

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 651 of 2017

1. Shri. Yangmi Haorei, aged about 42 years, S/o H. Vareichin, resident of Leingang Ching (S.Laho), P.O. & P.S.- Litan, Ukhrul District, Manipur, at present Litan, P.O. & P.S.- Litan, Ukhrul District, Manipur.
2. Shri. R. Moon, aged about 70 years, S/O Late R. Ayok, resident of Leingang Ching (S. Laho), P.O. & P.S. – Litan, Ukhrul District, Manipur, at present Litan, P.O. & P.S.- Litan, Ukhrul District, Manipur.
3. Shri. R. Yuimi, aged about 35 years, S/O R. Moon, resident of Leingang Ching (S. Laho), P.O. & P.S. – Litan, Ukhrul District, Manipur, at present Litan, P.O. & P.S.- Litan, Ukhrul District, Manipur.
4. Shri R. Robin, aged about 30 years, S/O R. Moon, resident of Leingang Ching (S. Laho), P.O. & P.S. – Litan, Ukhrul District, Manipur, at present Litan, P.O. & P.S.- Litan, Ukhrul District, Manipur.

..... Petitioners

-Versus-

1. The State of Manipur, through the Addl. Chief Secretary (Home), Government of Manipur, Imphal, Manipur.
2. The Director General of Police, Government of Manipur, Imphal, Manipur.
3. The Deputy Commissioner-Cum-District Magistrate, Ukhrul District, Ukhrul, Manipur.
4. The Superintendent of Police, Ukhrul District, Government of Manipur.
5. The Sharkaphung Village Authority represented by its Chairman/Headman of Sharkaphung Village, Shri Wungreikhan Kasar, aged about 30 years, resident of Sharkaphung Village, P.O. & P.S. Litan, Ukhrul District, Manipur.
6. The Leingangching Village Authority represented by its Chairman Shri. S.W. Shoknganing, aged about 55 years, S/O Late S.W. Kuingai, resident of

Leingangching, P.O. & P.S. Litan, District Ukhrul,
Manipur.

7. The Deputy Commissioner, Kamjong District,
Kamjong, Govt. of Manipur, Kamjong, Manipur.

..... Respondents

**BEFORE
HON'BLE THE ACTING CHIEF JUSTICE MR. N. KOTISWAR SINGH**

For the Petitioners	::	Mr. Kh. Tarunkumar, Advocate, Mr. Mark Khapai, Advocate.
For the Respondents	::	Mr. H. Samarjit, G.A., Ms. H. Bisheshwori, Advocate.
Date of hearing	::	29.11.2017
Date of Reserving Judgment	::	29.11.2017
Date of Judgment & Order	::	16.01.2018

**JUDGMENT & ORDER
(CAV)**

Heard Mr. Kh. Tarunkumar and Mr. Mark Khapai, learned counsel for the petitioners as well as Ms. Bisheshwari, learned counsel for the private respondents and Mr. Samarjit H., GA for the State respondents.

[2] In this petition, an apparently intra village dispute between some of the villagers, all Christians, but belonging to different denominations, has raised certain fundamental issues touching upon the right of a villager to stay in his village as guaranteed under Article 19(1)(e) of the Constitution of India and to practice his denominational faith under Article 25 read with Article 26 of the Constitution of India and his right to life and personal liberties as guaranteed under Article 21 of the Constitution.

[3] The 4 (four) petitioners claiming to be permanent residents of Sharkaphung/Leingangching Village under Kamjong District, erstwhile part of Ukhrul District of Manipur have alleged that they had been forcibly expelled from their village by the Village Authority after the petitioners, who were initially Baptist Christians, adopted Roman Catholic faith in the year 2009. The petitioners alleged that after they adopted Roman Catholic faith,

they were warned by the Village Authority of Sharkaphung/Leingangching to apologise and remain in the Baptist fold as, according to the Village constitution, only one Christian denomination, i.e., Baptist Christianity will be permitted to be practised in the village. The petitioners not having heeded the warning, were served the quit notice on 08.03.2010 to leave the village. According to the petitioners, as they failed to leave the village, their houses and properties were destroyed and to avoid any physical harm they escaped to a nearby Litan village and took shelter there. It is alleged that though they had lodged an FIR at the Litan Police Station, no action was taken by the Police. The petitioners also state that even interventions by other Catholic organisations of nearby villages have come to nought and they have continued to remain in Litan village where they had taken shelter.

[4] The petitioners state that when the wife of the petitioner No. 2 died on 10.12.2016, the petitioners requested the Village Authority of Sharkaphung/Leingangching village for burial of the mortal remains in the village which was refused, because of which the body was buried in another village. It has been also stated that recently on 07.08.2017, the wife of the petitioner No.1 expired after a prolonged illness. However, the request of the petitioner no. 1 for burial of his wife in Sharkaphung/Leingangching village was also turned down. After the refusal, the Tangkhul Catholic Council and other organisations requested the District Authorities to allow her mortal remains to be buried in the native village at Leingangching. The representations to the authorities and protestations at various quarters having evinced no response, the petitioners have approached this Court by filing this petition seeking reliefs, inter alia, for quashing the constitution of Leingangching village which stipulates that "*There should not be any denominational activity dividing the existing Religion (i.e., Baptist Christianity)*", and for allowing burial of the mortal remains of the wife of the petitioner no.1 in the courtyard of his house in the village of Leingangching, payment of compensation for the damages suffered by the petitioners and for directing the official respondents to take appropriate measures for resettlement of the petitioners in the village and allow them to practice the religion of their choice.

[5] The private respondents, however, have vehemently opposed the petition and the reliefs claimed. The Chairman/Headman of Sharkaphung/Leingangching Village, the Respondent no. 5 has filed the affidavit-in-opposition on behalf of the Respondents no. 5 and 6 denying the allegations made and on the contrary contended that the petitioners are not residents of Sharkaphung/Leingangching village. They state that, in fact, the petitioner No. 1 had migrated from another village (Khamasom) to Leingangching sometime in the year 1996 and the names of the petitioners do not find place in the census report of 2016 and 2017. It has been also stated that every village in the hill areas of Manipur has a village constitution which is to be followed by every villager. It has been contended that the private respondents have no objection to the petitioners following the Catholic faith and they were not expelled from the village because of adoption of Catholic faith. The real reason, according to the private respondents for expulsion of the petitioners, was that the petitioners while remaining in the Sharkaphung/Leingangching village tried to form a new village Committee without the knowledge and consent of the Village Authority and tried to form a new village under the name of "Ramshairam" and sought recognition of the said newly formed village from the Deputy Commissioner on 13.08.2001 in violation of the customary laws and also violated the oath of allegiance to the village constitution. It was also contended that the wives of the petitioners No.1 and 2 had ceased to be residents of Sharkaphung/Leingangching village and both died in some other place and hence they were not allowed to be buried in the village. It has been also stated that there is a civil dispute pending before the Court of Civil Judge (Sr. Division), Ukhrul filed by the Petitioner no.1 and others and as such, the burial in the disputed land was not allowed by the villagers. In short, the plea of the private respondents is that the petitioners are not residents of Sharkaphung/Leingangching village and they were expelled because of the land dispute and for their attempts to disrupt the village administration and not because they had adopted Catholic faith.

[6] The respondents thus, contended that the petitioners had, in fact, been expelled from the village for creating disunity in the village by trying to set up a separate village though they were not the original settlers

of the village. However, they are trying to give a religious colour to the civil disputes. It has been asserted that in fact, there is no persecution of the petitioners on the ground that they had converted to Catholic faith.

[7] The petitioners, in order to rebut the allegation of the respondents that they are not the original residents of the village, have relied on the Electoral Roll of 2007 in respect of 43 Phungyar (ST) Assembly Constituency, District Ukhul, Sub-Division Phungyar Part – 43/6 . In the said electoral roll, the name of the petitioner No. 2 appears at serial No. 402 under House No. 97 and petitioner No. 1 appears at serial No. 420 as the son of H. Vareichin.

Similarly, in the Electoral Roll of 2008 for the Assembly Constituency, 43 Phungyar (ST) the name of the petitioner No. 2 appears at serial No. 634 and petitioner No. 1 at serial No. 649. The name of the petitioner No. 3 appears at serial No. 640 and the petitioner No. 4 at serial No. 639. The said electoral roll is in respect of Leingangching village under Phungyar Sub-Division, Ukhul District. The wife of the petitioner No. 1, namely, H. Ritah who expired on 07.08.2017, appears at serial No. 648 with her husband's name being shown as Yangmi (Petitioner No.1).

[8] In the same manner, in the Electoral Roll for the year 2011 of the Assembly Constituency 43-Phungyar (ST), Manipur in respect of Leingangching village under Phungyar Sub-Division, Ukhul District, the name of the petitioner No. 2 appears serial No. 268. In the electoral roll of 2012, in the Assembly Constituency for the 43 Phungyar (ST) Manipur, the name of the petitioner No. 2 appears at serial No. 260, petitioner No. 3 at serial No. 265, and petitioner No. 4 at serial No. 262.

[9] In the Aadhaar card issued by the Government of India, in respect of the petitioner No. 1, his address is clearly shown as Leingangching, Sikibung, Ukhul, and in respect of H. Rita, wife of the petitioner No. 1, her address has been shown as Leingangching. So is the case of the petitioner No. 2. In the identity card issued by the Election Commission of India in respect of the petitioner No. 4, his address is shown as Leingangching. In the identity card issued under the Mahatma Gandhi National Rural Employment Guarantee, the petitioner No. 2 is shown to be

the head of the household and is also shown to be a resident of Leingangching under Phungyar Block. As far as the petitioner No. 1 is concerned, the Headman of the Sikibung village himself had certified in 19-02-1999 that he is a bonafide resident of Leingangching village and he was recommended for award of the work for construction of the Leingangching Primary School by the Headman. In fact, as late as 14-02-2017, the Chairman of the Sikibung/Leingangching village authority had also recommended the petitioner No. 1 for a housing scheme under the Pradhan Mantri Awas Yojana (PMAY) for the year 2017-2018, certifying him to be a bonafide resident of Leingangching. It may be noted that the name of the village has been interchangeably used as Sharkaphung/Leingangching/Sikibung.

The petitioners also contended that the father of the petitioner No. 1 namely, H. Vareichin and the eldest son of petitioner No. 2 , namely, R. Withing are allowed to stay in the Leingangching village as they had not adopted Catholic faith, and continue to remain as Baptist Christians.

[10] The aforesaid assertions of the petitioners have been controverted by the private respondents contending that when the aforesaid Electoral Rolls of 2008-2011 were prepared, the petitioners were temporarily residing at Sikibung. However, subsequently, their names were deleted and as such, their names do not find place in the electoral rolls of 2016-2017. Similarly, as regards the Aadhaar Cards and the Identity cards issued by the Election Commission of India, these were issued when they were temporarily residing at Leingangching and now steps have been made for deletion of the Leingangching Village as their village.

[11] As regards the contention of the petitioners that the father of the petitioner No. 1 and eldest son of the petitioner No. 2 are still residing at Leingangching village, it has been stated that they have been allowed to remain in the village as they have not created any disturbance in the village and they have not broken the vow of allegiance to the village constitution. In fact, the petitioners were expelled from the village since 2010 by the village authority as they had created problems in the village and also they are not original villagers of Leingangching village.

[12] In the midst of the proceeding, this Court had to deal with the issue of burial of the wife of the petitioner No.1, which was being denied to be buried at Leingangching village by the private respondents. Her mortal remains were kept at another village at the Sacred Heart Parish, Hungpung.

This Court in an attempt to have an amicable solution to the aforesaid issues called upon both the parties to arrive at an amicable settlement by way of mediation, for which the Director of the Manipur Judicial Academy was requested to act as the Mediator on 18th September, 2017. When the matter was taken up on 19-09-2017, it was informed by the parties that there has been an amicable settlement as far as burial of the dead body of late H. Ritah, wife of the petitioner No. 1 is concerned in the Sikibung/Leingangching village in a place to be allotted by the Village Authority of Sikibung/Leingangching. However, it was submitted on behalf of the private respondents that the said permission for burial at Sikibung/Leingangching was given purely on humanitarian ground. Considering the settlement arrived at regarding the aforesaid issue of burial, this Court urged both the contesting parties to go for another round of mediation process to deal with the other contentious issue of alleged expulsion of the petitioners from the village. However, as the said mediation process relating to the allegation of expulsion has not resulted into any agreement, this Court has proceeded to hear the parties to decide the issues on merit.

[13] Ms. Bisheshwari, learned counsel for the private respondents submits that as evident from the above, there is certainly a dispute about the residential status of the petitioners in as much as they claim to be original villagers of Sikibung/Leingangching. But they were merely temporary residents of the village Leingnangching who migrated from another village because of which they have filed a suit before the Civil Court against the Village Authority of Leingangching as mentioned above claiming their property in the village. This fact itself would indicate that there is a serious dispute about the status of the petitioners as villagers of Sikibung/Leingangching and since serious disputed questions of fact are involved, it may not be appropriate for this Court to entertain this petition and it should be left to be decided by the competent Civil Court.

[14] Ms. Bisheshwari, learned counsel further submits that since the petitioners were never expelled from the village on the ground that they had converted to Catholic Christianity, and since there is no issue of the villagers of Leingangching, victimising or preventing the petitioners from practicing their Catholic faith, the plea of the petitioners ought to be rejected. In fact, they were expelled only because they created problems and disturbances in the village for trying to set up a new village and form a new village committee and for their undisciplined act which could not be tolerated in the village. She submits that the petitioners will have every right to stay in the village, if they are successful in the aforesaid civil suit pending in the Civil Court and till such appropriate order is passed by the Civil Court, they would have no right to claim to stay in the village.

[15] Accordingly, it has been submitted by Ms. Bisheshwari, learned counsel for the private respondents that the relief claimed in this petition for allowing the petitioners to stay in the village cannot be granted as the same can be granted only by the Civil Court whose jurisdiction the petitioners have already invoked.

[16] Before this Court proceeds to deal with the issues raised, it may be appropriate to deal with the objection raised by the private respondents that this Court may not entertain this petition as it involves disputed questions of facts.

[17] Ms. Bisheswari submits that the petitioners have already approached the Civil Court by filing a Civil suit claiming ownership of certain lands which would clearly indicate that they are not residents of Leingangching village and in any event, whether they are villagers and possess lands in the village on the basis of which they are claiming that they have a right to remain in the village, is to be decided by the Civil Court on the basis of evidences, for which this Court may not be the appropriate forum to decide, and accordingly submits that this Court may not entertain this petition.

[18] It is on record that the petitioners have filed a suit before the Court of the Civil Judge (Sr. Division), Ukhru, being Civil Original

(Declaration) Suit No. 1 of 2015 in which the petitioners have sought the following reliefs:

“(i) a decree declaring that the Plaintiff No. 1,2,3,4 and 5 are the owner and possessor of the suit land described in the Schedule-A,B,C,D and E respectively.

(ii) a decree for permanent injunction against the Defendants restraining the Defendants and their men from interfering with peaceful possession of the Suit land by the Plaintiffs.

(iii) a temporary injunction against the Defendants and their men and privies for restraining him/them for committing illegal acts by trespassing inside the suit land.

(iv) Any other relief(S) which the Hon’ble Court deems fit and proper in the facts and circumstances of the case, for the ends of justice.”

[19] On the other hand, the relief claimed in this writ petition is for a declaration that the village constitution which requires that there should not be any denominational activity dividing the existing religion (i.e., Baptist Christianity), to be unconstitutional, and directing for allowing the petitioners to resettle peacefully and to profess the religion of their choice and for payment of compensation for the loss suffered by the petitioners.

It can be said that claim for payment of compensation would involve deciding disputed questions of fact. As regards resettlement in the village, the private respondents may claim that it would depend on the success of the civil suit. Further, deciding whether the petitioners are residents of the village would also involve deciding disputed facts.

However, it is to be remembered that residence in a place does not necessary mean that one must own a land of his own or any property. One may stay in a village as a tenant or with other relatives in the village, which right cannot be deprived of on the ground that he does not profess any particular religious denomination. The claim for right to reside and settle in any part of the territory of India as guaranteed under Article 19(1)(e) claimed by the petitioners cannot be rejected on the ground that

disputed questions of facts are involved, if there are sufficient materials on record to decide such an issue.

Further, the other claim of the petitioners is that they were original residents of Leingangching but were expelled as they renounced Baptist Christianity and entered the Catholic fold, though the private respondents have vehemently denied that the petitioners were expelled on religious ground. Of course, consideration of this issue may also involve appreciation of certain evidences. But it is also to be remembered that it also involves exercise of the fundamental right to freedom of religion as guaranteed under Article 25 of the Constitution.

This Court is of view that if violation of certain fundamental rights has been alleged and there are certain materials on record to examine these allegations, it may not be appropriate to close the doors of this Court merely on the ground that it would involve deciding disputed facts. It may be noted that every claim seeking enforcement of fundamental rights may involve certain elements of appreciation of evidence and consideration of facts, which may be disputed by either of the parties. However, mere existence of such disputed facts may not be sufficient to oust a petition, unless such a consideration would involve highly complicated facts, whose proof may require elaborate recording of evidence etc. If such disputes can be considered on the basis of affidavits or admitted documents available on record, this Court can certainly entertain such a petition.

[20] Keeping the aforesaid principle in mind, this Court would hold that as regards the claim of the petitioners for payment of compensation, the petitioners may approach the competent court for the same. However, as regards the other issues raised in this petition which are founded on the fundamental rights as guaranteed under Articles 19(1)(e) and 25 and 26 of the Constitution, this Court would proceed to examine the same on merit.

Accordingly, the objection raised by Ms. Bisheshwari, learned Counsel for the private respondents that the petition is not maintainable is rejected.

[21] The petitioners have alleged that the petitioners have been driven out from the village as they had converted to Catholic denomination, which of course, has been vehemently denied by the private respondents. In support of the claim of the petitioners that they were earlier residing in the village, they have relied on the electoral rolls, Adhaar cards, etc. The private respondents however, state that the petitioners were temporarily staying in the village, and they were not original residents but had migrated from other village. This would show that, the private respondents admit that the petitioners were residing in the village before they were expelled. If that is so, it is irrelevant whether they were original inhabitants or migrants from other village for the purpose of consideration as to whether their rights as guaranteed under Article 19(1)(e) had been violated or not, as enjoyment of this right is not contingent on whether one is a permanent or temporary resident of the place. In fact, the very language of the provisions of Article 19(1)(e) shows that one has the right to reside and settle in any part of the territory of India. It does not merely guarantee a permanent resident of a place to continue to reside in any part of the territory of India. This Article implicitly recognises that one may move to any other part of the country as guaranteed under Article 19(1)(d) and settle and reside as guaranteed under Article 19(1)(e). These rights are only subject to reasonable restrictions which may be placed either in the interests of the general public or for the protection of the interests of any Scheduled tribes.

Articles 19(1)(d) and (e) read as follows:

“19. Protection of certain rights regarding freedom of speech, etc.—(1) All citizens shall have the right—

(a) to freedom of speech and expression;

(b)

(c)

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f)

(g)

(2)

(3).....

(4).....

(5) Nothing in sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable

restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.”

Thus, a person, unless prevented in the interest of the general public or for the protection of the interest of any Scheduled Tribe, has a right to move freely throughout the territory of India and settle and reside in any part of the country.

It is to be remembered that the petitioners and the private respondents and other residents of Leingangching village themselves belong to the same Scheduled Tribe Community. Further, no valid law or order had been passed by the State or its agency preventing settlement or residing in the said village.

The private respondents have of course, relied upon the village constitution which places certain conditions for staying in the village, the violation of which has been cited by the petitioners as the reason for expelling the petitioners from the village. This village constitution has been challenged by the petitioners as being unconstitutional.

[22] After India gained independence from the British Rule on the 15th of August, 1947, the Constituent Assembly was constituted which framed and enacted the Constitution of India, which was adopted on the 26th November, 1949.

When the Constitution was adopted, the people of this free country declared this country to be a sovereign, democratic republic as clearly proclaimed in the Preamble to the Constitution. The Constitution assures to secure to all its citizens, social, economic and political justice, liberty of thought, expression, belief, faith and worship, equality of status and opportunity assuring dignity of the individual. These cherished constitutional goals are sought to be practically realised by guaranteeing certain basic rights which are incorporated as Fundamental Rights under Part III of the Constitution. These enumerated rights are not only essential and fundamental for the development of the individuals enabling to live with dignity, but have been so identified to limit the power of the State, so that the State or its organs or agencies do not violate or encroach upon these

rights. The Fundamental Rights represent the claims of the individuals and restrictions placed on the State.

The Fundamental Rights though sacrosanct, yet, are not absolute. Societal needs require placing certain restrictions on the exercise of these individuals rights as otherwise, untrammelled and unfettered rights of individual rights may lead to anarchy and chaos. Part III of the Constitution while enumerating these basic human rights as Fundamental Rights thus, has provided for placing certain reasonable restrictions.

Part III of the Constitution containing Articles 12 to 35 deals with the conglomerate of the fundamental rights, both substantive and procedural and the limitations thereof.

While Article 12 defines what "State" means for the purpose of the Fundamental Rights guaranteed under the Constitution, Article 13 declares that any existing law which is inconsistent or in derogation of the fundamental rights, to that extent, will be void. It further declares that the State shall not make any law which takes away or abridges the rights conferred under this Part.

Article 13 further elaborates that "law" includes any Ordinance, order, bye-law, rule, regulations, notification, custom or usage having the force of law. What this Article mandates is that it is not only the laws made by the Legislatures or orders, rules framed by the State, but also any custom or usage which has the force of law which must conform to the fundamental rights. Otherwise, such laws, including the customary laws and practices having the force of law would be liable to be declared void and unconstitutional to the extent they are inconsistent or derogatory to the fundamental rights.

Equality clause under the Constitution is covered under Articles 14 to 18. Article 14 is main provision which ensures that the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India. Other Articles 15 to 18 are the various facets of the right to equality.

Article 19 consists of bundle of rights to freedom. Various dimensions of right to freedom of a person necessary to have for a full expression of the individuality and potentiality of a person, of course

confined only to the citizens of this country, have been encapsulated under Article 19. Article 19 assures that all the citizens shall have the following rights, namely,

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions, co-operative societies;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; and
- (g) to practise any profession, or to carry on any occupation, trade or business.

These rights are, however, subject to certain reasonable restrictions as mentioned in the Article.

Of the aforesaid rights, fundamental rights to freedom as guaranteed under Articles 19(1)(d) and (e) are of immediate relevance to us as far as this case is concerned.

Article 19 is, of course, not exhaustive of the individual rights. These rights are complemented by other fundamental rights mentioned in Part III.

Articles 20 to 22 deal with important aspects of the right to freedom which have been specifically mentioned to emphasise the significance of these rights. Article 20 provides that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. Further, no person shall be prosecuted and punished for the same offence more than once and no person accused of any offence shall be compelled to be a witness against himself.

One of the most important fundamental rights is contained in Article 21 which provides that no person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 21-A is a newly inserted right assuring free and compulsory education to all children of the age of six to fourteen years.

Article 22 guarantees protection against arrest and detention in certain cases.

Articles 23 and 24 provide for the rights against exploitation.

Articles 25 to 28 contain rights relating to freedom of religion, of which Articles 25 and 26 are of immediate relevance to the case.

Articles 29 and 30 deal with the cultural and educational rights of the minorities.

The right to move the Supreme Court for enforcement of the rights under Part III has been also guaranteed under Article 32. Remaining Articles deal with limitations or restrictions that may be placed on fundamental rights and also on the State.

[23] The issues raised in this petition involve exercise of rights as guaranteed under Articles 19, 21, 25 and 26.

Article 19 enumerates the various rights freedom guaranteed under the Constitution of which, we are immediately concerned with the rights as guaranteed under Article 19(1)(d) and (e) which provide for freedom to move freely throughout the territory of India and to reside and settle in any part of the territory of India.

The other fundamental rights which are of relevance to this case are Articles 25 and 26, as there is an allegation that the petitioners have not been allowed to profess and practice religion of their choice in the village and have been expelled from the village on the ground that the petitioners have adopted the Catholic faith of Christianity.

Article 25 reads as follows:

“ 25. Freedom of conscience and free profession, practice and propagation of religion.—(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

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

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

Explanation I.—.....

Explanation II.—.....

Article 26 reads as follow:

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

- a) to establish and maintain institutions for religious and charitable purposes;
- b) to manage its own affairs in matters of religion;
- c) to won and acquire movable and immovable property; and
- d) to administer such property in accordance with law”

Closely co-related with the aforesaid rights is one of the most basic human rights which has been included in the Constitution as Article 21 which guarantees the right to life and personal liberty. Article 21 reads as follows:

“ Article 21. Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.”

[24] As mentioned above, the freedom of movement throughout the territory of India has been guaranteed under Article 19(1)(d) of the Constitution. It, therefore, ensures that any citizen of this country will have the right to go wherever he chooses without any distinction of any State or local boundary. This right to move freely in any part of the territory of the Country is complemented by the right to reside and settle in any part of the territory of India. These provisions affirm the unity of this country. This Country may consist of union of many States. However, such distinction of separate States will not come in the way of any citizen to move to any part of the territory of the country as this Union forms a single country governed by the same fundamental law, i.e., the Constitution of India. The same principle applies to any intra state movement. It is to be noted that village forms one of the smallest political units. These rights to move freely throughout the territory of the country and to settle and reside in any part of the territory of India are only subject to the limitations that reasonable restrictions can be imposed on these rights in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

[25] It is to be remembered that both the petitioners and the private respondents belong to the same Scheduled Tribe community and as such there may not be any problems with any restriction which may be placed in the interests of Scheduled Tribe. Further, there is no such issue about reasonable restrictions to be imposed in the interests of general public.

[26] The restriction imposed on the petitioners as alleged by them was placed by the Headman of Sarkhapung village, representing the Village, who is an authority within the meaning of Article 12 of the Constitution of India. The Headman of the Village is also the Chairman of the Village Authority by virtue of Section 3(4) of the Manipur (Village Authorities in Hill Areas) Act, 1956.

The Headman/Chairman of the Sarkhapung Village Authority does not deny expulsion of the petitioners from the village, but deny that it was on the ground of the petitioners adopting Catholic faith but because the petitioners allegedly joined hands together to form a new village committee without the knowledge and consent of the Village Authority as stated in para no.5 of the affidavit in opposition filed by the Respondent no. 5 and 6. It has been charged by the Respondents no.5 and 6 that by such acts of the petitioners, they had violated the village constitution.

The Respondents no.5 and 6 have also alleged that the decision to expel the petitioners was taken by the Village Council and not by the Village Authority. Hence, Article 12 of the Constitution will not be attracted as Village Council is not an authority within the meaning of Article 12 of the Constitution. However, this Court is of the view that such a contention of the Respondents no.5 and 6 may not be entertained in view of the specific plea of the Respondents no. 5 in the additional affidavit filed on 11.9.2017 in paragraph no. 7 thereof that the petitioners were expelled/banished from the village since 2010 by the Village Authority. The aforesaid para no.7 reads as follows:

"7. That with reference to Para no. 6 of the Additional affidavit the deponent reiterated submitted that the petitioners were expelled/banished from the village since 2010 by the village Authority and they are not the villagers of the Leingangching village anymore."

[emphasis added]

[27] The fact that the Respondents 5 and 6 have claimed that the petitioners were banished/expelled from the village as the petitioners tried to form a new committee in the village without the consent of the Village Authority would itself indicate that the petitioners were earlier residing in the village. Whether, prior to that they were residents of another village and they had subsequently migrated to the village, in the opinion of this Court, may not be of much relevance as the petitioners would have a fundamental right to move freely throughout the territory of India and to reside and settle in any part of the territory of this country. The fact that the petitioners before being banished/expelled from the village were residing in the village would imply that their stay in the village was protected by the rights as guaranteed under Articles 19(1)(d) and (e) of the Constitution.

Thus, if the petitioners had been residing in the village before they were banished/expelled by the Village Authority, the question would arise, as to under what authority of law, the Village Authority of Leingnagching could expel the petitioners. Is the reason put forth by the Respondents no.5 and 6 that the petitioners were expelled from the village as they had tried to form a new village committee without the consent of the village authority and in violation of the village constitution, be valid in law? In the opinion of this Court, the answer must be a categorical 'No'.

The Village Authority is not endowed with any such power to order banishment/expulsion of any villager. The powers and functions of the Village Authority are clearly laid down under Section 16 of the Manipur (Village Authorities in Hill Areas) Act, 1956, which provides that it shall to the best of its ability maintain law and order and for that purpose exercise and perform the powers and duties generally conferred and imposed on the police by or under the Police Act, 1961. There is nothing under the Police Act empowering any person to be expelled/banished from the place of residence.

Under the Manipur (Village Authorities in Hill Areas) Act, 1956 there is also provision for constitution of Village Court under section 19 thereof. However, it is not the case of the private respondents that the order of banishment was passed by the Village Court. In any event, even the Village Court has no such power for expulsion or banishment from the village also as it has the limited power to impose fines or to award compensation as provided under Section 26 of the Act.

[28] Thus, the order of expulsion of the petitioners from the village issued by the Village Authority was without any authority of law, even if the private respondents claim that the cause of expulsion was not because of conversion of the petitioners to Catholic faith.

[29] The petitioners, however, assert that they were expelled on religious ground as they had adopted Catholic faith.

This Court will examine the claim of the petitioners on the basis of undisputed facts and materials before this Court.

[30] The petitioners have annexed a copy of the village constitution (riyan) which is not disputed by the private respondents.

Para 18 of the village constitution which has been also challenged by the petitioners as unconstitutional reads as follows:

“18. There shall not be any denominational activity dividing the existing Religion (i.e., Baptist Christianity).”

The aforesaid provision therefore, in categorical terms disallows any other denominational activity including practice of Catholic faith in the village, except Baptist Christianity.

[31] The petitioners have also annexed a copy of the appeal submitted by the Parish Priest of the Sacred Heart Parish on 8.11.2009 addressed to the Headman and Village Authority of the Sharkaphung Village for allowing to open a Catholic Church in Leingangching village and not to disturb persons who wish to convert to Catholic faith. In response, the Headman of Sharkaphung/Sikibung Village informed the Sacred Heart Parish Pastoral Council that as per the decision of the Village Authority taken on 21.11.2009, no other denomination should exist in the village or any second locality in the village.

The Chairman of the Village Authority further informed the Sacred Heart Parish Pastoral Council on 24.11.2009 that while the Village Authority has no objection to the conversion of the petitioner no.1 to Roman Catholic religion, since Sharkaphung/Leingangching village has only one denomination, he should apologise, failing which he should leave the village. The clear inference that can be drawn from the said letter is that though the Village Authority has no objection to adoption of Catholic faith, since the village follows only one religious denomination of Baptist faith, he has to apologise for the same and he cannot remain in the village as a Catholic, as otherwise, he has to leave the village. If he has to remain in the village, he has to profess Baptist Christianity.

Apparently, the petitioner no.1 did not apologise as sought by the Village Authority and accordingly, he was served with the quit notice on 8.3.2010 on the ground that he has violated the village constitution. Though it has not been specifically mentioned in the quit notice that he was being asked to leave the village as he converted to Catholic faith, it can be clearly inferred so, from the earlier communications read with Para no. 18 of the village constitution. In fact, the petitioners made an appeal before the Village Authority of Leingangching village on 6.8.2014 that they may be allowed to return to their village and practice their Catholic faith. Though the private respondents have denied that the petitioners were expelled from the village on religious ground, these documents would indicate otherwise, and the correctness of these documents have not been denied by the private respondents. These documents unambiguously indicate that the petitioners were in fact expelled by the private respondents and the Village Authority of Leingangching as the petitioners did not conform to the mandate of the village constitution allowing only one religious denomination of Baptist Christianity. Of course, other attending factors of trying to form a new group in the village may have also contributed to their expulsion from the village. What, however, comes out very clearly from the foregoing documents is that conversion of the petitioners to Catholic faith was certainly a decisive contributing factor for their expulsion from the village.

[32] This takes us to the next related issue, as to whether, any villager has a right to practice a different denominational faith and still

reside in the village and whether the mandate of the village constitution that there will be only one religious denomination of Baptist Christianity in the village can be said to be permissible in law.

[33] Certainly, any person or a group of persons can profess any religion of his or their choice and accordingly also establish a village of their own and can also manage their own affairs as guaranteed under Articles 25 and 26 of the Constitution of India. However, such rights cannot come in the way of any villager, if he so decides to leave that particular religious faith and adopts another religious faith or denomination as such a person will have equal right to profess and practice his own religion as guaranteed under Article 25. Such person will also have the right to manage his own religious affairs as guaranteed under Article 26 of the Constitution. Thus the rights of a person as guaranteed by Articles 25 and 26 cannot be defeated by exercise of similar rights by other persons. This seems to have been happening in the instant case.

The villagers of Leingangching have every right to follow the Baptist Christianity and accordingly, also manage their affairs in tune with the Baptist principles and practices. However, it cannot come in the way of the petitioners professing a different religious denomination of Catholic faith as they have also similar fundamental right to profess and practice Catholic Christianity as guaranteed under Article 25 of the Constitution of India. On adopting such Catholic faith, they also would have a right to establish and maintain institutions for religious and charitable purposes and, manage their own affairs including owning, acquiring movable and immovable properties and administer such property in accordance with law as guaranteed under Article 26 of the Constitution, which would include setting up a church in the village provided they have their own land and other means to do so.

[34] Grantaire in Victor Hugo's *Les Miserables* tells Enjolras, ".....The liberty of one citizen ends where the liberty of another citizen begins.....". In similar vein, it was observed, as generally attributed to US Supreme Court Justice Oliver Wendell Holmes, Jr, "Your right to swing your arms ends just where the other man's nose begins."

[35] This Court would, accordingly, hold that the petitioners would have the fundamental right to profess, practice religious faith of their choice as guaranteed under Article 25 of the Constitution which cannot be violated by the Village Authority, which is an authority within the meaning of Article 12 of the Constitution of India. This fundamental right to profess and practice religion of one's own choice will be subject only to public order, morality and health and can be regulated or restricted by the State only in respect of any economic, financial, political or other secular activity which may be associated with religious practice. The Village Authority is a statutory authority constituted under the Manipur (Village Authorities in Hill Areas) Act, 1956 having statutory power of village administration as provided under the Act and tasked with the responsibility of maintaining law and order in village having police power as provided under the Police Act, 1961. Therefore, if the Village Authority has directed banishment and expulsion of the petitioner as stated in the additional affidavit of the private respondents, quoted above, the same will be plainly illegal being violative of fundamental rights of the petitioners as guaranteed under Articles 19(1)(d) and (e) as well as Articles 25 and 26 of the Constitution of India.

[36] That takes us to the issue whether, in view of the Constitutional provisions discussed above, the village constitution which mandates that there shall not be any denominational activity dividing the existing Religion (i.e., Baptist Christianity) can be said to be valid.

[37] In the opinion of this Court, it cannot be said to be valid, as the same is violative of Articles 25 and 26 of the Constitution of India. The said provision of the village constitution, by the said injunction prohibits existence or practice of any other denominational activity other than Baptist Christianity in the village which has the effect of abrogating the rights conferred under Articles 25 and 26 of the Constitution of India.

[38] Pandit Lakshmi Kanta Maitra (West Bengal), a member of the Constituent Assembly of India observed while debating on Article 19 of the Draft Constitution(now Article 25 of the Constitution) on 6th December, 1948 in the following words,

".....At the same time we must be very careful to see that in this land of ours we do not deny to anybody the right not only to profess or practise but also to propagate any particular religion. Mr. Vice-President, this glorious land of ours is nothing if it does not stand for lofty religious and spiritual concepts and ideals. India would not be occupying any place of honour on this globe if she had not reached that spiritual height which she did in her glorious past. Therefore I feel that the Constitution has rightly provided for this not only as a right but also as a fundamental right. In the exercise of this fundamental right every community inhabiting this State professing any religion will have equal right and equal facilities to do whatever it likes in accordance with its religion provided it does not clash with the conditions laid down here....."

[39] This fundamental right to freedom of religion is derived from the very rich cultural heritage of this country. This fundamental right is also based on the virtue and principle of universal tolerance practiced in this country since time immemorial. Sri K. Sanathanam, another member of the Constituent Assembly observed that this Article was not so much an article on religious freedom but on religious tolerance, in the following words,

".....Sir, I stand here to support this article. This article has to be read with article 13, article 13 has already assured freedom of speech and expression and the right to form association or unions. The above rights include the right of religious speech and expression and the right to form religious association or unions. Therefore, article 19 is really not so much an article on religious freedom. But an article on, what I may call religious toleration. It is not so much the words "All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion" that are important. What are important are the governing words with which the article begins, viz., "Subject to public order, morality and health"..... Therefore I submit to you that this article, as it is, is not so much an article ensuring freedom, but toleration--toleration for all, irrespective of the religious practice or profession. And this toleration is subject to public order, morality and health....."

[40] Swami Vivekananda in his celebrated address at the World's Parliament of Religions, Chicago, more than hundred years before, on the 11th of September, 1893 in response to his welcome, spoke in these stirring words, which reflect the tolerant spirit and catholicity of Indian culture which are now echoed amongst others, in Articles 25 and 26 of the Constitution and the effect and dangers of intolerance,

"Sisters and Brothers of America,

It fills my heart with joy unspeakable to rise in response to the warm and cordial welcome which you have given us. I thank you in the name of the most ancient order of monks in the world; I thank you in the name of the mother of religions; and I thank you in the name of millions and millions of Hindu people of all classes and sects.

My thanks, also, to some of the speakers on this platform who, referring to the delegates from the Orient, have told you that these men from far-off nations may well claim the honour of bearing to different lands the idea of toleration. I am proud to belong to a religion which has taught the world both tolerance and universal acceptance. We believe not only in universal toleration, but we accept all religions as true. I am proud to belong to a nation which has sheltered the persecuted and the refugees of all religions and all nations of the earth. I am proud to tell you that we have gathered in our bosom the purest remnant of the Israelites, who came to Southern India and took refuge with us in the very year in which their holy temple was shattered to pieces by Roman tyranny. I am proud to belong to the religion which has sheltered and is still fostering the remnant of the grand Zoroastrian nation. I will quote to you, brethren, a few lines from a hymn which I remember to have repeated from my earliest boyhood, which is every day repeated by millions of human beings: "As the different streams having their sources in different places all mingle their water in the sea, so, O Lord, the different paths which men take through different tendencies, various though they appear, crooked or straight, all lead to Thee."

The present convention, which is one of the most august assemblies ever held, is in itself a vindication, a declaration to the world of the wonderful doctrine preached in the Gita: "Whosoever comes to Me, through whatsoever form, I reach him; all men are struggling through paths which in the end lead to me." Sectarianism, bigotry, and its horrible descendant, fanaticism, have long possessed this beautiful earth. They have filled the earth with violence, drenched it often and often with human blood, destroyed civilisation and sent whole nations to despair. Had it not been for these horrible demons, human society would be far more advanced than it is now. But their time is come; and I fervently hope that the bell that tolled this morning in honour of this convention may be the death-knell of all fanaticism, of all persecutions with the sword or with the pen, and of all uncharitable feelings between persons wending their way to the same goal. (emphasis added)

[41] What does the Bible say of tolerance?

“ During his ministry, Jesus Christ was surrounded by intolerance. Jews and Samaritans in particular hated one another. **(John 4:9)** Women were treated as inferior to men. And Jewish religious leaders scorned the common people. **(John 7:49)** Jesus Christ stood out as vastly different. “This man welcomes sinners and eats with them,” said his opposers. **(Luke 15:2)** Jesus was kind, patient, and tolerant because he came, not to judge people, but to heal them spiritually. Love was his primary motivation.— **John 3:17; 13:34.**

(<https://www.jw.org/en/publications/magazines/g201508/bible-says-about-tolerance>)

[42] This is what **Romans 14:1-4** says, about tolerance,

“As for the one who is weak in faith, welcome him, but not to quarrel over opinions. One person believes he may eat anything, while the weak person eats only vegetables. Let not the one who eats despise the one who abstains, and let not the one who abstains pass judgment on the one who eats, for God has welcomed him. Who are you to pass judgment on the servant of another? It is before his own master that he stands or falls. And he will be upheld, for the Lord is able to make him stand.”

Luke 9:46-47 also says,

“ An argument started among them as to which of them might be the greatest. But Jesus, knowing what they were thinking in their heart, took a child and stood him by His side.”

[43] One may also have one of the Christian views on tolerance, in the following words,

“The ‘divine plan’ for history does not involve the destruction of human cultures, religions or civilizations, but is rather a divine acceptance for them, signified in the very resurrection of Jesus. They all bring their unique contribution to the wholeness of human growth. They are an indispensable part of the process. This is the vision that commands the Christian understanding of our world and its direction. This does not, of course, deny the right of other people to propose different visions and to live according to them. Even if we do not understand how, we think that the various visions will be somehow integrated into the divine purpose. This plan is a call to action which extends to all human beings: a call to work for reconciliation of all polarities, for the overcoming of all enmities, for equality and freedom for all, a call to bring together, to make peace, to preach forgiveness of sins for people who are alienated from one another or from God. This is what makes the Christian tick.”

[**Christianity in India: Two Thousands Years of Faith**, Authors: Leonard Fernando and G. Gispert-Sauch; published by Viking/Penguin Books, India, 2004.]

[44] Religion, theology, philosophy apart, the Constitution of India, which is the paramount law of this Country and foundational basis of the polity of this Country guarantees religious tolerance by assuring all the citizens of this country the right to religious freedom to profess and practice and propagate religion of his choice and manage their own affairs as enshrined under Articles 25 and 26 of the Constitution. The solemn pledge taken by the countrymen on adoption of the Constitution to secure to all the citizens of this country social, economic and political Justice, Liberty of thought, expression, belief, faith and worship and Equality of status and of opportunity have been translated into constitutional provisions as found under Part III of the Constitution.

[45] In *Shayara Bano v. Union of India, (2017) 9 SCC 1*, the Hon'ble Supreme Court held as follows:

"25. To freely profess, practise and propagate religion of one's choice is a fundamental right guaranteed under the Indian Constitution. That is subject only to the following— (1) public order, (2) health, (3) morality and (4) other provisions of Part III dealing with fundamental rights. Under Article 25(2) of the Constitution of India, the State is also granted power to make law in two contingencies notwithstanding the freedom granted under Article 25(1). Article 25(2) states that:

"25. (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

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

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

Except to the above extent, the freedom of religion under the Constitution of India is absolute....."

[46] We may, therefore, examine as to whether such a provision in the village constitution that there shall not be any denominational activity dividing the existing Religion (i.e., Baptist Christianity) is void, as contended by the petitioners.

What the aforesaid provision in the village constitution mandates is that other than Baptist Christianity, no other denominational activity will be allowed to be practised in the village. Thus, if a person seeks to profess and practice Catholic faith in the village, and since it is not part of the Baptist Christianity, he cannot do so in the village because of the aforesaid provision of the village constitution. In such event, what would Articles 25 and 26 of the Constitution mean to him? Absolutely, redundant for him. Articles 25 and 26 will have no meaning for him. Will this injunction then, be permissible in the face of Articles 25 and 26 of the Constitution? The obvious answer will be in the negative.

[47] It was held by the Hon'ble Supreme Court in ***Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiarof Sri Shirur Mutt, 1954 SCR 1005 : AIR 1954 SC 282*** that,

" 23.As we have already indicated, freedom of religion in our Constitution is not confined to religious beliefs only; it extends to religious practices as well subject to the restrictions which the Constitution itself has laid down. Under Article 26(b), therefore, a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters. Of course, the scale of expenses to be incurred in connection with these religious observances would be a matter of administration of property belonging to the religious denomination and can be controlled by secular authorities in accordance with any law laid down by a competent legislature; for it could not be the injunction of any religion to destroy the institution and its endowments by incurring wasteful expenditure on rites and ceremonies. It should be noticed, however, that under Article 26(d), it is the fundamental right of a religious denomination or its representative to administer its properties in accordance with law; and the law, therefore, must leave the right of administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose. A law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under clause (d) of Article 26."

[48] Article 13 (1) of the Constitution provides that all laws in force in the territory of India immediately before the commencement of this

Constitution, in so far as they are inconsistent with the provisions of Part III shall, to the extent of such inconsistency, be void. Article 13(2) further provides that the State shall not make any law which takes away or abridges the rights conferred by Part III and any law made in contravention of this clause shall, to the extent of the contravention, be void. It has been clarified under Article 13(3)(a) "law" includes amongst others, rule, regulation, notification, custom or usage having in the territory of India the force of law.

Thus, if any regulation or custom or usage having the force of law takes away or abridges or is inconsistent with the provisions of Part III, to that extent it will be void.

[49] The part of the village constitution which lays down that there shall not be any denominational activity dividing the existing Religion (i.e., Baptist Christianity), which was enforced by the Village Authority of the Leingangching plainly militates against the constitutional spirit but also basic tenets of Articles 25 and 26 of the Constitution. This injunction is not related to public order, morality and public health and hence, cannot limit the fundamental rights of the petitioners as guaranteed under Articles 25 and 26 of the Constitution. This also cannot be construed to be part of any law which regulates or restricts any economic, financial, political or other secular activities which may be associated with the practice of Catholic faith as provided under sub-clause 2(a) of Article 25.

The inexorable and inescapable conclusion is that the said provision of the village constitution which lays down that there shall not be any denominational activity dividing the existing Religion (i.e., Baptist Christianity) is void in law and cannot be enforced being violative of Articles 25 and 26 of the Constitution of India.

[50] If any citizen of this Country is banished from his village by a village authority and that too on the ground that he has adopted a different religious faith, it is violative of not only Article 19(1)(d) and (e) and Articles 25 and 26 of the Constitution without following any validly enacted law or by following the procedures of law, it would also amount to violation of the overarching Article 21 of the Constitution which guarantees that no person

shall be deprived of his life or personal liberty except according to the procedure laid down by law.

[51] It is to be remembered also that it is the Rule of Law on which the entire constitutional structure of this country is founded and the constitutional norms have evolved and the rights of the citizens are protected and the authority of the institutions regulated by laws guided by Rule of Law. The Supreme Court, thus, in ***Masood Alam v. Union of India, (1973) 1 SCC 551*** observed that,

“.....The rule of law reigns supreme in this Republic and no person on the soil of free India can be deprived of his personal liberty without the authority of law.”

[52] What is Rule of Law?

The term 'Rule of Law' though nowhere found in the Indian Constitution, pervades the entire governance of this country and has been referred to extensively by the Courts in India. It has assumed such constitutional importance that it has been recognised as one of the 'basic features' of the Constitution in ***Indira Nehru Gandhi v Raj Narain, 1975 Supp SCC 1*** and ***SP Gupta v Union of India, 1981 Supp SCC 87***.

The Rule of Law is invoked by the Indian Courts to invalidate any arbitrary action on the part of the executive and uphold the supremacy of law. The other important attributes of Rule of Law is that law should be clear, unambiguous, predictable and applicable equally to everyone irrespective of status, standing or occupations. Equality before law is the main feature of Rule of Law.

Other very important aspects of Rule of Law are the existence of basic and fundamental human rights which are necessary for leading a life with dignity, institutional mechanism for preventing the State from encroaching upon these rights and existence of an institution which would act as the *qui vive* to protect the rights of the citizens. Thus the principle of judicial review of legislative and executive actions by an independent judiciary also becomes an inseparable part of Rule of Law. The concept of Rule of Law is dynamic and constantly evolving with challenges of time and

many of these facets of the Rule of Law may be necessary to be mentioned here.

Professor Dicey has pointed out three main principles of Rule of Law:

- (i) Absence of Arbitrary Power or Supremacy of Law,
- (ii) Equality before Law,
- (iii) The constitution is the consequence of the rights of the individuals.

In India, the third principle is substituted by the written Constitution which is the source of all the rights of the individuals and rules that regulate the functioning of the body polity.

The existence of and protection of human rights is one of the most important part of the Rule of Law.

[53] The Hon'ble Supreme Court in India held in **Renu v. District & Sessions Judge, (2014)14 SCC 50** that,

"5. The rule of law is the basic feature of the Constitution. There was a time when REX was LEX. We now seek to say LEX is REX. It is axiomatic that no authority is above law and no man is above law. Article 13(2) of the Constitution provides that no law can be enacted which runs contrary to the fundamental rights guaranteed under Part III of the Constitution. The object of such a provision is to ensure that instruments emanating from any source of law, permanent or temporary, legislative or judicial or any other source, pay homage to the constitutional provisions relating to fundamental rights. Thus, the main objective of Article 13 is to secure the paramountcy of the Constitution, especially with regard to the fundamental rights. The aforesaid provision is in consonance with the legal principle of "rule of law" and they remind us of the famous words of the English jurist, Henry de Bracton — "The King is under no man but under God and the Law". No one is above law. The dictum — "Be you ever so high, the law is above you" is applicable to all, irrespective of his status, religion, caste, creed, sex or culture. The Constitution is the supreme law. All the institutions, be it legislature, executive or judiciary, being created under the Constitution, cannot ignore it. The exercise of powers by an authority cannot be unguided or unbridled as the Constitution prescribes the limitations for each and every authority and therefore, no one, howsoever high he may be, has a right to exercise the power beyond the purpose for which the same has been conferred on him. Thus, the powers have to be exercised within the framework of the Constitution and legislative provisions, otherwise it would be an exercise of

power in violation of the basic features of the Constitution i.e. Part III dealing with the fundamental rights which also prescribes the limitations.”

[54] In the opinion of this Court there has been serious breach of the Rule of Law in the instant case.

[55] For the reasons discussed above, this Court would unhesitatingly hold that when the petitioners were expelled/banished from the village by the Village Authority of Leingangching village, it was not by any valid order. Hence, it was violative of Article 21 of the Constitution. Further, such expulsion and banishment of the petitioners from Leingangching Village also violated the Fundamental Rights of the petitioners as guaranteed under Articles 19(1)(d) and (e) of the Constitution and hence, illegal. The petitioners have the fundamental right to reside and settle in Leingangching village in their respective residences/homes in Leingangching village.

[56] This Court also for the reasons discussed above holds that the expulsion and banishment of the petitioners from the village by the Village Authority of Leingangching village, was also actuated by religious motive based on the village constitution which lays down that there shall not be any denominational activity dividing the existing religion of Baptist Christianity.

[57] For the reasons discussed above, this Court holds that the aforesaid provision of the village constitution under Paragraph no. 18 thereof that there shall not be any denominational activity dividing the existing religion, i.e., Baptist Christianity, is unconstitutional and hence illegal and void, being violative of Articles 25 and 26 of the Constitution of India.

[58] The petition is accordingly allowed with the above findings, observations and directions.

ACTING CHIEF JUSTICE

FR/NFR

Sushil