RESERVED JUDGMENT

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No. 26 of 2020

Dr. Subramanian Swamy … Petitioner

Versus

State of Uttarakhand and others … Respondents

And

Writ Petition (M/S) No. 700 of 2020

Sri 5 Mandir Samiti Gangotri Dham and another … Petitioners

Versus

State of Uttarakhand and others … Respondents

Dr. Subramanian Swamy, petitioner, in-person in Writ Petition (PIL) No. 26 of 2020.
Ms. Manisha Bhandari, learned counsel for the petitioner in Writ Petition (PIL) No. 26 of 2020.
Mr. Rajendra Dobhal, learned Senior Counsel assisted by Mr. Devang Dobhal, learned counsel for the petitioners in Writ Petition (M/S) No. 700 of 2020.
Mr. S.N. Babulkar, learned Advocate General assisted by Mr. Paresh Tripathi, learned Chief Standing Counsel, for the State of Uttarakhand.
Mr. D.C.S. Rawat, learned Standing Counsel for the Union of India.
Mr. Ravi Babulkar, learned counsel for the third respondent in Writ Petition (M/S) No. 700 of 2020.
Mr. Kartikey Hari Gupta, learned counsel for the Intervener in Writ Petition (PIL) No. 26 of 2020.

Judgment Reserved : 06.07.2020
Judgment Delivered : 21.07.2020

Chronological list of cases referred :

1. AIR 1959 Ori 5
2. AIR 1964 SC 1501
3. (1996) 9 SCC 548
4. AIR 1963 SC 1638
5. (1997) 4 SCC 606
6. AIR 1955 SC 540
7. AIR 1946 PC 127
8. AIR 1965 SC 745
9. (1982) 1 SCC 271
10. AIR 1958 SC 883
11. AIR 1958 SC 538
12. (2012) 6 SCC 312
13. (1996) 3 SCR 721
14. (2014) 8 SCC 682
15. (2017) 9 SCC 1
16. (2017) 10 SCC 800
17. (1995) 5 SCC 482

18. (2008) 4 SCC 720
19. 2003 (4) PLJR 44
20. (2003) 5 SCC 239
21. AIR 1973 SC 1643
22. (2014) 5 SCC 75
23. (2018) 6 SCC 1
24. (1998) 1 SCC 226
25. 1982 (2) SCR 365
26. (1993) 4 SCC 441
27. AIR 1980 SC 2097
28. (1985) 1 SCC 523
29. (1973) 2 SCC 713
30. (2004) 10 SCC 1
31. (2008) 2 SCC 108
32. AIR 1959 SC 648
33. AIR 1955 SC 191
34. (1974) 4 SCC 3
35. (1996) 2 SCC 498
36. (1970) 1 SCC 245
37. (1984) 3 SCC 127
38. (2014) 4 SCC 583
39. AIR 1951 SC 41
40. AIR 1951 SC 318
41. AIR 1952 SC 75
42. AIR 1964 SC 1633
43. 1952 CriLJ 805
44. 1952 CriLJ 1167
45. 1953 CriLJ 911
46. 1953 CriLJ 1158
47. (1952) 1 MLJ 557
48. AIR 1954 SC 388
49. (1964) 1 SCR 561
50. (1974) 1 SCC 500
51. 1958 SCR 895
52. (1971) (DB) 84 Law Weekly 86
53. AIR 1954 SC 282
54. AIR 1959 SC 860
55. (2019) 11 SCC 1
56. (1977) 1 SCC 677
57. (2002) 8 SCC 106
58. (1972) 3 SCR 815
59. (1962) Suppl. SCR 496 (1)
60. (1954) 1 SCR 1046
61. (1962) 1 SCR 383
62. (2005) 11 SCC 45
63. (1983) 1 SCC 51
64. AIR 1968 SC 662
65. AIR 1966 SC 1119
66. (2002) 7 SCC 368
67. ILR (1971) AP 320
68. AIR 1971 SC 161
69. AIR 1949 PC 302
70. AIR 1953 SC 65
71. (1990) 1 SCC 193
72. (1990) 2 SCC 715
73. (2005) 1 SCC 444
74. AIR 1965 SC 1153
75. AIR 1971 SC 1676

76. AIR 2005 SC 2392
77. (2005) 7 SCC 190
78. (2004) 12 SCC 673
79. AIR 1962 SC 83
80. (1989) 1 SCC 101
81. AIR 1967 SC 1480
82. (1991) 4 SCC 139
83. (1996) 6 SCC 44
84. (2006) 1 SCC 275
85. (2005) 6 SCC 404
86. AIR 1968 SC 647 = (1968) 2 SCR 154
87. (1901) AC 495
88. AIR 2002 SC 3088
89. 98 (2002) DLT 525
90. (2003) 2 SCC 111
91. (2002) 3 SCC 496
92. AIR 1990 AP 171
93. (2004) 8 SCC 579
94. (2003) 11 SCC 584
95. (2004) 3 SCC 75
96. 2008 LAP 340
97. (2008) 16 SCC 14
98. (1951) 2 ALL ER 1 (HL)
99. (1970) 2 ALL ER 294
100. (1972) 2 WLR 537
101. (2004) 6 SCC 186
102. (2015) 9 SCC 109
103. (2006) 1 SCC 368
104. (1985) 1 SCC 260
105. (1972) AC 1027
106. (1984) 2 SCC 436
107. AIR 1965 SC 1887
108. AIR 1978 SC 548
109. (1990) IIL LJ 70 SC
110. (1891) 2 QB 665
111. AIR 1995 SC 1395
112. (2003) 1SCC 433
113. AIR 1990 All ER 780
114. AIR 1960 SC 971
115. (1968) 1 W.L.R. 1526
116. AIR 1952 SC 245
117. (1978) 2 SCC 1
118. AIR 2004 SC 361
119. (2015) 10 SCC 681
120. AIR 1989 SC 2105
121. 1964 (7) SCR 456
122. (1992) 2 SCC 36
123. (1981) 4 SCC 675
124. AIR 1974 SC 2098
125. AIR 2003 SC 355
126. AIR 2003 SC 4225
127. (1904) AC 515
128. (1881) ILR 4 Mad. 391
129. (1996) 8 SCC 705
130. AIR 1978 Ker 68
131. (1997) 2 SCC 745
132. (1997) 8 SCC 422
133. (2010) 13 SCC 336

134. (1969) 1 SCR 42
135. ILR (1988) KAR 960
136. (2008) 13 SCC 30
137. (2007) 13 SCC 673
138. (2015) 12 SCC 611
139. (1991) Supp. (1) SCC 600
140. (1999) 9 SCC 700
141. (1999) 4 SCC 458
142. (1993) 1 SCC 78
143. AIR 2003 SC 3268
144. (2004) 6 SCC 531

Coram : Hon'ble Ramesh Ranganathan, C.J.
Hon'ble R.C. Khulbe, J.

Ramesh Ranganathan, C.J.

The Uttarakhand Char Dham Devasthanam Management Act, 2019 (for short the "2019 Act") is the latest, in a long line of enactments, made by various States all over the country, both before and after the advent of the Constitution, entrusting management of Hindu temples to a Board whose Chairman and members are, by and large, nominated by the State Government. The statement of objects and reasons for introducing the 2019 Bill records the need to make legal provisions, for temples and devasthanams located in Uttarakhand, similar to Shri Vaishno Devi Mata Temple, the Sai Baba, the Puri Jagannath and Somnath temples.

2. Shri Mata Vaishno Devi temple, in Jammu & Kashmir, is under the management and supervision of the Shri Mata Vaishno Devi Shrine Board constituted under the J&K Shri Mata Vaishno Devi Shrine Act, 1988. Shri Jagannath Temple at Puri is under the control of a temple management committee constituted under the Shri Jagannath Temple Act, 1955. A challenge to its constitutional validity, on the touch-stone of Article 26-(d) of the Constitution of India, was rejected by the Orissa High Court in **Ram Chandra Deb v. State of Orissa**[1], and the judgment of the Orissa High Court was affirmed by the Supreme Court in **Raja Bira Kishore Deb v. State of Orissa**[2]. The Somnath temple is managed by the board of a religious and charitable trust registered under the Gujarat Public Trust Act, 1950, and the Shri Shirdi Sai Baba temple is managed by the board of the

Shri Shirdi Sai Baba Sansthan Trust which is registered under the Bombay Public Trust Act, 1950.

3. Other than the above, the Lord Venkateshwara temple (popularly known as Tirupati Balaji temple) is also administered by a board, constituted under the A.P. Charitable & Hindu Religious Institutions & Endowments Act, 1987 called the TTD Board consisting of a Chairman and members who are nominated by the State Government. The constitutional validity of this Act was upheld by the Supreme Court in **A.S. Narayan Deekshitulu v. State of A.P & others**[3]. The renowned Ramanatha Swamy temple at Rameshwaram, and the Meenakshi Amman temple at Madurai, both in the State of Tamil Nadu, are under the management and control of a board constituted under the Tamilnadu (hitherto Madras) Hindu Religious and Charitable Endowments Act, 1959. The Shrinathji temple at Nathdwara, Rajasthan is also under the control and management of a board constituted under the Nathdwara Temple Act, 1959, the constitutional validity of which was upheld by the Supreme Court in **Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan and Ors.**[4].

4. The Mahakaleshwar temple at Ujjain is in the control of a managing committee constituted under the Madhya Pradesh Shri Mahakaleshwar Act, 1982, and the Guruvayoor temple in Kerala is under the control of the Travancore Devaswom Board constituted under the Travancore Cochin Hindu Religious Institutions Act, 1950. The Kashi Vishwanath temple at Banaras is under the management of a board constituted under the U.P. Kashi Vishwanath Temple Act, 1983. The validity of the 1983 Act was upheld by the Supreme Court in **Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and Ors. v. State of U.P. and Ors.**[5]. Two of the Chardham temples in Uttarakhand, i.e. Shri Badrinath and Shri Kedarnath temples, were, prior to the 2019 Act coming into force, under the control and management of a managing committee constituted under the U.P. Shri Badrinath and Shri Kedarnath Temples Act, 1939 which continued to remain in force till it was repealed by the 2019 Act.

5. Dr. Subramanian Swamy seeks to draw a distinction between the Somanth, Shirdi Sai Baba and Vaishno Devi temples on the one hand, and the temples brought within the ambit of the 2019 Act on the other, contending that, while the former are individual temples, the latter covers a large number of temples. It is necessary, in this context, to note that the Somnath trust has been conferred sole authority to manage and maintain not only the Somnath temple but 64 other temples in Prabhas Patan. The TTD Board manages and administers several temples referred to in the first Schedule to the A.P. Hindu Religious and Charitable Endowments Act, 1987. Likewise the Hindu Religious and Charitable Endowments Board, in the State of Tamil Nadu, manages and administers several thousand temples. The distinction sought to be made, between these temples and those brought within the ambit of the 2019 Act, does not therefore merit acceptance.

6. Yet another complaint of Dr. Subramainan Swamy is that the Chief Minister of the State is the ex-officio Chairman of the Board. It is necessary, in this context, to note that the Governor of J&K is the ex-officio Chairman of the Board constituted under the Jammu and Kashmir Shri Mata Vaishnodevi Shrine Act, 1988. The members of the Board of Somnath temple include those presently holding very high constitutional offices. While the wisdom, of drawing the Chairman and Members of the Board from those holding constitutional offices, may be open to debate, it is not for the Court to pronounce upon the wisdom or the justice, in the broader sense, of legislative acts. It can only examine whether they were validly enacted. (**Umeg Singh and Ors. v. The State of Bombay & others**[6]; and **Thakur Jagannath Bakshi Singh v. The United Provinces**[7]).

7. Dr. Subramanian Swamy suggests, in his writ affidavit, that, after striking down the provisions of the 2019 Act as unconstitutional, the remedy lies in the promulgation of a Central Legislation in consultation with the heads of religious denominations who are members of the Hindu Dharma Acharya Sabha; the expeditious promulgation of such legislation by the Union of India should be directed at striking a balance between the

fundamental rights of the religious denominations under Article 26 and the limited power of the State to interfere under Article 25(2); underlying the spirit of legislation must be to encourage, empower and respect the sanctity of the community participating in the administration with minimal interference by the State; and this would result in greater cohesion within the religious communities, and participation by various members of the communities such a women, scheduled castes and scheduled tribes, thereby furthering the cause of social justice.

8. What Dr. Subramanian Swamy suggests, as an alternative to the 2019 Act, is again legislation, this time by Parliament. Subject to constitutional limitations, including legislative competence, the power of either the Central or the State legislature to make laws is plenary. The Legislatures discharge their legislative functions by virtue of the power conferred on them by the relevant provisions of the Constitution, and they function within the limits prescribed by the material and relevant provisions of the Constitution. The basis for exercise of the plenary powers of legislation is the Constitution itself. (**Under Article 143 of the Constitution of India; In the matter of Special Reference No. 1 of 1964**[8]**)**.

9. The plenary power conferred upon the State Legislature, by Article 245 of the Constitution, to make laws within the field of legislation upon which that power can operate, is subject only to the provisions of the Constitution. (**A.K. Roy and others v. Union of India & others**[9]). The fetter or limitation on such legislative power must be found within the Constitution itself, and if there is no such fetter or limitation to be found there, the State Legislature has full competence to make the law. (**Umeg Singh**[6]). If the legislative competence, of the State Legislature to enact the law, is not challenged, the Act must, save other constitutional limitations, be held to be a valid piece of legislation whatever may have been the intention which led to its enactment. (**Firm of A. Gowrishankar v. Sales Tax Officer, Secunderabad & another**[10]).

10. Whether the Board constituted under the 2019 Act should be continued in its present form, or be replaced by another, are all matters for the competent legislatures to decide, and are not matters for judicial intervention. Any exercise undertaken by the Court, to alter the composition of the Board constituted under the 2019 Act, would amount to judicial legislation which, in view of the constitutional limitations imposed on the judicial branch of the State, is impermissible. The role of Superior Courts, in such matters, is limited to an examination of whether the Uttarakhand State Legislature had the legislative competence to make the 2019 Act, and whether the 2019 Act is in violation of any provision of the Constitution including Part-III thereof. If it is, the Act must then be struck down and, if it is not, the High Court must refrain from interference even if it finds force in the submission that a better law could have been made, for Courts must, while examining the constitutional validity of an Act, presume that the legislature understands and correctly appreciates the need of its people, that its laws are directed to problems made manifest by experience, and that its discriminations are based on adequate grounds. (**Ram Krishna Dalmia v. Justice S.R. Tendolkar and Ors.**[11]).

11. The Supreme Court, and the High Courts, neither sit in judgment over the wisdom of the legislature in making laws, (**State of Madhya Pradesh v. Rakesh Kohli and Another**[12]**;** and **State of Andhra Pradesh and Ors. v. McDowell & Co.**[13]), nor would they substitute their views on what the Legislative policy should be. A legislation does not become unconstitutional merely because there is another view. (**Subramanian Swamy v. Director, Central Bureau of Investigation and another**[14]**;** and **Shayara Bano and others v. Union of India and others**[15]). If two views are possible, one making the provision in the statute constitutional, and the other making it unconstitutional, the former should be preferred. (**Independent Thought v. Union of India and Another**[16]**; LIC of India v. Consumer Education and Research Centre**[17]**; Government of Andhra Pradesh and Ors. v. Smt. P. Laxmi Devi**[18]**;** and **Kedar Nath Singh v. State of Bihar**[19]). If it is necessary, to

uphold the constitutionality of a statute, to construe its general words narrowly or widely, the Court is obligated to do so (**Independent Thought**[16]; and **G.P. Singh's Principles of Statutory Interpretation, 9th Edn., 2004, p. 497**). It is only if a legislation is found to lack in legislative competence, or is found to contravene any of the provisions of Part III or any other provision of the Constitution, that it cannot escape the vice of unconstitutionality **(State of West Bengal and Ors. v. E.I.T.A. India Ltd. and Ors.**[20]**; Keshavananda Bharti v. State of Kerala**[21]**;** and **McDowell & Co.**[13]**)**.

12. The respondents trace the source of power of the State Legislature, to make the 2019 Act, to Entry 7 of List II and Entries 10 and 28 of List III to the Seventh Schedule to the Constitution. Entry 7 of List II relates to pilgrimages, other than pilgrimages to places outside India. Entry 10 of List III relates to trust and trustees, and Entry 28 relates to charities and charitable institutions, charitable and religious endowments and religious institutions. As the legislative competence of the State legislature, to make this law, has not been subjected to challenge in these Writ Petitions, it is only if the impugned Act violates any other provisions of the Constitution, would intervention by this Court, to strike down the law, be justified. The validity of the 2019 Act is subjected to challenge by the petitioners herein who claim that it is in violation of Articles 14, 25, 26 and 31-A of the Constitution.

13. Elaborate oral submissions were put forth by Dr. Subramanian Swam in-person and by Mr. Rajendra Dobhal, learned Senior Counsel and Ms. Manisha Bhandari, learned counsel for the petitioners. Learned Advocate General appearing for the State Government, Mr. Ravi Babulkar, learned counsel for the Board and Dr. Kartikey Hari Gupta, learned counsel for the interveners, made detailed submissions in support of their contention that the Legislation is intra-vires Part-III of the Constitution. Written submissions have been filed by Dr. Subramanian Swamy and Mr. Ravi Babulkar. Dr. Swamy has also filed supplementary written submissions. It is

convenient to examine the rival submissions, put forth by the petitioner in person and learned counsel on either side, under different head.

I. LOCUS STANDI / MAINTAINABILITY :

14. It is contended, on behalf of the respondents, that the Writ Petition filed by Dr. Subramanian Swamy is not a Public Interest Litigation, but is a political interest/publicity oriented litigation; it does not fulfil the requirement of the High Court PIL Rules; Dr. Subramanian Swamy has not stated, in the Writ Petition, that the taking over of the management of the temples is against larger public interest; in **Dr. Subramanian Swamy v. State of Tamil Nadu & others**[22], cited by the petitioner, the question of either his right to file a Writ Petition in public interest, or his locus standi to represent a large section of the public, unrepresented before the Court concerned, did not arise for consideration; the present Writ Petition is a Publicity Interested Litigation as is evident from the statements made by petitioner through the print and social media before filing the present PIL; in **Dr. Subramanian Swamy**[22], the case was originally filed by the religious denomination itself; the petitioner had intervened later, and since the appeals before the Supreme Court were filed both by the religious denomination and the petitioner, the said case would not justify the petitioner being permitted to invoke the public interest litigation jurisdiction of this Court; and since it is the right of a religious denomination which is alleged to have been violated, no third party can espouse their cause, that too in public interest as the fundamental right under Article 26 of the Constitution is not the right of the general public, but is the right of a religious denomination or a section thereof.

15. On the other hand Dr. Subramanian Swamy would submit that the petitioner has successfully filed, argued and won many Public Interest Litigations (PILs) on similar questions of law i.e. challenging the constitutionality of such Act(s); though he did not belong to their religious denomination, he had appeared on behalf of the Podhu Dikshitars in **Dr. Subramanian Swamy**[22]; it is evident from the order, passed by the

Supreme Court therein, that he was heard first before the others were heard; the Supreme Court did not non-suit him on the ground of lack of standing; in his affidavit, he has detailed the cases in which he had appeared espousing the cause of religious institutions; in none of these cases was any objection raised to the maintainability of the Writ Petition filed by him; in **Lok Prahari v. The State of Uttar Pradesh and Ors.**[23], the Supreme Court held that Courts have moved away, from the theory of infringement of the fundamental rights of an individual citizen or non-citizen, to one of infringement of the rights of a class; the above transformation is the foundation of what had developed as an independent and innovative stream of jurisprudence called "Public Interest Litigation" or class action; though evolved much earlier, a solemn affirmation of the aforesaid principle is to be found in paragraph 48 of **Vineet Narain and Ors. v. Union of India and Anr.**[24]; the Supreme Court, in **S.P. Gupta v. Union of India (UOI) and Ors.**[25], held that any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226, and in case of breach of any fundamental right of such person or determinate class of persons, in the Supreme Court under Article 32, seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons; the legal and factual position of the Petitioner's locus standi, and maintainability of the Public interest Litigation, is the natural and legal sequitur of the above cited judgments; the petitioner is fully entitled in law to file the present PIL; and the plea of maintainability of the Writ Petition was being raised only to divert the issue.

16. In the exercise of its power under Article 225 of the Constitution of India, the Uttarakhand High Court made the "**Writs in the nature of Public Interest Litigation under Article 226 of the Constitution of India, Rules**" (hereinafter called the "PIL Rules"). Rule 2(g) of the PIL Rules defines "Public Spirited Person" to include a person who has a genuine interest in the issues being canvassed through a "PIL petition" and can substantiate, on the basis of material in his possession, that he has been pursuing the subject matter involved with the concerned

authorities; but shall not include a person pursuing a private interest litigation, or a publicity interest litigation, or a political interest litigation, in the guise of a "PIL petition".

17. Rule 3(1), under the head "PIL-Petition", stipulates that a public spirited person may file a PIL petition in respect of one or more of the subject matters expressed in sub-rule (3), unless the same is barred under sub-rule (4). Rule 3(3)(a) stipulates that a cause in public interest may be raised in respect of matters relating to the enforcement of fundamental rights, including social and economic justice, and more particularly, for the enforcement of human rights, including the right to live with dignity, enshrined under Article 21 of the Constitution of India, concerning sections of the society who are either extremely poor, illiterate, depressed, vulnerable, discriminated, marginalized, or who may have no easy access to justice, so that they do not remain victims of ignorance, deception or exploitation, including matters, on the aforesaid issues, as would shock the judicial conscience. Under clause (e) of Rule 3 are matters of public interest not falling within sub-clauses (a) to (d) above, but are of a like nature, on being certified by the advocate representing the petitioner in a "PIL petition", or the concerned "Public Spirited Person", (in case he himself is pursuing the PIL petition), to be a cause in public interest, requiring consideration at the hands of the High Court.

18. We find it difficult to agree with the submission, urged on behalf of the respondents, that the present Writ Petition is a Political Interest Litigation as both Dr. Subramanian Swamy, who has invoked the jurisdiction of this Court questioning the validity of the 2019 Act, and the ruling dispensation in the State of Uttarakhand belong to the same political party. While reliance is placed on certain tweets, which Dr. Subramanian Swamy admits having made, to submit that it is a Publicity Interest Litigation, it is the petitioner's case that he has a genuine interest in the issues being canvassed, through the PIL petition, which is non-interference by the State Government with the administration of Hindu temples. He has referred to several cases which he has filed in various High Courts on this

and other related issues. The contention that the Writ Petition filed by him is a publicity interest litigation, therefore, necessitates rejection.

19. Under Rule 3(3)(a), it is only causes of such sections of society, which are in no position to access justice, that may be espoused by another. It is also true that the question of locus of Dr. Subramanian Swamy was not put in issue before the Supreme Court in **Dr. Subramanian Swamy**[22] and, consequently, the fact that he was permitted to appear would not, by itself and without anything more, justify a PIL Petition filed by him being entertained by this Court. We also find considerable force in the submission of the respondents that, since the fundamental rights under Article 26 is the right of religious denomination, it is only if it is asserted in the Writ Petition that a particular religious denomination lacks the means to avail its judicial remedies, would it be permissible for another to espouse their cause. No such plea is, admittedly, taken in the Writ Petition.

20. Rule 3(3)(a), however, also stipulates that matters, relating to the enforcement of fundamental rights which Dr. Subramanian Swamy complains as having been violated by the provisions of the 2019 Act, can be agitated by a PIL petition. Even otherwise, we see no reason to non-suit Dr. Subramanian Swamy on this score since, in any event, the society of Gangotri Dham (petitioners in Writ Petition (M/S) No.700 of 2020) is, admittedly, entitled to invoke the jurisdiction of this Court questioning the validity of the 2019 Act. As elaborate submissions have been made by Dr. Subramanian Swamy on the validity of the 2019 Act on the touch-stone of Articles 14, 25, 26 and 31-A, and these contentions have been largely adopted by Mr. Rajendra Dobhal, learned Senior Counsel appearing on behalf of the petitioners in Writ Petition (M/S) No.700 of 2020, the objection, to Dr. Subramanian Swamy's lack of standing to file the Writ Petition, is rejected.

II. CAN THE VALIDITY OF AN ACT BE EXAMINED ON GROUNDS OF MALAFIDES OR EXTRANEOUS CONSIDERATIONS :

21. Dr. Subramanian Swamy would submit that only one counter-affidavit has been filed by the four listed Respondents in the Writ Petition; only Respondent No. 2 (State Government, Cultural Department) has filed a counter-affidavit; the Union of India has argued that they are not an interested party in the present petition; under Section 3(2)(A)(vii) of the 2019 Act, the Union of India, Ministry of Culture (not below the rank of a Joint Secretary) is invited to be a part of the Board as a special invitee; flowing from that, the Union of India was made a party in the present Petition; and the natural sequitur is that the present Writ Petition is neither being opposed nor is it being contested by the Union of India, which is deemed to have admitted the contents of the present Writ Petition.

22. Dr. Subramanian Swamy claims that the sole object of making the 2019 Act, as is evident from the counter-affidavit, is the rejuvenation of the Char Dhams, and to manage the same through a Board; before taking over the temple, the respondents were obligated to place evidence that there was mismanagement of the temple or improper management necessitating the Act being made; reasons should have been assigned in support of the claim of mismanagement, and evidence should have been placed before the Court in support of such allegations; the actions of the Respondents, which are impugned herein, make a mockery of constitutional principles, and are an abuse of the legal process and statutory power; they are vitiated by malafides and extraneous considerations; as held by the Supreme Court, in **Supreme Court Advocates on Record Association v. Union of India**[26], when the will of the legislature, as declared in a statute, stands in opposition to the will of the people as declared in the Constitution, the will of the people shall prevail; taking over Hindu religious temples is in utter disregard of public morality; and as held by the Andhra Pradesh High Court, in W.A. No.579 of 2018 dated 26.06.2018, such acts would result in erosion of faith by those who are worshippers in these temples.

23. A statute enacted by a Legislature falling within its competence, which does not offend any fundamental rights guaranteed by Part III of the Constitution and which does not contravene any other provision of the Constitution, cannot be declared ultra vires either on the ground that its provisions are vague, or uncertain or ambiguous or mutually inconsistent. (**Nand Lal & another v. State of Haryana & others**[27]), or for reason of non-application of mind. (**K. Nagaraj & others v. State of Andhra Pradesh & another**[28]). If the law is constitutionally valid, the Court can hardly strike it down on the ground that, in the long run, the legislation, instead of turning out to be a boon, will turn out to be a bane. (**State of Kerala & another v. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd & others**[29]).

24. Unlike judicial and quasi-judicial orders, or even administrative orders, which must contain reasons, no such obligation is placed on the State legislature in making laws. It is for the Court to ascertain the object of the legislation, if need be, by resort to aids of construction, both internal and external. No obligation is placed by the Constitution on the State Legislature to produce evidence before the Court, regarding improper management or mis-management of the Char Dham fund, necessitating the 2019 Act being made. As shall be elaborated later in this order, the history of the Shri Badrinath and Shri Kedarnath temples, which has resulted in the U.P. Shri Badrinath and Shri Kedarnath Temples Act, 1939 being made, would show that these temples were mismanaged necessitating the 1939 Act being enacted. In so far as the Shri Gangotri Dham temple is concerned, a bare reading of its by-laws made in 2002, as shall be elaborated hereinafter, would itself show that the funds of the Gangotri Dham were mis-utilized. Neither is it permissible for us, nor do we see any reason to do so, to declare the 2019 Act unconstitutional on this score.

25. It is the duty and function of the Court, in relation to each forensic situation, to examine the language of the law, the context in which it is made, to discover the intention of the Legislature and to interpret the law

to make it effective, and not to frustrate the legislative intent. (**Nand Lal & another**[27]). Even where the provisions of a statute appear to be mutually inconsistent, there are several well-known rules of interpretation to guide the Court in ascertaining the proper meaning of the provisions of a statute. (**Nand Lal & another**[27]). An act, which is otherwise valid in law, cannot be treated as non-est merely on the basis of some underlying motive supposedly resulting in prejudice as perceived by the respondents. (**Union of India & another v. Azadi Bachao Andolan & another**[30]). Malafides cannot be attributed to a legislation. It is only its validity, that can be challenged. (**General Manager, North West Railway & others v. Chanda Devi**[31]).

26. As no malice can be attributed to the legislature in making laws, and the petitioner has not spelt out what extraneous considerations weighed with the legislature, as a body, in enacting this law or how that can be a ground to interfere with a legislative enactment, the contentions under this head necessitate rejection.

III. ARTICLE 13 AND THE BASIC STRUCTURE OF THE CONSTITUTION OF INDIA :

27. Dr. Subramanian Swamy would submit that no Act or law can be passed or enacted which is inconsistent with or in derogation of the fundamental rights enshrined in the Constitution of India; under Article 13 of the Constitution of India, the State shall not make any law which takes away or abridges the Right(s) conferred by Part III; any law made in contravention of Article 13, shall, to the extent of the contravention, be void; the 2019 Act falls within the ambit of Article 13(3)(a), and must be tested on the touchstone of Article 13(3)(a) for its legality and constitutionality; this fundamental dictum was upheld by the Supreme Court in **Supreme Court Advocates on Record Association**[26]; the 2019 Act is in contravention of Article 13 read with Articles 14, 25, 26 and 31-A (1) (b) of the Constitution of India; the Statement of Objects and Reasons, as submitted to the Uttarakhand Legislative Assembly before enacting the 2019 Act, records the basis for the takeover of the management to be "rejuvenation of temple(s)"

belonging to the sampradaya professing Sanatan Dharam, which object is violative of the faith and belief to worship enshrined in the basic structure of the Constitution, read with Article 25 of the Constitution of India; the 2019 Act is blatantly unconstitutional, it is palpably flawed and suffers from grave legal infirmities; the 2019 Act, apart from failing to abide by the Constitutional provisions, has also failed in understanding the gravity of issues of faith and belief which is enshrined in the Preamble to the Constitution of India; the impugned Act comes within the ambit of Article 13(3)(a); the 2019 Act fails to meet the constitutional test of legality and is also contrary to the rich jurisprudence laid down by the Supreme Court with regards temples and their complete autonomy, as well as the salutary principles of faith and belief which are constitutional provisions being sacrosanct and pristine in their nature, content and scope, apart from violating the major constitutional doctrines enshrined in various noteworthy decisions of the Supreme Court; and as the said Act is void-ab-initio, it is "to be treated as invalid from the outset" i.e. no such Act or law could have been passed or enacted as it is inconsistent with, or in derogation of, the Fundamental Rights enshrined in the Constitution of India.

28. Article 13 relates to laws inconsistent with and in derogation of the fundamental rights. Clause (2) of Article 13 stipulates that the State shall not make any law which takes away or abridges the rights conferred by this Part, and any law made in contravention of this clause shall, to the extent of the contravention, be void. Article 13(3) stipulates that in this article, unless the context otherwise requires (a) "law" includes any ordinance, order, bye-laws, rule, regulation, notification, custom or usage having, in the territory of India, the force of law.

29. A Legislature has no power to make any law in derogation of the injunction contained in Article 13(2) which imposes a prohibition on the State in making laws taking away or abridging the rights conferred by Part III, and declares that laws made in contravention of this clause shall, to the extent of the contravention, be void. No post-constitution law can be made contravening the provisions of Part III, and therefore such a law to that

extent, though made, is a nullity from its inception, and is still born. (**Deep Chand & others v. State of U.P & others**[32]). The power of Parliament and the Legislature of States to make laws is subject to the limitations imposed by Part III of the Constitution. The general power of legislation, to that extent, is restricted. (**Deep Chand & others**[32]).

30. As Articles 14, 25, 26 and 31-A, which the petitioners claim the 2019 Act violates, are all in Part III of the Constitution, if the 2019 Act is held to be in contravention of anyone of the aforesaid Articles, it is liable to be declared void to the extent of the contravention.

IV. IS THE ACT VIOLATIVE OF ARTICLE 14 OF THE CONSTITUTION :

31. Dr. Subramanian Swamy would submit that the 2019 Act, under Section 45, elucidates that the said Act shall not apply to Waqfs governed by the Waqf Act (1995) and Sikh Gurudwaras Act (1925), and other religious institutions established under any Central Act or Acts of the State; such a Section is *void-ab initio*; it is against the basic structure of the Constitution of India, and is violative of Article 14 of the Constitution of India; there has been an equally important shift from the classical test (classification test) for the purpose of enquiry with regard to infringement of the equality clause under Article 14 of the Constitution of India to, what may be termed, a more dynamic test of arbitrariness; the shift which depicts two different dimensions of a challenge on the anvil of Article 14 is best demonstrated by a comparative reading of the judgments of the Supreme Court in **Budhan Choudhry and Ors. v. State of Bihar**[33]**;** and **E.P. Royappa v. State of Tamil Nadu and Anr.**[34]; no prerequisites or conditions are mentioned in this Section that would explain such takeover, transfer, control and management of institutions; and it is thus in violation of Article 14 of the Constitution of India, which mandates that all State action should be just and fair, and that it should comply with the fundamental right of equality before the law.

32. On the challenge to the validity of the 2019 Act as violative of Article 14 of the Constitution of India, it is contended, on behalf of the respondents, that a law can, in certain circumstances, relate even to a single individual on account of some special circumstances, or reasons applicable to him and not applicable to others; in such cases the single individual may be treated as a class by himself; the temples under the 2019 Act have a unique and distinctive history which is not comparable with any other temple; as these temples are public temples, the State legislature thought it necessary to safeguard the interests of these temples by taking adequate legislative action; and, in passing the Act, the legislature is not guilty of unconstitutional discrimination.

33. Section 45 of the 2019 Act stipulates that the 2019 Act shall not apply to Waqfs governed by the Waqfs Act, 1995 and the Sikh Gurudwaras Act, 1925, and other religious institutions established under any Central Act or Acts of State. Failure on the part of the State Legislature to extend this law to Waqfs and Gurudwaras is contended to be in violation of the equality clause in Article 14. It is not necessary that the legislature should make a law uniformly applicable to all religious or charitable or public institutions and endowments established or maintained by people professing all religions. In a pluralistic society like India, in which people have faith in their respective religions, beliefs or tenets propounded by different religions or their off-shoots, the founding fathers, while making the Constitution, were confronted with problems of unifying and integrating people of India professing different religious faiths, born in different castes, sex or sub-sections in society speaking different languages and dialects in different regions, and to provide a secular Constitution to integrate all sections of society. **(Pannalal Bansilal Patil and Ors. v. State of Andhra Pradesh and Ors.**[35]).

34. Enactment of a uniform law in one go, though desirable, may perhaps be counter-productive. In a democracy, governed by the rule of law, gradual progressive change and order should be brought about. Making a law is a slow process, and the legislature attempts to remedy where the need

is felt the most acute. It would, therefore, be inexpedient and incorrect to think that all laws should be, uniformly, made applicable to all people in one go. The mischief or defect, which is the most acute, can be remedied by a process of law in stages. **(Pannalal Bansilal Patil[35])**.

35. The Legislature need not extend the regulation of a law to all cases it may possibly reach, and may make a classification founded on practical grounds of convenience. (**Rustom Cavasjee Cooper v. Union of India[36])**. The Legislature is not disabled from introducing reform i.e. by applying the legislation to some institutions or objects or areas or persons only, according to the exigency of the situation. Classification can also be sustained as a piecemeal method of introducing reform (**Ajay Kumar Banerjee v. Union of India[37];** and **Amarendra Kumar Mohapatra v. State of Orissa[38]**). The temples covered by the 2019 Act are Hindu temples, and constitute a class distinct from that of Waqfs and Gurudwaras. Failure to extend this Act to Waqfs and Gurudwaras does not render the 2019 Act as violative of Article 14 of the Constitution of India.

36. The object of the 2019 Act is to provide for rejuvenation of the Char Dham and various other temples located in Uttarakhand, and to manage the Devasthanam Management Board. “Rejuvenation” is the act or process of making an organization or system more effective by introducing new methods, ideas, or people. The object of the 2019 Act is to make the management of the Char Dhams, and other temples covered by the said Act, more effective by constituting the Devasthanam Management Board under whose overall supervision various amenities are to be provided, and the secular activities of these temples regulated.

37. Article 14 forbids class legislation, but not reasonable classification in making laws. The test of permissible classification under an Act lies in satisfying the two cumulative conditions: (i) classification under the Act must be founded on an intelligible differentia distinguishing persons, transactions or things grouped together from others left out of the group; and (ii) the differentia should have a rational relation to the object sought to be

achieved by the Act. There must be a nexus between the basis of the classification and the object of the Act. **(Chiranjit Lal Chowdhri v. Union of India[39]; State of Bombay & others v. F.N. Balsara[40]; The State of West Bengal v. Anwar Ali Sarkar[41]; Budhan Choudhry[33]; Shri Ramkrishna Dalmia[11]; State of Rajasthan v. Mukanchand[42]; Kathi Raning Rawat v. The State of Saurashtra[43]; Lachmandas Kewalaram Ahuja v. The State of Bombay[44]; Qasim Razvi v. The State of Hyderabad[45]; Habeeb Mohamad v. The State of Hyderabad[46];** and **Rustom Cavasjee Cooper[36])**.

38. As the temples, covered by the 2019 Act, are primarily the Char Dhams, which are undoubtedly important places of pilgrimage for devout Hindus from all over the country, and as the object sought to be achieved by the 2019 Act is to rejuvenate these temples, and to provide effective management thereof by constituting a Devasthanam Management Board, the twin tests of a valid classification, under Article 14 of the Constitution of India, are satisfied.

39. It is only if the law, enacted by the State Legislature, suffers from manifest arbitrariness, would it fall foul of Article 14. Manifest arbitrariness is something done by the legislature capriciously, irrationally and/or without any adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. Arbitrariness, in the sense of manifest arbitrariness, would apply to negate legislation under Article 14 (**Shayara Bano and others[15];** and **Independent Thought[16]**).

40. It is only where no reasonable basis for the classification appears on the face of the law, or is deducible from surrounding circumstances or matters of common knowledge, will the Court strike down the law as an instance of naked discrimination (**Shri Ramkrishna Dalmia[11];** and **Subramanian Swamy[14]**). The object of classifying these temples, and in bringing them within the ambit of the 2019 Act for its rejuvenation and its effective management by the Devasthanam

Management Board, is undoubtedly reasonable. It cannot, therefore, be said to suffer from manifest arbitrariness violating Article 14 of the Constitution of India. The contention that the Act violates Article 14, therefore, necessitates rejection.

V. IS THE ACT ULTRA VIRES ARTICLE 26 OF THE CONSTITUTION OF INDIA ?

(a) SUBMISSIONS OF THE PETITIONER UNDER THIS HEAD :

41. Dr. Subramanian Swamy would submit that it follows, from Sections 2(l) and 2(w) of the 2019 Act, that all temples, whose management has been taken over by the impugned Act, are of the Sampradaya following and professing the Sanatan Dharam; this definition is different from the definition given in Article 25 (2) (b) Explanation II of the Constitution of India; Article 394-A of the Constitution of India empowers the President, under his authority, to publish a translation of the Constitution of India in Hindi, and it shall have the same meaning [as the authoritative text in English] for all purposes as the original; in the Hindi version of the Constitution, the equivalent term for the word "denomination" is "Sampradaya" i.e. tradition, established doctrine transmitted from one teacher to another, traditional belief or usage; any peculiar or schismatic system of religious teaching, custom, usage **(Monier Williams : Sanskrit Dictionary)**; since the respondents admit that all the temples, taken over by the Act, are of the "Sanatan-Dharam Sampradaya", hence it falls within the meaning of a "Religious denomination" within the scope/ambit of Article 26 of the Constitution of India; in the Hindu faith, Sanatan Dharam members of one "sampradaya", that is a denomination, do not exclude or deny opportunities to worship to those who, primarily, follow other sampradayas, or even no sampradaya at all; religious sects in English law were already portrayed as denominations, and are so held in English dictionaries, old and modern; but the Constitution, authenticated in the Hindi version, makes it clear that, despite belonging to the Vaishnava sampradaya for example, the temple would not deny entry for worship by other sampradayas e.g., Shaivite or even Buddhists, Jains and Sikhs; the Constitution makers saw it fit to

define and state, in Article 25(2)(b) [Explanation II], that a Hindu is one who is not a Muslim, Christian or a Parsi; the words 'sampradaya' and "denomination" are synonyms; Sanatana Dharma is a sampradaya; the Hindu religion is a conglomeration of sampradayas; since Hindus of the Sanatana Dharma sampradaya are a sect of Hindus, they constitute a religious denomination; a religious denomination can maintain public temples even if it has not established it; the distinction between a public temple and a private temple, with such a right enuring in favour of a denomination, has been acknowledged by a Division Bench of the Madras High Court, in **Marimuthu Dikshitar v. State of Madras**[47], where the Chidambaran temple was acknowledged to be a public temple maintained by a religious denomination known as Podhu Dikshitars; this has been referred to in the judgment of the Supreme Court in **Dr. Subramanian Swamy**[22]; there was never any doubt in the mind of the legislature that these temples were denomination temples; consequently, the onus lay on the State to disprove that the management of the temples is not under a religious denomination; it is not a part of the petitioner's obligation to discharge this onus; reference to several provisions of the Act, in Para 15 of the counter-affidavit, is also an acknowledgement of the fact that these temples are being maintained by a religious denomination; Article 26 of the Constitution of India guarantees freedom to manage religious affairs, to every religious denomination or any section thereof, and to have the rights referred to in clauses (a) to (d) thereof; and a Constitution Bench of the Supreme Court, in **Ratilal Panchand Gandhi v. State of Bombay**[48], held that any law, which takes away the right of administration altogether from a religious denomination, and vests it in any other or secular authority, would result in violation of the right guaranteed by Article 26(d) of the Constitution.

42. Dr. Subramaninan Swamy would then submit that, under Section 4(1) of the 2019 Act, the Board is empowered, as the highest governing body, to frame policies, to manage the devasthanam area etc; under the cloak of regulation of the right of administration of a religious endowment, or on grounds of public order, morality and health, or even

under the guise of better management or public good, the State cannot permanently take over and divest the religious denominations/mutts of their proprietary rights or violate the fundamental rights, guaranteed by the Constitution in their favour, of administering the temples; such an Act as a whole, or a Section in particular, is violative of the basic structure, and the constitutional fundamental rights enshrined in Article 26 of the Constitution; under Section 15 of the Act, the administration of the Char Dham, and associated temples mentioned in the Schedule, is under the supervision and control of the CEO; it is apparent that the provisions of the 2019 Act vest the right of administration of the temples completely in the hands of Government instrumentalities created by the said Act, and in the Government itself; the entire scheme and content of the Act thus renders nugatory any freedom or autonomy in the religious communities or denominations to administer or manage the temple; under Section 32(3), in Chapter VIII of the Act, power is conferred on the CEO to maintain proper accounts, and to carry out audit in respect thereof; and as the auditor is appointed by the government appointed body itself, and no other external audit is provided, transparency is itself questionable.

43. He would further submit that, in **Dr. Subramanian Swamy**[22], the Supreme Court held that the 1959 Act does not contemplate unguided or unbridled functioning; on the contrary, the prescription of rules to be framed by the State Government, under Sections 116 read with Sections 45 and 65 etc of the 1959 Act, indicated that the legislature only intended to regulate and control any incidence of mal-administration, and not a complete replacement by introducing a Statutory authority to administer the Temple; as a natural sequitur of the above submissions, it is clear that a certain set of rules needs to be framed, defining the circumstances under which the powers, as enacted under Chapter VI, VII, VIII, particularly Sections 17, 28 and 32, can be exercised; the Act fails to comprehend or contemplate the same; and the intent of such Section(s) indicates abuse of the legal process, statutory power and further mal-administration; the impugned Act and Respondent No. 2, have recognized the temple takeover [including the Char-Dham and all other temples under the schedule] as a denomination as, under

Section 28(1) of the Act, due regard, for religious denomination, customary and hereditary rights, has been emphasized in making appointments of Priests, Rawal, Trustees etc; reference to a religious denomination in Section 28(1) is a legislative acknowledgment that these temples were hitherto under the management of a religious denomination; the counter-affidavit filed by Respondent No. 2, in paragraphs 15, 15(c), 15(h), 15(i), 16, 27, is full of purported concern to ensure that the Act does not affect denominational rights afforded by Article 26 of the Constitution; and if none of the Char-Dhams, or the associated temples, are being taken over in perpetuity, then the question arises as to why Respondent No. 2 is expressing this purported concern that the impugned Act could impact the denominational character of the Char Dham, and all other temples mentioned in the Schedule.

44. Dr. Subramanian Swamy would then submit that, in **Tilkayat Shri Govindlalji Maharaj**[49], the Supreme Court held that the term "matters of religion", used in Article 26(b) of the Constitution, is synonymous with the term "religion" in regard to Article 25(1) of the Constitution of India; the protection under Article 26 extends to acts done in pursuance of religion, and therefore contains a guarantee for rituals and observances, ceremonies and modes of worship which are an integral part of religion; in **State of Rajasthan v. Sajjanlal Panjawat**[50], the Supreme Court held that the word "denomination" is wide enough to include sections thereof; under Section 28 of the Act, due regard has been given to "religious denomination"; the Respondent(s) claim, that all such temples are public temples and therefore do not belong to any denomination, is not tenable as there is no bar on public temples being denominational temples; the Sri Sabhanayagar Temple is a denominational temple **(Dr. Subramanian Swamy**[22]) belonging to a closed body of Podu Dikkshitars, and a public temple; the Division Bench of the Madras High Court, which recognized the denominational character of Sri Sabhanayagar Temple **(Marimuthu Dikshitar**[47]), held that the temple at Chidambaram, Chit and Ambalam (the atmosphere of wisdom), is a public temple of great antiquity sacred to Saivites all over India; in **Shri Venkataramana Devaru and Ors. v. The**

State of Mysore and Ors.[51], the Supreme Court held that the temple in question, ie Mulkipettah Shri Venkatramana Temple, is a denominational institution as also a public institution, as a denominational institution would also be a public institution, Article 25(2)(b) applied, and thereunder all classes of Hindus were entitled to enter into the temple for worship; it is not required for the denomination to have established the temple in order to maintain it, when a temple's origin is lost in antiquity; and a long period of uninterrupted administration of the temple would show that the temple belonged to the administrators.

45. Dr. Swamy would further submit that the Supreme Court, in **Dr. Subramanian Swamy**[22], held that, even if the Temple was neither established nor owned by the said Respondent, nor such a claim has ever been made by the Dikshitars, once the High Court, in the earlier judgment, has recognised that they constituted a "religious denomination" or a section thereof, and had the right to administer the Temple since they had been administering it for several centuries, the question of re-examination of any issue in this regard could not arise; the Madras High Court, in **Madurai Sourashtra Sabha represented by its Honorary Secretary T.D. Rajagopalier v. The Commissioner, Hindu Religious and Charitable Endowments (Administrative Department) Madras**[52], has held that there was, admittedly, no direct evidence that the temple in question belonged to the Sourashtra Hindus, a Community of Madurai or as to when and by whom the said temple was constructed; it was also the case that the said temple was throughout maintained by the Sourashtra Community; under such circumstances, the suit temple was held to belong to the said community; in Tamil Nadu there are more than 50 ancient temples more than 1000 years old, but which are a part and parcel of various Mutts which were established around 500 years ago; each of these Mutts are religious denominations (**The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Tirtha Swamiar of Sri Shirur Mutt**[53]); the ancient temples of Sri Vaidyanadaswamy Temple, Vaitheeswarankoil, Sri Mahalingeswarar Temple, Tiruvidaimaruthur and Sri Masilamaniswarar

Temple, Tiruvavaduthurai are denominational temples belonging to the mutts; Sri Lakshmi Narasimha Swamy Temple in Ahobilam is an ancient temple that is under the Ahobilam Mutt from the time of inception of the Mutt about 600 years ago; these temples are also public temples where the Hindu Public has free access to worship; the entire scheme and context of the Act negates any freedom or autonomy in the religious communities, or denominations, to administer or manage the temple; and the High Court of Andhra Pradesh, in **Writ Appeal No. 579 of 2018**, held that, while parting with the case, the learned Single Judge had observed that, if the Government and its officers deal with endowment property in such a manner, it would affect persons of faith who make munificent contributions to the temple, this is a misappropriation or usurpation of dharmic institutions belonging to a religious denomination, and is in violation of the fundamental property rights guaranteed under Article 26 of the Constitution.

(b) <u>CONTENTIONS, URGED ON BEHALF OF THE RESPONDENTS, UNDER THIS HEAD</u> :

46. It is contended, on behalf of the respondents, that no evidence has been adduced by Dr. Subramanian Swamy to show that the Badrinath and Kedarnath Temples belong to any religious denomination; the Badrinath Temple is a Vishnu Tirth and has been in existence since times immemorial; it is not even known who established the said Temple; after Hindu Temples were destroyed by Buddhists, Adi Shankaracharya reinstalled the idol in the Badrinath temple in the 9th century; some believe that the idol was installed by Ramanujacharya; views differ on who re-installed the idol in Badrinath, whether it was Adi Shankaracharya or Ramanujacharya; the Hindu Dharma Kosh refers to Shri Badrinath Temple; Buddhists and Jains also claim a right over the temple; these two temples are believed to have been in existence even during the times of the Mahabharata, and are said to have been established by Janmejaya- the grandson of Arjuna; the Pandavas are said to have travelled from Badrinath to manibhadra ashram, and from there to swargarohini; the priest in the Kedarnath temple is a Lingayath from Karnataka, and the priest of Badrinath temple is a Nambudiri from Kerala; the Himalayan Gazetteer refers to the Badrinath temple and to the Rawal of

the temple; Manu's Code of law records that, even in ancient days, priests had no absolute right, and it was king's duty to appoint them; none of these temples were at any time under the control of a religious denomination, much less were they established by any religious denomination; Gangotri and Yamunotri are places of worship where people pray to Ganga mata and Yamuna Devi; Yamuna is said to be the sister of Lord Yama and the daughter of Lord Surya; it is the place which is worshipped, and is considered more important than the temple and the Idol; there are several other places of worship, which do not have idols such as the Triveni Sangam at Prayag, the Bhagirathi-Alaknanda Sangam at Dev Prayag, from where its confluence is known as the Ganges; the Shivling at Amarnath temple is also naturally formed; and at Naimisharanya, Hari Ki Pauri and Benaras prayers are offered to the River Ganges and not to any particular idol.

47. It is contended, on behalf of the respondents, that Article 26 is not an individual right, but is a right conferred only on a religious denomination or a section thereof; it is for those, who claim to be a religious denomination, to establish their right; the onus lies on the petitioner to establish which religious denomination he belongs to, and which religious denomination is the founder of, and has established, any of the four Dhams; no Court has declared that the temples covered by the 2019 Act were established by any religious denomination; the present Act replaces the 1939 Act making certain modifications thereto; while the 1939 Act related only to the Badrinath and the Kedarnath Temples, the 2019 Act brings within its ambit the Gangotri and Yamunotri Dhams also; the 2019 Act was made in the interest of pilgrims, from all over the country, who visit these places of worship regularly; Article 26 is a group right; for a group to complain of violation of their fundamental right under Article 26, the following conditions must be satisfied: (i) the person claiming the right under Article 26 must be a religious denomination or a section thereof; (ii) the said religious denomination should have established the religious institution of which it claims a right to maintain; (iii) the said denomination must be managing its own affairs with respect to religion; (iv) such management

must be by a denomination, and not by an individual; (v) only then would the said denomination have the right to acquire moveable and immovable properties; (vi) the right of the religious denomination to administer its property can be regulated by law; (viii) these facts must be specifically pleaded in the Writ Petition; and in the absence of any such plea, no contention regarding violation of Article 26 can be examined.

48. It is also contended, on behalf of the respondents, that the right under Article 26 is available only to a religious denomination or a section thereof; Dr. Subramanian Swamy has not raised any plea, either in the writ affidavit or in his rejoinder, that these temples are managed by a specific religious denomination; no reference is made therein to any body or organization which constitutes such a religious denomination; there is no claim that any particular religious denomination has established these temples, and they should therefore be maintained by them; without pleadings, an argument has been raised that the 2019 Act provides for Hindus, practicing Sanathan Dharma, to be a religious denomination; the intention of the Legislature is otherwise; such a contention has been negated by the Supreme Court in **Sri Adi Visheshwara**[5]; the impugned legislation does not violate Article 26(b) of the Constitution as it does not regulate any affairs in matters of religion; rather by way of Section 2(j), (k),(l) and (m), Sections 15, 19, 28, 35(2)(a), the impugned Act protects affairs in matters of religion; the petitioner has not raised any claim under Article 26(c) of the Constitution; the word “such” in Article 26(d) is significant; to claim any right under Article 26(d), the petitioner must establish the origin of the claim and establish that, from the date of establishment of that property, they never lost that right; in the present case, if at all there was any right with the priests to administer the Badrinath and Kedarnath temples, it was already lost by the 1939 Act, and was never retrieved through any legal process thereafter; the facts on record show that Shri Kedarnath and Shri Badrinath Temple (along with others temples in Schedules I and II) were already governed, under the Uttar Pradesh Shri Badrinath and Shri Kedarnath Temples Act, 1939, through a Committee constituted by the State Government, in accordance

with the Rules framed by the State Government from time to time; the 2019 Act does not divest any religious denomination of Hindus from the management of the religious affairs of these temples; the petitioner has not pleaded any particular religious denomination as having established these temples, which can now claim the right to administer them; if the entire Hindu community is treated as a religious denomination, even then no interference is called for, as the 2019 Act has created a board comprising only of Hindus; the officers of the Board can hold office only on the basis of their faith i.e. Hindu religion; under Section 3(A) of the Act, members are qualified to hold office only if they profess Hindu religion; under Section 3(2)(B)(ii) and (vi), members of the Royal family and three priests have also been inducted into the Board, and are thereby involved in the administration of the temple; the impugned Act does not interfere in matters of religion; it only regulates secular functions associated in matters of religion of these temples; and Sections 32(7) and 34(5) bring transparency in the financial matters of these temples, which are in public interest.

49. According to the learned counsel for the respondents, Article 26 relates to private temples established by a religious denomination; the subject temples are all public temples, and are not private temples; Article 26 of the Constitution has therefore no application; the test of a religious denomination would be satisfied only if the rights under Clauses (a) to (c) of Article 26 are possessed by them; the rights, in clauses (a) to (d) of Article 26 of the Constitution, must be read conjunctively; Section 2(l) of the Act refers to the Hindus who believe and profess Sanatana Dharma; “Hindu Dharma” and “Sanatana Dharma” are synonyms; Hindus professing Sanatana Dharma cannot be called a religious denomination; the mere fact that the temple is a Hindu temple would not bring it within the ambit of Article 26 of the Constitution; even if it is so held, the subject temples must then be held to be administered, and controlled only by Hindus; and all the temples in the PIL are public temples, and are not denomination temples.

50. It is further contended, on behalf of the respondents, that the word “any property”, in Article 26(d) of the Constitution, relates to the

property of private temples, and not of public temples; the right to administer can only be of such property which is established and maintained for religious and charitable purposes by a religious denomination; the property being managed should have been acquired and owned by the denomination or a Section thereof; a reading of Section 19 with Sections 2(1) and 2(r) of the 2019 Act, makes it clear that the rights of the priests have been recognized by the State Government in relation to the religious activities performed by them; Section 28 provides that priest, having customary and hereditary rights, will be appointed/engaged in these posts; Section 17 of the 2019 Act provides for preparation of a register for each and every priest or employee working in the temples referred to in the Schedule to the Act; there cannot be misuse of public temple funds for personal benefit; while the Act has been subjected to challenge in its entirety, there is no challenge to any specific provision of the said Act as violative of Article 26(d); the impugned Act protects the religious affairs of the temple from any form of control by the State; it is only the secular activities of the temples which are now brought under the control of a board with a view to ensure transparency, and to provide facilities to pilgrims who visit these temples in very large numbers; the Act requires an inventory to be made to ensure transparency: the Char Dham Board was constituted, and its meeting was held on 22.05.2020 with the required quorum; in terms of Section 17, the records were summoned; since the records were not produced, an order was passed on 22.06.2020 requesting the District Magistrate to collect the records and submit them to the Board; a Sub-Committee has been constituted to frame bye-laws, which would also prescribe the remuneration to be paid to the priests of the temple; and, till by-laws are framed, status quo is being maintained.

51. It is contended, on behalf of the respondents, that, to claim the right/protection of Article 26, firstly a collection of individuals, religious group or body, having a common faith and organization, should have approached the Court, and secondly the Court should hold that such a body/religious group constitutes a "religious denomination"; applying the

tests prescribed to determine whether the rights violated is that of a religious denomination, the Court must declare the said group as a religious denomination; only thereafter can the group, claiming to be a religious denomination, complain of violation of their fundamental right under Article 26; the protection to a religious denomination, under Article 26, is also not absolute; Clause (a), (b) and (c) of Article 26 are subject to public order, morality or health, whereas Clause (d) is also subject to a law made by the State legislature; Article 26 only gives protection to private temples established and maintained by a recognized religious denomination; no such protection is available to public character temples established for all Hindus (public at large) professing Sanatan Dharm or having faith in it; the definition of "Hindu Religion" in Section 2(1) of the 2019 Act read with Section 28 thereof, does not accord legislative sanction to any religious Hindu denomination; the word "religious denomination", used in Section 28, relates to Priests, Rawals or trustees who are being appointed, for the past several centuries, on the basis of their affiliation to certain religious denominations, to look after the religious activities of the subject temples; no other meaning can be attached to the words "religious denomination" in the said provision; the temples, listed under the Schedule of the 2019 Act, are established public character temples and not private temples; there is a presumption regarding the constitutionality of an enactment; and the petitioner has not discharged the burden to show that there is a clear transgression of constitutional principles.

(c) **ARTICLE 26 OF THE CONSTITUTION: ITS SCOPE :**

52. Before examining the rival contentions under this head, it is useful to briefly note the scope and ambit of Article 26 of the Constitution, and each of its clauses. Article 26 of the Constitution confers freedom to manage religious affairs and, thereunder, subject to public order, morality and health, every religious denomination or any section thereof shall have the right (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such

property in accordance with law. The fundamental right of freedom of religion is of an enduring character, and must stand beyond the sweep of changing and deflecting forces of current opinion. (**Sardar Sarup Singh and Ors. v. State of Punjab and Ors.**[54]). Article 26, which grants religious freedom to minority religions like Islam, Christianity and Judaism, does not deny the same guarantee to Hindus. Protection under Articles 25 and 26 is available to all faiths, including those professing Hindu religion, subject to the law made in terms thereof.

53. The kernel of Article 26 is 'establishment of a religious institution' by a religious denomination, whereas Article 25(1) guarantees the right to practise religion to every individual, and the act of practice is concerned primarily with religious worship (**Indian Young Lawyers Association & others v. State of Kerala & others**[55]**;** and **Rev. Stainislaus v. State of Madhya Pradesh and Ors.**[56]**)**. As in Article 25, it is only essential religious matters which are protected by Article 26. (**Indian Young Lawyers Association**[55]). The right to establish a religious and charitable institution is a part of religious belief or faith. (**Pannalal Bansilal Patil**[35]).

54. The protection of Articles 25 and 26 is not limited to matters of doctrine or belief, they extend also to acts done in pursuance of religion, and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion. What constitutes an essential part of a religion or religious practice is required to be decided by Courts with reference to the doctrine of that particular religion, and would include practices which are regarded by the community as a part of its religion. (**N. Adithayan v. The Travancore Devaswom Board and Ors.**[57]**; Seshammal and Ors. v. State of Tamil Nadu**[58]**; Sardar Syadna Taher Saifuddin Saheb v. The State of Bombay**[59]**; Sri Lakshmindra Thirtha Swamiar of Sri Shirur Matt**[53]**; Mahant Jagannath Ramanuj Das v. The State of Orissa**[60]**; Shri Venkataramana Devaru**[51]**; Sri Adi Visheshwara**[5]**; Pannalal Bansilal Patil**[35]**;** and **Durgah Committee, Ajmer v. Syed Hussain Ali**[61]**)**.

55. The word “religion”, used in Articles 25 and 26, requires a restricted interpretation in an etymological sense. It is not every aspect of religion that requires the protection of Articles 25 and 26, nor has the Constitution provided that every religious activity would not be interfered with. Every mundane human activity is not intended to be protected under the Constitution in the garb of religion. Articles 25 and 26 must be viewed with pragmatism. **(Sri Adi Visheshwara[5]).** The rights conferred under Article 26 are, unlike Article 25 of the Constitution, not subject to any other provisions of Part III of the Constitution. (**Dr. Subramanian Swamy[22]**). Article 26 deals with a particular aspect of the subject of religious freedom, and guarantees freedom of the denomination, or a section thereof, to manage their religious affairs and their properties. (**Tilkayat Shri Govindlalji Maharaj[4]**).

56. The rights conferred by Article 26 are not unqualified. Where the denominational rights would substantially diminish Article 25(2)(b), the former must yield to the latter. However, when the ambit of Article 25(2)(b) is not substantially affected, the rights of a "denomination", as distinct from the rights of the “public", may be given effect to. However, such rights must be "strictly" denominational in nature. Since the right granted under Article 26 is to be harmoniously construed with Article 25(2)(b), the right to manage its own affairs in matters of religion, guaranteed by Article 26(b) in particular, is subject to laws made under Article 25(2)(b) which throw open religious institutions of a public character to all classes and sections of Hindus. (**Indian Young Lawyers Association[55]**).

57. Article 26 does not create rights in any denomination which it never had. It merely safeguards and guarantees continuance of an existing right which such denomination, or the section, had. If the denomination never had the right to manage the property of a temple, it cannot claim protection under Article 26. (**The Durgah Committee, Ajmer[61]; M.P. Gopalakrishnan Nair and Ors. v. State of Kerala and Ors.[62];** and **Sri Adi Visheshwara[5])**.

(d) CLAUSE (b) OF ARTICLE 26 : ITS SCOPE :

58. Matters of religion in Article 26(b) include practices which are regarded by the community as part of its religion. **(Shri Venkataramana Devaru[51]; and Sardar Sarup Singh and Ors.[54])**. Under Article 26(b), a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold (**Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt[53]**; **Shri Venkataramana Devaru[51]; and Sardar Sarup Singh and Ors.[54]**), and include even practices which are regarded by the community as part of its religion. (**Shri Venkataramana Devaru[51]; Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt[53]**; **The Durgah Committee, Ajmer[61]**).

59. The meaning of the words, "its own affairs in matters of religion" in Article 26(b), is in contrast to secular matters relating to administration of its property. As the religious denomination enjoys complete autonomy, in deciding as to what rites and ceremonies are essential, no outside authority has jurisdiction to interfere with their decision in such matters. **(Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt[53]**; and **N. Adithayan[57]**). The language of clause (b) of Article 26 suggests that there could be other affairs of a religious denomination, or a section thereof, which are not matters of religion, and to which the guarantee given by this clause would not apply. (**Lakshmindra Thirtha Swamiar of Sri Shirur Mutt[53]; and S.P. Mittal v. Union of India[63]**).

60. While Article 25(1) deals with rights of individuals, Article 25(2) is wider in its content, and has reference to the rights of communities and controls both Articles 25(1) and 26(b) of the Constitution. The rights recognized by Article 25(2)(b) must, necessarily, be subject to some limitations or regulations, and one such would be inherent in the process of harmonizing the right conferred by Article 25(2)(b) with that protected by Article 26(b). **(Sri Venkataramana Devaru[51]; and N. Adithayan[57])**. In matters as to what rites and ceremonies are essential, the scale of expenses to

be incurred in connection with these religious observations would be a matter of administration of the property belonging to the religious denomination, and can be controlled by secular authorities in accordance with any law laid down by a competent legislature, for it could not be the injunction of any religion to destroy the institution and its endowments by incurring wasteful expenditure on rites and ceremonies. (**Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt**[53]**;** and **S.P. Mittal**[63]).

61. If the affair, which is controlled by the statute, is essentially secular in character, Article 26(b) cannot be said to have been contravened. Whenever a claim is made on behalf of the religious denomination, that the fundamental right guaranteed to it to manage its own affairs in matters of religion is contravened, it is necessary to consider whether the practice in question is religious, or the affairs in respect of which the right of management is alleged to have been contravened are affairs in matters of religion. If they are, then, of course, the rights guaranteed by Article 26(b) cannot be contravened. **(Tilkayat Shri Govindlalji Maharaj**[4]**;** and **N. Adithayan**[57]**).**

(e) <u>DISTINCTION BETWEEN CLAUSES (b) and (d) OF ARTICLE 26</u> :

62. The language of the two clauses (b) and (d) of Article 26 bring out the difference between the two. In regard to affairs in matters of religion, the right of management, given to a religious body, is a guaranteed fundamental right which no legislation can take away. On the other hand, as regards the property which a religious denomination is entitled to own and acquire, it has undoubtedly the right to administer such property, but only in accordance with law. This means that the State can regulate the administration of such properties by means of laws validly enacted. **(Ratilal Panachand Gandhi**[48]**; Sri Lakshmindra Thirtha Swamiar**[53]**;** and **Raja Bira Kishore Deb**[2]**)**.

63. The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The latter is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly make. (**Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt**[53]**; Sajjanlal Panjawat and Ors.**[50]**; The Durgah Committee, Ajmer**[61]**; Sri Adi Visheshwara**[5]; and **Sardar Sarup Singh**[54]).

64. The law referred to in Article 26(d) must, therefore, leave the right of administration to the religious denomination itself, subject to such restrictions and regulations as it might choose to impose. A law which takes away the right of administration from the hands of a religious denomination altogether, and vests it in any other authority, would result in violation of the right guaranteed under Clause (d) of Article 26. (**Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt**[53]**; S.P. Mittal**[63]**; Ratilal Panachand Gandhi**[48]; and **Durgah Committee, Ajmer**[61]**)**.

65. Clauses (c) and (d) of Article 26 give power to the religious denomination to own and acquire movable and immovable property and, if it so owns or acquires, it can administer such property in accordance with law. (**S. Azeez Basha and Ors. v. Union of India**[64]**)**. Administration of properties, belonging to the religious group or institution, are not matters of religion which attracts Article 25 and 26(b). (**Sajjanlal Panjawat and Ors.**[50]**; Sri Adi Visheshwara**[5]; and **Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt**[53]). Article 26(b) does not refer to the administration of property at all. If the clause "affairs in matters of religion" were to include affairs in regard to all matters, whether religious or not, the provisions under Article 26(d), for legislative regulation of the administration of the denomination's property, would be rendered illusory. (**Tilkayat Shri Govindlalji Maharaj**[4]**)**.

66. The law, in accordance with which the denomination has a right to administer its property, is not the law prescribed by the religious tenets of

the denomination, but a legislative enactment passed by a competent legislature. In other words, Article 26(d) brings out the competence of the legislature to make a law in regard to the administration of the property belonging to a religious denomination. The denomination's right must, however, not be extinguished or altogether destroyed under the guise of regulating the administration of the property by the denomination. (**Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt[53]; Ratilal Panachand Gandhi[48];** and **Tilkayat Shri Govindlalji Maharaj[4]**).

67. As long as the law does not totally divest the administration of a religious institution or endowment, by a religious denomination, the State has the general right to regulate the right of administration of a religious or charitable institution or endowment; and such a law may choose to impose such restrictions the need for which is felt the most, and to provide a remedy therefor. (**Pannalal Bansilal Patil[35]**; and **S.P. Mittal[63]**).

(f) <u>PLEADINGS REGARDING THE CHAR DHAM TEMPLES</u> :

68. As the right conferred by Article 26(d) is guaranteed only to a religious denomination, let us take note of the pleadings on record to ascertain which religious denomination has sought enforcement of such a right from this Court. In the Writ Petition filed by him, Dr. Subramanian Swamy has highlighted the significance of the Chaar Dhaam Shrines. With regards Yamunotri Temple, he states that it is a place where the holy River Yamuna originates, and it is the western-most shrine of the Garhwal Himalayas; Yamunotri Dham, the first stop in the pilgrimage of the Chaar Dhaam, is situated in the Uttarkashi district of Uttarakhand; the shrine of Yamunotri is at the source of the river Yamuna located at the foot of the hills; the Yamunotri Temple is situated at an altitude of 3293 meters; Maharani Gularia of Jaipur built the temple in the 19th century; the temple, dedicated to the River Yamuna, is represented in the form of a silver idol, bedecked with garlands and reconstructed by Maharaja Pratap Shah of Tehri Garhwal; and all the pujaris and priests, who perform in Yamunotri Temple, come from the village of Kharsali near Jankichatti.

69. With regards the Gangotri Dham, Dr. Subramanian Swamy states that Gangotri is located much beyond Yamunotri in Uttarkashi; around 9 km from the shrine is Gaumukh, (the main origin of the river), which is the source of River Ganga; Gangotri is one of the origin sources of the Holy River Ganga (Ganges), and one of the important Chaar Dhaam pilgrimage centres in Hindu religion; Ganga river is the longest and, as per the belief and faith of the Hindus, the most sacred river in the world; the Gangotri temple, dedicated to Goddess Ganga, was built by the Gorkha General Amar Singh Thapa in the 18th century; it is situated on the left bank of the Bhagirathi river; it lies close to the holy rock or the Bhagirath Shila where King Bhagirath had worshipped Lord Shiva; and the pujaris and priests, who perform in the temple, belong to Mukhwa village.

70. With regards Badrinath Temple, Dr. Subramanian Swamy states that it is one of the four Dhams of the country; this temple was founded in the 8th century by Adiguru Shankaracharya; it is located towards the left of the River Alaknanda; the Badrinath Temple is divided into three parts (a) the Garbha Grah or the sanctum sanctorum; (b) the Darshan Mandap where rituals are conducted; and (c) the Sabha Mandap where devotees assemble; and close to the shrine of Badrinath is Vyas Gufa where Sage Veda Vyas wrote the Mahabharata and other scriptures. With regards Kedarnath Dham, Dr. Subramanian Swamy states that the temple at Kedarnath is dedicated to Lord Shiva, and it is here that the deity is worshipped in the form of a lingam; it is one of the 12 *Jyotirlingas* of Lord Shiva; and it is located on a hill top at the bank of Mandakani river at an altitude of 3584 meters above sea level.

71. In his rejoinder affidavit, Dr. Subramanian Swamy states that, in view of Section 3(3) of the Act, all assets and properties, belonging to the Deity, have been vested in the Government; this amounts to State acquisition of an ancient group of religious institutions belonging to a particular religious denomination, and departmentalization of the entire Devasthanam

for an indefinite period; and the State Government has illegally taken over administration and management of the temples and their finances.

(g) <u>PLEADINGS ARE SILENT REGARDING THE IDENTITY OF THE RELIGIOUS DENOMINATION WHICH IS ADMINISTERING THE CHAR DHAM</u> :

72. Neither in the affidavit filed by him in support of the Writ Petition, nor in his rejoinder affidavit, has Dr. Subramanian Swamy identified the religious denomination which, according to him, is administering each of the Char Dham temples; nor has he furnished details of any religious denomination which, according to him, had established and is maintaining these temples. The pleadings are also silent regarding the religious denomination whose Article 26 rights have, allegedly, been taken away by the 2019 Act.

73. In **Raja Bira Kishore Deb**[2], the Supreme Court held that, except saying in the petition that the Act was hit by Article 26, there was no indication anywhere therein as to which was the denomination which was concerned with the temple, and whose rights to administer the temple had been taken away; there was no claim put forward on behalf of any denomination in the petition; and, under these circumstances, it was not open to the petitioner to argue that the Act was bad as it was hit by Article 26(d).

74. In the absence of any plea in this regard, either in the Writ Petition filed by Dr. Subramanian Swamy or even in the rejoinder affidavit filed by him, much less a plea substantiated by sufficient evidence, it would be wholly inappropriate for us to undertake an examination, *suo motu*, on whether or not any of the Chaar Dhaam temples, which are brought under the ambit of the 2019 Act, are temples administered by a Hindu Religious Denomination temples, and whether the fundamental right guaranteed under Article 26(d) is violated.

75. It is only in his written arguments, has Dr. Subramanian Swamy for the first time referred to the definition clauses in, and to certain Sections

of, the 2019 Act to put forth a claim of legislative acknowledgement of these temples belonging to a religious denomination of Hindus professing Sanathana Dharma or a section thereof. In order to examine this contention, it is necessary, in the first instance, to understand what Hindu Religion means.

(h) <u>"HINDU RELIGION" : ITS SCOPE AND AMBIT</u> :

76. The word "religion" has not been defined in the Constitution, and is a term which is hardly susceptible of any rigid definition. Religion is a matter of faith with individuals or communities, and is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion has its basis in a system of beliefs or doctrines which are regarded, by those who profess that religion, as conducive to their spiritual well-being. A religion may not only lay down a code of ethical rules for its followers to accept, it may also prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion. (**Lakshmindra Thirtha Swamiar of Sri Shirur Mutt[53]; Tilkayat Shri Govindlalji Maharaj[4]; Pannalal Bansilal Patil[35];** and **S.P. Mittal[63]).** Religion is not merely a doctrine. It has an outward expression in acts as well. (**Sri Adi Visheshwara[5]**).

77. The Encyclopedia of Religion and Ethics, Vol. VI, has described "Hinduism" as the title applied to that form of religion which prevails among the vast majority of the present population of the Indian Empire (p. 686). As Dr. Radhakrishnan 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, and the Hindu scriptures which give their name to this period of Indian history. The people on the Indian side of the Sindhu were called Hindu by the Persians, and the later western invaders".

("**The Hindu View of Life" by Dr. Radhakrishnan, p. 12.**) That is the genesis of the word "Hindu".

78. 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 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. (**Sastri Yagnapurushadji and Ors. v. Muldas Bhudardas Vaishya and Ors.**[65]).

79. It is 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. (**Sastri Yagnapurushadji**[65]). Hinduism is far more than a mere form of theism resting on brahminism. It has always 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 swallowed, digested and assimilated something from all creeds. (**N. Adithayan**[57]**;** and **Sastri Yagnapurushadji**[65]**)**.

80. 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 the Lingayat religion, Dnyaneshwar and Tukaram initiated the Varakari cult, Guru Nanak inspired Sikhism, Dayananda founded Arya Samaj, and Chaitanya began the Bhakti cult. As a result of the teachings of Ramakrishna and Vivekananda, Hindu religion flowered into its most attractive, progressive and dynamic form. A study of the teachings of these saints and religious reformers would reveal the divergence in their respective views, but underneath that divergence, there is a 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. (**Sastri Yagnapurushadji**[65]).

81. The popular Hindu religion of modern times is not the same as the religion of the Vedas, though the latter are still held to be the ultimate source and authority of all that is held sacred by the Hindus. In course of its development, Hindu religion did undergo several changes, which reacted on the social system and introduced corresponding changes in the social and religious institutions. But whatever changes were brought about by time - and it cannot be disputed that they were sometimes of a revolutionary character - the fundamental moral and religious ideas of the Hindus, which lie at the root of their religious institutions, remained substantially the same. The system that we see around us can be said to be an evolutionary product of the spirit and genius of the people passing through different phases of their cultural development. (**Justice B.K. Mukherjea in his Tagore Law Lectures on Hindu Law of Religious and Charitable Trust at p. 1; Sri Adi Visheshwara**[5]**;** and **N. Adithayan**[57]).

(i) <u>SANATANA DHARMA : ITS MEANING:</u>

82. In examining the question whether Hindus, professing and having faith in Sanatana Dharma, are a Hindu religious denomination, who can claim protection of the fundamental right guaranteed under Article 26(c) and (d) of the Constitution of India, it must be noted that the word 'Dharma' has a very wide meaning. One meaning of it is the ‘moral values or ethics’ on which life is naturally regulated. Dharma or righteousness is elementary and fundamental in all nations, periods and times. For example truth, love, compassion are human virtues. This is what Hindus call “**Sanatan Dharma**” meaning “**religion which is immutable, constant, living, permanent and ever in existence**”. Religion, in a wide sense, is those fundamental principles which sustain life and without which life will not survive. Rig Veda describes Dharma as Athodharmani Dharayan. In this concept of religion or Sanathana Dharma, different faiths, sects and schools of thoughts are, merely, different ways of knowing the truth which is one. The various sects or religious groups are understood as Panth or Sampradaya. **(A.S. Narayana Deekshitulu[3]; and Aruna Roy and Ors. v. Union of India[66])**.

83. Hindu dharma is said to be 'Sanatana' i.e. one which has eternal values: one which is neither time-bound nor space-bound. It is because of this that Rig Veda has referred to the existence of "Sanatan Dharmani". The concept of 'dharma', therefore, has been with us from times immemorial. The word is derived from the root 'Dh.r' -- which denotes: "upholding', 'supporting', 'nourishing' and 'sustaining'. It is because of this that Kama Parva of the Mahabharata, Verse 58 in Chapter 69, says:"Dharma is for the stability of society, the maintenance of social order and the general well-being and progress of human kind. Whatever conduces to the fulfilment of these objects is Dharma; that is definite."(This is the English translation of the verse quoted in the Convocation Address by Dr. Shankar Dayal Sharma). **(A.S. Narayana Deekshitulu[3]; and Aruna Roy[66])**.

84. “Sanatana” is a term which means eternal. Hinduism is often described as Sanatana Dharma, the eternal religion. Sanatana is a term used to describe BRAHMAN in the UPNISHADS. (for instance, Paingala, 1.2) (Reference **Hinduism - An Alphabetical Guide by Roshen Dalal**). “Hinduism” or “Hindu Dharma” was originally called “Sanatana Dharma”, a codified ethical way of living to attain salvation, knowledge, and freedom from the cycle of birth and death. Sanatana Dharma showcases, to its followers, the wide view of the world and a way of life with a clear and sagacious picture of reality. The two words “**Sanatana**” and “**Dharma**” are Sanskrit words, wherein the word “Sanatana” denotes “Anadi” (without a beginning), Anantha (endless), and is something which is eternal and everlasting. The word “Dharma”, which means to hold together or to sustain, corresponds to natural law. “Sanatana” can, therefore, be understood to mean the natural, ancient and eternal way. Sanatana Dharma is a system which has spiritual freedom as its central core, and includes within itself things recognizing spiritual freedom. “Vyapakaga” means wide spread knowledge, or the knowledge which contains within itself everything. “Vyapakaga Gyanam” is the basis for “Sanatana Dharma”, and focuses on ‘Atma’ which is eternal, and not the body. “Sanatana Dharma” is, by itself, a “Dharma” that is devoid of sectarian or ideological divisions.

85. Section 2(l) of the 2019 Act defines “Hindu religion” to mean a sect of Hindus professing or having faith in Sanatana Dharma. All Hindus, by and large, profess and have faith in the “Sanatana Dharma”. They cannot, therefore, be equated to any religious denomination, for the chord of a common faith and spiritual organization, which unites the adherents together, is absent. The word “temple” is defined in Section 2(w) to mean a place of religious worship for the benefit of, or used as of right, by the Hindu community professing Sanatana Dharma or any section thereof. Neither Section 2(l) nor 2(w) of the 2019 Act can be construed as a legislative acknowledgment that Hindus professing and having faith in Sanatana Dharma, or any Sect thereof, constitute a religious denomination.

86. The aforesaid definition clauses of the 2019 Act, evidently, refer to Hindus professing "Sanatana Dharma" or a section of it, in contra-distinction to Explanation-II to Article 25(2)(b) of the Constitution, wherein "Hindus" are referred to include persons professing Sikh, Jain, and Buddhist religions. Hindus, professing and having faith in "Sanatana Dharma", are Hindus other than Sikhs, Jains and Buddhists. Since this distinction brings almost all Hindus within its fold, the Hindus professing and having faith in Sanatana Dharma, or a section of it, cannot be held to be a religious denomination as the test of a religious denomination, which refers to a collection of individuals having a common name, a common organization and a designation by a distinctive name, is not satisfied.

87. Believers of a particular religion are to be distinguished from denominational worshippers. Thus, Hindu believers, in general, including those of the Shaivite and Vaishnavite form of worship, are not denominational worshippers, but form part of the general Hindu religious form of worship. (**Indian Young Lawyers Association[55]**). As the believers of the Shaiva form (or the Vaishnavite form) of worship are not a denominational sect or a section thereof, but are Hindus as such, they are entitled to the protection under Articles 25 and 26 of the Constitution, but not to the protection, in particular of Clauses (b) and (d) of Article 26, as a religious denomination in the matter of management, administration and governance of the temples under the Act. **(Sri Adi Visheshwara[5])**. We find no merit, therefore, in the submission that Hindus, professing and having faith in Sanatana Dharma, constitute a religious denomination, or that the definition clauses in the 2019 Act (where this terms finds place) is a legislative acknowledgement that they constitute a religious denomination.

88. The subtle attempt by Dr. Subramanian Swamy, to equate the Chardham temples to mutts, necessitates rejection. It is true that Adi Shankaracharya established the Sankara Mutts at Joshimath, Dwarka, Puri and Rameshwaram. The practice of setting up Maths as centers of theological teaching, started by Shri Sankaracharya, was followed by various teachers since then. After Sankara, came a galaxy of religious teachers and

philosophers who founded different sects and sub-sects of the Hindu religion that we find in India in the present day. The followers of Ramanuja are known by the name of Shri Vaishnavas. Madhwacharya and other religious teachers soon followed. The eight Udipi Maths were founded by Madhwacharya himself, and the trustees and the beneficiaries of these Maths profess to be followers of that teacher. As Article 26 contemplates not merely a religious denomination, but also a Section thereof, the Math, or the spiritual fraternity represented by it, legitimately claimed to fall within the purview of this Article, as it was designated by a distinctive name, - in many cases it was the name of the founder, - and had a common faith and common spiritual organization. (**Lakshmindra Thirtha Swamiar of Sri Shirur Mutt**[53]).

89. While any sect or sub-sect, professing certain religious cult having a common faith and common spiritual organisation, may be termed a religious denomination, no caste, sub-caste or sect of the Hindu religion, who worship mainly a particular deity or god, can be termed as such. (**Nalam Ramalingayya v. Commissioner of Charitable and Hindu Religious Institutions and Endowments, Hyderabad**[67]**;** and **S.P. Mittal**[63]**)**. Hindus as such are not a denomination/section/sect **(Sri Adi Visheshwara**[5]; nor as Hindus, professing and having faith in Sanatana Dharma, one such.

90. Even if this contention, that these Chaar Dhaam Temples are being managed by a religious denomination of Hindus, professing and having faith in Sanatana Dharma, is presumed to have some force, a bare reading of Sections 3(1) and (2) of the Act would show that it is only persons, who follow Hindu Religion, (which is defined in Section 2(l) to mean such sect of Hindus professing Santhana Dharma or having faith in it), who can be nominated as the Chairman and members of the Board, to manage the secular affairs of the Chaar Dhaams and other temples referred to in the 2019 Act. As it is they who, according to the petitioners, would

constitute a religious denomination, the impugned Act cannot be said to violate their fundamental rights under Article 26 of the Constitution of India.

(j) THE TEMPLES/INSTITUTIONS, WHICH A RELIGIOUS DENOMINATION HAS THE RIGHT TO MAINTAIN, MUST HAVE BEEN ESTABLISHED BY IT :

91. By the use of the word “such” in Article 26(d), the word “property” referred to therein, is the “property” referred to in clause (c) of Article 26 in terms of which the religious denomination has been conferred the right to own “and” acquire property. The words," establish and maintain" in Article 26(a) must be read conjunctively, and it is only institutions which a religious denomination establishes which it can claim to maintain. The right, under clause (a) of Article 26, is available only where the institution is established by a religious denomination, and it is in that event only that it can claim to maintain it. (Constitution bench judgment of the Supreme Court in **S. Azeez Basha**[64]. It is not even the case of Dr. Subramanian Swamy that any of the Chaar Dhaam temples have been established by a religious denomination. Consequently no right is available, under clauses (a), (c) and (d) of Article 26, to manage the Char Dham temples as they are not established by a religious denomination.

(k) LAW DECLARED BY THE SUPREME COURT IN THE CHIDAMBARAM SRI SABHANAYAGAR TEMPLE CASE :

92. Dr. Subramanian Swamy would however contend that a religious denomination would have the right, under Article 26(d) of the Constitution, to maintain temples even if it has not established it. The fulcrum of this submission, that it is unnecessary for a religious denomination which manages the affairs of the Temple to have established it, is the judgment of the Supreme Court relating to the Sri Sabanayagar Temple at Chidambaram. The facts and circumstances giving rise to the appeal, in **Dr. Subramanian Swamy**[22], were that the Sri Sabhanayagar Temple at Chidambaram (hereinafter referred to as the “temple”) had been in existence since times immemorial, and had been administered for a long time by the Podhu Dikshitars (all male married members of the families of

Smarthi Brahmins who claimed to have been called for the establishment of the 'Temple in the name of Lord Nataraja). The State of Madras enacted the Madras Hindu Religious and Charitable Endowments Act, 1927, which was repealed by the 1951 Act. G.O. Ms. 894 dated 28.8.1951 was issued notifying the Temple to be subject to the provisions of Chapter VI of the 1951 Act. The said notification enabled the Government to promulgate a Scheme for the management of the temple. Pursuant thereto, the Hindu Religious Endowments Board. Madras (hereinafter called the 'Board') appointed an Executive Officer for the management of the Temple vide orders dated 28.8.1951 and 31.08.1951. The Dikshitars, and/or their predecessors in interest, challenged the said orders by filing Writ Petition Nos. 379-380 of 1951 before the Madras High Court. These Writ Petitions were allowed vide judgment dated 13.12.1951, (**Marimuthu Dikshitar**[47]), quashing the said orders, holding that the Dikshitars constituted a 'religious denomination' and their position vis-à-vis the temple was analogous to a muttadhipati of a mutt, and the orders impugned therein were violative of the provisions of Article 26 of the Constitution.

93. Aggrieved thereby, the State of Madras filed appeals before the Supreme Court, which stood dismissed vide order dated 9.2.1954 as the notification was withdrawn by the Respondent-State. After the judgment in the aforesaid case, the 1951 Act was repealed by the 1959 Act. Section 45 of the 1959 Act empowered the statutory authorities to appoint an Executive Officer to administer religious institutions. The Commissioner of Religious Endowment, in the exercise of his powers under the 1959 Act, appointed an Executive Officer on 31.07.1987. Consequent thereto, the Commissioner passed an order dated 5.8.1987 defining the duties and powers of the Executive Officer so appointed for the administration of the Temple. Aggrieved thereby, respondent no. 6 challenged the said order by filing Writ Petition No. 7843 of 1987. The Madras High Court granted stay of operation of the said order dated 5.8.1987, However, the writ petition later stood dismissed vide judgment dated 17.2.1997. Aggrieved thereby, Respondent No. 6 preferred Writ Appeal No. 145 of 1997 and the Division Bench of the

Madras High Court, vide its judgment dated 1.11.2004, disposed of the said writ appeal giving liberty to Respondent No. 6 to file a revision petition before the Government under Section 114 of the 1959 Act, as the writ petition had been filed without exhausting the statutory remedies available to the said Respondent.

94. The revision petition, preferred by the sixth respondent, however stood dismissed vide order dated 9.5.2006 rejecting his contention that the order dated 5.8.1987 violated his fundamental rights under Article 26 of the Constitution. The revisional authority observed that, by virtue of operation of law i.e. the statutory provisions of Sections 45 and 107 of the 1959 Act, such rights were not available to him. Respondent no. 6 preferred Writ Petition No. 18248 of 2006 to set aside the order dated 9.5.2006. The said Writ Petition was dismissed by the Madras High Court vide judgment dated 2.2.2009 observing that the earlier judgment in Writ Petition (C) Nos. 379-380 of 1951, (**Marimuthu Dikshitar**[47]), wherein it was held that Dikshitars were a 'religious denomination', would not operate as res judicata. Aggrieved thereby, Respondent No. 6 filed Writ Appeal No. 181 of 2009. Dr. Subramanian Swamy was allowed by the Madras High Court to be impleaded as a party, and the Writ Appeal was dismissed vide judgment dated 15.9.2009. Aggrieved thereby, appeals were filed before the Supreme Court.

95. In **Dr. Subramanian Swamy**[22], the Supreme Court noted that, in **S. Azeez Basha**[64], a Constitution bench of the Supreme Court had earlier observed that the words "establish and maintain", contained in Article 26(a), must be read conjunctively, and a 'religious denomination' can only claim to maintain that institution which had been established by it; and, in **Khajamian Wakf Estates etc. v. State of Madras**[68], another Constitution Bench of the Supreme Court had held that, in case the religious denomination loses the property or alienates the same, the right to administer automatically lapses, for the reason that the subject property ceases to be their property.

96. The Supreme Court then held that the issues involved in the case before it were whether the Dikshitars constituted a 'religious denomination', and whether they had the right to participate in the administration of the Temple; both these issues stood finally determined by the Madras High Court in **Marimuthu Dikshitar**[47], and the doctrine of res judicata was applicable in full force; it was evident from the judgment, in **Marimuthu Dikshitar**[47] which had attained finality, that the Madras High Court had recognized that the Dikshitars, who were Smarthi Brahmins, formed and constituted a 'religious denomination'; the Dikshitars were entitled to participate in the administration of the temple; and it was their exclusive privilege which had been recognised and established for over several centuries.

97. The Supreme Court, thereafter, held that it was not necessary to examine whether, in the facts and circumstances of the case, the earlier judgments of the Supreme Court in various cases were required to be followed, or the ratio thereof was binding in view of the provisions of Article 141 of the Constitution; rather, the sole question was whether an issue in a case between the same parties, which had been finally determined, could be negated relying upon an interpretation of law given subsequently in some other cases; the answer was in the negative more so, as nobody can claim that fundamental rights can be waived by the person concerned, or can be taken away by the State under the garb of regulating certain activities; the scope of application of the doctrine of res judicata was in question; even an erroneous decision, on a question of law, attracted the doctrine of res judicata between the parties to it; the correctness or otherwise of a judicial decision had no bearing upon the question whether or not it operated as res judicata (**Shah Shivraj Gopalji v. ED, Appakadh Ayiassa Bi and Ors.**[69]**;** and **Mohanlal Goenka v. Benoy Kishna Mukherjee and Ors.**[70]); the ratio of a decision must be understood in the background of the facts of that case, and the case was only an authority for what it actually decided, and not what logically followed from it; the Court should not place reliance on decisions without discussing as to how the factual situation before it fits in with the fact-situation of the decision on which reliance is placed; a different view on

the interpretation of law may be possible, but the same should not be accepted in case it has the effect of unsettling transactions which had been entered into on the basis of those decisions, as reopening past and closed transactions, or settled titles, all over would stand jeopardized; this would create a chaotic situation which may bring instability in Society; the declaration, that "Dikshitars were a religious denomination or a Section thereof", was in fact a declaration of their status; making such a declaration was in fact a judgment in rem; it was not permissible for the Madras High Court to assume that it had jurisdiction to sit in appeal over its earlier judgment, in **Marimuthu Dikshitar**[47], which had attained finality; the Madras High Court had committed an error in holding that the said judgment, in **Marimuthu Dikshitar**[47], would not operate as res judicata; even if the temple was neither established nor owned by the said Respondent, nor such a claim had ever been made by the Dikshitars, once the Madras High Court, in its earlier judgment in **Marimuthu Dikshitar**[47], had recognised that they constituted a 'religious denomination' or a Section thereof, and had the right to administer the temple since they had been administering it for several centuries, the question of re-examination of any issue in this regard would not arise.

(l) <u>JUDGMENT INTER-PARTIES IS BINDING</u> :

98. In **Marimuthu Dikshitar**[47], the Division Bench of the Madras High Court traced the history of the Podu Dikshitars and examined their rights, etc. The Court concluded:

> "……Looking at it from the point of view, whether the Podu Dikshitars are a denomination, and whether their right as a denomination is to any extent infringed within the meaning of Article 26, it seems to us that it is a clear case, in which it can safely be said that **the Podu Dikshitars who are Smarthi Brahmins, form and constitute a religious denomination or in any event, a section thereof. They are even a closed body, because no other Smartha Brahmin who is not a Dikshitar is entitled to participate in the administration or in the worship or in the services to God. It is their exclusive and sole privilege which has been recognized and established for over several centuries**……..
>
> ……..In the case of Sri Sahhanayakar Temple at Chidambaram, with which we are concerned in this petition, it should be clear from what we have stated earlier in this judgment, that **the position of the**

> **Dikshitars, labelled trustees of this Temple, is virtually analogous to that of a Matathipathi of a Mutt, except that the Podu Dikshitars of this Temple, functioning as trustees, will not have the same dominion over the income of the properties of the Temple which the Matathipathi enjoys in relation to the income from the Mutt and its properties**. Therefore, the sections which we held ultra vires in relation to Mutts and Matathipathis will also he ultra vires the State Legislature in relation to Sri Sabhanayagar Temple, Chidambaram and the Podu Dikshitars who have the right to administer the affairs and the properties of the Temple. **As we have already pointed out even more than the case of the Shivalli Brahmins, it can be asserted that the Dikshitars of Chidambaram form a religious denomination within the meaning of Article 26 of the Constitution**…….”
>
> (emphasis supplied)

99. The aforesaid judgment of the Division Bench of the Madras High Court, which had attained finality, was held by the Supreme Court, in **Dr. Subramanian Swamy**[22], as binding inter-parties (ie both on the Podu Dikshitars and the State of Tamil Nadu), for an order passed by a Court of competent jurisdiction, after adjudication on merits of the rights of the parties, binds the parties or the persons claiming right, title or interest from them. Its validity can neither be assailed in subsequent legal proceedings, (**Sushil Kumar Metha v. Gobind Ram Bohra**[71]**)**, nor can it be re-agitated in collateral proceedings. The binding character of judgments, of Courts of competent jurisdiction, is in essence a part of the rule of law on which administration of justice is founded. An order or judgment of a Court/Tribunal, even if erroneous, is binding inter-parties. (**The Direct Recruit Class-II Engineering Officers' Association and others v. State of Maharashtra and others**[72]**;** and **U.P. State Road Transport Corporation v. State of U.P. and Another**[73]).

100. Matters in controversy, in writ proceedings under Article 226, decided after full contest, after affording fair opportunity to the parties to prove their case, by a Court competent to decide it, and which proceedings have attained finality, is binding inter-parties. (**Gulabchand Chhotalal Parikh v. State of Bombay (Now Gujarat)** [74]**;** and **State of Punjab v. Bua Das Kaushal**[75]). Once a matter, which was the subject-matter of a lis,

stood determined by a competent Court, no party can thereafter be permitted to reopen it in a subsequent litigation. (**Swamy Atmananda and Ors. v. Sri Ramakrishna Tapovanam and Others**[76]**;** and **Ishwar Dutt v. Land Acquisition Collector and Another**[77]). Issues which have been concluded inter-parties cannot be raised again in proceedings inter-parties. (**State of Haryana v. State of Punjab**[78]).

101. In **Dr. Subramanian Swamy**[22], the Supreme Court was neither called upon, nor did it undertake an independent examination of whether the tests applicable, for a group of persons to be declared a religious denomination, were satisfied. It is only because the Podhu Dikshitars, who were administering the temple which was in existence since times immemorial, were held to be a religious denomination by the Division Bench of the Madras High Court, in **Marimuthu Dikshitar**[47] which order had attained finality, that the order passed by it was held to be *res judicata* in subsequent proceedings.

(m) THE JUDGMENT OF A TWO JUDGE BENCH CANNOT BE UNDERSTOOD AS HAVING HELD CONTRARY TO THE LAW DECLARED BY A CONSTITUTION BENCH OF THE SUPREME COURT :

102. The conclusion, on application of the principles of *res judicata*, does not amount to a declaration of law by the two Judge bench of the Supreme Court, in **Dr. Subramanian Swamy**[22], that invariably, even if the temple is not established by a religious denomination, it can nonetheless administer it, for that would fall foul of the law declared by the Constitution bench of the Supreme Court in **S. Azeez Basha**[64] wherein the words "establish and maintain" in Article 26 were held to be conjunctive; and it was held that only such institutions, which were established by a religious denomination, which could be maintained by it. As the right to manage the affairs of the Char Dham temples would only be available to a religious denomination which has established these temples, and as it is not even the case of Dr. Subramanian Swamy that any particular religious denomination had established any of the Char Dham temples, the 2019 Act cannot be said

to have violated the right under Article 26(d) of the Constitution. It is only on grounds of res judicata did the Supreme Court, in **Dr. Subramanian Swamy**[22], hold that the earlier constitution bench judgments of the Supreme Court, in **S. Azeez Basha**[64]**;** and **Khajamian Wakf Estates**[68], were inapplicable to the case before it. A two judge bench of the Supreme Court, in **Dr. Subramanian Swamy**[22], could not otherwise have, nor did it, take a view contrary to the earlier Constitution bench judgments of the Supreme Court.

(n) <u>IT IS ONLY THE RATIO, AND NOT EVERY OBSERVATION IN A JUDGMENT, WHICH IS BINDING</u> :

103. The observations, in **Dr. Subramanian Swamy**[22], cannot be read out of context or be understood as a binding declaration of law that a religious denomination has the right under Article 26(d) to manage temples which it has not established, for it is well settled that a decision is binding not because of its conclusions but in regard to its ratio, and the principles laid down therein'. (**Jaisri Sahu v. Rajdewan Dubey**[79]**; Municipal Corporation of Delhi v. Gurnam Kaur**[80]**; B. Shama Rao v. Union Territory of Pondicherry**[81]**;** and **State of U.P. v Synthetics and Chemicals Ltd.**[82]). A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case, or is put in issue, would constitute a precedent. It is the rule, deductible from the application of law to the facts and circumstances of the case, which constitutes its ratio decidendi. (**Union of India v. Dhanwanti Devi**[83]; **State of Orissa v. Mohd. Illiyas**[84]; **ICICI Bank v. Municipal Corpn. of Greater Bombay**[85]; **State of Orissa v. Sudhansu Sekhar Misra**[86]; and **Quinn v. Leathem**[87]**)**. Uniformity and consistency are undoubtedly the core of judicial discipline. But that which escapes in the judgment, without any occasion, is not the ratio decidendi. (**Synthetics and Chemicals Ltd.**[82]; and **Municipal Corporation of Delhi v. Gurnam Kaur**[80]).

104. A decision of a Court is only an authority for what it decides and not what can logically be deduced therefrom. It cannot be quoted for a proposition that may seem to follow logically from it. Such a mode of

reasoning assumes that the law is necessarily a logical Code whereas, it must be acknowledged that, the law is not always logical. It is not a profitable task to extract a sentence here and there from a judgment and to build upon it. **(Quinn v. Leathem[87]; Sudhansu Sekhar Misra[86]; Delhi Administration (NCT of Delhi) v. Manoharlal[88]; Dr. Nalini Mahajan etc. v. Director of Income Tax (Investigation)[89];** and **Bhavnagar University v. Palitana Sugar Mill (P) Ltd.[90]**).

105. In **Haryana Financial Corpn.v. Jagdamba Oil Mills[91]**, the Supreme Court observed:

> "……Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed…."

106. A word here, or a word there, should not be made the basis for inferring inconsistency or conflict of opinion. Law does not develop in a casual manner. It develops by conscious, considered steps. (**Sri Konaseema Cooperative Central Bank Ltd v. N. Seetharama Raju[92]**). Observations of Courts are neither to be read as Euclid's theorems nor as provisions of a Statute, and that too taken out of their context. The observations must be read in the context in which they appear to have been stated. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. (**Bharat Petroleum Corporation Ltd v. N.R. Vairamani[93]; Ashwani Kumar Singh v. U.P. Public Service Commission[94]; Union of India v. Amritlal Manchanda[95]; P Sridevi W/o P Murali Krishna v. Cherishma Housing Private Ltd.[96];** and **Deepak Bajaj v. State of Maharashtra[97])**. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. Judgments ought not to be read as statutes (**N. Seetharama Raju[92])**.

107. In **London Graving Dock Co. Ltd. v. Horton[98] :-**

> "……The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge….."

108. In **Home Office v. Dorset Yacht Co.[99]** Lord Reid said (at All ER p.297g-h),

> "Lord Atkin's speech … is not to be treated as if it were a statutory definition. It will require qualification in new circumstances".

Megarry, J. in **(1971) 1 WLR 1062** observed:

> "One must not, of course, construe a reserved judgment of even Russell, L.J. as if it were an Act of Parliament."

And, in **Herrington v. British Railways Board[100]** Lord Morris said:

> "There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case……..."
>
> (emphasis supplied)

109. These observations have been reiterated by the Supreme Court in **Ashwani Kumar Singh[94]; Amrit Lal Manchanda[95]; Collector of Central Excise, Calcutta v. Alnoori Tobacco Products[101]; Escorts Ltd. v. Commissioner of Central Excise, Delhi II[102]; N.R. Vairamani[93];** and **Union of India v. Major Bahadur Singh[103])**.

110. All that the Supreme Court has held, in **Dr. Subramanian Swamy[22],** is that the earlier judgment of the Madras High Court, in **Marimuthu Dikshitar[47]**, which had attained finality, was binding inter-parties on the principles of *res judicata*, and nothing more.

(o) <u>WHILE THE JUDGMENT OF ANOTHER HIGH COURT IS OF PERSUASIVE VALUE, THE JUDGMENT OF THE SUPREME COURT IS BINDING</u> :

111. In the hierarchical system of courts it is necessary for each lower tier, including the High Court, to accept loyally the decisions of the higher tiers i.e. the Supreme Court. The judicial system only works if someone is allowed to have the last word and that last word, once spoken, is loyally accepted. The wisdom of the court below must yield to the higher wisdom of the court above. That is the strength of the hierarchical judicial system. Under Article 141 of the Constitution the law declared by the Supreme Court shall bind all courts within the territory of India and, under Article 144, all authorities, civil and judicial in the territory of India, shall act in the aid of the Supreme Court. (**CCE v. Dunlop India Ltd.[104]; Casell and Co. Ltd. v. Broome[105]; Siliguri Muncipality v. Amalendu Das[106];** and **Rajeshwar Prasad Mishra v. State of W.B.[107]**). While the judgment of another High Court would, undoubtedly, have persuasive value, if the law declared therein runs contrary to the law declared by the Supreme Court, the High Court, in dealing with the issues which arise for consideration in the case, is bound by the law declared by the Supreme Court, and not that of the other High Court whose judgment is cited before it. Though the judgment of the Division Bench of the Madras High Court, in **Marimuthu Dikshitar[47]**, has persuasive value, as the law declared therein is contrary to the law declared by the Constitution Bench of the Supreme Court, in **S. Azeez Basha[64]**, it is latter judgment which binds us, and not the decision of the Madras High Court.

(p) <u>"DEFINITION CLAUSE" IN AN ACT : ITS SCOPE AND AMBIT</u> :

112. The definition clause of an Act is meant only to define a term or an expression referred to elsewhere in a substantive portion of the said Act, and cannot be construed as a substantive provision by itself. Clause 2(l) and 2(w) of the 2019 Act, which define "Hindu Religion" and "temple" respectively, cannot therefore be read in isolation, or independent of the relevant provisions of the 2019 Act where the defined words find place. A

definition is, ordinarily, the crystallisation of a legal concept promoting precision and rounding off blurred edges. (**Bangalore Water Supply & Sewarage Board v. A. Rajappa & others**[108]). A definition is an explicit statement of the full connotation of a term (**Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court**[109]**; Gough v. Gough**[110]**; P. Kasilingam & others v. P.S.G. College of Technology & others**[111]; and **Feroze N. Dotiwala v. P.M. Wadhwani**[112]) and nothing more. If, in a statutory enactment, the legislature defines the terms (whether by enlarging or by restricting the ordinary meaning of a word or expression), it must intend that, in the absence of a clear indication to the contrary, those terms as defined shall govern what is proposed, authorized or done under or by reference to that enactment. (**Wyre Forest District Council v. Secretary of State for the Environment & another**[113]).

113. Section 2 of the 2019 Act starts with the words "**in this Act unless the context otherwise requires**". All statutory definitions must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that, even where the definition is exhaustive in as much as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in the different Sections of the Act depending upon the subject or the context. That is why all definitions in Statutes, generally, begin with the qualifying words, namely, "unless there is anything repugnant in the subject or context". (**The Vanguard Fire and General Insurance Co. Ltd. Madras v. M/s Fraser & Ross & another**[114]). There may be Sections in the Act where the meaning may have to be departed from, on account of the subject or context in which the word has been used, and that will be giving effect to the opening sentence in the definition section, namely, "**unless there is anything repugnant in the subject or context**".

114. In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such a matter and interpret the meaning intended to be

conveyed by the use of the words under the circumstances. (**M/s Fraser & Ross & another**[114]). A definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising that the function of a definition is to give precision and certainty to a word or phrase which would otherwise be vague and uncertain-but not to contradict it or supplant it altogether. (**Hotel and Catering Industry Training Board v. Automobile Proprietary Ltd.**[115]; and **A. Rajappa & others**[108]**)**. The definition in clauses 2(l) and 2(w) of the 2019 Act must not only be given a restricted meaning, but should also not be read in isolation. It must be read in the context of the provisions in which these terms are used.

115. No specific provision, other than Section 28(1) of the 2019 Act, has been relied upon by Dr. Subramanian Swamy in support of his submission that the Chaar Dhaam temples are religious denomination temples. Section 28(1) requires the Chief Executive Officer, in making appointment of priests, rawals and trustees of the Chaar Dhaam Devasthanams referred under the 2019 Act, with the approval of the Board, with due regard to the "**religious denomination, customary and hereditary rights**". In view of the mandate of Section 28(1) regard must be had, by the Chief Executive Officer, to the religious denomination, in making appointment of Priests, Rawals and Trustees of the Chaar Dhaam Devasthanams.

116. This provision has, evidently, been made since the Rawal (head priest) of the Sri Badrinath temple has, ever since the idol was re-installed in the temple by Shri Adi Shankaracharya in the ninth century, been appointed from members of the Nambudiri Brahmin community of Kerala. Likewise the priest at the Sri Kedarnath temple is a Lingayat from Karnataka. It is to ensure that the customary right, of appointing Priests and Rawals only from a particular community, continues, that the words "religious denomination, customary and hereditary rights" have been used in Section 28(1). The Chief Executive Officer, in making appointment of Priests and Rawals, must have due regard to the fact that the Rawal of Sri Badrinath temple should be a Nambudiri of Kerala, and the priest of the Kedarnath temple should be a

Lingayat from Karnataka, and nothing more. That, by itself, does not make either the Sri Badrinath, or the Sri Kedarnath temple, as temples belonging to a religious denomination.

(q) <u>THE FUNDAMENTAL RIGHT, UNDER ARTICLE 26(d), CEASES ONCE THE RIGHT TO ADMINISTER A TEMPLE/PROPERTY IS LOST</u> :

117. Even otherwise, no religious denomination can claim to manage the Badrinath and Kedarnath temples atleast from the year 1939. As both the Badrinath and Kedarnath temples were brought within the ambit of the U.P. Shri Badrinath and Shri Kedarnath Temples Act, 1939 (for short the "1939 Act"), it is useful, in this context, to briefly note the history of these temples culminating in the introduction of the 1939 Act.

118. In the "Question of Transfer of Jurisdiction" (published by Tara Printing Works, Benares City on 15.01.1934), Shri Madan Mohan Malviya has stated that Shri Raja Sudarshan Shah had agreed to part with the area of Puri Badrinath, because the British Government, which had helped him to recover his lost kingdom from the Gurkhas of Nepal, insisted on including it in the territory to be ceded to it in lieu of the help given. He agreed only when the British Government gave the Raja the assurance that it would leave the religious and financial administration of the temple to the Tehri Darbar. The British Government respected this assurance for nearly a century, until in consequence of the enactment of the Code of Civil Procedure, which was extended to the whole of British India and therefore also to British Garhwal in which the temple of Badrinath lay, the Raja was advised that he could, thereafter, be regarded only as a Trustee of the temple, liable to be sued in a court in British Garhwal like any other subject residing in British India. This involved a lowering of the status of the Ruler of Tehri, and to avoid this and other complications involved in it, under legal advice, the Raja agreed to the scheme which, on a suit filed at the instance of the Government, the High Court of Kumaun passed in 1899, and under which the Rawal, who was the Raja's nominee, was, subject to certain conditions, made the Trustee of the temple.

119. Shri Malaviya, thereafter, states that, in the Manual of Titles in U.P, published by the authority of the U. P. Government, it is stated in page 12 that "the rulers of Garhwal are Panwar Kshatriyas of Agni Bans. The first ruler of the line was Raja Kanak Pal who came to Northern India from Gujarat (Ahmadabad) in 688 A. D. Raja Bhanu Pratap of the solar race, who was at that time the ruler of Kedarkhand (as Garhwal was then called), gave his only daughter in marriage to Kanak Pal and left him in possession of his ancestral estates, himself retiring into the Himalayas to spend his life in contemplation." A complete genealogical table of the past rulers of Garhwal from 688 A. D., with the respective dates of their demise, is given in the Manual. Also on page 446 of Atkinson's Gazetteer Vol. II., the same list of Garhwal Rajas, compiled from documentary evidence by Mr. Backett, the Settlement Officer of Garhwal, is given. In both of them the first Garhwal Raja Kanak Pal is shown to have died at the age of 51, after having reigned for 11 years (from 688 A.D.). This shows the connection of Tehri State with the Badrinath temple since 688 A. D. when the Panwar dynasty succeeded the Katura dynasty of which the last ruler in Garhwal was Raja Bhanu Pratap.

120. Shri Malaviya adds that, when the area of Badrinath temple was ceded to it, the British Government agreed to leave the religious and financial control of the Badrinath temple to the Tehri Darbar. In matters of semi-religious and semi-civil nature, the British District authorities and the Tehri Darbar acted in co-operation. In matters purely civil, the Tehri Darbar had no hand. Under this arrangement the Rawal, i.e. the Pujari of the temple, continued to be installed, as such by the Tehri Darbar, with traditional religious ceremonies. After he had been so installed, he received a sanad from the British Commissioner, so that his status in secular affairs may be recognised. This lasted till the year 1896 or 1897. About that time it struck some one that, by reason of the extension of the Civil Procedure Code to British Garhwal, the position of the Tehri Darbar, in relation to the temple, had become that of a Trustee. This position was not acceptable to the Tehri Darbar, and, at the instance of the Government, a scheme of management

was consequently framed on 19th January 1899, by the High Court of Kumaun, for the future management of the temple. This scheme was found defective, so it was proposed to revise it. At that time, the then Rawal, Purushottam, who had held the office of Rawal for about fifty years, i.e., for nearly more than half the period of British administration in Garhwal, made a representation to the Political Agent, in which he described the practice which had been followed throughout the period of British administration, i.e., even when the temple area had ceased to be a part of Tehri State. A translation of the said representation ran as follows:-

"In the Court of R. I. Humblin, Esq., Commissioner and Judge, High Court, Kumaun Division, dated 2.11.1899.

CIVIL SUIT No. 6 OF 1899.

The Deputy Commissioner, District Garhwal - Plaintiff.
Purushottam Rawal, Badrinath Temple - Defendent.
After usual compliments.

"I beg to state that I sent a letter to you on the 10th instant. At that time I was unwell, and could not get an occasion to deliberate over the matter in all respects. I therefore request that the following submission, after being taken into full consideration, may be accepted which will place me under a great obligation :-

(1) As I had submitted last year, on account of old age I was unable to conduct the management or else I would not have relinquished charge of it before.

(2) The Naib Rawal [who, according to the practice established by the Adi Guru Shankaracharya, must be a Nambudri Brahman from South India] must necessarily be a new man and a foreigner. He will take years to pick up the language of these parts. It is difficult to say how long he will take to acquire a working knowledge of the affairs of the temple, and it appears undesirable to entrust the management of so much property to an outsider without control by Government. But, on account of this being a religious matter, the British Government has never before interfered, nor will it ever interfere in future. It is, therefore, prayed that I, and after me the Naib Rawal, may be entrusted with the duty of conducting the worship only and all other control be vested in the Tehri Darbar. By so doing, not only I and others connected with the temple but the entire Hindu public will bless you and sing your praises. This will conduce to the benefit of the temple and of us all.

3. Formerly, so long as the ancestors of the Maharaja of Tehri ruled from Srinagar, the Srinagar Darbar was the sole master in every way.

Like the British Administration also, the Tehri Darbar continued and still continues, to appoint and instal the Rawal and the Naib Rawal, and also to appoint the Vasir Likhwar and other servants of the temple staff. I was also given Tilak and Khilat by the Tehri Darbar. The Tehri Darbar should continue to exercise control according to past custom and practice.

4. The auspicious date for the opening of the temple also still continues to be fixed by the Tehri Darbar. Every year the Tehri Darbar Purohit comes to open the doors of the temple and all expenses connected with the ceremony are borne by the Tehri Darbar.

5. The Tehri Darbar should appoint an able manager. The audit and inspection of accounts should be conducted on behalf of the Tehri Darbar in accordance with the scheme of 19th January 1899."

RAWAL PURUSHOTTAM,
Badrinath Temple.

121. The Himalayan Gazetteer (Volume-III by Edwin Thomas Atkinson, first published in 1884), refers to the expenditure of the Badrinath Temple sometimes exceeding the income of the year from offerings and endowments, resulting in recourse being had to loans, to be repaid from the surplus of favourable years; the offerings consisted of *Bhet,* or offering to the idol, *bhog* or for the expenses of his food and clothing and Nazarana or gift to the Rawal; of late, the affairs of the temple had been so badly managed that it was always in debt, though, if properly controlled, the revenues were sufficient for all proper expenditure; the ceremonies to be performed by pilgrims were simple in the extreme, consisting of a short service with a litany and bathing, and in the case of orphans and widows in shaving the head; the principal priests were Namburi Brahmans from Malaba and the head-priest was called Rawal; in order to provide for succession, in case of the illness or death of the Rawal, a Chela of his caste was always in attendance at Joshimath, so that there was always a Rawal elect present to take possession of the office; the Rawal had a regular establishment to manage the temporal concerns of the institutions and, under the former Rajas, exercised supreme and uncontrolled authority in the villages attached to the temple. It is, evident, therefore, that the principal

priest or the Rawal of the Badrinath Temple was, for the past several centuries, from the Namburi Brahman sect in Kerala.

122. In **Nar Hari Sastri and Ors. v. Shri Badrinath Temple Committee**[116], the Supreme Court held that the temple at Badrinath is an ancient institution and is a public place of worship for Hindus. The chief priest of the temple is known by the name of 'Rawal' who originally looked after both the spiritual and temporal affairs of the idol subject to certain rights of supervision and control exercisable by the Tehri Durbar. There was a scheme for the management of the temple framed by the Commissioner of Kumaun Division, within whose jurisdiction Badrinath is situated, some time in the year 1899. Under this scheme, the 'Rawal' was to be the sole trustee of the Badrinath temple and its properties, and the entire management was entrusted to him subject to his keeping accounts, which he had to submit for the approval of the Tehri Durbar, and to make arrangements for the disposal and safe custody of cash receipts and other non-perishable valuables. This scheme, apparently, did not work well and led to constant friction between the "rawal' on the one hand and the Tehri Durbar on the other. This unsatisfactory state of affairs led to public agitation and demand for reforms and, in 1939, the U. P. Legislature passed the Sri Badrinath and Sri Kedarnath Temples Act, the object of which was to remove the chief defects in the existing system of management. The 1939 Act restricts the 'Rawal' to his priestly duties, and the secular management is placed in the hands of a small committee, the members of which are partly elected and partly nominated, powers being reserved to the Government to take steps against the committee itself, if it is found guilty of mismanagement. The 1939 Act preserved the traditional control of the Tehri Durbar.

123. The Kedarnath Ji Temple, which was also brought within the ambit of the 1939 Act, is one among the Panch Kedar, a group of five Shaivate Temples considered sacrosanct by religious Hindus.

124. The statement of objects and reasons, for introducing the Bill which resulted in the Uttar Pradesh Shri Badrinath and Shri Kedarnath

Temple Act, 1939 being enacted, stated that the Badrinath Temple, which is one of the foremost sacred place of Hindu pilgrimage in India, is situated in the Garhwal district on the heights of the Himalayas; under the Scheme of 1899, its management was in the hands of the Rawal, while the Tehri Durbar was invested with certain supervisory powers; the defective nature of the Scheme was the source of constant friction between the Rawal and the Tehri Durbar; as a result, supervision of the temple had suffered, its income had been squandered, and the convenience of the pilgrims had been neglected; the unsatisfactory condition of the temple, which had existed for a long time, was specially brought to the notice of the Government by the Hindu Religious and Charitable Endowments Committee in 1928; since then public agitation had been continually pressing for reform in its management; the Bill seeks to remove the chief defects of the present Scheme; it restricts the Rawal to his priestly duties, and places the secular management of the temple in the hands of a small committee which would be partly nominated; and it preserves, at the same time, the traditional control of the Tehri Durbar, while adequate powers have been reserved for the Government to guard against mis-management by the Committee.

125. Section 4 of the 1939 Act stipulated that the ownership of the temple fund shall vest in the deity of Shri Badrinath or Shri Kedarnath as the case may be, and the Committee shall be entitled to its possession. Section 5(1) stipulated that the administration and the governance of the temple and the temple fund shall vest in a Committee which shall be comprised, among others, of two persons to be elected by the Hindu members of the Uttar Pradesh Legislative Assembly, and one person to be elected by the Hindu members of the Uttar Pradesh Legislative Council, and others; and the President of the Committee and seven members would be nominated by the State Government. Both the Sri Badrinath and Sri Kedarnath temples remained under the administration and governance of the temple committee, constituted under Section 5(1) of the 1939 Act, till the 1939 Act was repealed by the 2019 Act. Any right which the Rawal, or any other, may have had earlier was lost on the 1939 Act coming into force and, consequently, no such right can now be claimed over these temples.

126. In **The Durgah Committee, Ajmer**[61], the Supreme Court held that the challenge presented to the vires of the provisions dealing with the powers of the Committee could not succeed for the reason that the denomination never had the right to administer the said property; if the denomination never had the right to manage the properties endowed in favour of a denominational institution, it cannot be heard to say that it has acquired the said rights as a result of Article 26(c) and (d); and if the right to administer the properties never vested in the denomination, or had been validly surrendered by it, or had otherwise been effectively and irretrievably lost by it, Article 26 cannot be successfully invoked.

127. In **S. Azeez Basha**[64], the Supreme Court held that the muslim minority did not own the property which was vested in the Aligarh University on the date the Constitution came into force, and it could not lay claim to administer that property by virtue of Article 26(d), for it did not own that property when the Constitution came into force.

128. While a religious denomination can own, acquire properties and administer them in accordance with law, the right to administer automatically lapses, in case they lose the property or alienate the same, for the reason that the property ceases to be their property thereafter. **(Khajamian Wakf Estates**[68]**;** and **S. Azeez Basha**[64]**)**. The denomination must be enjoying the right to manage the properties endowed in favour of the institutions. If the right to administer the properties is lost, the protection under Article 26 of the Constitution of India is not available. (**M.P. Gopalakrishnan Nair**[62]). A denomination, which had no right prior to January 26, 1950 when the Constitution came into force, cannot claim any such rights after the enactment of the Act. (**M.P. Gopalakrishnan Nair**[62]**)**. As the right of administration over the properties of the Badrinath and Kedarnath temples, even if any such right had existed earlier, was lost, on the 1939 Act coming into force, no such right can now be claimed by a religious denomination even if it existed.

(r) <u>ARTICLE 394-A : ITS SCOPE</u> :

129. Article 394A(1)(a) of the Constitution of India requires the President to cause to be published, under his authority, the translation of the Constitution in Hindi language, signed by the members of the Constituent Assembly, with such modifications as may be necessary to bring it in conformity with the language, style and terminology adopted in the authoritative texts of Central Acts in Hindi language, and incorporating therein all the amendments of the Constitution made before such publication. Article 394A(2) stipulates that the translation of the Constitution, and of every amendment thereof published under clause (1), shall be construed to have the same meaning as the original thereof and, if any difficulty arises in so construing any part of such translation, the President shall cause the same to be revised suitably. Clause (3) of Article 394A stipulates that the translation of the Constitution, and of every amendment thereof published under Article 394, shall be deemed to be, for all purposes, the authoritative text thereof in Hindi language.

130. As is evident from clause (2) of Article 394A, translation of the Constitution, in Hindi language, should be construed to have the same meaning as the original thereof which is in English. As the english word "denomination" has been construed by the Supreme Court in several of its judgments, and as the law declared by the Supreme Court is binding on the High Court under Article 141 of the Constitution of India, it would not be permissible for us to give the word "denomination" a meaning different from that given by the Supreme Court in its judicial pronouncements. We see no reason, therefore, to dwell on the question whether Hindus, professing and having faith in Sanatana Dharma, constitute a Sampradaya, or whether such a Sampradaya would constitute a religious denomination.

(s) <u>ONUS LIES ON THE PETITIONER TO PROVE THAT THE 2019 ACT IS *ULTRA VIRES* PART III OF THE CONSTITUTION</u> :

131. There is always a presumption in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that

there has been a clear transgression of the constitutional principles. (**Shri Ram Krishna Dalmia[11])**. The onus, to prove its invalidity, lies on the petitioner who has assailed it. (**Pathumma v. State of Kerala[117]; Independent Thought[16]; Shri Ramkrishna Dalmia[11]; Saurabh Chaudri and Ors. v. Union of India[118];** and **Chiranjit Lal Chowdhri[39]**). The person challenging the act of the State as unconstitutional must establish its invalidity. (**Union of India v. N.S. Rathnam[119]; Bank of Baroda v. Rednam Naga Chaya Devi[120];** and **Sri Venkata Seetaramanjaneya Rice& Oil Mills and Ors. v. State of Andhra Pradesh[121]**).

132. If any state of facts can reasonably be conceived to sustain the validity of an enactment, the existence of that state of facts must be assumed. (**Constitutional Law by Prof. Willis, Page No.579**; and **Charanjit Lal Chowdhri[39]**). In order to sustain the presumption of constitutionality, the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation. (**Shri Ram Krishna Dalmia[11]**).

133. As there is a presumption regarding the constitutionality of an Act, the Court ought not to interpret statutory provisions, unless compelled by their language, in such a manner as would involve its unconstitutionality, since the legislature is presumed to enact a law which does not contravene or violate the constitutional provisions. If the provisions of the law can be construed in such a way as would make it consistent with the Constitution, and another interpretation would render the provision unconstitutional, the Court would lean in favour of the former construction. (**M.L. Kamra v. Chairman-cum-Managing Director, New India Assurance Co. Ltd. and another[122]; Shri Ramkrishna Dalmia[11]**; and **R.K. Garg v. Union of India[123]**).

134. The onus, therefore, lay on the petitioner to establish that the Act, or any of its provisions, fell foul of the fundamental rights guaranteed under Part III of the Constitution. The definition clauses in an enactment, as

held earlier, only define the expression used in the other provisions of the Act and cannot, by itself, be construed as a substantive provision. The contention that these definition clauses constitute a legislative acknowledgement, of all Hindus, professing and having faith in Sanatana Dharma, being a religious denomination does not therefore merit acceptance, nor is the petitioner justified in shifting the onus, which lies on him, to the State. The obligation remained with the petitioner to discharge the onus that the 2019 Act was unconstitutional.

(t) <u>THERE IS NO ADMISSION IN THE COUNTER-AFFIDAVIT OF THE STATE GOVERNMENT THAT THE CHAR DHAM TEMPLES ARE ADMINISTERED BY A RELIGIOUS DENOMINATION</u> :

135. The petitioner wants us to infer from the averments in the counter-affidavit that, as the State Government had stated that the denomination rights guaranteed by Article 26 are not affected, such expression would amount to a tacit admission that the Chaar Dhaam temples are managed by a religious denomination. The contents of the counter-affidavit do not necessitate any such inference, of the State Government having acknowledged that the Chaar Dhaam temples are administered by a religious denomination. The respondent has denied the specific assertions in the writ-affidavit, and has contended that none of the provisions violate the freedom guaranteed under Article 26 of the Constitution of India.

136. Nowhere in the counter-affidavit, or in the Act (except Section 28 thereof), is there any reference to a "religious denomination". The context in which the words "religious denomination" are used in Section 28(1) of the Act has already been dealt with by us earlier in this order, and do not bear repetition.

(u) <u>CONFERMENT OF POWER ON THE CHIEF EXECUTIVE OFFICER IS NOT ILLEGAL</u> :

137. It is true that, under Section 15 of the Act, the Chief Executive Officer has been conferred power to administer the Chaar Dhaam and associated temples mentioned in the Schedule to the Act, and the general

supervision and control of these temples has been entrusted to him. What has been entrusted, to the supervision and control of the Chief Executive Officer, are the secular activities associated with these temples, and not its religious affairs. As the subject temples are not administered by any religious denomination, conferment of the power of superintendence and control, of the secular activities of all these temples, on the Chief Executive Officer does not violate Article 26 of the Constitution of India.

(v) <u>OTHER CONTENTIONS UNDER THIS HEAD</u> :

138. Section 17 of the Act relates to preparation and maintenance of registers by the Chief Executive Officer for each Devasthanam/temple covered by the Act and, under Section 17(2), the information mentioned in Section 17(1) is to be stored in the form of a website for viewing on the internet, evidently, by the general public. Section 32 relates to the creation of the Uttarakhand Chaar Dhaam Fund, and provides for the funds to be deposited in a nationalized bank or other bank approved by the Reserve Bank of India for its audit. Section 32(3) of the Act obligates the Chief Executive Officer, or any other officer authorised in this behalf by the Board, to maintain proper accounts of the Uttarakhand Chaar Dhaam Fund. It also requires the fund to the audited annually by an Audit Agency or a Chartered Accountant approved by the Board and its balance sheet to be published, at the end of every financial year, for the general public. Section 32(4) of the Act requires the accounts of the Board to be audited by the Accountant General, Uttarakhand or any other officer authorized by him/her on his/her behalf.

139. The Uttarakhand Chaar Dhaam Fund is not only required to be audited by an Audit Agency or a Chartered Accountant, but its balance sheet is also required to be published at the end of every financial year for the information of the general public. An additional safeguard is provided, by Section 32(4) of the Act, whereby the accounts of the Board are to be audited by the Accountant General, Uttarakhand. The 2019 Act contains adequate safeguards to ensure transparency, and for an audit to be conducted both by a Chartered Accountant and by the Accountant General,

Uttarakhand. Since an external audit is specifically provided, by way of audit by a Chartered Accountant, the contention that transparency is, itself, questionable does not merit acceptance.

140. It is true that Section 46 of the Act confers, on the State Government, the power to make Rules to carry out the purposes of the Act. The mere fact that Rules are yet to be made would not render the provisions of the 2019 Act unconstitutional, for the power to make Rules is conferred on the Government only by the Act, and not the other way round. While we appreciate the petitioner's concern for the need to frame Rules at the earliest, to ensure effective implementation of the provisions of the 2019 Act, his claim, that the Act is unconstitutional as Rules have not been made, is untenable.

141. As shall be detailed later in this order, the scheme of the 2019 Act differentiates religious functions of the Chaar Dhaam temples from its secular functions. It also contains adequate provisions to safeguard and protect the religious affairs of these temples from interference by any of the authorities who have been conferred power only to manage the secular functions of these temples.

142. Reliance placed on the judgment of the Andhra Pradesh High Court, in **W.A. No. 579 of 2018**, is also misplaced. Writ Appeal No. 579 of 2018 was filed, before the Division Bench of the Andhra Pradesh High Court, against the order passed by the learned Single Judge in W.P. No. 41458 of 2017 dated 27.12.2017. The said Writ Petition was filed seeking a declaration that the action of the District Collector, in not fixing the rate of compensation for acquiring 4.00 acres of land of a temple, be declared illegal and arbitrary; and to direct the District Collector to fix the rate of the land at a price which was fetched in the public auction.

143. What was in issue before the Andhra Pradesh High Court was acquisition of temple land by the State Government without paying just compensation. While expressing shock that the property endowed in favour

of the temple was parted with, without even realizing its value for the benefit of the temple, the learned Single Judge had opined that, if the Government and its officers deal with endowment property in such a manner, it would affect persons of faith who make munificent contributions to the temple. The learned Single Judge, consequently, directed payment of compensation, to the temple, at the price which the land had fetched in the public auction held in 2006; and to pay interest thereupon at 24% per annum.

144. The Division Bench, while modifying the order of the learned Single Judge, opined that the order under appeal did not disable the State Government from acquiring the land in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013, and in paying compensation, to the subject temple, in terms of the award to be passed under the 2013 Act. The question, which arose for consideration before the Andhra Pradesh High Court, was regarding the compensation payable on acquisition of the land belonging to temples. The said judgment has no application to the present case wherein the validity of the 2019 Act, on the touchstone of Article 26 of the Constitution of India, is under challenge. Reliance placed by the petitioners, on Writ Appeal No. 579 of 2018, is therefore misplaced.

145. Viewed from any angle, the submission of Dr. Subramanian Swamy that the 2019 Act violates the fundamental rights guaranteed under Article 26 of the Constitution, necessitates rejection.

VI. IS THE GANGOTRI DHAM TEMPLE ESTABLISHED AND ADMINISTERED BY A RELIGIOUS DENOMINATION ENTITLED FOR THE PROTECTION OF ARTICLE 26 OF THE CONSTITUTION OF INDIA ?

(i) CONTENTIONS URGED ON BEHALF OF THE PETITIONERS :

146. Mr. Rajendra Dobhal, learned Senior Counsel appearing on behalf of the petitioners in Writ Petition (M/S) No.700 of 2020, would submit that the Gangotri Dham temple is a very old temple; it was

constructed by the ancestors of the Semwal Brahmin community who were residents of Mukhwa village; it was renovated in the 18th Century by a Gorkha General namely Kazi Amar Singh Thapa; thereafter, it is being renovated by the Semwal Brahmin Community on the basis of donations collected from across the country; the pooja and management of the Gangotri Ganga Temple is done by 5 families, of Semwal Brahmins of village Mukhwa, of Bhardwaj Gotra, Tri-Pravar, Madhyandni Shakha, Shukl Yajurveda and Katyayni Sutra; these five families have been discharging their duties of worship as Rawal-Pujari, and have been managing the affairs of the temple through a Managing Committee known as the Sri 5 Temple Committee, Gangotri Dham (Himalayan); the rights of the Semwal Brahmin Community and their ancestors, and the efforts made by them to protect the Gangotri Dham Temple, have been recognized from time to time; the Sri 5 Temple Committee Gangotri Dham (Himalyan) was being managed by the Managing Committee constituted by the 5 Thoks (branches) of Semwal Brahmin families of Mukhwa village; the present Gangotri Temple was renovated in the early 19th Century, by His Highness Maharaja Sawai Jay Singh of Jaipur Riyasat, because of the efforts of the priests of Gangotri Temple who belonged to the Semwal Brahmin Community; the Semwal Brahmins have the right of worship, and management of the Gangotri Temple, which has been recognized, by His Highness the Maharaja of Tehri Garhwal; the renovation of Gangotri Dham was completed in 1923, and since then the pooja and management of the temple is being performed by the Semwal Brahmins; Rules were framed in the year 1939 by the Tehri State in terms of which the management of the temple was to be carried on by a committee; in terms of the said Rules, the Tehsildar of the area is one of the members; this Committee was replaced in the year 1980 by the Sub-Divisional Magistrate as the Chairman of the Committee of Management; the Semwal Brahmins registered a Society, under the Societies Registration Act, by name Sri 5 Mandir Samiti Gangotri Dham (Himalaya), on 30.04.2002; and the Gangotri temple is under the control of the Mukhimatt of Uttarkashi.

147. After referring to the memorandum and by-laws of the Society, learned Senior Counsel would submit that the petitioners' rights, under Article 26 of the Constitution of India, have been violated by the impugned Act whereby the control and administration of the Gangotri temple, and its management, have been taken over, from the petitioner society, by the State Government; the accounts of the temple are periodically audited by a Chartered Accountant; the rights of the temple committee, and the Rawal purohits, have been taken away by the impugned Act; the circumstances under which the Badrinath and the Kedarnath temples were brought under the control of a Board, in terms of the 1939 Act, has no application to the Gangotri Dham temple; the 1939 Act was enacted by the State Legislature in the exercise of its powers under Section 75 of the Government of India Act, 1935; on the other hand there is no legislation, prior to the impugned Act, governing the Gangotri Dham; the temple was managed by the Semwal Brahmin community from times immemorial; its bye-laws were framed in 1939; a letter was addressed on 26.04.2002 for registration of the Management Committee under the Societies Registration Act; there is no complaint of misutilisation and the specific plea in this regard, in the Writ Petition, has not been denied in the counter-affidavit; by virtue of the 2019 Act, the presence of priests in the board of the temple has been done away with; Section 3(2)(B)(vi) of the 2019 Act does not obligate the State Government to nominate priests to be the members of the board of the temple; the petitioner, as a part of the temple management committee, has been managing the temple as per its bye-laws without any complaint, of mismanagement, from anyone; and the right of a religious denomination, recognized from times immemorial, is now sought to be taken away. Learned Senior Counsel would refer to the Epigraph of five Gangotri Shrine by Sandeep Badoni; to the Sanad issued by the Maharaja of Tehri on 09.03.1789; and to the 1939 Rules. He would also rely on **Ratilal Panachand Gandhi**[48]; and **Dr. Subramanian Swamy**[22].

(ii) <u>CONTENTIONS URGED ON BEHALF OF THE RESPONDENTS</u> :

148. It is submitted, on behalf of the respondents, that the Gangotri Temple is referred to in the "Ganga Stotra", written and recited by Adishankara at Gangotri, as the "Devi Mandir"; it is believed that the river Ganges was permitted to flow only on the prayers of Rishi Bhagirath; the Hindu Dharma Kosh refers to these holy rivers as places of worship; the temples established there are of ancient origin; the Aditya Puran, Rig Ved and the Skand Puran refer to these holy rivers; it is said that Maharani Ahilya Bai Holkar had the Garbh Grah of the Gangotri Temple built; before the temple was built, pilgrims used to worship the River Ganges at Gangotri and Gaumukh; unlike in **Dr. Subramanian Swamy**[22], where there was a declaration by the Division Bench of the Madras High Court that the Podu Dikshitars were a religious denomination, there is no such declaration by any Court that the petitioners, in Writ Petition (M/S) No. 700 of 2020, are a religious denomination, that too one which established the Gangotri Dham temple; no material has been placed in support of the plea that the Gangotri temple was established and is administered by a religious denomination; the writ petition, relating to Gangotri Dham, is filed by a family of priests who formed themselves into a registered society only in the year 2002; the petitioners are only priests, and are not a religious denomination; no evidence has been adduced to establish their vague and bald plea that they are a religious denomination; from the pleadings in Writ Petition (M/S) No.700 of 2020, it is clear that the Gangotri Temple, situated in District Uttarkashi, is a public character temple whose history dates back to the times of the Mahabharata; it is the place which has significance, as people worship the Ganges thereat; subsequently the temple was built through donations from the general public; atleast from 1939, the management of the temple was entrusted to a Committee of Management whose Chairman was the concerned Tehsildar, and the committee functioned under the control of Tehri Darbar; representation in the Committee was also given to the Tirth Purohits; the management of the secular activities of the temple was not under the control of the Tirth Purohits of Gangotri Temple as claimed by

them; it is only in the year 2002 that the tirth purohits of Gangotri temple established a Society to manage the secular as well as the religious affairs of the concerned temple; after the 2019 Act was enacted, the Gangotri temple was put in the Schedule of temples, and the management of its secular activities was entrusted to a board; the Semwal Brahmin community has never had exclusive management of the Gangotri temple; they were only priests of the temple under the Tehri Darbar, and were being paid for the services they rendered; the 1939 Rules do not also suggest that the priests from the Semwal community had the sole management of the Gangotri temple; the 2019 Act, made for the better management of the Gangotri temple, cannot be held to violate their fundamental rights; in Writ Petition (M/S) No.700 of 2020, the petitioners have not adduced sufficient evidence to establish that they are a religious denomination; they have also not sought any such declaration in their prayer; the affairs of the Gangotri Dham temple are also managed with public funds; it is evident, from the Memorandum of the Society, that the entire proceeds of the temple are distributed among the priests and members of the Semwal Brahmin community; while 30 per cent of the proceeds are earmarked for priests from this community, the remaining 70 percent is distributed among other members of the Semwal Brahmin community; except management of the temple, no other right of theirs is even claimed to have been taken away; there is no such plea in the writ petition either; and the right to administer the property of a public temple cannot be claimed by the petitioners without establishing that they are a religious denomination, and the subject temple is a private temple.

149. The case of the petitioners, in short, is that the Semwal Brahmin community of Mukhwa village has the right of management and worship of the Gangotri temple; they have exercised their right of management over the temple since times immemorial; their right to manage the Temple has been admitted in various documents issued by the competent authorities; the Semwal Brahmins of Mukhwa village have the hereditary and customary rights over the Temple; and they constitute a religious denomination.

(iii) <u>DENOMINATION : ITS MEANING</u> :

150. In examining the question, whether or not the Gangotri Dham temple is maintained by a “religious denomination”, it is necessary to understand what this expression means. On the precise meaning or connotation of the expression "religious denomination" in Article 26, it must be noted that the word "denomination" has been defined in the Oxford Dictionary to mean "a collection of individuals classed together under the same name : a religious sect or body having a common faith and organisation and designated by a distinctive name." (**Lakshmindra Thirtha Swamiar of Sri Shirur Mutt**[53]).

151. In the **Law Lexicon by P. Ramanatha Iyer (1987 Reprint Edition) at page 315**, the author says that "denomination" means a class or collection of individuals called by the same name, a sect, a class of units, a distinctively named church or sect, as clearly, of all denominations. The maxim “Denomination est a digniore” means "Denomination is from the more worthy" (Burrill). "Denomination fieridebet a digniorihus", another maxim, means "denomination should be deduced from the more worthy" (Wharton Law Lexican). “Denomine proprio non estcurandum cum in substanta non erreturquia nominal mutabillasunt res autemimmobiles” means “as to the proper name, it is not to be regarded when one errs not in substance; because names are changeable, but things are immutable”. (**Bouvier Law Dictionary; Ame. Encyc.**).

(iv) <u>“RELIGIOUS DENOMINATION” : ITS SCOPE</u> :

152. The term 'religious denomination' means a collection of individuals having a system of belief, a common organization, and designation of a distinct name. (**Acharya Mahurajshri Narendra Prasadji Anand Prasadji Maharaj etc. etc. v. The State of Gujarat and Ors.**[124]**; T.M.A. Pai Foundation and Ors. v. State of Karnataka and Ors.**[125]**; Sri Lakshimindra Thirtha Swamiar of Sri Shirur Math**[53]**; Sri Adi Visheshwara**[5]; **Nallor Marthandam Vellalar and Ors. v. Commissioner,**

Hindu Religious and Charitable Endowments and Ors.[126]**;** and **Dr. Subramanian Swamy**[22]).

153. Over the years, criteria have emerged on whether a collective of individuals qualify as a 'religious denomination'. In making the determination, reference is made to the history and organisation of the collective seeking denominational status. (**Indian Young Lawyers Association**[55]**;** and **Shri Venkataramana Devaru**[51]**)**. The words "religious denomination", in Article 26 of the Constitution, take their colour from the word ‘religion’, and the expression “religious denomination” must, therefore, satisfy three conditions: (1) It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is, a common faith; (2) common organisation; and (3) designation by a distinctive name. (**S.P. Mittal**[63]**; Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt**[53]**; The Durgah Committee, Ajmer**[61]**; Sri Venkataramana Devaru**[51]**; Sri Adi Visheshwara**[5]; and **Nalam Ramalingayya**[67]**)**. It necessarily follows that the common faith of the community should be based on religion, and in that they should have common religious tenets, and the basic chord which connects them should be religion, and not merely considerations of caste or community or societal status. (**Indian Young Lawyers Association**[55]**; Nallor Marthandam Vellalar**[126]**)**.

154. Each such sect or special sects, which is founded by their organiser generally by name, is called a religious denomination as it is designated by a distinctive name in many cases. It is in the name of the founder, and has a common faith and a common spiritual organisation. (**Sri Adi Visheshwara**[5]). Besides being a collection of individuals having a collective common faith, and a common organization which adheres to the said common faith, the said collection of individuals must be labeled, branded and identified by a distinct name. (**Indian Young Lawyers Association & others**[55]**;** and **Nallor Marthandam Vellalar**[126]**)**. It is the distinct common faith and common spiritual organization, and the belief in a particular religious teacher of philosophy, on which the religious

denomination is founded or based, that is the essence of the matter, but not any caste or sub-caste or a particular deity worship by a particular caste or community. (**Nalam Ramalingayya**[67]**;** and **S.P. Mittal**[63]).

155. Adherence to a 'common faith' would entail that a common set of beliefs have been followed since the conception of the particular sect or denomination. Religion is the basis of the collective of individuals who worship the deity. Bereft of a religious identity, the collective cannot claim to be regarded as a 'religious denomination'. (**Indian Young Lawyers Association**[55]**)**. In the absence of conformity to essentials, the denomination would not be an entity cemented into solidity by harmonious uniformity of opinion, it would be a mere incongruous heap of, as it were, grains of sand, thrown together without being united, each of these intellectual and isolated grains differing from every other, and the whole forming a but nominally united, while really unconnected, mass; fraught with nothing but internal dissimilitude, and mutual and reciprocal contradiction and dissension. (**Free Church of Scotland v. Overtoun**[127]**;** and **Indian Young Lawyers Association**[55]).

156. Further the right to establish and maintain institutions for religious and charitable purposes, or to administer property of such institutions in accordance with law, is protected only in respect of such a religious denomination, or any section thereof, which appears to extend help equally to all, and has a religious practice peculiar to such small or specified group or section thereof as part of the main religion from which they got separated. The denomination sect is also bound by the constitutional goals, and they too are required to abide by the law; they are not above the law. Law aims at removal of social ills and evils for social peace, order, stability and progress in an egalitarian society. (**Sri Adi Visheshwara**[5]**)**.

157. The identity of a religious denomination consists in the identity of its doctrines, creeds and tenets, and these are intended to ensure the unity of the faith which its adherents profess, and identity of religious views is the bond of the union which binds them together as one community. (**Sardar**

Syadna Taher Saifuddin Saheb[59]**;** and **Indian Young Lawyers Association**[55]). These ingredients, which must be present for a set of individuals to be regarded as a religious denomination, must have been brought together under the rubric of religion. A common faith and spiritual organisation must be the chord which unites the adherents together. A common thread which runs through them is the requirement of a religious identity, which is fundamental to the character of a religious denomination. (**Indian Young Lawyers Association**[55]).

158. In **Nallor Marthandam Vellalar**[126], the question that arose for consideration was whether the temple at Nallor, owned by the Vellala community of Marthandam, constituted a 'religious denomination' within the meaning of Article 26 of the Constitution. It was argued that the Vellala Community observed special religious practices and beliefs which were an integral part of their religion; the front Mandapam of the Sanctorum had open access only to members of their community and no one else; and outsiders could only offer worship from the outer compound.

159. It is in this context that the Supreme Court held that the temple at Nellor, owned by the Vellala Community of Marthandam, did not constitute a religious denomination as there was no evidence to prove that the members of the Vellala Community had common religious tenets peculiar to themselves, other than those which were common to the entire Hindu community. Following the principles laid down in **S.P. Mittal**[63], the Supreme Court observed:

> "…..It is settled position in law, having regard to the various decisions of this Court, that the words "religious denomination" take their colour from the word 'religion'. The expression "religious denomination" must satisfy three requirements- (1) it must be collection of individuals who have a system of belief or doctrine which they regard as conducive to their spiritual well-being, ie a common faith; (2) a common organization; and (3) designation of a distinctive name. **It necessarily follows that the common faith of the community should be based on religion, and that they should have common religious tenets, and the basic cord which connects them, should be religion and not merely considerations of caste and community or societal status…..**"
>
> (**emphasis supplied**)

(v) <u>MATERIAL PLACED ON RECORD BY THE PETITIONERS IN SUPPORT OF THEIR CLAIM TO BE MANAGING THE GANGOTRI DHAM TEMPLE</u> ?

160. Let us now examine the material placed on record, by the petitioners, in support of their claim that the Gangotri Dham temple was established and administered by a religious denomination. The Epigraphs of Sri 5 Gangotri Shrine by Sandeep Badoni, published on 08.01.2020, refers to the rights and duties of stakeholders. It contains a family tree of the priests of Sri 5 Gangotri Temple. The 1779 Sanad, an order passed by the Maharaja of Tehri, refers to the seat of the King in three circles. Besides a reference to the three circles, it also states that the land of Mukhwa had been granted to Gangotri for Dhoop, Deep and Naivedya; this was disputed by the people of Dharali; it was again granted to Sri Gangotri Ji, and they should not quarrel with the priests; the monastery of Gangotri was dilapidated, and they should restore it and conduct prayers for Gangaji in a proper manner; the traditional dues, which are paid to Priests, should be paid by them to the priests now also; illegal exactions of Mukhba should not be levied; whatever was levied, in a right and traditional manner, should be collected now also; and they should do things in such a manner that Gauridutt priest does not complain again. This Sanad is said to have been issued, by the order of the King, on 09th March, 1789 A.D.

161. The Shree Gangotri Jee, Gangotri, (Vikram) Samvat Management Rules (for short the "1939 Rules") provides for the Gangotri temple to be managed by a management committee of ten members : (a) one Area Tehsildar; (b) five representative (of pandas) to be elected one each from the five thoks (lineage groups) of pandas; (c) one representative of Goonth village (tax free land owned by the deity); (d) three other members who would be nominated by the Darbar (Tehri State); and (e) the Chairman of the Committee would be the Tehsildar and, in his absence, the Deputy Chairman appointed by the Darbar shall be the Chairman. Rule 2(a) of the 1939 Rules stipulated that five members, elected from the five thoks, would remain committee members for life; and if pandas of any Thok were

dissatisfied with their representative, then, at least half of that thok, with their signature or thumb print, should send an application to the darbar.

162. The 1939 Rules then refer to the rights and duties of the committee and stipulate, among others, that the election and change of Pujaaris would be done by the committee itself and, at that time, the material of pooja and shringaar would be handed over to the new pujaari, and a receipt would be issued to the old pujaari; the daily offerings of Thaal will be entered in the cash book and handed over to the cashier at the time of Sandhya every day by the committee member present in the temple; he should also sign the cash book; in the month of April each year, budget for the next year should be prepared and presented for approval, by the committee, to the Darbar; in the same way, the annual report, related to the comprehensive record of income and expenditure and other subjects, should be presented by the committee to the Darbar; the Committee had the full right to spend money according to the budget approved by the Darbar, but any expenditure above 50 Rs. could not be incurred by the Committee without the approval of the Darbar; the material of Chadhaava like Shreefal etc. would be sold by the Committee itself, but ornaments etc. and utensils, whose sale price is above 100 Rs, could not be sold, and no change could be effected in them without the approval of the Darbar; in this regard appropriate proposals of the committee would be presented to the Darbar; stock material for Bhog will be brought or contracted in a proper manner by the management committee; any employee of the Darbar, who is authorized to inspect the temple, would be allowed inspection, by the Committee, without demur; the Committee would supervise the work of the employees, conduct repairs and supervise the temple property, and maintain all stock entered in the stock book; the Committee will make adequate arrangements for the convenience of pilgrims at the time of pilgrimage and special occasions like Ganga Dusshera, and try to increase the income of the temple; the temple committee had no right to take financial liabilities in the name of the temple, or give away loans from the Temple fund; and the Management Committee should keep proper sanitation in the city of Gangotri, and should

report to the Darbar regarding any wrong activities which take place in the city.

163. Rule 5 of the said Rules details the temples which will be under the Temple of Shree Gangotri Jee, and Rule 7 details the quantity of Bhog and its division. The said Rules also record that, from the statistics related to the income and expenditure of the temple, it seemed that the expenditure was in excess of income, due to mismanagement of the temple; to make up the deficit, the Pandas of Mukhba should pay Rs. 900 per year many times; and for this, they should keep half the share of their income separately. Rule 9 relates to the rules of income and expenditure of the Temple, and requires any work expenses to have the written approval of the Committee, and the approval to be attached with the receipt and voucher; any head of receivables should have the receipt signed by the *Lekhwar*, who should maintain two registers for keeping records; and the budget and annual account should be presented in the forms enclosed to the Rules. The enclosed Form Nos. 1 and 2 were required to be signed by the Chairman or the Deputy Chairman.

164. A Society was registered, under the Societies Registration Act, on 30.04.2002 by the Semwal Brahmin priests and its by-laws were signed, by 12 members of the Semwal Brahmin community, seeking registration as a Society. In terms of the by-laws, a temple committee was formed by the Semwal Brahmins from among themselves. Clause 4(7), of the manual attached to the Memorandum, stipulates that the priests, working in the main Sri Ganga Temple, will get 30% of the offerings and donations of the Temple, or each priest will get such donations in a timely manner as decided by the Committee; and in case the preceding temple committee's expenditure is more than its income, then the priest will also be responsible for giving the said amount. Clause (ii) relates to the Bhog of Sri Gangaji and, under clause (d) thereof, the Semwal Caste Brahmins of Mukhimath village, whose gotra is Bharadwaj Tripwar, are eligible to get 70% of the Brahman income store, of Sri 5 Temple Committee Gangotri Dham, according to Madyadini Sect Shukla Yajurved, and will continue to get so in

future. The manual also records that the directions for management of the temple is being made by taking the 1939 Rules as the standard, and was made keeping in mind the interests of the beneficiary priests.

(vi) <u>DOES THE EVIDENCE PLACED BY THE PETITIONERS SHOW THAT THEY ARE A RELIGIOUS DENOMINATION MANAGING THE GANGOTRI DHAM TEMPLE</u> :

165. The family tree, recorded in the Epigraph of Sree 5 Gangotri Shrine by Shri Sandeep Badoni, only shows that the Semwal Brahmin community were priests in the Gangotri temple for a considerable length of time. This is also clear from the 1779 Sanad wherein land was given not to the priests, but to the temple for Dhoop, Deep and Naivedya. By the Sanad, the general public was asked not to quarrel with the priests, and the villagers were requested to make payment of the traditional dues of the priests. It is nowhere indicated in the Sanad that the properties of the Sri Gangotri temple was administered by any religious denomination. On the other hand, the contents of the Sanad disclose that the Gangotri temple was functioning under the overall control and supervision of the Tehri Durbar, and the priests of the temple were Semwal Brahmins.

166. By the 1939 Rules, the management of the Gangotri Dham temple was entrusted to a managing committee headed by the area Tehsildar, with three members nominated by the Tehri State Darbar, along with 5 representatives of the priests, one each to be elected from each of the 5 Thoks. The 1939 Rules clearly show that the temple was under the overall control and supervision of the Tehri State Darbar, and was administered by a temple committee of which the Chairman was the Tehsildar, and not any of the Semwal Brahmin priests. The 1939 Rules conferred power on the temple committee to change the Pujaris, record the offering at the temple, and to present the budget for approval of the Tehri State Darbar; sale of material, by the committee, required prior approval of the Tehri State Darbar; the temple Committee was required to permit, without demur, an employee, authorised by the Tehri Darbar, to inspect the temple, to maintain proper sanitation in the city, and report to the Darbar regarding any illegal

activities committed therein. The work expenses, required the written approval of the Committee, before it was incurred; and the budget and annual accounts, which were required to be submitted to the Tehri State Darbar, were to be signed by the Chairman (the area Tehsildar), and the Deputy Chairman who was to be a nominee of the Tehri State Darbar. It is evident, therefore, that the management of the Gangotri temple was not under the Semwal Brahmin priests but was under the control of the Maharaja of Tehri and, at least from 1939, was administered by a Temple Committee, headed by the area Tehsildar, under the overall supervision and control of the Tehri State Darbar. The plea that the Semwal Brahmins, who were the priests of the Gangotri Temple, constitute a religious denomination, administering the temple, does not therefore merit acceptance.

167. It is only from 2002, when they formed themselves into a Society, does it appear that the petitioners had taken over administration of both the religious and secular affairs of the Gangotri Dham temple, till they were eventually displaced by the Board constituted under the 2019 Act. As there is no material on record to show that the Semwal Brahmins constitute a religious denomination, or that they established the temple, or even that they exercised control over the management of the Gangotri temple at any stage prior to 2002, their claim for protection, under Article 26(d) of the Constitution of India, necessitates rejection.

(vii) <u>MANAGEMENT OF THE TEMPLE WAS LOST ON THE 1939 RULES BEING MADE</u> :

168. Even otherwise, ever since 1939 when the Rules were framed, it is the temple committee which was managing the affairs of the temple, and not the Semwal Brahmin community. As held by the Supreme Court, in **The Durgah Committee, Ajmer[61], S. Azeez Basha[64];** and **Khajamian Wakf Estates[68]**, the right to manage the temple, (even if any such right is presumed to have existed earlier), was evidently and irretrievably lost by the Semwal Brahmins after the 1939 Rules came into force, and they could not, thereafter, claim that they continued to have the right, under Article 26(d) of the Constitution, to administer the property of the temple. Further, as held

by the Supreme Court in **M.P. Gopalakrishnan Nair**[62], as the petitioners had no right to administer the property, prior to 26.01.1950 when the Constitution came into force, they cannot claim any such right, under Article 26(d) of the Constitution of India thereafter, much less after the 2019 Act was made, merely because they formed themselves into a Society in 2002 and, by themselves, took over management of the Gangotri Dham temple.

169. While a vague plea is taken, by the petitioners herein in their writ affidavit, that the Gangotri Dham temple was constructed by the ancestors of the Semwal Brahmin community, no details have been furnished as to when and how the temple was so constructed. This plea is contradicted in the affidavit filed by Dr. Subramanian Swamy wherein it is stated that the Gangotri temple, dedicated to Goddess Ganga, was built by the Gorkha General Amar Singh Thapa in the 18th century. The learned Advocate General, appearing for the State, claims that it was the place, i.e. Gangotri, where the River Ganges is worshipped from times immemorial; and the temple was constructed much later by Maharani Ahalya Bai Holkar. As there is a presumption regarding the constitutionality of the 2019 Act, the onus lay on the petitioners to plead and prove necessary facts in support of their claim that they are a religious denomination which established, and is administering, the Gangotri Dham temple ever since its inception. No evidence has been placed on record by the petitioners to establish that the Gangotri Dham Temple was established, and is being maintained, by the Semwal Brahman community. On the other hand, it does appear that, even in terms of the 1789 Sanad, it was the Tehri Darbar which was in-charge of the Temple.

170. In the absence of a proper plea or sufficient proof of any specific custom or usage, specially created by the founder of the religious endowment or Temple, or those who claim to have the exclusive right to administer the affairs - religious or secular of the Temple in question, its legality, propriety and validity, in the changed legal position bought about by the Constitution and the law enacted by competent legislature, cannot be examined. (**N. Adithayan**[57]).

(viii) <u>DO THE PETITIONERS FULFIL THE TESTS OF BEING A RELIGIOUS DENOMINATION</u> :

171. Coming to the first and the most important condition for a religious denomination, i.e., the collection of individuals ought to have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, there is nothing on record to show that the priests of the Gangotri Dham temple have any common religious tenets peculiar to themselves, which they regard as conducive to their spiritual well-being, other than those which are common to the Hindu religion. The priests at Gangotri Dham temple are Hindus of the Semwal Brahmin caste, and do not constitute a separate religious denomination. For a religious denomination, there must be a new methodology provided for a religion. Mere observance of certain practices, even though from a long time, does not make it a distinct religion on that account. (**Indian Young Lawyers Association[55];** and **Nallor Marthandam Vellalar[126])**.

172. Every Hindu devotee can, as of right, visit the Gangotri Dham temple. There are other temples for Goddess Ganga, including at Har Ki Pauri in Haridwar. There is no identified sect having a distinct common faith and common spiritual organisation. It is also not founded on the belief in a particular religious teacher of philosophy. The priests at Gangotri are Semwal Brahmins, a sub-caste of Brahmins, and their identity as a sub-caste would not make them a religious denomination. The Gangotri Dham temple is a public temple, and there are no exclusive identified followers of any cult. (**Indian Young Lawyers Association[55];** and **Nallor Marthandam Vellalar[126]**). The Temple does not belong to any denominational category with any specialized form of worship peculiar to such denomination or to its credit. (**N. Adithayan[57]**).

173. Worship of the presiding deity at Gangotri is not confined to adherents of a particular religious denomination. Coupled with this, is the absence of a common spiritual organisation which is a necessary element to constitute a religious denomination. The Gangotri dham temple, at which

worship is carried out, is dedicated to the public and represents, truly, the pluralistic character of society. Everyone, irrespective of religious belief, can worship the deity. The practices, associated with the forms of worship at these temples, do not make the priests or the devotees, at the Gangotri dham, a religious denomination. None of the tests laid down, in **Indian Young Lawyers Association**[55] and the earlier judgments of the Supreme Court, are satisfied. The claim, of the petitioners in Writ Petition (M/S) No 700 of 2020, to be a "religious denomination" therefore necessitates rejection.

174. Reliance placed, on behalf of the petitioners, on **Ratilal Panachand Gandhi**[48] is misplaced. In the said judgment, the Supreme Court examined the distinction between clauses (b) and (d) of Article 26 of the Constitution of India and held that, since it is a religious denomination which has been given the right to administer its properties in accordance with law, the power conferred on the State Government is confined to making a law regulating the administration of properties; and a law, which takes away the right of administration altogether from a religious denomination and vests it in any other secular authority, would violate the right guaranteed by Article 26(d) of the Constitution of India. The right, under Article 26(d) of the Constitution of India, is available only to a religious denomination and, as the Gangotri Dham temple is not managed or administered by any religious denomination, reliance placed on **Ratilal Panachand Gandhi**[48] is misplaced.

175. In **Dr. Subramanian Swamy**[22], the Podhu Dikshitars were held to be a religious denomination. The observations made by the Supreme Court, in the said judgment, were in the context of the rights of a religious denomination to administer its properties. As the petitioners herein have failed to establish that they are a religious denomination, entitled to the protection of Article 26(d) of the Constitution of India, reliance placed on the judgment of the Supreme Court, in **Dr. Subramanian Swamy**[22], is also misplaced.

(ix) MIS-UTILIZATION OF FUNDS OF THE TEMPLE :

176. The petitioners contend that there has never been any complaint of mis-utilization of funds, and highlight absence of a denial in the counter-affidavit. The fact that the counter-affidavit does not refer, to mis-utilization of funds by the petitioners, matters little as the by-laws, which the petitioners have made on their registering themselves into a Society in 2002, itself reflects that the entire income, remaining after expenditure is incurred, is to be distributed among the Semwal Brahmins. While clause 10(7) of the Manual, attached to the Memorandum of the Society, stipulates that the priests, working in the main Sri Ganga temple, will get 30% of the offerings and donations of the temple, Clause 11(d) thereof states that the Semwal caste Brahmins of Mukhimath village, whose gotra is Bharadwaj Tripawar, are eligible to get 70% from the Brahmin income store of Sri 5 Temple Committee. Distribution of the entire income of the temple, remaining after expenditure is incurred, only among members of a community appears to us to amount to mis-utilization of the funds of a public temple.

(x) IS THERE NO REPRESENTATION FOR PRIESTS IN THE CHAR DHAM DEVASTHANAM BOARD ?

177. In terms of the 1939 Rules, five of the ten members of the temple management committee were to be represented from the Pandas, who were the priests in the Gangotri Dham temple. Section 3(2)(B)(vi) of the 2019 Act requires, among the nominate members, three renowned persons, to represent the priests or hereditary priests, holder of any rights of Badri-Kedar, Yamnotri-Gangotri and from the religious Devasthanams mentioned in the Schedule of the Act, to be nominated by the State Government. The contention that the three renowned persons, mentioned in Section 3(2)(B)(vi) of the Act, can also be persons, other than the priests, is not tenable.

178. What clause (B)(vi), of Section 3(2) of the 2019 Act, stipulates is that three persons should be nominated in the Board from among (i) the priests or hereditary priests; (ii) holder of any rights of Badri-Kedar,

Yamnotri-Gangotri; and (iii) from the religious Devasthanams mentioned in the Schedule of the Act. It is only from among these three categories, that the State Government is entitled to nominate three persons, under Section 3(2)(B)(vi), as members of the Board. The word "renowned", used in clause (B)(vi) of Section 3(2) of the 2019 Act, merely confers a discretion on the State Government to choose three renowned persons from among these three categories, and the provision cannot be so read as to confer power on the State Government to pick and choose three other persons, who do not belong to any of the aforesaid three categories, as members of the Board.

179. Viewed from any angle, we are satisfied that the petitioners' claim to be a religious denomination, or of violation of their fundamental rights under Article 26 of the Constitution of India, is without merit and is liable to be rejected.

VII. ARE THE PROVISIONS OF THE 2019 ACT IN VIOLATION OF ARTICLE 25 OF THE CONSTITUTION OF INDIA :

(i) CONTENTIONS PUT FORTH BY THE PETITIONER IN SUPPORT OF HIS CLAIM THAT THE 2019 ACT IS ULTRAVIRES ARTICLE 25 :

180. Dr. Subramanian Swamy would submit that the term "matters of religion", in Article 26(b) of the Constitution of India, is synonymous with the term "religion" in Article 25(1) of the Constitution of India; as held by the Supreme Court, in **Govindlalji**[49], Article 26 not only includes religious beliefs but also such religious practices and rites as are regarded to be an essential and integral part of religion; in **Ratilal Panachand Gandhi**[48], the Supreme Court held that, subject to the restrictions which Article 25 imposes, every person has a fundamental right under the Constitution not merely to entertain religious beliefs, but to exhibit his belief and ideas, and to propagate his religious views; what sub-clause (a) of clause (2) of Article 25 contemplates is not State regulation of religious practices which are protected, unless they run counter to public health or morality, but of activities which are really of an economic, commercial or political character though they are associated with religious practices; under Section

2(d) of the Act, all property is under the control of “Char Dham Board” i.e. under State control; the definition showcases the avaricious intent of the Act which is to interfere with religious matters of all services, decorations and take over of all property, movable or immovable, belonging to or given for worship under the garb of secular activities; since these ornaments and clothes of the idols can now be inspected by the CEO under Section 21 of the Act, such inspection amounts to interference with the religious activities of the temple; the aforesaid provisions, therefore, violate Article 25 of the Constitution; such religious services are incidental to matters of religion, and are included in religious affairs / matters; Chapters VI and VII, in Sections 19 to 31 of the 2019 Act, violate Article 25; in the Statement of Objects and Reasons, as submitted to the Uttarakhand Legislative Assembly, the basis for the take-over of the management is stated to be “rejuvenation of temple(s)” belonging to the sampradaya professing Sanatan Dharam, which object is violative of the faith and belief to worship enshrined in the Preamble to the Constitution read with Article 25 of the Constitution of India.

181. Dr. Subramanian Swamy would then submit that the respondent has referred to various judgments, including **Seshammal**[58], in the context of “Archakas appointment being a secular activity” which comes under the management of the government; the impugned Act regulates the appointment / removal / engagement and disqualification of trustees, priests, Rawals etc, and fails to even mention “Archakas”; there is a difference between an Archaka and a priest; an Archaka is not a priest; he may be an accomplished person well-versed in the agamas and rituals to be performed in a temple, but he does not have the status of a spiritual head; the word Archaka has been derived from Archa meaning idol; a priest alone is allowed personally to attend upon the idol; his duties are those of offering of worship in the temple on behalf of the community (**Narasimha Thathacharya v. Anantha Bhatta**[128]); Sections 28, 29, 30, 31 [Chapter VII] are violative of Article 25 of the Constitution of India; the role of the priest is a religious matter, and such interference is violative of Article 25 of

the Constitution of India, read with the freedom of faith and belief to worship under the preamble; the Government can wield its power to appoint or remove the trustees/priests, and compel them to obey all orders of the Government or its servants on pain of prosecution and dismissal; in devious ways the Government can remove the trustees and replace them; it is plain that Article 25 of the Constitution of India is rendered nugatory and *non est* in such a scenario, which is illegal and unconstitutional; and thus, in considering the reasonable restrictions on the fundamental religious freedom guaranteed under Article 25 of the Constitution, the restrictions imposed by the 2019 Act, on the fundamental rights of Hindu devotees, are ultra vires the constitutional rights of Hindus.

(ii) <u>CONTENTIONS URGED ON BEHALF OF THE RESPONDENTS</u> :

182. It is contended, on behalf of the respondents, that Article 25 is an individual right which is subject to the provisions of Part III of the Constitution of India; the rights conferred by Article 25 are not absolute; freedom under this Article can be regulated by a law relating to the secular activities which may be associated with religious practices; the secular activities, of religious institutions of a public character, are subject to a law made by the competent Legislature; Article 25(2)(a) of the Constitution of India relates to “social activity, social welfare and reform”; the Explanation to Article 25 includes Sikhs, Jains and Buddhists as Hindus; these communities have no connection with the Char Dham temples ; appointment of a trustee is a part of “social reform” under Article 25(2); administration of temples, appointment of priests etc, are all secular activities; Section 21 of the 2019 Act merely confers a right of inspection, and does not interfere with the religious activities of the temple; Article 25 of the Constitution of India clearly stipulates what the State Government can and cannot do, while making a law to regulate the right to freedom of religion guaranteed under the Constitution; in view of Article 25(1) of the Constitution of India, it is only religious activities which cannot be controlled by law; the petitioners have not pleaded that any of their rights to undertake religious activities, or their right to conscience, or even the right to freely profess, practice and

propagate religion, has been taken away by the 2019 Act; the said Article distinguishes religious activities from secular activities; it also subjects religious activities to public order, morality and health, and to the other provisions of Part-III of the Constitution; all activities, which do not form an integral part of religion, can be termed as secular activities; thus all management activities, including economic/financial/ administrative activities, are secular activities; the State can make a law to control the secular activities, of public character Hindu religious institutions, under Article 25 of the Constitution of India; any law made under Articles 25(2) (a) and (b) of the Constitution of India, for managing the secular activities of public temples, have a perpetuity attached to it; the present Act falls within the ambit of Article 25 whereby the secular activities alone are controlled, and not the religious activities of the temple; officers and servants were also appointed under the 1939 Act which stipulated that the Priests of the concerned temples should be appointed by a committee constituted by the State Government, and their service conditions be governed as per Rules; the secular activities of both the Badrinath and Kedarnath temples were governed by the law in place, till the 2019 Act was enacted in furtherance of the earlier 1939 Act; the distinction between Public and Private Temples has been well recognized; applying the tests laid down in this regard, all temples, in the Schedule to the 2019 Act, satisfy the ingredients to be characterised as Public Temples, irrespective of their being managed earlier either by the Committee constituted by the State Government, or through some family settlement/society; the 2019 Act falls within the ambit of Article 25 as it only controls the secular activities of public character temples; money received in the form of donations or as contributions, from Hindu worshippers in a public temple, can be controlled and managed by way of a law; each and every Section of the 2019 Act clearly stipulate that the said Act has been framed with the purpose of giving better management of the secular activities of public character temples (to which the 2019 Act applies), and to provide facilities for the proper worship and darshan of the public at large; not a single Section of the 2019 Act curtails any of the religious activities/freedoms guaranteed to the public at large under Article

25 of the Constitution of India; and, in the present case, it is not even pleaded, much less established, that any religious activities of the petitioner have been curtailed by the 2019 Act.

(iii) <u>ARTICLE 25: ITS SCOPE</u> :

183. As we have already held that the petitioners do not have any fundamental right under Article 26 of the Constitution which they can claim violation of, the next question which necessitates examination is whether the 2019 Act violates the petitioners' fundamental rights under Article 25 of the Constitution. Before examining the rival contentions in this regard, it is useful to take note of the scope and ambit of the said Article.

184. Articles 25 to 28, in Part III of the Constitution, are placed under the sub-title "Right to Freedom of Religion" and deal with matters in the background of that freedom. Article 25 relates to freedom of conscience and free profession, practice and propagation of religion. Under clause (1) thereof, subject to public order, morality and health and to the other provisions of Part III, all persons are equally entitled to freedom of conscience, and the right freely to profess, practice and propagate religion. Article 25 is made subject to "public order, morality and health" and also "to the other provisions of Part III". **(Acharya Maharajshri Narendra Prasadji Anand Prasadji Maharaj[124])**. Article 25 secures to every person the freedom not only to entertain such religious beliefs, as may be approved of by his judgment and conscience, but also to exhibit his belief in such outward acts as he thinks proper and to propagate or disseminate his ideas for the edification of others. What is protected is the propagation of belief, no matter whether the propagation takes place in a church or a monastery or a mosque or in a temple. **(Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt[53]**; **Pannalal Bansilal Patil[35]**; **Lakshamana Yatendrulu and Ors. v. State of Andhra Pradesh and Ors.[129]**; and **N. Adithayan[57])**. The freedom guaranteed by Article 25 applies not only to religious minorities, but to all persons. (**T. Krishnan v. G.D.M. Committee[130];** and **S.P. Mittal[63]**).

185. The protection of Article 25 of the Constitution is not limited to matters of doctrine. They extend also to acts done in furtherance of religion and, therefore, they contain a guarantee for rituals and observances, ceremonies and modes of worships which are integral parts of religion. Performing rituals in temples for the idol, to sustain the faith of people, is important. So is the need for performance of elaborate ritual ceremonies accompanied by chanting of mantras appropriate to the Deity. (**A.S. Narayana Deekshitulu**[3]). Article 25 strikes a balance between the rigidity of the right to religious belief and faith, and their intrinsic restrictions in matters of religion, religious beliefs and religious practices, and guaranteed freedom of conscience. (**Sri Adi Visheshwara**[5]**;** and **N. Adithayan**[57]**)**.

186. The right under Article 25 is not absolute or unfettered, but subject to legislation by the State limiting or regulating any secular activity associated with the religious belief, faith, practice or custom. **(Bhuri Nath and Ors. v. State of J&K and Ors.**[131]**;** and **N. Adithayan**[57]). Clause (2)(a) of Article 25 reserves the right of the State to regulate or restrict any economic, financial, political and other secular activities which may be associated with religious practice, and there is a further right given to the State, by sub-clause (b), to legislate for social welfare and reform even though, by so doing, it might interfere with religious practices. (**Lakshmindra Thirtha Swamiar of Sri Shirur Mutt**[53]).

187. The provision for protection of religion is not an absolute protection to be interpreted and applied independent of the other provisions of the Constitution. These privileges must be reconciled with the right of the State to employ the sovereign power to ensure peace, security and orderly living without which the constitutional guarantee of civil liberty would be a mockery. (**Lakshmindra Thirtha Swamiar of Sri Shirur Mutt**[53]**)**. It is not every aspect of religion that requires the protection of Article 25, nor has the Constitution provided that every religious activity would not be interfered with. Every mundane human activity is not intended to be protected under the Constitution in the garb of religion. Article 25 must be viewed with pragmatism. (**Sri Adi Visheshwara**[5]**)**. The guarantee of

religious practice is in-built in every religion, but is subject to Article 25 and other provisions of the Constitution. **(Sri Lakshmindra Tirtha Swamiar of Sri Shirur Mutt[53]; Ratilal Panachand Gandhi[48];** and **Pannalal Bansilal Patil[35]**).

188. All secular activities which may be associated with religion, but which do not relate or constitute an essential part of it, may be amenable to State regulation. **(Sri Adi Visheshwara[5];** and **N. Adithayan[57])**. The State can control secular matters connected with religion. **(Seshammal[58]**; and **Shri Jagannath Temple Puri Management Committee represented through its Administrator and Ors. v. Chintamani Khuntia and Ors.[132])**. The legislature is empowered to enact a law regulating the secular aspect of the management of the temple or the religious institution or endowment. **(Sri Adi Visheshwara[5])**.

189. In deciding the question whether a given religious practice is an integral part of religion or not, the test would, ordinarily, be whether or not it is regarded as such by the community following the religion. (**Tilkayat Shri Govindlalji Maharaj[4]**). Whether the practice in question is religious in character, and whether it can be regarded as an integral and essential part of religion, must be determined by the Court upon the evidence adduced before it. **(Sri Adi Visheshwara[5];** and **N. Adithayan[57])**. Matters of religion and religious practices are essentially a question of fact to be considered, in the context in which the question arises, on the basis of material-factual or legislative or historic, if need be, giving a go bye to claims based merely on those which are not really, essentially or integrally, matters of religion or religious belief or faith or religious practice. **(Bhuri Nath[131]**; and **N. Adithayan[57]**). Though the performance of certain duties is a part of religion, and the person performing such duties is also a part of the religious faith, it should be carefully examined and considered whether it is a matter of religion or of the secular management by the State. **(Sri Adi Visheshwara[5];** and **N. Adithayan[57])**.

190. If an obviously secular matter is claimed to be a matter of religion, or if an obviously secular practice is alleged to be a religious practice, the Court would be justified in rejecting the claim because the protection, guaranteed by Article 25(1), cannot be extended to secular practices which are not matters of religion; and so, a claim made by a citizen that a purely secular act amounts to a religious practice, should be rejected on the ground that it is based on irrational considerations and cannot attract the provisions of Article 25(1). (**Tilkayat Shri Govindlalji Maharaj**[4]; and **N. Adithayan**[57]**)**.

191. The Court should take a common sense view and be actuated by considerations of practical necessity. (**Sri Lakshmindra Thirtha Swamiar of Shri Shirur Mutt**[53]; and **Ratilal Panachand Gandhi**[48]). The protection must be confined only to such religious practices as are an essential and an integral part of it, and no other. (**The Durgah Committee, Ajmer**[61]**)**. Though the task of disengaging the secular from the religious may not be easy, it must nevertheless be attempted in dealing with the claims for protection under Article 25. It is necessary that, in judging the merits of the claim, the Court must be satisfied that the practice is religious and the affair is in regard to a matter of religion. (**N. Adithayan**[57]**)**.

(iv) <u>PUBLIC AND PRIVATE TEMPLES : THEIR DISTINCTION</u> :

192. Before examining the petitioner's contention that the 2019 Act interferes with the religious affairs of the temples, and confers on the Board and the Chief Executive Officer the power to do so, it is useful to also note the distinction between public and private temples. Whether or not a particular temple is a public temple must, necessarily, be considered in the light of relevant facts. A temple, belonging to a family, which is a private temple is not unknown to Hindu law. In the case of a private temple, it is also not unlikely that the religious reputation of the founder may be of such a high order that the private temple, founded by him, may attract devotees in large numbers, and the mere fact that a large number of devotees are allowed to worship in the temple would not, necessarily, make a private temple a

public temple. On the other hand, a public temple can be built by subscriptions raised by the public, and a deity installed, to enable all members of the public to offer worship. In such a case, the temple would clearly be a public temple. (**Tilkayat Shri Govindlalji Maharaj[4])**.

193. Where evidence in regard to the nature of the temple is not clearly available, reliance is sometimes placed on certain other facts which are treated as relevant. Is the temple built in such an imposing manner that it may, *prima facie*, appear to be a public temple ? The appearance of the temple cannot be a decisive factor; at best it may be a relevant factor. Are the members of the public entitled to an entry in the temple ? Are they entitled to take part in offering service and taking darshan in the temple ? Are the members of the public entitled to take part in the festivals and ceremonies arranged in the temple ? Are their offerings accepted as a matter of right ? The participation of members of the public in the darshan of the deity in the temple, and in the daily acts of worship or in the celebration of festivals, is an important factor in determining the character of the temple. (**Tilkayat Shri Govindlalji Maharaj[4])**. If no such evidence has been led, and it is also not shown that admission to the temple is controlled or regulated or that there are other factors present which indicate clearly that the temple is a private temple, **(Tilkayat Shri Govindlalji Maharaj[4]**), then the temple must be held to be a public temple.

194. The Char Dham temples are all public temples. None of them, including the Gangotri temple, belong to a family nor are they, as held earlier, been established by a religious denomination. In the affidavit filed in support of Writ Petition (M/S) No.700 of 2020, the petitioners acknowledge that the temple was built with donations from the public. The public at large has the right to worship the deity in all the Char Dham and associated temples. They are also entitled, as of right, to enter the temples and have darshan of the deity in these temples. The general public is also entitled to place their offerings to the deity in all these temples. No evidence has been placed, by the petitioner, on record to show that admission, into these temples, is controlled or regulated or restricted to a particular class of

people. The factors, to indicate that they are private temples, are not to be found in the Char Dham and associated temples. We are satisfied, therefore, that all the Char Dham and associated temples are public temples whose secular functions can be regulated by a law made by the competent legislature.

(v) <u>PROVISIONS OF THE 2019 ACT WHICH PROTECT THE RELIGIOUS AFFAIRS OF THE CHAR DHAM TEMPLES</u> :

195. While the legislature has the power to make a law regulating the secular activities, associated with the religious practices of public temples, the 2019 Act, besides providing for such a regulation, also contains provisions which, explicitly, protect religious practices in the Char Dham and associated temples. It is useful, therefore, to note the provisions of the Act which protect the religious affairs of these temples. Section 19(1) of the 2019 Act stipulates that the matter of Dustoor/rights prevailing presently, payable to priest/trustee/ teerth purohits/panda, related to Hak-Hakukdari, shall remain as it is. Section 19(2) stipulates that a trustee of the Char Dham Devasthanam, covered under the Act, shall administer his/her office as per customs and usage of the institutions. Section 28(1) stipulates that, in appointing Priests, Rawal, Trustees etc for the Char Dham Devasthanams, the CEO shall have due regard to the religious denomination, customary and hereditary rights. Section 4(7) of the 2019 Act confers power on the Char Dham Devasthanam Board to constitute a committee to hear any matter or dispute regarding customary and hereditary rights, and the rights of Hak-Hakukdars. The power of modification-addition of any type regarding the aforesaid, lies with the Board. Section 35(1) requires the CEO, in consultation with the trustee or priest etc, to prepare the annual budget for each devasthanam governed under the 2019 Act. Section 35(2)(a) requires every such budget to make adequate provisions for the scale of expenditure for the time being in force, and the customary expenditure.

196. Not only are matters of dustoor/rights, payable to priests/threeth purohits/pandas related to Hak-Hakudari, as presently prevailing, required to remain as it is, but the trustees are also conferred the power to administer

their office as per the custom and usage of the institutions. Due regard must be had to the religious denomination, customary and hereditary rights in making appointment of priests, Rawal, trustees etc. Disputes regarding hereditary and customary rights, and the rights of Hak-Hakudari, are required to be resolved by the Char Dham Devasthanam Board. The budget for each devasthanam is required to be prepared in consultation with the priests/trustees, and the budget is required to make adequate provision for customary expenditure.

(vi) <u>PROVISIONS IN THE 2019 ACT RELATING TO SECULAR ACTIVITIES</u> :

197. Let us now examine the provisions of the 2019 Act, which relate to regulation of the secular activities of the temples. Section 4(1) confers on the Board the power to frame policies, make decisions to give effect to the provisions of the 2019 Act, budget formulation and sanction of expenditure and planning and management of the Devasthanam area, and the modernization of management systems. Section 4(2) enables the Board to give directions for the safe custody, preservation and management of funds, valuable securities, jewelleries, properties vested in all the religious temples mentioned in the Schedule of the Act. Section 4(6) requires the Board to supervise, direct and control all activities that may be conducive and incidental to the efficient management of the temples or for the convenience of the pilgrims. Section 10(1) provides for the constitution of a High level Committee for inter-departmental cooperation for smooth conduct of the Yatra/pilgrimage. Section 11(1) requires the High Level Committee to establish coordination, between various departments, for execution of the decisions to be taken by the Board under the Act for smooth conduct of pilgrimage.

198. Section 15(1) stipulates that the administration of the Char Dham, and the associated temples, shall be under the general supervision and control of the CEO who is empowered to pass orders to ensure that the Devasthanams are properly administered, the earnings are properly credited to the Uttarakhand Char Dham Fund, and are properly utilized. The CEO is

required to exercise his powers and perform the functions entrusted to him/her under the Act and the Rules. Section 15(2) requires the CEO to undertake Devasthanam area development, and activities such as boarding and lodging, medical services, hygiene sanitation facilities, adequate means of transportation, communication facilities, modernization of management systems, and welfare of purohits and local stakeholders, for the benefit of worshippers, pilgrims and tourists without distinction. Section 15(3) requires the CEO to make arrangements for the safe custody of funds, valuables, gold and jewellery, and for preservation of the property vested in the Deities, and to maintain proper accounts in respect thereof. Section 15(4) requires the CEO to fix the remuneration of priests, office holders, trustees etc after approval from the Board.

199. Section 17(1) stipulates that, for each Devasthanam/temple covered under the Act, the CEO shall have a register prepared and maintained, in such form and manner as may be prescribed in clauses (a) to (h) thereof. Section 17(2) requires this information to be stored in the form of a website, for viewing on the internet, under a suitable name. Section 18 relates to annual verification of Registers. Section 19(3) requires the trustee/authorized agent to scrutinize, and bring to the notice of the CEO, any omissions or wrongful entries in the registers prepared under Section 17 or 18. Section 21(1) enables the CEO, or any other person authorized by him/her, to inspect all movable and immovable property belonging to the Devasthanams etc.

200. Section 29 confers power on the CEO to suspend, remove or dismiss the trustees, or a priest etc of any Char Dham Devasthanams on the grounds mentioned therein. Section 32(1) stipulates that there shall be constituted the ‘Uttarakhand Char Dham Fund’ which shall be vested in, and be administered by, the CEO with the approval of the Board. Section 32(2) requires all such funds to be deposited in the account of the Board in a nationalized bank or other bank approved by the Reserve Bank of India. All incomes of the religious Devasthanams, and other religious institutions, are required to be credited to this fund. Section 32(5) enables the CEO, on

obtaining sanction from the Board, to incur expenditure for the fulfillment of the objects under the Act, and pay emoluments to its employees and honorarium to its members from this fund. Section 32(7) enables the Board to receive donations, carry out works as mentioned under the Act, and to carry out other works of public interest.

201. The 2019 Act has demarcated and drawn a distinction between the secular and the religious activities of the Char Dham temples. The said Act contains safeguards against interference with the religious activities of the Rawals / priests in the performance of rituals and ceremonies and services according to Hindu Sastras, customs, usages and practices as applicable and prevailing in these temples. The secular activities, associated with the temple, have been entrusted to the supervision and control of the Board and the Chief Executive Officer **(Sri Adi Visheshwara[5])**. The 2019 Act restricts the power of the Chief Executive Officer to enter the temples, cause inspection and appoint priests/Rawals/trustees, and requires him to have due regard to customs / usages etc. The 2019 Act does not interfere with the religious activities of the priests who have the freedom to perform daily or periodical rituals and ceremonies as are in vogue **(Sri Adi Visheshwara[5])**.

(vii) <u>MANAGEMENT OF PUBLIC TEMPLES PARTAKES A SECULAR CHARACTER</u> :

202. The contention that the 2019 Act discloses the avaricious intent of the State to interfere with religious matters, and its intent to take over the properties of the temple given for worship, under the garb of secular activities, is devoid of merit. Section 2(d) of the 2019 Act defines ‘Char Dham’ to mean the Shri Badrinath Dham, Shri Kedarnath Dham and the holy Devasthanams of Gangotri and Yamunotri in Uttarakhand, the temples mentioned in the Schedule of the Act, and such temples as are notified by the State Government from time to time, and includes: (i) all property, movable or immovable, belonging to or given for worship in maintenance or improvement of, for the performance of any service or charity connected therewith; and (ii) the idols established in the temple, clothes, ornaments and

other things for decoration etc. It is evident, from the aforesaid definition, that "Char Dham" refers to the specified temples along with its properties, idols, ornaments, clothes, decoration items etc. The funds, valuable securities, jewelleries, properties are vested, in terms of Section 4(2), in the religious temples mentioned in the Schedule to the Act, and power is conferred on the Char Dham Devasthanam Board, under Section 4(1) of the 2019 Act, to give directions for its safe custody, preservation and management. The definition of "Char Dham", (which includes the properties given for worship and the idols established in the temples), cannot be read out of context or be understood as if the properties of the Char Dham temples are vested in the Char Dham Board. All that the 2019 Act provides is for the Char Dham Board to administer the secular functions of these temples, and manage its properties.

203. The State has the requisite jurisdiction to oversee the administration of a temple subject to Article 25 of the Constitution of India. (**M.P. Gopalakrishnan Nair**[62]). The management of a temple is, primarily, a secular act. (**Chintamani Khuntia and Ors.**[132]**; Pannalal Bansilal Patil**[35]**; Bhuri Nath**[131]**;** and **M.P. Gopalakrishnan Nair**[62]). The right to manage the Temple or endowment is not integral to religion or religious practice or religion as such, and is amenable to statutory control. (**Sri Adi Visheshwara**[5]**)**.

204. In **Tilkayat Shri Govindlalji Maharaj**[4], the Supreme Court held that the right to manage the properties of the temple is a purely secular matter, and it cannot be regarded as a religious practice falling under Article 25(1), or as amounting to affairs in matters of religion; if the temple had been private, and the properties of the temple had belonged to the religious denomination, it was another matter; but once it is held that the temple is a public temple, it was difficult to accede to the argument that the tenets required, as a matter of religion, that the properties must be managed by the religious denomination; the course of conduct, based on that belief, may have spread for many years, but such a course of conduct could not be regarded as giving rise to a religious practice under Article 25(1).

205. The management or administration of a temple partakes a secular character as opposed to the religious aspect of the matter. **(M.P. Gopalakrishnan Nair[62])**. The right to manage the temple is not integral to religion or religious practice, and is amenable to statutory control. These secular activities are subject to State regulation. **(Sri Adi Visheshwara[5])**. The right to manage the properties of a temple is a purely secular matter, and cannot be regarded as a religious practice under Article 25(1). An enactment will not contravene Article 25(1), if the temple properties are brought under the management of a temple Committee. **(Tilkayat Shri Govindlalji Maharaj[4];** and **Chintamani Khuntia and Ors.[132])**. The contention that, by the 2019 Act, the State intends taking over temple properties, therefore, necessitate rejection.

(viii) <u>EXERCISE OF DISCIPLINARY CONTROL OVER PRIESTS/TRUSTEES, AND PAYMENT OF REMUNERATION TO THEM, ARE SECULAR ACTS</u> :

206. The maintenance of discipline and order inside the temple, can be controlled by the State. As the management of the temple is a secular act, the temple authority may also control the activities of various servants of the temple. The disciplinary power over the servants of the temple, including the priests, may be given to the temple committee appointed by the State. The temple committee can decide the quantum and manner of payment of remuneration to the servants. Merely because a system of payment is prevalent, for a number of years, is no ground for holding that such system must continue for all times to come. The payment of remuneration to the temple servants is not a religious act, but is of a secular nature. **(Seshammal[58]**; and **Chintamani Khuntia and Ors.[132])**.

207. The temple authority controls the activities of various servants of the temple. The disciplinary power over servants of the temple, including the priest may vest in a committee or an authority. Neither are exercise of disciplinary powers over priests, nor is payment of remuneration to temple servants, a religious act. They are all purely secular in nature. (**Chintamani**

Khuntia and Ors.[132]**, Pannalal Bansilal Patil**[35]**; Bhuri Nath and Ors.**[131]**;** and **M.P. Gopalakrishnan Nair**[62]**)**.

208. The petitioners' contention that Archakas are not priests is not tenable. In any event, the law laid down in the judgments of the Supreme Court relate not only to Archakas but also to priests and pujaris of temples. The archaka or the priest occupies a place of importance in the performance of ceremonial rituals. A qualified archaka should observe daily discipline imposed upon him by the Agamas according to tradition, usage and customs of the temple. (**Seshammal and Ors.**[58]**; A.S. Narayana Deekshitulu**[3]**;** and **Sri Adi Visheshwara**[5]). Worshippers lay great store by the rituals which are a part of the Hindu religious faith. (**N. Adithayan**[57]**)**.

209. Compilation of treatises on the construction of temples, installation of idols therein, rituals to be performed and conduct of worship therein, known as "Agamas", came to be made with the establishment of temples and the institution of Archakas. Where the temple was constructed as per Agamas, the idol had to be consecrated in accordance with an elaborate and complicated ritual accompanied by chanting of mantras and devotional songs appropriate to the deity. Thereafter for continuing the divine spirit, which is considered to have descended into the idol on consecration, daily worship was made. (**N. Adithayan**[57]**)**.

210. In temples in which the idols are consecrated, the Agamas insist that only the qualified Archaka or Pujari step inside the sanctum sanctorum, and that too after observing the daily discipline which are imposed upon him by the Agamas. Thus, under the ceremonial law pertaining to temples, even the question as to who is entitled to enter the Garbhagriha or the sanctum sanctorum, who is not entitled to enter it, and who can worship and from which place in the temple, are all matters of religion. (**N. Adithayan**[57]**)**.

211. The Agamas have rules with regard to Archakas. In Saivite temples only a devotee of Siva and, there too, one belonging to a particular denomination or group or sub-group is entitled to be the Archaka. If he is a

Saivite, he cannot possibly be an Archaka in a Vaishnavite Agama temple to whatever caste he may belong, and however learned he may be. Similarly, a Vaishnavite Archaka has no place as an Archaka in a Saivite temple. Indeed there is no bar to a Saivite worshipping in a Vaishnavite temple as a lay worshipper or vice versa.What the Agamas prohibit is his appointment as an Archaka in a temple of a different denomination. (**N. Adithayan[57])**.

212. Appointment of an Archaka is a secular act even though, after appointment, the Archaka discharges religious duties. His position is that of a servant subject to the disciplinary authority of the prescribed authority. **(Seshammal and Ors.[58]**; and **Chintamani Khuntia and Ors.[132])**. An Archaka (Priest) is not an integral part of religion, as he performs all religious tenets or ceremonies in a temple as a servant of the Temple. The priests / purohits / Archakas owe their existence to an appointment. They are servants of the temple, and their services are terminable on grounds of misconduct or unfitness to perform service, rituals/ceremonies in accordance with Hindu Sastras, customs and practices prevailing in the temple handed down from centuries. **(Sri Adi Visheshwara[5])**.

213. Chapter VI of the 2019 Act relates to administration and management of the Char Dham Devasthanams, and Chapter VII relates to appointment, engagement and disqualification of trustees, priests, rawal etc. As noted hereinabove Section 19, which relates to the duties and rights of trustees and Hak-Hakkukdari, and Section 28, which prescribes the procedure for making appointment and engagement of priests, rawal, trustee etc and their term, protects the religious practices of these temples. Section 19(1) stipulates that the dustoor/rights prevailing presently, payable to the priests/trustee/teerth purohits/panda relating to Hak-Hakukdari, shall remain as it is. Section 19(2) stipulates that a trustee of the Char Dham Devasthanams, covered under the 2019 Act, should administer his/her office as per customs and usage of the institutions, besides complying with the lawful directions which the CEO may give. The trustee of the Char Dham institutions cannot be asked to contravene the customs and usages of the institutions, for such customs and usages are now protected by Section 19(2)

of the 2019 Act. The obligation placed by Section 19(3) on the trustee, to inform the CEO of any omissions or wrongful entries in the registers, is to ensure that the registers of each Devasthanam temple is properly maintained, and reflect correctly the particulars stipulated therein. Even if an illegal direction is given by the CEO, the trustee is entitled, under Section 19(3) of the 2019 Act, to prefer an appeal thereagainst to the Char Dham Devasthanam Board.

214. The contention that Sections 28 to 31 of the 2019 Act violate Article 25 of the Constitution does not also merit acceptance. Section 28(1) adequately safeguards the religious activities, associated with these temples, by ensuring that the rawals/priests are appointed only from the concerned religious denomination, or as per customary and hereditary rights. The said provision also obligates the CEO to obtain approval of the Board before making any such appointment of priests/rawals, thereby ensuring that no appointment is made contrary to their customary and hereditary rights, or of any person other than one who belongs to the religious denomination from which these priests/rawals have always been appointed.

215. It is not as if the CEO can remove the trustees or priests at his whim or fancy. The power to remove trustees, priests etc, conferred by Section 29(1) of the 2019 Act on the CEO, is only if the grounds, referred to in clauses (a) to (e) thereunder, are attracted. Exercise of this power by the CEO is subject to appeal. A priest or trustee, aggrieved by the decision of the CEO, can prefer an appeal to the Char Dham Devasthanam Board. As Section 3(2)(B)(vi) of the 2019 Act requires the Board to consist, among others, of three persons representing the priests or hereditary priests etc, it is difficult to accept the submission that the Government can wield its power to appoint or remove the trustees/priests, and compel them to obey all orders of the Government or its servants, on pain of prosecution and dismissal; or that the Government can remove the trustees and replace them at their whim.

216. The CEO and the Char Dham Devasthanam Board are creatures of the 2019 Act, and must act in strict compliance with the provisions of the

said Act. The apprehension that they may act at their mere whim, or adopt devious ways to remove the trustees, is unfounded. In the unlikely event of the trustees and priests being illegally removed, or dismissed from service, it is always open to them to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

217. Section 30 relates to the disqualification of trustees, rawals, priests etc and it is only if the trustees, priests or rawal suffer from any of the disqualifications stipulated in clauses (a) to (j), would they then be disqualified from being appointed, or to be discontinued, as a trustee, priest or rawal. Section 31 relates to the filling of vacancies in the office of hereditary priest, trustee, rawal or priest. None of these provisions interfere with the religious affairs of the temples. The object of the 2019 Act is to provide amenities to devotees visiting the Char Dham temples. No restrictions are imposed by the Act on the right of devotees to worship at these temples.

218. Except for a vague and bald assertion that Chapters VI and VII, in Section 19 to 31, of the 2019 Act violate Article 25, the petitioner has not been able to show which particular provision interferes with the religious affairs/activities of these temples.

(ix) <u>POWER OF INSPECTION, CONFERRED ON THE CEO, DOES NOT RESULT IN INTERFERENCE WITH THE RELIGIOUS ACTIVITIES OF THE TEMPLES</u> :

219. Section 21 of the 2019 Act relates to inspection of property and documents and, under sub-section (1) thereof, the CEO, or any person authorised by him/her in this behalf, may, with due regard to the religious practices and usages of the Char Dhams and the Devasthanams, inspect all moveable and immovable property belonging to the Devasthanams, and all records, correspondence, plans, accounts and other documents for the purpose of satisfying himself/herself that the provisions of the Act, and the Rules made thereunder, are duly carried on; and it shall be the duty of the trustee or the priest of such Devasthanam, and all officers working under

him/her, his/her agent, and any person having concern in the administration thereof, to afford all such assistance and facilities as may be necessary or reasonably required in regard to such inspection, and also to produce any such moveable property or document for inspection, as required. Section 21(2) stipulates that, for the purpose of inspection as aforesaid, the inspecting authority, subject to the local practice, custom or usage, may enter, at any reasonable time, the premises of the Char Dham Devasthanams or any place of worship covered under the 2019 Act. Section 21(3) stipulates that nothing in this section shall be deemed to authorise any person to enter the premises or place, referred to in sub-section (2) or any part thereof, unless such person professes Hindu religion or the religion to which the premises or place belongs.

220. The words "Hindu Religion", in Section 21(3) of the 2019 Act, derive their meaning from the definition in Section 2(l), in terms of which "Hindu Religion" means such sects of Hindus professing Sanatana Dharma or having faith in it. It is only those Hindus, who profess and have faith in Sanatana Dharma, who are authorized to enter the premises of these temples for inspection. Persons, who do not profess or have faith in the Sanatana Dharma, are prohibited, by Section 21(3), from entering the premises, or places referred to in Section 21(2) of the 2019 Act, for inspection of properties.

221. Section 21(1) requires the CEO, while exercising his right of inspection, to have due regard to the religious practices and usages of the Char Dham and the Devasthanams. If the religious practices and usages of the Char Dham restrict or regulate any such inspection, the CEO is obligated, in terms of Section 21(1), to adhere to such religious practices and usages while causing inspection. In view of the restrictions placed by Section 21(2) of the 2019 Act, the inspecting authority can enter the temple premises only at a reasonable time, that too subject to local practice, custom or usage. The word "reasonable time", in Section 21(2), suggests that the CEO cannot enter the temple premises any time he chooses. The right conferred on him, by Section 21(2) of the 2019 Act, to enter the premises of

the Char Dham temples and Devasthanams, or any place of worship covered under the 2019 Act, for the purpose of inspection, is also subject to local practice, custom or usage. For instance, if the temple is closed in order to perform religious rituals, and such religious practices prohibit outsiders from entering the temple for the said duration, the CEO cannot, even for the purpose of inspection, enter the temple during such period. The mere fact that the power of inspection is conferred on the CEO, that too only for the purpose of satisfying himself/herself that the provisions of the 2019 Act and the Rules made thereunder are duly carried out, cannot be construed as an interference with the religious activities of the temple, as an inspection is caused only to ensure that the provisions of the 2019 Act and the Rules are properly and effectively implemented.

(x) <u>COLLECTION OF OFFERINGS, AND INSTALLATION OF HUNDIS, IN PUBLIC TEMPLES IS A SECULAR ACT</u> :

222. Under Section 3 (b) of the Shri Badrinath and Shri Kedarnath Temple Act, gifts made by pilgrims, became part of the endowment, and the donees were incapable of laying any claim thereto. Bye-law (8) of the Puja Bye-laws, framed by the temple committee, prevented a person, other than those whose rights had been specifically recognised by the Committee, from receiving any gifts within the precincts of the temple. This was a legitimate provision, the making of which was within the rule-making authority of the committee of management. (**Nar Hari Sastri and Ors.**[116]). Section 34(1) of the 2019 Act confers power on the Board to install such receptacles/Hundis as it may think fit for placing of offerings by pilgrims and devotees visiting the temple. Section 34(3) requires such portion of the offerings placed in a Hundi, as the Board may from time to time direct, to be credited to the Uttarakhand Char Dham Fund. Section 34(5) stipulates that, notwithstanding anything to the contrary contained in any law, custom, usage or agreement or in the record of reports, no priest/rawal is entitled to any share in the offerings placed in any Hundi installed after the commencement of the 2019 Act.

223. Collection and distribution of money, even though given as offerings to the deity, is not a religious practice. The offerings, whether of money, fruits, flowers or any other thing, are no doubt given to the deity. The religious practice ends with these offerings. Collection and distribution of these offerings or retention of a portion of the offerings for maintenance and upkeep of the temple are secular activities. These activities belong to the domain of management and administration of the temple. (**Chintamani Khuntia and Ors.[132])**. The right to receive offerings from the pilgrims is incidental to the service rendered by the archakas (priest). Independent of service, there is no right to receive offerings from a pilgrim or the devotee. **(Sri Adi Visheshwara[5])**.

224. Installation of Hundis, for collection of offerings made by devotees inside the temple, does not violate the religious rights of the priests of the temple in any manner, even though they are denied any share of the offerings made in the Hundis. (**Chintamani Khuntia and Ors.[132];** and **Seshammal[58])**. The provisions of the 2019 Act requiring installation of Hundis in these temples, and in disentitling the priest/rawal to any share in the offerings placed in any Hundi installed after the commencement of the 2019 Act, do not amount to interference in the religious affairs of the temple.

(xi) <u>LEGISLATIVE ENDEAVOUR TO REJUVENATE THE CHAR DHAM TEMPLES DOES NOT AMOUNT TO INTERFERENCE IN ITS RELIGIOUS AFFAIRS</u> :

225. The statement of objects and reasons for introducing the Bill, which resulted in the 2019 Act being made, recognizes the importance of rejuvenating the Gangotri and Yamunotri and other famous temples; and that it was found necessary to make legal provisions for the Char Dham Devasthanams in Uttarakhand. The preamble of the Act shows that the 2019 Act was made to provide for rejuvenation of the Char Dham and other famous temples located in Uttarakhand, and to manage the Devasthanam Management Board.

226. The various secular activities, referred to hereinabove, are statutorily prescribed to ensure smooth conduct of the Char Dham yatras for the benefit of pilgrims (Section 10(1)) whereby a High Level Committee is constituted); and to modernize the management systems (Section 4(1)). The 2019 Act obligates the CEO to undertake Devasthanam area development activities, such as boarding and lodging, medical services, hygiene sanitation facilities, adequate means of transportation, communication facilities, modernization of management systems and welfare of purohits and local stakeholders for the benefit of worshippers, pilgrims and tourists without any distinction [Section 15(2)], and to do such acts as are conducive for the convenience of pilgrims [Section 15(6)]. These provisions highlight the endeavour of the Uttarakhand State Legislature to rejuvenate, and effectively manage, the Char Dham and associated temples. The legislative object of proper, efficient, effective and sustained management of the temples, and of the Fund of the temples, should be effectuated and ensured. The 2019 Act, equally, requires the facilities for the pilgrims and worshippers for darshan, performance of pooja, rituals, ceremonies etc. to be constantly monitored by the Board, the Chief Executive Officer, and the staff under the supervision of the Board. **(Sri Adi Visheshwara[5])**. The contention that the petitioners' rights, under Article 25 of the Constitution, are violated does not, therefore, merit acceptance.

VIII. IMPACT OF ARTICLE 31-A(1)(b) OF THE CONSTITUTION OF INDIA :

(i) CONTENTIONS URGED BY THE PETITIONER :

227. Dr. Subramanian Swamy would submit that the taking over of the management of any property by the State for a limited period, either in public interest or in order to secure proper management of the property, is permissible; the words "for a limited period" would thus prohibit any takeover of the management of any property for an uncertain or unlimited period; the purposes of such limited period takeover, of the management of any property, can only be (a) either in public interest or (b) in order to secure the proper management of the property; under Section 3(2) of the Act, the

State Government has constituted a Board called the "Char Dham Devasthanam Board"; all assets and properties, belonging to the Deity, have thus been vested in a designated Government Committee; this, in effect, is a state acquisition of an ancient group of religious institutions belonging to a particular religious denomination, and departmentalization of the entire Devasthanam for an indefinite period; Article 31-A(1)(b) disables the State from taking over management of the property of a religious denomination in perpetuity; Section 3(3) of the Act shows that the Board has been constituted in perpetuity; the management of the subject temples have been taken over from a religious denomination, not for a temporary duration but in perpetuity; and Section(s) 3(2) and (3) of the Act violate Article 31-A(l)(b) of the Constitution of India.

228. He would rely on **Dr. Subramanian Swamy**[22] to submit that expropriatory orders should be construed strictly as it infringes the fundamental rights of citizens, and divests them of their legitimate rights to manage, and administer the temple for an indefinite period; supersession of the rights of administration cannot be of a permanent and enduring nature; its life should be reasonably fixed so as to be co-terminus with the removal of the consequences of mal-administration; the objective, of taking over the management and administration, is not the removal and replacement of the existing administration, but to rectify and stump out the consequences of mal-administration; and the power to regulate does not mean the power to supersede the administration for an indefinite period.

229. In support of his submission that it is not permissible for the State/Statutory Authorities to supersede the administration, by adopting any oblique/circuitous method, Dr. Subramanian Swamy would rely on **Sant Lal Gupta & Ors. v. Modern Coop. Group Housing Society Ltd. & Ors.**[133], to contend that what cannot be done directly is not permissible to be done obliquely, meaning thereby that, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of "quandoaliquidprohibetur, prohibetur et omne per quod

deveniturad illud"; and an authority cannot be permitted to evade a law by "shift or contrivance".

230. Dr. Subramanian Swamy would also rely on **Ramanlal Gulabchand Shah Etc. v. State of Gujarat and Others**[134], to submit that Article 31-A(b) provides for the taking over of the management of any property'; 'any property' means property of any kind; the words 'by the State' indicate that the taking over must be by the State; this taking over must be either in the public interest or in order to secure the proper management of the property; the taking over must be for a limited period; if the management is likely to continue for an indefinite period, it is not in any sense limited and, therefore, protection of the said provision cannot be claimed.

231. He would also refer to the judgment of the Karnataka High Court, in **Srikantadatta Narasimaharaja Wodeyar v. The State of Karnataka**[135], to submit that an order, in which no period of operation is prescribed, is unsustainable, being ex facie arbitrary, illegal and unjust; the 2019 Act permits the takeover and control of Hindu Religious Institutions for an indefinite period, and provides for removal of the management, and of vesting them in secular or other authorities to be nominated or appointed by various State Governments; the provisions of the 2019 Act are thus in violation of the fundamental rights guaranteed under Article 31-A of the Constitution of India; therefore, taking over the management of a religious institution, in all the temples and the Char Dhams mentioned in the schedule of the Act, in order to be constitutional, must be for a limited period; the supersession of rights of such administration cannot be of a permanent and enduring nature; and its life should be reasonably and explicitly fixed so as to be co-terminus with the removal of the consequences of mal-administration.

232. Dr. Subramanian Swamy would cite from page 5691 (9th Edition) of Durga Das Basu's Commentary on the Constitution of India, to submit that sub-clause (b) of Article 31-A is not restricted to industrial

undertakings alone, but extends to any kind of property movable or immovable, agricultural or non-agricultural for a limited period; the observations in **Acharya Maharajshri Narandra Prasadji Anand Prasadji Maharaj**[124] may have been made in the context of agrarian reforms, but the scope of the Article is not limited to that alone; and the said judgment did not examine the negative or destructive character of acquisition of property of a religious denomination by the State, which is the question which arises in the present case; and the question of Article 31-A was not before the court in the cited case, which relied only on Article 31, which has now been repealed.

(ii) CONTENTIONS URGED ON BEHALF OF THE RESPONDENTS:

233. It is contended, on behalf of the respondents, that Article 31-A relates to agrarian reforms; a reading of Articles 31-A and 31-B, with the Ninth Schedule to the Constitution of India, suggests that these provisions are a shield, provided by the Constitution, for certain classes of Legislation necessary for the economic development of the nation; Article 31-A relates to taking over of private property/land as stated in the definition of “estate”, and is not related to the property or management of temples; Article 31A is an individual property right, and applies only to private temples; the subject temples are public temples having hundis; Article 31-A, which was introduced to bring in agrarian reforms, does not confer any right on the petitioners to claim that the power of management of the temple should vest in them; Article 31-A(1)(b) has no relevance to the facts of the present case; it is only the management (secular activities) which is regulated by a law made in this regard; the petitioners have failed to establish that they are a religious denomination, the Gangotri temple is a private temple, and its management has been taken over by the State Government; Article 31-A was brought into effect for the purpose of agrarian reforms; the subject Temples are not any individual’s property; they are public temples which have hundis wherein public money is collected; and Article 31-A only saves

certain laws, it has no relation to religious rights, and is not attracted in the facts and circumstances of the present case.

(iii) <u>ARTICLE 31-A(1)(b) OF THE CONSTITUTION: ITS SCOPE</u> :

234. Article 31-A of the Constitution was firsts inserted by the Constitution 1st Amendment Act, 1951 with retrospective effect. The words "Article 14 or Article 19" were substituted by the Constitution 44th Amendment Act, 1978 w.e.f. 20.06.1979 for "Article 14 or 19 or 31". Article 31 was deleted since it was repealed by the Constitution 44th Amendment Act, 1978. As the complaint, in the present Writ Petition, is of violation of Article 31-A(1)(b), it would suffice to note what this clause provides, and it is not necessary to refer to the other clauses of Article 31-A(1).

235. Article 31-A relates to savings of law providing for acquisition of estates etc and, under clause (1)(b) thereof, notwithstanding anything contained in Article 13, no law providing for the taking over of the management of any property by the State for a limited period, either in the public interest or in order to secure the proper management of the property, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges, any of the rights conferred by Article 14 or Article 19. In view of the non-obstante clause in Article 31-A, a law, made in terms of clause (1)(b) thereof, shall prevail even if it is contrary to Article 13(2) in terms of which any law, which takes away or abridges the rights conferred by Part III, shall, to the extent of contravention, be void.

236. The word "management" is specially used in Clause (b) of Article 31-A, and must be considered under that clause. The words of that clause are 'the taking over of the management of any property'. 'Any property' means property of any land, and would embrace land of landholders and non-landholders alike. The words "by the State" indicate that the taking over must be by the State. The next requirement is that this taking over must be either in the public interest, or in order to secure the

proper management of the property. And lastly the taking over must be for a limited period. (**Ramlal Gulabchand Shah**[134]).

237. In **S. Azeez Basha and Anr.**[64] the Supreme Court held that, even if the management of a temple is taken over to remedy the evil, the management must be handed over to the person concerned immediately after the evil stands remedied; continuation thereafter would tantamount to usurpation of their proprietary rights, and would be in violation of the fundamental rights guaranteed by the Constitution in favour of the persons deprived; taking over of the management must be for a limited period; expropriatory orders were required to be considered strictly as it infringed the fundamental rights of citizens, and amounted to divesting them of their legitimate rights to manage and administer the temple for an indefinite period; super-session of the right of administration cannot be of a permanent and enduring nature; its life has to be reasonably fixed so as to be co-terminus with the removal of the consequences of mal-administration; the reason was that the objective, to take over the management and administration, was not the removal and replacement of the existing administration, but to rectify and stump out the consequences of mal-administration; and the power to regulate did not mean the power to supersede the administration for an indefinite period.

238. What Article 31-A(1)(b) does is to save laws providing for the taking over of the management, of any property by the State, for a limited period either in public interest or in order to secure the interest of proper management of the property. As a result of the 44th Constitution Amendment, any law, which is not referable to Article 31-A(1)(b), would not be saved if it is inconsistent with or takes away or abridges the fundamental rights conferred by Articles 14 and 19 of the Constitution. The protection of Article 31-A(1)(b) is available only when there is a definite limit, in the law, for the period of management. If there is none, the condition, of protection from Articles 13, 14 and 19 is not available. The protection of Article 31-A(1)(b) can only be invoked if the law can show a real limit for the period of management. (**Ramlal Gulabchand Shah**[134]**)**. If

the management is taken over without any clear time limit, then the relevant statutory provision, authorizing the taking over of the management, cannot seek protection under Article 31-A(1)(b). (**Ramlal Gulabchand Shah**[134]; and **Srikantadatta Narasimharaja Wodeyar, Mysore**[135]**)**.

239. It is true that the 2019 Act confers on the Board, the power of management of all the Char Dhams, in perpetuity (Section 3), and, consequently, such a law would not be saved if it is inconsistent with or takes away or abridges any of the rights conferred by Part III of the Constitution, including Article 14 or 25 or 26. The 2019 Act, which provides for a Board to manage the property of all the Char Dhams in perpetuity, is, therefore, not a law which is saved by Article 31-A(1)(b) of the Constitution of India. As a result, if the 2019 Act is held to violate any one of the fundamental rights guaranteed by Part III of the Constitution, including Articles 14, 25 and 26 thereof, the said Act is liable to be declared *void ab initio.*

240. As the State is only entitled to make a law imposing restrictions on, and the regulation of, the right of a religious denomination to administer its property, and cannot take away the right of administration altogether from a religious denomination and vest it any other authority, the Supreme Court, in **Dr. Subramanian Swamy**[22], after noting that the Podu Dikshitars had been declared, to be a religious denomination, by the Division Bench of the Madras High Court, in **Marimuthu Dikshitar**[47], and the Commissioner of Religious Endowments, Tamil Nadu had appointed an Executive Officer to administer the temple, (thereby taking away the right of administration of the temple from the religious denomination of Podu Dikshitars altogether), held thus:

> "…….Even if the management of a temple is taken over to remedy the evil, the management must be handed over to the person concerned immediately after the evil stands remedied. Continuation thereafter would tantamount to usurpation of their proprietary rights or violation of the fundamental rights guaranteed by the Constitution in favour of the persons deprived. Therefore, taking over of the management in such circumstances must be for a limited period. Thus, such expropriatory order requires to be considered strictly as it

> infringes fundamental rights of the citizens and would amount to divesting them of their legitimate rights to manage and administer the temple for an indefinite period. We are of the view that the impugned order is liable to be set aside for failure to prescribe the duration for which it will be in force.
>
> Supersession of rights of administration cannot be of a permanent enduring nature. Its life has to be reasonably fixed so as to be co-terminus with the removal of the consequences of maladministration. The reason is that the objective to take over the management and administration is not the removal and replacement of the existing administration but to rectify and stump out the consequences of maladministration. Power to regulate does not mean power to supersede the administration for indefinite period……"

241. In **Dr. Subramanian Swamy**[22], the Supreme Court noted that the Podu Dikshitars were held earlier by the Madras High Court to be a religious denomination which had the right under Article 26 of the Constitution to maintain the religious institution ie Chidambaram temple. As the State Government sought to denude such a religious denomination of its rights under Article 26 in perpetuity, its action was held not to be saved by Article 31-A(1)(b) of the Constitution, and as it violated the fundamental rights of the Podu Dikshitars under Article 26, the government orders were declared unconstitutional.

242. It is true that the 2019 Act vests administration of the Char Dham and other temples, and its properties, on the Board, under Sections 3(2) and (3) of the 2019 Act, in perpetuity. It is only if the 2019 Act had taken away the right of a religious denomination, to administer its property, would it have, in view of the judgment of the Supreme Court in **Dr. Subramanian Swamy**[22], been liable to be declared ultra vires Article 26(d) of the Constitution.

243. As already dealt with by us earlier in this order, Dr. Subramanian Swamy has neither named nor identified any religious denomination, as managing and administering the Char Dham temples, either in his writ affidavit or in the rejoinder affidavit filed by him in the Writ Petition. We have also held earlier that the Gangotri Dham temple is

also not being administered by any religious denomination, and the petitioners in Writ Petition (M/S) No.700 of 2020 cannot claim the protection of Article 26 of the Constitution of India. As the right under Article 26 is that of a religious denomination, the 2019 Act, whereby administration of the Char Dham temples are vested in a Board in perpetuity, cannot be said to have violated any such right of a hypothetical religious denomination which is not even pleaded to be in existence. Nor does the 2019 Act violate the fundamental rights guaranteed under Articles 14 and 25 of the Constitution. The mere fact that the 2019 Act is not saved by Article 31-A(1)(b) of the Constitution, makes little difference and is of no consequence.

(iv) <u>THE CHAR DHAM DEVASTHANAM BOARD SHALL ONLY MANAGE THE TEMPLES WHICH SHALL CONTINUE TO OWN ITS PROPERTIES:</u>

244. Under Section 4 of the U.P. Shri Badrinath and Shri Kedarnath Temples Act, 1939, the ownership of the temple fund vested in the diety of Shri Badrinath and Shri Kedarnath, as the case may be, and the Committee was only entitled to its possession. Section 5 related to the Committee and, under sub-section (1) thereof, administration and governance of the temple, and the temple fund, was vested in a Committee comprised of the persons referred to therein. Section 5(g) of the 1939 Act conferred power on the State Government to nominate the President of the Committee and seven other members. By the 2019 Act, the temple committee constituted under the 1939 Act was replaced by the Char Dham Devasthanam Board constituted under Sections 3(1) and (2) thereof and, in addition to Shri Badrinath and Shri Kedarnath temples, the Gangotri, Yamunotri and other temples were also brought within the ambit of the 2019 Act. The contention that the State has acquired an ancient group of religious institutions belonging to a particular religious denomination, and has departmentalized the entire devasthanams for an indefinite period, does not merit acceptance. Acquisition of property means the extinction of the citizen's rights in the property, and the conferment of the said rights in the State or in a State owned corporation. If the office of one functionary is brought to an end by

the Act, and another functionary has come into existence in its place, such a process cannot be said to constitute the acquisition of the extinguished office or of the rights vesting in the person holding that office. (**Tilkayat Shri Govindlalji Maharaj[4];** and **Raja Bira Kishore Deb[2])**.

245. As shall be elaborated later in this order, the "properties belonging to the dieties of the Char Dham temples" shall continue to remain the properties of the Char Dhams, and it is only its possession alone which shall be with the Char Dham Devasthanam Board. In addition, the said Board shall manage and administer these properties only in furtherance of, and to achieve, the objects of the 2019 Act. Reliance placed on **Sant Lal Gupta and Ors.[133]** to contend that this is an indirect mode of acquisition of the entire institutions by the Government, does not therefore merit acceptance. As the properties of the Char Dham temples shall continue to remain vested in it, the apprehension expressed of its take-over by the State Government, through its designated committee, is unfounded.

(v) <u>RELIANCE PLACED ON THE DIVISION BENCH JUDGMENT OF THE KARNATAKA HIGH COURT IS MISPLACED:</u>

246. Reliance placed on the Division Bench judgment of the Karnataka High Court, in **Srikantadatta Narasimharaja Wodeyar[135]**, is also misplaced. The dispute before the Karnataka High Court related to the validity of a government order issued by the Karnataka State Government taking over possession and management of the Mysore Palace along with the moveables therein, and the adjoining lands, in public interest. The validity of this government order was challenged, among other grounds, as falling foul of Article 31-A(1)(b) of the Constitution of India.

247. In **Srikantadatta Narasimharaja Wodeyar[135]**, the Division Bench of the Karnataka High Court noted that, on an instrument of accession being executed, the State of Mysore had acceded to the Dominion of India on 01.06.1949; the agreement was entered into between the Government of India and the Maharaja of Mysore on 23.01.1950, in terms of which the

Maharaja was entitled to full ownership, use and enjoyment of all his private properties; the Maharaja was required to submit an inventory of all his immovable properties, securities and cash balances; an inventory was submitted, of the movable and immovable properties as on 26.01.1950, which included the Mysore Palace; and this was accepted by the Government of India on 08.01.1951 as the private properties of the Maharaja.

248. It is in this context that the Division Bench of the Karnataka High Court held that the impugned order showed that, in terms thereof, possession of the property of the heirs of the Maharaja was taken over for management, in overall public interest, without specifying any time limit for the same; as held by the Supreme Court, in **Ramanlal Gulabchand Shah**[134], the law made by the legislature, providing for taking over of the possession of the property for management, could not have been protected except by providing for its retention for a limited duration; the State Government exercising executive power under Article 162 of the Constitution, could not have claimed a higher power than even the legislature; and, therefore, the impugned government order, authorizing the taking over of the possession of the properties for the purpose of management, was ab initio void and non-est in the eye of law rendering their possession over the properties, contrary to the wishes of the owners, illegal, arbitrary and an instance of gross misuse of the State's executive power.

249. The properties in question, before the Karnataka High Court, were the personal properties of the Maharaja and it is in this context that the taking over of the management of such properties, for an unlimited period, was held not to be protected by Article 31-A(1)(b) of the Constitution of India.

(vi) <u>OTHER CONTENTIONS</u> :

250. The scope and ambit of Article 26(c) was considered by the Supreme Court, in **Acharya Maharajshri Narendra Prasadji Anand Prasadji Maharaj**[124], wherein it was held that the right under Article 26(c)

was not an absolute and unqualified right to the extent that no agrarian reform can be extended to the lands owned by the religious denomination; no rights in an organised society can be absolute; a distinction has to be made between those laws which directly infringe the freedom of religion and others, although indirectly, affecting some secular activities of religious institutions or bodies; for example if a religious institution owns large areas of land far exceeding the ceiling under the relevant laws, and indulges in activities detrimental to the interest of the agricultural tenants who are at their mercy, freedom of religion or freedom to manage religious affairs cannot be pleaded as a shield against regulatory remedial measures adopted by the State to put a stop to exploitation, and unrest in other quarters, in the interest of general social welfare; and the core of religion is not interfered with, in providing for amenities for sufferers of any kind.

251. It is true that, in the aforesaid judgment, the Supreme Court held that acquisition of property of a religious denomination by the State Government cannot be such as to destroy or completely negative its right to own and acquire movable or immovable properties, for even the survival of the religious institution.

252. As noted hereinabove, since the management of the properties of the Char Dham temples have been vested in the Char Dham Devasthanam Board in perpetuity, the 2019 Act, whereby such management has been entrusted to a Board, is not saved by Article 31-A(1)(b) of the Constitution. As a result, if the 2019 Act fell foul of any of the provisions of Part-III of the Constitution, the said Act was liable to be declared void ab initio. However, as noted hereinabove, the 2019 Act does not violate the petitioners' fundamental rights either under Article 14 or 25 or 26 of the Constitution, and it matters little therefore that it is not saved by the provisions of Article 31-A(1)(b) of the Constitution of India.

IX. ARE THE PROPERTIES OF THE TEMPLES/DIETY NOW VESTED IN THE BOARD?

(i) CONTENTIONS URGED ON BEHALF OF THE PETITIONER:

253. Ms. Manisha Bhandari, learned counsel appearing along with the petitioner in Writ Petition (PIL) No.26 of 2020, would submit that, under Section 4 of the 1939 Act, ownership of the property remained with the deity; it was unnecessary for the petitioner or anyone else, therefore, to question the validity of the said enactment; unlike the 1939 Act, the 2019 Act divests ownership of its properties from the temple, and vests it in the Board; this is also evident from Section 22 of the Act; and, since the properties of the temples is now sought to be taken away, and to be vested in a Board, the validity of the Act has been subjected to challenge.

(ii) CONTENTIONS URGED ON BEHALF OF THE RESPONDENTS:

254. It is contended on, behalf of the respondents, that, under Section 4(2) of the 2019 Act, all the properties of the temple vest in the temple itself; ownership rights have not been divested from it or vested in the Board; and Section 22 merely confers a right on the Board regarding matters which were hitherto being exercised by the State Government, local bodies and others.

(iii) RELEVANT PROVISIONS OF THE 2019 ACT WHICH RELATE TO VESTING OF THE PROPERTIES OF THE CHAR-DHAM TEMPLES :

255. Section 4(2) of the 2019 Act enables the Board to give directions for safe custody, preservation and management of funds, valuable securities, jewelleries, properties vested in all the religious temples mentioned in the Schedule to the Act. It is evident from Section 4(2) of the 2019 Act that what has been conferred on the Board is only the power to give directions with respect to properties which vest in the religious temples mentioned in the Schedule to the 2019 Act i.e. the Char Dham and associated temples. In terms of Section 4 of the 1939 Act, the ownership of

the temple fund vested in the deity of Shri Badrinath and Shri Kedarnath, and the temple committee under the 1939 Act was only entrusted with its possession. The properties of the deity could not have, and has in fact not, been transferred to the Char Dham Devasthanam Board.

(iv) <u>SECTION 22 OF THE 2019 ACT: ITS SCOPE</u> :

256. Section 22 of the 2019 Act stipulates that all properties belonging to Char Dham Devasthanams to which the Act applies, on the date of commencement of the Act, that are in the possession or under the superintendence of the Government, Zila Panchayat, Zila Parishad, Municipality, property in the Board or any other local authority or in the possession or superintendence of any company, society, organisation, institutions or other person or any committee, superintendent appointed by the Government, shall, on the date on which the Board is or is deemed to have been constituted, or members are or are deemed to have been appointed under the Act, stand transferred to the Board and all assets vesting in the Government, local authority or person aforesaid and all liabilities subsisting against such movement, local authority or person on the said date shall devolve on the Board. Under the proviso thereto, the Board may further acquire land in or around the vicinity of the religious devasthanam and other places as it would deem proper for its better development.

257. The properties referred to in Section 22 are the properties of the Char Dham which is defined, in Section 2(d) of the 2019 Act, to mean the Shri Badrinath, Shri Kedarnath and the holy devasthanams of Gangotri and Yamunotri, and the temples mentioned in the Schedule to the Act. When read in the light of Section 4(2), the legislative intent of Section 22 is not to vest the properties of the "Char Dham" on the Char Dham Devasthanam Board, but only to entrust its administration and management to the Board. If Section 22 is construed as vesting the properties of the "Char Dham" in the Char Dham Devasthanam Board, then such a provision, whereby the properties of the Char Dham are read as having been taken over by the Board without payment of any compensation, much less just compensation,

would fail the test of reasonableness, and fall foul of Article 14 read with Article 300-A of the Constitution of India. It is unnecessary for us to dwell on this aspect any further as both the learned Advocate-General, and Mr. Ravi Babulkar, learned counsel for the Board, insist that Section 4(2) of the 2019 Act makes it clear that the properties vest only in the "temples". If that be so, Section 22, which strikes a discordant note, must be read down to fulfil the legislative intent expressed in Section 4(2) of the 2019 Act that the properties vest in the temples i.e. the "Char Dham" as defined in Section 2(d) of the 2019 Act.

(v) <u>SECTION 22 OF THE 2019 ACT, AND ITS PROVISO SHOULD BE READ DOWN TO SAVE IT FROM UNCONSTITUTIONALITY</u> :

258. It is well settled that if the law violates the fundamental rights guaranteed to the citizens of the country, then the law can either be struck down or be read down to bring it in consonance with the Constitution of India. A provision may be read down and its creases ironed out, to save it from being declared unconstitutional (**Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd.**[136]), and thereby ensure that it does not fall foul of Part III of the Constitution. It is only if it cannot, that legislation (plenary or subordinate) should be struck down as ultra-vires Part III of the Constitution of India. **(Independent Thought**[16]**)**.

259. As the Court must start with the presumption that the impugned Act is *intra vires*, it should be read down to save it from being declared ultra vires, if the Court finds, in a given case, that the presumption of constitutionality stands rebutted. **(J.K. Industries Limited & another v. Union of India & others**[137]**;** and **Hindustan Zinc Limited v. Rajasthan Electricity Regulatory Commission**[138]**)**. A provision of an Act is read down to sustain its constitutionality (**Pannalal Bansilal Patil**[35]**;** and **Delhi Transport Corporation v. D.T.C. Mazdoor Congress**[139]), and by separating and excluding that part of the provision which is invalid, or by interpreting the word in such a manner as to make it constitutionally valid. **(B.R. Enterprises v. State of U.P. & others**[140]). The question of reading

down a provision arises if it is found that the provision is *ultra vires* as they stand. (**Electronics Corporation of India Ltd v. Secretary, Revenue Department, Govt. of Andhra Pradesh and Ors.**[141]). In order to save a statute or a part thereof, from being struck down, it can be suitably read down. (**C.B. Gautam v. Union of India & others**[142]).

260. An attempt should be made to make the provision of the Act workable and, if it is possible, to read down the provision. (**Balram Kumar Wat v. Union of India & others**[143]**;** and **ANZ Grindlays Bank Ltd and Ors. v. Directorate of Enforcement and Ors.**[144]). If a provision can be saved by reading it down, it should be done. This interpretation springs out of the concern of Courts to salvage a legislation. **(B.R. Enterprises**[140]).

261. The words "shall devolve" in Section 22 shall be read as "devolve on the Char Dham and shall be maintained by the Board". Likewise the words "may further acquire land", in the proviso thereto, shall be read as "may further acquire land on behalf of the Char Dham". When so read, the legislative intent that the properties of the Char Dham temples shall continue to vest in it, as declared in Section 4(2) of the 2019 Act, would be given effect to; and the power of the Board would thereby be confined only to the administration and management of the properties of the Char Dham Devasthanam. When so read, Section 22 and its proviso would be saved from being struck down as ultra vires the provisions of the Constitution.

X. <u>CONCLUSION:</u>

262. Except to the limited extent that the words "shall devolve" in Section 22 must be read as "devolve on the Char Dham and shall be maintained by the Board", and the words "may further acquire land", in the proviso thereto, shall be read as "may further acquire land on behalf of the Char Dham", the challenge to the validity of the 2019 Act, on the ground that it violates Articles 14, 25, 26 and 31-A of the Constitution of India, must fail.

263. Subject to the aforesaid observations, both the Writ Petitions are dismissed. However, in the circumstances, without costs.

(R.C. Khulbe, J.)
21.07.2020

(Ramesh Ranganathan, C.J.)
21.07.2020

Rahul