हिन्दू विवाह अधिनियम, 1955

(1955 का अधिनियम संख्या 25) [18 मई 1955]

प्रारम्भिक

हिन्दू विवाह **संक्षिप्त नाम और विस्तार–**

(1) यह अधिनियम हिन्दू विवाह अधिनियम, 1955 कहलाया जा सकेगा।

(2) इसका विस्तार समस्त भारत पर है और जिन राज्य-क्षेत्रों पर कि इस अधिनियम का विस्तार है, उन राज्य-क्षेत्रों में अधिवासी उन हिन्दुओं को भी यह लागू है जो उक्त राज्यक्षेत्रों के बाहर हैं।

*. *Vide* notification No. S.O. 3912(E), dated 30th October, 2019, this Act is made applicable to the Union territory of Jammu and Kashmir and the Union territory of Ladakh.

2. अधिनियम का लागू होना-

(1) यह अधिनियम -

(क) वीरशैव, लिंगायत, ब्राह्म, प्रार्थना या आर्य-समाज के अनुयायियों के सहित ऐसे किसी व्यक्ति को लागू है जो कि हिन्दू धर्म के रूपों के विकासों में से किसी के नाते धर्म से हिन्दू हैं;

(ख) ऐसे किसी व्यक्ति को लागू है जो कि धर्म से बौद्ध, जैन या सिक्ख हैं; और

(ग) जब तक कि उन राज्य-क्षेत्रों में जिन पर कि इस अधिनियम का विस्तार है, अधिवासित ऐसे किसी अन्य व्यक्ति के बारे में जो कि धर्म से मुसलमान, ईसाई, पारसी या यहूदी नहीं है, यह सिद्ध नहीं कर दिया जाता कि यदि यह अधिनियम पारित न किया गया होता तो वह ऐसी किसी बात के बारे में, जिसके लिये इसमें व्यवस्था की गई है, हिन्दू विधि द्वारा या उस विधि की भागरूप किसी रूढ़ि या प्रथा द्वारा शासित नहीं होता, ऐसे अन्य व्यक्ति को भी लागू है।

स्पष्टीकरण — निम्न व्यक्ति अर्थात् :-

(क) ऐसा कोई बालक चाहे वह औरस हो या जारज जिसके दोनों जनकों में से एक धर्म से हिन्दू, बौद्ध, जैन या सिक्ख हों;

(ख) ऐसा बालक चाहे वह औरस हो या जारज जिसके दोनों जनकों में से एक धर्म से हिन्दू, बौद्ध, जैन या सिक्ख है और जिसका कि लालन-पालन उस आदिम जाति, समुदाय, समूह या परिवार के सदस्य के रूप में किया गया है जिसका कि ऐसा जनक है या था; और

(ग) ऐसा कोई व्यक्ति जिसने हिन्दू, बौद्ध, जैन या सिक्ख धर्म ग्रहण किया है, पुनर्ग्रहण किया है; यथास्थिति धर्म से हिन्दू, बौद्ध, जैन या सिक्ख है।

(2) उपधारा (1) में अन्तर्विष्ट किसी बात के होते हुए भी इस अधिनियम में अन्तर्विष्ट कोई बात संविधान के अनुच्छेद 366 के खण्ड (25) के अर्थों के अन्दर वाली किसी अनुसूचित आदिम जाति के सदस्यों को तब तक लागू न होगी जब तक कि केन्द्रीय सरकार राजकीय गजट में अधिसूचना द्वारा अन्यथा निर्दिष्ट न करे।
(3) इस अधिनियम के किसी प्रभाव से हिन्दू पद का ऐसे अर्थ लगाया जायगा मानो कि इसके अन्तर्गत ऐसा व्यक्ति है जो कि यद्यपि धर्म से हिन्दू नहीं है तथापि ऐसा व्यक्ति है जिसे कि यह अधिनियम इस धारा में अन्तर्विष्ट उपबन्धों के बल से लागू होता है।

Short title and extent.-

(1) This Act may be called the Hindu Marriage Act, 1955.

(2) It extends to the whole of India, and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

2. Application of Act.-

(1) This Act applies-

(a) to any person who is a Hindu by religion in any of its forms or developments, including a

Virashaiva, a

Lingayat or a follower of the

Brahmo,

Prarthana or

Arya Samam,

(b) to any person who is a

Buddhist,

Jaina or

Sikh by religion, and

(c) to any other person domiciled in the territories to which this Act extends who is not a

Muslim,

Christian,

Parsi or

Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

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

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

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

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

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

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

Case Law on 'who is Hindu'

1. **Sastri Yagnapurushadji And ... vs Muldas Brudardas Vaishya And ... on 14 January, 1966**

BENCH:
GAJENDRAGADKAR, P.B. (CJ)
BENCH:
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
HIDAYATULLAH, M.
RAMASWAMI, V.
SATYANARAYANARAJU, P.

ACT:
Bombay Hindu Places of Public Worship (Entry Authorisations Act (31 of 1956), s. 3-Validity.
Hindu-Who is.
Practice-Vakalanama in favour of an Advocate-Presentation of appeal by another advocate working in his chambers-If valid presentation.

HEADNOTE:
The appellants, who are the followers of the Swaminarayan sect and known at Satsangis, filed a representative suit: (i) for a declaration that the relevant provisions of the Bombay Harijan Temple Entry Act, 1947, as amended by Act 77 of 1948, did not apply to their temples, because, the religion of the Swaminarayan sect was distinct and different from Hindu religion and because, the relevant provisions of the Act, were ultra vires, and (ii) for an injunction restraining the 1st respondent and other non Satsangi

Harijans from entering the Swaminarayan temple. The Trial Court decreed the suit. Pending the 1st respondent's appeal in the High Court, the Bombay Hindu Places of Public Worship (Entry Authorisation) Act, 1956, was passed, and since the 1947 Act gave place to the 1956 Act, it became necessary to consider whether the 1956 Act was intra vires. The High Court allowed the appeal and dismissed the suit holding that the followers of the Swaminarayan sect professed Hindu religion and that the Act of 1956 was constitutionally valid.

In appeal to this Court it was contended that : (i) the High Court erred in treating the 1st respondent's appeal as competent when the vakalatnama filed on his behalf was invalid (ii) s. 3 of the 1956 Act was ultra vires as it contravened Art. 26(b) of the Constitution; and (iii) the religion of the Swaminarayan sect was distinct and separate from Hindu religion and that therefore the temples belonging to that sect did not fall within the ambit of the 1956 Act.

HELD: (i) The appeal to the High Court was properly presented.

Technically the memorandum of appeal presented by the Assistant Government Pleader on behalf of the 1st respondent suffered from an infirmity, because, the 1st respondent signed the vakalatnama in favour of the Government Pleader. But, since the Registry had not returned the appeal for correcting the irregularity, and since r. 95 of the Appellate Side Rules of the High Court authorises an advocate to appear even without initially filing a vakalatnama, the High Court was right in allowing the Government Pleader to sign the memorandum of appeal and the vakalatnarna, in order to remove the irregularity. [251 E-G; 252 A-C]

(ii) There is no substance in the contention that s. 3 contravenes Art. 26(b) of the Constitution and is therefore ultra vires.

The right to enter temples which has been vouchsafed to the Harijans by the impugned Act substance symbolises the right

of Harijans to enjoys all social amenities and rights, for, social justice is the main foundation of the democratic way of life enshrined in the provisions of the Indian Constitution. After the Constitution came into force, the whole social and religious outlook of the Hindu community has undergone a fundamental change as a result of the message of social equality and justice proclaimed by the Constitution; and the solemn promise in Art. 17, abolishing untouchability has been gradually, but irresistibly enforced by the process of law assisted by enlightened public conscience. All that s. 3 of the 1956 Act purports to do is to give the Harijans the same right to enter the temple for darshan of the deity as can be claimed by the other Hindus. The act of actual worship of the diety is allowed to be performed only by the authorised poojaris of the temple and by no other devotee entering the temple for darshan. Therefore, it was nont intended to invade the tradition and conventional manner of performing the actual worship of the idol.

(iii) The High Court was right in coming to the conclusion that the religion of the Swaminarayan sect is not, distinct and separate from Hindu religion, and consequently, the temples belonging to the sect did fall within the ambit of s. 2 of the Act.

The Indian mind has consistently through the ages, been exercised, over the problem of the nature of godhead, the problem that faces the spirit at the end of life, and the interrelation between the individual and the universal soul. According to Hindu religion the ultimate goal of humanity is release and freedom from the unceasing cycle of births and rebirths and a state of absorption and assimilation of the individual soul with the infinite. On the means to attain this and there is a great divergence of views; some emphasise the importance of Gyana, while others extol the virtue of Bhakti or devotion, and yet others insist upon the paramount importance of the performance of duties with a heart full of devotion and in mind inspired by knowledge. Naturally it was realised by Hindu religion from the very

beginning of its career that truth was many-sided and different views contained different aspects of truth which no one could fully express. This knowledge inevitably bred a spirit of tolerance and willingness to understand and appreciate the opponent's point of view. Because of this broad sweep of Hindu philosophic concept under Hindu philosophy, there is no scope for excommunicating any notion or principle as heretical and rejecting it as such. The development of Hindu religion and philosophy shows that from time to time saints and religious reformers attempted to remove from Hindu thought and practices, elements of corruption and superstition, and revolted against the dominance of rituals and the power of the priestly class with which it came to be associated; and that led to the formation of different sects. in the teaching of these saintns and religious reformers is noticeable a certain amount of divergence in their respective views; but underneath that divergence lie certain broad concepts which can be treated as basic, and there is a kind of subtle indescribable unity which keeps them within the sweep of broad and progressive Hindu religion. The first among these basic concepts is the acceptance of the Vedas as the highest authority in religious and philosophic matters. This concept necessarily implies that all the systems claim to have drawn their principles from a common, reservoir of thought enshrined in the Vedas. Unlike other religions in the world, the Hindu religion does not claim any one prophet; it does no(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 satisfy the traditional features of a religion or creed. It is a way of life and nothing more.

The Constitution makers were fully conscious, of the broad and comprehensive character of Hindu religion; and while guaranteeing the fundamental right to freedom of religion made it clear that reference to Hindus shall be construed as

including a reference to persons professing the Sikh, Jaina or Buddhist religion.
Philosophically, Swaminarayan was a follower of Ramanuja and the essence of his teachings is acceptance of the Vedas with reverence, recognition of the fact that the path of Bhakti or devotion leads to Maksha, insistence or devotion to Loard Krishna and a determination to remove corrupt practices and restore Hindu Religion to its original glory and purity. This shows unambiguously and unequivocally that Swaminarayan was a Hindu saint. Further, the facts that initiation is necessary to become a Satsangi, that persons of other religions could join the sect by initiation without any process of proselytising on such occasions, and that Swaminarayan himself is treated as a God, are not inconsistent with the basic Hindu religious and philosophic theory.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 517 of 1964. Appeal from the judgment and decree, dated October 3, 1958 of the Bombay High Court in First Appeal No. 107 of 52. Vasant J. Desai, M. L. Bhalja and A. G. Ratnaparkhi, for the appellants.

C. K. Daphtary, Attorney-General, Atiqur Rehman and K. L. Hathi, for respondent No. 1.

C. K. Daphtary, Attorney-General, N. S. Bindra and B. R. G. K. Achar, for respondent No. 2.

S. V. Gupte, Solicitor-General, and B. R. G. K. Achar, for the intervener.

The Judgment of the Court was delivered by Gajendragadkar, C.J. The principal question which arises in this appeal is whether the Bombay High Court was right in holding that the Swaminarayan Sampradaya (sect) to which the appellants belong, is not a religion distinct and separate from the Hindu religion, and that the temples belonging to the said sect do come within the ambit of the provisions of the Bombay Hindu Places of Public Worship (Entry- Authorisation) Act, 1956 (No. 31 of 1956) (hereinafter called 'the Act'). The suit from which the present appeal arises was instituted by the appellants on the 12th January, 1948, in the Court of the Joint Civil Judge, Senior Division, Ahmedabad.

Before the suit was instituted, the Bombay Harijan Temple Entry Act, 1947 (No. 35 of 1947) (Hereinafter called 'the former Act') had come into force on the 23rd November, 1947. The appellants are the followers of the Swaminarayan sect, and are known as Satsangis. They have filed the present suit on behalf of themselves and on behalf of the Satsangis of the Northern Diocese of the sect at Ahmedabad. They apprehended that respondent No. 1, Muldas Bhudardas Vaishya, who is the President of the Maha Gujarat Dalit Sangh at Ahmedabad, intended to assert the rights of the non-Satsangi Harijans to enter the temples of the Swaminarayan sect situated in the Northern Diocese at Ahmedabad in exercise of the legal rights conferred on them by s. 3 of the former Act of 1947. Section 3 of the said Act had provided, inter alia, that every temple to which the Act applied shall be open to Harijans for worship in the same manner and to the same extent as other Hindus in general. To this suit the appellants had impleaded five other respondents, amongst whom was included the Province of Bombay as respondent No. 4, under the order of the Court at a later stage of the proceedings on the 18th July, 1949. In their plaint, the appellants had alleged that the Swaminarayan temple of Sree Nar Narayan Dev of Ahmedabad and all the temples subordinate thereto are not temples within the meaning of the former Act. Their case, was that the Swaminarayan sect represents a distinct and separate religious sect unconnected with the Hindus and Hindu religion, and as such, their temples were outside the purview of the said Act. On the basis of this main allegation, the appellants claimed a declaration to the effect that the relevant provisions of the said Act did not apply to their temples. In the alternative, it was urged that the said Act was ultra vires. As a consequence of these two declarations, the appellants asked for an injunction restraining respondent No. 1 and other non- Satsangi Harijans from entering the Swaminarayan temple of the Northern Diocese of the Swaminarayan sect; and they prayed that an appropriate injunction should be issued directing respondents 2 and 3 who are the Mahants of the said temples to take steps to prevent respondent No. 1 and the other non-Satsangi Harijans from entering and worshipping in the said temples.

Pending these proceedings between the parties, the former Act was amended by Bombay Act No. 77 of 1948; and later, the Constitution of India came into force on the 26th January, 1950. As a result of these events, the appellants applied for an amendment of the plaint on the 30th November, 1950, and the said application was granted by the learned trial Judge. In consequence of 24 6 this amendment, the appellants took the plea that their temples were not temples within the meaning of the former Act as amended by Act No. 77 of 1948; and they urged that the, former Act was ultra vires the powers of the State of Bombay inasmuch as it was inconsistent with the Constitution and the fundamental rights guaranteed therein. It was contended by them

that the Swaminarayan sect was an institution distinct and different from Hindu religion, and, therefore, the former Act as amended could not apply to or affect the temples of the said sect. On this additional ground, the appellants supported the original claim for declarations and injunctions made by them in their plaint as it was originally filed.

This suit was resisted by respondent No. 1. It was urged on his behalf that the suit was not tenable at law, on the ground that the Court had no jurisdiction to entertain the suit under s. 5 of the former Act. Respondent No. 1 disputed the appellants' right to represent the Satsangis of the Swaminarayan sect, and he averred. that many Satsangis were in favour of the Harijans' entry into the Swaminarayan temples, even though such Harijans were not the followers of the Swaminarayan sect. According to him, the suit temples were temples within the meaning of the former Act as amended and that non-Satsangi Harijans had a legal right of entry and worship in the said temples. The appellants' case that the former Act was ultra vires, was also challenged by respondent No. 1. Respondents 2 and 3, the Mahants of the temples, filed purshis that they did not object to the appellants' claim, while respondent No. 4, the State of Bombay, and respondents 5 and 6 filed no written statements. On these pleadings, the learned trial Judge framed several issues, and parties led voluminous documentary and oral evidence in support of their respective contentions. After considering this evidence, the learned trial Judge held that the suit was maintainable and was not barred under s. 5 of the former Act. He found that the former Act was intra vires the legislative powers of the Bombay State and did not infringe any fundamental rights of the appellants. According to him, the Swaminarayan sect was not distinct and different from Hindu religion and as such, the suit temples were temples which were used as places of religious worship by the congregation of the Satsang which formed a section of the Hindu community. The learned trial Judge, however, came to the conclusion that it had not been established that the suit temples were used by non-Satsangi Hindus as places of religious worship by custom, usage or otherwise, and consequently, they did not come within the meaning of the word "temple" as defined by the former Act. Thus, the conclusion of the learned trial Judge on this part of the appellants' case decided the fate of the suit in their favour, though findings were recorded by the trial Judge in favour of respondent No. 1 on the other issues. In the result, the trial court passed a decree in favour of the appellants giving them declarations and injunctions as claimed by them. This judgment was pronounced on the 24th September, 1951.

The proceedings in the trial court were protracted and lasted for nearly three years, because interim proceedings which led to certain interlocutory orders, were contested between the parties and were taken to the High Court on two occasions before the suit

was finally determined. The decision of the trial court on the merits was challenged by Respondent No. 4 and respondent No. 1 who joined in filing the appeal. The appeal thus presented by the two respondents was heard by the High Court on the 8th March, 1957. At this hearing, two preliminary objections were raised by the appellants against the competence and maintainability of the appeal itself. It was urged that the appeal preferred by respondent No. 4 was not competent, inasmuch as respondent No. 4 had no locus standi to prefer the appeal in view of the fact that the former Act in the validity of which respondent No. 4 was vitally interested had been held to be valid. This objection was upheld and the appeal preferred by respondent No. 4 was dismissed. In regard to the appeal preferred by respondent No. 1, the appellants contended that the Vakalatnama filed on his behalf was invalid and as such, the appeal purported to have been preferred on his behalf was incompetent. It appears that respondent No. 1 had authorised the Government Pleader to file an appeal on his behalf, whereas the appeal had actually been filed by Mr. Daundkar who was then the Assistant Government Pleader. The High Court rejected this objection and held that the technical Irregularity on which the objection was founded could be cured by allowing the Government Pleader to sign the memorandum of appeal presented on behalf of respondent No. 1 and endorse acceptance of his Vakalatnama.

Having thus held that the appeal preferred by respondent No. 1 was competent, the High Court proceeded to consider the merits of the said appeal. It was urged before the High Court by respondent No. 1 that the declarations and injunctions granted to the appellants could not be allowed to stand in view of the Untouch 10Sup.CI/63--3 ability (Offences) Act, 1955 (Central Act 22 of 1955) which had come into force on the 8th May, 1955 and which had repealed the former Act. This contention did not find favour with the High Court, because it took the view that the declarations and injunctions granted by the trial court were not based on the provisions of the former Act, but were based on the view that the rights of the appellants were not affected by the said Act. The High Court observed that in dealing with the objections raised by respondent No. 1, it was unnecessary to consider whether on the merits, the view taken by the trial court was right or not. The only point which was relevant for disposing of the said objection was to consider whether any relief had been granted to the.appellants under the provisions of the former Act or not; and since the reliefs granted to the appellants were not under any of the said provisions, but were in fact based on the view that the provisions of the said Act did not apply to the temples in suit, it could not be said that the said reliefs could not survive the passing of the Untouchability (Offences) Act, 1955. The High Court, however, noticed that after the trial court pronounced its judgments, the Bombay Legislature had passed the Act (No. 31 of 1956) and respondent No. 1 naturally relied

upon the material provisions of this Act contained in s. 3. Thus, though the substance of the controversy between the parties remained the same, the field of the dispute was radically altered. The former Act had given place to the Act and it now became necessary to consider whether the Act was intra vires, and if yes, whether it applied to the temples in suit. Having regard to this altered position, the High Court took the view that it was necessary to issue a notice to the Advocate-General under O.27A of the Code of Civil Procedure. Accordingly, a notice was issued to the Advocate General and the appeal was placed before the High Court on the 25th March, 1957 again. At this hearing, the High Court sent the case back to the trial court for recording a finding on the issue " whether the Swaminarayan temple at Ahmedabad and the temples subordinate thereto are Hindu religious institutions within the meaning of Art. 25 (2) (b) of the Constitution". Both parties were allowed liberty to lead additional evidence on this issue.

After remand, the appellants did not lead any oral evidence, but respondent No. 1 examined two witnesses Venibhai and Keshavlal. Keshavlal failed to appear for his final cross- examination despite adjournments even though the trial court had appointed a Commission to record his evidence. Nothing, however, turned upon this oral evidence. In the remand proceedings, it was not disputed before the trial court that the temples in suit were public religious institutions. The only question which was argued before the court was whether they could be regarded as Hindu temples or not, The appellants contended that the suit temples were meant exclusively for the followers of the Swaminarayan sect; and these followers, it was urged, did not profess the Hindu religion. The learned trial Judge, however, adhered to the view already expressed by his predecessor before remand that the congregation of Satsang constituted a section of the Hindu community; and so he found that it was not open to the appellants to contend before him that the followers of the Swaminarayan sect were not a section of the Hindu community. In regard to the nature of the temples, the learned trial Judge considered the evidence adduced on the record by both the parties and came to the conclusion that the Swaminarayan temples at Ahmedabad and the temples subordinate thereto were Hindu religious institutions within the meaning of Art. 25 (2) (b) of the Constitution. This finding was recorded by the trial Judge on the 24th March 1958.

After this finding was submitted by the learned trial Judge to the High Court, the Appeal was taken up for final disposal. On' this occasion, it was urged before the High Court on behalf of the appellants that the members belonging to the Swaminarayan sect did not profess the Hindu religion and, therefore, their temples could not be said to be Hindu temples. It was, however, conceded on their behalf that in case the High Court came to the conclusion that the Swaminarayan sect was not a different religion from Hinduism,

the conclusion could not be resisted that the temples in suit would be Hindu religious institutions and also places of public worship within the meaning of s. 2 of the Act. That is how the main question which was elaborately argued before the High Court was whether the followers of the Swaminarayan sect could be said to profess Hindu religion and be regarded as Hindus or not. It was urged by the appellants that the Satsangis who worship at the Swaminarayan temple may be Hindus for cultural and social purposes, but they are not persons professing Hindu religion, and as such they do not form a section, class or sect or denomination of Hindu religion. Broadly stated, the case for the appellants was placed before the High Court on four grounds. It was argued that Swaminarayan, the founder of the sect, considered himself as the Supreme God, and as such. the sect that believes in the divinity of Swaminarayan cannot be assimilated to the followers of Hindu religion. It was also urged that the temples in suit had been established for the worship of Swaminarayan himself and not for the worship of the traditional Hindu idols, and that again showed that the Satsangi sect was distinct and separate from Hindu religion. It was further contended that the sect propagated the ideal that worship of any God other than Swaminarayan would be a betrayal of his faith, and lastly , that the Acharyas who had been appointed by Swaminarayan adopted a procedure of "Initiation" (diksha) which showed that on initiation, the devotee became a Satsangi and assumed a distinct and separate character as a follower of the sect. The High Court has carefully examined these contentions in the light of the teachings of Swaminarayan, and has come to the conclusion that it was impossible to hold that the followers of the Swaminarayan sect did not profess Hindu religion and did not form a part of the Hindu community. In coming to this conclusion, the High Court has also examined the oral evidence on which the parties relied. While considering this aspect of the matter, the High Court took into account the fact that in their plaint itself, the appellants had described themselves as Hindus and that on the occasion of previous censuses prior to 1951 when religion and community used to be indicated in distinct columns in, the treatment of census data, the followers of the sect raised no objection to their being described as belonging to a sect professing Hindu religion. Having thus rejected the main contention raised by the appellants in challenging their status as Hindus, the High Court examined the alternative argument which was urged on their behalf in regard to the constitutional validity of the Act. The argument was that the material provision of the Act was inconsistent with the fundamental rights guaranteed by Articles 25 and 26 of the Constitution and as such was invalid. The High Court did not feet impressed by this argument and felt no difficulty in rejecting it. In the result, the finding recorded by the trial Judge in favour of the appellants in regard to their status and character as followers of the Swaminarayan sect was upheld; inevitably the decree passed by the trial Judge was vacated and the suit instituted by the appellants was

ordered to be dismissed. It is against this decree that the present appeal has been brought to this Court on a certificate issued by the High Court.

Before dealing with the principal point which has been posed at the commencement of this Judgment, it is necessary to dispose of two minor contentions raised by Mr. V. J. Desai who appeared for the appellants before us. 'Mr. Desai contends that the High Court Was in error in treating as competent 'the appeal preferred by respondent No. 1. His case is that since the said appeal had not been duly and validly filed by an Advocate authorised by respondent No. 1 in that behalf, the High Court should have dismissed the said appeal as being incompetent. It will be recalled that the appeal memo as well as the Vakalatnama filed along with it were signed by Mr. Daundkar who was then the Asstt. Government Pleader; and the argument is that since the Vakalatnama had been signed by respondent No. 1 in favour of the Government Pleader, its acceptance by the Assistant Government Pleader was invalid and that rendered the presentation of the appeal by the Assistant Government Pleader on behalf of respondent No. 1 incompetent. O.41, r. 1 of the Code of Civil Procedure requires, inter alia, that every appeal shall be preferred in the form of a memorandum signed by the appellant or his Pleader and presented to the Court or to such officer as it appoints in that behalf. O. 3, r. 4 of the Code relates to the appointment of a Pleader. Sub-r. (1) of the said Rule provides, inter alia that no Pleader shall act for any person in any court unless he has been appointed for the purpose by such person by a document in writing signed by such person. Sub-r. (2) adds that every such appointment shall be filed in court and shall be deemed to be in force until determined with the leave of the Court in the manner indicated by it. Technically, it may be conceded that the memorandum of appeal presented by Mr. Daundkar suffered from the infirmity that respondent No. 1 had signed his Vakalatnama in favour of the Government Pleader and Mr. Daundkar could not have accepted It, though he was working in the Government Pleader's office as an Assistant Government Pleader. Even so, the said memo was accepted by the office of the Registrar of the Appellate Side of the High Court, because the Registry regarded the presentation of the appeal to be proper, the appeal was in due course admitted and it finally came up for hearing before the High Court. The failure of the Registry to invite the attention of the Assistant Government Pleader to the irregularity committed in the presentation of the said appeal cannot be said to be irrelevant in dealing with the validity of the contention raised by the appellants. if the Registry had returned the appeal to Mr. Daundkar as irregularly presented, the irregularity could have been immediately corrected and the Government Pleader would have signed both the memo of appeal and the Vakalatnama. It is an elementary rule of justice that no party should suffer for the mistake of the court or its Office. Besides, one of the rules framed by the High Court on its Appellate Side-

Rule 95-seems to authorise an Advocate practising on the Appellate Side of the High Court to appear even without initially filing a Vakalatnama in that behalf. If an appeal is presented by an Advocate without a Vakalatnama duly signed by the appellant, he is required to produce the Vakalatnama authorising him to present the appeal or to file a statement signed by himself that such Vakalatnama has been duly signed by the appellant in time. In this case, the Vakalatnama had evidently been signed by respondent No. 1 in favour of the Government Pleader in time; and so, the High Court was plainly right in allowing the Government Pleader to sign the memo of appeal and the Vakalatnama in order to remove the irregularity committed in the presentation of the appeal. We do not think that Mr. Desai is justified in contending that the High Court was in error in overruling the objection raised by the appellants before it that the appeal preferred by respondent No. 1 was incompetent.

The next contention which Mr. Desai has urged before us is that s. 3 of the Act is ultra vires. Before dealing with this contention, it is relevant to refer to the series of Acts which have been passed by the Bombay Legislature with a view to remove the disabilities from which the Harijans suffered. A brief resume of the legislative history on this topic would be of interest not only in dealing with the contention raised by Mr. Desai about the invalidity of S. 3, but in appreciating the sustained and deliberate efforts which the Legislature has been making to meet the challenge of untouchability.

In 1958, the Bombay Harijans Temple Worship (Removal of Disabilities) Act (No. 11 of 193 8) was passed. This Act represented a somewhat cautious measure adopted by the Bombay Legislature to deal with the problem of untouchability. It made an effort to feel the pulse of the Hindu community in general and to watch its reactions to the efforts which the Legislature may make, to break through the citadel of orthodoxy, and conquer traditional prejudices against Harijans. This Act did not purport to create any statutory right which Harijans could enforce by claiming an entry into Hindu temples; it only purported to make some enabling provisions which would encourage the progressive elements in the Hindu community to help the Legislature in combating the evil of untouchability. The basic scheme of this Act was contained in sections 3, 4 & 5. The substance of the provisions contained in these sections was that in regard to temples. the trustees could by a majority make a declaration that their temples would be open to Harijans notwithstanding the terms of instrument of trust, the terms of dedication or decree or order of any competent court or any custom, usage or law for the time being in force to the contrary. Section 3 dealt with making of these declarations. Section 4 required the publication of the said declarations in the manner indicated by it, and section 5 authorised persons interested in the temple in respect of which a declaration had been published under s. 4 to apply to the court to set aside the said

declaration. If. such an application is received, the jurisdiction has been conferred on the court to deal with the said application. Section 5(5) provides that if the court is satisfied that the applicant was a person interested in the temple and that the impugned declaration was shown not to have been validly made, it shall set aside the declaration; if the court is not so satisfied, it shall dismiss the application. Section 5(7) provides that the decision of the Court under sub-s. (5) shall be final and conclusive for the purposes of this Act. The court specially empowered to deal with these applications means the court of a District Judge and includes the High Court in exercise of its ordinary Original Civil jurisdiction. The jurisdiction thus conferred on the court is exclusive with the result that s. 6 bars any Civil Court to entertain any complaint in respect of the matters decided by the court of exclusive jurisdiction purporting to act under the provisions of this Act. This Act can be regarded as the first step taken by the Bombay Legislature to remove the disability of untouchability from which Harijans had been suffering. The object of this Act obviously was to invite cooperation from the majority of trustees in the respective Hindu temples in making it possible for the Harijans to enter the said temples and offer prayers in them.

Then followed Act No. 10 of 1947 which was passed by the, Bombay Legislature to provide for the removal of social disabilities of Harijans. This Act was passed with the object of removing the several disabilities from which Harijans suffered in regard to the enjoyment of social, secular amenities of life. Section 3 of this Act declared that notwithstanding anything contained in any instrument or any law, custom or usage to the contrary, no Harijan shall merely on the ground that he is a Harijan, be ineligible for office under any authority constituted under any law or be prevented from enjoying the amenities described by clauses

(b) (i) to (vii). The other sections of this Act made suitable provisions to enforce the statutory right conferred on the Harijans by s. 3.

Next we come to the former Act-No. 35 of 1947. We haveA already seen that when the present plaint was filed by the appellants, they challenged the right of the non-satsangi Harijans to enter the temples under S. 3 of this Act, and alternatively, they challenged its validity. This Act was passed to entitle the Harijans to enter and perform worship in the temples in the Province of Bombay. Section 2(a) of this Act defines a "Harijan" as meaning a member of a caste, race or tribe deemed to be a Scheduled caste under the Government of India (Scheduled Castes) Order, 1936. Section 2(b) defines "Hindus" as including Jains; S. 2(c) defines "temples' as meaning a place by whatever designation known which is used as of right by, dedicated to or for the benefit of the Hindus in general other than Harijans as a place of public religious worship; and S. 2(b) defines

"Worship" as including attendance at a temple for the purpose of darshan' of a deity or deities installed in or within the precincts thereof. Section 3 which contains the main operative provision of this Act reads thus :-

"Notwithstanding anything contained in the terms of any instruments of trust, the terms of dedication, the terms of a sanad or a decree or order of a competent court or any custom, usage or law, for the time, being in force to the contrary every temple shall be open to Hari jans for worship in the same manner and to the same extent as to any member of the Hindu community or any section thereof and the Harijans shall be entitled to bathe in, or use the waters of any sacred tank, well, spring or water- course in the same manner and to the same extent as any member of the Hindu Community or any section thereof."

Section 4 provides for penalties. Section 5 excludes the jurisdiction of Civil Courts to deal with any suit or proceeding if it involves a claim which if granted would in any way be inconsistent with the;provisions of this Act. Section 6 authorises the police officer not below the rank of Sub-Inspector to arrest without warrant any person who ;is reasonably suspected of having committed an offence punishable under this Act.

Section 2(c) of the former Act was later amended by Act 77 of 1948. The definition of the word "temple" which was thus inserted by the amending Act -reads thus :- "Temple, means a place by whatever name known and to whomsoever belonging, which is used as a place 2 5 5 of religious worship by custom, usage or otherwise by the members of the Hindu community or any section thereof and includes all land appurtenant thereto and subsidiary shrines attached to any such place."

It will be recalled that after this amended definition was introduced in the former Act, the appellants asked for and obtained permission to amend their plaint, and it is the claim made in the amended plaint by relation to the new definition of the word "temple" that parties led evidence before the trial court. This act shows that the Bombay Legislature took the next step in 1947 and made a positive contribution to the satisfactory solution of the problem of untouchability. It conferred on the Harijans a right to enter temples to which the Act applied and to offer worship in them; and we have already seen that worship includes attendance at the temple for the purpose of darshan of a deity or deities in the precincts thereof. On the 26th January, 1950 the Constitution of India came into force, and Art. 17 of the Constitution categorically provided that untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence

punishable in accordance with law. In a sense, the fundamental right declared by Art, 17 afforded full justification for the policy underlying the provisions of the former Act.

After the Constitution was thus adopted, the-Central Legislature passed the Untouchability (Offences) Act, 1955 (No. 22 of 1955). This Act makes a comprehensive provision for giving effect to the solemn declaration made by Art. 17 of the Constitution. It extends not -only to places of public worship, but to hotels, places of public entertainment, and shops as defined by s. 2 (a), (b), (c) and (e). Section 2 (d) of this Act defines a "place of public worship" as meaning a place by whatever name known which is used as a place of public religious worship or which is dedicated generally to, or is used generally by, persons professing any religion-or belonging to any religious denomination or any section thereof, for 'the performance of any religious service, or for offering prayers therein; and includes all lands and subsidiary shrines appurtenant or attached to any such place. The sweep of 'the definitions prescribed by section 2 indicates the very broad field of socio-religious activities over which the mandatory provisions of this Act are intended to operate. It is not necessary for our purpose to refer to the provisions of this Act in detail. 'It is enough to state that ss. 3 to 7 of this Act provide 25 6 different punishments for contravention of the constitutional guarantee for the removal of untouchability in any shape or form. Having thus prescribed a comprehensive statutory code for the removal of untouchability, s. 17 of this Act repealed twenty one State Acts which had been passed by the several State Legislatures with the same object. Amongst the Acts thus repealed are Bombay Acts 10 of 1947 and 35 of 1947.

That takes us to the Act No. 31 of 1956-with which we are directly concerned in the present appeal. After the Central Act 22 of 1955 was passed 'and the relevant Bombay statutes of 1947 had been repealed by S. 17 of that Act, the Bombay Legislature passed the Act. The Act is intended to make better provision for the throwing open of places of public worship to all classes and sections of Hindus. It is a short Act contain 8 sections. Section 2 which is the definition section is very important; it reads thus :-

"2. In this Act, unless the context otherwise requir es,-

(a)"place of public worship' means a place, whether a temple or by any other name called, to whomsoever belonging which is dedicated to, or for the benefit of, or is used generally by, Hindus, Jains, Sikhs or Buddhists or any section or class thereof, for the performance of any religious service or for offering prayers therein; and includes all lands and subsidiary shrines appurtenant or attached to any such place, and also any

sacred tanks, walls, springs, and water courses the waters of which are worshipped, or are used for bathing or for worship;

(b)"section" or "class" of Hindus includes any division, sub-division, caste, sub-caste, sect or denomination whatsoever of Hindus." Section 3 is the operative provision of the Act and it is necessary to read it also : "3. Notwithstanding any custom, usage or law for the time being in force, or the decree or order of a court, or anything contained in any instrument, to the contrary, every place of public worship which is open to Hindus generally, or to any section or class thereof, shall be open to all sections and classes or Hindus; and no Hindu of whatsoever section or class, shall in any manner be prevented, obstructed or discouraged from entering such place of public worship, or from worship-

ping or offering prayers threat, or performing any religious service therein, in the like manner and to the like extent as any other Hindu of whatsoever section or class may so enter, worship, pray or perform."

Section 4(1) provides for penalties for the contravention of the provisions of the Act and s. 4(2) lays down that nothing in this section shall be taken to relate to offences relating to the practice of "untouchability". Section 5 deals with the abetment of offences prescribed by s. 4(1). Section 6 provides, inter alia, that no Civil Court shall pass any decree or order which in substance would in any way be contrary to the provisions of this Act. Section 7 makes offences prescribed by s. 4(1) cognisable, and compoundable with the permission of the Court; and s. 8 provides that the provisions of this Act shall not be taken to be in derogation of any of the provisions of the Untouchability (Offences) Act-22 of 1955-or any other law for the time being in force relating to any of the matters dealt with in this Act. That in brief is the outline of the history of the Legislative efforts to combat and meet the problem of untouchability and to help Harijans to secure the full enjoyment of all rights guaranteed to them by Art. 17 of the Constitution.

Let us now revert to Mr. Desai's argument that s. 3 of the Act is invalid inasmuch as it contravenes the appellants' fundamental rights guaranteed by Art. 26 of the Constitution. Section 3 throws open the Hindu temples to all classes and sections of Hindus and it puts an end to any effort to prevent or obstruct or discourage Harijans from entering a place of public worship or from worshipping or offering prayers threat, or performing any religious service therein, in the like manner and to the like extent as any other Hindu of whatsoever section or class may so enter, worship, pray or perform. The object of the section and its meaning are absolutely clear. In the matter of entering the Hindu temple or worshipping, praying or performing any religious service therein, there shall be no discrimination between any classes or sections of Hindus, and others.

In other words, no Hindu temple shall obstruct a Harijan for entering the temple or worshipping in the temple or praying in it or performing any religious service therein in the same manner and to the same extent as any other Hindu would be permitted to do.

Mr. Desai contends that in the temples, in suit, even the Satsangi Hindus are not permitted to enter the innermost sacred part of the temple where the idols are installed. It is only the Poojaris who are authorised to enter the said sacred portion of the temples and do the actual worship of the idols by touching the idols for the purpose of giving a bath to the idols, dressing the idols, offering garlands to the idols and doing all other ceremonial rites prescribed by the Swaminarayan tradition and convention; and his grievance is that the words used in S. 3 are so wide that even this part of actual worship of the idols which is reserved for the Poojaris and specially authorised class of worshippers, may be claimed by respondent No. 1 and his followers; and in so far as such a claim appears to be justified by s. 3 of the Act, it con- travenes the provisions of Art. 26(b) of the Constitution. Art. 26(b) provides that subject to public order, morality and health, every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion, and so, the contention is that the traditional conventional manner of performing the actual worship of the idols would be invaded if the broad words of S. 3 are construed to confer on non-Satsangi Harijans a right to enter the innermost sanctuary of the temples and seek to perform that part of worship which even Satsangi Hindus are not permitted to do.

In our opinion, this contention is misconceived. In the first place it is significant that no such plea was made or could have been made in the plaint, because s. 3 of the former Act which was initially challenged by the appellants had expressly defined " worship" as including a right to attend a temple for the purpose of darshan of a deity or deities in or within the precincts thereof, and the cause of action set out by the appellants in their plaint was 'hat they apprehended that respondent No. 1 and his followers would enter the temple and seek to obtain darshan of the deity installed in it. Therefore, it would not be legitimate for the appellants to raise this new contention for the first time when they find that the words used in s. 3 of the Act are somewhat wider than the words used in the corresponding section of the former Act.

Besides, on the merits, we do not think that by enacting s. 3, the Bombay Legislature intended to invade the traditional and conventional manner in which the act of actual worship of the -deity is allowed to be performed only by the authorised Poojaris of the temple and by no other devotee entering the temple for darshan. In many Hindu temples, the act of actual worship is entrusted to the authorised Poojaris and all the devotees are allowed to enter the temple up to a limit beyond which entry is barred :to

them, the innermost portion of the temple being reserved only for the authorised Poojaris of the temple. If that is so, then all that s. 3 purports to do is to give the Harijans the same right to enter the temple for 'darshan' of the deity as can be claimed by the other Hindus. It would be noticed that the right to enter the temple, to worship in the temple, to pray in it or to perform any religious service therein which has been conferred by s. 3, is specifically qualified by the clause that the said right will be enjoyed in the like manner and to the like extent as any other Hindu of whatsoever section or class may do. The main object of the section is to establish complete social equality between all sections of the Hindus in the matter of worship specified by s. 3; and so, the apprehension on which Mr. Desai's argument is based must be held to be misconceived. We are, therefore, satisfied that there is no substance in the contention that s. 3 of the Act is ultra vires.

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 not 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 the 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.

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". (1)."

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 Indian history. The people on the Indian side of the Sindhu were called Hindu by the Persian and the later western invaders".(2) That is the genesis of the word "Hindu".

When we think of the Hindu religion, we find it difficult, if not impossible, to define Hindu religion or even adequately describe it. Unlike other 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. 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?"(3) 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, (1) "Hinduism" by Monier Williams, p. 1.

(2) "The Hindu View of Life" by Dr. Radhakrishnan, p. 12. (3) Ibid p. 11.

savage and half-civilized people, the cultured Dravidians and the Vedic Aryans were all Hindus as they were the sons of the same mother. The Hindu thinkers reckoned with the striking fact that the men and women dwelling in India belonged to different communities, worshipped different gods, and practised different rites (Kurma Purana)(1). 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."(2) 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. (3) 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-vidyapratishtha'. 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 (1) lbid p. 12.

(2) "Religious Thought & Life In India" by Monier Williams, p. 57.

(3) "Indian Philosophy" by Dr. Radhakrishrian, Vol. 1, pp. 22-23.

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.(1) The Indian mind has, consistently through the ages, been exercised over the problem of the nature of godhead the problem that faces the spirit at the end of life, and, the interrelation between the individual and the universal soul. "If we can abstract from the variety of opinion", says Dr. Radhakrishnan, "and observe the general spirit of Indian thought, we shall find that it has a disposition to interpret life and nature in the way of monistic idealism, though this tendency is so plastic, living and manifold that it takes many forms and expresses

itself in even mutually hostile teachings".(2) 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."(3) 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-

(2) lbid, p. 32. (3) lbid P. 48.

communicating any notion or principle as heretical and rejecting it as such.

Max Muller who was a great oriental scholar of his time was impressed by this comprehensive and all-pervasive aspect of the s`weep 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".(1) 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 claim 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 retravels its ascending path of realisation. This interminable succession of world ages has no beginning(2) 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".(8) 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.

Do the Hindus worship at their temples the same set or number of gods ? That is another question which can be asked in this (1) "Six Systems of Indian Philosophy" by Max Muller p. xvii.

(2) In Philosophy" by Dr. Radhakrishnan, Vol. IT., V.

(3)idib.

L10 Sup. C.I./6"

2 64 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.

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 Tuk-aram initiated the Varakari cult; Guru Nank inspired Sikhism; Dayananda founded Arya Samaj, and Chaitanya began Bhakti cult; and as a result of the teachings of Ramakrishna and Viveka-nanda, 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.

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.

Whilst we are dealing with this broad and comprehensive ,aspect of Hindu religion, it may be permissible to enquire what, :according to this religion, is the ultimate goal of humanity? It is the release and freedom from the unceasing cycle of births and rebirths; Moksha or Nirvana, which is the ultimate aim of Hindu religion and philosophy, represents the state of absolute absorption and assimilation of the individual soul with the infinite. What are the means to attain this end ? On this vital issue, there is great divergence of views; some emphasise the importance of Gyan or knowledge, while others extol the virtues of Bhakti or devotion; and yet others insist upon the paramount importance of the performance of duties with a heart full of devotion and mind inspired by true knowledge. In this sphere again, there is diversity of opinion, though all are agreed about the ultimate goal. Therefore, it would be inappropriate to apply the traditional tests in determining the extent of the jurisdiction of Hindu religion. It can be safely described as a way of life based on certain basic concepts to which we have already referred. Tilak faced this complex and difficult problem of defining or at least describing adequately Hindu religion and he evolved a working formula which may be regarded as fairly adequate and satisfactory. Said Tilak : "Acceptance of the Vedas with reverence; recognition of the fact that the means or ways to salvation are diverse and realisation of the truth that the number of gods to be worshipped is large, that indeed is the distinguishing feature of Hindu religion"(1). This definition brings out succinctly the broad distinctive features of Hindu religion. It is somewhat remarkable that this broad sweep of Hindu religion has been eloquently described by Toynbee. Says Toynbee : "When we pass from the plane of social practice to the plane of intellectual outlook, Hinduism too comes out well by comparison with the religions and ideologies of the

South- West Asian group. In contrast to these Hinduism has the same outlook as the pre-Christian and pre-Muslim religions and philosophies of the Western half of the old world. Like them, Hinduism takes it for granted that there is more than one valid approach to truth and to salvation and that these different approaches are not only compatible with each other, but are complementary"(2).

The Constitution-makers were fully conscious of this broad and comprehensive character of Hindu religion; and so, while guaranteeing the fundamental right to freedom of religion, Explanation II to Art. 25 has made it clear that in sub- clause (b) of clause (2), the reference to Hindus shall be construed as (B.G.Tilak's"Gitarahasya") (2) "The Present-Day Experiment in Western Civilisation" by Toynbee, pp. 48-49.

including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly. Consistently with this constitutional provision, the Hindu Marriage Act, 1955; the Hindu Succession Act, 1956; the Hindu Minority and Guardianship Act, 1956; and the Hindu Adoptions and Maintenance Act, 1956 have extended the application of these Acts to all persons who can be regarded as Hindus in this broad and comprehensive sense. Section 2 of the, Hindu Marriage Act, for instance, provides that this Act applies-

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

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

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

The same provision is made in the other three Acts to which we have just referred.

It is in the light of this position that we must now proceed to consider whether the philosophy and theology of Swaminarayan show that the school of Swaminarayan constitutes a distinct and separate -religion which is not a part of Hindu religion. Do the followers of the said sect fall outside the Hindu brotherhood, that is the crux of the problem which we have to face in the present appeal. In deciding this question, it is necessary to consider broadly the philosophic and theological tenets of Swaminarayan and the characteristics which marked the followers of Swami narayan who are otherwise known as Satsangis. In dealing with this aspect of the problem, it would be

safe to rely upon the data furnished by Monier Williams in his book "Religious thought and life in India" (1883). It is hardly necessary to emphasise that Monier Williams played a very important role in explaining the religious thought and life in India to the English-speaking world outside India. "Having been a 2 67 student of Indian sacred literature for more than forty years," observed Monier Williams "and having twice travelled over every part of India, from Bombay to Calcutta, from Cashmere to Ceylon, I may possibly hope to make a dry subject fairly attractive without any serious sacrifice of scientific accuracy, while at the same time it will be my earnest endeavour to hold the scales impartially between antagonistic religious systems and as far as possible to do justice to the amount of truth that each may contain" (P.

1). It is remarkable tribute to the scholarship of Monier Williams and of his devotion to the mission which he had undertaken that though his book was written as early as 1883, it is still regarded as a valuable source of information in dealing with problems connected with the religious thought and life in India.

Let us then refer briefly to the life story of Swaminarayan for that would help us to understand and appreciate the significance of his philosophic and religious teachings. The original name of Swaminarayan was Sahajananda. By birth, he was a high-caste Brahaman. He was born at Chapai, a village 120 miles to the North-west of Lucknow, about the year 1780. He was born to Vaishnava parents, but early in his career he was "disgusted with the manner of life of the so-called followers of Vallabhacharya, whose precepts and practice were utterly at variance, and especially with the licentious habits of the Bombay Maharajas." He was then determined to denounce these irregularities and expose the vices that had crept into the lives of the Bombay Maharajas. Swaminarayan was a celibate and he "lived an ascetical, yet withal a large-hearted and philanthropic, life" and the showed a great aptitude for learning. In 1800, he left his home and placed himself under the protection of the chief Guru, named Ramananda Swami at a village within the jurisdiction of the Junagarh Nawab. When Ramananda Swami removed to Ahmedabad in 1804, Sahajananda followed him. Soon Sahajananda collected around him a little band of disciples, which rapidly grew "into an army of devoted adherents". That naturally provoked the wrath of the orthodox Brahmans and magnates of Ahmedabad who began to persecute him. That drove Sahajananda to Jetalpur, 12 miles south of Ahmedabad, which became the, focus of a great religious gathering. Thousands of people were attracted by this young religious teacher who now took the name of Swaminarayan. Swaminarayan then retired to the secluded village of Wartal, where he erected a temple to Narayana (otherwise Krishna, or Vishnu, as the Supreme Being) associated with the goddess Lakshmi. From this Central scene of his religious activities, Swaminarayan mounted a strong crusade 2 68 against the licentious

habits of the gurus of the Vallabhacharya sect. His watchword was "devotion to Krishna with observance of, duty and purity of life". The two principal temples of the Swaminarayan sect are at Wartal, which is about four miles to the west of the Baroda railway station, and at Ahmedabad.

In about 1826-27, a formal constitution of the sect appears to have been prepared; it is known as the 'Iekh' or the document for the apportionment of territory (Deshvibhaga Lekh). By this document, Swaminarayan divided India into two parts by a national line running from Calcutta to Navangar and established dioceses, the northern one with the temple of Nar Narayan at Ahmedabad, and the southern one which included the temple of Lakshminarayan at Wartal. To preside over these two dioceses Swaminarayan adopted his two nephews Ayodhyaprasad and Raghuvir respectively. Subordinate to these Gadis and the principal temples, two score large temples and over a thousand smaller temples scattered all over the country came to be built in due course.

The Constitution of the Swaminarayan sect and its tenets and practices are collected in four different scriptures of the faith viz., (1) the "Lekh" to which we have just referred; (2) the "Shikahapatri" which was originally written by Swaminarayan himself in about 1826 A.D.; the original manuscript does not appear to be available, but the Shikshapatri was subsequently rendered into Sanskrit verses by Shatanandswami under the directions of Swaminarayan himself. This Sanskrit translation is treated by the followers of Swaminarayan as authentic. This book was later translated into Gujarati by another disciple named Nityanand. This Shikshapatri is held in high reverence by the followers of the faith as a prayer book and it contains summary of Swaminarayan's instructions and principles which have to be followed by his disciples in their lives; (3) the "Satsangijiwan" which consists of five parts and is written in Sanskrit by Shathnand during the lifetime of Swaminarayan. This work gives an account of the life and teachings of Swaminarayan. It appears to have been completed in about 1829. Shikshapatri has been bodily in- corporated in this work; (4) the "Vachanamrit" which is a collection of Swaminarayan's sermons in Gujarati. This appears to have been prepared between 1828 and 1830. Swaminarayan died in 1830.

It is necessary at this stage to indicate broadly the principles which Swaminarayan preached and which he wanted his followers to adopt in life. These principles have been suscinctly sum-

marised by Monier Williams. It is interesting to recall that before Monier Williams wrote his Chapter on Swaminarayan sect he visited the Wartal temple in company with the Collector of Kaira on the day of the Purnima, or full moon of the month of Karttik

which is regarded as the most popular festival of the whole year by the Swaminarayan sect. On the occasion of this visit, Monier Williams had long discussions with the followers of Swaminarayan and he did his best to ascertain the way Swaminarayan's principles were preached and taught and the way they were, practised by the followers of the sect. We will now briefly reproduce some of the principles enunciated by Swaminarayan. "The killing of any animal for the purpose of sacrifice to the gods is forbidden by me. Abstaining from injury is the highest of all duties. No flesh meat must ever be eaten, no spirituous or vinous liquor must ever be drunk, not even as medicine. My male followers should make the vertical mark (emblematical of the footprint of Vishnu or Krishna) with the round spot inside it (symbolical of Lakshmi) on their foreheads. Their wives should only make the circular mark with red powder or saffron. Those who are initiated into the proper worship of Krishna should always wear on their necks two rosaries made of `Tulsi wood, one for Krishna and the other for Radha. After engaging in mental worship, let them reverently bow down before the pictures of Radha and Krishna, and repeat the eight-syllabled prayer to Krishna (Sri Krishnan saranam mama, 'Great Krishna is my soul's refuge') as many times as possible. Then let them apply themselves to secular affairs. Duty (Dharma) is that good practice which is enjoined both by the Veda (Sruti) and by the law (Smriti) founded on the Veda. Devotion (Bhakti) is intense love for Krishna accompanied with a due sense of his glory. Every day all my followers should go to the Temple of God, and there repeat the names of Krishna. The story of his life should be listened to with the great reverence, and hymns in his praise should be sung on festive days. Vishnu, Siva, Ganapati (or Ganesa), Parvati, and the Sun; these five deities should be honoured with worship. Narayana and Siva should be equally regarded as part of one and same Supreme Spirit, since both have been declared in the Vedas to be forms of Brahma. On no account let it be supposed that difference in forms (or names) makes any difference in the identity of the deity. That Being, known by various names

-such as the glorious Krishna, Param Brahma, Bhagavan, Puru- shottama-the cause of all manifestations, is to be adored by us as our one chosen deity. The philosophical doctrine approved by me is the Visishtadvaita (of Ramanuja), and the desired heavenly abode is Goloka. there to worship Krishna and be united with him as the Supreme Soul is to be considered salvation. The twice born should perform at the proper seasons, and according to their means, he twelve purification rites (sankara), the (Six) daily duties, and the Sradha offerings to the spirits of departed ancestors. A pilgrimage to the Tirthas, or holy places, of which Dwarika (Krishna's city in Gujarat) is the chief, should be performed according to rule. Almsgiving and kind acts towards the poor ,Should always be performed by all. A tithe of one's income should be assigned to

Krishna; the poor should give a twentieth part. Those males and females of my followers who will act according to these directions shall certainly obtain the four great objects of all human desires-religious merit, wealth, pleasure, and beatitude"(1).

The Gazetteer of the Bombay Presidency has summarised the teachings embodied in the Shikshapatri in this way :-

"The book of precepts strictly prohibits the destruction of animal life; promiscuous intercourse with the other sex; use of animal food and intoxicant liquors and drugs on any occasion, suicide, theft and robbery; false accusation against a fello-wman, blasphemy;

partaking of food with low caste people; caste pollution; company of atheists and heretics and other practices which might counteract the effect of the founder's teachings".(2) It is interesting to notice how a person is initiated into the sect of Satsangis. The ceremony of initiation is thus described in the Gazetteer of the Bombay Presidency :-

"The ceremony of initiation begins with the novice offering a palmful of water which he throws on the ground at the feet of the Acharya saying : I give over to Swami Sahajanand my mind, body, wealth, and sins of (all) births, 'Man', tan, dhan, and janmana pap. He is then given the sacred formula 'Sri Krishnastwam gatirmama, Shri Krishna thou art my refuge. The novice then pays at least half a rupee to the Acharya. Sometimes the Acharya delegates his authority to admit followers as candidates for regular discipleship, giving them the Panch Vartaman, formula forbiding lying, theft, adultery, intoxication and animal food. But a (1) "Religious thought and life in India"' By Monier Williams pp. 155-58.

(2) Gazetteer of the Bombay Presidency, Vol. IX, Part 1, Gujarat Population, 1901, p. 537.

2 7 1 .lm15 perfect disciple can be made only after receiving the final formula from one of the two Acharyas. The distinguishing mark, which the disciple is then allowed to make on his forehead, is a vertical streak of Gopichandan clay or sandal with a round redpowder mark in the middle and a necklet of sweet basil beads".(1) Now that we have seen the main events in the life and career of Swaminarayan and have examined the broad features of his teachings, it becomes very easy to, decide the question as to whether the Swammarayan sect constitutes a distinct and separate religion and cannot be regarded as a part of Hindu religion. In our opinion, the plea raised by the appellants that the Satsangis who follow the Swaminarayan sect form a separate and distinct community different from the Hindu community and their religion is a distinct and

separate religion different from Hindu religion, is entirely misconceived. Philosophically, Swaminarayan is a follower of Ramanuja, and the essence of his teachings is that every individual should follow the main Vedic injunctions of a good, pious and religious life and should attempt to attain salvation by the path of devotion to Lord Krishna. The essence of the initiation lies in giving the person initiated the secret 'Mantra' which is : "Lord Krishna, thou art my refuge : Lord Krishna, I dedicate myself to thee'. Acceptance of the Vedas with reverence recognition of the fact that the path of Bhakti or devotion leads to Moksha, and insistence on devotion to Lord Krishna unambiguously and unequivocally proclaim that Swaminarayan was a Hindu saint who was determined to remove the corrupt practices which had crept into the lives of the preachers and followers of Vallabhacharya, and who wanted to restore the Hindu religion to its original glory and purity. Considering the work done by Swaminarayan, history will not hesitate to accord him the place of honour in the galaxy of Hindu saints and religious reformers who by their teachings, have contributed to make Hindu religion ever alive, youthful and vigorous. It is, however, urged that there are certain features of the Satsangi followers of Swaminarayan which indicate that the sect is a different community by itself and its religion is not a part of Hindu religion. It is argued that no person becomes a Satsangi by birth and it is only by initiation that the status of Satsangi is conferred on a person. Persons of other religions and Harijans can join the Satsangi sect by initiation. Swaminarayan himself is (1) Gazetteer of the Bombay Presidency, Vol. IX Part 1, Gujarat Population, pp. 538-39.

2 72 .

treated as a God and in the main temple, worship is offered to Swaminarayan pre-eminently; and that, it is argued, is not consistent with the accepted notions of Hindu religion. Women can take Diksha and become followers of Swaminarayan though Diksha to women is given by the wife of the Acharya. Five vows have to be taken by the followers of the Satsang, such as abstinence from drinking, from non-vegetarian diet, from illegal sexual relationship, from theft and from inter- pollution. Separate arrangements are made for Darshan for women, special scriptures are honoured and special teachers are appointed to worship in the temples. Mr. Desai contends that having regard to all these distinctive features of the Swaminarayan sect, it would be difficult to hold that they are members of the Hindu community and their temples are places of public worship within the meaning of s. 2 of the Act.

We are not impressed by this argument. Even a cursory study of the growth and development of Hindu religion through the ages shows that whenever a saint or a religious reformer attempted the task of reforming Hindu religion and fighting

irrational or corrupt practices which had crept into it, a sect was born which was governed by its own tenets, but which basically subscribed to the fundamental notions of Hindu religion and Hindu philosophy. It has never been suggested that these sects are outside the Hindu brotherhood and the temples which they honour are not Hindu temples, such as are contemplated by s. 3 of the Act. The fact that Swaminarayan himself is worshipped in these temples is not inconsistent with the belief which the teachings of Bhagvad- Gita have traditionally created in all Hindu minds. According to the Bhagvad-Gita, whenever religion is on the decline and irreligion is in the ascendance, God is born to restore the balance of religion and guide the destiny of the human race towards salvation.(1) The birth of every saint and religious reformer is taken as an illustration of the principle thus enunciated by Bhagvad-Gita; and so, in course of time, these saints themselves are honoured, because the presence of divinity in their lives inevitably places them on the high pedestal of divinity itself. Therefore, we are satisfied that none of the reasons on which Mr. Desai relies, justifies his contention that the view taken by the High Court is not right.

It is true that the Swaminarayan sect gives Diksha to the followers of other religions and as a result of such initiation, they Gita 4 .7.

become Satsangis without losing their character as the followers of their own individual religions. This fact, however, merely shows that the Satsang philosophy preached by Swaminarayan allows followers of other religions to receive the blessings of his teachings without insisting upon their forsaking their own religions. The fact that outsiders are willing to accept Diksha or initiation is taken as an indication of their sincere desire to absorb and practice the philosophy of Swaminarayan and that alone is held to be enough to confer on them the benefit of Swaminarayan's teachings. The fact that the sect does not insist upon the actual process of proselytising on such occasions has really no relevance in deciding the question as to whether the sect itself is a Hindu sect or not. In a sense, this attitude of the Satsang sect is consistent with the basic Hindu religious and philosophic theory that many roads lead to God. Didn't the Bhagavad-Gita say: "even those who profess other religions and worship their gods in the manner prescribed by their religion, ultimately worship me and reach me."(1) Therefore, we have no hesitation in holding that the High Court was right in coming to the conclusion that the Swaminarayan sect to which the appellants belong is not a religion distinct and separate from Hindu religion, and consequently, the temples belonging to the said sect do fall within the ambit of s. 2 of the Act.

The present suit began its career in 1948 and it was the result of the appellants' apprehension that the proclaimed and publicised entry of the non-Satsangi Harijans

would constitute a violent trespass on the religious tenets and beliefs of the Swaminarayan sect. The appellants must no doubt, have realised that if non-Satsangi Hindus including Harijans enter the temple quietly without making any public announcement in advance, it would be difficult, if not impossible, to bar their entry; but since respondent No. 1 publicly proclaimed that he and his followers would assert their right of entering the temples, the appellants thought occasion had arisen to bolt the doors of the temples against them; and so, they came to the Court in the present proceedings to ask for the Court's command to prevent the entry of respondent No. 1 and his followers. It may be conceded that the genesis of the suit is the genuine apprehension entertained by the appellants; but as often happens in these matters, the said apprehension is founded on superstition, ignorance and complete misunderstanding of the true teachings Gita 9.23.

27 4 of Hindu religion and of the real significance of the tenets and philosophy taught by Swaminarayan himself. While this litigation was slowly moving from Court to Court, mighty events of a revolutionary character took place on the national scene. The Constitution came into force on the 26th January, 1950 and since then, the whole social and religious outlook of the Hindu community has undergone a fundamental change as a result of the message of social equality and justice proclaimed by the Indian Constitution. We have seen how the solemn promise enshrined in Art. 17 has been gradually, -but irresistibly, enforced by the process of law assisted by enlightened public conscience. As a consequence, the controversy raised before us in the present appeal has today become a matter of mere academic interest. We feel confident that the view which we are taking on the merits of the dispute between the parties in the present appeal not only accords with the true legal position in the matter, but it will receive the spontaneous approval and response even from the traditionally conservative elements of the Satsang community .Whom the appellants represent in the present litigation. In conclusion, we would like to emphasise that the right to enter temples which has been vouchsafed to the Harijans by the impugned Act in substance symbolises the right of Harijans to enjoy all social amenities and rights, for, let it always be remembered that social justice is the main foundation of the democratic way of life ,,enshrined in the provisions of the Indian Constitution.

The result is, the appeal fails and is dismissed with costs. Appeal dismissed.

2. Perumal Nadar (Dead) By L.R.S vs Ponnuswami on 17 March, 1970

Equivalent citations: 1971 AIR 2352, 1971 SCR (1) 49

Author: S C.
Bench: Shah, J.C.

PETITIONER:
PERUMAL NADAR (DEAD) BY L.R.S.

Vs.

RESPONDENT:
PONNUSWAMI

DATE OF JUDGMENT:
17/03/1970

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
HEGDE, K.S.
GROVER, A.N.

CITATION:
1971 AIR 2352 1971 SCR (1) 49

ACT:
Hindu Law--Marriage between Hindu and former Christian--Proof of conversion to Hinduism--No formal purification ceremony necessary--Bona fide intention accompanied by unequivocal conduct sufficient.
Madras Hindu (Bigamy Prevention and Divorce) Act 6 of 1949-Act applicable only to those domiciled in Madras.
Indian Evidence Act 1 of 1872, s. 112--Presumption as to legitimacy of child.

HEADNOTE:

One Perumal Nadar, a Hindu, married Annapazham, daughter of an Indian Christian, on November 29, 1950 at Kannimadam in the State of Travancore-Cochin according to Hindu rites. Of the two children born of the marriage one died. The younger child, a son born in 1958, acting through his mother, the afoResaid Annapazham, as his guardian, filed an action in the Court of the Subordinate Judge, Tirunelveli, for separate possession of a half share in the properties of the joint family held by his father Perumal. The 'suit was defended by Perumal. The trial court decreed the suit and the High Court confirmed the decree. In appeal to this Court by certificate Perumal, the appellant, contended : (i) that Annapazham was an Indian Christian and a marriage between a Hindu and an Indian Christian must be regarded as void; (ii) that the marriage was invalid because the appellant was already married .before he married Annapazham and bigamous marriages were prohibited by Madras Act 6 of 1949; (iii) that the appellant and Annapazham were living apart for a long time before the birth of the plaintiff and on that account the plaintiff could not be regarded as a legitimate child of the appellant.

HELD : (i) The question whether marriage between a Hindu male and a Christian female is valid or not did not arise for consideration in the present case because the finding of the Courts below that Annapazham was converted to Hinduism before her marriage with Perumal was amply supported by evidence. [52 D-E]

A person may be a Hindu by birth or conversion. A mere theoretical allegiance to the Hindu faith by a person born in another faith does not convert him into a Hindu, nor is a bare declaration that he is a Hindu sufficient to convert him to Hinduism. But a bona,fide intention to be converted to the Hindu faith, accompanied by conduct unequivocally expressing that intention may be sufficient evidence of

conversion. No formal ceremony of purification or expiration is necessary to effectuate conversion. [52 E-F]

Muthusami Mudaliar v. Musilamani alias Subramania Mudaliar I.L.R. 33 Mad. 342 and Goona Durgaprasada Rao v. Goona Sudarasanaswami, I.L.R. (1940) Mad. 653, referred to.

The evidence in the present case established that the parents of Annapazham arranged the marriage. The marriage was performed

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according to Hindu rites and ceremonies in the presence of relatives who were invited to attend : customary ceremonies peculiar to a marriage between Hindus were performed : no objection was raised to the marriage and after the marriage Annapazham was accepted by the local Hindu Nadar community as belonging to the Hindu faith; and the plaintiff was also treated as a Hindu. On the evidence there could be no doubt that Annapazham bona fide intended to contract marriage with Perumal. Absence of specific expiatory or purificatory ceremonies would not be sufficient to hold that she was not converted to Hinduism before the marriage ceremony was performed. The fact that the appellant chose to go through the marriage ceremony according to Hindu rites with Annapazham in the presence of a large number of persons clearly indicated that he accepted that Annapazham was converted to Hinduism before the marriage ceremony was performed. [53 C-E]

(ii) On the facts and pleadings the High Court was right in holding that it was not proved that the appellant was domiciled in the State of Madras at the date of his marriage with Annapazham. He could not therefore rely upon the provisions of the Madras Hindu (Bigamy Prevention and Divorce) Act 6 of 1949. [54 F]

(iii) There was a concurrent finding by the courts below that there was no evidence to establish that the appellant living in the same village as Annapazham had no access to her during the time when the plaintiff could have been begotten. Therefore, in view of s. 112 of the Indian Evidence Act it could not be held that the plaintiff was an

illegitimate child. [55 A-B]

Chilukuri Venkateswarlu v. Chilukuri Venkatanarayana, [1954] S.C.R. 425, Karapaya v. Mayandi, I.L.R. 12 Rang. 243 (P.C) and Ammathayee v. Kumaresain, [1967] 1 S.C.R. 363, applied.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 354 of 1967. Appeal from the judgment and decree dated August 25, 1965 of the Madras High Court in Appeal No. 177 of 1961. S. V. Gupte, R. Thiagarajan, Janendra Lal and B. R. Agar- wala, for the appellant.

N. H. Hingorani and K. Hingorani, for the respondent. The Judgment of the Court was delivered by Shah, J. Perumal Nadar married Annapazham (daughter of Kailasa Nadar-an Indian Christian) on November 29, 1950, at Kannimadam in the State of Travancore-Cochin according to Hindu rites. Annapazham gave birth to two children-the first on September 14, 1951 and the other on March 5, 1958. The elder child died shortly after its birth. The younger named Ponnuswami acting through his mother Annapazham as his guardian filed an action in the Court of the Subordinate Judge, Tirunelveli, for separate possession of a half share in the properties of the joint family held by his father Perumal. The suit was defended by Perumal contending that he had not married Annapazham as claimed by her; that if it be proved that marriage ceremony had been performed, it was invalid, and in any event Ponnuswami was an illegitimate child and could not claim a share in his estate. The Trial Court rejected the defence, and decreed the suit. Perumal appealed to the High Court of Madras, but without success. With certificate under Art. 133(1)(c) of the Constitution, this appeal is preferred. Three contentions are urged in support of this appeal : (1) that Annapazham was an Indian Christian and a marriage between a Hindu and an Indian Christian is regarded by the Courts in India as void; (2) that the marriage was invalid because it was prohibited by the Madras Act 6 of 1949; (3) that Annapazham and Perumal were living apart for a long time before the birth of Ponnuswami and on that account Ponnuswami could not be regarded as a legitimate child of Perumal.

Annapazham was born of Christian parents and she followed the Christian faith. She married Perumal when she was about 19 years of age. It is not now in dispute that on November 19, 1950 she went through the ceremony of marriage and lived with Perumal as his wife for several years thereafter. The children born to Annapazham in September 1951 and March 1958 were entered in the Register of Births as Hindus. On the occasion of the marriage, printed invitations were sent to the relatives of Perumal and of Annapazham and an agreement was executed by Perumal and Annapazham reciting that:

"Individual No. 1 (Perumal) among us has married Individual No. 2 (Annapazham) as settled by our parents and also with our full consent. As our relatives are of the opinion that our marriage should be registered, this agreement has been registered in accordance therewith. We have executed this agreement by consenting that both of us shall lead a family life as husband and wife from this day onwards, that we shall not part each other both in prosperity and adversity and that we shall have mutual rights in respect of the properties belonging to us, under the Hindu Mitakshara Law."

The marriage ceremony was performed according to Hindu rites and customs : a bridal platform was constructed and Perumal tied the sacred than which it is customary for a Hindu husband to tie in acknowledgement of the marriage. The High Court on a consideration of the evidence recorded the following finding:

"Oral evidence was adduced to prove that the marriage was celebrated according to Hindu rites and Sams-

karas. Invitations were issued at the time of the marriage and usual customary tying of thali was observed. After the marriage she ceased to attend the Church, abandoned the Christian faith and followed the Hindu customs and manner prevailing among the Hindu Nadar community of Travancore."

Perumal who had previously been married to one Seethalakshmi agreed to and did go through the marriage ceremony. It is in evidence that marriage between Hindu males belonging to the Nadar community and Christian females are common and the wife after the marriage is accepted as a member of the Hindu Nadar community.

Mr. Gupte on behalf of Perumal contends that a valid marri- age mistake place between two Hindus only and not between a Hindu and a non-Hindu and in the absence of any evidence to show that Annapazham was converted to Hinduism before she married Perumal, the marriage, even if performed according to the Hindu rites and ceremonies, is not valid in law. Counsel also contended that the evidence that Annapazham lived after the marriage is a Hindu will not validate the marriage.

It is not necessary to decide in this case whether marriage between a Hindu male and an Indian Christian female may be regarded as valid for, in our judgment, the finding of the Courts below that Annapazham was converted to Hinduism before her marriage with Perumal is amply supported by evidence. A person may be a Hindu by birth or by conversion. A mere theoretical allegiance to the Hindu faith by a person born in another faith does not convert him into a Hindu, nor is a bare declaration that he is a Hindu sufficient to convert him to Hinduism. But a bona fide intention to be converted to the Hindu faith, accompanied by conduct unequivocally expressing that intention may be sufficient evidence of conversion.

No formal ceremony of purification or expiation is necessary to effectuate conversion.

In Muthusami Mudaliar v. Masilamani alias Subramania Mu liar(1) the validity of a marriage according to Hindu rites between a Hindu and a Christian woman fell to be determined. It was held that the marriage contracted according to Hindu rites by a Hindu with a Christian woman, who before marriage is converted to Hinduism, is valid, though the marriage was not in strict accordance with the Hindu system of law. Such a marriage is still common among and recognised as valid by the custom of the caste to which the man belongs. In Goona Durgaprasada Rao and Another v. Goona Sudarasa- naswami and others(1), Mockett, J., observed that no gesture or (1) I.L.R. 33 Mad. 342.

(2) I.L.R. [1940] Mad. 653.

declaration may change a man's religion, but when on the facts it appears that a man did change his religion and was accepted by his co-religionists as having changed his religion and lived and died in that religion, absence of some formality cannot negative what is an actual fact. Krishnaswami Ayyangar, J., observed that a Hindu who had converted himself to the Christian faith returned to Hinduism and contracted a second marriage during the life- time of his first wife and remained and died a Hindu having been accepted as such by the community and co-religionists without demur. Absence of evidence of rituals relating to conversion cannot justify the Court in treating him as having remained a Christian.

The evidence clearly establishes that the parents of Anna- pazham arranged the marriage. The marriage was performed according to Hindu rites and ceremonies in the presence of relatives who were invited to attend : customary ceremonies peculiar to a marriage between Hindus were performed : no objection was raised to the marriage and after the marriage Annapazham was accepted by the local Hindu Nadar community as belonging to the Hindu faith, and the plaintiff was also treated as a Hindu. On the evidence there can be no doubt that Annapazham bona fide intended to contract marriage with Perumal. Absence of specific expiatory or purificatory ceremonies will not, in our judgment, be sufficient to hold that she was not converted to Hinduism before the marriage ceremony was performed. The fact that Perumal chose to go through the marriage ceremony according to Hindu rites with Annapazham in the presence of a large number of persons clearly indicates that be accepted that Annapazham was converted to Hinduism before the marriage ceremony was performed.

The second contention has little substance. The Madras Hindu (Bigamy Prevention and Divorce) Act 6 of 1949-provided by ss. 3 & 4(1) :

S. 3-"This Act applies to Hindus domiciled in the State of Madras.

Explanation. This Act shall also apply if either of the parties to the marriage was a Hindu domiciled in the State of Madras." S. 4(1)-"Notwithstanding any rule of law, custom or usage to the contrary, any marriage solemnized after the commencement of this Act between a man and a woman either of whom has a spouse living at the time of such solemnization shall be void, whether the marriage is solemnized within or outside the State of Madras :

Provided....."

Mr. Gupte contended that Perumal was domiciled in the village of Kannamkulam, Taluka Nanguneri, District Tirunelveli in the State of Madras and on that account governed by Madras Act 6 of 1949, and since Perumal had been previously married to Seethalakshmi who was alive, his marriage with Annapazham was invalid. The Courts below have held that Perumal had married Seethalakshmi before he married Annapazham, and that Seethalakshmi was alive at the date of Perumal's marriage with Annapazham. But no contention was raised in the written statement filed by Perumal that he was domiciled in the State of Madras. The marriage with Annapazham took place in Kannimadam which is admittedly within the territory of the State of Travancore- Cochin and after the marriage Perumal and Annapazham lived at Kannimadam. M. Thangiah Nadar P.W. 2, and Kailasa Nadar P.W. 4 have deposed that the families of Annapazham and Perumal were the subjects of the Travancore Maharaja and that evidence was not challenged. Perumal and Annapazham were married according to the ceremonies which make a valid marriage: they had lived as husband and wife and if it was the case of Perumal that the marriage was, by reason of the prohibition contained in Madras Act 6 of 1949, invalid, it was for him to set up and to establish that plea by evidence. It is true that an attempt was made after plaintiff closed her case to suggest to witnesses examined that he Perumal was a resident of Kannamkulam and that he occasionally visited Kannimadam where he had a house. But no argument was raised that Perumal was domiciled in the State of Madras. In the absence of any such contention, the Trial Court held that Perumal was not domiciled in the State of Madras. It cannot be held in the absence of a specific plea and issue raised to that end that Perumal was domiciled in the State of Madras and was on that account governed by the provisions of the Madras Hindu (Bigamy Prevention and Divorce) Act 6 of 1949. We agree with the High Court that it is not proved that Perumal was domiciled in the State of Madras at the date of his marriage with Annapazham. Nor can we accept the contention that the plaintiff Ponnu- swami is an illegitimate child. If it be accepted that there was a valid marriage between Perumal and Annapazham and during the subsistence of the marriage the plaintiff was born, a conclusive established that at the time when the plaintiff was conceived, Peru presumption arises that he was the son of Perumal, unless it be mal had no access to Annapazham. There is evidence on the record that there were in 1957 some disputes between Annapazham and Perumal. Annapazham had lodged a complaint before the Magistrate's court that Perumal had contracted marriage with one Bhagavathi. That complaint was dismissed and the order was confirmed by the High Court of Madras. Because of

this com- plaint, the relations between the parties were strained and they were living apart. But it is still common ground that Perumal and Annapazham were living in the-same village, and unless Perumal was able to establish absence of access, the presumption raised by s. 112 of the Indian Evidence Act will not be displaced.

In Chilukuri Venkateswarlu v. Chilukuri Venkatanarayana(1) in a suit filed by a Hindu son against his father for partition it was contended that the plaintiff was not the legitimate child of the defendant. The defendant relied upon certain documents by which he had agreed to pay maintenance to the plaintiffs mother, and upon a deed gifting a house to her and assertions made in a previous suit that he had no intercourse with her after he married a second wife. The Court in that case observed, following the judgment of the Privy Council in Karapaya v. Mayandi(1) that .,non-access could be established not merely by positive or direct evidence; it can be proved undoubtedly like any other physical fact by evidence, either direct or circumstantial, which is relevant to the issue under the provisions of the Indian Evidence Act, though as the presumption of legitimacy is highly favoured by law it is necessary that proof of non-access must be clear and satisfactory", and since on the basis of that proof there was evidence on the record that the plaintiffs mother lived in the house gifted to her by her husband and there was no impossibility of cohabitation between the parties, there was no acceptable evidence of non-access.

In Ammathayee v. Kumaresain (3) this Court held that the conclusive presumption under s. 112 of the Indian Evidence Act can. only be displaced if it is shown that the parties to the marriage had no access at any time when the child could have been begotten, There is a concurrent finding of the Trial Court and the High Court that there is no evidence to establish that Perumal living in the same village as Annapazham had no access to Annapazham during the time when the plaintiff could have been begotten.

The appeal fails and is dismissed with costs.

G.C. Appeal dismissed.