

THE QUEEN

on the application of

DAVENDER KUMAR GHAI

Claimant

*-and-*

RAMGARHIA GURDWARA, HITCHIN

Intervener

*-and-*

NEWCASTLE CITY COUNCIL

Defendant

*-and-*

SECRETARY OF STATE FOR CONSTITUTIONAL AFFAIRS

Interested Party

The Logic of Cremation  
in the Hindu Context:  
An Anthropological Analysis

by

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# 1. AUTHOR'S BACKGROUND & LEGAL PRELIMINARIES

## *My instructions*

1. This report was prepared, upon instructions from Charles Beton of J. M. Wilson Solicitors, as an analysis of the underlying social, cultural, religious issues in Davinder Kumar Ghai's application to challenge Newcastle City Council's refusal to more fully accommodate Hindu religious priorities.
2. During my professional career as a social anthropologist I have taken a specialist interest in South Asia. As an academic for over thirty years, I conducted extensive ethnographic fieldwork in both India and Pakistan, and also amongst settlers who established themselves in the UK from South Asia. In doing so, I have taken particular interest in issues of religion, family, kinship and culture, and in the way in which settlers in the UK have drawn on those resources to construct what I have found it convenient to describe as 'ethnic colonies' around themselves as an adaptive response to the challenges which they encounter in their new environment.
3. I have published a large number of academic papers outlining my findings, and I am recognised as one of Britain's leading academic experts in these fields. I have prepared some 400 expert reports for use in all manner of proceedings – in the civil, criminal and family courts as well as the Asylum and Immigration Tribunal – in which people of South Asian descent have found themselves involved.
4. I was most recently instructed to prepare expert reports for two high-profile cases concerning South Asian religious practices. On instruction from the Treasury Solicitor, I prepared a report entitled *The Fate of Shambo the Bullock*<sup>1</sup>; I was

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<sup>1</sup> *The Queen, on The Application of Swami Suryananda as a Representative of the Community of the Many Names of God (Claimant) and the Welsh Ministers (Defendant).*

subsequently instructed by would-be interveners to prepare a report entitled *The Religious and Cultural Significance of the Sikh Kara*.<sup>2</sup>

5. My current academic post is as the Director of the Centre for Applied South Asian Studies in the University of Manchester. (A full CV is appended to this report).

***The materials I have relied on***

6. I have relied on a large bundle including documents submitted by the claimant, defendant and interveners. These have been reviewed according to my professional perspective and experience of Hindu and Sikh religious belief and practice, as well as wider patterns of social, cultural and religious adaptation and change within South Asian settlements in the UK. I have written extensively on all these matters throughout the course of my academic career and many of the arguments presented herein are grounded in my research and attendant publications listed in my CV.

***My approach to these issues***

7. I prepared this report as an anthropologist, hence the arguments developed and conclusions herein are anthropological rather than legal in character. I should also emphasise that this report seeks to explore the issues in the round and structures the analysis upon several stages.
8. Firstly, I set out the basic facts of the case, without of course intending to undermine the court's role as 'finder of fact'. Those facts are then set within the relevant social, cultural and legal contexts. Any references I make to the law and to decision are

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<sup>2</sup> *The Queen, on the application of Sarika Watkins-Singh (Claimant) and The Governing Body of Aberdare Girls' High School (Defendant)*.

primarily driven by a desire to ensure that my arguments take adequate cognisance of legal framework within the court is operating, and should not be mistaken for any kind of lawyerly effort on my part. That is manifestly not within the scope of my expertise.

### ***Statement of truth***

9. In preparing this report, I am conscious that my principal obligation is to the court, rather than to those instructing me. In fulfilling my instructions I have also made my best efforts to present an objective account of current forms of belief and practice within the UK's Hindu population. I can consequently confirm that all the analyses I have developed and conclusions that I reached in the Report represent my considered professional opinion and are true to the best of my knowledge and belief.

## **2. Factual matters & Legal Considerations**

### ***An application to Newcastle City Council for an outdoor cremation site***

10. The claimant, Davender Kumar Ghai, is a charismatic spiritual leader (*Baba*) in the Punjabi Hindu tradition. His home base is in Newcastle but he has attracted a significant local, national and international following. On 30<sup>th</sup> January 2006 Mr. Ghai approached Newcastle City Council, on behalf of the Anglo-Asian Friendship Society, requesting it to pledge out-of-town land to enable Hindus to perform open-air funeral pyres, in accordance with their deeply held religious beliefs.
11. On 14<sup>th</sup> February 2006 Newcastle City Council responded that the law prohibited funeral pyres in the UK, suggesting that the local crematorium did nevertheless permit Hindu mourners to charge coffins into the cremators and view the cremation process.

The claimant found this response unacceptable, and on 3<sup>rd</sup> March 2006 he replied requesting reconsideration of their decision, in light of Byers [1907] 71 J.P. 205 (proposing that burning of human remains outside a crematorium is not subject to the 1902 Cremation Act) and the provisions of Article 9 ECHR.

12. On 13<sup>th</sup> March the defendant replied, stating they were seeking opinion from leading counsel on the legality of open pyre cremations in the UK. On 8<sup>th</sup> May counsel's opinion – stating that open-pyre funerals were unlawful under the 1902 Act - was forwarded to the claimant. Pursuant to Counsel's opinion, the defendant stated it was unable to pledge land for natural cremation sites, as the law prohibited funeral pyres.
13. The claimant had made it clear he was ready to discuss his concerns with all interested parties, including representatives of Newcastle City Council, the local burial authority. However, as far as the claimant was concerned, his attempts to negotiate made no significant progress.
14. The Claimant performed just such a cremation on behalf of Rajpal Mehat on 12<sup>th</sup> July 2006 in circumstances which have been widely publicised. He did so with the express approval of DCI Rob Coulson of the Northumbria Police. His objective was not to break the law, but rather clarify a critical legal point. In October 2006 he requested the High Court to mount a judicial review of the Newcastle City Council decision-making processes with respect to these matters.

***Factual subtext to the case: The cremation of Dr. Anand's father***

15. Dr. Anand is a close associate of Mr Ghai and a fellow-member of the Anglo-Asian Friendship Society. He is equally enthusiastic about the religious significance of open-pyre cremations. By happenstance, Dr. Anand's father – whose dying wish was to be cremated in the open air– passed away in August 2006.

16. By then the Anglo-Asian Friendship Society had offered Northumbria Police an assurance not to conduct further funeral pyre cremations until their legal status was formally resolved. In the light of this undertaking, Dr Anand concluded there was no alternative but to respect the undertaking and use the services of the local crematorium.
17. As far as the claimant is concerned, Dr. Anand's experiences in the defendant's crematorium are not related to this case – in which his sole concern is to establish the legitimacy of open-air cremation. Nevertheless, Dr. Anand's experiences provide an inescapable sub-text to these proceedings.
18. A series of documents<sup>3</sup> sets out correspondence between Dr. Anand and the defendant, providing invaluable insights into the difficulties Dr. Anand faced while trying to conduct a funeral according to Hindu principles. It appears to me that all such difficulties are largely avoided if the relief the claimant seeks is granted.
19. This correspondence also illuminates the defendant's crematory service policies and why followers of Indic traditions would be likely to find them uncomfortable, inappropriate and humiliating.

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<sup>3</sup> As soon as his father passed away, he wrote to Ms. Tracey Harrison, Newcastle's Bereavement Officer, setting out how he hoped his father would be cremated. This elicited a reply from Mr. Rob Nichols, Head of Environmental Services, on 8<sup>th</sup> August, acknowledging Dr. Anand's dissatisfaction with service he had received.

***Mr. Ghai's statement of claim***

20. The core issues in Mr. Ghai's statement of claim contest that:

(ii) The decision of the Defendant not to permit the funeral rights of Hindus residing within its area to be observed (in the manner set out below) in its area or within such crematoria as are provided by them;

(iii) A declaration as to whether the burning of human remains in a place that is not a crematorium is an activity that is subject to the provisions of the Cremation Act 1902 and the Cremation Regulations 1930 made there under, and would also be subject to the provisions of the Pollution Prevention and Control (England and Wales) Regulations 2000.

(iv) A declaration as to whether open air funeral pyres are lawful.

21. The Claimant seeks the following reliefs:

(i) A declaration of his rights under the Human Rights Act 1998 article 9 ECHR as to whether he is entitled to an open air funeral pyre after his death.

(ii) A declaration that his son's Article 8 rights will be breached if the son is unable to exercise a choice of it Hindu cremation for his father.-

(iii) A declaration that the Claimant is entitled to exercise his right to have an open air funeral pyre.

(iv) A declaration as to the correct interpretation of The Cremation Act 1902, The Cremation Regulations 1930 and The Pollution Prevention and Control (England and Wales) Regulations 2000 in so far as it relates to the issue as to whether the burning of human remains in a place that is not a crematorium is an activity that is subject to its provisions.

(v) A declaration that the above legislation applies only to the burning of human remains in a crematorium and that the burning of human remains elsewhere

is not a "cremation" and therefore not subject to the prohibitions, restrictions and requirements laid down in the 1902 Act and 1930 Regulations.

- (vi) An order requiring the Defendant to reconsider their above decision in accordance with any direction the Honourable Court may give in respect of the request made by the Claimant and the Anglo-Asian Friendship Society to the Defendant to pledge land for the specific purpose of permitting the Claimant and other members of the Hindu faith to undertake open air funeral pyres.
- (vii) A declaration that the burning of human remains outside at, crematorium is not prohibited by the 1902 Act/1930 Regulations and/or under Section 3 Human Rights Act 1998 it is possible to interpret these provisions in such a way as to permits Hindus to burn their bodies on a funeral pyre outside the crematorium that:
  - (a) enables the burning of bodies to take place in the open air;
  - (b) in a large metal cradle onto which is placed wood, then the body of the deceased, and then more wood on top of the body;
  - (c) enables the pyre to be lighted from the "head end";
  - (d) permits mourners to walk around the open flame and watch the burning of the body.
- (viii) A declaration that if the burning of human remains outside a crematorium is prohibited under the 1902 Act etc then this is incompatible with articles 8, 9 and 14 ECHR, and Section 4 Human Rights Act 1998.

***The Secretary of State's response***

22. Arguing the application for Judicial Review should be dismissed, the Secretary of State makes the following key points:

**B: Summary of the Claimant's case**

9. The Claimant's primary contention is to the effect that the meaning of "cremation" as used in the 1930 Regulations, is limited to the burning of human remains at a crematorium. Based on this premise, the Claimant

contends that burning human remains in the open air on a funeral pyre is not a "cremation" for the purposes of regulation 3 of the 1930 Regulations, and is therefore, not within the prohibition contained within regulation 3 (see Grounds at §29).

10. Alternatively, the Claimant seeks to rely on the provisions of the Human Rights Act 1998. He contends that if the provisions of the 1902 Act and/or 1930 Regulations prohibit the burning of human remains on an open air funeral pyre, that amounts to a breach of his rights under ECHR Article 9 (see Grounds-at §§42 - 45).

### C: Secretary of State's response

23. ECHR Article 9 provides as follows:

- 1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching practice and observance.
- 2) Freedom to manifest one's religion or beliefs shall be 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."

### *Key issues raised by the defendant*

24. The defendant first quotes the relevant legislation:

- a. "The Secretary of State shall make regulations...prescribing in what cases and under what conditions the burning of any human remains may take place... "
- b. "No cremations of human remains shall take place except in a crematorium of the opening of which notice has been given to the Secretary of State."
- c. "The expression 'crematorium' shall mean any building fitted with appliances for the purpose of burning human remains, and shall include everything incidental or ancillary thereto."

25. Having noted that *'It is the Claimant's wish that following his death his body should be burned on an open funeral pyre in line with his deeply held religious belief,'* the defendant responds that Article 9 is effectively trumped by the provisions of section 2 of the Article. Hence, it is argued that the established legislation and attendant regulations should be regarded as the democratically legitimated framework within which the claimant should reasonably be expected to manifest his religious practices and observances.
26. The defendant sets out three more specific objections as to why it would be inappropriate to interpret the regulations according to the claimant's wishes:
- (i) by reason of considerations of public safety (having regard to the possible risks resulting from the use of open air funeral pyres to burn human remains);
  - (ii) for the protection of public morals and/or the rights and freedoms of others (having regard to the likely reaction of other persons to the practice of burning human remains other than in buildings); and
  - (iii) for the protection of public health (the burning of human remains on open sites, would result, for example, in the release of dioxins, mercury emissions, and benzopyrene emissions, pollutants that are harmful and/or carcinogenic.

***Intervention by Ramgarhia Gurudwara, Hitchin***

27. On 28th May 2008 the Ramgarhia Gurudwara, Hitchin was granted permission to intervene in the proceedings. The witness statement of Gulzar Singh Sahota, Chairman of the Gurudwara's Trustees, succinctly sets out the grounds for his support for the claimant:

“Basically, we wish to support and seek further clarification of the established Hindu religious/cultural practice of open-air cremations and funeral pyres, as it affects us as Sikhs....” (pp8)

28. Gulzar Singh offers highly significant and specific grounds explaining why he, as a Sikh, fully supports the claimant. Given the wider issues likely to be discussed in this Review, those grounds are worth quoting in detail:

“Unlike those in our community belonging to the Hindu faith, the Sikhs do not as a matter of doctrine and dogma *require* that their dead be immolated in an open-air funeral pyre – but have traditionally done so as matter of practice.”

Should Sikhs, therefore, as a matter of cultural practice have the right to continue with this practice where some members so choose to do? To our organisation, this is-a matter of 'choice' in today's diverse and multi-cultural society and we say they should have that choice, without fear of breaking the law.” (pp9)

***Issues of eligious, Ethnic and Cultural Plurality***

29. While I am no lawyer, I also wish cite a recent judgement by Arden LJ in Khan v Khan [2007] EWCA Civ 399, which clearly states the court’s duty to take cognisance of the increasingly plural character of our society:

“Where the parties are members of a particular community, then in my judgment the court must bear in mind that they may observe different traditions and practices from those of the majority of the population. That must be expected and respected in the jurisdiction that has received the European Convention on Human Rights. One of the fundamental values of the Convention is that of pluralism: see Kokkinakis v Greece [1994] 17 EHRR 397. Pluralism is inherent in the values in the Convention. Pluralism involves the recognition that different groups in society may have different traditions, practices and attitudes and from that value tolerance must inevitably flow. Tolerance involves respect for the different traditions, practices and attitudes of different groups. In turn, the court must pay appropriate regard to these differences.” (pp 36)

30. I was mindful of Lady Arden’s admonition throughout the preparation of this report, whilst I readily acknowledge that it may well have has no direct impact on the present legal issues.

### 3. Death and the Disposal of Human Remains

#### *The social and psychological significance of death*

31. Human death entails far greater implications beyond the disposal of one's physical remains. The immense social and psychological impact of death raises fundamental questions of mortality, meaning and human purpose. Understood as such, funerary rituals of any social, cultural, conceptual or behavioural format provide spiritual succour and are, in my view, best regarded as quintessentially *religious* events – regardless of scriptural basis or limited common knowledge of refined theological and cosmological premises.

32. From an anthropological perspective funerary rituals are the last in a series of *rites de passage* that accompany a person through the significant life-stages: from birth through to marriage, family life, retirement and ultimately to death. Of all rites of passage celebrated throughout the world, the last rites are invariably accorded the greatest significance.

For many, the psychological consequences of death are best assuaged through a carefully articulated, culturally and religiously conditioned bereavement process. This is mostly manifested through a defined protocol of rituals under priestly officiation, serving to reconstitute the deceased's socio-familial order, to publicly mark his or her departure from socio-physical order inhabited by the living, and above all to put the deceased symbolically to rest. Failure to implement these ritual in the expected fashion can greatly hinder processes of bereavement amongst the survivors.

33. Virtually everyone within the Abrahamic faith spectrum holds a conceptual belief in a creator God and the prospect of post-burial resurrection into a heavenly after life of some sort. Given the Abrahamic belief in resurrection, burial has always been

considered most appropriate means of dealing with human remains, since that would facilitate eventual recomposition of the deceased at some future day of judgement. By contrast those operating within the context of Indic traditions take the view that the life-spark which around which every living being is constructed will experience immediate reincarnation within the existent world, samsara, and that the identity of the being within which that reincarnation takes place is governed by the laws of karma and dharma. For human beings, the first and most vital step in that process of reincarnation is for the bodily remains of the deceased to be cremated in the midst of an appropriate ritual, the *anthyeshthi sanskara*, thereby smoothing the passage of the *atma* onwards towards its next form of incarnation.

***Last rites in Indic as opposed to Abrahamic traditions***

34. I raise these issues with a specific purpose in mind, for the scale of the Indic/Abrahamic theological and cosmological disjunction is nowhere more apparent than in British crematoria. It is precisely that disjunction which the Court is called upon to navigate in these proceedings.
35. This Review, while brought by a single individual, raises matters of concern common to all faith communities holding the normative expectation of cremation. These Hindu, Sikh, Buddhist and Jain religious traditions are most usefully identified as constituents of an over-arching 'Indic tradition'. Hence, the class of persons sharing the claimant's concerns will overwhelmingly – although by no means exclusively – comprise of followers from these Indic religious traditions.

36. The Indic traditions do not accept burial as a proper terminal condition for human beings expecting reincarnation<sup>4</sup> and thus *ritual reduction of the physical remains to ashes in the flames of a pyre* is the central focus of the funerary process. Moreover as Gulzar Singh notes, followers of other traditions within the Indic spectrum regularly use the same burning *ghats* as their Hindu neighbours, even if the fine details of their ritual procedures may differ somewhat.
37. By contrast, if ever cremation is practiced by followers of Abrahamic traditions, theological orthodoxy for the most part regards it as an inferior means of disposing human remains to burial of the entire body. Hence, whilst the act of burial, *as well as the interment of the ashes following a cremation*, is routinely ritualised, *the act of cremation is not in itself a focus of ritual activity in the Abrahamic tradition*. Rather it is as viewed a means of disposal of human remains which is a modern, pragmatic, space saving alternative to the burial of whole bodies, given that the ashes can subsequently be interred using rituals of a similar format..

***The disposal of the dead: developments in English Law and Practice***

38. The introduction of crematoria did not result from moral or theological enthusiasm but rather the strictly utilitarian concern for the lack of cemetery space. Cremation appeared to offer a cheaper and more ‘scientific’ alternative but was not – and is still not – perceived with any religious significance.
39. Under the default assumption that all subjects of the Crown followed the Christian religion, the Church of England historically undertook a whole series of public duties, particularly provision for burial of the dead. Indeed, bureaucratic scrutiny of birth

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<sup>4</sup> There are some important exceptions to this rule. *Sanyassi* ascetics seeking *moksha* or *sahaj* are most emphatically *not* cremated, since that would pitch them straight back into the *samsaric* world of reincarnation. Deceased *Sanyassis*, *Yogis* and the like may consequently be buried, thrown into rivers or their bodies exposed for consumption by birds and wild animals.

marriage and death (currently implemented through local registrars) was largely deputed to the Church of England, until relatively recently.

40. Doe (1996)<sup>5</sup> reveals a strong historical common law assumption that everyone has the right to a ‘Christian burial’ and interment in their local parish burial ground. The prospect of being interred by any means other than burial was not even countenanced.

*The legitimisation of cremation in English Law*

41. A lengthy legislative process<sup>6</sup> culminated in two major pieces of legislation, the Cremation Act 1902 and Burial Act 1906, effectively completing transfer of responsibility for disposal of the dead from Church to State. By legitimating cremation, the Cremation Act 1902 substantially relieved the severe pressures of urbanisation.
42. Whilst the Act relieved the Church of England of officiating duties, it still included the assumption that a funeral service, Christian in character, would be performed at the crematorium, prior to cremation.
43. Neither the Act, nor accompany Regulations, specify how cremations are to be performed. The opening section of the 1903 Regulations (as yet unchanged, in an otherwise much revised regulation) states:
- 1) Every crematorium shall be-
    - (a) maintained in good working order;
    - (b) provided with a sufficient number of attendants; and
    - (c) kept constantly in a cleanly and orderly condition:

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<sup>5</sup> Doe, Norman *The Legal Framework of the Church of England* Oxford: The Clarendon Press, 1996.

<sup>6</sup> Burial Acts of 1852, 1853, 1855, 1857, 1859 and 1900, in addition to numerous locally applicable Acts.

### *Contemporary cremation conventions*

44. Cremations amongst the indigenous majority are frequently preceded by a fully-fledged funeral service in Church, followed by ritual interment of the ashes, either in a cemetery or a churchyard. An abridged funeral service then takes place in the crematorium Chapel –organised by the bereaved and largely Christian in format.
45. Once the funeral service is complete, the carousel containing the coffined body begins to roll and disappear behind a curtain. Christian and Jewish mourners generally view this as the end of the funeral proceedings, leaving the actual disposal process to crematorium staff, operating invisibly behind the scenes.
46. It follows that the process of cremation itself is not considered integral to mainstream last rites, and in that sense not a specifically *religious* matter. This is entirely congruent with the theological premises of the three Abrahamic traditions, in which interment (returning dust to dust) is the prime symbolic act and cremation has no active significance in this respect.
47. As a result the final disposal of the remains is conducted behind closed doors in an industrial environment, supervised by technicians rather than priests, and with no attempt to imbue the process with any symbolic significance. In other words, it is treated as an entirely *secular* and *mechanical* activity, from which the public are routinely excluded.

### *Rites of Passage*

48. As van Gennep long ago perceived, rites of passage (and most especially those associated with birth, marriage and death) are a universal social phenomenon we humans quite literally cannot do without. To abandon them completely – as rationalist

critics' cries of superstition and *mumbo-jumbo* may suggest – would entail the abandonment of our very humanity.

49. It is striking that even while support for institutionalised religious practice fades – as undoubtedly in contemporary Britain – humans still show no sign of abandoning symbolic celebration of such rites of passage.
50. Such rituals serve to acknowledge that the person celebrated is part of a social order, in which their status has significantly changed and publicly marked. Absence of such *mumbo-jumbo* has the inverse significance: the person in question is no longer part of a social order and even the most irreversible change of all attracts no public attention. That is why the disposal of human remains is never handled in the same way as the disposal of rubbish and trash.

### *Changing times, changing practices*

51. Measured in regular Church attendance, Britain has entered a 'post-Christian' era. This, in part, may have prompted the increasing popularity of 'do-it-yourself' 'amendations and alternatives to established Christian rituals – most notably, so-called 'green burials'.
52. Such initiatives are discussed at length in *The Natural Death Handbook*<sup>7</sup>. While primarily concerned with alternative forms of burial, the volume generally highlights the extent and success with which individuals are taking control of conventionally established end-of-life practices and reshaping them according to their own preferred premises.

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<sup>7</sup> Stephanie Weinrich and Josefine Speyer's *The Natural Death Handbook* (Rider Books)

#### 4. The Hindu theological perspective

53. For the vast majority of Indic faith communities, the purpose of life is to live in congruence with cyclical processes of existence and eventual re-emergence in new manifestations. This cyclical vision of Indic cosmology stands in sharp contrast to the more linear vision around which the various Abrahamic traditions are constructed.
54. Rites of passage (the same term, *sanskara*, is used by all Indic faiths) thus play a central role in all Indic religious traditions and failure to properly perform them is held to damage one's *karma* and also the future course of one's *atma* (soul) through subsequent cycles of rebirth.
55. The precise practice of the *sanskritic* rituals varies significantly between Indic traditions, with yet more variety as between the various sectarian strands found within the Hindu, Sikh, Jain and Buddhist traditions.
56. However, these diversities can to a first approximation usefully be understood as variations on a common theme, based on the logic of the Hindu *hawan* fire ceremony.
57. Ritual *hawan* fires are central components of every Hindu sacrament. Inspired by Vedic premises, a sacred fire is lit on a prepared altar by a Brahmin *purohit*. Once lit the sponsors perform the sacrifice under the supervision of the *Purohit*, pouring spoonfuls of *ghee* onto the fire as the *Purohit* recites the appropriate *mantras*; in turn producing clouds of fragrant smoke.
58. The sponsor's *hawan* is held to participate in, celebrate and further promote the process of cyclicity: the *ghee* is consumed by the fire, rising as smoke into the heavens, where it is digested and turned into rain, to fertilise the soil and produce

vegetation. Once that is digested by the cow and turned into milk, and thence *ghee*, the sponsor once again may commence the sacrificial fire cycle.

### ***The symbolic significance of the anthyeshthi sanskara***

59. The *anthyeshthi sanskara*, as the last rite of passage, follows the same basic logic outlined above, but for the fact that sacrificial object consumed by fire is nothing less than the very body of the deceased. The chief mourner, ideally the deceased's eldest son, acts as the sponsor of the sacrifice: it is he who lights the fire which returns his parent's physical body to its former inchoate state, and smashes the skull (actually or symbolically) to release the *atma* (soul) on its journey towards the incarnation which its accumulated *karma* ordains.
60. It follows that in a Hindu context – no less than Indic faith generally – cremation is much more than a convenient means of 'disposing of the remains'. On the contrary, it is at the heart of a *samskaric* ritual, with far-reaching symbolic and spiritual consequences. It follows that the *anthyeshthi sanskara* should be understood as a *sacrament* whose proper execution is regarded as a matter of supreme religious significance by followers of all the Indic traditions.<sup>8</sup>

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<sup>8</sup> It is worth noting that all the sacrificial rituals I describe in this section – which are often described as 'Vedic' – are most elaborately celebrated by followers the Hindu tradition. But whilst all the other strands of the Indic tradition reject (although to varying degrees) the authority of the Vedas and the Brahmins, they nevertheless still operate within the same broad cosmological vision of their Hindu counterparts, and consequently celebrate most of the same *sanskaras*. As a result all discussion of how far the rituals accompanying the celebration of the *sanskaras* Sikh and Jain tradition is modelled on, or differs comprehensively from Hindu practices has recently become the focus of intense theological and political debate.

## 5. Hindu social and cultural practice

### *The practice of cremation Indian context*

61. In India cremations are organised by local communities, and are not subject to regulation by the state. When a death occurs the family prepares the body for burial, wrapping it in a shroud they carry it on a bier to the local burning *ghat*<sup>9</sup>, where a stock of timber is ready for the construction of the funeral pyre. Before setting off for the funeral *ghat* mourners attend in large numbers to pay their respects, for which they will expect to see the face of the deceased.
62. On arrival at the *ghat*, the shroud is pulled back, to once more expose the deceased's face, and the body is placed on the logs which form the base of the pyre. Once the pyre is suitably arranged, the cremation begins by the Chief Mourner stepping forward to ignite the pyre by applying a flame to *ghee*-soaked tinder at the base of the pyre.
63. Once the pyre is well-ignited the Chief Mourner and close kinsmen circumambulate the fire several times, concluded by piercing the now well-incinerated skull with a stave to release the *atma*. Thereafter, mourners promptly bathe to remove the ritual pollution arising from participation in the event.
64. Meanwhile the remains of the pyre is tended by village servants, and when the fire has burnt itself out the *phul* ('flowers', or the ashes of the skeletal remains) are extracted and eventually immersed in the Ganges or a suitable riverine substitute.

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<sup>9</sup> In rural India each village maintains its own burning *ghat*, usually located well clear of the settlement itself, unless there is a major river close by.

65. This is by no means the end of the funerary and mortuary rituals, however, and all manner of elaborations on this basic pattern exist – however I have taken the view that little further illumination would be generated if I were provide a detailed account of these variation in this report.
66. By contrast the most salient differences in the *social* and *practical* character of mortuary rituals as between Hindu and contemporary English norms are well worth highlighting.

### *A public event*

67. The most obvious difference arises from the treatment of the body itself. No attempt to conceal the funeral process is made in the *anthyeshthi sanskara*: its focus remains firmly on the *body* of the deceased, whereas contemporary British practices remove bodies from public view as soon as practicable after death.
68. In mainstream British cremations, the body of the deceased is first taken to a mortuary, and from there delivered to professional funeral directors, who embalm, groom and dress the body, before laying it in a specially prepared coffin in a Chapel of Rest. Only then does it return into public view, allowing family members to come and offer their respects.
69. However if the coffin is closed prior to departure from the Chapel of Rest, it normally remains closed for the remainder of the funerary procedures, whether it is destined for burial or cremation. In other words the deceased's body is deliberately and comprehensively concealed from public view – including that of immediate members of the family – for the greater part of the procedure.

70. Indic conventions could hardly be more different: whilst they treat the body with great respect, their normative behaviour is in the inverse to the majority British population. Far from concealing the body, the mourners literally take a hands-on approach in preparing for the last journey. Preparation of the body is not outsourced to professional specialists and family attempt to remain involved in every stage in the proceedings.

### ***Pollution and Impurity***

71. In a Hindu context impurity (*achhut*) is regarded as an inevitable consequence of death. Hence the burning *ghat* – and indeed the pyre itself – is regarded as a source of pollution, and so always located at some distance from human habitation. Those contaminated by *achhut* by virtue of attending the cremation take a bath at the earliest opportunity in order to purify and restore oneself to a condition of *pabitr*.<sup>10</sup>

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<sup>10</sup> However it is essential to bear in mind Mary Douglas' well known distinction between culturally constructed understandings of purity and pollution on one hand, and biologically/hygienically grounded understandings of contamination on the other. Hence Hindu notions of pollution have no intrinsic connection with contact with contaminants posing a health risk. (M Douglas, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo*, London: Routledge 1974)

## 6. Hindu social and religious practice in the UK

### *Migration, resettlement and the reconstruction of communities*

72. Although Hindus and Sikhs first came to Britain as visitors and students from the middle of the nineteenth century, not until the mid-twentieth century did migrants settle and make homes in Britain. The scale of their presence grew steadily, so much so that the 2001 Census revealed a population in England and Wales of no less than 557,985 Hindus and a 322,955 Sikhs. The size of these population continues to grow apace.
73. As invariably the case with long-distance migration, the vast majority of settlers were young adults, with initial priorities to find employment, a roof over their heads and gradually to achieve material comfort within their local environment.
74. As these settlements grew, and couples married and produced children, their character gradually changed: mere sojourners turned into settlers and began to make increasingly strenuous efforts to reconstruct the social, cultural and religious contact they had operated within back home.<sup>11</sup> Whilst reconstruction began in familial and domestic contexts, as *ethnic colonies* grew in size and confidence, an ever greater complexity of specialist businesses and religious institutions sprang up to serve the needs of local communities, enabling familial rites of passage to be celebrated on much the same basis as in India.

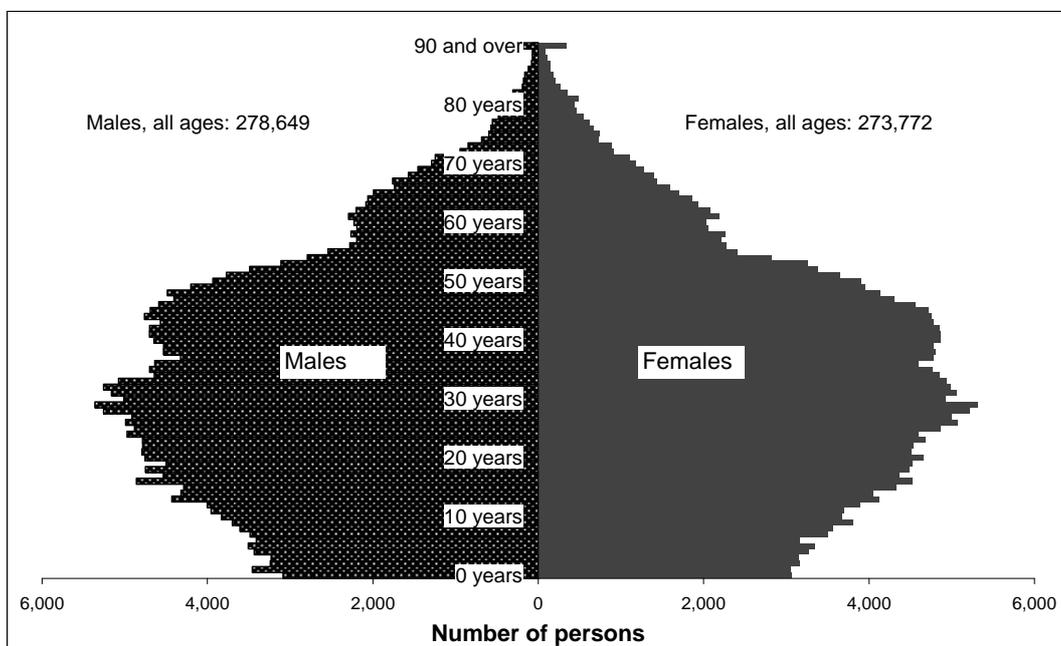
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<sup>11</sup> These processes are described and analysed in considerable detail Ballard, R. *Desh Pardesh: the growth of the South Asian presence in Britain* London: Hurst 1994

### *The age pyramid*

75. The demographic ‘age pyramids’ of immigrant communities are highly distinctive, displaying a disproportionately large number of young adults but virtually no elderly people. Britain’s Hindu population is now relatively mature, since immigration reached its peak several decades ago. However, the 2001 Census figures still depict a characteristically immigrant origin community of, as numbers tail off highly in the upper reaches of the age spectrum.

**Age Distribution of the Hindu Population of England and Wales, 2001**



76. The consequences funerary public services are plain to see: in contrast to the historically low death rates within the Hindu population, its incidence – and hence demand for funerary services – will grow exponentially in coming years.

### *Access to funerary services*

77. The need to seek out local cremation facilities in the UK was rare during the early years of Hindu and Sikh settlement. In this sphere, as in many others, they frequently felt uneasy with public services which most accommodated the indigenous

population's cultural and social expectations. However in the early days of settlement, very little could be done about it: if they wished to access public resources at all, they had no alternative but to accept the established norms of the service providers.

78. However, there were few contexts in which the contradictions between their own expectations and the relevant public service were sharper than in a crematorium. As settlements grew and matured and funerals have steadily become more frequent, their awareness of the tightly pinching character of this shoe has become increasingly serious.

***How and why does the shoe pinch***

79. Although the great majority of crematoria are run by Local Authorities, they are the least secular of all public services. They are mostly deliberately fitted out to be Church-like, as during the late 19<sup>th</sup> and early 20<sup>th</sup> Century, the overwhelming majority of the British public would readily have identified themselves as Christian, even if they never set foot in a church.
80. It is easy to appreciate why such non-secularity continues to be expected in crematoria. No matter how secular members of the indigenous majority may profess to be, a funeral is by definition a rite of passage. *Hence the proceedings are inescapably a ritual, and in the broadest sense a **religious**, event.* In consequence the 'front of house' physical environment of any given crematorium is congruent with Christian (and wider Abrahamic) expectations.
81. However, the steady rise in the South Asian settlement significantly undermines that congruence, and an ever greater proportion of funerary public services users are

becoming acutely aware of the contradictions between ideal expectations and the reality on offer.

### ***Adjustments***

82. The continuing response has been to seek to deploy their own behavioural expectations as far as they possibly could, no matter how alien their new surroundings were. At some levels, accommodations have been easily negotiated, crematorium staff proving happy to remove Christian symbols (although not, of course, the stained glass windows) whenever asked. Hindu and Sikh prayers are said in place of Christian prayers; and *bhajans* can be played in place of hymns on the sound system.
83. Nevertheless, it is now apparent that the contradictions between Abrahamic and Indic expectations is possibly beyond the degrees of mutual accommodation on offer. Many – although by no means all – of these contradictions arise from the Indic funerary ritual focus directly on the *body* of the deceased.

### ***Undertakers and the purification of the body of the deceased***

84. Rather than prepare and wash the body at home themselves, UK settlers soon found they had little alternative but to utilise the services of an undertaker. Bodies would generally be released in to the undertaker's control, and it they who prepared it for cremation, arriving with it at the crematorium upon the agreed time– just as happened with indigenous customers.
85. At first they felt no alternative but to comply but, in time, the needs of the customer began to prevail. Many were initially resistant but most undertakers began to allow family mourners to attend their premises to wash and prepare the body. Thereafter,

the body would be transported to the residence of the family and the coffin opened, revealing the deceased's face.

***Following the body through into the crematorium proper***

86. Indigenous mourners from Abrahamic perspectives see no reason to ritualise the process of cremation itself, and so once their prayers are complete, the coffin slides soundlessly behind a curtain and is disposed of elsewhere. With such expectations in mind the structure of a crematorium is divided into two very distinct spheres.
87. On the one hand stands the public sphere: a chapel in which the mourners assemble, into which the coffin is carried upon arrival in the hearse, and where the funeral service takes place. Beyond that stands the 'industrial' sphere. Carefully curtained off from the public sphere, here the coffin and body are mechanically transferred into, and incinerated by, a high temperature furnace.
88. Not only are the public systematically excluded from this 'industrial' part of the crematorium, but indigenous mourners express no interest whatsoever in witnessing the event. Many may leave the crematorium before the actual cremation begins and regard an interest in the incineration process as ghoulish.
89. For Hindus and Sikhs, by contrast, the process of incineration is central to the *anthyeshthi sanskara* and a process they wish, for theological reasons, to participate in rather be removed from.

***Negotiation and accommodation***

90. As Hindu and Sikhs began to use UK-based crematoria, staff regularly were soon faced with virtually unprecedented requests. Not satisfied with watching the coffin slide behind the curtain, mourners wanted to follow it into the bowels of the

‘industrial’ section and participate in the committal of the body (or rather, the coffin) into the furnace. At first such requests were resisted, but in recent times a small group of mourners is invariably permitted to go ‘round the back’, enabling the eldest son to perform a simulacrum of his ideal ritual role by pressing the button to convey the coffin into the furnace.

91. The claimant’s application is best understood against this background. In seeking to establish that open-pyre cremations are not contrary to English law, the claimant aims to achieve more than score a legal point. So far as I can see, his core position is that crematoria– and/or regulations governing them – cannot adequately accommodate the expectations of religiously minded Hindus, Sikhs and so on.
92. His challenge to the established patterns of funerary services is far from unprecedented. Rather it is part of, and indeed the logical culmination of, a lengthy series of ad hoc negotiations and initiatives.
93. Viewed retrospectively from the claimant’s culminating standpoint, it becomes clear that all previous challenges to crematorial practices were principally directed against over-riding, and ultimately disregard, the public/private (and religious/industrial) disjunction that is the inherent defining feature of a crematorium.
94. Commendable progress had been made, no doubt, but the sticking point has arisen because no amount of flexibility or accommodation within a crematorial context can fully accommodate ritual practices which focus attention on the body of the deceased *per se*.
95. With that in mind the claimant is effectively claiming relief from the limitations imposed on him by current crematoria and crematorial practices – and/or the

regulations which inform them – on the grounds that they unreasonably limit his capacity to express his deeply felt religious beliefs and practices.

## **7. Dr. Anand's experiences**

### *Conventions in conflict: a worked example*

96. Dr. Anand is not a party to these proceedings, nor – so far as I am aware – does the claimant seek to rely on his experiences. Nevertheless, the defendant, as local burial authority, provided crematorial services to Dr. Anand upon his father's death. I believe Dr. Anand's experiences provide a convenient 'worked example' of precisely the type of difficulties Indic faith communities face, and which this Review could effectively provide relief from.

### *Dr Anand's experiences*

97. The contrast with English expectations becomes apparent from the very outset, as a Hindu feels no need to mourn the death of an elderly man who has fulfilled his purposes in life: instead he deserves a happy send-off amidst signs of celebration rather than sadness or despair.
98. In preparing the cremation Dr. Anand wanted to follow Hindu conventions as far as possible, in which a closed wooden coffin plays no part. However it appears that the crematorium staff objected to the absence of a coffin and came close to refusing to allow the cremation to proceed without one.
99. A significant contradiction of principles arises because Hindus *expect* to leave the face of the deceased exposed, and see nothing unusual or alarming about seeing it. By

contrast, current English conventions regard direct sight of a dead body, and especially their face, as inappropriate and even as inauspicious.

100. While the crematorium staff did their best to accommodate Dr. Anand's requests, it is equally clear they did not hide their irritation at how these requests were systematically transgressing the normal division between the public and private domains. Hence the (ethnocentric) response of crematorium staff during a dispute about taking photographs inside the 'industrial' section:

Our photographer was informed not to take pictures at the cremator. My brothers had travelled from Canada & New Delhi to see off our father and one of them had taken one photo of Dad going into the preheated machine.

Kevin said 'No photos please'. Kevin's demeanour, tone and body-language were not something I would expect from anyone representing a major national institution, particularly when dealing with people of another culture who are distressed.

101. Dr. Anand also raises an important wider point, questioning whether it is ever appropriate to conduct simultaneous funerals - conscious that the celebratory drumming was not appropriate given the family in an adjacent Chapel were mourning the death of a young lad. In other words, he would have been much happier if only a single chapel was in use, but fears that even then the crematorium staff would have sought to limit the activities of his drummer.
102. Clearly the Chapel facilities were not organised to cope with the level of incense burning which is a routine component of Hindu rituals, nor indeed many other rituals – such as circumambulation with fire – that are integral to the *anthyeshiti sanskara*.

103. Whilst Dr. Anand can only account for his own personal (and thus unique) experience, there are excellent reasons to suppose all those operating within the Indic behavioural spectrum of ritual conventions encounter pinch-points of a similar kind. After all, crematoria such as the defendant's, are inherently unable to facilitate a ritual focus on the deceased's body. On the contrary they were deliberately arranged in such a way as to render that wholly unnecessary.

## **8. Dr. Firth's report**

### *The character of Dr Firth's instructions*

104. Before proceeding further, I must state my respect for Dr. Firth's scholarship in this field. I do not question her scholarly knowledge of Hindu beliefs and practices regarding death, dying and bereavement amongst Hindu settlers in Britain. Moreover, as is evident below, I have no quarrel whatsoever with her account of contemporary Hindu *practices*, which is extremely illuminating.

105. If our conclusions differ in these proceedings– and they do– I suspect that originates from a difference in perspective attributable to our respective instructions. Dr. Firth's instructions were 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 consistent with Hindu religious beliefs.
- Provide observations/conclusions as to:

-How funeral arrangements may be conducted in the UK in such a way to satisfy these beliefs

-Whether the current arrangements available satisfy these beliefs.

-Consider the spectrum of beliefs held by Hindus and whether the Claimant's views are widely held

-Identify how these beliefs arise from scriptures and distinguish where practices originate from cultural tradition.

106. It is striking Dr. Firth's instructions primarily require her to identify the content and character of Hindu *beliefs*. At only two points in her instructions is the term *practice* explicitly employed. Dr. Firth later cites additional Solicitors Questions (whose source is unclear) regarding funeral pyres *practices*; responded to as an addendum.
107. At this stage, however, I would advise the court not to place excessive weight on efforts to distinguish between that which is religious and cultural. As an anthropologist with long experience in this field I find it impossible – and mostly unhelpful – to draw a sharp line between the two.
108. Hence, my constant use of the term '*ritual practice*', highlighting how the practices are of symbolic significance to both the implementer and the participating mourners. Most efforts to characterise any given practice as one or the other, rapidly become arcane and distracted by reference to ever more ancient texts.
109. I take the broader view that 'religion' is best understood in terms of what is actually done and believed by a body of people, rather than sophisticated (and invariably contentious) instructions from theologians as to what they *ought* to believe.

*Dr. Firth's analysis of the claimant's underlying theological premises*

110. In a section headed *Current Hindu Views*, Dr. Firth considers whether Mr. Ghai's claim that an open pyre is necessary for reincarnation, is a typical Hindu view. I am unconvinced there is sufficient theological substance to any of the conclusions Dr Firth draws as a result of her 'straw poll',<sup>12</sup> and advise against attributing any weight to them.
111. Firstly, Dr Firth appears to have confined her (necessarily limited) enquiries primarily to Hindu scholars, rather a representative sample from the Hindu population at large. Secondly, the questions posed are thoroughly theological in character: akin perhaps, to asking whether belief in the transubstantiation of Eucharist bread and wine is a typically held Christian view. In my opinion the only viable and honest answer is that some believers take one view, and some another.
112. In eliciting opinions on the likely popular response to open pyre cremations, I fear Dr. Firth has exceeded her legitimate brief. The reactions she cites (again, drawn from a limited sample responding to narrowly formulated questions) appear to address issues wholly beyond these proceedings.

*Dr. Firth's conclusions*

113. Dr. Firth's critique of Mr. Ghai's aims and objectives assumes a rather explicitly critical stance. Having noted he is a learned and well-regarded holy man – of which there is no dispute – she then observes that **“this means that he is in a powerful**

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<sup>12</sup> Namely, that (i) reincarnation did not depend on an open pyre, (ii) the soul leaves at death, (iii) electric or gas crematorium does not affect the progress of the soul (which is determined by one's *karma*, (iv) the purpose of cremation is to release the five bodily elements into the five elements of nature.

**position to *change* (my italics) Hindu perceptions as to what is appropriate for an [orthodox] Hindu to practice”.**

114. Ostensibly, such ‘change’ is entirely neutral, since all successful charismatic teachers such as Mr. Ghai strive to impact upon (and so change) contemporary spiritual and behavioural practices and beliefs - both amongst their followers and wider communities at large.
115. However, Dr. Firth’s argument implies a very different understanding of change. Her throwaway remark to the effect that, ‘*customs are changing in India too, with electric crematoria in all cities,*’ is grounded in an expectation of the *necessity* to adapt and modernise. At an empirical level her argument is accurate: electric crematoria are indeed fairly widely available in urban India. However the fact that they are available does not make them normative, or in any way preferred to an open pyre at a burning *ghat*.
116. I am firmly of the opinion, not least in light of Lady Arden’s *dicta*, that the numerous strands of religious and cultural practice found in plural societies deserve to be treated, at least in principle, with an equal degree of respect. I make no attempt to predict how far the various strands of Abrahamic tradition followers are likely to begin according the same degree of ritual legitimacy to cremation, as they have long done for burial, or to argue the passage of time would inevitably lead to an ever wider acceptance of the more ‘modern’ and/or ‘hygienic’ alternative.
117. With such considerations in mind I find myself exceeding sceptical about the legitimacy – or to put it more accurately in this context, the *admissibility* – of many of the views opinions which Dr Firth’s expresses, and most notably those which she sets out in the closing sections of her report:

I believe there is a case for allowing choices, and permitting open air cremations in some regulated situations, a change in the law would come with a risk that this could be divisive, particularly as it might involve a re-interpretation of what the majority of Hindus in this country believe.

As one pandit said, "*Why are they opening this up? It will create conflict, and open us up for criticism*". Hindus have begun to find new ways of dealing with death rituals in the home and would prefer modern crematoria with modifications to open air pyres. (p32)

118. In my view the mode of expression the opinions she expresses in these two paragraphs improperly breaches the line between expert anthropological analysis and subjective personal opinion. Beyond this I cannot see that she has produced anything close to sufficient evidence to support her assertions that open air cremations could be "*divisive*", that their introduction "*might involve a re-interpretation of what the majority of Hindus in this country believe*" and that "*most British Hindus would prefer modified crematoria to open air pyres*".
119. I also have reservations regarding Dr Firth's attempts to resolve the issues in these proceedings and offer 'compromise solutions'. Indeed I am uncertain as to how appropriate it is for her to offer any such proposals in the context of an expert report, even if she has done so at the invitation of those instructing her.

## 9. Conclusion

### *The current situation*

120. The 1902 Cremation Act and successive Cremation Regulations, were undoubtedly framed according to the contemporary ritual, religious and cultural practices of the indigenous British population. As such, they specifically reflect and accommodate the Abrahamic premises held by the vast majority of crematorium users at that time.
121. Mass immigration from distant shores has since rendered a steadily more plural British social order. The religious, cultural and familial practices routinely deployed by public services users have become ever more diverse. The traditional congruence between the assumptions of service users and service providers has been critically undermined, precipitating all manner of challenges to the appropriateness and legitimacy of public service behavioural norms.
122. Emergence of wider funeral practice diversity amongst the indigenous population (as evidenced by the success of the Natural Death Movement and over 200 woodland burial sites nationwide) suggests immigrant minorities are by no means the only ones disaffected with contemporary funerary services.
123. Nevertheless, given the demographic characteristics of newly-arrived migrant populations, British maternity services, nurseries and schools were the first to respond to significant challenges to accommodate ethnic and religious diversity. Only much later, now the early pioneers are reaching the end of their natural lives, are funerary services facing similarly significant challenges. Thus far, at least, deaths amongst Hindus have been relatively few and far between; but as the Age Pyramid (page 18) demonstrates, funerary service providers should expect a rapid rise in demand from Indic faith communities, and with it a rapidly rising pressure to cater to specific needs.

*Specific needs of members of the Indic communities*

124. The limitations of British crematoria are felt most acutely by Indic faith communities in the UK. Firstly, their ritual practices differ substantially from the indigenous majority's. For instance, the incense used in Hindu rituals set off the smoke alarms of crematorium chapels. Secondly, and far more significantly, Indic faith rituals explicitly focus on the deceased's body, such that the process of cremation itself is at the core of the sacrament.
125. Whilst Indic mourners expect to see and touch the body, the current indigenous preference is to box it away in a sturdy coffin. This latter perspective regards cremation as a functional means of disposal, most properly performed by industrial process and beyond public view.

*Proper implementation of Indic last rites*

126. For Indic faith communities, the physical body of the deceased is the central focus of attention throughout the proceedings. It is washed, dressed and purified by the mourners themselves and the many friends, kinsfolk and family members offering their condolences, would fully expect to have sight (and receive *darshan*) of the deceased's face.
127. The body remains the ritual focus of attention while being transported to the place of cremation. Upon arrival, further rituals, including the crucial rite of circumambulation, similarly focus directly on it. Once placed on the pyre, the chief mourner applies an initial flame, further circumambulating the body whilst it is consumed by the flames.

128. The contrast between Indic expectations and the indigenous majority is profound. Far from incineration by an industrial process carefully screened off from public view, the *anthyeshthi sanskara* is an explicitly *public* ritual in which many mourners play an active role.

***The essence of the claimant's case***

129. This report has sought to highlight the underlying source of contradictions giving rise to the claimant's application: namely that current crematoria, relevant legislation and working practices, are implicitly grounded in Abrahamic religious and cultural premises. These premises are significantly at odds with the Indic cosmological and theological vision of life and death, and the resulting sacrificial and sacramental nature of their funerary practices.
130. With reference to the Equality Act 2006 and Silber J's recent ruling, I can fully confirm that Mr. Ghai will suffer a disadvantage and significant detriment if he is prevented from the course of action he proposes .
131. With respect to the four criteria set out in R (Williamson and others) v Secretary of State for Education [2005] 2 AC, I would respond as follows:
- a. I see no reason to doubt the foundations of Mr. Ghai's claim are a genuine manifestation of his personal concerns..
  - b. I can confirm the practice he has in mind is a manifestation of his belief, which is made in good faith. Likewise, I readily confirm it is neither fictitious, nor capricious nor an artifice. Rather, Professor Sharma's report illustrates how the cremation and funerary rituals are theologically, ritually and

behaviourally *normative* in South Asian contexts in general and in Hindu contexts in particular.

- c. In common with many other scholarly commentators, I take the view that it is questionable whether the concept of orthodoxy has any meaning in Hindu contexts, given the inherent diversity of the Hindu tradition; hence I have for the most part avoided using the term. Nevertheless, one of the most significant commonalities which stretches across all dimensions of Hindu and Indic diversity is the performance of rites of passage identified as *sanskara*. These sacramental rituals are invariably accompanied by the lighting of a sacrificial fire in the broad format of a *hawan*.
- d. In view of this, there is no question whatsoever that the beliefs informing Mr. Ghai's claim are genuinely held. From a believer's point of view the issue could hardly be more important. In addition to lying at the core of Hindu theology and cosmology, proper performance of the *anthyeshthi sanskar* holds a determinative influence over the course of the *atma* (soul) through future incarnations.

132. With the provisions of the Equality Act in mind, the defendant's crematorium is quite clearly organised according to the premises, practices and expectations of Abrahamic and post-Abrahamic religious traditions. For the reasons outlined in this report, and particularly due to the public/private division inherent in crematoria design, those whose end-of-life rituals are grounded in Indic as opposed to Abrahamic religious and cosmological assumption will of necessity be put at a significant disadvantage.
133. It appears the defendant seeks to argue that British Indic faith communities are continuing to utilise local authority crematoria services without obvious signs of

demur, and it so follows that any disadvantages suffered are not greatly significant, nor are current arrangements seriously detrimental to their interests.

134. However, I urge the court to take careful cognisance of the users' perspective and the specific circumstances they find themselves in: members of a minority and vulnerable whilst in the midst of mourning. Moreover, cremation-attendance was hitherto a relatively rare event, given the demographic characteristics of their community. Most have simply put up with the facilities on offer, pressing for limited practical compromises while compelled to ultimately accept the intrinsically Abrahamic character of the process and surroundings. The very nature of funerary procedures behoves one to maintain dignity and respect and are hardly appropriate occasions to try to rally political support or to petition Local Authorities..
135. But just how tightly does the shoe pinch, and is the resultant detriment of *exceptional* importance? At present, the alternative arrangements which may remedy this minority group's disadvantage are largely hypothetical. There are no agreements on how such initiatives could be delivered or any mutual commitment on assuaging potential hostility. Thus, one can clearly see why those genuinely concerned and affected by inadequate public service provision would nevertheless keep a low profile until observing which way the wind blowing.
136. The claimant's role in these proceedings is manifestly exceptional, in that he makes an explicit stand on principle, in fulfilment of his role as a spiritual leader. In my opinion it is quite clear the issues he takes up, and the reliefs he seeks, are also matters of *general* concern beyond his own sincere personal interests. The contradictions he points out are manifested to greater or lesser degree in *all* British Hindu cremations. Gulzar Singh's intervention confirms those concerns are specifically shared amongst members of the Sikh community.

*Dissenting voices*

137. As acknowledged, these contradictions are felt with widely differing degrees of intensity amongst a population now almost 1 million strong. Likewise, patterns of belief and practice within the respective Indic traditions vary substantially and, hence, it is not clear that all would immediately flock to make use of natural cremation grounds.
138. In light of that, what should be made of the institutional and personal dissenting voices in Dr. Firth's report? I understand the three main grounds of dissent to be: firstly, open-pyre cremation is not a theological necessity. Secondly, the majority of Indic faith followers are satisfied with the existing provisions. Thirdly, it would be politically unwise to launch such an initiative and risk provoking public hostility, thus undermining the public esteem these communities have earned. I will address each of these issues in turn.

*Pyres not a theological necessity?*

139. In my view little weight should be given to this argument. Open air cremation has long been the routine format for end-of-life rituals in virtually every Indic tradition. Even when major sectarian deviations split way from the Hinduism's Brahminical core – as did the Sikh, Buddhist and Jain traditions – the practice of *anthyeshiti sanskara* remained virtually unchanged, despite even radical revision of its theological underpinnings.
140. As long as this vision is broadly sustained – and I readily confirm it is widely evident amongst Indic faith communities in the UK – popular sentiment will continue to prefer funerary rituals modelled on the practices and premises of a family's community background in South Asia.

141. *Reformists* – such as several of Dr. Firth’s informants – frequently take an opposing view, urging that ancient practices are in need of modernisation. My own first hand observation of South Asian settlements in the UK is that popular domestic ritual practice remains deeply traditional in character, and strenuous efforts ensue to reproduce all aspects of what was done ‘back home’, despite the challenges of a largely alien environment. The claimant’s position is a logical and consistent extension of these wide underlying efforts.

***Are most people happy with the facilities currently on offer?***

142. Funerals are exceptional experiences in life, combining deeply felt emotion and religious sentiment in a manner that is intensely personal yet completely public in character. In any event, they behave the utmost sensitivity.

143. From a public policy perspective, the issues in these proceedings are not unprecedented. Inward migration has led settlers to offspring organise personal and domestic lives in terms of unfamiliar social, cultural and religious premises. The best public service providers are constantly, qualitatively evaluating their practices to accommodate distinctive priorities from within their clientele groups.

144. No doubt, funerary services have responded to pressure from their Indic clientele, enabling a range of practical accommodations. However, as Dr. Anand’s experience exemplifies, the level of accommodation still falls far short of ideal expectations and do not enable the full panoply of ritual practices most Hindus and Sikhs wish to deploy. In the absence of any other legitimate arena in which to perform the funerary rites, they simply have no alternative but to use the facilities available.

145. It is thus erroneous to suggest that service usage on this basis equates to satisfaction. Rather, the status quo only reflects the best deal thus far negotiated, within their mainstream understandings of the law.

***Where does the shoe pinch?***

146. Two sets of issues have sprung to the fore. Firstly, issues arising in the public sphere of the crematorium chapel, including limited space, drummers, the lighting of lamps, burning incense, need for a coffin and so forth. Secondly, issues arising in the ‘industrial’ area of the crematorium. For most followers from Indic traditions, it is clear that the shoe pinches more or less sharply in both these areas.
147. The claimant’s central concern appears to be focused on limitations upon his religious freedom within the ‘industrial’ area, notwithstanding provisions for charging confined bodies into the cremator etc. In addition to the need to invoke a ritually pure form of Agni, Hindu last rites clearly require the deceased’s body to be available for circumambulation at all stages in the funeral and cremation proceedings. Moreover, a designated chief mourner should commence the process of cremation by the application of a flame.
148. If the sought relief was granted, it would effectively sweep away the crematoria public-private disjunction. The physical offering of the body to fire would become a public event – just as are burials.
149. This appeared implicit in Mr. Ghai’s initial approach to Newcastle City Council, seeking support an out-of-town site, with provision for all dimensions of Indic crematorial practices. Such requests are far from unprecedented: similar applications were also made to local authorities in Leicester and Southall, London but so far similarly set to one side.

***Would allowing this claim provoke widespread public hostility?***

150. Neither of the parties in these proceedings make explicit reference to fears of public hostility in their pleadings. Nevertheless, the current state of ethnic relations in the UK suggest excellent reasons why such political, rather than legal, concerns provide an unavoidable sub-text to these proceedings.
151. In comparison with South Asian premises and practices, Britain's indigenous majority is markedly squeamish about the prospect of facing a dead body, even in the context of a funeral. By contrast Indic expectations lie right out at the other end of the scale. Not only do close kinsfolk expect to wash, purify and dress the deceased's body in preparation for cremation, they also expect to personally implement the procedures which lead to its gradual sacramental consumption before their very eyes.
152. This has ramifications on all sides. Conscious of the indigenous majority's squeamish sensitivities, and no less it's proclivity to sometimes condemn alien and unfamiliar practices, Britain's Indic faith communities regularly go out of their way to counter stereotypic interpretations with the most positive possible accounts of their religious and cultural practices. Many in positions of leadership subsequently take the view that complaining against established forms of public services, and so highlighting the extent of their religious and ethnic alterity, risks upsetting their carefully constructed apple-cart and increasing levels of popular hostility against their community. These are specifically the perceptions that transpire in Dr. Firth's report.

***Issues of public policy***

153. By the same token, there is every prospect the elected members of Newcastle City Council were also mindful of potential antagonisms the claimant's proposed course of action could evoke. Whether or not such concerns are justified, I take the view these

issues are at least as much legal as political, given the Equalities Act and the recent interpretation set out by Mr. Justice Silber in paragraphs 36. ff in **Sarika Angel Watkins-Singh [2008] EWHC 1865 (Admin)**. That judgement was deeply critical of the defendant's failure to take sufficient cognisance of the Equality Act and ruled comprehensively in favour of the claimant.

154. Whilst the facts of this case differ markedly from Watkins-Singh, precisely the same issue appears to be raised: the extent to which the Equality Act imposes a duty on Local Authorities to ensure the everyday operations of their public services do not impose “*a particular disadvantage*” or “*detriment*” on members of racial, ethnic and religious minorities.
155. Silber J sensibly states all claims arising from this legislation must be decided on a case to case basis. However, I would suggest it is close to self-evident that the detriment and disadvantage suffered by Sarika<sup>13</sup>, pales into insignificance as compared to denial of performing sacramental, sacrificial end-of-life last rites.
156. The negotiation of compromises to accommodate the contradictions arising from ethno-religious plurality is never easy – especially if majoritarian democracy pressures for unilateralist solutions which override the interests of others. With such considerations in mind, I am in no position to advise the court whether or not it is politically advisable to grant Mr. Ghai the reliefs he seeks. In any event, Silber J's judgement does suggest the court need not pay significant attention to such issues.
157. Regarding the *legal* issues in these proceedings, there is plentiful evidence to support the claimant's primary contention. Crematorium facilities in Newcastle, and indeed

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<sup>13</sup> Namely, precluded from wearing a symbolic representation of her commitment to the Sikh tradition (a steel bangle known as a *kara*) at school

the UK at large, are organised and designed to preclude most – if not all –from Indic faith backgrounds from expressing their last rites beliefs and practices as fully as they wish.

## **DECLARATION AND STATEMENT OF TRUTH**

I understand that my overriding duty is to the court, both in preparing reports and in giving oral evidence. I have complied and will continue to comply with that. I

have set out in my report what I understand from those instructing me to be the questions in respect of which my opinion as an expert is required.

I have done my best, in preparing this report, to be accurate and complete. I have mentioned all matters, which I regard as relevant to the opinions I have expressed. All the matters on which I expressed an opinion lie within my field of expertise.

I have drawn to the attention of the court all matters of which I am aware, which might adversely affect my opinion.

Wherever I have no personal knowledge, I have indicated the source of factual information.

I have not included anything in this report, which has been suggested to me by anyone, including those instructing me, without forming my own independent view of the matter.

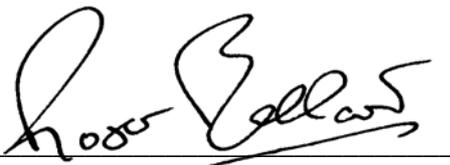
Where in my view there is a range of reasonable opinion, I have indicated the extent of that range of opinion in the report.

At the time of signing the report I consider it to be complete and accurate. I will notify those instructing me, if for any reason I subsequently consider that the report requires any correction or qualification.

I understand that this report will be the evidence that I will give under oath, subject to any correction or qualification I make before swearing its veracity.

I have attached to this report a statement setting out the substance of all facts and instructions given to me, which are material to the opinions expressed in this report or upon which those opinions are based.

I believe that the facts I have stated in this report are true and that the opinions I have expressed are correct. I confirm that insofar as the facts stated in my report are within my knowledge I have made clear which they are and I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion.

Signed: \_\_\_\_\_

Print Name: Dr Roger Ballard

Dated: 12<sup>th</sup> day of October 2008

## ROGER BALLARD CV

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### Qualifications

1966 B.A. in Social Anthropology, University of Cambridge  
 1970 Ph.D. in Sociology, University of Delhi.

### Membership of Professional Bodies

Fellow of the Royal Anthropological Institute  
 Member, Association of Social Anthropologists  
 Member, Institute of Expert Witnesses

### Appointments

2002 – Director, Centre for Applied South Asian Studies, University of Manchester  
 1989 – 2002 Senior Lecturer in Comparative Religion, University of Manchester  
 1975 – 1989 Lecturer in Race Relations, University of Leeds.  
 1971 – 1975 Research Associate, SSRC Research Unit on Ethnic Relations, University of Bristol.

### Fieldwork Experience

India (District Jullundur): 1967-69 (18 months), 1972-73 (6 months), 1981 (6 weeks), 2000 (3 weeks)  
 Pakistan (District Mirpur): 1981 (6 weeks), 1984-85 (12 months), 2000 (3 weeks)  
 Bangladesh (District Sylhet): 2003 (1 week)  
 UK: Continuous contact (of varying intensity) with Punjabi communities throughout the Pennine region for over 20 years

### Languages spoken

Punjabi, Urdu

### Research Fellowships and Grants

1996 – 1997 *Reconceptualising race and ethnicity in Britain* Leverhulme Research Fellowship  
 1999 – 2002 *Kinship, entrepreneurship and the transnational circulation of assets*, supported by ESRC as a component of the Transnational Communities Programme

### Recent consultancies

2003 *The Current Demographic Characteristics of the South Asian Presence in Britain: an analysis of the results of the 2001 Census* Foreign and Commonwealth Office  
 2003 *The economic impact of migrant remittances* Department for International Development  
 1999 Equal Treatment Advisory Committee, Judicial Studies Board (to contribute to second edition of the JSB's *Equal Treatment Benchbook*).

### Professional activities

In 2003 I took early retirement my teaching at the University of Manchester to service an ever-growing number of commissions as a Consultant Anthropologist. Whilst also accepting instructions from various central and local government agencies, the preparation of expert reports for use in legal proceedings concerning British Indian community social, cultural, linguistic, familial and religious issues constitutes the majority of my commissioned work. I have prepared over 400 such reports for use in the criminal, civil, immigration and family courts. Indeed, material in my current academic publications is substantially drawn from the first hand experience of acting as an expert witness in key proceedings.

### Selected Publications

2008 "Minority professionals' experience of marginalisation and exclusion: the rules of ethnic engagement" in Eade, John (ed) *Advancing Multiculturalism, Post 7/7* Cambridge: The Scholar's Press pp 73 - 96.

- 2007 "Common Law and Common Sense: Juries, Justice and the Challenge of Ethnic Plurality" in Shah, P. (ed) *Socio-Legal Perspectives on Ethnic Plurality*. Leiden: Martinus Nijhoff. p. 69 -106.
- 2007 "Living with Difference: a forgotten art in urgent need of revival?" in Hinnells, J.R. (ed) *Religious Reconstruction in the South Asian Diasporas: From one generation to another* London: Palgrave Macmillan p. 265 - 301
- 2006 "Ethnic diversity and the delivery of justice: the challenge of plurality" in Shah, Prakash (ed) *Migrations, Diasporas and Legal Systems in Europe* London: Routledge Cavendish p. 29 – 56
- 2003 "The South Asian Presence in Britain and its Transnational Connections" in Singh, H. and Vertovec, S. (eds) *Culture and Economy in the Indian Diaspora*, London: Routledge Pages 197 - 222
- 2002 "Race, Culture and Ethnicity" in Holborn, M. (ed) *New Developments in Sociology*, The Causeway Press.
- 2000 "Religious reconstruction in an alien environment: the Sikh tradition in Britain", in Coward, H. and Hinnells, J.R. (eds), *The South Asian religious diaspora in Britain, Canada and the United States* New York: SUNY Press. pages 193 - 124
- 2000 "Panth, Kismet, Dharm te Qaum: Four dimensions in Punjabi Religion" in Singh, Pritam and Thandi, Shinder (eds.) *Punjabi Identity in a Global Context* Delhi, Oxford University Press, p 7-37
- 1994 *Desh Pardesh: The South Asian Presence in Britain*. London: C. Hurst and Co., and Vancouver: University of British Columbia Press, pp. 297.
- 1994 "The Evolution of the Sikh Community in Britain", (review article) *International Journal of Punjab Studies*, Vol. 1, pp. 297 – 302
- 1993 "The Politicisation of Religion in Punjab", in Rohit Barot (ed.), *Religion and Ethnicity: Minorities and Social Change in the Metropolis*, The Hague: Kok Pharos pp. 80 – 95
- 1992 "New Clothes for the Emperor? The Conceptual Nakedness of the British Race Relations Industry", in *New Community*, Vol. 18 481 – 492
- 1990 "Migration and Kinship: the differential effect of marriage rules on the process of Punjabi migration to Britain", in Clarke, C. Peach, C. and Vertovec, S. (eds.), *South Asians Overseas: Contexts and Communities*, Cambridge: Cambridge University Press
- 1984 "The Bitter Drama of the Sikhs", in *New Society*, 21st June pp. 464 – 4
- 1982 "South Asian Families: Structure and Process", in Rapaport, R. Fogarty, M. and Rapaport, R. (eds), *Families in Britain*, London: Routledge. pp. 179 - 204
- 1979 "Ethnic Minorities and the Social Services" in Khan, V.S. (ed.), *Minority Families in Britain*, London: Macmillan. Pp. 146 – 164
- 1977 (with Catherine Ballard) "The Sikhs", in Watson, J. L. (ed.), *Between Two Cultures: Migrants and Minorities in Britain* Oxford: Blackwell. pp. 21 – 56
- 1973 "Family Organisation amongst the Sikhs in Britain", in *New Community*, Vol. 2. pp. 12-23