

(1989) 05 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 1720, 1721, 1755, 3074, 3081 and 21112 of 1989

Sri Gopi Nath

APPELLANT

Vs

The Director General Doordarshan and Others

RESPONDENT

Date of Decision : 05-05-1989

Acts Referred:

Cinematograph Act, 1952 — Section 2, 3, 4, 5, 5B
Cinematograph Rules, 1962 — Rule 2(1), 21(1)
Constitution of India, 1950 — Article 19, 19(1), 19(2), 226, 25
Telegraph Act, 1885 — Section 3(1)

Citation : (1989) 2 AWC 848

Hon'ble Judges : R.M. Sahai, J;K.K. Birla, J;J.N. Dubey, J

Bench : Full Bench

Advocate : Party in Person and M.C. Agarwal, for the Appellant;

Judgement

R.M. Sahai, J.—Galaxy of eminent intellectuals, academicians, Social workers, religious heads and even Godman, apart from numerous interveners, feeling religiously hurt and morally wounded by telecast of serial Uttar Ramayan from Doordarshan have raised issue of enormous importance and profound sensitivity touching upon religious autonomy guaranteed by Article 25 of Constitution its susceptibility depth and impact.

2. Religion is a realm beyond reason and logic as belief in the unseen "Holy" and faith in the mythology emanates worship by prayer or sacrifice, contemplation or incantation magic or ritual. What constitutes religion has eluded theologians, philosophers and scholar alike. But what is universally accepted it is one's own perception of the "Divine" or belief in creator or faith in Dharmma or observance of rituals etc. Dr. Radha Krishnan, the famous philosopher, considered religion as specific attitude of self, Swami Vivekanand described it as comprising of philosophy, mythology and rituals. Encyclopaedia Britannica explains religion as, "Man's relation to that which he regards holy...Worship is probably the most basic of these, but moral conduct, right belief, and participation in religious

institutions are generally also constituent elements of the religious life as practised by believers and worshippers and as commanded by religious sages and scriptures". In *S.P. Mittal v. Union of India* AIR 1983 SC 1 while highlighting various facts of religion its meaning and understanding it was observed that, "Religion like "democracy" and "equality" is an elusive expression which everyone understands according to his own pre-conception." In *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, , it was held that religion is a matter of faith with individual or community. In *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, , it was held that religion undoubtedly has its basis in system of beliefs and doctrines which are regarded by those who profess their religions to be conducive to their well being.

3. Hinduism is a religion professed and practised by Hindus, primarily residing in this country but spread all over the world. Transmigration of soul and re-birth is its essence. Its followers may be worshippers of Vishnu or Shiva popularly known as Vaishnavites and Shavites. All the same they are Hindus whose religion is Hinduism. In *Religions of India* published by Clarion Books Hinduism is described as a "geographical term based upon the Sanskrit name for the great river that runs across the northern boundaries of India, known as Sindhu, the entire religion to the south-east of the Sindhu which the Greeks call the Indus, came to be known as the land of the Hindus, and the vast spectrum of faiths that flourished here acquired the generic name Hinduism. In fact, Hinduism calls itself the Sanatana Dharm, the eternal faith, because it is based not upon the teachings of a single preceptor but on the collective wisdom and inspiration of great seers and sages from the very dawn of Indian civilization." Encyclopaedia Britannica narrates Hinduism thus, "A precise definition of Hinduism is hard to formulate since the beliefs and practices of the Hinduism is very widely different both regionally and within a 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 religion." Dr. Radha Krishnan opined that, "Hinduism is, therefore, not a definite dogmatic creed, but a vast complex but subtly unified means of spiritual thought." According to Swami Nikhilanand the four cardinal principles of Hinduism are non-duality of the God head, the divinity of the soul, the unity of existence and harmony of religion. In *Sastri Yagnapurushadji and Others Vs. Muldas Bhudardas Vaishya and Another*, the Hon"ble Supreme Court after exhaustively reviewing various authorities held that Hinduism was a religion with definite philosophy. To suggest, therefore, even remotely that Hinduism is not a religion is being academic only. However, whether Hinduism is an, "utterly diverse conglomeration or doctrines cults and way of life", or it holds, "an incomparable form of Monism in accompaniment with the idea of other deities subordinate to non-dual supreme spirit", or it is, "specific attitude or self", or it is generic name for followers or Vaishnavites and Shavites, whose principal source of knowledge and religion are Vedas and Upanishads, Ramayan, the great epic rich in wisdom and philosophy

having profound influence on life and culture of Hindus, is undoubtedly one of the auxiliary scriptures of the Hindu religion. It glorifies man as God, sets up ideals for one and all which have been cherished and imitated by people, rich or poor, saint or seer, philosopher or Scholar, Scientist or theologian, and has helped in ennobling them and succouring them in tribulations. It has served as an inexhaustible source of inspiration to great poets. The original is universally accepted to have been written by Sage Balmiki in Sanskrit, which has either been translated or has furnished source for poetic or dramatic rendering in various languages in different parts of country. Large number of such works written in different languages have been noticed in cultural heritage of India published by Ram Krishna Mission.

4. Ramayan is a sacred book and its sanctity and status is no less than Koran and Bible. True it is Kavya or Mahakavya but it was written on dictate of Brahma the creator by Rishi Balmiki on what was narrated by Narad Muni. It may not be the words spoken by God but it is a record of what God said. In *Lal Singh Yadav v. State* 1975 ALJ 601, a Special Bench of this Court observed Ramayan was almost a Dharm Granth, a moral and religious treatise which was not past history but perennial experience. In Balmiki Ramayan published from Gita Press it is said to have same status as Vedas. Kane in his book *Dharm Shastras* noticed that although Ramayan was a Kavya yet on account of its ideals it was a source of Dharm. It has been respected as such for thousand years. Its value as source of Hindu religion has not been doubted even by Western Scholars. Lord Ram the model of virtue, round whom the whole epic revolves is worshipped not only in this country but according to Baroda Institute was worshipped even in Cambodia and China in 600 A.D. He was, seventh incarnation (avtar) of Bhagwan Vishnu. "Ram's name became most often invoked at time of death." (*Encyclopaedia Britannica*). Similarly Devi Sita an ideal of womanhood is worshipped in every household as mother Goddess. Uttar Kand is one of the chapters in Balmiki Ramayan which amongst other episodes includes banishment of Devi Sita. It was said to be interpolation, various reasons were advanced for it. Voluminous literature has been filed. Reliance was placed on various Shloks from Balmiki Ramayan itself and efforts made by research scholars. What is true and which version is authentic is an exercise which need not be gone into by this Court. Suffice it to mention that from various books written by scholars of eminence both from East and West and stupendous research work done notably by Oriental Institute Baroda there appears to be cleavage of opinion, on interpolation of Uttar Kand and the episodes relating to banishment of Devi Sita by Lord Ram etc. In *Righteous (sic) J.L. Brockington* has expressed doubt rather has stated that it has long been recognised that the first and last book Bal Kand and Uttar Kand were later additions. On the other hand the work published by Baroda Institute casts doubt because of *Raghuvansh* written by Kalidas. In *History of Philosophy Eastern and Western Volume one* sponsored by Government of India the Editorial Board of which was presided by late Dr. Radha Krishnan, it is noticed that Ramayan did not, "Come down to us in the original in which its author, Balmiki

conceived it, but as considerably overlaid and disfigured with interpo-lations of all sorts. Moreover, it appears today in atleast three important recensions the West Indian, the Bengal and the Bombay, which differ from each other to such an extent that about one third of the verses in each is found in neither of the two." But the birth of Lav and Kush in forest appear to be accepted by all. Even Ram Charit Manas written by Tulsidas mentions it.

5. With this preface about Hinduism and religion we now proceed to examine scope of Article 25. Religion being the binding faith and divine nector for the survival and growth of men every civilised society has permitted its preservation. The American and Australian Constitutions too guarantee free exercise of religion. When our Constitution was framed visualising a secular society and preamble set up the goal of liberty of faith and belief then it was concretised by providing freedom of conscience and right freely to profess, practice and propagate religion. Religious autonomy articulated in Article 25 "has left every person free in the matter of his relation to his creator, if he believes in one", Saifuddin v. State of Bombay AIR 1962 SC 853. The words used are of wide import. They can not be freezed in a rigid mould nor it is possible while constitutionalising the relationship of State to Religion to quest for too literal construction as problems such as these may not have been envisioned when the constitution was framed. Yet it may be legitimate to find out doctrinal frame work, which would best realise the value which lies at bottom of guarantee. Freedom of conscience and right freely to profess, practice and propagate religion expands the scope and widens the ambit to account for multiple form of religious exercises. American Courts have extended operation of freedom clause to what is even "arguably religion." Probably the best illustration is furnished by *Malnak v. Maharshi Mahesh Yogi* case in which the American Courts while considering free exercise clause held Transcendental meditation taught to students was religion even when vast majority considered it to be mental exercise only. In *Ratilal Panachand Gandhi v. State of Bombay* AIR 1954 SC 388, the Hon"ble Court while explaining scope of Article 25 observed "Thus, subject to the restrictions which this Article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others." It was reiterated by the Hon"ble Supreme Court in *Rev. Stainislaus Vs. State of Madhya Pradesh and Others*, . In *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, , it was held that Article 25 secured to every person not only the freedom of religion belief and conscienced but also the right to express his belief in such outward acts as he thought proper. Since religion has not been defined, obviously, because it is incapable of any precise specification it extends and includes any renet or belief or practice which one considers to be religion. Even fasting or bathing in a sacred river is religion for Hindus.

6. Since Ramayan is a source of religion and has the same status as Dharm Granth or Vedas any distortion of it or any disrespect shown to its Characters Lord Ram and Devi Sita would attract Article 25, what exactly is the violation and whether it infringes the right of petitioner shall be adverted little latter but it appears necessary to clear the haze about competing right of the produce emphasised time and again. It proceeded obviously on fallacy about jural relationship between right and duty. The antithesis of right is absence of it in others or existence of no right and its corresponding is duty. A legal right is a right which vests in a person, is available against a determined person or body, that is in personam, or against the whole world, that is in rem, whose breach or violation is actionable and can be enforced in a court of law. A person claiming violation is not competing with another person but seeking enforcement of his right guaranteed by Constitution. He may succeed or fail depending on merits of his claim and interpretation of Article 25 but he cannot be denied relief because the other person has equal competing right. As observed by Latham C.J. in *Adelaide Company of Jehovah's Witnesses v. The Commonwealth* 1963-67 CLO 117 . The constitution projects religion with a community organised under a constitution so that the continuance of such protection necessarily assumes the continuance of the community so organised. This view makes possible to reconcile religious freedom with ordered government." The decision has been approved by our Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, , and *Bijoe Emmanuel and Others Vs. State of Kerala and Others*, , wherein the Hon"ble Court further held, "what Latham C.J. has said about the responsibility of the court accords with what we have said about the function of the court when a claim to the Fundamental Right guaranteed by Article 25 is put forward." A person's religious faith and belief are his own and his freedom to hold them is absolute subject to restrictions envisaged in the constitution itself. If it is well founded then it cannot be negated because it shall be interfering with others right. Establishment of right means the other have corresponding obligation to obey it. Moreover the relief sought is to prohibit Doordarshan a State Department or agency of State from telecasting it. Restrictive clause on exercise of right do not create a right in favour of State or its agency or anyone acting on its behalf to claim that its action being not contrary to public order health or morality it can interfere with a person's right guaranteed under this Article. To put it differently the Doordarshan cannot interfere with otherwise absolute right of petitioners because the telecast did not create any law and order problem or it was not against morality. Negative provision in a statute according to Solman gives rise to negative duty. But the negative right which vests in anyone against a person who claims positive right cannot give rise to or create positive right. If the petitioners have a right of freedom of conscience subject to "public order, health and morality then it is not possible for anyone may be the whole world to deprive them of their right because their action was not against public order or health or morality. The submission of competing right therefore, appear to be misconceived.

7. Another misunderstanding which need be clarified is the scope of and effect of restrictive clause in Article 25. Public Order is an expression of wide connotation. It was held so in *Rev. Stainislaus Vs. State of Madhya Pradesh and Others*, . The Hon"ble Court reiterated meaning given to it in *Romesh Thappar Vs. The State of Madras*, while construing similar expression in Article 19 and observed that it signified state of tranquillity which prevailed amongst members of political society as a result of internal regulations. In *Trivikram Narain Singh and Others Vs. State of U.P. and Others*, a Division Bench of this Court observed, "Public Order is a word of wide impact. It cannot have any static or fixed meaning. Its concept has to vary with improvement or deterioration in social, economic and political conditions of society. Therefore, while making religious freedom as the basis of secular democracy, a recognition of Indian culture and civilization, provision was made for state interference if freedom was abused either because it got mixed with politics or because it became necessary in the interest of society. It was with this objective that the words public order was used. It has to be given a liberal and wide interpretation. It has been used in Article 19(2) as well. In various decisions given by Hon"ble Court right from 1950 in *Ramesh Thapa's case*, *G.K. Ganesh v. E.X. Xariar* AIR 1983 SC 812, it has been held to signify tranquillity and peace, political and social. In *Words and Phrases Permanent Edition* it has been explained to mean tranquility and security which every person feels under the protection of law, a breach of which is an invasion of protection which the law affords. But the words cannot be understood as equivalent to public violence. Social peace and public tranquillity may be disturbed even without riots. Moral pertains to character, conduct, to way of life. The expression health and morality are of wide amplitude. They have to take colour from the setting where they have been framed. Used in Article 19(2) in relation to freedom of speech and expression the exercise of right is hedged with restriction that towards speaker or communicated may not be obscene or profane etc. But when the same words are used in Article 25 they have to be understood in context of religious freedom. A word which may not be otherwise indecent or immoral thus free to be spoken may become vulnerable and violative when used for religion. That is the concept of these words have to be understood in context of freedom guaranteed under Article 25. In other words it restricts exercise of right in a manner which may not cross the limit of religious morality and health of any person. In *Ramji Lal v. State* 1957 SC 620 the Hon"ble Court held that no one was entitled to outrage religious feeling of others. The State is empowered to regulate the exercise or it may prevent a person from exercising the right if it is beyond restrictive clause. An outrage of religious feeling or insult to religion or the belief and faith in religion may contravene public order, health or morality. But the restrictive clause cannot be construed as creating a right in State to interfere with free exercise of right by a person because it was not against public order, health or morality. State, cannot, therefore, interfere with otherwise absolute right of any person because its action do not create any law and order problem. State is to protect the right and ensure its guarantee not to exercise it.

8. Religious susceptibility is another aspect which need be dealt with as it shall facilitate in appreciating the attack on serial in general and episode nine to twelve telecast from Doordarshan in particular. That it is highly delicate and sensitive and cannot be played with cannot admit of any doubt. In *S. Veerabadran Chettiar Vs. E.V. Ramaswami Naicker and Others*, , the Hon"ble Court deprecated the attitude of courts in overlooking it by observing that it was cynical to overlook religious susceptibility of that class or persons to which the complainant belonged and claimed that breaking of an idol of Lord Ganesh made of clay hurt his religious feelings. A devotee of a diety or followers of a religion in his devotion or worship may appear from ordinary standard susceptible reasonably, cynically or even fanatically. But the susceptibility has to be judged not from other point of view but his and his alone. So long it is genuine and held conscientiously it is within the ambit of freedom of conscience guaranteed by the Constitution. In *Bijoe Emmanuel* the Hon"ble Court held that, "the question is not whether a particular belief or practice appeals to our reason or sentiment but whether the belief is genuinely and conscientiously held as part of the profession or practice of religion. Our personal views and reactions are irrelevant. If the belief is genuinely and conscientiously held it attracts the protection of Article 25 but subject, of course to the inhibitions contained therein." *Bijoe Emmanuel and Others Vs. State of Kerala and Others*, . Barometre of religious susceptibility thus is not the man in the train or bus who claims its violation.

9. Principal objection to telecast of episodes relating to banishment of Devi Sita was because Uttar Kand was an interpolation and even if it was accepted then it could not be distorted as it amounted to destroying identity of basic feature of religion and in any case even if true its depiction being offensive violated not only religion, morality and health but was likely to disturb public order. For interpolation suffice it to say that for reason already stated it appears highly controversial. In any case it being admittedly written in Balmiki and many other Ramayan and having existed for thousand and thousand years any exercise by this Court shall not be hazardous only but unnecessary. But the objection of petitioners to telecast of episodes leading to abandonment by Sita of Ram cannot be brushed aside. What was shown to this bench was edited and episodes Nos. 12 and 13 were condensed into one for reasons which shall remain in realm of speculation yet the theme of episodes 9 to 12 telecast from Doordarshan presented the popularly or commonly known as Sita Tyag differently than what finds place in Balmiki Ramayan the source of all Ramayans whether written in Hindi, Bengali, Malyalam, Tamil, Gujrati or Assemese. Two objections were raised the one was founded on principle laid down in *Saifuddin v. State of Bombay* AIR 1962 SC 962 that the State could not act in a manner which would result in changing the identity of basis of religion and other its crude depiction. Extracts from Balmiki Ramayan mainly but other Ramayans prevalent in Bengal, Bombay and Tamil undoubtedly establish that Devi Sita was banished by Lord Ram. Line 58 of Chapter iv (Slock 58 of Sarq iv). Even the Hindi translation of *Adhyatm Ramayan* published from Gita Press said to be one of the sources which inspired

produced to alter the basic text narrates Laxman saying to Sita on reaching Balmiki Ashram that Raghunathji, that is Lord Ram had banished you (Tyag) due to public comments (Raghunath Ji ne Lokapvad Se Der Kar Tumhe Tyag Diya Hai). Same is mentioned in Slok 102 Sarq 20 of Anand Ramayan. Much reliance was placed on Sansar Ramayan written in Gujrati by Swami Brahmanand and published in 1984 from Ahmedabad. According to Cultural Heritage of India Premanand was the greatest literary figure in Gujrat in 17th Century AD who wrote a complete version of Ramayan. Girdhari, Bhelana, Mantri Karmana were other noted Gujrati authors of Ramayan. Amongst the modern authors name of Janmashanker Mahasanker much is mentioned. Sansar Ramayan appears to have surfaced in 1984 only the authority of weight of which is neither established nor necessary to be gone. But it was not mentioned ever in counter affidavit as one of the Ramayans on which episodes as telecast was based. Even there the Chapter reads as Sita Tyag. Of course at one place it does mention that after a long discussion between Ram and Sita she sent for Laxman requested him to bring the Chariot and leave her in forest. But the Ramayan which is considered as basic text or historical record is the Ramayan written by Balmiki. Other Ramayans written in different languages have derived only inspirations from it. Moreover, even in the proposed programme submitted by the producer to the Doordarshan synopsis mentioned at serial No. 45 and 47 indicate that what was proposed to be shown as Tyag of Devi Sita by Rama as is mentioned in various Ramayan and not otherwise.

10. But the religious autonomy guaranteed under Article 25 is violated only if banishment of Devi Sita by Ram is basic text of Ramayan of any alteration of change shall result in destroying the religious scripture. In broader or gistical narration the epic may be said to be fight between two kings one kshatriya and other Brahmin due to kidnapping of former's wife who after caronation was blessed with two sons born in an Ashram in forest. Such simplifications is not countenanced in religious matters. As even rituals forms part of religion. Worship of idol as symbol of God Vishnu or Shiva, Ram or Krishna, Durga or Kali, Parvati or Sita is essential part of religion. An image of diety in God or stone clay or paper may be a piece of art for one but God incarnated for other. For believer of faith and followers of religion bathing of idol with milk, honey and water dressing "Him" in most precious clothes, feeding Him and distributing it's "Bhog" as "Prasad", singing and dancing before "Him", and even putting him to rest at night-fall after night "Bhog" is all part of religion. "His" marriage or even "Ras Leela" is considered religion. Such belief and faith is probably peculiar to Hindu religion, but if this be, which cannot be doubted then even mebiculous behaviour of the idol whom one worships is religion then any deviation from it results in disfiguring the religion and changing its identity. To illustrate the difference between basic and otherwise it may not be out of place to mention that sending of "Guptchar" by Sita as shown in Episode 10 to find out the cause of anxiety of Rama may be against rule of governance as apart from kind probably the queen was not entitled to maintain espionage system anywhere in world, ancient or

even modern, but no objection can be taken as it does not touch religious sensitivity. But same cannot be said about Tyag of Sita. In the whole of Uttar Kand which bristles with narration of mythological stories narrated by Aagast Muni to Lord Ram or by Ram to Laxman the only episode which relates to Ram the God, is the banishment of Devi Sita, therefore, any distortion of it amounted to doing violence to basic text. Therefore, episodes which show Devi Sita abandoning Ram for sake of Ayodhya or even Ram were not in consonance with the epical version. It was not Ramayan written by the renowned Rishis, Munis or devotees but the producer who minced no words when he claimed in an interview to an English Weekly Magazine "Sunday" published on 19-25 March, 1989 that what was being shown by him was Sagar's Ramayan (Sagar-ki-Ramayan). At one place in same interview when asked that he changed the episode and "shifted the onus of leaving Ayodhya to Sita", he replied, "what I showed on television is what I think must have happened". Poetic imagination or dramatic adaptation with alterations, modifications or even deviations are well recongised but what is true of stories and novels is not applicable to matters of religion which include religious texts. Liberty of a script-writer cannot be converted into licence for constituting himself as a source of religion. Nor it can be done in name of social or welfare reform as was suggested by the learned Counsel for Doordarshan a submission that stands answered by observations of Honble Ayyangar in Saifuddin case that in matters of religion the State action cannot be sustained as a measure of social welfare or social reform without eviscerating of the guarantee under Article 25. Dramatisation or religion is always hazardous. Its risk lies in arousing susceptibility. The injury cannot be judged by yardstick of majority or lack of objections by many. Even susceptibility of one person can be sufficient to provoke global disorder. The submission that petitioners could switch off their television sets to avoid any injury was making a mockery of constitutional guarantee under Article 25. Freedom of conscience has been guaranteed equally to conservative and progressive secular and fanatic, emotional and rational, rich or poor, literate or illiterate, saint or Grahasth. Merely because of the other class does not feel hurt or even the majority may feel that treatment of subject is commendable yet the claim of minority or even few cannot be ignored if violation is established. Injury to fundamental right cannot be decided by rule of numbers.

11. May be the episodes enhanced the image of Devi Sita and womanhood in general. But what was telecast was not a social movie but a depiction of Lord Ram and Devi Sita, the Hindu God and Goddess who are held in veneration and worshipped in every household. The epic could not be distorted as it was not suitable for 20th century. Nor the producer who is educated, renowned in film world for producing commercial movies could venture suggest how Lord Ram should have behaved more than six thousand years ago. Many may not object to it in an enlightened secular democracy, and opine, "imagine a wife sacrificing her whole wifeness, sacrificing the status of queen of the land for success of empire, for the success of principle in order that Ram should not go down in the eyes of

men at large, that Ram should continue to remain an ideal king" or, the latest episode the manner in which the whole episode is presented, is a tribute to the realism and concern for the truth displayed by Ramanand Ji. Ram's greatness as a king purely of his character, Sita's grandeur and dignity as a queen and as wife were at once brought into focus or, "In my opinion the presentation is not at all objectionable to the present day society. On the contrary it gives strength to religion culture and civilisation". Many other may like it as appealing to visual senses. And feel that depiction, "was full of religious worship and a delicate aspect was tackled intelligently". Or somebody may feel that the episode did not contain any objectionable dialogue. "Each one of them may be correct. Yet it may not erase or lessen the injury of others who may not share their views. The violation has to be judged from their point of view. That is the difference between religious subjects and others. It is to be tested on touchstone of Article 25 and not Section 5-B as was the case in Tamas and Honi Anthoni, the two cases decided by Hon'ble Supreme Court in 1988. Susceptibility has to be judged from the reaction it generates on the person who acts and not from the standard of others. Unlike social or cultural movie the test as held by Supreme Court is of the person who claims violation and not of the men in street or even the Court deciding it. Therefore, what is wrong and is violative of religion because it infringes the religious text or practice cannot become proper, decent and moral because it is more rational and logical. If Ramayan is a Dharm Granth or source of religion, or forms alongwith Vedas, Upanishads, Maha-Bharat "the massive basement on which stands the magnificent edifice of Indian religion of thought, culture and literature" (Cultural Heritage of India) then its identity of basic feature could not be destroyed or distorted how-soever illogical it may appear if such disfigurement for commercial purposes is permitted the imagination fails where it shall stop. Future generation of spaceage, ultra modern in outlook windowing religion through videos may know only "Sagar-ki-Ramayan" where Devi Sita worshipped as mother Goddess was "Kalankini" who abandoned her husband and went to forest for Him and for sake of Ayodhya Raj. A religion is not to be tackled with care, compassion and brilliance but left to its believers and followers.

12. Materialising God is not permissible either religiously or morally. Picturising "Him" as a script writer thinks "He" should have behaved is nothing short of heresy. The use of the word "Kalankini" in episode number nine and loose words used for Lord Ram uttered from residents of Ayodhya even if mentioned in Ramayans was not fit subject to be telecast. Not in the manner it was done. Unpleasant truth is avoided in discussion and discourses. Depicting it through media of movie may generate unthinkable provocation as impart of movie is, "so vivid, so immediate, so penetrating and the extent of identification with the episode displayed on the screen so complete that all but a few of the more cultural and beloved individuals can discount the compulsive or persuasive force of what they see. (Khosla Committee reports). Recently the Hon'ble Court while dealing with freedom of right under Article 19 of the Constitution of S. Rangraja

v. P. Jaggiwan Ram 1989 Judgment Today (2) page 73 brought out vividly the distinction between movie and magazine etc. by observing ""Movie motivates" thought and action and assured a high degree of attention and retention. It makes its impact simultaneously arousing visual and moral sense. It can, therefore, be said that the movie has unique capacity to disturb and arouse feelings. It has as much potential for evil as it has for good. It has an equal potential to instil or cultivate violent or good behaviour. With these qualities and since it caters for mass audience who are generally not selective about what they watch, the movie cannot be equated with other modes of communications. It cannot be allowed to function in a free market place just as does the news-paper or magazines" "What is said of movies applies with greater force for T.V. It is a media which caters to millions and millions simultaneously. Its impact on visual senses is more intense and lasting. Therefore, it is just and proper that indecent or abusive words are avoided from programmes which are telecast from Doordarshan. "Kalankni" is a very cheap word used in low strata of society. Use of such word for God or Goddess is ethically, morally and socially reprehensible. Recently, a picture was shown from Doordarshan in which the words presumably untouchable used at many places was rightly shown in mime. Effect was not lost without breaking the sequence. That is why the Censor's scissor is needed. But in his case it did not move from the shelf. It must not be lost sight of that modern world is very small. These cassettes shall be shown in other parts of the world. And this is the image which these cassettes shall project. Novels and dramas with horror scenes or dealing with delicate subjects although famous and renowned are often not permitted to be picturised. Why because audio visual senses are easily affected. They have more lasting effect. And yet a subject as delicate and sensitive as religion was permitted to be telecast with so derogatory and indecent words used for God and Goddess.

13. Recourse was also taken to Article 19(1)(a) of the Constitution and it was urged that Article 25 being subject to other provisions of part III and freedom of speech and expression one of the guarantees under this part and there being no existing law nor any law having been made by Government imposing any restriction as contemplated in Article 19(2) the producer was free to communicate and propogate his views and opinion even on religion. Article 19 includes, "the freedom of communication", which, "could be made through any medium, newspaper, magazine or movie" (P. Rangarajan). But the right is subject to public order, decency or morality or security of State etc. Apart from reasonable restrictions that may be placed on the freedom of speech and expression by State the right carries with it certain inherent restrictions and limitation which although limited are well defined and their observance or contravention has never presented any constitutional problem. They include the profane the abusive, the insulting, the indecent etc. Existence of such right was brought out by the Hon"ble Court in Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh, , when considering the right to assemble peacefully and without arms to form association or union it observed that there

was inherent limitation on exercise of such right and the existence of right did not mean that it could be exercised in any place. In *Francis v. Chief of Police* 1973 (2) All E R 251 the concept of liberty as explained by the Supreme Court in *A.K. Gopalan v. State* 1950 SC 27, was followed that liberty of the individual did not mean that he must make himself a nuisance to others. It had to be limited to be possessed. Therefore, even if there is no existing law or law made by the State the right guaranteed under Article 19(1)(a) can be examined on touchstone of inherent limitation on exercise of such right. The freedom of right of expression cannot mean interfering with religious feelings, of others. The submission therefore, was more attractive than tenable.

14. Reliance was placed on *Ramesh Dalal Vs. Union of India (UOI) and Others*, and it was urged that yardstick for judging reaction in movies has to be of prudent reasonable person, strongly minded and courageous and not of weak and vacillating minds. It was submitted that the story as depicted in *Uttar Kand* having existed for thousands years and accepted by society followed by two pictures *Ram Rajya* and *Sampurna Ramayan* it was too late in the day to seek prohibition against telecast. It was urged that religious belief can be tested on accepted norms of it in the community and individual susceptibility was of no consequence if it did not have sanction of the community or society to which he belonged. The argument, however, ignored that the Hon'ble Court in *Tamas or Honi and Anthoni* case was not concerned with fundamental rights but the question was, "whether the film has been misjudged or wrongly judged and allowed to be exhibited or allowed to be serialised on a wrong approach". To remove any doubt the Hon'ble Court itself observed that no violation of any right under Article 25 was involved. Recently the Hon'ble Court in *S. Rangarajan* case while reiterating the ratio laid down in *Ramesh's* case, added, "a word, more." The censor boards should exercise considerable circumspection on movies affecting the morality or decency of our people and cultural heritage of the country". Although it has been explained earlier that in religious matters the test is the susceptibility of the person claiming injury but as observed by Lord Denning in *Secretary of State v. Tameside* 1976 (3) All IE R 665, "No one can properly be labelled as unreasonable unless he is not only wrong but unreasonably wrong, so wrong that no reasonable person could sensibly take that view." Can it be said that susceptibility manifested by petitioners is so wrong that no reasonable person could sensibly feel that way. And the answer is self evident. As regards the two movies none distorted the version and altered the text. Even the language used was not obnoxious. For this purpose we viewed the episodes relating to accusation of washer woman in *Sampurna Ramayan* and compared it with the words used in telecast. Even the banishment depicted therein is in accordance with texts. Although it is not necessary to extract reactions of newspapers, magazines and individuals against use of language and distortion of text but the argument of norm of society or community cannot be built up on earlier depiction or lack of agitation. More-over, there can be no estoppel for enforcement of fundamental right when these petitions were filed

much before the telecast commenced.

15. Violation of religious autonomy apart, the attack was founded on validity of Section 9 of Cinematograph Act (The Act) and the notification issued under it exempting all Doordarshan programmes from requirement of certification under Chapter II of the Act. Before examining of the section is bad for absence of guidelines and is liable to be struck down for excessive delegation a very ingenious argument for excluding Doordarshan programmes from operation of the Act advanced on behalf of opposite parties may be dealt with. Relying on definition of telegraph in Sub-section (1) of Section 3 of the Indian Telegraph Act it was urged that since the Doordarshan either broadcasts or emits radio waves to satellite from where it is received back by the television sets the Doordarshan was governed by Indian Telegraph Act and the provisions of Cinematograph Act did not apply to it. And in any case the telecast made by it through satellite did not amount to public exhibition. The submission was neither elaborated nor any material was produced nor even this could be established if Doordarshan was created under any Act or notification etc. However, Sub-section (1) of Section 3 of Telegraph Act reads as under:

"Telegraph" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of a signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electromagnetic emissions, Radio waves or Hetzian waves, galvanic, electric or magnetic means.

It defines the telegraphic instrument. Telegraph according to Encyclopaedia Britannica is a system of communication at a distancce through the medium of electro magnetic phenomenon in which the information transmitted is in (or may signify) written, printed or pictorial form. Whereas television, according to some authority, is the electrical transmission of picture in motion and the simultaneous electrical transmission of sounds. Even the transmission theory of telegraph and Television broadcasting are entirely different. It appears unnecessary to mention it in detail. But to call a Television centre as Telegraph instrument required ingenuity. Even assuming for arguments sake that Doordarshan is Telegraph instrument no effort was made either by producing any order or communication of Government nor any reason was advanced to support the claim that the production and exhibition of a film by such department stood excluded from operation of Cinematograph Act. Similarly the claim that television programmes are not public exhibition as it is through transmission of radio waves is fallacious. Television operates effectively even without satellite. The word public according to Webster means relating to or affecting the people as an organised community, therefore, anything meant for exhibition for a person or group which is opposed to private is public exhibition. Its nature does not change by the medium through which it is exhibited. Moreover, the radio waves of picture are sent to satellite for being remitted back or caught in the air by other television centres or even televisions directly resulting in exhibition which cannot be described anything but public exhibition. Display in air is as much public exhibition as in picture hall or

open air theatre.

16. Yet another argument which requires to be stated to be rejected was that since various functions for certification etc. under the Act are provided to be performed by Central Government and even appeal etc. against refusal or grant of certificate lay before Government the provisions of the Act did not apply to Doordarshan which was a government department. The argument was attempted to be supported by use of word person in Section 4 which according to opposite parties meant a film producer of a cinema meant for public exhibition and not Government. Since person has not been defined in the Act it has to be understood in the larger sense including Government or a department. No provision in the Act or rules explicitly or implicitly indicates that the provisions of the Act do not apply to Government. Even the newsreel produced by Government carries a certificate of exhibition. If the construction as suggested is accepted it shall result in discriminating between producers of film. A Government or its department carrying on commercial activities is as much bound by law of land as any other person. Cinematograph Act is the law enacted in exercise of power under item No. 60 of the List I of VIIth Schedule for regulating certification of cinematograph films for exhibition. It applies to all films produced for public exhibition whether by a private film producer or government. The provisions of the Act do not become inapplicable to government merely because Central Government can constitute the board u/s 3 or advisory panel u/s 5 or has power of review and revision u/s 5-F and 6 of the Act.

17. Reverting to Section 9 of the Act validity of which is under challenge it is extracted below:

9. Power to exempt--The Central Government may by order in writing exempt, subject to such conditions and restrictions, if any, as it may impose, the exhibition of any film or class of films from any of the provisions of this part or of any rules made there under

. Does it suffer from vice of excessive delegation? Prima facie it does. Not because the power of exemption is a pure or essential legislative function which cannot be delegated but because it does not contain any express words spelling out legislative policy or guidelines on which the power can be exercised. The constitutional inhibition against delegation of essential legislative function on sound constitutional principles are rooted firmly and surely." Legislature cannot self efface its personality and make over, in terms plenary the legislative function" Avinder Singh and Others Vs. State of Punjab and Others, . But in modern day complex society with States responsibility for its citizens" welfare extending to social, political and economic spheres the power to delegate non-essential functions to the appropriate authority with clear guidance and carved out field of operation is equally well settled. How it may be done was indicated by the Hon"ble Court in Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. Vs. The Asstt. Commissioner of Sales Tax and Others, , "in order to avoid the pure delegation of legislative power by creation of an administrative agency, the legislature may set

out limits on such agency's power and enjoin on it a certain course of procedure and rules of decision in the performance of its function and if the legislature fails to prescribe with reasonable clarity the limits of power delegated to an administrative agency or if these limits are too broad, its attempt to delegate is a nullity". In *Atvinder Singh's* case it was observed that "in essentials, however, numerous and significant they be may well be made over to appropriate agencies". Same was reiterated in *The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others*, . "Legislate it may by laying down policy and principle and delegate it may to fill in details and carry out the policy."

18. And that is precisely what the legislature failed to do. Absence of any express words in Section 9 render the power vague and arbitrary and if the ratio of Hon"ble Supreme Court in *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, are applied where the expression, "or any other disease or condition which may be specified in the rules made under this Act", used in Sub-section (d) of Section 3 of Drugs and Magic Remedies (Objectionable Advertisement) Act, was held to confer uncannalised power then the section is liable to be struck down. But power of granting exemption without any express words in the section have been upheld if the policy and guideline for exercise of power could be culled out from preamble. See *Punjab Tin Supply Co., Chandigarh and Others Vs. Central Government and Others*, , *The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others*, , *P.J. Irani Vs. The State of Madras*, , *Sardar Inder Singh Vs. The State of Rajasthan*, . Many more decisions on various other statutes where exercise of power for the purpose mentioned therein was upheld as the guidelines for exercise of power could be gathered from the Scheme of the Act or other sections etc. But it appears unnecessary to mention them as the broad and general principle laid down in these cannot be disputed. We shall then immediately turn to preamble and scheme of the Act to ascertain if any guideline can be said to be discernable from them for exercise of power. The Act was enacted to "make provisions for the certification of Cinematograph films for exhibition and for regulating exhibition by means of Cinematograph." It was not a preamble like one which was considered by the Hon"ble Court in the four cases mentioned above which spelt out the legislative policy, the purpose of legislation, the objective the Act set out for fulfilment and the persons to whom it was intended to benefit. Equally unhelpful is the scheme. The Act was originally enacted in four parts. But fourth part stands repealed and part three applies to Union Territories. The first part deals with extent, commencement of the Act and definition. And the second with certification. It has 9 sections. Section 3 deals with constitution of board of film of censors, 4 with examination of films, 5 with advisory panel, 5-A with certification of films, 5-B with principle for guidance in certifying films, 5-C with appeals, 5-D with constitution of appellate tribunal, 5-E with suspension and revocation of certificate, 5-F with review, 6 with revision, 6-

A with information and documents to be given to distribution and exhibitions with respect to certified films, 7 with penalties, 7-A with seizure, and 7-B with delegation of power by board, 8 with framing of rules and 9 with exemption. If the principles on which a film can be certified u/s 5-B can be said to furnish guideline negatively to grant exemption then it is certainly there. In other words if it can be said that the Central Government in the light of Section 5-B decide the films which should not be subjected to requirement of certification then no exception can be taken. For instance Section 5-B requires the Board to examine if the film was not against security of State or interest of country or public order, health and morality. Can these furnish guidelines to Central Government to exempt a film from satisfying these norms. If this is accepted it would negate the whole purpose of Act and result in clothing Central Government with uncanalised and arbitrary power. Thus neither the preamble nor any of the sections throw any light as to how, when and why the Government can grant exemption to any film or class of films. No basis or principle or policy can be culled out from either. Yet another formidable reason which stares at the face of Section 9 is that the power conferred on Central Government in content and reach is to exclude any film or class of films from operation of the Act. If Chapter II is made inapplicable then in effect the Act does not apply. And that surely is legislative function. May be that certification for every programme of Doordarshan may lead to impossibility. That may require legislation or the Act may be made inapplicable to Doordarshan. But so long the Act applies the grant of exemption by taking recourse to Section 9 appears to be fraught with grave danger.

19. Even assuming it to be valid piece of legislation the issue is what is the field of its operation. That is clearly demarcated. Namely to exempt film or class of films. How the word class of films has to be understood. Class according to Webster Dictionary means one group according to social status, political or economic similarities. In Blacks Legal Dictionary class is defined as a group of persons having common characterised attributes. Strouds Judicial Dictionary, however, refers that even one person can be a class. May be, yet the issue is how the expression class of films in Section 9 has to be understood. Can Doordarshan programmes be considered to be class of films. Class governs films. Not the place of production or telecast. Doordarshan cannot be class of films. Any doubt in this regard stands dispelled by Hindi version of Section 9 as film or class of films mean "Film ya Filmo ki kisi varg". That is the category should be of films. The objective of the Act is to regulate Cinematograph films, and not the place where film is produced or persons who produce it. For instance a scientific film or sports film or newsreel or commercial movie may be considered as class of films. The legislative intent is clearly brought out by perusal of form 1 or 1A in which an application has to be made under Sub-Rule(1) of Rule 2 for grant of certificate for public exhibition. Clause (2) of the application requires disclosure if the film was a newsreel, documentary, scientific, educational feature or advertisement film. This is what is meant by class. That is the films having common characteristic. Doordarshan programmes as such cannot constitute a

class of film. If this be the construction it shall amount to extending the exemption not to films or class of films but to place of films or persons who produce the film. That will be beyond purview of the Cinematograph Act.

20. Having dealt with Section 9 and assuming it to be valid the attack on notification issued under it may now be examined:

In exercise of the powers conferred by Section 9 of the Cinematograph Act 1952 (37 of 1952), the Central Government hereby exempts all Doordarshan programmes from the provisions relating to certification of films in Part If of the said Act and the rules made thereunder subject to the conditions that while clearing programmes for telecast, the Director General Doordarshan or the concerned Director, Doordarshan kendra, shall keep in view of the film certification guidelines issued by the Central Government to the Board of Film Certification u/s 5-B(2) of the said Act.

It was issued on 16th October, 1984 by the Government of India and is published in Government Gazette, Part II on 3rd November, 1984. Therefore, the doubt cast on its authenticity stands dispelled. It is in two parts--one exempting all Doordarshan programmes from provision relating to certification of films under U.P. Cinematograph Act and the other empowers the Director General or concerned Director to clear the programmes on the guidelines issued u/s 5-B(2) of the Act. No provision or material could be produced to throw any light as to the ambit of expression "Doordarshan programme". It is not clear either by the Code for commercial advertising or the guidelines issued for sponsored programmes. But what stands out from these two and the day to day viewing of programmes, which can be taken notice of, is that the programmes can be divided in self produced programmes such as newsreel or it may be extended to such features which are produced in the Sludio of Doordarshan, sponsored programmes produced outside, but telecast from Doordarshan, advertisements, and film which may or may not be sponsored. May be some more. But the notification appears to have been issued as including each and every of these programmes. Programmes according to Webster Dictionary amongst other means a programme broadcast on radio or television. Such programmes are exhibited by playing video tapes. From the letter written on 31st January, 1976 by Government of India to the Director General All India Radio produced by the learned Senior Standing Counsel of Union of India it appears the Law Ministry was of view that provisions of Cinematograph Act did not apply to video taped material as they were tapes and not celloloid films, within the definition of word "film" as given in the Act. Consequently separate guidelines were proposed to be issued. Till then television was directed to conform to same directions as were issued by Central Government to the Board of Films Censors for certifying films as contained in the notification No. 68 R dated 6th February 1960 as amended from time to time and the provisions of Section 5-B(1) of the Act. Lateron guidelines for permitting telecast of sponsored programmes and advertisements were issued. But the distinction between film and video tape was done away

when Cinematograph certification rules were framed in 1983 and Copy Right Act of 1957 was amended in 1984. Clause (ix), (xi) and(xvi) of the rule defining feature films, long film and short film have included film prepared on video. Form 1A in second schedule lays down the manner of filing an application under Sub-rule (1) of Rule 21 for certifying a video film for public exhibition. And proviso to Section 7 of the Act makes it clear that a video film exhibited in contravention of Section 7(a) namely exhibited either without a certification issued for public exhibition or against the restrictions imposed by the certificate shall entail penalty. And the Copy Right Act amended in 1984 to check piracy in films included video films a work produced by a process analogous to cinematography by adding an explanation to Clause (f) of Section 2 defining cinematograph film It also added Clause (dd) defining "broadcast" to mean communication to public:

(i) by any means of wireless diffusion whether in any one or more of the forms or signs, sounds or visual images, or

(ii) by wire and includes a broadcast. A combined reading of these provisions indicates that a film or a telecast by recording a picture or feature or any programme on video is governed by Cinematograph Act.

21. All this leaves no scope for argument that programmes telecast from Doordarshan do not fall under Cinematograph Act. Exemption is exception. That is when power is exercised u/s 9 it shall exclude the film from undergoing rigour of certification and it shall not be required to be examined on touchstone of public order, health and morality. If all Doordarshan programmes are exempted as it has been done now it clothes the authorities with naked power which may become pernicious. For instance a film not be worth certification if it is submitted to censor board, yet it may not be required to undergo any test if it is telecast from Doordarshan. May be it may not happen as the Doordarshan itself has issued detailed guidelines but validity of provision is judged not from the action taken but likely abuse of power. The first part of the notification, therefore, cannot be sustained. Since the latter part is dependent on first, it cannot be severed and falls automatically. Even if it could have been separated the notification is bad as it clothes the Director with arbitrary power to certify a programme on the guidelines issued under Sub-section (2) of Section 5-B. Basic requirement u/s 5-B(1) are that the film should "not be against interest of the security of the State, friendly relations with foreign States, public order, decency or morality or provoking defamation or contempt of court or is likely to incite the commission of any offence". Apart from these the Government may issue guideline under Sub-section (2). But this power is subject "to provisions contained in Sub-section (1)". That is the basic guideline provided in sub-section cannot be ignored. But what has been prohibited by legislature even for Central Government has been permitted by Central Government to be done by the Director Doordarshan, as he can certify a programme on guidelines issued under Sub-section (2) that is additional or supplementary guideline without adhering to Sub-section (1) Here again it need be clarified that the guidelines issued by

Central Government u/s 5-B(2) mention even those which are mentioned in Section 5-B(1) but that is relevant for judging if the exercise of power under notification was bad and not for judging its validity. Apart from it the Central Government is delegate of Legislature, therefore, it could not delegate its power to Director Doordarshan. The exercise of power u/s 9 was, therefore, clearly bad and the notification issued under it is liable to be struck down.

22. Let it be assumed that the notification is valid it still survives for consideration if the Doordarshan authorities have performed their duty in accordance with norms laid down u/s 5-B(2) Two guidelines appear to have been issued in this regard one in February 1960 and other in January 1978. Emphasis is on moral and social standard. Summary of it is expressed on the guidelines issued for sponsored programme. Sub-clause (b) of Clause 7 of it reads as under:

(b) In approving the proposals, the Selection Committee will keep in view, inter alia, the need to:

(i) Promote the basic socio-cultural values like human unity and harmony; equal respect to all religions, rejection of violence, communal rivalries and tensions, liberation from superstitions and prejudices;

(ii) Project the rich cultural diversity of the country and

(iii) Use the medium in such a way that it can help inculcate in the growing generations the right kind of values, outlook and standards.

Have the authorities of Doordarshan entrusted with responsibility of acting on guidelines issued u/s 5-B(2) have discharged their duty with seriousness called for by the nature of serial which was going to be telecast and in respect of which controversy has been raised even before the telecast commenced? Sadly not. In the counter-affidavit filed by Director of Doordarshan Lucknow it has been averred that episodes of Uttar Ramayan had been minutely examined in light of Section 5-B(2) by the competent authority and nothing objectionable was found. Further the programmes were exhibited for social and cultural purposes and was not based on any religious spirit. But probably in the alternative it is averred that the episodes were based not only on Balmiki Ramayan but others written by scholars and on folklores popular in town and villages. Telecast is justified also because of two pictures Sampurna Ramayan and Ram Rajya on same topic had already been made. And the concept committee, selection committee and purview committee did not find anything objectionable. And the telecast was for entertainment of public and for social and cultural purposes. Since all these paragraphs and others were sworn on personal knowledge and the deponent did not disclose if he was posted at Delhi and was member of any committee nor did he disclose the source on which he swore the affidavit the learned Senior Standing Counsel was granted time to produce the record even when the arguments concluded. From a letter dated 11th September 1985 produced by learned Senior Standing Counsel written by Secretary Information and Broadcasting to the producer conveying Government's happiness on acceptance

of proposal to serialise Ramayan it was clearly mentioned that "The real challenge of your project lies in seeing this immortal epic with the eyes of a modern man and relating its message to the spiritual and emotional needs of our age". But the Secretary hastened to add and rightly, "I do not mean to say that, in the process, one should do any violence to the original text in any manner or try to create Joycion version of Ramayan". The producer unfortunately in serialising Uttar Kand did not adhere to this norm. In the glory of success and universal a claim of the episode till coronation and in anxiety to project the image in eyes of a modern man the permissible limits were crossed. The very basis of principal guideline was lost sight of. This part of the Uttar Kand leading to banishment of Devi Sita is the most sensitive delicate and controversial. It required very careful handling. Laudable endeavour was made by omitting incident of washer woman. Success would have been admirable if the use of word "Kalankini" and utterance of various objectionable words from episode number 9 were omitted and dramatic effect would have been created without any dialogue. But the producer faltered a bit. Not unusual. In handling such subjects lapses are bound to be there. That is why censor boards are constituted. These mistakes can easily be noticed by them. Various committees either did not include any one who was aware of Ramayan or forget that what was being telecast was an epic relating to religion. If care would have been taken by asking the producer to place any material before the high sounding committees to establish the authority of the episodes the committee would have known that it was doing violence to the original text. The seriousness with which the episodes were viewed is manifest with a letter sent by Controller of programmes on 7th March 1989 to the Senior Standing Counsel Union of India informing him in pursuance of directions of this Court dated 23rd January 1989 that the committee consisting of Controller of Programme, Deputy Controller of Programmes, two producers of grade I, and one of grade II had viewed the episodes scheduled for telecast on 27th January, 3rd February, 10th February, 24th February on the guidelines issued for sponsored programmes and they certified that episodes were telecast worthy. The duty appears to have been performed more as an obligation on this Court. In the order dated 23rd January 1989 it was directed that telecast may be got certified by a Committee as is contemplated u/s 5-B which must include persons having knowledge of Ramayan. No care has been taken to disclose if any of the members of the committee had any study of Ramayan. It was known to the committee that the basic challenge was based on textual distortion of religious epic and offending to belief and faith and yet the committee did not take care to test it on any of these and proceeded to certify it on guidelines of sponsored programmes extracted earlier. The opportunity afforded by this Court was squandered presumably, as mentioned in letter dated 28th April, 1989 sent to the Senior Standing Counsel by the Deputy Controller of Programmes, the "pilot programmes" submitted by producers had already been previewed by high powered committee of Director General and other Senior Officers. Even in guideline of sponsored programmes extracted earlier, respect to religion is mentioned. But the committee ignored it

and even forgot the letter of Secretary sent to producer which appears to have been taken out from rakes for perusal of this Court when it should have been the primary concern of the committee. Thus even the criteria on which the serial was to be tested was ignored. Duty of the Committee entrusted with this responsibility has been highlighted in S. Rangarajan's case and it has been observed, "We do not, however, mean that the Censors should have an orthodox or conservative outlook. Far from it, they must be responsive to social change and they must go with the current climate. All we wish to state is that the Censors may display more sensitively to movie which will have a markedly deleterious effect to lower the moral standards of those who see it". Since television is viewed by much larger number of persons than the movie the committee of Doordarshan are required to be more careful and circumspect. It is not presence of large number of officers by objective assessment which is called for. And these various committees miserably failed.

23. Objection preliminary in nature may now be taken up. Hearing was objected as the objectionable episodes having been telecast these petitions were rendered infructuous. Answer is short and simple. Once the Hon'ble Court while suspending the interim order passed by this Court directed petitions to be decided on merits. Second telecast may have been done but relief of prohibition which may include future telecast, sale etc. still survives.

24. To sum up, in brief, any person is constitutionally entitled to vindicate violation of religious autonomy guaranteed under Article 25. Therefore, the petitioners who are Hindus and whose religion is Hinduism could approach this Court under Article 226 for restraining the Doordarshan from telecasting serial Uttar Ramayan if it hurt their freedom of conscience and right to practice, profess and propagate religion. Since Hinduism is a religion and Ramayan is one of auxiliary sources of Hinduism, having same status as Vedas and Smritis and respected and regarded by ordinary Hindu as religious book and distortion or disfigurement of its basic text would amount to destroying identity of religion. Banishment of Devi Sita is the only incident in the whole of Uttar Kand which is associated with Rama. It being a part of religious text may have been avoided rather than distorted under cover of social and cultural reform as a religious subject should not be tactfully or brilliantly handled but left to religious preachers and followers. The telecast was invalid also because it has been shown without obtaining any certificate u/s 5-B of the Cinematograph Act which was mandatory after amendment of Rules in 19853- And the notification issued u/s 9 of the Act exempting all Doordarshan programmes from provisions of Chapter II of the Act was ultra vires both because the section under which it was issued is invalid for vice of excessive delegation and it conferred unbridled and arbitrary powers on the Director of Doordarshan.

25. Result is that all the petitions succeed and are allowed in part.

(i) Section 9 of Cinematograph Act is held to be ultra vires and Notification No. S6-3488 issued on 16th October, 1984 u/s 9 of the Act is quashed.

(ii) Direction is issued to opposite parties prohibiting them from exhibiting or selling video tapes relating to episodes No. 9 to 11. It is, however, left open to producer to produce fresh episodes keeping in mind that the language and depiction of the episodes should be in conformity with what has been observed earlier in this judgment and get it certified u/s 5-B of the Cinematograph Act.

(iii) Telecast made earlier shall not be rendered invalid.

(iv) Direction is further issued to opposite parties to get the infirmity removed on or before 15th June, 1989 else the telecast of Uttar Ramayan from that date onwards shall stand restrained.

The parties shall bear their own costs