Comments of Cranston J's Judgment in Ghai [2009] EWHC 978 (Admin)

1. Draws a sharp distinction between religious belief (which cannot legitimately be constrained), and the *manifestation* of the consequences of those beliefs (which may be so constrained in the public interest).
2. Draws an equally clear distinction between activities which constitute family life (which are essentially manifested in private) and larger-scale gatherings – which are essentially public – and which are consequently not protected under article 8.
3. Nods to, but fails to give not give any significant weight to the promotion/protection of plurality
4. Asserts that neither of the Houses of Parliament are necessarily constrained by either the Race Relations or the Equalities Act when it comes to introducing legislation.
5. However the Cremation Regulations 2008 are a Statutory Instrument promulgated by the Secretary of State. This raises two questions:
    a. Can such an Instrument properly be regarded as 'legislation'
    b. Even if it is, the 2008 Regulations have merely been laid before – not debated – by parliament[1].
6. Great weight is placed on the 1902 definition of a crematorium as a building: would a walled enclosure also be 'a building' under the meaning of the Act?
7. Great store is set on the Secretary of State's affirmation in the 2008 regulations that the only place in which human remains may legitimately be burned is in a properly regulated crematorium, which must *ipso facto* be 'a building'.
8. In doing so neither the Judge nor the Secretary of State make any reference to the fact the process identified as 'the disposal of human remains' invariably has religious connotations, and that this process is explicitly a *sacramental act* (not just a belief or a thought process) in Indic contexts.
9. Takes the view that great weight should be placed on majority assumptions as to what is, and what is not, appropriate behaviour when it comes to the formulation of public policy.
10. Appears to leave the door wide open for Local Authorities to argue that they are under no legal obligation to make a positive response to forms of behavioural/cultural practice which run contrary to the expectations of the indigenous majority, regardless of the provisions of the Race Relations and the Equalities Act.

In my view this Judgement is impeccably secular. Religion – for those who happen to believe in such matters – should be practiced in the head. However if the activation of those beliefs precipitates actions and practices of a kind which the members of the majority of look upon with askance, regulations to render them *ultra vires* may legitimately be introduced.

It would also appear that this judgement, if sustained by the higher courts, would opens the door for the State to regulate any aspects of religious practice which members of the indigenous majority collenctively regard as unseemly, misguided and contrary to the public interest.

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[1] It is also worth noting that the 2008 regulations were a post-Shipman initiative, into which the Secretary of State chose to slip a clause rendering this disposal of human remains outside a designated crematorium illegal.