

## **Synopsis**

1. This is a petition filed under Article 136 of the Constitution seeking to express and make clear the frustration and disappointment of a large part of the Sikh community who feel that their identity as a Sikh is undermined by certain clauses and titles of certain statutes which club Sikhs under the definition of Hindu. The right of a community, which has a separate and distinct identity, to be recognized as such in the drafting of statutes may have appeared to the Ld. Judges who have made the impugned Order to be only an issue of semantics. They could not have been more wrong. Identity is an innate and powerful emotional feeling and, it is submitted, is part of the right to life. That the Sikh identity be preserved as a separate and distinct identity while drafting statutes causes no difficulty for the State at all and it requires only a little sensitivity while drafting statutes to maintain this identity within the statute itself. This omission to recognize identity is also indicative of a linguistic error in legislative drafting which has resulted in labeling people wrongly for the application of law and calls for immediate linguistic correction in the statutes. Even though Hinduism, Sikhism, Buddhism and Jainism are given equal status and independent identity in the Constitution, the anomaly/ error based on language in certain statutes is resulting in denial of equality and

independent identity to these communities. This is all that the Petitioners sought, when they filed their Petition before the High Court and it suggested a remedy that could have been easily adopted without causing discomfort to any community and, in fact, would have positively impacted even the Buddhists and the Jains. Unfortunately, the High Court has used very strong and negative language that perhaps could have been avoided.

2. The petitioner No.1 Birendra Kaur who is Ph.D. (Punjab University) in the subject of Zoology has worked as Sr. Lecturer, Sri Guru Gobind Singh College, Sec 26, Chandigarh, from 1991 to 2008; Assisted in editorial work with Institute of Sikh Studies [1991 to 2009]; Associate Editor, *Abstracts of Sikh Studies*, its quarterly Journal [2008 to 2010]; Settler, Dr Kharak Singh Trust; Associated with International Sikh Confederation & Institute of Sikh Studies; Authored two Books - *Hail Hair!* and *On Sikh Identity*; Participated in Numerous Seminars; Published Numerous Research Papers; Exposed to Sikh issues of our times as daughter of Dr Kharak Singh, a renowned personality, who was dedicated and committed to concerns of Sikhism, in particular, and the nation, at large. The petitioner No.2 Rohit Garg is a practicing lawyer at District Courts, Mansa.

3. The Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Adoptions and Maintenance Act, 1956 and the Hindu Minority and Guardianship Act, 1956 (herein hereafter referred to as the "Acts"), use the word 'Hindu' to include Sikhs, Buddhists, Jainas and others, even though it is clarified that these are separate religions. By contrast, an earlier legislation, the Special Marriage Act, 1954 applicable also to Hindus, Buddhists, Sikhs and Jains uses a secular term in the title of the Act and references to these religions are to be found separately as in section 19 and 21-A.
4. Making a law applicable to all religions is one thing. Calling all religions by the name of a single religion for the purpose of that law, quite another. Herein lies the discrimination.
5. When all the four religions stand admittedly on an equal footing and are independent of each other, is it right for the legislature to use language giving a title to legislation in the name of one religion only?
6. The use of language and the use of particular words can be the source of discrimination. Using one religion to define all could possibly be said to be discrimination in the use of particular terms and words.

7. A historical example given at this stage is very pertinent.  
India joined the Commonwealth in April 1949 and this was ratified by the Constituent Assembly in May 1949. Consequent to India joining, the name was changed from "British Commonwealth" to "Commonwealth of Nations".
8. One simple way of assessing as to whether the use of one religion to define all is discriminatory and hurtful to identity is to an exercise where the name of the Act is changed to Buddhist Marriage Act or Sikh Succession Act or Jain Marriage Act and thereafter use the same legal fiction, namely, that the use of this religion(s) will signify coverage of all. Persons from the majority religion will immediately perceive the title as odd; some may even feel resentful. This perception is a sure indicator of the undermining of identity which is very critical to the individual as well as to communities and is part of Article 21.
9. Is the right to identity part of the right to life?
10. That identity is protected in the commercial world by way of trademark and other laws is well established. Legal battles are fought over commercial identity. How much

more important therefore is the identity of an individual and, more so, religious identity.

11. Christians are governed by the Indian Christian Act, 1872; Muslims by the Muslim Personal Law (Shariat) Application Act, 1937; Parsis by the Parsi Marriage and Divorce Act, 1936; and yet Sikhs, Jains and Buddhists are governed by statutes in the name of the majority religion.

12. The Prime Minister of India, Shri Jawahar Lal Nehru, on 3<sup>rd</sup> September 1947, while addressing a public meeting at Allahabad said:- -

“No doubt India has a vast majority of Hindus, but they could not forget the fact that there were also minorities –Muslims, Parsis, Christians, Sikhs and Jains. If India was understood as a Hindu Rashtra, it meant that the minorities were not cent per cent citizens of this country. (English daily newspaper *The Statesman*, dated 05.09.1949)

13. Pt. Jawahar Lal Nehru, in his celebrated book *Discovery of India*, mentioned as under :-

“Buddhism and Jainism were certainly not Hinduism or even the Vedic Dharma. Yet they arose in India and were integral parts of Indian life, culture and philosophy. A Buddhist or Jain in India is a hundred per cent product of Indian thought and culture, yet neither is a Hindu by faith. It is therefore, entirely misleading to refer to Indian culture as a Hindu culture.”

14. A sample copy of the Marriage Certificate issued by the Registrar for Marriages in accordance with the provisions of the Hindu Marriage Act, is annexed as additional documents hereto and makes no reference whatsoever to the religion of the married couple. Even in the formats there is reference neither to the religion of the Sikh couple nor to the ceremony that was performed (according to the religious rites of the Sikhs in a gurdwara) in the present instance. All that is found on the certificate is reference to the “Hindu Marriage”.
15. Similarly in the tax returns, Sikhs are required to declare that they are part of “Hindu Undivided Family”.
16. Hinduism was not an issue raised at all in the Petition. Nevertheless it finds frequent mention in the Judgment. “Hinduism... is not a strait jacket religion; it is a way of life.

It is a 'Dharma'. Hindus are not one people but many. Therein lies the beauty of India." By writing thus the High Court has raised the threshold of the Petitioners' case from one based on language and the discriminatory use of the word 'Hindu', to one of religion. The Hon'ble High Court failed to observe that the word 'Hindu' is being simultaneously used as a Proper Noun as well as a Collective Noun. The tendency in the Judgment is to say that Hinduism encompasses all religions. To say that Hinduism is not a strait jacket is to imply that Sikhism, Buddhism and Jainism are. Thus the High Court judges, who were "peeved" with the legal submissions made, have unnecessarily taken the Petition in an entirely different direction.

17. In paragraph 5, the High Court says that the use of the word 'Hindu' in the title "is no more than a key to an Act; no more than a thumb nail indication of the subject matter to follow, aimed more for convenience of indexing, reference and application." If this is the reason for the clubbing of religions under Hinduism then it is a defect quite easy to rectify. The discrimination can be removed by mere choice and arrangement of words in a manner that is suitable for all religions. Surely if the original draft was done only for the sake of convenience, it would be

very possible for legislation drafters today to make an equally convenient Act by removing the offensive portions. Of course, if what the learned Judges say in paragraph 4 is the real reason for the nomenclature, then more fundamental considerations arise.

18. To say, as in paragraph 6, that Sikhs, Jains and Buddhists “live happily under the umbrella of the Acts” is not factually correct. The issue did not arise. In fact, the Court had closed its mind to the issue at the outset and the Petition was dismissed in two minutes. The Petitioners do not contest the power of the High Court to summarily dismiss a petition but are aggrieved by the lengthy reasoning which followed in the impugned Order which was made without giving the Petitioners a full opportunity to explain the legal issues arising in the Petition. As stated before, numerous protests and representations were made over the years. For example, the Sikh Religious Society passed a resolution in 2008 stating as under:-

“Resolution

Historically Sikh marriages have been performed under the Anand Karaj Ceremony and since 1999 had been registered under the Anand Marriage Act, until the inclusion of Sikhs under the Hindu Marriage Act (1955). On this basis, this day the 13<sup>th</sup> day of

January, 2008 the congregation at the Sikh Religious Society of Chicago, Palatine, IL (USA) hereby resolves that the mandate by the Indian Supreme Court requiring Sikhs to register their marriage under the Hindu Marriage Act (1955) violates our fundamental right to practice our religion freely. The said mandate must therefore be rescinded immediately, and provisions should be made to register Sikh Marriages under the Anand Marriage Act (1909).

The registration of Sikh marriages under the Hindu Marriage Act thus unjustly infringes upon the constitutionally protected and universally accepted norms of International Law allowing for free and unfettered practice of religion.

Pakistan has already taken the lead in implementing the Anand Karaj Act. We demand that requisite provisions be made in India for the protection of the Sikhs' right to practise their religion freely, and to allow for the registration of Sikh marriages under the Anand Marriage Act.

Furthermore, we state unequivocally that Sikhs are a unique and independent religion and therefore cannot come under the purveyance of the Hindu

Marriage Act, the imposition of which is a clear violation of the basic principle of Indian secularism and of the United Nations Charter of Fundamental Human Rights.

Sd-"

19. The Shiromani Gurdwara Parbandhak Committee addressed a letter to the Union Law Minister on 18.12.10 stating as under:-

"Shri M. Veerappa Moily,

Hon'ble Union Law Ministry,

Government of India,

New Delhi.

Date - 18.12.2010

Subject:- Registration under Anand Marriage Act.

Respected Sir,

As you know that the Supreme Court of India has directed the Central and State Government in its decision "Seema v. Ashwani Kumar" delivered on 25.10.2007 to make a provision that all marriages in India should be compulsorily registered. The Sikhs at present are governed by the Hindu Marriage Act 1955 and their marriages are registered under this

Act. The Sikh community strongly resents to this provision. All the Sikhs do not want their marriages registered under the Hindu Marriage Act, because Sikhism is an independent and distinct religion and not an appendage of Hinduism. It is pertinent to mention that Sikhs solemnize their marriage through Anand ceremony before Sri Guru Granth Sahib which was legally recognised by a statute of the Government of India, namely, the Anand Marriage Act, 1909.

In the Anand Marriage Act, 1909, there is no provision for registration of marriages. The Shiromani Gurdwara Parbandhak Committee, an apex representative body of Sikhs demands and strongly recommends that the marriages of Sikhs should be registered under the Anand Marriage Act by a suitable amendment (addition) in the Anand Marriage Act, 1909. It will satisfy the Sikh community as a whole to a great extent.

With Regards.

Yours sincerely

(Avtar Singh),

President,

Shiromani Gurdwara Parbandhak Committee,

Sri Amritsar"

20. A similar letter dated 2.9.2011 was sent by the Committee once again to the law minister stating as under:-

“Shri Salman Khursheed,

Minister of Law and Justice and Minority Affairs,

Government of India,

New Delhi – 1100 01

Date:- 02.09.11

Subject:- Regarding Anand Marriage Act.

Sir,

As stated by your good self in the parliament that there is no need of Anand Marriage Act for the Sikhs, we wish to bring it your notice that mainly the people belonging to Hindu, Muslim, Sikh and Christian Communities are residing in India and all of them have their own religious rites and ceremonies and they live accordingly. The Hindus have their own religious ceremonies regarding the marriage, Christians have their own and the Muslims enter into Nikah as per their rites. The Sikhs as per their belief enter into marriage before Shabad Guru Sri Guru Granth Sahib after reciting the sacred bani of Sri Guru Ram Das from Shri Guru Granth Sahib which is called as Lavan. The bride and bridegroom are taught about the spiritual aspect of married life so that they can lead a happy and satisfied

married life. The Anand Karaj is completed after performing Ardas before Sri Guru Granth Sahib.

Sikhs have been demanding, over the years, to have a separate marriage Act so that their marriages can be registered. During the British Rule, with the special efforts of Raja Tikka Ripudaman Singh Nabha and S. Surinder Singh Majithia, a bill was presented in the legislative assembly on 28<sup>th</sup> August, 1909 and Anand Marriage Act was passed on 22<sup>nd</sup> October 1909. This Act did not have the provision regarding registration of Anand Karaj because of which legislation of marriage could not start. The Sikhs have been demanding to implement for the last many years and the law ministers of the country had been giving the assurance for the same. This Act had already been implemented in Pakistan and Punjab Government has already passed the resolution regarding it in the Legislative Assembly in March 2008 and same has been sent to the Hon'ble President of the country for approval. The countries like America have given all the communities to enjoy religious freedom and the Sikhs with full religious symbols and untied beard are serving the Government. Your decision at this moment regarding Anand Marriage Act is highly unfortunate and will create a sense of alienation among the Sikhs. The rites and ceremonies of the Sikhs do not match with that of Hindu religion. The

Sikhs have to get their marriages registered under the Hindu Marriage Act because of compulsion and it affects the religious sentiments of the Sikhs.

India is a multi community, multi-religious and multi-lingual country therefore an equal respect to all religious segments regarding their various ceremonies and rites will enhance the unity and integrity of the country, whereas denying the right to Sikhs under the Anand Marriage Act will further enhance the sense of alienation. We strongly demand the implementation of Anand Marriage Act and to incorporate the provision of registration of marriages under this Act. We strongly bring it to your kind notice that the long pending demand of the Sikhs regarding registration provision in the Anand Marriage Act must be implemented immediately so that the sentiments of the Sikhs around the globe can be taken care of. It is worth mentioning that Sikhs played an important role in the freedom movement of the country and they must be allowed to live with honour, dignity and self respect in the country.

With regards,

Yours sincerely,

Secretary,

Shiromani Gurdwara Parbandhak Committee,

Sri Amritsar"

21. In 2012, however, the Anand Marriage (Amendment) Bill 2012 was unanimously passed by both the Houses of the Parliament. The Amendment has permitted Sikhs to register their marriages under the Act, thereby making available to them on paper, an independent identity. Though the amendment of the Anand Marriage Act has enabled registration of Sikh marriages under a separate Act, much has to be done to reconcile the provisions of the Hindu Succession Act, the Hindu Adoptions and Maintenance Act, and the Hindu Minority and Guardianship Act as well as other aspects of The Hindu Marriage Act to make it a complete personal law for the Sikhs. Notwithstanding the limited nature of the Act, this small amendment has elated Sikhs from across the community giving a sense of independent status of the Sikh religion as recognized by the Indian law. On account of this feat, miniscule as it is, there is a sense of jubilation among Sikhs. The joy and satisfaction expressed by the entire Sikh community worldwide on just being able to register their marriages under an Act in the name of their own ceremony amply clarifies that what they suffered from was an 'identity crisis'. This Act had already been implemented in Pakistan and Punjab Government had already passed the resolution regarding it in the Legislative Assembly in March 2008 and same was sent to the Hon'ble President of the country for approval. Countries like America have given all the

communities the right to enjoy religious freedom, and the Sikhs with their religious symbols and flowing beard are serving in the Government.

22. In 2000, Sikhs, Buddhists and others made a representation to the National Commission to Review the Working of the Constitution (NCRWC), and this Commission made the following recommendation:-

“Explanation II to Article 25 should be omitted, and sub-clause (b) of clause (2) of that Article should be reworded as follows:-

“(b) providing for social welfare and reform or the throwing open of Hindu, Sikh, Jaina or Buddhist religious institutions of a public character to all classes and sections of these religions.”

23. Petitioners have never based their challenge premised solely on Article 25 of the Constitution – the right to freely profess, practice and propagate religion. The challenge made reference to Article 14 as well and the choice of one religion to signify all. Thus reference to Explanation II is not relevant. Finally the Hon'ble Court has been very harsh in characterizing the petitioners as 'myopic, fissiparous' and the petition 'uncalled for'. Homogeneity is sometimes best achieved by recognizing and respecting differences rather

than attempting to force different religions under one umbrella.

24. There is another point. Section 13 (1) (ii) is as under:-

“Divorce-(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party...(ii) has ceased to be a Hindu by conversion to another religion; or”

25. Thus divorce on the ground of change of religion of a spouse is not possible if one of the partners in a Sikh marriage converts either into Hinduism or Jainism or Buddhism. This is true of married couples of all the four religions. Thus the word ‘Hindu’ is patently discriminatory. For example, if one of the Hindu partners converts to the Parsi religion, divorce is possible. If the partner converts to Buddhism, divorce is not possible.

#### LIST OF DATES AND EVENTS

| DATES      | PARTICULARS   |
|------------|---|
| 22.10.1909 | The Anand Marriage Act, 1909 was passed to solemnize Sikh marriages through Anand ceremony. |

31.01.50 Pt. Jawahar Lal Nehru, former Prime Minister of India explains that Jains form a separate religious group and cannot be clubbed as Hindus. In his letter to a delegation of the Jain community, he states the following:

“...It is clear that Buddhists are not Hindus and therefore there need be no apprehension that the Jains are designated as Hindus. There is no doubt that the Jains are a different religious community and this accepted position is in no way affected by the Constitution.”

18.05.55 Hindu Marriage Act, 1955 was brought into force. Section 2 (1) (b) states that the Act shall be applicable to “any person who is a Buddhist, Jaina or Sikh by religion.”

Section 2 (3) of the Act states, “The expression ‘Hindu’ in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.”

1956 Hindu Succession Act, 1956, Hindu Adoptions and

Maintenance Act, 1956, and Hindu Minority and Guardianship Act, 1956, passed providing similar provisions for the applicability of the Act(s).

1956 Dr. Radha Krishnan, former President of India, in his book, the *Recovery of Faith* states as under:-

“...the Indian state will not identify itself with or be controlled by any particular religion. We hold that no one religion should be given preferential status.... This view of religious impartiality, or comprehension and forbearance, has a prophetic role to play within the National and International life.”

02.04.02 The discrimination is also seen in the Marriage Certificate issued by the Registrar for Marriages in accordance with the provisions of the Hindu Marriage Act. The certificate makes no reference whatsoever to the religion of the married couple. Even in the formats there is reference neither to the religion of the Sikh couple nor to the ceremony that was performed (according to the religious rites of the Sikhs in a Gurdwara) in the present instance. All that is found on the certificate is reference to the “Hindu Marriage”. Such discrimination is also

seen in the application forms for Tax Deduction and Collection Account Number for Hindu Undivided Family (HUF), HUF Pan Card, HUF Creation Deed as well as Deed of Adoption, Succession Certificate, Lawsuits/ Affidavits, etc. The followers of these religions have to themselves place their signatures on such documents.

- 8.08.2005 Supreme Court in Bal Patil & Anr. v. Union of India & Ors., AIR 2005 SC 3172 held that "the State does not recognize any religion as a State religion and that it treats all religion equally, and with equal respect without, in any manner, interfering with their individual rights of religion, faith or worship."
- 13.01.08 The Sikh Religious Society passed a resolution expressing their reservation on Sikh marriages being included under the Hindu Marriage Act, 1955.
- 18.12.10 Shiromani Gurdwara Parbandhak Committee (SGPC) wrote to Shri Veerappa Moily, the then Union Law Minister, expressing reservations in registering Sikh marriages under the Hindu Marriage Act, 1955.
- 02.09.11 SGPC again wrote to Shri Salman Khurshid, Union Law Minister stating that the decision to

compulsorily register Sikh marriages under the Hindu Marriage Act, 1955 affects the religious sentiments of the Sikhs.

30.09.11 Petitioners filed Civil Writ Petition No. 18634 of 2011 before the Punjab and Haryana High Court for an Order declaring *inter alia* that the inclusion of the term 'Sikh' within the expression 'Hindu' of the Personal Laws infringes the fundamental rights of the Sikhs.

3.10.11 High Court dismissed the Petition of the Petitioners.

22.05.12 The Anand Marriage (Amendment) Bill, 2012, was unanimously passed by both the Rajya Sabha and the Lok Sabha allowing registration of Sikh Marriages under the separate Act.

Hence the present Petition

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION NO. OF 2012

(Arising out of the final Order and Judgment dated 3.10.11  
passed by the High Court of Punjab and Haryana in Civil Writ  
Petition No. 18634 of 2011)

In the Matter of:-

| S.<br>No | PARTICULARS  | POSITION IN<br>HIGH COURT | POSITION<br>BEFORE<br>THIS<br>COURT |
|----------|--|---------------------------|-------------------------------------|
| 1.       | Birendra Kaur,<br><br>W/o S Jatinder Singh,<br><br>R/o D-151, Industrial<br><br>Area, Phase-8, Mohali.<br><br>Chandigarh                         | ...Petitioner<br><br>No.1 | ...Petitioner<br><br>No.1           |
| 2.       | Rohit Garg S/o<br><br>Dr Rajinder Kumar Garg,<br><br>C/o Rajindra Diagnostic<br><br>Centre, Near Civil<br><br>Hospital, Mansa.<br><br>Chandigarh | ...Petitioner<br><br>No.2 | ...Petitioner<br><br>No.2           |

Versus

1. Union of India

Through its Secretary,

Ministry of Law and

Justice, "A" Wing,

Shastri Bhavan, New

Delhi – 1100 11

Contesting

Respondent

...Respondent

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS HON'BLE COMPANION JUDGES

OF THE SUPREME COURT OF INDIA

THE SPECIAL LEAVE PETITION

OF THE PETITIONERS ABOVE NAMED

MOST RESPECTFULLY SHOWETH:-

1. The Petitioners respectfully submit this petition seeking Special Leave to Appeal against the final Judgment and Order dated 3.10.11 passed by the Hon'ble Division Bench of the High Court of Punjab and Haryana in Civil Writ Petition No. 18634 of 2011. The Hon'ble Division Bench was pleased to dismiss the Petition filed by the Petitioners herein. It is respectfully submitted that the Hon'ble Division Bench failed to take into consideration that clubbing different and distinct religions under the expression 'Hindu' in the legislations - The Hindu Marriage Act, 1955, the Hindu

Succession Act, 1956, the Hindu Adoptions and Maintenance Act, 1956, and the Hindu Minority and Guardianship Act, 1956 (herein hereafter referred to as the "Acts"), is discriminatory and prejudicial to the identity of these religions. Thus the Petitioners approach this Honb'le Court and seek Special Leave to Appeal against the final Order and Judgment dated 3.10.11 of the Honb'le Division Bench of the Punjab and Haryana High Court.

## 2. QUESTION OF LAW

The Petitioners submit that the following substantial questions of law of general public importance arise for the determination by this Honb'le Court in this Special Leave Petition:-

- i. Whether when all the four religions stand admittedly on an equal footing and are independent of each other, is it right for the legislature to use language giving a title to legislation in the name of one religion only?
- ii. Whether using one religion to mean all could possibly be said to be discrimination in the use of particular terms and words, and is in violation of the right to identity under Article 21 of the Constitution?

- iii. Whether various religious communities which have their own recognized religious identities can be termed and clubbed by an expression 'Hindu' under the "Acts" in issue; whether such clubbing violates the religious rights of the other communities?
- iv. Whether naming these "Acts" by the name of one religion, has discriminated the other religions, which are party to these "Acts"?
- v. Whether by clubbing independent religions under the word 'Hindu', the "Secular" character of the Constitution of India has been jeopardized and as to whether such an action has jeopardized the religious rights of individual religious communities, as enshrined under Articles 14, 15, 25, 26, 29, 30 of Constitution of India?

### 3. DECLARATION IN TERMS OF RULE 4(2)

The Petitioners state that no other petition seeking Special Leave to Appeal has been filed by them in the impugned final Judgment and Order passed by the Hon'ble High Court of Punjab and Haryana in Civil Writ Petition No. 18634 of 2011.

### 4. DECLARATION IN TERMS OF RULE 6

No annexures were placed before the Hon'ble High Court of Punjab and Haryana to form part of the records of the case before the Honb'le High Court, against whose Order the leave to Appeal is sought for in this Petition.

## 5. GROUNDS

- A. Because the Constitution has, in its Preamble, envisioned the structure of a Nation. The Preamble initially spelt out the Indian State to be a Sovereign Democratic Republic and vide 42nd Amendment Act of 1976 which came into effect on 3.1.1977, the words 'Socialist' and 'Secular' and 'Unity and Integrity' were added to it. In order to give effect to the true concept of Secularism, the Constitution of India ensures Equality before law through Article 14; Prohibition of discrimination on grounds of religion, race, castes, sex or place of birth through Article 15; Freedom of Conscience and Free profession, practice and propagation of religion through Article 25; Freedom to manage religious affairs through Article 26; and further through Articles 29 Protection of interests of minorities; and through Article 30 Right of minorities to establish and administer educational institutions. These rights clearly show that India/ Bharat, having no State religion, endeavored to give due respect and recognition to each religion.

B. Because the Sikh identity be preserved as a separate and distinct identity while drafting statutes causes no difficulty for the State at all and it requires only a little sensitivity while drafting statutes to maintain this identity within the statute itself. This omission to recognize identity is also indicative of a linguistic error in legislative drafting which has resulted in labeling people wrongly for the application of law, and calls for immediate linguistic correction in the Statutes. Even though Hinduism, Sikhism, Buddhism and Jainism are given equal status and independent identity in the Constitution, the anomaly/ error based on language in certain Statutes is resulting in denial of equality and independent identity to these communities. This is all that the Petitioners sought when they filed their Petition before the High Court, and it suggested a remedy that could have been easily adopted without causing discomfort to any community and, in fact, would have positively impacted even the Buddhists and the Jains. Unfortunately, the High Court has used very strong and negative language that perhaps could have been avoided.

C. Because the Amendment to the Anand Marriage Act, 1909 has permitted Sikhs to register their marriages under the Act, thereby making available to them on paper, an independent identity. Though the amendment of the Anand Marriage Act has enabled registration of Sikh

marriages under a separate Act, much has to be done to reconcile the provisions of the Hindu Succession Act, the Hindu Adoptions and Maintenance Act, and the Hindu Minority and Guardianship Act as well as other aspects of the Hindu Marriage Act to make it a complete personal law for the Sikhs. Notwithstanding the limited nature of the Act, this small amendment has elated Sikhs from across the community giving a sense of independent status of the Sikh religion as recognized by the Indian Law. On account of this feat, miniscule as it is, there is a sense of jubilation among Sikhs. The joy and satisfaction expressed by the entire Sikh community worldwide on just being able to register their marriages under an Act in the name of their own ceremony amply clarifies that what they, indeed, suffered from was an 'identity crisis'.

- D. Because the use of language and the use of particular words can be the source of discrimination. Using one religion to define all could possibly be said to be discrimination in the use of particular terms and words. One simple way of assessing as to whether the use of one religion to define all is discriminatory and hurtful to identity is to an exercise where the name of the Act is changed to Buddhist Marriage Act or Sikh Succession Act or Jain Marriage Act and thereafter use the same legal fiction, namely, that the use of this religion(s) will signify coverage

of all. Persons from the majority religion will immediately perceive the title as odd; some may even feel resentful. This perception is a sure indicator of the undermining of identity which is very critical to the individual as well as to communities, and is part of Article 21.

E. Because in *Bal Patil & Anr. v Union of India & Ors.* AIR 2005 SC, the Supreme Court observed as under:-

“The State does not recognise any religion as a State religion and that it treats all religions equally, and with equal respect without, in any manner, interfering with their individual rights of religion, faith or worship.”

In *Commissioner, Hindu Religious Endowment, Madras v Hiku mindrti Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282, the Supreme Court held Jainism to be a separate faith with its own distinctive characteristics and beliefs.

In *Hirachand v Rowji Sojpal* AIR 1939 Bom 377, the Bombay High Court had observed that:-

“Jainism prevailed in this country long before Brahmanism came into existence and held the field, and it is wrong to think that the Jains were originally

Hindus and were subsequently converted into Jainism."

The acting Chief Justice Kumar Swami Shastri held in *Getappa v Eramma & Others* (AIR 1927):-

"Were matters *res integra*, I would be inclined to hold that modern research has shown that the Jains are not Hindu dissenters but that Jainism has an origin and history long anterior to the Smritis and Commentaries which are recognized authorities on Hindu law and usage. The Jain religion refers to a number of previous Tirthankaras and there can be little doubt that Jainism as a distinct religion was flourishing several centuries before Christ. In fact, Jainism rejects the authority of the Vedas which form the bedrock of Hinduism and denies the efficacy of the various ceremonies which Hindus consider essential."

The 'Bombay Samachar' on 10.12.04 quoted Lokmanya Tilak as under:

"In ancient times innumerable animals were butchered in sacrifice. But the credit for the disappearances of this terrible massacre from the Brahminical religion goes to the share of Jainism."

F. Because even while separate personal laws were given to the Christians through Indian Christian Act, 1872, Indian Succession Act, 1925, and to the Muslims through the Muslim Personal Law (Shariat) Application Act, 1937, and even to the Parsis through the Parsi Marriage and Divorce Act, 1936, the people of the Hindu, Sikh, Jaina and Buddhist religions were clubbed together to give common laws through Hindu Marriage Act, 1955, Hindu Succession Act, 1956, Hindu Adoptions and Maintenance Act, 1956, and Hindu Minority and Guardianship Act, 1956.

Because even if Hinduism, Sikhism, Buddhism and Jainism may have a common geographic and cultural background, yet these religions are ideologically far separated, each having its own unique features. And these are also recognized to be equal and independent by the Constitution of India. Rather, the Constitution ensures through Fundamental Rights enshrined in Article 29 & 30 that these minority religious communities maintain their identity and flourish in the Independent India. But the clubbing of these minorities under the majority religion in the "Acts" is rather contradictory to this spirit of the Constitution.

Keeping in view the ever new legislations being introduced to enhance the quality of life and ensure the dignity of

individuals of every sector without even their seeking, gives us hope and confidence that this anomaly that has gone unnoticed so far will now be addressed favorably by the Hon'ble Court.

That Sikhs, Buddhists and Jainas can also not be considered sects of Hinduism for having originated from the Hindus. Because, the antiquity of Jainism over Hinduism has been acknowledged by the Court as well as by Dr S. Radha Krishnan, as mentioned herein.

Because even if, as pointed out by the Judges, "Hinduism... is not a strait jacket religion; it is a way of life. It is a 'Dharma'. Hindus are not one people but many.", then these comprise the unique features of Hinduism. But these do not qualify Hinduism to place under its banner other recognized religions having their own unique features. As per the Constitution, the fact remains undisputed that all religions, irrespective of whatever their unique features may be, are equal and should, therefore, always be placed on an equal level. Otherwise Sikhism too may claim a preferential status on the ground that its Scripture addresses the entire humankind, and other religions may cite other features for such claims.

G. Because this discrimination can also be seen at the time of registration of marriages under the Hindu Marriage Act, 1955. The Marriage Certificate issued by the Registrar for Marriages in accordance with the provisions of the Hindu Marriage Act, makes no reference whatsoever to the religion of the married couple. Even in the formats, there is reference neither to the religion of the Sikh couple nor to the ceremony that was performed (according to the religious rites of the Sikhs in a gurdwara) in the present instance. All that is found on the certificate is reference to the "Hindu Marriage". This discrimination is also seen in the application forms for Tax Deduction and Collection Account Number for Hindu Undivided Family (HUF), HUF Creation Deed as well as Deed of Adoption under the Hindu Adoption and Maintenance Act.

H. Because in the "Acts" mentioned above, the word 'Hindu' is used as the 'Name' of a Religion (i.e. as a proper noun), and as well as an 'Expression' jointly for Hindus, Sikhs, Buddhists and Jains, including some others as well (i.e. as a collective noun). The relevant portions of the "Acts" in which the word 'Hindu' has been defined as 'a religion' as well as 'a joint expression' are reproduced as under:-

**"Hindu Marriage Act, 1955**

Section 2. Application of Act.

- (1) This Act applies –
- (a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,
  - (b) to any person who is a Buddhist, Jaina or Sikh by religion, and
  - (c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

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

- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion;
- (b) any child, legitimate or illegitimate, one of whose parents is Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member

of the tribe, community, group or family to which such parent belongs or belonged ; and

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

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

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

### **Hindu Succession Act, 1956**

#### Section 2. Application of Act.

- (1) This Act applies –
- a. to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

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

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

- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;
- (b) any child, legitimate or illegitimate, one of whose parents is Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged ; and
- (c) any person who is a convert or reconvert to the Hindu, Buddhist, Jaina or Sikh religion.

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

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

## **Hindu Adoptions and Maintenance Act, 1956**

### Section 2. Application of Act.

- (1) This Act applies –
- (a) to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,
  - (b) to any person who is a Buddhist, Jaina or Sikh by religion, and
  - (c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have

been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

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

- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;
- (b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged,
- (bb) any child, legitimate or illegitimate, who has been abandoned both by his father and mother or whose parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh, and
- (c) any person who is a convert or reconvert to the Hindu, Buddhist, Jaina or Sikh, religion.

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

(2-A) Notwithstanding anything contained in subsection (1), nothing contained in this Act shall apply to the Renoncants of the Union Territory of Pondicherry.

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

### **Hindu Minority and Guardianship Act, 1956**

#### Section 3. Application of Act.

(1) This Act applies—

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

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

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

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

- (i) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;
- (ii) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhists, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and
- (iii) any person who is convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any scheduled Tribe within the meaning of

clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

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

It is thus clear that while in these "Acts", the Application of Act, Section 2 (in the first three Acts) and Section 3 (in the last Act) (1)(b) clearly denotes the independent status of Sikhs, Buddhists and Jainas, and at par with Hinduism, the sub-section (3) of the same Section negates the same by 'construing' even persons who are not Hindus by religion to be included under the 'Expression' Hindu for the purpose of these "Acts". A contradiction in terms, thus, exists even in the same Section of the "Acts".

Further Section 2(3) of these "Acts" does not serve any purpose, as other similar Acts related to personal laws of other religions generally use the terms 'party(ies)', spouse, husband/ wife, etc., to denote the persons to whom those Acts apply. But the 'Expression' Hindu, designed for these "Acts", only needlessly adds the word 'Hindu' to every

other term, for example:- marriage between two Hindus, Hindu Marriage Register, Registration of Hindu Marriages, Conditions/ Ceremonies of a Hindu Marriage, a female Hindu, a male Hindu, a minor Hindu, when a Hindu dies, and so on and so forth.

An Explanation with similar import is also needlessly placed in another Act - the Protection of Civil Rights Act, 1955, based on Article 17 (Abolition of Untouchability). At the end of its Section 3, the following Explanation is placed:-

Explanation:- For the purposes of this section and section 4 persons professing the Buddhist, Sikh or Jaina religion or persons professing the Hindu religion in any of its forms or developments including Virashaivas, Lingayats, Adivasis, followers of Brahmo, Prarthana, Arya Samaj and the Sawaminarayan Sampraday shall be deemed to be Hindus.

But a perusal of the Section 3 and Section 4 of this Act reveals that the word 'Hindu' does not find mention therein at all. Rather, the word 'Hindu' does not even exist in the entire text of the Act. Now this defies all logic.

That the anomaly/ misnomer of use of the same word 'Hindu' as a Religion as well as a joint 'Expression' has also denied important rights to the members of all the religions

mentioned herein. This is illustrated by Section 13(1)(ii) of the Hindu Marriage Act, 1955, which states as under:-

“13(1)(ii) - if he (or she) has ceased to be a Hindu by conversion to another religion”.

How can one cease to be a Hindu by conversion to Jainism/ Buddhism/ Sikhism, as followers of these religions are also ‘Hindu’, since they all are collectively covered by the ‘Expression’ Hindu? For example, can a Sikh cease to be a Hindu, if he converts to Jainism or Buddhism, as per the “Acts”?

In the given situation, in addition to the Sikhs, Buddhists and Jainas, even Hindus are denied the equal rights conferred on them by the Constitution.

Further, it also means that a Sikh/ Jaina/ Buddhist shall ‘cease to be a Hindu’, even if he/ she shall convert to Hinduism. As, for example, say, a Buddhist cannot avail the ground for divorce, if his/ her spouse converts to Hinduism, because the person converting has ‘ceased to be a Hindu by conversion to another religion’.

That the word ‘Hindu’ has also been used in the texts of the “Acts” in the following manner and are being reproduced for ready reference of this Hon’ble Court:-

## **Hindu Marriage Act, 1955**

Sec 13. Divorce –

- (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party–
  - (ii) has ceased to be a Hindu by conversion to another religion; or

## **Hindu Minority and Guardianship Act, 1956**

Sec 6. Natural guardians of a Hindu minor

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section-

- (a) if he has ceased to be a Hindu, or

## **Hindu Adoptions and Maintenance Act, 1956**

Sec 18. Maintenance of wife –

- (1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to

be maintained by her husband during her lifetime.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance,—

(f) if he has ceased to be a Hindu by conversion to another religion;

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

I. Because all these "Acts", i.e., Hindu Succession Act, 1956, Hindu Marriage Act, 1955, Hindu Adoptions and Maintenance Act, 1956, Hindu Minority and Guardianship Act, 1956, are named using the word 'Hindu', even as these "Acts" are applied to not only Hindus but also to Sikhs, Buddhists, Jainas and some others as well. In these Statutes, the Hindus, Sikhs, Jainas and Buddhists – followers of the four distinct, equal religions are collectively clubbed under the word 'Hindu', by calling the same an 'Expression'. In other words, the word 'Hindu' is being used as the Name of one religion as well as for Collective Reference of all the four religions mentioned above, by calling the same word an 'Expression'. Such use of one

word to denote two different meanings leads to this error, which altogether cancels/ negates the equality and distinct identity of the remaining religions, which is conferred on them by the Constitution. Such usage is against the spirit of the Constitution, as the word 'Hindu' even though used as an 'Expression' jointly for the members of the religions mentioned above, ultimately discriminates against these religions vis-à-vis the Hindu religion.

For example:- the Hindu Marriage Act is titled by the name of only one of these religions. And so are the other Acts which deal with succession, adoption, guardianship, etc. As such, for all practical purposes, and for every aspect of one's life such as registration of marriage performed as per sacred religious rites; settlement of ancestral property, business management within family [HUF], adoption documentations, succession certificates, execution of will, lawsuits/ affidavits, etc., the followers of the Sikh, Buddhist and Jaina religions are labeled as 'Hindu'. Whereas, the Constitution says that nobody can be discriminated on the basis of religion and that there is equality for all before law, and also that every person is free to profess and practice his/ her religion.

The above situation can be best understood if, in the given situation, the other religions also stake a claim that the

Hindu Marriage Act, for example, should be termed the Sikh Marriage Act or a Buddhist Marriage Act or a Jaina Marriage Act.

Thus, the nomenclature of these "Acts" by using the name of only one religion gives that religion a preferential status and, at the same time, creates a sense of inequality, insecurity and discrimination in the minds of the remaining religious communities. All the religious communities, besides the Hindus, are forced to be labeled as 'Hindus', although their religions on their own have separate identities, and this is also antithesis to the very provisions of Constitution of India.

That this leads to gross discrimination of Sikhs, Buddhists and Jainas vis-à-vis Hindus. As, for all practical, legal purposes related to family life, as mentioned above, the status that the Hindus enjoy is different, from the one accorded to the Sikhs, Buddhists and Jainas:-

The Hindus are Hindus by religion as well as Hindus for all documentation/ purposes related to family matters. On the other hand, the Sikhs, Buddhists and Jains, although are respectively so by religion, but for all other family-related legal purposes, they are labeled as Hindus. As a case, a

Sikh is a Sikh by religion, but a Hindu by 'Expression' and, thereby, a Hindu for all legal purposes.

That all these religions are far separated ideologically, and are also recognized to be equal and independent religions by the Constitution. And, it is understandable that these religions need to be referred to collectively at certain times and individually at others. It should be easy to achieve the same accurately, and accuracy is of utmost importance in the legal world. And, this is exactly what the Petition seeks to bring to the notice of the Hon'ble Court. Banana, mango, guava, papaya, have individual names, but are collectively referred to as Fruits. A group of these fruits mentioned above can not be named Banana, or Mango, or so on. The Petition seeks to bring out that the use of the word 'Banana' for these two different purposes is bound to confuse the customer as well as the vendor. The legal world can not afford such a blunder; both the words – 'Banana' and 'Fruit' should be used, as and where they belong. Even groups of closely related fruits have a word when these are to be referred to collectively. For example, Citrus fruits - all citrus fruits put together are not called Oranges.

The Constitutional promise of an Independent and Equal status to all religions can not be made available on paper, when Hindus, Sikhs, Buddhists and Jains are collectively referred to as 'Hindus'. The Constitution of India is a progressive document, ensuring not only equal rights and opportunities irrespective of religion, race, gender, but also assures dignity to all its citizens.

J. Because laws are not always introduced in response to chaotic situations created by citizens, so to say. Many a people, the old, the ailing, the minors, etc., know nothing about legal rights, yet the State takes care of their interests. There are even laws for the unborn.

K. Because it is one thing to apply a Law to a people, but another to label them wrongly. The word 'Hindu' is synonymous with the religion of the majority in India. Therefore, another word, neutral and secular, should be selected for referring to Hindus, Sikhs, Buddhists and Jains collectively, so as to maintain the independent status of these religions, and yet denote that the same family laws are applicable to them. It is imperative that legal language be precise.

L. Because as per a Maxim – *Ubi jus ibi remedium*, it is provided that 'Where there is a Right, There is a Remedy.'

Keeping in mind the Constitutional right of equality of all religions, and having identified the anomaly that interfered with the implementation of that equality on paper, a simple remedy is being sought herein for rectification of the same – a remedy which neither violates the basic structure of the Constitution, nor does it require any change in any provision of any statute. Thus, what is sought through this Public Interest Litigation is only a 'Remedy to ensure the Right Guaranteed'.

M. Because to the minds of the Petitioners this anomaly [of using the 'Expression' Hindu for including reference to Jainas, Buddhists, Sikhs and others, has infringed upon the fundamental rights of these communities to profess, practice and propagate their religion. Such an anomaly has become a roadblock in giving effect to the concept of secularism as envisaged by the framers of the Constitution and the leaders of the times. They declared time and again that Jainas, Sikhs and Buddhists are separate and independent religions, distinct from Hinduism.

N. Because Pt. Jawaharlal Nehru, the former Prime Minister of India vide his letter dated 31.1.50, assured a delegation of the members of the Jain community that the Jains are not Hindus. Pt. Nehru wrote the following letter in reply to the petition:-

"This Article merely makes a definition. This definition by enforcing a specific constitutional arrangement circumscribes that rule. Likewise you will note that this mentions not only Jains but also Buddhists and Sikhs. It is clear that Buddhists are not Hindus and therefore there need be no apprehension that the Jains are designated as Hindus. There is no doubt that the Jains are a different religious community and this accepted position is in no way affected by the Constitution."

Also in his celebrated book *Discovery of India*, Pt Nehru mentioned as under:-

"Buddhism and Jainism were certainly not Hinduism or even the Vedic Dharma. Yet they arose in India and were integral parts of Indian life, culture and philosophy. A Buddhist or Jain, in India, is a hundred per cent product of Indian thought and culture, yet neither is a Hindu by faith. It is, therefore, entirely misleading to refer to Indian culture as a Hindu culture."

O. Because Dr. Radha Krishnan, former President of India while speaking on Secularism in India, in his book *Recovery of Faith* stated as under:-

“When India is said to be a Secular State, it does not mean that we reject the reality of an unseen spirit or the relevance of religion to life or that we exalt irreligion. It does not mean that secularism itself becomes a positive religion or that the State assumes divine prerogatives.... The Indian state will not identify itself with or be controlled by any particular religion. We hold that no one religion should be given preferential status, or unique distinction.... This view of religious impartiality, or comprehension and forbearance, has a prophetic role to play within the National and International life.”

It is clear from the proposition given by Dr. Radha Krishnan that no particular religion can be picked up for giving a ‘preferential status’ or ‘unique distinction’ to that religion, irrespective of its features, to include people of other religions under its banner. The Constitution of India holds all religions to be equal and independent, irrespective of their features, whatever these may be.

Further, in his book *Indian Philosophy*, Vol. I, Dr S. Radha Krishnan mentioned as under:-

“The Bhagawat Purana endorses the view that Rishabhadeva was the founder of Jainism. There is evidence to show that so far back as the first century

B.C. there were people who were worshipping Rishabhadeva, the first Tirthankara. There is no doubt that Jainism prevailed even before Vardhamana Mahaveera or Parsvanatha. The Yajurveda mentions the names of three Tirthankaras - Rishab, Ajitnath & Aristanemi."

P. Because Sardar Vallabhbhai Patel, former Deputy Prime Minister of India in his letter dated 25.08.46 addressed to Sir Bhagchand Soni, President, All India Digamber Jain Mahashbha assured the Jain Community not to be worried about their religious rights and promised that "in free India there would be no restrictions upon the religious liberty of any Community and there need be no apprehensions in this regards."

Q. Because India today holds promise and aims to be a major world power in the near future. For realization of such a goal, it is of paramount importance that its diverse communities enjoy stability, and the confidence of each other.

R. Because as the word 'Hindu' is commonly understood, and is being used as the 'Name' of a Religion in the Indian Law and by the Government of India, the Petitioners through this Public Interest Litigation are seeking quashing the use of the same word (Hindu) as an 'Expression' in the "Acts"

under consideration herein (wherein under, the Buddhists, Sikhs, Jains and some others, have been clubbed together as 'Hindus' for the Application of these "Acts"). Such a use of the word 'Hindu' to denote 'two different categories of people,' creates confusion amongst the masses and generates discontentment in the minds of the followers of these religions.

This point can be made clearer by the fact that the name "Punjab High Court" of the old Punjab was changed to "Punjab and Haryana High Court" following creation of the state of Haryana. Why was the need felt for the same? Why did the Haryana state not continue to operate under the earlier name? Why was the word 'Punjab' not used as an 'Expression' to cover the state of Haryana as well, as it had even been borne/ carved out of Punjab? The name was changed to give due recognition and respect to the newly carved out State. Further, would it be acceptable today, to all concerned, to club the current Punjab, Haryana and Himachal Pradesh under the word 'Punjab' by calling it an 'Expression', as these collectively constituted the (old) Punjab?

S. Because how issues of the above-mentioned nature impact the people/ nations concerned, and how important

it is for them to have these redressed, comes clear from the following:-

Commenting on the nature of the British Commonwealth, Mr. Henderson, the Under Secretary of India during second reading of the Indian Independence Bill, observed, "The British Commonwealth of Nations is not static, but constantly developing and it has throughout the years steadily changed from an empire in which power of control rested with British to a partnership of a free people inspired by common ideals and united by common interests." These observations helped to remove doubts of the Indian people that the membership of Commonwealth meant subjugation and subordination to the British rule. They were convinced that the membership of Commonwealth was only a mutual relationship based on deep-root affinities in ideas and institutions of the two countries – India and United Kingdom. India, therefore, joined the Commonwealth in April 1949, which was ratified by the Constituent Assembly of India in May 17, 1949. Consequent to Indian's joining the British Commonwealth, it no longer remained the "British Commonwealth", but came to be known as the "Commonwealth of Nations", with UK, Canada,

Australia, New Zealand, South Africa, India, Pakistan and Ceylon united as free and equal members, co-operating in the "pursuit of peace, liberty and progress." It was Pt. Jawahar Lal Nehru, who made substantial contribution to this new nomenclature of the Commonwealth by suggesting that the word "British" should be dropped and it should be known only as the "Commonwealth of Nations". (*Indian Legal and Constitutional History*, by Dr N V Paranjape, Central Law Agency, Allahabad, 2005, Pg No. 379)

It was, thus, important for India to be a free and equal member of the Body, and that the same should also be reflected in the nomenclature of that Body.

T. Because suitable words are sometimes selected/ coined by scholars, keeping in mind the sentiments of the communities to which these relate, to ensure that all the member communities are equally represented.

The word 'Mohammedan' used during the British rule (with varying spellings) has become obsolete and is no more in use in Indian legislation, case law and legal literature. In 1971, on P H Joshi's suggestion, the leading law reports of India, the All India Reporter (AIR) of Nagpur, and the

premiere legal research body of the country, the Indian Law Institute (ILI) of Delhi, had changed to the word 'Muslim' and have since been using this expression instead of 'Mohammedan' - so as to be equally representative of all the factions of Islam.

U. Because identity is very dear to every person/ state/ nation. And, it would not be an over-statement to say that the most sensitive issue for any individual is the issue of one's faith. So, it should not be difficult to understand the hurt caused to religious sentiments of individuals, when, while belonging to one religion, he/ she is referred to by the name of another religion – be one a Hindu or Sikh or a Buddhist or a Jaina. It is tantamount to demolishing/ annihilating religious identities of people.

V. Because the fact that identity is also protected in the commercial world by way of trademark and other laws is well established. Legal battles are fought over commercial identity. How important therefore is the identity of an individual and, more so, one's religious identity, should not be difficult to comprehend.

As per the provisions of the Companies Act:-

20. COMPANIES NOT TO BE REGISTERED WITH UNDESIRABLE NAMES

(1) No company shall be registered by a name which, in the opinion of the Central Government, is undesirable.

1 [(2) Without prejudice to the generality of the foregoing power, a name which is identical with, or too nearly resembles,-

(i) The name by which a company in existence has been previously registered, or

(ii) a registered trade mark, or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999, may be deemed to be undesirable by the Central Government within the meaning of sub-section (1).

Thus, not only an identical name but even a name which 'too nearly resembles' a previously registered company is considered an undesirable name by the Central Government for registration of another company.

Thus to use the word Hindu as an 'Expression' to include Sikhs, Buddhists and Jainas should also, therefore, be 'undesirable', as it not only 'too nearly resembles' but is 'identical with', alphabet by alphabet, the 'name of a religion in existence.'

The right to identity has also been recognized by the international legal framework of human rights. Besides its explicit reference in the UN Convention on the Rights of Child, which expressly recognizes the right to identity, the latter has been recurrently invoked in the case law of the European Court of Human Rights in Strasbourg, namely, through jurisprudential interpretation of the right for respect of one's private life, as set out in Article 8 of the Convention. Despite not being specifically mentioned in any of the Articles of the European Convention on Human Rights (ECHR), the Court in Strasbourg has derived a right to identity from the "right to one's private life", enshrined in Art 8 of the ECHR.

W. Because Article 25 of the Constitution of India states as under:-

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.

As may be noted, the Explanation II of clause (2) of Article 25 clearly states that such a reference to Hindus is for the purpose of the sub-clause (b) of clause (2). And the sub-clause (b) of clause (2) states:-

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

Thus, such a reference to Hindus in Explanation II is only for 'providing for social welfare and reform or the throwing open of religious institutions of a public character'.

Further, a perusal of the Constituent Assembly Debates also confirms this stance that Article 25 [then Article 19] deals with only freedom of religion, and that there is no link between Article 25 and the personal laws.

The concerns raised about personal laws by Mr. Mohammed Ismail Sahib and Mr. Pocker Sahib at the time of the debate on Article 19 (now Article 25), were not considered, and the amendment suggested by them was negated, as the same was stated to be irrelevant to this Article. Also, that the issue under consideration in this Article was 'freedom of religion', and not 'personal law':-

The Honourable Shri K. Santhanam (Madras:- General):-  
Sir, on a point of order. This particular amendment No. 612 is not relevant to this article 19. The amendment refers to personal law, but here we are dealing only with freedom of religion. The matter touched by the amendment has already been raised in a previous article, and also in the Directive Principles.

That even during the debate on Article 13 [now Article 19] inclusion of personal laws in the Fundamental Rights was considered unnecessary. The observation made by Shri M.

Ananthasayanam Ayyangar and Dr B R Ambedkar on the issue at the time of this Debate are reproduced below:-

"Shri M. Ananthasayanam Ayyangar: A time may come when members belonging to the particular community may feel that in the interests of the community progressive legislation has to be enacted. But if we make a provision here that the personal law shall not be interfered with, there will not be any right to the members of that community itself to modify that law. Therefore it is not necessary that we should introduce it as a fundamental right."

"The Honourable Dr. B. R. Ambedkar: Coming to the question of saving personal law, I think this matter was very completely and very sufficiently discussed and debated at the time when we discussed one of the Directive Principles of this Constitution..."

And, a perusal of the Debate on Article 35 of the Directive Principles (now Article 44) also confirms that the issues related to personal laws do, indeed, belong to this Article, and not to Article 25. Some observations made by Dr B R Ambedkar during the Debate on this Article are noteworthy:-

"Dr. B R Ambedkar: We have a uniform and complete Criminal Code operating throughout the country, which is contained in the Penal Code and the Criminal Procedure

Code. We have the Law of Transfer of Property, which deals with property relations and which is operative throughout the country. Then there are the Negotiable Instruments Acts:- and I can cite innumerable enactments which would prove that this country has practically a Civil Code, uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. It is this little corner which we have not been able to invade so far and it is the intention of those who desire to have Article 35 as part of the Constitution to bring about that change.”

As such, linking the nomenclature of the “Acts” of family laws of Hindus, Sikhs, Buddhists, Jains and some others to Explanation II of (2)(b), Article 25, which construes Sikhs, Buddhists and Jains as ‘Hindus’, as suggested by the Judges, is not tenable.

A Uniform Civil Code was envisaged and hoped for by the framers of the Constitution, and ensured in the Constitution through Article 44. It states:

44. Uniform Civil Code for the Citizens. — The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

That the Supreme Court rulings from time to time have admitted that it is desirable to have a Uniform Civil Law and that a beginning has to be made. And that this has to be achieved gradually through stages, starting with where the need felt is most acute:-

In Ms. Jorden Diengdeh vs. SS Chopra, AIR 1985 SC 935, The Hon'ble Supreme Court of India held, "...although, it would be difficult to bring the persons of different faiths and persuasions on a common platform but, the court held that a beginning has to be made if the Constitution is to have any meaning."

In Sarla Mudgal vs Union of India, AIR 1995 SC 1531, The Hon'ble Supreme Court Of India held, "...the desirability of the Uniform Civil Code can hardly be doubted. But, it can concretize only if social climate is properly built and the masses awakened to accept the change."

In Panna Lal Bansi Lal Patil vs State of Andhra Pradesh, AIR 1996 SCW 507, The Hon'ble Supreme Court Of India held, "... The directive principles of the Constitution themselves visualize diversity and attempted to foster uniformity among people of different faiths. A uniform law, though is highly desirable, enactment thereof in one go perhaps may be counter productive to unity and integrity of the nation. In a democracy governed by rule of law

gradual progressive change and order should be brought about. Making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute. It would therefore be inexpedient and incorrect to think that all laws have to be made uniformly applicable to all people in one go. The mischief or defect which is most acute can be remedied by process of law at stages."

That the anomaly pointed out herein is a 'defect most acute' which 'can be remedied by process of law' and this, as a step, would also go a long way in realizing the vision of the Constitution makers.

X. Because the provisions of Article 25, in fact, seek to empower the State to enact laws for removing caste-based restrictions for entry into Hindu temples, and through the Explanation II, it extends this power also to the religious institutions of a public character belonging to Buddhists, Jainas and Sikhs. And, based on this character of Article 25, a number of local laws have since been enacted - e.g., Bombay Hindu Places of Public Worship (Entry Authorization) Act 1956. Laws for the same purpose had been enacted in some states even before the commencement of the Constitution - e.g., Madras Temple Entry Authorization Act 1947. The validity of some of these laws was challenged but upheld by the courts in various

cases like Sri Venkataramann Devnni v State of Mysore AIR 1955 SC 245; VSR liyar v Narayana Pillai AIR 1956 Mad 528].

Y. Because many states have legislated shrine-management Acts. But the use of the word 'Hindu' is not uniform in these. The word 'Hindu' in the title may or may not always mean to include Sikhs, Buddhists and Jainas. Below are the Acts which may not necessarily apply to Sikhs, Buddhists and Jainas:-

1. The Bihar Hindu Religious Trusts Act 1950 says that the word 'Hindu' used in its provisions means 'a person professing any religion of Hindu origin and includes a Jain and a Buddhist, but does not include a Sikh' - Section 2(a).
2. Under the Madras Hindu Religious and Charitable Endowment Act 1959 the expression 'Hindu' does not include Jains, unless the Act is specifically extended to them - Section 1(3), Explanation & Section 2.

There are also laws which have the word 'Hindu' in their titles, but the same is employed exclusively to refer to 'Hindus' by religion. And, the Sikhs, Buddhists and Jainas do not form a part of those Acts, because in their text, it is clearly stated that every officer or servant must be Hindu by religion. For example, The Madras Hindu Religious and

Charitable Endowments (Karnataka Amendment) Act, 1963

states as under:-

“Section 9. Commissioner, etc., to be Hindus. - The Commissioner, every Deputy or Assistant Commissioner and every other officer or servant appointed to carry out the purposes of this Act, by whomsoever appointed, shall be a person professing the Hindu religion, and shall cease to hold office as such when he ceases to profess that religion.”

Thus, the legislators have not been using the word ‘Hindu’ to always mean it to be inclusive of Sikhs, Buddhists and Jainas, even for the legislations based on the Articles for Freedom of Religion (Articles 25-28).

Thus, the personal laws are not even related to Article 25, as brought out earlier, based on the Constituent Assembly Debates. Therefore, to associate the Explanation II of Article 25 (2)(b) with the personal laws of Hindus, Sikhs, Buddhists and Jainas is absolute misconstruction.

Z. Because to base the name of an Act on an ‘Explanation’ contained in an Article or even on the ‘Title’ of the Article itself is not an absolute necessity/ compulsion. What is more important is to ensure that it is in consonance with the spirit of the Constitution. For example, the title -

Untouchability (Offences) Act, 1955, based on Article 17 (Abolition of Untouchability) was rather changed to Protection of Civil Rights Act, 1955, twenty one years later, in 1976.

This inconsistency of the anomaly of clubbing all four religions under the common head 'Hindu' as in the personal laws mentioned above can also be seen in other legislations, which do not necessarily club all the four religions under the name of a single religion. Some of these legislations are enumerated below:-

Bodh Gaya Temple Act 1949 regulates the management of the biggest Buddhist shrine, the Bodh Gaya Temple, Gaya, Bihar. The Act says that the temple and its land will be open to the 'Hindus and Buddhists of every sect' for the purposes of worship or *plandan*." (The mention of Buddhists also means that reference to 'Hindus' is reference to those by 'religion'. Jainas and Sikhs do not find mention herein.)

Sikhs also have special, independent laws in their own name, covering only the Sikh religion, like The Sikh Gurdwaras Act, 1925 and the Delhi Sikh

Gurdwaras Act, 1971, and these are independent of any reference to the Hindu religion.

That there are also special, shrine-specific enactments controlling and regulating the management of several major places of worship belonging independently to Hindus, Sikhs and Buddhists, situated in various parts of the country. The special laws relating to these shrines preserve and enforce their religious and spiritual traditions and are concerned only with the one specific religion. And, these are not confined only to administrative aspects, but in the legislation of these, the law-makers have kept in mind the specific religious practices and sensitivities of the related holy places. Prominent among these are:-

- i. Sri Jagannath Temple of Puri in Orissa,
- ii. Nathdwara Temple near Udaipur in Rajasthan,
- iii. Sri Kashi Viswanath Temple of Varanasi in UP,
- iv. Shree Mahakaleshwar Temple of Ujjain in Madhya Pradesh,
- v. Sri Venkateswara Temple of Tirupathi in Andhra Pradesh, and
- vi. Mata Vaishno Devi Shrine in the State of Jammu and Kashmir

vii. Hazoor Sahib at Nanded, Maharashtra

viii. Bodh Gaya Temple at Gaya, Bihar

That a visit to Article 25 further reveals that its scope, in addition to throwing open religious institutions of a public character, is also to address and ensure reforms and welfare. Thus, while some of these reforms were initiated even before independence, prohibiting practices like Sati, Dowry, Child Marriage, Devadasi, and allowing Widow Remarriage, etc., the Article has ensured that the reforms and welfare continue to meet the changing needs of the changing times. To name a few of such Acts:-

Hindu Widows Re-Marriage Act, 1856

Bombay Devadasi Protection Act 1934

Madras Devadasis (Prevention of Dedication) Act 1947.

Protection of Civil Rights Act, 1955

The Dowry Prohibition Act, 1961

Child Marriage Restraint Act, 1980

Karnataka Devadasis (Prohibition of Dedication) Act 1982

Sati (Prevention) Act, 1987

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

PCPNDT Act 1994 to check Female Foeticide

AA. Because the Constituent Assembly Debates on Article 19 (now Article 25), while making no specific reference to the

Explanation II, further reveal that when the Members used the word 'Hindu' in their discussions, they used it purely in the sense of 'the religion' and not in the sense of an 'Expression' to be inclusive of Sikhs, Buddhists and Jains:-

i. The suggestion by Prof K T Shah was to add the words "Jain, Buddhist, or Christian" after the words "or throwing open Hindu" in sub-clause (b) of clause (2) of Article 19 (now Article 25). It is evident that he did not construe Sikhs, Buddhists and Jainas as Hindus. Rather his suggestion is to include Christians; and Sikhs are not even mentioned.

ii. Shrimati G. Durgabai too did not think that the word 'Hindu' she was referring to meant to construe Sikhs, Buddhists and Jainas as well, comes clear from her proposed amendment:-

That in sub-clause (b) of clause (2) of Article 19 for the words "any class or section" the words "all classes and sections" be substituted."

Sir, in my view the clause as it stands is restricted in its scope, and the object of my amendment is to secure the benefit in a wider way and to make it applicable to all classes and sections.

Sir, though we are not able to make a sweeping reform or a more comprehensive reform in this direction, I feel that no distinction of any kind should be made between one class of Hindus and another.

BB. Because it can, therefore, by no stretch of imagination, be taken to mean that Sikhs, Buddhists and Jainas should always be construed as Hindus for any and every legislation whatsoever, even for those based on Article 25. And, the personal laws are even beyond the scope of Article 25. As such, the equality and independent status of all religions of the Secular India should have been maintained in all legislation that was framed in the independent India. But, if these have remained unnoticed, then these should be rectified as and when pointed out.

CC. That rather, some Acts passed even prior to the above-mentioned Acts under consideration, have, indeed, been referring to Hindus, Sikhs, Buddhists and Jainas as independent and equal religions. For example, the Special Marriage Act, 1954 applicable also to Hindus, Buddhists, Sikhs and Jainas uses a secular term in the title of the Act and references to these religions are to be found separately as in section 19 and 21-A.

The Indian Succession Act, 1925 is still an earlier legislation of the pre-Independence period, which refers to Hindu, Buddhist, Sikh and Jaina religions as separate religions, in spite of the mention of these religions being made many a times in the text of the Act. No word was coined to construe these religions even for the purpose of brevity.

Earlier still is the old family law, the Married Woman's Property Act, 1874 which also mentions the Hindus, Buddhists, Jainas and Sikhs, separately, along with the other religious communities. Their provisions are clear enough to indicate independent identity of all these faiths.

DD. Because when a religious community which already had an Act on an aspect of personal law and marriage, long before Independence, in 1909, i.e., the Anand Marriage Act, 1909, titled in the name of a very pious hymn of the Sikhs, should the consent of this community not have been sought before applying a new law to their personal law matters? Even a simple contract between two or more parties requires their free consent for it to be valid under the law - Indian Contract Act, 1872.

Would it be justified that if one day, a new Law using 'Bah'ai' in the title is formulated for personal laws, and that repeals all the existing statutes titled as 'Hindu'?

That the penal code applicable to all the religions in India is called the Indian Penal Code; it is not titled on the name of one of the religions. Therefore, not objected to by any.

EE. That the religious minorities will never be able to have any say in a Democratic setup, which is purely based on numbers. The personal law matters are placed in the Concurrent List of the Constitution, and one of the Objectives of this List is to provide safeguards for the interests of the minorities. Yet the Statutes for the personal laws of minorities have been titled by the name of the majority community. Tribunals are set up to study, resolve inter-state issues, but how can the voice of the minorities be taken into account, at least in the matters that relate to them on the personal front?

FF. Because Jains, Buddhists and Sikhs have been counted as independent religious denominations right from the first Census in India in 1873 under the Indian Census Act, to date. As such, the Government of India uses the word 'Hindu' as a religion in the censuses it conducts. Herein

these, the Explanation II of the sub-clause (b) of clause (2) (Article 25) does not come into play.

The Census Reports of India provide in six separate columns the population data for six religious communities - Hindus, Muslims, Christians, Sikhs, Buddhists and Jainas - in this order which conforms to their respective numerical strength. A large number of tribal indigenous faiths are mentioned in the Census Reports of India. Many of these find a mention in the Census Reports under the head 'Other Religions and Persuasions'.

GG. That for the purpose of some legislations, definitions are sometimes coined for the specific purpose of an Act/ Article, either to clarify the meaning of that particular word in the particular context or to avoid repetitive mention of some words/ phrases in their text for the sake of brevity. In the case of Article 25, Sikhs, Buddhists and Jainas are construed as Hindus. But, a perusal of the Article shows that there was no need to define/ construe the word Hindu, for any purpose whatsoever, especially in the manner in which it has been done, as the names of these religions find mention only once. And, neither has the construing of Sikhs, Buddhists and Jainas as Hindus achieved brevity for the Article, as, for the same reason again - the names of these religions

find mention only once. Thus, instead of achieving any purpose, the Explanation II has only added bulk to the Article.

HH. Because the National Commission to Review the Working of the Constitution (NCRWC) set up in 2000 was also convinced that the purpose of Article 25 can be served without construing the word 'Hindu' to mean Sikhs, Buddhists and Jainas.

Members of the Sikh, Buddhist and other religious communities had represented to the NCRWC seeking rewording of the Article 25. Its Report, submitted in 2003, regarding Article 25 is as follows:-

Explanation II to Article 25 should be omitted, and sub-clause (b) of clause (2) of that Article should be reworded as follows:-

(b) providing for social welfare and reform or the throwing open of Hindu, Sikh, Jaina or Buddhist religious institutions of a public character to all classes and sections of these religions.

On the other hand, in the Indian Succession Act, 1925, the words Hindus, Sikhs, Buddhists, Jainas are repeated many a times, without being assigned any specific word to

construe these all as one entity, not even for the purpose of brevity.

If need arises for the sake of brevity or for any other purpose in a particular instance, it should be done by ensuring the dignity of the citizens of this Country, as promised in the very Preamble. Moreover, the duty-bound authorities should ensure that the use of any word(s) does not mar/ negate the spirit of the Constitution.

Because the application of a Law to a people is one thing, but labeling those people wrongly for the application of that Law, quite another. Herein lies the discrimination, and this needs to be addressed so as to bring the "Acts" in line with the secular spirit of the Constitution.

- II. Because 'construing a people to be another people' is different from construing states/ organizations/ bodies, etc., as another – the former being humans are emotional beings. Constituent Assembly Debates reveal that the word 'Scheduled Tribes' was specifically coined over the use of the word *Adibasi* as a category, as the former had a 'fixed meaning', over the latter, it being a 'general term'. Similar care should have been taken when the title/ text of the "Acts" under consideration were to be legislated.

JJ. Because if it was the practices/ beliefs of Hinduism that had been reformed and codified and, therefore, the nomenclature 'Hindu', then this nomenclature should have been changed when it was decided for these Statutes to be made applicable to some other religions too – just as it was expected in the case of the 'British Commonwealth' – when its title was sought to be changed to 'Commonwealth of Nations'. It is worth noting here that the demand was met, and the change was effected.

That these religions are all well-established, independent religions and recognized universally to be so. These must not, therefore, be misrepresented nor construed in any manner, which may even remotely imply an erroneous connotation, even if possible to justify the same from a legal point of view. They richly deserve this from their Home Country.

KK. Because Article 26 of the Constitution, also under the sub-head 'Right to Freedom of Religion' as is the Article 25, reproduced herein below, does not use the name of any religion, not even Hinduism, in its text and is working perfectly well, without ever having been objected to by any religious community:-

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.

That the other Articles, i.e., Articles 27 & 28, under this sub-head 'Right to Freedom of Religion', also do not specifically mention any religion, and relate to issues, such as - Freedom as to payment of taxes for promotion of any particular religion in Article 27; and Freedom as to attendance at religious instruction or religious worship in certain educational institutions, etc., in Article 28.

As such, it further becomes evident that matters of personal law, such as, marriage, succession, adoption, etc., clearly do not belong to any of the Articles under the sub-head 'Right to Freedom of Religion' [Articles 25-28], and is tantamount to misreading if believed to be so.

Because the Hon'ble High Court failed to take into consideration the fact that time and again objections were

raised by members of these religious communities, notably the Sikhs. The Hon'ble Court observed as under:-

"... Sikhs, Jains and Buddhists live happily under the umbrella of the Acts subject to custom and usage. The clubbing of the groups results in no prejudice; no hostile or invidious discrimination and no identity crisis within the range of selection."

The objections/ opposition raised by members of the Sikh Community are listed herein below:-

- i. On Nov. 21, 1949, upon the review of the draft of the Indian Constitution, Hukam Singh, the Sikh representative, declared to the Constituent Assembly:-

"Naturally, under these circumstances, as I have stated, the Sikhs feel utterly disappointed and frustrated. They feel that they have been discriminated against. Let it not be misunderstood that the Sikh community has agreed to this (Indian) Constitution. I wish to record an emphatic protest here. My community cannot subscribe its assent to this historic document."

- ii. Sikh Members refused to sign the Constitution at the time of its adoption in 1949.
  
- iii. In 2005, Tarlochan Singh, MP, moved bills in the Parliament to amend Article 25 of Indian Constitution where the Sikhs have been described as part of Hindus. The amendment is to seek independent status for the Sikhs as a separate religion. This Bill came twice on the agenda for discussion but due to disturbance it could not be debated. This is still pending for discussion.

In 2007, he also moved an amendment in the Anand Marriage Act, 1909, seeking registration of Sikh marriages.

- iv. The Sikh Religious Society passed a resolution in 2008 stating as under:-

“Resolution

Historically Sikh marriages have been performed under the Anand Karaj Ceremony and since 1999 had been registered under the Anand Marriage Act, until the inclusion of Sikhs under the Hindu Marriage Act (1955). On this basis, this day the 13<sup>th</sup> day of January, 2008 the congregation at the Sikh Religious Society

of Chicago, Palatine, IL (USA) hereby resolves that the mandate by the Indian Supreme Court requiring Sikhs to register their marriage under the Hindu Marriage Act (1955) violates our fundamental right to practice our religion freely. The said mandate must therefore be rescinded immediately, and provisions should be made to register Sikh Marriages under the Anand Marriage Act (1909).

The registration of Sikh marriages under the Hindu Marriage Act thus unjustly infringes upon the constitutionally protected and universally accepted norms of International Law allowing for free and unfettered practice of religion.

Pakistan has already taken the lead in implementing the Anand Karaj Act. We demand that requisite provisions be made in India for the protection of the Sikhs' right to practise their religion freely, and to allow for the registration of Sikh marriages under the Anand Marriage Act.

Furthermore, we state unequivocally that Sikhs are a unique and independent religion and therefore cannot come under the purveyance of the Hindu Marriage Act, the imposition of which is a clear violation of the basic principle of Indian secularism and of the United Nations Charter of Fundamental Human Rights.

Sd-"

- v. The Shiromani Gurdwara Parbandhak Committee addressed a letter to the Union Law Minister on 18.12.10 stating as under:-

"Shri M. Veerappa Moily,

Hon'ble Union Law Ministry,

Government of India,

New Delhi.

Date - 18.12.2010

Subject:- Registration under Anand Marriage Act.

Respected Sir,

As you know that the Supreme Court of India has directed the Central and State Government in its decision "Seema v. Ashwani Kumar" delivered on 25.10.07 to make a provision that all marriages in India should be compulsorily registered. The Sikhs at

present are governed by the Hindu Marriage Act 1955 and their marriages are registered under this Act. The Sikh community strongly resents to this provision. All the Sikhs do not want their marriages registered under the Hindu Marriage Act, because Sikhism is an independent and distinct religion and not an appendage of Hinduism. It is pertinent to mention that Sikhs solemnize their marriage through Anand ceremony before Sri Guru Granth Sahib which was legally recognised by a statute of the Government of India, namely, the Anand Marriage Act 1909.

In the Anand Marriage Act 1909 there is no provision for registration of marriages. The Shiromani Gurdwara Parbandhak Committee an apex representative body of Sikhs demands and strongly recommends that the marriages of Sikhs should be registered under the Anand Marriage Act by a suitable amendment (addition) in the Anand Marriage Act 1909. It will satisfy the Sikh community as a whole to a great extent.

With Regards.

Yours sincerely

(Avtar Singh),

President,

Shiromani Gurdwara Parbandhak Committee,

Sri Amritsar"

- vi. A similar letter dated 2.9.11 was sent by the Committee once again to the law minister stating as under:-

"Shri Salman Khursheed,

Minister of Law and Justice and Minority

Affairs,

Government of India,

New Delhi – 1100 01

Date:- 02.09.11

Subject:- Regarding Anand Marriage Act.

Sir,

As stated by your good self in the parliament that there is no need of Anand Marriage Act for the Sikhs, we wish to bring it your notice that mainly the people belonging to Hindu, Muslim, Sikh and Christian Communities are residing in India and all of them have their own religious rites and ceremonies and they live accordingly. The Hindus have their own religious ceremonies regarding the marriage, Christians

have their own and the Muslims enter into *Nikah* as per their rites. The Sikhs as per their belief enter into the marriage before *Shabad* Guru Sri Guru Granth Sahib after reciting the sacred *bani* of Sri Guru Ram Das from Shri Guru Granth Sahib which is called as Lavan. The bride and bridegroom are taught about the spiritual aspect of married life so that they can lead a happy and satisfied married life. The Anand Karaj is completed after performing *Ardas* before Sri Guru Granth Sahib.

Sikhs have been demanding, over the years, to have a separate marriage Act so that their marriages can be registered. During the British Rule, with the special efforts of Raja Tikka Ripudaman Singh Nabha and S. Surinder Singh Majithia, a bill was presented in the legislative assembly on 28<sup>th</sup> August, 1909 and Anand marriage Act was passed on 22<sup>nd</sup> October 1909. This Act did not have the provision regarding registration of Anand Karaj because of which legislation of marriage could not start. The Sikhs have been demanding to implement for the last many years and the law ministers of the country had been giving the assurance

for the same. This Act had already been implemented in Pakistan and Punjab Government has already passed the resolution regarding it in the Legislative Assembly in March 2008 and same has been sent to the Hon'ble President of the country for approval. The countries like America have given all the communities to enjoy religious freedom and the Sikhs with full religious symbols and untied beard are serving the Government. Your decision at this moment regarding Anand Marriage Act is highly unfortunate and will create a sense of alienation among the Sikhs. The rites and ceremonies of the Sikhs do not match with that of Hindu religion. The Sikhs have to get their marriages registered under the Hindu Marriage Act because of compulsion and it affects the religious sentiments of the Sikhs.

India is a multi community, multi-religious and multi-lingual country therefore an equal respect to all religious segments regarding their various ceremonies and rites will enhance the unity and integrity of the country, whereas denying the right to Sikhs under the Anand Marriage Act will

further enhance the sense of alienation. We strongly demand the implementation of Anand Marriage Act and to incorporate the provision of registration of marriages under this Act. We strongly bring it to your kind notice that the long pending demand of the Sikhs regarding registration provision in the Anand Marriage Act must be implemented immediately so that the sentiments of the Sikhs around the globe can be taken care of. It is worth mentioning that Sikhs played an important role in the freedom movement of the country and they must be allowed to live with honour, dignity and self respect in the country.

With regards,

Yours sincerely,

Secretary,

Shiromani Gurdwara Parbandhak Committee,

Sri Amritsar"

LL. Because the Constitution of India has been amended almost a hundred times to remove errors since its adoption in 1950. But, the amendment needed most to ensure fraternity among individuals; dignity of individuals; national amity, unity and integrity, has remained elusive so far. To

err is human, but it would, indeed, be humane to remedy the hurt being caused to certain sections of citizens, which can be done at no cost to the Country at all.

MM. Because 'construing' Sikhs, Buddhists and Jains as 'Hindus' translates into discrimination. Therefore, should the Authorities concerned not cause the same to be revised suitably? The Indian Law should not cause the word 'Hindu' to be vague, by attributing to it a variety of meanings, not only in the Judgments of the Courts from time to time but also in the Constitution itself, and even within the same Section of the same Act(s).

NN. Because the uniqueness of all religions must be respected and given due recognition. It should not be difficult to understand that followers of all religions are equally sensitive to such issues, and a Secular State should be duty-bound not to disregard the sentiments of any of these.

OO. Because the family laws applicable to Hindus, Sikhs, Buddhists and Jainas as of now are very progressive, being in line with the most modern laws of the day. Codification for the purpose of uniformity and introduction of a number of reforms into the customary laws, in a bid to conferring

equality on all, irrespective of religion, race, caste, gender, place of birth, etc., have led to the creation of a whole new value-system, far removed from the religious/ regional values of yore.

It goes to the credit of the majority community to have adopted these values based on equality of humanity, although these legislations did face much resistance and opposition, because some provisions contained therein were seen as contradictory to religious values. Thus, since these Statutes are a departure from the values held by people of yore, for this reason, too, the "Acts" under consideration deserve a new nomenclature.

PP. Because the issue which the Petitioners are raising before this Hon'ble Court is very personal, sensitive and important for each community, as the same affects the identity of each religion, and the dignity of every follower thereof, which is very much protected through various Articles of the Constitution of India as well as in the Preamble, respectively, as enumerated in the preceding paragraphs. It is a fact that India comprises of diverse faiths, cultures and languages. A nation of 1.2 billion people can only be jelled together, in case each segment of the Indian Citizenry is given due respect to its religious, cultural and linguistic rights.

There was no intent to make the Judges to feel 'peeved' at the nature of the Petition, and to be 'mortified' to issue a direction of the nature sought. The Petition was filed in the spirit of concern, with the aim of promoting communal harmony in the interest of National unity, amity and integrity, in commitment to the Fundamental Duties of citizens as enshrined in Article 51A of the Constitution of India.

The present Petition is a sincere and genuine effort to achieve National Unity, Amity and Integration through respect for each other's values, religions and culture, so that the Indian State develops into the type of Nation, which our elders envisioned in the Constitution of India.

QQ. Because the use of the word 'Hindu' as an 'Expression' for Buddhists, Jains and Sikhs as well as some others to whom these "Acts" under consideration herein apply, to be unconstitutional, illegal and *ultra vires* to the Articles 14 and 25 of the Constitution of India, as the same is, in principle, discriminatory, inaccurate, misleading.

As a rectifying measure, the same could be replaced by any other suitable, neutral word, which is equally reflective of all the members of the Group to whom the current "Acts" apply. The word used for nomenclature could be of

the like – National/ Regional/ Bharti/ Indoi/ Indic/ Popular/ Homeland/ Denizen/ Indian, or so on so forth. For example, the “Acts” under consideration herein could be titled, say, “National Marriage Act”, and so on and so forth, and applied to the present Group without having to club the member religions by the name of any one religion.

RR. Because the Petitioners are not seeking any change in any provision of any statutes whatsoever, all of which are indeed progressive, modern, and confer equality and ensure fairness to one and all, and are in line with the most advanced nations of the day. What the Petitioners seek is only ‘Remedy of a Right Guaranteed’, on the basis of the Maxim of the Indian Law itself – *ubi jus ibi remedium*, i.e., Where there is a Right, There is a Remedy.

#### 6. GROUNDS FOR INTERIM RELIEF

No interim relief claimed hence no grounds for interim relief.

#### 7. MAIN PRAYER

In view of the facts and circumstances stated hereinabove, the Petitioners most respectfully submit the following prayers:-

A. Grant Special Leave to Appeal against the Final Order and Judgment dated 3.10.11 passed by the Hon'ble High Court of Punjab and Haryana in Writ Petition No. 18634 of 2011.

B. Pass any such Order as this Hon'ble Court may deem fit in the light of facts and circumstances prayed for hereinabove.

8. PRAYER FOR INTERIM RELIEF

No interim relief sought hence no prayer for interim relief is made in the present Special leave to Appeal.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS SHALL AS IN DUTYBOUND EVER PRAY.

Filed By:-

Jyoti Mendiratta

Advocate for the Petitioners

# 576 Masjid Road, Jungpura,

New Delhi 110 014

Drawn By:- Svetlana S. Correya

Date:-

Place:-

