

In the High Court of Justice

THE QUEEN

on the application of

DAVENDER KUMAR GHAI

Claimant

-and-

NEWCASTLE CITY COUNCIL

Defendant

-and-

SECRETARY OF STATE FOR JUSTICE

Interested Party



BANARAS HINDU UNIVERSITY

काशी हिन्दू विश्वविद्यालय

Report Compiled by:

Prof. H R Sharma

Head, Department of Veda

Banaras Hindu University

Introduction

Author's Profile

1. My name is Hridaya Ranjan Sharma. I am a Professor of *Veda* (the four original and most eminent of the canonical Hindu scriptures) and have served as the Head of the Department of *Veda* (Faculty of *Sanskrity Vidya Dharma Vijnana Sankaya*) at Banaras Hindu University (BHU) since 2002. I have taught at BHU for 29 years, guiding 17 PhD research students and my entire scholastic career progressed at BHU, where I attained:

- ~ M.A. in the *Rgveda* (1975)
- ~ PhD in Etymological Aspects of the *Rgveda* (1974)
- ~ M.A. in Sanskrit (*Veda* group) (1971)

Banaras (or Varanasi) is India's anciently acclaimed Sanskrit 'Capital of Knowledge' and BHU its largest and most prestigious institute of higher learning. The city and the university have been the research focus for every notable English-language treatise on Hindu cremation rites in the past 40 years. BHU was founded under specific National Indian legislation to promote the study of Hindu scripture and Sanskrit literature. It was the venue chosen for Mahatma Gandhi's first public address in India upon his return from South Africa in 1914 and is today the largest campus university in Asia.

2. My additional academic, administrative and advisory roles include:

- ~ Visiting Fellow, Veda Department of Jagannath Sanskrit University, Orissa (1993)
- ~ Senior Vice President, Uttar Pradesh Sanskrit Sansthan, Lucknow (1999-2003)
- ~ Governing Council Member, Nalanda Virtual University, Kochi Kerala
- ~ Academic Council Member, Jnana Pravah Academic Centre, Varanasi
- ~ Vice President, Naisargic Shodha Samsthan research journal
- ~ Advisory Board Member, Official Journal for the International Society for Ayurveda and Health (Connecticut, USA)
- ~ Convener, 2nd World Congress on Vedic Sciences.
- ~ Chair, International Environment Conference, Suruchi Kala Samiti

3. I am widely acknowledged as an expert in the specific fields of *Vedic* sacrifice, the spiritual concepts in *Vedic* texts and *Vedic* etymology. I have authored two books (on *Vedic* etymology and the spiritual theory of the *Rgveda*) which are currently under publication and have previously published 35 Hindi language research papers. In addition I have published 6 research papers and 2 English language articles including an entry in Vol.6 of the 'Encyclopedic History of the Religious Quest' ("*The Spirituality of the Vedic Sacrifice*") and two articles in *Elements* ("*Vedic Concept of Consciousness*", Vol.3, No.3 Nov. 2005 & "*The Inner Aspects of Five Sheaths: The Concepts in Human Life*", Vol.6, No.3 March 2007). I have presented over 25 papers and delivered keynote speeches at numerous international conferences, most recently at the Sivananda International Conference in Durban, South Africa (2006).

Instructions & CPR Formalities

4. I am instructed on behalf of the Claimant, Mr Davender Kumar Ghai, to provide a report on Hindu beliefs and practices in relation to the cremation of human remains, with particular reference to open-air pyres. In order to ensure precision of all contested issues I am instructed in like terms to Dr Shirley Firth for the Secretary of State for Constitutional Affairs, namely to:
- Identify the religious beliefs of Hindus in respect of funeral rites
 - Explain the way (or ways) in which Hindu religious beliefs in respect of funeral rites are or may be manifested or observed
 - Identify the manner in which Hindus in the United Kingdom presently manifest or observe their religious beliefs as regards funeral rites
 - Explain whether (and if so, why) the present practice of Hindus in the United Kingdom as regards funeral rites is inconsistent with Hindu religious beliefs.

In the course of doing so I will identify/comment upon:

- How funeral arrangements may be conducted in the UK in such a way to satisfy these beliefs
- Whether the current arrangements satisfy these beliefs
- Consider the spectrum of beliefs held by Hindus and whether the Claimant's views are widely or commonly held

- Identify how these beliefs arise from scriptures and distinguish where practices originate from cultural tradition (I bear this distinction at the forefront of my mind and unless specifically stated in my report my opinion is strictly based on a religious interpretation).
5. I fully understand that my primary duty is to assist the Court and that duty overrides any obligation to the party who has engaged me. In drafting my report my intention is to help the court understand the contested issues before it and where required I have provided literal translations of Hindu scripture for ease of understanding. I have acted as an Expert Witness on a number of occasions in the Indian Judiciary and although I am based overseas am familiar with the English Civil Procedure Rules with which I have conducted myself in the preparation of this report.
 7. I have no previous connection with any of the parties in this case and I am therefore unaware of any conflict of interest.

Synopsis

8. I received my instructions on 21st November 2007 together with a comprehensive bundle of legal documents submitted by all parties in support of the Judicial Review, including various witness statements, a lengthy expert report by Dr Shirley Firth (with appendix articles), various news reports and other documents. Copies of these documents are not annexed to my report to enable its brevity.
9. I understand that the Claimant is claiming Judicial Review of the Newcastle City Council's refusal to grant him permission to allow cremation on an open-air funeral pyre for himself. I understand that the Claimant wishes to incorporate such provision within his will, to be carried out by his eldest son, who echoes his father's desires. The issues raised have led the Secretary of State for Constitutional Affairs to intervene as an interested party. I understand that one of the Claimant's arguments is that the refusal of permission for open funeral pyres is contrary to his human right to the freedom to manifest his religion or belief in practice and observance (Article 9.1 ECHR). I am familiar with the European Convention of Human Rights and am aware that the Claimant's right is "*subject only to such limitations as are prescribed by law and are*

necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others" (Article 9.2). Thus there is a clear need (presently for the High Court) to balance the Claimant's freedom to manifest against others' freedoms and considerations. In this regard the Defendant relies on the evidence of Dr Firth whose conclusion is essentially that, "Mr. Ghai's views on funeral pyres are not uncontroversial, and while some Hindus would agree with him, most would not".

Author's Note

10. Having read Dr Firth's expert report on behalf of the Secretary of State, I confirm there is very broad consensus between us on matters of scriptural Hindu theology. That scriptural basis provides **extremely strong, indeed irrefutable, grounds to substantiate Mr Ghai's claim** that open-air cremation is an essential component of the *antyeshti* sacrament (Hindu last rites).
11. However, Dr Firth does not conclude her report on scriptural grounds only, as I have. Her point of departure from scriptural orthodoxy results from the entirely questionable methodology of her "straw" polling. Hence, I propose to assist the court by re-aligning attention on the issues of greatest pertinence to these proceedings.

Source Materials

12. **Scripture:** Hindu last rites originate directly from hymns in the *Rgveda*, Hinduism's premier canonical scripture which Dr Firth rightly describes as, "*the most holy texts of all*" (page 2). As such it provides the foundation of my scriptural research alongside other texts that depict funerary rites in precise detail, such as the *Satpath Brahmanam*, *Asvalayana-Grihya-Sutra*, *Kausika-sutra*, *Garuda Purana*, *Brhadar-aryanaka* and *Taittiriya-aranyaka*.
13. **Sanskrit terminology:** I have exercised the fullest scholarly diligence to decipher the precise Sanskrit etymology¹ deployed in these texts, as unsophisticated translations, in even the most respected ethnographies, have caused and perpetuated critical distortions through generations of scholarly endeavour. Accurate Sanskrit translation is essential because the language reveals a systematic and scientific codification of the relevant theological rationale.

¹ It pains me, however, that the available word processing programs have not accurately rendered Sanskrit accents and pronunciations of in this report.

14. **Ethnographies:** I have quoted widely from English-language scholarly research to confirm that my findings are consistent with the virtually the entire general academic *oeuvre* and also to undermine Dr Firth's claim of scholarly unanimity.

Chapter 1:

Cremation as Sacrificial Offering to *Agni*

15. By emphasising that **“cremation is a sacrifice** to the sacred fire, *Agni*” (p17, her emphasis) Dr Firth concurs with undisputable scripture and a consistent body of scholarly research². Indeed, the very Sanskrit term for cremation (*antyeshti*) denotes ‘last sacrifice’³ whereby the deceased becomes, “the ‘ultimate’ victim of the sacrificer’s ultimate grand sacrifice.”⁴

1.1 What is *Agni*?

16. *Agni* is the ‘living’ deity manifested in consecrated fire and, in practical terms, no Hindu anywhere in the world goes through life without encountering *Agni*’s all-pervasive influence, whether during daily worship, ritual fire ceremonies (*havans*), weddings or funerals. Over half of the *Rgveda* (Hinduism’s premier canonical scripture) is devoted to *Agni*, depicting it as a prism of profound physical, spiritual and psychic energy. Mediating between the worldly and Divine, *Agni* is essentially required to sanctify prayers and worldly offerings (in this case the deceased) and so render them worthy of acceptance into the Divine plane of existence.

² The point is most emphatically made out, amongst many others, in M Levin, ‘Mummification and Cremation in India’ (1930); R Pandey, ‘Hindu Samskaras: Socio-Religious Study of the Hindu Sacraments’ (1969); V Das, ‘Structure and Cognition: Aspects of Hindu Caste and Ritual’ (1977); J Parry, ‘Death and Cosmogony in Kashi’ (1981) in ‘Banaras: Cosmic Order, Sacred City, Hindu Traditions’ (ed. R P B Singh); J Parry, ‘Sacrificial Death and the Necrophagous Ascetic’ (1982) in ‘Death and the Regeneration of Life’ (eds. M Bloch and J Parry); J Parry, ‘Death in Banaras’ (1994); G G Filippi, ‘Mrytu: Concept of Death in Indian Traditions’ (1996)

³ Dr Firth alternates between this correct translation (page 9) and ‘last wish’ (page 19)

⁴ U Vesce, ‘Heat & Sacrifice in the Vedas’ (1985), the most detailed exposition of the significance of sacred heat currently in the English-language

1.2 The Power of Agni and Consecrated Fire

*“In this fire the gods offer man,
From this sacrifice man comes out covered in light”*

Brhadaranyaka Upanishad VI.II.13-14

17. The *Brahmanas* (technical manuals on sacrificial ritual performance) depict the three stage process by which *Agni* makes the deceased worthy and capable of absorption in to the Divine plane. These are:

- 1) **Purification** ~ When the funeral pyre is first lit, *Agni* is ritually invoked in its *kravyada* (‘eater of flesh’) form to remove the body’s ‘raw’ profanity.
- 2) **Transformation** ~ The cremation is then ritually demarcated (by mantra and oblation) to herald the arrival of *Agni* in its *jataveda* (‘knower of all things’) form:

*“Agni, send away the fire devourer of raw meat,
drive out the fire devouring corpses,
have the fire which cooks for the gods come here.”*

Taittiriya Samhita I.1.1.7

Sacrificial cremation requires a nuanced fusion with *Agni*, reflected by use of the word ‘*srta*’ (related to the verbal participle of *tap*) to denote heat that penetrates, “*into the depths of those things on which it alights and transforms them from within*”⁵:

*‘O Jatavedas, when you have **correctly burned** (srta) this body,
then lead its soul to the ancestors;
When you have **correctly burned** (srta) it,
O Jatadeva, **then** give it to the fathers.’*

Rgveda X.16.1-2 [my emphasis]

⁵ Vesci, *ibid.*

In stark contrast to the blistering, undiscerning heat of gas cremation chambers, *Agni's* thermal energy must be carefully tempered and “*encompassed by cooling agents if it is to be properly harnessed for creative ends.*”⁶ Thus, “*if the fire burns out too violently it must be put out. The son of the deceased will rekindle it, being careful to keep the flames in check.*”⁷ ‘Cooling’ of the cremation is achieved by observing a defined ritual process before, during and after the cremation, such as bathing and applying sandalwood paste on the body, locating aquatic plants around the cremation ground and throwing a pitcher of water directly on to the smouldering ashes.⁸

3) **Bestowal of energy** ~ Once duly purified and transformed, only then can the deceased be imbued with *Agni's* sacred energy⁹ and be propelled on the transcendental journey towards the Land of the Forefathers and Gods (*pitriloka*). As Dr Firth acknowledges, *Agni jataveda* is, “*an intermediary between the living, the gods and the ancestors, carrying the deceased to heaven,*” (page 17) thus fulfilling the ultimate purpose of the last rites sacrament:

*“The cremation fire is the translator of the deceased from this world to heaven, and the Rgvedic funeral hymns stress the mystical connections in this ritual process that will re-establish the deceased in the highest heaven.”*¹⁰

18. **Protection from malign spirits** ~ *Agni's* role as the destroyer of evil spirits *per antonomasia* is also of paramount importance, hence the need to circumambulate the body with an *Agni*-bearing torch, prior to cremation. Indeed, “*funeral rites are dedicated to the control, neutralization and destruction of the bhutas [spirits]*”¹¹ who encircle cremation grounds with the intention of disrupting and defeating the sacrifice. It has been noted that, “*the correct performance of funeral rites is the best defence,*” against such spirits¹² but it appears that Health and Safety

⁶ Parry (1981)

⁷ Vesci, *ibid.*

⁸ The cremation is ‘cooled’ by mantrams invoked at various stages through from the *Rgveda* X.16.13-14, *Athurveda* 18.3.6, *Kausika-sutra* 82.26 and *Taittiriya-aranyaka* VI.4.1.

⁹ *Rgveda* X.16.9: ‘let this other jatavedas carry oblations to the Gods for he is skilful’

¹⁰ D Knipe, ‘*In the Image of Fire: The Vedic Experience of Heat*’ (1975)

¹¹ P Laungani, ‘*The Changing Patterns of Hindu Funerals in Britain*’.

¹² Filippi, *ibid.*

concerns have compelled British Hindus to circumambulate the body with incense or water instead – a meaningless measure that informed Hindus such as the Claimant may well consider an insulting alternative, given the significance and implications of the ritual.

1.3 Ritual Purity and How Agni is Invoked

“The thread that strings all the ceremonies together is the imperative desire that the funeral offerings should be perfectly performed.”¹³

19. It is not enough to simply offer a sacrifice, for it must prove worthy of acceptance to be effective. If the rituals are fully performed then, and only then, is the sacrifice acceptable and the objective of the cremation fulfilled. Mantras are invoked at the precisely specified time¹⁴, providing formulae of rhythm and sound that reverberate amongst the fusion of fire with *yagyik* wood (pertaining to fire sacrifice) and ritually pure ingredients. This is critical. For *Agni* invocation, *“the kind of wood used, the size and orientation of the pyres, and other things related to them are regulated by the sacred texts and nothing is left to the whims of the mourners.”¹⁵* Furthermore, *“every oblation offered will be poured in a specific way, at a specific moment and on a specific form of the fire.”¹⁶* Hence, the ‘all in one’ pre-packaged offerings enclosed in coffins and pulpit prayers prior to British cremations serve no meaningful spiritual purpose at all. The Claimant’s assertions in this regard are correct and there can be no substitute or alternative method of doing the same.
20. Staal’s monograph¹⁷ on Vedic fire ritual concludes that *“what is essential in the ceremony is the precise and faultless execution, in accordance with rules, of numerous rites and recitations.”* Thus, to understand a Hindu’s ideal of religious devoutness, *“we should refer, not to the faithful or orthodox, but to the orthoprax (from Greek ortho, ‘right’ and praxis, ‘action’). It is precisely this feature which is least understood.”*

¹³ S Stevenson, ‘Rites of the Twice Born’

¹⁴ F Staal ‘*Rituals and Mantras: Rules Without Meaning*’: *“one should let the beginning of the acts coincide with the end of the mantras”*

¹⁵ Pandey (1969)

¹⁶ Vescei, *ibid.*

¹⁷ *ibid.*

21. However, this should not be mistaken for ceremonial pedantry, for ritual exactitude is the catalyst of a sublime science of cause and effect: “*Sacrifice was effective not because the Devas [Gods] chose to grant requests, but because ritual knowledge and action produced results directly. Life in the World of the Fathers was thus not a gift of the Devas, but a product of proper ritual performance.*”¹⁸ This leaves neither margin for error nor credit for good intentions. This conclusion should be given due deference.
22. It is true, nevertheless, that a degree of ritual diversity is evident throughout India, varying according to caste/geographic cultural norms. However, it is very important that any such variations are not overstated because there is **always** a ritual invocation of *Agni* – both as funeral fire and circumambulating torch – and a pot/skull breaking ceremony to denote the final release of the soul.¹⁹

1.4 Preliminary Conclusion

23. As Hindu last rites are a sacrificial sacrament, the presence and ritual invocation of *Agni* demands strict attention to ritual detail. It is **critically important** (deliberate emphasis) to understand that *Agni*’s divine power “*does not apply to all kinds of fire, but only to the consecrated fire...it derives its power not from its mere physical heat but from the fact that it forms part of a whole ritual complex.*”²⁰ In contrast, gas crematoria provide only enclosed industrial furnaces that cremate using a profane form of fire and preclude the strictly timed sequence of mantras and oblations.
24. Without a ritually pure and carefully monitored invocation of *Agni*, the very *raison d’être* of Hindu cremation becomes redundant and devoid of *Agni*’s unique ability to purify, transform, revivify **and** protect the body. Dr Firth’s assertion that the mere presence of “*some fire, whether*

¹⁸ T J Hopkins, ‘*Hindu Views of Death and Afterlife*’ in ‘*Death and Afterlife: Perspectives of World Religions*’ (ed. H. Obayashi, 1992)

¹⁹ G Evison, ‘*Indian Death Rituals: the Enactment of Ambivalence*’ unpublished Oxford University DPhil thesis (1989), The most comprehensive comparative funeral ritual field study to date.

²⁰ U M Vescei, *ibid.*

at a crematorium or a pyre,” (page 20) suffices is an alarming *reductio ad absurdum*. I repeat my last sentence in paragraph 18 above.

25. Not only does the absence of *Agni* leave the deceased and mourners without protection from malign spirits, it is also important that, “*one has to make sure that it is really cooked before it can be offered in sacrifice lest one incurs...wrath of the God or risks to have the act becoming counter-productive.*”²¹

²¹ Vesci, *ibid.*

Chapter 2: Death & Progress of the Soul

2.1 WHAT IS 'DEATH'?

26. 'Death' is the permanent separation of the soul from the body. However, rather than debate the precise nature of one's soul according to the *Vedas*, it is more helpful to focus on the 'vital' or innate life force, which is depicted in some detail in *Taittiriya Upanishad*. Accordingly, the *antahkarana* ('inner organ') is enwrapped in '5 sheaths' of matter and airs that collectively form the human body. In layman's terms, 'death' is the cessation of these gross outer sheaths, defined as '*dehanta*' ('end of the body'). However, the 'inner organ' persists beyond the end of the body and, "*though dehanta is death –the end of the body'-it is not normally the end of the soul's embodiment.*"²²
27. Death, in its truest sense is properly defined as '*mrityu*' ('one taking on their vital existence') which, "*has a wider range of meaning and designates the disappearance of even subtle bodies.*"²³ A failure to rely on this fundamentally important distinction between *dehanta* and *mrityu* may account for Dr Firth's misconceived insistence that the soul departs at the commonly perceived point of death. No less, the soul routinely departs the body during sleep too. To determine death, the pertinent issues are the *extent* and *permanence* of that departure.

2.2 WHEN DOES MRITYU OCCUR?

²² Filipi

²³ J Parry (1994)

28. Death is not a binary equation but a transitory process progressing over a prolonged period of time, leading scholars²⁴ to observe that, “*death is a paradigm of liminal states*” (meaning ‘betwixt two states’) and that “*this notion of transition is important in the [Hindu] death ritual*”.²⁵
29. A Sanskrit term used for cremation (*aurdhvadaihika-kriya*) denotes “*ceremonies that release the soul from the body for its spiritual journey to heaven.*” Hence, “*it is commonly held that... death does not occur at the cessation of physiological functioning, but during the last rites.*”²⁶ It has been further noted that, “*from the time the deceased is released from his body on the funeral pyre his condition as departed begins*”²⁷ and that until then, “*the deceased, though disembodied, was supposed to be still living.*”²⁸

2.3 **PROGRESS OF THE SOUL**

30. In contrast to the ostensibly destructive act of cremation, sacrifice to *Agni* entails profound multi-dimensional rebirth:

*“And when he dies...and when they place him on the fire,
Then he is born again out of the fire, and the fire consumes only his body.”*

Satapatha Brahmana II.2.4.8

This birth after death is considered more significant than one’s original birth, as it unravels the spiritual existence all beings ultimately aspire to:

*“By the samskaras which follow birth, the Earth is gained,
By means of the samskaras which follow death, the heavens”*

²⁴ Mostly inspired by V W Turner, ‘*The Ritual Process*’ (1969)

²⁵ M Kaushik, ‘*Representations of Death*’ (in *Contributions to Indian Society*, Vol. 10, No.2, 1976)

²⁶ J Parry (1981) This relates to the theory in *Chandogya Upanishad* VII.1-15 stating that the most innate self resides in one’s *prana* (‘life breaths’). It is commonly understood that the final ‘vital breath’ is only released during cremation and often has to be assisted by the mourners-an act not possible in an enclosed gas cremation chamber.

²⁷ G Evison, *ibid.*

²⁸ R Pandey (1969)

Baudhayana Pitṛmedha-Sūtra, III.1.4.1

The *samskaras* referred to in the above sūtra denotes a life-cycle ritual facilitating a real spiritual transformation, comparable to the Christian ideal of ‘sacrament’²⁹.

31. After *dehanta* (‘end of body’) the deceased is classified as a *shava* (‘disembodied soul’) requiring liberation in *Agni*’s consecrated fire to become a *preta* (‘one leaving the physical form’).³⁰ *Pretas* still require rituals to be performed on their behalf for at least 12 days after cremation in order to ascend towards the status of a *pitr* (forefather), completing the soul’s post-mortuary, transcendental journey. Intricate funeral and post-funerary rites have persisted to this very day because,

*’He who does not obtain funeral rites,
is condemned to perpetually remain a preta’.*

Garuda Purana II 9.47-49

2.4 HINDU CREMATION GROUNDS

32. The Sanskrit etymology for a cremation ground is often misconstrued as ‘burial ground’³¹ but in fact translates as a place to ‘nourish the embodied soul’ (*Satpath Brahmanam* XIII.8.1.1). *Satpath Brahmanam* XIII 8.1 and *Asvalayana-Grihya-Sutra* IV.1-2 provide precise instructions dictating the requirements of a cremation site:

- an open site upon which the sun can directly shine at midday
- fertile land surrounded by a thicket of trees (with the exception of certain categories and thorn-bearing plants)
- a site not visible from neighbouring houses nor from the nearest road
- a site nearby a stream of running water, to the north or west

²⁹ See Pandey, *ibid*, for an in-depth correlation between the concepts of *samskara* and sacrament as an ‘outer and visible sign of inner spiritual grace’

³⁰ Parry (1981): “Before this stage [kapala kriya] it is commonly said to be completely inappropriate to use the term *preta*”

³¹ *Shava* (disembodied soul) and “*anna*” (food) being conflated into “*smasana*”

- a trench should be dug on the site and consecrated prior to cremation, to the dimensions of 1 fathom breadth, 1 span depth and the length equivalent to a man with upraised arms.

33. It is worthy of emphasis that these instructions come from one of “*the main sources for the rituals today*” – according to Dr Firth (p16) and hence, there can be little debate as to the significance of these detailed requirements.

2.5 **CREMATORIA IN INDIA**

34. The existence of crematoria in India (particularly in Banaras) is cited by Dr Firth to suggest that they provide viable means of performing the last rites sacrament and, “*even in India, Hinduism is in a state of development and change.*” (page 16) As a lifelong resident of Banaras and keen observer of such developments, I believe both inferences are misleading.

35. The Banaras crematorium was a local government initiative specifically for the benefit of indigent families (by whom it is overwhelmingly used) unable to afford adequate amounts of wood required in natural cremation.³² Notwithstanding some tokenistic provisions that are made to perform rituals on a north-south facing platform, the absence of *Agni* utterly precludes the efficacy of the sacrificial last rites.

36. India’s secular constitution enshrines freedom to practice religious rites (similarly to the United Kingdom’s Human Rights Act 1998/ECHR) and non-religious practices alike. India and Hinduism have experienced radical transitions for many millennia and yet ritual fire sacrifice has persisted to the extent that, “*Vedic sacrifice in the Hindu tradition might be regarded as one mode of defining Hindus*” and “*sacrifice might be termed a canonical category in the Hindu tradition.*”³³ It is naïve, if not disingenuous, to argue that modern social trends have overhauled

³² This point is reaffirmed by Evison, *ibid*.

³³ D Scott in the foreword of “Vedic Sacrifice: Challenge and Response” (I Selvanayagam, 1996)

the ancient sacrament, when in fact, many scholars have observed the remarkable extent to which Hindu last rites have been preserved.³⁴

37. To my mind, the advent of crematoria is less relevant than the fact that natural cremation is still practiced by the overwhelming majority (including heads of government, captains of industry and the like) despite the comparative convenience of gas cremation. India is a secular country (albeit with a vibrant spiritual heritage) and, in parallel to the terms of the Claimant's case, India provides funeral pyres for followers of the sacraments and crematoria for those who are not. I understand that this is the extent of the Claimant's claim.

2.6 *Preliminary Conclusion*

38. The act of ritual cremation is critical to the progress of the soul because, "*If death sets in motion a passage to the realm of the ancestors, cremation is a sacrifice that conveys one there. The funerary fire Agni is the divine power that releases the spirit, the sacrificial offering, from its earthly body and begins to transport it to the heavenly domain.*"³⁵ However, if Dr Firth's informants represent the current cremation practices in the United Kingdom, it reveals an alarming lack of knowledge and awareness. As such, I fear that many Hindu cremations have been ill performed which, if brought to public attention, will cause immense distress to families. In light of the clear scriptural guidance, this issue must be addressed immediately.
39. The scriptural characteristics of Hindu cremation sites are most precise and could not be meaningfully substituted or symbolised. As a sacrificial fire altar the cremation ground is the catalyst to enact a nexus between the ritual, cosmic and Godly planes, enabling acts on earth to facilitate the soul's transcendental spiritual journey. I cannot see how Dr Firth could disagree with this point and, in support of the same, I have been careful to set out my scriptural sources.

³⁴ R H Davis has observed that leading ethnographers such as Das, Kaushik, Knipe and Parry all, "*postulate a continuous 'orthodox' tradition of crematory practice, stretching from the funerary hymns of the Rg Veda*" (in '*Cremation and Liberation: The Revision of a Hindu Ritual*', 1988). Furthermore, Vesce (*ibid*) has stated that, "*the thought of modern Hindus appears to be very close to that of their ancestors of proto-historic times. Indeed, although in today's India Western mentality sometimes has affirmed itself...its rhythms, rituals and beliefs going back to time immemorial has been maintained.*" S Ghosh has added (in '*Hindu Concept of Life and Death*', 1989) that, "*These [Hindu last rites], as observed today also, are basically the same as were prevalent in Vedic times.*"

³⁵ R H Davis, *Cremation and Liberation: the Revision of a Hindu Ritual* in *History of Religions*, 1988, Vol. 28, No 1

CONCLUSIONS

58. The Claimant's central contention, namely that open air cremation, performed as a sacrificial offering to *Agni*, has an undeniably strong basis in Hindu scripture – as defined by both myself and Dr Firth. Without the presence of *Agni*, the very *raison d'être* of Hindu last rites becomes redundant.
59. Most of the rituals accompanying Hindu cremation – claimed by Dr Firth to be more significant than even the cremation itself – actually exist to invoke, ritually demarcate or 'cool' *Agni* and thus enhance its ability to purify, nourish and protect the deceased.
60. In any event, the *Asvalayana-Grihya-Sutra* – cited by Dr Firth as “*one of the main sources*” for correct Hindu funerary rituals, explicitly states the need for an “*open cremation site upon which the sun can directly shine at midday*”.
61. The ritual science of the *antyeshti sanskara* can not be symbolically replicated, for these rites are considered to be, “*efficacious actions that bring about real transformations in the state of the deceased.*”³⁶ Dr Firth rightly states that, “*Neglecting the antyeshti commandments is seen, in*

³⁶ R H Davis, *ibid.*

scriptures and in practice, to prevent the soul from reaching its destination.” (page 21) Strict ritual exactitude is essential to facilitate the sublime process of cause and effect governing the very progress of the soul - and malpractice is considered most displeasing to the Gods. Hence, Dr Firth rightly speaks of the “*sacred duty of immense responsibility*” mourning families carry to ensure all last rites are perfectly performed.

62. Two very significant letters of support in the trial bundle deserve specific attention, revealing support for Claimant’s application from within the very highest temporal, religious authorities of the Hindu³⁷ and Sikh³⁸ faiths.

Is open air cremation practically viable in the UK?

63. I am greatly impressed by the *Proposal Paper* prepared by the Alice Barker Welfare and Wildlife Trust. It has been appended to this report as it offers a serious, practical and responsible response to all the legitimate concerns and needs raised in these proceedings. The witness statement of John Bradfield, author of the *Paper*, also illuminates the coherence of ‘natural’ cremation with sound theories of bereavement psychology. It is also highly informative on how such schemes may run smoothly within the existing regulatory requirements and how the Claimant’s case is profoundly resonant with the historical jurisprudence of English cremation laws.

Is open air cremation ‘appropriate’ in the UK?

³⁷ Non-judicial affidavit of Shankaracharya Dibyananda Teerth – ‘Shankaracharya’ are responsible for presides over the spiritual and scriptural integrity of worldwide Hindu congregation.

³⁸ Letter by President of the SGPC, Golden Temple to Indian Prime Minister

64. I profess no expertise on this subject *per se* but do feel justified – indeed compelled – to draw the Court’s attention to the research of (late) Dr Pittu Laungani.³⁹ He is the sole reference cited in Dr Firth’s tome, as an authority on British Hindu funerary ritual adaptations.
65. His observations are so perfectly pertinent to key issues in these proceedings that they deserve to be cited, and considered in full:

“Critics, viewing the situation from an English perspective, would be right in contending that although the practices described above might well be true of Indians living in India, they do not have the same meaning or relevance for Indians living in Britain or in any other countries. They would point out too that the situation is so vastly different from that in India. The Thames is not the Ganges. Open cremations here are as real as leprechauns here...Even assuming such conditions were created here, would the 2nd and 3rd generation Indians living here follow them, and wish to perpetuate them? ...The above arguments, at first sight, seem quite robust. A closer examination reveals that some of the arguments are specious...

...Whether the 2nd – or 3rd – generation Indians living here follow the ancient Indian rituals and practices related to cremation is not the point. The point is that there is an assumption that all those who live in England must conform to the normative expectations related to certain kinds of behaviours. This takes away from the individuals the vital element of choice and forces them to conform to practices which may seem totally alien to their own fundamental religious beliefs, values and practices. One would wish to believe that the hallmark of an enlightened society is the extent to which it tolerates and permits the perpetuation of heterogeneity by religious beliefs and practices.

³⁹ Renowned psychologist, Reader of Psychology at London South Bank University and an Honorary Senior Research Fellow at Manchester University.

“It is only when cultures meet- on equal terms and as partners - and express a genuine willingness to share and learn from each other, then one might find tentative answers to the questions which concern us all. But for the West to assume that there is little or nothing which they might profitably learn from Eastern cultures, many of which have sustained and perpetuated themselves for over 4,000 years, is precisely the kind of attitude which is inimical to the creation of a genuine multi-cultural society.”⁴⁰

66. Observing the immense changes Hindu last rites in Britain have endured, Dr Firth herself has advocated, *“Adaptation need not and should not be a one-way process: the host community also needs to adapt and learn.”⁴¹* Ultimately, Dr Laungani’s clarion call⁴² to future generations of social reformers represents perhaps the very defining issue in these proceedings. The unanswered question, however, remains to what extent bereavement public services in Britain are willing and able to take up the challenge:

“It is often the ‘fate’ of immigrant populations to conform and accept – often with bitterness and sorrow – the dominant social norms of the host culture...An unqualified willingness by the host community to respond sensitively to the fundamental values (religious, social and familial) of different cultural groups, and actively assist in their perpetuation rather than in their destruction, will eventually lead to the creation of a genuine pluralistic society based on trust and harmony. To achieve this it is necessary for persons of goodwill, compassion and power from both sides of the cultural fence to come together and express a willingness to pay urgent attention to these problems.

Unless this is done, in the years to come the rituals, the traditions and the customs which give each culture its unique identity and meaning will be swept aside and will be replaced by gargantuan, monolithic, homogenous cultural arrangements. And this would mean the death of a culture.

⁴⁰ ‘Death Among Hindus in India and England’, International Journal of Group Tensions, Vol 28, Nos. 1-2, June, 1999

⁴¹ ‘Death and Bereavement Among British Hindus’ (1997)

⁴² ‘Death in a Hindu Family’

The death of a culture is a far greater loss to humanity than the death of an individual: the latter is inevitable, the former avoidable.

The death of a culture is the death of a civilization.”

ADDENDUM ~ Critique of Dr Firth’s Concluding Theological Conclusions

67. Mindful that the Court may not require the following arguments to be scrutinised to the extent that follows, this analysis is deliberately excluded from the main text of the report. This report argues the basis on which these scripturally-divergent assertions have been formulated (namely by “straw” poll) appears fundamentally flawed and should not be relied upon.
68. If true, the following assertions would indeed undermine the theological validity of the Claimant’s central contention *viz.* the necessity of open air cremation to sacramental Hindu last

Critical Differences Between Open-Air & Gas Cremation

Funeral Pyres

- ~ Comply with scriptural requirements for Hindu cremation grounds
- ~ Enable *Agni* invocation and regulation
- ~ Sacramental rebirth
- ~ Enables ritual purity with oblations & mantras at the scripturally specified times
- ~ Protection from malign spirits
- ~ The Chief Mourner creates a spiritual nexus by lighting the pyre

Crematoria

- ~ Do not comply
- ~ Profane furnace fire
- ~ Merely destructive disposal
- ~ ‘Pre-packaged’ offerings
- ~ Meaningless symbolism of incense
- ~ Tokenistically ‘pressing the button’

rites. Therefore, full scrutiny is provided.

‘The Soul Departs at the Time of Death’

69. Dr Firth acknowledges, “*the ‘person’ is released by the sacrifice [of cremation],*” which is required for, “*carrying the deceased to heaven,*” (page 17) but later confusingly insists there is academic consensus proving that the soul departs with the ‘end of the body’. The confusion deepens further when Dr Firth is found to state, “*Nor is death seen as an instantaneous event. It is a process taking at least 13 days.*”⁴³ and, therefore, cremation is relatively inconsequential to the soul’s progress. As apparent from the ethnographies cited in this report, there is **no credence to her conclusion**, raising very serious questions of Dr Firth’s evidence and the terms in which the Claimant’s case was put to her academic sources.
70. A number of fundamental and irreconcilable inconsistencies would arise if, indeed, the soul departs before cremation. The following inconsistencies are not exhaustive but instead limited to funeral rites acknowledged by Dr Firth (in both her evidence and existing research). I pose them as questions to highlight the points:
- Why is it essential to perform cremation soon after death if the soul has already departed?
 - Given the torment a *preta* (‘disembodied soul’) suffers until it is ensconced in the *pitriloka* why do the *sraddha* rituals (performed to ease the suffering) not commence until after cremation, even in Britain, where cremation is delayed for many days?
 - If cremation is sacrifice, is not a corpse a wholly inappropriate (and illogical) ritual offering?⁴⁴
 - Why does the body require protective circumambulation by *Agni* if it is only a corpse which, in any event, will be imminently consumed by fire?

⁴³ “*Dying, Death and Bereavement in a British Hindu Community*” (1997)

⁴⁴ Vesce (1985) observes that, “*in academic disputes about the definition of ‘sacrifice’ scholars agree that the specific character of ‘sacrifice’ is the ‘killing’ of the victim*” and that, “*the victim must still be alive to be able to accomplish fruitfully its divine and cosmic mission.*”

- Why does the very first (and thus most telling?) *mantra* uttered whilst lighting the pyre make a plea of clemency from Agni's destructive heat if the body is merely a corpse to be disposed of? ⁴⁵
- Why is cremation, ostensibly a destructive act, scripturally depicted as rebirth?
- What is to be made of the *kapala kriya* (actual or symbolic skull breaking) ritual, performed during cremation to release the last 'vital breath'? The ritual is entirely consistent with the rationale propounded in this report but, as Dr Firth graciously accepts, utterly incompatible with her own conclusions.
- Why is cremation (even more so than 'death') considered inauspicious during the lunar *pancaka* period if cremation has no implications for the soul?
- Why are the toes and limbs tied together⁴⁶ (to prevent the *preta* returning to the family home) prior to cremation if the soul and all life from the body has already departed?
- Why is 'death pollution' only observed after cremation?
- Why does the mourning period only officially commence after cremation?

'It is the Rituals Accompanying Cremation that are Essential'

71. If so, this line of argument logically makes out a very persuasive case in favour of the Claimant. After all, the following 'essential' rituals are impossible or extremely difficult to observe during cremation in an enclosed gas crematorium furnace:

- *Agni* invocation and regulation of its discrete stages is relegated to a uniformly destructive fire.
- Circumambulating the body with *Agni* (to afford protection from spirits) becomes meaninglessly substituted with incense or water for fear of health and safety hazards.
- Consecration of the cremation site (to maintain the appropriate level of divine thermal energy before each cremation) becomes impracticable.

⁴⁵ 'Agni, devour this body into ashes; do not harm it, do not disperse its skin and parts' (Rgveda X.16.1.) These pleas continue during the cremation itself (Rgveda X.16.7, Atharva Veda XVIII.2.36 and XVIII.4.11).

⁴⁶ AV V.19.12

- Lighting of the pyre by the Chief Mourner is described as “*the most significant and poignant rite of the funeral ceremony*”⁴⁷ and yet Dr Firth acknowledges, “*pushing the coffin into the furnace is not really a substitute.*”⁴⁸
- Inability to perform the *kapala kriya* (to release the final vital breath) that liberates the soul from the body impedes the ‘soul’s’ evolution and progression from the state of a *preta*.
- Meticulously timed sequences of mantras and oblations are tokenistically pre-packaged.

‘The Purpose of Cremation is to Regenerate the Five Elements’

72. While *Rgveda* X.16.3 (‘May your eye go to the sun, your life’s breath to the wind...’) illustrates a dispersal of the five bodily elements back into Mother Nature, there is **no evidence** in the Veda that it is the *primary* purpose of cremation (nor is scriptural evidence offered by Dr Firth). Rather, “*Vedic hymns lay more emphasis more on the revivification of the body through its sacrificial transformation than on anything else*”.⁴⁹
73. In fact, the need to ritually cremate in consecrated fire is so overwhelming that even bodies which are buried, immersed or never found, are still ceremonially sacrificed to *Agni* in the form of a replica body (*Aitareya Brahmana* XXXII.1). This clearly establishes the sacrament of cremation is required even in the absence of any bodily elements.

‘There is No Difference to the Progress of the Soul Whether the Body is Burned, Buried or Exposed’

74. The corresponding wording to a passage in *Athar Veda* XVIII.2 (‘*O Agni, lead all the ancestors here, whether they were buried, thrown, cremated, or exposed, so as to enjoy the offerings*’) suggests itself as the basis for her claim. If so, it should be treated with extreme caution. Only one single reference to any such *actual* funerals appears in the entire *Veda*. The more convenient

⁴⁷ P Laungani, *ibid.*

⁴⁸ ‘*Changing Patterns in Hindu Death Rituals in Britain*’ (1991)

⁴⁹ Vesci, *ibid.*

alternatives (burial, exposure) have not prevailed despite the onerous and intricate ritual requirements sacrificial cremation entails, clearly demonstrating its spiritual significance. All methods are *not* equally efficacious and, actually, “*Want of cremation is looked upon with horror, retarding the progress of the souls in the other world.*”⁵⁰

75. In fact, these alternatives are only countenanced when the deceased is not suitable for sacrifice⁵¹ and, as noted above, even bodies which are buried, immersed, or never found are also ceremonially sacrificed in the form of a replica body. This would not be necessary if the alternatives sufficed.

‘Karma is the Determining Factor for Reincarnation’

76. It must be noted that Dr Firth provides no scriptural references for this claim and even contradicts by stating, “*If one observes one’s dharma (often translated as religion) then one generates good karma.*” (page 5) Hence, I must assume the claim is derived from a rather unsophisticated application of purely philosophical texts, whether her own or by her informants.
77. The very notion of *karma* primarily applies to the correct performance of ritual activity. One’s neglect of a “*sacred duty of immense responsibility*” towards the deceased would itself generate extremely bad *karma* and hold profoundly negative consequences in the afterlife. In any event, practicing Hindus are entirely familiar with (and often dependant on) supplanting questionable moral conduct (as *karma* is commonly interpreted) by undertaking ritual activity. Numerous *Vedic* hymns also expressly refer to cremation as a purification of sins or ‘stains’⁵².
78. Furthermore, one asks why the post-cremation *shraddha* rituals are necessary to facilitate the soul’s evolution if *karma* alone governs one’s fate in the afterlife?⁵³ I repeat Dr Firth’s own assertion that, “*The son is the chief mourner, the one who comes to the succour of his father in*

⁵⁰ Pandey (1969). Dr Firth herself attributes the assertion to Pandey 1949:420 ff, which could not be traced and certainly does not exist in the author’s revised 2nd edition. Indeed, this quotation from the author’s the revised edition could not be more contrary to Dr Firth’s assertion.

⁵¹ This point is convincingly made out by Das, Parry and Vesci and also acknowledged in Dr Firth’s report. (page 18)

⁵² Rgveda X.16.9: “*Bearing off the stains may he depart to Yama’s subjects*”

⁵³ W Doniger O’Flaherty, ‘*Karma and Rebirth in the Vedas and Puranas*’ in ‘*Karma and Rebirth in Classical Indian Traditions*’ (ed. W Doniger O’Flaherty, 1983)

the abode of Yama. It is he who saves his father from hell.” (page 18) The *sraddha* rituals illustrate the dynamic of merit transference between the living and dead (and conversely also consumption of the deceased’s sins⁵⁴) - *de facto* evidence that one’s good deeds alone are not sufficient to overcome the treacherous path of the afterlife.

‘Later Post-Vedic Texts are More Relevant’

79. The suggestion that later texts (ie the *Upanishads* and *Bhagavad Gita*) supersede *Vedic* funeral rites doctrine (page 16) represents a “*pervasive bias that stands at the forefront of Western Indology*”⁵⁵ since the Nineteenth Century.
80. Post-*Vedic* texts never expressly supersede *Vedic* funeral rites. Rather, the *Brahmanas*, *Sutras* and *Arayanakas* actually elaborated and extended the detail of the rituals required. However, it is erroneous to think of Hindu scriptures in chronological terms as they all expound the same Universal Truths but in different manners and mediums.
81. The *Upanishads* are wholly philosophical texts also known as *Vedanta* – the ‘end’ or ‘essence’ of the *Veda*. They exist in physical contiguity to the *Veda*, express similar idioms and are often figuratively attributed to a shared authorship: all illustrating the line of continuity between *Vedic* ritual science and *Upanishadic* philosophy. Any ostensible differences between the two must be perceived as compatible and co-existent as *Svetasvatara Upanishad* (IV.9) expressly states that the *Veda*, sacrifices and rituals are directly sent forth by God.
82. The *Upanishads* do not depart from the *Veda* but rather, “*define the meaning of sacrifice in countless ways. The allegorical interpretation, interiorisation and ethicised interpretation do occur in the Upanishads, but together with the continuation of ritual.*”⁵⁶ The *Upanishads* do contain references denouncing the empty mechanistic ritualism of sinners but this cannot be perceived as a renunciation of ritual *per se* as, “*In the Upanishads the negation of ritual religion*

⁵⁴ J Parry, ‘*Death and Digestion*’ (1985)

⁵⁵ TULL, in I Selvanayagam, ‘*Vedic Sacrifice: Challenge and Response*’ (1996), by far the most nuanced and in-depth discourse on the relationship between the *Veda* and *Upanishads*.

⁵⁶ *Ibid.*

and the voice for interior vision are mixed with the persistent continuation of the former.”⁵⁷
Precisely the same may be said of the *Bhagavad Gita* which, “*over and over the text speaks of the tradition, the age old customs that should be followed, practiced.*”⁵⁸ Hence, Knipe, alongside other eminent scholars⁵⁹, has rightly observed that, “*With few exceptions, the Hindu rites at the time of death and the procedures for cremation are fairly uniform throughout the regions of India...This conformity in ritual across vedic, epic, puranic and agamic periods, and on to modern practice, is remarkable.*”⁶⁰

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⁵⁷ *ibid.*

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⁵⁹ See footnote no.35

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