

(1996) 01 KAR CK 0046

In the Karnataka High Court

Case No : Civil Revision Petition No. 2536 of 1995

Dattatraya Ganesh Bhat

APPELLANT

Vs

Mrs. Surender Kumari

RESPONDENT

Date of Decision : 18-01-1996

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 1

Citation : (1996) 1 KarLJ 561

Hon'ble Judges : Harinath Tilhari, J

Judgement

1. The civil revision under Section 115 of the Code of Civil Procedure, for short "Code" arises out of the judgment and order dated May 30th, 1995, delivered by the 1st Additional Civil Judge, Belgaum (Sri C.Y. Ellur), dismissing the revisionist's petition under Section 9, sub-section 4 of the Hindu Adoption and Maintenance Act, 1956, for short, "The Act".

2. The brief facts of the case are that the revisionist is the Manager of Bal Kalyan Kendra known as Smt. Gangamma Chikkumbimath Bal Kalyan Kendra of Swami Vivekanand Seva Pratishthan, Belgaum. According to the revisionist, this is an institution located in Belgaum and is registered under the Bombay Trust Act. This public institution is engaged in the social welfare activity of taking care of the neglected as well as the orphan children. According to the revisionist, a male child known by name Keshava is and has been in the care and custody of the revisionist's institution. The male child Keshava, as per allegations was deserted for reasons best known by his parents, since the time of his birth and the revisionist has been taking care of that child since that time. The revisionist in his application submitted that in the year 1994, the respondent Smt. Surrender Kumari, wife of Purshothama Channa, that is, the respondent in the case visited this Bal Kalyan Kendra and offered to adopt this male child Keshava. The authorities of the Bal Kalyan Kendra in their efforts to make sure that the respondent bona fide desires to adopt the child made enquiries and got reports from certain competent Authorities. That according to the reports, respondent has no child and the reports indicated that even she has no hopes of be getting a

child at any time hereafter. The revisionist's further case is that respondents' financial position has been satisfactory and that the respondents will take care of the child. The revisionist's case is that the revisionist became satisfied that the respondent bona fide desires to adopt the said orphanage child-Keshava deserted by his parents and that the interest of the child would also be safe. According to the revisionist's case, the respondents came to India twice to take the child in adoption after having spent huge amount. Therefore, the revisionist further alleged that it will be in the welfare of the child if the child is given in adoption to the respondents. The revisionist further asserted in the application that neither the revisionist nor his institution have received nor have agreed to receive any money or reward in consideration of giving the child in adoption. On these grounds, the revisionist has sought the permission of the Court under Section 9(4) of the Hindu Adoption and Maintenance Act, for short, "The Adoption Act", to give the child in adoption to the respondents. Before the Trial Court, respondent put in appearance, enquiry was conducted and the petitioner and respondents were examined and Home Study Report was also filed which was marked as Ex. P-1.

3. That after having heard the Counsels for both the parties, the Trial Court rejected the application taking the view that the Home Study Report being authenticated by United States of America as well as by Indian Embassy in U.S.A., clearly reveals that respondents-Smt. Surender Kumari and her husband-Purshothama Channa, both are citizens of United States. As per Ex. P-1, at page 4 under the heading Citizenship, it is "stated" Mr./Mrs. Channa became citizens of United States. Mr. Channa became a citizen (12472791) on January 13th, 1987. Mrs. Channa became a citizen (12558444), on October 13th, 1987. So, both proposed adoptive mother and father, the Court below observed, are citizens of United States of America and therefore, it held that they are the citizens of United States of America and not the citizens of India and they are domiciled in United States of America, that is, outside the territories of India. Therefore, respondent and her husband are not governed by Hindu Adoption and Maintenance Act, 1956, for short, "The Adoption Act". The Trial Court opined that the Act is applicable to a Hindu domiciled in India. Taking that view, the Trial Court held that the application moved under Section 9(4) of the Act has not been maintainable on the admitted facts. Therefore, without entering into considerations of the merits relating to welfare of the child and the like, the Trial Court, that is, Additional Civil Judge, Belgaum, dismissed the application as not maintainable under law and dismissed it.

4. That having felt aggrieved from the judgment and order of the Trial Court dated 13-5-1995, the revisionist has come up in civil revision or to say has filed the civil revision under Section 115 of the Code.

5. I have heard Sri S.K. Joshi, learned Counsel for the revisionist as well as Smt. Shanta W. Joshi, learned Counsel appearing for the respondents.

6. It has been contended by Sri S.K. Joshi, that the learned Court below

committed error of law in opining that the petitioner's application under Section 9(4) of the Act was not maintainable and by taking the view that the respondent, who has offered to adopt the minor or the orphan child-Keshava, happens to be residing in United States of America and is a citizen of United States of America as well as respondent's husband is also American citizen, the provisions of the Act, that is Hindu Adoption and Maintenance Act, for short, "Adoption Act" will not apply and the application is as such, not maintainable. Sri Joshi, further submitted that by going to America or by becoming a citizen of United States of America, the respondent or her husband did not cease to be Hindu. He submitted that a Hindu is entitled to adopt a child under Hindu Adoption and Maintenance Act, for short, "Adoption Act", if adoption is to take place in India and in case of orphan or a neglected child being given, in adoption the application could be moved by the present revisionist for permission. The institution is a Hindu Institution and the child is also a Hindu as having been brought up under Hindu tradition and way of life. That being the position, Hindu Adoption and Maintenance Act, for short "Adoption Act", did apply. Sri Joshi, further submitted that the respondent did not cease to be Hindu, merely because the respondents are living in United States since, 1987 or so or because of their becoming citizens of United States of America and as such, the Court below has illegally refused to exercise the jurisdiction vested in it by dismissing the application moved by the revisionist. Sri S.K. Joshi, further submitted that the basic principle of law in the matter of adoption or appointment of Guardianship of the orphanage children or as to permitting the adoption or as to giving in adoption in relation to extra territorial adoptions of children have well been laid down by their Lordships of the Supreme Court in the case of Lakshmi Kant Pandey v Union of India, AIR 1984 SC 469, and he placed reliance on it in detail.

7. On behalf of the respondents, Smt. Joshi, learned Counsel for the respondents, that is the lady, who offered to adopt this orphanage child submitted that it was in the welfare of the child if the child was permitted to be given to respondent in adoption. Smt. Joshi, further submitted that the respondent and her husband are Hindus within the four corners of Hindu Adoption and Maintenance Act, for short "Adoption Act" and they did not cease to be Hindu, simply on account of their having gone to America or they are residing therein for the last 7 to 10 years under any custom or law nor has such has been referred or relied by the Court below. They have never lost capacity and status of being Hindu either in the wider sense of the terms or in the narrower sense of the term. She submitted that the respondent and her husband are born Hindus, their parents have been Hindus, they have affinity for Hinduism, they have lived as Hindu and have got inner attachment for the land and honour of this Country-Hindustan, so, they never ceased to be Hindu irrespective of the fact that in legal terms for certain reasons, they have to adopt the American citizenship. The learned Counsel Smt. Joshi submitted that the child being Hindu and having been brought as Hindu, the respondents have been interested in adopting the child as their own, as the child's parents are not known and it was in the best interest of

the child that the child be permitted to be given in adoption, after consideration of the application moved by the Bal Kalyan Kendra.

8. In the context of question, whether the respondent is a Hindu, reference has been made to the decision of the Allahabad High Court in Smt. Indumatee Koorich v The Family Court, Lucknow, 1993 All. L.J. 1379, delivered by me as a Judge of Allahabad High Court, sitting at Lucknow and to the cases and decisions reported, and referred therein, by both Sri S.K. Joshi and Smt. Shanta Joshi, Counsels for both the parties.

9. I have applied my mind to the contentions advanced by the learned Counsels for the parties.

10. The questions that this case poses for consideration are:

1. "Whether the application that had been made under Section 9(4) of the Hindu Adoption and Maintenance Act was maintainable at the instance of the revisionist-applicant?

2. Whether the Court below was justified in taking the view that the respondents who were born Hindus, whose parents were Hindus, that they ceased to be Hindus, for the reason that they became for one reason or other, citizens of United States of America in 1987?

3. Whether the respondents did cease to be Hindus, for the purpose of this Act and whether they were entitled or not to adopt an orphan child who is brought up in Hindu way of life, under the provisions of Hindu Adoptions and Maintenance Act and could that application be rejected which had been moved by the revisionist-applicant, for permission to give that child to the respondents, without its being considered on merits, as being not maintainable?".

11. Hindu Adoptions and Maintenance Act, that is Act No. 78 of 1956, was enacted to codify the law relating to the adoptions and maintenance among Hindus. Section 1, sub-section (2) of Hindu Adoptions and Maintenance Act, provides that it extends to the whole of India, except the State of Jammu and Kashmir. The Act applies to Hindus and codifies the law relating to maintenance among Hindus. When question of application of the Act has to be considered, the personal law being an essential enactment, intended to provide the clear cut codified law, in respect of matters, relating to adoption and maintenance, i.e. the adoption of children and maintenance to the dependants that is to the minor children, widows and for right of maintenance to a wife or to old aged parents being a social welfare law or enactment it has got to be interpreted in case of ambiguity and in cases where there are more than two possible interpretations in a manner which may be beneficial to the subject. If the interpretations, more than one are possible then, the one beneficial to the subject and the one leading us to the main objective of the Act or which helps us in attaining the purpose of the Act has got to be adopted and followed (See: Har Charan Singh v Shiv Rani and Others, AIR 1981 SC 1284; Jeewanlal (1929) Ltd. v Appellate Authority

under the Payment of Gratuity Act and Others, AIR 1984 SC 1842; S. Appukuttan v Thundiyil Janaki Amma and Another, AIR 1988 SC 587.

12. Chapter II of this Act deals with adoption. Section 5 of the Act provides that no adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this chapter, and any adoption made in contravention of the said provisions shall be void. An adoption which is void, sub-section (2) of the Act, the Act provides, shall not affect any rights in the family or in favour of a person which he or she could have acquired by reason of adoption, nor the rights of any family or any person in the family of his or her birth, shall destroy in case where adoption is void.

13. Section 6 of the Act provides requisite conditions of a valid adoption and it provides and reads as under:

"6. No adoption shall be valid unless,- (i) the person adopting has the capacity, and also the right, to take in adoption;

(ii) the person giving in adoption has the capacity to do so;

(iii) the person adopted is capable of being taken in adoption; and (iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.

14. A reading of this section reveals that the first three conditions are that the person adopting must have the capacity and the right to take a child in adoption and the other condition is that a person who wants to give in adoption must have the capacity of giving the child in adoption and the third condition is that the person who is to be given in adoption should be capable of being taken in adoption. These are the three conditions in addition to the other conditions prescribed under the Act. Sections 7 and 8 of the Act define the capacity of the person who wants to take a child in adoption. Section 7 of the Act deals with the capacity of a male Hindu to be entitled to take in adoption, while Section 8 deals with the capacity of a female Hindu. Section 9 of the Act defines the persons who are capable of giving in adoption, while Section 10 of the Act defines the persons who may be capable of being adopted or being taken in adoption. The other conditions for a valid adoption, apart from the other three, have been mentioned in Section 11 of the Act. For the present, I am not concerned in this case with the other conditions of a valid adoption. They may have to be considered at the stage, if and when the application is to be disposed of on merits. Firstly the basic thing to be noted is that first essential conditions of the three, that is, the person who wants to give in adoption, the person who wants to take in adoption and person who is to be given and taken in adoption is that he or she must be a Hindu i.e. (Hindu male or female Hindu) and the person who is to be taken in adoption must also be a Hindu. Section 7 of the Act provides as under:

"Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption:

Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a Court of competent jurisdiction to be of unsound mind.

Explanation.-If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary, unless the consent of any one of them is unnecessary for any of the reasons specified in the preceeding proviso.

Section 8 of the Act reads as under:

"8. Any female Hindu,- (a) who is of sound mind;

(b) who is not a minor; and (c) who is not married, or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a Court of competent jurisdiction to be of unsound mind.

15. Section 9 deals with the persons capable of giving in adoption. Section 9 reads as under:

"9.(1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

(2) Subject to the provisions of sub-section (3) and sub-section (4), the father if alive, shall alone have right to give in adoption, but such right shall not be exercised save with the consent of the mother unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a Court of competent jurisdiction to be of unsound mind.

(3) The mother may give the child in adoption if the father is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a Court of competent jurisdiction to be of unsound mind.

(4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a Court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the Court to any person including the guardian himself.

(5) Before granting permission to a guardian under sub-section (4), the Court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the Court may sanction. .

Explanation.-For the purposes of this Section,- (i) the expression "father" and

"mother" do not include an adoptive father and an adoptive mother;

(ia) "guardian" means a person having the care of the person of a child or of both his person and property and includes,- (a) a guardian appointed by the will of the child's father or mother; and (b) a guardian appointed or declared by a Court; and (ii) "court" means the city civil Court or a district Court within the local limits of whose jurisdiction the child to be adopted ordinarily resides.

16. Section 10 defines the capacity of persons who may be adopted. It reads as under:

"10. No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:

(i) he or she is a Hindu;

(ii) he or she has not already been adopted;

(iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;

(iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

17. In the present case as the facts are, the child Keshava is a male child who is an orphan and who appears to have been abandoned by his parents. The name of the father and the mother or the religion of his father or mother is not known. The person in whose custody and guardianship this abandoned orphan child has been living since his birth is Smt. Gangamma Chikkumbimath Bal Kalyan Kendra of Swami Vivekanand Seva Pratishthan, Belgaum, whose Manager is the present revisionist-applicant namely Sri Dattatraya Ganesh Bhat. The revisionist-applicant has moved the application under Section 9(4) of the Act, as the guardian of the child for being permitted to give the child in adoption to the respondents. The Court, to which this application has been moved, is the Court within the local limits of whose jurisdiction, the minor has been living with the applicant that is with the said institution-Smt. Gangamma Chikkumbimath Bal Kalyan Kendra of Swami Vivekanand Seva Pratishthan, Belgaum. The Manager of this institution claims himself to be a Hindu and is known by the name Dattatraya Ganesh. The Court before which this application has been made for permission to give the child in adoption is the Court constituted within the territory of India in the District of Belgaum. The question before the Court is whether the Act applies to such a case and whether the persons namely the person who has to be given in adoption is a Hindu and the person to whom the child has to be given in adoption are Hindus. The Trial Court it appears to have opined that as the Act operates within the territory of India, the respondents, having become American citizens ceased to be Hindus and as they ordinarily reside out of the State, and the Act in question operates within the territory of India, the application for giving the child to such persons was not maintainable. The law operates

throughout the Country and is to operate in respect of transactions, that is, matters relating to adoption or causes for claim of maintenance amongst Hindus taking place within the territory of India. The Act may also apply to the cases in which action is sought to be taken for taking permission within the territory of India. If the adoption of a Hindu child is to take place within any of the territories of India, the Hindu Adoptions and Maintenance Act will apply to the case, provided the parties are Hindus. The question is who is a Hindu and when a person ceases to be a Hindu. The material expressions used in Sections 7 and 8 or under Section 9(1) and (3), give an indication that in the matter of adoption of a child taking place within the territory of India, the Act will be applicable if the three conditions, that is the person giving in adoption, person taking in adoption and person being given in adoption, happen to be Hindu, be that person a male or a female. The expression "Hindu" is important for our consideration and the other thing to be considered is when one ceases to be Hindu.

18. There are expressions popularly used in "Hindu", "Hindi" and, "Hindustan". There are also expressions at times used "Hinduism", "Hindustaniat", "Hindutwa" and "Hindu Dharma", and the expression "Hindu Religion" is also used in many acts. The question is from where has Hindu come. Whether Hindu is a communal name or creedal or a religious name and what is the significance of the word "Hindustan" and what do we understand by the expression "Hindu Dharma" or "Hindu Religion". In the case of *Shastri Yagnapurushdasji and Others v Muldas Bhundardas Vaishya and Another*, AIR 1966 SC 1119, their Lordships of the Supreme Court observed:

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

19. It is well known that since long in Countries like United States of America and Arab Countries, people of India are used to be called Hindu or Hindi. In Arabic Countries the expression used is Hindi while in United States of America, Indians were called Hindus. In the Book *The Discovery of India*, which was published in 1950, though had been written during the period from August 8, 1942 to March 28, 1945, the Author of that book Pandit Jawahar Lal Nehru, observes-the correct word for Indian as applied to Country or culture or the historical continuity of our varying traditions, is Hindi, from the expression Hind, a shortened form of Hindustan. Hind is still commonly used for India. In the Countries of Western Asia, in Iran and Turkey, in Iraq, Afghanistan, Egypt and elsewhere, India has always been referred to and is still called, Hind; and everything Indian is called Hindi, Hindi has nothing to do with religion and a Muslim or Christian Indian is as much a Hindi as a person who follows Hinduism

as a religion. Americans who call all Indians Hindus are not far wrong; they would be perfectly correct if they used the word Hindi. Unfortunately, the word Hindi has become associated in India with a particular script, the devanagiri script of Sanskrit-and so it has become difficult to use it in its larger and more natural significance. Perhaps when present-day controversies subside we may revert to its original and more satisfying use. Today, the word Hindustani is used for Indian and it is of course, derived from Hindustan.....".

20. This passage very clearly reveals that ordinarily in Western Countries, the expression "Hindu" is used to indicate one whom we call "Indian". That is in Foreign Countries, "Hindu" or "Hindi" is taken as synonymous of being an Indian. Whether a person is born or living in Kashmir or in Punjab, Haryana, Himachal Pradesh or in Uttar Pradesh, Bihar, or Bengal, Assam, Orissa, Madhya Pradesh, Rajasthan, Gujarat, or Tamil Nadu, Madras, Kerala, Andhra Pradesh or Karnataka, when he goes outside or those living in the other parts of the former India, that is unpartitioned India, whether from Sindh, Bengal (East or West) or even from Burma prior to 1937, on the Foreign lands when they used to go, they were called by the Americans as Hindus and in Countries like Turkey, Arab and Egypt by expression "Hindi" and even the people of Nepal call themselves to be "Hindus". More significant thing to be noted is that in Arab Countries where Philosophy and Mathematics had gone from India the numericals are generally called as "Hindus". The question crops up and agitates the mind to consider from where this "Hindu" has come and what is its origin, when in this Country if a person whether, he is a Vaishnavait, whether he is a Shaivite or Lingayat, whether he is a Shakta, Buddha, Jain, Sikh, Arya Samaji or Brahmo Samaji, Kabir Panthi or Nanak Panthi, even an agnostic, or even an Atheist on this land or any part of this land irrespective of his mode of worship or his Atheism, has been known and described as a Hindu. The question as such crops up as to the importance of this expression "Hindu" when persons living in several parts of the Country were described as Hindus and in Discovery of India the most secular person of India. Sri Jawaharlalji Nehru has gone even to the extent of using and expressing that a Muslim or Christian Indian is as much a Hindi or Hindu, as the person who follows Hinduism as a religion. It may be a different thing that a Christian or a Muslim may not like to be called a "Hindi" or "Hindu" but a person who has got the broader vision, national out look, emphasises that they can also be called, to be Hindu, a Hindi.

21. In the case of The Commissioner for Hindu Religious and Charitable Endowments, Mysore v Ratnavarma Heggade, AIR 1977 SC 1848, in para 43 of the judgment, Hon'ble Justice M.H. Beg, observes as under:

"The Act does not define the term "Hindu". This word has had a fairly wide connotation. In origin, it indicated people living in the Indus region. It is only by subsequent usage and extension of meaning that the word acquired a religious and therefore, in this sense, a more limited significance. But, in some contexts, the term "Hindu", even today stands for Indians in general. In foreign countries,

all Indians are sometimes described as "Hindus".

22. The expression "Hindu" is not of recent origin. This is an old expression. It occurs in the Avesta and in old Persian literature. The expression "Hindu" had originally a territorial significance and not a credal significance. It implied birth and residence even in geographical area. Dr. Radhakrishnan in his Book "The Hindu view of Life", at page 12 observes-"The term "Hindu" had originally a territorial and not a credal significance. It implied residence in a well-defined geographical area. Aboriginal tribes, savage and half-civilized people, the cultured Dravidians and the Vedic Aryans were all Hindus as they were the sons of the same mother.

23. Who is that mother, whose sons or daughters have been these people, of whom or about whom Dr. Radhakrishnan referred or used the expression to be "the sons of same mother" here. He appears to have intended to refer to the great, vast, open land and area with sky above that, that was known by the name of "Hindustan" or "Bharath". We have to realise, understand it and have to be very clear about the concept of Hindu. The historical and etymological genesis of the word "Hindu" has given rise to a controversy amongst indologists. But the view to a great extent accepted by the scholars appears to be that the expression "Hindu" is derived from Sindhu, the river Sindhu, otherwise known as Indus which flows from Punjab. Williams Monier expressed that:

24. "That part of the great Aryan race, which immigrated from Central Asia through the mountain passes into India, settled first in the districts near the river Sindhu, now called the Indus. The Persians pronounced this word "Hindu" and named their Aryan Brethren Hindus. The Greeks who probably gained their first ideas of India from the Persians, dropped the hard aspirate and called the Hindus-"Indoi". (See Hinduism by Monier Williams, page 1)".

25. In his work the Hindu View of Life, Dr. Radhakrishnan observes:

"The Hindu civilization is so called, since its original founders or earliest followers occupied the territory drained by the Sindhu "the Indus", river system corresponding to the North-West Frontier province and the Punjab. This is recorded in the Rig Veda, the oldest of the Vedas, the Hindu scriptures which give their name to this period of Indian History. The people of the Indian side of the Sindhu were called Hindu by the Persian and the later Western invaders". The statement of Monier Williams may have half of the truth or may be expressing a partially correct view no doubt, but it poses a question, if this name "Hindu" is simply derivation from river "Sindhu", on account of Sindhu being pronounced as "Hindu", by the Persians, thereafter from this Sindhu it became Hindu and thereafter it becomes Indus or Indoi and then India. Why this entire land running from the top of Himalayas up to the cape-comarin and the Indian Ocean as well as from Darraiye Khaibar in West to Kashi Ghatis of Assam and the old Burma in the East, that was part of the greater India prior to 1937, when Burma was separated from India, was known as Hindustan, if river Sindhu formed the basis

of origination of expression "Hindu" or "Hindustan", why that part of land that did lay on both the sides of river Sindhu, that is the area known as provinces of Sind and Punjab and Baluchistan were not alone called Hindustan and how and why the Sindh province itself retained its name as Sindha and again why the Gangetic plains were described as Hindustan and not as Gangastan or the parts of Southern India, the area in which the great rivers like Narmada, Godavari, Tunga Bhadra, Krishna and Kaveri do flow, were also called as Hindustan, were not known by the name of those rivers. Another question crops up, what has been the rationale behind the naming of the great ocean which we call Hindu Mahasagar or Indian Ocean and how was it named after the name of a river i.e., Sindhu which is smaller in comparison to that Indian Ocean. No doubt river Sindhu has been one of the important rivers of greater India. The, question is whether this theory represents a complete truth that expression "Hindu" was derived from "Sindhu" which according to Western authors and scholars was changed by Persians as "Hindus" and then became Hindus and then later on from that, the expression "Indus" or "Indoi" did emerge.

26. When I apply my mind to these questions, in the context of these question, it appears to me that the theory propounded by Monier Williams may be correct, but it may not be fully correct, instead it represents half truth. In Hindi or in Sanskrit the expression "Sindhu" means the Sea or Ocean as well. It has also been used for to mean deep water that flows i.e. Sea, Ocean and Deep rivers in general as well. "Sindhu" here appears have reference to the Sea lying to the South of the land of ours.

27. When I examine this question in the light of the basic principles of law and of interpretation relating to description of land, open land or immovable property, there appear to be different reason and on account of those reasons, and the facts and circumstances created by nature and represented by the Book of Nature revealed to great Rishis and man of wisdom, this Country was known and named after as "Hindustan". The expression "Stan" or "Sthan" in Sanskrit means and refers to- the place, an open area, the land. That this land was named after as "Hindu" and "Hindustan". This expression "Hindu" appears to represent the geographical and not credal. It is beyond doubt represents, as Dr. Radhakrishnan has observed a territorial significance. While defining geographically an area we talk of the geography and then we talk of the boundaries as well of certain area. It is one of the well settled principles of interpretation of documents with reference to immovable property i.e., land that where there is a conflict in the description of an immovable property or land by boundaries and the area, and the boundaries are well defined, then the description by boundaries has to prevail over the description of the property or land by area or by number (See: The Palestine Kupat Am Bank Co-operative Society Ltd. v Government of Palestine and Others, AIR 1948 PC 207, Watcham v Attorney General on behalf of the Government of the East Africa Protectorate, AIR 1918 PC 280 and M/s. Roy and Co. and Another v Smt. Nani Bala Dey and Others, AIR 1979 Cal. 50). In the case of Sheodhyan Singh and Others v Mst. Sanichara Kuer and Others, AIR

1963 SC 1879, Their Lordships of the Supreme Court observed and laid down the principles giving prominence to the description of immovable property by boundaries over area.

28. The authors of Indian doctrine of interpretation of documents or to say Memansa during the long old ages in the past appear to have well recognised the principle of interpretation regarding the identification of certain land or landed property by boundaries i.e., its description by boundaries. The Book of Nature was open before them. They had the vision of this long widened field or land of this Country surrounded by the clear largely extended boundaries on the Northern side by great Himalayas or the mountain ranges of Himalayas running from Darraiye Khaibar to Assam and Burma and, in the South by Sea or Sindhu, which appears to have been known as Indu-Sarovar, defining its Northern and Southern boundaries. On the Eastern and Western side there were great rivers like Sindhu, Bramhaputra and Iravadi. It appears to be reason why that the name which has been given to this "Sthan" or "Stan" or land or say Country as "Hindustan" or "Hindu". It has got a geographical and territorial significance, in the sense that the expression "HI" that is the first two letters of the name of "Hindu" are derivation from the name of great Himalaya Mountains, which represented the Northern boundary of the Country and "NDU" was used to represent and indicate the Southern boundary that is the Sindhu or say "Indu", because the Sindhu or Indu-Sarovar and was named after as Hindustan. The name "Hindustan", if we decipher it is like this-"HI" plus "NDU" plus "STHAN", and the three put together gave birth to the expression "Hindustan". There are two shlokas in Sanskrit which also help us to solve this riddle and they read as under:

"Himalayan Samaramya Yavad Indu-Sarovaram

Hindusthanam Itikhyatam Aadhyantkshar Yogta".

"Himalayam Samaramya Yavad Indu-Sarovaram

Tarn Deva Nirmitam Desham Hindusthanam Prachaksha Tey".

29. These shlokas also indicate that the great Rishis of India or I may say great Scholars of this Country interested in the unification of one Nation, though bearing divergent modes at different pace of life, but having common objects of life, described, discovered this land by name "Hindu" or "Hindustan" and disclosed the genesis as to why this name of "Hindu" or "Hindustan" was given to this land. If we take and write in English the expression "Indu-Sarovar" used in these shlokas and if we decipher it as "Indus" and "arovar" and remove the expression "arovar" from this expression "Indu-Sarovar", that remains is "Indus", as the short abbreviation of the great Indian Ocean. Indu sarovar is lying to the South of this land touches this land and its feet, whether at Rameshwaram, Kanya-Kumari, Madras, Calcutta, Rangoon or Singapore, Bombay Rangoon, or at Dwaraka or at Karachi. This really indicates that "Indus" might not have originated as has been propounded instead might have been a development or

derivation after removing "arovar" from "Indu-Sarovar" and this entire land from Cape-Comrin running via Western and Eastern Ghats of our Country going up to Himalayan ranges via the Eastern side from Madras and Burma, Assami Khasi Hills etc., and going towards West-via the Banks of river Sindhu up to Himalayas, they really represented this land and then making use of this expression "Indu" with Himalayan mountains and putting the two expressions together, that is the first two letters of the expression "Himalaya"-that is "HI" and the latter expression i.e., "NDU". This land surrounded by these boundaries has been named after "HI" + "NDU" + "STAN", that is "HINDUSTAN".

30. Thus considered it appears that the expression "Hindu" refers to geographical and territorial credal and this has been our "Bharath Matha", whose sons, whether Aryans or any other born in India, adopting it and living in India, merging their identity in India, in the words of Dr. Radhakrishna, were the sons and daughters of this Mother. If we look to the description of "Bharath Matha" in the old Indian Literature, it tallies with this description of "Hindustan". In the III Chapter of "Vishnu Puran" there is shloka as number one of III Chapter of second part of "Vishnu Puran", which reads as under:

"Uttaram Yet Samudrasya Himadrashchaiva Dakshinam

Varsham Tad Bharatam Nam Bharatee Tatra Santati".

31. It means that all that "varsh" that is open land i.e., land open up to sky that lies to the North of the Ocean or Sea i.e., Sindhu or Samudra and the land that lies to the South of Himadra that is Himalaya is Bharat and all the children of this Motherland are Bharatiya. Thus considered it appears that the expression "Hindustan" as such is not different in any manner in this description from the description of Bharath or our Bharat Matha. If we look to the Map of un-partitioned India, which included in itself the entire territory of the present India, present Pakistan, Present Bangladesh, Burma, Nepal etc. all included together, as it existed prior to even 1937, this entire unit which at one point of time was one cultural nationality, what it reflects and what it depicts, and its shape resembles with what, tallies with what?. Bharat Matha gives a clear expression and replica of a crawling Cow or a crawling Nandhi, that is the Bull, what we may call the Cow, representing "Govansh". That is why if we travel throughout this Country we find the worship of Cow and Nandi or the Bull in almost all the parts of India-be the Northern part of India or the Southern India. That the sense of nationality has been so much that the people worshipped the Cow (or Bull), and Cow as reverend Mother and as Abadhya, as the Cow (Gau) was representing as idol of Divine Mother Bharath Matha and looked as idol of Devine Mother India. The urge of national feeling and devotion for the Motherland and the Mother India being such, it appears that being children of one mother-the Hindustan or Bharath Matha, all children of this land preferred to describe themselves with the name of the divine Motherland-Hindustan or Bharath by use of expression "Hindu" Bharath or Bhartiya which is the name of "Stan" and they called themselves "Hindus", irrespective of their sect, mode of worship, their mode of

living, dining and caste or religion even some difference of language either in the script or otherwise. The one thing that is one consideration of common fraternity or maternity was represented among the children of this land when they adopted the name of the Motherland namely "Hindu". The expression "Hindi" from Persian Expression "Hind" had been used to denote the people of this land i.e., Hindus, but the language that had developed was called as Hindi. Original expression which has been developed by conjugation of "HI" from Himalaya and "NDU" of Indu-Sarovar was adopted as a name of all those who are the children of this land either by birth or by adoption, who adopted this land as their Motherland and merged their identity and believed that the blood that flowed in their veins was of Bharat or Hindustan and put themselves in the thread of this great Nation the great Hindustan. India expression may be a derivation from "Indus", but Indus as mentioned earlier developed from "Indu-Sarovar" after having deleted the expression "arovar" from the expression "Indu-sarovar" and their remain only Indus. When this is taken in the wider sense, as well as literal and the liberal sense, the expression "Hindu" denotes and includes in itself every one who is born on this land, whose Motherland is Hindustan, who has honestly, earnestly, eternally adopted Hindustan or Bharath as his Mother or Motherland, irrespective of his mode of worship, irrespective of the way of living, provided the one has eternally and earnestly adopted and developed an affection and value for the basic tenants of life, the basic values of life, cultural composite heritage of this Country. Composite culture in the sense that the culture and cultural values developed in any part of this Country, the high values and high principles brought out by the great Scholars of this Country, be of the Northern part of Hindustan, including Kashmir, the Himalayas, Punjab, Uttar Pradesh, Bihar, Sindh, Bengal, Madhya Pradesh, Andhra Pradesh, Karnataka, Tamil Nadu, or Kerala, Maharashtra, Orissa or any other part of India, including those great parts which on account of the policy of divide and rule of the British imperialist forces, have been separated from us in 1937 and in 1947. The one who has got a sense of respect and honour for the great men and women of virtue, the great children of this great land who had contributed to a great extent and added to the development, prosperity, cultural, ethical, moral and national of this great Nation, beginning from Lord Rama, Krishna, Buddha, Mahabir Jain Teerthanker, Adi Shankaracharya, Basaveshwar, Goswami Tulsidas, Guru Nanak, Vivekananda, the great Lord Maruthinandan (of Karnataka who taught the lesson of devotion to duty and that till job is not fulfilled, there is nothing to stop as a barrier or obstacle nor is there time to take rest). The Great Ashoka, Lakshmi Bai of Jhansi, the Great Akbar and the great freedom fighters who fought for the cause of making the Country free from the foreign yoke, like Balagangadhar Tilak, Lala Lajpatrai, Bipin Chand Pal, Gopala Krishna Gokhale, Mahatma Gandhi, Netaji Subashchandra Bose, Sardar Vallabai Patel, Jawahar Lal Nehru, Dr. B.R. Ambedkar, Dr. Rajendra Prasad, Maulana Azad and many others who worked for nothing, but for its freedom and unification of greater India, its prosperity being the sons of this great Hindustan, even those who adopted this Motherland-Hindustan, as their Motherland and completely devoted to this divine land, they

can be termed to be Hindu, in the wider sense of the term. All those to whom the interest of this great Hindustan is dear and who give priority to the well being of this land, known as Hindustan over their selfish interest or along with their narrow interest, they can well be termed to be Hindu, irrespective of their sect, religion or religious mode of worship and living. When I so observe as above, I find support for my view of the greater India, from the framers of our Constitution,

as originally framed and adopted. They also indicated by depiction of 22 photographs in this Constitution, this very spirit beginning from the first photograph of Nandhi-Bull, representing Govamsh, as contained in the seals of Indus and Harappa Civilisation. This Bull-Cow shape, represented the concept constant action and the concept of taking less and giving more as these Cows or Bull do, as well as the Govamsh, whose replica this entire Hindustan appear to be. Not only that the members of the Constituent Assembly, which was represented by Hindus and non Hindus, that is Christians, Muslims, Parsis or Jews, when, adopted and signed the Constitution, containing further pictures of Rama, Sita and Laxman on the chapter of fundamental rights, containing the photograph of Lord Krishna giving the message of "Gita" to Arjun, who had become pessimist in outlook and making him a man of action and the portraits of Bhagirathi, Gautam Buddha, Mahavir Tirthankar, Guru Govind Singh, Shivaji, Great Vikramaditya, Great Bhagirath, Rani Lakshmi Bai, the Great King Akbar, the picture of Tipu Sultan, Mahatma Gandhi, Subash Chandra Bose on one hand adorned those great men who worked for the best interest, prosperity and uplift and unification of this great land i.e., Hindustan or India, and that on the other hand the portraits of the Great Himalayan Mountains on the North and those Sea, Sindhu or the Indu-Sarovar on the South depicted, vide. Illustrative figure (Pictures) Nos. 20 and 22 indicating the geographical boundaries of this Country in Constitution as originally enacted and adopted, these basic facts appear to have recognised and they render me a support, when I so observe that the expression "Hindu" represented the entire nationality and culture of the Country. The expression "Hindu" does not represent any particular community or a particular communal sect. So this indicates that "Hindu" is one in broader sense of the term who is the son of this land, as defined and who is attached earnestly to this great Country, who has got respect for the cultural heritage and the basic traits truths of life and who always thinks and acts for the best interest of this land, Country, i.e., Nation over and above his self interest or over and above his caste or communal, sectarian or regional interests. So this expression "Hindu" in its wider sense represents the people of this Country as well, in addition to representing the geographical entity of this great Nation and of this great land and all that exists on this land of Hindustan.

32. Hinduism may broadly be said to mean the way of life and culture, civilisation and the values of life that were discovered, found and established in the continuous process of search for truth which is the ultimate goal of life, by the great seers of this land Hindustan, in any part thereof, with reference to moral,

ethical social and temporal matters in conjunction with their spiritual pursuit. The eternal truths, the values of life and its pursuits discovered and found by great seers of this land, with intent to infuse unity in diversity and in diverse modes of research and achievements of those eternal values of life guiding and controlling the action, they were given one common name, irrespective of the cult of worship or region in which they were found or developed-the common name bearing allegiance to the geographical name of this land, that is "Hindu" and is known as Hindu Dharma or Hinduism. Hindu Dharma is not strictly a religion in the sense and on the tests on which other religions namely Christianity or Islam or the like may stand. There is no one God, there is no one founder of this mode of life or this Dharma or Hinduism, nor is there one single Holy book of theology nor sample or genesis. Hindu Dharma deals with every aspect of human life. We find things providing guide lines and control as to the whole life and whole entire aspect of life and in Hindu Dharma itself we may find principles of Swadharma, Varnashrama Dharma, Loka Dharma, Rajadharma, Rashtradharma and the like. It also includes the various cults of Bhakti or devotion-Bhakti, Nirakar and Sakar Bhakti. The sects as Vaishnava, Shaiva, Shakta and even Atheists and Agnostics are all therein. Truth, Ahimsa, Aparigraha, Astheya etc., are said to be the fundamentals and the basic eternal truths of Hindu Dharma. Hindu Dharma was originally known as Sanathana Dharma that is the fundamental principles of uprightness, with no beginning and with no end. Without going into the details it may be said that the great seers have laid great emphasis on truth and have said there is no Dharma at par with the Dharma of truth that is "Truth". The God is Truth and Truth is God is one of the basic principles laid by great seers of this land including Mahatma Gandhi. The great Saint Tulsidas has in his "Ramcharita Manasa" said,- "Dharam no doosar satya samana, Aagam nigam puran bakhana, Param dharm sruti vidit ahimsa, Par nindasum aghana girisa;

33. That is there is no Dharma than adherence to truth and ahimsa is the greatest Dharma, thinking of evil or doing of evil or saying of evil of others is the greatest sin.

There is another Sanskrit Shloka which says:

Ashtadash Puraneshu Vyasasya Vachanadwayam, Paropakaraya Punya Ya Papaya Par Peedinam

34. This conveys the same message and the basic tenets of Hindu way of life. There is concept of Varnashram Dharma in the social order that is consisting of four Varnas-Brahman, Kshatriya, Vaisya and Sudra, with their Dharma or duties broadly indicated. But in concept-Varnashram Dharma, there is no such thing as hatred or the concept of superiority or inferiority. It has been really classification and distribution of common human being in the four classes, on the basis of the doctrine of Karma and Guna and the synthesis of the doctrine of Karma and Guna and birth and rebirth it portrays and lays down that every one has to bear the fruits of his Karma i.e., deeds in one's own life and after rebirth. The Karma of the past life result in development of samskara and swabhava and in

swabhava janit guna that is the basic development of the man and those basic virtues developing as a result of Karma, result in his birth in a particular Varna fitting him for the Karma and Dharma of that Varna. The deeds of Karmas of one in his life control the destiny and birth at the time of rebirth, good, bad or evil. Even one person may go in the Yoni of a cattle or a beast, depending upon his Karma. The doctrine of Karma is one of the basic concepts of Hindu Dharma controlling and guiding the actions, movement or destiny of a man. If we study Sri Bhagwad Gita, particularly Shlokas 47 and 48 of II Chapter, Shloka No. 13 of IV Chapter thereof along with Shlokas 41 to 46 of Chapter XVIII thereof and in conjunction with Shlokas 40 to 45 of Chapter VI, it reveals that performing of the duty is within one's power is the message and one must perform to his best with detachment. The last Shloka of Shrimath Bhagwad Gita, one of the important Holy Books of Hindu life and culture, says that if one performs his job and the duties just like a man full of action, always taking God or Truth-Yogeshwar Krishna with him or in his heart and faith and controlling him, that person is bound to achieve all success, name and fame and prosperity irrespective of his being of any Varna. So theory of Karma is very essential feature or part of Hindu way of life. It gives the message that destiny is built by one's own action as per good or bad deeds. The treatment inter se the Varnas has been provided as the treatment of his ownself by one with reference to the different parts of his own body. In the matters of joy, sorrow, pain and suffering, as there is co-relationship in entertaining of pleasantries, feeling of joy and sorrow or the pain and suffering, inter se the various organs and parts of the body, the same or similar is and should be inter-relationship of the members of 4 Varnas. As none hates with any part or particle of his body and none feels any part of the body is either untouchable or unimportant and that as every part of the body has got its own importance, so is, the concept of Hindu Dharma and Hindu way of life, as to persons belonging to various Varnas do stand in inter se relationship and according to the basic Tenets every one has got his own importance in life and in the social order and deserves due human respect. The other great aspect of Hindu way of life is that the spirit of God pervades in all and every beings and particles of the Universe-movable or immovable or animate or inanimate beings, including the human beings, catties and other living beings as well, expressed in the following words in Bhagwad Gita:

"Eeshwara Sarva BhootanamHrdayeshe Arjun Tisthati,Bhram Yan Sarva Bhutani YantraRurdani Mayyaa".

35. Hindu concept of devotion and of an earnest or complete devotee is that one is complete devotee or ananya Bhakt who thinks of himself to be the servant or sevak committed in the service of all that exists in this Universe in any form which is nothing but manifestation of God, the object of his Love, Devotion and Bhakthi, as Lord Rama in Ram Charit Manasa of Tulsidas says to Lord Anjaneya i.e., Hanuman:

"So ananya jake use mathi natarai HanumantaMai sevak sachara-char roopa

swami Bhagwanth".

36. That is a real earnest devotee consistently, constantly thinks and believes and adheres as a fundamental principle of life of Devotion that the object of his adoration and worship, whom he adores i.e., He (God) or His Spirit pervades in all beings animate or inanimate and He i.e., Bhagwan manifests himself in the form of all those objects. This is the principle of Hindu way of life and this has been much appreciated by one of great man Pandit Jawahar Lal Nehru, as appears from the perusal of the Book known as "Mind of Nehru" published by famous Journalist Sri R.K. Karanjia as an interview of Pandit Jawahar Lal Nehru. So these are some of the basic things about the Hindu way of life. Love and adornment or adoration of Mother and Motherland has always been held on high and more ethical and valuable pedestal than all the pleasantries of Heaven even has as per basic values of life been cherished in land Bharath:

"Janani Janma Bhumischa Swargadapi Gariyasi".

Thinkers of this land adorned women as incarnation of Shakthi and as the best and equal partner of man in the pursuit and pilgrimage of life and have always preached that in the family where women are adorned and worshipped i.e., kept satisfied of the need and requisite things of life and are honoured and treated with dignified manner keeping pace with the dignity, there live the God and the pleasantries of God. That is the Shloka which reads:

"Yatra nariyat poojyante Ramante tathre Devata".

That the women has been taken by the ancient Hindu Seers and thinkers to be the equal partners and the relationship between man and woman, husband and wife is of co-operation and co-ordination, supplementary and complementary to each other. Goswami Tulsidas illustrates the relationship in his Ramcharit Manas by giving the similes of relation of Chandra (Moon) and Chandrika (Moon's light) "soul" and "body", "water" and the "river", that is the two are so inter related that in the absence of one there is no worth existence of the other as in life we find that soul without body is never welcomed or as body without soul is never loved. The river without water is taken to be of no worth as a river and the water which is not in river but in dirty lanes or drains also loses importance. In the same way in human life or human social life a man without woman as a partner is just like soul without body and the woman without a male partner is a body without soul.

37. The Hindu seers have no contempt for others religion. He looks upon him as aids to our knowledge of God, as channels of divine revelation. He does not believe that salvation is to be had only through any one particular mode of worship or religion. God does not refuse his truth, his love, his grace to any one who with sincerity seeks him wherever one may be and whatever creed one may profess. The aim of Hindu religion is regeneration of mankind.

38. Hindu Dharma has been known as Sanatan Dharma as well meaning thereby

that uprightness is for ever, of that which has no beginning or end, and proclaims to the world the eternal truths, as Great Rishis happened to be the first to tap into them as Hindu Dharma or Sratana Dharma.

39. One of the important aspects of Hinduism is utmost freedom of thought. Hinduism only gives suggestion on how to tackle the problems and it never orders us what to do. Every one has absolute freedom to do what he himself finally thinks to be just and proper and as per theory of cause and action he bears the fruits of action. The story of Mahabharat and Gita of Krishna reveals it. After giving all advice and upadesha, Lord Krishna says to Arjun in Sixty Third Shloka of Eighteenth Chapter of Srimadh Bhagwad Gita-"Do as you now wish and think proper". It does not believe in conversion of a person of a religion, sect to its fold but keeps open the doors of itself for one who desires to follow and adopt it and be benefited by it. But lays emphasis on one's own natural or Swa Dharma and its observance. It would be profitable to refer to the following Shlokas of Bhagwad Gita:

"Shreyan Swadharmo Viguna PardharmatSwisthitat/Swadharma NidhanamShreya Pardharmo Bhayavaha".

(Shloka 35, Chapter III).

40. The same message Hindu way of life and culture i.e., Hinduism is communicated by Shlokas-45 to 48 of Chapter XVIII of Shri Bhagwad Gita.

41. There is no doubt Hinduism which assimilates all modes of worship in itself, stands against military exploitation of all sorts, in action and cowardice. This is well exhibited by the two great epics i.e., Ramayan and Mahabharat stories and teaching of Bhagwad Gita and the history of freedom movement under the guidance of Bapu (Gandhiji), and Truth and Ahimsa and Unity of the people of the Country i.e., Hindustan being the essential weapon used.

42. The Hindutva, Hinduism is thus collective name of the life of people and values-ethical, religious, moral, cultural, national and spiritual which guided and controlled the whole or entire aspect of life of people of this Country.

43. Here it will be profitable to refer and quote for Encyclopaedia Britannica.

44. In Encyclopaedia Britannica (1972 Edition) Volume 11 at page 507, it is observed:

"A precise definition of Hinduism is hard to formulate since the beliefs and practices of the Hindus vary widely both regionally and, within the given region, from class to class. It is a favourite dictum that Hinduism is not a religion but a whole way of life, whose precepts cover a vast range of human activity outside the scope of most modern religions.....

In its traditional form the chief distinguishing features of Hinduism are the doctrine of the transmigration of souls, with its corollary that all living beings are the same in essence; a complex polytheism, subsumed in a fundamental

monotheism by the doctrine that all lesser divinities are subsidiary aspects of the one God; a deep-rooted tendency to mysticism and monistic philosophy; a stratified system of social classes, generally called castes, which is given religious sanction; and a prosperity to assimilate rather than to exclude". .

45. Swami Vivekanand said "I am proud to belong to a religion which has taught the world both tolerance and universal acceptance. We believe not only in universal toleration but we accept all religions are true, as different streams having different sources, all mingle their water in the sea. So different paths which men take through different tendencies, various though they appear, crooked or straight, all lead to God".

46. It will be profitable at this stage to quote the following passage dealing with Hinduism in the Book "Am I a Hindu?" Edited by Viswanathan, 1944 and published firstly by Hale Books, San Francisco in 1992, in it is observed as under:

"Hinduism is a great banyan tree. On its "Sakas" (limbs) one can see the principles of all the great religions of the world. The total surrender Yoga which Jesus Christ spoke of one can see in the Bhagwad Gita. The statement of the Sufisthat "I am God" one can see in the Upanishads as "Aham Brahmasmin". The statement of Lao-Tse that everything is Tao can be seen as "Everything is Brahman" in the Upanishads. In Hinduism alone one can see the strange coexistence of an atheist, an agnostic and a theist. When Socrates and the Sufis were persecuted in the West in India we adored Buddha, who did not recognize the authority of the Vedas, and tolerated Charvaka, who ridiculed the Vedas and attacked the existence of God. So let us face it, in Hinduism one can find a religion tailor-made for each of us, whatever be our way of thinking.

47. Hinduism recognized the fact that people are on different levels. Matters do not apply or appeal to all persons in the same manner.....".

(see page 30/38 of the Book)

Thus considered Hindu in wider and broader sense of the term the one who is born on this vast land which is known as Hindustan running from Himalayan Mountains in the North to Indu-Sarovar or Indian Ocean and in any part thereof having a faith that the blood that runs in his veins is nothing but of Divine Mother Bharath Matha or Hindustan, and bearing allegiance and faith with it and its cultural heritage and Hindutva is nothing but basic instic of affinity and character of being of this land Hindustan with devotion, its cultural and values it stood far and Hinduism is not a religion in strict sense or test as Christianity and Mohammadanism. Hinduism is really way of life developed in this Country with goal to attain and experience the truth and development of life by process of cultivating the great virtues needed for the purpose. It is an conglomeration of doctrines, cults of life and basic Tenets of life of truth, Ahimsa etc., with stimulative power of accumulating what is good and virtuous or beneficial to all from what so ever source of experience it may come but absorbed in it and is

named as Hindu way of life.

48. That keeping in view the circumstances particularly those which had been created, as a result of exercise of policy of divide and rule adopted by British Empirist forces ruling this Country generating the communal tensions finally leading to a second division, separation or partition of India in 1947 and to keep India united to give the concrete shape to the assurance of religious freedom to those people who worked for freedom of the Country and who adopted this partitioned India as their Home but yet wanted to maintain their separate entity as Muslims, Christians and the Jews and many foreigners who had come to this land and who adopted this land as their Motherland and tried to merge, their identity with the identity of the Motherland as devoted children of this land in slow process like other children born of this land, but yet wanted to maintain their identity as a different sect or community distinct from the main cultural theme of the Nation, with best intents to give impetus to them to adopt in times to come this Country and the cultural heritage of this Country as their own and to feel one with all the people and framers of the Constitution and the laws, adopted, their liberal and co-operative approach, when they defined the expression "Hindu" under the Constitution. That as per Explanation II, to Article 25 of the Constitution, the expression "Hindu" includes Hindus in restricted sense, all those sects, panthas or religions or religious thoughts or religious perceptions or value of life and their followers that had their origin on this land or sprung from this land known as Hindustan and which had their base, the original thoughts emerging and forming part of India and of Indian culture. They were all included under the expression "Hindu". Explanation II to Article 25 of the Constitution of India, reads as under:

"In sub-clause (b) of clause (2) reference to Hindu shall be construed as including reference to persons professing Sikh, Jain or Buddhist religion and reference to Hindu religious institution shall be construed accordingly".

49. If we look to the definition of "Hindu" in the Legislation, particularly in the Hindu Adoption and Maintenance Act, there also appears to be the adoption of this spirit. Section 2 of Hindu Adoption and Maintenance Act is relevant for our purposes. Section 2 of the Act reads as under:

"2. (1) This Act applies,-

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

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

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

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

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

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

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

50. According to the provisions of this Act, the expression "Hindu" for the purpose of the Act is to be construed as if it included in itself, a person who though not a Hindu by religion is nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section. To whom this Act will apply Section 2 indicates that it applies to any person who is Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahma Samaj, Prarthana Samaj or Arya Samaj. It also applies to any person who is a Buddhist, Jaina or Sikh by religion. It also applies to any person who is not a Muslim, Christian, Parsi or Jew by religion, unless and until it is proved that such person would not have been covered by Hindu Law or any custom or usage as part of that law in respect of any of the matters dealt with under the Act, if the Act had not been passed. A perusal of the definition of Section 2 along with sub-section (3) reveals that a Hindu for the purpose of this Act is one who is either a Hindu by religion in any of its forms or developments including Virashaiava, Lingayat. It also applies to Buddhists, Jains and Sikhs and to all other persons who do not belong to a particular religion or sect, which had its origin in foreign land i.e., a land other than India. Muslim religion originated in Mekka and Madhina. In the same way the religion of Christians, Parsies and Jews also did originate and developed in the lands other than India. A person, who does not belong to any of these religions, and who is born in India or whose parents were born in India residing out side India or in lands out side India, has also been described and taken to be included within the four corners of the expression "Hindu", as per Section 2, sub-section (1) and (3) of the Hindu Adoption and Maintenance Act, 1956. So only followers of those religions of Muslims, Christians, Parsies and Jews which had their roots outside India (pre-partitioned India) have been excluded, otherwise as Pandit Jawahar Lal Nehru

observed in "Discovery of India" that everything Indian is Hindi, Hindi has nothing to do with religion. A Muslim or a Christian is as much a Hindu or Hindi as a person who follows Hinduism, Pandit Jawahar Lal Nehru has used the expression "Hindi" for expression "Hindu". So he could be called a Hindu Christian, a Hindu Muslim, a Hindu Jews or a Hindu Parsi. But really to keep the assurance and to give concrete shape to assurance religious freedom given to them these communities have been kept out and were not included within the frame work of the expression "Hindu" as defined, within the four clauses of Section 2. For the above view, I find support from the view expressed by the Allahabad High Court in the case of Smt. Indumatee Koorich's case, supra. That a reading of the provisions of Hindu Adoption and Maintenance Act, per se, does not per se bring in the concept of citizenship as an imperative or necessary qualification for the application of the Act. It provides that it extends to whole of India except Jammu and Kashmir and applies to Hindus as per Section 2 in the matters of Adoption and Maintenance. That a perusal of the similar provisions of Hindu Marriage Act, 1955, Hindu Succession Act, Hindu Minority and Guardianship Act also reveal this position that for application of the provisions thereof, citizenship is not a necessary imperative condition, instead what is essential is that the parties must be "Hindus".

51. It is one of general principles of Private International Law as regards immovable property, in matters relating to immovable property and inheritance thereof, it is law of Country in which immovable property is situate will govern it as per doctrine of *Lex Loci rei Sitae*.

In Broom's Legal Maxim, X Edition, Sixth Reprint at page 336-37, it has been so laid:

"The right of inheritance does not follow the law of domicile of parties, but that of the Country where the land lies, but with respect to movable property which has no locality and is of an ambulatory nature which is part of Law of England that this description of property should be distributed according to "*Jus domicitir*"-the movable estate of testator is deemed to accompany him wherever he may reside and become domiciled". . . . The right to such property depends on the place where property is".

52. That as regards to Hindu Succession Act, it appears to have no extra territorial operation and operates to control and govern the succession to the property of a Hindu situate within the territories of India, by a Hindu as defined, as provided in Section 2 of the Act and it does not bring into it any such concept as of domicile as per Section 2(c) thereof. That similarly appears to be the position under Hindu Adoption and Maintenance Act, as per provisions of Sections 1 and 2 of the Act. It has no extra territorial operation. It is *Lex Loci rei Sitae* i.e., if adoption is to take place or locus of Hindu child whose adoption is to take place is within India the Act will apply. That, if adoption is to take

place in India of a Hindu child, Hindu Adoption and Maintenance Act is to govern

and question of domicile may not be relevant. The intra territorial aspect is not controlled by domicile as it applies to all the Hindus who are within India, irrespective of the domicile.

53. But so far personal relations as of marriage or of Ward and Guardianship thereof and rights there under are concerned, if these take place in territories outside i.e., in Countries other than India the law of domicile is to govern and apply.

54. That the use of expression "applies also to Hindus-domiciled in the territories to which this Act extends,-who are outside the said territories used in Hindu Marriage Act and Hindu Minority and Guardianship Act, reveals these two Acts are of extra territorial operation, in the sense, in relation to matters of Marriage of Hindus, taking place at the time when they are or happen to be outside of India, if those Hindus are domiciled in India or in cases where cause of appointing Guardian to minor Hindu arises in foreign land, the Hindu Minority and Guardianship Act is to apply, as well as to such matters provided that Hindu is domiciled in India, though at that relevant point of time he is happens to be in the other Country as per Sections 1 and 2 of Hindu Marriage Act and Sections 1 and 3 of Hindu Minority and Guardianship Act.

55. That as regards the intra territorial matters whether of succession, adoption, maintenance or if parties are Hindus, with the meaning of the Act, it is immaterial if they or either of them is or is not a citizen of India or a domicile in India, for the application of the Acts, and Hindu Succession Act or Hindu Adoption or Maintenance Act is to apply and govern as per Sections 1 and 2 of these two Acts.

56. A Hindu who if he wants to adopt a Hindu child in India whose parents are not alive or are not known, the provisions of Hindu Adoption and Maintenance Act would apply. If other conditions of Section 9(4) are fulfilled, an application by guardian of the Hindu child may be moved for grant of permission by competent Civil Court to give in adoption the child to the person named therein who is also a Hindu. Section 2(c) of the Act does not put any condition or restriction as to domicile or like for the application of the Hindu Adoption and Maintenance Act. What is material firstly is that, parties must be Hindus for the application of Act as per Sections 1 and 2 of the Act, that the guardian of minor Hindu child whose parents have abandoned her, or whose parents are dead or whose parentage is not known, may move an application under Section 9(4) of Hindu Adoption and Maintenance Act, even for permission for giving the child in adoption to a Hindu, residing outside India and even to those they have no domicile in India, provided the adoption is to take place in or within the territories of India. In the case of *State Trading Corporation of India Ltd. v The Commercial Tax Officer and Others*, AIR 1963 SC 1811, dealing with the question of difference between Nationality and Citizenship, Their Lordships of the Supreme Court have been pleased to observe:

"But the question still remains whether "nationality" and "citizenship" are interchangeable terms. "Nationality" has reference to the jural relationship which may arise for consideration under international law. On the other hand "citizenship" has reference to the jural relationship under Municipal Law. In other words, nationality determines the civil rights of a person, natural or artificial, particularly with reference to international law, whereas citizenship is intimately connected with civic rights under Municipal Law. Hence all citizens are nationals of a particular State but all nationals may not be citizens of the State. In other words citizens are those persons who have full political rights as distinguished from nationals who may not enjoy full political rights and are still domiciled in that country".

57. This principle may be applied to cases where these acts do not require or emphasise on domicile or citizenship, the provisions of Act, such as Hindu Adoption Act may operate with respecting transactions of adoptions or with respect to cause of action in cases of claims of maintenance by a Hindu against a Hindu only as per the provisions of the Act, i.e., Sections 1 and 2 thereof in respect of transactions or causes of action arising in whole or part in the territory of India.

58. In the present case, the child who is an orphan beyond dispute is a Hindu. Though he is an orphan, it is nobody's case that he belongs to either Muslim or Christian or to Parse or to Jew Community. The child admittedly is brought up by a Hindu Organisation namely "Smt. Gangamma Chikkumbimath Bal Kalyan Kendra" run by Swami Vivekananda Seva Pratishthan, Belgaum. The child is born in this Country. The institution that has moved this application and its President, Members of Managing Committee are beyond doubt admittedly Hindus. The person to whom this child is proposed to be given as per assertions have been Hindus and are the persons who were born or whose parents appear to have been born in India and have been Hindus by birth. No doubt they have, for reasons best known to them had gone to America, adopted citizenship of American in 1987. But by taking the American citizenship or by going to America, they cannot be said to have ceased to be Hindus, unless it is to be alleged or proved by cogent evidence of fact and law to that effect or otherwise. It is nobody's case that they had ceased to become Hindus. In the wider sense of the term, they had been Hindus born in Hindustan as well as their parents being Hindus, they have affinity to this Country-Hindustan and these persons claim themselves to be Hindus by birth. That until and unless it is proved and shown that they have ceased to be Hindus, either by conversion to any other religion or under any law customary, statutory or the like, merely by going to foreign land these persons did not cease to be Hindus, simply on account of having taken the citizenship. Hindus reside even after partition in Pakistan, Bangladesh, Nepal, England and United States and maintain the culture, tradition, heritage of Hindustan and follow Hindu way of life, they, unless under specific law statutory or customary are shown to have ceased to be Hindu, they remain Hindu. The Trial Court has not indicated any custom or law where under they may be taken

to have so ceased.

59. The Court below rejected this application simply on the ground that the application is not maintainable as the respondents who want to take the child in adoption have migrated to United States of America, therefore, the application for permission to give the child in adoption to the respondent is not maintainable and on that count rejected the application. In my opinion, the Court below committed jurisdictional error i.e., it illegally refused to exercise the jurisdiction to consider and decide the application on merits. In order to consider the maintainability of the application, what was material to be looked into and to be decided as fact in case of any dispute being raised is that whether the person moving the application was a Hindu, whether the child to be given in adoption was a Hindu and whether the person to whom the child is intended to be given for adoption has been a Hindu or whether he had ceased to be Hindu. Merely by reason the respondent's becoming a citizen of United States of America, the immigration or going of the respondents for the purposes best known to them to United States of America, the circumstances cannot by itself be taken to render the application that had been made as not maintainable, because they cannot be deemed to have ceased to be Hindus under the provisions of the Act, even if their domicile is not in India, though this question has not been decided by the Trial Court at all, and there appears to be no provision to indicate a Hindu going to or residing in a foreign land will automatically cease to be a Hindu.

60. The approach of the Court below in my opinion suffers from illegality when it rejected the application and it resulted in refusal to exercise the jurisdiction vested in the Court.

61. No doubt ordinarily there is no law specifically dealing in the matter of international adoption or adoptions of children at international level as observed by Hon''ble Mr. Justice Bhagwat, but certain basic principles of law applicable to such cases even which may be applied to the matters under Section 9(4) in such cases, have been laid down by Their Lordships of the Supreme Court in the context of Guardians and Wards Act, in the case of Lakshmi Kant Pandey, supra and in particular in the matter relating to adoption of children who are orphans. As observed by the Supreme Court no doubt efforts should be made to find out adoptive parents for such children within the Country, but it has to be taken note of that those children require love, care and attention and the adoptive parents may be the next best substitute for biological prospects. Their Lordships of the Supreme Court in the case of Lakshmi Kant Pandey, have very clearly and succinctly laid down the principles indicating the consideration which are of important significance and need be taken into consideration by Courts which are dealing with the matters of Inter Country Adoption. It will be profitable to quote the following observations of the Supreme Court in Lakshmi Kant Pandey's case:

"What Paul Harrisan has said about children of the third world applies to children in India and if it is not possible to provide to them in India decent family life where they can grow up under the loving care and attention of parents and enjoy

the basic necessities of life such as nutritive food, health care and education and lead a life of basic human dignity with stability and security, moral as well as material, there is no reason why such children should not be allowed to be given in adoption to foreign parents. Such adoption would be quite consistent with our National Policy on Children because it would provide an opportunity to children, otherwise destitute, neglected or abandoned, to lead a healthy decent life, without privation and suffering arising from poverty, ignorance, malnutrition and lack of sanitation and free from neglect and exploitation, where they would be able to realise "full potential of growth". But of course as we said above, every effort must be made first to see if the child can be rehabilitated by adoption within the Country and if that is not possible, then only adoption by foreign parents, or as it is some time called inter-country adoption should be acceptable. This principle stems from the fact that inter-country adoption may involve trans-racial, trans-cultural and trans-national aspects which would not arise in case of adoption within the country and the first alternative should therefore always be to find adoptive parents for the child within the Country.....".

There Lordship of Supreme Court further observed:

"But, while supporting inter-country adoption, it is necessary to bear in mind that the primary object of giving the child in adoption being the welfare of the child great care has to be exercised in permitting the child to be given in adoption to foreign parents, lest the child may be neglected or abandoned by the adoptive parents in the foreign Country or the adoptive parents may not be able to provide to the child a life of moral or material security or the child may be subjected to moral or sexual abuse or forced labour or experimentation for medical or other research and may be placed in a worse situation than that in his own Country.....".

62. In the case of the orphan child if in our Country we could not find other Hindu family ready to adopt and really there is a Hindu family residing in some other Country namely United States of America, earnestly desiring to adopt him, then that has been in the best interest of the child the application was required to be considered by the Trial Court and ought not to have been thrown out. The Court should have considered the matter, keeping in view the paramount consideration to be interest of the welfare of the minor child, in the light of the provisions of law as contained in Section 9(4) and (5) of the Act and the law and guiding principles as laid down by Hon''ble Supreme Court in the context of inter-country adoption in the case of Lakshmi Kant Pandey, as explained in subsequent decision in Laxmikant Pandey v Union of India and Another, AIR 1986 SC 272.

63. Thus considered in my opinion, the revision application deserves to be allowed and the order of the Trial Court deserves to be set aside and the case requires to be remanded and as such I hereby allow the revision petition and set aside the order of the Trial Court dated 30-5-1995, passed in G. and W.C. No. 2/95, and remand back the case to the Trial Court to decide it afresh in the light of the paramount consideration of interest and welfare of child being best served

and those referred to in sub-section (5) of Section 9 of the Act and the principles of law laid down in Lakshmi Kant Pandey's case, i.e., AIR 1984 SC 469, AIR 1986 SC 272 and AIR 1987 SC 232. The Trial Court is expected to decide the case on merits expeditiously.

64. No order as to costs i.e., parties to bear their own costs.