Supreme Court of India
Most. Rev. P.M.A. Metropolitan & ... vs Moran Mar Marthoma & Anr on 20 June, 1995
Equivalent citations: 1995 AIR 2001, 1995 SCC Supl. (4) 286
Author: R Sahai
Bench: Sahai, R.M. (J)

PETITIONER:
MOST. REV. P.M.A. METROPOLITAN & ORS.

Vs.

RESPONDENT:
MORAN MAR MARTHOMA & ANR.

DATE OF JUDGMENT20/06/1995

BENCH:
SAHAI, R.M. (J)
BENCH:
SAHAI, R.M. (J)
JEEVAN REDDY, B.P. (J)
SEN, S.C. (J)

CITATION:
1995 AIR 2001 1995 SCC Supl. (4) 286
JT 1995 (5) 1 1995 SCALE (4)1

ACT:

HEADNOTE:

JUDGMENT:

J U D G E M E N T R.M. Sahai.J.

When Lord Jesus Christ was asked by a youngman who was possessed of property what was the road to heaven, the Holy Bible records it in Chapter 19 of the New Testament - the Gospel According to St. Mathew thus.

> "16. And, behold, one came and said unto him, Good Master, what good thing shall I do, that I may have eternal life?
>
> 17. And he said unto him, Why callest thou me good? there is none good but one, that is, God: but if thou wilt enter into life, keep the commandments.

18. He saith unto him, Which? Jesus said, Thou shalt do no murder, Thou shalt not commit adultery, Thou shalt not steal, Thou shalt not bear false witness,

19. Honour thy father and thy mother: and, Thou shalt love thy neighbour as thyself.

20. The young man saith unto him, All these things have I kept from my youth up: what lack I yet?

21. Jesus said unto him, if thou wilt be perfect, go and sell that thou hast, and give to the poor, and thou shalt have treasure in heaven: and come and follow me.

22. But when the young man heard that saying, he went away sorrowful: for he had great possessions".

Turning 'away sorrowful', is the long and short of this litigation between two rival groups of Jacobite Christian Community of Malabar which has been going on for more than hundred years apparently for religious and spiritual supremacy over the Church but really for administrative control and temporal powers over vast assets which have accumulated out of 3000 star pagodas created in Trust in 1808 for charitable purposes by one Moran Mar Marthoma VI popularly called `Dionysius the Great'. This is the third round between the parties in this court, the two earlier being in 1954 and 1959. While deciding the appeal in 1959 this Court had observed that the dispute had been going on for a considerable length of time which has brought in its train protracted litigation involving ruinous costs. The effect of the decision was that for sometime both the parties resolved their differences by mutual adjustment, but `those who hoped - fondly, as events have proved, that the decision of the Supreme Court in Moran Mar Basselios Catholicos v. Thukalan Paulo Avira & others (1958 K.L.T.

721) = AIR 1959 SC 31 and the reported reconciliation following upon that decision would give the quietus to the litigation, prolific, prolonged and ruinous, arising out of the faction in the Malankara Jacobite Syrian Church between what is known as the Patriarch's Party on the one hand and what is known as the Catholicos' Party on the other, counted without the resourcefulness of those entrenched in and of those covetous of positions of power, and we dare say, of profit, and of those who, for one reason or another, have a vested interest in the continuance of the dispute,' [Raman Nayar, J. in Appearl Suit No. 269 of 1960 decided on 3rd April 1964].

How the much negotiated peace and quiet arrived at by written adjustments worked out by issuing letters from both the groups was shaken even before expiry of 15 years since the judgement was delivered by this Court in September, 1958 and what leld to filing of numerous suits eight of which were consolidated by the Additional. District. Judge but were heard and decided by a learned Single Judge of the High Court, as they were transferred under orders of this Court, and were ultimately decided in appeal and cross objections by the Division Bench giving rise to these appeals and various legal issues including whether the suit under Section 9 of the Code of Civil Procedure was maintainable, effect of Places of Worship (Special Provisions) Act, 1991 and whether the decision in earlier suit filed by the appelants operated as res judicata can be, better, appreciated if the history

how the Malankara Church came to be established, what is its nature and how the two groups Patriarch of Antioch and Catholicos came to be formed leading to internecine struggle and litigation may be noticed in brief. The adversorial duel between the two rival groups has assumed so much of publicity that it has found place even in the Encyclopedia of Religion. It may be prefaced with brief observations about the Christian religion and the Church.

Religion is founded on faith and belief. Faith emanates from conscience and belief is result of teaching and learning. Christianity is `a religion that traces its origins to Jesus of Nazareth, whom it affirms to be the chosen one (Christ) of God' [Encyclopedia Britannica, Volume 5, Page 693]. `It is embodied both in its principles and precepts in the Scriptures of the Old and New Testaments, which all denominations of Christians believe to be a Divine revelation, and the only rule of faith and obedience' [Faiths of the World by James Gardner, Volume 1, P. 516]. It is `a historical religion. It locates within the events of human history both the redemption it promises, and the revelation to which it lays claim' [The Encyclopedia of Religion, Volume 3, p. 348]. `In its origin Christianity is Eastern rather than Western. Jesus was a Palestinian Jew, and during the early, formative centuries of the church's life the Greek and Syriac East was both numerically stronger and intellectually more creative than the Latin West. Christianity came to India many centuries before it reached Europe as it is believed that St. Thomas, one of the original apostles of Jesus Christ, visited India in 56 A.D. and found the first Christian settlement in the South' [Religion in India by Dr. Karan Singh]. In A.D. 37 Apostolic See at Antioch was established by St. Peter to whom the stewardship of Church was entrusted by Lord Jesus Christ. It took root in Kerala within 20 years of the epoch making events in Jerusalem, the crucifixion, resurrection and ascension of the Lord Jesus Christ. St. Thomas, one of the 12 apostles of Jesus Christ visited India in A.D. 51/52 and established 7 Churches in the Malayalam speaking parts of South India. They are known as Malankara Jacobite (or orthodox) Syrian Church, "Malankara" means "Malayalam speaking" `The two Syrian Orthodox Churches in Syria and India, along with the Egyptian (Coptic), Ethiopian, and Armenian Churches, belong to the group of Ancient, or Oriental Orthodox, Churches, wrongly called "monophysite". Their Christology is essentially the same as that of the Eastern Orthodox related to the patriarchate of Constantinople. They affirm the perfect humanity as well as the perfect divinity of Christ, inseparably and unconfusedly united in the divine-human nature of the person of Christ' [Encyclopedia of Religion, Volume 14, page 227].

Jacobite Church is, `a name which the Syrian Church assumes to itself. When the Syrian Churches are interrogated as to the reason of this name they usually allege that they are the descendants of Jacob' [Faiths of the World by James Gardner, Volume II). `Known to the West as Jacobites (after Jacob Baradeus, c. 500-578, the reorganiser of the West Syrians and Egyptians in the sixth century), the Syrian Orthodox Church is found mainly in Syria, Lebanon, Jordan, Turkey, India, the United States, the Federal Republic of Germany, and Sweden. In 1985 the total number of Jacobites, including 1.8 million Indians, was about 2 million, in two separate jurisdictions -- one with Patriarch Ignatius Zakka as head in Damascus, Syria and the other with Catholicos Mar Thoma Mathews I as head, in Kottayam, Kerala, India' [Encyclopedia of Religion, Volume 14 p. 227]. The word `church' refers both to the Christian religious community and to the building used for Christian worship' [Encyclopedia Britannica, Volume 5 page 739). The Christian religion is one, but, `Christians differ greatly in their beliefs about the nature of the church' [Encyclopedia Britannica,

Volume 5, page 739] which was, `originally applied in the classical period to an official assembly of citizens.... In the Septuagint translation of the Old Testament (3rd-2nd centuries B.C.) the term ecclesia is used for the general assembly of the Jewish people especially when gathered for a religious purpose such as hearing the Law (Deut. ix, 10, xviii, 16; etc.) In the New Testament it is used of the whole body of believing Christians throughout the world (e.g., Matt.xvi, 18), of the believers in a particular area (e.g. Acts v, 11) and also of the congregation meeting in a particular house - the "house- church")' [Encyclopedia Britannica, Volume 5 page 739]. `The four marks or characteristics by which the church is said to be distinguished are recited in the creed - holy, catholic and apostolic'.

Coming to the history of Jacobite Syrian Church it is, both, fascinating and eventful. The long period stretching from A.D. 51-52 can be conveniently divided in three one, the religious and the formative period which saw the foundation of the church and the vicissitudes through which it passed. The second can be said to be the golden period, a period of affluence and prosperity, in which the church not only acquired assets and became financially rich but is also marked for administrative efficiency imparted by different metropolitans who were consecrated from time to time. But wealth breeds dissension, disharmony and discontent. And that is the unfortunate story of the last period beginning from 1879. More than 100 years have rolled by since then when the storm of strife for supremacy over the Church was taken to courts but the dust has not settled down till now. The first two periods have been described by the Royal Court of Appeal as, `Grand Periods, the first commencing from the foundation of the church and ending with the overthrow of the Portuguese power in India sometime in 1663, and the second period commencing from that year or 1665 and extending to the period when the famous Mulunthuruthy Synod was held in 1876 which was remarkable for more than one reason, including the one which led to struggle for spiritual supremacy and administrative control over temporal matters of the Church through the courts. The events till 1876 have been discussed in great detail in the judgment of the Royal Court of Appeal. The period thereafter commencing from the last quarter of 19th century and beginning of 20th century is remarkable for creation of Catholicate of East in this country and framing of Constitution by the Malankara Association. All this is discussed in Moran Mar Basselios (supra).

Religious spirit was dominant in the first period. Every move was religion oriented. The keen desire to delve more and more in spiritual than temporal matters was exhibited from time to time. Three important events took place during this long period. Although each was distance in time from the other but everyone was significant in its own way in shaping the future of the Church. The first, of course, was establishing of the Church by St. Thomas who exercised great influence and ordained two men as Arch - Deacons, one from each of the two respectable families, that is, Sankarapuri and Pakalomattiom. In A.D. 200 the devotees had written to Demetrius the Bishop of Alexandria, requesting him to send a teacher, to instruct them in the doctrines relating to the beliefs in Christ. The second in the sequence was significant not for the Syrian Church only, but for the entire Christian community. It was an epoch making event. The first eccuminical council was held in 325 A.D. at Nicea. Priests and prelates from all parts of Christendom were invited. Representatives of all dioceses in the Christian world attended the Synod. Christians of India were represented by their bishop or metropolitan known as Johannes, metropolitan of Persia and India. The council among other matters was concerned with matters relating to the revival and establishment of Christianity,

revision of the scriptures and framing a Code of faith and rituals. But the most important decision, of far reaching consequence was that the ecclesiastical jurisdiction of the Christandom was settled under four ecclesiastical heads and four Patriarchs were appointed over four sees - Rome, Constantinople, Alexandria and Antioch. India was placed under the Patriarch of Antioch. The other decision taken was that the great metropolitan of the East was proclaimed as the Catholicos of the East. It was laid down that the Catholicos appointed at Tigris (Baghdad) shall manage the affairs of the Eastern churches subject to that Patriarch of Antioch was common and could exercise all the functions of Patriarchs. These decisions were enforced and the Patriarch of Antiouch started taking action upon it. Till about A.D. 1599 Bishops (who were called `episcopas' or Metropolitans) were deputed to Malabar from time to time by the Catholicate of the East in Persia and by the Patriarchs of other Eastern Churches for discharging spiritual functions like ordination of priests in the Malankara Church. But all other functions were carried on by the Indian born ecclesiastical dignitary known as the 'Arch-Deacon' who was not possessed of the full spiritual grace of a Bishop.

The next or the third important event during this period was the famous Koonan Cross Oath at Muttancherry sometime in 1664. It was final break away from the Roman Catholic influence which was being forcibly imposed on the followers of Syrian Church. Between 1599 to 1654 A.D. due to influence of the Portuguese political power in the East Coast of India, the Malankara Church was compelled to accept Roman Catholic supremacy i.e., the supremacy of the Pope of Rome. The tough resistance from the Syrian Christians resulted in adopting repressive measures by the Portuguese. The climax was reached in 1599 in the so-called Synod of Diamper. Books of the Syrians Christians were burnt and destroyed. All traces of Apostolic succession in their church were obliterated. The Portuguese arrested Mar Ignatius the Patriarch, at Mylapore, brought him in fetters to Cochin on way to Rome and ultimately he mysteriously disappeared believed to have been killed either by drowing or burning. This enraged the Syrians. They met at Mattancherry, took the famous oath at Koonan Cross and resolved that they shall never again unite themselves with the Portuguese who had without any scruple or fear of God murdered their holy Patriarch. This was in 1664. This event marks an epoch in the history of the Syrian church. It split the followers in two Punthenkoor and Palayakoor. The former became Jacobite Syrians following the creed of Patriarch of Antioch and the latter Roman Syrians following the Roman creed of the Pope of Rome. The Puthenkoor people after meeting at Mattancherry came to Alengad Church and, in obedience to the Station of Mar Ignatius consecrated Arch- Deacon Thoma with the title of Mar Thoma Metran.

With this commenced the second period. It, too, like the first was marked by few important events, which again have played vital role in the destiny of the Syrian Church. The first was the ordination in 1654 of Mar Thoma Mitra as Marthoma I. Its significance lay as he was ordained as Metropolitan of Malankara by the Patriarch of Antioch through his delegate. From 1665 onwards, therefore, the ordination of the Malankara Metropolitan was carried on by the delegate of Patriarch of Antioch. The second important event took place in A.D. 1808 when a trust for charitable purposes was created by the then Malankara Metropolitan Mar Thoma VI (Dionysius the Great) by investing in perpetuity 3000 Star Pagodas (equivalent to Rs.10,500/-) in the British Treasury on interest @ 8% per annum. During this period the Church Mission Society, a missionary society of Protestant with headquarters in London, had come to Malabar and collaborated with the Malankara Church and had jointly acquired some properties. Disputes arose between this Society and the Malankara

Church with regard to those properties and also to the beneficial interest arising out of the charitable deposit of 3000 Star Pagodas which were referred to arbitration and were settled by what is known as the `Cochin Award of 1840', which was the third important event of this period. This Award divided the properties between the two bodies allotting among other items 3000 star Pagodas to the Malankara Church. The properties so allotted to the Malankara Church were as per the Award to be administered by the trustees i.e., (1) the Malankara Metropolitan, (2) a priest-trustee and (3) a lay-trustee. The effect of the Cochin Award was that the dispute between the Mission Society and the Syrian Church came to an end. But it appears between 1808 and 1840 vast assets had been acquired with the trust created by Dionysius VI. These were controlled and administered by the person who was the head of the Church. Therefore, even though one Cheppat Dionysius, a locally ordained Metropolitan was in office, one Mathew Athanasius went to Syria in 1840 and got himself ordained as Metropolitan by the Patriarch of Antioch. Thus the seeds of strife were sown.

If 1654 is significant for commencement of local ordination by the delegate of Patriarch of Antioch then 1840 marked the beginning of emergence of struggle for supremacy over the Church between locally ordained Metropolitan and the one ordained by the Patriarch of Antioch. Disputes arose between M. Athanasius and C. Dionysius. To settle it the Patriarch of Antioch sent one Mar Yayakim Koorilos as his delegate. But Koorilose adopted a novel way of settling the dispute by excommunicating Mathew and appointing himself as the Malankara Metropolitan. Cheppat Dionysius withdrew in favour of Mar Koorilos, but Mathew Athanasius persisted in his claim. When these disputes came to the knowledge of Travancore Government it appointed in 1848 a Tribunal known as the `Quilon Committee' to settle the dispute. The Committee held in favour of M. Athanasius and he took over charge as the Malankara Metropolitan. It appears the Committee preferred Patriarch ordained Metropolitan over the local ordained as spiritual spirit was flowing, still, from Antioch. Even though the Quilon Committee decided in favour of Athanasius and he took over charge of the property but the local people were not satisfied, therefore, they appear to have persuaded one Joseph Dionysius to go to Syria and get himself ordained as Malankara Metropolitan. In 1865 Joseph Dionysius was ordained as the popular feeling was that M. Athanasius was leaning towards protestainism. M. Athanasius however refused to lay down the office. He continued as metropolitan and towards the end of his life he ordained his nephew or brother one Thomas Athanasius who on death of his brother assumed the office.

This bitter strife between the two forced the Patriarch to come to Malabar, as the conduct of Athanasius amounted to denial of his authority, and call a meeting of accredited representatives of all the Churches at Mulunthuruthy in 1876. It is popularly known as `Mulanthuruthy Synod'. This is the most important event not only of this period, but in the entire history of Syrian Church. Many resolutions taking important decisions were adopted. At the Synod the Syrian Christian Association popularly called the `Malankara Association' was formed to manage the affairs of the Churches and the community. It constituted the Malankara Metropolitan as the ex-officio President and three representatives from each Church. A Managing Committee of 24 was to be Standing Working Committee of the said Association. The Synod affirmed the orthodox faith. Joseph Dionysius who had earlier been ordained by the Patriarch was accepted as the Malankara Metropolitan. Whether it was re- assertion of supremacy of Patriarch or not cannot be said as the election of Joseph Dionysius

was preceded by two factors, one, that he had been persuaded by the local people, earlier, and he got himself ordained by the Patriarch and second that Thomas Athanasius was a nominee of his brother and he had not been elected by the people. But it, undoubtedly, shows that the spiritual domination was still predominant. However, Thomas Athanasius challenged the ordination by Patriarch and claimed equal status. This could not have been agreed to by anyone as the spiritual faith in the Patriarch prevented the people in Malabar to acknowledge a person as Metropolitan who was not ordained either by the Patriarch or his nominee. However, Thomas Athanasius refused to hand over the property and Joseph Dionysius was left with no option except to approach the court.

Thus commenced the third period. If the first two periods were great for the growth and development of the Church then the third described as the, `turbulent period' is unique not for any development of religion, but for providing stability to the Church by creating a Catholicate of the East for India, Burma and Ceylon at Malankara and adopting a Constitution for the administration of the Church. The period unfortunately witnessed division amongst followers of the Church who came to be known as the `Patriarch' and the `Catholico', mainly because there was disturbance in Antioch itself and two of the Patriarch claimed to exercise the prerogative of being Patriarch of Antioch at the same time. Within a span of fifty years, five suits were filed, the first known as, `Seminary Suit', in 1879, the second as `Arthat case' in 1899, the third in 1913 which became famous as `Vattipanam case' the fourth in 1938 known as `Samudayam Suit' and fifth and last in 1974 giving rise to these appeals. The first was filed by a Patriarch ordained and duly elected Metropolitan at Mulanthuruthy Synod for recovery of property against nominated Metropolitan, whereas the second was filed for enforcement of the order passed in earlier suit as some of the parishes were denying the authority of the Metropolitan to exercise spiritual and temporal control over them. The third was an interpleader suit by Secretary of State for India due to formation of two groups laying rival claims against the assets. All the three suits were decided in favour of Catholico group. Therefore, the fourth suit was filed by the Patriarch group against Catholicos claiming that they had become heretics and had separated from the Church. This too was decided in favour of Catholicos. But the fifth and the last suits were filed by the Catholicos for reasons which shall be explained later. In the Encyclopedia of Religion, Vol. 14, P. 226, the history from creation of Patriarch of Antioch till 1970 is traced thus, The church in Antioch became practically the mother church of Christendom.....The leadership of the Syrian church was decimated by the Diocletian persecution that broke out around 304. The persecution also led to the development of Syrian monasticism through the Christians who fled into the wilderness. The spirit of Syrian Christianity was shaped more by worship, martyrdom, and monasticism than by theology.....In the twelfth century the Syrian church was at the peak of its glory, with 20 metropolitan sees, 103 bishops, and millions of believers in Syria and Mesopotamia.....The turbulent thirteenth century, wracked by invasions of Latin Crusaders from the West as well as of Mamluk Turks and Mongols from the East, produced such great leaders as Gregory Bar Hebraeus (1226-1286), a Jewish convert to Syrian Christianity, a chronicler and philosopher, and primate of the East.....The nineteenth and twentieth centuries have been turbulent times for the Syrian Orthodox in the Middle East.....The Syrian church in India numbers 1.8 million and is divided into two jurisdictions. The smaller of the two jurisdictional groups (with five hundred thousand members and a dozen bishops) decided in the 1970s to revolt against the Indian catholicos and his synod, forming a wing of the church directly administered by the Syrian Patriarch in Damascus and with its own maphrian see. The larger group,

numbering about 1.3 million is an autocephalous church in India under Moran Mar Baselius Mar Thoma Mathews I, Catholicos of the East. This group has a flourishing theological seminary and a number of ashrams and monasteries, as well as hospitals, orphanages, schools, and other institutions. Its members have established a diocese in North America with about thirty congregations and a bishop residing in Buffalo, New York. The Encyclopedia of Religion, Volume 14 p. 228].

The `Seminary Suit' was filed in 1879 by Joseph Dionysius against Mar Thomas Athanasius for recovery of the property over which he had obtained possession in lieu of the Quilon Committee report. It was contested by Thomas Athanasius who denied the supremacy of the Patriarch. He claimed that Patriarch could not claim as a matter of right to have any control over the Jacobite Syrian Church in Malabar either in temporal or spiritual matters although as a high dignitary in the churches in the country where their saviour was born and crucified the Malabar Syrian Christian community did venerate the Patriarch. The final judgment in the suit was given on 20th July 1889 by the Royal Court of Final Appeal (Travancore). The decision went in favour of Joseph Dionysius who was held entitled to recover the properties of Malankara Church as he was the Malankara Metropolitan accepted by the community. The judgment explained the extent of the spiritual supremacy of the Patriarch over the Malankara Church. It was held that Patriarch right consisted in ordaining either directly or by duly authorised delegates metropolitans from time to time, to manage the spiritual matters of the local church, sending Morone (holy oil) to be used in the churches for baptismal and other purposes and in general supervision over the spiritual government of the Malankara Church. But he was held to have no authority over temporal matters. It was held:

> "the Patriarch's supremacy over the Church in Malabar has extended only to spiritual matters. The Patriarch or his Delegates when they sojourned in this country, attended only to spiritual affairs of the Church leaving the management of the temporal affairs to the local Metropolitan and the trustees. The former never interfered with temporal affairs; and where in two or three instances they (the Delegates) tried to have some control over, or interference with, the temporal affairs, the Metropolitan and the community resisted them successfully.
>
> On a review of the whole History and evidence, we arrive at the conclusion that the Patriarch of Antioch has been recognized by the Syrian Christian community all through as the Ecclesiastical Head of their Church in Malabar; that consecration by him or by his Delegates duly authorised in that behalf was and has been felt absolutely necessary to entitle a man to become a Metropolitan of the Church in this country in matters spiritual that the man so consecrated should be a native Syrian Christian of Malabar acceptable to the community: that the Patriarch's power in spiritual affairs of the Church has been supreme: and that the Patriarch or his foreign Delegates have had no interference with the internal administration of the temporalities of the Church in Travancore which, in this respect has been an independent Church."

> [Emphasis supplied] The concluion and finding of the court that the Patriarch had no temporal and administrative control over the churches was not accepted either by the Patriarch or the Parishes. Some of the Parishes, therefore, denied the authority of Dionysius which led to filling of suit in 1899 by t he Metropolitan against Parishes which, as stated, became famous as 'Arthat Case. The suit was decreed in 1905 and the judgement of Rajah (Cochin) Court of Appeal reiterated that the Patriarch of Antioch was the spiritual head of Malankara See which included the church for which suit had been filed and the churches and the properties were bound by a trust in favour of those who worship God according to faith, doctrine, disciple of Jacobite Syrian Church in the communion of His Holiness the Patriarch of Antioch. The Court held that the churches and properties were, therefore, subject to spiritual, temporal and ecclesiastical jurisdiction of the Dionysius the Malankara Metropolitan'.

The effect of the two judgements of the Royal Court of Final Appeal and Rajah of Cochin on one hand was to recognise Dionysius as the validly elected Malankara Metropolitan, which of course was in keeping with what the Patriarch had decided when the meeting was held at Mulunthuruthy and with this there was no grievance, and on the other that Patriarch had no temporal power over the Church which was not acceptable to him. He, therefore, decided to come down to Malabar to influence the course of events and get an assurance from different churches accepting his superiority in temporal matters as well. However, in 1905 dispute started between two persons one, Abdul Messiah and other Abdulla-II over the right to be Patriarch. Both of them were appointed by Firman of the Suitan of Turkey.But the one issued in fovour of Abdul Messiah had been withdrawn. In 1909 Joseph Dionysius died. In his place one M.G. Dionysius was elected who had got himself ordained by the Patriarch Abdulla-II in 1907. When Abdulla-II came to Malabar with the object of claiming his temporal authority over the Malankara Jacobite Syrian Church and he convened a meeting at the old Seminary of Kottayam and demanded acknowledgement of his temporal authority the majority declined to do so. He, therefore, approached the Parish Churches individually and succeeded in getting submission deeds (Udampadis) from some including one Mar Paulose Athanasius. In token of it, he ordained him as a Metropolitan. This led to dispute between M.G. Dionysius and M.P. Athanasius the one ordained earlier at Syria and the other ordained in Malabar over the administrative and temporal control of the churches. In 1911 Abdulla-II the Patriarch ordained one Mar Coorilos as the Malankara Metropolitan so as to make him automatically the ex-officio President of the Malankara Association and one of the trustees of the trust property. The two of the other trustees also acknowledged the new nominee as the Malankara Metropolitan but Mar Gheevarghese Dionysius did not give up and in retaliation convened a meeting of the Malankara Association which declared his excommunication invalid and removed from trusteeship the two trustees who had gone over to the side of the Patriarch. The Committee further decided to suspend payment of Ressissa to the Patriarch so long it was not ascertained as to who was the Patriarch, Abdul Messiah or Abdulla-II. Abdulla-II left Malabar in October 1911 and in 1912 issued a Kalpana branding Abdul Messiah and M.G. Dionysius as "wolves" from whom the faithful should entirely keep aloof.

Little did anyone, then, visualise that the very next year which was to synchronise with visit of Abdul Messiah, yet another Patriarch who had been disentitled by the Sultan of Turkey, would so

significantly change the history of Malankara Church. Whether he was justified and more than that entitled to declare the ex-communication of Dionysius invalid and whether he could on his own issue a Kalpana creating a Catholicate of East is now a matter of history as its validity is beyond challenge since both the actions have been upheld judicially and have achieved finality in Moran Mar Basselios (supra). Abdul Messiah issued a Kalpana beseeching everyone, that it was their duty, to respect Mar Gheevarghese, and love him properly and suitably because he was their head, shepherd and spiritual father. It was stated that who respects him (respects us), he who receives him, receives us. Those who do not accept his right words and those who stand against his opinions which are in accordance with the canon of the Church, defy him and quarrel with him will become guilty. Keep aloof from quarrel and breach of law. Grace and blessings from the Lord will come and abide on them who obey. Another Kalpana was issued bestowing his blessings second time and expressing deep grief at the dissension shown by Effendi. It further said we, by the grace of God, in response to your request, ordained a Maphrian, that is, Catholicos by name; Poulose Basselios and three new Metropolitans the first being Gheevarghese Gregorius, the second, Joachim Evanios and the third, Gheevarghese Philexinos..... We commend you into the hands of Jesus Christ, our Lord, the Great Shepherd of the flock. May He keep you! We rest confident that the Catholicos and Metropolitans - your shepherds - will fulfil all your wants. The Catholicos, aided by the Metropolitans, will ordain melpattakkars, in accordance with the Canons of Our Holy Fathers and consecrate Holy Morone. In your Metropolitans is vested the sanction and authority to install a catholicos, when a catholicos dies. No one can resist you in exercise of this right and, do all thngs properly, and in conformity with Precedents with the advice of the committee, presided over by Dionysius, Metropolitan of Malankara.

[Emphasis supplied] The declaration of Abdul Messiah that ex-communication of Dionysius was invalid led to serious dispute between rival groups claiming their authority over the temporal affairs of the Church. Two rival groups were formed one led by Mar Gheevarghese Dionysius and the other by Mar Coorilos. Consequently, the Secretary of State for India filed the interpleader suit in 1913, in the District Court of Trivandrum, impleading both the sets of rival claimants as defendants and seeking a declaration from the court as to which of the two rival sets of trustees were entitled to draw the interest on the amount standing in the credit of the Malankara Jacobite Syrian Christian community in the British treasury. The suit was decided in favour of M.G. Dionysius. The decree was reversed by a Full Banch of the Travancore High Court in 1923. The judgement was reviewed at the instance of M.G. Dionysius and the net result was that M.G. Dionysius and his two co-trustees became finally entitled to withdraw the money deoosited in the Court as the lawful trustees of the Church properties.

On 16th August 1928 the Managing Committee of the Malankara Association was authorised to draw up a constitution of the Church. There was sharp reaction to it. The delegate of Patriarch issued an order to the Catholic Metropolitan to execute Udampad within two days. When nothing came out of it, 18 persons belonging to patriarch group filed suit against Mar Philexinos. a person who later joined the Patriarch after 1958 and was largely responsible for the disturbance of peace in 1965. The suit was dismissed in default and the order remained unchanged as the revision in the High Court was dismissed for non-prosecution. The Catholico in the meantime went ahead and in a meeting held on 26th December, 1934 at Kottayam adopted the draft Constitution unanimously and elected

the Malankara Metropolitan. The Constitution while recognising that Malankara Church was a division of orthodox church and primacy of Patriarch of Antioch provided that the primacy of the East was in Catholicos. Detailed provisions dealing with powers of Metropolitan, Bishop, Parishes, etc. were made.

Probably as a counter to 1934 meeting of Catholico the Patriarch group held meeting in August, 1935, elected one M. Paulose Althanasius as Malankara Metropolitan and armed with this they filed Suit No.111 of 1139, that is 10th March, 1938 in the District Court of Kottayam claiming that the Catholico had become heretics and separated from the Orthodox Syrian Church. The suit was dismissed in January, 1943. In 1946, appeal was allowed and the suit was decreed. The defendants again applied for review which was dismissed against which they preferred appeal under Article 136 of the Constitution and in Moran Mar Basselios Catholicos & Anr. vs. Most Rev. Mar Poulose Athanasius & Ors. AIR 1954 SC 526 the appeal was allowed. The judgement of the High Court was set aside and the High Court was directed to admit the review petition and re-heer the same. In December 1956 the judges heard the appeal, delivered the unanimous judgement allowing the appeal and decreeing the suit. Against the decree the Catholico group preferred an appeal which was decided in 1959 by this Court. Some of the Catholicos also filed a writ petition under Article 32 of the Constitution which was also decided along with the appeal. The Court after elaborate discussion and noticing the earlier course of litigation held that the claim of the other group that the Catholicos had become heretics on aliens or had gone out of the Church by establishing a new church because of the specific acts and conduct was not correct.

The Constitution framed in 1934 and the Kalpanas issued by Abdul Messiah were considered by this Court in 1959. The claim of the Patriarch, that the supremacy of the Patriarch had been taken away by the mere adoption of the new Constitution was not permitted to be raised as it was not raised in the pleadings. The Court further did not permit them to raise the question about the privilege of the Patriarch, alone, to ordain metropolitans and to consecrate Morone. It was also held that Ressissa which was a voluntary and not a compulsory contribution made by the parishes collected by the committee of the Malankara Association and sent to Patriarch was not forbidden and its non-payment did not amount to neresy on the party of the Catholicos. The declaration sought by the Patriarch that they were trustees of the property and the Catholicos were neither trustees nor in possession of the trust property, based on their election at a meeting held on August 22, 1935 was not accepted. The Court held that the meeting was, admittedly, held without any notice to the members of the Catholico party as they were erroneously regarded as having gone out of the Church. The Court did not find any merit in the Kalpana which was Ex.Z in the suit commanding the faithful not to have anything to do with the heretics. The court held that the Catholicos and their partisans had not become, 'ipso facto' heretics in the eye of the Civil Court or aliens and had not gone out of the Church. The court held that the election of the plaintiffs was not valid and their suit, in so far as it was in the nature of a suit for ejectment was llable to fail for want of their title as trustees. The Court further held that since the interpleader suit was converted into a representative suit on behalf of Jacobite Syrian Christian population of Malabar, therefore, the decision in that suit was binding on all members of the Malankara Syrian Christian Community. Thereafter, it proceeded to examine as to what were the material issues which were decided in that case and which operated as res judicata. The four issues which were framed in that suit and which were considered by the court for

purposes of deciding the question on res judicata read as under:

> 14. Do all or any of the following acts of the 1st defendant (catholico) and his partisans amount to open defiance of the authority of the Patriarch? Are they against the tenets of the Jacobite Syrian Church and do they amount to heresy and render them ipso facto heretics and aliens to the faith?
>
> (i) Claim that the 1st defendant is a Catholicos?
>
> (ii) Claim that he is the Malankara Metropolitan?
>
> (iii) Claim that the 1st defendant has authority to consecrate Morone and the fact that he is so consecrating?
>
> (iv) Collection of Ressissa by the 1st defendant?
>
> 15.(a) Have the 1st defendant and his partisans voluntarily given up their allegiance to and seceded from the Ancient Jacobite Syrian Church?
>
> (b) Have they established a new Church styled the Malankara Orthodox Syrian Church?
>
> (c) Have they framed a constitution for the new church conferring authority in the Catholicos to consecrate Morone to ordain the higher orders of the ecclesiastical hierarchy, to issue Staticons allocating Dioceses to the Metropolitans and, to collect Ressissa?
>
> (d) Do these functions and rights appertain solely to the Patrirch and does the assertion and claim of the 1st defendant to exercise these rights amount to a rejection of the Patriarch?
>
> (e) Have they instituted the Catholicate for the first time in Malankara? Do the above acts, if proved, amount to heresy?31
>
> 16. (a) Have the defendants ceased to be members of the Ancient Jacobite Syrian Church ?
>
> (b) Have they forfeited their right to be trustees or to hold any other office in the Church ?
>
> (c) Have they forfeited their right to be beneficiaries in respect of the trust properties belonging to the Malankara Jacobite Syrian community ?

> 19. (a) Have the plaintiffs and their partisans formed themselves into a separate Church in opposition to Mar Geevarghese Dionvsius and the Malankara Jacobite Syrian Church ?
>
> (b) Have they separated themselves from the main body of the beneficiaries of the trust from 1085 ?

The Court held that the same objection was raised by the Patriarch in the suit filed in paragraphs 19 to 26 and, therefore, the finding recorded on the aforesaid issues having been raised and decided in the interpleader suit and having been decided by the Travancore High Court on review in favour of M.G. Dionysius and his co-trustees (Catholico group) it operated as res judicata. It was on this reasoning that the Court held :

> "that the contentions put forward in paragraphs 19 to 26 of the plaint in the present suit on which issues Nos.14, 15, 16 and 19 have been raised were directly and substantially in issue in the interpleader suit (O.S.94 of 1088) and had been decided by the Travancore High Court on review in favour of Mar Geevarghese Dionysius and his two cotrustees (defendants 1 to 3) and against defendants 4 to 6 . In short the question whether Mar Geevarghese Dionysius and his two co-trustees (defendants 1 to 3) had become heretics or aliens or had gone out of the Church and, therefore, were not qualified for acting trustees was in issue in the interpleader suit (O.S.No.94 of 1088) and it was absolutely necessary to decide such issue. That judgment decided that neither (a) the repudiation of Abdulla II, nor (b) acceptance of Abdul Messiah who had ceased to be a Patriarch, nor (c) acceptance of the Catholicate with powers as hereinbefore mentioned, nor (d) the reduction of the power of the Patriarch to a vanishing point, 'ipso facto' constituted a heresy or amounted to voluntary separation by setting up a new Church and that being the position those contentions cannot be re-agitated in the present suit".

Thereafter the Court after discussing the matter in great detail held as under :

> "The case with which the plaintiffs have come to court in the present suit is that the defendants had become heretics or aliens or had gone out of the Church by establishing a new church because of the specific acts and conduct imputed to the defendants in the present suit and that the charges founded on those specific acts and conduct are concluded by the final judgment (Ex.256) of the High Court of Travancore in the interpleader suit (O.S.No.94 of 1088) which operates as 'res judicata'. The charge founded on the fact of non-payment of Ressissa, if it is not concluded as constructive 'res judicata' by the previous judgment must, on merits, and for reasons already stated, be found against the plaintiff-respondent. We are definitely of the opinion that the charges now sought to be relied upon as a fresh cause of action are not covered by the pleadings or the issues on which the parties went to trial, that some of them are pure after-thoughts and should not now be permitted to be raised and that at any rate most of them could and should have been

put forward in the earlier suit (O.S. No.94 of 1088) and that not having been done the same are barred by 'res judicata' or principles analogous thereto. We accordingly hold, in agreement with the trial court, that it is no longer open to the plaintiff-respondent to re-

agitate the question that the defendant-appellant had 'ipso facto' become heretic or alien or had gone out of the church and has in consecuence lost his status as a member of the Church or his office as a trustee."

[Emphesis supplied] The Court also examined whether the election of the Catholico group in the meeting held on December 26, 1934 was in accordance with rules or not and it answered the question in their favour. The Court, therefore, set aside the judgment of the Kerala High Court and dismissed the suit filed by the Patriarch group.

The one good effect of judgment delivered by this Court in 1959 after nearly 50 years of litigation was that good sense appears to have dawned on both the groups and on 9th December 1958 Patriarch Yakub-III issued a letter marked as Ex.A-19 one relevant portions of which are extracted below :

"It is not secret that the disputes and dissensions that arose in the Malankara church prevailing for a period of 50 years have in several ways weakened and deteriorated it. Although right from the beginning several persons who love the church and devout of God desired peace and unity putting an end to the dissention, they departed in sorrow without seeing the fulfilment of their desire. We also were longing for peace in the Malankara church and the unity of the organs of the one body of the church. We have expressed this desire of ours very clearly in the apostolic proclamation we issued to you soon after our ascension on the Throne. This desire of ours gained strength with all vigour day by day without in any way slakened and the lord God has been pleased to end the dissention through us. Glory be to Him. To bring forth peace in the Malankara church we hereby accept with pleasure Mar Baselious Gheevarghese as Catholicose. Therefore we send our hearty greetings intensified by the fervour of deace in this month of rejoycing. We also beseech, let the lord shower on you His abundant blessings. Let the lord make you a people beautified by virtuous acts towards the right and delight you with the comfort and plenteousness flowing from the care pleased to his Holy will to the envy of others. Let it be with the grace and mercy of Him, His father and His Holy spirit.

Our father which art in the heaven etc. etc. On the 9th December 1958, the 2nd year of our assension as patriarch.

From the Aramana at Holms."

[Emphasis supplied] The other letter was issued on 16th December 1958 marked as Ex.A-20 by the Catholico group to the following effect :

"Glory to God united in the Trinity, the self existing, perfect in essence and without beginning or end. From the meek Baselious Catholicose named as Gheevarghese If seated on the Throne of The East of Apostle St. Thomas. Seal Let divine grace and Apostolic Benediction be always in abundance with all the Melpattakkars (High Priests). Priests, Deacons and all the faithful under our jurisdicition.

We have always been in grief on account of the failure of the efforts made by late Mar Gheevarghese Dionisius and us to bring forth peace in our church and end quarrels and discord which were existing in our church for long. We are now very much delighted and do glorify God in that there is an end to the discord showing the willingness to unite.

We, for the sake of peace in the church, are pleased to accept Moran Mar Ignatius Yakub III as patriarch of Antioch subject to the constitution passed by the Malankara Syrian Christian Association and now in force.

We have also pleasure to accept the Metropolitans under him (patriarch) in Malankara subject to the provisions of the said constitution. Let the abundant grace and blessings of God Almighty be with you always.

Let it be through the prayers of St. Mary the mother of God, Mar Thoma Sleeba, the Patron saint of India and all the saints. Amen.

Our father that art in the heavens etc. etc."

After the exchange of these letters, Ex.A-19 and Ex.A-20 dispute started between the Patriarch and the Catholico over the use of the word 'Holiness', 'Throne of St. Thomas', and 'Church of the East' and 'Catholicos of the East' etc. as the expressions according to the Patriarch could be used by the supreme head, that is, Patriarch of Antioch and not by Catholico to which the reply was that this was not new and it was provided for in the Constitution of 1934. It is not necessary to extract the various points of differnce raised in the letters issued by the two. In a letter sent in August 1960 marked as Ex.A-26 after reiterating the stand which was taken in earlier letters it concluded with these words :

"To conclude, I wish to state that the prestige and influence of the throne of Antioch here depend very largely upon the wise co-operation of Your Holiness. The Malankara Church with its catholicate and synod of bishops and the association has certainly to adhere to the provisions of the constitution and has to abide by the Supreme Court decision. But that does not mean any kind of disrespect or hostility towards Antioch. There are enough provisions in the constitution to keep our connection Meeningful and alive".

> The relations thereafter appear to have become cordial so much so that in 1961 Ex.A-30 was written by Petriarch Yakub-

III in which it was mentioned, "I am placing your Beatitude's photo properly in our place so that all people who are in and out should see itand understand the intimate unity and real re-conciliation and the essential relationship between the Apostolic Throne and our church in Malankara ..... we are eager tosee perfect peace in our church in Malankara. We hope that all the disputes will be over and the church go ahead powerfully in the path of light, prosperity and progress during your Beatitude's old age itself.

Please convey our Apostolic Blessings to all our spiritual children both priests and faithfuls who are under your authority."

But from letter dated 18th January 1962 sent by Baselius Geevarghese II, Catholicos of the East, it appears some local dispute had surfaced again. Allegations were made against one Mar Philixenos and the same person about whom reference has been made earlier and who in fact was responsible for dissension once again and it was stated, they profess outwardly to be pro-Antioch, but really they are anti Patriarchal as well as anti- Catholicate. Now since at this time I am in my declining age I think it appropriate to invite your Holiness be pleased to visit us at your earliest convenience and bless us by your presence as well as prayers'. It appears Mar Baselius Geevarghese died in January 1964 and the members of the Holy Episcopal Synod installed one Ougen Mar Themotheus, Metropolitan as his successor as his election by the Malankara Association on 17th May 1962 was approved by the Holy Synod on 21st March 1963. The letter was sent requesting the patriarch Yakub-III for the installation ceremony. He did come in 1964 and installed Mar Ougen I. Then there are letters and other memoranda Ex.A-36 and A-37 submitted to the Catholicos regarding prevailing discontentment amongst some sections. The exchange of these letters and their contents indicate a simmering discontent which surfaced in June, 1970 when the Patriarch once again dug up the closed issue of use of expression 'Holiness' and, 'Throne of St. Thomas' by the Catholico. The initial anxiety of reconciliation and peace got set back with vengeance as the Catholico openly challenged the authority of Patriarch. Events moved swiftly, thereafter, when the Patriarch ordained Metropolitan who in his turn ordained Bishops started interfering resulting in filing of suits by Catholico against Patriarch ordained Bishop, obtaining of injunction sharply reacted by the Patriarch by issuing show-cause notice, starting disciplinary proceedings, summoning the Synod at Damascus and ex-communicating the Catholico. The breakaway was complete. There was vertical split. The two groups once again were up in arms. Two hundred suits were filed. Eight of which covering entire issues were consolidated and tried together.

This completes the factual narration and the background in which the suits out of which these appeals have arisen came to be filed. Although both the parties have furnished in great detail the events which took place after the judgment was delivered in 1959, but it appears unnecessary to mention each of them, except to observe that a mere look on these dated indicates that initially there was an anxiety for peace and reconciliation by both groups which was shaken by pinpricks here and there and was finally thrown to winds between 1970-75. Religious cover was again put forward to gain control over temporal affairs resulting in setting in motion the same old tortuous process of

litigation. In the first part beginning from December, 1958 a meeting of the Malankara Association was held in which almost all the Churches participated, irrespective of the faction. The meeting was attended even by the elected priest-trustee and the lay trustee and the delegate of the Patriarch as a special invitee. In January, 1959 the Patriarch Group submitted a memorandum to the Catholicos seeking among other things reconstitution of the Managing Committee of the Malankara Association which was considered in a Synod held on 21st February, 1959 and pursuant to the decision taken therein, dioceses were re-allotted. From the year 1959 to 1964 number of meetings were held in which both the groups participated and attempted to function as one unit. From 1960 to 1962 there are various letters, for instance Exhts. A-28, A-29, A-30, A-31 and A-39 which indicate cordial relationship between the Patriarch and Catholico. Even in 1964 when Mar Ougen I was installed by the Malankara Episcopal Synod, the Patriarch himself presided in the ceremony. In a meeting held in December, 1965 Malankara Association elected five candidates for ordination as Bishops and elected members to the Managing Committee which included members of the Patriarch group as well. In 1967 the Constitution was amended in consequence of meeting in which both the groups deliberated.

From June 1970 started the second part which was in contrast of the earlier. In June 1970 the dispute about use of expression `Holiness' and 'The Throne of St. Thomas' was again questioned followed by sending a delegate in 1972 which was objected to leading to ordination by the Patriarch of one of the appellants who was impleaded as defendant no.1 in Suit No.4/79. Thereafter as stated there was no end. When the Catholico succeeded in obtaining injunction from Civil Court in 1973 restraining the appellant from interfering, the Patriarch issued chargesheet in June 1974 which was not only objected but asserted to be without jurisdiction. Various ordinations followed. Each was challenged in courts. And when on 5th January 1975 the Catholico in their Synod declared that Malankara Association was autocephalous then the Patriarch in a Synod held at Damascus from 16th to 20th June 1975 decided that the only apostolic see of the Syrian Orthodox Church in the world was the See of Antioch founded by St. Peter, that the Malankara Church was an indivisible part of the Syrian Orthodox Church dependent on the Patriarch in all spiritual matters, that acknowledgment of Patriarch's and position by those ordained was essential, and the Catholicos having repelled against the Patriarch stood disqualified from their ecclesiastical grade and also guilty of violation of fundamental faith. It was followed by letter dated 23rd June 1975 asking the Catholicos if he was willing to submit to the decision of the alleged universal Synod. On 21st August 1975 the Patriarch by Kalpana Ex.B-72 excommunicated Catholicos and on 7th September 1975 installed at Damascus Mar Paulose Philexinos (who had earlier been deposed by the Malankara Episcopal synod for proved ecclesiastical indiscipline) as a Catholicos in the name of Baselius Paulose II.

Out of these suits eight covering all the issues were transferred to the High Court. The Single Judge even while accepting the Constitution as valid held that it was not binding on the Churches and Parishioners unless there was express surrender. The Court held that they had no concern with those Churches which continued with Patriarch of Antioch. The learned Single Judge held that the Malankara Church was Episcopal to a limit in spiritual affairs. In matters of temporalities, the Church was congregational. It was further held that the Parish Churches were independent autonomous units as far as governance and administration of temporalities were concerned. The

suits were dismissed. In appeal, the Bench framed as many as 31 questions to cover the wide range of controversy raised before it, reversed the decision of the learned Single Judge and decreed the suit, except in relation to Churches known as 'Simhasna Churches' and the Churches established by the Evangelistic Association. Relevant findings on the questions framed by it are extracted below. The first three questions related to the validity of the Cannon.

They read as under:-

> "(1) Whether Ext. A90 or Ext. B161 is the correct version of Hudaya Canons accepted by the Malankara Jacobite Syrian Community as valid and binding?
>
> (2) Are the plaintiffs barred by resjudicata from contending that the binding version of Hudaya canons is Ext. A90 by reason of the judgment in XLI T.L.R. 1. order in the Review Petition and the judgment in 45 T.L.R. 156? (3) Are the defendants barred by res judicata from contending that the binding version of Hudaya Canons is not Ext. B161 by reason of the decision in the Samudayam suit?"

The answer given by it was that the decision in 41 TLR 1, Exhibit 18 therein, and (Ext. 3p in the Samudayam suit and Exht. B-161 in these cases) is the version of the Hudaya Canons accepted as binding on the Malankara Church has not become concluded and does not operate as res judicata between the parties. The Bench further held that there was no independent evidence on the basis of which it could be held that either of the versions was binding on the Malankara Orthodox Syrian Christian Community and since finding in the previous litigations were not res judicata neither version of the Canon was proved to be binding on the community. In respect of Question Nos. 4-6, which read as under.

> "(4) Whether the Catholicate established under Ext. A14 by Patriarch Abdul Messiah with powers as provided for in Ext. A14 is valid and binding on the entire Malankara church? (5) Whether by such establishment of the Catholicate the Patriarch was deprived of his powers to ordain Metropolitans, consecrate/send morons or to exercise any other spiritual power over the Malankara church thereby reducting his powers to a vanishing point?
>
> (6) Whether contentions in points 4 and 5 are barred by res judicata against parties in Patriarch's group by reason of the decision of the Travancore High Court in Interpleader suit (45 TLR 116) and by reason of the decision of the Supreme Court in Samudayam suit (AIR 1959 SC 31)?

it was held that the Catholicate established under Exht. A14 with powers as provided therein was valid and binding on the Malankara Church, that by such establishment Patriarch has not been deprived of his powers to ordain Metropolitans or consecrate Morone or to exercise any other recognised spiritual power, though the power to ordain Metropolitans is subject to acceptance of the Malankara community represented by the Association and that by the establishment of the Catholicate spiritual power of the Patriarch has not been reduced to a vanishing point, though the

Patriarch could not be regarded as having active spiritual supremacy.

The Question Nos. 7 to 15 related to the Constitution of 1934 and status of Parish Churches. They were answered as follows:-

> "(a) 1934 Constitution is valid and binding on the Malankara Association, Community, Dioceses as well as parish churches and parishioners.
>
> (b) Parish churches are not congregational or independent, but are constituent units of Malankara church; they have fair degree of autonomy subject to the supervisory powers vesting in the Managing Committee of the Malankara Association, Catholicos and the Malankara Metropolitan as the case may be. Administration of the day-
>
> to-day affairs of parish churches vests in parish assembly and elected committees of the parishes.
>
> (c) Malankara church is not purely episcopal but has only some episcopal characteristics.
>
> (d) Malankara Association is a representative body which has right to bind the Malankara church, the community, parishes and parishioners by its deliberations and actions.

The most sensitive issue which has been subject of great debate in this Court was posed as Question No.18, "Has the Malankara Church become an autocephalous church?

and it was answered against the respondent by recording the finding:-

> "We, therefore, hold that the Malankara Church is not an autocephalous church but is a part or division of the world Orthodox Syrian Church and set aside the finding of learned single judge that the Catholicos group has now established an autoceohalous church. We hold that while Patriarch of Antioch is the head of the World Orthodox Syrian church Catholicos of the East who is subject to the Constitution is head of the Malankara Church and the relationship between Patriarchate and the Malankara Church is governed by the provisions of the Constitution."

This was the finding recorded in Moran Mar Basselios (supra) as well. It has not been challenged, therefore, it has become final.

Some of the churches claiming to be socially and culturally different, for instance, Knanaya Church or the Kanandra Church established in pursuance of Royal Charter issued by the Queen or registered under societies Registration Act or having their own bye-laws claimed to be independent and autonomous. Their claim was under Question Nos. 23, 24 and 25 and the answer given was that except Simhasana Churches and Evangelistic Association Churches the others were constituents of

Malankara Sabha. The appellants are the members of Patriarch Group. Separate appeals have been filed by those churches which claim to be independent. The Catholic Group is aggrieved by the decision in respect of Churches of Evangelistic Association and Simhasana Churches.

Factual canvas having been spread out the stage is now set for grappling with intricate issues of jurisdiction and law which have been canvassed neatly, by, both, the learned senior counsel, Mr. K. Parasaran for the appellant and Mr. F. Nariman for the respondents, without expression of any emotion, admirable understanding and respect for each other, with utmost congenial coolness and exemplary precision and clarity. To support their respective claims, the learned counsel for both the parties advanced extensive arguments covering wide range of various aspects ranging from maintainability of the suit, jurisdiction of the civil courts to entertain religious disputes, misjoinder and non- joinder of the parties, intricate questions of res judicata, religious nature of the Trust and even religious matters, such as whether the Catholicate of the East is entitled to be addressed as 'Holiness' sitting on the 'Throne of St. Thomas'. It is proposed to deal with the preliminary objections both to the maintainability of the suit under Section 9 of the Civil Procedure Code and the non- maintainability due to enactment of the Places of Worship (Special Provisions) Act, 1991 as if any of these is accepted then no further controversy would arise. Thereafter, what shall be examined is whether the claim of the appellant that they had ex-communicated the respondent in accordance with Hudaya Canon governing the Church is well founded as if even this plea is accepted, then no other issue shall survive. If the answer is in favour of the respondents, then it shall have to be decided, how far the dispute between parties has been settled by earlier decisions and what was the scope of Samudayam Suit and the finality arising out of it. Ancillary to this would be the question whether Catholicate of the East was established in Malankara in the year 1912 and whether it has been validly established, if so, what is its binding effect.

To begin with the objection to the maintainability of the suit under Section 9 of the Civil Procedure Code was probably not raised in 1954 and 1959 and if raised was not pressed. But that by itself may not preclude defendant- appellant from raising it, even in this Court as the bar or lack of jurisdiction can be entertained, at any stage, since an order or decree passed without jurisdiction is non est in law. What then is the scope of the Section? Does it comprehend suits for declaration that the Syrian Churches are episcopal? Could the respondent-plaintiff claim declaration that Malankara Association had become autocephalous and no priest could refuse to recognise the authority of the Catholico? Could the plaintiff seek injunction, restra in the priests or Deacon from performing any other sacramental services and prohibit the defendants from interfering with of the Malankara Church? How would the bar of jurisdiction operate if only part of relief is cognisable? To appreciate these aspects it is necessary to set out the Section itself and examine its scope and then advert to facts:

> "9. Courts to try all civil suits unless barred. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Explanation I-A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

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                Explanation II-For the
purposes of this section, it is
immaterial whether or not any fees
are attached to the office referred to
in Explanation I or whether or not
such office is attached to a
particular place."
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> One of the basic principles of law is that every right has a remedy. Ubi jus ibi remediem is the well known maxim. Every civil suit is cognisable unless it is barred, 'there is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue' Smt. Ganga Bai vs. Vijay Kumar & Ors., AIR 1974 SC 1126. The expansive nature of the Section is demonstrated by use of phraseology both positive and negative. The earlier part opens the door widely and latter debars entry to only those which are expressly or impliedly barred. The two explanations, one existing from inception and latter added in 1976 bring out clearly the legislative intention of extending operation of the Section to such religious matters where right to property or office is involved irrespective of whether any fee is attached to the office or not. The language used is simple but explicit and clear. It is structured on the basic principle of a civilised jurisprudence that absence of machinery for enforcement of right renders it nugatory. The heading which is normally key to the Section brings out unequivocally that all civil suits are cognizable unless barred. What is meant by it is explained further by widening the ambit of the Section by use of the word `shall' and the expression, `all suits of a civil nature' unless `expressly of impliedly barred'.

Each word and expression casts an obligation on the court to exercise jurisdiction for enforcement of right. The word `shall' makes it mandatory. No court can refuse to entertain a suit if it is of description mentioned in the Section. That is amplified by use of `expression, `all suits of civil nature'. The word `civil' according to dictionary means, `relating to the citizen as an individual; civil rights'. In Black's Legal Dictionary it is defined as, `relating to provide rights and remedies sought by civil actions as contrasted with criminal proceedings'. In law it is understood as an antonym of criminal. Historically the two broad classifications were civil and criminal. Revenue, tax and company etc, were added to it later. But they too pertain to the larger family of `civil'. There is thus no doubt about the width of the word `civil'. Its width has been stretched further by using the word `nature' along with it. That is even those suits are cognisable which are not only civil but are even of civil nature. In Article 133 of the Constitution an appeal lies to this Court against any judgment, decree or order in a `civil proceeding'. This expression came up for construction in S.A.L. Narayan Row & Anr. etc. etc. v. Ishwarlal Bhagwandas & Anr. etc. etc. AIR 1965 SC 1818. The Constitution Bench held `a proceedings for relief against infringement of civil right of a person is a civil proceedings'. In Arbind Kumar Singh v. Nand Kishore Prasad & Anr. AIR 1968 SC 1227 it was held `to extend to all proceedings which directly affect civil rights'. The dictionary meaning of the word `proceedings' is `the institution of a legal action, `any step taken in a legal action.' In Black's Law Dictionary it is explained as, `In a general sense, the form and manner of conducting juridical

business before a court or judicial officer. Regular and orderly progress in form of law, including all possible steps in an action from its commencement to the execution of judgment. Term also refers to administrative proceedings before agencies, tribunals, bureaus, or the like'. The word `nature' has been defined as, `the fundamental qualities of a person or thing; identity or essential character; sort; kind; character'. It is thus wider in content. The word `civil nature'is wider than the word `civil proceeding'. The Section would, therefore, be available in every case where the dispute has the characteristic of affecting one's rights which are not only civil but of civil nature.

Are religious rights, for instance right to worship in a religious place, entry in a temple, administration of religious shrines for instance a temple, mosque or a church are rights of civil nature? Is the suit filed by the respondent bad as the declaration, injunction and prohibition sought are in respect of matters which are not civil in nature? The answer is given by Explanation I. The Civil Procedure Code was enacted during British period. The legislature enacting the law was aware that there were no ecclesiastical courts either in ancient or Medieval India as in England. `The term "ecclesiastical law" may be used both in a general and in a technical sense. In its general sense it means the law relating to any matter concerning the Church of England administered and enforced in any court; in its technical sense it means the law administered by ecclesiastical courts and persons' [Halsbury's Laws of England Vol. 14 para 137]. `The ecclesiastical law of England is as much the law of the land as any other part of the law' [Halsbury's Laws of England Vol.14 para 139]. There was no such law in our country. The ecclesiastical courts are peculiar to England. The Parliament was aware of it. That is why it added Explanation I to Section 9 of the Civil Procedure Code. It obviates any ambiguity by making it clear that where even right to an office is contested then it would be a suit of a civil nature even though that right may entirely depend on the decision of a question as to religious rites or ceremonies. Explanation II widens it further to even those offices to which no fees are attached. Therefore, it was visualised from the inception that a suit in which the right to property or religious office was involved it would be a suit of civil nature. Reason for this is both historical and legal. In England ecclesiastical law was accepted as a part of the common law binding on all. But, `the introduction of English Law into a colony does not carry with it English ecclesiastical law'. (Halsbury Laws of England Vol. 14 para 315). In ancient or medieval India the courts were established by King which heard all disputes. No religious institution was so strong and powerful as church in England. The Indian outlook was always secular. Therefore, no parallel can be drawn between the administration of the churches by ecclesiastical courts in England. Religion in India has always been ritualistic. The Muslim rulers were by and large tolerant and understanding. They made India their home. They invaded, ruled and became Indian. But Britishers made it a colony. However, that did not interfere with religion. Disputes pertaining to religious office including performance of rituals were always decided by the courts established by law. As far back as 1885 Justice Mehmood in Queen Empress vs. Ramzan & Qrs. 1885 (7 ILR) Allahabad p. 461 repelled the argument that the courts were precluded from considering Muslim Ecclesiastical Law and observed at page 468 as under:-

> "I am unable to accept this view, because, if it is conceded that the decision of this case depends (as I shall presently endeavour to show it does depend) upon the interpretation of the Muhammadan Ecclesiastical Law, it is to my mind the duty of this Court, and of all Courts subordinate to it, to take judicial notice of such law".

There are numerous authorities where dispute about entry in the temple, right to worship, performing certain rituals have been taken cognizance of and decided by civil courts. In Narasimma Chariar & Ors. vs. Sri Kristna Tata Chariar 6 Mad. H.C. Reports 449 it was claimed by the plaintiff that they had the exclusive rights to Adhyapaka Mirass of reciting certain texts or chants in a temple. In that suit it was held:

> "The claim is for a specific pecuniary benefit to which plaintiffs declare themselves entitled on condition of reciting certain hymns.
>
> There can exist no doubt that the right to such benefits is a question which the Courts are bound to entertain, and cannot cease to be such a question, because claimed on account of some service connected with religion.
>
> If, to determine the right to such pecuniary benefit, it becomes necessary to determine incidentally the right to perform certain religious services, we know of no principle which would exonerate the Court from considering and deciding the point".

It was approved by the Privy Council in Krishname & Ors. vs. Krishnasamy & Ors. 1879 ILR 2 Mad. 62 and the passage extracted above was approved by observing that it was "perfectly correct". This was a decision when Explanation II was not there. The dispute had two rounds of litigation. In the second round after remand the High Court observed.

> "It is certainly not the duty of the Civil Court to pronounce on the truth of religious tenets nor to regulate religious ceremony; but, in protecting persons in the enjoyment of a certain status or property, it may incidentally become the duty of the Civil Court to determine what are the accepted tenets of the followers of a creed and what is the usage they have accepted as established for the regulation of their rights interse."

The Law Commission in its 27th Report in Civil Procedure Code, December 1964 at page 91 while considering the addition of Explanation II to Section 9 observed as under:

> "It may be added, that the decision of the Privy Council to the effect that a suit for pecuniary benefits is a civil suit, even if it becomes necessary to determine a right to perform religious services, does not imply that other suits relating to religious offices cannot be entertained."

In Srinivasalu Naidu v. Kavalmari Munnuswami Naidu AIR 1967 Madras 451 it was observed, "The explanation certainly does not confine the limits of the nature of suits contemplated by the main section. What the Explanation states is only that though religious rites and ceremonies may form the basis of a right that is claimed, such right being a right to property or to office, a suit to establish such right would be a suit of a civil nature. The Section takes within its broad sweep all questions where one person claims any privilege in himself as against others. There is no doubt that such a question would be one of a civil nature."

On the plain phraseology of the Section, therefore, it is clear that a suit filed after coming into force of the Constitution for vindication of rights related to worship of status, office or property is maintainable in civil court and it would be duty of the court to decide even purely religious questions if they have a material bearing on the right alleged in the plaint regarding worship, status or office or property. In Nagar Chandra Chatterjee & Anr. v. Kailash Chandra Mondal & Ors. AIR 1921 Calcutta 328 it was held:

"Where there were no Ecclesiastical Courts, there was nothing to prevent civil courts from holding that Pujari has been removed from his office on valid grounds."

Sir Ashutosh Mookerjee quoted thus:

"There is manifestly nothing wrong in principle that the holder of a spiritual office should be subject to discipline and should be liable to deprivation for what may be called misconduct from an ecclesiastical point of view or for flagrant and continued neglect of duty..... It is plain that although so far as Hindus are concerned, there is now no State Church and no ecclesiastical court, there is nothing to prevent civil courts from determining questions such as those raised in the present litigation and from holding that the Pujari has been removed from his office on valid grounds."

In U.W. Baya vs. U. Zaw Ta. AIR 1914 Lower Burma 178 (1) where a question arose as to which was the forum where an action for violation of religious rights could be brought, it was held, "there are, therefore, no ecclessiastical authorities in Lower Burma. Section 9, Civil P.C. enacts that the courts shall subject to the provisions herein contained, have jurisdiction to try all suits of a civil nature excepting suits of which the cognizance is either expressly or impliedly barred. This is a suit of a civil nature. It is a claim of certain lands and manuscripts.

The civil courts, in our opinion, clearly have jurisdiction to decide the suit and should do so".

In Sri Sinha Ramanuja Jeer & Ors. v. Sri Ranga Ramanuja Jeer & Anr. (1962) 2 SCR 509 this Court observed:

"prima facie suits raising questions of religious rites and ceremonies only are not maintainable in a civil Court, for they do not deal with legal rights of parties. But the explanation to the section accepting the said undoubted position says that a suit in which the right to property or to an office is contested is a suit of civil nature notwithstanding that such right may depend entirely on the decision of a question as to religious rites or ceremonies. It implies two things, namely, (i) a suit for an office is a suit of a civil nature; and (ii) it does not cease to be one even if the said right depends entirely upon a decision of a question as to the religious rites or ceremonies."

In Ugamsingh & Mishrimal vs. Kesrimal & Ors., 1971 (2) SCR 836, it was held that right to worship is a civil right which can be subject matter of a civil suit. The Court observed :

> "It is clear therefore that a right to worship is a civil right, interference with which raises a dispute of a civil nature."

That the right to conduct worship is also a civil right has been recognised by the courts in T.A. Aiyangar Swamigal & Ors. v. L.S. Aiyangar & Ors. 31 Madras Law Journal 758. In Devendra Narain Sarkar & Ors. v. Satya Charan Mukerji & Ors. AIR 1927 Calcutta 783 it was held that a suit by a person claiming to be entitled to a religious office against an usurper, for a declaration of his right to the office is a suit of a civil nature. Similarly in S. Ramnuja Jeer (supra) this Court observed as under:

> "From the aforesaid passage it is clear that so long as the holder of a purely religious office is under a legal obligation to discharge duties attached to the said office for the non-observance of which he may be visited with penalties, a civil court could grant a declaration as to who would be or could be the holder of such office."

It was vehemently urged that declaration of the character of a church, viz., whether it was autocephalous was solely dependent upon the canonical laws and it necessarily involved an adjudication of what was the applicable canon, what was its interpretation and what are the religious beliefs, practices, customs and usage in the church which pertained to the ecclesiastical jurisdiction and the civil courts could not embark on such an enquiry. This is the farthest or the highest stand that could be taken by the appellant. The answer is twofold, one section 9 of the Civil Procedure Code and other Article 25 of the Constitution. The latter guarntees constitutionally freedom of conscience and the right freely to profess, practice and propagate religion to every person. Its reach has been explained in various decisions. In His Holiness Srimad Perarulala Ethiraja Ramanuja Jeeyar Swami etc. vs. The State of Tamil Nadu. AIR 1972 SC 1586 it was held that this Article guarantees freedom to practice rituals and ceremonies which are integral parts of a religion by the followers of a doctrine. In S.P. Mittal vs. Union of India & Ors. AIR 1983 SC 1, it was held that freedom or right involving the conscience must naturally receive a wide interpretation. The suit filed was thus maintainable. The injunction and prohibition sought from interfering in administration of Church are certainly matters which pertain to the religious office. Even the declaration that the Church is episcopal is covered in the expansive expression of religion as explained in Mittal's case (supra). The word 'episcopal, means' of or pertaining to bishops, Having a govt. vested in bishop'. A suit for declaration of such a right would be maintainable under section 9. Not only because it is claim to an office but also because there is no other forum where such dispute can be resolved. If a dispute arises whether a particular religious shrine has ceased to be so due to its anti-religion activities then the followers of that religion or belief and faith cannot be denied the right to approach the court. Explanation I is not restrictive of the right or matters pertaining to religion. It only removes the doubt to enable the courts to entertain suits where dispute about religious office is incolved. The right to religion having become fundamental right, it would include the right to seek declaration that the Church was Episcopal. But the court may refrain from adjudicating upon purely religious matters as it may be handicapped to enter into the hazardous, hemisphere of religion. Maintainability of the suit should not be confused with exercise of jurisdiction. Nor is there any merit in the submission that Explanation I could not save suits where the right to property or to an office was not contested or where the said right depended on decisions of questions as to religious faith, belief, doctrine or creed. The emphasis on the expression 'is contested' used in Explanation I is not of any consequence. It widens the ambit of the Explanation and include in its fold any right which is contested to be a right of civil nature even though such

right may depend on decisions of questions relating to religious rights or ceremonies. But from that it cannot be inferred that where the right to office or property is not contested it would cease to be a suit cognisable under Section 9. The argument is not available on facts but that shall be adverted later. Suffice it to mention that in Ugamsingh (supra) the plaintiff's claim was that they were entitled to worship without interference of the idol of Adeshwarji in the temple named after him at Paroli according to tenets observed by the Digambri Sect of the Jain religion. It was held that from the pleadings and the controversy between the parties it was clear that the issue was not one which was confined merely to rites and rituals but one which effected the rights of worship. If the Digambaries have a right to worship at the temple, the attempt of the Swetamberies to put Chakshus or to place Dhawandand or Kalash in accordance with their things and to claim that the idol is a Swetamberi idol was to preclude the Digambaeries from exercising their right to worship at the temple, with respect to which a civil suit is maintainable under Section 9 of the Civil Procedure Code. The scope of the Section was thus expanded to include even right to worship.

'Religion is the belief which binds spiritual nature of men to super-natural being'. It includes worship, belief, faith, devotion etc. and extends to rituals. Religious right is the right of a person believing in a particular faith to practice it, preach it and profess it. It is civil in nature. The dispute about the religious office is a civil dispute as it involves disputes relating to rights which may be religious in nature but are civil in consequence. Civil wrong is explained by Salmond as a private wrong. He has extracted Blackstone who has described private wrongs as, 'infringement or privation of the private or civil rights belonging to individuals, considered as individuals, and are thereupon frequently termed civil injuries'. Any infringement with a right as a member of any religious order is violative of civil wrong. This is the letter and spirit of Explanation I to Section 9. In American Jurisprudence volume 66, paragraph 45, the law is explained thus.

'The (the) civil courts have steadily asserted their want of jurisdiction to hear and determine any controversy relating thereto. On the other hand, the civil courts have without hesitation exercised their jurisdiction to protect the temporalities of such bodies, for whenever rights of property are invaded, the law must interpose equally in those instances where the dispute is as to church property and in those where it is not'.

In Long vs.Bishop of Capetown, 1863 (1) Moore PCC NS 411, where the Bishop held an ecclesiastical court for proceeding against the appellant who was authorised to perform ecclesiastical duties in a Parish was held as coram non judice as he had no authority to hold an ecclesiastical court. The court held that where no Church was established by law it was in the same situation as any religious body, therefore, if any tribunal was constituted by such body which was not court then its decision would be binding only if it was exercised within the scope of the authority. In Dame Henriette Brown vs. Les Cure Et Marguilliers De L'Oeuvre Et Fabrique De Notre Dame De Motreal, 1874-75 (6) PC 157, the Privy Council while following the decision in Long (supra) held that where a Church was merely a private and voluntary religious society resting only upon a consensual basis courts of justice were still bound when due complaint was made that a member of the society was injured in any manner of a mixed spiritual and temporal character to inquire into the laws and rules of the tribunal or authority which inflicted the alleged injury and ascertain whether the act complained of was law and discipline of the Church and whether the sentence was justifiably pronounced by a competent

authority. The decision in Long (supra) has been followed in this country in Anadrav Bhikaji Phadke & Ors. v. Shankar Daji Charya & Ors. ILR 7 Bombay 323 where certain persons brought a suit that their right of worship in the sanctuary for a temple was being infringed, it was held that the right of exclusive worship of an idol at particular place set up by a caste was civil right.

The law being such it may be seen whether the suit filed by the respondent is covered within the forecorners of Section 9. Whether the relief sought by the respondent was regarding the status or office of the Metropolitan? In Original Suit No.4 of 1979 it is claimed that various persons said to be ordained as metropolitans have no right to act as such and priest ordained in turn by them would equally have no right to act as such, all these being usurpers. Further the office of metropolitan in the Malankara Church has, with it, attached legal obligations for the non-performance of which sanctions or penalties are provided is clear both from the canonical law as well as the Constitution. Apart from this four suits, namely, Original Suit Nos.2/79, 5/79, 6/79 and 8/79 concern themselves solely with the interference in the administration of Church properties being scheduled specifically in the respective plaints. Similarly the claim founded on allegations against wrong persons exercising the functions by those who have been wrongly designated as metropolitans and are interfering with the right to worship in Churches appears to be squarely covered in Section 9. The prayers in Original Suit No.4/79 were 'A' to 'H'. Even if the prayer 'A' which seeks a declaration that Malankara Church is episcopal in character ignored the suit for reliefs 'E','F', 'G' and 'H' which read as under cannot be held to be touching only religious rites and therefore, are not cognisable by Civil Court:

> "E.To declare that any Priest who refuses to recognize the authority of the Catholicos and Malankara Metropolitan, the 2nd plaintiff and other Metropolitans under him is not entitled to minister in any of the churches or its institutions in Malankara.
>
> F. To prohibit defendants 1 to 3 by an order or permanent injunction from ordaining Priests or deacons or performing any other sacraments, services etc. for the Malankara church or its institutions. G. To prohibit defendants 4 onwards from performing any religious services a sacraments whatsoever in or about any of the church of Malankara and for the Malankara church or its constituent churches or institutions.
>
> H. To prohibit the defendants from interfering in any manner with the administration of the Malankara church."

The appellant placed reliance on various averments in different I.As, written arguments and affidavits to demonstrate that the nature of relief sought was beyond the pale of Section 9. In fact this dispute was not seriously raised before the courts below. The dispute is going on since long and this is as stated the third round in this Court. But it appears that in earlier litigations in the Royal Court of Final Appeal and the Supreme Court no such objection was taken that the suit was not maintainable. The submission that the locus standi of the respondent was suspect as they having been ex-communicated by the Synod of the orthodox church with Patriarch as its head, did not have any substance as in Sardar Syendna Taher Saifuddin Saheb v. The State of Bombay (1962) Supp. 2

SCR 496 a Constitution Bench of this Court held that the exercise of the power of ex-communication by the religious head on religious ground form part of the management of its affairs in matters of religion and since Articles 25 and 26 of the Constitution protect not merely religious, doctrine and beliefs but also acts done in pursuance of religion and themselves carrying the rituals and observations, ceremonies and right of worship which are integral part of religion it is difficult to agree that there was no forum for vindication of such right.

Even the argument that the declaration that the Church was autocephalous or Episcopal is cognisable only in the ecclesiastical jurisdiction and the civil courts could not embark on such an enquiry does not appear to be well founded. A civil court may be precluded from deciding what rites are necessary to impart religious character. For instance, whether kaivapu, that is placing of the hand by the spiritual head for ordination is necessary or Morone, that is, oil of see must be there may be a matter for the Synod. But who has a right to perform it or whether it has been performed as provided in the religious book and whether a Church has become autocephalous due to adoption of Constitution by a Synod are matters which can surely and certainly be decided by the courts. The learned counsel submitted that question whether the Malankara Church was governed in its administration by the Constitution of Malankara Church with reference to the Constitution passed in M.D. Seminary meeting in 1934, which dealt with religious and ecclesiastical aspects of the Church, could not be adjudicated upon by the civil courts. According to learned counsel the Constitution expressly adopted the Catholico version of the canon and made provisions in regard to ordination of priecs, bishops, Catholicos andthe discipline to which they were subjected, these were mere matters of religious rites and ceremonies and involved an adjudiction of the question of religious faith, creed and doctrine which would be wholly outside the scope of the civil courts. The learned counsel submitted that the single most important question on which the fate of these appeals and suits would turn was as to which was the correct version of the canon applicable to Malankara Church and this was a matter which entirely depended on questions relating to the religious faith, doctrine and belief. It was also emphasised that the various decisions given by this Court, namely, Sardar Syedna Tahar Saifuddin Saheb vs. The State of Bombay, 1962 Supp. 2 SCR 496; Uqamsingh & Mishramal vs. Kesrimal & Qrs., 1971(2) SCR 836; Thiruvenkata Ramanuja Pedda Jiyyangarlu Valu vs. Prathivathi Bhayankaram Venkatacharlu & Ors. AIR 1947 PC 53; M. Appadorai Ayyangar & Ors. vs. P.B. Annanqarachariar & Ors. AIR 1939 Mad. 102; Kattalai Michael Pillai & Ors. vs. J.M. Barthe & Ors., AIR 1917 Mad. 431; E.C. Kent vs. E.E.L. Kent. AIR 1926 Madras 59 and Sri Sinna Ramanuja Jeer & Ors. vs. Sri Ranga Ramanuja Jeer & Anr., 1962 (2) SCR 509 would indicate that Explanation 1 to Section 9 saved only those suits where the right to property or to an office was contested. But where no contest was raised the suit would not be covered within the forecorners of the Section. Reference was made to paragraphs 301 to 304, 313 to 315, 318, 321, 332 to 339, 343 to 346, 352, 354, and 356 of Vol. 14 of Halsbury's Laws of England and it was urged that these paragraphs would show that the position of the crown in England in respect of Church was entirely different. The learned counsel submitted that passages which have been relied to deal with the Anglican Church relate to colonies where the supremacy of the Crown in ecclesiastical affairs still exists. He urged that those passages have no relevance to a sovereign secular country like India. The learned counsel pointed out that the decisions in Long (supra) and Dame (supra) arose in different colonies which accepted the supremacy of the Crown in ecclesiastical matters and apart from the regular hierarchical set up in the Anglican Churches or the Churches in the colonies the civil courts

also exercised jurisdiction. These decisions arising from jurisdictions where Church was part of the State could not apply in a country like India where religious neutrality was mandated by the secular constitution. In the end the learned counsel promitted that the judiciary should keep its hands off in respect of such religious matters.

The submissions do not appear to stand the test in light of what has been stated earlier. The relevant passage from Halsbury's Laws of England have already been extracted to demonstrate that the ecclesiastical law of England does not apply to colonies. There is no statute framed even during British regime which had adopted the statutory or common law to the Churches in India. The mere fact that the Churches in England are governed by ecclesiastical law could by no stretch of imagination furnish foundation for the submission that the Churches in India would also be governed by ecclesiastical law. The jurisdiction of courts depends either on statute or on common law. The jurisdiction is always local and in absence of any statutory provision the cognizance of such dispute has to be taken either by a hierarchy of ecclesiastical courts established in the country where the religious institutions are situated or by a statutory law framed by the Parliament. Admittedly no law in respect of Christain Churches has been framed, therefore, there is no statutory law. Consequently any dispute in respect of religious office in respect of Christians is also cognisable by the civil court. The submission that the Christians stand on a different footing than Hindus and Budhists, need not be discussed or elaborated. Suffice it to say that religion of Christians, Hindus, Muslims, Sikhs, Budhs, Jains or Parsee may be different but they are all citizens of one country which provides one and only one forum that is the civil court for adjudication of their rights, civil or of civil nature.

In reading Section 9 widely and construing it expansively the jurisdiction to entertain a suit for declaration whether the Church was episcopal or congregational and whether the appellants could have been ordained by the Patriarch when it was contrary to the earlier decision given by this Court that the ordination was required to be approved by Synod, the court is not being asked to adjudicate on faith but whether the exercise of right in respect of faith was valid. The Grace no doubt comes from Patriarch and on that there is no dispute but whether the Grace came in accordance with the Canon or the Constitution is certainly a matter which would fall within Section 9 C.P.C. Status and office are no doubt different but what was challenged is not the status or faith in Patriarch but the exercise of right by Patriarch which interfered with the Office of Cathelico held validly. Apart from it, as stated earlier, after coming into force of the Constitution Article 25 guarantees a fundamental right to every citizen of his conscience, faith and belief, irrespective of cast, creed and sex, the infringement of which is enforceable in a court of law and such court can be none else except the civil courts. It would be travesty of justice to say that the fundamental right guaranteed by the constitution is incapable of enforcement as there is no court which can take cognisance of it. There is yet another aspect of the matters that Section 9 debars only those suits which are expressly or impliedly barred. No such statutory bar could be pointed out. Therefore, the objection that the suit under Section 9 C.P.C. was not maintainable cannot be accepted.

The other objection to the maintainability of the suit was based on the Places of Worship (Special Provisions) Act, 1991 (`Act' for short). This Act was enacted to prohibit conversion of any place of worship and to provide for the maintenance of its religious character as it existed on the 15th day of

August, 1947 and for matters connected therewith or incidental thereto. Section 2(c) defines `worship' to mean `a temple, mosque, gurudwara, church, monastery or any other place of public religious worship of any religious denomination or any section thereof, by whatever name called'. Section 3 bars any person from converting any place of worship or any religious denomination into a place of worship of a different section of the same religious denomination or of a different religious denomination or any section thereof. Section 4 declares that the religious character of a place of worship existing on 15th day of August, 1947 shall continue to be same as it existed on that date. Therefore, it was urged that the suit having been filed for declaration that the Syrian Churches were apostolic and autocephalous, it amounted to seeking a declaration as to religious character of the places of worship and consequently it was barred and the court cannot assume jurisdiction to grant such declaration. The learned counsel urged that each Parish Church is a place of worship within the meaning of Section 2(c) of the Act and the religious denomination is the Jacobite Syrian Orthodox Church in Malabar. According to learned counsel, it having been held in successive decisions that there were two sections of the said religious denomination, one, the Patriarch Group and the other, Catholicos and these two denominations existed on 15th day of August, 1947, factually and legally, the suit filed by the respondents for a declaration that the Jacobite Church was autocephalous was not maintainable and liable to be dismissed on this ground alone. The learned counsel submitted that the Parish Churches believed in uniterrupted apostolic succession of St. Peter through the Patriarch and that the spiritual grace emanates through such Patriarchs and, therefore, the declaration sought by the respondents could result in destroying the basic character of the religious denomination. It is not necessary to deal with these submissions at length as sub-section (3) of Section 4 is a complete answer to it. It reads as under:-

> "Nothing contained in sub-section (1) and sub-section (2) shall apply to,-
>
> (a) any place of worship referred to in the said sub-sections which is an ancient and historical monument or an archeological site or remains covered by the Ancient Monuments and Archeological Sites and Remains Act, 1958 (24 of 1958) or any other law for the time being in force;
>
> (b) any suit, appeal or other proceeding, with respect to any matter referred to in sub-section (2), finally decided, settled or disposed of by a court, tribunal or other authority before the commencement of this Act;
>
> (c) any dispute with regard to any such matter settled by the parties amongst themselves before such commencement;
>
> (d) any conversion of any such place effected before such commencement by acquiescence;
>
> (e) any conversion of any such place effected before such commencement which is not liable to be challenged in any court, tribunal or other authority being barred by limitation under any law for the time being in force".

The Syrian Jacobite Church is an ancient and historical monument which was established sometime in 51-52 century A.D. The respondents did not seek a declaration for conversion of the church or place of worship. The matter of the religious denomination was settled as far back as 1876 in the Mulunthuruthy Synod. Even the declaration sought that the Church is autocephalous is founded on the Kalpana issued in 1912 and the Constitution framed in 1934. No declaration is sought for change of the place as it existed in 1947. Further, whether the declaration sought for can be granted or not is a different matter than claiming that the declaration if granted would result in converting the place of worship or the religious denomination. This objection, too, therefore, is not available on facts of this case.

Reverting to merits the principal issue that calls for adjudication is about the scope of excommunication in ecclesiastical matters and the extent to which the Court can examine it and lastly whether the ex-communication of the Catholico by the Synod held at Damascus under the Presidentship of the Patriarch of Antioch was valid either canonically or conventionally? The principal defence in the suit from which these appeals have arisen, was that the Catholico-plaintiffs were ex-communicated, therefore, the suits were liable to be dismissed. Two questions arise, one, the jurisdiction of the civil court to examine ex- communication and second, whether the ex-communication was in accordance with law. Taking up the first question as to whether the civil courts are competent to decide on the validity of the ex-communication, the answer, in this connection, has been given while deciding the objection of maintainability of the suit under Section 9 CPC. Yet it would not be inappropriate to mention how far the protection of a civil court extends regarding the ecclesiastical matters. The law has been explained in paragraphs 315, 332 and 337 of Halsbury's Laws of England, Vol. 14. A church is formed by the voluntary association of individuals. And the churches in the commonwealth are voluntary body organised on a consensual basis - their rights apart from statutes will be protected by the courts and their discipline enforced exactly as in the case of any other voluntary body whose existence is legally recognised. Therefore, all religious bodies are regarded by courts of law in the same position in respect of the protection of their rights and the sanction given to their respective organisations. It is further settled that discipline of a church cannot affect any person except by express sanction of the civil power or by the voluntary submission of the particular person. But for purposes of enforcing discipline within a church religious body may constitute a tribunal to determine whether its rules have been violated by any other members or not and what will be the consequence of that violation. In such case the tribunals so constituted are not in any sense courts, they derive no authority from the statutes and they have no power of their own to enforce their sentence. Their decisions are given effect to by the courts as decision of the arbitrators whose jurisdiction rests entirely on the agreement of the parties. Consequently if any member of such body has been injured as to his rights in any matter of mixed spiritual and temporal character the courts of law will, on due complaint being made, inquire into the laws and rules of the tribunal or authority which has inflicted the injury and will ascertain whether any sentence pronounced was regularly pronounced by competent authority, and will give such redress as justice demands. See Long (supra), Dame (supra) and Anadrav (supra). In Hasanali & Ors. vs. Mansoorali & Ors., AIR (35) 1948 PC 66, it was held that a court of law cannot recognise a purported ex-communication as valid if principles of substantial justice have not been complied with.

Ex-communication in religious order and that tco of a spiritual head entails serious consequences both religious and civil.'Ex-communication' is defined in Black's Law Dictionary as 'a sentence of censure pronounced by one of the spiritual courts for offences falling under the ecclesiastical cognizance. It is described as two-fold: (1) The lesser excommunication, which is an ecclesiastical censure, excluding the party from the sacraments; (2) the greater, which excludes him from the company of all Christians. Formerly, too, an excommunicated man was under various civil disabilities. He could not serve upon juries, or be a witness in any court; neither could he bring an action to recover lands or money due to him. These penalties were abolished in England by St. 53 Geo. III, c. 127. Excommunication is still a censure under Canon Law". In Faiths of the World by James Gardner, it is discussed under 'Anathema' and 'Censure'. The Anathema was usually administered to offenders. 'It is well known that a solemn Curse or anathema "with bell, book, and candle" against all heretics, is annually pronounced by the pope at Rome, and by other ecclesiastics in other places on the Thursday of Passion week, the day before Good Friday, the anniversary of the Saviour's crucifixion". The substance of the "Anathema"is in these words:

> "Excommunicated and accursed may they be, and given body and soul to the devil. Cursed be they in cities, in towns, in fields, in ways, in paths, in houses, out of houses, and all other Places, standing, lying, or rising, walking running, waking, sleeping, eating, drinking, and whatsoever things they do besides. We separate them from the threshold, and from all prayers of the church."
>
> 'Censures (Ecclesiastical)" is 'the various punishments inflicted by the Christian church upon delinquent members of her communion, in virtue of that authority which has been committed to her by Christ, the great King and Head of the church'.

One of the effects of such action is that the person concerned is deprived of the risnt of worship. Under our Constitution it is a fundamental right. Any intemenace with it or its deprivation can be challenged in a court of law. Even in England the Courts extend protection regarding ecclesiastical matters if they affect the right as is clear from paragraph 337 of Halsbury's Laws of England, Fourth Edition, Volume 14.

In the light of the law thus stated it may be examined if the ex-communication of Catholico by the Patriarch was valid as if the power of ex-communication was validly exercised then the suit filed by them was not maintainable. The specific case in this regard of the appellants was that, 'canonically' and, 'traditionally' the Patriarch of Antioch is the supreme head of the Holy Universal Syrian Orthodox Church and the Catholicos, is subordinate to the Patriarch of Antioch'. Therefore, the Catholico was validly ex- communicated in accordance with the canon filed as Ex. 18, which is the foundation of the power and jurisdiction of the Patriarch. How far is correct? In Moran Mar Basselios (supra) it was held that the Catholicos had not committed any act of heresy. Could they be held to have committed act of heresy when, then used the world 'Holiness' and on the 'Throne of St. Thomas'. From the New Testament - The Gospel according to St. Mathew. Chapter 19 it appears there was throne for each apostle:-

> "Then answered Peter and said unto him, Behold, we have foresaken all, and followed thee; what shall we have therefore?"
>
> "And Jesus said unto them, verily I say unto you, That ye which have followed me, in the regeneration when the son of, man shall sit in the throne of his glory, ye also shall sit upon twelve thrones, judging the twelve tribes of Israel".

St. Thomas was, 'one of the original apostles of Jesus Christ' [Religions of India by Dr. Karan Singh, P. 15]. In a book written by E.M. Philip, one of the authors on Syrian Church, the effect of the judgment by Royal Court of Appeal is described thus, 'of course. the majority judgment prevailed and Mar Dionysius was established on the throne of St. Thomas'. The expression 'Melapattakaran of the throne in Malayalam' has been used by Royal Court of Cochin in its judgment thus, "He upheld the contention of Mar Thomas Athanasius, and found that the Syrian Church was independent of the Patriarch of Antioch. Of course, the majority judgment prevailed, and Mar Dionysius V. was established on the throne of St. Thomas".

In Exht. A-4 (Notice for M.D. Seminary Meeting of 1934) issued to Vicars, Priests, Kykars and Parishioners, it was mentioned:-

In the letter dated 8th June, 1959, Ex. A-24, the Catholic in his reply to the Patriarch wrote as under:-

> "3. His Holiness: The propriety of using the title 'His Holiness' along with my name is questioned. Now I must bring to your notice that fact that customarily the same ephithets have been attached to the Patriarch and the Catholicos in our church as evinced by our Holy writs and other books. For example, in the diptych (first intercession of the Church, during the Holy Qurbana, the people are asked to pray for our Patriarchs Aboon Mar Ignatius and Aboon Mar Baselios. The very same titles are here seen applied to the Patriarch and the Catholicos, alike, the later himself being called a Patriarch. The inference is that the titles proper to the Patriarch of Antioch are proper also to be Catholicos of the East. We also see that such epithets as Moran, Aboon, etc. are applied to both the prelates in common. Further this title has been in use here for long time.
>
> 4. The Throne of St. Thomas:
>
> Your Holiness says 'It is never heard that St. Thomas established a throne of the Catholicos or the Mapriano, either in India or in my other place'. I must, without presumption, ask your Holiness, whether for that matter, any apostle has established a throne anywhere. Is it not that such honours have been connected, with them in latter times. There is also no special thronal ascension for any dignitary of our church except the installation ceremony(.....) done at the time of the consecration of Bishops and other prelates and at their acceptance by their respective dioceses. Besides, we see that this term 'throne' is added to the Patriarchs, Metropolitans and Bishops alike

in the Hudaya Canon and other books (Canon Chap. VII, Section I) and the ceremony of enthronment is done over for Bishops. Your Holiness knows that the very eminent Syrian Historical writer Gregories Bar Heoraous regards St. Thomas, the apostle, as the first bishop of the East. Let me also bring to your notice that the Malankara Church Historian, E.M. Philip who had been a staunch partisan of the Patriarch, refers to the throne of St. Thomas, in his history of the Malankara Syrian Church (2nd Edition page 253). That being the case, can we say that St. Thomas, one among the twelve eminent apostles, had no throne at all.

Your Holiness says 'Also we could not find such a throne in the document given by Abdul Messiah II'. I am indeed happy that your Holiness respects and depends upon the Kalpana given by Abdul Messiah II. But it must caution your Holiness that the Kalpana you refer to may be the General Kalpana that he issued just before he left Malankara (1913). The earlier Kalpana issued by him from Niranam Church on the day he installed Mar Ivanios of Murimattom as Catholicos, had to be necessarily referred to. To make things clear, I shall quote a sentence from it. "According as you requested we have consecrated our spiritual and beloved Ivanious as Mapriano under the name Baselios of the East, on the throne of the Diocese of St. Thomas in India and other places". (1912). This is very definite and no one could say that a throne like this was a now find or one found without the knowledge of the throne of Antioch".

This letter explained the justification for use of the expression, 'Throne of St. Thomas' and 'Holiness'. Whatever may be its religious significance but in view of what has been stated above coupled with the conduct of the Patrirch in not only condoning and accepting its use but even presiding in the installation ceremony, it is difficult to treat it as an act of heresy deserving ex-communication.

Apart from it, the four charges levied in the show- cause notice were as under:-

(1) That the Catholicos claimed to be seated on the Throne of St. Thomas.

(ii) That he declared that he was equal in status to the Patriarch which was uncanonical as he was a subordinate.

(iii) That he did not accept the Patriarch delegate in India (sent in 1972) and resorted by all means "to send him off".

(iv) That at the time of ordination of three Metropolitans in 1966 by the Catholicos, the Catholicos did not take an oath of subordination to the Patriarch.

None of them individually or collectively could attract the punishment of excommunication even if found to be true. The nature and the power to be exercised for excommunication have been indicated earlier. They are not lightly exercised as they deprive a person of his right of worship. The accusation that the Catholico was subordinate to Patriarch was not an accurate description. The

Patriarch of Antioch was and is undoubtedly the highest ecclesiastical functionary. But the second highest dignitary was and is the Catholicate of the East. The concept of subordinate amongst such spiritual heads is out of place. They function in their own sphere according to religious canon. When Patriarch of Antioch was established in Synod of Nicea the Catholico of the East was established at Tigris. The two authorities in the hierarchy existed from 4th century. Therefore, the creation of Catholico in 1912 in Malankara conferring jurisdiction over India, Ceylon and Burma was neither against scriptures nor against faith. The exercise of power by the Catholico in pursuance of such creation and under the Constitution which was framed in 1934 could not entail ex- communication. The action of Patriarch in ex-communicating the Catholico deprived him of the religious right guaranteed to him under the Constitution, therefore, it had to be in accordance with law. Even the meeting summoned at Damascus being in violation of the Constitution of 1934 was invalid. Therefore, the ex-communication of Catholicos was not in accordance with law.

Was the ex-communication canonical? If the religion is a bond uniting man to God then canon is a rule or decree, a body of principles and standards the practice and observance of which identifies the man with the religion. 'The identity of the religious community described as church consist in the identity of its doctrine, creeds, formularies, rituals etc.' [Hidayatullah, J. in Ninal Daniel v. Most Rev. Ubanon Marthoma, Metropolitan of Mar Thoma Church, and others, Civil Appeal no.947 of 1964 decided on 7th January, 1965].

Canon is explained in Black's Law Dictionary as under:

"A law, rule or ordinance in general, and of the church in particular. An ecclesiastical law or statute. A rule of doctrine or discipline. A criterion or standard of judgment. A body of principles, standards, rules, or norms." Canon means both a norm and attribute of the scripture. The erm 'canon law' is explained in The Encyclopedia of Religion Vol. 3 as under:

"The term canon is based on the Greek word Kanon. Originally signifying a straight rod or bar, especially one used to keep something else straight, canon came to mean something that is fixed, a rule or norm. The term has several applications in church usage: the canon of scripture, or that fixed list of books that are determined to belong to sacred scripture; the canon of the Mass, the fixed portion of the eucharistic prayer; the process of declaring a deceased person to be among the fixed list of saints in heaven, or canonization. From the third century, directives for church living and norms for church structures and procedures have been issued as canons.

Canon law refers to the law internal to the church. In the early centuries of Christianity, canon was used for internal church norms, to distinguish them from the imperial nomos (leges in Latin) or laws. Church norms have also been known as sacred or divine, to distinguish them from civil or human laws. At times they are referred to as the "sacred canons" or the "canonical order". The term ecclesiastical law refers to the civil law adopted in various nations to regulate church affairs. The term canon law is used in the Roman Catholic, Anglican, and Orthodox communions.

Canon law is drawn from sources in scripture, custom, and various decisions of church bodies and individual church authorities. Over the centuries these have been gathered in a variety of collections

that serve as the law books for various churches".

Canons are thus the principal scriptural bases for the religious practices observed in a Church. Syrian Orthodox Church is very old. But its canon appears to have come in existence sometime in 13th Century collected and written by Bar Hebrew who was the Catholico of Tigris. In the appeal arising out of interpleader. suit this Court after examining the evidence in detail particularly of C. Philip, P.W.5, who was the Professor of the Sriram College, Calcutta and was examined, as expert on canon law held that there was no authorised edition of these canons even though one of the resolutions at the Mulunthuruthy Synod ran thus :

> "It will be very good if a book containing the Canons and procedure necessary for the firmness in the Orthodox faith is printed in Syriac or Malayalam as per orders (of the Holy father) and a copy with his seal given to each church and decided that future conduct shall not be except in accordance with that."

The absence of any canon in such an old Church existing since 51-52 Century A.D. with such extensive and widespread following not only in this country but even others is a tribute to the honest, firm and sincere belief in the Syrian Church. Even without any written Code or rule their never was any controversy over faith, practice, belief, rituals etc. But what is surprising is that till the advent of late 19th and the beginning of 20th Century there was no authentic publication of it. Consequently when the battle in courts of law started between the two groups there appeared two divergent versions differing on vital aspects. To add to this the courts have not been consistent in accepting one or the other version. More so because of the accusation of interpolation and tampering. Even though the first occasion to examine the canons arose in the appellate judgment of the Royal Court, the scope was limited as to whether the Patriarch alone had the power to consecrate Morone. The authority to ex-communicate etc. in which the interpolation is alleged was never examined. The decision, therefore, cannot be taken to be as putting its seal of approval on the authority of the canon produced on behalf of Patriarch of Antioch. And when the power and jurisdiction to ex- communicate in accordance with canon law was raised in the interpleader suit (Vattipanam suit) both the sides came with different versions, the one filed by Catholico was accepted by the trial court whereas the High Court found the version placed by the Patriarch as authentic. Both the judgments abound in thorough and careful analysis of difficult subject. The discussion is extensive and learned. But all this labour was lost when the appeal in the High Court was dismissed in consequence of the review judgment. It is true that the Bench while admitting the review petition had confined its scope but once it found that the excommunication was invalid for violation of principles of natural justice and question having been raised that the ordination of defendant no.1 (that is catholico) as Malankara Metropolitan was invalid he was the Malankara trustee. Justice Chatfield with whom Justice Pillay agreed that, 'he (that is catholicos) did not forfeit these positions afterwards by any heresy or schism. The meeting of the Malankara Association which removed the 5th & 6th defendants (that is Patriarch) was presided over bythe Malankara Metropolitan and the reason given in the original judgment of this court for holding that their removal was illegal cannot therefore stand'. On these findings it was held :

> "In the result therefore by reason of the decision on the contentions as to natural justice and apostacy the appeal must fail quite apart from the decision of the other questions in dispute in this suit. It would not be necessary to consider these other questions even if it were open to this court to do so in view of the orders already referred to."

The effect in law of this order, on review, was that the finding recorded by the High Court on the authenticity of the canon etc. in its original order ceased to be operative. But the learned counsel for the appellant vehemently urged that since the Bench which admitted the review petition had restricted its scope and made it subject to the findings recorded on the authenticity of the canon and the power of the Patriarch to ex-communicate without any intervention by the Synod, the findings recorded on these aspects were not destroyed in consequence of the order passed on the review petition. The submission does not appear to be correct either legally or factually. When a reivew petition is entertained and notice is issued by a court it is open to it to restrict the scope of hearing but once the petition is heard and the court is satisfied that the order under review was erroneous at the fact of it then it is not precluded from allowing the petition was admitted and the Catholicos were restricted from re-opening other points, an application was filed on their behalf which was rejected but while rejecting the application it was observed, `if it is found that any of these questions is so legally connected with the questions relating to natural justice that the latter questions cannot be properly dealt with without considering such excluded questions then for this purpose and for this purpose alone the excluded questions may be considered'. This observation of Chatfield, J. was concurred by other judges also. And when the review petition was heard on merits the court was of the opinion, `these (These) orders did not prevent the defendants (that is Patriarch) from relying on contentions not expressly found in their favour in the original judgment and they have in fact relied on the contentions previously set up by them that the defendants 1 to 3 have become aliens to the faith of Syrian Jacobite Church and for this reason alone are capable of acting as trustees. The plaintiffs on the other hand have failed to show that any of the questions which have been declared to be excluded from consideration at the re-hearing are inseparably connected with these questions and thereupon in disposing of this appeal the excluded questions will not be referred to'. It is thus clear that the Bench heard the appeal not only on the questions on which the review was entertained but even on other questions as the questions of natural justice and apostacy were closely connected with and could not be separated from the issues which had earlier been closed. It was after these observations that Justice Chatfield made the observations which have been extracted earlier. To argue, therefore, that the finding recorded in the earlier judgment by the High Court that Ex. 18 filed by the Patriarch group and relied as authentic canon survived, does not appear to be correct.

Even assuming, although there appears no doubt, that the finding recorded by the High Court in its earlier judgment on the authenticity of the canon survived, there is yet another reason to disregard it. If the ex-communication of Dionysius was invalid for violation of principles of natural justice, as was found by the Bench reviewing the order, then the findings on earlier issues were rendered unnecessary and it is fairly settled that the finding on an issue in the earlier suit to operate as res judicate should not have been only directly and substantially in issue but it should have been necessary to be decided as well. For instance, when a decision is taken in appeal the rule is that it is the appellate decision and not the decision of the Trial Court that operates as res judicata.

Consequently where a suit is decided both on merits and on technical grounds by the Trial Court, and the appellate court maintains it on technical ground of limitation or suit being not properly constituted then the decision rendered on merits by the Trial Court ceases to have finality. In Abdullah Ashgar Ali Khan v. Ganesh Dass AIR 1917 PC 201 the Court while considering the expression, `heard and finally decided' in Section 10 of the British Baluchistan Regulation IX of 1896 held that where the suit was dismissed by two courts on merits but the decree was maintained in second appeal because the suit was not properly constituted then the finality on merits stood destroyed. In Sheosagar Singh & Ors. v. Sitaram Singh ILR 1897 Cal. Vol.XXIV where parentage of defendant was decided in his favour by the Trial Court but the High Court maintained the order as the suit was defective the claim of the defendant in the latter suit that the finding on parentage operated as res judicata was repelled and it was held, that the question of parentage had not been heard and finally decided in the suit of 1885. The appeal in that suit had put an end to any finality in the decision of the first Court, and had not led to a decision on the merits.

The rationale of these decisions is founded on the principle that if the suit was disposed of in appeal not on merits but for want of jurisdiction or for being barred by time or for being defectively constituted then the finality of the findings recorded by the Trial Court on merits stands destroyed as the suit having been found to be bad for technical reasons it becomes operative from the date the decision was given by the trial court thus rendering any adjudication on merits impliedly unnecessary. On the same rationale, once the Royal Court of Appeal allowed the Review Petition and dismissed the appeal as the ex-communication of Dionysius was contrary to principles of natural justice and he had not become heretic then the finding on authenticity of the canon etc. rendered in the original order was rendered unnecessary. Therefore, the finding recorded on the authenticity of the canon and power of the Patriarch etc. recorded in the earlier order could not operate as res judicate in subsequent proceedings.

Last but not the least reason to hold that the finding in the Vattipanam Suit recorded by the High Court in its original judgment on canon etc. could not operate as res judicata is where a decree is one of dismissal in favour of the defendants, but there is an adverse finding against him, a plea of res judicata cannot be founded upon that decision because the defendant having succeeded on the other plea had no occasion to go further in appeal against the adverse finding recorded against him [see Midnapur Zamindari Company Ltd. vs. Naresh Narayan Roy, AIR 1922 PC 241]. Mr. Parasaran, the learned senior counsel for the appellant, urged that this is not an absolute rule as there is mutuality in res judicata and even the succeeding party is bound by the question decided against him. Reliance was placed on Mt. Munni Bibi & Anr. vs. Tirloki Nath & Ors., AIR 1931 PC 114, V.P.R.V.Chockelingam Chetty vs. Seethai Ache & Ors., AIR 1927 PC 286, Sham Nath Madan vs. Mohammad Abdullah & Ors., AIR 1967 J&K 85 and Arjun Singh & Ors. vs. Tara Das Ghosh & Ors., AIR 1974 Patna 1. The two Privy Council decisions do not appear to be of any assistance as the first one, Mt. Munni Bibi (supra) , is the leading decision on the principle of res judicata amongst co-defendants. True the Patriarch and Catholico were co-defendants and there was lis too but in view of the finding on natural justice and apostacy the finding on other issues was rendered unnecessary. The rule of res judicata amongst co-defendants is also govened by those rules which apply to normal rule of res judicata. The decision in Chockalingam Chetty (supra) is an authority for the principle that where an appeal is filed without impleading a defendant through whom other

defendants derived title then the decision in his favour operates as res judicata between plaintiff and other defendants as well. Similarly, in the decision of the Patna High Court in Arjun Singh (supra) the primary question was whether a party against whom a finding is recorded has got a right of appeal even though the ultimate decision was in his favour and it was held that there was no bar, but what was necessary was that the finding so recorded should operate as res judicata. On facts it was found that the Appellate Court while maintaining the order of dismissal of the suit on preliminary issue recorded findings on other issues which were against the plaintiff, yet the plaintiff was not entitled to file an appeal as the findings on merits which were adverse to him could not operate as res judicata. In Sham Nath's case (supra) the learned Single Judge rejected the plea of res judicata raised on behalf of the plaintiff, but while considering the alternative argument, observed that an adverse finding recorded against a defendant in a suit dismissed could not operate as res judicata unless the adverse finding formed a fundamental part of the decree itself. None of the decisions, therefore, are of any help to the appellant. In any case the findings on cannon or power of Patriarch which were the findings adverse to the Catholico could not form fundamental part of the decree itself, therefore, it could not operate as res judicata. Truly speaking, the findings on the authenticity of the canon and the power of Patriarch etc. recorded in the earlier judgment and the finding on apostacy and breach of natural justice recorded in the review judgment could not go together. Otherwise in Moran Mar Bessilios (supra) it would not have been possible for this Court to come to a finding that the findings recorded on Issue Nos. 14, 15, 16 and 19 in the Vettipanam Suit operated as res judicata in the Samudayam Suit. The finding recorded by the learned Single Judge and the Division Bench, therefore, that, `the decision in XLI T.L.R. that Ext.18 there in (Ext.BP in the Samudayam case and Ext.B161 in these cases) is the version of Hudaya canons accepted as binding on the Malankara Church has not become concluded and does not operate as res judicata between the parties, is well founded.

Could the finding on the authenticity of the canon be relied as a precedent? For that it must fall either under Section 42 or Section 43 of the Indian Evidence Act. Section 42 which makes any judgment relating to public nature admissible itself provides but `such judgments are not conclusive proof of that which they state'. Section 43 makes a judgment admissible if existence of such a judgment is in issue. In Kumar Gopika Raman Roy vs. Atal Singh & Ors. AIR 1929 PC 99, it was held that `the Indian Evidence Act does not make finding of fact arrived at on the evidence before the court in one case evidence of that fact in another case'. In Benode Lal vs. Secretary of State, AIR 1931 Calcutta 239 where the law was clearly explained, it was observed, `when an appeal is taken against a decree, the decree of the lower gets merged in the decree of the Appellate Court and so the judgment of the trial court is not final adjudication on the point in issue between the parties in the suit'. The Court further observed that even assuming that, `the existing judgment may be relevant, but the truth of it, by which it is understood, the decision of the Judge and the opinion expressed by him, is not relevant'. Applying these principles once the appellate judgment was set aside, the appeal was dismissed and the order of the trial court was maintained, the findings recorded on canon etc. in the appeal could not be relied.

That is why when the suit was filed in 1938, that is the Samudayam Suit, the parties joined issue, once again, on the authenticity of the canon and the Court framed the issue as to which was the correct and genuine version. No issue about res judicata was raised by the Patriarch. Coincidentally

same story was repeated, the Trial Court accepting the version filed by the Patriarch. But when the matter came to this Court in 1959 it while considering the objection of Patriarch that by inserting Clause 5 in the Constitution the Catholicos were guilty of heresy as it was contrary to the authentic version produced by them did observe that for deciding this aspect it was necessary to decide the issue which related to authenticity of the version. Since this Court had not recorded any finding itself on the authenticity of the canon the dispute again arose, when these suits were filed, about the authenticity of the canon and the findings and conclusions recorded in earlier suits that is the Vattipanam Suit and the Samudayam Suit and whether any one of them operated as res judicata. It has already been explained why the findings recorded in Vattipanam Suit could not operate as res judicata. Nor the finding could be treated as binding precedent.

Can the same be said about the finding in the Samudayam Suit? It is not disputed that the Trial Court not only framed Issue No.13 but even recorded specific finding that the canon produced by the Patriarch group was not the authentic version. But its binding effect was rendered nugatory both according to the Division Bench and the learned counsel for the appellant because when this Court restored only the decree of the Trial Court and not the judgment then the findings recorded by the Trial Court could not be taken to be binding or final. Two legal questions, therefore, arise one, whether the authenticity of the canon was directly and substantially in issue and second the effect of restoration of the decree of the Trial Court. The first was answered by this Court itself while adjudicating upon the plea advanced on behalf of the Patriarch group to support the judgment of the High Court. To appreciate it, it is appropriate to extract Issue No. 13 which reads as under:

> "13. Which is the correct and genuine version of the Hoodaya Canons compiled by Mar Hebraeus? Whether it is the book marked as Ext. A or the book Marked as Ext. XVIII in O.S.91 of 1088."

Issues Nos.19 and 20 related to as to whether the defendants, that is, the Catholicos formed themselves into a separate Church and whether the acts mentioned under the Issues constituted separation. This Court did not permit the appellants, that is, Patriarchs to support the order of the High Court on the ground that insertion of Clause 5 in the Constitution of 1934 was contrary to canons, as it was not raised in the pleadings. Nor did the Court find any merit in the submission that Issues Nos.13 and 16 which related to loss of status as members of the Church was wide enough to include it. But it held that reference to pleadings would indicate why Issue No. 13 was raised. It further found that to decide Issue Nos. 16, 17, 19 and 20 it was, `absolutely necessary to determine which is the correct book of canons, for the plaintiff (that is the Patriarch Group) founded their charges on Ex.B.P. - Ex. 18 in O.S. No.94 of 1088 and the defendants took their stand on Ex.26 - Ex.A in O.S. No.94 of 1088. Issue No.13 was directed to determine that question'. The issue whether the Hudaya canon filed by the Patriarch Group as Ex.18 in the earlier suit and as Ex.BP in the present was authentic was not only directly and substantially in issue but as held by this Court was necessary to be decided for the principal and the main dispute which arose in that case. In the circumstances it is difficult to agree with the Division Bench, that, `this does not mean that findings were really relevant or necessary for the ultimate decision in the litigation by the Supreme Court. Issue Nos. 14 to 17 and 19 and 20 were raised by the plaintiffs and had to be decided'. The Trial Court no doubt observed that it was not necessary to decide the issue in the broad and general sense

but it held that the discussion and conclusions in the earlier suit that is Vattipanam Suit on the question of canon did not operate as res judicata. It did make some observations which furnished occasion to the appellants to urge that once the Court found that it was not necessary to decide the larger issue it should not have discussed the smaller one only because additional evidence had been led and the counsel had argued the matter. But this submission cannot be accepted as in view of the observation made by this Court that the finding on Issue No.13 was necessary the observations lose importance. And the finding if recorded by the Trial Court would have to be accepted and any observation to the contrary ignored. The finding of the Trial Court on Issue No. 13 was that no Hudaya canon book approved as authentic and genuine by the Patriarch was ever supplied to the Malankara Sabha and the manuscript were of questionable origin and it could not be shown that, "either in Malankara or in Syria or Turkey or other places under the Patriarch or any where in the Jacobite church outside Malankara, there is or has been in existence and in use any version of the Hudaya canon corresponding to Ext. BP or that such a version has been approved and accepted by the Jacobite church as a correct version".

[Emphasis supplied] In appeal (The Most. Rev. Mar Poulose Athanasius & Ors. vs. Moran Mar Bassaelios Catholicos & Ors., 1957 KLT 63) the findings recorded by the Trial Court were not set aside, on merits but the canon filed by Patriarch was accepted as authentic since, `in the final judgment after review the question of natural justice alone was considered and decided and this means that the earlier finding on the question of canons, which was a matter directly and substantially in issue in the suit, was accepted as correct even for the purpose of the final decision on the question of natural justice. Thus by implication the finding on the question of the canons forms an integral part of the final decision in 45 T.L.R. 116 because, without maintaining that finding, the question of natural justice could not have arisen at all'. But that judgment did not and could not operate as res judicata for reasons explained earlier. The judgment of the High Court in The Most. Rev. Mar Poulose Athanasius & Ors. vs. Moran Mar Bassaelios Catholicos & Ors., 1957 KLT 63. was reversed by this Court. It was held that Catholico had not become heretic or separated from the Church. But for recording this finding the decision on Issue No. 13 was as observed by this Court necessary. Therefore, the appellate judgment of this Court precluded the Patriarch from claiming that the Hudaya Canon filed by them was authentic as the earlier judgment operated as bar to this plea as once this Court recorded the finding that the Catholico had not separated the finding on Issue No. 13 stood affirmed even though it was not referred since the finding on the Catholic having become heretic or separated from the Church depended as observed by this court itself, on finding on Issue No.13. If the finding of the trial court on Issue No.13 was necessary for deciding whether the Catholico had become heretic and that finding was affirmed in the review judgment then the finding of the High Court in its earlier judgment on the authenticity of the canon cannot stand. It could neither be res judicata nor a precedent.

The next aspect is the legal effect of restoration of decree of the Trial Court. Did it result in revival of the findings on authenticity of the canons as well. The Division Bench held that, `once an appeal is disposed of it is the appellate judgment which should be considered for the purpose of deciding the question of res judicata. Appellate judgment supersedes the judgment of the trial court, and it is no longer open to look into the judgment of the trial court except to the extent it might have been specifically confirmed by the appellate court. See Benodial Chakravarthy V. Secretary of State for

India (A.I.R. 1931 Cal. 239) and Venkiteswarulu v. Venkitanarasimham and others (AIR 1957 A.P. 557)'. The reasoning that once an appeal is taken to higher court then it is the appellate decree which is final and binding cannot be faulted with. But the other observation that the findings of the Trial Court cannot be looked into except to the extent it might have been specifically confirmed is not wholly correct. None of the decisions referred in the order support it. The Calcutta decision has already been referred to. In Venkateswarlu v. Venkata Narasimham & Ors., AIR 1957 Andh. Pradesh 557, the High Court observed, `Now the appellate court rested its conclusion not on the ground that Ex.A-1 was unsupported by consideration but on the ground that the transaction was such as not to bind the joint family. Though the trial court found that the consideration for the sale Ex.A-1 was wholly fictitious, the appellate court did not give a finding upon that question but confirmed the decree of the trial court on the ground that the sale was for a consideration not binding on the joint family. But what the Division Bench ignored was that the High Court did not look into the earlier judgment as the order was upheld on a different ground, therefore, it could not be held that it was express or implied approval of the decision of the Trial Court. In Narayanan Chetty v. Kannammai Achi & Ors. ILR Madras 1905 Vol. XXVIII which is more in point it was held:

> "An appellate judgment operates by way of estoppel as regards all findings of the lower Court, which though not referred to in it, are necessary to make the appellate decree possible only on such findings."

This Court having held that Issue Nos. 14 to 20 could not have been decided without a decision on Issue No. 13 and set aside the order of the High Court and restored the decree of the Trial Court the finding recorded by the Trial Court on Issue No. 13 has to be read as part of appellate judgment rendered by this Court.

Even otherwise there is no power in canon produced by the Patriarch for excommunicating a Catholico. In fact it could not be. All this controversy was raised, with respect, without having regard to it that the canon framed in 13th Century could not have provided for excommunication of Catholico of East who was himself visualised as high spiritual authority no doubt lower in hierarchy to Patriarch of Antioch but otherwise not subordinate to him. In absence of any such express provision in the canon, the Patriarch of Antioch could not exercise this power as even if it was there it did not mention Catholicos. Who could exercise this power is not necessary to be gone into. Suffice it to say that where scriptures are silent the courts cannot substitute their own opinion but when the excommunication of high spiritual authority is involved which, as seen earlier, has serious repercussion not only on the individual status of the man but also of religious society, then such an action by a general body of ecclesiastics like a properly requisitioned Synod of all the groups may have that sanctity which may compel the courts to stay its hands. But the Synod summoned at Damascus was certainly not empowered to excommunicate.

There is one additional feature in this case that Clause 5 of the Constitution framed in 1934 read as under:

> 5. "The Canon accepted by this church is the Hudaya canon of Bar- Hebreaus (This is the Canon that has been printed in Paris in 1890)."

This Constitution has been upheld by this Court in Moran Mar Basselious (supra). It is now binding on the Syrian Christians. Any action taken against the respondent contrary to it could not have been upheld. Religious persons in all religions have been men of great learning and character. Spiritual superiority emanates from purity of character. Any person elected or nominated to such high spiritual office as Catholicate of East could not be subjected to ex- communication. That is why the Canons did not contain any provision. The entire proceedings of ex-communication, therefore, were unsustainable. If the spiritual heads of such high stature start ex-communicating each other, it may not be conducive for the religious order. That is why even though the Sultan of Turkey withdrew the Firman issued in favour of Abdul Messiah, the court in absence of any material to show that such withdrawal resulted in deprivation of his spiritual superiority refused to act upon it. Apart from it, once a Constitution for Malankara Association was framed, accepted and upheld by the Court, the ex-communication, if any, could be in exercise of that power only. The power to ex-communicate can be exercised by a spiritual head either when the scriptures specifically permit it or it is in respect of the authorities which function under him and are subordinate to it. Normally in religious matters such decisions depend either on the text and if there is no text on the Constitution of the trust or on convention developed in course of time. From the history of Orthodox Syrian Church, it appears such important decisions are taken by the Synod that is a general body of bishops, vicars, clergies etc. and, therefore, before ex- communication can be held to be valid two things were required to be proved, one, that such power existed either in the spiritual head or in the general body and the power was exercised in respect of a person or holder of an office for whom it could be exercised. It has already been indicated that in consequence of Ex.A-14 the Kalpana issued by Abdul Messiah the entire power, spiritual or temporal, which was exercised by the Patriarch of Antioch was conferred on the Catholico of the East. The only relation which was to be observed in future was the communion of the two. In fact if the history is traced from the Mulunthuruthy Synod held in 1876 to 1912 then it is apparent that Catholicate of the East was not treated as subordinate to the Patriarch of Antioch. He exercised same spiritual and temporal powers as Patriarch but with respectful communion. The ex-communication thus cannot be upheld canonically, traditionally or constitutionally. It was violative of the norms which are mandatorily required to be observed conventionally.

Having dealt with ex-communication, the controversy about spiritual and temporal powers of the Patriarch and Catholicos, their inter-relationship and the extent to which they have become final by earlier decisions, particularly Moran Mar Basselios (supra) and operate as res judicata, may be examined. The pleadings of the parties giving rise to various issues and the questions framed by the Division Bench and answered by it have been extracted in extenso. The crucial issue that had been argued was whether the direction of this Court in Moran Mar Basselios (supra) 'that the judgment of the Kerala High Court is set aside, the decree of the trial court dismissing the suit must be restored', resulted in restoring the decree and not the judgment, therefore, any finding recorded in that suit could not operate as res judicata. In Satyadhyan Ghosal & Ors. v. Sm. Deorajin Debi & Anr. (1960) 3 SCR 590 this court insisted on finality in the strict sense of the term and observed as under :

> "The very fact that in future litigation it will not be open to either of the parties to challenge the correctness of the decision on matter finally decided in a past litigation makes it important that in the earlier litigation the decision must be final in the strict

sense of the term".

This was affirmed by a Constitution Bench in The Mysore State Electricity Board vs. Bangalore Woollen, Cotton and Silk Mills Ltd. & Ors. 1963 supp. (2) SCR 127 and it was observed :

> "It is well settled that in order to decide whether a decision in an earlier litigation operates as res judicata, the court must look at the nature of the litigation, what were the issues raised therein and what was actually decided in it.....it is indeed true that what becomes res judicata is the "matter" which is actually decided and not the reason which leads the court to decide the 'matter'".

These observations are well settled and reiterate established principle laid down by the courts for the same, sound and general purpose for which the rule of res judicata has been accepted, acted, adhered and applied, dictated by wisdom of giving finality even at the cost of absolute justice. In a recent English decision - Ampthill Peerage Case, [1976] 2 All England Law Reports p. 411, finality at cost of fallibility has been graphically described at pages 423 and 424 thus :-

> "Our forensic system, with its machinery of cross- examination of witnesses and forced disclosure of documents, is characterised by a ruthless investigation of truth. Nevertheless, the law recognises that the process cannot go on indefinitely. There is a fundamental principle of English law (going back to Coke's Commentary on Littleton) generally expressed by a Latin maxim which can be translated: 'It is in the interest of society that there should be some end to litigation'. This fundamental principle finds expression in many forms. Parliament has passed Acts (the latest only last year) limiting the same within which actions at law must be brought. Truth may be thus shut out, but society considers that truth may be bought at too high a price, that truth bought at such expense is the negation of justice. The great American Judge, Story, J. delivering the judgment of the Supreme Court of the United States in Ball v. Morrison called the first of there Acts of limitation a statute of repose : and in England Best CJ called it 'an act of peace'(A'Court v. Cross). The courts of equity, originally set up to make good deficiencies in the common law, worked out for themselves a parallel doctrine. It went by the technical name of laches. Courts of equity would only give relief to those who pursued their remedies with promptitude. Then, people who have long enjoyed possession, even if they cannot demonstrate a legal title, can rarely be dispossessed. Scottish law goes even further than English : delay in vindicating a claim will not only bar the remedy but actually extinguish the right. But the fundamental principle that it is in society's interest that there should be some end to litigation is seen most characteristically in the recognition by our law--by every system of law--of the finality of a judgment. If the judgment has been obtained by fraud or collusion it is considered a nullity and the law provides machinery whereby its nullity can be so established. If the judgment has been obtained in consequence of some procedural irregularity, it may sometimes be set aside. But such exceptional cases conclude the matter. That, indeed, is one of society's purposes in substituting the law suit for the vendetta....And once the final appellate court has pronounced its

> judgment, the parties and those who claim through them are concluded, and if the judgment is as to the status of a person, it is called a judgment in rem and everone must accept it. A line can thus be drawn closing the account between the contestants. Important though the issues may be, how extensive so ever the evidence, whatever the eagerness for further fray, society says; 'We have provided courts in which your rival contentions have been heard. We have provided a code of law by which they have been adjudged. Since judges and juries are fallible human beings, we have provided appellate courts which do their own fallible best, to correct error. But in the end you must accept what has been decided. Enough is enough, And the law echoes : res judicata, the matter is adjudged'. The judgment creates an estopel - which merely means that what has been decided must be taken to be established as a fact, that the decided issue cannot be reopened by those who are bound by the judgment, that the clamouring voices must be stilled, that the bitter waters of civil contention (even though channeled into litigation must be allowed to subside".

[emphasis supplied] Such is the principle of finality. True that the question must have been adjudicated stricto senso as observed by this Court. Conclusiveness according to the learned counsel applied to decree and not the judgment. For reasons given while discussing the authenticity of canons, it is difficult to agree that once decree of the trial court was resiwred it did not result in making the findings an effective which were basis of the decree, except to the extent it was expressly or impliedly set abld by this Court.

Therefore, the judgment of this Court in Moran Mar Basselios (supra) would preclude the parties from agitating those issues which have been concluded. Effect of the judgment delivered by this Court in 1958 on the rights of Catholicos was twofold, one their status was defined and two, their relationship with Patriarch of Antioch was explained. What stands out clearly from the decision after decision rendered right from 1899 to 1959 is that the Patriarch of Antioch is the spiritual head of the Syrian Orthodox Church. It was held so clearly in the appellate judgment of the Royal Court of Appeal. It was reiterated in Court of Appeal judgment delivered in 1905. In the Interpleader Suit filed by the Secretary of State the claim of Catholicos was upheld. The findings recorded therein were held to operate as res judicata in Moran Mar Basselios (supra) which arose out of a suit filed by the Patriarch Group as far back as 1938. The claim of the Patriarch that the Catholicos had become heretics and ceased to be members of the Syrian Orthodox Church, was repelled. The Court held that the reduction of power of the Patriarch of Antioch to 'vanishing point', ipsofacto did not constitute heresy nor it amounted to voluntary separation of setting up a new Church. But the most vital finding was that the creation of Catholicate of the East by Abdul Messiah, the disentitled Patriarch of Antioch, by Kalpana, Exhibit A-14 (latter order) issued in 1912 was not invalid. The result of creation of Catholicate of East with power to ordain metropolitan and perform all those functions which could be performed by Patriarch Antioch was that even the spiritual power which was held to be vesting in him in earlier judgments stood reduced to 'vanishing point'. What is meant by this expression shall be explained later. The verdict was accepted by the Patriarch himself when he issued Kalpana- Exhibit A-19 after the Supreme Court decision to bring peace. The specific objection on behalf of the Patriarch that "the re-establishment of the Institution of the Catholicos in the East in Malabar having jurisdiction over India, Burma and Ceylon" was "different from the

Catholicate that was the subject-matter of Interpleader Suit" was repelled by this Court in Moran Mar Basselics (supra) and it was observed at page 48 as under :-

> "We do not think there is any substance whatever in this contention. A reference to paragraphs 30 and 31 of the written statement clearly indicate that the institution of Catholicate, which is relied upon by the defendants, is no other than the Catholicate established in Malabar in 1088 by Patriarch Abdul Messiah".

Relevant clauses of 1934 Constitution declaring the status of Patriarch and Catholicate in the Malankara Church are extracted below :-

> "1.The Malankara Church is a division of the Orthodox Syrian Church and the Primate of the Orthodox Syrian Church is the Patriarch.
>
> 2. The Malankara Church was founded by St. Thomas the Apostle and is included in the Orthodox Syrian Church of the East and the Primate of the Orthodox Syrian Church of the East is the Catholicos".

The basis for it was the Kalpana issued in 1913 , the relevant portion of which is reproduced:

> "We commend you into the hands of Jesus Christ, our Lord, the Great Shepherd of the flock. May He keep you ! We rest confident that the Catholicos and Metropolitans -Your shepherds - will fulfil all your wants. The Catholicos,aided by the Metropolitans, will ordain melpattakkars, inaccordance with the Canons of Our Holy Fathers and consecrate Holy Morone. In your Metropolitans is vested the sanction and authority to install a catholicos, when a catholicos dies.
>
> No one can resist you in exercise of this right and, do all things properly, and in conformity with precedents with the advice of the
>
> committee, presided over by dionysius, Metropolitan of Malankara. We beseech our Lord Jesus that Ye faint not in your true faith of Saint Peter, on which is built, the Holy Catholic and Apostolic Church. What we enjoin your true love is that the unlawful conduct of a usurper, may not induce you to sever that communion which is the bond of love connecting you with the Apostolic Throne of Antioch".

Relevant portion of Exhibit A-19 issued by Patriarch after the decision of the Court read as under :-

"To bring forth peace in the Malankara church we hereby accept with pleasure Mar Baselious Gheevarghese as Catholicose".

The combined reading of these documents along with the findings recorded by this Court in Moran Mar Basselios (supra), thus, leaves no doubt that Catholicate of East whether due to disuse of the

Catholicate which, undisputedly, existed at Tigris or because of creation of a new one by the Kalpana of 1912 or for any other reason did come into existences. The power and jurisdiction to be exercised by such Catholicate is spelt out from the Kalpana A-12 and A-13 and the Constitution of 1934. In fact, going by the history it was nothing new or unusual as it has already been narrated that even in the first Eccuminical Councial When Patriarch of Antioch was created, the Catholicate of the East was also created and he was entrusted with the power and prerogative to manage the affairs of Eastern Churches subject to that Patriarch of Antioch was common and could exercise all the functions. Then from 1654 to 1800 the ordination of Bishops in Malabar used to take place by the delegates of the Patriarch. Even though after 1840, i.e., the Cochin Award, the individual persons went to Antioch and got themselves ordained which was accepted as well, but due to its disuse and in any case after issuance of Kalpana in 1912 and framing of the Constitution the controversy arose whether the supremacy in spiritual matters also was not reduced to 'vanishing point'. It was negatived by the Court as it was held that it was not so and nor any separate Church came into existence. The documents which have been referred earlier if properly construed and the course of activity, thereafter, is studied in correct perspective, then the Syrian Church in Malabar and the Patriarch of Antioch, the two authorities with nearly same spiritual powers, one local and the other at Syria entered into relationship of happy communion between the two. This communion meant that each was supreme, but if both of them were present then it was the Patriarch of Antioch who was higher in the hierarchy. In religious orders the two supreme authorities one highest and the other higher without the latter being subordinate is not unknown. This was the change in the power and prerogative of Patriarch as compared from 325 A.D. where he had the supreme power. But this change has been recognised, accepted and acted upon. Further, now the relationship is governed by a Constitution which has been held to be valid.

This was fairly observed. Between 1912 to 1970 four Catholicos were appointed, the first B. Paulose I by Abdul Messiah in 1912, second Basselius Gheevarghese I in 1924, third in 1929 after the Vattipanam Suit, fourth Mar Ougen I in 1964. What is significant is that second and third were not installed by or with the consent of Patriarch. And the fourth was installed after the judgment of this Court in Moran Mar Basselios (supra) by the Malankara Synod presided over by the Patriarch Yakub III. But what led to filing of suits by members of the Catholico group and the Catholico himself and successors-elect was the wrongful consecration by the Patriarch of Paulose Athanasius on 3.9.1973 (the first ordination by the Patriarch after 15 years). Original Suit No.274 of 1973 filed in the District court was numbered as O.S. No. 2/79 in the High Court. The suit was filed as Paulose Athanasius had never been elected by the Malankara Association and, therefore, was not entitled to function as Metropolitan in the Malankara Church. In view of the findings recorded by the Travancore Royal Court of Final Appeal pronounced on July 12, 1889 that a Metropolitan of the Jacobite Syrian Church could be a native of Malabar consecrated by the Patriarch or the delegates and accepted by the people to be entitled to be spiritual and temporal head of the local Church, which finding was endorsed by this Court in 1958, the suit was filed to prevent Athanasius from interfering with administration of the Malankara Church and any of its constituent diocese including the Kottayam Diocese, as he was neither qualified nor entitled to be appointed. Since the Patriarch ordination created the apprehension and the defendants threatened to act on strength of his ordination from the Patriarch of Antioch the Court granted an injunction in October 1973 restraining him from interfering in the administration of the Malankara Church. As a sequel to this injunction a show

cause notice was issued on 30th January, 1974 by the Patriarch against the first plaintiff levelling various charges and describing the action of the plaintiff as uncanonical and a challenge to the authority of the Patriarch. The matters thereafter grew worse and when the Patriarch ordained two more bishops the Catholico Mar Ougen I and Catholico-elect Mathew Athanasius filed Suit No. 142/74 which was re-numbered in the High Court as O.S. No. 4/79 once again protesting against the direct ordination by the Patriarch of bishops not accepted by the Malankara Association. In this manner nearly 8 suits came to be filed by the Catholico Mar Ougen I along with his successor-elect Mathew Athanasius. The main defence in the suits apart from others was that the plaintiff had been ex-communicated. Both the learned Single Judge and the Division Bench did not find any merit in the claim that after the death of first plaintiff the third plaintiff who was successor-elect was not entitled to continue the suit. It was held that they were not apostate and aliens to the Jacobite faith and the decision of the Universal Episcopal Synod and the Syrian Orthodox Church held from 16.6.1975 was not in accordance with the rule of the Church. The judgment thus in Moran Mar Bassilios (supra) and the findings recorded by the trial court to the extent it was not set aside by this Court, operates as res judicata.

Two more issues remain, one the nature of Parish Churches whether they are congregational, episcopal, voluntary association or autonomous bodies, public charities or private charities and their relation with the Malankara Association; second, legal status of the Patriarch of Antioch whether he is a corporation sole as argued by Ms.Lily Thomas, the learned counsel for the intervener, and if so, his rights, privileges and prerogative. Taking up the issues of Parish Churches and whether they are autonomous units, the constitution and the status of the Parishes may be discussed first.

A Parish Church is a, 'district committed to the charge of one incumbent having the cure of souls in it'. [Halsbury's Laws of England, Vol.14 para 534]. 'The ancient parishes appear to have been gradually formed between the 7th and 12th or 13th Centuries. Their boundaries seem to have been originally identical with or determined by those of manors, as a manor very serfdom extends over more than one of these parishes, although in many cases one parish contains two or more manors. Besides being ecclesiastical units, ancient parishes have been at different perious, and in many cases still are, administrative areas for various civil purposes, although the boundaries for parishes for civil purposes have in many cases been altered under statutory authority'. [Halsbury's Laws of England Vol.14 para 535]. 'The word 'Parish' was in use as early as the third century, but it was at that time equivalent to the term Diocese (which see). In primitive time the diocese of a bishop was neither more nor less than what is now called a parish; and even when the jurisdiction of bishops had become extensive, the diocese long continued to be called the parish. Afterwards the word was limited to the district attached to a single church over which a presbyter presided, who was hence called parochus. .....During this formation of the parochial system, the ..... measures were adopted to retain these churches in a state of dependence on the mother or cathedral church. The diocesans, however, were often obliged to allow the parish churches a greater degree of independence than they were of their own accord willing to concece to them.....for sometime after the first introduction of the parochial system, the revenues of a diocese continued to be regarded as a whole the distribution of which was subjected to the bishop; that is to say, whatever obalations or the like were made in parish churches were paid into the treasury of the cathedral church as the one heart of the body and thence distriouted among the cleray after the claims of the

parish had been satisfied [emphasis supplied]. This arrangement remained generally in force until the end of 5th century, many parish Churches having in the meantime greatly increased in wealth by means of bequests and donations and having come into the receipt of considerable obalations. .....But in the course of the sixth century the revenues of the pareshial clarc came to be considered simply as cheir own, the bishops being obliged to rele cheir hold of them Faiths of the World, by thems Gardner p.617 Parish Church, thus, is an ecclesiestical authority operating in a specific area. But they are of a religious order. Their autonomy, their financial powers, their administrative control have been thus different in different ages depending on the terms of creation of the trust, the purpose and objective of its establishment, the personality of the person occupying it, the financial strength of it etc. The Syrian Churches, as the history narrated earlier indicates, were established for religious worship and public charity and every church, small or big, claimed that its spiritual head was the Patriarch of Antioch. DW-28- Gheevarghese Moran Mar Basselios II who was ordained as Metropolitan by Abdul Messiah and examined in O.S. No. 111/1113 and on whose testimony reliance was placed by the appellant, stated that the Churches are established after obtaining sanction of the Metropolitan and the Government.

When the Malankara Association was formed in the Mulunthuruthy Synod a resolution was passed constituting 8 of the priests assemshed there and 16 of the laymen of the first class with the ruling Metropolitan as President entrusted with the complete responsibility of management for every matter connected with the common religious and communal affairs of the entire Syrian community. The other resolution passed was that the 'committee shall have liberty to collect other amounts as well in addition to the amounts above mentioned to cause its increase, to make sub- committees and to do everything beneficial'. In respect of administration of property it was resolved that 'for altering the existing rules relating to the administration of the property belonging to, the church and to the Syrian community, and for enacting new laws for the same, for examining and approving the accounts of the various churches, for confirming the epithopas (stuarts of the Church) of the respective churches decided by the Yogam, for printing the books useful and necessary for the community, for repairing the churches which have fallen into disrepair, for building new churches and for erecting schools, the above said committee shall have full responsibility'. The Committee was further entrusted with responsibility to collect and send the "Ressissa" due to His Holiness the Patriarch, to collect the 'kaimuthu' and other income due to the metropolitans from the churches and in case it was not sufficient to find other ways for the same and also for maintenance of the Dayaras (Monasteries), to effect payment of salaries to the vicars according to the capacity of the parish and pay the salary of the Secretary and others. Thereafter when the Constitution of 1934 was made a full chapter was devoted to the Parish church. The detailed procedure was given about the membership, maintenance of register, the payment of subscription, the convening of the Parish Assembly meeting, the duration at which the Assembly should meet in a year and the manner in which the fund was to be spent. It was also provided that the Vicar shall report to the diocesan Metropolitan about the election of the Parish Committee which shall not have any authority to take any decision in matters relating to religion which shall be referred to the Diocesan Metropolitan. Right of appeal was also provided to Metropolitan. Clause 37 provided that when the Diocesan Metropolitan came to the Church on his Parish visit he shall sign the register maintained in every Parish of moveable and immoveable properties. All this indicates that the Parish Churches were under the control and supervision of the Metropolitan. This Constitution was amended in 1967 with

participation of Patriarch group and apart from reiterating what was said in 1934 it was provided in Clasue 120 that Vicar of every Parish Church shall collect Ressissa' at the rate of 2 annas every year from every male member who has passed the age of 21 years and shall send the same to the Catholico. The Constitution further contemplates entire hierarchy in which the Catholico and Metropolitan were placed at the highest. From the scheme unfolded by the Resolution passed in the Mulunthuruthy Synod read with the Constitution it appears every Syrian Parish Church even though established independently has necessarily to have relation with the Malankara Association. The relationship between the two that is, the Parishes and the Malankara Association has been subject matter of consideration in every decision which came up before the courts. Even in the suit out of which this appeal has arisen the issues framed were whether Parish Churches were independent and autonomous units and whether the administration and conduct of their affairs and their assets were to be under the immediate control, direction and supervision of the Diocesan Metropolitan as provided for in the Constitution and whether vicars, priests and office bearers in Parish Churches had to be approved and appointed by him or the Metropolitan had only spiritual supervision and no temporal control. Both these issues were decided by the learned Single Judge in favour of the Parish Churches. But the Division Bench after elaborate discussion of law and fact held, 'Parish Churches' were' not congregational or independent' and the Constitution is valid and binding on the Malankara Association, community diocese as well as Parish Churches and Parishes.

Whether the finding is well founded or not and whether the Division Bench was justified in further recording the finding that the Malankara Church was episcopal to a limited extent, only, shall be adverted presently, but before doing so it is necessary to deal with one submission of Mr. Parasaran on this aspect at the outset, which was more preliminary in nature, as to whether the relief sought by the plaintiffs that the Malankara Church was episcopal in character was not a Union or Federation of Autonomous Church Units and was governed in its administration by the Constitution of the Malankara Church could not be granted in absence of impleadment of each Parish Church. Prima facie the submission appeared attractive but a closer scrutiny of the pleading demonstrates that the nature of Parish Churches was very much in issue of which parties were aware and the suits were tried on the footing whether Parish Churches were autonomous or not. In any event, it is worthwhile referring to the pleading.

In paragraph 11 onwards of the Plaint (in Original Suit No.142/74 re-numbered as Original Suit No.4/79 in the High Court) it was averred that the Malankara Church consisted of an aggregate of about 15 lakhs of worshippers worshiping in more than 1000 Parish Churches. A list of churches was appended to the Plaint. It was claimed that each Church founded became a constituent of the Malankara Church a well established religious community administered under the authority of the Malankara Metropolitan. It was claimed that the Parishioners of each Church were entitled to the benefits from the Church and its properties. The Malankara Church was neither a Union with a Federation of Congregational Units but a Church with a unique solidarity derived from apostolic succession and authority of Malankara Metropolitan and the doctrines and creed followed by the Church. It was alleged that the Constitution of 1934 was binding on every Church and the temporal, ecclesiastical and spiritual powers of the administration vested in the Malankara Metropolitan who invariably is a native of Malankara or elected by a group by the community. In paragraph 19 it was averred that defendants were impleaded in their individual capacity and as representatives of

Malankara Jacobite Syrian Christian Association. Permission to sue in representative capacity under Order 1 Rule 8 was also sought.

In the written statement filed by different defendants the entire claim of the Catholicos was denied. The averments went to the extent of denying establishment or revival of Catholicate in Malabar. The basic claim was that the Catholicate of East was deputy to the Patriarch of Antioch. It was alleged that Syrian Christian Association formed at the Mulunthuruthy Synod was given the power to take decisions on common matters of the community but it was not vested with any power over the individual Parish Churches or their administration. It was alleged that no Parish Church has surrendered their powers of administration to the said Association. It was claimed that Parish Churches and their properties belonged to the respective Parishioners and the plaintiffs or the hierarchy in the Malankara Church had no manner of right, title, possession or management over these Churches. It was denied that the Parish Churches and other Churches mentioned in the list were constitutents of the Malankara Church and that the Malankara Metropolitan had the authority to administer all those Churches. Written statements were filed. The defendants raised all possible defence even contrary to earlier decision. Different written statements were filed by different defendants including the two, that is, Knanaya Association and Evangelistic Association which were impleaded on their own instance. These averments would indicate that the parties were very much at issue on the question whether Parish Churches were constituents of Malankara Church or not. That is why when applications were filed on behalf of the Parish Churches for being impleaded as party it was rejected and the dispute became final after the High Court held that it was not necessary to implead every Parish Church individually.

It is too late, therefore, to urge that no declaration on the status of Parish Churches be granted. No such objection was taken either before the learned Single Judge or the Division Bench. May be that the 1000 Parish Churches were not impleaded. But it was a representative suit. Then the suit was for a declaration that the Malankara Church was episcopal in character and not a Union of Federation of Autonomous Churches. It was not necessary to impleed every Parish Church as a party. The question whether Malankara Church is episcopal or not had to be decided on the pleading of the plaintiff. The defence raised by the defendants, who were ordained by the Patriarch of Antioch, was that they were the metropolitans and, therefore, entitled to protect the interest of Parish Churches. Moreover the declaration sought is as a matter of law. No factual dispute arises. The suit was filed for enforcement of this right. Once it was found by this Court in 1958 that the Constitution was validly framed the Catholicos could not be denied this declaration. In paragraph 94 of the 1934 Constitution it was provided that, 'the (The) Prime jurisdiction regarding the temporal ecclesiastical and spiritual administration of the Malankara Church is vested in the Malankara Metropolitan subject to the provisions of this constitution'. Whether a particular Parish Church is a member of the Malankara Association is not relevant. Therefore, the submission that the non-impleadment of individual Parishes precluded the court from granting any declaration about the nature and status of Parish Churches, does not appear to be correct.

'Congregationalism' is defined in New English Dictionary of Historical Principles (By Sir John Murray, Vol.III, Part I, page 245) as under:

> "A system of ecclesiastical polity which regards all legislative disciplinary and judicial functions as vested in the individual church or local congregation of believers."

'Congregationalism' is defined in Chambers Encyclopedia, Vol.IV, page 12 as under:

> "Congregationalism is the doctrine held by churches which put emphasis on the autonomy of the individual congregations. Congregationalism has for its sign manual the words of Jesus:
>
> 'Where 2 or 3 are gathered together in my name, there am I in the midst of them'."
>
> In Black's Law Dictionary 'Congregation' isexplained thus:
>
> "An assembly or gathering;
>
> specifically, an assembly or society of persons who together constitute the principal supporters of a particular Parish, or habitually meet at the same church for religious exercises."

The word is explained in the Faiths of the World Vol.1 at page 589 thus:

> "This word, like the term Church (which see) is sometimes used in a more extended and at other times in a more restricted sense. In its widest acceptation, it includes the whole body of the Christian people. It is thus employed by the Psalmist when he says, "Let the congregation of saints praise Him." But the word more frequently implies an association of professing Christians, who regularly assemble for divine worship in one place under a stated pastor. In order to constitute a congregation in this latter sense of the term, among the Jews at least ten men are required, who have passed the thirteenth year of their age. In every place in which this number of Jews can be statedly assembled, they procure a synagogue. Among Christians, on the other hand, no such precise regulation is found, our Lord himself having declared, "Wherever two or three are met together in my name, there am I in the midst of them." Guided by such intimations of the will of Christ, Christian sects of all kinds are in the habit of organising congregations though the number composing them may be much smaller than that fixed by the Jewish Rabbies."

'Episcopal' is defined in Webster Comprehensive Dictionary to mean, 'of or pertaining to bishops. Having a government vested in bishops; characterised by episcopacy', whereas 'Episcopacy' is defined as under:-

"Government of a church by bishops".

New English Dictionary of Historical Principles by Sir John Murray, Volume III, explains it to mean:

> "Theory of Church Polity which places the supreme authority in the hands of episcopal or pasteral orders".

'Episcopacy' is explained in the Faiths of the World by James Gardner, Volume I, at page 836 as under:-

> "that form of church government which recognises a distinction of ranks among the ministers of religion, having as its fundamental article that a bishop is superior to a presbyter".

'Bishop' in the same book is defined as under:-

> "one who in episcopalian churches has the oversight of the clergy of a diocese or district".

'Metropolitan' is defined in the same book at page 445 as under:-

> "the bishop who presides over the other bishops of a province. In the Latin church, it is used as synonymous with an archbishop. In England, the archbishops of Canterbury and York are both Matropolitans.....The title was not in use before the council of Nice in the fourth century.....The rise of the authority of Metropolitans seems to have taken place without any distinct interference on the part of the church. The council of Nice was the first to give an express deliverance on the subject, particular with reference to the Alexandrian Church. The sixth canon of that Council ran in these terms:
>
> 'Let the ancient custom which has prevailed in Egypt, Libya, and Pentapolis, that the bishop of Alexandria should have authority over all these places, be still maintained, since this is the custom also with the Roman bishop. In like manner, at Antioch, and in the other provinces, the churches shall retain their ancient prerogatives'."

These definitions of 'congregationalism' and 'episcopal' have been extracted to give an idea how the expressions are understood as the entire submission of autonomy of the Churches is based on whether the Parishes are congregational or episcopal. The basic or essential characteristic as appears from the above definitions and explanation of 'congregationalism' and 'episcopal' is that in the former the authority vests in the congregation whereas in the latter it is controlled by the bishop as he is deemed to be successor of the apostle. That the Syrian Orthodox Church of Malankara accept and acknowledge the theory of apostle succession is beyond doubt. In Faiths of the World, the word 'Episcopalians' is explained and it is stated that it is a name given to those who hold that peculiar form of Church government which is called 'Episcopacy'. The Church of Rome is Episcopalian in its constitution, and acknowledges the Pope as Universal Bishop, to whom all the various orders of clergy, cardinals, primates, and patriarchs, archbishops and bishops are subordinate...The Armenian church is similar in govenment to the Greek church, their Catholicos being equivalent in rank and authority to the Greek patriarch... All the ancient Eastern churches,

including the Copts, Abyssinians, and others, are Episcopalian. The church of England is strictly Episcopalian in its ecclesiastical constitution.' The claim, therefore, that they are congregational cannot be accepted.

Even factually it was not open to the Patriarch to take up this defence. The Canon on which reliance was placed by them and filed as Ex. B-161 dealing with properties and income of the Churches provided, 'If the valuable souls of the beliain can be entrusted to the (Episcops Bishop) it is quite apt that he bears authority over the property of the church. Everything should be administered by his order and be given to the Priests, Decons and those who are in needs'. The resolution in the Mulunthuruthy Synod also accepted this. In the Vattipanam Suit Justice Chatfield in paragraph 15 of the judgment has noticed, it may be stated that both sides admit that the administration of the temporalities of the Syrian Jacobite Church in Malankara is with the local Metropolitan and the other Metropolitans'. That is why in the Arthat case it was held that the plaintiff churches, that is the Parish Churches of Arthat were subject to spiritual, temporal and ecclesistical jurisdiction of the Metropolitan of Malankara. Paragraph 95 of 1934 Constitution itself provides that, 'there will be an Episcopal Synod in Malankara'.

Whether a public institution or a public Church unlike private religious places is autonomous or not depends on its trust deed, the intention of the members who found it, the purpose for which it was established. The establishment of a Church is normally understood as an institution established for public charities. Its objective is religious and spiritual. Whenever a charity is created it is either public or private. The latter is for individual, may be for fixed period or for determinate person. But public charities are of permanent character, the membership of which keeps on fluctuating. Lewin on Trust explained a 'charitable trust' thus, 'a public or charitable trust, on the other hand, has for its object the members of an uncertain and fluctuating body and the trust itself is of a permanent and indefinite character and is not confined within the limits prescribed to a settlement upon a private trust. These trusts may be said to have as their object some Purpose recognised by the law rather than human beneficiaries. Tudor on Charities at page 131 of 6th Edn. has stated thus, `when a charity has been founded and trusts have been declared, the founder has no power to revoke, vary or add to the trusts. This is so irrespective of whether the trusts have been declared by an individual, or by a body of subscribers or by trustees'. That the Parish Churches were established for promoting ideals of Syrian Orthodox or Jacobite Church has been the consistent claim of both the Patriarch and the Catholicos. Its nature cannot be changed by the persons who are entrusted to manage it. They were episcopal in character when they were found, they continue to be so at present and shall remain so in future. The character of public charities from episcopal to congregational cannot be changed as it would be against basic purpose for which these Churches were established. In Attorney General v. Pearson & Ors. 1814-23 All England Law Reports p.60 at 63 it was observed as under:

> "But if, on the other hand, it turns out that the institution was established for the express purpose of such form of religious worship, or the teaching of such particular doctrines, as the founder has thought most conformable to the principles of the Christian religion, I do not apprehend that it is in the power of individuals, having the management of that institution, at any time to alter the purpose for which it was founded, or to say to the remaining members: `We have changed our opinions, and

> you, who assemble in this place for the purpose of hearing the doctrines and joining in the worship prescribed by the founder, shall no longer enjoy the benefit he intended for you unless you confirm to the alteration which has taken place in our opinions'."

Therefore, once these public charities were found whether before the establishment of catholicate or after it their nature could not change. On the material on record the courts have found them to be so. Therefore, the submission that they are autonomous does not appear to be well founded. Autonomy for what, religious worship or temporal matters. Former cannot be pleaded as once a Church was found for religious worship it continued to be so. The autonomy in temporal matters as claimed appears to be two-fold, one, freedom to disassociate from Malankara Association and second to control and supervise its internal affairs. The first cannot arise. In law it is not open to members of public or public trust to appropriate trust properly for themselves. Under Hill on the Law of Trusts and Trustees has explained it thus, `However, the crucial difference surely is that no absolutely entitled members exist if the gift is on trust for future and existing members, always being for the members of the association for the time being. The members for the time being cannot under the association rules appropriate trust property for themselves for there would then be no property held on trust as intended by the testator for those persons who some years later happened to be the members of the association for the time being'. None of the Parish Churches claim autonomy in the sense that they have changed their faith and belief. Each of them claims that their spiritual head is Patriarch of Antioch. That is they are the believers and followers of Syrian Church. So are the members of Malankara Association and Catholicate of East. Therefore, the existence or exercise of autonomy for Parishes has no meaning. Similarly the independence or autonomy in temporal matters is not of any consequence. The Parishes are bound by the Constitution framed in 1934.

Mr. Parasaran submitted that the Malankara Church was from very ancient times episcopal to a limited extent in spiritual and ecclesiastical matters but has been congregational/autonomous in temporal matters. It was urged that if Jacobite Syrian Orthodox Church has been or was episcopal as claimed by the respondents then the Patriarch would have had control over temporal matters also. The learned counsel submitted that Malankara Church being essentially congregational it was to be presumed that every Parish Church was an independent Church. The learned counsel criticised the Constitution of 1934 as the deliberate departure from the established norms and practice of the Church and the attempt by it to invest it with episcopal character in temporal matters. The learned counsel submitted that the custom which was prevalent in the Malankara Church throughout has been that the Parish Churches and its properties were administered by the congregation that is Parishioners and in that sense the Malankara Church has been congregational in temporal matters and this well established custom must prevail even over the provisions of the canon. It was urged that this was already recognised in the Samudayam suit by the Trigal Judge and the admission of the Catholicos before the District Judge. The learned counsel submitted that the status of the Parish Churches even before Malankara Synod was independent and if indeed the Church was episcopal in temporal matters there was no necessity for the creation of an Association in the meeting of 1876 for the purpose of raising funds since the Patriarch directly or through the Malankara Metropolitan could have raised the necessary finance from the Parish Churches and above all if the Parish

Churches were episcopal then where was the question of entering into an Udampadi with every individual Parish Church. The learned counsel submitted that the entire claim of the respondents that the entire body of Churches, institutions and common properties formed one organic unit to be administered by the provisions of the impugned Constitution was based on a misrepresentation of the words `Church' and `Sabha' and is contrary to the history, customs and proceedings and the Malankara Church. Reliance was placed on the evidence of P.W.4 and P.W.8 and it was urged that if they were read along with Ex.A-19 and A-20 then they would indicate that it did not result into bringing into effect any voluntary association. The learned counsel submitted that if the exchange of Kalpanas are sought to be treated as legally binding on individual Parish Churches amounting to unification and acceptance of the Constitution on the basis that the Patriarch will bind the Parish Churches then necessarily Patriarch will have to be accepted as the supreme ecclesiastical and temporal superior. It was urged that it was so because the Constitution framed in 1934 deals with all the three aspects and can be imposed on the Parish Churches only on the basis that they did not have autonomy in respect of any one of the three and the Patriarch will have the power to impose such a constitution on the individual Parish Churches without obtaining their individual consent. According to learned counsel if Patriarch had such a spiritual, ecclesiastical and temporal supremacy such supremacy could not only be in regard to Parish Churches in the Patriarch section but also in regard to the Churches of the Catholico section. And otherwise the religious beliefs, practice etc. would be different in Parish Churches in the two sections and there cannot be any unification. It was urged that Ex.A-19 could not be construed as a surrender of the authority which existed in the Patriarch in favour of the Catholico as if the Kalpana is construed as such then it would amount to a change of faith so far the Parish Churches in the Patriarch section were concerned and on the principle of religious trust the properties and the Churches could not go to Catholicos section. Minutes of the meetings held by the Association in 1959, 1962, 1965 and 1970 including the presence of the Patriarch in the installation ceremony of Mar Ougen as Catholico was placed. It was urged that if these are construed as claimed by the respondents then it would inevitably result in applying the law relating to religious trusts. But that would not be in consonance with law. According to learned counsel on the principle of voluntary association even if it is assumed that they decided to be under Catholico there was nothing to prevent them in law from opting out of it. Attention was drawn to various suits filed during this period and the failure of the Catholico to impose their constitution. In respect of presence of the Patriarch at the installation ceremony of the Catholico the learned counsel urged that it only strengthened their claim that Patriarch was the supreme head as a person as delegation of power can be made only by a person who is superior than the person whom he ordains. In any case if the Patriarch was authorised to delegate and participate in the installation ceremony as the head of the Syrian Orthodox Church then there was nothing in law to prevent him from withdrawing it. The submission was placed on yet another aspect that the Catholicos had never claimed supremacy to the exclusion of the Patriarch. But on the other hand by their conduct and action they accepted the spiritual and ecclesiastical supremacy as was clear from various documents where the Catholico requested the consent of Patriarch for relaxing the rigour of canonical penances. The learned counsel submitted that the respondents were claiming that the Malankara Association had become autoceohalous. Therefore, applying the principle of religious trusts if the Parish Churches and properties which were originally founded for the benefit of the parishioners who believed in uninterrupted apostolic succession from St. Peter through the Patriarch then the use of such Parish Churches and their properties by those who claimed to be

Malankara Church would be contrary to original faith and character of the Sabha (Sabha means the Church as a whole) attached to the Parish which are established for worship according to the faith, custom and practice of the Sabha. Attention was drawn to Ex.B-269 and Ex.A-120 and it was claimed that the Constitution of these Parishes would indicate that they were part of the Malankara Church subject to superior authority of the Diocesan Metropolitan of the Malankara Metropolitan. The learned counsel submitted that according to the Orthodox teachings the Church or Sabha is a body with Christ as its head and together they form an integral whole and by consecration a Parish Church becomes the abode of God and becomes a part of the Sabha. Reliance was placed on the evidence of P.W.8 and admissions of D.W.2. It was urged that Church being a public trust of a religious nature the beneficiaries of which at a time have no right to deal with it as is clear from what has been stated by Lewin on Trusts.

The nature of public charities has already been explained. None of the submissions appear to have substance. A Church is either episcopal or congregational. It cannot be episcopal in spiritual matters and congregational in temporal matters. That would be against the basic characteristic of such a Church. It would be against specific provisions in the Constitution. The temporal matters or administration of Churches flows from its establishment for religious purposes, namely, `the cure of souls'. Where a building is consecrated as a Church, `it continues to exist in the eye of law as a church and the body corporate which had been endowed in respect of it remains in possession of the endowment even though the material building is destroyed'. Every Parish Church of Malankara acknowledges the Patriarch of Antioch as the spiritual head. They have been playing ressissa to Patriarch. The ordination, consecration and every spiritual or temporal power has always been exercised by the Patriarch of Antioch so long it was not decided on basis of the Synod held at Mulanthuruthy that the Patriarch was only the spiritual head and the temporal powers vested in the Metropolitan. This division of power could not destroy the basic characteristic of episcopacy. The Church in England is also an episcopal Church. In Halsbury's Laws of England Vol.14 para 562 the right of Parishioners has been described, `to enter the church remain there for purpose of participating in divine worship to have a seat and to obey the reasonable directions of the church to ordain'. The property vests in the endowment. That is the fundamental difference in congretational and episcopal. In the former it vests in the Parishioner. But in the latter in endowment. Once it is conceded that the Syrian Churches are episcopal in character then the distinction between spiritual and temporal is of no consequence. Therefore, the property of the Church vests in the endowment and not the Parishioners. The right to manage such property vests in the trustees under the bye-law subject to the control by the Catholicos and Metropolitan in accordance with the Constitution. The fact that every Church has its own bye law does not militate against its nature of being episcopal as Clause 122 of the Constitution of 1934 itself provides that, `byelaws which are not inconsistent with the principles contained in this constitution may be passed from time to time by the Parish Assembly, the Diocesan Assembly or the Diocesan Council and may be brought into force with the approval of the Rule Committee'. The Parish Churches are thus governed in their administration by the Constitution of the Malankara Church. The nature of relationship between the two bodies can be gathered either from the circumstances or from the documents if they are on record. The Resolution of the Mulanthuruthy Synod, the Constitution of 1934 and its amendment in 1967 unmistakenly demonstrate a close link between the Malankara Association and each Parish Church. A Church is established by followers of a religious faith. The mere establishment is not sufficient unless it

assures the realisation of the ultimate goal that is salvation and that could come only when such a body has a link with the higher spiritual body which religiously is considered to be the one which could help in permitting a man to achieve the end. It is not the case of the appellants that the Parish Churches are independent in the sense that they have no link with any higher spiritual power. It is their specific case that they claim their spiritual link from the Patriarch of Antioch. The ordination of the Metropolitan-consecrate of Bishop even according to them has to be from Antioch. When D.W. 28 was asked whether after creation of Catholicate the Patriarch ceased to have any power, he stated 'ordaining a Metropolitan is not a power. It is a bond and duty'. The witness denied that Patriarch of Antioch was only the head of the Jacobite Church and he had no power over or concerning the Malankara Church. Therefore, they are not independent and autonomous in the sense in which it was claimed by the learned counsel. If it be so and if what has been stated earlier that the Patriarch of Antioch himself created a Catholico of the East in 1912 with all the spiritual powers then it is difficult to visualise that how the Parish Churches can claim that they are independent and separate from the Malankara Association. In Moran Mar Basselios (supra) it has been decided that the Constitution was framed after notices were sent to every Parish Church. Therefore, whether they attended or not is not material and in any case once the Constitution was framed and its validity has been upheld then under the provisions of the Constitution the Metropolitan appointed by the Malankara Association has control over the Parish Churches. It is not necessary to refer to various observations made in the earlier judgments by the courts which undoubtedly indicate that the Malankara Association which was a creation of Malankara Synod and is the representative body that has the right to bind the holy community and all the Churches by its deliberations and actions. The Full Bench of the Royal Court of Cochin in 1905 held that the Churches and its properties were subject to spiritual, temporal and ecclesiastical jurisdiction of the Metropolitan of Malankara. Even in the very first judgment of 1889 it was held that, `once Metropolitan of the Syrian Jacobite Church was accepted by the people it would, `entitle him to spiritual and temporal governance of the local churches'. In the Samudayam suit this Court had observed that the whole of the Malankara Church was represented by the Malankara Association. The District Judge whose decree had been restored by this Court, and in appeal this Court had not said anything contrary to what was observed by him, observed, `It cannot therefore be denied that this Jacobite `Syrian Association' which was a creation of the Mulunthurn Synod was and is the representative body that has the right to bind the whole community and all the churches by its deliberations and actions.' The claim, therefore, that the Patriarch Churches are autonomous and independent in temporal matters cannot be accepted. That would be contrary to the Mulunthuruthy Synod, the decision in the Royal Court of Appeal, the Arthat Case and the Constitution of 1934. A power which vested in Malankara Association could not be denuded merely because the spiritual power of the Patriarch descended on the Catholico, who could be Metropolitan as well, on the analogy that if Patriarch did not have temporal power then it could not be deemed to vest in Catholico. Temporal power always vested in Metropolitan. It could not be divested because even the spiritual power came to be vested in him. The extent of power also remains the same, namely, not to interfere in day to day administration of a member which is governed by its own bye-laws.

Apart from the Syrian Orthodox Church there are various other churches such as the Evangelistic Association, the Simhasana churches the five churches established between 1951 to 1956 and Malankara Suriyani Knanaya Samudayan who claimed that though they are followers of Orthodox

Syrian Christian tenets and beliefs but they have been established separately either under the Societies Registration Act or by their own rules and their churches were established with explicit declaration that they were under the spiritual supremacy of Patriarch of Antioch from whom the grace emanates. It was claimed by them that the suits against them were misconceived and in any case some of them, for instance, the churches established between 1951 and 1956 having come into existence after the Constitution of 1934 was framed by the Malankara Association they could not be held to be under the spiritual or administrative control of the Catholicate of the East. Each of them were subject matter of separate suit. The issues were framed separately and the evidence was also led. Both the learned Single Judge and the Division Bench after consideration of the material on record and examining the finding recorded in the earlier decisions rendered by the Travancore Cochin High Court and this Court in Moran Mar Basselios (supra) had held that except churches of the Evangelistic Association and the Simhasana churches and St. Anthony church the others were under the Catholico of the East. The findings recorded in the case of Knanya Samudayam is subject-matter of Appeal No. 4953 whereas Appeal No.4954 to 4956 has been filed by Kundara Church and Appeal No. 4989 has been filed by five churches established during 1951-56. The Catholicos have challenged the findings of the Division Bench in respect of Evangelistic Association and Simhasana Churches which is the subject-matter of SLP No. 14783-86 of 1991.

The Malankara Suriyani Knanya Samudayam referred to as `Knanaya Samudayam' traces its origin from one Mar Thomas of Cona and one Bishop Joseph who migrated along with 400 persons comprising of 72 families from a place called Cona in 345 A.D. They claim that they are different racially, culturally and socially from the Syrian Christians and the membership in the community is only by virtue of birth. It is claimed that the community all along kept its status separate and functioned under the guidance and supervision of spiritual leadership of the Patriarch of Antioch. It claimed that Patriarch ordained Mar Sevoten as the Metropolitan in 1910 and Mar Clemis in 1951 who is still continuing. Attention was also drawn to the Constitution framed in 1912 and amended in 1918, 1932, 1939, 1951 and 1959 wherein the superemacy of Patriarch of Antioch was always offered. Various other provisions were pointed out and it was urged that it was clear that it was an autonomous church. The followers of Kundara Church claimed that it was established by followers of Mar Cyrial who had come to India as prelate, of the Patriarch of Antioch who resolved the differences between Mar Athanasius and M. Dionysius, but failed in his attempt due to the Royal Proclamation which was in operation. It is claimed that it was at the instance of the Patriarch that the Queen of England issued a second proclamation permitting the followers to establish a new church. Therefore, their fore-fathers were associated with Kundara Old Church now called `Valiapaly'. According to them, this church was established as Athanasius denied spiritual supremacy of Antioch. However, it is not denied that once ex-communication of Gheevarghese was cancelled in 1912 and when I. Ibrahim Kathanan, the priest of the Church died his son Fr. J. Abrahim was ordained as priest by Gheevarghese Dionysius, the Metropolitan of Malankara. The claim of Kothamangalam Church was that it was only an Archdiocese of the Syrian Orthodox Church under the Patriarch of Antioch which is administered by its Parishioners according to congregational principles of governance and its administration is carried on in accordance with its Constitution which provided for Edavaka Yogam, a managing committee, a working committee and Thonnanda Kaikors. In the appeal filed by the five churches established during 1951-56 it was claimed that when Catholicos were declared as aliens to the church by the Travancore High Court,

they established the church under the Patriarch of Antioch. They claimed that they have their own Constitution and mode of administration. They are registered under the Societies Registration Act to whom the Constitution of Sabha was never made applicable. According to them, they having been established exclusively by the Patriarch Group, there can presumably be no doubt as to the object of its foundation and its basic faith. In the SLP filed by the Catholicos against the Evangelistic Association referred as `Samajam' and `Simhasana Churches', it is claimed that the object of the Evangelistic Association indicates that it is composed of the members of the Malankara Church and it provided that any person holding the faith of the Jacobite Syrian Church and acknowledging the authority of that church can be a member of that Association. It was claimed that even though Samajam is registered under the Societies Registration Act, but it being established in the territorial jurisdiction of the Catholicos and having acknowledged the spiritual headship of the Patriarch of Antioch as a supreme patron of the Samajam, they too should be treated as a part of the Malankara Church. It was pointed out that in 1966 the Samajam amended Clauses 7 and 9 of its Regulations and Rules and incorporated in Clause 7 (a) and (b), but their claim was rejected by the Division Bench as this amendment was subsequently withdrawn. In respect of the Simhasana Churches, it was claimed that they were established with the object of seeking grace from Patriarch of Antioch and, therefore, they too should be deemed to be part of Malankara Church.

Since the basic controversy is the same and both the learned Single Judge and the Division Bench have recorded the finding for or against the catholicos in respect of different churches after considering the material on record in each case and with full understanding and correct appreciation of law it is not necessary to deal with them in any detail except to hold that they do not call for any interference. Suffice it to say that the parishes are the churches which cannot claim to be separate or autonomous bodies only because their racial and cultural origin was different. Once they were established whether they came from outside or they were local persons it did not make any difference as after the establishment of the church with the permission of the Government and the Metropolitan and acknowledging the spiritual headship of Patriarch of Antioch which follows the apostolic succession, the nature of these churches was episcopal and, therefore, it was not open to them to claim that they should be treated as autonomous bodies merely because they have their separate bye-laws. As stated earlier, the framing of the bye-laws in each church is necessary for purposes of governance and administration. But once a church is established then the property vests in the endowment and it becomes a public charity, the administration and control of which has to be governed in accordance with the objective of the endowment. Since the objective is to follow Syrian Orthodox Church of which Patriarch of Antioch is the head, they cannot claim to be independent, especially after the Constitution of 1934 was framed.

What remains to be dealt with is the argument advanced by Ms. Lily Thomas, the learned counsel for intervener that the Patriarch of Antioch being corporation sole his powers, spiritual or temporal were not partible nor the integrality can be split up. Reliance was placed on paragraph 1206 of Halsbury's Laws of England Vol. 9 and General Assembly of Free Church of Scotland & others etc. V. Lord Overtoun and others etc. 1904 Appeal Cases 515. The characteristics of a corporation sole which was, `originally ecclesiastical for the most part' is, `that its identity is continuous, that is that the original member or members and his or their successors are one' [Halsbury's Laws of England Vol. 9 paras 1207-1208]. But does it help? The personality of the Patriarch is not being split. His

integrality is not being destroyed. He remains the spiritual head. The difference in degree of exercise of spirituality does not detract his status from being corporation sole. The mere fact that it has been reduced to `vanishing point' does not mean that he has ceased to be so. In fact much sensitivity has been generated for nothing. The Patriarch of Antioch and Catholicate always existed in the hierarchy as the two dignitaries. `This dignitary (Patriarch) usually resides in a monastery near Mardin. The second dignitary, the primate of Tagrit, resides near Mosul, and is termed Maphrida or fruit-bearer' [Faiths of the World Vol.II p. 195]. In General Assembly of Free Church (supra) what was held that nature of public trust cannot be changed. Has it been changed by the Catholicate? The answer has to be in the negative. Even the first clause of the Constitution framed in 1934 acknowledge the supremacy of the patriarch.

The conclusions thus reached are, 1 (a) The civil courts have jurisdiction to entertain the suits for violation of fundamental rights guaranteed under Articles 25 and 26 of the Constitution of India and suits.

(b) The expression 'civil nature' used in Section 9 of the Civil Procedure Code is wider than even civil proceedings, and thus extends to such religious matters which have civil consequence.

(c) Section 9 is very wide. In absence of any ecclesiastical courts any religious dispute is congnizable, except in very rare cases where the declaration sought may be what constitutes religious rite. 2.

Places of Worship (Special Provisions) Act, 1991 does not debar those cases where declaration is sought for a period prior to the Act came into force or for enforcement of right which was recognised before coming into force of the Act.

3. The following findings in Moran Mar Basselious (supra) have become final and operate as resjudicata:-

(a). The Catholicate of the East was created in Malankara in 1912.

(b). The Constitution framed in 1934 by Malankara Association is valid.

(c). The Catholicos were not heretics nor they had established separate church.

(d). The meeting held by Patriarch Group in 1935 was invalid.

4 (a). The effect of the two judgments rendered by the Appellate Court of the Royal Court and in Moran Mar Basselios (supra) by this Court is that both Catholicos and Patriarch Group continue to be members of the Syrian Orthodox church.

(b) The Patriarch of Antioch has no temporal powers over the churches.

(c) Effect of the creation of Catholicate at Malankara and 1934 Constitution is that the patriarch can exercise spiritual powers subject to the Constitution.

(d) The spiritual powers of the patriarch of Antioch can be exercised by the Catholico in accordance with the Constitution.

5. (a) The Hudaya Canon produced by the Patriarch is not the authentic version.

(b) There is no power in the Hudaya Canon to ex- communicate Catholicos.

6. The ex-communication of the Catholicos by the Patriarch was invalid.

7. All churches, except those which are of Evangelistic Association or Simhasna or St. Mary are under spiritual and temporal control of the Malankara Association in accordance with 1934 Constitution..

Legal issues of jurisdiction, maintainability of the suits, ex-communication of the Catholico, authenticity of the canon, res judicata of the findings recorded in the Samudayam Suit, relationship of Malankara Association with Parish Churches having been resolved not much difficulty remains in the manner in which these appeals should be decided. But before doing so the stage is also ripe for recording the deep anguish on baffling tenacity, to fight till finish, between two groups, rather, members of the same family of a community which is, a living tradition of faith and culture' which teaches honesty, simplicity and above all sacrifice. What is astonishing is that the two groups have had several rounds of bouts in the courts, where mass evidence both oral and documentary was led not on ideological clash, religious difference, theological conflict or any scriptural dispute or controversy about the right of worship, rituals and ceremonies or belief and faith surfaced but on matters which appear to be extraneous to establishment of the Syrian church a religious institution which has a glorious history and proud record of service. Mr. Parasaran was justified in submitting that Syrian churches could not be thought of without Patriarch of Antioch. But where is the dispute about it. Even the Catholicos acknowledge that he is the highest spiritual head. Extent of his powers and prerogative and not the existence or his being highest spiritual authority was disputed. Therefore, in nutshell the entire exercise was much ado about nothing. If the Catholicos went to one extreme and claimed that a declaration be granted that the Church had become autocephalous then the Patriarch went to other extreme by raising all possible defence denying even the most basic and fundamental concepts which had been settled either by judicial decision or the Constitution and Kalpanas issued from time to time. Even when Patriarch of Antioch was constituted in the meeting of Nicea held in 325 A.D. the other higher spiritual authority was the Catholico of the East. It was agreed even at that time that the Catholico could perform every spiritual function but the Patriarch had the overall superiority. There is no deviation from that, except to the extent it is provided in the Constitution with consent of all and in accordance with the convention and custom which has developed for all these long years. Therefore, in order to bring down the curtain and avoid any future digging of the grave activated by personal prejudices and rivalry, it is necessary to hold that the Constitution of 1934 as amended from time to time accepted and acted upon till the spurt of activities in 1970 shall be taken as final, governing the right and relationship of all the parties.

When hearing of these appeals commenced it was felt both at the outset and in the midst that if both parties agreed, the dispute could be referred to some high-powered committee of religious

authorities. But probably the issue being less religious and more legalistic and technical, both the parties through their counsel reposed confidence in this Court and entreated the Bench to bring an end to this litigation. Therefore, now after dealing with various legal matters which could not have probably been satisfactorily resolved it is appropriate to declare that, (1) Relationship between the two spiritual superiors, that is, the patriarch of Antioch and Catholico of the East at Malankara is neither of superior nor subordiante but of two independent spiritual authorities with Patriarch at the highest in the hierarchy (2) The Catholicos and the Patriarch are declared as followers of one creed,namely , Syrian Orthodox Church. (3) The Constitution framed by the Malankara Association as amended from time to time shall govern the Churches attached to the Malankara Association.

Before concluding it may be observed that while highlighting the relationship between Malankara Association and the Parish Churches, it was submitted by Mr. Parasaran that the provisions in the Constitution permitting every church to send same number of representatives irrespective of the strength of churches was not very fair. May be. But this is a provision governing matters not only of administration of churches but of faith and religion. The Malankara Association is like the executive of the Malankara Church to exercise control over religion and temporal matters. The Courts' function is restricted to ensure its proper implementation and not to determine whether the provisions in the Constitution framed by the religious body was fair or unfair. Religion is not governed, necessarily, by logic. In any case, it is not in the domain of secular courts to substitute its own opinion of fairness. Further, no foundation was laid for it either in the pleading in the trial court or in the SLPs filed in this Court nor any argument appears to have been advanced either before the Single Judge or the Division Bench. In fact, if the figures given in the Encyclopedia of Religion is any guide then the numerical strength of Catholicos in 1970 was more than the Patriarch. However paragraphs 120 and 121 of the Constitution of 1934 provide for a Rule Commitee which is empowered to amend the Constitution from time to time. The grievance, therefore of fair representation, if it has any substance, can be raised before the Committee.

In a separate judgment written by Brother Jeevan Reddy,J., he has agreed, although for different reasons, that the creation of catholicate in 1912 was valid and that the Constitution framed in 1934 was binding and it