
(2011) 05 AHC CK 0446
In the Allahabad High Court
Case No : Writ Petition No. 3362 (M/B) of 2011

Vasudev Gupta

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-05-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(a), 19(6), 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (2011) 5 ADJ 674

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Advocate : Hari Shanker Jain and Vishnu Shankar Jain, for the Appellant;

Judgement

Devi Prasad Singh, J.—Present writ petition under Article 226 of the Constitution of India has been preferred by a devotee of Goddess Durga asserting his right to carry on religious procession for immersion of "Akhand Jyoti Kalash" in river "Kalyani" of district Barabanki of the State of U.P. Question, involved is of public importance as to whether the State or its authorities may stop a religious procession or religious ceremony affecting the citizens right, protected by Articles 25 and 26 of the Constitution of India?

2. In village Rampur Katra within the premises of police station Safdarganj, district Barabanki, there is a temple named Man Durga Mandir where the deity, i.e. Goddess Durga is being worshiped since time immemorial. Nine day worship of nine incarnations of Durga is done in Navaratri, namely Shardiya and Vasantik. After Navaratn, "Akhand Jyoti Kalash" procession is carried out by the villagers to immerse the Jyoti Kalash in river Kalyani. Earlier in the year 2003, when the Jyoti Kalash procession was stopped by the district administration, the petitioner had filed a writ petition No. 5149(M/B) of 2009 whereby a Division Bench of this Court has passed an interim order dated 10.10.2003 permitting to carry out the procession and directing the District Magistrate, barabanki to make proper arrangement for immersion of Jyoti Kalash peacefully.

3. It appears that when the order was not complied with in letter and spirit, an Advocate Commissioner was appointed. In pursuance to the order passed by this Court, the Advocate Commissioner Shri Anupam Mehrotra, a distinguished advocate of this Court had gone to make spot inspection and submitted his report, a copy of which has been filed as Annexure No. 3 to the writ petition.

4. Now again, according to the petitioner's counsel, Jyoti Kalash ceremony has been stopped by the administration and the petitioner and his associates have been restrained to immerse Jyoti Kalash in river Kalyani. Hence, the present writ petition has been preferred.

5. It has been submitted by Shri H.S. Jain, learned counsel for the petitioner that the petitioner and other villagers have got right to immerse Akhand Jyoti Kalash in river Kalyani and they have also right to assemble for the purpose and move in procession for immersion of "Akhand Jyoti" in accordance with Hindu rituals. It has also been submitted that Puja during Navaratri festival is continuing in "Ma Durga Mandir" since ages which cannot be stopped by the district administration in any manner whatsoever. It has also been submitted that after completion of "Navaratri", they have right to move in procession to immerse Akhand Jyoti Kalash. Their right has been protected by Articles 25 and 26 of the Constitution of India.

6. On the other hand, learned Chief Standing Counsel submits that the Akhand Jyoti Kalash procession has been started recently in the year 2003 for the first time. It is incorrect to say that it is age old tradition professed by Hindu villagers. It has also been submitted that the State has right to stop new tradition which lacks old practice. It is further submitted that the district administration has no objection so far as the procession is concerned but that should move on the specified route. It is further submitted by the learned Chief Standing Counsel that the temple is not situated from time immemorial; rather it was a very small temple, known as "Mathya" in local parlance and for the first time, it was constructed in the year 2003. However, it has been submitted that because of overwhelming Muslim population in the adjoining area and because of their objections, the district administration has tried to regulate the procession from different route which has been objected by the petitioner and his associates. For convenience, para 8 of the counter-affidavit filed by Shri Gore Lal Shukla, Sub-Divisional Magistrate, Sirauli Gaushpur, district Barabanki is reproduced as under:

8. That in reply to the contents of paragraph 4 of the writ petition it is submitted that during "Vasantik Navratra" neither "Akhand Jyoti Kalash" has earlier ever been installed in the temple nor it has ever been immersed by the devotees in river Kalyani. It is not denied that village Rampur Katra is heavily populated by Muslims.

It is stated that village Rampur Katra has a history of communal flare-ups in past which started in the year 1981 on the day of Basant Panchami and the local police has taken preventive measures. However, in "Tyohar Register" there is no

entry about observance the rituals related to "Akhand Jyoti Kalash" since 1982 to 2002. Akhand Jyoti used to be installed in Purvi Devi Temple which used to be immersed in Kalyani river but while immersion took place the same was not taken in a procession in the village. In the year 2002 there was some dispute relating to open land in front of Durga Temple and with the efforts made by the District and Police Administration there was some compromise arrived at between two communities.

It is further stated that during Shardiya Navratra in the year 2003, on 4.10.2003 for the first time Akhand Jyoti Kalash was planned to be immersed in the year and procession carrying the Kalash was taken and while passing through the Muslim dominated areas the same was objected to by the members of the Muslim community. Since then on such occasions there has always been apprehension of breach of peace and public order. At this juncture, it is further stated that the petitioner and other members of Hindu Community deliberately intend to take out the procession through a route passing through the midst of the thick population of Muslims. For Shardiya Navratra, District and Police Administration suggested another route which processes through the Public Works Department Road and goes to the bridge at Kalyani River where the Kalash can be immersed. However, devotees of the Kalash never agreed to same. It is further stated that the District Administration has also sorted out another straight route from the temple to Kalyani river which is shorter in distance and does not pass through thick population of the other community but on the said route also the members of Hindu community do not agree. For the purposes of sorting out a solution for taking out the procession and immersing the Kalash in river Kalyani a sketch map was prepared in the year 2003 which is being annexed herewith as Annexure No. CA-1 to this Counter-affidavit.

7. It has been vehemently argued by Mr. D.K. Upadhyay, learned Chief Standing Counsel that the State is not depriving to immerse the Akhand Jyoti Kalash in river Kalyani but only specifying the route to maintain law and order. It is submitted that being Muslim dominated area, a different route has been set up by the district administration. Learned Chief Standing Counsel further submits that it is not an age old practice but a new one started in 2003, hence also, the petitioner has no fundamental right to claim immersion of Akhand Jyoti Kalash in river Kalyani.

8. However, the petitioner has reiterated his submission and invited attention to the application filed with supplementary affidavit stating that they have right to profess religion and carry out the procession for immersion of "Akhand Jyoti Kalash" in river Kalyani. The petitioner's counsel also raised objection with regard to the word, "dominant" used by the respondents while filing counter-affidavit. It is stated that the temple is age old and only renewal work was done in the year 2003.

9. Articles 25 and 26 of the Constitution of India protect the practice and propagation of religion. Articles 25 and 26 of the Constitution are reproduced as

under:

Article 25 {Freedom of conscience and free profession, practice and propagation of religion}

1. Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

2. Nothing in this article shall affect the operation of any existing law or prevent the State from making any law--

a. regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

b. providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

[Explanation I: The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.]

[Explanation II: In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.]

Article 26 {Freedom to manage religious affairs}

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

a. to establish and maintain institutions for religious and charitable purposes;

b. to manage its own affairs in matters of religion;

c. to own and acquire movable and immovable property; and

d. to administer such property in accordance with law.

10. A plain reading of Article 25 reveals that freedom of conscience and free profession, practice and propagation of religion has been subjected to public order, morality and health and other provisions of Part-III of the Constitution. Every person is entitled to freedom of conscience and the right freely to profess, practise and propagate religion. However, these rights have been subjected to public order, morality and health. Meaning thereby, the citizens' right of practice and propagation of religion is subjected to public order and morality.

11. Article 26 guarantees freedom to manage religious affairs that too subject to public order, morality and health. Article 26 further guarantees citizens' right to manage its own affairs in the matter of religion but that too subject to public order and morality.

PUBLIC ORDER

12. "Public Order" is what the French call "ordre publique" and is something more than ordinary maintenance of law and order. While the expression "law and order" is wider in scope inasmuch as contravention of law always affects order. "Public order" has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is: "Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed"? This question has to be faced in every case on its facts. The two concepts have well defined contours, it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life.

13. "Public Order", "law and order" and the "security of the State" fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the security of the State.

14. The disturbance of public order is to distinguish from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect

upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Public order was said to embrace more of the community than law and order. Public order was the even tempo of the life of the community taking the community as a whole or even a specified locality.

It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of public order.

It is not the number of acts that matters - What has to be seen is the effect of the act on the even tempo of life, the extent of its react upon society and its impact.

15. While interpreting the word, "public order", Hon"ble Supreme Court in a case in *Romesh Thappar Vs. The State of Madras*, , held that public order is an expression of wide connotation and signifies the state of tranquility prevailing among the members of a political society as a result of the internal regulations enforced by the Government which they have instituted. "Public safety" is used as a part of the wider concept of public order. Public safety ordinarily means security of public or their freedom from danger. Anything which tends to prevent dangers to public health may also be regarded as securing public safety.

16. In *Brij Bhushan and Another Vs. The State of Delhi*, , Hon"ble Supreme Court held that the public order and public safety are allied matters, but in order to appreciate how they stand in relation to each other, it seems best to direct our attention to the opposite concepts which we may, for convenience of reference, respectively label as "public disorder" and "public unsafety". "Maintenance of public order" always occurs in juxtaposition with "public safety"

17. In *Arun Ghosh Vs. State of West Bengal*, , Hon"ble Supreme Court distinguished the "public order" and "law and order" holding that the "public order" is to be distinguished from acts directed against individual which do not disturb the society to the extent of causing a general disturbance of public tranquility.

18. In *Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others*, , while considering the expression, "in the interest of public order", Hon"ble Supreme Court ruled that it includes those acts which disturb the security of the State or are within "Order-Publique" alongwith certain acts which disturb public tranquility or are breaches of the peace.

19. In *Anil Vs. State of U.P. and Others*, , a Division Bench of Allahabad High Court at Lucknow has distinguished the concept of "public order" and "law and order" as the latter is directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. The Court held that it is a degree of disturbance and its effect upon the life of a community in the locality determines whether disturbance amounts to only breach of law and order or public order.

20. In *The Commissioner of Police and Others Vs. Smt. C. Anita*, Hon'ble Supreme Court while considering the validity of detention held that the condition precedent for detention is the act for which a person is charged should be prejudicial to the maintenance of public order. To reproduce relevant portion:

7.....The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression "law and order" is wider in scope inasmuch as contravention of law always affects order. "Public order" has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of the degree and extent of the reach, of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting public order from that concerning "law and order". The question to ask is. "Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed"? This question has to be faced in every case on its facts.

8. "Public order" is what the French call "ordre publique" and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, is; Does it lead to disturbance of the current life of the community so as to amount to disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?

9. "Public order" is synonymous with public safety and tranquility: "it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State". Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum, which includes at one end small disturbances and at the other the most serious and cataclysmic happenings.

10. "Public Order", "law and order" and the "security of the State" fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting law and

order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the security of the State.

11. The distinction between "law and order" and "public order" has been pointed out succinctly in Arun Ghosh's case (supra). According to that decision the true distinction between the areas of "law and order" and "public order" is "one of degree and extent of the reach of the act in question upon society". The Court pointed out that "the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different".

12. The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different.

13. The two concepts have well defined contours, it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. Law and order represents the largest scale within which is the next circle representing public order and the smallest circle represents the security of State. "Law and order" comprehends disorders of less gravity than those affecting "public order" just as "public order" comprehends disorders of less gravity than those affecting "security of State"

MORALITY

21. Moral codes are ordinarily founded on emotional instincts and intuitions that were selected for in the past because they aided survival and reproduction.

22. Marc Bekoff and Jessica Pierce (2009) have argued that morality is a suite of behavioral capacities likely shared by all mammals living in complex social groups (e.g., wolves, coyotes, elephants, dolphins, rats, chimpanzees). They define morality as "a suite of interrelated other-regarding behaviors that cultivate and regulate complex interactions within social groups." This suite of behaviors includes empathy, reciprocity, altruism, cooperation, and a sense of fairness. In

related work, it has been convincingly demonstrated that chimpanzees show empathy for each other in a wide variety of contexts.

23. Christopher Boehm (1982) has hypothesized that the incremental development of moral complexity throughout hominid evolution was due to the increasing need to avoid disputes and injuries in moving to open savanna and developing stone weapons.

24. In talking about human rights today, we are referring primarily to the following demands; protection of the individual against arbitrary infringement by other individuals or by the Government; the right to work and to adequate earnings from work; freedom of discussion and teaching; adequate participation of the individual in the formation of his Government. These human rights are nowadays recognised theoretically, although, by abundant use of formalistic, legal manoeuvres, they are being violated to a much greater extent than even a generation ago.

25. When we speak for morality or moral values, we become conscious to some unforeseen restriction likely to be imposed in the form of moral policing. Though, under the old Indian concept, the difference between the morality and law was minimum. However, later on, law and morality moved apart. Morality should not be confused with law. Though, it may be based on some religious doctrine because of aged-old recognitions but basically it shall be dependant upon its soundness and perceived soundness providing guidelines with the elements of social recognition to regulate the social order for humanity as a whole. The followers of Positivist theory like, Hart Bentham, Austin and Kelson have deliberately kept justice and morality out of the purview of legal system. They opined that law must never be used as a custom or enforcement of any moral standards. Their formalistic attitude is concerned with law, as it is and not law as it ought to be. Virtually, what appears, the influence of the positivist on European law makers had segregated the morality from law and in due course of time, it affected the moral values of the society. People understand that they have to follow law and morality as optional.

26. There cannot be statutory provisions, rules or regulations to regulate every breath of life. There are gaps, vacuums in the field of law as well as human behaviour which can be regulated only by enforcing moral values. The difference between constitutional and statutory provisions are part and partial of morality. Every moralist has to follow the law and where there is conflict between the law and moral values and the law is silent, morality should also be enforced to maintain social order and to check the beast embedded in the human being.

27. According to Mahatma Gandhi, civilization does not mean only to achieve something for bodily comfort. Instead of bodily comfort civilization co-relate to generate the sense of duty in the coming generation. It co-relate with the good conduct of a person and sense of duty towards nations and society. In the words of Mahatma Gandhi, to quote:

Civilization is that mode of conduct which points out to man the path of duty. Performance of duty and observance of morality are convertible terms. To observe morality is to attain mastery over our mind and our passions. So doing, we know ourselves. The Gujarati equivalent for civilization means "good conduct".

28. In a democratic polity or country like India, morality may be judged after taking into account the commonality or common features broadly accepted by different religions, sex, communities or believers and non-believers securing the ultimate goal, i.e. the public good and national interest.

CONSTITUTIONAL AMBIT AND DISCUSSION

29. In view of above, Articles 25 and 26 of the Constitution do not extend unfettered right to carry on religious practice but it has been subjected to public order and morality. However, under the garb of public order or morality, the State and its authorities have no right to interfere with the right protected by Articles 25 and 26 on flimsy grounds or for extraneous reasons or by abuse of their power. In case, it is done arbitrarily, then being fundamental right, the decision of State is subject to judicial review and the Court may pass appropriate direction to protect the rights of citizens.

30. Hon'ble Supreme Court in Acharya Jagdishwaranand Avadhuta and Others Vs. Commissioner of Police, Calcutta and Another, , negated the plea of Ananda Margis for Tandava dance in processions or at public places. Hon'ble Supreme Court held that Ananda Marga is not a separate religion being not an institutionalized religion but a religious denomination. Relying upon its earlier judgment in Sastri Yagnapurushadji and Others Vs. Muldas Bhudardas Vaishya and Another, , to satisfy the word, religious denomination, three conditions are required to be fulfilled, viz. (1) It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is, a common faith; (2) common organisation; and (3) designation by a distinctive name. To reproduce relevant portion, to quote:

17. Similar view was expressed by this Court in Gulam Abbas and others v. State of U.P. and others, where it was said that "the entire basis of action u/s 144 is provided by the urgency of the situation and the power thereunder is intended to be availed of for preventing disorders, obstructions and annoyances with a view to secure the public weal by maintaining public peace and tranquility...." Certain observations in Gulam Abbas's decision regarding the nature of the order u/s 144 of the Code - judicial or executive - to the extent they run counter to the decision of the Constitution Bench in Babulal Parat's case, may require reconsideration but we agree that the nature of the order u/s 144 of the Code is intended to meet emergent situation. Thus the clear and definite view of this Court is that an order u/s 144 of the Code is not intended to be either permanent or semi-permanent in character. The consensus of judicial opinion in the High Courts of the country is thus in accord with the view expressed by this Court. It is not necessary on that ground to quash the impugned order of March 1982 as

by efflux of time it has already ceased to be effective.

31. In *A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh and Others*, , their Lordships of Hon"ble Supreme Court accepted the importance of rituals in religious life which is relevant for evocation of mystic and symbolic beginnings of the journey but on them the truth of a religious experience cannot stand. The truth of a religious experience is far more direct, perceptible and important to human existence. It is the fullness of religious experience which must be assured by temples, where the images of the Lord in resplendent glory is housed. All must have an equal right to plead and in a manner of such directness and simplicity that every human being can approach the doors of the Eternal with equality and with equal access and thereby exercise greater freedom in his own life. The word "Dharma" or "Hindu Dharma" denotes upholding, supporting, nourishing that which upholds, nourishes or supports the stability of the society, maintaining social order and general well-being and progress of man kind; whatever conduces to the fulfilment of these objects is Dharma, it is Hindu Dharma and ultimately "Sarva Dharma Sambhava". It shall be appropriate to reproduce few paragraphs from A.S. Narayana's case (supra); to quote:

39. Swami Vivekananda in his lecture on "Religion and Science" incorporated in "The Complete Works" (Vol. VI, Sixth Edition) had stated at page 81 thus:

Experience is the only source of knowledge. In the world, religion is the only science where there is no surety, because it is not taught as a science of experience. This should not be. There is always, however, a small group of men who teach religion from experience. They are called mystics, and these mystics in every religion speak the same tongue and teach the same truth. This is the real science of religion. As mathematics in every part of the world does not differ, so the mystics do not differ. They are all similarly constituted and similarly situated. Their experience is the same; and this becomes law.

In Volume II, Ninth Edn. at page 432, Swamiji said that: There are two worlds: the microcosm and the macrocosm, the internal and the external. We get truth from both these by means of experience. The truth gathered from internal experience is psychology, metaphysics and religion; from external experience, the physical sciences. Now a perfect truth should be in harmony with experience in both these worlds. The microcosm must bear testimony to the macrocosm and the macrocosm to the microcosm; physical truth must have its counterpart in the internal world, and internal world must have its verification outside;

80. The importance of rituals in religious life is relevant for evocation of mystic and symbolic beginnings of the journey but on them the truth of a religious experience cannot stand. The truth of a religious experience is far more direct, perceptible and important to human existence. It is the fullness of religious experience which must be assured by temples, where the images of the Lord in resplendent glory is housed. To them all must have an equal right to plead and in a manner of such directness and simplicity that every human being can approach

the doors of the Eternal with equality and with equal access and thereby exercise greater freedom in his own life. It is essential that the value of law must be tested by its certainty in reiterating the Core of Religious Experience and if a law seeks to separate the nonessential from the essential so that the essential can have a greater focus of attention in those who believe in such an experience, the object of such a law cannot be described as unlawful but possibly somewhat visionary.

81. The word "Dharma" or "Hindu Dharma" denotes upholding, supporting, nourishing that which upholds, nourishes or supports the stability of the society, maintaining social order and general well-being and progress of man kind; whatever conduces to the fulfilment of these objects is Dharma, it is Hindu Dharma and ultimately "Sarva Dharma Sambhava".

82. In contradistinction, Dharma is that which approves oneself or good consciousness or springs from due deliberation for one's own happiness and also for welfare of all beings free from fear, desire, disease, cherishing good feelings and sense of brotherhood, unity and friendship for integration of Bharat. This is the core religion which the Constitution accords protection.

89. A religion undoubtedly has its basis in a system of beliefs and doctrine which are regarded by those who profess religion to be conducive to their spiritual well-being. A religion is not merely an opinion, doctrine or belief. It has outward expression in acts as well. It is not every aspect of religion that has been safeguarded by Articles 25 and 26 nor has the Constitution provided that every religious activity cannot be interfered with. Religion, therefore, cannot be construed in the context of Articles 25 and 26 in its strict and etymological sense. Every religion must believe in a conscience and ethical and moral precepts. Therefore, whatever binds a man to his own conscience and whatever moral or ethical principle regulate the lives of men believing in that theistic, conscience or, religious belief that alone can constitute religion as understood in the Constitution which fosters feeling of brotherhood, amenity, fraternity and equality of all persons which find their foot-hold in secular aspect of the Constitution. Secular activities and aspects do not constitute religion which brings under its own cloak every human activity. There is nothing which a man can do, whether in the way of wearing clothes or food or drink, which is not considered a religious activity. Every mundane or human activity was not intended to be protected by the Constitution under the guise of religion. The approach to construe the protection of religion or matters of religion or religious practices guaranteed by Articles 25 and 26 must be viewed with pragmatism since by the very nature of things, it would be extremely difficult, if not impossible, to define the expression religion or matters of religion or religious belief or practice.

32. In A.S. Narayana's case (supra), Hon'ble Supreme Court reiterated that right to religion guaranteed under Articles 25 and 26 of the Constitution of India is not absolute and unfettered right to propagate religion which is subject to

legislation by the State limiting or regulating any activity - economic, financial, political or secular which are associated with religious belief, faith, practice or custom. The religious practice is subject to reform on social welfare by appropriate legislation by the State (para 19).

33. In *Municipal Corporation of the City of Ahmedabad and Others Vs. Jan Mohammed Usmanbhai and Another*, , while interpreting Article 19(6) of the Constitution of India, their Lordships of Hon''ble Supreme Court held that ordinarily, the Legislature is the best Judge of what is good for community but the Court should not shirk its duty of determining the validity of law. In determining the reasonableness of the restriction imposed by law under Article 19(6), the Court cannot proceed on a general notion of what is reasonable in the abstract or even on a consideration of what is reasonable from the point of view of the person or persons on whom the restrictions are imposed. The Court has to consider whether the restrictions imposed are reasonable in the interest of general public. The expression "in the interests of general public" in Article 19(6) is of wide import comprehending public order, public health, public security, morals, economic welfare of the community and the objects mentioned in Part IV of the Constitution. The tests of reasonableness has to be viewed in the context of the issues which faced the legislature.

34. In *Church of God (Full Gospel) in India Vs. K.K.R. Majestic Colony Welfare Association and Others*, , where question cropped up with regard to use of voice amplifiers or beating of drums, their Lordships ruled that the activities which disturb the peace in the name of religion cannot be permitted in a civilised society as rights are closely related to duties. The rights of babies, children, students, the aged or mentally or physically infirm persons should be protected from noise pollution, Their Lordships held that no religion prescribes that the prayers are required to be performed through voice or by beating of drum. Hon''ble Supreme Court held that the provision of Article 25 of the Constitution is subject to provision of Article 19(1)(a) of the Constitution. Their Lordships affirmed the finding recorded by the Calcutta High Court whereby it is held that true and proper construction of the provision of Article 25(1), read with Article 19(1)(a) of the Constitution, it cannot be said that a citizen should be coerced to hear any thing which he does not like or which he does not require. While reiterating the earlier ratio of its earlier judgment in *Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj and Others Vs. The State of Gujarat and Others*, , Hon''ble Supreme Court held that no rights in an organized society can be absolute. Enjoyment of one''s rights must be consistent with the enjoyment of rights by others. Where in a free play of social forces it is not possible to bring about a voluntary harmony, the State has to step in to set right the imbalance between competing interests. A particular fundamental right cannot exist in isolation in a water-tight compartment. One fundamental right of a person may have to co-exist in harmony with the exercise of another fundamental right by others also with reasonable and valid exercise of power by the State in the light of the directive principles.

35. Subject to aforesaid proposition of law and factual controversy, it appears that the procession to immerse "Akhand Jyoti Kalash" seems to have started in 2003. The Advocate Commissioner noted in his report that in October, 2003, the procession of Kalash was stopped by the police, hence it was locked in the temple on account of communal tension between Hindu and Muslim communities, The police admitted before the Advocate Commissioner that "Akhand Jyoti Kalash" could not be immersed in 2003 because of great tension which could have resulted in riots. "Akhand Jyoti Kalash" could be immersed only in the midnight. Local police informed the Advocate Commissioner that the village Rampur Katra has a population of 17000 and majority of which are minorities and only 5% of them are Hindus. Because of long standing history of communal tension, district administration took precaution stopping the procession from the densely populated village.

36. During the course of argument, learned Chief Standing Counsel on the basis of instruction received stated that the district administration has not prevented with the procession but only specified the route to avoid any conflict. Accordingly, by an interim order, while reserving the judgment, we have directed to communicate the decision specifying the route so that immersion ceremony after Navaratri could be ensured in a peaceful manner Keeping in view the law on the subject and State intends not to stop the procession in future, there appears to be no hurdle in the way of the petitioner to continue with procession with regard to immersion of "Akhand Jyoti Kalash" in river Kalyani on the specified route provided by local administration.

37. However, there appears to be one other aspect of the matter. During the course of argument as well as from the report of the Advocate Commissioner submitted in the earlier writ petition, it appears that the procession of "Akhand Jyoti Kalash" was stopped without communicating the decision in writing. Once right to profess and propagate a religion is a fundamental right subject to morality and public order, then it shall always be incumbent on the State and its authorities to communicate the decision in writing so that in the event of arbitrary exercise of power, a citizen may approach the Court for judicial review of the action. Oral instruction or stopping the religious ceremony without communicating the decision taken by the district administration in writing to the persons concerned that too with regard to rights protected in Part-III of the Constitution seems to be highly arbitrary and hit by Article 14 of the Constitution. Every action of the State must be just and fair and the citizens must be informed in writing with regard to a decision taken by the State and its authorities affecting their fundamental rights. It shall be appropriate that the State must provide a time frame and inform the same to the citizens in writing.

38. The Government should notify the authority to whom such application for religious procession may be moved and decision should be taken by the authority concerned expeditiously, say within three days with due communication to the person or body concerned by Registered Post as well as personal service by

revenue.

39. Before parting with the judgment, we would like to make observation with regard to pleading on record. While filing affidavit and advancing argument on behalf of the State, it has been stated that one community is in dominant position resulting in denial to carry out religious procession.

According to Oxford Advance Learners' Dictionary, dominant means "(1) more important, powerful or noticeable than other things: The firm has achieved a dominant position in world market. The dominant feature of the room was the large fireplace. (2) a dominant GENE causes a person to have a particular physical characteristic, for example brown eyes, even if only one of their parents has passed on this GENE - compare Recessive dominance to achieve/assert dominance over sb. Political/economic dominance.

40. In Words and Phrases Permanent Edition Vol. 13 page 569, the word, "domination" has been defined as an edge of one patent over other. To reproduce the definition:

DOMINATION

C.A. Fed. 1986. "Domination" refers to that phenomenon, which grows out of fact that patents have claims, whereunder one patent has broad or "generic" claim which "reads on" invention defined by narrower or more specific claim in another patent, the former "dominating" the latter because more narrowly claimed invention could not be practiced without infringing the broader claim. - In re Kaplan, 789 F. 2d 1574.-Pat 165(5)

C.C.A. 2 1946. It is for the National Labor Relations Board, not the Court, to find whether the degree of independence of employer influence is sufficient to escape condemnation as constituting "domination" within National Labor Relations Act prohibiting domination of union by employer. National Labor Relations Act.

9th Cir. BAP (Cal) 1993. Under New Mexico law, "instrumentality" or "domination" as required to pierce corporation veil means proof that subservient corporation functioned under domination and control and for purpose of some dominant party; however, mere control by the entity is not enough to warrant piercing corporate veil, but rather, some form of moral culpability attributable to that party, such as use of the corporation to perpetrate a fraud, is also required.- In re Yarbrow, 150 B.R. 233.-Corp 1.4(1), 1.4(3), 1.4(4).

Thus, according to dictionary meaning, "domination" with regard to population may be treated as the situation where one section of society has edge over the other and in consequence thereof, the weaker group may suffer with ill consequences even succumbing to the pressure of other group to compromise on the constitutionally protected rights. Such situation is not only undemocratic but in due course of time, may result into public discontentment and adverse consequence. The Government must avoid to use such phrases while filing response and in case there is reality in defence taken by the State, then

appropriate remedial measure must be adopted to create uniformity, harmony, affection and good will among the citizens.

41. It is unfortunate that the State feels itself helpless to facilitate the religious procession. Even after 63 years of independence, Governmental system has been failed to create communal harmony, love and affection among the various sections of the society. Religious procession or rituals of one community must be welcomed by other and only then, countrymen may enjoy the independence and freedom of life. Freedom and independence cannot be enjoyed in an atmosphere where the State or its authorities find one community in a "dominant" position to check the others" religious practice. As you will sow you will reap. Failure to create communal harmony is because of unequal enforcement of law. Whosoever involves themselves in communal disharmony, corrupt practices, propagate casteism must be dealt with uniformly with firm hand without any appeasement, side track or flexibility. Only then, there shall be respect for law and constitutional spirit. Only because of overwhelming population or head count, one group should not have an edge over others" fundamental right, otherwise, mobocracy shall rule the country. State and its authorities and instrumentality must enforce law with full vigorousness without any discrimination on the basis of caste, creed or religion.

In this cosmopolitan country, at one place, one community may be higher in number but at other place, other community may be in overwhelming number. Unity in diversity may be established and maintained ordinarily only by equal applicability and enforcement of law. Arbitrariness, animosity, affection and appeasement are generally four enemies of good governance. Good governance being part and partial of quality and dignity of life is the fundamental right protected by Article 21 of the Constitution. Constitutional functionaries and the public servants should be cautious of these four enemies (supra).

42. It is well settled that the State or its instrumentalities have to pass order in writing while considering an application, that too relating to fundamental right protected by the Constitution. Oral communication of a decision is anti-thesis to rule of law. The decision must be speaking one may be precise indicating therein the reason for rejection of an application moved by citizen or a body. Hon"ble Supreme Court has ruled that reason in an order, may be administrative, is necessary ingredient of Article 14 of the Constitution of India vide *State of Orissa Vs. Dhaniram Luhar*, , *State of Rajasthan Vs. Sohan Lal and Others*, , *Sant Lal Gupta and Others Vs. Modern Co-operative Group Housing Society Ltd. and Others*, , *K.R. Deb Vs. The Collector of Central Excise, Shillong*, and (2003) 3 LLJ 557 SC *Union of India v. K.D. Pandey and Anr.* .

Long Back, a Constitution Bench of Hon"ble Supreme Court in a case in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, , held that difference between judicial, quasi judicial and administrative orders has been obliterated. In a recent case in *The Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and Others*, , Hon"ble Supreme Court held that reasons ensure

clarity, objectivity, transparency and fairness in decision-making process. Reasons also show that there was application of mind. Hence it is implicit in the process of administrative order to assign reason, may be in brief or precise.

43. Before parting, we wish to cite a couplet of Great Urdu Shaer Firaq Gorakhpuri which is self speaking and befitted to present scenario:

44. Subject to aforesaid observation and finding, writ petition is decided finally and we affirm the interim order dated 16.4.2011 and direct the State of U.P. to provide time frame for acceptance and disposal of applications with regard to religious procession with due communication of the decision so taken to the person or body concerned within specified period, preferably within three days by Registered Post as well as personal service. Decision should contain precise reason, in case prayer for the religious procession is rejected. Let the Chief Secretary of the State issue appropriate order/circular keeping in view the observation made in the body of judgment forthwith and submit a compliance report to this Court within a month.

Registry shall send a copy of the present judgment to the Chief Secretary, Government of U.P. forthwith for compliance.