IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 16TH DAY OF JUNE 2020 / 26TH JYAISHTA, 1942

WP(C).No.11142 OF 2020(S)

PETITIONERS:

1 MURALEEDHARAN T., AGED 51 YEARS,
S/O. NARAYANAN, USHUS, PARAYANCHERY, KUTHIRAVATTOM.P.O.,
KOZHIKODE-673016.

2 VIMAL C.V., AGED 35 YEARS,
S/O. SOMAN C.V., VALIYAVALAPPIL HOUSE, THONDAYAD,
NELLIKODE.P.O., KOZHIKODE-673008.

BY ADVS. SRI. P. SATHISAN
SMT.DONA AUGUSTINE

RESPONDENTS:

1 STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY, SECRETARIAT, CENTRAL STADIUM,
MAHATHMA GANDHI ROAD, PALAYAM, THIRUVANANTHAPURAM.P.O.,
KERALA-695001.

2 UNION OF INDIA,
REP. BY SECRETARY, MINISTRY OF LAW AND JUSTICE, 4TH FLOOR,
A-WING, SHASTRI BHAWAN, NEW DELHI.P.O., DELHI-110001.

3 ANIMAL WELFARE BOARD,
REPRESENTED BY SECRETARY, VILLAGE-SEEKRI, BALLABHARH,
FARIDABAD.P.O., HARYANA-121004.

R1 SENIOR GOVT. PLEADER SRI. V. MANU
R2 BY ADV. SHRI P.VIJAYAKUMAR, ASG OF INDIA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16.06.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R"

JUDGMENT

S.Manikumar, CJ.

Instant public interest writ petition is filed challenging the constitutionality of the Kerala Animals and Bird Sacrifices Prohibition Act, 1968. The reliefs sought for in the writ petition are as follows:

(i) "Issue a writ of certiorari or such other writ or direction, declaring Exhibit-P1 enactment namely, Kerala Animals and Birds Sacrifices Prohibition Act, 1968 (Act 20 of 68) as unconstitutional, discriminatory, and declare it as void and set it aside.

(ii) Issue a writ of mandamus or such other writ or direction, directing 1st respondent, State of Kerala, not to interfere with religions practices like sacrifice of animals and birds through enactments like Exhibit P1 or similar enactments after holding that such enactments are unconstitutional and illegal."

2. Short facts leading to the filing of instant writ petition are that,- petitioners are professing and practicing Hindu religion and they are adversely affected by Exhibit-P1 enactment promulgated by State of Kerala represented by Chief Secretary, Secretariat, Thiruvananthapuram (respondent No.1). It is averred that what is prohibited under the abovesaid Act is propitiation of deity through sacrifice of animals and birds in temples and temple precincts. According to the petitioners, killing is not a prohibited act, but propitiation of deity is a prohibited act

and the same dehors their fundamental rights as Hindus to practice and profess religion, as per Articles 25 and 26 of the Constitution of India. Petitioners have further stated that the Act does not disclose the reason for the enactment and it could be presumed that field of legislation is Entry 17 in the Constitution of India, as per List III of Schedule VII. As per the entry of the legislation, Central Government have promulgated Exhibit-P2 enactment, removing the act of killing animals for religious purpose from the ambit of an offence, as per Section 28 of the Prevention of Cruelty to Animals Act, 1960. Therefore, Exhibit-P1 enactment is repugnant to Exhibit-P2.

3. The purpose highlighted in Exhibit-P1 enactment is confined to propitiating the deity, which would adversely affect the petitioners in practicing the religion, as per the custom and practice inscribed in texts and scriptures. Petitioners have further stated that other religions like Christianity, Islam or the like also, have similar set of practices and propitiating sacrifice to Jehovah is considered as a sacrament as per Biblical tenets. It is, therefore, stated that Exhibit-P1 is not sustainable.

4. Petitioners have further contended that Exhibit-P2 clearly excludes animal killing in relation to religious purposes from the rigour of an offence, if it is done in a manner required by the religion of any community whereas, Exhibit-P1 bluntly and emphatically makes the same

killing as an offence, which cannot be countenanced as per the Constitution of India.

5. Being aggrieved, instant writ petition is filed on the following grounds:

A) The field of legislation vis-a-vis prevention of cruelty to animals is readable from Entry 17 under List III Schedule VII of Constitution of India. Based on the entry for legislation, Parliament had promulgated Exhibit-P2 legislation namely, The Prevention of Cruelty to Animals Act, 1960. Therefore, the power exercised by the Parliament by the above legislation makes the Act, 1960 conclusive and one applicable to entire geographic limits of Union. It is submitted that as per Article 254 of the Constitution, the field of legislation which had been filled by the Parliament cannot be intercepted by a State legislature. The supremacy of Parliament in this regard is readable from Article 254 of the Constitutuion. In these circumstances, the present law by the State as per Exhibit-P1, which did not get Presidential assent, has any force in the State, if the same is repugnant to law made by the Parliament in the same field.

B) Exhibit-P2, the law by Parliament, permits sacrifice for the purpose of religious practices removing the same from the rigour of criminal prosecution. Killing an animal in any manner required by religion of any community is made a legal act by the Parliament. Exhibit-Pl enactment completely curves out and criminalizes the sacrifice of animal or bird in or in the precincts of Hindu temple. Thus, repugnancy makes Exhibit-P1 void.

C) It is further contended that practice of Hindu religion is based on texts and scriptures of ancient origin. The original texts were written by Rishis and Saints more than 2000 years back, The texts and scriptures, including Vedas, specifically permit sacrifice of animals and birds, and on that basis, the said practice had been there all throughout. It is submitted that the very definition of sacrifice under the Act is meaningless and absurd while put under proper interpretation. The sacrifice is defined as an act with the intention of propitiating any deity. Therefore, the mental condition alone is the core consideration as per the provision and the converse is if the act is not for propitiating any deity, but for personal consumption even in temple premises, it is not forbidden. Since the texts and scriptures of a Hindu permit sacrifice of animal or bird, the same is made sacrosanct as per Section 28 of the Central Act, whereas same is forbidden as per state enactment. The same is totally irrational and unreasonable.

D) It is further contended that the Hon'ble Supreme Court in a catena of decisions concluded that Articles 25 and 26 as duly protecting religious practices which had been in practice for long, though anti-social custom and practice like sati or the like are termed as unconstitutional and illegal. The practices which are not against public interest cannot be forbidden as per law. As per Art.25 (1), the religious practice could be interfered with, if the same is against any principle or doctrine affecting public order, morality and health. The practice of sacrifice of bird or animal in relation to religion and done as prescribed therein cannot be termed as one against public order, morality and health. The killing of bird or animal is as such not forbidden and the killing in or in precincts of a temple

is also not forbidden, but the same is forbidden if it is done to propitiate a deity.

E) The above parameter makes the very concept of legislation irrational. It is further contended that Exhibit-P1 enactment on a bare reading shows that the same is confined to Hindu temples. Thereby, sacrifice in a Hindu temple by a Hindu or any person in the State of Kerala is forbidden, whereas same practice as permitted in texts and scriptures of Hindu else-where in India, outside Kerala is permitted. This itself makes the very law creating two types of citizens, whereby the same suffers from the vice of discrimination.

F) It is pertinent that State of Tamil Nadu repealed similar enactment in 2004 as per Act 20 of 2004. Thus, discriminating Hindus in Kerala is palpably erroneous and unconstitutional. It is also contended that discriminating Hindus from other religions like Christianity, Islam or the like dehors Articles 14 and 15 of the Constitution of India. Prohibition and discrimination only on the ground of religion is a taboo as per the constitution. Ext.Pl suffers from the above anomaly as of violating the Fundamental Rights as per Articles 14 and 15 as well. The discrimination among citizens based on religion they practice is unconstitutional.

G) It is further contended that the Christianity as per biblical tenets itself practices sacraments in churches and other Christian religious institutions. During the holy mass itself sacrifice of flesh and blood of Jesus Christ is commemorated. The words sacrament, sacrilege, sacrifice and the like come from the base word “sacra” which is nothing but offering or dedicating. Therefore, the prohibition and restriction as per

Ext.P1 is apparently discriminatory and is unconstitutional. The same practice as of sacrifice killing to propitiate the God is done in Islam religion as well, particularly when the offering is made to 'Allah' and the animal or bird is killed for getting Halal meat. Halal is associated with Islamic dietary laws in particular and especially, meat processed and prepared in accordance with those requirements after offering the animal or bird to the almighty to propitiate, the meat is called Halal meat. Thus offering to deity happens in almost all the world religions and in Kerala the same is practiced in other religions. Classifying Hindus as a separate class forbidding similar offering as per Law, Exhibit-Pl, is discriminatory.

H) It is further contended that Vedic texts and Tantric texts in Hindu religion uphold sacrifice of animals as an essential part of 'Yajnham' and 'Yagam'. Likewise, the sacrifice is an essential part of Tantric practice. When killing of an animal or a bird is not an offence, the mental condition of the same cannot be considered as an offence. Presently, symbolic sacrifices are done in religious institutions and, therefore, killing is not an offence. But, if the mental condition alone is considered as offensive, the mental condition as of sacrifice of an animal or bird symbolically will be construed as an offence, if the law is prevailed. Thus, the very enactment is cutting the root of Hindu religious practice as per Hindu texts and scriptures and the practice which is having immemorial origin of more than thousands of years and all the more pre-constitutional cannot be forbidden by Exhibit-P1 and the same is unconstitutional.

I) It is further contended that 'Yajurveda' in particular refers about "awsamedhayagam" and other rituals in which, sacrifice of animals is an essential part. Likewise, among "Kaulas" and "sakhteyas", animal sacrifice is an integral part as per the texts applicable to them. The 'Yajna's' and 'Yagas' consider this as an integral part in its performance. Therefore, the enactment is infringing the Hindu religious practice by these denominations in particular. It is pointed out that the Act 20 of 1968 is purported to be based on the field of legislation as per Entry l7 of list III of Constitution of India and the same is apparently not meted out on a bare reading of the definition to "sacrifice" under the Act. The Act is a prohibition of sacrifice of animals or birds in temple premise or in its precincts with the intention of propitiating the deity and not for the protection of animals and birds evidently. The same is NOT a Law against the killing of animals and birds or against cruelty to it but against the intention behind the killing which has nothing to do with protection of animals and birds or prevention of cruelty against animals and birds. So the very purposes projected in the preamble as well as under the object of the Act are not in existence as per the promulgation or implementation of the Act. Therefore, the very field of legislation, purpose and object of the Act are neglected as per the provisions of the Act. The restraint as per Exhibit Pl is targeted against propitiation of deity alone that too of Hindus alone which infringes the right to practice religion by Hindus, namely propitiation of deity which is one of the cardinal. aspects of religion in certain level of elevation of consciousness of the devotee."

6. Based on the above grounds, Mr. P. Sathisan, learned counsel for the petitioners, made submissions.

7. Heard the learned counsel appearing for the parties and perused the material on record.

8. The Prevention of Cruelty to Animals Act, 1960 is an Act to prevent infliction of unnecessary pain or suffering on animals and for that purpose, to amend the law relating to the prevention of cruelty to animals. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States and for the different provisions contained in this Act. Insofar as State of Kerala is concerned, vide Notification No.S.O.2000 dated 11.07.1963, the said Act has come into effect from 15.07.1963. Section 3 of the Act deals with duties of persons having charge of animals and it reads thus:

> "It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering."

9. As per Section 9 of the Act, the functions of the Board are thus:

> "The functions of the Board shall be— (a) to keep the law in force in India for the prevention of cruelty to animals under constant study and advise the Government on the amendments to be undertaken in any such law from time to time;

(b) to advise the Central Government on the making of rules under this Act with a view to preventing unnecessary pain or suffering to animals generally, and more particularly when they are being transported from one place to another or when they are used as performing animals or when they are kept in captivity or confinement;

(c) to advise the Government or any local authority or other person on improvements in the design of vehicles so as to lessen the burden on draught animals;

(d) to take all such steps as the Board may think fit for amelioration of animals by encouraging, or providing for, the construction of sheds, water-troughs and the like and by providing for veterinary assistance to animals;

(e) to advise the Government or any local authority or other person in the design of slaughter-houses or in the maintenance of slaughter-houses or in connection with slaughter of animals so that unnecessary pain or suffering, whether physical or mental, is eliminated in the pre-slaughter stages as far as possible, and animals are killed, wherever necessary, in as humane a manner as possible;

(f) to take all such steps as the Board may think fit to ensure that unwanted animals are destroyed by local authorities, whenever it is necessary to do so, either instantaneously or after being rendered insensible to pain or suffering;

(g) to encourage, by the grant of financial assistance or otherwise the formation or establishment of *pinjrapoles*, rescue homes, animal shelters, sanctuaries and the like where animals and birds may find a shelter when they have become old and useless or when they need protection;

(h) to co-operate with, and co-ordinate the work of, associations or bodies established for the purpose of preventing unnecessary pain or suffering to animals or for the protection of animals and birds;

(i) to give financial and other assistance to animal welfare organisations functioning in any local area or to encourage the formation of animal welfare organisations in any local area which shall work under the general supervision and guidance of the Board;

(j) to advise the Government on matters relating to the medical care and attention which may be provided in animal, hospitals and to give financial and other assistance to animal hospitals whenever the Board thinks it necessary to do so;

(k) to impart education in relation to the humane treatment of animals and to encourage the formation of public opinion against the infliction of unnecessary pain or suffering to animals and for the promotion of animal welfare by means of lectures, books, posters, cinematographic exhibitions and the like;

(l) to advise the Government on any matter connected with animal welfare or the prevention of infliction of unnecessary pain or suffering on animals."

10. Chapter III of the Act deals with cruelty to animals generally. As per Section 11, if any person,-

"(a) beats, kicks, over-rides, over-drives, over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes or, being the owner permits, any animal to be so treated; or

(b) employs in any work or labour or for any purpose any animal which, by reason of its age or any disease, infirmity, wound, sore or other cause, is unfit to be so employed or, being the owner, permits any such unfit animal to be so employed;

(c) wilfully and unreasonably administers any injurious drug or injurious substance to any animal or wilfully and unreasonably causes or attempts to cause any such drug or substance to be taken by 2 [any animal]; or

(d) conveys or carries, whether in or upon any vehicle or not, any animal in such a manner or position as to subject it to unnecessary pain or suffering; or

(e) keeps or confines any animal in any cage or other receptacle which does not measure sufficiently in height, length and breadth to permit the animal a reasonable opportunity for movement; or

(f) keeps for an unreasonable time any animal chained or tethered upon an unreasonably short or unreasonably heavy chain or cord; or

(g) being the owner, neglects to exercise or cause to be exercised reasonably any dog habitually chained up or kept in close confinement; or

(h) being the owner of 3 [any animal] fails to provide such animal with sufficient food, drink or shelter; or

(i) without reasonable cause, abandons any animal in circumstances which render it likely that it will suffer pain by reason of starvation or thirst; or

(j) wilfully permits any animal, of which he is the owner, to go at large in any street while the animal is affected with contagious or infectious disease or, without reasonable excuse permits any diseased or disabled animal, of which he is the owner, to die in any street; or

(k) offers for sale or, without reasonable cause, has in his possession any animal which is suffering pain by reason of mutilation, starvation, thirst, overcrowding or other ill-treatment; or

(l) multilates any animal or kills any animal (including stray dogs) by using the method of strychnine injections in the heart or in any other unnecessarily cruel manner; or

(m) solely with a view to providing entertainment—

(i) confines or causes to be confined any animal (including tying of an animal as a bait in a tiger or other sanctuary) so as to make it an object of prey for any other animal; or

(ii) incites any animal to fight or bait any other animal; or

(n) organises, keeps, uses or acts in the management of, any place for animal fighting or for the purpose of baiting any animal or permits or offers any place to be so used or receives money for the admission of any other person to any place kept or used for any such purposes; or

(o) promotes or takes part in any shooting match or competition wherein animals are released from captivity for the purpose of such shooting;

he shall be punishable, in the case of a first offence, with fine which shall not be less than ten rupees but which may extend to

fifty rupees and in the case of a second or subsequent offence committed within three years of the previous offence, with fine which shall not be less than twenty-five rupees but which may extend to one hundred rupees or with imprisonment for a term which may extend to three months, or with both.

(2) For the purposes of sub-section (1), an owner shall be deemed to have committed an offence if he has failed to exercise reasonable care and supervision with a view to the prevention of such offence:

Provided that where an owner is convicted of permitting cruelty by reason only of having failed to exercise such care and supervision, he shall not be liable to imprisonment without the option of a fine.

(3) Nothing in this section shall apply to—

(a) the dehorning of cattle, or the castration or branding or nose-roping of any animal, in the prescribed manner; or

(b) the destruction of stray dogs in lethal chambers or by such other methods as may be prescribed; or

(c) the extermination or destruction of any animal under the authority of any law for the time being in force; or

(d) any matter dealt with in Chapter IV; or

(e) the commission or omission of any act in the course of the destruction or the preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering."

11. Section 13 of the Act deals with destruction of animals and it reads thus:-

> "(1) Where the owner of an animal is convicted of an offence under section 11, it shall be lawful for the court, if the court is satisfied that it would be cruel to keep the animal alive, to direct that the animal be destroyed and to assign the animal to any suitable person for that purpose, and the person to whom such animal is so assigned shall, as soon as possible, destroy such animal or cause such animal to be destroyed in his presence without unnecessary suffering, and any reasonable expense incurred in destroying the animal may by ordered by the court to be recovered from the owner as if it were a fine:
>
> Provided that unless the owner assents thereto, no order shall be made under this section except upon the evidence of a veterinary officer in charge of the area.
>
> (2) When any magistrate, commissioner of police or district superintendent of police has reason to believe that an offence under section 11 has been committed in respect of any animal, he may direct the immediate destruction of the animal, if in his opinion, it would be cruel to keep the animal alive.
>
> (3) Any police officer about the rank of a constable or any person authorised by the State Government in this behalf who finds any animal so diseased or so severely injured or in such a physical condition that in his opinion it cannot be removed without cruelty, may, if the owner is absent or refuses his consent to the destruction of the animal, forthwith summon the veterinary officer in charge of the area in which

the animal is found, and if the veterinary officer certifies that the animal is mortally injured or so severely injured or in such a physical condition that it would be cruel to keep it alive, the police officer or the person authorised, as the case may be, may, after obtaining orders from a magistrate, destroy the animal injured or cause it to be destroyed. 21 [in such manner as may be prescribed].

(4) No appeal shall lie from any order of a magistrate for the destruction of an animal."

12. Section 26 of the Act speaks about offences and the same is extracted hereunder:

"26. Offences.—If any person—(a) not being registered under this Chapter, exhibits or trains any performing animal; or

(b) being registered under this Act, exhibits or trains any performing animal with respect to which, or in a manner with respect to which, he is not registered; or

(c) exhibits or trains as a performing animal, any animal which is not to be used for the purpose by reason of a notification issued under clause (ii) of section 22; or

(d) obstructs or wilfully delays any person or police officer referred to in section 25 in the exercise of powers under this Act as to entry and inspection; or

(e) conceals any animal with a view to avoiding such inspection; or

(f) being a person registered under this Act, on being duly required in pursuance of this Act to produce his certificate under this Act, fails without reasonable excuse so to do; or

> (g) applies to be registered under this Act when not entitled to be so registered; he shall be punishable on conviction with fine which may extend to five hundred rupees, or with imprisonment which may extend to three months, or with both."

13. As per Section 28 of the Act, nothing contained in the Act render it an offence to kill an animal in a manner required by the religion of any community.

14. Section 30 of the Act deals with presumption as to guilt in certain cases and the same is extracted hereunder:

> "If any person is charged with the offence of killing a goat, cow or its progeny contrary to the provisions of clause (1) of sub-section (1) of section 11, and it is proved that such person had in his possession, at the time the offence is alleged to have been committed, the skin of any such animal as is referred to in this section with any part of the skin of the head attached thereto, it shall be presumed until the contrary is proved that such animal was killed in a cruel manner."

15. Section 31 of the Act speaks about cognizance of offences and it reads thus:

> "Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), an offence punishable under clause (1) , clause (n) or clause (o) of sub-section (1) of section 11 or under section 12 shall be a cognizable offence within the meaning of that Code."

16. The Kerala Animals and Birds Sacrifices Prohibition Act, 1968 is an Act to consolidate and amend the laws relating to prohibition of the sacrifice of animals and birds in or in the precincts of Hindu temples in the State of Kerala.

17. Section 2(d) defines the word "sacrifice" which means the killing or maiming of any animal or bird for the purpose, or with the intention, of propitiating any deity.

18. Section 3 of the Act prohibits sacrifice of animals and birds in temples or its precincts,- No person shall sacrifice any animal or bird in any temple or its precincts.

19. Section 8 provides repeal,- The Madras and Birds Sacrifice Prohibition Act, 1950 (XXXII of 1950), as in force in the Malabar district referred to in sub-section (2) of Section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956) and the Travancore-Cochin Animals and Birds Prohibition Act, 1953, (VII of 1953), are hereby repealed.

20. Before adverting to the grounds raised, we deems it fit to consider the following decisions ***as to how a provision in a Statue has to be interpreted***.

> (i) In the words of Tindal, C.J., in **Sussex Peerage** case [(1844) 11 Cl & F 85], wherein, he said thus, "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary

sense. The words themselves so alone in such cases best declare the intent of the lawgiver.

(ii) In **Nairin v. University of St. Andrews** reported in 1909 AC 147, the Hon'ble Apex Court held that, "Unless there is any ambiguity it would not be open to the Court to depart from the normal rule of construction which is that the intention of the Legislature should be primarily gathered from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and construed in the light of surrounding circumstances and constitutional principle and practice. (Emphasis supplied)

(iii) In **Ram Rattan** v. **Parma Nand** reported in AIR 1946 PC 51, the Hon'ble Mr.S.R.Das, held as follows:

"The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. In the present case, the literal construction leads to no apparent absurdity and therefore, there can be no compelling reason for departing from that golden rule of construction."

(Emphasis supplied)

(iv) In **Poppatlal Shah** v. **State of Madras** reported in AIR 1953 SC 274, the Hon'ble Supreme Court held that, "It is settled rule of construction that to ascertain the legislative intent all the constituent parts of a statute are to be taken together and each word, phrase and sentence is to be considered in the light of the general purpose and object of the Act itself." (Emphasis supplied)

(v) In **Rao Shive Bahadur Singh** v. **State**, reported in AIR 1953 SC 394, the Hon'ble Supreme Court held that, "While, no doubt, it is not permissible to supply a clear and obvious lacuna in a statute, and imply a right of appeal, it is incumbent on the Court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application."

(vi) What is the spirit of law, Hon'ble Mr. Justice S.R.Das in **Rananjaya Singh** v. **Baijnath Singh** reported in AIR 1954 SC 749, said that, "The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the Sections of the Act."

(vii) In **Hari Prasad Shivashanker Shukla** v. **A.D.Divelkar** reported in AIR 1957 SC 121, the Hon'ble Apex Court held that,

> "It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended, Where, within the framework of the ordinary acceptation of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined."

(viii) In **Kanai Lal Sur** v. **Paramnidhi Sadhukhan** reported in AIR 1957 SC 907, the Hon'ble Supreme Court held that,

> "It must always be borne in mind that the first and primary rule of construction is that the intention of the

Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act.

The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the courts would prefer to adopt the latter construction.

It is only in such cases that it becomes relevant to consider the mischief and defect which the, Act purports to remedy and correct."

(ix) In **Attorney-General** v. **HRH Prince Ernest Augustus of Hanover** reported in (1957) 1 All.ER 49, Lord Somervell of Harrow has explained the unambiguous, as "unambiguous in context".

(x) In **State of W.B., v. Union of India** reported in AIR 1963 SC 1241, the Hon'ble Apex Court held that in considering the expression used by the Legislature, the Court should have regard to the aim, object and scope of the statute to be read in its entirety.

(xi) In **State of Uttar Pradesh** v. **Dr. Vijay Anand Maharaj** reported in AIR 1963 SC 946, the Supreme Court held as follows:

"But it is said, relying upon certain passages in Maxwell on the Interpretation of Statutes, at p, 68, and in

Crawford on "Statutory Construction' at p. 492, that it is the duty of the Judge "to make such construction of a statute as shall suppress the mischief and advance the remedy," and for that purpose the more extended meaning could be attributed to the words so as to bring all matters fairly within the scope of such a statute even though outside the letter, if within its spirit or reason. But both Maxwell and Crawford administered a caution in resorting to such a construction. Maxwell says at p.68 of his book:

"The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words."

Crawford says that a liberal construction does not justify an extension of the statute's scope beyond the contemplation of the Legislature.

The fundamental and elementary rule of construction is that the words and phrases used by the Legislature shall be given their ordinary meaning and shall be constructed according to the rules of grammar. When the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself. It is a well recognized rule of construction that the meaning must be collected from the expressed intention of the Legislature."

(Emphasis supplied)

(xii) In **Namamal** v. **Radhey Shyam** reported in AIR 1970 Rajasthan 26, the Court held as follows:

"It was observed by Pollock C. B. in Waugh v. Middleton, 1853-8 Ex 352 (356):-- "It must, however, be conceded that where the grammatical construction is clear and manifest and without doubt, that construction ought to prevail, unless there be some strong and obvious reason to the contrary. But the rule adverted to is subject to this condition, that however plain the apparent grammatical construction of a sentence may be, if it be properly clear from the contents of the same document that the apparent grammatical construction cannot be the true one, then that which, upon the whole, is the true meaning shall prevail, in spite of the grammatical construction of a particular part of it." And substantially the same opinion is expressed by Lord Selborne in ***Caledonian Ry, v. North British Ry.*** (1881) 6 AC 114 (222):-- "The mere literal construction of a statute ought not to prevail if it is opposed to the intentions of the legislature as apparent by the statute, and if the words are sufficiently flexible to admit of some other construction by which, that intention can be better effectuated." Again Lord Fitzgerald in ***Bradlaugh v. Clarke,*** (1883) 8 AC 354 at p. 384 observed as follows:-- "I apprehend it is a rule in the construction of statutes that in the first instance the grammatical sense of the words is to be adhered to. If that is contrary to, or inconsistent with, any expressed intention or declared purpose of the statutes, or if it would involve any absurdity, repugnance, or inconsistency, the grammatical sense must then be modified, extended, or abridged, so far as to avoid such an inconvenience, but

no further." 11. Maxwell in his book on Interpretation of Statutes (11th Edition) at page 226 observes thus:--

"The rule of strict construction, however, whenever invoked, comes attended with qualifications and other rules no less important, and it is by the light which each contributes that the meaning must be determined. Among them is the rule that that sense of the words is to be adopted which best harmonises with the context and promotes in the fullest manner the policy and object of the legislature. The paramount object, in construing penal as well us other statutes, is to ascertain the legislative intent and the rule of strict construction is not violated by permitting the words to have their full meaning, or the more extensive of two meanings, when best effectuating the intention. They are indeed frequently taken in the widest sense, sometimes even in a sense more wide than etymologically belongs or is popularly attached to them, in order to carry out effectually the legislative intent, or, to use Sir Edward Cole's words, to suppress the mischief and advance the remedy."

(xiii) In **Inland Revenue Commissioner** v. **Joiner** reported in (1975) 3 All. ER 1050, it has been held that normally a statutory provision consists of a general description of some factual situation and the legal consequences ensuing from it. Whether the general description is wide or narrow, it will have some limits. The question before a court of law in dealing with a statute is whether the factual situation proved before it falls within the general description given in the statute. A real difficulty in determining the right answer can be said to arise from an

"ambiguity" in the statute. It is in this sense that the words, "ambiguity" and "ambiguous" are widely used in judgments.

(xiv) In **Commissioner of Sales Tax** v. **M/s.Mangal Sen Shyamlal** (AIR 1975 SC 1106), the Hon'ble Apex Court held that,

"A statute is supposed to be an authentic repository of the legislative will and the function of a court is to interpret it "according to the intent of them that made it". From that function the court is. not to resile. It has to abide by the maxim, "ut res magis valiat quam pereat", lest the intention of the legislature may go in vain or be left to evaporate into thin air."

(xv) In **C.I.T., Madras** v. **T.Sundram Iyengar (P) Ltd.**, reported in (1976) 1 SCC 77, the Hon'ble Supreme Court held that, if the language of the statute is clear and unambiguous and if two interpretations are not reasonably possible, it would be wrong to discard the plain meaning of the words used, in order to meet a possible injustice.

(xvi) If the words are precise and unambiguous, then it should be accepted, as declaring the express intention of the legislature. In **Ku.Sonia Bhatia** v. **State of U.P. and others** reported in (1981) 2 SCC 585 - AIR 1981 SC 1274, the Hon'ble Supreme Court held that a legislature does not waste words, without any intention and every word that is used by the legislature must be given its due import and significance.

(xvii) In **LT.-Col. Prithi Pal Singh Bedi v. Union of India** reported in (1983) 3 SCC 140, at Paragraph 8, the Hon'ble Supreme Court held as follows:

"8. The dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well

recognised canons of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision the Court should adopt literal construction if it does not lead to an absurdity. .....If the literal construction leads to an absurdity, external aids to construction can be resorted to. To ascertain the literal meaning it is equally necessary first to ascertain the juxtaposition in which the rule is placed, the purpose for which it is enacted and the object which it is required to subserve and the authority by which the rule is framed. This necessitates examination of the broad features of the Act."

(xviii) In **Philips India Ltd.**, v. **Labour Court** reported in 1985 (3) SCC 103, the Hon'ble Apex Court, at Paragraph 15, held as follows:

"(15) No cannon of statutory construction is more firmly, established than that the statute must be read as a whole. This is a general rule of construction applicable to all statutes alike which is spoken of as construction ex visceribus actus. This rule of statutory construction is so firmly established that it is variously styled as 'elementary rule' (See *Attorney General v. Bastow* [(1957) 1 All.ER 497]) and as a 'settled rule' (See *Poppatlal Shall v. State of Madras* [1953 SCR 667 : AIR 1953 SC 274]). The only recognised exception to this well-laid principle is that it cannot be called in aid to alter the meaning of what is of itself clear and explicit. Lord Coke laid down that: 'it is the most natural and genuine exposition of a statute, to construe one part of a statute by another part of the same statute, for that best expresseth meaning of the makers' (Quoted with approval in *Punjab Breverages Pvt. Ltd. v. Suresh Chand* [(1978) 3 SCR 370 : (1978) 2 SCC 144 : 1978 SCC (L&S) 165])."

(xix) In **Narendra H.Khzurana v. Commissioner of Police** reported in 2004 (2) Mh.L.R. 72, it was held that, it must be noted the proper course in interpreting a statute in the first instance is to examine its language and then ask what is the natural meaning uninfluenced by the considerations derived from previous state of law and then assume that it was property intended to leave unaltered. It is settled legal position, therefore, that the Courts must try to discover the real intent by keeping the direction of the statute intact.

(xx) In **Nyadar Singh** v. **Union of India** reported in AIR 1988 SC 1979, the Hon'ble Apex Court observed that ambiguity need not necessarily be a grammatical ambiguity, but one of the appropriateness of the meaning in a particular context.

(xxi) It is a well settled law of interpretation that "when the words of the statute are clear, plain or unambiguous, ie., they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences. Reference can be made to the decision of the Hon'ble Apex Court in **Nelson Motis v. Union of India** reported in AIR 1992 SC 1981."

(xxii) In **M/s.Oswal Agro Mills Ltd., v. Collector of Central Excise and others** reported in 1993 Supp (3) SCC 716 = AIR 1993 SC 2288, the Hon'ble Apex Court held that,

> "where the words of the statute are plain and clear, there is no room for applying any of the principles of interpretation, which are merely presumption in cases of ambiguity in the statute. The Court would interpret them as they stand."

(xxiii) In **Nasiruddin v. Sita Ram Agarwal** reported in (2003) 2 SCC 577, the Hon'ble Supreme Court held as follows:

> "35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom....
>
> 37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. ...But the intention of the legislature must be found out from the scheme of the Act."

(xxiv) In **Indian Dental Association, Kerala v. Union of India** reported in 2004 (1) Kant. LJ 282, the Court held as follows:

> "The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. The object of all interpretation is to discover the intention of Parliament, "but the intention of Parliament must be deduced from the language used", for it is well-accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law. If the words of the statute are themselves

precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. Where the language of an Act is clear and explicit, the Court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature. Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise. The decision in a case calls for a full and fair application of particular statutory language to particular facts as found. It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the Legislature intended something which it omitted to express. A construction which would leave without effect any part of the language of a statute will normally be rejected."

(xxv) In **Nathi Devi v. Radha Devi Gupta** reported in AIR 2005 SC 648, the Hon'ble Apex Court held that,-

"The interpretation function of the Court is to discover the true legislative intent, it is trite that in interpreting a statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When a language is plain and unambiguous and admits of only one meaning no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are

capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the Court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional."

In ***Nathi Devi's*** case, it was further held that,

"It is equally well-settled that in interpreting a statute, effort should be made to give effect to each and every word used by the Legislature. The Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors."

(xxvi) In Justice G.P. Singh's Principles of Statutory Interpretation (11th Edn., 2008), the learned author while referring to judgments of different Courts states (at page 134) that procedural laws regulating proceedings in court are to be construed as to render justice wherever reasonably possible and to avoid injustice from a mistake of court. He further states (at pages 135 and 136) that: "Consideration of hardship, injustice or absurdity as avoiding a particular construction is a rule which must be applied with great care. "The argument ab inconvenienti", said LORD MOULTON, "is one which requires to be used with great caution".

(xxvii) In **State of Jharkhand v. Govind Singh** reported in (2005) 10 SCC 437, the Hon'ble Supreme Court held as follows:

> "12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature.
>
> 13. Interpretation postulates the search for the true meaning of the words used in the statute as a medium of expression to communicate a particular thought. The task is not easy as the "language" is often misunderstood even in ordinary conversation or correspondence. The tragedy is that although in the matter of correspondence or conversation the person who has spoken the words or used the language can be approached for clarification, the legislature cannot be approached as the legislature, after enacting a law or Act, becomes functus officio so far as that particular Act is concerned and it cannot itself interpret it. No doubt, the legislature retains the power to amend or repeal the law so made and can also declare its meaning, but that can be done only by making another law or statute after undertaking the whole process of law-making.
>
> 14. Statute being an edict of the legislature, it is necessary that it is expressed in clear and unambiguous language.....
>
> 15. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the judges should not proclaim that they are playing the role

of a lawmaker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so. (See Frankfurter: Some Reflections on the Reading of Statutes in Essays on Jurisprudence, Columbia Law Review, p. 51.)

16. It is true that this Court in interpreting the Constitution enjoys a freedom which is not available in interpreting a statute and, therefore, it will be useful at this stage to reproduce what Lord Diplock said in ***Duport Steels Ltd. v. Sirs*** [(1980 (1) All.ER 529] (All ER at p. 542c-d):

> "It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, if judges, under the guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the court before whom the matter comes consider to be injurious to the public interest."

(xxviii) In **Vemareddy Kumaraswamy Reddy v. State of A.P.**, reported in (2006) 2 SCC 670, the Hon'ble Apex Court held that,

> "12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous."

(xxix) In **A.N.Roy Commissioner of Police v. Suresh Sham Singh** reported in AIR 2006 SC 2677, the Hon'ble Apex Court held that,

> "It is now well settled principle of law that, the Court cannot change the scope of legislation or intention, when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction, which would reduce the legislation to futility. It is also well settled that every statute is to be interpreted without any violence to its language. It is also trite that when an expression is capable of more than one meaning, the Court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions."

(xxx) In **Adamji Lookmanji & Co. v. State of Maharastra** reported in AIR 2007 Bom. 56, the Bombay High Court held that, when the words of status are clear, plain or unambiguous, and reasonably susceptible to only meaning, Courts are bound to give effect to that meaning irrespective of the consequences. The intention of the legislature is primarily to be gathered from the language used. Attention should be paid to what has been said in the statute, as also to what has not been said.

(xxxi) In **State of Haryana v. Suresh** reported in 2007 (3) KLT 213, the Hon'ble Supreme Court held that,

> "One of the basic principles of Interpretation of Statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary, to or inconsistent with any express intention or declared purpose

of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity."

(xxxii) In **Visitor, Amu v. K.S.Misra** reported in (2007) 8 SCC 593, the Hon'ble Supreme Court held that,

"It is well settled principle of interpretation of the statute that it is incumbent upon the Court to avoid a construction, if reasonably permissible on the language, which will render a part of the statute devoid of any meaning or application. The Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intent is that every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. It is not a sound principle of construction to brush aside words in a statute as being in apposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute."

(xxxiii) In **Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.,** reported in (2008) 4 SCC 755, the Hon'ble Supreme Court, at Paragraphs 52, 54, 55 and 56, held as follows:

"52. No doubt ordinarily the literal rule of interpretation should be followed, and hence the court should neither add nor delete words in a statute. However, in exceptional cases this can be done where not doing so would deprive certain existing words in a statute of all meaning, or some part of the statute may become absurd."

(xxxiv) In **Phool Patti v. Ram Singh** reported in (2009) 13 SCC 22, the Hon'ble Supreme Court held that,

"9. It is a well-settled principle of interpretation that the court cannot add words to the statute or change its language, particularly when on a plain reading the meaning seems to be clear."

(xxxv) In **Mohd. Shahabuddin v. State of Bihar**, reported in (2010) 4 SCC 653, the Hon'ble Supreme Court held that,

"179. Even otherwise, it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is a determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. Reference in this regard may be made to a recent decision of this Court in *Ansal Properties & Industries Ltd. v. State of Haryana* [(2009) 3 SCC 553]

180. Further, it is a well-established principle of statutory interpretation that the legislature is specially precise and careful in its choice of language. Thus, if a statutory provision is enacted by the legislature, which prescribes a condition at one place but not at some other

place in the same provision, the only reasonable interpretation which can be resorted to by the courts is that such was the intention of the legislature and that the provision was consciously enacted in that manner. In such cases, it will be wrong to presume that such omission was inadvertent or that by incorporating the condition at one place in the provision the legislature also intended the condition to be applied at some other place in that provision."

(xxxvi) In **Satheedevi v. Prasanna** reported in (2010) 5 SCC 622, the Hon'ble Supreme Court held as follows:

"12. Before proceeding further, we may notice two well-recognised rules of interpretation of statutes. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise--Kanai Lal Sur v. Paramnidhi Sadhukhan [AIR 1957 SC 907]

13. The other important rule of interpretation is that the court cannot rewrite, recast or reframe the legislation because it has no power to do so. The court cannot add words to a statute or read words which are not

there in it. Even if there is a defect or an omission in the statute, the court cannot correct the defect or supply the omission - *Union of India v. Deoki Nandan Aggarwal* [1992 Supp (1) SCC 323] and *Shyam Kishori Devi v. Patna Municipal Corpn.* [AIR 1966 SC 1678]"

(xxxvii) In **Sri Jeyaram Educational Trust & Ors., v. A.G.Syed Mohideen & Ors.** [2010 CIJ 273 SC (1)], it was held that,

"6. It is now well settled that a provision of a statute should have to be read as it is, in a natural manner, plain and straight, without adding, substituting or omitting any words. While doing so, the words used in the provision should be assigned and ascribed their natural, ordinary or popular meaning. Only when such plain and straight reading, or ascribing the natural and normal meaning to the words on such reading, leads to ambiguity, vagueness, uncertainty, or absurdity which were not obviously intended by the Legislature or the Lawmaker, a court should open its interpretation tool kit containing the settled rules of construction and interpretation, to arrive at the true meaning of the provision. While using the tools of interpretation, the court should remember that it is not the author of the Statute who is empowered to amend, substitute or delete, so as to change the structure and contents. A court as an interpreter cannot alter or amend the law. It can only interpret the provision, to make it meaningful and workable so as to achieve the legislative object, when there is vagueness, ambiguity or absurdity. The purpose of interpretation is not to make a provision what the Judge thinks it should be, but to make it what the legislature intended it to be."

(xxxviii) In **Delhi Airtech Services (P) Ltd. v. State of U.P.**, reported in (2011) 9 SCC 354, the Hon'ble Supreme Court, while dealing with a provision under Section 17(3-A) of the Act, held as follows:,

> "Therefore, the provision of Section 17(3-A) cannot be viewed in isolation as it is an intrinsic and mandatory step in exercising special powers in cases of emergency. Sections 17(1) and 17(2) and 17(3-A) must be read together. Sections 17(1) and 17(2) cannot be worked out in isolation.
>
> 55. It is well settled as a canon of construction that a statute has to be read as a whole and in its context. In *Attorney General v. Prince Ernest Augustus of Hanover* [1957 AC 436], Lord Viscount Simonds very elegantly stated the principle that it is the duty of court to examine every word of a statute in its context. The learned Law Lord further said that in understanding the meaning of the provision, the Court must take into consideration "not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate means, discern that the statute was intended to remedy."(All ER p. 53 I)
>
> 57. These principles have been followed by this Court in its Constitution Bench decision in **Union of India v. Sankalchand Himatlal Sheth** [1977 (4) SCC 193]. At SCC p. 240, Bhagwati, J. as His Lordship then was, in a concurring opinion held that words in a statute cannot be read in isolation, their colour and content are derived from their context and every word in a statute is to be examined in its

context. His Lordship explained that the word context has to be taken in its widest sense and expressly quoted the formulations of Lord Viscount Simonds, set out above."

(xxxix) In **Noida Entrepreneurs Association v. Noida** reported in (2011) 6 SCC 58, at paragraph 25, the Hon'ble Supreme Court held as follows:

"22. It is a settled proposition of law that whatever is prohibited by law to be done, cannot legally be affected by an indirect and circuitous contrivance on the principle of "quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud", which means" "whenever a thing is prohibited, it is prohibited whether done directly or indirectly". (See: *Swantraj & Ors. v. State of Maharashtra*, AIR 1974 SC 517; *Commissioner of Central Excise, Pondicherry v. ACER India Ltd.*, (2004) 8 SCC 173; and *Sant Lal Gupta & Ors., v. Modern Co-operative Group Housing Society Ltd., & Ors.*, JT (2010) 11 SC 273).

At Paragraph 26 in Noida Entrepreneurs Association's case (cited supra), the Hon'ble Apex Court, further held that,

"23. In *Jagir Singh v. Ranbir Singh & Anr.* AIR 1979 SC 381, this Court has observed that an authority cannot be permitted to evade a law by "shift or contrivance." While deciding the said case, the Court placed reliance on the judgment in *Fox v. Bishop of Chester*, (1824) 2 B &C 635, wherein it was observed as under:-

> "To carry out effectually the object of a statute, it must be construed as to defeat all attempts to do, or avoid doing in an indirect or circuitous manner that which it has prohibited or enjoined."

21. Petitioners, who claim to be public interest litigants, have to place materials to support their contention that there is no Presidential assent for the Kerala Animals and Birds Sacrifices Prohibition Act, 1968, which, in the case on hand, not done. They have further contended that the definition of "sacrifice" under the Act, 1968 is meaningless. But, they have candidly admitted that mental condition is the core consideration as per the provision, and converse is that, if the act of killing is not for propitiating any deity, but for personal consumption, it is not forbidden. At this juncture, we deem it fit to consider what propitiate means, as per dictionary meaning:

(a) In *Merriam Webster*, the word "propitiate" is defined as,- to gain or regain the favor or goodwill of : appease.

(b) In *Cambridge Advanced Learner's Dictionary*, the word "propitiate" is defined as,- to please and make calm a god or person who is annoyed with you. In those days, people might sacrifice a goat or sheep to propitiate an angry god. The radicals in the party were clearly sacked to propitiate the conservative core.

(c) In *Oxford Learner's Dictionary of Current English*, the word "propitiate" is defined as,- to stop from being angry by trying to please them.

(d) In *Collins Cobuild Dictionary*, the word "propitiate" is defined as,- If you propitiate someone, you stop them being angry or impatient by doing something to please them; a formal word - I have never gone out of my way to propitiate people.

22. Article 254 of the Constitution of India reads thus:

> "254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States:
>
> (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.
>
> (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in the State:
>
> Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

23. Public order is included in Entry I of the State List. Entry 17 in List III Concurrent List deals with "Prevention of Cruelty to Animals". Entry 17B of List III - Concurrent List, speaks about "Protection of Wild

Animals and Birds". Let us consider a few decisions on ***repugnancy and entries in the lists***.

"(i) In **Zaverbhai Amaidas v. The State of Bombay** (1954 AIR 752), the Hon'ble Supreme Court laid down the various tests to determine the inconsistency between two enactments, and observed as follows:

> "The important thing to consider with reference to this provision is whether the legislation is 'in respect of the same matter'. If the later legislation deals not with the matters which formed the subject of the earlier legislation but with other and distinct matters though of a cognate and allied character, then Article 254 (2) will have no application. The principle embodied in Section 107 (2) and Article 254 (2) is that when there is legislation covering the same ground both by the Centre and by the Province, both of them being competent to enact the same, the law of the Centre should prevail over that of the State.
>
> It is true, as already pointed out, that on a question Under Article 254 (1) whether an Act of Parliament prevails against a law of the State, no question of repeal arises but the principle on which the Rule of implied repeal rests, namely, that if subject-matter of the later legislation is identical with that of the earlier, so that they cannot both stand together, then the earlier is repealed by the later enactment, will be equally applicable to a question Under Article 254(2) whether the further legislation by Parliament is in respect of the same matter as that of the State law."

(ii) In **Ch. Tika Ramji and Ors. v. The State of Uttar Pradesh and Ors.** (1956 SCR 393), the question which arose for consideration was as to whether there existed a repugnancy between the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953, which was enacted in terms of Entry 33 of List III of the Seventh Schedule of the Constitution and the notifications issued thereunder vis-a-vis the Industries (Development and Regulation) Act, 1951, the Hon'ble Supreme Court referred to Nicholas's Australian Constitution, 2 Ed. Page 303, in the following terms :

> "(1) There may be inconsistency in the actual terms of the competing statutes (R. V. Brisbane Licensing Court, (1920 28 CLR 23).
>
> (2) Though there may be no direct conflict, a State law may be inoperative because the Commonwealth law, or the award of the Commonwealth Court, is intended to be a complete exhaustive code (Clyde Engineering Co. Ltd. v. Cowburn, (1926) 37 C.L.R. 466).
>
> (3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject matter (Victoria v. Commonwealth, (1937) 58 C.L.R. 618; Wenn v. Attorney-General (Vict.), (1948) 77 C.L.R. 84).

This Court also relied on the decisions in the case of *Hume v. Palmer* as also the case of *Ex Parte Mclean (supra)*, referred to above and endorsed the observations of Sulaiman, J. in the case of *Shyamakant Lal v. Rambhajan Singh [(1939) FCR 188]* where Sulaiman, J. observed as follows:

"When the question is whether a Provincial legislation is repugnant to an existing Indian law, the onus of showing its repugnancy and the extent to which it is repugnant should be on the party attacking its validity. There ought to be a presumption in favour of its validity, and every effort should

be made to reconcile them and construe both so as to avoid their being repugnant to each other, and care should be taken to see whether the two do not really operate in different fields without encroachment. Further, repugnancy must exist in fact, and not depend merely on a possibility."

(Emphasis supplied)

(iii) In **Deep Chand v. State of U.P.** reported in AIR 1959 SC 648, while examining repugnancy between two statutes, the following principles were enunciated by the Hon'ble Supreme Court:

"(1) There may be inconsistency in the actual terms of the competing statutes;

(2) Though there may be no direct conflict, a State law may be inoperative because the Commonwealth law, or the award of the Commonwealth Court, is intended to be a complete exhaustive code; and

(3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject matter."

(iv) In the case of **State of Orissa v. M.A. Tulloch & Co**. [(1964) 4 SCR 461] Ayyangar J. speaking for the Court observed as follows:

"Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one Legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two

legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation." (Emphasis supplied)

(v) In **T.S. Balliah v. T.S. Rangachar**i [(1969) 3 SCR 65], the Hon'ble Supreme Court held as follows:

"On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:

1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

3. That where the two statutes occupy a particular field, there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.

4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.

(Emphasis Supplied)

(vi) In **Fatehchand Himmatlal v. State of Maharashtra** reported in (1977) 2 SCC 670, the Hon'ble Supreme Court held as under:

> "It has been held that the rule as to predominance of Dominion legislation can only be invoked in case of absolutely conflicting legislation in pari materia when it will be an impossibility to give effect to both the Dominion and provincial enactments. There must be a real conflict between the two Acts i.e. the two enactments must come into collision. The doctrine of Dominion paramountcy does not operate merely because the Dominion has legislated on the same subject-matter. The doctrine of "occupied field" applies only where there is a clash between Dominion Legislation and Provincial Legislation within an area common to both. Where both can co-exist peacefully, both reap their respective harvests (Please see: Canadian Constitutional Law by Laskin -- pp. 52-54, 1951 Edn)."

(vii) In **M. Karunanidhi v. Union of India** reported in (1979) 3 SCC 431, the test for determining repugnancy has been laid down by the Hon'ble Supreme Court as under:

> "24. It is well settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied:
>
> 1. That there is a clear and direct inconsistency between the Central Act and the State Act.
>
> 2. That such an inconsistency is absolutely irreconcilable.
>
> 3. That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached

where it is impossible to obey the one without disobeying the other."

(viii) In **Hoechst Pharmaceuticals Ltd. v. State of Bihar** (1983) 3 SCR 130, the Hon'ble Apex Court, after referring to earlier judgments, held as follows:

"67. Article 254 of the Constitution makes provision first, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Article 254(1) enunciates the normal Rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is 'repugnant' to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. To the general Rule laid down in Clause (1), Clause (2) engrafts an exception, viz., that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under

the proviso to Clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the 'same matter'. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together. [See: *Zaverbhai Amaidas v. State of Bombay (1955 1 SCR 799), M. Karunanidhi v. Union of India (1979 3 SCR 254) and T. Barai v. Henry Ah Hoe and Anr. (1983 1 SCC 177)].*

68. We may briefly refer to the three Australian decisions relied upon. As stated above, the decision in Clyde Engineering Company's case (supra), lays down that inconsistency is also created when one statute takes away rights conferred by the other. In Ex Parte McLean's case, supra, Dixon J. laid down another test viz., two statutes could be said to be inconsistent if they, in respect of an identical subject-matter, imposed identical duty upon the subject, but provided for different sanctions for enforcing those duties. In *Stock Motor Ploughs Limited's case, supra*, Evatt, J. held that even in respect of cases where two laws impose one and the same duty of obedience there may be inconsistency. As already stated the controversy in these appeals falls to be determined by the true nature and character of the impugned enactment, its pith and substance, as to whether it falls within the legislative competence of the State Legislature Under Article 246(3) and

does not involve any question of repugnancy under Article 254(1) of the Constitution.

69. We fail to comprehend the basis for the submission put forward on behalf of the appellants that there is repugnancy between Sub-section (3) of Section 5 of the Act which is relatable to Entry 54 of List II of the Seventh Schedule and paragraph 21 of the Control order issued by the Central Government Under Sub-section (1) of Section 3 of the Essential Commodities Act relatable to Entry 33 of List III and therefore Sub-section (3) of Section 5 of the Act which is a law made by the State Legislature is void Under Article 254(1). The question of repugnancy Under Article 254(1) between a law made by Parliament and a law made by the State Legislature arises only in case both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List, and there is direct conflict between the two laws. It is only when both these requirements are fulfilled that the State law will, to the extent of repugnancy become void. Article 254(1) has no application to cases of repugnancy due to overlapping found between List II on the one hand and List I and List III on the other. If such overlapping exists in any particular case, the State law will be ultra vires because of the non-obstante Clause in Article 246(1) read with the opening words "Subject to" in Article 246(3). In such a case, the State law will fail not because of repugnance to the Union law but due to want of legislative competence. It is no doubt true that the expression "a law made by Parliament which Parliament is competent to enact" in Article 254(1) is susceptible of a construction that repugnance between a State law and a law made by Parliament may take place outside the concurrent

sphere because Parliament is competent to enact law with respect to subjects included in List III as well as "List I". But if Article 254(1) is read as a whole, it will be seen that it is expressly made subject to Clause (2) which makes reference to repugnancy in the field of Concurrent List-in other words, if Clause (2) is to be the guide in the determination of scope of Clause (1), the repugnancy between Union and State law must be taken to refer only to the Concurrent field. Article 254(1) speaks of a State law being repugnant to (a) a law made by Parliament or (b) an existing law. There was a controversy at one time as to whether the succeeding words "with respect to one of the matters enumerated in the Concurrent List" govern both (a) and (b) or (b) alone. It is now settled that the words "with respect to" qualify both the clauses in Article 254(1) viz. a law made by Parliament which Parliament is competent to enact as well as any provision of an existing law. The under lying principle is that the question of repugnancy arises only when both the Legislatures are competent to legislate in the same field i.e. with respect to one of the matters enumerated in the Concurrent List. Hence, Article 254(1) can not apply unless both the Union and the State laws relate to a subject specified in the Concurrent List, and they occupy the same field.

70. This construction of ours is supported by the observations of Venkatarama Ayyar, J. speaking for the Court in *A.S. Krishna v. Madras State (AIR 1957 SC 297)*, while dealing with Section 107(1) of the Government of India Act, 1935 to the effect:

> “For this Section to apply, two conditions must be fulfilled: (1) The provisions of the Provincial law and those of the Central legislation must both be in respect

> of a matter which is enumerated in the Concurrent List, and (2) they must be repugnant to each other. It is only when both these requirements are satisfied that the Provincial law will, to the extent of the repugnancy, become void."

(ix) In **Vijay Kumar Sharma and Ors. Etc v. State of Karnataka** (1990) 2 SCC 562, the Hon'ble Supreme Court held as follows:-

> "Ranganath Misra, J., in a concurring judgment, posed the question as to whether when the State law is under one head of legislation in the Concurrent List and the Parliamentary legislation is under another head in the same list, can there be repugnancy at all? The question was answered thus:
>
> "13. In Clause (1) of Article 254 it has been clearly indicated that the competing legislations must be in respect of one of the matters enumerated in the Concurrent List. The seven Judge Bench examining the vires of the Karnataka Act did hold that the State Act was an Act for acquisition and came within Entry 42 of the Concurrent List. That position is not disputed before us. There is unanimity at the bar that the Motor Vehicles Act is a legislation coming within Entry 35 of the Concurrent List. Therefore, the Acquisition Act and the 1988 Act as such do not relate to one common head of legislation enumerated in the Concurrent List and the State Act and the parliamentary statute deal with different matters of legislation.
>
> 19. A number of precedents have been cited at the hearing and those have been examined and even some which were not referred to at the bar. There is no clear authority in support of the stand of the Petitioners -- where the State law is under one head of legislation in the Concurrent List, the subsequent Parliamentary legislation is under another head of

legislation in the same list and in the working of the two it is said to give rise to a question of repugnancy."

(x) In **Girnar Traders v. State of Maharashtra** reported in (2011) 3 SCC 1, the Hon'ble Supreme Court held as follows:

"173. The doctrine of pith and substance can be applied to examine the validity or otherwise of a legislation for want of legislative competence as well as where two legislations are embodied together for achieving the purpose of the principal Act. Keeping in view that we are construing a federal Constitution, distribution of legislative powers between the Centre and the State is of great significance. Serious attempt was made to convince the Court that the doctrine of pith and substance has a very restricted application and it applies only to the cases where the court is called upon to examine the enactment to be ultra vires on account of legislative incompetence.

174. We are unable to persuade ourselves to accept this proposition. The doctrine of pith and substance find its origin from the principle that it is necessary to examine the true nature and character of the legislation to know whether it falls in a forbidden sphere. This doctrine was first applied in India in *Prafulla Kumar Mukherjee v. Bank of Commerce Ltd*. (AIR 1947 PC 60). The principle has been applied to the cases of alleged repugnancy and we see no reason why its application cannot be extended even to the cases of present kind which ultimately relates to statutory interpretation founded on source of legislation.

175. In Union of India v. Shah Goverdhan L. Kabra Teachers' College [(2002) 8 SCC 228], this Court held that

in order to examine the true character of the enactment, the entire Act, its object and scope is required to be gone into. The question of invasion into the territory of another legislation is to be determined not by degree but by substance. The doctrine of pith and substance has to be applied not only in cases of conflict between the powers of two legislatures but also in any case where the question arises whether a legislation is covered by a particular legislative field over which the power is purported to be exercised. In other words, what is of paramount consideration is that the substance of the legislation should be examined to arrive at a correct analysis or in examining the validity of law, where two legislations are in conflict or alleged to be repugnant.

176. An apparent repugnancy upon proper examination of substance of the Act may not amount to a repugnancy in law. Determination of true nature and substance of the laws in question and even taking into consideration the extent to which such provisions can be harmonised, could resolve such a controversy and permit the laws to operate in their respective fields. The question of repugnancy arises only when both the legislatures are competent to legislate in the same field i.e. when both, the Union and the State laws, relate to a subject in List III {*Hoechst Pharmaceuticals Ltd. v. State of Bihar [(1983) 4 SCC 45]*}.

178. On the contrary, it is contended on behalf of the respondent that the planned development and matters relating to management of land are relatable to Entry 5/18 of the State List and acquisition being an incidental act,

the question of conflict does not arise and the provisions of the State Act can be enforced without any impediment. This controversy need not detain us any further because the contention is squarely answered by the Bench of this Court in *Bondu Ramaswamy v. Bangalore Development Authority [(2010) 7 SCC 129]*,

179. The Court has to keep in mind that function of these constitutional lists is not to confer power, but to merely demarcate the legislative heads or fields of legislation and the area over which the appropriate legislatures can operate. These entries have always been construed liberally as they define fields of power which spring from the constitutional mandate contained in various clauses of Article 246. The possibility of overlapping cannot be ruled out and by advancement of law this has resulted in formulation of, amongst others, two principal doctrines i.e. doctrine of pith and substance and doctrine of incidental encroachment. The implication of these doctrines is, primarily, to protect the legislation and to construe both the laws harmoniously and to achieve the object or the legislative intent of each Act. In the ancient case of *Subrahmanyan Chettiar v. Muttuswami Goundan (AIR 1941 FC 47)*, Sir. Maurice Gwyer, C.J. Supported the principle laid down by the Judicial Committee as a guideline i.e. pith and substance to be the true nature and character of the legislation, for the purpose of determining as to which list the legislation belongs to.

181. The primary object of applying these principles is not limited to determining the reference of legislation to an entry in either of the Lists, but there is a greater legal

requirement to be satisfied in this interpretative process. A statute should be construed so as to make it effective and operative on the principle expressed in the maxim ut res magis valeat quam pereat. Once it is found that in pith and substance, an Act is a law on a permitted field then any incidental encroachment, even on a forbidden field, does not affect the competence of the legislature to enact that law [*State of Bombay v. Narottamdas Jethabha (AIR 1951 SC 69)*].

182. To examine the true application of these principles, the scheme of the Act, its object and purpose, the pith and substance of the legislation are required to be focused at, to determine its true nature and character. The State Act is intended only to ensure planned development as a statutory function of the various authorities constituted under the Act and within a very limited compass. An incidental cause cannot override the primary cause. When both the Acts can be implemented without conflict, then need for construing them harmoniously arises.

187. Even if fractional overlapping is accepted between the two statutes, then it will be saved by the doctrine of incidental encroachment, and it shall also be inconsequential as both the constituents have enacted the respective laws within their legislative competence and, moreover, both the statutes can eloquently coexist and operate with compatibility. It will be in consonance with the established canons of law to tilt the balance in favour of the legislation rather than invalidating the same, particularly, when the Central and State Law can be

enforced symbiotically to achieve the ultimate goal of planned development."

(xi) In **Rajiv Sarin v. State of Uttarakhand** reported in (2011) 8 SCC 708, the Hon'ble Supreme Court examined the Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 vis-à-vis the Forest Act, 1927 and found that there was no repugnancy between the two, and held as follows:

"52. The aforesaid position makes it quite clear that even if both the legislations are relatable to List III of the Seventh Schedule of the Constitution, the test for repugnancy is whether the two legislations "exercise their power over the same subject-matter..." and secondly, whether the law of Parliament was intended "to be exhaustive to cover the entire field". The answer to both these questions in the instant case is in the negative, as the Indian Forest Act, 1927 deals with the law relating to forest transit, forest levy and forest produce, whereas the KUZALR Act deals with the land and agrarian reforms.

53. In respect of the Concurrent List under Seventh Schedule to the Constitution, by definition both the legislatures viz. the Parliament and the State legislatures are competent to enact a law. Thus, the only way in which the doctrine of pith and substance can and is utilised in determining the question of repugnancy is to find out whether in pith and substance the two laws operate and relate to the same matter or not. This can be either in the context of the same Entry in List III or different Entries in List III of the Seventh Schedule of the Constitution. In other words, what has to be examined is whether the two Acts

deal with the same field in the sense of the same subject matter or deal with different matters." (Emphasis Supplied)

(xii) In **Innoventive Industries Ltd. v. ICICI Bank and Ors.** reported in (2018) 1 SCC 407, the Hon'ble Supreme Court observed as follows:

"50. The case law referred to above, therefore, yields the following propositions:

i) Repugnancy Under Article 254 arises only if both the Parliamentary (or existing law) and the State law are referable to List III in the 7th Schedule to the Constitution of India.

ii) In order to determine whether the Parliamentary (or existing law) is referable to the Concurrent List and whether the State law is also referable to the Concurrent List, the doctrine of pith and substance must be applied in order to find out as to where in pith and substance the competing statutes as a whole fall. It is only if both fall, as a whole, within the Concurrent List, that repugnancy can be applied to determine as to whether one particular statute or part thereof has to give way to the other.

iii) The question is what is the subject matter of the statutes in question and not as to which entry in List III the competing statutes are traceable, as the entries in List III are only fields of legislation; also, the language of Article 254 speaks of repugnancy not merely of a statute as a whole but also "any provision" thereof.

iv) Since there is a presumption in favour of the validity of statutes generally, the onus of showing that a statute is repugnant to another has to be on the party attacking its validity. It must not be forgotten that that every effort should be made to reconcile the competing statutes and construe them both so as to avoid repugnancy - care should be taken to see whether the two do not really operate in different fields qua different subject matters.

v) Repugnancy must exist in fact and not depend upon a mere possibility.

vi) Repugnancy may be direct in the sense that there is inconsistency in the actual terms of the competing statutes and there is, therefore, a direct conflict between two or more provisions of the competing statutes. In this sense, the inconsistency must be clear and direct and be of such a nature as to bring the two Acts or parts thereof into direct collision with each other, reaching a situation where it is impossible to obey the one without disobeying the other. This happens when two enactments produce different legal results when applied to the same facts.

vii) Though there may be no direct conflict, a State law may be inoperative because the Parliamentary law is intended to be a complete, exhaustive or exclusive code. In such a case, the State law is inconsistent and repugnant, even though obedience to both laws is possible, because so long as the State law is referable to the same subject matter as the Parliamentary law to any extent, it must give way. One test of seeing whether the subject matter of the Parliamentary law is encroached upon is to find out whether the Parliamentary statute has adopted a plan or scheme which will be hindered and/or obstructed by giving effect to the State law. It can then be said that the State law trenches upon the Parliamentary statute. Negatively put, where Parliamentary legislation does not purport to be exhaustive or unqualified, but itself permits or recognises other laws restricting or qualifying the general provisions made in it, there can be said to be no repugnancy.

viii) A conflict may arise when Parliamentary law and State law seek to exercise their powers over the same subject matter. This need not be in the form of a direct conflict, where one says "do" and the other says "don't". Laws under this head are repugnant even if the Rule of conduct prescribed by both laws is identical. The test that has been applied in such cases is based on the principle on which the Rule of implied repeal rests, namely, that if the subject matter of the State legislation or part thereof is identical with that of the Parliamentary legislation, so that they cannot both stand together, then the State legislation will be said to be repugnant to the Parliamentary legislation. However, if the State legislation or part thereof deals not with the matters which formed the subject matter of Parliamentary legislation but with other and distinct matters though of a cognate and allied nature, there is no repugnancy.

ix) Repugnant legislation by the State is void only to the extent of the repugnancy. In other words, only that portion of the State's statute which is found to be repugnant is to be declared void.

x) The only exception to the above is when it is found that a State legislation is repugnant to Parliamentary legislation or an existing law if the case falls within Article 254(2), and Presidential assent is received for State legislation, in which case State legislation prevails over Parliamentary legislation or an existing law within that State. Here again, the State law must give way to any subsequent Parliamentary law which adds to, amends, varies or repeals the law made by the legislature of the State, by virtue of the operation of Article 254(2) proviso."

24. Let us consider a few decisions ***on entries*** in the Constitution of India, which are extracted hereunder:

(i) In **Union of India v. Harbhajan Singh Dhillon** [(1971) 2 SCC 779], while interpreting the Entries in the Constitutional Lists, a Seven-Judge Bench of the Hon'ble Supreme Court, held as under:

"22. It must be remembered that the function of the lists is not to confer powers; they merely demarcate the legislative field. The Federal Court, while interpreting the Government of India Act in *Governor-General-in-Council v. Releigh Investment Co. 1944 FCR 229, 261* observed:

"It would not be right to derive the power to legislate on this topic merely from the reference to it in the List, because the purpose of the Lists was not to create or confer powers, but only to distribute between the Federal and the Provincial Legislatures the powers which had been conferred by Sections 99 and 100 of the Act."

23. In ***Harakchand Ratanchand Banthia v. Union of India*** [(1969) 2 SCC 166] Ramaswami, J., speaking on behalf of

the Court, while dealing with the Gold (Control) Act (45 of 1968), observed as follows:

> "Before construing these entries it is useful to notice some of the well-settled rules of interpretation laid down by the Federal Court and by this Court in the matter of construing the entries. The power to legislate is given to the appropriate Legislature by Article 246 of the Constitution. The entries in the three Lists are only legislative heads or fields of legislation, they demarcate the area over which the appropriate Legislatures can operate."

24. We are compelled to give full effect to Article 248 because we know of no principle of construction by which we can cut down the wide words of a substantive article like Article 248 by the wording of entry in Schedule VII. If the argument of the respondent is accepted. Article 248 would have to be re-drafted as follows:

> "Parliament has exclusive power to make any law with respect to any matter not mentioned in the Concurrent List or State List, provided it has not been mentioned by way of exclusion in any entry in List I. We simply have not the power to add a proviso like this to Article 248."

(ii) In **Ujagar Prints v. Union of India** [(1989) 3 SCC 488], the Hon'ble Apex Court described these Entries and stated the principles which would help in interpretation of these Entries. While enunciating these principles, the Court held as under:

> "48. Entries to the legislative lists, it must be recalled, are not sources of the legislative power but are merely topics or fields of legislation and must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The expression "with respect to" in Article 246 brings in the doctrine of "Pith and Substance" in the understanding of the

> exertion of the legislative power and wherever the question of legislative competence is raised the test is whether the legislation, looked at as a whole, is substantially 'with respect to' the particular topic of legislation. If the legislation has a substantial and not merely a remote connection with the entry, the matter may well be taken to be legislation on the topic."

(iii) The Hon'ble Supreme Court, while referring to the principles of interpretation of Entries in the legislative Lists, expanded the application to all ancillary or subsidiary matters in **Jijubhai Nanabhai Kachar v. State of Gujarat** reported in (1995) Supp. 1 SCC 596 and held as under:

> "7. It is settled law of interpretation that entries in the Seventh Schedule are not powers but fields of legislation. The legislature derives its power from Article 246 and other related articles of the Constitution. therefore, the power to make the Amendment Act is derived not from the respective entries but under Article 246 of the Constitution. The language of the respective entries should be given the widest scope of their meaning, fairly capable to meet the machinery of the Government settled by the Constitution. Each general word should extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. When the vires of an enactment is impugned, there is an initial presumption of its constitutionality and if there is any difficulty in ascertaining the limits of the legislative power, the difficulty must be resolved, as far as possible in favour

of the legislature putting the most liberal construction upon the legislative entry so that it may have the widest amplitude...."

(iv) In **State of West Bengal v. Kesoram Industries Ltd**. reported in (2004) 10 SCC 201, the Hon'ble Apex Court observed as follows:

"That the entries in two lists (Lists I and II in that case) must be construed in a manner so as to avoid conflict. While facing an alleged conflict between the entries in these Lists, what has to be decided first is whether there is actually any conflict. If there is none, the question of application of the non obstante clause does not arise. In case of a prima facie conflict, the correct approach to the question is to see whether it is possible to effect reconciliation between the two entries so as to avoid such conflict. Still further, the Court held that in the event of a conflict it should be determined by applying the doctrine of pith and substance to find out, whether, between entries assigned to two different legislatures, the particular subject of the legislation falls within the ambit of the one or the other. Where there is a clear and irreconcilable conflict between the Union and a Provincial Legislature it is the law of the Union that must prevail. In that event the court can proceed to examine whether an incidental encroachment upon another field of legislation can be ignored, reference can be made to paras 31, 75 and 129 of that judgment."

(v) A Constitution Bench of the Hon'ble Supreme Court, while answering a Presidential Reference and deciding connected cases, in **Association of Natural Gas v. Union of India reported in**

(2004) 4 SCC 489, stated the principle that it is the duty of the Court to harmonize laws and resolve conflicts, and, in para 13, held as under:

> "13. The Constitution of India delineates the contours of the powers enjoyed by the State Legislature and Parliament in respect of various subjects enumerated in the Seventh Schedule. The rules relating to distribution of powers are to be gathered from the various provisions contained in Part XI and the legislative heads mentioned in the three lists of the Schedule. The legislative powers of both the Union and State Legislatures are given in precise terms. Entries in the lists are themselves not powers of legislation, but fields of legislation. However, an entry in one list cannot be so interpreted as to make it cancel or obliterate another entry or make another entry meaningless. In case of apparent conflict, it is the duty of the court to iron out the crease and avoid conflict by reconciling the conflict. If any entry overlaps or is in apparent conflict with another entry, every attempt shall be made to harmonise the same."

(vi) In **Offshore Holdings Pvt. Ltd. vs. Bangalore Development Authority and Ors.** reported in (2011) 3 SCC 139, the Hon'ble Apex Court held as follows:

> "The entries in the legislative lists are not the source of powers for the legislative constituents but they merely demarcate the fields of legislation. It is by now well-settled law that these entries are to be construed liberally and widely so as to attain the purpose for which they have been

enacted. Narrow interpretation of the entries is likely to defeat their object as it is not always possible to write these entries with such precision that they cover all possible topics and without any overlapping.

The Courts have taken a consistent view and it is well-settled law that various Entries in three lists are not powers of legislation but are fields of legislation. The power to legislate flows, amongst others, from Article 246 of the Constitution. Article 246(2), being the source of power incorporates the non-obstante clause, 'notwithstanding anything contained in Clause (3), Parliament and, subject to Clause (1), the legislature of any State' have power to make laws with respect to any of the matters enumerated in List III. Article 246 clearly demarcates the fields of legislative power of the two legislative constituents. It clearly states on what field, with reference to the relevant constitutional Lists and which of the legislative constituents has power to legislate in terms of Article 246 of the Constitution. While the States would have exclusive power to legislate under Article 246(2) of the Constitution in relation to List II; the Concurrent List keeps the field open for enactment of laws by either of the legislative constituents.

In the event the field is covered by the Central legislation, the State legislature is not expected to enact a law contrary to or in conflict with the law framed by the Parliament on the same subject. In that event, it is likely to be hit by the rule of repugnancy and it would be a stillborn or invalid law on that ground. Exceptions are not unknown to the rule of repugnancy/covered field. They are the constitutional exceptions under Article 254(2) and the judge

enunciated law where the Courts declare that both the laws can co-exist and operate without conflict. The repugnancy generally relates to the matters enumerated in List III of the Constitution.

The Court has to keep in mind that it is construing a Federal Constitution. It is the essence of a Federal Constitution that there should be a distribution of legislative powers between the Centre and the Provinces. In a Federal Constitution unlike a legally omnipotent legislature like British Parliament, the constitutionality of a law turns upon the construction of entries in the legislative Lists. If a legislature with limited or qualified jurisdiction transgresses its powers, such transgression may be open, direct or overt, or disguised, indirect or covert and it may encroach upon a field prohibited to it. Wherever legislative powers are so distributed, situation may arise where two legislative fields might apparently overlap, it is then the duty of the Courts, however, difficult it may be, to ascertain to what degree and to what extent, the Authority to deal with the matters falling within these classes of subjects exist in each legislature and to define, in the particular case before them, the limits of respective powers. It could not have been the intention that a conflict should exist; and, in order to prevent such a result the two provisions must be read together, and the language of one interpreted, and, where necessary modified by that of the other. [Refer *A.S. Krishna v. Madras State AIR 1957 SC 297 and Federation of Hotels and Restaurants v. Union of India (1989) 3 SCC 634*].

Article 246 lays down the principle of federal supremacy that in case of inevitable and irreconcilable

conflict between the Union and the State powers, the Union power, as enumerated in List I, shall prevail over the State and the State power, as enumerated in List II, in case of overlapping between List III and II, the former shall prevail. This principle of federal supremacy laid down in Article 246(1) of the Constitution should normally be resorted to only when the conflict is so patent and irreconcilable that co-existence of the two laws is not feasible. Such conflict must be an actual one and not a mere seeming conflict between the Entries in the two Lists. While Entries have to be construed liberally, their irreconcilability and impossibility of co-existence should be patent.

One, who questions the constitutional validity of a law as being ultra vires, takes the onus of proving the same before the Court. Doctrines of pith and substance, overlapping and incidental encroachment are, in fact, species of the same law. It is quite possible to apply these doctrines together to examine the repugnancy or otherwise of an encroachment. In a case of overlapping, the Courts have taken the view that it is advisable to ignore an encroachment which is merely incidental in order to reconcile the provisions and harmoniously implement them. If, ultimately, the provisions of both the Acts can co-exist without conflict, then it is not expected of the Courts to invalidate the law in question.

The repugnancy would arise in the cases where both the pieces of legislation deal with the same matter but not where they deal with separate and distinct matters, though of a cognate and allied character. Where the State legislature has enacted a law with reference to a particular

> Entry with respect to which, the Parliament has also enacted a law and there is an irreconcilable conflict between the two laws so enacted, the State law will be a stillborn law and it must yield in favour of the Central law. To the doctrine of occupied/overlapping field, resulting in repugnancy, the principle of incidental encroachment would be an exception.
>
> It is an established principle of law that an Act should be construed as a complete instrument and not with reference to any particular provision or provisions. "That you must look at the whole instrument inasmuch as there may be inaccuracy and inconsistency; you must, if you can, ascertain what is the meaning of the instrument taken as a whole in order to give effect, if it be possible to do so, to the intention of the framer of it", said Lord Halsbury. When a law is impugned as ultra vires the powers of the legislature which enacted it, what has to be ascertained is the true character of the legislation. To do so one must have regard to the enactment as a whole, to its object and to the scope and effect of its provisions. It would be quite an erroneous approach to view such a statute not as an organic whole but as a mere collection of sections, then disintegrate it into parts, examine under what head of legislation those parts would severally fall and by that process determine what portions thereof are intra vires, and what are not [Reference can be made to A.S. Krishna's case (supra).”

25. Let us have a comparison of the legislative intent of two enactments. The Prevention of Cruelty to Animals Act, 1960 is an Act to

prevent infliction of unnecessary pain or suffering on animals and for that purpose, to amend the law relating to the prevention of cruelty to animals. Whereas, the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 is an Act to consolidate and amend the laws relating to prohibition of the sacrifice of animals and birds in or in the precincts of Hindu temples in the State of Kerala. The former is to prevent cruelty to animals and the latter is to prohibit sacrifice of animals and birds in the precincts of temples in the State of Kerala.

26. Bare reading of the above makes its abundantly clear that the object and the purpose of both the Acts are entirely different. Prevention of Cruelty to Animals Act, 1960 does not employ the word “sacrifice”, which in the latter Act of the State - Kerala Animals and Birds Sacrifices Prohibition Act, 1968, as per Section 2(b), has been defined as killing or maiming of any animal or bird, for the purpose, or with an intention of propitiating any deity. Giving our due consideration to the decisions of the Hon'ble Supreme Court on interpretation of statutes and repugnancy, we have no hesitation to conclude that the legislative intent in enacting the above laws, is unambiguous. That apart, having regard to the categorical admission of the petitioners that killing an animal or bird for personal consumption is different from killing or maiming of any animal or bird, for the purpose, or with an intention of propitiating any deity, there

is a difference in the legislative intent between the two laws.

27. Let us consider few decisions, as to whether, **Courts can add or delete or substitute any word to a section or rule**, as the case may be.

> "(i) In **CIT v. Badhraja and Company** reported in 1994 Supp (1) SCC 280, the Hon'ble Apex Court held that,-
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> "An object oriented approach, however, cannot be carried to the extent of doing violence to the plain meaning of the Section used by rewriting the Section or substituting the words in the place of actual words used by the legislature."
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> (ii) In **Dadi Jagannadham v. Jammulu Ramulu** reported in (2001) 7 SCC 71, the Hon'ble Supreme Court held that,
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> "13. We have considered the submissions made by the parties. The settled principles of interpretation are that the court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the court would not go to its aid to correct or make up the deficiency. The court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there."
>
> (iii) In **Institute of C.A. of India v. Ajit Kumar Iddya** reported in AIR 2003 Kant. 187, the Karnataka High Court held that,-

> "So far as the cardinal law of interpretation is concerned, it is settled that if the language is simple and unambiguous, it is to be read with the clear intention of the legislation. Otherwise also, any addition/subtraction of a word is not permissible. In other words, it is not proper to use a sense, which is different from what the word used ordinarily conveys. The duty of the Court is not to fill up the gap by stretching a word used. It is also settled that a provision is to be read as a whole and while interpreting, the intention and object of the legislation have to be looked upon. However, each case depends upon the facts of its own."

(iv) In **Maulavi Hussein Haji Abraham Umarji v. State of Gujarat** (AIR 2004 SC 3947), the Hon'ble Supreme Court held as follows:

> "18. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent.
>
> 19. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. (See *Institute of Chartered Accountants of India v. M/s.Price Waterhouse and Anr.,* AIR 1998 SC 74). The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of

words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner, [1846] 6 Moore PC 1, Courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See the State of Gujarat and Ors., v. Dilipbhai Nathjibhai Patel and Anr., JT (1998) 2 SC 253). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See Stock v. Frank Jones (Tiptan) Ltd., [1978] l All ER 948 HL.) Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn L.C. in Vickers Sons and Maxim Ltd. v. Evans, [1910] AC 445 HL, quoted in Jamma Masjid, Mercara v. Kodimaniandra Deviah and Ors., AIR (1962) SC 847).

20. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage, 218 FR 547). The view was reiterated in *Union of India and Ors., v. Filip Tiago De Gama of Vedem Vasco De Gama*, AIR (1990) SC 981.

21. In *Dr. R. Venkatchalam and Ors. Etc. v. Dy. Transport Commissioner and Ors. Etc., AIR (1977) SC 842*, it was observed that Courts must avoid the danger of a priori

> determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.
>
> 22. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *Commissioner of Sales Tax, M.P., v. Popular Trading Company, Ujjain [2000] 5 SCC 515*)."

(v) In **Sanjay Singh v. U.P. Public Service Commission** reported in (2007) 3 SCC 720, the Hon'ble Supreme Court held that, -

> "It is well settled that courts will not add words to a statute or read into the statute words not in it. Even if the courts come to the conclusion that there is any omission in the words used, it cannot make up the deficiency, where the wording as it exists is clear and unambiguous. While the courts can adopt a construction which will carry out the obvious intention of the legislative or the rule-making authority, it cannot set at naught the legislative intent clearly expressed in a statute or the rules."

28. Power is conferred on the Central and State Legislatures to enact on the subject - Prevention of Cruelty to Animals as well as Protection of Wild Animals and Birds. As stated above, the word "sacrifice" is not used in the Prevention of Cruelty to Animals Act, 1960. Contention of the petitioners is nothing, but adding words to the Statute -

Prevention of Cruelty to Animals Act, 1960, and that Section 28 of the Act, 1960 does not prohibit killing of an animal. At the risk of repetition, Section 28 of the Act is reproduced:

> **"28. Saving as respects manner of killing prescribed by religion.**- Nothing contained in this Act shall render it an offence to kill any animal in a manner required by the religion of any community."

29. At this juncture, we may consider the definition of the word "animal" in Act, 1960. As per Section 2(a) of the Act, unless the context otherwise requires, "animal" means any living creature other than a human being. Definition is wide to cover all animals, inclusive of birds. Prevention of Cruelty to Animals Act, 1960 does not employ the word "sacrifice" for the purpose of religious practice.

30. The issue raised with respect to sacrifice of animals is more *res integra*, in view of some of the authoritative judgments of the Hon'ble Supreme Court, which are extracted hereunder:

> "(I) In **Commr. Hindu Religious Endowments, Madras v. Sri. Lakshmindra Thirtha Swamiar of Sri. Shrur Mutt** [AIR 1954 SC 282], a Seven Member Constitution Bench of the Hon'ble Supreme Court held as follows:
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> > "It will be seen that besides the right to manage its own affairs in matters of religion which is given by cl. (b), the next two clauses of Art.26 guarantee to a religious denomination the right to acquire and own property and to

administer such property in accordance with law. The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The latter is a fundamental right which no Legislature can take away, where as the former can be regulated by laws which the legislature can validly impose. It is clear, therefore, that questions merely relating to administration of properties belonging to a religious group or institution are not matters of religion to which cl. (b) of the Article applies. What then are matters of religion? The word "religion" has not been defined in the Constitution and it is a term which is hardly susceptible of any rigid definition. In an American case -- 'Vide Davis v. Beason', (1888) 133 US 333 at p.342 (G), it has been said :

> "that the term 'religion' has reference to one's views of his relation to his Creator and to the obligations they impose of reverence for His Being and character and of obedience to His will. It is often confounded with 'cultus' of form or worship of a particular sect, but is distinguishable from the latter."

We do not think that the above definition can be regarded as either precise or adequate. Articles 25 and 26 of our Constitution are based for the most part upon Art 44(2), Constitution of Eire and we have great doubt whether a definition of 'religion' as given above could have been in the minds of our Constitution makers when they framed the Constitution. Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent

First Cause. A religion undoubtedly has its basis in a system of belief or doctrines which are regarded by those who profess that religion as conductive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress."

The contention formulated in such broad terms cannot, we think be supported, in the first place, what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Art.26(b).

What Art.25(2)(a) contemplates is not regulation by the State of religious practices as such, the freedom of which is guaranteed by the Constitution except when they

run counter to public order, health and morality but regulation of activities which are economic, commercial or political in their character though they are associated with religious practices."

(ii) In **Sardar Syedna Taher Saifuddin Saheb v. State of Bombay** [AIR 1962 SC 853], a Five Member Constitution Bench of the Hon'ble Supreme Court held as follows:

"..... It is noteworthy that the right guaranteed by Art.25 is an individual right, as distinguished from the right of an organised body like a religious denomination or any section thereof, dealt with by Art.26. Hence, every member of the community has the right, so long as he does not in any way interfere with the corresponding rights of others, to profess, practise and propagate his religion, and everyone is guaranteed his freedom of conscience. The question naturally arises : Can an individual be compelled to have a particular belief on pain of a penalty, like excommunication ? One is entitled to believe or not to believe a particular tenet or to follow or not to follow a particular practice in matters of religion. No one can, therefore, be compelled, against his own judgment and belief, to hold any particular creed or follow a set of religious practices. The Constitution has left every person free in the matter of his relation to his Creator, if he believes in one. It is thus, clear that a person is left completely free to worship God according to the dictates of his conscience, and that his right to worship as he pleased is unfettered so long as it does not come into conflict with any restraints, as aforesaid, imposed by the State in the interest of public order etc. A person is not liable to answer for the verity of his religious views, and he cannot be

questioned as to his religious beliefs, by the State or by any other person. Thus, though, his religious beliefs are entirely his own and his freedom to hold those beliefs is absolute, he has not the absolute right to act in any way he pleased in exercise of his religious beliefs. He has been guaranteed the right to practice and propagate his religion, subject to the limitations aforesaid. His right to practice his religion must also be subject to the criminal laws of the country, validly passed with reference to actions which the Legislature has declared to be of a penal character. Laws made by a competent legislature in the interest of public order and the like, restricting religious practices, would come within the regulating power of the State. For example, there may be religious practices of sacrifice of human beings, or sacrifice of animals in a way deleterious to the well being of the community at large. It is open to the State to intervene, by legislation, to restrict or to regulate to the extent of completely stopping such deleterious practices. It must, therefore, be held that though the freedom of conscience is guaranteed to every individual so that he may hold any beliefs he likes, his actions in pursuance of those beliefs may be liable to restrictions in the interest of the community at large, as may be determined by common consent, that is to say, by a competent legislature. It was on such humanitarian grounds, and for the purpose of social reform, that so called religious practices like immolating a widow at the pyre of her deceased husband, or of dedicating a virgin girl of tender years to a god to function as a devadasi, or of ostracizing a person from all social contacts and religious communion on account of his having eaten forbidden food or taboo, were stopped by legislation."

(iii) In **State of W.B. And Others v. Ashutosh Lahiri and Others** reported in (1995) 1 SCC 189, the Hon'ble Supreme Court held as follows:

> "8. The aforesaid relevant provisions clearly indicate the legislative intention that healthy cows which are not fit to be slaughtered cannot be slaughtered at all. That is the thrust of S.4 of the Act. In other words there is total ban against slaughtering of healthy cows and other animals mentioned in the schedule under S.2 of the Act. This is the very essence of the Act and it is necessary to subserve the purpose of the Act i.e. to increase the supply of milk and avoid the wastage of animal power necessary for improvement of agriculture. Keeping in view these essential features of the Act, we have to construe S.12 which deals with power to grant exemption from the Act. As we have noted earlier the said section enables the State Government by general or special order and subject to such conditions as it may think fit to impose, to exempt from the operation of this Act slaughter of any animal for any religious, medicinal or research purpose. Now, it becomes clear that when there is a total ban under the Act so far as slaughtering of healthy cows which are not fit to be slaughtered as per S.4(1) is concerned, if that ban is to be lifted even for a day, it was to be shown that such lifting of ban is necessary for subserving any religious, medicinal or research purpose. The Constitution Bench decision of this Court in Mohd. Hanif Quareshi's case (1959 SCR 629 : AIR 1958 SC 731) (supra) of the report speaking through Das C. J. referred to the observation in Hamilton's translation of Hedaya Book, XLIII at p. 592 that it is the duty of every free Mussulman arrived at

the age of maturity, to offer a sacrifice on the YD Kirban, or festival of the sacrifice, provided he be then possessed of Nisab and be not a traveller. The sacrifice established for one person is a goat and that for seven a cow or a camel. It is, therefore, optional for a Muslim to sacrifice a goat for one person or a cow or a camel for seven persons. It does not appear to be obligatory that a person must sacrifice a cow. Once the religious purpose of Muslims consists of making sacrifice of any animal which should be a healthy animal, on Bakri Idd, then slaughtering of cow is not the only way of carrying out that sacrifice. It is, therefore, obviously not an essential religious purpose but an optional one. In this connection Mr. Tarkunde for the appellants submitted that even optional purpose would be covered by the term 'any religious purpose' as employed by S.12 and should not be an essential religious purpose. We cannot accept this view for the simple reason that S.12 seeks to lift the ban in connection with slaughter of such animals on certain conditions. For lifting the ban it should be shown that it is essential or necessary for a Muslim to sacrifice a healthy cow on Bakri Idd day and if such is the requirement of religious purpose then it may enable the State in its wisdom to lift the ban at least on Bakri Idd day. But that is not the position. It is well settled that an exceptional provision which seeks to avoid the operation of main thrust of the Act has to be strictly construed. In this connection it is profitable to refer to the decisions of this Court in the cases Union of India v. Wood Papers Ltd., (1991 (1) JT (SC) 151 : AIR 1991 SC 2049) and Novopan India Ltd., Hyderabad v. C.C.E. and Customs, Hyderabad, (1994 (6) JT (SC) 80 : 1994 AIR SCW 3976). If any

optional religious purpose enabling the Muslim to sacrifice a healthy cow on Bakri Idd is made the subject matter of an exemption under S.12 of the Act then such exemption would get granted for a purpose which is not an essential one and to that extent the exemption would be treated to have been lightly or cursorily granted. Such is not the scope and ambit of S.12. We must, therefore, hold that before the State can exercise the exemption power under S.12 in connection with slaughter of any healthy animal covered by the Act, it must be shown that such exemption is necessary to be granted for subserving an essential religious, medicinal or research purpose. If granting of such exemption is not essential or necessary for effectuating such a purpose no such exemption can be granted so as to by pass the thrust of the main provisions of the Act. We, therefore, reject the contention of the learned counsel for the appellants that even for an optional religious purpose exemption can be validity granted under S.12 In this connection it is also necessary to consider Quareshi's case (AIR 1958 SC 731) (supra) which was heavily relied upon by the High Court. The total ban of slaughter of cows even on Bakri Idd day as imposed by Bihar Legislature under Bihar Prevention of Animals Act, 1955 was attacked as violative of fundamental right of the petitioners under Art.25 of the Constitution. Repelling this contention the Constitution Bench held that even though Art.25(1) granted to all persons the freedom to profess, practice and propagate religion, as slaughter of cows on Bakri Idd was not an essential religious practice for Muslims, total ban on cow's slaughter on all days including Bakri Idd day would not be violative of Art. 25 (1). As we have noted earlier the Constitution Bench speaking

through Das C. J., held that it was optional to the Muslims to sacrifice a cow on behalf of seven persons on Bakri Idd but it does not appear to be obligatory that a person must sacrifice a cow. It was further observed by the Constitution Bench that the very fact of an option seemed to run counter to the notion of an obligatory duty. One submission was also noted that a person with six other members of his family may afford to sacrifice a cow but may not be able to afford to sacrifice seven goats, and it was observed that in such a case there may be an economic compulsion although there was no religious compulsion. In this connection, Das C. J., referred to the historical background regarding cow slaughtering from the times of Mughal Emperors. Mughal Emperor Babar saw the wisdom of prohibiting the slaughter of cows as and by way of religious sacrifice and directed his son Humayun to follow this. Similarly, Emperors Akbar, Jehangir and Ahmed Shah, it is said, prohibited cow slaughter. In the light of this historical background it was held that total ban on cows slaughter did not offend Art. 25(1) of the Constitution.

9. In view of this settled legal position it becomes obvious that if there is no fundamental right of a Muslim to insist on slaughter of healthy cow on Bakri Idd day, it cannot be a valid ground for exemption by the State under S.12 which would in turn enable slaughtering of such cows on Bakri Idd. The contention of learned counsel for the appellant that Art. 25(1) of the Constitution deals with essential religious practices while S.12 of the Act may cover even optional religious practices is not acceptable. No such meaning can be assigned to such an exemption clause which seeks to whittle down and dilute the main provision of the

Act, namely S.4 which is the very heart of the Act. If the appellants' contention is accepted then the State can exempt from the operation of the Act, the slaughter of healthy cows even for non essential religious, medicinal or research purpose, as we have to give the same meaning to the three purposes, namely, religious, medicinal or research purpose, as envisaged by. Sec 12. It becomes obvious that if for fructifying any medicinal or research purpose it is not necessary or essential to permit slaughter of healthy cow, then there would be no occasion for the State to invoke exemption power under S.12 of the Act for such a purpose. Similarly it has to be held that if it is not necessary or essential to permit slaughter of a healthy cow for any religious purpose it would be equally not open to the State to invoke its exemption power under S.12 for such a religious purpose. We, therefore, entirely concur with the view of the High Court that slaughtering of healthy cows on Bakri Idd is not essential or required for religious purpose of Muslims or in other words it is not a part of religious requirement for a Muslim that a cow must be necessarily scarified for earning religious merit on Bakri Idd."

(iv) In **N.Adithayan v. The Travancore Devaswom Board and others** reported in AIR 2002 SC 3538, the Hon'ble Supreme Court held as follows:

"16. It is now well settled that Article 25 secures to every person, subject of course to public order, health and morality and other provisions of Part-III, including Article 17 freedom to entertain and exhibit by outward Acts as well as propagate and disseminate such religious

belief according to his judgment and conscience for the edification of others. The right of the State to impose such restrictions as are desired or found necessary on grounds of public order, health and morality is inbuilt in Article 25 and 26 itself. Article 25(2)(b) ensures the right of the State to make a law providing for social welfare and reform besides throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus and any such rights of the State or of the communities or classes of society were also considered to need due regulation in the process of harmonizing the various rights. The vision of the founding fathers of Constitution to liberate the society from blind and ritualistic adherence to mere traditional superstitious beliefs sans reason or rational basis has found expression in the form of Article 17. The legal position that the protection under Articles 25 and 26 extend a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion and as to what really constitutes an essential part of religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion or practices regarded as parts of religion, came to be equally firmly laid down."

(v) In **Commissioner of Police and Others v. Acharya Jagadishwarananda Avadhuta and Another** [(2004) 12 SCC 770, the Hon'ble Apex Court held thus:

"9. The protection guaranteed under Articles 25 and 26 of the Constitution is not confined to matters of

doctrine or belief but extends to acts done in pursuance of religion and, therefore, contains a guarantee for rituals, observances, ceremonies and modes of worship which are essential or integral part of religion. What constitutes an integral or essential part of religion has to be determined with reference to its doctrines, practices, tenets, historical background etc. of the given religion. (See generally the Constitution bench decisions in The Commissioner v. L. T. Swamiar of Srirur Mutt (1954 SCR 1005), SSTS Saheb v. State of Bombay 1962 Supp (2) SCR 496), and Seshammal v. State of Tamilnadu (1972 (2) SCC 11), regarding those aspects that are to be looked into so as to determine whether a part or practice is essential or not). What is meant by 'an essential part or practices of a religion' is now the matter for elucidation. Essential part of a religion means the core beliefs upon which a religion is founded. Essential practice means those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practices the superstructure of religion is built. Without which, a religion will be no religion. Test to determine whether a part or practice is essential to the religion is - to find out whether the nature of religion will be changed without that part or practice. If the taking away of that part or practice could result in a fundamental change in the character of that religion or in its belief, then such part could be treated as an essential or integral part. There cannot be additions or subtractions to such part. Because it is the very essence of that religion and alterations will change its fundamental character. It is such permanent

> essential parts is what is protected by the Constitution. No body can say that essential part or practice of one's religion has changed from a particular date or by an event. Such alterable parts or practices are definitely not the 'core' of religion where the belief is based and religion is founded upon. It could only be treated as mere embellishments to the non essential part or practices."

31. On a conspectus of the facts and the proposition of law laid down by the Hon'ble Supreme Court in the decisions, extracted above, we are of the view that freedom of conscience and free profession, practice, propagation, and management of religious affairs, the fundamental rights guaranteed to a citizen under Articles 25 and 26 of Part III of the Constitution of India are subject to, public order, morality and health, and more importantly, to other provisions of Part III of the Constitution, and therefore, it thus means all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. That apart, freedom to manage religious affairs protected under Article 26 of the Constitution of India, as per the law laid down by the Hon'ble Apex Court in ***Acharya Jagadishwarananda Avadhuta*** (cited supra), makes it explicit that such a concept deals with freedom of establishment of the religion itself and not the rituals that are developed by the worshipers, after the formation of religion to satisfy their personal

needs. Likewise, sacrificing animals for propitiating the deity is exactly what the Hon'ble Apex Court has considered in the judgments extracted above and held that unless they are essentials of the religion, such acts are not protected under Article 25 of the Constitution of India. Therefore, merely by stating that freedom of conscience and free profession, practice and propagation as well as freedom to manage religious affairs are protected under Articles 25 and 26 of the Constitution of India, the petitioners are entitled to get the reliefs as sought for, to continue with sacrifices for propitiating any deity, cannot be sustained. So much so, no materials are forthcoming to establish that sacrificing animals and birds are essentials of the religion to drive home the case that Act, 1968 is interfering with Articles 25 and 26 of the Constitution.

32. Article 48 of the Constitution of India states that the State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle. Reading of the fundamental rights guaranteed under Part III, and the Directive Principles of the State Policy of the Constitution of India, make it clear that there is enough and more compassion extended under the provisions of the Constitution to protect the well being and interest of animals. Moreover, Part IVA of the

Constitution deals with fundamental duties, and it imbibes in every citizen of India the duty to protect and improve the natural environment, including forests, lakes, rivers and wild life, and to have compassion for living creatures.

33. Now, reverting back to Articles 25 and 26 of the Constitution of India, it is evident that the fundamental rights guaranteed therein, as stated earlier, are subject to certain restrictions such as public order, morality and health. In the judgments of the Hon'ble Apex Court, discussed above, it is established that public order is significantly different from law and order, that arises in individual cases. Public order is something which affects the public or a group of persons due to any disturbances, and in order to avoid such situations, it was consciously incorporated under Articles 25 and 26 of the Constitution that public order shall be maintained while enjoying freedom of conscience and management of religious affairs.

34. What is public order has been considered by the Hon'ble Apex Court in various judgments. In ***Nagendra Nath Mondal v. State of West Bengal*** [(1972) 1 SCC 498] and Nandalal Roy v. State of West Bengal [(1972) 2 SCC 524], the Hon'ble Supreme Court had occasion to consider breach of public order vis-a-vis breach of law and order and held that it solely depends on its extent and reach to the society and if the fact is

restricted to particular individuals or a group of individuals, it breaches the law and order problem, but if the effect and reach and potentiality of the act is so deep as to effect the community at large and/or even the tempo of the community, then it becomes a breach of the public order.

35. In ***K.Kedar v. State of West Bengal*** [(1972) 3 SCC 816], the Hon'ble Supreme Court held that,- an act by itself is not determinative of its own gravity. In its quality, it may not differ from another, but in the potentiality, it may be very different. It was further held that similar acts in different context affect differently law and order on the one hand and public order on the other, and further that public order is the even tempo of the life of the community taking the country as a whole or even a specified locality and it is the degree of disturbances and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of the law and order. So also, in ***State of U.P. v. Hari Shankar Tewari*** [(1987) 2 SCC 490], the Hon'ble Apex Court held that, - An act which may not at all be objected to in certain situations is capable of totally disturbing the public tranquility. When communal tension is high, an indiscreet act of no significance is likely to disturb or dislocate the even tempo of the life of the community.

36. Taking into account these formidable aspects and considering the same along with the facts putforth by the petitioners, we are of the

view that State has brought out the Kerala Animals and Bird Sacrifices Prohibition Act, 1968 with an object sought to be achieved i.e, to prohibit killing of animals and birds in or in the precincts of Hindu temples in the State of Kerala, in the name of sacrifice or with an intention of propitiating any deity. Though grounds have been raised that other religions permit sacrifices and that there is discrimination, violating Article 14 of the Constitution of India, Mr.P.Sathisan, learned counsel for the petitioners, contended that he is not pressing the ground. Placing on record, there is no need to advert to the same.

37. On the aspect of Government of Tamil Nadu, repealing Act, 1948 by Act 20 of 2004, it is purely the decision of State of Tamil Nadu, which cannot be said to have an application on the ground that States in India being federal, is empowered to take decision. Decision taken by the State of Tamil Nadu is not binding on the State of Kerala.

38. With due regard to the argument advanced to Section 28 of the Prevention of Cruelty to Animals Act, 1960, that nothing contained in this Act shall render it an offence to kill any animal, in a manner required by the religion of any community, there are no materials on record to substantiate which community of the religion is required under the Hindu or any other religion, to kill an animal, for propitiating, if not personal consumption, in the manner required in the religion. We are also of the

view that the expression used in Section 28 is "killing" and not sacrifice and, therefore, the said provision is intended to protect the manner of killing by any particular community, but not for any religious purpose.

39. After conducting a threadbare research on the issue, the High Court of Tripura at Agartala in ***Subhas Bhattacharjee v. The State of Tripura and Ors.*** [MANU/TR/0215/2019], has considered the matter of goat sacrifice which was existing in a temple, and found that 500 years before, a practice of human sacrifice was remaining in a community. Ultimately, it was held that such sacrifices are superstitious beliefs, which are not essential part of the religion, and upheld the provisions of The Prevention of Cruelty to Animals Act, 1960. Though a contention has been made that the above judgment is stayed by the Hon'ble Apex Court, it is also a well settled principle that an order of stay will not have the effect of wiping out the judgment. Reference can be made to the decision in Shree Chamundi Mopeds Ltd. v. Church of South India trust Association, Madras reported in (1992) 2 SCR 999, wherein the Hon'ble Apex Court while pointing out the difference between an order of stay of operation of the order impugned and an order quashing the order itself, held as follows:

> "While considering the effect of an interim order staying the operation of the order under-challenge, a distinction has to be

made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21,1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7,1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority."

Bearing in mind all these aspects, we have no hesitation to hold that there is no repugnancy in the two laws. The constitutional validity

of the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 is upheld.

Writ petition fails and accordingly, dismissed. No costs.

Sd/-
S.MANIKUMAR
CHIEF JUSTICE

Sd/-
SHAJI P. CHALY
JUDGE

krj

APPENDIX

PETITIONER'S/S EXHIBITS:

P1:- COPY OF THE KERALA ANIMALS AND BIRDS SACRIFICES PROHIBITION ACT, 1968.

P2: COPY OF THE RELEVANT EXTRACT OF THE PREVENTION OF CRUELTY OF ANIMALS ACT, 1960.

RESPONDENTS' EXHIBITS:-NIL

//TRUE COPY//

PA TO CJ