

**Legally Admissible Corroborated**

# **Girnar Evidence**

**Dr Bimal Jain**

**Girnar Hills, Junagadh  
Gujarat**

विधिमान्य गिरनार ऐवीडेन्स'

Legally Admissible Corroborated

Girnar Evidence

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## दिगम्बर जैन समाज के मनन चिन्तन एवं प्रयास हेतु 'लीगली एडमीसिबल कॉरोबोरेटेड गिरनार एविडेन्स'

दिगम्बर जैन समाज का श्री सम्मेदशिखर जी के बाद सबसे पूजनीय सिद्धक्षेत्र श्री गिरनारजी है। ये ना केवल दिगम्बर जैनों का बल्कि समस्त भारतवर्ष का ईसा पूर्व से सहस्राब्दियों के बाद भी सुरक्षित उपलब्ध प्राचीनतम आर्किऑलॉजिकल साइट है। जैन धर्मावलम्बी प्राचीन काल से ही इसका संरक्षण, जीर्णोद्धार और आराधना करते रहे हैं, इसी कारण ईसा पूर्व का यह पुरातत्त्व साइट अभी तक सुरक्षित है।

आज स्थिति यह है कि इसपर महन्तों द्वारा कब्जा कर दिगम्बर जैन समाज के आधिपत्य एवं पूजा पद्धति के एकल अधिकार से जबरन वंचित कर दिया गया है। गुजरात हाईकोर्ट में मुकदमा चलता रहा है। जब महन्तों ने 5वीं टॉक पर अनाधिकृत निर्माण कार्य किया और गुरु दत्तात्रय की मूर्ति स्थापित करने की पहल की तब हाई कोर्ट के निषेधादेश का उल्लंघन करने पर कन्टेम्प ऑफ कोर्ट की सुनवाई के दौरान तत्कालीन जस्टिस श्री अकील अहमद कुरैशी ने 21 दिसम्बर 2004 को महन्तों को मौखिक आदेश दिया कि अगली सुनवाई 28 दिसम्बर 2004 तक अनाधिकृत निर्माण गुरु दत्तात्रय की मूर्ति हटाकर एफिडेविट और समर्थन में फोटोग्रफ्स दाखिल करें अन्यथा 28 दिसम्बर 2004 की सुनवाई में हटाने का लिखित आदेश एवं कन्टेमप्ट की कार्यवाही होगी। लेकिन हमारे अहमदाबाद के वकील के उपलब्ध होते हुए भी दिल्ली के वकील के अनुपलब्ध होने के ग्राउण्ड पर हाई कोर्ट में सुनवाई का एडजॉर्नमेंट ले लिया। समय की विडम्बना है कि 28 दिसम्बर 2004 के बाद सुनवाई कर रहे जस्टिस का स्थानांतरण हो गया। तब से केस कछुए की गति से चल रहा है। वर्तमान परिस्थिति में गुजरात हाईकोर्ट में कोई त्वरित न्याय मिलने की आशा नहीं है।

जब हमारा ईसा पूर्व से पाँचवीं टॉक पर आधिपत्य, संरक्षण, जीर्णोद्धार एवं आराधना का एकल अधिकार रहा है तब अतिक्रमण करने वाले महन्तों से मुलाकात करके उनसे मात्र भगवान नेमिनाथ के चरणों के दर्शन करने की छूट लेने का उपलब्ध नीचे संदर्भित प्रागैतिहासिक एवं आर्किऑलॉजिकल एविडेन्स पूर्णतः हमारे पक्ष में होने के कारण उनसे चर्चा या मोल भाव करने का कोई औचित्य नहीं है?

समन्वय समिति ने निर्णय लिया कि इस पर ऐतिहासिक एवं आर्किऑलॉजिकल एविडेन्स एकत्रित कर सुप्रीम कोर्ट में प्राचीनतम आर्किऑलॉजिकल साइट के संरक्षण के रूप में न्याय लेने की सम्भावनाओं पर विचार किया जाये। अतः समन्वय समिति के सह समन्वयक डॉ. बिमल जैन, जो अनुसंधानकर्ता रह चुके हैं और सरकारी सेवा के दौरान रिट पीटिशन्स की ड्राफ्टिंग एवं पेरवी करने का अनुभव है, उन्हें अनुसंधान करने का उत्तरदायित्व तीर्थक्षेत्र कमेटी के तत्कालीन अध्यक्ष श्री आर.के. जैन की सहमति से दिया गया।

उन्होंने देश की सर्वमान्य आर्किऑलॉजिकल एवं ऐतिहासिक संस्थानों, नेशनल लाइब्रेरी कोलकाता, एशियाटिक सोसायटी कोलकाता एवं भण्डारकर ओरियेंटल रिसर्च इंस्टीट्यूट पूना के संग्रहालयों में गिरनार से सम्बन्धित समस्त उपलब्ध आर्किऑलॉजिकल, एन्टीक्योरियन, प्रागैतिहासिक एवं ऐतिहासिक डॉक्यूमेंट्स का अध्ययन करके उसमें से निर्विवाद एविडेन्स खोजा, जो पूर्णतः वैधानिक मान्यता की कसौटी पर खरा उतरे। धार्मिक ग्रन्थों का अपना रुझाव एवं पूर्वाग्रह होता है, अतः उन्हें परे रखा गया।

संदर्भित एंक्विजिटर्स में ऐतिहासिक एवं मध्यकालीन विदेशों से आए हुए भ्रमणकारी स्कॉलर्स के आँखों देखे यात्रा चिवरण, यूरोपियन इतिहासविदों के आँखों देखे डॉक्यूमेंटेशन, ऑर्किगोलॉजिकल सर्वे ऑव वेस्टर्न इण्डिया की रिपोर्ट, बोम्बे गजेटियर्स, नवाब जूनागढ़ के दस्तावेज और इतिहासकारों के लिपिबद्ध निष्कर्ष और लागू कानून उद्धृत हैं, जिन्हें किसी भी कोर्ट में चैलेंज नहीं किया जा सकता क्योंकि यह धर्म और पंथवाद से हटकर स्कॉलर्स के आँखों देखे वर्णन हैं जो दूसरे विदेश यात्रियों और इतिहासकारों द्वारा कोरबोरेटिड हैं।

यह समस्त डॉक्यूमेंट्स जो मूल रूप से उपरोक्त संस्थाओं द्वारा उपलब्ध कराये गये, उनका पूर्ण रूप में उल्लेख करते हुए वस्तुस्थिति इस गिरनार एवीडेन्स, डॉक्यूमेंट्स में हैं, जो स्वयं तथ्यों को उजागर करते हैं। एवीडेन्स में तीसरी सदी ईसा पूर्व में गिरनार भ्रमणित चीनी यात्री ह्वेन शांग, मध्यकालीन में यूरोपियन इतिहासकार कर्नल टॉड, ऑर्किगोलॉजिकल सर्वे ऑफ इण्डिया के जनरल सर अलेक्जेंडर कनिंघम के बाद डायरेक्टर जनरल जेम्स वर्गीज द्वारा दिये गये निष्पक्ष वृत्तांत हैं, जो प्रमाणित करते हैं कि पांचवी टोंक का असली नाम 'दत्तारी टोंक' (जो बाद को काठियावाड़ी ब्राह्मणों द्वारा गुरु दत्तात्रेय टोंक प्रचलित कर लिया गया) है, जो भगवान नेमीनाथ के अनुयायी राजा थे और जिन्होंने पांचवी टोंक पर उनके चरण कमल एवं मूर्ति स्थापित की थी, और कर्नल टॉड ने उसका नक्शा और तबके दर्शनार्थियों द्वारा पहाड़ से उतरते हुए 'नेमी की जय' उच्चारण करने का उल्लेख किया है। ह्वेन शांग ने इसे नेमीनाथ की टोंक वर्णित किया है। जेम्स वर्गीज ने अपनी कई रिपोर्ट में इन तथ्यों का सविवरण उल्लेख किया है। यह ऐसे विधिमान तथ्य हैं जिन्हें किसी भी अदालत में झुठलाया नहीं जा सकता।

दिगम्बर जैन समाज के समक्ष इस भावना से गिरनार डॉक्यूमेंट्स एवं उल्लेखित ऑरिजनल प्रमाण प्रस्तुत हैं, जिससे समाज में जागरूकता आ सके और हम समय रहते अपने प्राचीनतम सिद्धक्षेत्र गिरनार की रक्षा कर सकें और आधिकारिक एवं एकल रूप में भगवान नेमीनाथ की अर्चना कर सकें।

आपके विचार, सुझाव एवं प्रयास गिरनार की रक्षा के लिए बहुमूल्य रहेंगे।

— निर्मल कुमार जैन सेठी  
राष्ट्रीय अध्यक्ष—श्री भारतवर्षीय दिगम्बर जैन महासभा

# अखिल भारतवर्षीय दिगम्बर जैन संस्थाएं-समन्वय समिति

## All India Digamber Jain Organizations - Coordination Committee

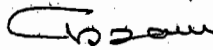
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### Composite Girnar Evidence with Exhibits for SCA 6428 of 2004 - Gujarat High Court

This document is a composite corroborated Girnar Evidence, collected from, records in custody of government / national depositories, which has been collected and analyzed by All India Digamber Jain Organizations' Samanvay Samiti office with Evidence Exhibits and Annexure on issues involved in this case. This attempt has been made with reference to our request to submit additional evidence in Special Civil Application No. 6428 of 2004 in matter of Girnar dispute pending before the High Court of Gujarat at Ahmedabad.

The evidence exhibits incorporate travelogue of ancient and medieval celebrated scholars to Girnar, Official Survey Reports of Girnar by Archaeological Survey of Western India, accounts of eminent antiquarians and historians, ancient and medieval documents and gazetteers and applicable enactments. All these are admissible in law, as they are authentic government records and objective eye witnesses' accounts and on spot corroborated reportage of renowned foreign scholars in ancient and medieval times, historians and government surveyors, not belonging to either Hindu or Jain faith.

The evidence exhibits prove beyond doubt that i) the footprints (*Charan*) and image at 5<sup>th</sup> peak of Girnar are of Bhagwan Neminatha ; ii) Neminatha attained nirvana from 5<sup>th</sup> *tonk* of Girnar; iii) the ancient name of 5<sup>th</sup> peak was 'Guru Dhatarie peak' (Neminatha's first disciple king Dhatarie [Dattar]- 'Guru (of) Dhatarie' = Neminatha), or 'Neminatha peak' and not 'Guru Dattatreya peak'; iv) name of 5<sup>th</sup> peak changed later on by Girnar Brahmins, to attempt conversion of Jain Temples; v) The Reports of Archeological Survey of Western India by James Burgess (1874-75) has very empathetically stated wrongful creation of 'Girnar Mahamatya' by Girnar Brahmins for their benefit ; vi) Girnar and its 5<sup>th</sup> peak had been pilgrimage centre of Digamber Jains prior to period of Ashoka [3<sup>rd</sup> century B.C.] and in their ministration since pre-Christ era; vii) the permission of Archaeological Department, Gujarat to Mahants to construct *chhatris* at 5<sup>th</sup> peak is in contravention of the Gujarat Ancient Monuments and Sites and Remains Act, 1965; viii) conversion of place of worship [Shrine of Neminatha at 5<sup>th</sup> peak of Girnar] of religious denomination of Digamber Jains in place of worship of Hindu religious denomination is in contravention of the Places of Worship [Special Provisions] Act, 1991 and is cognizable punishable offence thus, making a strong case to withstand legal scrutiny; and ix) State is legally bound to restore it to devotees of original religious denomination.



C.P. JAIN  
COORDINATOR



Dr Bimal Jain  
Co-coordinator

## गिरनारजी विवाद पर बैठक हेतु पत्र

माननीय निर्मलकुमार जी बण्डी,

अध्यक्ष-श्री बण्डीलाल दिगम्बर जैन कारखाना ट्रस्ट, गिरनार जी, जूनागढ़

राष्ट्रीय सह संयोजक,

श्री गिरनार तीर्थ राष्ट्र-स्तरीय एक्शन कमेटी

विषय: तीर्थक्षेत्र गिरनार जी विवाद पर इन्दौर में बैठक आमन्त्रित करने के सम्बन्ध में

सन्दर्भ: अखिल भारतवर्षीय दिगम्बर जैन संस्थाएँ-समन्वय समिति से प्राप्त साक्ष्य/प्रमाण

आदरणीय,

दिगम्बर जैन समाज में सर्व ज्ञात है कि तीर्थक्षेत्र गिरनार जा का विवाद सौ वर्षों से भी अधिक समय से मौजूद है। परस्पर चर्चा से समाधान के लिये प्रयास किये जाने के बावजूद भी महन्त समुदाय की नीयत सकारात्मक नहीं है। राजनैतिक दृष्टि से भी सरकार का झुकाव हिन्दू महन्तों के पक्ष में रहा है। समाज हित में अब एकमात्र रास्ता न्यायालय से न्याय प्राप्त करने का बचा है।

सन्दर्भित समन्वय समिति की ओर से समाज का पक्ष न्यायालय में पुख्ता हो, इस दिशा में आशाजनक-उम्मीद बढ़ाने वाला काम किया गया है। उनका ९, अप्रैल २०१५ का तैयार किया गया प्रमाणिक दस्तावेज मुझे व सिर्फ आपको अध्ययन करने व आगे के लिये समाज के हित में न्याय प्राप्त करने हेतु भेजा गया है। उनका विश्वास है कि गिरनार जी की पाँचवीं टोंक पर उपलब्ध प्रमाणों/सबूतों के आधार पर न्यायालय से पूरा अधिकार हमें मिल सकेगा। सच्चाई भी यह है कि जैसे-जैसे विलम्ब हो रहा है, हमारा पक्ष निरन्तर कमजोर होता जा रहा है। हमारी चारों टोंकों पर कब्जा करने की नीयत से उन्हें विवादाग्रस्त बना दिया गया है।

हमारे गिरनार पहाड़ को दत्तात्रेय पहाड़ का रूप दिया जा रहा है। यह हमारी आन्तरिक

कमजोरी का प्रतिफल है। हमारे स्थान पर अगर अल्पसंख्यक सिक्ख, बौद्ध, पारसी, ईसाई

अथवा मुस्लिम होते तो उनके साथ ऐसा अन्याय कभी नहीं हो सकता था।

अति प्रसन्नता का क्षण आया है कि समन्वय समिति के डॉ. विमल

जैन ने सही दिशा में पुरुषार्थ करके पर्याप्त सबूत उपलब्ध करा दिये हैं। निराशा में आशा की

किरण पैदा कर दी है।

इन्दौर का समाज पिछले कई वर्षों से गिरनार रक्षा के लिये सतत सक्रिय रहा है। अभी भी इस दिशा में चुप नहीं है। इन्दौर समाज की भूमिका को देखते हुए आप श्री से निवेदन है कि आप माह अप्रैल/मई में प्राप्त प्रमाणों पर विचार करने तथा भविष्य की रणनीति निश्चित करने के लिये इन्दौर में बैठक आयोजित करने की पहल करें।

परिस्थिति के अनुसार जरूरत हो तो सर्वोच्च न्यायालय स्तर पर भी पहल करना पड़े तो संकोच नहीं किया जाना चाहिये। कारण गुजरात से न्याय की उम्मीद कम दिख रही है।

सधन्यवाद।

निर्मलकुमार पाटोदी, इन्दौर

सदस्य-श्री गिरनार तीर्थ राष्ट्र-स्तरीय एक्शन कमेटी

सम्माननीय सदस्य-भारतवर्षीय दिगम्बर जैन तीर्थक्षेत्र कमेटी, मुम्बई

निर्मलकुमार पाटोदी,

विद्या-निलय, ४५, शांति निकेतन, (बॉम्बे हॉस्पिटल के पीछे),

इन्दौर-४५२०१० मध्य प्रदेश

## गिरनार विधि मान्य ऐवीडेन्स

### गिरनार अतिक्रमण की पृष्ठभूमि के सन्दर्भ में न्यायिक कार्यवाही पर विचार

#### पृष्ठभूमि

10 मई 2004 की देर रात को श्री ज्ञानमल शाह, रिटायर्ड ऑर्किटोलॉजिकल इन्जीनियर, गुजरात पुरातत्व विभाग का फैक्स एवं टेलीफोन आया कि भगवान श्री नेमीनाथ के मोक्ष स्थल - प्रोटेक्टेड मॉन्यूमेन्ट गिरनार की पाँचवीं टोंक पर महन्तों द्वारा अनाधिकृत निर्माण हो रहा है। महासभा अध्यक्ष श्री निर्मल सेठी नॉर्थ-ईस्ट की यात्रा पर थे। प्रयास करने पर मुख्यमंत्री गुजरात कार्यालय के नाईट ड्यूटी ऑफीसर से सभी सम्बद्ध लोगों के फैक्स नम्बर मिल गये। उसी रात हमारे द्वारा गुजरात के तत्कालीन मुख्यमंत्री श्री नरेन्द्र मोदी, तत्कालीन संस्कृति मंत्री श्रीमती आनन्दीबेन पटेल, मुख्य सचिव, संस्कृति सचिव, डायरेक्टर ऑर्किटोलॉजी, सुपरिन्टेन्डिंग ऑर्किटोलॉजिस्ट, कलेक्टर, एस.पी., थानाध्यक्ष जूनागढ़ को विरोध पत्र फैक्स से भेजा गया। अगले दिन 11 मई 2004 को कोरियर से विस्तृत विरोध पत्र राष्ट्रपति, तत्कालीन प्रधानमंत्री श्री अटल बिहारी वाजपेयी, तत्कालीन उप प्रधानमंत्री श्री लालकृष्ण आडवाणी एवं गुजरात के राज्यपाल व मुख्यमंत्री से लेकर थानाध्यक्ष जूनागढ़ को भेजा गया। उनकी प्रतिलिपियां सूचना एवं कार्यवाही हेतु तीर्थक्षेत्र कमेटी के तत्कालीन अध्यक्ष साहू श्री रमेशचन्द्र एवं श्री बण्डीलालजी दिगम्बर जैन कारखाना जूनागढ़ के प्रभारी ट्रस्टी श्री निर्मल बण्डी को भेजी गई। महासभा द्वारा प्रेस रिलीज भी जारी की गई और पूरे देश का, विशेषतया दिल्ली, मध्य प्रदेश, राजस्थान, सकल दिगम्बर जैन समाज उद्वेलित हो गया और 'गिरनार बचाओ' अभियान राष्ट्र-स्तर पर शुरू हो गया।

महासभाध्यक्ष ने नॉर्थ-ईस्ट से लौटने के बाद राजनैतिक, प्रशासनिक एवं सामाजिक स्तर पर गहन कार्यवाही की और परिणामतः राज्यों के समाज ने अलग-अलग आन्दोलन छेड़ दिया। विभिन्न संस्थाओं द्वारा अलग-अलग तरीके से आन्दोलन व सरकार को ज्ञापन भेजने से उत्पन्न स्थिति को समन्वित करने के लिये सामूहिक बैठक में 'राष्ट्र-स्तरीय गिरनार एक्शन कमेटी' का 24 नवम्बर 2004 को नई दिल्ली में गठन हुआ। एक्शन कमेटी में पाँचों राष्ट्रीय संस्थाओं - महासभा, दक्षिण भारत जैन सभा, तीर्थक्षेत्र कमेटी, परिषद्, महासमिति के अध्यक्ष व श्री बण्डीलाल जी दिगम्बर जैन कारखाना के प्रभारी ट्रस्टी एवं गिरनार से सम्बन्धित अन्य संस्थाओं के अध्यक्ष यथा श्री सौभागमल कटारिया, अहमदाबाद, श्री निर्मल पाटौदी, इंदौर आदि शामिल थे। 'राष्ट्र-स्तरीय गिरनार एक्शन कमेटी' के संयोजक श्री निर्मल सेठी, महासभा अध्यक्ष एवं सह-संयोजक श्री निर्मल बण्डी, प्रभारी ट्रस्टी

श्री बण्डीलाल जी दिगम्बर जैन कारखाना बनाये गये। इस बैठक में एक राष्ट्र-स्तरीय संस्था के अन्तर्गत 'गिरनार अतिक्रमण' पर न्यायिक कार्यवाही संचालित करने का निर्णय हुआ और कानूनी कार्यवाही का उत्तरदायित्व तीर्थक्षेत्र कमेटी को, श्री बण्डी लालजी दिगम्बर जैन कारखाना के समन्वय व भागीदारी से, देने का निर्णय हुआ।

महासभाध्यक्ष निर्मल सेठी एवं तीर्थक्षेत्र कमेटी अध्यक्ष साहू रमेशचन्द्र का प्रतिनिधि मण्डल तत्कालीन केन्द्रीय संस्कृति मंत्री जयपाल रेड्डी से मिला और उनके प्रयास से गुजरात पुरातत्व विभाग हरकत में आया और विभाग ने महन्तों के खिलाफ एफ.आई.आर. दर्ज कराई।

कालान्तर में सन् 2012 में गिरनार पर अपने कड़े रुख के कारण ऐसा लगता है कि तीर्थक्षेत्र कमेटी के तत्कालीन प्रभारियों द्वारा संयोजक महासभाध्यक्ष निर्मल सेठी को सदस्य रूप में परिवर्तित कर दिया गया और मात्र सह-संयोजक श्री निर्मल बण्डी आज विद्यमान हैं।

#### गिरनार महन्तों द्वारा मुकदमा बाजी

पूर्व में सदियों से श्री बण्डी लाल जी दिगम्बर जैन कारखाना, गिरनार की पाँचवीं टोंक और भगवान नेमीनाथ के चरण एवं ईमेज पर निर्मित छतरियों के रखरखाव की देखभाल करता था और महन्तों का 5वीं टोंक पर कोई दखल या ऐतराज नहीं था। सन् 1879, 1902 एवं 1914 में श्री बण्डी लाल जी दिगम्बर जैन कारखाना ने जूनागढ़ रियासत की स्वीकृति से बिजली गिरने से क्षतिग्रस्त छतरियों का पुनर्निर्माण किया। गिरनार महन्तों ने कभी जूनागढ़ रियासत से किसी भी प्रकार का ऐतराज नहीं किया। उनकी पाँचवीं टोंक पर दखलन्दाजी का प्रयास सन् 1984 से शुरू हुआ जब गुजरात पुरातत्व विभाग ने 1981 में बिजली गिरने से क्षतिग्रस्त छतरियों का पुनर्निर्माण गुजरात ऐनसियन्ट मॉन्यूमेन्ट्स एण्ड ऑर्किटोलॉजिकल साइट्स एण्ड रिमेन्स एक्ट, 1978 के नियमानुसार पुरातत्व विभाग द्वारा स्वयं करने का निर्णय लिया। उस निर्णय के विरुद्ध गिरनार महन्तों ने जूनागढ़ सिविल कोर्ट में सिविल दावा नम्बर 908/84 एवं 1968/84 दायर किये, जिस पर न्यायालय ने यथास्थिति बनाये रखने का आदेश दिया। दोनों दावे सन् 1996 में गिरनार महन्तों ने स्वयं वापस ले लिये।

बीसवीं सदी के उत्तरार्ध के शुरू के दशकों तक गिरनार महन्तों का पांचवीं टोंक पर कोई पड़ाव नहीं था। हालांकि दखल मारने एवं व्यवधान करने की कोशिशें बीसवीं सदी के उत्तरार्ध में शुरू कर दी थीं।

21वीं सदी के अभ्युदय के समय से गिरनार महन्तों को राजाश्रय मिलता दिखाई देता है और अप्रैल 2004 में उन्होंने नये ढंग से छतरी बनाने का प्रयास किया। इस पर विगत वर्णित विवरणानुसार मई 2004 से महासभा ने केन्द्र व गुजरात सरकार से एवं देशव्यापी विरोध किया और समाज को सचेत किया।

अतः स्पष्ट है कि कानूनी कार्यवाही का पर्यवेक्षण का अधिकार 'राष्ट्र स्तरीय गिरनार एक्शन कमेटी' को है जो इससे स्पष्ट है कि 7 जून 2004 को दिगम्बर जैन समाज द्वारा पांचवीं टोंक पर अतिक्रमण के विरुद्ध गुजरात हाईकोर्ट में दायर रिट पिटीशन नं. 6428/2004 में पहले पिटीशनर श्री बण्डी लाल जी दिगम्बर जैन कारखाना व दूसरे पिटीशनर तीर्थक्षेत्र कमेटी है।

13 जून 2005 को 'एक्शन कमेटी' द्वारा पूरे गिरनार पर्वत को अतिक्रमण से बचाने के लिए नई रिट लगाने का निश्चय हुआ और श्री बण्डीलाल जी दिगम्बर जैन कारखाना एवं तीर्थक्षेत्र कमेटी ने संयुक्त रूप से 25 जुलाई 2005 को रिट पिटीशन, एवं एक्शन कमेटी के कुछ सदस्यों द्वारा 27 जुलाई 2005 को अलग रिट पिटीशन, गुजरात हाईकोर्ट में लगाई गयी।

8 जून 2004 को गुजरात हाईकोर्ट के 'स्टेट क्यो' (यथास्थिति) आदेश के बावजूद गिरनार महन्तों ने छतरियों का निर्माण तो किया ही, 4 फुट की 'गुरु दत्तात्रेय' की मूर्ति भी 5वीं टोंक पर हाई कोर्ट के आदेश की अवहेलना करके रख दी।

#### न्यायिक प्रक्रिया में चिन्तनीय उतार-चढ़ाव

नतीजन कन्टेम्पट पिटीशन नं. 1312/2004 21 दिसम्बर 2004 को दायर किया गया। जस्टिस अकील अहमद कुरैशी ने मौखिक आदेश से गिरनार महन्तों को 28 दिसम्बर 2004 तक का समय रखी गई गुरु दत्तात्रेय की मूर्ति और किये गये बदलाव हटाने का समय दिया और अगली तारीख पर आदेश पर अमल करने का ऐफीडेविट और सपोर्टिंग फोटोग्राफ्स दाखिल करने का हुक्म दिया। लेकिन हमने 'ब्लन्डर' किया और अगली सुनवाई की तारीख का हमारे एक वकील की उपलब्धता न होने के आधार पर 'एडजोर्नमेन्ट' ले लिया।

उसी तारीख में जस्टिस कुरैशी मूर्ति व बदलाव हटाने का लिखित आर्डर पास कर देते और कन्टेम्पट भी लगा देते।

तत्पश्चात् जिन्होंने शुरू से मुकदमे सुनवाई की और समझी तथा गुरु दत्तात्रेय की रखी गई मूर्ति एवं अनाधिकृत नव निर्माण हटाने के मौखिक आदेश दो बार दिये उन न्यायाधीश का ट्रांसफर हो गया।

#### कन्टेम्पट पिटीशन की अनकही - अनसुनी वापसी

किसी पक्ष ने कभी जीतता हुआ 'कन्टेम्पट पिटीशन' वापिस लिया हो, रिट पिटीशनों के इतिहास में सुनने को नहीं मिलता। पिटीशनर नं. 1 श्री बण्डीलाल जी दिगम्बर जैन कारखाना के प्रभारी ट्रस्टी श्री निर्मल बण्डी, गिरनार के हस्ताक्षरित वृत्तान्त में उनकी ही जुबानी "Contempt Petition No. 1312/2004 was filed by us before the Hon'ble High Court against the installation of idol at the 5<sup>th</sup> Peak. This was later on withdrawn by us, for reasons, which are neither forthcoming from the order of withdrawal nor could be elaborated upon at the local level."

सब जानते हैं कि 'स्टे ऑर्डर' या 'स्टेटस क्यो' ऑर्डर लेने के लिये पिटीशनर वकीलों पर पूरा जोर लगाते हैं जिससे आधा फैसला उनके फेवर में तुरत-फुरत हो जाता है और बीसीयों साल सुनवाई चलती रहती है।

विपक्ष द्वारा कोर्ट का आदेश न मानने पर कन्टेम्पट में जीत मुकदमें का रुख ही पलट देती है।

लेकिन इसके विपरीत ऐसा दो दो बार क्यों हुआ, इस पर समाज को गहन चिन्तन करना है, अन्यथा पवित्रतम तीर्थ गिरनार हाथ से जाता दिखाई देता है।

बाद को रिट पिटीशनें दायर होती गईं। रिट पिटीशन नं. 1499/2005, रिट पिटीशन नं. 5351/2006, रिट पिटीशन नं. 25543/2007 एवं रिट पिटीशन नं. 12846/2012 दायर की गईं जो सब 'क्लब' होकर आज भी चल रही हैं।

#### ब्लन्डर पर ब्लन्डर

20 जनवरी 2013 को नई दिल्ली में आयोजित अखिल भारतवर्षीय दिगम्बर जैन संस्थाओं की समन्वय समिति की विशेष बैठक श्री गिरनार जी की असाधारण स्थिति, जो 1 जनवरी 2013 को मुनि श्री प्रबल सागर जी महाराज पर गिरनार पर्वत पर हुये जानलेवा हमले के परिप्रेक्ष्य में हुई, जिसमें राष्ट्र-स्तरीय गिरनार एक्शन कमेटी के अन्य सदस्य भी विशेष आमन्त्रित थे।

इस बैठक में तीर्थक्षेत्र कमेटी उपाध्यक्ष श्री बसन्त भाई दोषी ने, जो गिरनार मुकदमे की देखभाल करते हैं, उक्त समन्वय समिति की बैठक की रिकॉर्डिड मिनिट्स के अनुसार कहा कि "गुरु दत्तात्रेय की 4 इंच की मूर्ति 5वीं टोंक पर, पूर्व में, स्वीकार कर हमने ब्लन्डर किया।"

हमारे वकील ने अज्ञानवश ऐसी आत्मघाती भूल कर भी दी तब भी तुरन्त उसका सुधार करना परोकार व वकील की जिम्मेदारी थी जो उन्होंने आज तक नहीं निभाई।

वह 4 इंच की तथाकथित मूर्ति, जो कभी 5वीं टोंक पर थी ही नहीं, अब 5वीं टोंक पर उसके बल पर 4 फुट की रख दी गई है। जिसका विरोध राष्ट्रव्यापी समाज एक आवाज में आज तक कर रहा है।

किसी पर आक्षेप नहीं है पर न्यायिक घटनाक्रम में अनहोनी अनवरता विचार करने को बाध्य कर देती है।

अतः समन्वय समिति कार्यालय ने निश्चय किया कि 'विधिमान्य निर्विवाद गिरनार ऐवीडेन्स' अपने साधनों से खोजे जायें, जिससे कोर्ट में हमारा पक्ष मजबूती से रखा जा सके।

इस प्रयास में गिरनार पर दायर रिट पिटीशन का अध्ययन करने पर तथ्य उजागर हुये:

i) रिट पिटीशन अति महत्वपूर्ण 'द प्लेस ऑफ वरशिप (स्पेशल प्रोवीजन्स) एक्ट 1991' की भावना के अन्तर्गत दायर नहीं की गई, केवल गुजरात ऐनसियन्ट मोन्यूमेन्ट्स एण्ड ऑर्कियोलॉजिकल साइट्स एण्ड रिमेन्स एक्ट, 1978 तक सीमित रही। इसके अन्तर्गत 15 अगस्त 1947 को विद्यमान पूजास्थल के धार्मिक स्वरूप को नहीं बदला जा सकता। अगस्त 1947 में दिगम्बर जैन समाज का धार्मिक आधिपत्य रख रखाव व पूजा-अर्चना का अधिकार पांचवीं टोंक पर निर्विवाद था, भले ही यह प्रोटेक्टेड मोन्यूमेन्ट है;

ii) रिट पिटीशन में हमने स्वयं स्वीकार किया कि हिन्दू मान्यता के अनुसार 5वीं टोंक पर चरण गुरु दत्तात्रेय के हैं और हिन्दू यात्री उनका दर्शन व पूजा अर्चना करते रहे हैं, जिसका कोई औचित्य नहीं है।

iii) रिट पिटीशन में हमारी प्रेयर छतरियों के निर्माण का अधिकार और गुरु दत्तात्रेय की रखी गई मूर्ति एवं अनाधिकृत नव निर्माण हटाने तक ही सीमित है और कोई प्रेयर हमारे धार्मिक अधिकार, स्वामित्व, रखरखाव, चरण व मूर्ति के पूजा-अर्चना का अधिकार एवं निर्विघ्न दर्शन के लिये नहीं है। जबकि शुरु से ही हमारा स्वामित्व इस क्षेत्र पर रहा है।

#### गिरनार महन्तों से समझौतों के प्रयास

जिसका कब्जा होता है वह कभी कब्जा छोड़ने का समझौता नहीं करता। मात्र 'कन्सेसन' दे सकता है। समन्वय समिति की बैठकों में सर्वसम्मत मत रहा है कि अगर गुजरात सरकार 5वीं टोंक से गुरु दत्तात्रेय की रखी गई मूर्ति व अन्य बदलाव हटा ले और जैन यात्रियों को चरणों व इमेज के दर्शन व उनकी निर्विघ्न पूजा अर्चना करने का अधिकार दें, तभी समझौता किया जा सकता है।

जिन्हें राजाश्रय प्राप्त हो वह ऐसा समझौता मानेंगे, मात्र विडम्बना ही लगती है।

हमारे फेवर में ऐतिहासिक साक्ष्य खोजने के लिये समन्वय समिति सह समन्वयक द्वारा स्वयं के पूर्ण व्यय से ओरीयन्टल इंस्टीट्यूट पुणे, ऐशियाटिक सोसाइटी मुम्बई, ऐशियाटिक सोसाइटी कोलकाता व नेशनल लाइब्रेरी कोलकाता, जो ऐसे 'विधिमान्य ऐतिहासिक डॉक्यूमेंट्स' के स्रोत हैं, में शोध किया गया और आशातीत विधिमान्य हिस्टोरिकल, ऑर्कियोलॉजिकल, एन्टीक्योरियन एवं गजेटियरस् ऐवीडेन्स मिले, जो न केवल 5वीं टोंक बल्कि गिरनार पर्वत की अन्य टोंकों पर भी हमारे धार्मिक अधिकार और स्वामित्व को निर्विवाद सिद्ध करते हैं। ऐसे निष्पक्ष डॉक्यूमेंट्स सुप्रीम कोर्ट भी विधिमान्य एवं निष्पक्ष मानती है। तथ्यों, ग्राउण्ड्स और लागू एक्ट्स एवं 'आई. विटनेस ऐवीडेन्स' एकजीविटस् के साथ 'कम्पोजिट लीगली एडमिसिबल कोरबोरेटड गिरनार ऐवीडेन्स' समाज को विचारार्थ एवं उचित कार्यवाही हेतु प्रस्तुत है।

### जैन समाज को गिरनार की रक्षा करने का एकमात्र विकल्प

उपरोक्त वर्णित गुजरात हाईकोर्ट में अभी तक की गई कार्यवाही, दाखिल की गई रिट पिटीशन एवं दाखिल किये गये शास्त्रीय व आधे अधूरे साक्ष्यों के तथा एक के बाद एक की गई भयंकर चूकों के सन्दर्भ में गुजरात हाईकोर्ट में जीत की धूमिल सम्भावना है।

पुख्ता ग्राउण्ड्स, फैक्ट्स, लागू एक्ट्स के अन्तर्गत वेल ड्राफ्टेड रिट पिटीशन और विधिमान्य ऐवीडेन्स सुप्रीम कोर्ट में दायर करने का एकमात्र विकल्प तर्कसंगत लगता है और समाज को निर्णय करना है क्योंकि गिरनार में आज भी त्यागियों और यात्रियों पर जुल्म हो रहे हैं।

गुजरात ऐनसियन्ट मोन्यूमेन्ट्स एण्ड ऑर्कियोलॉजिकल साइट्स एण्ड रिमेन्स एक्ट, 1978 के अन्तर्गत गिरनार पर्वत प्रोटेक्टेड मोन्यूमेन्ट है। इसके अन्तर्गत कोई भी नव निर्माण व बदलाव तथा पड़ाव नहीं कर सकता। किसी भी प्रकार की मरम्मत भी केवल गुजरात सरकार का ऑर्कियोलॉजिकल अफसर ही कर सकता है। महन्तों द्वारा किये नव निर्माण, बदलाव, गुरु दत्तात्रेय की मूर्ति रखना, पांचवीं टोंक पर पड़ाव, अन्य अनाधिकृत कार्य, गुजरात ऐनसियन्ट मोन्यूमेन्ट्स एण्ड ऑर्कियोलॉजिकल साइट्स एण्ड रिमेन्स एक्ट, 1978 का खुला उल्लंघन हैं। दिगम्बर जैन समाज को इसे रोकने के लिये आगे आना समय की माँग है। अन्यथा शनैः हम पांचवीं टोंक तो क्या गिरनार पर्वत से ही हाथ धो बैठेंगे। अन्य धर्मावलम्बियों को राजाश्रय प्राप्त है। हमारी अकर्ममण्यता भारी पड़ेगी।

गिरनार एक्शन कमेटी का कोई भी सदस्य या दिगम्बर जैन समाज की कोई भी संस्था प्रागैतिहासिक पांचवीं टोंक की अस्मिता की सुरक्षार्थ हाई कोर्ट/सुप्रीम कोर्ट जाने को स्वतन्त्र है।

— डॉ. बिमल जैन

## Legally Admissible Corroborated GIRNAR EVIDENCE

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### Admissible Irrefutable Historical, Antiquarian Archeological and Eye Witnesses' corroborated Documented Evidence

– for consideration for submission by Petitioners: Shri Bandilalji Digamber Jain Karkhana, Junagadh and Ors. in S.C.A No. 6428 of 2004 pending before the High Court of Gujarat at Ahmedabad and enlargement of Writ Petition: 'In the matter of the Places of Worship (Special Provisions) Act 1991', and enlargement of Prayers to direction for 'Restoration of Ministration and Worship Rights of Minority Religious denomination of Digamber Jains on 5<sup>th</sup> Peak of Girnar'.

[Denial of additional hereunder recorded evidence by Defendants will shift burden of proof on Defendants, which is not available to them, as entire credible admissible documents / travelogue on Girnar have been thoroughly studied and no contradiction is available.

The books / encyclopedias based on *Girnar Mahamatya*, which James Burgess has proved to be consisting chiefly of stories fabricated or copied from other *Puranik* legends, by the *Girnar Brahmins* ever ready to consecrate with legends and sanctity, what may produced to their own profit, is not admissible in law being based on faith and belief].

### Abstract of hereunder recorded additional evidence on 5<sup>th</sup> peak of Girnar

As supported by Exhibits 'A' and 'B' [Hiun Tisang (A.D. 640)], Exhibit 'E' [Colonel Tod (A.D. 1822)], Exhibits 'C' and 'D' [James Burgess (A.D. 1869 and A.D. 1874 - 75)], Exhibit 'E' [John Key (A.D. 1931)], Exhibit 'G' [Vincent Smith (A.D. MCMXX)], Exhibit 'H' [H. Cousens (A.D. 1926)], and Exhibit 'I' [A.D. 1902], Exhibit 'J' [A.D. 1914] and Exhibit 'K' [A.D. 1965] and judgments of High Court and Supreme Court in support of admissibility of archaeological and antiquarian evidence, and provisions of applicable Enactments and Rules framed there under PROVE beyond doubt:

- i.) That Girnar Shrine of *Neminatha* was pilgrimage centre of Digamber Jains since the days prior to *Asoka* [prior to 3<sup>rd</sup> century B.C.];
- ii.) That *Neminatha* attained *nirvana* from the 5<sup>th</sup> peak of Girnar;
- iii.) That *charan* and image at 5<sup>th</sup> peak are of *Neminatha* – 22<sup>nd</sup> Tirthankar of Jains;

- iv.) That king *Dhatarie* [*Dattatr*] – the first disciple of *Neminatha* erected the *charan* and image of *Neminatha* and canopies over them;
- v.) That Digamber Jain *Munis* and *Shravaks* ministered and maintained the Shrine and offered prayers as per *Digamber Jain* rituals there, doubtless a place of religious pilgrimage of *Digamber Jain* denomination of religion before the days of *Ashoka*. [prior to 3<sup>rd</sup> century B.C. - Before Christ Era] till the end of twentieth century;
- vi.) That public usage name of 5<sup>th</sup> peak was '*Guru Dhatarie*' (*Guru of Dhatarie* = *Neminatha* - the first disciple king of *Neminatha*) and / or *Neminatha* peak and not *Guru Dattatraya* peak till first half of nineteenth century and Girnar *Brahmans* conspired and converted its name as '*Guru Dattatraya*' with ulterior motives to claim profits from swelling number of pilgrims;
- vii.) That Girnar *Brahmans* have proven historical criminal blemished record of fabricating '*Girnar Mahatmya*' to appropriate Girnar for their profit, appropriating in past by force '*Ambika Temple*', which was built and ministered by Jains, and attempted to convert Jain Temple in Hindu Temple at Girnar in past and present conversion of *Neminatha* Shrine into *Guru Dattatraya* Shrine is in chain of their forcible appropriation history;
- viii.) That permission of Archaeological Department of Gujarat to Girnar *Mahants* to construct *Chattries* over *charan* and image of *Neminatha* is without authority of law under the Gujarat Ancient Monuments and Sites and Remains Act 1965 thus, null and void and *de novo*;
- ix.) That conversion of *Neminatha* Shrine of Jain religious denomination into *Dattatraya* Shrine of Hindu religious denomination is punishable under the Places of Worship (Special Provisions) Act 1991 and in violation of Article 26 of the Constitution;
- x.) That *Neminatha* Shrine at 5<sup>th</sup> peak of Girnar is exclusively of *Digamber Jain* religious denomination and the Judiciary is law bound to restore it to its rightful *Digamber Jain* denomination of religion;

**ISSUES – FACTS, GROUNDS, EVIDENCE - FOR ADJUDICATION  
IN SPECIAL CIVIL APPLICATION NO. 6428 OF 2004  
IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**Shri Bandilal Ji Digamber Jain Karkhana & others**

**V**

**The State of Gujarat & others**

**ISSUE – 1**

**What is the true source of admissible and dependable evidence in case of 5<sup>th</sup> Peak of Girnar hill containing a historical shrine and its monument of Before Christ (B.C) era?**

**1. GROUND**

- i) That the law decides a case on facts, documents and evidence and not on belief.
- ii) That in case of a historical shrine and its monument of Before Christ (B.C) era, recorded travelogue of great travelers from abroad in ancient and medieval times - who were eye witnesses at Girnar, Archaeological evidences and findings of Archaeologists, Antiquarians and Historians are dominant evidence.

In case of '*Paramount Studio and Ors V. The Union of India and Ors*', reported in AIR 1981 All 186, Allahabad High Court admits:

... "archaeology may include a science of epigraphy, for the purpose of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the regulations framed there under, ... archaeology is the study of human history and pre – history through the excavation of sites and the analysis of artifacts and other physical remains"....

- iii) That the contribution of archaeologists and antiquarians in unearthing the ancient and mediaeval history of India has been acknowledged and their findings admitted by the Supreme Court of India in *Archaeological Survey of India V. Narender Anand and Ors* (Civil Appeal No. 2430 of 2006) clubbed with *Narender Anand and Ors V. ASI and Ors* (Civil Appeal No. 2431 of 2006) stating. ....

"Archaeological and historical pursuits in India started with the efforts of Sir William Jones, who put together a group of antiquarians, to form the Asiatic Society on 15<sup>th</sup> January 1784 in Calcutta.

"He was supported by many persons who carried out survey of monuments in various parts of India. The identification of *Chandragupta Maurya* with *Sandrokottos* of Greek historians by (Sir William) Jones helped in fixing a chronological horizon of Indian history this was followed by the identification of *Patliputra* (xxx) at the confluence of the *Ganga* and *Sone*. The decipherment of *Gupta* and *Kutila* script by Charles Wilkinson was landmark in this regard. Thereafter many individuals made contribution in surveying different monuments in India. In 1861, Alexander Cunningham was appointed as the first Archaeological Surveyor.

"He surveyed areas stretching from Gaya in the east to the Indus in the northwest, and from *Kalsi* in the north to the *Narmada* in the south between 1861 and 1865. For this, he largely followed the footsteps of the Chinese pilgrim Hieun Tsang, .... an act was passed in 1863 empowering the Government to prevent injury to and preserve the buildings remarkable for their antiquity and historical or archaeological value."

- iv) That but for the tireless efforts of the team of archaeologists of Archaeological Survey of India headed by General Sir Alexander Cunningham the Indus civilization of *Taxsila*, *Mohanjodaro* and *Harappa* would not have seen the light of the day. The same way Archaeological Survey of Western India brought to light many historical sites and remains. Their contribution in fixing a chronological horizon of Indian history is remarkable as well as accurate.
- v) That the mystery and appeal of India have enticed great travelers from all over the globe. Their diaries, dispatches and travelogue, some are of pre and ancient history era, by conducting in-depth enquiry and research have immortalized myriad places, culture and times visiting in historical places that fascinated them and they immortalized their historical accounts. A lot have changed, but traces of truth that impressed them remain intact. Their records have helped antiquarians, archaeologists and historians in fixing a truthful chronological horizon of Indian history.
- vi) That British army and civil officers, who loved heritage and history by their culture, voluntarily did a lot to preserve and conserve Indian architectural heritage and conducted in-depth enquiry and research and excavation and unearthed truthfully the lost Indian pre and ancient history. Among them Colonel Tod, General Alexander Cunningham, James Burgess and Vincent Smith are doyens and their descriptions are considered credible beyond doubt and admissible by even higher judiciary in India.

- vii) That in introduction to 'Notes of a visit to *Somnath, Girnar* and other places in *Kathiawad*, in May 1869 by James Burgess', (Exhibit - 'D' pp i and viii) pioneering work of Archaeological Survey in Western India is described as hereunder:

"James Burgess ... while at Bombay, he visited Gujarat, Sind, Maharashtra and Nizam's territories in order to visit some of the more important architectural remains. He published his reports in the form of pamphlets or articles to daily papers. This labour of his love was not lost. When it was decided in 1873 to conduct a survey of the archaeological remains in the then Bombay Presidency on the pattern of the work done by Sir Alexander Cunningham in northern India, James Burgess was the natural choice. In 1881, he was given the additional burden of surveying antiquarian remains in the Madras Presidency. Burgess was at the helm of affairs in 1985, when he was appointed Director General of the Archaeological Survey of India."

- viii) That those such architectural, antiquarian and historical findings are authoritative and objective being free of any bias or favour and may be depended upon by the Hon'ble Court to unveil the true facts of 5<sup>th</sup> peak of Girnar hills and for deciding issues raised in the Special Civil Application by the Petitioners.

## ISSUE - 2

- i) Whether *Neminatha*, also called *Arishtranemi*, twenty - second Tirthankar of religious denomination of Jains, attained *nirvana* (salvation) at 5<sup>th</sup> peak of Girnar who gave to this summit his name and made whole mount as sacred?

### 2(i) Evidence

- i) That among the great travelers from abroad in pre and ancient times and mediaeval times, e.g. Megasthenes (Greek - B.C. 290 - 350), Faxian (Chinese. A.D. 399 - 411), Kuanzang (Chinese - A.D. 602 - 644), Al-Biruni (Iranian - A.D. 973 - 1048), Marco Polo (Italian - A.D. 1254 - 1325), Iban Battuta (Moroccan - A.D. 1325 - 1357), Domingo Paes (Portuguese - A.D. 1520) Thomas Roe (British - A.D. 1581 - 1644), Francois Bernier (French - A.D. 1656 - 1688) and some others till colonial times, only one illustrious Chinese pilgrim 'Huen Tsiang' (A.D. 629 - 645) travelled to Girnar in A.D. 640. His travel accounts namely, 'SI - YU - KI' are translated and deciphered by renowned linguistics, antiquarians, archaeologists and historians like Thomas Walters, Samuel Beal, Colebrook, Stanislas Julien and Sir Alexander Cunningham, Vincent A. Smith etc.

The versions given are reproduced below:

"Julien restored the Su-la-ch'a (or-t'a) of this passage as Surashtra, the modern Kathiawad. [P.248, Para 3 lines 1 to 2 - Exhibit - 'A' - on Yuan Chwang's Travels in India, 629 - 645 A.D. by Thomas Watters, Vol II, 1905 reprint, containing title page, pp. 1, 2, x, xi, 248, 249, 328, 329, 348, 349, 356, 357]....

"The hill here called *yuh - shan* - (or *yhu shan*) to was restored by Julien as *Ujjanta*. Cunningham States that this is the pali form of *Ujjayanta* and identifies the pilgrim's hill with the mountain of that name in Surashtra - "the Girnar hill that rises above the old city of Junagarh<sup>1</sup>". This city, called by other writers, Junagadh, is supposed to correspond to our pilgrim's capital of his Surat. The name of the hill is also given as *Ujjinta*, which is nearer the Chinese transcription, and it was on this peak that the Jain *Arhat* named *Nemi* died at a very advanced age<sup>2</sup>.

<sup>1</sup>AGI (Ancient Geography of India) Sir Alexander Cunningham p. – 325)  
<sup>2</sup>Colebrook 'Essays' Vol ii (Archaeological Survey of Western India Report, Vol ii) p. 191.

[p, 249 Para 1 lines 3 to 12, Bottom, lines 1, 3 – Exhibit – 'A' Ibid]

*"Not far from the city is a mountain called yuh-chen-to (ujjanta)<sup>79</sup> on the top of which is a Sanghadrama. The cells and galleries have mostly been excavated from the mountain side. .... Here saints and sages roam and rest, and rishis endued with spiritual faculties congregate here and stay."*

<sup>79</sup>The Old Prakrit name of *Girnara*, close to Junagadh in Kathiawad; the Sanskrit form is *Ujjayanta* (Mahabh, iii. 8347 ff. .... It is sacred to *Neminatha*, the Twenty-Second *Jina*, and *Urjayata* (Colebrooke, Essays, Vol ii, p. 212, Arch. Sur.W. Ind. Rep. (Archaeological Survey of Western India Report) vol ii p. 129, and is also called *Rajvata*)

[p. 269, para 2 Bottom Right, para 1, Exhibit – 'B', - 'SI-YU-KI, Buddhist Records of the Western world' – Translated from the Chinese of Hieun Tsiang (A.D. 629) by Samuel Beal, Professor of Chinese, University College, London, 1884, containing Title Page, pp. 1, 2, xviii, xv, 268, 269, 316, 337]

- i-b) That James Burgess, an archaeologist from the United Kingdom who came to India in 1855, did elaborate survey of Girnar Hills, first in the year 1869 as a free lance architect, and again in 1874 – 75 officially as Archaeological Surveyor and Reporter to Government, Western India. The Official Report of Archaeological Survey of Western India 1874 – 75 is minute to details, and the most authentic Government version on Girnar hills.

James Burgess records "...towards the *Guru Dattatraya* peak ...

*"This Neminatha or Arishtanami, who gives his name to this summit and to whom the Jainas consider the whole mount as sacred, is the twenty – second of their defied saints - ... after which he gradually rose to the exalted rank of a Tirthankara, and finally nirvana on this lonely pinnacle of rock which retains his name."*

[p. 175 Para 2 line 14, para 3 lines 1 to 3, lines 14 to 16 Exhibit 'C' – 'Archaeological Survey of Western India, Report on the Antiquities of Kathiawad and Kachh, being the result of the second seasons operations of the Archaeological Survey of Western India. 1874-75' by James Burgess, Archaeological Surveyor and Reporter to Government, Western India, London, India Museum, 1876 containing Title page, pp. iv , v, vi, vii, A, B, sub-title page, pp. 1, x, pp. 154 to 176, Plate xxx, Plate xxxi, Plate xxxii , Plate xxxiii, Plate xxxiv, Plate xv, Plate xvi]

- i-c) In 'Notes of visit to Somnath, Girnar and other places in Kathiawad in May 1869', reported in the 'Bombay Gazette', James Burgess reports:

*".... Girnar the ancient Raivata or Ujjanta – sacred among the Shravaks to Neminatha, and doubtless a place of religious pilgrimage before the days of Ashoka. [prior to 3<sup>rd</sup> century B.C. - Before Christ Era] Hiuen Tshang who visited it about A.D. 640 says –*

[V p. 37 Para 1 lines 2 to 6 Exhibit 'D' – 'Notes of a visit to Somnath, Girnar and – other places in Kathiawad in May 1869' by James Burgess, Bombay

Gazette, 1869 containing title page, pp. 1, 2, 3, i, viii, ix, x, xi, xii, Sub-title page, pp. 36 to 57]

James Burgess describes:

**"The largest temple is that of *Neminatha* ... and bears an inscription on one of the pillars of the *mandopa* stating that it was repaired in A.D. 1278."**

[p. v, 38 Para 3, lines 1, 3 to 5 – Exhibit - 'D' Ibid]

James Burgess further reports:

**"This *Neminatha* or *Aristhenemi* who gives his name to this summit ... after which he gradually rose to the exalted rank of a *Tirthankara*, and finally attained *nirvana* on this lonely pinnacle of rock which retains his name."**

[p. 50 Para 2 lines 1 to 2, p. 51 Para 1, lines 2 to 5 – Exhibit 'D' - Ibid ]

- i-d) Colonel James Tod, the celebrity author of 'Annals of Rajasthan' and authority on medieval history of Rajpootana and Western India, was the first European Traveler who brought first description on Girnar 'In travels in Western India - embracing a visit to the sacred mounts of the Jains' by Colonel James Tod, 1822.'

Colonel Tod's descriptions are laborious and accurate and he has been quoted authentically by reputed historians and archaeologists.

Col Tod reports in his travelogue:

**"The last of group ... is dedicated to *Neminat'h*, the tutelary divinity of Girnar"**

[xviii p. 394. Para 1 lines 1 to 2 . – Exhibit – 'E' – 'Travels in Western India - Embracing a visit to the sacred Mounts of the Jains and the most celebrated Shrines of the Jains between Rajpootana and the Indus' by colonel James Tod, London, 1822, reprint containing title page, pp. i, ii, 276, 277, 378 to 401]

Colonel Tod reports:

**"Early next morning I commenced my descent and as I passed through the portals of the palace, ... and cheering on their way crowded of pilgrims to the shrine of Nemi, and others of the many objects of adoration" ....**

[p. xviii p. 398 Para 2, lines 1 to 2, 5 to 7 – Exhibit 'E' - Ibid]

Colonel Tod further records:

***Satrunja* is one of the *Panj- Teert'has*, or five places of pilgrimage of the Jains of these, three viz. *Arbudha*, *Satrunja* and *Girnar* are at hand. ...."**

[p. 276 Para 3 lines 1 to 3 – Exhibit 'E' - Ibid]

John Keay in his 'India Discovered' has deliberated upon the spirited travelogue by Colonel Tod.

He records:

**"In the preface of Travels in Western India he (Colonel Tod) restated his commitment ... But I linger a while in the skirts of Rajasthan and lead my reader into the hardly less interesting region of Surashtra and to the mounts sacred to the monotheistic Jain. .... Tod was determined, before leaving Rajasthan, to see this famous Shrine. By 1822 he was a very sick man. ... But he resolved to turn his journey down to Bombay into a short of Jain pilgrimage. He visited the mountain of Girnar bristling with white**

washed temples, and there first discovered the famous Asoka Rock inscription."

[p. 164 Para 1 line 1, Para 2 lines 5 to 7, Para 4 lines 1 to 6 Exhibit - 'F' - 'India Discovered' by John Keay, London, 1931 containing title page, pp. i, ii, 164, 165]

John Keay is quoted to explain why travelogue of Colonel Tod on Girnar does not give description of 5<sup>th</sup> peak of Girnar as Colonel Tod could not make it up due to very short visit to Girnar hill and his inability to climb tedious way to 5<sup>th</sup> Peak being very sick.

- i-e) A spirited ICS (Indian Civil Service) officer Vincent A. Smith, with keen interest in history who associated with the Archaeological Survey of India by choice in nineteenth century and became a celebrated authority on early and medieval history of India, records in 'Asoka - the Buddhist Emperor of India':

"The famous Girnar Version first described by Colonel Tod in 1822, lay buried in dense forest and might never have come to light had not a local notable made a causeway through the jungle for the benefit of pilgrims to the hill, which is one of the most sacred places venerated by the Jains."

[p. 129 Para 3 lines 1 to 4, p. 130 lines 1 to 2 - Exhibit 'G' - 'Asoka - Buddhist Emperor of India' by Vincent A. Smith, London MCMXX - containing title page, p. 128, 129, 130, 131]

Renowned antiquarian H. Cousens, who surveyed the historical places of Western India, records about Girnar:

"... This (Mount *Strunjaya*) is one of the five great *tirthas* of the Jains, the others being *Samet Sikhara*, or Mount *Parsvanatha*, in Bihar, Mount *Arbuda* or Abu, in Sirohi, *Girnar* in Kathiawad, and *Chandragiri* in the Himalayas."

[p. 44 para 2 lines 11 to 14 Exhibit 'H' - 'The Architectural Antiquities of Western India' by H. Cousens, London, 1926, containing title page, pp. i, ii, 44]

## 2 (i) GROUND

The above cited evidences recorded by travelers, antiquarians, archaeologists and historians, among them some were eye witnesses at Girnar hills, were not belonging to faith and belief of either Petitioners or Defendants, and were objective and authority in their respective fields, corroborates the facts illustrated from A.D. 640 to nineteenth century A.D. in respect of Girnar hill.

The evidences prove beyond doubt that *Neminatha* attained *nirvana* (salvation) from 5<sup>th</sup> peak of Girnar called *Guru Dhatarie* till first half of nineteenth century and converted by Girnar *Brahmans* with ulterior motives in later part of nineteenth century as *Guru Dattatraya* peak, and because of that the whole mount *Girnar* became most sacred to Jainas and was place of their pilgrimage even before the days of Ashoka [Before 3<sup>rd</sup> century B.C.].

There is not even a scant evidence of existence of *Guru Dattatraya* on 5<sup>th</sup> peak of Girnar or anywhere on Girnar hill, which is a ploy of *Girnar Brahmins* by changing its ancient public usage name *Guru Dhatarie* to *Guru Dattatraya*, ever ready to consecrate with legend and pretended sanctity, what may conduce to their own profit. That is why they converted the name as there is no Hindu deity named *Dhatarie* with the motive to exclusively appropriate it

Thus, the issue deserves to be decided in favour of petitioners.

- ii) Whether the small open shrine or pavilion or canopy (or *Chhatra* or *Deri*) over the footmarks (or *Paduka* or *Charan* or *Charan Chinha*) and Image in nude form in sitting *Padmasan* posture of *Neminatha* cut in the rock at *Guru Dhatarie* or *Guru Dattatraya* or *Neminatha Peak* (or 5<sup>th</sup> Peak or *Tonk* or summit) of Mount Girnar in Junagadh District, Kathiawad Region of Gujarat is of twenty-second Jain *Tirthankar Neminatha* or of another persona or deity named *Guru Dattatraya*?
- iii) What structures and sculptures existed at the aforesaid shrine and its peak from Before Christ era to end of twentieth century A.D.?

## 2.(ii-iii) EVIDENCE

James Burgess, an eye witness in 1869 and again 1874, records in his Archaeological Survey of mount Girnar:

"... and again climb a steep ascent, that tries the muscles of the traveler's legs, towards the *Guru Dattatraya* peak ... By and bye the ascent becomes so steep that the hands come easily to the help of more wearied limbs and at length the summit is gained. It has a small open shrine or pavilion over the footmarks or *paduka* of *Neminatha* cut in the rock, and was being ministered to by a naked ascetic. Beside it hung a heavy bell.

"*Neminatha* or *Arishtanemi*, who gives his name to this summit and to whom the Jainas consider the whole mount as sacred, is the twenty - second of their defied saints, .... This one is the favourite object of worship with the *Digambara* or naked Jainas."

[p. 175, Para 2 lines 13, 14, lines 17 to 20, Para 3 lines 1 to 3, 4, 5 Exhibit 'C' - 'Archaeological Survey of Western India - Report on the Antiquities of Kathiawad and Kachh - being the result of the second season's operations of the Archaeological Survey of Western India - 1874 - 75' by James Burgess, Archaeological Surveyor and Reporter to Government, Western India, London, Indian Museum, 1876 -Ibid].

## 2.(ii-iii) GROUND:

That the archaeological findings prove no doubt that *Charan* (footmark) or of *Neminatha*, which were ministered by a necked ascetic and *Digamber Shravakas*. No other structure or idol existed there other then described by Archaeological Survey of Western India.

There are no footmarks or idol or sculpture or inscription or whatsoever evidence of existence of *Guru Dattatraya* not only on 5<sup>th</sup> peak of Girnar but anywhere else on mount Girnar. James Burgess [Exhibit 'C' and Exhibit 'D'] had extensively quoted and given plates of inscriptions at Girnar hill but none has scant evidence of a persona or deity named *Guru Dattatraya* at *Girnar* hill.

When James Burgess surveyed antiquities of Girnar in 1869, the same description was prevalent and reported by him (at pp. 49, 50 and 51 in Exhibit 'D' - 'Notes of a visit to Somanth, Girnar and other places in Kathiawad in May 1869.') Colonel Tod too didn't mention anywhere about *Guru Dattatraya* in his travelogue of Girnar in the year 1822.

The Girnar arm of Digamber Jain denomination of religion - Shri Bandilal ji Digamber Jain Karkhana, Girnar, which over looked the ministration and maintenance of 5<sup>th</sup> peak of Girnar hills since nineteenth century witnessed no other sculpture or footmarks or Statue other than described by James Burgess (in Exhibit 'C' and 'D') or reported by any pilgrim to the shrine from the days before *Ashoka* to the end of twentieth century A.D.

Whatever alternations taken place at 5<sup>th</sup> peak are of the twenty - first century in the year 2004 in contempt of Collector Junagadh's Prohibitory Orders of 25 May 2004 and Status Quo Orders of High Court of Gujarat at Ahmedabad of 8<sup>th</sup> June 2004, which are

liable to be removed and original architectural and religious character of the Shrine at 5<sup>th</sup> peak of Girnar to be restored.

Thus, the issue deserves to be decided in favour of Petitioners.

## ISSUE - 2

iv) What is the significance of name of 5<sup>th</sup> Peak converted later on as *Guru Dattatraya* from *Guru Dhatarie* and is there any historical or architectural evidence of its being connected in whatsoever manner to another different persona or deity named *Guru Dattatraya*?

### 2.(iv) EVIDENCE

Colonel Tod (A.D. 1822) has given a map of peaks of Girnar hills (at p. 382 – Exhibit 'E'), wherein he has mentioned till then prevailing name of 5<sup>th</sup> peak as '*Dhatarie*' and in location chart (p. 381) as '*Guru Dhatarie*' (p. 381, 382 - Exhibit – 'E' - Ibid). The 5<sup>th</sup> peak of Girnar till first half of nineteenth century was called in public usage name as *Guru Dhatarie* [i.e. *Guru* (of) *Dhatarie* = *Neminatha*]. *Dhatarie* or *Dattâtri* being the first disciple king of *Neminatha*, erected *charan* (footprints) and *image of Neminatha* after his *nirvana* (salvation), which was changed to by *Girnar Brahmans* in late nineteenth century as *Guru Dattatraya*, as there was no Hindu god known as *Dhatarie* [as spelled by Colonel Tod in early nineteenth century format of English] or *Dattâtri* [as spelled by James Burgess in later format of English], for appropriation for their profit from pilgrims visiting it from ancient times. For sake of clarity, Colonel Tod spelled '*Nemnat'h*' in 1822 and James Burgess spelled '*Neminâtha*' in 1869 and 1874 – 75 for same persona hence, difference in spelling is due to changing formats of English pronunciation as in case of '*Dhatarie*' by Colonel Tod and *Dattâtri* by James Burgess for the same persona].

James Burgess (A.D. 1869, 1874 – 75, Exhibit 'C' and 'D'), thus, has not given the name of 5<sup>th</sup> peak only as *Guru Dattatraya* but *Guru Dattatraya* or *Neminatha* peak (p. 175 Para 2 Line 4, Exhibit 'C').

He further describes:

"His first convert was a king *Dattatri*, to whom he became guru, after which he gradually rose to the exalted rank of a *Tirthankara*, and finally attained *nirvana* on this lonely pinnacle of rock which retains his name.

(p. 175 Para 3 lines 14 to 16, Exhibit 'C').

### 2 (iv) – GROUND

It may that in times in public perception the name *Neminatha*, became common usage name as '*Guru* (of) *Dhatarie*' = *Neminatha*. Till first half of nineteenth century name of 5<sup>th</sup> peak was *Guru Dhatarie* as recorded by Colonel Tod in 1822. There is no Hindu god named *Dhatarie* thus, *Girnar Brahmans* converted *Dhatarie* as *Dattatraya* under their appropriation policy for their profit. It is a ploy of *Girnar Brahmans*, thus archaeologists in later part of nineteenth century recorded it as *Guru Dattatraya* or *Neminatha* peak and not alone as *Guru Dattatraya* peak. Hence, in terms of evidence there is no significance of its name converted now as *Dattatraya* and to be read judiciously and rationally as *Guru Dhatarie*.

Name of 5<sup>th</sup> peak has been described by spirited explorer Colonel Tod (A.D. 1822) as *Guru Dhatarie* and in later part of nineteenth century by Archaeological Survey of Western India (A.D. 1869, 1874 - 75) as *Guru Dattatraya* or *Neminatha* peak. It is abbreviated form of *Guru* (of) *Dhatarie* later on converted by *Girnar Brahmans* as *Guru Dattatraya* for their bounty from the pilgrims.

## ISSUE - 2:

v) Whether the *Vaishnavas*, who came to the pilgrimage of *Dwarka* (Abode of Lord *Krishna* and *Harivansa* Race), considered they only reap the fruit of their toil when they have paid their respects at 5<sup>th</sup> Peak of Girnar to brother of Lord *Krishna* - *Neminatha*, or *Arishtnemi*, the *Guru* of *Dhatarie*, or another different persona or deity named *Guru Dattatraya*?

## 2 (v) EVIDENCE

James Burgess traces the origin of *Neminatha* describing :

“...like all the other *Tirthankaras*, he was of royal descent, being the son of *Samudravijaya*, king of *Sauryanagara* or *Soryapuri*, in the country of *Kusavarata*, and of the *Harivansa* race – his parental uncle being *Vasudeva*, the father of the famous *Krishna*... he renounced the world, and leaving *Dwarka* went to *Girnar* .... of his long life in asceticism; ..... He is in fact, the *Krishna* of the Jains.”

(Para 3 lines 6 to 11, 19 to 20 Exhibit – ‘C’ Ibid)

## 2 (v) EVIDENCE

Thus, it is not unusual that the *vaishnavas* who came from the pilgrimage to *Dwaraka* (Abode of Lord *Krishna* – *Harivansa* Race) considered they only reap the fruit of their toils when they have paid their respects here to *Neminatha* (common public usage name as *Guru Dhatarie* (*Guru* (of) *Dhatarie* = *Neminatha*), his being the cousin brother of Lord *Krishna* and self of *Harivansa* race.

It is undisputed that ancient name of 5<sup>th</sup> peak was *Guru Dhatarie* as recorded by Colonel Tod (A.D. 1822). Colonel Tod's descriptions on history of *Rajpootana* and Western India are considered accurate and authoritative and quoted as it is by noted historians.

## 2 (v) GROUND

There are instances in many areas in India, to which judiciary too is aware, that persons of other religious denomination pay their respects to Hindu or Jain deities or Sikh Gurus or Muslim Sufi Saints albeit in their original or local name.

For example, respects are paid to *Digamber* Jain deity of *Tirthankar Mahavir* at *Shri Mahavir ji* in District Karauli in Rajasthan by local *Gujjars* and *Meenas* of Hindu religious denomination calling him as ‘*Chandanpur wale Bawa*’; to Hindu deity Lord *Venkatashwara* at Tirupati in Andhra Pradesh by pilgrims of non – Hindu religious denomination calling him as ‘*Bala ji*’; to Hindu deity Lord *Krishna* at *Vrindavan* in Uttar Pradesh and many other places too by numerous Christians (ISKON); to Muslim Sufi Saint *Khawaja Mohuddin Chisti's Dargah* at Ajmer in Rajasthan by large number of pilgrims of Hindu religious denomination; to Sikh religious shrine *Harmander Shaheb* at Amritsar in Punjab by pilgrims of Hindu religious denomination in huge numbers. Like wise at many other places of worship, of other religious denomination, instances are offering of prayers by pilgrims of other religious denomination calling them in their own usage names.

However, in spite of respects paid by pilgrims of other religious denomination at Places of Worship of other religion of denomination, the ownership or custodianship and character of religious Place of Worship of original religious denomination do not change and no other religious denomination can make any claim on such Place of Worship being of their religious denomination or of another sect of same religious denomination or of common religious denominations and if done, it would not stand in law. Such is the case of pilgrims of Hindu religious denomination paying respects to Jain *Tirthankar Neminatha* at 5<sup>th</sup> peak of *Girnar* albeit in local usages name of *Guru Dhatarie*, later on converted as *Guru Dattatraya* for their profit by *Girnar Brahmans* to make claims on the Place of Worship, of *Digamber* Jain religious denomination, as of Hindu religious denomination.

ISSUE - 2:

- vi) Of which religious denomination the said shrine and its peak has been religious Place  
of Worship from days before *Asoka* (3<sup>rd</sup> century B.C.) to 18 September 1991, in specific,  
and continue to date?

## 2 (vi) EVIDENCE

Historical and archaeological records cited herein undoubtedly corroborates the Shrine at 5<sup>th</sup> peak of Girnar of *Neminatha* – the twenty second *Tirthankara* of *Jainas* and it remains so from historical times to 18<sup>th</sup> September 1991, in specific, when Worship of Places (Special

Provisions) Act, 1991 came into effect and to date.

## 2 (vi) GROUND

That the evidences no doubt prove the shrine at 5<sup>th</sup> peak of Girnar is of *Neminatha* and remains so from the days Before Christ to 18<sup>th</sup> September 1991 in specific and to date and is covered under the provisions of the Places of Worship (Special Provisions) Act, 1991.

## ISSUE – 3

Whether there is historical record of the *Girnar Brahmanas*, being ever ready to consecrate with fabricated legend and pretended sanctity, which may conduce to their own profit and of conversion of religious places of worship of other religious denomination in case of *Girnar*?

## 3. EVIDENCE

The late twentieth century attempts of *Girnar Brahmanas* to appropriate profits by making claims on 5<sup>th</sup> peak of *Girnar* and early twenty – first century attempted conversion thereof and forcible encroachment over it has deep rooted history of their expansionist policy, which has been recorded by archaeologists and historians who were also eye witnesses in *Girnar*. In *Ashoka*'s time Buddhists had sizeable presence at Girnar hills having their monasteries there. They too was not spared by *Girnar Brahmanas* and they succeeded in vanishing them totally in due course of time.

James Burgess unveiled it in no uncertain words in his 1874 –75 Archaeological Survey of Girnar Hills.

He records:

“... A short walk leads to the foot of *Girnar* the ancient *Rajvata* or *Ujjayanata* – sacred among the *shravaks* or *Jaina* to *Neminatha* the twenty – second is their list of *Tirthankaras* and doubtless a place of pilgrimage even before the days of *Ashoka*. In his (*Ashoka*) time it probably became a Buddha *Tirtha* or sacred place where monasteries were early formed, and cells cut in its granite scraps for the devotees. The *Brahmanas* ever ready to consecrate with legend and sanctity, what may produce to their own profit, have not forgotten *Girnar*, for about thirty chapters of the *Prabhasa Khand* of the *Skanda Puran* is devoted to the account of the sanctity of *Girnar* and the surrounding neighbourhood: this forms the *Girnara Mahatmya*, consisting chiefly of stories fabricated or copied from other puranic legends, by the *Girnar Brahmanas*, and placed in the mouth of *Siva*, their favourite divinity, as being related by him to *Parvati*.

“According to the *Girnar Mahatmya*. *Prabhasa Kshetra* or *Somanatha Pattan* and its vicinity on the sea shore on the south cost of *Sorath*, is the holiest of all places of Hindu sanctity, but, *Girnar* or *Vastrapatha*, as it is called, is holier still by some almost

infinitesimal account. Many of the chief Hindu gods and heroes here their names connected with the numerous places of sanctity in *Vstrapatha*. The gods have consented to reside here permanently, and the heroes have performed pilgrimages to *Girnar*.

“The priests who are to officiate in the ceremonies are the *Girnar Brahmanas*. Their ministry is strictly enjoined on the pilgrim. The number of this class of *Brahmanas* in *Kathiawad* is considerable, and a peculiar sanctity attaches to them; though it appears from the *Prabhasa Khanda* that they were not originally natives of *Kathiawad* but came from the foot of the *Himalaya*.

"The general name for the holy places about *Girnar* is *Vastrapatha*. It is not now in general use, but the following story from the *Mahatmya* relates how it came to have this name: -

[x p. 154, 155 Exhibit - 'C', Ibid]

James Burgess goes on to cite extract of such fabricated legends at p. 155, 156, 157 in detail.

[p. 155, 156, 157 - Exhibit 'C' - Ibid]

The Temple of *Amba* is another example, which was of *Jainas* but forcibly occupied by *Hindus*.

James Burgess describes in no uncertain terms:

"The *Jaina* temples are all beautifully clean inside; this of *Amba* is filthy with smoke, and seems scarcely ever to have been swept since the *Buddhists* or *Jainas* had to leave it"

(p. 175 para 1 lines 1 to 3, Exhibit - 'C' - Ibid)

Of course, the inscriptions at Mount Girnar establishes that *Amba* temple was of *Jainas* and not of the *Buddhists* as James Burgess further reports:

"*Neminath's* ... He had as tutelary goddess, or familiar *devi* - *Ambika Mata*, the same to whom the old temple on the first summit is dedicated. The Mango tree is also appropriated to him by the *Sravaks* as his "*Bo-tree*" whilst the *Sankha* or conch shell is his cognizance".

(p. 175 para 3 line 13, lines 16 to 19, Exhibit - 'C' - Ibid)

James Burgess further corroborates this:

"On the right hand of the South entrance door of the temple is a small shrine (C) of *Ambika Mata* the *Sasanadevi* or tutelary goddess of *Neminatha*; and (at D) by the side of the door of the outer *mandapa* is an *Amba* or *Mango* tree, the "*Bo - tree*" peculiar to the same *Jina*.

"As we descend from the court of *Neminatha's* temple by the northern door, we find some old inscriptions in the porch(N) partly destroyed, however, by the exfoliation of granite. So far we can make out the two longest run as follows: -

original inscription reproduced.

"... This states that in Sam 1215 (1158 A.D.) ... built a small temple of *Sri Ambika* who presides over the actions of men."

(p. 167 para 2 lines 1 to 4, para 3 lines 1 to 3, para 5 lines 1, 5, Exhibit - 'C' - Ibid)

James Burgess further describes an inscription there:

"... on the south of the court of *Neminatha's* temple ... Built into the wall, on the left of the entrance, is an inscription, imperfect at the upper left corner, but which Dr Buhler has kindly transliterated and translated as follows (facsimile Plate xxx):-

Transcript

4. I praise *Sri Ambika* who ... to destroy the obstacles (formidable) like elephants, and to fulfill the prayers of those endowed with spiritual merit, carries numerous mango - fruits, and places her son in her lap to fulfill the desire for a hundred sons ..."

(p. 159 para 2 lines 5, 6, para 3 lines 7, 8, 9 10, p. 160 xxx, p. 161, para 3 lines 1 to 4 - Exhibit 'C' - Ibid)

James Burgess further reports:

"There we find a pretty large temple of great age, which once had a large open portico (Plate xxxvi); but the outer line of columns has been bricked up and a *Sikhar* or spire added or renewed, containing an unsightly stone, the image of *Amba Mata* – a goddess of ancient times, one of the many forms of *Uma* or *Parvati*, whom Tod dignifies with the titles of "Universal Mother" and "Mother of the Gods" And though here she is now exclusively appropriated by *Hindus*. She has a shrine at the door of *Neminatha's* temple; an image of her is mentioned also among the works of *Vastupala* on Girnar; and an inscription thus celebrates her praise: -

"The destroyer of doubts and fears, the accomplisher of all human desires and wishes, who causes to be completed the designs of the devout – such a goddess is *Sri Mata Ambika*, the Sole Power whereby the prayers of mankind are fulfilled. To her be praise and glory"

[p. 174 para 4 line 7 to 14, para 5 lines 1 to 4, Exhibit 'C' - Ibid]

This leaves no scope for doubt that *Amba* Temple was built by Jain *Sravakas* and exclusively appropriated by *Hindus* in a chain of events of expansion.

Such attempts of conversion of Place of Worship of Jain religious denomination to Hindu denomination of religion are further brought to light by Colonel Tod and James Burgess.

Colonel Tod reports in 1822:

"Adjoining this is a temple said to have been founded by *Komer Pal*, of *Anhulwara* ... The Committee of Jain laymen, who superintended the affairs of the their churches, had commenced its restoration and part of the sanctum was completed when the bigotry of the great banker of these parts interposed to enshrine his own object of worship, the symbol of *Siva*' This was met by the only kind of opposition in the power of Jains in charge, who threatened self – immolation on the threshold. Here the matter rests ..."

(p. 392 para 3 lines 1, 2, 10 to 14, p. 393 para 1 lines 1, 2 Exhibit – 'E' - Ibid)

James Burgess details it out in his first Survey of Girnar Hills in 1869 at pp. 41 and 42 (Exhibit 'D') He elaborates it further in 1874 – 75 Archaeological Survey of Girnar Hills:

"The next and last temple to the north is *Kumarpala's*' ... Indeed towards the end of last century there was little of this temple standing, except the *mandapa* with it's beautiful pendentive and the pillars and lintels of the portico; and when the *sravakas* began to repair it they were suddenly and unexpectedly stopped; a wealthy and influential *sharaf* or banker devoted to the worship of *Siva*, resolved to install his favourite idol here. The *sravak*, it is said, threatened to perform the desperate ceremony of *dharna* – sitting at the door of the temple fasting until the desired boon was granted, or till the suitor perished when the sin of his death and its consequences would fall upon the occupants. Both parties were thus brought to a stand for a while. In 1824, however, *Seth Sri Pancha Honsraja Jetha* appears, from an inscription, to have been able to proceed with the restoration,"

(p. 168 para. 5 lines – 1, 4 to 13, Exhibit – 'C' - Ibid)

Numerous inscriptions (of A.D.1231) at triple temple of *Vasutpala* and *Tejapala* (Plates xxxiii and xxxvi, xv) describes:

"Adoration to the omniscient one ! May the *Nemi Jina*, with whom the lord gods are pleased..."

(p. 171 para 2 lines 1, 2 Exhibit – 'C' - Ibid)

"The holy place *Ujjanyanta* ornamented with the temple of *Neminatha* the lord of gods..."

(p. 172 para 3 lines 1, 2, Exhibit 'C' - Ibid)

"May this panegyric of the family of *Vastupala* remain safe through the grace of *Amba* and of the prosperous *Nemi*, the lord of three worlds?"

(p. 173 para 3, lines 4 to 6, Exhibit 'C' - Ibid)

### 3. GROUND

In spite of existing numerous inscriptions at Girnar hills on *Neminatha* and the fact that neither any of inscriptions or antiquity or sculptures or image at 5<sup>th</sup> peak or anywhere at Girnar hill nor archaeological or historical findings make even remote indication of existence of *Guru Dattatraya* at Girnar hill, the footmarks, (*charan*) and image of *Neminatha* at 5<sup>th</sup> peak are fibrously claimed to be of *Guru Dattatraya*, which in fact are of '*Guru Dhatarie* or *Dattatri*' (i.e. *Neminatha*). The issue has to be decided in the light of established blemished criminal record of Defendants, recorded by historians and archaeologist in early and later nineteenth century.

### ISSUE - 4

Which religious denomination exclusively undertook maintenance and up keep of the said religious shrine on 5<sup>th</sup> Peak of Mount Girnar uninterruptedly till late twentieth century A.D. without any dispute or counter claim by any other religious denomination?

### 4. EVIDENCE

5<sup>th</sup> Peak of Girnar has been mentioned as *Guru Dhatarie* in early nineteenth century by Colonel Tod (1822) as it was called till then and later converted by *Girnar Brahmans* fibrously as *Guru Dattatraya*. Thus, it was recorded as *Guru Dattatraya* or *Neminatha* peak and not alone as *Dattatraya* by the Archaeological Survey of Western India in its Surveys in 1869 and 1874-75. James Burgess during survey of 5<sup>th</sup> peak of Girnar in 1869 and again in 1874 - 75, found a naked ascetic (i.e. a *Digamber Muni*) who ministered the footprints (*charan*) of *Neminatha*.

Colonel Tod mentions a local notable, who ought to be a *Jaina Shravak*, who made access to Girnar hills through jungle. Centuries after king *Dhatarie* or *Dattatri*, *Jaina Shravaks* and naked ascetics (*Digamber Munies*) continued to minister and maintain the *Neminatha* shrine. Due to its height, pavilion or canopy or *chahatrie* or *deri* at 5<sup>th</sup> peak have remained prone to damage by lighting, as highlighted in order of princely state of Junagadh (para 6 Exhibit 'J'), and such occasions must have been occurred numerous times in the past millennium, and it would not have existed intact during James Burgess's visit to it in 1869 and 1874 -75, if *Digamber Shravaks* would not have undertaken maintenance of it from ancient times.

Since nineteenth century the charge of its maintenance and religious offerings as per *Digamber rituals* and ministration by *Digamber Jain pujaries* (priests) was entrusted to Shri Bandilal ji Digamber Jain Karkhana at Girnar - a local arm of devotee Digamber Jain denomination of religion in India. It repaired and restored the canopies or *chhatries* or *deries* over *charan* (footprints) and image of *Neminatha* at 5<sup>th</sup> Peak of Girnar, damaged due to lighting in 1879 A.D., with requisite permission of Nawab of princely state of *Junagadh* and *Bhavnagar* and again in 1902 A.D. and 1914 A.D with permission of the said state.

Had the said *chhatries* or *deries* would have been over footprints and image of *Guru Dattatraya* to whom neo - *Girnar Brahmans* claim to be a separate deity of their religious denomination, their predecessors must have attempted or made a claim to repair the canopies or *chhatries* or *deries* and objected to the right of Shri Bandilal ji Digamber Jain Karkhana to undertake its repairs and restoration before the Nawab - the Aap Saheb of Junagadh but nowhere any record of erstwhile Junagadh State shows so.

Had it not been the place of Worship of *Jainas*, the Princely State of *Junagadh* and *Bhawalpur* would not have granted permission to Shri Bandilal Ji Digamber Jain Karkhana to repair and restore the *deri* or *chhatries* or canopies on the footmarks (*charans*) and image of *Neminatha* at 5<sup>th</sup> peak. Vide Order No. 3680 of 16 June 1902 permission was granted to Shri Bandilal Ji Digamber Jain Karkhana as a religious public charity without property rights. (Exhibit 'I'). In

other words, it was treated as a historical monument of worship under protection of the princely State. No other religious denomination ever claimed maintenance rights or objected its up keep by Digamber *Jainas*. Again the said *Deri* or Chhatris was damaged due to lighting and again Shri Bandilal ji Digamber Jain Karkhana was granted permission to repair and restore it, without any counter claims by any other religious denomination, vide order no. 2311 dated 20 December 2014 A.D. by princely State of Junagadh and Bhawalpur .

The order reads as follows:

**"The *deri* shall be constructed at the sole cost of the Petitioner in Karkhana of *Digamberi Shravaks* purely as an act of public charity without reservation of any right or interest in the same.**

**"2. Electric conductor or some appliances of the kind should be fitted up with a view to obviate chances of recurrence of the kind as the *deri* is situated very high at the top of Girnar hill. The recurring expenses if any should be borne by the Place (the Palace of *Riyast*) and not by the Karkhana."**

[Order No. 2311 dated 20.12.2014" of State of Junagadh – Exhibit 'J' – p. 2, para. 5 & 6]

After merger of princely State of Junagadh and Bhavnagar in the Union of India, the newly created State of *Saurashtra* again granted permission to Shri Bandilal Ji Digamber Jain Karkhana vide order of 24 July, 1950 to carry out certain repair work at 5<sup>th</sup> peak with the stipulation that it did not create any ownership right.

It draws the inference that Shri Bandilal Ji Digamber Jain Karkhana, Girnar - an arm of Digamber Jain denomination of religion, was constantly recognized by the State as the trustee to minister, maintain and offering of religious services at the shrine of *Neminatha* at 5<sup>th</sup> peak without any property rights.

Shri Bandilal Ji Digamber Jain Karkhana was registered on 6 October 1965 under Bombay Public Trust Act under registration entry No. A – 959 recording 'under schedule II-A – Memorandum of Immovable property of Public Trusts. Rule 6, (7), 13-B & 16', which includes worship places of Digamber Jain denomination of religion at Girnar hill including shrine of *Neminatha* at 5<sup>th</sup> peak of Girnar.

"The trust so registered was in respect of 1 to 8 entry of immovable property of Trust. Entry 7 is regarding Girnar hills. – Survey No. 75, include 'a Pair or *Charan* of Lord *Neminath* – 22<sup>nd</sup> *Tirthankar* – in *deri* and carved image in the passage on the fifth *Tonk* and Entry 8 pertains to *Shashwan* (Junagadh) / - Survey No. 89 include 1 Pair of *Charan* of Lord *Neminath* – 22<sup>nd</sup> *Tirthankar* in the *deri*. 1 Pair of *Charan* of Lord *Neminath* – 22<sup>nd</sup> *Tirthankar* – outside and along the *deri*."

In the note it was stated: "N.B. these places mentioned in items 7 and 8 are holy places of worship by Digamber Jain situated on the Girnar hill and *Sheshvan* and the Digamber Jains are accordingly entitled to the same."

[p. 2 Sr. 7 paragraph 6 lines 1 to 6 – Exhibit – K – Bandilal Digamber Jain Karkhana Trust Registration 1965 containing pp. 1, 2]

It implies that for protected monument at 5<sup>th</sup> peak of Girnar State is the custodian and right to minister it remained with the trust. Thus, Shri Bandilal ji Digamber Jain Karkhana became the legal trustee, short of ownership, Vide Entry No. 7 of shrine of *Neminath* at 5<sup>th</sup> peak - a protected monument. Claimants of other religious denomination for its trusteeship after 1965 in later dates are non – entity in law in view of above given chronological events, which are in records of Government of the day.

A trust property already registered in name of a Trust cannot be claimed to be their trust property by other religious domination in later dates and if such Trust is inadvertently registered, becomes void.

#### 4. GROUND

That the records prove that Digamber Jain denomination of religion maintained the *Neminatha* shrine at 5<sup>th</sup> peak of Girnar from before Christ era. Thus, act of Assistant Charity Commissioner, Rajkot to register trust property vide registration no. A – 1684 in later date in favour of 'Shri *Neminath / Guru Dattatraya Shikhar Girnar pahad*' of Shri Amrit Giri was totally illegal. A protected monument of worship of other religious denomination cannot be registered as trust property of other religious denomination and is in contravention of provisions of Gujarat Ancient Monuments and Archaeological Sites and Remains Act, 1965 as well as the Places of Worship (Special Provisions) Act, 1991 and liable to be set aside.

The subsequent proceedings change enquiry no. 1284 / 1974 filed by Shri Bandilal ji Digamber Jain Karkhana against it and rejection thereof by Assistant Charity Commissioner vide order dated 27 April 1976, Appeal No. 50 / 1976 against it by Government of Gujarat, and Appeal No. 51/1976 by Shri Bandilalji Digamber Jain Karkhana was filed and admitted by Joint Charity Commissioner vide order dated 29 June 1977 reminding it to Assistant Charity Commissioner for re-hearing, which is pending to date and registration of trust namely 'Shri *Neminath / Guru Dattatraya Shikhar Girnar pahad*' is liable to abate under section 3 of the Gujarat Ancient Monuments and Archaeological Site and Remains Act, 1965 being inherited protected monument of worship as well as the Places of Worship (Special Provisions) Act, 1991.

#### ISSUE – 5

What is the Status of *Guru Dhatarie* or *Guru Dattatraya* or *Neminatha* peak (5<sup>th</sup> Peak of Girnar) under Law and Rules framed there under and what actions of Petitioners and Defendants are permissible under law?

#### 5 FACTS:

- i) That *Guru Dhatarie* or *Guru Dattatraya* or *Neminatha* peak (5<sup>th</sup> peak of Girnar) was notified on 6 December 1932 as Protected Monument by the erstwhile princely State of Junagarh and Bahawalpur under 'Ancient Monuments Preservation Act of Junagadh State, 1932'.
- ii) After merger of princely state of Junagadh and Bahawalpur in Union of India the then State of *Saurashtra* notified on 22 May 1950 *Guru Dhatarie* or *Guru Dattatraya* or *Neminatha* peak (5<sup>th</sup> Peak of Girnar) as 'Protected Monument'.
- iii) After the merger of *Saurashtra* State in newly formed Gujarat State, the Gujarat Government promulgated the 'Gujarat Ancient Monuments and Archaeological Sites and Remains Act, 1965 ( Gujarat Act No. 25 of 1965) and under section 3 of the Act, which reads as follows, *Guru Dhatarie* or *Guru Dattatraya* or *Neminatha* peak (5<sup>th</sup> peak of Girnar) remained 'Protected Monument' in continuity of Statues and remains so to date:

“Protected Monuments.

“3 All ancient and historical monuments in the State of Gujarat, which before the commencement of this Act have been declared by or under the *Saurashtra* Ancient Monuments Preservation Act, 1956 to be protected monuments, and have not been declared by or under any law made by Parliament to be of national importance, shall be deemed to be protected monuments for the purposes of this Act.”

- iv) Under the Act, the State Government issued a notification prescribing 100 meters around protected monument as 'Prohibited Area' and further 200 meters as 'Regulated Area.

#### RULES PROVIDE:

No person other than an archaeological officer shall undertake any mining operation or any construction – (a) in a prohibited area, or

(b) In a regulated area,

Expect under and in accordance with the terms and conditions of a license granted by the designated authority.

In view of rules applicable in even prohibited or regulated area, no one whomsoever can undertake any construction in 'Protected Monuments' and an archaeological officer can only preserve, conserve, renovate and reconstruct the damaged part of monument in the original architecture as it stood before, and under the Act none has authority to grant permission to whomsoever to undertake any construction or reconstruction or alteration in the 'Protected Monument'

## 5. GROUND

i) *Guru Dhatarie* or *Guru Dattatraya* peak of Girnar is covered under section 3 of the Gujarat Ancient Monuments and Archaeological Sites and Remains Act 1965, inheriting this protected monument so declared by or under the *Saurashtra* Ancient Monuments Preservation Act 1956, (*Saurashtra* Government inheriting this protected monument declared by or under the 'Ancient Monuments Preservation Act of Junagadh State, 1932, and initially declared protected monument on 6 December 1932 by the Princely State of Junagadh and Bahawalpur).

Shri Bandilal ji Digamber Jain Karkhana, Girnar, an arm of religious denomination of Digamber Jains, did mistake by not making representation of its ownership of *Guru Dhatarie* or *Guru Dattatraya* or *Neminatha* peak of Girnar when it was declared protected monument by and under the 'Ancient Monuments Preservation Act of Junagadh State, 1932 on 6 December 1932 as they were, content with the State's Policy of allowing them to minister the Shrine of *Neminatha* by their Digamber *Munis* (naked ascetics as mentioned by James Burgess in Exhibit 'C' and 'D'), *Pujaries* (Priests), performing *Pujas*, (offerings) as per Digamber Jain rituals, up keep and maintenance rights, and being a liberal society at the same time facilitating pilgrims of other religious denomination to pay their respects to *Neminatha* in guise of *Guru Dhatarie* as well as welcoming tourists.

The same attitude prevented this peaceful society to claim ownership when erstwhile *Saurashtra* State declared the *Guru Dhatarie* or *Guru Dattatraya* or *Neminatha* peak (5<sup>th</sup> peak of Girnar) as protected Monument on 22 May 1950 as they continued to enjoy rights to minister and maintain it and there were no perceived threats of encroachment from other denomination of religion.

There was no scope to represent ownership rights under section 4 of the Gujarat Ancient Monuments and Archaeological Sites and Remains Act, 1965, in case of such protected monuments declared so under section 3 of the Act.

But apprehending trouble from other denomination of religion, they registered Shrine of *Neminatha* at 5<sup>th</sup> peak in Shri Bandilal ji Digamber Jain Karkhana Trust under Bombay Trust Act, as applied to Gujarat State, on 6 October 1965 vide Entry 7, Survey No. 75.

iii) Since *Guru Dhatarie* or *Guru Dattatraya* or 5<sup>th</sup> peak of Girnar was inherited protected monument under Section 3 of the Act Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 18, 20, 22, are not applicable to protected monument under Section 3, and the State Government and its designated authorities do not enjoy any lawful authority under above mentioned sections in case of protected monument under Section 3. Sections 23, 24, 25, 26, 27 under chapter IV are not relevant.

iv) Section 40 provides as follows:

**"40 – Save as expressly provided the provisions of this Act shall be in addition to, and not in derogation of the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, in so far as it relates to entry 40 in list III in the Seventh schedule to the constitution of India, or any other law relating to that entry for the time being in force."**

It implies that Central Act and Rules framed there under and norms prescribed and followed by the Archaeological Survey of India, to which Gujarat Act and Rules framed under it and norms followed by the Archaeological Department of Gujarat are identical, and no contrary decisions and actions can be taken in derogation of the Central Act, and rulings of the Supreme Court in Matter of Central Act are binding in Matter of Gujarat Act.

v) In light of above, it is aptly clear that:

a) 'Protected Monument' is a separate entity from 'Protected Area' or controlled area, which embraces its entire boundary area and provisions thereof does not empower the State Government or its designated authority to apply them on 'Protected Monument.'

b) In protected monument even an archaeological officer cannot construct new building or erect or insert new objects or apply other architectural form, his mandate is to preserve, conserve, repair, restore and renovate it as it is and in case of decay recreate the part of monument in same form, and same architecture and by himself.

No permission can be granted to outside party to construct or reconstruct it or erect or insert foreign objects or alter its architectural character (or religious character, in case of a place of worship of a denomination of religion by other denomination of religion).

It is a settled position of law and cannot be deviated under any pretext.

c) That thus, contrary to earlier rightful decisions of Archaeological Department of Gujarat that reconstruction of *Chhatries* or *deries* on 5<sup>th</sup> Peak of Girnar struck by lightning will be done by the Department itself, grant of permission by Archaeological Department of Gujarat to other religious denomination to undertake construction of *chharties* or *deries* on *Guru Dattatraya* or *Neminatha* peak (5<sup>th</sup> peak of Girnar), believed to be in back date that is 2 June 2004, is beyond the delegated authority under the Gujarat Act and thus *de novo*, a clear act of abetment and criminal conspiracy with Defendants of Writ Petition filed against them by Petitioners on 7 June, 2004 in High Court of Gujarat at Ahmedabad, and in contempt of Status Quo Order passed by the Hon'ble Court on 8 June, 2014.

This act of clear abetment and criminal conspiracy is bound to be set aside and responsibility fixed for penal action.

vi) That the framers of the Constitution were very much conscious of the need of protecting the monuments and places / objects of artistic and historic importance. This is why Article 49 was incorporated in the Directive Principles of State Policy (Part IV of the Constitution) whereby an obligation has been imposed on the State to protect every monument or place or object of artistic or historic interest declared by or under law made by Parliament.

For the Sake of reference Article 49 is reproduced hereunder:

**"49 Protection of Monuments and places and objects of National importance – It shall be the obligation of the State to protect every monument or place or object of artistic or historic importance, declared by or under law made by Parliament to be of national importance from spoliation , disfigurement , destruction, removal, disposal or export as the case may be."**

"In 1951, Parliament enacted the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National importance) Act, 1951. After 7 years, Parliament enacted the Ancient Monuments and Archaeological Sites and Remains Act, 1958.

**Similar legislations have been enacted by various State legislatures with reference to Entry 12 list II of the Seventh Schedule of the Constitution. The Gujarat Ancient Monuments and Archaeological Sites and Remains Act 1965 is one of them mandated to protect every monument or place or object of artistic or historic interest**

and declared or under law made by Gujarat Legislature Act as enshrined in Article 49 of the Constitution.

Protected Monument of shrine of *Neminatha* at 5<sup>th</sup> peak of Girnar, as proven beyond doubt by evidences at exhibits (A, B, C, D, E, F, H), is the most ancient monument in country, not only among protected Gujarat Monuments but even among protected monuments of national importance. It executive fails, it as the Solomon duty of the Hon'ble Court to protect spirit of the Article 49 of Directive Principles of State Policy and enactments promulgated to implement the same and under Article 26 of the Constitution.

May their Lordships, view this petition in light of above context and pass such directives as their Lordships are pleased to protect the spirit of the Gujarat Act and Constitution

vii) That the Division Bench of GS Singhvi J and AK Ganguly J. of Supreme Court of India – in Civil Appeal No. 2431 of 2006 (ASI V. Narender Anand & Ors. ) held that the permission to construct buildings in the vicinity of protected monuments could only be given in 'exceptional circumstances provided public interest was core to it, making such exception.

viii) In light of above and the rule that only archaeological officer can undertake any construction even in 'Prohibited Area' the act of Archaeological Department of Gujarat granting permission to other denomination of religion for construction in protected monument is to be viewed seriously and the fact that construction, alteration, misuse, desecration and pollution is in existence from 2004 to date on protected monument *Guru Dhatarie* or *Guru Dattatraya* or *Neminatha* peak (5<sup>th</sup> peak of Girnar) calls for a summary action by the High Court.

ix) That in contempt of status Quo orders of High Court of Gujarat at Ahmedabad dated 8 June 2004 and otherwise also in contravention of the Gujarat Ancient Monuments and Archaeological Sites and Remains Act, 1965, all constructions, alterations, destruction, misuse, desecration and pollution and erection of foreign object of Statue of *Dattatraya* on *Guru Dhatarie* or *Guru Dattatraya* or *Neminatha* peak (5<sup>th</sup> peak of Girnar) – which changes original architectural and religious character of *Guru Dhatarie* or *Guru Dattatraya* or *Neminatha* peak, contrary to status report of the site in question of the Archaeological Survey of Western India, 1874 – 75 (Exhibit 'C' and 'D') – are liable to be removed forthwith with the directions to the Department of Archaeology of Gujarat to restore it to the descriptions given in the Archaeological Survey of Western India, Survey Report 1874 – 75 (exhibit 'C') and as per original photographs of *Chharties* or *Deries* prevailing there, submitted in the High Court of Gujarat at Ahmedabad.

x) Under Section 17 of the Gujarat Act, State shall prohibit or restrict the construction in controlled area, and under section 21, no person including the owner or occupier of a protected area (which is not the case here) shall construct, the permission of construction by Archaeological Department of Gujarat in a protected monument being *void* and *de novo*, and State being silent spectator of violations of Gujarat Act from 2004 to date are unlawful acts and attracts provisions of Section 31 of Gujarat Ancient Monuments and Archaeological Site and Remains Act, which reads as follows:

**"31-(i) Whoever –**

**i) destroys, removes, injures, alters, defaces, imperils or misuses a protected monument or**

provides for conviction, punishment with imprisonment, and under Section 33 makes it a cognizable offence, the actions of granting permission to construction in a Protected Monument to Defendant by Department of Archaeology of Gujarat; and Government of Gujarat and its designated authorities - Department of Archaeology and Collector of Junagadh not preventing construction, alteration, injury, defacement, imperilment, misuse

and encroachment in the said Protected Monument from 2004 to date; and prohibiting lawful trustees of other denomination of religion i.e. *Digamber Jains* to perform their traditional religious offerings; and acts of violence by Defendant against pilgrims of denomination of religion of *Digamber Jains*, of which FIRs have been lodged; and failure of State and Collector of Junagadh to prevent violence against pilgrims and tourists; and blanket violation of States Quo Orders of Hon'ble High Court of Gujarat dated 8 July, 2004 are clearly indicative of abetment and criminal conspiracy and attracts provisions of Section 31 against them, and Hon'ble Court may be pleased to Order or direct action against the Defendants.

xi) That to facilitate preservation and conservation including restoration, repair and renovation of decaying part or parts of protected monument by an archaeological officer, Section 15 of the Gujarat Act provides as follows:

**"15 The Director may receive voluntary contribution, towards the cost maintaining a protected monument, and may give orders as to the management and application of any funds so received by him;**

**"Provided that no contribution shall be applied to any purpose other than the purpose for which it was contributed?"**

In case of a Place of Worship, Section 15 has to be read in light of section 16(1) of Gujarat Act and Article 26 of the Constitution on 'Freedom to manage religious affairs.' It implies that the FIRST RIGHT to offer contribution for restoration of Shrine of *Neminatha* at 5<sup>th</sup> peak of Girnar shall be of the petitioners, and only if they decline the contribution may be received from the other parties.

#### ISSUE - 6

i) What statutory duty to state has been assigned under the Gujarat Ancient Monument and Archaeological Site and Remains Act 1965?

ii) Whether conversion of the religious character of Place of Worship, i.e. Shrine of *Neminatha* at 5<sup>th</sup> Peak of Girnar as existing on the 18<sup>th</sup> day of September, 1991 is in contravention of Sections 2(C) and 3 of the Places of Worship (Special Provisions) Act, 1991 and defendants are liable for penal action under Section 6 (1), (2), (3) thereof?

#### 6. GROUND

i) Section 16(i) of the Gujarat Ancient Monuments and Archaeological Sites and Remains Act, 1965 is reproduced hereunder for reference:

**"Protection of place of Worship from misuse, pollution or desecration:**

**16(i) A protected monument maintained by the state Government under this Act, which is a place of worship or Shrine, shall not be used for any purpose inconsistent with its character."**

Set 16(2) is not applicable as it is an inherited protected monument under section 3, not acquired under section 13 or section 5, it is obligatory on the part of Collector of Junagadh to ensure protection of its character and from pollution or desecration, its religious practice and observances in relation thereto, by prohibiting the entry of any person not entitled so to enter by the religious usages of the community by which the monument or part thereto is used.

For clarity section 2(a) and (b) are reproduced hereunder:

**"16(2)**

**(a) by prohibiting the entry therein except in accordance with the conditions prescribed with the concurrence of the persons, if any, in charge of the said monument or part thereof, and connected with any religious practice or observances in relation thereto, of any person not entitled so to enter by the**

religious usages of the community by which the monument or part thereof is used, or

(b) By taking such other action as, he may think necessary in this behalf."

It is established fact evincing from historical, antiquarian and architectural evidences that the foot marks or *charan* and Image carved in rock is of *Neminatha* and ministered by naked ascetics and *Shravaks* of Digamber Jain denomination of religion since before Christ era to date. It is an most ancient archaeological monument and the findings of the Archaeological Survey of Western India are no doubt to be treated final words being objective government records.

Shri Bandilal ji Digamber Jain Karkhana is local arm of the Digamber Jain denomination of religion, and is trustee and in charge of the said monument. It has traditional rights to religious practice or observances in relation thereto. It has always allowed other pilgrims to pay their respects and visit by tourists.

But the true picture today is *Mahants* of other denomination of religion have encroached the shrine due to apathy of protectors of protected monument. The Defendant has desecrated the *Charan* (or foot prints) by covering it by flowers, coconuts and *Sindur* damaging the ancient artifact and creating pollution just for the sake of profit coming from offerings by pilgrims of other denomination of majority religion. Pilgrims of Digamber Jain denomination of religion are beaten and thrown out and local police side with them. Thus, the place of Worship or Shrine has been forcibly taken from that denomination of religion to which it belongs in spite of status Quo Orders of the High Court of Gujarat and the defendants have violated the provisions of the Gujarat Ancient Monument and Archaeological Sites and Remains Acts, 1965 as well Places of Worship (Special Provisions) Act 1991 and Article 26 of the Constitution in abetment and criminal conspiracy with each other and liable to be penalized under provisions of said Gujarat Act and Places of Worship (Special Provisions) Act 1991 and Criminal Procedure Code.

#### ISSUE 7

Whether the actions and deeds of Defendants individually or / and in abetment and criminal conspiracy with each other are in violation of the Places of Worship (Special Provisions) Act 1991 and Article 26 of Constitution, besides the Gujarat Ancient Monuments and Archaeological Sites and Remains Act, 1965?

- i) Section 3 of The Places of Worship (Special Provisions) Act 1991 is reproduced for sake of reference as hereunder:

**"Bar of conversion of places of worship – No person shall convert any place of worship of any religious denomination or any section thereof into a place of worship of a different section of the same religious denomination or of a different religious denomination or any section thereof."**

The aforesaid Act came into force on 18<sup>th</sup> September 1991 as provided in the Act as hereunder:

**"Act 42 of 1991**

**"The Places of Worship (Special Provisions) Bill having been passed by both the Houses of Parliament received the assent of the President on 18<sup>th</sup> September 1991. It came on the Statue Book as THE PLACES OR WORSHIP (SPECIAL PROVISIONS) ACT, 1991 (42 of 1991)."**

- ii) That conversion of any place of worship of any religious denomination or any section thereto into a place of worship of a different section of the same religious denomination or of a different religious denomination is prohibited. Its

**contravention is punishable with imprisonment up to three years and also with fine.**

iii) Section 6 and 7 of the aforesaid Act reads as follows:

"6. Punishment for contravention of section 3. – (1) whoever contravenes the provisions of section 3 shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) Whoever attempts to commit any offence punishable under sub-section (1) or to cause such offence to be committed and in such attempt does any act towards the commission of the offence shall be punishable with the punishment provided for the offence.

(3) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under sub-section (1) shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code, be punishable with the punishment provided for the offence.

7. Act to override other enactments. – The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than this Act."

iv) It is not disputed that it is a place of worship. It contains Shrine of *Neminatha* wherein James Burgess (Exhibit 'C' and 'D') found 'a heavy bell hung and a naked ascetic (*Muni* or Saint of *Digamber Jain* denomination) ministering it.

Colonel Tod (Exhibit 'E') and James Burgess (Exhibit 'C' and 'D') eye – witnessed *Shravaks* (*Digamber Jain*) pilgrims paying respects to it.

Historians and antiquarians have stated that it was a sacred place of pilgrimage of *Digamber Jain* denomination of religion even prior to days of *Asoka* (3<sup>rd</sup> Century B.C). Thus, it is a case of conversion of place of worship of the *Digamber Jain* denomination of religion in Hindu religious denomination by the Defendants in abetment and criminal conspiracy and attracts penal action under section 6 (i), (2) and (3) under provision the Places of Worship (Special Provisions) Act 1991 which override other enactments.

v) The Places of Worship (Special Provisions) Act, 1991 prohibits change of character, form of worship and ownership or custodianship of any religious place of worship and in the instant case in light of Section 4 of the said Act, is in force with effect from 18<sup>th</sup> September, 1991. On this date the place of worship under reference was without any dispute under trusteeship (sort of ownership because of being protected monument), ministration, performance of worship as per rituals of *Digamber Jain* denomination of religion and ministered by its *Pujaris* (Priests) and pre-dominantly *Shravaks* (*Digamber Jain* denomination of religion) and naked ascetics (*Digamber Jain Muni* or Saints) paid prayers there without any hindrance and encroachment and without any counter claims of other denomination of religion. Thus, it is liable to be restored to original denomination of religion of *Digamber Jains* as encroachments arose only dominantly in the start of 21<sup>st</sup> Century and definitely after 18<sup>th</sup> September 1991.

vi) That the Article 26 grants the fundamental rights to citizens, which is reproduced below for sake of reference:

### **"Freedom to manage religious affairs**

**26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right –**

**(a) To establish and maintain institutions for religious and charitable purposes;**

- (b) To manage its own affairs in matters of religion;
- (c) To own and acquire movable and immovable property; and
- (d) To administer such property in accordance with law. ”

The Shrine of *Neminath* at 5<sup>th</sup> peak of Girnar was established by king *Dattātri* [*Dhatarie*] (James Burgess – Exhibit ‘C’ and ‘D’) – the first disciple of *Neminath* – twenty – second *Tirthankar* of Jain denomination of religion – and *Shravaks* (followers of *Digamber Jain* denomination of religion) ministered and offered prayers as per their relics no doubt Before – Christ era to date (Evidence Exhibits ‘A’, ‘B’, ‘C’, ‘D’ ‘E’ ‘F’, ‘I’, ‘J’, ‘K’) and continued to be in absolute possession and maintenance till the advent of twenty-first century. Hence, they have fundamental right

- a) To establish and maintain institutions (which includes places of worship) for religious and charitable purposes;
- b) To manage its own affairs in matter of religion;

And the Hon’ble Court of Judicature is protector of the Fundamental Rights of Citizens under the Constitution and is preyed upon to enforce it to *Digamber Jain* denomination of religion.

## ISSUE 8

For what relief parties to the litigation are entitled?

## 8. PRAYER

The Petitioners, therefore, pray that:

- (A) Your LORDSHIPS be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order and / or direction and be pleased to direct the Respondents to restore the Shrine of *Neminatha* - twenty – second *Tirthankara* of Jain denomination of religion, at the 5<sup>th</sup> peak of Girnar to its original religious and architectural character;
- (B) Your LORDSHIPS be pleased to issue a Writ of Prohibition or any other appropriate Writ, Order or / and direction by prohibiting the Respondents from occupation and desecration of Shrine of *Neminatha* forthwith;
- (C) Your LORDSHIPS be pleased to issue a direction to Respondents to restore the Shrine of *Neminatha* to its original and lawful Trustee– the Petitioner No. 1 and *Digamber Jain* religious denomination;
- (D) Your LORDSHIPS be pleased to issue a Order and / or direction to Charity Commissioner of Gujarat to abate proceedings of any trust of later date, other than Shri Bandilalji Digamber Jain Karkhana Trust Registered under Bombay Trust Act vide registration no. 959 on 6 October 1965;
- (E) Your LORDSHIPS be pleased to issue a direction to Respondents to provide strict police protection to the Trustee and its Agents / Servants / Officers, *Munis* (Saints) and pilgrims of Jain denomination of religion for managing, ministering and offering of prayers at *Guru Dhatarie* or *Guru Dattatraya* or *Neminatha* peak (5<sup>th</sup> peak of Girnar) as per their rituals;
- (F) Your LORDSHIPS be pleased to direct the Respondents to remove all new constructions, idol or idols, erections, insertions, modifications, alterations, fittings and foreign objects other then description of Shrine by Archaeological Survey of Western India;
- (G) Your LORDSHIPS be pleased to direct the Respondents to restore the *deri* (or *chhatre* or *canophy*) in its original form and architecture;

- (H) Your LORDSHIPS be pleased to issue a Writ a of Prohibition or Order and / or direction to refrain from any occupation, construction, erection, installing any idol and alteration of original character of Shrine of *Neminatha* in what so ever manner;
- (I) Your LORDSHIPS be pleased to issue direction that none other than an archaeological officer may carry out preservation, conservation, repair, reconstruct and recreate at 5<sup>th</sup> peak of Girnar;
- (J) Your LORDSHIPS be pleased to issue order and / or direction to State of Gujarat and its officers / Servants / Agents and designated authorities – to perform their Statutory Duties in strict accordance of the Gujarat Ancient Monuments Archaeological Sites and Remains Acts, 1965 and Rules framed there under;
- (K) Your LORDSHIP be pleased to penalize the Respondents for violation and contravention, in abetment and criminal conspiracy, of the Gujarat Ancient Monuments and Archaeological Sites and Remains Act, 1965 and The Places of Worship (Special Provisions) Act, 1991:
- (L) Your LORDSHIPS be pleased to award exemplary costs from the Respondents;

**Index of Evidence Exhibits**  
**being Grounds on Settlement of Issues**

Evidence Exhibits No.	Name of Exhibit	Containing Pages From To	Referred Pages Para Line Cited for Evidence
A	ON YUAN CHWANG'S TRAVELS IN INDIA 629-645 AD. VOL. II BY THOMAS WATTERS 1905	TITLE 1 2 X XI 248 249 328 329 348 349 356 357	Exhibit A [P.248, Para 3 lines 1 to 2 – [p, 249 para 1 lines 3 to 12, Bottom, lines 1, 3]
B	SI – YU – KI BUDDHIST RECORDS OF THE WESTERN WORLD TRANSLATED FROM THE CHINESE OF HIEUN TSIANG A.D. 629 BY SAMUEL BEAL PROFESSOR OF CHINESE UNIVERSITY COLLEGE LONDON 1884	TITLE 1 2 XVII XV 268 269 336 337	Exhibit – 'B' [p. 269, para 2 Bottom Right, para 1]
Evidence Exhibits No.	Name of Exhibit	Containing Pages From To	Referred Pages Para Line Cited for Evidence
C	ARCHEOLOGICAL SURVEY OF WESTERN INDIA REPORT ON THE ANTIQUITIES OF KATHIAWAD AND KACHH BEING THE RESULT OF THE SECOND SEASON'S OPERATION OF THE ARCHEOLOGICAL SURVEY OF WESTERN INDIA 1874- 75 BY JAMES BURGESS ARCHEOLOGICAL SURVEYOR AND REPORTER TO GOVERNMENT, WESTERN INDIA LONDON INDIA MUSEUM 1876	TITLE IV VII A B 1 X.154 158 PLATE XXX 159 164 PLATE XXXI 165 166 PLATE XXXII 167 168 PHOTO PLATE XXXIII XXXIV 169 170 PLATE XV 171 174 PLATE XVI 175 176	Exhibit 'C' [p. 175 para 2 line 14, para 3 lines 1 to 3, lines 14 to 16, Plate xxxiv, Plate xv, Plate xvi] [p. 175, para 2 lines 13, 14, lines 17 to 20, para 3 lines 1 to 3, 4, 5 pp] (p. 175. Para 3 lines 14 to 16). para 3 lines 6 to 11, 19 to 20 [x p. 154, 155 [p. 155, 156, 157 (p. 175 para 1 lines 1 to 3, (p. 175 para 3 line 13, lines 16 to 19, (p. 167 para 2 lines 1 to 4, para 3 lines 1 to 3, para 5 lines 1, 5, (p. 159 para 2 lines 5, 6, para 3 lines 7, 8, 9 10, p. 160 xxx, p. 161, para 3 lines 1 to 4 [p. 174 para 4 line 7 to 14, para 5 lines 1 to 4,] (p. 168 para. 5 lines – 1, 4 to 13, (p. 171 para 2 lines 1, 2 (p. 172 para 3 lines 1, 2, (p. 173 para 3, lines 4 to 6 )

Girnar Evidence

D	NOTES OF A VISIT TO SOMNATH, GIRNAR AND OTHER PLACES IN KATHIAWAD IN MAY, 1869 BY JAMES BURGESS ARCHEOLOGICAL SURVEY OR AND REPORTER TO GOVERNMENT, WESTERN INDIA BOMBAY GAZETTE BOMBAY 1869	TITLE 1 3 I VIII XII ORIGINAL TITLE 36 57	Exhibit 'D'  [V p. 37 para 1 lines 2 to 6] [p. v, 38 para 3, lines 1, 3 to 5] [p. 50 para 2 lines 1 to 2, p. 51 para 1, lines 2 to 5]
E	TRAVELS IN WESTERN INDIA EMBRACING A VISIT TO THE SACRED MOUNTS OF THE JAINS. AND THE MOST CELEBRATED SHRINES OF HINDU FAITH BETWEEN RAJPOOTANA AND THE INDUS BY LT. COLONEL JAMES TOD 1822	TITLE I II 276 277 378 401	Exhibit 'E'  [xviii p. 394, Para 1 lines 1 to 2 . -] [p. xviii p. 398 para 2, lines 1 to 2, 5 to 7] [p. 276, para 3 lines 1 to 3] [p. 381, 382, p. 392 para 3 lines 1, 2, 10 to 14, p. 393 para 1 lines 1, 2].
F	INDIA DISCOVERED BY JOHN KEAY REPRINT BY ARRANGEMENT WITH WILLIAM COLLINS SONS & CO. LTD LONDON 1981	TITLE I II 164 165	Exhibit 'F'  [p. 164 para 1 line 1, para 2 lines 5 to 7, para 4 lines 1 to 6]
G	ASOKA THE BUDDHIST EMPEROR OF INDIA BY VINCENT A. SMITH INDIAN CIVIL SERVICE (RETD) OXFORD AT THE CLARENDON PRESS M CM XX	TITLE 128 131	Exhibit 'G'  [p. 129 para 3 lines 1 to 4 , p. 130 lines 1 to 2]
H	INDIAN HISTORICAL RESEARCHES THE ARCHITECTURAL ANTIQUITIES OF WESTERN INDIA BY COUSENS H. VOL. 9	TITLE I II 44	Exhibit 'H'  [p. 44 para 2 lines 11 to 14]
I	ORDER NO 3680 DATED 16 JUNE 1902 OF NAWAB OF PRINCELY STATE OF JUNAGADH 1902	1 3	Exhibit 'I'
J	ORDER NO 2314 DATED 20 DECEMBER, 2014 OF NAWAB OF PRINCELY STATE OF	1 3	Exhibit 'J'  Order No. 2311 dated 20.12.2014" of State of Junagadh — p. 2, para. 5 & 6)

## Girnar Evidence

	JUNAGA		
K	BANDILAL JI DIGAMBER JAIN KARKHANA TRUST DATED 30 OCTOBER 1961 REGISTERED 6 OCTOBER 1965 UNDER BOMBAY PUBLIC TRUST ACT BEING TRUSTEE OF 5 <sup>TH</sup> PEAK OF GIRNAR	1	2 Exhibit 'K' p. 2 Sr. 7 paragraph 6 lines 1 to 6

## THE CONSTITUTION OF INDIA

### *Right to Equality*

Equality before  
law.

14. The State shall not deny to any person equality  
before the law or the equal protection of the laws within the  
territory of India.

### *Right to Freedom of Religion*

Freedom of  
conscience and free  
profession, practice  
and propagation of  
religion.

25. (1) Subject to public order, morality and health  
and to the other provisions of this Part, all persons are  
equally entitled to freedom of conscience and the right  
freely to profess, practise and propagate religion.  
(2) Nothing in this article shall affect the operation  
of any existing law or prevent the State from making  
any law—  
(a) regulating or restricting any economic, financial,  
political or other secular activity which may be  
associated with religious practice;  
(b) providing for social welfare and reform or the  
throwing open of Hindu religious institutions of a  
public character to all classes and sections of Hindus.

*Explanation I.*—The wearing and carrying of *kirpans*  
shall be deemed to be included in the profession of the Sikh  
religion.

*Explanation II.*—In sub-clause (b) of clause (2), the  
reference to Hindus shall be construed as including a  
reference to persons professing the Sikh, Jaina or  
Buddhist religion, and the reference to Hindu religious  
institutions shall be construed accordingly.

Freedom to  
manage religious  
affairs.

26. Subject to public order, morality and health, every  
religious denomination or any section thereof shall have  
the right—  
(a) to establish and maintain institutions for  
religious and charitable purposes;  
(b) to manage its own affairs in matters of religion;  
(c) to own and acquire movable and immovable property; and  
(d) to administer such property in accordance with law.

Power of High  
Courts to issue

2[226. (1) Notwithstanding anything in article 32 3\*\*\*  
every High Court shall have power, throughout the

certain writs.

territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including 1[writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.]

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

2[(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard,

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which

the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.]

1[(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.]

# SERIES OF JAIN TEMPLES ON GIRNAR HILLS

