court in above case further observed that a juristic person like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. The entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law. When an idol was recognised as a juristic person it was known that by itself it cannot act. Like the case of a minor where a guardian has been appointed, so in the case of an idol, a Shebait or manager is appointed to act on its behalf. In that sense, relation between an idol and Shebait is akin to that of a minor and a guardian. As a minor cannot express himself, so the idol, but like a guardian, the Shebait and manager have limitations under which they have to act. The

Court observed that an idol is a juristic person because it is adored after its consecration in a temple. The offerings are made to an idol. The followers recognised an idol to be symbol of God. Without the idol the temple is only a building or mortar, cement and bricks which had no sacredness or sanctity for adoration.

1913. Let us apply these tests in respect to the plaintiffs 1 and 2 in the case in hand. Sri Ramjanambhumi, the place in dispute is visited by Hindus under the faith and belief that Lord of Universe Sri Vishnu appeared in his Chaturbhuj Roop before Queen Kaushalya one of the wife of King Dashratha at a particular date and time mentioned in **Balmiki Ramayan** as well as **Ramcharitmanas of Goswami Tulsi Das**. On the prayer made by Kaushalyaji Sri Vishnu took the form of Sri Ramlala and manifested himself in human form. The place, therefore, bear the spirit and power of Lord of Lords and it is believed that by visiting the place having its Dashan, i.e., adoration and worship one will get all happiness and fulfilment of his wishes. It will confer upon him all merits as well as salvation. The visit to birthplace itself has been said to be sufficient to confer all the merits and salvation upon the believer. It is with this faith and belief it is said that the Hindus are visiting the birthplace of Lord Rama at Ayodhya since time immemorial and despite of several adverse situation the belief and worship has continued unrelented.

1914. It is well settled that faith and belief cannot be judged through any juridical scrutiny, its a fact accomplished and accepted by its followers. In fact this faith necessitated the creation of a unique to be recognised as a juristic person. The juristic person, in view of the above discussion, it is evidence,

cannot be roped in a defined circle. With the changing thoughts, changing needs of the society fresh juristic personalities were/are created from time to time. In the context of Guru Granth Sahib whether it is a juristic person or not an argument was raised though an idol can be recognised to be a juristic person but not a temple and on the same party neither a Gurudwara can be treated to be a juristic person nor Guru Granth Sahib which is only a sacred book. Repelling this argument the Apex Court in **Shiromani Gurdwara Prabandhak Committee, Amritsar Vs. Som Nath Dass (supra)** said that Gurudwara or Guru Granth Sahib cannot be equated with an idol. Sikhism does not believe in worshipping any idol but that does not mean that Guru Granth Sahib in order to treat to be a juristic person should be equated with an idol. When belief and faith of two different religions are different there is no question of equating one with the other. If Guru Granth Sahib by itself could stand the test of its being declared as such, it can be declared to be so. The Court peep into the fundamentals of Sikh religion though as a matter of caution observed that to comprehend any religion fully may indeed be beyond the comprehension of anyone and also beyond any judicial scrutiny for it has its own limitations. But then it is added with that silver lining could easily be picked up from the tenets and dictates of the concerned religion. In the Sikh religion the Guru is revered as the highest reverential person. The first of such most revered Guru was Guru Nanak Dev followed by the succeeding Gurus and the 10th being the last living Guru Gobind Singh Ji. It is believed that Adi Granth or Guru Granth Sahib was compiled by the fifth Guru Arjun and it is this book that is worshipped in all the Gurudwaras. Besides being read, people go down on their knees to make reverential obeisance and place

their offerings of cash and kind on it, as it is treated and equated to a living Guru. The composition of Gurus were always considered sacred by their followers. Guru Nanak said that in his hymns the true Guru manifested himself, because they were composed at His orders and heard by Him. The fourth Guru, Ram Das said, "look upon the words of the true Gurus as the supreme truth, for God and the Creator hath made him utter the words." When Guru Arjun formally installed the Granth in the Hari Mandir, he ordered his followers to treat it with the same reverence as they treated their Gurus. By the time of Guru Gobind Singh, copies of the Granth had been installed in most gurdwaras. He asked his followers to turn to the Granth for guidance and look upon it as the symbolic representation of the ten Gurus. The Granth Sahib is the central object of worship in all gurdwaras. It is with this faith that it is worshipped like a living Guru. This faith and conviction results, when installed in a Gurudwara to turn in a sacred place of worship. Sacredness of Gurudwara is only because of placement of Guru Grath Sahib in it. It also held that a restrictive meaning to the words juristic person ought not to be given otherwise it would erase the very jurisprudence which gave birth to it.

1915. Applying all these observations to the two plaintiffs we find no hesitation to observe that every condition or ingredient is fully satisfied so as to confer legal personality upon the two. In respect to the plaintiff no. 1 the defendants, pro-mosque parties, have no dispute that an idol duly consecrated would constitute a legal person and, therefore, their only objection is that the idol in question being not consecrated in accordance with the Shastrik laws is not a deity constituting a legal person. With respect to the plaintiff no. 2 their objection is

much stronger and virtually travels on the same causes as were argued in **Shiromani Gurdwara Prabandhak Committee, Amritsar Vs. Som Nath Dass (supra)** to outclass Guru Granth Sahib from the status of juristic person. We have already observed much with respect to the plaintiff no. 1 which in our view suffice to constitute it a legal person capable of maintaining a suit through a Shebait or a next friend as the case may be. The procedure of filing the suit we shall discuss later on in detail. So far as the place is concerned, it is almost admitted by most of the witnesses of pro-mosque parties, i.e., of plaintiff (Suit-4) that Hindus regularly visit Ayodhya for worshipping the birthplace of Lord Rama and several fairs are also held thereat periodically wherein a very large number of people across the country and even abroad come and participate. It is also admitted by some of the pro-mosque parties witnesses that the disputed place used to be visited by Hindus believing it to be the birthplace of Lord Rama. The manner of worship and Darshan has been explained by the witnesses produced by Nirmohi Akhara as well as the plaintiff (Suit-5) in one or the other ways. It is true that most of the part of the evidence of most of the witnesses is either irrelevant hence inadmissible or otherwise is not creditworthy which we have pointed out or shall be referring later as the case may be but that does not mean that the entire statement of a witness for this reason can be rejected. It is always permissible to a Court to take out the part of the statement of a witness which is believable and also sometimes when the statement amounts to an admission on behalf of party who has produced that witness, i.e., the part of the evidence of a witness which is against the party in whose favour the witness is deposing.

PW-1, Mohd. Hashim

“22/23 दिसम्बर, 1949 को जिस स्थान की कुर्की हुई हिन्दू लोग उसे राम जन्म भूमि कहते थे और मुसलमान बाबरी मस्जिद कहते हैं।” (पेज 40)

“*The Hindus called the place attached on 22nd - 23rd December, 1949, Ram Janam Bhumi and the Muslims call it Babri mosque.*” (E.T.C.)

“जैसे मक्का मुसलमानों के लिए अहमियत रखता है उसी तरह अयोध्या भगवान राम को लेकर हिन्दुओं के लिए महत्व रखता है।” (पेज 44)

“*As Mecca holds importance for Muslims, similarly Ayodhya holds importance for Hindus because of Lord Rama.*” (E.T.C.)

“हिन्दुस्तान से बाहर के देशों के लिए लोग भी अयोध्या में दर्शन के लिए आते हैं।” (पेज 73)

“*People from abroad also come to have darshan at Ayodhya.*” (E.T.C.)

“यह ठीक है कि अयोध्या हिन्दुओं का एक तीर्थ स्थल है।
. यह ठीक है कि 22 दिसम्बर 1949 से इस भूमि पर जो मुकदमा में मुतदाविया है, हिन्दू लोग देश-विदेश से दर्शन करने के आते हैं।”

(पेज 120)

“*It is true that Ayodhya is a place of pilgrimage for Hindus. It is true that from 22nd December, 1949, Hindus come from within the country and from abroad to have darshan on this land, which is disputed in litigation.*” (E.T.C.)

“हिन्दू लोग हिन्दुस्तान के हर कोने में रहते हैं उनके लिए अयोध्या मुतबरिक है।” (पेज 128)

“*Hindus live in every corner of Hindustan. Ayodhya is a holy place for them.*” (E.T.C.)

“यह भी ठीक है कि इस परिक्रमा को हिन्दू लोग कई सौ सालों से कर रहे हैं एक परिक्रमा चौदह कोशी भी है। एक चौदह कोसी परिक्रमा भी

है, जिसको लेने में यह पाँच कोसी परिक्रमा भी शामिल हो जाती है। ये दानों परिक्रमायें दो-तीन दिन के फर्क में होती हैं, यह परिक्रमायें सिर्फ हिन्दू लोग करते हैं यह उनकी अपनी समझ है कि वह इसे राम जन्म भूमि समझकर करते हैं या किसी और वजह से करते हैं। यह भी ठीक है कि इन मौकों पर हिन्दू लोग कल्पवास भी करते हैं । साधू-सन्त, वृद्ध आदि लोग कल्पवास करते हैं यह त्योहार कार्तिक के महीने में आता है।”

(पेज 141)

“It is also true that Hindus have been doing this parikrama (circumambulation) for hundreds of years. There is also a parikrama known as 'chaudah kosi'. There is also a 'chaudah kosi' parikrama in doing which this 'paanch kosi' parikrama also gets done. These two parikramas are done on the interval of two- three days. Only Hindus do these parikramas. It is their understanding whether they do so considering it to be Ram Janam Bhumi or due to any other reason. It is also true that Hindus also observe 'kalpvaas' on these occasions. Saints, seers, elderly persons and others observe 'kalpvaas'. This festival is celebrated in the month of Kartik.” (E.T.C.)

PW-2, Haji Mahboob Ahmad

“यह ठीक है कि रामचन्द्र जी की पैदाइश अयोध्या की है। जब से यह तुफान उठा है तब से देश के कोने कोने से हिन्दू लोग विवादित परिसर को उनकी जन्मभूमि कहते हैं और पूजते हैं वरना उनकी सारी अयोध्या है। पहले कनक भवन और जन्म स्थान को उनकी जन्मभूमि कहते थे। यह बताया गया जन्म स्थान मस्जिद से अलग दूसरी जगह पर है।”

(पेज 90)

“It is true that Ram Chandra's birthplace is Ayodhya. From when this turmoil has erupted, the Hindus from nooks and corners of the country call and worship the disputed premises as his Janam Bhumi. Otherwise, the

whole of Ayodhya is theirs. Earlier, they called the Kanak Bhawan and the Janam Sthan as his birth-land. It was told that Janam Sthan is at another place, separately from the mosque.” (E.T.C.)

“पंचकोसी परिक्रमा पूरे अयोध्या में है आम तौर से सर्दियों में होती हैं। परिक्रमा पर भीड़ होती है काफी लोग बाहर से आते हैं काफी लोग शहर के होते हैं।” (पेज 101)

“Panchkosi Parikrama covers the whole of Ayodhya. It usually takes place in winters. The Parikrama attracts a crowd. A number of people come from outside. A number of people hail from the city.” (E.T.C.)

PW-3, Farooq Ahmad

“अयोध्या में हिन्दू मेले होते हैं जैसे कि रामनवमी, परिक्रमा मेला और सावन मेला, इन मेलों पर हिन्दू लोग इकट्ठा होते हैं ये लोग मस्जिद भी देखने आया करते हैं। इस चबूतरे को देखने की गरज से बहुत से हिन्दू और मुस्लिम लोग सभी जाते हैं। मेले के वक्त भी हर मजहब के लोग चबूतरा देखने आते थे।” (पेज 29)

“Hindu fairs are held at Ayodhya such as Ramnavami, Parikrama Mela and Sawan Mela. Hindus gather in these fairs. They also come over to see the mosque. Many Hindus and Muslims used to come over to see this platform (Chabutara). Even on occasion of the fairs, people of all religions used to come to see the platform (Chabutara).” (E.T.C)

PW-4, Mohd. Yaseen

“वह हिन्दू लोग अपने ख्याल के मुताबिक इस जगह के दर्शन भगवान राम के जन्म स्थान के तौर पर करते होंगे।” (पेज 70)

“In my view, the Hindus must have had the darshan of this place as birthplace of Lord Rama.” (E.T.C)

“उनका यह अकीदा है कि यह श्री राम का जन्म स्थान है (अजखुद कहा कि उनका अकीदा उनके साथ है) हिन्दू लोग इस जगह को

पाक और पवित्र समझ कर इसकी पूजा करते हैं।” (पेज 71)

“It is their belief that it is the birthplace of Sri Rama (stated on his own that their belief lies with them). The Hindus revere this place as sacred and pious.” (E.T.C)

PW-7, Hasmat Ulla Asnsari

“मैं अयोध्या का मूल निवासी हूं। वहाँ पर सावन का मेला होता है एक मणि पर्वत का मेला होता है वशिष्ठ कुण्ड पर भी मेला लगता है चैत के महीने में रामनवमी का मेला भी होता है। यही कहते हैं कि रामनवमी का मेला भगवान राम के जन्म दिन के उपलक्ष्य में मनाया जाता है। उस मौके पर बाहर के लोग भी अयोध्या में आते हैं। वहाँ परिक्रमा भी होती है। दो परिक्रमायें हैं एक पंचकोशी और एक चौदह कोशी। जगह जगह से हिन्दू लोग आते हैं और इस मौके पर परिक्रमायें भी करते हैं।” (पेज 73)

“I am a native of Ayodhya. Sawan Mela takes place there and so does Mani Parvat fair. A fair is also organised at Vashishtha Kund. Ram Navami fair too takes place in the month of Chaitra. It is said that Ram Navami fair is organised to commemorate the birth anniversary of Lord Rama. People even from outside come to Ayodhya on that occasion. Circumambulation also takes place there. There are two circumambulations, one is called Panchkoshi and the other Chaudahkoshi. Hindus come from different places and also do circumambulations on this occasion.” (E.T.C.)

PW-8, Abdul Ajij

“यह ठीक है कि अयोध्या हिन्दुओं की एक तीर्थस्थली है। बहुत दूर-दूर से हिन्दू लोग वहाँ आते हैं।” (पेज 33)

“It is true that Ayodhya is a pilgrimage of Hindus. Hindus come here from far off places.” (E.T.C)

PW-9, Syed Akhlak Ahmad

“यह ठीक है कि अयोध्या हिन्दुओं का तीर्थ स्थल करके मशहूर है

अयोध्या में हजारों मंदिर तो जरूर हैं।" (पेज 3)

"It is true that Ayodhya is famous as pilgrimage of Hindus. There are certainly thousands of temples in Ayodhya." (E.T.C.)

"मैं सुनता हूँ कि हिन्दू हजरात यह यकीदा रखते हैं कि अयोध्या उनका जन्म स्थान है अयोध्या में श्रीराम जन्मभूमि को वो उनका जन्मस्थान मानते हैं।" (पेज 42)

"I hear that Hindus have the belief that Ayodhya is his birthplace. They believe Sri Ramjanmbhumi at Ayodhya to be his birthplace." (E.T.C)

"अयोध्या में हर साल चौदहकोसी और पंचकोसी परिक्रमाएं होती है। यह ठीक है कि इनमें लाखों हिन्दू नंगे पांव भाग लेते हैं। स्थानीय लोग भी होते हैं और देश के दूसरे हिस्सों से भी काफी लोग आते हैं।

अयोध्या में रामनवमी का मेला होता है। लाखों में तीर्थ यात्री अयोध्या आते हैं और भगवान श्री राम का जन्म मनाते हैं और मंदिरों को भी सजाया जाता है। सावन के महीने में झूला मेला भी होता है। यह भी एक बड़ा मेला है। लाखों में हिन्दू लोग बाहर से आते हैं। इनके अलावा भी तकरीबन हर रोज ही साधारण तौर पर भी बाहर से काफी हिन्दू यात्री तीर्थ के लिए आते जाते रहते हैं।" (पेज 94)

"'Chaudahkosi' (fourteen kose, one kose being equal to two miles) and 'Panchkosi' (five kose) circumambulations are performed every year in Ayodhya. It is true that lakhs of Hindus participate in them, barefoot. (They) include local people as well as people coming over from other parts of the country.

Ramnavami fair is held at Ayodhya. Lakhs of pilgrims come to Ayodhya and celebrate the birth of Lord Sri Rama and the temples are also decorated. The 'Jhula' fair is also held in the month of Shravana. It is also a big fair. Lakhs of Hindus come from outside. Besides these, usually almost everyday many Hindu travelers keep coming

from outside for pilgrimage." (E.T.C)

“मैंने सुना है कि हिन्दू लोग इस बीच वाले हिस्सों को भगवान राम का जन्म स्थान और गर्भगृह मानते हैं।” (पेज 130)

"I have heard that the Hindus consider this central part to be the birthplace of Lord Rama & sanctum sanctorum." (E.T.C)

PW-12, Ram Shankar Upadhyay

“भगवान राम को हम भगवान विष्णु का साक्षात अवतार मानते हैं।”

(पेज-6)

“We regard Lord Rama as a manifest incarnation of Lord Vishnu.” (E.T.C.)

“लेकिन वास्तविकता यह जरूर है कि आयोध्या एक तीर्थ है।”

(पेज-7)

“But it is certainly a reality that Ayodhya is a site of pilgrimage.” (E.T.C.)

“क्योंकि हम सनातनी हैं। मैंने भगवान राम का दर्शन किया।”

(पेज-17)

“Since I am a Sanatani (orthodox Hindu), I had a sight of Lord Rama.” (E.T.C.)

“मेरी जानकारी में विवादित स्थल और ऊपर बताये गये राम जन्म स्थान के अलावा अयोध्या में कोई और मंदिर या जगह राम जन्म भूमि के नाम से नहीं है।” (पेज-52)

“To my knowledge, except for the disputed site and Rama Janam sthan mentioned above, there is no temple or place in Ayodhya in the name of Ram Janam Bhumi.”

(E.T.C.)

“भगवान राम का जन्म चैत की राम नवमी को हुआ था इसलिए उनका जन्म दिन मनाने के लिए यह मेला होता है।” (पेज-52)

“Lord Rama was born on Ramnavami of Chaitra; so,

this fair is held to celebrate his birth anniversary.”

(E.T.C.)

“यह ठीक है कि अयोध्या का महत्व इसलिए है कि वहां मर्यादा पुरुषोत्तम श्री राम का जन्म हुआ था।” (पेज-53)

“It is correct that Ayodhya holds importance because Maryada Purushottam Sri Rama(Supreme Being Sri Rama epitomizing dignified behaviour) was born there.”

(E.T.C.)

“यह ठीक है कि विवादित स्थल मोहल्ला रामकोट में स्थित था कोट का अर्थ किला होते हैं। मोहल्ले का नाम रामकोट है उसका शब्दार्थ रामजी का किला हो सकता है मेरे इल्म से तो इस मोहल्ले को रामकोट के नाम से ही जाना जाता है।” (पेज-58)

“It is correct that the disputed site was situated in Ramkot Mohalla. Kot means fort. The name of the Mohalla is Ramkot. It may literally mean the fort of Ramji To my knowledge, this Mohalla is known only by the name of Ramkot.” (E.T.C.)

PW-13, Suresh Chandra Misra

“ग्रन्थों के आधार पर यह तथ्य आता है कि श्री राम का जन्म अयोध्या में हुआ।” (पेज 36)

“On the basis of treatises it comes to knowledge that Sri Rama was born in Ayodhya.” (E.T.C.)

“मुझे यह जिज्ञासा थी और यह जानने का प्रयास भी किया कि श्रीराम किस स्थान पर पैदा हुए थे। लोगों ने मुझे यह बताया कि अमुक स्थान पर यानी विवादित स्थान पर श्री राम का जन्म हुआ था।”

(पेज 146)

“I had a curiosity and also tried to know at which place Sri Rama was born. People told me that Sri Rama was born on a particular place, that is, the disputed site.”

(E.T.C.)

“प्रश्न— जो लोग भगवान श्रीराम की आराधना करते हैं वे लोग अयोध्या को उनकी जन्मस्थली मानते हैं?”

उत्तर— यह ठीक है।” (पेज 177)

“*Question:- Do those worshipping Lord Sri Rama regard Ayodhya as his birth-place?*

Answer:- It is true.” (E.T.C.)

PW-23, Mohd. Qasim Ansari

“यह ठीक है कि खिलजी एवं लोधी वंश की हुकूमत के दौरान और उससे पहले भी बहुत से सूफी भारतवर्ष आये। ख्वाजा मोइनुद्दीन चिश्ती, चिस्त एक जगह है, वहाँ के रहने वाले थे। यह शायद सेन्ट्रल एशिया में है।” (पेज 19)

“*It is true that many Sufis came to India during the reign of Khilji and Lodhi dynasties and even earlier. Khwaja Moinuddin Chisti was a resident of a place called Chist. It is perhaps in Central Asia.” (E.T.C.)*

“पंचकोसी परिक्रमा साल में एक बार होती है यह शायद परिक्रमा कार्तिक माह में होती है शायद कार्तिक मेले के आस पास होती है यह कहना सही है कि इस मौके पर अयोध्या में भारी मेला लगता है। यह कहना सही है कि लाखों की तादाद में तीर्थ यात्री दर्शन करने को आते हैं।लाखों लोग पंचकोसी मार्ग पर परिक्रमा करते हैं। यह कहना सही है कि जो तीर्थ यात्री परिक्रमा करते हैं वे हनुमानगढ़ी, कनक भवन और रामजन्मभूमि का दर्शन भी करते हैं।मैं चौदह कोसी परिक्रमा के बारे में भी जानता हूँ।। इस चौदह कोसी परिक्रमा मार्ग में अयोध्या और फ़ैजाबाद आते हैं यह कहना भी सही है कि चौदह कोसी परिक्रमा भी कार्तिक के माह में होती है। यह कहना भी सही है कि इस परिक्रमा में भी लाखों की संख्या में तीर्थ यात्री और भक्तगण शिरकत करते हैं।” (पेज 34)

“*The ‘Panchkosi’ (distance of five kose, one kose being equal to two miles) circumambulation is performed annually, possibly in the ‘Kartika’ month, possibly around the Kartika fair. It is true that a very big fair is held at Ayodhya on this occasion. It is true that lakhs of pilgrims*

come to have darshan. Lakhs of people perform circumambulation on the 'Panchkosi' path. It is true that such pilgrims, who perform circumambulation, also have darshan of Hanumangarhi, Kanak Bhawan and Ramjanmbhumi I also know about 'Chaudahkosi' (distance of fourteen kose) circumambulation. Ayodhya and Faizabad fall in this 'Chaudahkosi' circumambulation path. It is also true that the 'Chaudahkosi' circumambulation also commences in the month of 'Kartika'. It is also true that lakhs of pilgrims and devotees participate in this circumambulation as well." (E.T.C)

"यह ठीक है कि हिन्दू लोग जिसे मैं बाबरी मस्जिद कहता हूँ उसे जन्मभूमि कहते हैं।" (पेज 36)

"It is true that what is termed as Babri mosque by me, is called Janmbhumi by Hindus." (E.T.C)

"यह ठीक है कि चैत में भी राम नवमी का मेला होता है। यह भी ठीक है कि उस मेले में लोग लाखों की संख्या में आते हैं और काफी भीड़ भाड़ होती है।" (पेज 39)

"It is true that the Ramnavami fair is also held during 'Chaitra'. It is also true that lakhs of people come in that fair and a huge gathering takes place." (E.T.C)

"सावन मेला भी अयोध्या में बहुत धूमधाम से होता है।" (पेज 39)

"Sharavana fair is also held with great pomp and show at Ayodhya." (E.T.C)

"यह ठीक है कि इस मेले में जो आते हैं, सरयू में स्नान करते हैं, कनक भवन मंदिर, जन्मस्थान मंदिर और जन्मभूमि का दर्शन करते हैं।" (पेज 39)

"It is true that the visitors of this fair, take a holy dip in the Saryu and have darshan of Kanak Bhawan temple, Janmsthan temple and Janmbhumi." (E.T.C)

“यह कहना ठीक है कि उपरोक्त तीनों मेले में अपनी याददाश्त से देखता चला आ रहा हूँ। यह कहना सही है कि यह तीनों मेले में लाखों की संख्या में श्रद्धालु आते हैं कुछ रेल से आते हैं, कुछ बस से आते हैं और कुछ अपनी गाड़ी से आते हैं पहले कुछ लोग बैलगाड़ी और घोड़ों से भी आते थे।यह ठीक है कि जो विवादित जगह है उसे हिन्दू लोग जन्म भूमि कहकर अपना हक जता रहे हैं।यह कहना ठीक है कि उपरोक्त मेले के दिनों में हिन्दू और मुसलमानों के बीच भेदभाव खत्म हो जाता है और लोग प्यार से रहते थे।” (पेज 39-40)

"It is true that I have seen these three fairs since my memory. It is true that lakhs of devotees visit on occasion of these three fairs, some come by train, some by bus and some by their private vehicles. Earlier some people used to come by bullock-carts and horses as well It is true that by terming the disputed site as Janmbhumi, the Hindus are staking their right over the same It is true that the mutual differences between Hindus and Muslims stood extinguished during the aforesaid fairs and people used to live in harmony." (E.T.C)

“यह ठीक है कि अयोध्या को हिन्दुओं का एक तीर्थ स्थल माना जाता है।” (पेज 41)

"It is true that Ayodhya is considered a pilgrimage of the Hindus." (E.T.C)

“तीर्थ स्थान पहले भी था यह ठीक है कि हिन्दू लोग भगवान राम को अपना देवता मानते हैं। यह कहना सही है कि हिन्दुओं का ऐसा विश्वास है कि भगवान राम अयोध्या में पैदा हुए थे। यह भी कहना ठीक है कि अयोध्या में भगवान राम से सम्बन्धित कई कुण्ड और स्थान हैं।”

(पेज 42)

It was a pilgrimage in past as well It is true that Hindus consider Lord Rama, their God. It is true that it is the belief of Hindus that Lord Rama was born in Ayodhya. It is also true that there are many 'Kundas' and

places related to Lord Rama in Ayodhya.” (E.T.C)

“मैं जानता हूँ कि भगवान राम हिन्दुओं के आराध्य देवता हैं।
. . . . मैंने ऐसा सुना और पढ़ा है कि अयोध्या कई बार पलटी है जिसके
आज भी निशान मौजूद हैं। मैंने ऐसा पढ़ा है कि अयोध्या दो तीन
बार पलटी है जिसके निशानात आज भी मौजूद हैं जिसे मैंने देखा है।”

(पेज 64)

*"I know that Lord Rama is the favoured deity of
Hindus. . . . I have heard and read that Ayodhya has over
turned many times traces of which exist even today.
. . I have read that Ayodhya has overturned two-three times
traces of which are found even today; I have seen them."*

(E.T.C.)

“सरयू नदी के किनारे से झुनझुनियो घाट तक जो सामान दिखता
है वह सब उल्टा मिलता है अर्थात् कुओं भी उल्टा मिलता है।” (पेज 65)

*“All things seen from the river bank of Saryu up to
Jhunjuniya Ghat are found to be upside down, that is to
say, the well is also found upside down.” (E.T.C.)*

OPW-1, Mahant Ramchandra Das Digambar

“जिस समय शिखर गिरा उस समय शिखर के नीचे रामलला की
कोई मूर्ति नहीं थी शिखर की नीचे की भूमि पर पूजा पाठ होता था।
मध्य शिखर के नीचे प्रसूति भूमि, जहां पर भगवान राम का जन्म हुआ था
वह स्थान था। मध्य शिखर के नीचे का जो भाग गर्भ गृह के रूप में था वह
स्थान तथा उसके चारो तरफ उस स्थान को मैं गर्भगृह का स्थान मानता
हूँ। तीनों गुम्बजों के नीचे की भूमि तथा परिक्रमा मार्ग की सम्पूर्ण भूमि
गर्भगृह के अन्तर्गत थी।”(पेज 42)

*“When the dome collapsed, there was no idol of
Ram Lala beneath it. ‘Pooja-Paath’ used to be performed
on the land beneath the dome. ‘Prasuti Bhumi’ - the
land where Lord Rama was born – was beneath the middle
dome. I take the part beneath the middle pillar – which
was in the shape of the sanctum sanctorum – as also the*