STATE CONTROL OVER HINDU RELIGIOUS INSTITUTIONS IN INDIA WITH SPECIAL REFERENCE TO TEMPLE ADMINISTRATION THROUGH VARIOUS DEVASWOM BOARDS IN KERALA

THESIS SUBMITTED TO

THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES

FOR THE AWARD OF DEGREE OF

DOCTOR OF PHILOSOPHY

BY

VIPIN DAS R.V.

UNDER THE SUPERVISION OF

DR. ANIL R. NAIR

THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES (NUALS)

NUALS CAMPUS, KALAMASSERY, KOCHI, KERALA, INDIA, PIN – 683503

NOVEMBER 2020

DECLARATION

I do hereby declare that this thesis entitled **"State Control over Hindu Religious Institutions in India with Special Reference to Temple Administration through Various Devaswom Boards in Kerala"** for the award of the degree of Doctor of Philosophy is the record of the original research work carried out by me under the guidance and supervision of Dr. Anil R. Nair, Associate Professor, National University of Advanced Legal Studies. I further declare that this work has not been previously formed the basis for the award of any degree, diploma, associateship, fellowship or any other title or recognition from any University/Institution.

VIPIN DAS R.V.

Kochi – 683503

Date: 05/11/2020

THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES (NUALS)

NUALS CAMPUS, HMT COLONY P.O.

KALAMASSERY, KOCHI, KERALA, INDIA, PIN – 683503

Dr. Anil R. Nair **Ph: +91-9847183640**

Associate Professor **Email: arn@nuals.ac.in**

CERTIFICATE

This is to certify that this thesis entitled **"State Control over Hindu Religious Institutions in India with Special Reference to Temple Administration through various Devaswom Boards in Kerala"** submitted by **VIPIN DAS R.V.** for the award of the degree of Doctor of Philosophy is to the best of my knowledge, a *bonafide* record of the research work carried out by him as part time research scholar at National University of Advanced Legal Studies under my guidance and supervision. I further certify that this thesis or any part thereof has not been submitted elsewhere for any degree.

Kochi – 683503 **Dr. Anil R. Nair**

Date: 05/11/2020 (Supervising Guide)

THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES (NUALS)

NUALS CAMPUS, HMT COLONY P.O.

KALAMASSERY, KOCHI, KERALA, INDIA, PIN – 683503

Dr. Anil R. Nair **Ph: +91-9847183640**

Associate Professor **Email: arn@nuals.ac.in**

CERTIFICATE

This is to certify that this thesis entitled **"State Control over Hindu Religious Institutions in India with Special Reference to Temple Administration through various Devaswom Boards in Kerala"** has been presented by Vipin Das R.V. in the pre-submission seminar held at National University of Advanced Legal Studies Kalamassery, Kochi, on 23/07/2016.

Kochi – 683503 **Dr. Anil R. Nair**

Date: 05/11/2020 (Supervising Guide)

THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES (NUALS)

NUALS CAMPUS, HMT COLONY P.O.

KALAMASSERY, KOCHI, KERALA, INDIA, PIN – 683503

Dr. Anil R. Nair **Ph: +91-9847183640**

Associate Professor **Email: arn@nuals.ac.in**

CERTIFICATE

This is to certify that all the corrections and modifications suggested by the Research Committee in Pre-submission Seminar have been incorporated in this thesis entitled **"State Control over Hindu Religious Institutions in India with Special Reference to Temple Administration through various Devaswom Boards in Kerala"** submitted by **VIPIN DAS R.V.** for the award of the degree of Doctor of Philosophy.

Kochi – 683503 **Dr. Anil R. Nair**

Date: 05/11/2020 (Supervising Guide)

ACKNOWLEDGEMENT

The work presented in this Ph.D. thesis is the result of the support and encouragement of numerous people including my Guide, mentors, well-wishers, friends, colleagues, family members and various institutions.

First and foremost, I would like to express my gratitude and heartiest deep-felt thanks to GOD (the Almighty), for giving me an opportunity to carry on research in this Great University and for such a very good Supervising Guide. I thank God for His blessings.

I would like to extend my sincere gratitude to my Supervising Guide, Dr. Anil R. Nair, for his dedicated help, advice, inspiration, encouragement and continuous support, throughout my Ph.D. His enthusiasm, integral view on research and mission for providing high-quality work, made this thesis working. I am extremely indebted to my guide, Dr. Anil R. Nair; this work would not have been possible without his support and encouragement, guidance and his endless kindness. His sympathetic attitude and scholarly guidance have inspired me at every stage of my efforts in the completion of this thesis. I am sincerely grateful to him for his devoted contribution in reviewing my progress, writing, making correction to improve and finalize the research papers as well as the thesis. I am really lucky to be associated with a person like Dr. Anil R. Nair in my life.

I wish to express my deep sense of gratitude and sincere thanks to our respected Vice Chancellor, Prof. (Dr.) K.C. Sunny, who has been a constant source of inspiration and the guiding light to NUALS. I take this opportunity to

sincerely acknowledge his visionary work for providing necessary infrastructure and resources which help every student to perform his work comfortably. I express my sincere gratitude to the former Vice Chancellors of this University Dr. N.K. Jayakumar, Dr. N. Balu and Dr. Rose Varghese, who provided all the support to me for doing my Ph.D work.

I wish to express my deep hearted gratitude to our Registrar, Shri. Mahadev M.G., for his sincere support. I specially thank him for facilitating all the requirements for doing my Ph.D work.

This thesis has been kept on track and been seen through to completion with the support of members of Research Committee and Doctoral Committee. I owe a great deal of gratitude to Dr. Balakrishnan K., the Chairman of Research Committee, for his valuable advice, helpful suggestions, comments, support and encouragement. I would also thank Dr. M.C. Valson, who was the Chairman of Research Committee, for his support and help in completing this thesis. I convey my sincere expression of thanks to my Doctoral Committee member Dr. Sheeba S. Dhar for her kind hearted attitude and support.

I convey my sincere expression of thanks to my teachers in NUALS. Dr. V.R. Jayadevan, Dr. Mini S., Shri. Raveendrakumar D., Dr. Jacob Joseph, Dr. Liji Samuel, Shri. Hari S. Nayar, Shri. Abhayachandran K., and Smt. Namitha K.L., for their valuable advice, helpful suggestions, comments and encouragement.

I extend thanks to Shri. Sudheesh Kumar S., for his valuable suggestion and support. I also extend my thanks to Dr. Sandeep Menon, Dr. Athira P.S, Dr. Asif E., for their valuable support. Dr. Shinsy P.S., Dr. Veena Roshan.

Smt. Cicy Berly, Smt. Sunitha P.N., Smt. Rejani Bhaskar, Smt. Hind T. Rasheed, and Adv. Ajitha, deserve special mention here for their constant support and motivation during the tenure of my research.

I am also thankful to all the staff members of NUALS Library. With special gratitude, I acknowledge Smt. Jeeja V.T., Assistant Librarian, for making me available the standard books, periodicals, journals and other material for reference to complete this study. I also thank Shri. Anil Kumar C., Shri. Anil Kumar K., for their endless support.

I must thank all the office staff in NUALS, for their kind support throughout my tenure at NUALS. I specially acknowledge Shri. Arun Kumar S., Finance Officer, Shri. Rajagopalan V., Deputy Registrar, Shri. Yogendra Prasad B.S., Assistant Registrar & Public Information Officer. I am also thankful to each and every staff member in NUALS, who have supported me during the course of my Ph.D.

I specially acknowledge the support rendered by the Examination section. I thank Dr. Asha G, Controller of Examinations, Smt. Salini A.R., Assistant Registrar (On Deputation). I specially thank Shri. Apu Jose, Shri. Praveen Kumar, Smt. Remya Raphel and Smt. Rekha Rajan, for their timely help. I specially thank Smt. Safeena who helped me a lot in doing my Ph. D, especially at the time of my pre submission seminar.

I specially thank all the Research Scholars and Research Associates who have worked with me during my Ph.D course.

I also express my sincere gratitude to Shri. Arun G.S., Shri. Irshad K., Shri.Tibin Mathew, Smt. Sangeetha V.V., Shri. Antony V.P., Smt. Jency Jose, Shri. Ajmal T. K., Shri. Anil K., Shri. Ramakrishnan P.K., Shri. Basheer Ikka, Shri. Ali Ikka, Dr. Sujith S., for their timely help.

Many of the results obtained in this thesis have been published in a referred journal. I owe a great deal of gratitude to Shri. Abhilash Gopinath, Asst. Professor, Government Law College, Thrissur, for his constructive comments on my published paper that helped me to refine them to the present form.

I am highly thankful to my learned and respected teachers in Government Law College, Thrissur. Special mention of Dr. Sonia K. Das, Dr. Preetha U., Dr. Bhavana, Smt. A.A. Khadeejabi for their guidance and encouragement.

I owe a great deal of gratitude to Dr. V.S. Sebastian, who was the Principal of Co-operative School of Law, Thodupuzha, for his timely advice and support. I am highly indebted to Shri. George Puthumana, the Manager of Co-operative School of Law, for his constant and countless support for completing this thesis. I also thank Dr. E.R Jayaram, the Principal of Co-operative School of Law, for his support, motivation and encouragement.

I wish to place on record my sincere thanks to all my friends, colleagues, other supportive staffs, and students in Co-operative School of Law, Thodupuzha, for their support and co-operation.

Further, I am thankful to officers and officials of Centre for Development Studies Library, Thiruvananthapuram, Government Law College Library, Thrissur, Co-operative School of Law Library, Thodupuzha, for helping me in finding out the relevant materials for completing my present study.

No man succeeds without a good woman behind him. Yes, there is the constant support of my wife Arathi V., at the back of me. She is the one who always supported me at my worst and took care of me when I needed. I am greatly indebted to my wife, for all her support, encouragement, sacrifice, prayer, love, and affection which were the fuel, for completing this thesis work. Without her help, I would not have been able to complete much of what I have done and become who I am. Being an amazing mom to our son, she managed him very well whenever I was busy with my work. I am thankful to my son Prabhav Krishnan for his prayer, co-operation.

I feel a deep sense of gratitude to my Father, P. Rajendra Das, who inspired and supported me to join for Ph.D. I am also grateful to my Mother, Vasantha Kumari Amma, Brother, Renjith Das for their constant inspiration and encouragement.

I feel fortunate to have an understanding and supporting In-Laws. My heart felt regard goes to my Father in Law, Dr. Vagiswara Kumar and Mother

in Law, Dr. C. Beena, for all their support and sacrifice for me to complete the Ph.D work. I am greatly indebted to them who have been striving to build a life for me and my wife. I also thank my wife's Aunt Smt. Mini and Uncle Dr. Chandrasekharan Pillai, for their whole hearted support for completing this work. I extend my sincere gratitude to my Uncle Adv. Babu Pothencode, for encouraging me to do Ph.D.

I express my gratitude towards my following friends, Adv. Shameer A., Adv. Kiran Raj Unnithan, Adv. Davis George, Adv. Manoj Madhav, Adv. Abhilash S., Adv. Abhilash T.G, Adv. Sachin Menon, Adv. Tom Jose and Shri. Ratheesh Kumar Veliyam.

I have had the fortunate of meeting so many wonderful people on the journey; capable and ready to guide, help, and advise me. I sincerely thank all of them who contributed in for helping me during my Ph.D.

I would like to thank the Art of Living Foundation, founded by Guruji Sri. Sri. Ravi Shanker and the senior teachers of it in Kerala, for imparting me extended spiritual knowledge and guidance. And finally, I thank to Almighty God for showering blessings and enabling me to complete this work.

PREFACE

Each religion is a social phenomenon, with its own community. Articles 25 to 30 of Indian Constitution, deal with the specific provisions which guarantee freedom of religion. Religious institutions are a part and parcel of every religion. The word 'institution' refers to organizations for religious and charitable purposes, such as Temples, Mosques, Church, and the like. It has been a common practice in India, in the past, for the State to supervise the working of religious institutions.

As a secular state, the Constitution of India guarantees all the religious groups and denominations the right to establish, administer, and maintain their institutions. The State exercised extensive authority over public religious endowments and enacted legislation for the proper administration of properties and funds of endowments. After Independence, for better management in religious and charitable endowments in India, many Central and State legislations have been enacted.

The Temples as the characteristic Hindu religious institutions have long historical standing. These institutions have been part and parcel of Hindu religion and culture. In the case of Hindu religious institutions like temples, in India there is no unique and central legislation for all the states. But every state has its own legislation with regard to the administration of public temples and religious endowments concerned.

In Kerala, the ownership of public temples are vested with and governed by independent statutory bodies like Travancore Devaswom Board, Cochin

Devaswom Board, Malabar Devaswom Board, Guruvayur Devaswom and Koodalmanickam Devaswom. Besides them, there are innumerable temples belonging to private trusts, institutions and individuals having their own system of administration and management. They are totally out from the purview of state control or supervision.

It is still a great controversy that Hindu Temples alone are being managed and controlled by the State, but the religious institutions of other religions are outside the ambit of state control. However, it is a fact that Devaswom laws continue in the same form as was prevalent at the time of the reorganization of the states. In this context the study of administration of various religious institutions of major religions in India assumes relevancy. The study of administration of public temples through Devaswom Boards and the study of the relationship between the State and the management of temples in Kerala also assumes great significance.

The methodology adopted for the present study is purely doctrinal. The presentation of this research study is descriptive, explanatory and analytical in nature. My research analyses various Statutes and schemes which deal with the administration of various Devaswom Boards in Kerala. Many of such legislations and schemes have been challenged through numerous cases. The courts have protected the legitimate claims of various disputing parties and have justified state interference in regard of proper administration.

My research leads me to the justification that State Control over Hindu religious institutions is legally and constitutionally valid. The research also

leads me to the finding that a uniform single Devaswom legislation for the secular administration and supervision of all the Public Devaswom boards in the State is desirable. It must also be one considering the factor of the uniqueness in the religious matters of each temple or Devaswom.

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

AIR	- All India Reporter
All	- Allahabad
Bom	- Bombay
Cal	- Calcutta
CDB	- Cochin Devaswom Board
CPC	- Civil Procedure Code
Cr.PC	- Code of Criminal Procedure
Cutt	- Cuttack
DB	- Division Bench
DE	- Delhi
FB	- Full Bench
Guj	- Gujarat
HR&CE	- Hindu Religious and Charitable Endowments
IPC	- Indian Penal Code
ILR	- Indian Law Review
J&K	- Jammu and Kashmir
Kant	- Karnataka
Ker	- Kerala
KHC	- Kerala High Court Cases
KLT	- Kerala Law Times
Mad	- Madras
MANU	- Manupatra

MDB	- Malabar Devaswom Board
MH	- Maharashtra
MP	- Madhya Pradesh
Ori	- Orissa
Pat	- Patna
P & H	- Panjab and Haryana
Raj	- Rajasthan
SC	- Supreme Court
SCC	- Supreme Court Cases
Sec.	- Section
TC	- Travancore Cochin
TDB	- Travancore Devaswom Board
TN	- Tamil Nadu
TTDB	- Thirupathi Thirumala Devaswom Board
UK	- United Kingdom
UP	- Upper Pradesh
US	- United States
WB	- West Bengal

STATUTES, CODES, BILL

1. African Charter on Human and Peoples Rights, 1981
2. American Convention on Human Rights, 1969
3. Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
4. Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
5. Assam State Acquisition of Lands Belonging to Religious or Charitable Institution of Public Nature Act, 1959
6. Assam State Acquisition of Lands Belonging to Religious or Charitable Institution of Public Nature Act, 1959
7. Assam Witch Hunting (Prohibition, Prevention and Protection) Act, 2015
8. Ayodhya Act, 1993
9. Bengal Wakf (Amendment) Act, 1973
10. Bengal Wakf Act, 1934
11. Bihar Hindu Religious Trust (Amendment) Act, 2013
12. Bihar Hindu Religious Trusts Act, 1950
13. Bihar Hindu Religious Trusts Act, 1951
14. Bihar Wakf Act, 1948
15. Bombay Public Trusts Act, 1950
16. Bombay Regulation, 1827
17. Charitable and Religious Trusts Act, 1920

18. Charitable Endowments Act 1890

19. Charities Act, 2006 (United Kingdom)

20. Chhattisgarh Tonahi Pratadna Nivaran Act, 2005

21. Code of Civil Procedure, 1908

22. Code of Criminal Procedure, 1973

23. Constitution of Australia

24. Constitution of India

25. Constitution of Ireland

26. Constitution of U.S.A.

27. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981

28. Durgha Khwaja Saheb Act, 1955

29. European Convention on Human Rights, 1953

30. Gujarat Devsthan Inams Abolitions Act, 1969

31. Guruvayoor Devaswom Act, 1978

32. H.R. & C.E. (Amendment) Ordinance, 2008

33. Hindu Adoptions And Maintenance Act, 1956

34. Hindu Marriage Act, 1955

35. Hindu Minority And Guardianship Act, 1956

36. Hindu Religious & Charitable Endowments Act, 1951

37. Hindu Succession Act, 1956

38. Income Tax Act 1961

39. Indian Divorce Act, 1896

40. Indian Penal Code, 1860

41. Indian Trust Act, 1882

42. International Covenant on Civil and Political Rights, 1966

43. Jharkhand Prevention of Witch (*Daain*) Practices Act, 2001

44. Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997

45. Karnataka Hindu Religious Institutions And Charitable Endowments (Amendment) Act, 2011

46. Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act (RPT Act), 2017

47. Karnataka Religious Institutions and Charitable Institutions Act, 1997

48. Kerala Animals and Birds Sacrifices Prohibition Act, 1968

49. Kerala Christian Church Properties and Institutions Trust Bill, 2019

50. Kerala Christian Marriage Act, 2008

51. Kerala Travancore-Cochin Hindu Religious Institutions Act, 1950

52. Koodalmanickam Devaswom Act, 2005

53. Koodalmanickyam Devaswom Act, 1971

54. Limitation Act, 1963

55. Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968

56. Madhya Pradesh Public Trusts Act, 1951

57. Madras H.R. & C.E. (Amendment) Act, 2008

58. Madras Hindu Religious and Charitable Endowments (Amendment) Act, 2008

59. Madras Hindu Religious and Charitable Endowments Act, 1951
60. Madras Hindu Religious and Endowments Act, 1927
61. Madras Regulation VII, 1817
62. Madras Temple Entry Authorization Act, 1947
63. Maharashtra Prevention and Eradication of Human Sacrifice and or Inhuman, Evil and Aghori Practices and Black Magic Act, 2013
64. Maharashtra Public Trust Act, 1950
65. Muslim Personal Law (Shariat) Application Act, 1937
66. Nathdwara Temple Act, 1959
67. Odisha Hindu Religious Endowments Act, 1951
68. Orissa Freedom of Religion Act, 1967
69. Orissa Hindu Religious Endowments Act, 1969
70. Places of Worship (Special Provisions) Act, 1991
71. Prevention of Witch (Daain) Practices Act, 1999
72. Protection of Civil Rights Act, 1955
73. Rajasthan Nathdwara Temple Act, 1959
74. Rajasthan Prevention of Witch-hunting Act, 2015
75. Rajasthan Public Trusts Act, 1959
76. Religious Endowment Act, 1863
77. Religious Institutions (Prevention of Misuse) Act, 1988
78. Representation of People Act, 1951
79. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

80. Shri Jagannath Temple Act, 1955

81. Sree Pandaravaka Lands (Vesting and Enfranchisement) Act, 1971

82. Sri Kashi Viswanath Temple Act 1983

83. Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959

84. Transfer of Property Act, 1882

85. Travancore-Cochin Hindu Religious Institutions (Amendment) Act, 2007

86. Travancore-Cochin Hindu Religious Institutions Act, 1950

87. Trusts Acts 1882

88. U.P. Muslim Wakf Act, 1966

89. Universal Declaration of Human Rights, 1948

90. Wakf Act, 1995

LIST OF CASES

13. Ambattukavu Bhagavathy Kshethra Samithi v. State of Kerala, 2010 (4) KLT 422
14. Angurbala v. Debabrata, AIR 1951 SC 293
15. Arun Ghosh v. State of West Bengal, AIR 1970 SC 1228
16. Arya Vyasa Sabha v. Commissioner of Hindu Charitable and Religious Institutions & Endowments, Hyderabad, (1976) 1 SCC 292
17. Association of Radhaswami Dera Baba Bagga Singh v. Gurnam Singh, AIR 1972 Raj 263
18. Azees Basha v. Union of India, AIR 1968 SC 662
19. B.S. Adityan v. B. Ramachandran Adityan, (2004) 9 SCC 720
20. Babulal v. Resmabai Narayanrao Kaurati, MANU/MH/0004/2019
21. Badruddin v. Aisha Begam, 1957 ALJ 300
22. Balpatil v. Union of India, AIR 2005 SC 3172
23. Baluswami v. Balakrishna, AIR 1957 Mad 97
24. Balwant Singh v. State of Punjab, AIR 1995 SC 1785
25. Bijoe Emmanuel v. State of Kerala, AIR 1987 SC 748
26. Board of Commissioner for the Hindu Religious Endowments v. P. Narasimham, MANU/TN/0029/1938
27. Brahmadathan Namboothiripad v. Cochin Devaswom Board, AIR 1956 TC 19
28. Bramchari Sidheswar Shai v. State of West Bengal, AIR 1995 SC 2089
29. C. Radhakrishnama Naidu v. The Government of Andhra Pradesh, MANU/AP/0280/2015

30. C.W.T v. Champa Kumara Singhi, AIR 1972 SC 2119
31. Chandanmal Chopra v. State of West Bengal, AIR 1986 Cal 104
32. Chennamilla Chenna Basavaiah v. The Deputy Commissioner of Endowments, AIR 2004 AP 467
33. Chiranjit Lal Chowdhuri v. The Union of India, AIR 1951 SC 41
34. Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association, AIR 2000 SC 2773
35. Cochin Devaswom Board v. Ramachandra Kurup, MANU/KE/0632/2004
36. Commissioner of Hindu Religious v. Kanak Durga Thakurani, AIR 1958 Ori 183
37. Commissioner of Police v. Acharya Jagadishwarananda Avadhuta (2004) 12 SCC 770
38. Daljit Kaur v. Municipal Corporation of Chandigarh, AIR 1989 P & H 159
39. Davis v. Beason, 133 U.S. 333: MANU/USSC/0156/1890
40. Deoki Nandan v. Murlidhar, AIR 1957 SC 133
41. Desraj Chela Baba Shri Hazur Singh Maharaj v. Association of Radhaswa, AIR 2003 Raj. 27
42. Deva Asir v. The Superintendent of Police, Kanyakumari District, MANU/TN/0449/2019

43. Dhaneshwarbuwa Guru Purshottambuwa, Owner of Shri Vithal Rukhamai Sansthan v. The Charity Commissioner, State of Bombay, AIR 1976 SC 871
44. Digyadarshan R.R. Varu v. State of Andhra Pradesh, AIR 1970 SC 181
45. Dilawar Singh v. State of Haryana, MANU/PH/0330/2016
46. Durgah Committee, Ajmer v. Syed Hussain Ali, AIR 1961 SC 1402
47. E. Subramania Oduvar v. Srivaikuntam Kailasanatha Swami Koil, MANU/TN/0328/1933
48. ERJ Swami v. State of Tamil Nadu, AIR 1972 SC 1586
49. Executive Officer, Arthanareswarar Temple v. R. Sathyamoorthy, AIR 1999 SC 958
50. Forum, Prevention of Environment and Sound Pollution v. Union of India (In Re: Noise Pollution), AIR 2005 SC 3136
51. Free Church of Scotland v. Overtoun (1904) AC 515 *as cited in* Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay, AIR 1962 SC 853
52. G. Michael v. S. Venkateswaran, MANU/TN/0198/1952
53. Gadigi Mariswamappa v. Sivamurthy, AIR 2005 Kant 172
54. Gangadhar Ambadas Parashare v. Mahadeo Ambadas Parashare, MANU/MH/1287/1999
55. Gangadhar Mohapatra v. Commissioner of Hindu Religious Endowments, MANU/OR/0157/1973
56. Ganpat v. Returning Officer, MANU/SC/0265/1974

57. Gedela Sachidananda Murthy v. Deputy Commissioner, Endowments, A.P., AIR 2007 SC 1917
58. George Sebastian v. Molly Joseph, AIR 1995 Ker 16
59. Gobinda Chandra Ghosh v. Abdul Majid Ostagar, MANU/WB/0085/1943
60. Goolrokh M. Gupta v. Burjor Pardiwala President, MANU/GJ/1005/2012
61. Gopala Muppanar v. Dharmakarta Subramania Aiyar , MANU/TN/0114/1914
62. Gopalakrishnan Nair v. State of Kerala, 1999 (3) KLT 575
63. Gopalakrishnan Nair v. State of Kerala, AIR 2005 SC 2053
64. Gulam Abbas v. State of Uttar Pradesh, AIR 1981 SC 2198
65. Gulam Madar v. Ahmadbhai Memon, AIR 1998 Guj. 235
66. Guruvayoor Devaswam Committee v. Income Tax Officer, Trichur, 1976 KLT 241
67. Guruvayoor Devaswom Managing Committee v. C.K. Rajan, (2003) 7 SCC 546
68. Guy Porter Gillette v. United States, 401 U.S. 437 (1971): MANU/USSC/0162/1971
69. H.H. Sudhundra Thirtha Swamiar v. Commissioner for Hindu Religious & Charitable Endowments, Mysore, AIR 196 3SC 966
70. Haji Usmanbhai Hasanbhai Qureshi v. State of Gujarat, AIR 1981 Guj 40

71. Harnam Singh v. Gurdial Singh, AIR 1967 SC 1415
72. Hemraj Shriripali Prasad v. Ravi Prakash Pujari, MANU/MP/0178/1987
73. His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala, AIR 1973 SC 1461
74. I.R. Coelho v. State of Tamil Nadu, AIR 2007 SC 861
75. Indian Hotel & Restaurant Association v. The State of Maharashtra, MANU/SC/0045/2019
76. Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018
77. Jagannath Ramanuj Das v. The State of Orissa, AIR 1954 SC 400
78. Jamshedji v. Soonabai, MANU/MH/0216/1907
79. Javed v. State of Haryana, AIR 2003 SC 3057
80. Jayan v. Chief Commissioner, Travancore Devaswom Board 2010 (4) KLT 757
81. Jinnappa Hedge v. Shrinivas Tantri 1962 Mys LJ (Supp) 109
82. John Vallamattom v. Union of India, AIR 2003 SC 2902
83. Joseph Shine v. Union of India, MANU/SC/1074/2018
84. K. Rajamanickam v. Periyar Self Respect Propaganda Institution, AIR 2007 Mad 25
85. K.R. Ramaswamy v. The Chief Secretary, Govt. of Tamilnadu, MANU/TN/2517/2017
86. K.S. Soundararajan v. Commissioner of H.R., (2016) 15 SCC 597
87. Kacha Kanti Seva Samity v. Kach Kant Devi, AIR 2004 SC 608

88. Kamaraju Venkata Krishna Rao v. Sub-Collector, Ongole, AIR 1969 SC 563

89. Kamsala v. State, rep. by the Inspector of Police, MANU/TN/0242/2008

90. Kasinath Sahoo v. State of Orissa, MANU/OR/0465/2007

91. Khajamain Wakf Estates v. State of Madras, AIR 1971 SC 161

92. Khatji v. Abdul Razak Sufi, MANU/JK/0034/1976

93. Khursheed Ahmad Khan v. State of U.P. (2015) 8 SCC 439

94. Krishna Singh v. Mathura Ahir, AIR 1980 SC 707

95. Laxmanarao Umaji Rao v. Govindrao Madhavarao 1950 Nag 215

96. Lily Thomas v. Union of India, AIR 2000 SC 1650

97. M. Ismail Faruqui v. Union of India, AIR 1995 SC 605

98. M. P. Gopalakrishnan Nair v. State of Kerala, AIR 2005 SC 3053

99. M. Siddiq v. Mahant Suresh Das, MANU/SC/1538/2019

100. Madappa v. Mahanthadevaru, AIR 1966 SC 878

101. Maharani Hemanta Kumari Debi v. Gauri Shankar Tewari, MANU/PR/0009/1940

102. Manohar Joshi v. Nitin Bhaurao Patil, (1996) 1 SCC 169

103. Manohar Mookerjee v. Peary Mohan, MANU/WB/0268/1919

104. Manoj Narula v. Union of India, (2014) 9 SCC 1

105. Marry Mc Gee v. A.G., (1974) IR 284

106. Marthanda Varma (D) L.Rs. v. State of Kerala, MANU/SC/0519/2020

107. Marthanda Varma (dead) v. State of Kerala, MANU/SCOR/17023/2014

108. Masjid Shahid Ganj v. Shiromani Gurdwara Parbandhak Committee, Amritsar, MANU/PR/0024/1940

109. Menakuru Dasaratharami Reddi v. Duddukuru Subba Rao, MANU/SC/0098/1957

110. Mohd. Hanif Quareshi v. The State of Bihar, MANU/SC/0027/1958

111. Most. Rev. P.M.A. Metropolitan v. Moran Mar Marthoma, AIR 1995 SC 2001

112. Moulana Mufti Syed Md. Noorur Rehman Barkati v. State of West Bengal, AIR 1999 Cal 15

113. Muraleedharan Nair v. State, 1990 (1) KLT 874

114. N. Adithayan v. The Travancore Devaswom Board, AIR 2002 SC 3538

115. N. Veerabrahmam v. State of Andhra Pradesh, AIR 1959 AP 572

116. Nalam Ramalingayya v. Commr. of Hindu Religious Endowments, MANU/AP/0263/1969

117. Nallor Marthandam Vellalar v. The Commissioner, Hindu Religions and Charitable Endowments, AIR 2003 SC 4225

118. Nar Hari Sastri v. Shri Badrinath Temple Committee, AIR 1952 SC 245

119. Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi, AIR 1960 SC 100

120. Narayanan Nair v. State of Kerala, AIR 1971 Ker. 98

121. Narayanan Namboodripad v. State of Madras AIR 1954 Mad 385

122. Narayanan v. Naduvil Madom, 2011 KHC 2389

123. Navtej Singh Johar v. Union of India, MANU/SC/0947/2018

124. Naz Foundation v. Government of NCT of Delhi, MANU/DE/0869/2009

125. Nazeer v. Shemeema, 2017 (1) KLT 300

126. Nelson v. Kallayam Pastorate, (2006) 11 SCC 624

127. Nikhil Soni v. Union of India, MANU/RH/1345/2015

128. Noorjehan Safia Niaz v. State of Maharashtra, MANU/MH/0191/2015

129. Odisha Vikash Parishad v. Union of India, Writ Petition (C) No. 571 of 2020

130. P. Elumalai v. Pachaiyappa's Trust Board, MANU/TN/2762/2017

131. P. M. Bhargava v. University Grants Commission, AIR 2004 SC 3478

132. P.M. Bramadathan Nambooripad v. The Cochin Devaswom Board, AIR 1956 TC 19

133. Padala Latchamma v. Mutchi Appalaswamy, AIR 1961 AP 55

134. Pandit Shivam Sunder Nath Suthoo v. Laxmi Narayana Thakur ILR 1960 Cut 92

135. Panduranganathaswami v. Deputy Commissioner for Hindu Religious and Charitable Endowments, AIR 1989 Mad. 198

136. Pannalal Bansilal Patil v. State of Andhra Pradesh, AIR 1996 SC 1023

137. Pathumma v. State of Kerala, AIR 1978 SC 771

138. Pavani Sridhara Rao v. Govt. of A.P., AIR 1996 SC 1334

139. Perumal Nadar v. Ponnuswami, AIR 1971 SC 2352

140. Pichai v. The Commissioner for Hindu Religious and Charitable Endowments, Madras, AIR 1971 Mad 405

141. Pogakula Laxmireddy v. The Prinicipal Secretary to Govt. of Andhra Pradesh, AIR 1997 AP 6

142. Pragdasji Guru Bhagwandasji v. Patel Ishwarlalbhai Narsibhai, AIR 1952 SC 143 Prakash Chandra v. Krishna Kumar, MANU/UP/0069/2019

143. Pramati Educational and Cultural Trust v. Union of India, AIR 2014 SC 2114

144. Prayar Gopalakrishnan v. State of Kerala, 2018 (1) KLT 478

145. Punjab Rao v. D.A.T. Meshram, AIR 1965 SC 1179

146. R. v. Dhyan Sigh, AIR 1952 All 53

147. R. Venugopala Naidu v. Venkatarayulu Naidu Charities, AIR 1990 SC 444

148. R.A. Pathan v. Director of Technical Education, MANU/GJ/0263/1980

149. Rabindra Kumar Pal v. Union of India, MANU/SC/0062/2011

150. Radhakanta Deb v. Commr. Hindu Religions Endowments, Orissa, AIR 1981 SC 798

151. Radhamohan Dev v. Nabakishore Naik, AIR 1979 Ori 181

152. Raja Birakishore v. State of Orissa, AIR 1964 SC 1501

153. Raja Suriya Pal Singh v. The State of UP, MANU/SC/0061/1952

154. Rajendra v. State of Andhra Pradesh, AIR 1957 AP 63

155. Rajendran Unnithan v. Mahadevar (Deity), 2005 (3) KLT 997

156. Rajesh Kumar Srivastava v. A.A.T. Verma, AIR 2005 All 175

157. Ram Chandra Deb v. The State of Orissa, MANU/OR/0003/1959

158. Ram Manohar Lohia v. State of Bihar, MANU/SC/0054/1965

159. Ram Prasad Seth v. State of Uttar Pradesh, AIR 1961 All 334

160. Ram Prasad v. State of U.P., AIR 1957 All 408

161. Ram Rattan v. Bajrang Lal, AIR 1978 SC 1393

162. Ramachandra G. Kapse v. Haribansh Ramakbal Singh, (1996) 1 SCC 206

163. Ramasami Mudaliar v. Comnr. H.R. & C.E. Admn. Dept., AIR 1999 Mad 393

164. Ramaswami v. Karumuthu, AIR 1957 Mad 597

165. Ramchodass v. MahalaxmiVahuji, 1953 Bom 153

166. Ramesh Thappar v. The State of Madras, MANU/SC/0006/1950

167. Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte, (1996) 1 SCC 130

168. Ramjilal Modi v. State of UP, AIR 1957 SC 620

169. Rana Muneshwar Kumar Singh v. The State of Bihar, MANU/BH/0055/1976

170. Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388

171. Ratnavelu Mudaliar v. Commr. for Hindu Religious and Charitable Endowments, MANU/TN/0243/1954

172. Re Audit Report of Travancore Devaswom Board for the Year 1967-68, 1990 (1) KLT 347

173. *Re* T.R. Ramachandra Ayyar's case, MANU/TN/0166/1918

174. Rev. Satya Ranjan Majhi v. State of Orissa, AIR 2003 Ori 163

175. Rev. Stainislaus v. State of Madhya Pradesh, AIR 1977 SC 908

176. Reynolds v. United States, 98 U.S. 145 (1878)

177. Riju Prasad Sarma v. State of Assam, MANU/SC/0722/2015

178. S. Azeez Basha v. Union of India, AIR 1968 SC 662

179. S. Khushboo v. Kanniammal, AIR 2010 SC 3196

180. S. Narayana Deekshitulu v. State of A. P., (1996) 9 SCC 548

181. S. P. Mittal v. Union of India, AIR 1983 SC 1

182. S. R. Bommai v. Union of India, AIR 1994 SC 1918

183. S.B. Narayanchandra Public Trust v. The State of Gujarat, AIR 2001 Guj 208

184. Samsthana Mahabaleshwara Devaru v. Secretary, Revenue Department (Endowment) Government of Karnataka, MANU/KA/3369/2018

185. Sanjay Ananda Salve v. The State of Maharashtra, MANU/MH/1900/2013

186. Sanjeev v. Karanakodam Sri Venkitachalapathy Devaswom, AIR 2005 Ker. 302

187. Santosh Kumar v. The Secretary, Ministry of Human Resources Development, AIR 1995 SC 293

188. Saraswathi Ammal v. Rajagopal Ammal, MANU/SC/0091/1953

189. Sardar Sarup Singh v. State of Punjab, MANU/SC/0238/1959

190. Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay, AIR 1962 SC 853

191. Sarika v. Administrator, Shri Mahakaleshwar Mandir Committee, Ujjain (M.P.) MANU/SC/0503/2018

192. Sarla Mudgal v. Union of India, AIR 1995 SC 1531

193. Sasti Yagnapurushdasji v. Muldas Bhundardas Vaishya, AIR 1966 SC 1119

194. Satradhikar, Bengana-Ati v. State of Assam, MANU/GH/0220/2001

195. Satya Ranjan Majhi v. State of Orissa, (2003) 7 SCC 439

196. Saumya Ann Thomas v. The Union of India, 2010(1) KLT 869

197. Seshadri Ayyangar v. Nataraja Ayyar, MANU/TN/0078/1898

198. Seshammal v. State of Tamil Nadu, AIR1972 SC 1586

199. Shabnam Hashmi v. Union of India, AIR 2014 SC 1281

200. Shankar Prasad v. Muneshwari, AIR 1969 Pat.304

201. Shanmughan v. Vishnu Bharatheeyan, AIR 2004 Ker 143

202. Shayara Bano v. Union of India, (2017) 9 SCC 1

203. Shiromani Gurdwara Parbandhak Committee v. Harnam Singh, AIR 2003 SC 3349

204. Shree Bhanvatacharya Narayanacharya Public Trust, AIR 2001 Guj. 208

205. Shri Jagannath Temple Puri Management Committee v. Chintamani Khuntia, AIR 1997 SC 3839

206. Shrimali Lal v. Advocate General, AIR 1955 Raj 166

207. Shriomani Gurudwara Prabandhak Committee, Amritsar v. Som Nath Dass, AIR 2000 SC 1421

208. Shripatprasad Beharilalji Acharyashri v. Lakshmidas Dungarbhai Barot, MANU/MH/0215/1922

209. Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi v. State of U.P. (1997) 4 SCC 606)

210. Sri Gedela Satchidananda Murthy v. Dy. Commnr. Endowments Department, A.P., (2007) 5 SCC 677

211. Sri Kanyaka Parameswari Anna Satram Committee v. Commissioner, Hindu Religious Charitable and Endowments, AIR 1997 SC 2332

212. Sri Kanyaka Parameswari Anna Satram Committee v. The Commissioner, Hindu Religious & Charitable Endowments Department, AIR 1999 SC 3567

213. Sri Kashi PAS Committee v. Commissioner, Hindu Religious Endowments, AIR 1997 SC 232

214. Sri Lakshamana Yatendrulu v. State of Andhra Pradesh, AIR 1996 SC 1414

215. Sri Sabanayagar Temple v. The State of Tamil Nadu (2009), Indian Kanoon, http:indiankanoon.org/doc/396397

216. Sri Sahasra Lingeshwara Temple, Uppinangady v. State of Karnataka, (2007) 1 Kar LJ 1

217. Sri Sarangadevar Peria Matam v. Ramaswamy Gounder, AIR 1966 SC 1603

218. Sri Satnarayan Ji Maharaj Virajman Mandir Sat Narayan Dharamshala v. Rajendra Prasad Aggarwal, AIR 1997 All 413

219. Sri Venkataramana Devaru v. State of Mysore, AIR 1958 SC 255

220. Sri. KAS Committee v. Commissioner of Endowments AIR 1979 AP 121

221. Sri. Vidya Manohara Teertha Swamigalu Peethadipathy v. The State of Karnataka, MANU/KA/0268 /2013

222. State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84

223. State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat, AIR 2006 SC 212

224. State of Gujarat v. The I.R.C.G, MANU/SC/1052/2017

225. State of Karnataka v. Praveen Bhai Thogadia, AIR 2004 SC 2081

226. State of West Bengal v. Ashutosh Lahiri, AIR 1995 SC 464

227. Subhankar Chakraborty v. The State of West Bengal, MANU/WB/0773/2017

228. Subramaniam Swamy v. State of Tamil Nadu, (2014) 5 SCC 75

229. Sudarshan Singh v. Suresh Singh, AIR 1960 Pat 45

230. Sugra Bibi v. Hazi Kummu Mia, AIR 1969 SC 884

231. Sujan Mohinder Charitable Trust v. Mohinder Kaur, MANU/DE/0346/2019

232. Suresh Kumar Koushal v. NAZ Foundation, (2014) 1 SCC 1

233. Swami Shivshankargiri Chella Swami v. Satya Gyan Niketan, MANU/SC/0206/2017

234. Syed Faizal v. Union of India, AIR 1993 Ker. 311

235. T. M. A. Pai Foundation v. State of Karnataka, AIR 2003 SC 355

236. T. Sitharam Chetty v. S. Subramania Aiyer, MANU/TN/0345/1915

237. T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481

238. T.R. Ramachandra Aiyar v. Parameswaran Unni, MANU/TN/0166/1918

239. Tamil Nadu v. Ahobila Matam, AIR 1987 SC 245

240. The Ahmedabad St. Xavier's College Society v. State of Gujarat, AIR 1974 SC 1389

241. The Bihar State Board Religious Trust, Patna v. Biseshwar Das, AIR 1971 SC 2057

242. The Commissioner for Hindu Religious and Charitable Endowments, Mysore v. Ratnavarma Heggade, AIR 1977 SC 1848

243. The Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282

244. The Durgah Committee, Ajmer v. Syed Hussain Ali, AIR 1961 SC 1402

245. The Executive Officer, Arthanareswarar Temple v. R. Sathyamoorthy, AIR 1999 SC 958

246. The President of the Board of Commissioners for the Hindu Religious Endowments v. Thadikonda Koteswara Rao, MANU/TN/0178/1937

247. The State of Bihar v. Charusila Dasi, AIR 1959 SC 1002

248. The State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84

249. Thenappa Chettiar v. Karuppan Chettiar, AIR 1968 SC 915

250. Thirnmakku v. Bandlu Rangappa, AIR 1977 Kant 115

251. Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan, AIR 1963 SC 1638

252. Tirumala Educational Trust v. Tirumala Tirupati Devasthanams, INDIAN KANOON, http://indiankanoon.org/doc/110796116/

253. Travancore Devaswom Board Staff Association v. State of Kerala, 1993 (3) KLT 721

254. Uthradam Thirunal Marthanda Varma and Sree Padmanabhaswamy Temple v. Union of India, MANU/KE/0087/2011

255. Vadilal Nandlal Shah v. Ramesh Dharamdas Mehta, MANU/MH/1248/2010

256. Vaithianatha Aiyer v. S. Tyagaraja Aiyar, MANU/TN/0001/1919

257. Vedavyasa R. Lakshmi Narasimha v. The Commissioner, Hindu Religious and Charitable Endowment, Chennai (2010), Indian Kanoon, http://indiankanoon.org/doc/ 1594161

258. Vidya Bal v. The State of Maharashtra, PIL NO.55 / 2016

259. Vidya Varuthi Thirtha Swamigal v. Baluswami Ayyar, MANU/PR/0062/1921

260. Vidyodaya Trust v. Mohan Prasad, (2008) 4 SCC 115

261. Vikrama Das Mahant v. Daulat Ram Asthana, AIR 1956 SC 382

262. Virji Ladhabhai KDO Jain Vidyarthi Griha v. Commissioner of Income Tax (Exemptions), MANU/IU/0085/2019

263. Zain Yar Jung v. The Director of Endowments, AIR 1963 SC 985

264. Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra, 1975 SCC (2) 260

265. Zorach v. Clauson, 343 U.S. 306 (1952)

CHAPTER 1

INTRODUCTION

1.1 Introduction

1.1.1 Religion in India

Religion as a concept evades an accurate definition and identification. Each religion is a social phenomenon, with its own community. The character and right of religious observance depends on the membership of that social group and to its specific collective identity.

India is home to all religions that today have a worldwide presence. Hinduism, Islam, Christianity, Sikhism, Buddhism, Jainism, Judaism, Sufism Zoroastrianism, and the Bahai faith are the major religions in India presently.

The Constitution of India does not define the expressions ‘religion’ and ‘religious denomination’. However, the Preamble to the Constitution does promise to secure to its citizens “liberty of thought, expression, belief, faith and worship”. The freedom of religion flows out of this idea so expressed in the Preamble. Articles 25 to 30 deal with the specific provisions which guarantee freedom of religion. The constitutional aspiration and scheme for granting and protecting religious freedom is elaborately supported by many legislative measures.

1.1.2 Temple Administration in India

The temples as the characteristic Hindu religious institutions have long historical standing. These institutions have been part and parcel of Hindu religion and culture. Temples are primarily places of prayer and worship of the

supreme deity manifesting itself in various forms. Temple is an endowment that can be defined as a property or money bestowed as a permanent fund. It is a gift of property to the Idol or God and the property is vested in the Idol or God, in a symbolic sense.

In the earlier days, kings appointed ministers and superintendents to supervise and regulate the working of temples and also prescribed penalties for those who violated commonly accepted religious practices. In the event of mismanagement, the then kings had intervened in the temple administration. Later, the East India Company and the British Government continued the practice of earlier Indian rulers and enacted unique legislations to prevent mismanagement and misappropriation of temple funds by the managers of the endowments. In post independent India, in the case of Hindu religious institutions like temples, there is no unique and central legislation for all the States. Every State in India has its own legislation with regard to the administration of public temples and religious endowments concerned. Each State in India has a separate system of administration of temples that are unique in nature.

1.1.3 Temple Administration in Kerala

Temples in the history of Kerala has culturally occupied a pre-eminent position. The construction and the proper maintenance of the temples have always been considered as one of the principal functions of the State in India. In the case of Kerala, kings were considered as the protector of temples. Rulers had supervised and regulated the working of Temples. Presently, the ownership

of public temples in Kerala are vested with and governed by independent statutory bodies like the Travancore Devaswom Board, the Cochin Devaswom Board, the Malabar Devaswom Board, the Guruvayur Devaswom and the Koodalmanickam Devaswom. Besides them, there are innumerable temples belonging to private trusts, institutions and individuals, having their own system of administration and management. They are free from State control or supervision. It is still a great controversy that Hindu Temples alone are being managed and controlled by the State, but the religious institutions of other religions are outside the ambit of state control. Over the years, the functioning of statutory Devaswom Boards has got heavily criticised in many respects. The allegations regarding financial indiscipline and mismanagement of temples by Devaswom Boards have led to the appointment of many Commissions. These Commissions have submitted their reports with valuable recommendations and a few of which have been implemented so far.

1.1.4 The Secular State and Religion

Among the democratic countries, India is distinguished by its proclaimed commitment to secularism as the guiding principle of state policy and action. The pattern of secularism developed under the Indian Constitution is no imitator of the concept of secularism adopted in other major democratic countries; and it is a unique system, or *sui generis*.

In India, the term ‘secular’ or ‘secularism’ is used to describe the relationship between the State and religion. Though secularism is one of the basic features of the Indian Constitution and Indian polity, there is no such

"wall of separation" as that exists under the American concept of secularism between the State and religious institutions. In India, the State is secular since there is no official religion. However the Constitution does envisage the involvement of the State in matters associated with religion and religious institutions, and even indeed with the profession, propagation and practice of religion in its most limited and distilled meaning.

1.1.5 State and Religious Institutions

Religious institutions are a part and parcel of every religion. The word 'institution' refers to organizations for religious and charitable purposes, such as temples, mosques, church, and the like. It has been a common practice in India, in the past, for the State to supervise the working of religious institutions. The State exercised extensive authority over public religious endowments and enacted legislation to prevent mismanagement and misappropriation of properties and funds of endowments. The governments were also empowered to settle schemes for the administration of the property of these endowments. For better management and prevention of maladministration in religious and charitable endowments in India, numerous central and state legislations have been enacted.

Legislative provisions have made this aspect a justiciable one and these schemes have been litigated in numerous cases. The courts have protected the legitimate claims of various disputing parties and have justified State interference in the event of gross mismanagement.

1.2 Significance of the Study

Freedom of religion is one of the fundamental rights guaranteed by the Constitution of India. The secular view point and approach of our Constitution gives wider protection to all the religions and religious institutions in the country. Even on this secular platform we require these institutions and endowments to be controlled as public institutions. It has become a delicate issue for the Central and State governments to interfere in the area of rituals while managing temples.

There has been a debate about the state control over the functioning of religious institutions. A section of people favours state control or interference in the administration of Hindu temples. Some others strongly oppose the government control over the administration of Hindu temples.

It has been a great controversy that Hindu temples alone are being managed and controlled by the State, but the religious institutions of other religions are outside the ambit of State control and hence a violation of equality and equal protection of laws guaranteed under the Indian Constitution.

It is heavily criticised that a secular Government is not supposed to interfere in the administration of any religious institutions. In this regard, many demand abolishing of existing Devaswom Board system and transfer of ownership and undertakings of public temples to devotees to cure political interference in Devaswom Boards.

In this context the study of administration of public temples through Devaswom Boards and the study of the relationship between the State and the management of temples in Kerala assumes great significance.

1.3 Scope of the Study

In order to understand the historical development in the relationship between the State and management of temples, both the evolution of temple worship and the history of State intervention in temple administration are studied. This study enables understanding the ambit and limitations of the government interventions in the temples. The study reveals various aspects of State control over various religious institutions in India. It also depicts the clear picture of the State control over Hindu religious institutions in various states in India. It gives an understanding about the government control over the administration of Devaswom boards in Kerala. The study opens the possibility for a single administrative mechanism that governs all the Devaswom boards in the State of Kerala. The study opens the possibility for a uniform law for Devaswoms in the State of Kerala.

1.4 Objectives of the Study

The main objectives of this study are:

- To analyse the concept of religion in its common and specific parlance.
- To analyse the scope of religious freedom guaranteed under Indian Constitution from the light of its secular fabric.

- To analyse the extent of State control over various religious institutions.
- To analyse the past and present concepts of State control over Hindu religious institutions, especially temples in India and to discuss the problems, issues and challenges to it.
- To study the distinctive legal aspects relating to the organization and management of the Hindu religious institutions in India with special reference to public temples in Kerala.
- To throw light on the strength of present legislations intended to control the administration and supervision of Devaswom Boards in Kerala.
- To find the scope for a new, single and strong and centralised legislation.
- To find the scope for an alternative administrative mechanism that can control all the public Devaswom Boards in the State.
- To suggest measures for effective organization and management of Devaswom Boards in Kerala.

1.5 Research Problem

1. Whether a secular State can and ought to interfere and regulate the affairs of any religious institution in India?
2. Whether interference in the administration of temples, especially the concept of Devaswom Board is legitimate and constitutionally valid?

3. Is a uniform Law for all Devaswoms possible for the State of Kerala as indicated by the various court decisions and commission reports?

1.6 Hypothesis

- A secular State can lawfully interfere and regulate the affairs of any religious institution in India.
- State interference in the administration of public temples, through various Devaswom Boards or Managing Committees, is legitimate and constitutionally valid.
- There is no legal or constitutional taboo on enacting a uniform Devaswom legislation for the State of Kerala.

1.7 Research Questions

1. How Hindu religious Institutions in India are controlled by various States in India.
2. To what extent are the Hindu religious institutions especially public temples in Kerala, managed and controlled by the State?
3. How religious institutions other than Hindu religious institutions are administered or controlled in the State of Kerala?
4. How are the concepts of 'freedom of religion' and 'religious freedom' protected and regulated in India?
5. How and to what extent can a secular India manage and regulate the affairs of religious institutions?
6. Should a strict wall of separation of State and religion be insisted in the case of religious institutions within the ambit of the Indian Constitution?

7. How are religious and secular matters of a religious institution to be differentiated under the Constitution?
8. Whether State control over Hindu temples especially in control through Devaswom Boards Kerala, is permissible under the provisions of Constitution of India

1.8 Research Methodology

The methodology adopted for the present study is purely doctrinal. The presentation of this research study is descriptive, explanatory and analytical in nature. This study is a historical and descriptive approach, as it is based on relevant documents and published materials. The descriptive method is used to analyse the interpretation of legal provisions and case laws. The study is analytical as it is based on the analysis of the existing Constitutional and statutory provisions.

The study is based on both primary and secondary sources. The study heavily depends upon the primary sources for legal research like, the Constitution, various Statutes, Assembly Debates, Commission Reports, and Case laws. The study also depends upon secondary sources like various books and law journals. Published and un-published research theses, research papers, and websites are also referred for the study.

1.9 Research Design

The study on 'State Control over Hindu Religious Institutions in India, with Special Reference to Temple Administration through Various Devaswom Boards in Kerala' has been divided into 14 chapters.

Chapter 1 titled as 'Introduction' gives a brief idea about the concept of temple administration and state control over it. It highlights the significance, scope and objective of the study. It gives details about the research problem, research hypothesis, research questions, the methodology adopted in the research, limitations of the study.

Chapter 2 titled as "Religion, Religious Law: Theoretical and Conceptual Analysis" provides a detailed description about the meaning and definition of the concept religion and its various dimensions. It demarks the differentiation between religion and culture in the conceptual level. It depicts the interrelation between religion and custom. It gives an idea about various religious law/divine law/personal law and their systems. It analyses the meaning and definition of religion under the Indian context. It also throws light upon the applicability of religious laws in India and their constitutional validity. It explains the importance of religious and charitable endowments and their relation with various personal laws in India. It briefly explains the constitutional jurisprudence on religion and religious freedom in India. It also explains about the statutory provisions those govern the matters related to religion and religious freedom in India. It clearly analyses the judicial interpretations on the concept of religion and religious freedom.

Chapter 3 titled as "Hindu Religious Institutions in India: A General Understanding" gives a general idea about the meaning and concept of religious institutions. It depicts the historical evolution of Hindu religion and religious institutions in India. It tries to give a theoretical understanding about

Hindu religion and religious institutions. The study further tries to give constitutional and statutory definitions and judicial interpretations for the term 'Hindu' and 'Hindu religion'. The core of this chapter gives clear understanding about meaning and definition, historical evolution of Hindu religious and charitable endowments in India. Analysis of some concepts like, *ishta* and *purta*, *sankalp* and *utsarg* related to Hindu religious endowments is the essence of this chapter. It demarks the concept religious endowments from charitable endowments. It explains about various types of Hindu religious endowments like temple and math. It explains about the legal personalities like, founder, *shebait*, *dharmakarta*, *mahant*, *pujari*, *archaka*, *panda* and other legal matters connected to Hindu religious endowments. It clearly distinguishes the public and private religious endowments. It studies how a Hindu religious endowment is different from a trust and a waqf. It gives brief idea about some important laws related to religious and charitable institutions in India.

Chapter 4 titled as "State Control over Hindu Religious Institutions in India: Sources" throws light upon the need and significance of state control over Hindu Religious Endowments. It analyses the rule of '*parens patriae*' and scope and applicability of the same in the case of State control over Hindu religious endowments especially public temples or Devaswoms. It narrates the historical evolution of State control over Hindu religious institutions in India. This analysis of legal history of state control over Hindu religious institutions mainly gone through with the analysis of legislations like Religious Endowments Act, 1863, Charitable Endowments Act 1890, Charitable and

Religious Trusts Act of 1920, Section 92 of Code of Civil Procedure, 1908, and The Hindu Religious Endowments Act (Madras Act II of 1927). It gives much focus on Section 92 of Code of Civil Procedure, 1908, and its scope and applicability especially in the case of private religious endowments and private religious trust.

Chapter 5 titled as "State Control over Hindu Religious Institutions in Various States in India" is the study of various legislations that govern the administration or state control of Hindu religious institutions in various states in India. As part of this analysis, various states and their respective legislations like, Andhra Pradesh (Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987), Tamil Nadu (Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959), Karnataka (Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997), Odisha (Odisha Hindu Religious Endowments Act, 1951), Bihar (Bihar Hindu Religious Trusts Act, 1950), Maharashtra (The Maharashtra Public Trusts Act, 1950 [The Bombay Public Trust Act 1950], Rajasthan (Rajasthan Public Trusts Act, 1959), Madhya Pradesh (Madhya Pradesh Public Trusts Act 1951), Assam (The Assam State Acquisition of Lands Belonging to Religious or Charitable Institutions of Public Nature Act, 1959) taken into study. It also studies about some special legislations or legal mechanism to control some special temples in India. For the purpose of this analysis of special legislations or legal mechanism, temples like, Kashi Viswanath Temple (Uttar Pradesh), Shri

Jagannath Temple (Odisha), Nathdwara Temple (Rajasthan), Sri Venkatshwar Temple of Tirupathi (Andhra Pradesh) are taken into study.

Chapter 6 titled as "History of State Control over Temple Administration in Kerala" gives a detailed understanding about the origin and development of temple culture in Kerala. It also covers the areas like ancestral worship idol worship bhakti cult social reform movements in Kerala. The main focus of the study is the origin and development of temple administration in Kerala through various periods ranging from early period to post-State reorganisation period. It also depicts the origin and development of the concept of Devaswom. Another important area that covered by this chapter is history of various Devaswom Boards in Kerala like, Cochin Devaswom Board, Travancore Devaswom Board Malabar Devaswom Board.

Chapter 7 titled as "State Control over Temple Administration in Kerala: Part I - Malabar Devaswom, Guruvayur Devaswom & Koodalmanickam Devaswom" covers the detailed study about statutory Devaswom Boards in Kerala, such as Travancore Devaswom Board, The Cochin Devaswom Board, Malabar Devaswom Board, Guruvayur Devaswom Committee, Koodalmanickyam Devaswom Committee. This study about administrative mechanism or State control over various statutory Devaswom Boards is done with the analysis of each statute in detail and separately.

In order to study the administrative mechanism or State control over Malabar Devaswom Board, The Madras Hindu Religious and Charitable Endowments Act, 1951 was analysed in detail. As part of analysis, the

composition, powers and functions of the Malabar Devaswom Board, powers and functions of temple advisory committees, financial control over the Board, control over trustees of other temples, Government's power to interfere in the administration of Devaswoms by framing scheme etc., are studied.

Another part of this chapter studies about state control over Guruvayoor Devaswom by analysing the Guruvayoor Devaswom Act, 1978. As part of analysis, the composition, powers and functions of the Guruvayoor Devaswom Managing Committee, financial control over the committee, Government's rule making power, Government's power for dissolution and supersession of committee are studied,

It devolves space for the study of administration or control over Koodalmanickam Devaswom by analysing the Koodalmanickam Devaswom Act, 2005. It clearly explains the structure and composition 'Koodalmanickam Devaswom Managing Committee', financial control over the committee, Government's power to supersede the committee, Government's rule making power etc.

Chapter 8 titled as "State Control over Temple Administration in Kerala: Part II: Travancore and Cochin Devaswoms" is the analysis of the Travancore-Cochin Hindu Religious Institutions Act, 1950 in detail.

It analyses various provisions of the Act governing the Travancore Devaswom Board. It clearly details about administrative control over Travancore Devaswom Board. It provides a detailed understanding about the composition and structure of the Travancore Devaswom Board, control over

temples under Travancore Devaswom Board through Temple Advisory Committees, financial control over Travancore Devaswom Board, Government's control over Travancore Devaswom Board etc. It analyses the power of the Travancore Devaswom Board to assume the control of Hindu religious endowments.

Special study has been done in the case of Chapter III of Part I of the Act that deals with Sree Padmanabhaswamy Temple. It also discusses the origin and developments in the administration of the temple over the period of time. It also tries to study the latest developments from Supreme Court of India with regard to the case related to the administration of the Sree Padmanabhaswamy Temple.

Analysis of Part II of the Act throws light upon the composition and structure of the Cochin Devaswom Board, control over temples under Cochin Devaswom Board through Temple Advisory Committees, financial control over Cochin Devaswom Board, Government's control over Cochin Devaswom Board etc. It also provides details regarding the Cochin Devaswom Board's power to assume the control of Hindu religious endowments and to frame schemes.

Chapter 9 titled as "State Control over other Religious Institutions in Kerala". Since the political history of State of Kerala and State control over various religious institutions and intrinsically mixed up, the study gives importance to the subject of historical evolution of various religions and religious institutions in Kerala. It narrates the legal transformation of state

patronage into state control over various religious institutions side by side of evolution of political process in Kerala. It depicts the clear picture of present system of administration of various religious institutions in Kerala. As part of this, State control over churches and church properties is studied here. It also touches the study of the proposed bill, The Kerala Christian Church Properties and Institutions Trust Bill, 2019. It clearly explains about the mode of State control over mosques/ waqfs through Wakf Board. The study also covers the areas of administration of Jewish synagogues, Jain temples, and Buddhist temples at present.

Chapter 10 titled as "Freedom of Religion to Individuals" provides an idea about the historical origin and perspective of religion and religious freedom in India. It focuses on the origin and growth of constitutional provision related to freedom of religion under Article 25 through the debates in the Constituent Assembly. It shows how an individual's religious freedom is protected under the letter and spirit of the constitution. It throws light upon the various freedoms like freedom of conscience, profess, propagate and practice that are undermined in the wide connotation 'freedom of religion' granted to an individuals.

Chapter 11 titled as "State Control over Freedom of Religion to Individuals" provides a detailed description about the control or restrictions over religious freedom under Article 25. It describes the scope and ambit of such restrictions of public order, morality and health. Such analysis of State control over individual's religious freedom has been carried with the help of

various decided case laws. As Article 25(1) is subject not only to the public order, morality and health, but also to 'the other provisions of part III' it explains about restrictions under the head 'the other provisions of part III'. It clearly analyses the scope of State control over both secular and religious matters related to religion. The 'doctrine of essential religious practice' has been detailed with the help of decided case laws. It explains about the control or restrictions over individual's religious freedom on the grounds of social welfare & social reform.

Chapter 12 titled as "State Control over Freedom of Religion to Denominations" is the study of various rights enjoyed by religious denominations and state control over them. It tries to analyse the collective freedom of religion under Article 26. It studies the scope and applicability of rights enjoyed by religious denominations. It clearly depicts how the right of religious denominations were framed under the fabric of Constitution by its makers. It analyses all the rights enjoyed by denominations, such as to establish and maintain institutions for religious and charitable purposes; to manage its own affairs in matters of religion; to own and acquire movable and immovable property; and to administer such property in accordance with law, in detail. It studies and compares the 'doctrine of essential religious practice' or 'matters of religion' and Rights of Religious Denominations and the interrelation between them. It focuses on the extent and limit of State control over religious institutions and their properties. All the analyses are made with the help of decided case laws.

Chapter 13 titled as "State Control over Religious Institutions in Secular India" narrates the state of religious plurality in contemporary modern Indian society and role of state in a multi religious society. It makes a theoretical analysis of the terms secularity, secularization and secularism in its general parlance. It compares the American model of secularism 'wall of separation' with Indian secularism. It clearly analyses the secularism in India in its sociological and historical perspectives. It also studies the constitutional perspective of Indian secularism. It clearly depicts how Indian secularism developed through judicial interpretations.

Chapter 14 titled as 'Conclusion and Suggestions' summarises the research study with the findings, conclusions and suggestions. The study reveals that the administration of religious endowments and institutions by the secular governments through various statutory bodies like Devaswom boards and endowment boards is not against the secular feature of Indian constitution. In the case of the five Devaswom Boards described in this study, they have historically evolved as inter-mediaries between the State and the temple managements. Devaswom laws continue in the same form as was prevalent at the time of the reorganization of the states. The later governments opted to maintain the statues-quo in the area of temple administration. There is no uniform law governing all the temples in Kerala. A uniform law for all the Devaswoms in Kerala is suggested. A uniform mechanism to regulate all the public Devaswoms Boards in Kerala is also suggested. Original proposals resulting from this research study are submitted in this regard.

CHAPTER 2

RELIGION, RELIGIOUS LAW: THEORETICAL AND CONCEPTUAL ANALYSIS

2.1 Introduction – Meaning and Definition of Religion

Religion is a concept that is very difficult for an accurate definition and identification.[1] The concept of religion is beyond mere doctrinal conformity or ceremonial piety and moreover, it is not mere theology but practice also.[2]

The atheist or the rationalist does not find any comprehensible evidence or any reason for believing in the existence of God. According to them, the belief in God itself is an indication of innate rationality of all human beings.[3]

Religion in some form or the other has been with mankind since time immemorial. It is impossible to trace its origins. It is evolutionary in character.[4] The concept of religion might have probably developed from man's conviction on the existence of some forces, usually called God, which are supposed to be more powerful than him. The belief in supernatural cause and effect might have been the result of experiences coinciding with the vicissitudes of nature. E.B. Taylor, the known anthropologist, in his classic work *Primitive Culture*, puts

[1] Melford E. Spiro, *Religion: Problems of Definition and Explanation, in* ANTHROPOLOGICAL APPROACHES TO THE STUDY OF RELIGION 87 (Micheael Banton ed., Tavistock Publications 2004) (The definitional complexities in religion have generally involved differences in what are technically termed ostensive definitions).
[2] S. RADHAKRISHNAN, INDIAN RELIGIOUS THOUGHT 156 (Orient Paperbacks 2006).
[3] M.A. Rane, *Atheism and Rational Belief, in* M.A. RANE, GOOD TIMES, BAD TIMES, SAD TIMES: SELECTED WRITINGS OF M.A. RANE 476 (M.A. Rane 75th Birthday Felicitation Committee 2001).
[4] G. STANLEY JAYA KUMAR, RELIGION AND SOCIETY 1 (M.D. Publications 1996).

forward that *animism*[5] is the point of departure for the birth and development of religion.[6]

In the ancient world, religion is concerned only with Gods, Goddesses, Spirits, Demons, Ghosts and the rest.[7] Many beliefs and practices are frequently evolved independently among different groups of people.[8]

Modern theories of religion come from modern disciplines of the social sciences: anthropology, sociology, psychology, and economics.[9] Pre-social scientific theories came largely from philosophy and were speculative rather than empirical in nature.[10]

Religion is an institution consisting of culturally patterned interactions with culturally postulated superhuman beings. Religion is an attribute of social groups, comprising a component part of their cultural heritage and its component features are acquired by means of the same enculturation processes

[5] Animism (from Latin *anima*, "breath, spirit, life") is the worldview that non-human entities-such as animals, plants, and inanimate objects-possess a spiritual essence.

[6] PAITOON PATYAIYING, S. RADHAKRISHNAN'S PHILOSOPHY OF RELIGION 14 (Gyan Publishing House 2008) (The Victorian anthropologist, E.B.Tylor observed that the origin of religion started from the 'primitive men' and the later people did not re-invent religion but instead they inherited it from their primitive forebears). *See also* M.A. Rane, *Atheism and Rational Belief*, *in* M.A. RANE, GOOD TIMES, BAD TIMES, SAD TIMES: SELECTED WRITINGS OF M.A. RANE 476 (M.A. Rane 75th Birthday Felicitation Committee 2001) (Whenever the primitive man is unable to find a cause for any phenomenon like lightning or storm, he thinks there is supernatural power behind the event. He worshiped his killers like snakes, tigers, etc. That is animism and rudiments of religion).

[7] Eric J. Sharpe, *The Study of Religion in Historical Perspective*, *in* THE ROUTLEDGE COMPANION TO THE STUDY OF RELIGION 21 (John R. Hinnells ed., Psychology Press 2005).

[8] Hodder M. Westropp & C. Staniland Wake, *Influence of the Phallic Idea in the Religions of Antiquity*, *in* ANCIENT SYMBOL WORSHIP: INFLUENCE OF THE PHALLIC IDEA IN THE RELIGIONS OF ANTIQUITY 23 & 39 (Alexander Wilder ed., Harvard University 1948) (J. W. Bouton 1874) (Serpent worship is one of the best examples to such belief or practices which have sprung up independently and which seem to have extensively prevailed among many ancient civilizations).

[9] Robert A. Segal, *Theories of Religion,* in THE ROUTLEDGE COMPANION TO THE STUDY OF RELIGION 49 (John R. Hinnells ed., Psychology Press 2005).

[10] *Id*. (The nineteenth century theories focused on the origin of religion, whereas the twentieth century theories have focused on the function of religion).

as the other variables of a cultural heritage are acquired.[11] Religion is different from other culturally constituted institutions by virtue only of its reference to superhuman beings.[12]

The concept of religion recognizes metaphysical force from which people believe to gather benefits and hope to avert evils.[13] It contains rules of spiritual and ethical discipline for attaining perfection in individual and collective life. Austin explained that religion exists in the country's public affairs and individual, private lives.[14] According to Max Weber, a religion may be polytheistic or monotheistic.[15]

The Charities Act, 2006 of England provides a partial definition of religion.[16] It defines religion to include-

i. a religion which involves belief in more than one God, and

ii. a religion which does not involve belief in a God.

This above definition supplements the common law definition.[17]

The western concept is largely theistic in its approach to religion and so it usually regards religion as some form of theism.[18] It is clear that a religion is

---

[11] Melford E. Spiro, *Religion*: *Problems of Definition and Explanation*, *in* ANTHROPOLOGICAL APPROACHES TO THE STUDY OF RELIGION 96-97 (Micheael Banton ed., Tavistock Publications 2004) (In other words, the variables constituting a religious system have the same ontological status as those of other cultural systems: its beliefs are normative, rituals are collective, and values are prescriptive).

[12] *Id*. at 98.

[13] J.D.M. DERRETT, RELIGION, LAW AND THE STATE IN INDIA 36-37 (Faber & Febar London 1968).

[14] Granville Austin, *Religion and Personal Law and Identity in India*, *in* RELIGION AND PERSONAL LAW IN SECULAR INDIA: A CALL TO JUDGMENT 15 (Gerald James Larson ed., Indiana University Press 2001).

[15] A.P. THAKUR, WEBER'S RELIGIOUS SOCIOLOGY 11 (Global Vision Publishing House 2007).

[16] Charities Act, 2006 (United Kingdom), § 2 (3).

[17] *But see* RUSSELL SANDBERG, LAW AND RELIGION 46 (Cambridge University Press 2012) (The emphasis upon 'faith and worship' reveals a rather narrow and conservative view of 'what a religion is or is to be'. This may seem to be an outmoded approach to religion).

not necessarily contained within one sole and single idea, and does not proceed as a unique principle which varies according to the circumstances.[19]

Even though all religions differ on certain theological matters (like for example, on the nature of God and his Oneness) and eschatological matters (i.e. those pertaining to the hereafter world such as heaven and hell) or even on certain historical events, yet all the religions seem to have a general agreement on the existence of spiritual realities, the immortality of the soul and its accountability as well as on general ethical and moral principles.[20]

In a very recent Indian case, popularly known as *Sabarimala Women entry case*,[21] it was observed by the Chief Justice of India, Dipak Misra that any relationship with the Creator (God) is a transcendental one crossing all socially created artificial barriers and not a negotiated relationship bound by terms and conditions.[22] This firmly rejects the institutionalization of religion and gives prominence to individual, as religion is a matter of individual.

2.2 Various Dimensions of Religion

Each religion is a social phenomenon, and each has its own community. The character and right of religious observance depends upon the membership

---

[18] Y. MASIH, INTRODUCTION TO RELIGIOUS PHILOSOPHY 1 (Motilal Banarsidass Publishers 1991). *See also* WILLIAM JAMES, THE WILL TO BELIEVE: AND OTHER ESSAYS IN POPULAR PHILOSOPHY, AND HUMAN IMMORTALITY 116 (Courier Corporation 1956) (William James's observation on definitions on religion is a noteworthy one. According to him, "*anything short of God is not rational, anything more than God is not possible*").

[19] SETH DANIEL KUNIN, JONATHAN MILES-WATSON, THEORIES OF RELIGION: A READER 31 (Seth Daniel Kunin & Jonathan Miles-Watson eds., Rutgers University Press 2006).

[20] Wan Azizah Wan Ismail, *Building Effective Ethical - Moral Co-Operation in a Pluralist Universe*, *in* RELIGION AND CULTURE IN ASIA PACIFIC: VIOLENCE OR HEALING? 8 (Joseph A. Camilleri ed., Vista Publications 2001).

[21] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018.

[22] *Id*.

of a particular social group.[23] This gives rise to specific collective identity and forms the basis for group cohesion. According to the functionalist point of view, the existence of religion is necessary for the satisfaction of the society.[24]

According to Max Weber, religion seeks answers that provide opportunities for salvation.[25] According to Emile Durkheim, A religion is a unified system of beliefs and practices relative to sacred things.[26] Karl Marx considered religion as the illusory happiness of the people and appealed to abolish it to assert their real happiness.[27]

[23] J. D. M. DERRETT, RELIGION, LAW AND THE STATE IN INDIA 57 (Faber & Febar London, 1968).

[24]Melford E. Spiro, *Religion: Problems of Definition and Explanation*, *in* ANTHROPOLOGICAL APPROACHES TO THE STUDY OF RELIGION 119 (Micheael Banton ed., Tavistock Publications 2004) (According to the functionalist point of view, religion not only satisfies certain functional requirements of the society but is a necessary condition for their satisfaction. Thus existence of religion is necessary for the satisfaction of the society).

[25] Max Weber, *The Social Psychology of the World Religions*, *in* FROM MAX WEBER: ESSAYS IN SOCIOLOGY 267-277 (H.H. Gerth & C. Wright eds., Psychology Press 1991) (According to Max Weber, religion responds to the human need for dealing with the question of how the extraordinary power of a divine God may be reconciled with the imperfection of the world that he has created and ruled over; and seeks answers that provide opportunities for salvation. The pursuit of salvation, like the pursuit of wealth, becomes a part of human motivation. Hence, even the sacred values do not get confined to "other-worldly" affairs, but have strong social character and basis for social control).

[26] THOMAS A. IDINOPULOS, REAPPRAISING DURKHEIM FOR THE STUDY AND TEACHING OF RELIGION TODAY 69 (Thomas A. Idinopulos & Brian C. Wilson eds., Brill Publishers 2002) (According to Emile Durkheim, "A religion is a unified system of beliefs and practices relative to sacred things, that is to say, things set apart and forbidden - belief and practices which unite into one single moral community called a Church, all those who adhere to them.").

[27] KARL MARX & FRIEDRICH ENGELS, ON RELIGION 42 (Courier Corporation 2012) (Karl Marx wrote (1844) that "religion is the sigh of the proposed creature, the heart of a heartless world, and the soul of soulless conditions. It is the opium of the people. The abolition of religion as the illusory happiness of the people is the demand for their real happiness"). *See also* KARL MARX, CRITIQUE OF HEGEL'S 'PHILOSOPHY OF RIGHT' 131 (J. O. Malley ed., Cambridge University Press 1977).

Feuerbach argued that in making religion, human beings unwillingly project their human essence onto the image and in making this image into God, they assign qualities to it that are distinctly non-human.[28]

According to Auguste Comte[29] religion would consist of all the organised practices and representations that pertain to the cultivation of the highest instincts and their harmonious integration into collective life.[30] Comte was of the opinion that religious beliefs and rites bring about social solidarity.[31]

According to Max Weber, the world view of the great religions was the work of clearly identifiable social groups; the puritan divines, the Confucian scholars, the Hindu Brahmins and the Jewish Levites and Prophets. Each of these status groups possessed "a style of life" and each developed certain religious beliefs. [32]

While every religion bears the imprint of the structure of social milieu in which it had its birth, it is by no means totally constrained by its source but acquires a dynamic life of its own, sometimes achieving the unanticipated.[33]

Religion is not only the result of any historical-geographical diffusion but also an expression of the variety of spiritual manifestations.[34] According to

[28] KEN MORRISON, MARX, DURKHEIM, WEBER: FORMATIONS OF MODERN SOCIAL THOUGHT 111 (Pine Forge Press 2006). [Ludwig Feuerbach was a contemporary of Karl Marx. Feuerbach developed a theory of 'Religious Alienation'].
[29] Auguste Comte is known as the Father of Modern Sociology (1798-1857).
[30] ANDREW WERNICK, AUGUSTE COMTE AND THE RELIGION OF HUMANITY: THE POST-THEISTIC PROGRAM OF FRENCH SOCIAL THEORY 102 (Cambridge University Press 2001).
[31] PAITOON PATYAIYING, S. RADHAKRISHNAN'S PHILOSOPHY OF RELIGION 17 (Gyan Publishing House 2008).
[32] A.P. THAKUR, WEBER'S RELIGIOUS SOCIOLOGY 11 & 42 (Global Vision Publishing House 2007).
[33] T.N. MADAN, RELIGION IN INDIA 5 (Oxford University Press 1992).
[34] SETH DANIEL KUNIN, JONATHAN MILES-WATSON, THEORIES OF RELIGION: A READER 121 (Seth Daniel Kunin & Jonathan Miles-Watson eds., Rutgers University Press 2006).

Dr. S. Radhakrishnan, religion is an inward transformation, a spiritual change, and the overcoming of the discords within our own nature. Religion has been the fundamental feature of Indian society from the beginning of our history.[35] Morals of religion and environmentalism go hand in hand at some point and turning out a socially integrated totality.[36]

But the differences between religions are basically very little on their deeper philosophical terrains, which emphasise on moral perfection in either individual or social behaviour. The ancient Indian vision points out the diversity in various religious thoughts.[37]

2.3 Religion and Culture: The Conceptual Difference

Like religion, culture is also a complex phenomenon that is difficult to define in a comprehensive manner. Culture can be described as "a way of life" - material, intellectual and spiritual - of people living in a particular society at a particular time.[38] Religion is not identical with culture. But religion is one of the important determinants of the "way of life" of individuals and communities.[39] Culture goes beyond religion.[40]

---

[35] S. RADHAKRISHNAN, INDIAN RELIGIOUS THOUGHT 139 (Orient Paperbacks Publishers 2006).

[36] *See generally* ROGER S. GOTTLIEB, THE OXFORD HANDBOOK OF RELIGION AND ECOLOGY (Oxford University Press 2006).

[37] *Ekam Sat Vipraa Bahuda Vadanti* Rig-Veda, I-164.46; another Verse "Akash atpatitamtoyamyathagachhatisagaram, sarva deva bamaskarahkeshavampratigachhati", states, "Just as the rain descending from sky reaches the same ocean, obeisance to God may be in any name, but destination is the same".

[38] BASIL POHLONG, CULTURE AND RELIGION: A CONCEPTUAL STUDY xiv (Mittal Publications 2004).

[39] *Id*. at xvii.

[40] MATTHEW ARNOLD, CULTURE AND ANARCHY 36 (Oxford University Press 2006) (According to Mathew Arnold, Culture is a harmonious expansion of all the powers which make the beauty and worth of human nature and is not consistent with the over development of any one power at the expense of the rest).

From functional point of view, both culture and religion provide moral codes of conduct which regulate the behavioural patterns of people. In its invisible institutional aspect, religion may be viewed as a segment of culture alongside others such as family, economic order, political order, etc. At this level we have temple, church, mosque etc., existing alongside others like local governments, schools, etc.[41]

Law cannot, however, allow defences, exceptions, or justifications under some blanket category of culture. It must make judgements about the acceptability of each component of culture (whether seen as a matter of interests, of ultimate values and beliefs, of traditions or of affective ties).[42]

2.4 Inter relation between Religion, Custom and Customary Law

Custom and customary law are two different concepts though both seem alike. From the early primitive society customs are the part and parcel of a society. A customary law is the product of modern society where customs are accepted as a source of law and legally sanctioned.

According to Salmond, custom is the embodiment of those principles which have commended to the national conscience as justice and public policy.[43] According to Keeton, customary law may be defined as rules of human action, established by usage and regarded as legally binding by those to

[41] *See* BASIL POHLONG, CULTURE AND RELIGION: A CONCEPTUAL STUDY xvii (Mittal Publications 2004).
[42] ROGER COTTERRELL, LAW, CULTURE AND SOCIETY: LEGAL IDEAS IN THE MIRROR OF SOCIAL THEORY 107 (Ashgate Publishing 2006).
[43] V.D. MAHAJAN, JURISPRUDENCE AND LEGAL THEORY 225 (5th ed., Eastern Book Co. 2017). *See also* ROBERT H. WINTHROP, DICTIONARY OF CONCEPTS IN CULTURAL ANTHROPOLOGY 75-77 (ABC-CLIO Publishers 1991) (In anthropology, 'custom' refers to the totality of socially acquired behavioural patterns which are supported by tradition and generally exhibited by members of the society).

whom such rules are applicable, which are adopted by the courts and applied as a source of law because they are generally followed by the political society as a whole or by some part of it.[44]

A positivist like Austin, representing the positive school of jurisprudence, does not recognise custom as a valid source of law.[45] He does not recognise custom as a law until it is recognised by a court of law.[46]

It is true that custom has lost its primacy as a source of law in tune with the growth of any legal system. In the era of statutory codes, customs get the sanction of law when it finds place in the statute book.[47]

According to Manu, "Immemorial custom is transcendental law."[48] In India, antiquity is essential for the recognition of a custom, but it is not based upon a fixed period for which it must have been in existence.[49]

---

[44] AVTAR SINGH & HARPREET KAUR, INTRODUCTION TO JURISPRUDENCE 256 (4th ed., Lexis Nexis 2013).

[45] H.L.A. HART, ESSAYS IN JURISPRUDENCE AND PHILOSOPHY 49-87 (Oxford University Press 2001). *See also* SURI RATNAPALA, JURISPRUDENCE 186, 187 (2nd ed., Cambridge University Press 2017).

[46] LIAM MURPHY, WHAT MAKES LAW, AN INTRODUCTION TO THE PHILOSOPHY OF LAW 23-27 (Cambridge University Press 2014). *See also* AMANDA PERREAU SAUSSINE & JAMES B. MURPHY, THE NATURE OF CUSTOMARY LAW: LEGAL, HISTORICAL AND PHILOSOPHICAL PERSPECTIVES (Cambridge University Press 2007).

[47] FREEMAN, LLOYD'S INTRODUCTION TO JURISPRUDENCE 922 (9th ed., Sweet & Maxwell 2016) (In order to get the sanction of law a custom has to pass through various stages. First it must be started as a usage. A usage is different from a custom. Thereafter such usages become established custom of the society).

[48] WILLIAM JONES, INSTITUTES OF HINDU LAW, OR, THE ORDINANCES OF MANU, ACCORDING TO THE GLOSS OF CULLUCA, COMPRISING THE INDIAN SYSTEM OF DUTIES, RELIGIOUS, AND CIVIL (The Law Book Exchange Ltd. 2007).

[49] DIAS, JURISPRUDENCE 188 (5th ed., Lexis Nexis 2014) (English law places an arbitrary limit to decide to constitute the antiquity of a custom as 1189 A.D. (accession of Richard – I). However, the Calcutta High Court in Nolin Behari v. Hari Pada, AIR 1934 Cal 452, took a different view that either 1773 or 1793 can be taken as a material point of time to decide question of antiquity. The reason for these two dates taken into consideration while deciding the question of antiquity was that it was in 1773 that the Act of Parliament was enacted and it was in 1793 that the Supreme Court was established. This view of Calcutta High Court has been criticised by many jurists and judges). [49] *See also* JAMES BERNARD MURPHY, THE PHILOSOPHY OF CUSTOMARY LAW (Oxford University Press 2014) (Customary law refers to

The various factors which make a custom valid and binding are immemorial antiquity, reasonableness, continuity, peaceful enjoyment, certainty, conformity with public policy and statutes, and morality.[50]

It is to be noted that a Custom is slightly different from prescription.[51] Both custom and prescriptions are governed by similar rules. The tests to fix the validity of both customs and prescriptions are more or less similar.[52]

Custom can be classified into two types: 1) Custom having force of law,[53] and 2) Custom not having force of law.[54] The Hindu code[55] recognises certain other customs like tribal custom[56] and family custom[57] also. However, customs which are immoral or opposed to public policy or opposed to

---

the set of customs chosen for both customary sanction and legal sanction. Hence customary law is not the spontaneous and habitual order of the custom but the deliberate order of the law).

[50] AVTAR SINGH & HARPREET KAUR, INTRODUCTION TO JURISPRUDENCE 261-63 (4th ed., Lexis Nexis 2007).

[51] P.S. ACHUTHEN PILLAI, JURISPRUDENCE AND LEGAL THEORY 95 (3rd ed., Eastern Book Co. 2016) (Custom is slightly different from considered as a source of law but prescription is considered as a source of right). *See also* V.D. MAHAJAN, JURISPRUDENCE AND LEGAL THEORY 240 (5th ed., Eastern Book Co. 2017) (In ancient days, law of prescription was treated as a branch of law of custom. A prescription was conceived as a personal custom limited to a particular person and his ancestors or predecessors).

[52] N.K. JAYAKUMAR, LECTURES IN JURISPRUDENCE 67 (2nd ed., Lexis Nexis 2010).

[53] These are those customs which are enforced by the State. These customs are backed by sanction. Such customs can be classified into (I) Legal Custom, and (II) Conventional Custom. The authority of legal custom is absolute. It possesses the force of law. Legal customs can be again classified into (a) General Custom, and (b) Local Custom. General customs are applicable to a whole country or State and are followed by all the members of a society. It must be reasonable and accepted by all as binding. Local customs apply only to a particular locality. In India, local customs are again classified into (i) Geographical local custom and (ii) Personal local customs. According to Salmond, a custom in its narrowest sense means a local custom exclusively. *See* P.S. ACHUTHEN PILLAI, *supra* note 51.

[54] These are those customs which are non-obligatory. They are all observed due to presence of public acceptance. *See* AVTAR SINGH & HARPREET KAUR, *supra* note 50, at 261.

[55] H.R. GOUR, 1 THE HINDU CODE 158 (Allahabad Law Publishers, 1980).

[56] It is a custom confined to a particular tribe, caste, community.

[57] A *kulachar* or family custom is a custom, the existence of which is confined to certain a single family.

enactments of the legislature are not recognised or enforced and are treated as void *ab initio*.[58]

A custom becomes a customary law only when such custom is accepted by law or when it gets the sanction of law. There are many customs having no sanction or acceptance of law. A society cannot legalise all customs, especially customs which are against public morality. Certain customs were abolished by law as they are against the established principles of the modern society.[59] In older days, morality and customary rules were the same. But due to the passage of time, the distinction between both has grown sharply.[60]

A custom must be reasonable and must not be opposed to public policy. The reasonableness of the custom is judged in accordance with the facts and circumstances of each case. Such a test must be with reference to the general principles of law like, justice, equity and good conscience. What is reasonable or unreasonable is decided on the basis of social values. It may differ from time to time, from place to place and country to country.[61]

A custom must not be derogatory to basic norms of law (especially statute law). If a custom is contrary to a statute, the courts will never recognise such customs.[62] If a custom that is recognized by statute is found to be

[58] Baluswami v. Balakrishna, AIR 1957 Mad 97; Padala Latchamma v. Mutchi Appalaswamy, AIR 1961 AP 55; Thirnmakku v. Bandlu Rangappa, AIR 1977 Kant 115.
[59] Abolishment of Sati in India is a good example in this regard.
[60] HOLLAND, THE ELEMENTS OF JURISPRUDENCE 57, 58 (13th ed., Universal Law Publishing Co. 2011).
[61] AVTAR SINGH & HARPREET KAUR, INTRODUCTION TO JURISPRUDENCE 261 (4th ed., Lexis Nexis 2007).
[62] P.S. ACHUTHEN PILLAI, JURISPRUDENCE AND LEGAL THEORY 94 (3rd ed., Eastern Book Co. 2016).

derogatory to the fundamental principles of law and the constitution, such custom and statutory provision may be held ultravires to the constitution.[63]

According to Coke, a custom cannot take away the force of an Act of Parliament. A state can abrogate a custom but a custom cannot abrogate state law unless otherwise it is permitted by a statute. Jurists like Savigny gives equal weight to both statutory law and customary law.[64]

2.5 Religious Institutions: A Part of Religions

The term 'religious' means, something that of, pertaining to, or concerned with religion. The word 'religious' is a general word applying to whatever pertains to faith or worship. The word 'institution' means an organisation, establishment, foundation, society or the like devoted to the particular cause or program, especially, one of a public, educational, or charitable character. In terms of ecclesiastical aspects the word 'institution' means that the institution that is a part and parcel of a religion.[65]

In the ordinary sense, the word 'religious institution' refers to organizations for religious and charitable purposes, such as temples, mosques, churches, math, monasteries and the like.[66]

---

[63] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018 (A five-judge Constitution bench, headed by Chief Justice of India, struck down Rule 3(b) of Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965, which authorised a long standing custom that excludes women between the ages of 10 and 50 from entering the temple at Sabarimala. The court held that such a rule is violative of the right of Hindu women to practice religion).

[64] V.D. MAHAJAN, JURISPRUDENCE AND LEGAL THEORY 240 (5th ed., Eastern Book Co. 2017).

[65] WEBSTER'S ENCYCLOPEDIC UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE, DELUXE EDITION, at 988 (Random House Value Publishing 2001).

[66] 2 D.D. BASU, COMMENTARY ON THE CONSTITUTION OF INDIA: BEING A COMPARATIVE TREATISE ON THE UNIVERSAL PRINCIPLES OF JUSTICE AND CONSTITUTIONAL GOVERNMENT

Religious institutions are used as a place of congregation or gathering of laities or devotees. In this regard, such institutions have some sociological importance also. Religious institutions are commonly used for prayer and worship. Some religious institutions perform charitable activities along with religious activities, since charity is a part of the most of the religions also. All the religious rites related to various occasions in our social life such as, birth, marriage, death, inauguration of a new building, oath taking etc. etc., are also related to religious institutions. This is why religious institutions are considered as part and parcel of concerned religions.[67]

From a general understanding it can be said that an institution which is the part of a religion is called a religious institution. To be more exact an institution which is owned, established, run, administered, maintained, by a religion or religious group, denomination, or section thereof for the sole purpose of religious activities or religious matters can be said to be a religious institution. All the institutions created and administered by religious groups cannot be called as religious institutions. An institution that carries any of the religious functions alone can be considered as a religious institution.

A charitable institution is quite different from a religious institution. However, in a majority of religions, charity is also a part and parcel of religious activity.

WITH SPECIAL REFERENCE TO THE ORGANIC INSTRUMENT OF INDIA 160 (4th ed., S. C. Sarkar Publishers 1961).

[67] Shanjendu Nath, *Religion and Its Role in Society*, IOSR JOURNAL OF HUMANITIES AND SOCIAL SCIENCE (IOSR-JHSS) 82-85 (Vol. 20, Issue 11, Nov. 2015), (Nov. 10, 2019), http://www.iosrjournals.org/iosr-jhss/papers/Vol20-issue11/Version-4/L0201148285.pdf

In such circumstances charitable institutions that serve religious functions also come under the broad category of religious institutions.[68]

The following are the examples of religious institutions that are part of major religions.

1. Hindu- Temple, Math
2. Muslim- Mosque, Dargah, Madrassa, Graveyard and Wakf
3. Christian- Church, Seminaries, Sunday school

In India, creation and control over religious and charitable institutions are dealt with under separate legislations. It is discussed under subsequent chapters.

2.6 Religious Law/ Divine Law/Personal Law

Divine law is considered as one that comes directly from God.[69] Many religions and their personal laws treat custom as a fundamental to those religions and as the basis of such personal laws. It contains the sacred text books like scripture, traditions, custom and so on. Such personal laws cover most of the aspects of a human being in his relation to his God, belief, social institutions etc. Such laws are usually applied and implemented by and through the religious authorities concerned, in its institutional form, to its own organizational and to family matters of individual laity.[70]

---

[68] *See* Zoe Robinson, *What Is a Religious Institution*, 55 BOSTON COLLEGE LAW REVIEW 181, 234 (2014), (28 Aug. 2019), https://lawdigitalcommons.bc.edu/bclr/vol55/iss1/6.

[69] WAYNE MORRISON, JURISPRUDENCE FROM GREEKS TO POST-MODERNISM 70 (Routledge 2015) (According to Aquinas divine law is available to man through revelation and is to be found in scriptures).

[70] Marylin Johnson Raisch, *Religious Legal Systems in Comparative Law: A Guide to Introductory Research*, NYULAWGLOBAL, (Jan. 8, 2020), http://www.nyulawglobal.org/globalex/Religious_Legal_Systems.html#_Classification.

A religious legal system is where the law is considered as the gift of God and that is applicable to all those who are subject to mundane power of that God or religion. For the purpose of study, religious legal systems like Hindu Law, Canon Law, and Islamic Law are examined briefly below to trace the influence of such religions on the daily life of its believers.

2.6.1 Hindu Law

Hindu legal system is considered as the most ancient legal system of jurisprudence having a legacy of more than 6000 years.[71] Hindu law is considered as of divine origin. Hindus believe their law as a revealed law. The concept of Hindu law is based on 'Hindu philosophy'[72] and Hindu religion.[73] The main sources of ancient Hindu law are *Sruti*[74] (vedas), *Smriti*[75] or Dharmasastras, digests and commentaries[76] and custom.[77]

Modern Hindu law has its sources from legislation, precedent, and principles of equity, justice and good conscience.[78] The concept of *Dharma* is a

[71] B.M. GANDHI, HINDU LAW 2 (4th ed., Eastern Book Co. 2016).
[72] According to Hindu philosophy the soul is immortal and there is a chain of birth and rebirth until one soul attains salvation (*moksha).*
[73] PARAS DIWAN, MODERN HINDU LAW 11 (23rd ed., Allahabad Law Agency 2017).
[74] It means one which has been heard. In other words language heard from divine god through revelation. Vedas are again classified into four, i.e., Rig veda, Yajur veda, Sama veda, and Atharva veda.
[75] It means, what is recollected and remembered. It is of human origin that is supposed to have been in the memory of sages who are the repositories of the revelation. Manusmriti (code of Manu) is the most revered of all smritis and considered as paramount.
[76] Commentaries and digests are the interpretations on smritis.
[77] MAYNE'S TREATISE ON HINDU LAW AND USAGE 15 (17th ed., Bharat Law House 2017). For detailed discussion, *see* MULLA, HINDU LAW 5- 77 (22nd ed., Lexis Nexis 2016).
[78] In absence of any clear *Shastric* text or valid custom on point, the courts have authority to decide cases on principles of justice, equity and good conscience. *See* Sudarshan Singh v. Suresh Singh, AIR 1960 Pat 45; Saraswathi Ammal v. Jagadambal, MANU/SC/0091/1953. *See also* PARAS DIWAN, MODERN HINDU LAW 27 (23rd ed., Allahabad Law Agency 2017).

part of Hindu law.[79] There was a great emphasize for the religious elements in Hindu law.[80] *Manusmriti*[81] is considered as the paramount authority of ancient Hindu law.[82]

Custom and local tradition could prevail over sacred texts of *smrithi* under the classical Hindu law.[83] However, a custom cannot override *sruthi* i.e., vedas. Both ancient *sruthis* and *smrithis* were recognised by authoritative law by early rulers, judicial bodies, and communities.[84] India is the only country where Hindu law has its limited application. During British period, the early Sanskrit literatures were replaced by their English translations and understanding in place of the original source and purport. Anglo- Hindu law preserved Hindu personal law in terms of family law matters and replaced the other matters with British law.[85]

After independence, Anglo-Hindu law was subjected to modernization and modern Hindu personal law involved a large amount of codification and

[79] MAYNE'S TREATISE ON HINDU LAW AND USAGE 6 (17th ed., Bharat Law House 2017) (The concept of Dharma includes religious, moral, social, and legal duties that can only be defined by its contents.)
[80] Axel Michaels, *The Practice of Hindu Law*, *in* HINDUISM AND LAW 68 (Timothy Lubin et al. eds., Cambridge University Press 2010).
[81] Manu, the mythical author of Manusmriti, is considered as the most revered of all the sages or rishis and first ancestor of mankind. Manusmriti contains the laws relating to family, property, and succession law.
[82] Patrick Olivelle, *Dharmasastra: A Textual History*, *in* HINDUISM AND LAW 40 (Timothy Lubin at al. eds., Cambridge University Press 2010). *See also* MAYNE'S, *supra* note 79, at 2.
[83] MULLA, HINDU LAW 97 (22nd ed., Lexis Nexis 2016). *See generally* WERNER F MENSKI, HINDU LAW: BEYOND TRADITION AND MODERNITY (Oxford University Press 2008).
[84] *See* MAYNE'S, *supra* note 79, at 2-11.
[85] Rina Verma Williams, *Hindu Code as a Personal Law: State and Identity in the Hindu Code Bills Debates 1952-1956*, *in* HINDUISM AND LAW 105-110 (Timothy Lubin et al. eds., Cambridge University Press 2010); Donald R Davis, *A Historical over view of Hindu Law*, *in* HINDUISM AND LAW 25 (Timothy Lubin et al. eds., Cambridge University Press 2010). *See also* MULLA, HINDU LAW 72 (22nd ed., Lexis Nexis 2016).

reforms between 1950s and 1970s.[86] In the modern context, Hindu personal law is applicable to all Hindus.[87] A person may be Hindu by birth or by conversion.[88]

2.6.2 Canon Law

The Canon law is the generic name in English for the rules of the Roman Catholic Church.[89] It originated as the indigenous law in Europe after the end of the Roman Empire and the retreat of ancient Roman law.[90] Gradually Canon law developed as a code of conduct as well as set of principles that govern the external order of the Church and the public and private life of the faithful. Later it became a part of civil law code of most of the secular states.[91]

---

[86] WERNER F. MENSKI, HINDU LAW BEYOND TRADITION AND MODERNITY 186-208 (Oxford University Press 2008) (As a result of codification and reformation the following legislations like, The Hindu Marriage Act, 1955, The Hindu Adoptions and Maintenance Act, 1956, The Hindu Minority and Guardianship Act, 1956, The Hindu Succession Act, 1956 were came into effect).

[87] MULLA, HINDU LAW 82 & 83 (22nd ed., Lexis Nexis 2016) (In accordance with constitutional provisions, the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956, and the Hindu Adoptions and Maintenance Act, 1956 have been extended to all persons who can be regarded as Hindus in this broad and comprehensive sense. For example, section 2 of the Hindu Marriage Act, provides that this Act applies-
(a) to any person who is a Hindu by religion in any of its forms of developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,
(b) to any person who is a Buddhist, Jaina, or Sikh by religion, and
(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed. The same provision is made in the other three Acts to which we have just referred). For detailed discussion on the term Hindu, *see* Sastri Yagnapurushadji v. Muldas Bhudardas Vaishya, AIR 1966 SC 1119.

[88] Perumal Nadar v. Ponnuswami, AIR 1971 SC 2352.

[89] *See generally* MARK HILL, ECCLESIASTICAL LAW (3rd ed., Oxford University Press 2007) (According to the Catholic Encyclopedia, *Canon law, otherwise called Ecclesiastical law, is the body of laws and regulations made by or adopted by ecclesiastical authority, for the government of the Christian organization and its members*).

[90] JAMES A. CORIDEN, AN INTRODUCTION TO CANON LAW 3-5 (Paulist Press 2004).

[91] RAN HIRSCHL, COMPARATIVE MATTERS: THE RENAISSANCE OF COMPARATIVE CONSTITUTIONAL LAW 83 (Oxford University Press 2014).

Ecclesiastical law has now established itself as the leading authority on the laws regulating the Christian religious community.[92]

Canon law is a fully developed legal system, with all the necessary elements like courts, lawyers, judges, a fully articulated legal code including principles of legal interpretation and coercive penalties. But it lacks civilly-binding force in most secular jurisdictions. The main source of Canon law is Christian theology.[93] The institutional mechanism through which Canon law is applied, are the Catholic churches.[94]

In India, matters like marriage, divorce, adoption, guardianship, and succession of Christians are regulated by the Christian personal law. The provisions of Canon law on marriage are recognised by Indian Christian Marriage Act 1872.[95]

2.6.3 Islamic Law

The primary source of Islamic law is traced to *Shari'ah*. Shari'ah has two main sources: (i) the *Qur'an* and (ii) The *Sunnah.*[96] The secondary source

[92] *See generally* MARK HILL, ECCLESIASTICAL LAW (3rd ed., Oxford University Press 2007).
[93] The things like the means of salvation, to whom and through whom the means of salvation were revealed, the orders of the clergy, the primacy of the Roman Pontiff, the claims of the Church to competence over the State, the celibacy of the clergy, the indissolubility of marriage, the suppression of simony etc., were originally developed from scriptural or doctrinal themes. However, now they are developed in legal enactments.
[94] Robert E. Rodes, *The Canon Law as a Legal System - Function, Obligation, and Sanction*, NATURAL LAW FORUM 47 (Jan 1, 1964).
[95] KANDE PRASAD RAO, 1 LAW APPLICABLE TO CHRISTIANS IN INDIA, MARRIAGE AND MATRIMONIAL CAUSES (Universal Law Publishing Co. 2003) (Christian personal law is not applicable in the state of Goa. The Goa Civil Code, also called the Goa Family Law, is the set of civil laws that governs the residents there). *See also* SEBASTIAN CHAMPAPPILLY, CHRISTIAN LAW OF SUCCESSION IN INDIA (Southern Law Publishers 1997).
[96] *Sunnah* means traditions of Muhammad Ibn Abdullah, the last Prophet of Islam, which includes the things he said, i.e. *Hadith*, the way he lived his life, his conduct.

of Islamic law is called as *fiqh*[97]. The sources also include the reasoning, known as *Ijtihad*, of Islamic religious judges.[98]

Currently, Saudi Arabia, Sudan, and Iran are the countries which fully recognize the Shari'ah as the official law of the land. Yemen, Bahrain, Kuwait and Qatar, also recognise Shari'ah principles to a limited extend. All other Islamic countries are following a hybrid of Islamic and European law.[99]

2.7 Applicability of Religious laws / Personal Laws in India

India can be called as the land of religions. Hindus, Muslims, Christian, Parsees, Buddhists, Jains, and Sikhs live in this country. Each community has its own laws governing marriage, adoption and inheritance.[100] After independence such religious laws of both Hindu and Muslim communities have taken the shape of statutory law in one way or the other, partly or fully from British colonial Codes and Acts. Most of such legislations largely incorporate

[97] *fiqh* are the methods used to discover and apply the law (Islamic jurisprudence or

[98] RAJ BHALA, UNDERSTANDING ISLAMIC LAW (SHARI'A) 285- 327 (Lexis Nexis 2011). *See also* Irshad Abdal Haqq, *Islamic Law: An overview of its Origin and Elements*, 7 J. ISLAMIC LAW & CULTURE 27 (2002), (Jan. 12 2019), https://heinonline.org/HOL/LandingPage?handle=hein.journals/jilc7&div=8&id=&page. (The principles and injunctions of the Shari'a are infallible and not subject to amendment. The *fiqh*-based standards may change according to the circumstances. Four methods, often called sources of law, are accepted by Muslim writers, for deducing and establishing fiqh-based law are universally recognized by Islamic jurists. These are the extraction of Qur'anic injunctions and principles based on interpretations of it; the application of the principles reflected through the Hadith of Prophet Muhammad; the consensus of opinion from among the companions of Muhammad or the learned scholars (*ijma*); analogical deduction (*qiyas*)).

[99] Irshad Abdal Haqq, *Islamic Law: An overview of its Origin and Elements*, 7 J. ISLAMIC LAW & CULTURE 27 (2002), (Jan. 12 2019), https://heinonline.org/HOL/Landing Page?handle=hein.journals/jilc7&div=8&id=&page.

[100] Ruma Pal, *Religious Minorities and the Law*, *in* RELIGION AND PERSONAL LAW IN SECULAR INDIA: A CALL TO JUDGMENT 24 (Gerald James Larson ed., Indiana University Press 2001).

religious and customary law, especially in personal matters like marriage, inheritance and adoption.[101] Religious laws are also called as personal laws.

Personal law is defined as a law that applies to a certain class or group of people or a particular person, based on their religion, faith, and culture. In India, most persons belong to a caste or religion and have their own faith and belief. One's belief is determined by the sets of laws made by the institutional mechanism of that religion. These laws may also have evolved through different customs followed by each religion. People in Indian have been following these laws since the colonial period.

In India, personal law and religion are closely intertwined. Hindu and Muslim communities are strongly concerned with the connection between religion and personal law.[102] Different religions like Hinduism, Islam, and Christianity are governed by their own personal laws. In India, there are five personal law systems for five different religious groups: Hindu personal law, Muslim personal law, Christian personal law, Parsi personal law and Jewish personal law.[103]

2.7.1 Hindu Personal Law in India

Hindu law is applicable to the personal and family matters of Hindus. Such matters that fall under Hindu personal law are marriage, divorce,

[101] Examples are; the Hindu Marriage Act, 1955; the Hindu Minority and Guardianship Act, 1956; the Hindu Succession Act, 1956; the Hindu Adoptions and Maintenance Act, 1956; and Muslim Personal Law Application Act, 1937.

[102] Granville Austin, *Religion, Personal law, and Identity in India*, *in* RELIGION AND PERSONAL LAW IN SECULAR INDIA: A CALL TO JUDGMENT 15 (Gerald James Larson ed., Indiana University Press 2001).

[103] Anna Drwal, *The Formation of Christian Personal Law in British India from 1865 to 1872*, (Jan. 21, 2020). *https://ruj.uj.edu.pl/xmlui/bitstream/handle/item/47451/drwal_the_formation_of_christian_personal_law_2016.pdf?sequence=1&isAllowed=y.*

maintenance, adoption, minority and guardianship, rights of a member of joint family, pious obligation of sons for the debts of the father, alienation of family property, partition of joint family property and succession. Custom or Usage is a very important source of Hindu law.[104]

Legislation is the most important modern source of Hindu personal law. Several enactments have been passed by the Parliament to regulate marriage, adoption, maintenance etc., among Hindus.[105]

2.7.2 Muslim Personal Law in India

Muslim personal law is applicable only to Muslims, who believe that there is only one God and that Mohammed is this the Prophet. In India, Muslims consist of two sects namely Sunnis (governed by Sunni law) and Shia (governed by Shia law). There are some differences between both these laws but the sources of both are one and same, namely the Holy *Quaran*, the *Sunnat* and the *Ijma*.[106]

Muslim personal law is founded on the divine revelations embodied in the principal source *Quaran*. The Islamic code *Shariah* (*Shariat*) is the basis of Muslim law that deals with matters such as marriage, dower, divorce, maintenance, guardianship, inheritance, will, gift, etc. of Muslims in India. Muslim law has been further supplemented and modified by State legislation

[104] Section 3 (a) of the Hindu Marriage Act 1955 defines this expression as: Custom or usage is a rule which has been continuously and uniformly observed for a long time among the Hindus in any local area, tribe, community or group or family. The rule should be certain, should not be unreasonable, should not be opposed to public policy and has not been discontinued by the family.

[105] The Hindu Minority and Guardianship Act, 1956; the Hindu Adoptions and Maintenance Act, 1956; the Hindu Marriage Act, 1955; the Hindu Succession Act, 1956 are examples.

[106] M.M. ALIYAR, SUNNI CODE OF MUSLIM PERSONAL LAW APPLIED BY COURTS OF JUSTICE IN INDIA 37 (1st ed., 2015).

and modern judicial precedents of the Privy Council, High Courts and the Supreme Court of India.[107] Muslims in India, in their personal matters like marriage, dower etc., are governed by the various legislations passed either by the Parliament or by State legislatures. Such Muslim personal laws are generally governed according to the provisions of Muslim Personal Laws (*Shariat*) Application Act, 1937.[108]

2.7.3 Christian Personal Law in India

Christian personal law is applicable to the Christians in India. Christian law deals with matters such as marriage, divorce, succession, adoption, etc. In matters like marriage, the Christian law is also governed by the provisions of the Indian Christian Marriage Act, 1872.[109]

The Indian Christian Marriage Act, 1872 provides for the solemnization of marriage of Christians, is however, not applicable to the whole of India.[110] It is not applicable to certain territories of Jammu, Manipur and Kashmir. It is not applicable to Travancore - Cochin States incorporated in Kerala State also. Therefore the Act is applicable to the erstwhile Malabar area of Kerala. In order to avoid such territorial disparities, the State of Kerala has brought its own legislation with regard to Christian marriages.[111]

The Indian Divorce Act, 1869, and the Christian Marriage Dissolution Act, 1936 are also part of Christian personal law in India.

---

[107] M.M. ALIYAR, SUNNI CODE OF MUSLIM PERSONAL LAW APPLIED BY COURTS OF JUSTICE IN INDIA 42 (1st ed., 2015).
[108] The Muslim Personal Law (Shariat) Application Act, 1937, § 2.
[109] *Id.* § 4.
[110] The Indian Christian Marriage Act, 1872, § 1.
[111] Kerala Christian Marriage Act, 2008 is one of such initiatives.

2.8 Personal Laws & Religious and Charitable Endowments

Religious and charitable endowments are also a part of personal law. Regulation Act of 1772 also recognised religious usage or institution as a listed topic under it. The personal law of each religion is used to validate an endowment and in such cases, the object for which the endowment is created is important. The object of the endowment is something religious or spiritual in nature. The object of endowment of one religion may not be valid for another religion.[112]

It is to be noted that regulatory jurisdiction over such religious endowments comes under State list even where religious and customary law is applicable. In the case of mismanagement and maladministration, the State is legally empowered to exercise its administrative control over such institutions. Section 92 of the Civil Procedure Code is one of the best examples in this regard.[113]

2.9 Constitutional Validity of Personal Laws in India

The Constitution of India empowers the legislatures to legislate with respect to family relations governed by the personal laws of various religious

[112] John H. Mansfield, *Religious and Charitable Endowments and A Uniform Civil Code*, *in* RELIGION AND PERSONAL LAW IN SECULAR INDIA: A CALL TO JUDGMENT 70 (Gerald James Larson ed., Indiana University Press 2001) (For example, under Hindu law, a Hindu religious endowment cannot be created or maintained for the object of worshiping at the tomb or Samadhi of an ordinary person. But under Muslim law it is permissible).

[113] Code of Civil Procedure, 1908, § 92 (Section 92 of Civil Procedure Code deals with the provision related to public trusts for religious and charitable purpose. A suit under Section 92 is a suit of a special nature which presupposes the existence of a public trust of a religious or charitable character. Such a suit can be initiated in the event of a proven breach of such trust or when the direction of the court is necessary for the administration of the trust).

groups in India. It also directs the state to replace these personal laws by a common civil code.[114]

Personal laws can be distinguished as or classified into traditional and statute enacted laws. Traditional personal laws are based upon customs and usages. In a sense, such traditional personal laws are unwritten in nature. Statute enacted personal laws are the result of a legislative process. Enacted legislations may affirm traditional personal laws by giving legislative sanctity.[115]

The question of justifiability of personal laws has drawn considerable attention in the light of numerous decisions. The applicability or the extent of applicability of personal laws is an important issue. If the judicial trend in this regard is analysed, it can be seen that the courts in India have given primacy for protecting constitutional rights rather than merely upholding personal laws.

In 1956, in the case of *State of Bombay v. Narasu Appa Mali*,[116] the Supreme Court held that personal laws cannot be treated as law under Article 13[117] of the Indian Constitution, and judicial scrutiny over such personal law is not permissible.[118] In *Ahmedabad Women's Action Group v. Union of India*,[119] the Supreme Court reiterated the ratio in *Narasu Appa Mali Case*.

---

[114] INDIA CONST. art. 44.
[115] Saumya Ann Thomas v. The Union of India, 2010(1) KLT 869.
[116] State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84 (The validity of the Bombay Prevention of Hindu Bigamous Marriages Act was challenged in this case. The said Act was found not to be violative of Article 14 as the State was free to bring in social reforms in stages).
[117] INDIA CONST. art. 13 (3).
[118] State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84. *See also* VII CONSTITUENT ASSEMBLY DEBATES 249 (1950) (The court found many reasons for arriving at such a conclusion. One of the major reasons for excluding personal law from the ambit of judicial scrutiny was that Personal laws are not included in the concept of 'law' referred to in Article

But, the recent judicial pronouncements travel in conflict to the *Narasu Appa Mali Case*. The court's view point in *Indian Young Lawyers Association v. The State of Kerala* ('*Sabarimala Women Entry Case'*)[120] is contrary to the decision of *Narasu Appa Mali Case*. In the context of customs and usages, it can be now said that, *Narasu Appa Mali Case* is no longer a good law.[121] In *Sabarimala Women Entry Case*, the Supreme Court held a customary law recognised by enacted law as ultravires of the Indian Constitution.[122]

The immunity to personal laws are not applicable to law enacted by the legislature enabled under Article 245 of the Constitution. For example, when a legislation or provision of legislation is challenged on the ground that it has violated equality under Articles 14 and 15, the scrutiny under Article 13 is permissible as the codified personal law in question would be subject to judicial review.[123]

---

13 (3) and are not the "law in force" referred to in Article 372 (3). The court also highlighted that the attitude of the makers of the Indian Constitution was non-interference in personal laws. Justice Gajendragadkar observed thus:-
"The Constitution of India itself recognises the existence of these personal laws in terms when it deals with the topic falling under personal law in item 5 in the Concurrent List. This item deals with matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law because, in my opinion, the framers of the Constitution wanted to leave the personal laws outside the ambit of Part III of the Constitution. They must have been aware that these personal laws needed to be reformed in many material particulars and in fact they wanted to abolish these different personal laws and to evolve one common code. Yet they did not wish that the provisions of the personal laws should be challenged by reason of the fundamental rights guaranteed in Part III of the Constitution.").

[119] Ahmedabad Women Action Group (AWAG) v. Union of India, AIR 1997 SC 3614.

[120] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018.

[121] *Id*.

[122] *Id*. (In this case the court declared that the bar on entry of women between age of 10 and 50 years on the ground of their "menstruating years" into the Sabarimala is ultra vires of the constitution, and all women should be allowed to enter the temple. In this case it was held that Rule 3(b) of the Kerala Hindu Places of Public Worship Act, 1965, that legalises the custom of not allowing women into the temple, was declared as a clear violation of right of Hindu women to practice religion under Article 25).

[123] *Id*.

In this case, Justice D.Y. Chandrachud, in his separate judgement, does not recognise the immunity given to personal laws from judicial scrutiny, especially in matters of customs and usages.[124] It, the *Sabarimala Case*, impliedly and indirectly rejects the ratio in *Narasu Appa Mali*.[125]

In *John Vallamattom v. Union of India*,[126] it was observed that the right to religion cannot be a hindrance to the recognition of the right of equality of sexes guaranteed under Article 14 and 15(1) for, Article 25(1) is expressly subject to other rights guaranteed by Part III of the Constitution.

The observation made in the case of *Saumya Ann Thomas v. The Union of India*,[127] is noteworthy here.

> "*... All laws whether pre-constitutional or post constitutional will have to pass the test of constitutionality. We find no reasons, in a secular republic, to call out "personal law" alone and expend the same from the sweep of Article 13 and Part III of the constitution. A price of personal law also binds citizens. It is as much a price of enforceable law notwithstanding the fact that such principles of personal law may not be statutory law and may only have been accepted and enforced by the sovereign and acted upon by the courts for a long period of time. Article 13 assures the citizen that pre-constitutional or post constitutional laws shall not be permitted to eat into space of fundamental rights reserved by 'we the people of India' in favour of themselves while giving into themselves the Constitution*."

---

[124] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018 (276).
[125] Krishnadas Rajagopal, *With Sabarimala verdict, 'Ghost of Narasu' is finally exorcised*, THE HINDU (New Delhi, Sept. 28, 2018).
[126] John Vallamattom v. Union of India, AIR 2003 SC 2902.
[127] Saumya Ann Thomas v. The Union of India, 2010(1) KLT 869 (In this case, section 10A which was introduced in the Divorce Act was challenged. The court held that, notwithstanding the fact that such statutory law amends the personal law, it will certainly have to satisfy Part III of the Constitution and will hence be open to challenge under Article 13. The court held that there is no scope for the legislature to discriminate between religions).

In *Nazeer v. Shemeema*,[128] it was held that '*Triple Talaq*' in single utterance is not approved by Quran and is illegal. From the judgements of the last few years, it can be seen that a strong view exists in favour of constitutional scrutiny of personal laws.[129]

In *Shayara Bano v. Union of India* (*Instant Triple Talaq Case*),[130] the Supreme Court interfered in the personal laws with its power of judicial scrutiny. In this case, the Supreme Court of India declared the practice of *talaq-e-bidat (Tripple Talaq)* as unconstitutional and directed the central government to make appropriate legislation in the matter. As a result, a new legislation The Muslim Women (Protection of Rights on Marriage) Act, 2018 was enacted by the Parliament.[131]

These judgements made a crucial distinction between traditional and statute enacted personal law. Reform in any personal law is constitutionally valid and not violative of religious freedom.[132]

2.10 Meaning and Definition of Religion under the Indian Context

People practising Hinduism, Islam, Christianity, Sikhism, Buddhism, Jainism, Judaism, Sufism, Zoroastrianism, and the Bahai faith co-exist as separate and distinctive communities.[133]

---

[128] Nazeer v. Shemeema, 2017 (1) KLT 300.
[129] Shabnam Hashmi v. Union of India, AIR 2014 SC 1281.
[130] Shayara Bano v. Union of India, (2017) 9 SCC 1.
[131] The Act seeks to make instant triple talaq a criminal offence.
[132] T Mahmood, *Personal Laws and The Constitution In India*, (Jan 25, 2019), *http://14.139.60.114:8080/jspui/bitstream/123456789/736/15/Personal%20Laws%20and%20the%20Constitution%20in%20India%20.pdf*
[133] T.N.Madan, *Religions of India*, *in* VEENA DAS, HAND BOOK OF INDIAN SOCIOLOGY (Oxford University Publishers 2006).

The freedom of religion occupies a prime position in Indian Constitution. However, the Constitution does not define the term 'religion'.[134]

In defining religion Indian thinkers largely try to follow the Western concept of religion.[135] But it is a fact that etymological meaning or Western dictionary meaning of religion is not quite fit under Indian circumstances.[136] The term religion in the Indian context is so closely related to the particular aspects of India's cultural traditions. In India, religion is a social system in the name of God laying down a code of conduct for the people in society. In other words religion is a way of life in India and it is an unending discovery into the unknown world.[137]

Religion is not to be confined to the traditional, established, well-known or popular religions like Hinduism, Mohammedanism, Buddhism and Christianity.[138] In *A.S. Narayana Deekshitulu* case,[139] the Supreme Court of India rightly observed thus:-

> "*Religion in development is man in search of God. Throughout history man endeavours in building into a fuller religious life from the experience of the past and also with the consciousness of life in God that he seeks, for he is always eternally in him. It is the eternal aspect of religion which is expressed in the religious recognition in every human life, at any stage of its development in the pursuit of knowledge of self-*

[134] INDIA CONST. arts. 25-30.
[135] Y. MASIH, INTRODUCTION TO RELIGIOUS PHILOSOPHY 1 (Motilal Banarsidass Publishers 1991).
[136] S.P. Mittal v. Union of India, AIR 1983 SC 1 (*Per* Chinnappa Reddy, J.) (Etymologically the word religion is derived from the Latin word 'religare' which means "to bind". Therefore, every bond between two people is a religion. But that is not absolutely true. Quite obviously, religion is much more than a mere bond uniting people).
[137] Commissioner of Police v. Acharya Jagadishwarananda Avadhuta, (2004) 12 SCC 770.
[138] S.P. Mittal v. Union of India, AIR 1983 SC 1, (*Per* ChinnappaReddy, J.).
[139] A.S. Narayana Deekshitulu v. State of Andhra Pradesh, AIR 1996 SC 1765.

consciousness or self-realisation and of personal experience of eternal or infinite worth."[140]

2.11 Various dimensions of Religion under the Indian context

According to the view point of Aurobindo there are two aspects of religion (i) true-religion and (ii) religionism. True religion is spiritual religion which seeks to live in the spirit, in what is beyond the intellect, beyond the aesthetic and ethical and practical being of man and to inform and govern these members' life by higher light and law of the spirit. On the other hand religionism entrenches itself in some narrow pietistic exaltation of the lower members, or lays exclusive stress on intellectual dogmas, forms and ceremonies on some fixed and rigid moral code of some religio-political or religio-socio system.[141]

But these are not always necessary or worthy for a spiritual religion which disdain the aid of the forms, ceremonies, creeds or system. In *A.S. Narayana Deekshitulu v. State of Andhra Pradesh*,[142] it was observed thus;

"*The fundamental desire of man is to make peace with his inner life. The spiritual religion is a form of the fundamental desire of man to make peace with his inner self and bring to bear the experience of transplantation of his current personality into a vibrant ready sense of knowledge of fulfilment and happiness. The experience of the man has to be propelled and to be brightened rather than dimmed by the myriad tribulation of knowing the system of rituals or feelings of inferior and*

[140] A.S. Narayana Deekshitulu v. State of Andhra Pradesh, AIR 1996 SC 1765.
[141] ROBERT N. MINOR, THE RELIGIOUS, THE SPIRITUAL, AND THE SECULAR: AUROVILLE AND SECULAR INDIA 32 (SUNY Press 1999).
[142] A.S. Narayana Deekshitulu v. State of Andhra Pradesh, AIR 1996 SC 1765.

inaccessible or unnecessary to realise the Supreme Being. The need to over-come this is the pursuit of spiritual religion."[143]

According to Dr. S. Radhakrishnan[144], religion is a specific attitude of self, itself no other, though it is mixed up generally with intellectual views, aesthetic forms and moral valuations. Religion is is not necessarily theistic. It is absolutely a matter of faith with individuals of communities.[145] Meaning of religion or the question as to what constitutes 'religion' can be ascertained only with reference to the various ingredients which are in common parlance associated with this word in India.

2.12 Ingredients of Religion in Indian Context

The following things can be considered as essential ingredients of a religion under Indian context.[146]

i. The assumption of a superior order of existence or life superior to our earthly existence and mundane affairs.

ii. The concept of a Creator or Supreme Being.

iii. Belief in certain ethical rules of conduct for the upliftment of a human being to a higher stratum.

[143] A.S. Narayana Deekshitulu v. State of Andhra Pradesh, AIR 1996 SC 1765.
[144] S. Radhakrishnan is the former President of India and renowned Philosopher.
[145] MAMTA ANAND, S. RADHAKRISHNAN - HIS LIFE AND WORKS 48 (Atlantic Publishers 2006). *See also* VERINDER GROVER, POLITICAL THINKERS OF MODERN INDIA: S. RADHAKRISHNAN 539 (Deep and Deep Publications 1993).
[146] 3 D.D. BASU, COMMENTARY ON INDIAN CONSTITUTION 3472 (Y.V. Chandrachud C.J. et al eds., 8th ed., Lexis Nexis Butterworths 2008).

2.12.1 The Assumption of a Superior Order of Existence or Life Superior to our Earthly Existence and Mundane Affairs

Persons who do not believe in the existence of a God or non-believers may not accept the concept of superstitious power of God. If we look at the Indian Constitution, the use of the word religion by second part of Article 25 (1) guarantees the right of those who believe in a superior order of existence or a mundane power. It manifests that the right to remain a non-believer is guaranteed by first part of clause (1) of Article 25 by emphasizing the expression 'freedom of conscience'.[147]

Freedom of conscience denotes a person's right to entertain beliefs and doctrines beneficial to his spiritual wellbeing.[148] To profess a religion means the right to declare one's faith freely and openly.[149]

2.12.2 The concept of a Creator or Supreme Being

Most religions believe that this world or universe has been created and is being ruled by some supernatural power, which is considered as Supreme Being or power and is called God. Such religions that believe in the existence of supreme power are of the faith that such Supreme Being is worshiped and obeyed.[150]

[147] INDIA CONST. art. 25, §1. *See also* The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.
[148] Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388.
[149] Punjab Rao v. D.P. Meshram, AIR 1965 SC 1179.
[150] 3 D.D. BASU, COMMENTARY ON INDIAN CONSTITUTION 3472 (Y.V. Chandrachud C.J. et al eds., 8th ed., Lexis Nexis Butterworths 2008).

In the U.S. case, *Davis v. Beason,*[151] it was observed thus;

"*The term 'religion' has reference to one's own views of his relation to his Creator and to the obligations they impose of reverence for his being and character and of obedience to his will. It is often confounded with cultus or form or worship of a particular sect, but is distinguishable from the latter.*"[152]

The Supreme Court of India, in *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (famously known as *Shirur Mutt Case*),[153] had not considered the above definition given in *Davis v. Beason*, as either precise or adequate. The Court also observed that the term religion is hardly susceptible of any rigid definition.[154] The Court raised doubt whether a definition of 'religion' as provided could have been in the minds of our Constitution-makers when they framed the Constitution.[155] The well known religions like Jainism and Buddhism do not believe in God or in any Intelligent First Cause.[156]

In *A.S. Narayana Deekshitulu Case,*[157] the Supreme Court of India accepted the observation in *Davis v. Beason*, and observed that, religion is a matter of personal faith and belief. It also represents an individual's personal relations with the Cosmos, his Maker or his Creator which he believes regulates the existence of insentient beings and the forces of the universe.

[151] Davis v. Beason, 133 U.S. 333: MANU/USSC/0156/1890 (*Per* Fields J.).
[152] *Id.* at.
[153] The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.
[154] *Id.* (*Per*. Mukherjea, J.).
[155] *Id.*
[156] *Id.*
[157] A.S. Narayana Deekshitulu v. State of Andhra Pradesh, AIR 1996 SC 1765.

In the recent *Sabarimala Case*,[158] also the Supreme Court affirms the definition of religion as it is one's relation with the God. The court emphasised that any relationship with the Creator (God) is a transcendental one crossing all socially created artificial barriers and not a negotiated relationship bound by terms and conditions.[159] It is a view of religion as related to individualistic approach than considering religion as part of social fabric. This individual centred approach can be seen in the judgements of very recent cases like *Haji Ali Dargah Case*[160] and the *Shani Shingnapur Temple Case*[161].

2.12.3 Belief in Certain Ethical Rules of Conduct for the Uplift of a Human Being to a Higher Stratum

A religion's basis lies in a system of beliefs or doctrines which are regarded by those who profess that religion as beneficial to their spiritual wellbeing. However, it cannot be said that religion is nothing other than a doctrine of belief.[162] A religion lay down a code of ethical rules for its followers to accept. It also prescribes rituals and observances, ceremonies and modes of worship which are regarded as integral parts of that religion. Such rituals and observances may extend even to matters of food and dress.[163]

Religious practices or performances of acts in pursuance of religious beliefs are as much a part of religion as faith or belief in particular doctrines.[164]

[158] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018.
[159] *Id.*
[160] Noorjehan Safia Niaz v. State of Maharashtra, MANU/MH/0191/2015.
[161] Vidya Bal v. The State of Maharashtra, PIL NO.55 / 2016.
[162] The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.
[163] *Id.*
[164] Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388.

The freedom of religion does not extend to political doctrines associated with particular creeds, which cannot be considered as essence of religion.[165]

Every religion has a conscience, ethical and moral precepts. In other words, a religion includes, whatever binds a man to his own conscience and whatever moral or ethical principle regulate the lives of men.[166]

It can be summarized that a religious belief system possess some of the relevant features: belief in a supreme being, belief in a transcendent reality, a moral code, a universal view point for everything; especially people's role in the universe, sacred rituals, worship and prayer, a sacred text and membership in a social organization. But there is no single feature or set of features that constitutes the essence of religion. Rather a belief system may be more or less religious depending on how closely it resembles the paradigm having all these eight features.[167]

2.13. Dharma and Indian Concept of Religion and Culture

In India, the word *dharma* has been used in the sense of religion.[168] But in actual sense, *dharma* is neither religion nor religious thought nor conservative thought.[169]

[165] The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.
[166] A.S. Narayana Deekshitulu v. State of Andhra Pradesh, AIR 1996 SC 1765.
[167] *See Generally* ALEX VARY, MY UNIVERSE-A TRANSCENDENT REALITY (Xlibris Corporation 2011); STEPHAN KORNER, METAPHYSICS: ITS STRUCTURE AND FUNCTION (Cambridge University Press Archive 1986); CHAKRAVARTHI RAM-PRASAD, ADVAITA EPISTEMOLOGY AND METAPHYSICS: AN OUTLINE OF INDIAN NON-REALISM (Routledge Curzon Publishers 2002); EBERHARD HERRMANN, RELIGION, REALITY, AND A GOOD LIFE: A PHILOSOPHICAL APPROACH TO RELIGION (Mohr Siebeck 2004).
[168] OM PRAKASH, RELIGION AND SOCIETY IN ANCIENT INDIA 3 (Bharatiya Vidya Prakashan 1985).

In many respects *dharma* in Indian context is similar to the natural law concept of Western jurisprudence.[170] The concept of *dharma* comprises those precepts which aim at securing the material and spiritual sustenance and growth of the individual.[171]

Dharma is beyond the scope of any "ism". Even though Hinduism or *Vedism* is the constant and perpetual pursuit of Dharma, it is a false conception that Dharma is correlated to Hinduism or *Vedism*.[172] Though Dharma is a word of wide meaning as to cover the rules concerning all matters such as spiritual, moral and personal as also civil, criminal and constitutional law, it gives the precise meaning depending upon the context in which it is used.[173]

India's indigenous channels of cultural transmission have formed very complex networks of many kinds. They have connected each small rural community, multiple townships, various political powers, shrines, diverse deities, revivalists, God-man cults, educational centres and so forth. Each indigenous centre of Indian civilization is at once distinctive and heterogeneous.[174]

---

[169] K. L. BHATIA, CONCEPT OF DHARMA, CORPUS JURIS OF LAW AND MORALITY 95 (Deep & Deep Publications 2010) (Dharma is a progressive movement of law, logic, and reasoning which have intellectual roots in the classical ancient Indian thought in action).
[170] *Id*. at 1 & 93.
[171] RAJ KUMAR, ESSAYS ON INDIAN RELIGION 55 (Discovery Publishing House 2003). *See also* OM PRAKASH, RELIGION AND SOCIETY IN ANCIENT INDIA 4 (Bharatiya Vidya Prakashan 1985) (Dharma has two sides which are interdependent- the individual and the social. All the facets of dharma aim for the harmonious working of the society by enabling every individual to realise his ultimate aim in life namely salvation by fulfilling all his duties as a member of the society).
[172] K.L.BHATIA, *supra* note 169, at 93.
[173] A.S. Narayana Deekshitulu v. State of Andhra Pradesh, AIR 1996 SC 1765.
[174] Mc Kim Marriott, *Cultural Transmission in Indian Culture*, *in* SOCIOLOGY OF RELIGION IN INDIA 89 (V. G. Nayar & M. G. Nayar eds., Genesis Publishing 2001).

2.14 Judicial Interpretation on the Concept of Religion

Since the Constitution of India does not define the expression 'religion,' the courts in India have found it necessary to explain the meaning of the word.

In *Shirur Mutt Case*,[175] Justice B.K. Mukherjea, observed that religion is a matter of belief and doctrine. Religion has its basis in a system of beliefs which are regarded by those who profess religion to be beneficial to their spiritual well-being.[176]

Justice Chinnappa Reddy, in his dissenting judgement in the case of *S.P. Mittal v. Union of India*,[177] it was observed that religion concerns the conscience, i.e. the spirit of man. Religion must be capable of expression in word and deed, such as worship or ritual.[178]

In *Kashi Vishwanath Temple Case*,[179] it was observed that even though religion is a matter of doctrine, it is not merely a doctrine. It has outward expression in acts as well.[180]

In the *P.M.A. Metropolitan Case*[181], it was observed that religion is founded on faith and belief. Faith emanates from conscience and belief is the result of teaching and learning. Religion includes worship, belief, faith,

[175] The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.
[176] *Id.* (*Per* B.K. Mukherjea, J.).
[177] S.P. Mittal v. Union of India, AIR 1983 SC 1 (*Per* Chinnappa Reddy, J., *dissenting*).
[178] *Id.*
[179] Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi v. State of U.P., (1997) 4 SCC 606.
[180] *Id.*
[181] Most. Rev. P.M.A. Metropolitan v. Moran Mar Marthoma, AIR 1995 SC 2001.

devotion, etc., and extends to rituals. Religious right is the right of a person believing in a particular faith to practice it, to preach it and to profess it.[182]

In *A.S. Narayana Deekshitulu Case*,[183] it was observed that religion is a matter of faith.

In *Lily Thomas v. Union of India*,[184] it was held that religion is a matter of faith stemming from the depth of the heart and mind. Religion is a belief which binds the spiritual nature of man to a super-natural being; it is an object of conscientious devotion, faith and pietism.

Devotion in its fullest sense is a consecration and denotes an act of worship. Faith in the strict sense constitutes firm reliance in the truth of religious doctrines in every system of religion. Religion, faith and devotion are not easily interchangeable.[185]

In the recent *Sabarimala Case*,[186] also the Supreme Court affirms the definition of religion as one's relation with the God. It was emphasised that any relationship with the Creator (God) is a transcendental one crossing all socially created artificial barriers and not a negotiated relationship bound by terms and conditions.[187] This is a symbol of recent judicial trend to give primacy to individual and his own faith rather than established dogmas of religious groups and communities. This tries to place individual as the paramount and organisational nature of religion as secondary. This individual centred approach

[182] Most. Rev. P.M.A. Metropolitan v. Moran Mar Marthoma, AIR 1995 SC 2001.
[183] A.S. Narayana Deekshitulu v. State of Andhra Pradesh, AIR 1996 SC 1765.
[184] Lily Thomas v. Union of India, AIR 2000 SC 1650.
[185] *Id*. *See also* Goolrokh M. Gupta v. Burjor Pardiwala President, MANU/GJ/1005/2012.
[186] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018.
[187] *Id*.

can be seen in the judgements like *Haji Ali Dargah Case*,[188] *Shani Shingnapur Temple Case*,[189] etc.

From the above described judicial pronouncements, it is evident that it is hard to define or delimit the expressions "religion" or "matters of religion" as used in Articles 25 and 26 of the Constitution of India.[190] The Supreme Court has observed that religion as used in these Articles must be construed in its strict and etymological sense.[191]

In a pluralistic society like India, as pointed out earlier, there are numerous religious groups who practise diverse forms of worship or practise religions, rituals, rites, etc. Even among Hindus, different denominations and sects residing within the country or abroad profess different faiths, beliefs and practices. They seek to identify religion with what may in substance be mere facets of religion. It would, therefore, be difficult to devise a definition of religion which would be regarded as applicable to all religions or matters of religious practices.

To one class of persons a mere dogma or precept or a doctrine may be pre-dominant in the matter of religion; to others, rituals or ceremonies may be pre-dominant facets of religion; and to yet another class of persons a code of conduct or a mode of life may constitute religion.[192] Even to different persons professing the same religious faith some of the facets of religion may have

[188] Noorjehan Safia Niaz v. State of Maharashtra, MANU/MH/0191/2015.
[189] Vidya Bal v. The State of Maharashtra, PIL NO.55 / 2016.
[190] A.S. Narayana Deekshitulu v. State of Andhra Pradesh, AIR 1996 SC 1765.
[191] The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.
[192] A.S. Narayana Deekshitulu v. State of Andhra Pradesh, AIR 1996 SC 1765. *See also* Vadilal Nandlal Shah v. Ramesh Dharamdas Mehta, MANU/MH/1248/2010.

varying significance. It may not be possible, therefore, to devise a precise definition of universal application as to what religion is and what matters of religious belief or religious practice are.[193]

In the *SP Mittal Case*,[194] it was rightly observed thus:-

"Some religions are easily identifiable as religions; some are easily identifiable as not religions. There are many in the penumbral region which instinctively appear to some as religions and to others as not religions. There is no formula of general application. There is no knife-edge test".[195]

2.15 Constitutional Provisions related to Religion & Religious Freedom

As stated earlier, the Constitution of India does not define the term religion. The word 'religion' does not occur in the Preamble to the Constitution of India, but the Preamble does promise to secure to its citizens "Liberty of thought, expression, belief, faith and worship".[196] The freedom of conscience and the right to profess, propagate and practise religion, flow out of the idea so expressed in the Preamble.[197]

Articles 25 to 30 deal with specific provisions related to freedom of religion. Articles 25 and 26 of Constitution of India that guarantees freedom of religion to both individual and denominations respectively, are based upon Article 44(2) of the Constitution of Republic of Ireland.[198]

---

[193] A.S. Narayana Deekshitulu v. State of Andhra Pradesh, AIR 1996 SC 1765.
[194] S.P. Mittal v. Union of India, AIR 1983 SC 1.
[195] *Id.* (*Per* Chinnappa Reddy, J.).
[196] INDIA CONST. Preamble.
[197] S.P. Mittal v. Union of India, AIR 1983 SC 1 (*Per* Chinnappa Reddy, J.).
[198] IR. CONST., 1937, art. 2, http://www.taoiseach.gov.ie/ upload/static/256.htm. (Oct. 15, 2019) (Article 44 of Constitution of Ireland reads as follows:-

Article 25(1) guarantees freedom of religion to all persons. This freedom of religion includes freedom of conscience, to profess, practise and propagate religion. Like any other fundamental right, freedom of religion is also subject to restrictions on the grounds of public order, morality and health and to the other provisions of Part III of the Constitution. According to clause (2) of Article 25, the State is empowered to make appropriate law for regulating or restricting, any economic, financial, political and other secular activity related to religious practice. The State is also empowered to bring any legislation that aims to provide social welfare and social reform or to throw open Hindu religious institutions of a public character to all classes and sections of Hindus.[199]

Freedom of religion guaranteed by the Constitution is not only applicable to individuals but also to religious communities and denominations. By virtue of Article 26, every religious denomination or any section thereof has the right to manage its religious affairs; establish and maintain institutions for

---

Article 44(1) The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion.
(2) (1) Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.
(2) The State guarantees not to endow any religion.
(3) The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.
(4) Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.
(5) Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes.
(6) The property of any religious denomination or any educational institution shall not be diverted save for necessary works of public utility and on payment of compensation).

[199] INDIA CONST. art. 25.

religious and charitable purposes; and to own, acquire and administer properties of all kinds.[200]

By virtue of Article 27, State cannot compel any one to pay taxes for promotion of any particular religion or religious denomination.[201] This ensures that the State will not favour any particular religion using public money.

According to Article 28, any kind of religious instruction cannot be provided in State aided or state funded schools. Such State educational institutions cannot compel any one to take part in any religious instruction or services without their consent.[202]

According to Article 29 (1), any section of the citizens having a distinct language, script or culture of its own shall have the right to conserve the same.[203] Article 29 (2) guarantees that no one shall be denied admission, on the grounds only of religion, into any educational institution, which is maintained by the State or receiving aid out of State funds.[204]

Article 30 unequivocally declares that religious and linguistic minorities are free to establish and administer educational institutions of their choice, which shall not be discriminated against by the State in the matter of giving aid or compensation in the event of acquisition.[205]

The Constitution of India emphasizes complete legal equality of its citizens irrespective of their religion and creed and prohibits all kinds of

[200] INDIA CONST. art. 26.
[201] *Id*. art. 27.
[202] *Id*. art. 28.
[203] *Id*. art. 29, cl. 1.
[204] INDIA CONST. art. 29, cl. 2.
[205] *Id*. art. 30.

discrimination based on religion. Articles 14 and 15 are the guiding principles in this regard. According to Article 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.[206] By virtue of Article 15, the State shall not discriminate any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them.[207]

The State can, by way of positive discrimination and affirmative action, make special provisions in certain cases as detailed below, and these will not be deemed to be detracting from the provisions relating to the rights of equality and non-discrimination in general. The State can provide special measures for women and children, and for the advancement of any socially and educationally backward class of citizens, or for the Scheduled Castes and Scheduled Tribes.[208]

Article 16 guarantees equality of opportunity for all citizens in the matter of employment or appointments under the State. No citizen shall be discriminated on ground only of religion, in respect of any employment or office under the State.[209]

Article 16 says that the State can reserve appointments or posts for any backward class of citizens not adequately represented in State services.[210] Clause 5 of Article 16 expressly permits that a law may require the incumbent

[206] INDIA CONST. art. 14.
[207] *Id*. art. 15.
[208] *Id*. art.15, cl. 4.
[209] *Id*. art. 16.
[210] INDIA CONST. art. 16, cl. 4.

of a religious or denominational office, or member of such a committee, must be a person from the religion concerned.[211]

Article 17 undoubtedly declares that untouchability, associated with caste system and traditional religious concepts, in any form, is strictly forbidden.[212] If the State imposes compulsory service on citizens for public purposes no discrimination shall be made in this regard on the ground of religion only.[213]

Article 46 in terms of a Directive Principle of State Policy, says that the State shall promote the weaker sections of the society, including the Scheduled Castes and Scheduled Tribes. The State shall protect them from social injustice and exploitation.[214]

Article 44 grants licence to bring uniform civil code which is applicable to all religious communities and groups in India.[215]

In the light of fundamental duties, it is the duty of every citizen to promote harmony and the spirit of common brotherhood amongst all the people of India.[216] It is also clear that every citizen is bound to value and preserve the rich heritage of our composite culture.[217]

---

[211] INDIA CONST. art. 16, cl. 5.
[212] *Id*. art. 17 (In order to meet the demands of Article 17 noted above, in the year 1955, the Parliament had enacted an Untouchability (Offenses) Act, which was later amended and renamed as the Protection of Civil Rights Act, 1955. The Act prescribes penalties for the practice of untouchability in various specified forms. Yet another law which was enacted in this respect is the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989).
[213] *Id*. art. 23, cl. 2.
[214] *Id*. art. 46.
[215] INDIA CONST. art. 44.
[216] *Id*. art. 51, cl. A (E).
[217] *Id*. art.51, cl. A (F).

Under Article 246 of the Constitution read with Schedule VIII, various religious matters fall under the jurisdiction of the State. Both Parliament and the State legislatures, or either of them, can legislate on such matters. Pilgrimage outside India is a subject falls under Union List.[218] Howevr, Pilgrimage within India,[219] burials & burial grounds, cremations & cremation grounds are the subjects come under the State List.[220] Family relations, succession & all other personal-law matters,[221] Charities and charitable institutions, charitable and religious endowments and religious institutions fall under the category of Concurrent List.[222]

2.16 Statutory Provisions related to Religious Affairs in India

The constitutional aspiration and scheme for granting and protecting religious freedom is elaborately supported by legislative measures. Chapter XV of the Indian Penal Code, 1860, contains five important sections dealing with offences relating to religion. Section 295 penalises persons defiling, destroying or damaging a place of worship or any sacred object with an intention or knowledge to insult any religion.[223] Religious hate speeches are punishable under Section 295-A.[224] Disturbing of religious assembly is forbidden and punishable under Section 296.[225] Trespassing of burial places and uttering of

[218] INDIA CONST. Union List, Entry 20.
[219] *Id*. State List, Entry 7.
[220] *Id*. State List, Entry 10.
[221] *Id*. Concurrent List, Entry 5.
[222] INDIA CONST. Concurrent List, Entry 28.
[223] Indian Penal Code, 1860, § 295.
[224] *Id*. § 295A.
[225] *Id*. § 296.

words or making of sound or gesture with deliberate intention of wounding religious feelings are punishable under Sections 297[226] and 298.[227]

The Religious Institutions (Prevention of Misuse) Act, 1988 was enacted in the background of misuse of religious premises that causes insecurity to State or public order. It prohibits the use of religious institutions for purpose such as promotion of political activity, harbouring of criminals, storing of arms and ammunitions, erection of bunkers, walls and towers without prior permission, and for causing religious disharmony.[228]

In the background of the controversial '*Ayodhya issue'*,[229] the Places of Worship (Special Provisions) Act, 1991 was passed. It does not directly mention about the disputed land in Ayodhya, but applicable to all religious institutions or places in India. It aims to prohibit and punish illegal takeover of

[226] Indian Penal Code, 1860, § 297.
[227] *Id*. § 298.
[228] The Religious Institutions (Prevention of Misuse) Act, 1988 (Section 3 of the Act reads as follows:- "*No religious institution or manager thereof shall use or allow the use of any premises belonging to, or under the control of, the institution- (a) for the promotion or propagation of any political activity; or (b) for the harbouring of any person accused or convicted of an offence under any law for the time being in force; or (c) for the storing of any arms or ammunition; or (d) for keeping any goods or articles in contravention of any law for the time being in force; or (e) for erecting or putting up of any construction or fortification, including basements, bunkers, towers or walls without a valid licence or permission under any law for the time being in force; or (f) for the carrying on of any unlawful or subversive act prohibited under any law for the time being in force or in contravention of any order made by any court; or (g) for the doing of any act which promotes or attempts to promote disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or (h) for the carrying on of any activity prejudicial to the sovereignty, unity and integrity of India; or (i) for the doing of any act in contravention of the provisions of the Prevention of Insults to National Honour Act, 1971*.").
[229] There had been a long-standing dispute relating to the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi - Babri Masjid, situated in Village Kot Ramchandra in Ayodhya, in Pargana Haveli Avadh, in Tehsil Faizabad Sadar, in the District of Faizabad of the State of Uttar Pradesh. This dispute has spanned the Mughal Empire, colonial Rule and the present Constitutional regime. The dispute was finally come before Supreme Court of India and pronounced final verdict on the matter in November 2019. *See* M. Siddiq v. Mahant Suresh Das, MANU/SC/1538/2019.

place of worship of one community by another community and to retain the status quo about religious character of the place of worship with reference to 15 August 1947. Section 3 of the Act prohibits the forcible or illegal conversion of any place of worship of a different religious denomination or any section thereof.[230] Any violation of section 3 is punishable with three years' imprisonment and fine.[231]

In order to keep the electoral and political process free form the influence of religions, Section 123(3) of the Representation of People Act, 1951 prohibits candidates from appealing to religion in order to get elected or to prejudice another candidate's chances to get elected. Section 123(3-A)[232] specifically prohibits prejudicing another candidate by promoting "feeling of enmity or hatred between different classes of the citizens of India on the grounds of religion." Violation of these mandates amount to corrupt acts and incur disqualification. The Supreme Court considered the questions of validity and interpretation of these provisions in the case of *Ramesh Prabhoo*, and held that Sub-section (3) of Section 123 cannot be held to be unconstitutional.[233]

Some of the legislation that aimed to protect morality against abusive religious practice can also be considered for their social content and reformative outlook. The Commission of Sati (Prevention) Act, 1987, Karnataka Devadasi (Prohibition of Dedication) Act, 1982, Immoral Traffic

[230] The Places of Worship (Special Provisions) Act, 1991, § 3.
[231] *Id.* § 6.
[232] The Representation of People Act, 1951, § 123 (3).
[233] Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte, (1996) 1 SCC 130; Manohar Joshi v. Nitin Bhaurao Patil, (1996) 1 SCC 169; Ramachandra G. Kapse v. Haribansh Ramakbal Singh, (1996) 1 SCC 206.

Prevention Act, 1956, Bombay Devadasi Prohibition Act, 1934, Sati Pratha Regulation, 1829 are some of the social reform measures in this regard. Stern approach about *narabali* (human sacrifice) by treating it as murder of rarest type has also exemplary effect.[234] Animal sacrifice, that are part of rituals and practices are also banned by law.[235] Various temple entry statutes passed by provincial governments were substituted by the Protection of Civil Rights Act, 1955.[236] Hindu Marriage Act, 1958 which delegitimise polygamous marriage can also be considered as a reformative legislation.[237]

The increasing graph of crimes against women under the pretext of them being witches has compelled some States in India to formulate necessary special anti-superstition legislation against these appalling practices. The states like Chhattisgarh,[238] Bihar,[239] Jharkhand,[240] Maharashtra,[241] Karnataka,[242] Assam,[243] and Rajasthan[244] have already formulated specific laws against superstition and black magic. And some others are on verge of drafting such new legal instruments. The demand for a National Anti-superstitious legislation

[234] The Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013. [Even in the absence of specific legislations the Judiciary has taken a stern approach in convicting culprits who are involved in human sacrifice. *See eg*. Kamsala v. State, rep. by the Inspector of Police, MANU/TN/0242/2008].
[235] *See eg.* The Kerala Animals and Birds Sacrifices Prohibition Act, 1968.
[236] Section 3 of the Act prescribes punishment for enforcing religious disability on the ground of "untouchability".
[237] Monogamy amongst the Hindus is introduced for the first time by the Hindu Marriage Act, 1955. The conditions and requirements of a valid marriage are now very much simplified as is evident from the provisions of Sections 5 and 17 of the Act.
[238] Chhattisgarh Tonahi Pratadna Nivaran Act, 2005.
[239] Prevention of Witch (Daain) Practices Act, 1999.
[240] Jharkhand Prevention of Witch (Daain) Practices Act, 2001.
[241] The Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013.
[242] Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, (RPT Act) 2017. (It came into force on January 2020).
[243] The Assam Witch Hunting (Prohibition, Prevention and Protection) Act, 2015.
[244] The Rajasthan Prevention of Witch-hunting Act, 2015.

is also there.[245] State of Kerala is working on bringing a legislation to curb such menace. In 2019, Kerala Law Reforms Commission has drafted The Kerala Prevention and Eradication of Inhuman Evil Practices, Sorcery and Black Magic Bill, 2019. The draft bill has been submitted to the State Government.

Many Central and State legislations were passed for the better management and prevention of maladministration in religious and charitable endowments in India, The Hindu Religious and Charitable Endowments Act, 1951, Religious Endowments Act, 1863, Charitable and Religious Trusts Act, 1920, Wakf Act, 1995 are examples of central legislations in this regard. Apart from the above legislations, various states in India also have their own state legislations in this respect.[246]

All these statutory measures reflect the legislative concern not only to protect the freedom of religion that is guaranteed by the constitution but also to bring reforms and order in the domain of religion.

[245] In 2015, the then Vice President of India, Hamid Ansari called for making the Anti-Superstition law in national level based on the legislation of Maharashtra as a model one. He also stressed the importance of rational thinking. *See Make Maharashtra Anti-Superstition law national: Ansari*, ZEE NEWS CHANNEL (February 27, 2015), (Oct. 10, 2019), http://zeenews.india.com/news/india/make-maharashtra-anti-superstition-law-national-ansari_1553852.html. *See also National anti-black magic bill required: Dabholkar's daughter*, THE HINDU (New Delhi ed., September 16, 2013), (Oct. 10, 2019), http://www.thehindu.com/news/national/other-states/national-antiblack-magic-bill-required-dabholkars-daughter/article5134507.ece.

[246] Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, Kerala Travancore-Cochin Hindu Religious Institutions Act, 1950, Bombay Public Trusts Act, 1950 etc., are examples for such State enactments.

CHAPTER 3

HINDU RELIGIOUS INSTITUTIONS IN INDIA: A GENERAL UNDERSTANDING

3.1 Religious Institutions: General Meaning and Concept

It is very hard to give a precise and concrete definition for the term 'religious institution' as such. However, the word 'religious institution' refers to organizations for religious and charitable purposes, such as temples, mosques, churches, math, monasteries and the like.[1]

Constitutional jurisprudence on religious freedom does not give a definition to religious institution. However, Article 26(a) of Indian Constitution allows every religious denomination or section thereof, to establish and maintain institutions for religious and charitable purposes.[2] The words 'establish' and 'maintain' under Article 26 go together. By virtue of this provision every religious denomination, both majority and minority are free to manage and administer their own religious and charitable institutions. But this right is also not unfettered. It is subject to restrictions. The right to administer does not mean right to maladministration, and mismanagement.[3]

The dictionary meaning of the word 'institution' is that it is an organisation, establishment, foundation, society or the like devoted to the

[1] 2 D.D. BASU, COMMENTARY ON THE CONSTITUTION OF INDIA: BEING A COMPARATIVE TREATISE ON THE UNIVERSAL PRINCIPLES OF JUSTICE AND CONSTITUTIONAL GOVERNMENT WITH SPECIAL REFERENCE TO THE ORGANIC INSTRUMENT OF INDIA 160 (4th ed., S. C. Sarkar Publishers 1961).
[2] INDIA CONST. art. 26.
[3] *See* Peter Heehs, *Not a Question of Theology: Religions, Religious Institutions, and the Courts in India*, COMPARATIVE LEGAL HISTORY 243-261(1:2) (2013), (30 Aug. 2019), https://www.tandfonline.com/doi/abs/10.5235/2049677X.1.2.243.

particular cause or program, especially, one of a public, educational, or charitable character.[4]

From a general understanding it can be said that an institution which is the part of a religion is called a religious institution. To be more exact an institution which is owned, established, run, administered, maintained, by a religion or religious group, denomination, or section thereof for the sole purpose of religious activities or religious matters can be said to be a religious institution. All the institutions created and administered by religious groups cannot be called as religious institutions. An institution that carries any of the religious functions alone can be considered as a religious institution.

A charitable institution is quite different from a religious institution. However, in a majority of religions, charity is also a part and parcel of religious activity. In such circumstances charitable institutions that serve religious functions also come under the broad category of religious institutions.[5] All religious and charitable institutions can be considered as non-profit organisations.

The following are the major religious institutions that are part of major religions.

1. Hindu- Temple, Math
2. Muslim- Mosque, Dargah, Madrassa, Graveyard and Wakf
3. Christian- Church, Seminaries, Sunday school

[4] WEBSTER'S ENCYCLOPEDIC UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE, DELUXE EDITION, at 988 (Random House Value Publishing 2001).
[5] *See* Zoe Robinson, *What Is a Religious Institution*, 55 BOSTON COLLEGE LAW REVIEW 181, 234 (2014), (28 Aug. 2019), https://lawdigitalcommons.bc.edu/bclr/vol55/iss1/6.

Before discussing about the control over religious institutions, it is necessary to discuss about different methods of creating and registering religious or charitable institutions. In India, creation and control over religious and charitable institutions are dealt with under separate legislations.

3.2 Evolution of Hindu Religious Institutions

3.2.1 Historical Evolution of Hindu Religion

Historically speaking, it is commonly believed that the word Hindu is derived from the river '*Sindhu*' or '*Indus*' which flows from Punjab. Monier Williams attributes the origin of the term 'Hindu' to the Aryan invasion theory. According to him a great part of Aryan race that migrated from Central Asia, settled near the river '*Sindhu*' (now called Indus).[6] It is believed that Persians used the word Hindu first to refer to their Aryan brethren who were settled near '*Sindhu*'.[7] Max Muller also pointed out the relationship between the religions of India and Persia.[8]

According to Dr. Radhakrishnan, the term Hindu originally had only a territorial but not a creedal significance.[9] It is understood that at a later period of history, Aryan civilization took the form of a religion and after the Aryan invasion on Dravidians it extended its influence on the Dravidian civilization.

---

[6] PAUL HEDGES, CONTROVERSIES IN CONTEMPORARY RELIGION: EDUCATION, LAW, POLITICS, SOCIETY, AND SPIRITUALITY 288 (ABC-CLIO, 2014). *See also* MONIER WILLIAM, HINDUISM 1 *as cited in*, Sastri Yagnapurushadji v. Muldas Bhudardas Vaishya, AIR 1966 SC 1119 , ¶ 27.

[7] A.L. BHASHAM, THE ORIGINS AND DEVELOPMENT OF CLASSICAL HINDUISM 8-9 (Kenneth G. Zysk ed., Oxford University Press 1990) (It is also believed that the Greeks used the term 'Indoi' instead of the term 'Hindu', subsequently became 'India'. Thus the term 'India' has been referred for 'Hindu' and vice versa).

[8] MAX MULLER, THEOSOPHY OR PSYCHOLOGICAL RELIGION 58-76 (Asian Educational Service 1988).

[9] RADHAKRISHNAN, THE HINDU VIEW OF LIFE 12 (Reprint, Harper Collins Publishers India 2009).

This definitely led to mutual assimilation in both Aryan and Dravidian civilizations and laid the foundation for modern Hindu religion.[10] Though the Dravidians retained many of their original customs and practises in a modified form, some of their deities were taken into the Hindu pantheon.

The influence of *Ithihasa* and *Puranas* like Mahabharatha and their translations into Dravidian language spread Aryan culture into the Dravidian. Many of the temples and religious institutions founded by Dravidians later became the part of great Hindu religion.[11]

Under the Maurya[12] and Gupta[13] dynasties, Hindu civilization and culture attained its predominance.[14]

According to historians and philosophers, Hindu religion has gone through many stages or States before it attained present form. Tarkteerth Laxmanshastri Joshi has explained about five stages through which Hindu religion has gone through.[15] They are the following:-

1. Tribal religion (Religion of primitive society)
2. Religion prior to Vedas (pre-vedic religion)
3. Religion of Vedic Aryans
4. Religion of post Vedic period (religion based on *smrithi*, *sruthi*, and *puranas* etc.).

[10] MAYNE'S TREATISE ON HINDU LAW & USAGE 5 (Vijender Kumar ed., 16th ed., Bharat Law House 2009).
[11] GAVIN FLOOD, AN INTRODUCTION TO HINDUISM 23-33 (Cambridge University Press 1996).
[12] Era 322 BC to 183 BC.
[13] Era 320 AD to 540 AD.
[14] BALAGANGADHARA MENON, REINTEGRATION OF INDIAN CULTURE 56-58 (1988).
[15] TARKTEERTH LAXMANSHATRI JOSHI, CRITIQUE OF HINDUISM AND OTHER RELIGIONS 102 (Popular Prakashan Publishers 1996).

3.2.2 Hindu Religion and Hinduism: A Theoretical Evolution

Theoretically, the Hindu religion does not claim or worship any single founder (like a prophet), it does not worship any one God, does not subscribe to any single dogma, does not believe in a single philosophy, does not follow any single religious practise, rituals, or order.[16] Broadly speaking Hindu religion is a way of life. Some authors treat it as part of a civilization and consider it as a culture.

Monier Williams's observation on Hinduism is noteworthy here. He observed thus:[17]

> "*It must be borne in mind that Hinduism is far more than a mere form of theism resting on Brahmanism.*"[18]

Monier Williams's Statement has been criticized in many regards. Many authors do not consider Hinduism and Brahmanism as one.[19] There are many different viewpoints and thoughts with regard to the true philosophical nature of Hindu Religion.[20]

Hinduism in its common parlance represents the Hindu religion. Hinduism is the world's oldest religion. It predates recorded history and has no human founder. Being a vast and profound religion it dictates worship of one

---

[16] MARKO GESLANI, RITES OF THE GOD-KING: SANTI AND RITUAL CHANGE IN EARLY HINDUISM 5 (Oxford University Press 2018). *See also* Sastri Yagnapurushadji v. Muldas Bhudardas Vaishya, AIR 1966 SC 1119, ¶ 29.

[17] MONIER WILLIAMS, RELIGIOUS THOUGHT & LIFE IN INDIA 57 (J. Murray, 1883, University of Minnesota, Digitized 2010) (In Sastri Yagnapurushadji v. Muldas Bhudardas Vaishya, AIR 1966 SC 1119, ¶ 45, Monier Williams and his book was recognized as a valuable source of information in dealing with problems connected with the religious thought and life in India).

[18] *Id. See also* M.G. CHITKARA, HINDUTVA 221 (APH Publishing 1997).

[19] MARKO GESLANI, *supra* note 16, at 4.

[20] *See generally* MONIER WILLIAMS, BRAHMANISM AND HINDUISM, OR, RELIGIOUS THOUGHT AND LIFE IN INDIA: AS BASED ON THE VEDA AND OTHER SACRED BOOKS OF THE HINDUS (4th ed., Macmillan, 1891, Oxford University, Digitized 2008).

supreme reality and believes that all souls ultimately realize the Truth. It follows many spiritual paths from pure monism (i.e., God alone exists) to theistic dualism (i.e., when shall I know His grace).[21]

Modern Hinduism comprises many of the practices of the pre-Aryan inhabitants i.e., those who believed and followed Vedas as fundamental, practised fire rites and the Dravidians, on the other hand, who worshipped their gods, by offerings of food accompanied by music and dancing which created an atmosphere of ecstasy.[22] Thus, modern Hindu religion or Hinduism, through the ages has absorbed and embraced many forms of beliefs, faiths, modes of worship and many practices (religious as well as secular). The doctrines of Jainism and Buddhism have influenced the practices of Hinduism and paved the way to its transformation into a new form of religious faith.[23] In later period, Brahmanism absorbed the ecclesiastical leadership of Hindu religion and transformed it into modern Hinduism, practically a new religion. This led the way gradually to the Bhakti cult, Vaisnavism and Saivism. Among these, the Bhakti cult made Hindu religion democratically popular among all castes and sects of people.[24] Sankara, who preached the cardinal doctrinal unity known as *Advaita* or monism lifted up the popular faiths from out of the dust of mere polemics into the lucid atmosphere of eternal truth.[25] After Sankara, the

[21] DAVID SMITH, HINDUISM AND MODERNITY 138-143 (Blackwell Publishing 2008).
[22] TARKTEERTH LAXMANSHASTRI JOSHI, CRITIQUE OF HINDUISM AND OTHER RELIGIONS 110-116 (Popular Prakashan Publishers 1996).
[23] MAX MULLER, NATURAL RELIGION 280-300 (Asian Educational Service 1988).
[24] A.R. DESAI, RURAL SOCIOLOGY IN INDIA 60 (5th ed., Popular Prakashan Publishers 1994).
[25] MAX MULLER, THEOSOPHY OR PSYCHOLOGICAL RELIGION 233- 276 (Asian Educational Service 1988).

philosophies of Ramanuja,[26] and Madhvacharya,[27] have influenced modern day Hinduism. Teachings of Ramakrishna and Vivekananda, Dayananda Saraswathy, and Guru Nanak have also contributed to make modern Hinduism progressive and dynamic.[28]

3.3 The term 'Hindu': Meaning and Definition

The word 'Hindu' is a very complex term that is difficult to define precisely. According to Oxford dictionary, the term Hindu means adherent of Hinduism or the Indian.[29] This definition reflects the religious and social system with adherents only in India, i.e., polytheism, ancestral worship, belief in reincarnation, believes in caste system as the basis of society, etc. This definition depicts the fundamental characteristics of modern Hinduism.[30]

Constitution of India does not define the term 'Hindu', but enumerates that the term includes the Buddhist, the Jain and the Sikh, and reference to Hindu religious institutions shall be construed accordingly.[31] In accordance

[26] He was also a believer in Advaita, but his system differs from the Advaita system of Sankara and is called Visistadvaita.
[27] He agreed with Sankara in his view of the all-pervading, all powerful, all knowing, all merciful God, but maintained that the Brahman comprises in itself distinct elements of plurality.
[28] *See generally* GAVIN FLOOD, AN INTRODUCTION TO HINDUISM (Cambridge University Press 1996). *See also* MAX MULLER, THEOSOPHY OR PSYCHOLOGICAL RELIGION 89-102 (Asian Educational Service 1988).
[29] OXFORD DICTIONARY & THESAURUS 351(Oxford University Press 2008).
[30] For fundamental features of Hindu religion, *See,* SWAMI ACHUTHANANDA, MANY MANY MANY GODS OF HINDUISM: TURNING BELIEVERS INTO NON-BELIEVERS AND NON-BELIEVERS INTO BELIEVERS (Create Space Independent Publishing Platform 2013); SWAMI BHASKARANANDA, THE ESSENTIALS OF HINDUISM: A COMPREHENSIVE OVERVIEW OF THE WORLD'S OLDEST RELIGION (2nd ed., Viveka Press 2002).
[31] INDIA CONST. art. 25.

with the constitutional provisions, all the personal laws relating to Hindu religion adopted this comprehensive explanation.[32]

In States where specific legislations are there with regard to religious and charitable endowments and trusts, the term Hindu is used in the same sense as it is understood in common parlance, as explained in the Constitution, as defined by above said personal laws and as interpreted by the judiciary.[33]

Bombay Public Trusts Act defines Hindu to include Buddhists, Jains, and Sikhs. The Madras Hindu Religious and Charitable Endowments Act, 1951 defines the term Hindu similarly. But Karnataka Hindu Religious and Charitable Endowments Act, 1997 defines the term Hindu as Hindu and does not include a Buddhist, Jain or Sikh. Bihar Hindu Religious Trusts Act, 1951 says that Hindu includes Buddhists and Jains but not Sikhs.

In *Ganpat v. Returning Officer*,[34] the Supreme Court has held that Hinduism is so tolerant and Hindu religious practices so varied. It is difficult to say whether a person is practising or professing Hindu religion or not. Though the Hindu religion has undergone several changes, the fundamental, moral and

---

[32] Sastri Yagnapurushadji v. Muldas Bhudardas Vaishya, AIR 1966 SC 1119, ¶ 43 (The Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoption and Maintenance Act, 1956 have extended this broader application of the term Hindu and defined the term in that regard. For example, section 2 of the Hindu Marriage Act, provides that this Act applies-
"*(a) to any person who is a Hindu by religion in any of its forms of developments, including a Virashaiva, a Lingayat or a follower for the Brahmo, Prarthana or Arya Samaj,*
(b) to any person who is a Buddhist, Jain, or Sikh by religion, and
(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein it his Act had not been passed. The same provision is made in the other three Acts to which we have just referred.

[33] V.K. VARADACHARI, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS 138 (R. Prakash ed., 4th ed., Eastern Book Publishers 2006).

[34] Ganpat v. Returning Officer, MANU/SC/0265/1974.

religious ideas of the Hindus which lie at the root of religious and charitable institutions, remain the same.[35]

The words 'Hinduism' or 'Hindutva' are not necessarily to be understood and construed narrowly but to be understood as a way of life of the Indian people and not to be confined merely to describe persons practising the Hindu religion as a faith.[36]

3.4 Hindu Religious and Charitable Endowments as Religious Institutions

3.4.1 Hindu Religious and Charitable Endowments: Meaning

The practice of endowing religious institutions like temples and maths as places for religious instruction was common from ancient period onwards.[37] In ancient India, a tradition of giving gift *(dana)* as a means of distributing wealth and attaining fame and prestige extends back through the Vedic period and is imbued with a legal format before the turn of the Common Era.[38]

The religious gifts of money or land are called 'endowments'. These endowments are given to existing religious institutions or are used to found

[35] Sastri Yagnapurushadji v. Muldas Bhudardas Vaishya, AIR 1966 SC 1119, ¶ 27. *See also* Commissioner of Wealth Tax, Madras v. R. Sridharan, MANU/SC/0515/1976, ¶ 10 (In this case the Constitution Bench observed that 'Hinduism' embraces so many diverse forms of beliefs, faiths, practices and worship that it is difficult to define the term 'Hindu' with precision).

[36] Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte, (1996) 1 SCC 130.

[37] Michael C. Baltutis, *Recognition and Legislation of Private Religious Endowments in Indian Law*, in RELIGION AND LAW IN INDEPENDENT INDIA 446 (Robert D. Baird ed., Manohar Publishers 2005).

[38] VIJAY NATH, DANA: GIFT SYSTEM IN ANCIENT INDIA-A SOCIO-ECONOMIC PERSPECTIVE 14, 58 (Munshiram Manoharlal Publishers 1987) (The gift or *dana* in the form of granting lands and other valuable gifts to Brahmins, the construction of building for distribution of food and clothing to the poor, etc., are religious acts and at the same time charitable acts too. In one sense it can be termed as religious charity).

new institutions for any number of purposes.[39] Endowment is dedication of property for the purpose of religion or charity having both the subject and objects certain and capable of ascertainment.[40]

In other words, Endowment means, properties set apart or given as a gift to a particular deity or to some religious institutions like temples, or for some charitable purposes. Such charitable purposes also include endowments gifted to the area of education, health, social welfare, etc. Temples and Maths are popular forms of Hindu religious institutions.[41]

Religious and charitable endowments are usually treated as same or together because of the relation between religion and charity in almost all the countries of the world.[42] However, a distinction between purely religious and purely charitable purposes has been there, and judicial attempts have been made to distinguish them in clear terms.[43] Charity is also part and parcel of Hindu religion. Charity is also intended to attain salvation (*moksha* after death under Hindu belief). It is difficult to differentiate the religious from charity under Hindu law.[44]

---

[39] Michael C. Baltutis, *Recognition and Legislation of Private Religious Endowments in Indian Law*, in RELIGION AND LAW IN INDEPENDENT INDIA 444 (Robert D. Baird ed., Manohar Publishers 2005) (This kind of '*dana'* is unilateral and consist of religious aspect and is clearly distinguished from spontaneous or ceremonial gifts (*priti dana*) exchanged by friends and relatives).

[40] V.K. VARADACHARI, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS 138 (R. Prakash ed., 4th ed., Eastern Book Publishers 2006).

[41] B.K. MUKHERJEA, THE HINDU LAW OF RELIGIOUS & CHARITABLE TRUSTS 26 (A.C. Sen ed., 5th ed., Tagore Law Lectures, Reprint 2016).

[42] V.M. BACHAL, FREEDOM OF RELIGION AND INDIAN JUDICIARY 106 (Shubhada Saraswat Publishers 1975).

[43] *Id.*

[44] *Id.*

A religious or charitable endowment is wealth set apart permanently for religious or charitable purposes. A pure religious endowment is neither a gift nor a trust. Because a gift requires acceptance by a person for its validity and in the case of religious endowment, the idol is not expected to make an acceptance. Similarly in the case of trust, there must be trustees and the property must be transferred to the trustees. In the case of a religious endowment, the idol or deity is vested with the property cannot hence be the trustee.[45]

The classical Hindu law relating to religious and charitable endowments is a part of Hindu Personal Law. Temples (*mandirs, dewasoms, kovil, and koil*), *Maths* (monasteries), *Gaushalas* (cow-sheds), *Dharmashalas* (guesthouses), etc., are various kinds of religious institutions related to Hindu religion.[46]

3.4.2 Hindu Religious Endowments: Statutory Definitions and Meaning

In order to understand the meaning of the term 'endowment' clear, it is necessary to understand the definitions given in concerned statutes in India. Religious purposes are rarely defined in the legislations. However religious purposes include the establishment of an idol, the maintenance of an idol, the building of a temple or *math*, performances of *shraddha* and endowments for periodic *pujas*, etc.

Most States in India have their own legislation to regulate religious endowments. They require that the trust or endowment be registered; such a

[45] V.K. VARADACHARI, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS 138 (R. Prakash ed., 4th ed., Eastern Book Publishers 2006).
[46] B.K. MUKHERJEA, THE HINDU LAW OF RELIGIOUS & CHARITABLE TRUSTS 26 (A.C. Sen ed., 5th ed., Tagore Law Lectures, Reprint 2016).

register would contain information regarding such details regarding the origin of the endowment, denomination, employees, wealth, idol(s), legends, and details of its regular services and festivals.[47]

Different state legislations, court cases, income tax laws, etc., may have provisions on 'endowments', 'temples', or 'trusts.' It is seen that these terms are being used interchangeably. In fact, they cannot be used interchangeably though they are all related. Majority of such legislations deals with public religious endowments rather than private endowments. The Bombay Public Trusts Act, 1950 relates to all three terms in its single definition that covers all kinds of religious and charitable institutions irrespective of religion, as public institutions.[48]

However, the specific statutes dealing with Hindu Religious endowments alone give much more concrete definition to Hindu religious institutions. For example, the definition of 'religious endowments' given by the Orissa Hindu Religious Endowments Act, 1951, is thus:

> "*'Religious endowment' or 'endowment' means all property belonging to or given or endowed for the support of Math or temples or given- or endowed for the performance of any service or charity connected therewith or of any other religious charity, and includes the institution concerned and the premises thereof and also all properties used for the*

[47] John H. Mansfield, *Religious and Charitable Endowments and a Uniform Civil Code*, in RELIGION AND PERSONAL LAW IN SECULAR INDIA: A CALL TO JUDGMENT 82 (Gerald James Larson ed., Indiana University Press 2001).

[48] The Bombay Public Trusts Act, 1950, § 2(13). of public trust thus:
"*Public trust means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a Math, a wakf, church, synagogue, or other place of public religious worship, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860*."

purpose or benefit of the institution and includes all properties acquired from the income of the endowed property." [49]

From a perusal of all these definitions it is evident that the terms 'trust', 'religious trust', or 'endowment', etc., denote the property given for a religious purpose (the corpus) and all properties (and income) derived from it.

3.5 Religious Endowment: Difference with Charitable Endowments

Religious and charitable endowments are usually treated as same or together because of the relation between religion and charity in almost all the countries of the world.[50] However, a distinction between purely religious and purely charitable purposes has been there. Religious purposes differ from charitable purposes. Charitable purposes are intended to benefit the public. Religious purposes need not satisfy such public utility. A privately endowed family idol constitutes a valid religious endowment just as much as a *math* established for the religious education of the general public.[51]

But in the modern world, there are specific legislations to regulate charitable endowments or trusts. Charitable Endowments Act, 1890, Charitable and Religious Trusts Act, 1920 are central legislations in this regard. But after independence, many States in India brought their own State legislations to regulate charitable and religious endowments.[52] Much legislation intended to

[49] The Orissa Hindu Religious Endowments Act, 1951, § 3(xii).
[50] V.M. BACHAL, FREEDOM OF RELIGION AND INDIAN JUDICIARY 106 (Shubhada Saraswat Publishers 1975).
[51] Michael C. Baltutis, *Recognition and Legislation of Private Religious Endowments in Indian Law*, in RELIGION AND LAW IN INDEPENDENT INDIA 446 (Robert D. Baird ed., Manohar Publishers 2005).
[52] K.D. GANGRADE, SOCIAL LEGISLATION IN INDIA 160-62 (Concept Publishing Company, Reprint 2011).

regulate both charitable and religious endowments in a single statute.[53] As charitable endowments enjoy tax relaxation, the regulations brought by Income Tax department are also important.[54]

3.6 Hindu Religious and Charitable Endowments: Conceptual Analysis

From an early period Hindu religious and charitable endowments were in existence in one form or another. Religious and charitable endowments under Hindu law are based on two religious obligations (1) *ishta* (*one which is done for one's self*) (2) *purta* (*done for others*).[55]

3.6.1 Ishta and Purta: Both *ishta* and *purta* are broad terms as old as *Rigveda*.[56] Both these terms were used conjointly.[57] The concept *ishta* represents Vedic sacrifices, and rites, gifts connected to that.[58] The concept of *purta* refers to pure charitable purposes not connected to any religious sacrifice.[59] In this sense, both *ishta* and *purta* were considered as modes to

[53] Bihar Hindu Religious Trusts Act, 1950; Madras Hindu Religious and Charitable Endowments Act, 1951; Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987; Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997.

[54] Income Tax Act 1961, § 2 (15).

[55] PANDIT PRANNATH SARASWATI, THE HINDU LAW OF ENDOWMENTS (FB&C Limited, Classic Reprint 2016). *See also* Saraswathi Ammal v. Rajagopal Ammal, MANU/SC/0091/1953.

[56] JAYANT GADKARI, SOCIETY AND RELIGION: FROM RUGVEDA TO PURANAS 187 (Popular Prakashan 1996).

[57] B.K. MUKHERJEA, THE HINDU LAW OF RELIGIOUS & CHARITABLE TRUSTS 10 (A.C. Sen ed., 5th ed., Tagore Law Lectures, Reprint 2016).

[58] SWAMI RAMA, WISDOM OF THE ANCIENT SAGES: MUNDAKA UPANISHAD 160 (Himalayan Institute Press 1990) (*Ishta* includes vedic sacrice, gifts offered to priests at the vedic sacrifice, preserving vedas, religious austerity, rectitude, hospitality etc.).

[59] JAYANT GADKARI, *supra* note 56, at 187 (Popular Prakashan, 1996) (The *purta* works include all works of public utility along with all acts regarded as meritorious from religious or spiritual point of view. They include gifts offered outside the sacrifice ground, construction of water tanks for public utility, construction of temples, conducting procession to honour Gods,

attain salvation. It is also pertinent to note that construction of temple for the worship of idol is an instance of *purta* work. It is very important here to assert that in the Vedic period, idol worship had only limited relevancy. In Vedic period, Vedic sacrifices had pre-eminence. In other words, a religious order based upon vedas existed before the religious order based upon temple and idol worship.[60]

3.6.2 Sankalp and Utsarg: In order to constitute a valid endowment, the settler has to clearly and unambiguously express his will or intention in that behalf. This intention or will is known as dedication.[61] Under Hindu law, dedication includes donation, establishment, and surrender. There are different modes of dedication for different acts and purposes.[62]

In every act of dedication there are two essential parts viz., *sankalp* and *utsarg*. *Sankalp* refers to express manifestation of the intention to create a gift or transfer of interest upon the subject matter i.e., property. In other words, the founder states the objective of making that endowment after mentioning the time of the gift (year, month, etc.). *Utsarg* is the expression of renouncing the ownership of the founder in the said endowed property.[63] In the case of

---

free food, relief to sick, construction of maths (mutts), dharmashalas, rest houses, etc. for the residence of ascetics, dedication for groves, planting trees, and etc. etc.).

[60] MANU V. DEVADEVAN, A PREHISTORY OF HINDUISM 26 (Walter De Gruyter GmbH Publishers 2016).

[61] V.K. VARADACHARI, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS 206 (R. Prakash ed., 4th ed., Eastern Book Publishers 2006) (Dedication means an act of or ceremony of dedicating property to a divine being or to a sacred use; setting aside for a particular purpose; transfer for the benefit of the deity).

[62] *Id*.

[63] B.K. MUKHERJEA, THE HINDU LAW OF RELIGIOUS & CHARITABLE TRUSTS 26 (A.C. Sen ed., Tagore Law Lectures, 5th ed., Reprint 2016).

establishment of temples as endowments, the ceremony of *pratishta* or *samarpan* is also followed.[64]

The existence of religious officials like *mahant* (monastery head), *shebait* (temple-manager), *pujaris* (worship-leaders in temples), *sewaks* (shrine-attendants), *purohits* (worship-guides) and the like are also noteworthy here.

Though all these are part of Hindu personal law, these find references in several legislative enactments[65] and judicial interpretations. Many ceremonies observed in particular Hindu shrines have been examined by various courts which have affirmed their legal permissibility and inviolability.[66]

3.7. Hindu Religious and Charitable Endowment: Essentials for Creation

A Hindu, who is of sound mind, and a major, can dispose of his property by gift or by will for religious and charitable purposes. Such religious and charitable purposes include the establishment and worship of an idol, feeding Brahmans and the poor, consecration of public tanks and water reservoirs,

[64] V.K. VARADACHARI, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS 206 (R. Prakash ed., 4th ed., Eastern Book Publishers 2006). *See also* Pichai v. The Commissioner for Hindu Religious and Charitable Endowments, Madras, AIR 1971 Mad 405 (In this case, it was held that idols installed, consecrated and worshipped by the Hindu Community represent the Supreme God and none else and such idols alone are required to be consecrated and installed for worship according to the rites and ceremonies prescribed by Agama Sastras).

[65] For example, Sections 2 & 5 of Madras Hindu Religious and Charitable Endowments Act, 1951.

[66] Saraswathi Ammal v. Rajagopal Ammal: MANU/SC/0091/1953; Masjid Shahid Ganj v. Shiromani Gurdwara Parbandhak Committee, Amritsar, MANU/PR/0024/1940; Kamaraju Venkata Krishna Rao v. Sub-Collector, Ongole, AIR 1969 SC 563; Chennamilla Chenna Basavaiah v. The Deputy Commissioner of Endowments, AIR 2004 AP 467; Prakash Chandra v. Krishna Kumar, MANU/UP/0069/2019; Hemraj Shriripali Prasad v. Ravi Prakash Pujari, MANU/MP/0178/1987; Gangadhar Ambadas Parashare v. Mahadeo Ambadas Parashare, MANU/MH/1287/1999; Deoki Nandan v. Murlidhar, AIR 1957 SC 133.

planting of shady trees, or for performing of any religious ceremonies or charitable purposes.[67] A guardian on behalf of a minor cannot endow the properties to create religious or charitable purposes. However, a *Kartha* in HUF can endow property. A Hindu widow can dedicate her share of husband's property for religious or charitable endowments.[68]

A Hindu can establish a religious endowment by expressing his purpose for it. A trust is not required for that purpose. A pure religious endowment is neither a gift nor a trust.[69] Writing is not necessary to create an endowment. If an endowment is created by a will, writing and attestation is necessary.[70]

A valid endowment needs a perpetual dedication on the ground of religious merit, though lacking public benefit. A gift in favour of an idol or for the performance of worship of a deity is valid according to the Hindu laws. But it may not be valid according to the English law. Judiciary has also accepted this position under the Hindu law.[71]

In the case of a Hindu religious endowment, acceptance of the property by the donee or beneficiary is not necessary. *Utsarg* (dedication) is enough to constitute a valid endowment. While in the case of a secular gift, it is not necessary that any particular person should accept the property dedicated.

[67] B.K. MUKHERJEA, THE HINDU LAW OF RELIGIOUS & CHARITABLE TRUSTS 26 (A.C. Sen ed., 5th ed., Tagore Law Lectures, Reprint 2016).
[68] V.K. VARADACHARI, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS 229 (R. Prakash ed., 4th ed., Eastern Book Publishers 2006).
[69] K.D. GANGRADE, SOCIAL LEGISLATION IN INDIA 160-62 (Concept Publishing Company, Reprint 2011).
[70] B.K. MUKHERJEA, *supra* note 67.
[71] Sri Satnarayan Ji Maharaj Virajman Mandir Sat Narayan Dharamshala v. Rajendra Prasad Aggarwal, AIR 1997 All 413.

Many judicial decisions in this regard have made this position clear.[72] The ceremonies like *sankalp* and *utsarg or the like* are not essential to create an endowment.[73] However they are helpful to interpret the intention of the grantor. Execution of a deed shows the *sankalp* of the grantor. A *sankalp* is not complete without *utsarg*.[74]

Under the Hindu law, dedication can be done by mere word of mouth. A written dedication is not necessary.[75] However, if there is a written document, it is easy to identify the intention of the donor.[76] In such situations, the rules of transfer of property and public trust will be applicable.[77] In both gift and endowment, clear and ample evidence is required to prove the intention of the donor.[78]

The dedication of a property to religious or charitable purposes may be either complete or partial. If the dedication is complete, a trust in favour of public religious charity is created. If the dedication is partial, a trust in favour of the charity is not created but a charge in favour of the charity is attached to, and follows, the property which retains its original private and secular character. Whether or not dedication is complete would naturally be a question

[72] Gangadhar Mohapatra v. Commissioner of Hindu Religious Endowments, MANU/OR/0157/1973.
[73] Deoki Nandan v. Murlidhar, AIR 1957 SC 133; The Bihar State Board Religious Trust, Patna v. Biseshwar Das, AIR 1971 SC 2057.
[74] B.K. MUKHERJEA, THE HINDU LAW OF RELIGIOUS & CHARITABLE TRUSTS 106 (A.C. Sen ed., 5th ed., Tagore Law Lectures, Reprint 2016).
[75] V.K. VARADACHARI, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS 208 (R. Prakash ed., 4th ed., Eastern Book Publishers 2006).
[76] K.S. Soundararajan v. Commissioner of H.R., (2016) 15 SCC 597; Sri Satnarayan Ji Maharaj Virajman Mandir Sat Narayan Dharamshala v. Rajendra Prasad Aggarwal, AIR 1997 All 413.
[77] Deoki Nandan v. Murlidhar, AIR 1957 SC 133.
[78] Prakash Chandra v. Krishna Kumar, MANU/UP/0069/2019; Deoki Nandan v. Murlidhar, AIR 1957 SC 133.

of fact to be determined in each case in the light of the material terms used in the document. In such cases it is always a matter of ascertaining the true intention of the parties; it is obvious that such intention must be gathered on a fair and reasonable construction of the document considered as a whole.[79] The rules regarding dedication is well explained in old *shastras* related to Hindu personal law. But many interpretations and propositions were also added to those age old rules by the contribution of judicial decisions.[80]

The subject matter of the endowment must be certain. Any uncertainty regarding the subject matter of endowment may defeat the creation of endowment. The object of the endowment is also very essential. The object or purpose of the endowment must be specified in clear or unambiguous terms.[81]

Under Hindu law, there is no need for trustees to an endowment. Even if there is a trustee, it is not necessary that the trustee must be assigned with title of the property.

The endowment or trust must not be for an illegal purpose.[82] An endowment intended to defeat the creditors is invalid.[83]

---

[79] Menakuru Dasaratharami Reddi v. Duddukuru Subba Rao, MANU/SC/0098/1957.
[80] Maharani Hemanta Kumari Debi v. Gauri Shankar Tewari, MANU/PR/0009/1940; Menakuru Dasaratharami Reddi v. Duddukuru Subba Rao, MANU/SC/0098/1957; The Commissioner for Hindu Religious and Charitable Endowments, Mysore v. Ratnavarma Heggade, AIR 1977 SC 1848; Deoki Nandan v. Murlidhar, AIR 1957 SC 133; Samsthana Mahabaleshwara Devaru v. Secretary, Revenue Department (Endowment) Government of Karnataka, MANU/KA/3369/2018.
[81] MAYNE'S TREATISE ON HINDU LAW & USAGE 834 (Vijender Kumar ed., 16th ed., Bharat Law House 2009).
[82] B.K. MUKHERJEA, THE HINDU LAW OF RELIGIOUS & CHARITABLE TRUSTS 132 (A.C. Sen ed., 5th ed., Tagore Law Lectures, Reprint 2016).
[83] V.K. VARADACHARI, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS 228 (R. Prakash ed., 4th ed., Eastern Book Publishers 2006).

As per Hindu law, the rule against perpetuity is not generally applicable to Hindu religious endowments.[84] Moreover, section 18 of Transfer of Property Act expressly makes an exception to the perpetuity rule when the transfer of property is for the benefit of public in advancement of religion.[85]

3.8 Types of Hindu Religious Endowments

According to traditional Hindu law, religious endowments are of two types, viz., (1) Temple and (2) *Math* (*Mutt*). Both temples and maths are the fundamental religious institutions of the Hindu system.

3.8.1 Endowments in favour of Temples: These endowments are gifts for the installation, consecration, worship, and service of idols, gifts for the building of temples, procession of idols, religious festivals etc. in a temple the idol is the principal being and the property of the temple is vested in the idol.[86] Temples are primarily made for prayer and worship of the supreme deity or various deities. According to classical law, idol is a juristic person. But modern jurists do not treat idol as a juristic entity.[87]

3.8.2 Endowments in favour of Math (Mutt): *Maths* are the institutions created for imparting spiritual instruction by the head of the *Math* usually

[84] MAYNE'S TREATISE ON HINDU LAW & USAGE 829 (Vijender Kumar ed., 16th ed., Bharat Law House 2009).
[85] The Transfer of Property Act, 1882, § 18 (Section 18 of The Transfer of Property Act, 1882 reads thus:
"*Transfer in perpetuity for benefit of public.-The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.*").
[86] V.M. BACHAL, FREEDOM OF RELIGION AND INDIAN JUDICIARY 105 (Shubhada Saraswat Publishers 1975).
[87] For more details, *See infra* Chapter 5.

known as *Mathadhipati* or *Mahant*.[88] It is commonly believed that it is Adi Sankara who started establishing a system of Hindu *Maths* in India.[89] After Sankara, many Hindu philosophical teachers have established many *Maths* as their own.[90] *Math* (*mutt*) is made for the purposes of theological learning, practise and propagation of the cult of each system of philosophy. They are intended to train and equip a line of teachers to spread the spiritual light to the society in their own way.[91]

As regards the property rights and position of a *Mathadhipati,* Justice B.K. Mukherjea, in *Shirur Mutt Case,*[92] observed thus:

> "*It may not be possible to say in view of the pronouncements of the Judicial Committee, which have been accepted as good law in this country ever since 1921, that a Mathadhipati holds the Math property as a life-tenant or that his position is similar to that of a Hindu widow in respect to her husband's estate or of an English Bishop holding a benefice. He is certainly not a trustee in the strict sense.*"

Early jurists considered *Maths* as private institutions. But modern jurists treat *Math*s as public institutions whose beneficiaries are a class of people who

[88] V.M. BACHAL, FREEDOM OF RELIGION AND INDIAN JUDICIARY 106 (Shubhada Saraswat Publishers 1975).
[89] Even before Shankara, Buddhist *viharas* were in existence. But they were only a place of congregation for ascetics or Sanyasis (monks). For more details, *see* B.K. MUKHERJEA, THE HINDU LAW OF RELIGIOUS & CHARITABLE TRUSTS 321 (A.C. Sen ed., 5th ed., Tagore Law Lectures, Reprint 2016).
[90] Ramanuja, Vallabhacharya, Madhavacharya, et al. are examples.
[91] The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.
[92] *Id*. ¶ 11.

believes in a particular mode of spiritual fraternity.[93] *Math* is a juristic person but its affairs can be done only through human agency.[94]

3.9 Other Matters Connected to Hindu Religious Endowments

3.9.1 Founder

A founder in Hindu religious endowments means one who donates property and establishes the endowment. The person who originally creates an endowment alone is founder. A person who made subsequent contributions to an endowment cannot be considered as founder.[95] The founder possesses prominent role in a religious endowment. A founder enjoys many rights over the endowment and its property. A founder has absolute control over the management of the endowment. He has the right to appoint and remove the *shebait*. He can transfer his rights to his heirs or descendants.[96]

If a trust is created by subscription and contribution of many persons, all those subscribers are not absolute founders but may be treated as co-founders if they have subscribed with the intention and knowledge to be co-founders. If the subscribers did not have any intention or knowledge to be a co-founder, they cannot be treated as founders.[97]

[93] V.M. BACHAL, FREEDOM OF RELIGION AND INDIAN JUDICIARY 152 (Shubhada Saraswat Publishers 1975).
[94] Sri Sarangadevar Peria Matam v. Ramaswamy Gounder, AIR 1966 SC 1603.
[95] V.K. VARADACHARI, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS 402 (R. Prakash ed., 4th ed., Eastern Book Publishers 2006).
[96] *Id*.
[97] Azees Basha v. Union of India, AIR 1968 SC 662; *see also* Venkata Rama Chettiyar v. Damodharan Chettiyar, AIR 1926 MAD 150.

3.9.2 Shebait

In earlier times, the founder ordinarily administered the property. Later period witnessed the practise of the founder appointing another person called *Shebait* to look after or manage the endowment and its properties. The word *Shebait* is the English translation of the Hindi word '*sevait*' which means one who does *seva* (service) to deity. '*Seva*' includes all kinds of services including worship.

Shebait is the human ministrant and custodian of the idol in a temple. In one sense the *shebait* is the custodian of the idol. He is authorised to look after all the temporal and corporeal affairs of the idol. He is authorised to manage the endowment property.[98] His role is like a manager of the endowment and idol. His position and functions are similar that of a trustee in English sense. As the property is vested with the idol and not with the *shebait*, he is not a trustee under Hindu law. As an administrator *shebait* has the power to institute suits for and on behalf of the idol.[99] However *shebait* enjoys limited power over the endowed property. He cannot manage or alienate the endowed property on his whims and fancies. Any such acts which are contrary to the object of the endowment is treated as breach of trust and *shebait* may be removed from that position lawfully. *Shebait* is considered as the head priest.[100] In Devaswom

[98] Angurbala v. Debabrata, AIR 1951 SC 293; The Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.
[99] V.M. BACHAL, FREEDOM OF RELIGION AND INDIAN JUDICIARY 126 (Shubhada Saraswat Publishers 1975).
[100] Ram Rattan v. Bajrang Lal, AIR 1978 SC 1393.

Board temples in Kerala there is a post known as *Thanthri*. This position is equivalent to the post of *shebait* in the North Indian temples.

3.9.3 Dharmakarta

It is a particular post or class of office bearer, related to temples in South India. He is merely an office holder or administrator to look after the corporeal affairs like maintenance and upkeep of the endowed property. His functions are rather managerial than spiritual. His functions are somewhat similar to *shebait* in corporeal affairs. In that sense, his functions are more or less similar to that of a trustee under the English law.[101] In some parts of the country, this post is hereditary in nature. The persons called *Ooralars* in Kerala temples may be similar to that of *Dharmakarta*.

3.9.4 Mahant

A head the Hindu *Math* is usually known as *Mahanth* or *Mathadhipati*. He is the manager or custodian of the *Math*. But he cannot be equated to a mere manager or office bearer. He is not a trustee. He is neither corporation sole nor a life tenant.[102] His office is regulated by customs and usages rather than *shastras*. He is the religious or spiritual head of the *Math* and at the same time, the manager of the properties of the *Math*. *Mahant* is the human agency of *Math*, the juristic person. While property is vested with the institution, the litigation is conducted by the *Mahanth*. He can sue and be sued for and on behalf of the *Math*.[103]

[101] Krishna Singh v. Mathura Ahir, AIR 1980 SC 707.
[102] Math Sauna v. Kedar Nath alias Uma Shankar, AIR 1981 SC 1878. *See also* Mahant Rajinder Gir v. The Commissioner (Deputy Commissioner), MANU/HP/0140/2006.
[103] Krishna Singh v. Mathura Ahir, AIR 1980 SC 707.

3.9.5 Pujari, Archaka, Panda

In the context of Hindu religious endowment like Temple, the terms like *Pujari*, *Archaka* and *Panda* are often used as synonymous.[104] *Puja* is a general term indicates worship in common parlance. *Archana* is part of puja. Under Hindu law, an *archaka* or *pujari* are appointed by the *shebait* or trustee. *Pujari* and *archakas* are generally entrusted with manifestations of various day to day services attached to a Temple like daily *puja* to deity, the recitation of religious hymns etc. etc., all other duties related to the idol in the sanctum sanctorum of a Temple.[105] They have the right to touch the idol. *Pandas* are a part of priestly class but working outside the Temples. Their main duty is acting as guides to pilgrims or helper to chief priests. They are not the part of daily worship of an idol and hence cannot treat as part of temple priests.[106]

3.10 Public and Private Religious Endowments

Religious endowments can be classified into public and private religious endowments. Classification of a religious endowment shall be made in consideration of its peculiar nature and characteristics.[107] In ancient times there was no such classification. This classification is of a modern origin.[108]

---

[104] V.M. BACHAL, FREEDOM OF RELIGION AND INDIAN JUDICIARY 129 (Shubhada Saraswat Publishers 1975).
[105] *Id.*
[106] Adi Saiva Sivachariyargal Nala Sangam v. The Government of Tamil Nadu, (2016) 2 SCC 725; Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi v. State of U.P., (1997) 4 SCC 606; N. Adithayan v. The Travancore Devaswom Board, AIR 2002 SC 3538; Nar Hari Sastri v. Shri Badrinath Temple Committee, AIR 1952 SC 245.
[107] Dhaneshwarbuwa Guru Purshottambuwa, Owner of Shri Vithal Rukhamai Sansthan v. The Charity Commissioner, State of Bombay, AIR 1976 SC 871.
[108] V.K. VARADACHARI, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS 238 (R. Prakash ed., 4th ed., Eastern Book Publishers 2006).

Bombay Public Trusts Act, 1950 defines 'Public Trust' as it includes religious institutions like a temple, a Math, a wake, church synagogue, agiary or other place of public religious worship, a dharmada or any other religious or charitable endowment. A trust may be either express or constructive. A trust shall be usually for a public religious or charitable purpose.[109]

The Bihar Hindu Religious Trusts Act, 1950 also gives a more or less similar definition. Moreover, it specifically excludes a private endowment created for the worship of a family idol in which the public are not interested.[110]

The Supreme Court has attempted many times to give a strict distinction between public and private endowments. In *Radhakanta Deb v. Commr. of Hindu Religions Endowments, Orissa*,[111] it was held that the question as to whether the religious endowment is of a private nature or of a public nature has to be decided with reference to the facts proved in each case. It is hard to lay down any test or tests which may be of universal application.

[109] Bombay Public Trusts Act, 1950, § 2(13).
[110] The Bihar Hindu Religious Trusts Act of 1950, § 2(i) (Section 2(i) defines public trusts as: "*Religious trust means any express or constructive trust created or existing for any purpose recognised by Hindu Law to be religious, pious or charitable but shall not include a private endowment created for the worship of a family idol in which the public are not interested*." The Bihar Trust Act is the only state legislation which specifically mentions private endowments as such. This is the only statute which uses the word private. This Act clearly excludes private endowments including family idols, the buildings in which they reside, and the income earned from them in Bihar Hindu Religious Trusts Act of 1950. This definition specifically mentions the phrase "*in which the public are not interested*" that makes the rule crystal clear).
[111] Radhakanta Deb v. Commr. Hindu Religions Endowments, Orissa, AIR 1981 SC 798.

The question regarding the nature of a religious endowment is well-settled by the Supreme Court in *Deoki Nandan v. Murlidhar*,[112] where it was observed thus:-

> "*The distinction between a private and a public trust is that whereas in the former the beneficiaries are specific individuals, in the latter, they are the general public or a class thereof. While in the former the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of ascertainment.*"

The Court further held that as the true beneficiaries of religious endowments are not the idols but the worshippers, and that the purpose of the endowment is the maintenance of that worship for the benefit of worshippers, it is very easy to determine the nature of that endowment.[113]

The cardinal rule is related to the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof. In accordance with this theory, if the property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family, and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers.[114]

---

[112] Deoki Nandan v. Murlidhar, AIR 1957 SC 133, ¶ 5.
[113] *Id.*
[114] The State of Bihar v. Charusila Dasi, AIR 1959 SC 1002; Shriomani Gurudwara Prabandhak Committee, Amritsar v. Som Nath Dass, AIR 2000 SC 1421; Sujan Mohinder Charitable Trust v. Mohinder Kaur, MANU/DE/0346/2019.

In *Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan,*[115] the Supreme Court held that the question as to whether a Hindu temple is private or public must be considered in the light of relevant facts.[116]

In *Bihar State Board of Religions Trust v. Biseshwar Das,*[117] the Supreme Court held that the general public *can* attend Private temples when participating in festivals and receiving *darshan,* and they can present offerings. However, the general public cannot use the temple as a matter of right.

3.11 Hindu Religious Endowments and Trust

3.11.1 Trust under English Law

In common law, a trust is a relationship whereby property (real or personal, tangible or intangible) is held by one person for the benefit of

[115] Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan, AIR 1963 SC 1638.

[116] *Id.* (In this case it was held that a temple belonging to a family (which is a private temple) is known to Hindu law. In the case of a private temple it is also not unlikely that the religious reputation of the founder may be of such a high order that the private temple founded by him may attract devotees in large numbers and the mere fact that a large number of devotees are allowed to worship in the temple would not necessarily make the private temple a public temple. On the other hand, a public temple can be built by subscriptions raised by the public and a deity installed to enable all the members of the public to offer worship. In such a case, the temple would clearly be a public temple. Where evidence in regard to the foundation of the temple is not clearly available, sometimes, judiciary must find answer to certain other relevant questions to find the nature of a religious institution like a temple. Such questions are:

(a) Is the temple built in such an imposing manner that it may prima facie appear to be a public temple?
(b) The appearance of the temple of course cannot be a decisive factor; at best it may be a relevant factor.
(c) Are the members of the public entitled to an entry in the temple?
(d) Are they entitled to take part in offering service and taking Darshan in the temple?
(e) Are the members of the public entitled to take part in the festivals and ceremonies arranged in the temple?
(f) Are their offerings accepted as a matter of right?

The court pointed out that the participation of the members of the public in the *Darshan* in the temple and in the daily acts of worship or in the celebrations of festival occasions may be a very important factor to consider in determining the character of the temple).

[117] The Bihar State Board Religious Trust, Patna v. Biseshwar Das, AIR 1971 SC 2057.

another.[118] A trust is a form of interest created in a property. This interest is created by one person for the benefit of another person. The interest in the property relates to its ownership.[119] Section 3 of the Indian Trust Act, 1882, defines a trust as an obligation annexed to the ownership of property.[120]

Three persons are necessary to create a trust. The person who declares his confidence is called 'author of the trust' or 'settler'. The person who accepts the confidence is called the 'trustee'. The person for whose benefit the confidence is accepted is called as 'beneficiary'. The subject matter of the trust is called 'trust property'.[121] The modern concept of trust is the contribution of English equity jurisprudence.[122] A Trust can be registered under two types:

1. Public Trust

2. Private Trust.

An alleged breach of trust in public religious or charitable trusts can be remedied by bringing a civil suit under section 92 of the Code of Civil Procedure, 1908.[123]

---

[118] M.P. TANDON, PRINCIPLES OF EQUITY WITH TRUSTS & SPECIFIC RELIEF 4 (14th ed., Allahabad Law Agency 2016).
[119] *Id.*
[120] Indian Trust Act 1882, § 3 (Section 3 of the Indian Trust Act, 1882, defines a trust as; *an obligation annexed to the ownership of property. arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner*. For example, if *A* wants *B* to enjoy the benefits of his property, *A* can either become a trustee himself and can also appoint another *C*. Here *A* or *C* may manage the property and look after it. B will be the beneficiary who can receive all benefits arising from the property).
[121] *Id.*
[122] M.P. TANDON, *supra* note 118, at 1.
[123] Code of Civil Procedure, 1908, § 92. *See also* 2 C.K. THAKKER, CODE OF CIVIL PROCEDURE, 1908, 183-200 (Estern Book Company 2016).

3.11.2 Hindu Religious Endowments: Difference from Trust

The basic concept of religious endowments under Hindu law is quite different from the concept of trust under English law. Under Hindu law there is no distinction between religious and charitable purposes. Many of the endowments are created for both religious and charitable purposes. Under English law, a gift for the advancement of religion or religious worship was treated as a charitable purpose. The Supreme Court of India has been dealing with this issue where a trust has been both religious and charitable.

Indian Trust Act, 1882 is applicable only to private trusts. This statute is not applicable to public or private religious or charitable endowments created as per Hindu religious practices or Waqf under Muslim religion.[124] This question has been considered by the Privy Council in *Vidya Varuthi Thirtha v. Balusami Ayyar*,[125]

[124] Indian Trust Act 1882, § 1 (Section 1 of the Act reads as follows:
"*But nothing herein contained affects the rules of Muhammadan law as to waqf, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors; and nothing in the Second Chapter of this Act applies to trusts created before the said day*").

[125] Vidya Varuthi Thirtha v. Balusami Ayyar, MANU/PR/0062/1921, ¶ 14 (In this case, Justice Ameer Ali observed thus:-
"It is to be remembered that a 'trust' in the sense in which the expression is used in English law, is unknown to the Hindu system, pure and simple. Hindu piety found expression in gifts to ideals and images consecrated and installed in temples, to religious institutions of every kind, and for all purposes considered meritorious in the Hindu social and religious system; to Brahmins, Goswamis, Sanyasis, etc... When the gift is directly to an idol or a temple, the seisin to complete the gift is necessarily effected by human agency. Called by whatever name, he is only the manager or custodian of the idol or the institution. In no case is the property, conveyed to or vested in him, nor is he a trustee in the English sense of the term, although in view of the obligations and duties resting on him, he is answerable as a trustee in the general sense for mal-administration."
This position was reiterated in many later cases. *See also*, The Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282; Zain Yar Jung v. The Director of Endowments, AIR 1963 SC 985).

From the observations in many cases it can be asserted that the basic concept of a religious endowment under Hindu Law differs in essential particulars from the concept of trust known to English Law.[126]

3.12 Hindu Religious Endowments and Waqfs

3.12.1 Waqf under Muslim Law

Waqf is a permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable.[127] The purpose of the creation of a wakf must be one which is recognised by Muslim law as pious, religious, or charitable, and the objects of public utility which may constitute beneficiaries under the wakf must be objects for the benefit of the Muslim community.[128] The Muslim law relating to trusts differs fundamentally from the English law. [129]

The Mohammadean law on waqf owes its origin to a rule laid down by the Prophet of Islam; and means 'the tying up of property in the ownership of God the Almighty and the devotion of the profits for the benefit of human beings'.[130]

---

[126] H.H. Sudhundra Thirtha Swamiar v. Commissioner for Hindu Religious & Charitable Endowments, Mysore, AIR 196 3SC 966; Sri. Vidya Manohara Teertha Swamigalu Peethadipathy v. The State of Karnataka, MANU/KA/0268 /2013.

[127] MULLA, PRINCIPLES OF MAHOMEDAN LAW 196 (20th ed., Lexis Nexis 2013).

[128] The Wakf Act, 1995, § 3(a) (Section 3(a) clearly establishes the object of the waqf. In terms of beneficiary, it reads thus: *"beneficiary means a person or object for whose benefit a Waqf is created and includes religious, pious and charitable objects and any other objects of public utility sanctioned by the Muslim law"*).

[129] The word '*wakf*' (*waqf*) and its plural from *awkaf* are derived from Arabic root verb '*waqafd*', '*uqifu*', '*waqfan*' or '*ruqufa*' which means 'to stop', or 'to hold', 'to keep' or to prevent property from passing into the hands of a third person. In a religious connotation, the term *wakf* means to protect and preserve the property in such a way that (*Asl*) corpus remains intact but its usufruct is dedicated for charitable purposes in perpetuity. *See* M. A. QURESHI, MUSLIM LAW 460 (3rd ed., Central Law Publishing 2007).

[130] Zain Yar Jung v. The Director of Endowments, AIR 1963 SC 985.

Under Muslim law, there is no prohibition against the creation of a trust of the latter kind. The usual practise is that of dedicating property to the Almighty and creating a wakf in the conventional Mahommedan manner. The followers of Islam is not prevented from creating a public, religious or charitable trust which does not conform to the conventional notion of a wakf and which purports to create a public religious charity in a non-religious secular sense.[131]

Waqf may be created in writing or orally. However, the dedication must be in clear and unambiguous words that show the intention of the dedication.[132]

After the creation of a wakf, the ownership of the waqf property is transferred to the Almighty and the right of *wakif*[133] is extinguished. The manager of the wakf is usually known as the *mutawalli* who is the governor, superintendent, or curator of the waqf. The *mutawalli* being the manager of the properties, has no right in the property belonging to wakf.[134] The property is not vested in him and he is not a trustee in the legal sense. It is evident that the wakf is different from the objects of charitable trust as is known to English law.[135] The supervision, control and management of waqf properties in India is governed by the Waqf Act, 1995.[136]

---

[131] A.A.A FYZEE'S OUTLINES OF MUHAMMADAN LAW 226 (Thahir Mahmood ed., 5th ed., 2008).
[132] MULLA, PRINCIPLES OF MAHOMEDAN LAW 197 (20th ed., Lexis Nexis 2013).
[133] *Wakif* is the one who dedicated the said property.
[134] S.A. KADER, THE LAW OF WAQFS - AN ANALYTICAL AND CRITICAL STUDY 27 (Eastern Law House 1999).
[135] A.A.A FYZEE, *supra* note 131, at 239. *See also* Zain Yar Jung v. The Director of Endowments, AIR 1963 SC 985.
[136] The Wakf Act, 1995 was enacted by the Government of India in November, 1995, which became effective from 01.01.1996. This Act is applicable throughout the country except for

3.12.2 Hindu Religious Endowments: Difference from Waqf

It is to be understood that in many respects there are similarities between a Hindu temple and a waqf. In both, the properties are dedicated to the god. The human agency who looks after the property is only a manager. In some respects, both act as trustees. Both have no right to alienate the properties of the endowment unless otherwise law permits. It is necessary to mention here that under both Hindu law and Muslim law, there is no prohibition against the creation of a trust.

3.13 Some Other Legal Aspects Related to Hindu Religious Endowments

In the early period the sole purpose of creating endowments were to get religious benefits like salvation etc. but in later periods, the endowments started being created as part of some practical benefits including financial benefits associated with religious endowments. Such financial benefits include exemptions from the payment of income taxes, exemptions from laws against wealth accumulation and trust perpetuity, and the rights of property.[137]

3.13.1 Income Tax Laws and Religious Endowments

Basically the income derived from a religious or charitable endowment established for public purposes is not to be included in the total income of the

---

Jammu & Kashmir and Dargah Khwahja Saheb, Ajmir. *See* MULLA, PRINCIPLES OF MAHOMEDAN LAW 197 (20th ed., Lexis Nexis 2013).

[137] The Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282 (The landmark *Shirur Mutt case* established the foundation for property ownership within religious endowments. It established that the *mahant* (like the shebait of the temple) is more than just a servant of the *Math* but is something less than the property owner).

tax year and is thus exempted to that limit.[138] But this rule is not applicable to income of private religious endowments which are taxable.[139] In order to avail exemption under Section 11 of the Income Tax Act, the following conditions must be satisfied:[140]

- The trust must be done for the fulfilment of a lawful purpose.
- The establishment of the trust must be for charitable purposes.

Section 2(15) the Income Tax Act, 1961 enumerates the nature of charitable purpose as it includes relief to the poor; education; medical relief; preservation of the environment, and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility.[141]

Accumulation of income is also restricted in religious and charitable endowments to the extent of maximum 25 percentages.[142]

3.13.2 Rule against Perpetuity and Religious Endowments

The fundamental thing is that the rule against perpetuity is not generally applicable to Hindu religious endowments. The Transfer of Property Ac, 1882 expressly makes an exception to the perpetuity rule when the transfer of property is for the benefit of public in advancement of religion. In other words, the public religious endowments are allowed to accumulate wealth for benefits

[138] V.K. VARADACHARI, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS 716 (R. Prakash ed., 4th ed., Eastern Book Publishers 2006).
[139] *Id*. at 726.
[140] Income Tax Act, 1961, § 11.
[141] *Id*. § 2(15).
[142] *Id*. § 11 (Section 11 of the Act reads as: "*Income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty- five percent of the income from such property*").

to countless generations of the public. This rule also does not apply to private religious endowments.[143]

3.13.3 Property Rights in Religious Endowments

There is essentially no legal difference in the property rights of public and private endowments. In the case of both public and private temples, the ownership of the endowed property vests with the idol (or purpose), and the profits of each must be put back into the institution, according to the original endowment. The only difference lies with the class of the beneficiaries and the direction of the dedication provided.[144] Derrett points out the usage of the private family idol for personal financial gain.[145]

3.14 Some Important Statutes Related to Religious and Charitable Institutions in India.

1. Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
2. Bihar Hindu Religious Trusts Act, 1950
3. Bombay Public Trusts Act, 1950 and Bombay Public Trusts Rules, 1951
4. Charitable and Religious Trusts Act, 1920
5. Dargah Khwaja Sahab Act, 1955
6. Hindu Religious and Charitable Endowments Act, 1951
7. Indian Trust Act, 1882

[143] MULLA, HINDU LAW 599 (22nd ed., Lexis Nexis 2016).
[144] *Id*. at 620.
[145] *See generally* J.D.M. DERRETT, RELIGION, LAW AND THE STATE IN INDIA 490- 492 (Faber & Febar London 1968).

8. Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 and Karnataka Hindu Religious Institutions and Charitable Endowments Rules, 2002
9. Kerala Travancore-Cochin Hindu Religious Institutions Act, 1950
10. Orissa Hindu Religious Endowments Act, 1951
11. Rajasthan Public Trust Act, 1959
12. Religious Endowments (Uttar Pradesh Amendment) Act, 1951
13. Religious Endowments Act, 1863
14. Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959
15. The Madras Hindu Religious And Charitable Endowments Act, 1951
16. Uttar Pradesh Charitable Endowments (Extension of Powers) Act, 1950 and Charitable Endowments (U.P. Amendment) Act, 1952
17. Wakf Act, 1995

CHAPTER 4

STATE CONTROL OVER HINDU RELIGIOUS INSTITUTIONS IN INDIA: SOURCES

4.1 State Control - Need and Significance

Historically speaking, State control over Hindu Religious Endowments was very common. The main reasons behind such regulations were rampant mismanagement of endowment funds.[1] The Report of the Hindu Religious Endowment Commission (HREC), 1960, also depicted the fact that the maladministration and mismanagement of endowments' funds lead to State control from ancient period onwards.[2] The massive complaints regarding such mismanagement and maladministration persuaded the early kings to intervene in the affairs of Hindu religious endowments, especially temples with huge amount of property and assets.[3] Those interventions were to regulate and rectify the mistakes or to put an end to corrupt practices. Some arguments were also there that such interventions by kings other than Hindu Kings were with the desire to loot the properties of Hindu religious endowments.[4] Modern instants of such mismanagement and maladministration made continuation of such state control as inevitable one.

[1] Michael C. Baltutis, *Recognition and Legislation of Private Religious Endowments in Indian Law*, in RELIGION AND LAW IN INDEPENDENT INDIA 456 (Robert D. Baird ed., Manohar Publishers 2005).
[2] THE REPORT OF THE HINDU RELIGIOUS ENDOWMENT COMMISSION (HREC), 1960.
[3] V.M. BACHAL, FREEDOM OF RELIGION AND INDIAN JUDICIARY 172 (Shubhada Saraswat Publishers 1975).
[4] ARJUN APPADURAI, WORSHIP AND CONFLICT UNDER COLONIAL RULE: A SOUTH INDIAN CASE 214-16 (Cambridge University Press 1981).

Ishwara Bhat observes thus:

"*However, trusts are vulnerable to various conundrums which inter alia include the abuse of funds and property, mismanagement, fraud, negligence, indifference, and internal disagreements between the trustees. Thus, it becomes the responsibility of the legal system to maintain the sanctity of trusts in order to meet the expectations of the donors as well as the public.*"[5]

4.2 State Control: An Extension of 'Parens Patriae' Rule

Under English law, the crown as *'parens patriae'* is considered as the Constitutional protector of all properties of charitable trusts.[6] Under English law, charitable trusts are essentially matter of public concern and State is substantially interested in the affairs of such charitable trusts.

According to the general rule in England, the king as *parens patriae*[7] is empowered to guard and enforce all charities of a public nature by virtue of his general superintending power over public interests, where no other person is entrusted with that right.[8] As such the law, relating to State control over religious endowments especially public trusts is the contribution of Britain.

---

[5] Ishwara Bhat, *The 'Parens Patriae' Role of The Courts in the Matter of Public Trusts under §92 of the Civil Procedure Code: Expectations, Contributions, and Limitations*, 7 NUJS LAW REVIEW 205 (2014).

[6] V.K. VARADACHARI, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS 634 (R. Prakash ed., 4th ed., Eastern Book Publishers 2006).

[7] In England, the doctrine of *parens patriae* allows State Attorneys General to represent state citizens in aggregate litigation suits that are, in many ways, similar to class actions and mass tort actions. Its origin was for a modest purpose. However *parens patriae* began as a doctrine allowing the British King to protect those without the ability to protect them, including wards and mentally disabled individuals. Later, this rule of *parens patriae* was expanded by native judiciary in accord with their own system of law. *See* Gabrielle J. Hanna, *The Helicopter State: Misuse of Parens Patriae Unconstitutionally Precludes Individual and Class Claims*, 92 WASHINGTON LAW REVIEW 1955 (2017).

[8] B.K. MUKHERJEA, THE HINDU LAW OF RELIGIOUS & CHARITABLE TRUSTS 404 (A.C. Sen ed., 5th ed., Tagore Law Lectures, Reprint 2016).

Hence, *parens patriae* rule is the jurisprudential basis of state control over religious endowments in India also.[9] Section 92 of Code of Civil Procedure which provides efficacious remedy on matters related to public charities is a good example of application of this rule in India, in matters of religious endowments.[10]

The extracts of Vedic texts shows that the implied form of *parens patriae* was in existence since State control over religious institutions was common in Vedic period. It is also to be noted that the State control over Hindu religious endowments was common in ancient India, especially during reigns of Guptas and Asoka.[11]

In *The Executive Officer, Arthanareswarar Temple v. R. Sathyamoorthy*,[12] with regard to the power of courts to make schemes for the administration of religious endowments or trusts, it was held that the Courts have a general '*parens patriae*' jurisdiction over trusts for charitable and religious purposes and in that case a question of public interest was involved because of the contentions raised by the Commissioner, HR & CE.

4.3 State Control: Sources

Religious sources of laws related to the affairs of Hindu religious institutions very much depend on traditional Hindu personal law, which are

[9] Ishwara Bhat, *The 'Parens Patriae' Role of The Courts in the Matter of Public Trusts under §92 of the Civil Procedure Code: Expectations, Contributions, and Limitations*, 7 NUJS LAW REVIEW 205 (2014)
[10] Code of Civil Procedure, 1908, § 92.
[11] *See generally* CHARLES ALLEN, ASHOKA: THE SEARCH FOR INDIA'S LOST EMPEROR (Hachette UK 2012); ASOKE KUMAR MAJUMDAR, CONCISE HISTORY OF ANCIENT INDIA: POLITICAL THEORY, ADMINISTRATION AND ECONOMIC LIFE (Munshiram Manoharlal Publishers 1977).
[12] The Executive Officer, Arthanareswarar Temple v. R. Sathyamoorthy, AIR 1999 SC 958.

based upon sastras, sutras, vedas, etc. They clearly depict the system of State control of Hindu religious institutions also. King's duty in this regard as mentioned in the vedas is noteworthy.

Modern sources of State control over Hindu religious institutions mainly lies with the legislations of the secular state. Executive branch and its orders occupy one of the main sources. Judicial decisions in this area are considered as precedents in many cases. Judicial creativity can be seen in a number of cases. Many commission reports provide a good source of literature in this matter, though most of the reports have been kept in the cold storage by the succeeding governments.

4.4 Historical Evolution of State Control over Hindu Religious Institutions

4.4.1 Ancient Period

The historians assert that there were no religious endowments like, temples or image worship during the Vedic period.[13] Temples as a religious institution, as we know now, is only of later vedic origin. Hence chances of religious endowments were a rare one in the vedic period. [14] Granting lands for religious purposes is considered as old as the later vedic period.[15] It was a common rule in ancient India that it was the duty of the King to protect temples and their properties. The protection includes protection from theft, robbery and

[13] S.R. RAMANUJAN THE LORD OF VENGADAM 6 (Partridge India 2014); ROMILA THAPAR, ANCIENT INDIAN SOCIAL HISTORY: SOME INTERPRETATIONS 127 (Orient Blackswan 1978).
[14] ASHIM BHATTACHARYYA, HINDU DHARMA: INTRODUCTION TO SCRIPTURES AND THEOLOGY 199 (IUniverse 2006); WENDY DONIGER, THE HINDUS: AN ALTERNATIVE HISTORY (Oxford University Press 2010).
[15] MANU V. DEVADEVAN, A PREHISTORY OF HINDUISM (Walter De Gruyter GmbH & Co. 2016).

encroachments of enemies.[16]A rule in Mitakshara School by *Aparka* and *Viramitrodaya*, specifically enumerate that it is the duty of the king to protect the temple (*Devagraha*). In ancient period, there were separate departments to manage the affairs of religion. The affairs of temples and Maths were under the supervision of such departments.[17] The texts of *Brihaspati* also show that there were provisions to punish fake astrologers, monks, and priests.[18]

4.4.2 Medieval Period

During the medieval period kings were the patrons of religious endowments, especially temples.[19] Many ancient rulers have dedicated property to temples as grants.[20] Some rulers even dedicated and surrendered their whole empire to their favourite deity and continued as the agent of that deity.[21]

Normally, administration and management of temples were in the hands of institutional arrangements consisting of priests or members from the priestly class.[22] Usually Brahmins, as the priestly class, were granted lands by the

[16] GUNTHER DIETZ SONTHEIMER, ESSAYS ON RELIGION, LITERATURE, AND LAW 38-40 (GUNTHER DIETZ SONTHEIMER, HEIDRUN BRÜCKNER & ANNE FELDHAUS ed., et al., Manohar Books 2004).
[17] S.D. CHAMOLA, KAUTILYA ARTHSHASTRA AND THE SCIENCE OF MANAGEMENT: RELEVANCE FOR THE CONTEMPORARY SOCIETY 25 & 26 (Hope India Publications 2007).
[18] RAMA JOIS, SEEDS OF MODERN PUBLIC LAW IN ANCIENT INDIAN JURISPRUDENCE AND HUMAN RIGHTS – BHARATIYA VALUES 103-04 (2nd ed., Eastern Book Co. 2000).
[19] HERMANN KULKE & DIETMAR ROTHERMUND, A HISTORY OF INDIA 140 (4th ed., Psychology Press 2004).
[20] UPINDER SINGH, A HISTORY OF ANCIENT AND EARLY MEDIEVAL INDIA: FROM THE STONE AGE TO THE 12TH CENTURY 622-23 (Pearson Education India 2008).
[21] HERMANN KULKE & DIETMAR ROTHERMUND, *supra* note 19, at 139 (For example, Travancore King transferred his Sovereign State to Lord Padmanabha, his favourite deity (the family deity of Travancore royal family) and constructed Sree Padmanabha Swamy Temple. Vijayanagara Empire was dedicated to Lord Virupaksha of Humpi. *See also* GOURI LAXMI BAYI, SREE PADMANABHA SWAMY TEMPLE, 55-201(Bharatiya Vidya Bhavan 2000).
[22] ESSAYS ON RELIGION, LITERATURE, AND LAW 38-40 (Heidrun Bruckner ed. at al, Manohar Publishers 2004).

Kings for this purpose.[23] There were incidents of mismanagement by the body entrusted to look after the affairs of temples. Historical evidences were found out in this regard.[24]

Many stone inscriptions and copper plates found out from various parts of our country evidence that the State was actively engaged in the affairs of religious endowments, especially in the matters related to temples.[25] Kings gave patronage to temple and as patrons; they also interfered in the affairs of such temples.[26]

During the Sultanate and Mughal periods, rulers followed classical Islamic law and created Muslim religious endowments called waqf. However they provided grants to both Hindu and Muslim religious endowments.[27] During this period certain waqfs were state organized religious endowments.[28] During the Mughal period, Hindu religious endowments were not strictly under state control. Rather they were outside the state control.[29] But, at the same time, waqfs were under the control of the Mughal kings. For this purpose, specific officers were appointed for religious endowments especially to the waqfs.[30]

---

[23] HERMANN KULKE & DIETMAR ROTHERMUND, A HISTORY OF INDIA 138 (4th ed., Psychology Press 2004).
[24] S. JAYASANKAR, TEMPLES OF KERALA, CENSUS OF INDIA SPECIAL STUDIES 15-16 (Government of India Press 2000).
[25] V.K. VARADACHARI, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS 636 (R. Prakash ed., 4th ed., Eastern Book Publishers 2006).
[26] *See generally* DWIJENDRA NARAYAN JHA, RETHINKING HINDU IDENTITY (Routledge 2014).
[27] JAMAL MALIK, ISLAM IN SOUTH ASIA: A SHORT HISTORY 235 (Brill publishers, 2008).
[28] Juma Masjid of Delhi and Taj Mahal were examples
[29] *See generally*, RAFAT MASHOOD BILGRAMI, RELIGIOUS AND QUASI-RELIGIOUS DEPARTMENTS OF THE MUGHAL PERIOD, 1556-1707 (Aligarh Muslim University 1984).
[30] MUNIS D. FARUQUI, THE PRINCES OF THE MUGHAL EMPIRE 1504–1719, at 65 (Cambridge University Press 2012) (During the period of Humayun, the chief of religious endowments were known as *sadr-us-sudur*).

4.4.3 The Colonial Period

During the early period of the East India Company, they followed a policy of non-interference in the affairs of religion or religious endowments.[31] Hence such endowments were controlled and managed by individuals or group of individuals. But by the beginning of 1800s, due to the mismanagement and misappropriation of temple funds, they started interfering in the administration of religious endowments.[32]

By this time, the management of the major temples was taken over by the local administrative authority. The Board of Revenue in Madras was constituted in the year 1789. In 1796, the Government at Madras took over the collection and distribution of all temple revenues in the territories under British control. A system of fixed compensatory payments was initiated for all the contributions, from various localities that were traditionally collected by the temples.[33]

By 1800, the Board of Revenue adopted procedures for taking charge of the temples and their endowments. As a result, they brought their first regulation in this regard in the year 1810, i.e., Regulation Act XIX of 1810. This was applicable only in the old presidency of Bengal. In the year 1817, a similar regulation was brought for the old presidency of Madras.[34]

---

[31] *See generally* PENELOPE CARSON, THE EAST INDIA COMPANY AND RELIGION, 1698-1858 (Boydell Press 2012).

[32] S. JAYASANKAR, TEMPLES OF KERALA, CENSUS OF INDIA SPECIAL STUDIES 15-16 (Government of India Press 2000).

[33] M.D. Srinivas, *Temples and the State in the Indian Tradition*, (14 Sep. 2019), http://indiafacts.org/temples-and-the-state-in-the-indian-tradition-part-5/. (Such compensatory payments were in the form called *maniyams* and *merais*).

[34] The Madras Regulation, 1817 (VII of 1817) (The preamble to the Regulation clearly states its objective as:

Subsequently, the regulation for the old presidency of Bombay was brought in the year 1827.[35] All these regulations were not extended to the whole of India, but they were applicable only in the concerned provinces. However, the system was effective and beneficial to those institutions.[36]

Under these regulations the States' Board of Revenue (BOR) was empowered with the duty of regulation of religious endowments.[37] Board of Revenue acted through officers called 'Collectors' or similar authorities. Board of Revenue had powers such as to appoint trustees for non-hereditary temples, supervision over hereditary trustees, maintenance and repair of endowment properties, etc. District level and local level officers were appointed to assist the BOR. The trustees were placed at the lowest level to look after the day to day affairs of the endowments. In order to meet the expenses for such regulatory mechanism, a fee was appropriated out of temple funds. Such temple funds were usually kept in the public treasury. The powers delegated to the Board of Revenue, were analogous to the powers conferred on Visitors in England.[38]

" *Whereas considerable endowments have been granted in land by the preceding Governments of this country and by individuals for the support of mosques, Hindu temples, colleges, and for other pious and beneficial purposes; and whereas there are grounds to suppose that the produce of such lands is in many instances appropriated contrary to the intentions of the donors, to the personal use of the individuals in immediate charge and possession of such endowments; and whereas it is an important duty of every Government to provide that all such endowments be applied according to the real intent and will of the grantor.*"

[35] Bombay Regulation, 1827 (VIII of 1827).

[36] B.K. MUKHERJEA, THE HINDU LAW OF RELIGIOUS & CHARITABLE TRUSTS 409 (A.C. Sen ed., 5th ed., Tagore Law Lectures, Reprint 2016).

[37] Michael C. Baltutis, *Recognition and Legislation of Private Religious Endowments in Indian Law*, in RELIGION AND LAW IN INDEPENDENT INDIA 457 (Robert D. Baird ed., Manohar Publishers 2005).

[38] T. Sitharam Chetty v. S. Subramania Aiyer, MANU/TN/0345/1915 (The functions of a *Visitor* was to inspect the actions and regulate the behaviour of the members that partake of

The intention behind those regulations was widely questioned.[39] Some authors argue that such interventions were legitimate and necessary. Kashmir Singh, in his book Stated that those regulations were to ensure proper administration of badly managed religious endowments.

But some other authors, like Presler, asserted that the real intention behind such regulations was to grab the vast amount of landed properties and income attached to that by the East India Company.[40]

All these regulations brought a system of supervision on Hindu and Muslim religious and charitable endowments. From the very beginning this system was vehemently criticized by Christian missionaries.[41] By 1840, the British Crown brought an end to such regulations and control over religious endowments. As a result, by 1843, the East India Company started withdrawing from controlling religious endowments. Instead of State's control, it was left to the control of local Kings, local bodies, newly formed committees, existing temple priests, existing trustees or group of trustees.

---

the charity. The nature of the powers possessed by *Visitors* was not easily ascertainable. This was well explained in the famous English case, Philips v. Bury (1788) 2 T.R. 346 per Holt, C.J.).

[39] Commissioner of Hindu Religious v. Kanak Durga Thakurani, AIR 1958 Ori 183, ¶ 7. *See also* Seshadri Ayyangar v. Nataraja Ayyar, MANU/TN/0078/1898 (In this case, the Court analysed the Regulation of 1817 and observed that the said Regulation recognised the fact that large endowments had been granted by former Governments, the British Government and individuals for the support of temples. The statute emphasized that such endowments were in many instances misappropriated, and the general superintendence of all endowments should be vested in the Board of Revenue and prescribes the duties to be performed by them to prevent misappropriation of the funds. It also authorises the Board to appoint local agents, and declares that the Collector of the district shall be ex-officio one of such agents).

[40] Michael C. Baltutis, *Recognition and Legislation of Private Religious Endowments in Indian Law*, in RELIGION AND LAW IN INDEPENDENT INDIA 457 (Robert D. Baird ed., Manohar Publishers 2005).

[41] S.A. KADER, THE LAW OF WAKFS-AN ANALYTICAL AND CRITICAL STUDY 7 (Eastern Law House 1999) (In and about 1839, there was an agitation from the Christian missionaries that it was not the function of a Christian government to administer Hindu and Muslim endowments and provide for their maintenance).

This withdrawal of the East India Company from the administration over religious endowments resulted in anarchy. Lack of proper authority gave way to maladministration and miss-management of endowed assets. At last, for curing all the irregular and fraudulent practices with regard to religious endowments, the Government of India under the Crown passed Religious Endowments Act in the year 1863.

4.5 Religious Endowments Act, 1863

This is considered as the most comprehensive legislation which was positively intended to regulate the religious endowments. This Act repealed both Bengal Regulation XIX of 1810 and Madras Regulation VII of 1817.[42] This Act was applicable to every mosque, temple or other religious establishment to which the provisions of either of the Regulations of Madras and Bengal applied.[43] The main objective of the legislation was to transfer the function of superintendence and control over religious endowments to statutorily appointed managers and managing committees.[44]

This statute provided that the concerned local government shall appoint one or more committees in every district or division to exercise the powers of Board of Revenue and other authorities under the repealed regulations.[45] This statute elaborately dealt with the provisions for the composition and duties of

[42] Religious Endowments Act, 1863, § 4 (Repealed by the Repealing Act, 1870 (14 of 1870)).
[43] *Id*. Preamble (This Act was applicable to religious endowments where nomination of the trustee, manager or superintendent thereof, at the time of the passing of this Act, is vested in, or may be exercised by, the Government, or any public officer, or in which the nomination of such trustee, manager or superintendent shall be subject to the confirmation of the Government or any public officer).
[44] *Id*. § 4.
[45] *Id*. § 7.

the committees. It also provided the qualifications and tenure of committee members.[46] It explicitly provided to conduct an election for ascertaining persons who are interested in the affairs of the particular religious endowment.[47] It specifically laid down the procedure for the removal of committee members. It also provided for the transfer of properties from the Board of Revenue to the newly elected committees.

A very important point to be noted here is that the statute very clearly declared that the properties of the endowments are not vested with the committees. Instead they are vested with the Idol or the Institution as such. The trustees or managers to the committee were competent to institute suits or proceedings in connection with the property.[48]

It is pertinent to note that the powers and functions of such committees shall not take away the powers of ordinary civil courts in this regard. In other words, the committee does not oust the general jurisdiction of the ordinary civil courts on the administration of trusts.[49]

[46] Religious Endowments Act, 1863, §§ 8 & 9.
[47] *Id*. § 8 (It reads thus: *Qualifications of member of committee- "The members of the said committee shall be appointed from among persons professing the religion for the purposes of which the mosque, temple or other religious establishment was founded or is now maintained, and in accordance, so far as can be ascertained, with the general wishes of those who are interested in the maintenance of such mosque, temple or other religious establishment. The appointment of the committee shall be notified in the Official Gazette. Ascertaining wishes of persons interested- In order to ascertain the general wishes of such persons in respect of such appointment, the State Government may cause an election to be held, under such rules by notification in the Official Gazette not inconsistent with the provisions of this Act, as shall be framed by such State Government. Every rule framed under this section shall be laid, as soon as it is framed, before the State Legislature."*
[48] *Id*. § 12.
[49] T. Sitharam Chetty v. S. Subramania Aiyer, MANU/TN/0345/1915.

The statute called upon the trustees to furnish the details of accounts.[50] It lay down that any person who is interested in the affairs of a particular religious institution may institute suits against trustees, managers, superintendents or members of the committee for any breach of trust, neglect of duty or misfeasance. The statute empowers the ordinary civil courts to order specific performance, or to award damages, or to order to remove any trustees, managers or superintendents.[51]

Apparently, the statute was a stern move in the right direction. However, it cannot be said that it was adequate to protect the endowments from the said abuses.[52] A major drawback of this legislation was that, it did not cover the whole of India and was applicable only to some provinces. Moreover, it was applied only to religious endowments whose trustees are appointed by government or similar authority. This statute was applicable only against pubic religious endowments and hence private religious endowments were outside the ambit of State control. The religious endowments whose trustees were hereditary were outside the scope of the statute.

---

[50] Religious Endowments Act, 1863, § 13 (It reads thus:
Duty of trustee, etc., as to accounts.- "It shall be the duty of every trustee, manager and superintendent of a mosque, temple or religious establishment of which the provisions of this Act shall apply to keep regular accounts of his receipts and disbursements in respect of the endowments and expenses of such mosque, temple or other religious establishment; and of committee. —and it shall be the duty of every committee of management, appointed or acting under the authority of this Act, to require from every trustee, manager and superintendent of such mosque, temple or other religious establishment, the production of such regular accounts of such receipts and disbursements at least once in every year; and every such committee of management shall themselves keep such accounts thereof."

[51] *Id*. § 14.

[52] B.K. MUKHERJEA, THE HINDU LAW OF RELIGIOUS & CHARITABLE TRUSTS 415 (A.C. Sen ed., 5th ed., Tagore Law Lectures, Reprint 2016).

Charitable and Religious Trusts Act of 1920 was the one legislation which cured the above said lacuna with regard to endowments of hereditary trustees.[53] This statute did not cover charitable endowments which give a vast room for misappropriations of funds. It led to the enactment of the Charitable Endowments Act in the year 1890.

4.6 The Charitable Endowments Act, 1890

The main objective of this legislation was to provide for the vesting and administration of the property of charitable trusts. In order to fulfil this objective this statute empowered the State government to appoint a special officer called 'Treasurer of Charitable Endowments' for that State.[54] The trust property would be vested with this officer (i.e., Treasurer).[55] The State was also empowered to settle schemes for the administration of the properties of charitable endowments.[56] This statute clearly defines the term 'charitable purpose'.[57] This definition clearly excludes religious teaching or worship from the ambit of the legislation as they were purely religious acts.

Both Religious Endowments Act, 1863 and Charitable Endowments Act, 1890 suffered from many inadequacies. Various attempts were made for rectifying the defects. As part of this various committees were appointed and various Private Bills were introduced to find out the solutions to cure the lacunas. But all were not fruitful. At last, in 1914, a conference of major

[53] Michael C. Baltutis, *Recognition and Legislation of Private Religious Endowments in Indian Law*, in RELIGION AND LAW IN INDEPENDENT INDIA 457 (Robert D. Baird ed., Manohar Publishers 2005).
[54] Charitable Endowments Act 1890, § 3.
[55] *Id*. § 4.
[56] *Id*. § 5.
[57] *Id*. § 2.

religions and their representatives were held. The discussions and suggestions of that conference paved the way for Charitable and Religious Trusts Act of 1920.[58]

4.7 Charitable and Religious Trusts Act, 1920

This piece of legislation was a landmark in the history of control over religious and charitable endowments. The main aim of the Act was to cure all the lacuna of previous legislations and regulations with regard to religious and charitable endowments. The highlight of this legislation was that it introduced right for interested parties of public religious or charitable endowments to approach the judiciary to get wider relief.

Section 3 of this statute clearly established that any person who is interested in a trust of public nature could apply by petition to a local court for an order directing the trustees to furnish all the particulars of a trust.[59] The trust may be express or constructive. The particulars include nature and objects of the trust, value of the properties of the trust, condition, management and application of the subject matter of the trust and income derived there from accounts and audit, etc. The court may direct the furnishing of these particulars on a petition seeking direction under section 3 of the statute. The trustees who failed to do so may be deemed to be in breach of trust allowing the person

[58] S.A. KADER, THE LAW OF WAKFS-AN ANALYTICAL AND CRITICAL STUDY 8 (Eastern Law House 1999) (It is important to note that in 1913, the Mussalman Wakf Validating Act was passed. It was also a land mark move with regard to religious and charitable endowments in India. This legislation provided for a new and separate system of administration of waqfs in India. After this, the Muslim waqfs were started occupying in separate legislation for waqfs alone. In 1923, the Mussalman Wakf Act was enacted with the objective of making provisions for the better management of wakf properties. After this, the Mussalman wakf Validating Act, 1930 was passed).

[59] Charitable and Religious Trusts Act, 1920, § 3.

concerned to file a suit against them under section 92 of the Civil Procedure Code, 1908.[60]

The notable point is that this Act protects the rights of trustees also. It allows the trustees to approach the concerned court to seek opinion, advice or direction on any question affecting the management and administration of the trust property.[61] This Act does not apply to a society registered under the Societies Registration Act.

4.8 The Hindu Religious Endowments Act, 1927

This was a specific legislation intended to deal with the mal-administration of temple properties. This Act was marked as the first attempt to proactively address the issue of temple mal-administration. This legislation brought a new system i.e., an executive-based system apart from a court-based system. By this the British put an end to the long-standing British policy of non-interference. But as this legislation is limited only to Hindu religious and charitable endowments in the then Madras region, it had no application all over India.

After independence, most states have also created their own public trust and endowment statutes since the adoption of the Constitution. The major purposes of these legislations are to provide for the better administration and governance of Hindu religious institutions and endowments in their own states. All of them fall within the limits of regulation prescribed by the Indian

[60] Charitable and Religious Trusts Act, 1920, § 5.
[61] *Id*. § 7.

Constitution.[62] In the same way that the government appointed trustees claimed hereditary status following the passage of Act XX of 1863 to avoid further regulation, endowment managers have claimed a private status for their endowments to prevent the loss of these traditional freedoms. The specific cases related to this will be dealt with a later section.

While these legislations do not pertain to private endowments at all, they are still relevant here, as a private endowment later judged to be public will be subject to the statute of its respective state.

4.9 Section 92 of Code of Civil Procedure, 1908

Section 92 of the Civil Procedure Code is analogous to Trustees Act of 1850 in England.[63] The present section 92 is a reproduction with certain changes of section 539 of Civil Procedure Code of 1882. Section 92 is intended to confer on the civil courts in India the power to interfere in the administration of public trusts and charities. It contains many provisions related to the enforcement and administration of public religious and charitable trusts.[64]

A suit under section 92 of the Code is a suit of special nature intended to protect the rights of public who are interested in the affairs of public trusts and charities. Any such suit is considered as a suit for and on behalf of the class of

[62] INDIA CONST. art. 25(2)(a).
[63] C.K. THAKKER, CODE OF CIVIL PROCEDURE, 1908, at 186 (Eastern Book Co. 2016) (However, there is some difference in procedure between both the provisions of England and India. Under English law, the procedure is summary in nature. But under Indian law, a similar petition is to be decided in a regular manner).
[64] *Id.*

persons who are all interested in the affairs of public trusts and charities.[65] Infringements of private rights are outside the scope of this section.[66]

4.9.1 Scope and Objective of Section 92 of Code of Civil Procedure, 1908

Section 92 of Code enables the institution of a suit in respect of a public trust by the Advocate General or two or more persons having an interest in the trust after obtaining leave of the Court in the principal Civil court of original jurisdiction. This aims to prevent a public trust from being harassed or put to legal expenses by reckless or frivolous suits being brought against the trustees and hence a provision was made for leave of the Court having to be obtained before the suit is instituted.[67] Thus, it aims to protect public religious and charitable endowments and trusts from unwanted and unworthy suits intended to harass the trustees.

This provision is applicable to the whole of India, except to states where specific and separate legislation that provides similar reliefs exist or where it is expressly declared inapplicable in this regard.[68]

4.9.2 Application of Section 92

In essence, in order to apply this section, certain conditions are to be fulfilled. In *Association of Radhaswami Dera Baba Bagga Singh v. Gurnam Singh*,[69] such conditions are summarized as under:

---

[65] Madappa v. Mahanthadevaru, AIR 1966 SC 878.
[66] 1 MLJ'S CODE OF CIVIL PROCEDURE, 1908, at 1084 (13th ed., Lexis Nexis, Reprint 2009).
[67] Swami Shivshankargiri Chella Swami v. Satya Gyan Niketan, MANU/SC/0206/2017.
[68] Section 92 does not apply to many states and their specific legislations in this regard. For example, Tamil Nadu Hindu Religious and Charitable Endowments Act 1959 (§ 5); Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act 1966 (§ 110) Bihar Hindu Religious Trusts Act 1951 (§ 4(5)); Bombay Public Trusts Act, 1950 (§ 52). Section 92 of CPC is not applicable to Wakf Act 1995 also.
[69] Association of Radhaswami Dera Baba Bagga Singh v. Gurnam Singh, AIR 1972 Raj 263.

i. There must be a trust for public purposes of religious or charitable nature.

ii. The plaintiff must prove 'breach of trust' and the intervention of judiciary is necessary for the administration of the trust;

iii. The relief claimed in the suit must be one of the reliefs mentioned in this section.

iv. The interest of the party who brings the suit must be for public good and not for private benefits.

If any one of the conditions is absent, this section has no application.[70] To maintain a suit under section 92 of CPC, the plaintiff has to show existence of trust.[71] It is also to be noted that section 92 deals with those charities only in which the public are interested. It does not apply to a private trust.[72]

The question regarding the nature of trust, i.e., whether public or private, would have to be decided in accordance with the facts and evidences of each and every case. As it was held in *Deoki Nandan v. Murlidhar*,[73] there is no single uniform rule applicable to all cases.

[70] 1 MLJ'S CODE OF CIVIL PROCEDURE, 1908, at 1085 (13th ed., Lexis Nexis, Reprint 2009).
[71] K. Rajamanickam v. Periyar Self Respect Propaganda Institution, AIR 2007 Mad 25 (The property vested with President and Secretary as per a Memorandum of Association or Articles of Association that was registered under Societies Registration Act is not property of trust. It was held that, property was vested with society and not with the trust. Thus, the suit was held not maintainable under section 92 of CPC. The petition was dismissed).
[72] 'Abhaya', A Society v. J.A. Raheem, AIR 2005 Ker 233 (In a private trust, the beneficiaries are specific individuals. In public trusts, the beneficiaries are general public or a class thereof).
[73] Deoki Nandan v. Murlidhar, AIR 1957 SC 133, ¶ 5.

In order to determine the nature of the trust, it is best to find whether the deed is substantially for a public purpose. The dominant object behind the endowment is the valid criterion.[74]

In *Gadigi Mariswamappa v. Sivamurthy*,[75] it was observed thus:

> *"In order to see whether a trust is a public or private trust, intention of person making endowment; purpose for which it is made; who all are beneficiaries, must be looked into. No universal rule can be laid down to find out as to whether trust is a public or a private trust. Each case has to be considered on its own facts and circumstances".*

In certain exceptional cases, a public trust may contain provisions of private trusts. In such cases if the trust is created mainly for a public purpose, section 92 of CPC is attracted.[76]

In some cases, the private religious trusts may subsequently become public trusts.[77] There are instances where a single trust may show the features of both private and public trusts. In such cases, if the trust is substantially for the purpose of public benefit, then section 92 of CPC can be invoked.

A suit under section 92 of CPC is a suit of special nature for the protection of public rights in the public trust and charities.[78] Such a suit fundamentally represents the entire body of persons who are interested in the

[74] V.K. VARADACHARI, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS 636 (R. Prakash ed., 4th ed., Eastern Book Publishers 2006).
[75] Gadigi Mariswamappa v. Sivamurthy, AIR 2005 Kant 172, ¶ 9.
[76] Sugra Bibi v. Hazi Kummu Mia, AIR 1969 SC 884.
[77] Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi, AIR 1960 SC 100.
[78] Pragdasji Guru Bhagwandasji v. Patel Ishwarlalbhai Narsibhai, AIR 1952 SC 143, ¶ 11.

trust. Hence, the legal presumption is that the suit is for the vindication of public rights.[79]

A suit under section 92 of CPC is thus a representative suit and as such binds not only the parties named in the suit-title but all those who share common interest and are interested in the trust.[80]

In *Thenappa Chettiar v. Karuppan Chettiar*,[81] it was held that, a suit filed for the removal of a trustee or for the settlement of a scheme in a private trust is permissible under section 92.[82] In *Vikram Das Mahanth Case*,[83] it was observed that the general rule is that persons without title and who are mere intermediaries cannot bring an action against the administration of a trust. However, courts are bound to protect the interests of the beneficiaries of a trust or endowment, where public interest is involved. A suit, by any person interested, is permissible under section 92 for the removal of the trustee and for

[79] R. Venugopala Naidu v. Venkatarayulu Naidu Charities, AIR 1990 SC 444.
[80] Shiromani Gurdwara Parbandhak Committee v. Harnam Singh, AIR 2003 SC 3349 (It is for that reason that Explanation VI to Section 11 of CPC constructively bars by res judicata the entire body of interested persons from re-agitating the matters directly and substantially in issue in an earlier suit under Section 92, CPC).
[81] Thenappa Chettiar v. Karuppan Chettiar, AIR 1968 SC 915.
[82] *Id*. (This was a special leave to appeal brought on behalf of the plaintiffs, against the judgment of the Madras High Court. In this case, a trust was founded for conducting puja and running school. The defendant was appointed as executive trustee and manager by joint founders. The defendant nominated his grandson. The plaintiff filed a suit before Subordinate Judge's court praying for a settlement of scheme in respect of trust. The plaintiff claimed mismanagement and contended that defendant had stopped puja and discontinued school. Lower court held that plaintiff accepted defendant as sole trustee and charges of mismanagement were not found. Plaintiff preferred an appeal to High Court. The decision of Subordinate Judge's court was affirmed by High Court. Subsequently, an appeal was made to Supreme Court. It was held that appellants being contributors are interested in administration of trust and can bring suit against mismanagement. But in this case, the appellants failed to prove mismanagement against defendant or nominee. Hence, the decision of High Court was affirmed by the honourable Supreme Court). *See also* Manohar Mookerjee v. Peary Mohan, MANU/WB/0268/1919.
[83] Vikrama Das Mahant v. Daulat Ram Asthana, AIR 1956 SC 382, ¶ 15.

the proper administration of the endowment, in the event of breach of trust or mismanagement on the part of the trustee.[84]

When the document creating the trust itself shows prima facie it is a public trust and created for the benefit of the Hindu public, when there is allegation of mismanagement, leave to file a suit has to be granted.[85]

4.9.3 Reliefs under Section 92

Section 92 of the Code provides the following reliefs:

a. Removing any trustee;
b. Appointing a new trustee;
c. Vesting any property in a trustee;
d. Directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;
e. Directing accounts and inquires;
f. Declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
g. Authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;
h. Settling a scheme; or
i. Granting such further or other relief as the nature of the case may require.

[84] Radhamohan Dev v. Nabakishore Naik, AIR 1979 Ori 181.
[85] Rajendran Unnithan v. Mahadevar (Deity), 2005 (3) KLT 997.

In granting reliefs like removing a trustee, framing a scheme or for any other relief, section 92 is applicable to constructive trusts also. In *Shripatprasad Beharilalji Acharyashri v. Lakshmidas Dungarbhai Barot,*[86] it was held that a *Mahanth, Shebait or Mutawalli* would ordinarily seem to be a constructive trustee under Section 92, CPC; for his fiduciary position would be that of a manager or custodian of property held for public purposes of a charitable or religious nature.[87] However, an implied dedication under Hindu law cannot be treated as constructive trust.[88] The doctrine of constructive trust under English law cannot be applied as such to a Hindu debutter or Mahommedan wakf.[89]

4.9.4 'Interested Persons' under Section 92

The connotation 'interested person' is a wide term that was a subject matter of numerous litigations. In *T.R. Ramachandra Aiyar v. Parameswaran Unni*,[90] a Full Bench of the Madras High Court held that 'interest' in Section 92, CPC denotes an interest which is present and substantial and not sentimental or remote or fictitious or purely illusory interest.

---

[86] Shripatprasad Beharilalji Acharyashri v. Lakshmidas Dungarbhai Barot, MANU/MH/0215/1922.

[87] *Id*.

[88] V.K. VARADACHARI, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS 651 (R. Prakash ed., 4th ed., Eastern Book Publishers 2006).

[89] Gobinda Chandra Ghosh v. Abdul Majid Ostagar, MANU/WB/0085/1943.

[90] T.R. Ramachandra Aiyar v. Parameswaran Unni, MANU/TN/0166/1918 (In this case, a Hindu residing in Madras and another residing in Tellicherry instituted a suit in the District Court of North Malabar under Section 92, Civil Procedure Code, in respect of a Hindu temple situated in Tellicherry. It was found that the petitioner had gone to worship in the temple on one or two occasions in the past. As a Hindu, who worshipped in that temple he instituted the suit. The majority held that though as a Hindu he might have the right to worship in the temple, he had not on that ground alone the 'interest' required by Section 92 of the Code to maintain the suit).

In *Vaithianatha Aiyer v. S. Tyagaraja Aiyar*,[91] it was held that the descendants of the founder of the charity have an interest within the meaning of Section 92 of the Code of Civil Procedure and can institute a suit under that.[92]

In *Harnam Singh v Gurdial Singh*,[93] it was observed that the residents of a village, where free food is served to visitors by an institution running a free kitchen, do not have any interest entitling them to file a suit under Section 92, Code of Civil Procedure.

In *Vidyodaya Trust v. Mohan Prasad*,[94] it was observed that the Courts have to be careful to eliminate the possibility of a suit being laid against public trusts under Section 92 by persons whose activities were not for protection of the interests of the public trusts.

In *Sugra Bibi v. Hazi Kummu Mia*,[95] it was held that the mere fact that the suit relates to public trust of religious or charitable nature and the reliefs claimed fall within some of the clauses of sub-section (1) of Section 92 would not by itself attract the operation of the Section, unless the suit is of a

[91] Vaithianatha Aiyer v. S. Tyagaraja Aiyar, MANU/TN/0001/1919 (In this case, the plaintiffs belong to the family of the founder. The court observed that they would naturally have an interest in the family charity so as to enable them to bring a suit under Section 92 of the Civil Procedure Code. The court distinguished the judgment of the Full Bench in *T.R. Ramachandra Ayyar's case*, MANU/TN/0166/1918).

[92] *Id.* (This judgment was affirmed on appeal by the Privy Council in Vaidyanatha Ayar v. Swaminathyya Ayyar, AIR 1924 P.C. 221 (2). In Ramaswami v. Karumuthu, AIR 1957 Mad 597, a learned Single Judge of the High Court held that a person who was a Hindu and was residing only three miles away, and had saved the trust properties from being sold away by a decree holder and had got the attachment released, and was a lessee in respect of the trust to be by being the highest bidder at an auction held by the Commissioner of Court, is a person vitally interested in the trust and its proper management. *See also* P. Elumalai v. Pachaiyappa's Trust Board, MANU/TN/2762/2017.

[93] Harnam Singh v Gurdial Singh, AIR 1967 SC 1415 (In this case, it was found by the Court that the institution of the suit was meant for Nirmala Sadhus and the Plaintiffs as lambarders and followers of Sikh religion cannot be said to have an interest entitling them to file a suit as Nirmala Sadhus are not Sikhs).

[94] Vidyodaya Trust v. Mohan Prasad, (2008) 4 SCC 115.

[95] Sugra Bibi v. Hazi Kummu Mia, AIR 1969 SC 884.

representative character instituted in the interest of the public and not merely for vindication of the individual or personal rights of the plaintiffs.

In *Executive Officer, Arthanareswarar Temple v. R. Sathyamoorthy*,[96] the Honourable Supreme Court held that the courts have a general '*parens patriae*' jurisdiction over religious and charitable trusts in the cases where a question of public interest was involved. If a temple is already administered by a trust and it has its own scheme, an application for framing a separate scheme at the instance of worshippers is not maintainable under Section 92 C.P.C.[97]

4.9.6 Leave of the Court

Although as a rule of caution, court should normally give notice to the defendants before granting leave under Section 92, CPC to institute a suit, the court is not bound to do so. If a suit is instituted on the basis of such leave, granted without notice to the defendants, the suit would not thereby be rendered bad in law or non-maintainable. Grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law or even in the course of suit which may be established that the suit does not fall within the scope of Section 92, CPC.[98]

4.9.7 Non application of Section 92

This section is not applicable to religious endowments where any specific legislation that deals with the administration of religious trusts

[96] Executive Officer, Arthanareswarar Temple v. R. Sathyamoorthy, AIR 1999 SC 958, ¶ 17.
[97] Sanjeev v. Karanakodam Sri Venkitachalapathy Devaswom, AIR 2005 Ker. 302.
[98] B.S. Adityan v. B. Ramachandran Adityan, (2004) 9 SCC 720.

expressly bars the applicability of Section 92. For example, Tamil Nadu Hindu Religious and Charitable Endowments Act, declares that Sections 92 and 93 of the Code of Civil Procedure shall not be applicable to Hindu religious institutions and endowments within the State.[99]

4.9.10 Private Religious Endowments and Private Religious Trust: Applicability of Trust Act and Section 92 of CPC

In reality, the religious and charitable trusts under Hindu law do not have a trustee like in English law of trusts. A trustee under the law of trusts is vested with the properties and acts for the benefits of the beneficiary. At the same time, under Hindu law of endowments, the dedicated property vests only in the idol in the case of temple, math, and the institution all of whom have juristic personality.

The trustee for a religious endowment or *mahanth* for a Math is only a manager of the property. The legal estate does not vest with them. However, with the objective of safeguarding the properties of religious or charitable trusts, the judiciary has described them as trustees in order to compel them to discharge their duties in relation to trust property and to prevent maladministration.[100] Though they are not trustees in its strict sense, they are answerable as trustees in the general sense for the maladministration of property.[101]

[99] Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, § 5.
[100] V.K. VARADACHARI, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS 652 (R. Prakash ed., 4th ed., Eastern Book Publishers 2006). *See also* Krishna Singh v. Mathura Ahir, AIR 1980 SC 707.
[101] Vidya Varuthi Thirtha Swamigal v. Baluswami Ayyar, MANU/PR/0062/1921.

An explanation to Section 10 of the Limitation Act 1963, of India is noteworthy here. This provision expressly asserts that any property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose and the manager of the property shall be deemed to be the trustee thereof.[102]

Private religious trusts are outside the purview of the Trusts Act.[103] When the legislature used the expression public or private religious charitable endowment, the word 'trust' as such is not used. But the words 'religious' or 'charitable' are to be noted. The expression 'charity' has not been defined in the Indian Trusts Act. The element of trust is embedded in the word 'charity' and various enactments like the Charitable Endowment Act, 1890, the Charitable and Religious Trust Act, 1920, the Religious Endowment Act, 1863, Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 etc.[104]

Besides the above legislations, Section 18 of the Transfer of Property Act says that restrictions in Sections 14, 16 and 17 thereof shall not apply in the case of transfer of property for the benefit of public in the advancement of religion.

In *Shanmughan v. Vishnu Bharatheeyan*,[105] it was observed that the words 'private religious endowment' used in the saving clause of the Indian Trusts

[102] The Limitation Act, 1963, § 10.
[103] Trusts Acts 1882, § 49.
[104] Charity in its legal sense comprises trusts for relief of poverty, for the advancement of education, for the advancement of religion, and for other purposes beneficial to the community.
[105] Shanmughan v. Vishnu Bharatheeyan, AIR 2004 Ker 143.

Act have the imprint of a trust without which private religious endowment would not fall in the categories of cases excluded through the saving clause. The expression 'private religious endowment' used in the saving clause has got the imprint of a trust and hence a private religious trust and the properties endowed are dedicated as private religious endowments.

Under Hindu Law, it is not only permissible but also very common to have private endowments. There can be religious trust of a private character under the Hindu Law which is not possible in English law. Under the Hindu law, it is very common to have private endowments which though are meant for charitable purposes yet the dominant intention of the founder is to install a family deity in the temple and worship the same in order to effectuate spiritual benefit to the family of the founder and his descendants and to perpetuate the memory of the founder.

The question as to whether religious endowment is of a private nature or of a public nature has to be decided with reference to the facts proved in each case and it is difficult to lay down any test or tests which may be of universal application. It can be said that the direction of the court under Section 92 of CPC is illegal if the trust is a private religious trust and the properties are that of the trust.

Since the nature and operation of waqfs are different from that of a trust, Indian Trust Act, 1882, is not applicable to Muslim waqfs. But, for the purposes of instituting any suit in the cases of irregularities and mismanagement of waqf property, a waqf has been regarded as a 'trust' within

the meaning of Section 92 of the Civil Procedure Code, 1908. But Section 92 is not applicable to private wakf.[106] Section 92 of the Code and provisions under it are held constitutionally valid.[107]

4.10 Specific State Legislations on Hindu Religious and Charitable Institutions / Endowments

There is no central legislation comprehensively covering the religious and charitable endowments except the Religious Endowments Act, 1863, Charitable Endowments Act, 1890 and Charitable and Religious Trusts Act of 1920. All these legislations do not cover all the issues that may arise in connection with religious and charitable trusts.

However, many states after independence have passed their own legislations with regard to religious and charitable trusts or endowments. Most of such legislations are regulatory in nature. In States where separate legislation is there, the central legislations in that regard are not applicable.

1. Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987.
2. Bihar Hindu Religious Trusts Act, 1950.
3. Bombay Public Trusts Act, 1950.
4. Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997.
5. Kerala Travancore-Cochin Hindu Religious Institutions Act, 1950.

[106] *See generally* S.A. KADER, THE LAW OF WAKFS-AN ANALYTICAL AND CRITICAL STUDY (Eastern Law House 1999).
[107] Shrimali Lal v. Advocate General, AIR 1955 Raj 166.

6. Orissa Hindu Religious Endowments Act, 1951.
7. Rajasthan Public Trust Act, 1959.
8. Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.
9. The Madras Hindu Religious and Charitable Endowments Act, 1951.
10. Uttar Pradesh Charitable Endowments (Extension of Powers) Act, 1950.

Most of the above legislations have provisions for compulsory registration of trusts, requiring the trustees to keep regular accounts, compulsory auditing, and provisions for the appointment of commissioners of endowments, provisions for taking over the administration of trusts, making settlement schemes for *maths*, provisions for the contribution from institutions for a common fund, etc.[108]

Certain States still do not have their own legislations. In such states central laws are in application.[109]

Several States' legislations have been examined by the courts for their validity under Articles 25 and 26 of the Constitution of India relating to religious freedom of individuals and communities. Such laws enacted to streamline the management of religious and charitable endowments have led to a proper judicial scrutiny to the permissible limits of legal regulation of religion in India.

[108] V.K. VARADACHARI, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS 674 (R. Prakash ed., 4th ed., Eastern Book Publishers 2006).
[109] *Id*. (States like West Bengal and Punjab have no separate state legislations in this regard).

CHAPTER 5

STATE CONTROL OVER HINDU RELIGIOUS INSTITUTIONS IN VARIOUS STATES IN INDIA

5.1 Andhra Pradesh: The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987

The State of Andhra Pradesh enacted its first legislation in this regard called as Charitable and Hindu Religious Institutions and Endowments Act in the year 1966. This legislation was replaced in 1987 on the basis of a report of Commission on the working of the 1966 Act.[1] In this legislation, there is a separate chapter provided for the administration of the famous temple Tirumala Tirupathi alone.[2]

The new statute of 1987 applies to all religious institutions and charitable endowments, except the Muslim Wakfs within the State of Andhra Pradesh.[3] The legislative control over such religious institutions is clear from the very provisions of the statute.

[1] PRABHAVATI C. REDDY, HINDU PILGRIMAGE: SHIFTING PATTERNS OF WORLDVIEW OF SRISAILAM IN SOUTH INDIA, Chapter 12 (Routledge 2014) (Justice Sri. Challa Kondaiah, Retd. Chief Justice of High Court of A.P. was the chairman of the commission).

[2] *Id*. (On the suggestion of the Commission the special statute was incorporated under Chapter XV of the new statute of 1987. The statute of 1987 has also gone through several amendments and the amendment of 2007 is an important one).

[3] Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, §§ 1 & 2 (The object of the Act is to consolidate and amend the law relating to the administration and governance of charitable and Hindu religious institutions and endowments in the State of Andhra Pradesh. The provisions of the Act are applicable to all public charitable institutions both registered and unregistered in the State of Andhra Pradesh. The statute does not prohibit public charitable institutions from carrying on their activities even though they are not registered under the Act). *See also* Virji Ladhabhai KDO Jain Vidyarthi Griha v. Commissioner of Income Tax (Exemptions), MANU/IU/0085/2019.

The Act defines the term 'religious institution',[4] and 'temple'.[5] Chapter II of the Act empowers the State government to appoint the Commissioner, Additional Commissioner, Regional Joint Commissioners, Deputy Commissioners and Assistant Commissioners.[6]

The Act requires the Commissioner to have a proper tab on all the religious institutions.[7] The power to appoint a trustee in certain category of institutions is conferred on the Deputy Commissioner.[8]

Chapter-III of the Act deals with the provisions relating to the administration and management of charitable and Hindu religious institutions and endowments.[9]

The State by this statute abolished the right to hereditary trusteeship.[10] The statute unequivocally declares the right of every qualified Hindu to claim appointment as a trustee.[11]

---

[4] Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, § 2(22) (*It means a math, temple or specific endowment and includes a Brindavan, Samadhi or any other institution established or maintained for a religious purpose*).

[5] *Id*. (The Act, defines 'temple' as; *a place by whatever designation known, used as a place of public religious worship, and dedicated to, or for the benefit of, or used as of right by, the Hindu community or any section thereof as place of public religious worship and includes sub-shrines, utsava mantapas, tanks and other necessary appurtenant structures and land*).

[6] *Id*. § 3 (Chapter II also deals with the qualifications for appointment to the office of Commissioner, Additional Commissioner, Regional Joint Commissioner, Deputy Commissioner and Assistant Commissioners. Section 4 says that such commissioners appointed under the Act exercising the powers and performing the functions in respect of religious institutions or endowments, shall be a person professing Hindu religion and shall cease to exercise those powers and perform those functions when he ceases to profess that religion).

[7] The Act requires the Commissioner to prepare separately, and publish in the prescribed manner, a list of charitable and religious institutions and other religious institutions.

[8] Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, § 15 (The power to appoint a trustee is conferred on the Deputy Commissioner under Section 15(2) of the Act in cases where the income of the institution is below Rs. 2,00,000/- in respect of each temple). *See also* Gollapudi Apparao v. Prl. Secy., Endowments Dept., MANU/AP/0368/2016.

[9] *Id*. § 14 (Chapter III, Section 14 of the Act declares unambiguously that all properties belonging to or given or endowed to a Charitable or religious institution or endowment shall, vest in the charitable or religious institution or endowment).

Proprietary control over the institutions is very clearly established by the concerned provisions of the statute.[12] The financial control over the institutions is very clear from the provisions which are dealing with certain funds like 'Common Good Fund'[13] and the 'Separate Consolidated Fund'[14] and Endowments Administration Fund.[15]

The Deputy Commissioner is empowered to decide the dispute of the nature of endowment, viz., whether it is private or public.[16]

This statute envisages an Endowments Tribunal to settle certain disputes related to endowments.[17] Judicial scrutiny is permitted by the statute itself.[18]

---

[10] Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, §§ 17- 19 (Sections 17 to 19 of the Act recognise the general right of every qualified Hindu to claim appointment as trustee and thus abolished the right to hereditary trusteeship).

[11] *Id*. (Chapter III also prescribes disqualifications and qualifications for trusteeship, procedure for appointment of trustees and appointment and constitution of the board of trustees so as to have collective proper and efficient administration and governance of the institution and endowment. Section 16 intends to remove discrimination on grounds of heredity which otherwise would be violative of Article 15(1) of the Indian Constitution. Instead of management by a single person, Chapter III through sections 15, 17, 18 and 19 of the Act envisages a composite scheme). *See also* Pannalal Bansilal Patil v. State of Andhra Pradesh, AIR 1996 SC 1023.

[12] *Id*. §§ 80 & 81 (The Act deals with alienation of immovable property and resumption of '*inam lands*'. Sections 80 & 81 of the Act elaborately and clearly establish the power of the commissioner to administer the properties held by a charitable religious institution or endowments).

[13] *Id*. §§ 70 & 71 ('Common Good Fund' is created for the promotion of all or any of the objects mentioned in the statute. The Common Good Fund shall vest in a Committee constituted by the Government and shall be administered in such manner as may be prescribed).

[14] Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987. § 65 A (2) (A separate consolidated fund was created for the services rendered by the Government and their employees. Salaries to all such Archakas, office holders and servants of Hindu Religious Institutions published under section 6 of the Act, shall be paid from the consolidated fund which may later be reimbursed from Endowments Administrative Fund. Every such institution under section 6 shall pay contribution annually to such fund at the rate prescribed from their annual income).

[15] *Id*. § 69 (1) (It establishes a fund to be called the Endowments Administration Fund. The Endowments Administration Fund shall vest in the Commissioner).

[16] *Id*. § 77 (The decision of the Deputy Commissioner is required to be published. A suit may be filed in a civil court by a person who is aggrieved by the decision of the Deputy Commissioner). *See also* C. Radhakrishnama Naidu v. The Government of Andhra Pradesh, MANU/AP/0280/2015.

Judicial control over such institutions is clearly established through various cases where the constitutional validity of the legislations is also settled as an important issue. In *Digyadarshan R.R. Varu v. State of Andhra Pradesh*,[19] the Act of 1966 was held constitutionally valid.[20] In *Gedela Sachidananda Murthy v. D.C., Endowments*,[21] it was held that the new Andhra Pradesh Act of 1987 is constitutionally valid.

In *Pannalal Bansilal Patil v. State of Andhra Pradesh*,[22] it was held that the abolition of the right to hereditary trusteeship was constitutional.

In *A.S. Narayana Deekshitulu v. State of A.P.*[23] the validity of Chapter IV of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 was assailed on the touch stone of the constitutional rights guaranteed under Articles 25 and 26 of the Constitution.

---

[17] Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, § 87 (Chapter XII of the Act elaborately deals with the provisions relating to enquiries by and other powers of Endowments Tribunal. Section 87 of the Act enumerates the matters on which the tribunal can act upon. Section 87 grants wide powers to the tribunal).

[18] *Id.* § 88 ("Chairman" of the Endowments Tribunal is a Judicial Officer not below the rank of District Judge. Any person aggrieved by the decision of the Endowments Tribunal under section 87 shall, within ninety days from the date of receipt of the decision prefer an appeal to the High Court).

[19] Digyadarshan R.R. Varu v. State of Andhra Pradesh, AIR 1970 SC 181.

[20] *See also* Sri. KAS Committee v. Commissioner of Endowments AIR 1979 AP 121.

[21] Gedela Sachidananda Murthy v. Deputy Commissioner, Endowments, A.P., AIR 2007 SC 1917.

[22] Pannalal Bansilal Patil v. State of Andhra Pradesh, AIR 1996 SC 1023 (Sections 17 and 29(5) of the Act were also held valid in law).

[23] A.S. Narayana Deekshitulu v. State of Andhra Pradesh, AIR 1996 SC 1765 (In this case, the Supreme Court of India upheld the constitutionality of the Act. The Supreme Court also directed to constitute a committee to determine the payment of salary to the holders of the office on hereditary basis prior to the abolition thereof. Consequently, a Committee was constituted to go into the questions and it submitted its report to the then Andhra Pradesh Government. The Committee also recommended the rationalisation of the pay-scales and payment of honorarium to the *Archakas, Potu Workers* and others religious staff, related to Thirupathi Thirumala Devaswom. The recommendations of the Committee were accepted subject to allowing full freedom to revise the cadre strength, emoluments, incentives etc., to be offered to its religious staff depending on the exigency of work, administrative convenience etc.). *See also* A.S. Narayana Deekshitulu v. State of Andhra Pradesh, AIR 1997 SC 3702.

5.1.1 Administrative Mechanism in Andra Pradesh

There is a separate endowments department in the State of Andhra Pradesh to administer Hindu temples, *mutts*, and other charitable endowments in the State. This department has a separate minister known as Minister for Endowments from the State ministry.[24] All other institutions like *mutts*, *dharmadayams* (irrespective of their income) are also under the administrative control of the Commissioner. According to the official records published by Andhra Pradesh Government, more than 23,500 temples are administered by the Endowment Department.[25]

There is a body known as 'Hindu Dharmika Parishad' which is the highest governing body for all matters pertaining to the administration of Hindu religious institutions in the State.[26]

An institute called 'State Institute of Temple Administration' was established in the year 2014 by the 'Andhra Pradesh Hindu Dharmika Parishad' to organise training programs for all the employees of the Endowment Department.[27]

---

[24] ENDOWMENT DEPARTMENT, GOVERNMENT OF ANDHRA PRADESH, https://tms.ap.gov.in/portal/info/endowment, (19 Sep. 2019) (The endowment department has a three tier system of administration for temples and charitable institutions. Temples having an annual income of 2 lakh are under the administrative control of Assistant Commissioners. Temples having an annual income of more than 2 lakh but below 25 lakhs are under the administrative control of Deputy Commissioners. Temples having an annual income of more than 25 lakhs are under the direct administrative control of the commissioner).

[25] *Id*. (19 Sep. 2019).

[26] *Id*., https://tms.ap.gov.in/portal/info/dharmikaparishad, (19 Sep. 2019) (This will supervise, guide and regulate the functioning of the endowments department. It will also give advice to government on all the matters related to the administration of Hindu temples and charitable institutions).

[27] ENDOWMENT DEPARTMENT, GOVERNMENT OF ANDHRA PRADESH, https://tms.ap.gov.in/portal/info/Sita, (19 Sep. 2019) (After one year of its establishment, in 2015, it became a separate entity under the government of Andhra Pradesh).

5.2 Tamil Nadu: The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959

The former Madras State had enacted a law called the Madras Hindu Religious and Charitable Endowments Act in the year 1951. In the year 1959, a new statute bearing the same name, replaced the statute of 1951 and brought the new statute applicable to the State of Tamil Nadu.[28] The present legislation applies to all Hindu public religious institutions and endowments including the Dewasoms.[29]

The government's control over religious institutions in the State is clearly established by the statute. The government is empowered to constitute a

[28] The word 'Tamil Nadu' substituted the word "Madras" by the Tamil Nadu Adaptation of Laws Order, 1969, as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969. More than fifty amendments have been made to the original statute from time to time. Among the amendments, amendment brought in the year 1970 is a prominent one. The amendment in 1970 made provisions for the appointment of an *Archaka* subject to some educational qualifications but without requiring him to be a *Shaivite* or *Vaishnavite* Hindu depending on which sect a particular temple belonged to. This amendment put an end to hereditary rights of *Archakas*).

[29] Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, § 1(3) (According to section 1(3) of the Act, it is applicable to all Hindu public religious institutions and endowments including the incorporated Devaswoms and Unincorporated Devaswoms. Explanation to the section says that Hindu public religious institutions and endowments do not include Jain religious institutions and endowments. Section 2 clarifies that the Government may, by notification, extend to Jain public religious institutions and endowments, all or any of the provisions of this Act and of any rules made thereunder and thereupon, the provisions so extended shall apply to such institutions and endowments. Section 3 of the Act empowers the Government to make an enquiry in the event of mismanagement of Jain charitable endowments. If the Government have reason to believe that any Hindu or Jain public charitable endowment is being mismanaged, in the interests of the administration of such charitable endowment, it may extend the statute or any of the provisions to Jain charitable endowments. By virtue of this Act, certain other statutes are not applicable to the State. By virtue of section 5 of the Act, certain statutes like the Religious Endowments Act, 1863 (Central Act XX of 1863); The Charitable Endowments Act, 1890 (Central Act VI of 1890); The Charitable and Religious Trusts Act, 1920 (Central Act XIV of 1920); and Section 92 and 93 of the Code of Civil Procedure, 1908 (Central Act V of 1908) ceased to apply to Hindu religious institutions and endowments in the State.).

State level Advisory Committee and a district level Advisory Committee to manage the religious endowments in the State .[30]

Chapter II of the Act creates a line of authority with the Commissioner, Additional Commissioner, Joint Commissioner, Deputy Commissioners and Assistant Commissioners.[31] All such officers shall be treated as the servants of the State Government.[32]

As compared to other States the direct control by the State in Tamil Nadu is of the highest order. This State control is through the above mentioned officers. All such officers like Commissioners hold vast powers with regard to the administration of Hindu religious institutions.[33]

Chapter III of the statute deals with general provisions relating to the control over religious institutions. All the Hindu religious institutions in the State are subject to the general superintendence and control of the

[30] Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, § 7 *(The Advisory Committee shall consist of the following members, namely: -(a) the Chief Minister, who shall be the Chairman, ex-officio; (b) the Minister in-charge of the portfolio of Hindu Religious and Charitable Endowments who shall be the Vice-Chairman, ex-officio ; (c) the Secretary to Government in-charge of Hindu Religious and Charitable Endowments, who shall be the Member ex-officio; (d) Such number of non-officials professing Hindu religion, nominated by the Government, of whom one shall be a member of the Scheduled Castes or Scheduled Tribes; (e) The Commissioner, who shall be the Member-Secretary, ex-officio*).

[31] *Id*. § 8 (Section 10 of the Act also makes it clear that all officials and servants appointed to carry out its objects must be Hindu by religion, and shall cease to hold office if they convert to any other religion).

[32] *Id*. § 12 (Section 12 of the Act clearly established that the Commissioner, Additional Commissioner, Joint Commissioner, Deputy Commissioners and Assistant Commissioners and other officers and servants including executive officers of religious institutions employed for the purposes of this Act shall be servants of the Government and their salaries, allowances, pensions and other remuneration shall be paid in the first instance out of the Consolidated Fund of the State).

[33] *Id*. §§ 8-14 & §§ 21-22 (By virtue of section 21 of the Act, the Commissioner may call for and examine the record of any trustee of a religious institution other than a *math* or a specific endowment attached to a *math* in respect of any proceeding under this Act. Section 21-A grants similar powers that of a commissioner to Joint or Deputy Commissioner to call for records and pass order).

Commissioner.[34] The day to day administration and utilisation of funds of every religious institution is vested with a trustee appointed under the statute.[35] The State Government and the other authorities under the statute are empowered to suspend, remove or dismiss trustees.[36]

The propriety control over the assets and properties of the religious institutions are vested with commissioner.[37]

Vacancies of the office-holders or servants of a religious institution shall be filled up by the trustee in all cases.[38]

---

[34] Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, §§ 23 & 24 (Section 23 titled as power and duties of the Commissioner, reads thus:
"*Subject to the provisions of this Act, the administration of all temples (including specific endowments attached thereto) and all religious endowment shall be subject to the general superintendence and control of the Commissioner and such superintendence and control shall include the power to pass any orders which may be deemed necessary to ensure that such temples and endowments are properly administered and that their income is duly appropriated for the purposes for which they were founded or exist : Provided that the Commissioner shall not pass any order prejudicial to any temple or endowment unless the trustees concerned had a reasonable opportunity of making their representations.*"
Section 24 of the Act empowers the Commissioner, or an Additional or a Joint or a Deputy or an Assistant Commissioner or any officer authorized by such commissioners to enter the premises of any place of worship for the purpose of exercising any power conferred or discharging any duty imposed by the Act, or the rules made thereunder).

[35] *Id*. §§ 25-28 (Section 28 of the Act says that the trustee of every religious institution is bound to administer its affairs and to apply its funds and properties in accordance with the terms of the trust, the usage of the institution and all lawful directions which a competent authority may issue in respect thereof and as carefully as a man of ordinary prudence would deal with such affairs, funds and properties if they were his own. The trustee of a religious institution shall be bound to obey all lawful orders issued under the provisions of this Act by the Government, the Commissioner, the Additional Commissioner, the Joint Commissioner, the Deputy Commissioner or the Assistant Commissioner. Section 32 of the Act also says that the trustee of every religious institution shall furnish to the Commissioner such accounts, returns, reports or other information relating to the administration of the institution, its funds, property or income or moneys connected therewith, or the appropriation thereof, as the Commissioner may require and at such time and in such forms as he may direct).

[36] *Id*. § 53.

[37] *Id*. §§ 34 & § 45. (According to section 34(1) of the Act, any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution. According to section 45 of the Act, the Commissioner may appoint, subject to such conditions as may be prescribed, an executive officer for any religious institution other than a *math* or a specific endowment attached to a *math*).

Chapter IV of the Act deals with the control and regulations over *maths*. Chapter V enumerates elaborately the legal provisions on inquiries by appropriate authorities and the power to make settlement schemes.[39]

Chapter VIII of the Act deals with the provisions of budgets, accounts and audit.[40] Chapter X exclusively deals with the creation and utilization of certain funds like Endowments Administration Fund[41] and the Common Good Fund[42] that shall be vested with the Commissioner. However Devaswom Fund of Incorporated Devaswom is managed by the Board of Trustees.[43]

The Government is empowered to make rules to carry out the purposes of the Act.[44] The schedules 1 and II of the Act enumerates the list of Incorporated Devaswom and Unincorporated Devaswom.[45]

---

[38] Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, §§ 55 & 56 (Section 56 provides that all office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite there from, shall be controlled by the trustee and the trustee may, after following the prescribed procedure, if any, fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause.

[39] *Id*. §§ 63-70.

[40] *Id*. §§ 86-90 & 92 (By virtue of section 86 of the Act, the trustee of every religious institution shall, before the end of March in each year, submit, in such form as may be specified by the Commissioner, a budget showing the probable receipts and disbursements of the institution during the following financial year. According to section 87, the accounts of every religious institution shall be audited by auditors appointed in the prescribed manner). (Section 92 of the act says: *Every religious institution shall, from the income derived by it, pay to the Commissioner annually such contribution not exceeding twelve per cent of its income as may be prescribed in respect of the services rendered by the Government and their officers and for defraying the expenses incurred on account of such services*).

[41] Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, § 96.

[42] *Id*. § 97.

[43] By virtue of Article 290-A of the Constitution of India, a sum of thirteen lakhs and fifty thousand rupees shall be charged on, and paid out of the Consolidated Fund of the State of Tamil Nadu every year to the Devaswom Fund established in that State for the maintenance of Hindu temples and shrines in the territories transferred to that State on the 1st day of November, 1956, from the State of Travancore-Cochin.

[44] Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, § 116.

[45] According to schedules I and II, there are about 500 Incorporated Devaswom and 32 Unincorporated Devaswom.

The statute and its amendments have raised many controversies and led to a number of litigations on the scope of individual and denominational rights to religious freedom under the Constitution of India.[46]

5.2.1 Administrative Mechanism in Tamil Nadu

There is a separate Government Department for the Administration of temples.[47] There are 44,121 Hindu and Jain religious institutions under control of the Hindu Religious and Charitable Department.[48] Hindu religious institutions have been classified on the basis of annual income as listed institutions and non-listed institutions[49]

The Commissioner is the head of general administration and all activities of the department.[50] For administrative convenience, the department has been divided into 11 regions and 28 divisions. Each region is administered by a Joint Commissioner and each division is administered by an Assistant Commissioner.[51] Based on significance, revenue, assets and or activities of

[46] *See* Narayanan Namboodripad v. State of Madras AIR 1954 Mad 385; Rajendra v. State of Andhra Pradesh, AIR 1957 AP 63. *See also* ERJ Swami v. State of Tamil Nadu, AIR 1972 SC 1586 (In this case, a provision was challenged for its validity under Articles 25-26 of the Constitution but was upheld on the ground that every *Archaka*, whatever may be his own sect, was bound by the Act to observe the tenets of a particular temple).
[47] HINDU RELIGIOUS & CHARITABLE ENDOWMENTS DEPARTMENT, GOVERNMENT OF TAMIL NADU, https://tnhrce.gov.in/hrcehome/hrce_about.php., (Sep. 20, 2019).
[48] *Id*., https://tnhrce.gov.in/hrcehome/hrce_institutions.php., (Sep. 20, 2019) (Hindu Temples 41,746; Jain Temples 19; Holy Mutts 309; Temples attached to Holy Mutts 492; Charitable Endowments 897; Specific Endowments 658).
[49] *Id*., https://tnhrce.gov.in/hrcehome/hrce_institutions.php., (Sep. 20, 2019).
[50] *Id*., https://tnhrce.gov.in/hrcehome/hrce_department.php., (Sep. 20, 2019) (Under the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959 (amended Act 39/1996,) an officer in the cadre of Indian Administrative Service is appointed and functions as Commissioner of the Hindu Religious and Charitable Endowments Department).
[51] HINDU RELIGIOUS & CHARITABLE ENDOWMENTS DEPARTMENT, GOVERNMENT OF TAMIL NADU, https://tnhrce.gov.in/hrcehome/hrce_department.php., (Sep. 20, 2019).

temples, the following posts of Executive Officers have been sanctioned for administration and supervision of religious institutions.[52]

For administering religious institutions as per the Hindu Religious and Charitable Endowments Act, non-hereditary trustees are appointed to each temple.[53]

There are about 4,78,284 acres of dry and wet lands and 22600 buildings and 33665 sites owned by religious institutions under control of this department.[54]

5.3 Karnataka: The Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997

A legislation called Mysore *Murzai* Act was in existence in the former Mysore State.[55] It was replaced in 1927 by a new law bearing the same name. It was after seventy years, the present Hindu Religious Institutions and Charitable Endowments Act, 1997 was enacted. The Act of 1997 applies to all temples and other specific endowments including a *brindavan, samadhi, gaddige, mnndir*, and other shrines and institutions 'established or maintained for Hindu religious purpose'.[56]

---

[52] HINDU RELIGIOUS & CHARITABLE ENDOWMENTS DEPARTMENT, GOVERNMENT OF TAMIL NADU, https://tnhrce.gov.in/hrcehome/hrce_department.php., (Sep. 20, 2019).
[53] *Id*. (Board of Trustees should consist of not less than three persons and not more than five persons. This Board should consist of members among whom one shall be from the Scheduled Caste or Scheduled Tribe and one shall be a woman. The period of Trust Board is two years).
[54] *Id*.
[55] The local expression '*murzai*' covers all religious institutions including temples and mosques.
[56] Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997, §§ 1 & 2.

The Act of 1997 exempts the *mutts* (monasteries) and their attached temples and religious institutions and charitable endowments founded, organized, run or managed by Hindu religious denominations from its purview.[57]

A notable feature of this legislation in the nature of a religious reform is an elaborate provision disallowing any discrimination in the distribution of sacred offering.[58]

The State Government is empowered to appoint the Commissioner for Hindu Religious Institutions and Charitable Endowments for the State of Karnataka.[59] The statute also empowers the State to appoint appropriate number of Deputy Commissioners and Assistant Commissioners and other subordinate officers.[60]

The Committee of Management of a notified institution may with the approval of the Commissioner appoint one or more *Archakas* to each temple belonging to the institution.[61] Like the Tamil Nadu Act of 1959, this Act also prescribes qualifications for appointment as *Archakas*.[62] The *Archaka* will be an ex-officio member of the Committee of Management of the temple, and his opinion on any question of custom or tradition of the temple may be considered by the Committee resolving disputes, if any, about the custom or tradition of

[57] Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997, § 2(4).
[58] *Id*. § 69.
[59] *Id*. § 3.
[60] *Id*. §§ 4 - 6.
[61] Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997, § 9.
[62] *Id*. § 10 (According to section 10 of the Act, a certificate course in *Agama* in the tradition of the temple from any recognized *Samskruta Pathshala* or any another notified institution or three years' experience as *Archaka* in the tradition of the particular temple is the qualification for being appointed as *Archaka*).

the temple.[63] The salary and service conditions of temple servants shall be as prescribed by the State Government.[64]

The Commissioner shall be the chief controlling authority in respect of all matters connected with notified institutions.[65]

A fixed percentage of contribution is collected as per actual income of the temple and a Common Pool Fund.[66] The accounts of each religious institution must be audited annually in the manner be prescribed by the statute.[67]

In event of mismanagement, the State Government can take over the control or management of any Hindu Religious Institution, subject to the procedure established under the statute.[68]

5.3.1 Administrative Mechanism in Karnataka

Hindu Religious Institutions and Charitable Endowments Department is empowered to look after the better administration and management of various temples.

The State Government or appropriate authority shall constitute a Committee of Management consisting of nine members in respect of one or

[63] Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997, § 11.
[64] *Id*. § 15.
[65] *Id*. § 24 (Chapter IX, sections 49-62 of the Act deals with the powers of such officers in detail. The Commissioner shall perform such duties and exercise such powers of superintendence and control as the State Government may by rules impose or, as the case may be, confer on him in respect of all or any class of notified institutions).
[66] *Id*. Chapter IV, §§ 17-19 (The Common Pool Fund is generated in the name of Commissioner, Hindu Religious Institutions and Charitable Endowments. The amount so collected through Common Pool Fund is further disbursed for the development of the various temples through *State Dharmika Parishath* headed by *Muzrai* Minister).
[67] Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997, §§ 37-38.
[68] *Id*. §§ 42- 43.

more notified institutions.[69] The State can dissolve or suspend any such Committee on any of the grounds specified under the statute. In place of the Committee of Management dissolved or suspended, the State can appoint an Administrator.[70]

Government of Karnataka is empowered to sanction annual cash grant to the Hindu Religious Institutions and Charitable Endowments, temples whose annual income is too low or to meet the necessary expenditure.[71]

5.4 Odisha: The Odisha Hindu Religious Endowments Act, 1951

This Act is applicable to all 'Hindu public religious institutions and endowments' in Orissa State.[72] It empowers the State to appoint appropriate persons as Commissioner, Deputy and Assistant Commissioners for Hindu

[69] Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997, § 25 (Different authorities may be prescribed in respect of different class or classes of notified institutions).

[70] *Id*. §§ 28-29.

[71] *Id*. (Such expenses include expenses for daily *pooja* items, current fees, cleanliness, annual function expenditure and miscellaneous expenditure. As per the statute, *Tasdik* and Annuity Fund are sanctioned to the temple to meet necessary expenditure of the institution. The annuity amount and *Tasdik* amount is paid to institution through Tahsildars. Such grants will be provided only when the proposals are technically signed by the Executive Engineer with a request to sanction State grant. The cash grant amount will be disbursed to the institution through Tahsildars).

[72] In the year 1969, yet another legislation related to Hindu religious endowments called 'Orissa Hindu Religious Endowments Act, 1969' was enacted. It got the assent of the President of India in January, 1970 and the same was published in an extra ordinary issue of the Orissa Gazette on 4th February, 1970. According to Sub-section (3) of Section 1 of the said Act, it shall come into force on such date as the State Government may, by notification, appoint in that behalf. Though the said Act had been enacted and assented in 1970, the said Act has not been brought into effect by the State Government by notification and the provisions of 1951 Act are still continuing. In Kasinath Sahoo v. State of Orissa, MANU/OR/0465/2007, a Public Interest Litigation was filed with a prayer to issue a direction to the State Government to bring into effect the provisions of the Orissa Hindu Religious Endowments Act, 1969. In this matter, a counter affidavit was filed by the State. The counter affidavit stated that there is already an Act called the Orissa Hindu Religious Endowments Act, 1951 and a comparative study of 1951 Act and 1969 Act does not show that any improvement had been made in 1969 Act. The State also asserted that the provisions of both the statutes are almost identical in respect of important items in the endowment administration. Therefore, the State is prima facie of the opinion that there is no point in adopting the subsequent statute and the provisions of the Act of 1951 are still continuing.

Religious Endowments.[73] These Commissioners hold wide powers in the administration of religious endowments in the State.[74] Such powers include power to make settlement scheme of administration for any shrine without the intervention of a judicial tribunal.[75]

The trustee of a religious institution shall be bound to obey all orders issued by the State Government, the Commissioner, the Deputy Commissioner or Assistant Commissioner in accordance with the provisions of this Act.[76] The trustee of every religious institution shall keep regular accounts of all receipts and disbursements. The accounts of the religious institutions must be properly audited and the report must be sent to Commissioner.[77] A fund called the 'Orissa Hindu Religious Endowments Administration Fund' has been created and the fund shall be vested in and be administered by the Commissioner.[78] The State Government is empowered to make rules to carry out the purposes of this Statute not inconsistent therewith.[79]

In *Jagannath Ramanuj Das v. The State of Orissa*,[80] it was held that the sections 38 and 39 and the proviso to section 46 of the Odisha Hindu Religious Endowments Act, 1951 were held ultra vires Articles 19(1) (f), 25 and 26 of the Constitution.

[73] The Odisha Hindu Religious Endowments Act, 1951, §§ 4 & 5.
[74] *Id*. §§ 7-12.
[75] *Id*. § 42.
[76] Inserted vide O.A.No. 29 of 1978.
[77] The Odisha Hindu Religious Endowments Act, 1951, § 58.
[78] *Id*. § 63.
[79] *Id*. § 76.
[80] Jagannath Ramanuj Das v. The State of Orissa, AIR 1954 SC 400.

This Act of 1951 was made inapplicable to the famous Hindu shrine of Puri known as the Jagannath Temple which was thereafter placed under a special statute.[81]

5.5 Bihar: The Bihar Hindu Religious Trusts Act, 1950

This was the first State legislation relating to Hindu religious endowments to be enacted after the commencement of the Constitution. Following the pattern of this particular legislation, many other States later enacted their own State legislations and established the same pattern for the management of the local Hindu religious institutions and endowments.

The main objective of the Act is to provide for the better administration of Hindu Religious Trusts in the State of Bihar and for the protection and preservation of properties appertaining to such trusts.[82]

The statute empowers the State government to constitute a Board called the 'Bihar State Board of Religious Trusts' to discharge the functions in regard to religious trusts other than Jain Religious Trusts.[83] Separate Boards are there for administering both sects in the Jain community.[84]

All the members and office holders of the 'Bihar State Board of Religious Trusts' will be appointed by the State Government.[85] This State Board of Religious Trusts holds the power of 'general superintendence' of all

[81] A special legislation known as 'Shri Jagannath Temple Act, 1955' was enacted to reorganise the scheme of management of the affair of the temple and its properties.
[82] Certain provisions in the principal Act of 1951 was amended by The Bihar Hindu Religious Trust (Amendment) Act, 2013.
[83] The Bihar Hindu Religious Trusts Act, 1950, § 5.
[84] *Id*. § 2 (In case of Swetambar Jain Religious Trusts, the Bihar State Board of Swetambar Jain Religious Trusts and, in the case of Digambar Jain Religious Trusts, the Bihar State Board of Digambar Jain Religious Trusts were established under Section 5).
[85] *Id*. § 6 -7.

Hindu religious trusts situated in the State.[86] The Board also has the power to appoint a person to be the Superintendent of Religious Trusts subject to the approval of the State Government. The Board has the power to establish a Regional Trust Committee for such area as it considers necessary.[87]

A separate Tribunal for deciding property disputes regarding a Hindu religious institution was established by the State Government.[88] In the event of wilful failure of duty from the part of any of the trustees, the Board or any person interested in such religious trust may make an application to the District Judge for an order directing the trustee to discharge such duty or for appointing a receiver of the funds and property of the religious trust if the trustee fails to carry out such direction.[89]

The accounts of every religious trust shall be audited and examined annually by a qualified auditor appointed by the Board.[90] There shall be a separate Trust Fund known as the 'Bihar State Board of Religious Trust Fund' for the Bihar State Board of Religious Trust.[91]

[86] The Bihar Hindu Religious Trusts Act, 1950, Chapter V, §§ 28-39 (Section 28 of the Act clearly states that the general superintendence of all religious trusts in the State shall be vested in the Board. The Board shall do all things reasonable and necessary to ensure that such trusts are properly supervised and administered and that the income thereof is duly appropriated and applied to the objects of such trusts and in accordance with the purposes for which such trusts were founded or for which they exist).
[87] *Id*. §§ 40-42.
[88] *Id*. § 43 (The Tribunal shall consist of a retired High Court Judge or a retired District Judge.)
[89] *Id*. §§ 47 & 48 (Orders of District Judge are appealable to the High Court as per section 55).
[90] The Bihar Hindu Religious Trusts Act, 1950, § 63.
[91] *Id*. § 69.

The State Government has the power to dissolve or supersede the Board, if the Board persistently make default in the performance of the duties imposed on it by or under this Act or exceeds or abuses its power.[92]

The rule making power with regard to the Act is vested with the State Government and bye laws can be made by the Board.[93]

5.6 Maharashtra: The Maharashtra Public Trusts Act, 1950 [The Bombay Public Trust Act, 1950]

Since Bombay Public Trust Act is applicable to all kinds of religious and charitable institutions in the State of Maharashtra, there is no specific or separate legislation for the control or supervision of Hindu Religious Institutions.[94]

The main purpose of this Act is to regulate and to ensure better provision for the purpose of smooth and proper administration of the Public Religious and Charitable Trusts in the State of Maharashtra. According to this Act, a charitable purpose includes an institution that is exclusively devoted to

---

[92] The Bihar Hindu Religious Trusts Act, 1950, § 80. (Section 80 reads thus:
"(1) If in the opinion of the State Government, the Board persistently make default in the performance of the duties imposed on it by or under this Act or exceeds or abuses its powers, the State Government may, [after giving notice] specifying the reason for so doing declare the Board to be in default or to have exceeded or abused its powers, as the case may be; and
(a) That on date to be specified in the notification the office of members of the Board shall be deemed to be vacated (b) direct that the Board shall be superseded for such period, as may be specified in the notification.
Provided that the Board cannot be kept in supersession for a period longer than the stipulated period under Section 81-A(c) i.e. 48 months from the date of the Gazette publication of the order.")

[93] *Id*. §§ 82 & 83.

[94] The title of the Act has been changed from 'The Bombay Public Trusts Act, 1950' to 'The Maharashtra Public Trusts Act' with retrospective effect from 1st May, 1960 by the Maharashtra (Change of short titles of certain Bombay Acts) Act, 2011. This is because when the Bombay Public Trusts Act, 1950 was passed, both states viz., Maharashtra and Gujarat were one. Though, the State of Gujarat, after its separation has made certain variations according to their requirements, provisions of both states are still more or less similar. However, title of the relevant rules continues to be 'The Bombay Public Trusts Rules, 1951'.

religious teaching or worship. As a Hindu temple is a religious institution exclusively devoted to religious worship, all the public temples will fall under the purview of this legislation. Since the Act provides for the registration of public trusts, all the public temples in the State have to be in compliance with this registration procedure and thereby treated as registered institutions under the Act.[95] The Act enables the State Government to appoint Charity Commissioner, Joint Charity Commissioners, Deputy and Assistant Charity Commissioners.[96]

Every trustee of a public trust shall keep regular accounts and such accounts must be properly audited as per the provisions of this Act.[97] The property of a public trust can be alienated only with the previous sanction of the Charity Commissioner. Such sanctions are usually subjected to such condition as the Charity Commissioner may think fit to impose, regard being had to the interest, benefit or protection of the trust.[98]

Unlike other States, the State control over Hindu temples in the State of Maharashtra is lesser. Due to complaints of mismanagement of funds in the major temples in Maharashtra, the State Government has started to take over such temples managed by private trustees.[99]

---

[95] The Maharashtra Public Trust Act, 1950, §§ 14 to 31.
[96] *Id*. §§ 3-5.
[97] *Id*. §§ 32 & 33.
[98] *Id*. § 36.
[99] *Maharashtra cites corruption, wants to take over temples*, TIMES OF INDIA, http://timesofindia.indiatimes.com/Articleshow/5942622.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst., (Sep. 21, 2019); *Maharashtra govt to take control of Shani Shingnapur temple* TIMES OF INDIA, https://timesofindia.indiatimes.com/city/mumbai/maharashtra-govt-to-take-control-of-shani-shingnapur-temple/Articleshow/64673350.cms., (Sep. 21, 2019).

5.7 Rajasthan: The Rajasthan Public Trusts Act, 1959

The Rajasthan Public Trusts Act was passed in the year 1959 with an objective to regulate and to ensure proper administration of public religious and charitable trusts in the State.

The State Government is empowered to appoint an officer to be called the Devasthan Commissioner.[100] The State can also appoint such number of Assistant Devasthan Commissioners and other subordinate officers and servants.[101] There will be an Advisory Board called the 'Rajasthan Public Trust Board' to monitor the functions of Devasthan Commissioners.[102] The State can establish Regional Advisory Committees for the area within the jurisdiction of each Assistant Commissioner.[103]

Registration of public trusts is mandatory under the Act.[104] The Assistant Commissioner shall be in-charge of the registration of all public trusts.[105] He has been given wide powers in regard to matters of registration of trusts.[106] Where any property belonging to public trust consists of money and such money cannot be applied immediately or at any early date to the purposes of the said public trust, the working trustee thereof shall be bound to deposit the money as per the provisions of the Act.[107] Previous sanction of the Assistant Commissioner has to be obtained for certain transfers with regard to

[100] The Rajasthan Public Trusts Act, 1959, § 7.
[101] *Id.* §§ 8 & 9.
[102] *Id.* §§ 11 & 12.
[103] *Id.* § 13.
[104] The Rajasthan Public Trusts Act, 1959, § 17.
[105] *Id.* § 16.
[106] *Id.* §§ 18-20.
[107] *Id.* § 30.

the trust property.[108] The working trustee or manager of a public trust which has been registered under this Act is bound to keep regular accounts of all movable and immovable properties of the trust.[109]

The Assistant Commissioner is empowered to move to the court for obtaining directions if the original object of the public trust has failed or the trust property has not been properly managed or administered or the direction of the Court is necessary for the administration of the public trust.[110]

For a better provision governing the field with respect to the public charitable trust and its properties and to provide substitution to section 92, CPC, section 44 was incorporated excluding the applicability of section 92, CPC.[111]

5.7.1 Administrative Mechanism in Rajasthan

Temples, Trusts, *Dharmashalas* and their assets & properties in the State of Rajasthan are monitored and supervised by a separate department called 'Devasthan Department'. After the creation of the new Rajasthan State, the responsibility of managing and preserving this huge temple estate rests with the present Devasthan Department. The Devasthan Department performs religious and social duties such as inheriting institutions and State temples, monasteries, public practices established for religious and charitable purposes,

[108] The Rajasthan Public Trusts Act, 1959, § 31.
[109] *Id.* § 32.
[110] *Id.* § 38.
[111] Desraj Chela Baba Shri Hazur Singh Maharaj v. Association of Radhaswa, AIR 2003 Raj. 27.

guiding them for administration, providing financial support to them.[112] The temples under the Department of Devasthan are classified as State Direct Charge Category Temple, State Self-dependent Class Temple, State Delivery Class Temple, State Aided Temple, Annuity Received Temples, and Temples under the Mandal Mandir Act.

5.8 Madhya Pradesh: The Madhya Pradesh Public Trusts Act, 1951

The Madhya Pradesh Public Trusts Act, 1951 was enacted with the intention to regulate and to provide better administration of public religious and charitable trusts in the State of Madhya Pradesh. It is applicable to all public trusts including a temple, a *math*, a mosque, a church, a wakf or any other religious or charitable endowment and a society formed for a religious or charitable purpose. This statute applies to a public trust administered by any agency acting under the control of the State or by any local authority, a public trust administered under any special enactment, and a public trust to which the Muslim Wakfs Act, 1954 is applicable.[113]

The registration of all the public trusts is mandatory in Madhya Pradesh. The District Collector shall be the Registrar of Public Trusts in respect of every public trust.[114] The working trustee or manager of a public trust shall keep regular accounts of all movable and immovable property.[115] The accounts shall be audited annually in such manner prescribed.[116] The Registrar shall have

[112] DEVASTHAN DEPARTMENT, GOVERNMENT OF RAJASTHAN, http://devasthan.rajasthan.gov.in., (Sep. 22, 2019).
[113] Madhya Pradesh Public Trusts Act, 1951, § 34.
[114] *Id.* §§ 3 & 4.
[115] *Id.* § 13.
[116] *Id.* § 16.

powers to enter on and inspect or cause to be entered on and inspected any property belonging to a public trust. The Registrar is also empowered to call for or inspect any documents or accounts related to any public trust.[117] In connection with the complaints and grievances of these trusts, the District Collector is the competent authority to take action.

5.8.1 Administrative Mechanism in Madhya Pradesh

A separate department called Religious Trust & Endowments Department has been established by the Government of Madhya Pradesh to look after the affairs of Religious Trust & Endowments in the State.[118] About 12000 temples are maintained by the government. The idol in such a temple is recorded as the land owner in land records. The name of the District Collector is recorded as an administrator in the land records.

The Government is mainly responsible for the renovations and the maintenance of these temples, honorarium of priests serving in them and the construction of hospices. The Priests of government maintained temples are paid an honorarium in accordance with special rules. All these works are undertaken through District Collectors, Sub-Divisional Officers and Tahsildars. A committee has been constituted for the management of the temples situated in certain regions.[119]

Special statutes have been established for all the temples of the State, which have their religious or historical or both type of special significance.

[117] Madhya Pradesh Public Trusts Act, 1951, § 22.
[118] RELIGIOUS TRUST & ENDOWMENTS DEPARTMENT, GOVERNMENT OF MADHYA PRADESH, (Sep. 22, 2019), http://www.religioustrust.mp.gov.in/activities.
[119] *Id.*

Mahakaleshwar Temple Ujjain (Madhya Pradesh Shri Mahakaleshwar Act, 1982), Salkanpur Devi Temple, Sehore (Salkanpur Devi Act, 1956), Sharda Mandir Satna (Sharda Devi Temple Act, 2002), Madhya Pradesh Shri Ganapati Khajrana Indore Act, 2003 etc., are prominent temples in the State having separate legislative and administrative mechanism provided by the Government.[120]

5.9 Assam: The Assam State Acquisition of Lands Belonging to Religious or Charitable Institutions of Public Nature Act, 1959

The Assam Government had not made any legislation with regard to the management of the temples in the State till the year 1954. The situation got worsened when the some sect of priests and devotees raised their demands to the Government to confer on them the right of proprietorship on the lands they possessed.[121] On this event, the State Government of Assam appointed Mr. S.K.Chakravarty to make an inquiry on the administration of the temples in Assam and their lands. He submitted his report and suggested a new legislation for the proper management of the temples. Accordingly, the State Government

[120] RELIGIOUS TRUST & ENDOWMENTS DEPARTMENT, GOVERNMENT OF MADHYA PRADESH, (Sep. 22, 2019), http://www.religioustrust.mp.gov.in/activities.

[121] KALITA & TAPAN, MANAGEMENT SYSTEM OF THE TEMPLES OF ASSAM AND ORISSA A COMPARATIVE STUDY, (Thesis, Gauhati University 2011), https://shodhganga.inflibnet.ac.in, (Sep. 24, 2019), (On this event, the State Government of Assam appointed Mr. S.K.Chakravarty to make an inquiry on the Administration of the temples in Assam and their lands. Mr. Chakravarty visited each and every temple and after consulting the prevalent system of management in other parts of India, especially those in Orissa and Bihar, submitted his report along with a suggestion that a new legislation should be enacted by the Government for the proper management of the temples. Accordingly the State Government of Assam enacted the Assam Act IX of 1961 through which all the landed properties of the temples have been acquired). *See also* P.C. Goswami, *Land Reform in Assam*. ECONOMIC AND POLITICAL WEEKLY 1662–1664 (vol. 4, no. 42, 1969), JSTOR, (Sep. 24, 2019), www.jstor.org/stable/ 40740544.

of Assam enacted the Assam Act IX of 1961 through which all the landed properties of the temples have been acquired.[122]

By virtue of this legislation the State Government can take over the properties of any religious institution having a public nature.[123] Section 25A of the Act provides for constitution of a committee to have control over the matter of utilization of the annuity and verification of the proper maintenance of the institution.[124] As per the provision, a Managing Committee has been provided to be headed by the Deputy Commissioner or Sub-Divisional Officer or his nominee as President, to have a control over the matter of utilization of the annuity and verification of proper maintenance of the institution. An Ex-Officio Secretary is to be elected by the *Deuries/Bor Deuries*.[125] Five members are to be elected from amongst the devotees.[126]

---

[122] In the year 1959, the Assam State Acquisition of Lands Belonging to Religious or Charitable Institution of Public Nature Act, 1959 (Assam Act No. IX of 1961), was passed for acquiring the lands belonging to the religious or charitable institutions. Compensation in lieu of acquisition of the land was payable under the provisions of the Act. *See* Satradhikar, Bengana-Ati v. State of Assam, MANU/GH/0220/2001.

[123] The Assam State Acquisition of Lands Belonging to Religious or Charitable Institution of Public Nature Act, 1959, § 3.

[124] Section 25A of the Act has been inserted by means of Assam Act No. XIX of 1987. Its operation, however, remained in abeyance till the year 1994. In 1994, it became applicable and gave rise to many petitions. *See* Satradhikar, Bengana-Ati v. State Of Assam, 2000 (In this case, it was held that the impugned provision is well within the pale of Clause (d) of Article 26 of the Constitution and it in no way offends the right guaranteed under Clause (b) of Article 26 of the Constitution).

[125] The *Deuries*, an aboriginal tribe inhabiting the plains and hills of Assam, are upholding their own language and socio-cultural rituals, rites and festivals and all these have contributed in shaping the composite Assamese culture. Anthropologically, the *Deuries* as the priestly community are affiliated to the great Tibeto-Burman branch of Mongoloid stock of Assam. The original seat of the *Deuries* was in the region beyond Sadiya. It is only about a century ago that they removed thence to their present settlements; and some of them still occasionally visit Sadiya for religious purposes. At present the *Deuries* reside in the districts of Lakhimpur, Dhemaji, Sibsagar, Dibrugarh, Tinsukia, Jorhat and Sonitpur districts in Assam. The *Deuri* villages are generally found in plain areas of the river banks. Other than the State of Assam, the *Deuri* villages are also found in the Lohit and Changlang districts of Arunachal Pradesh. Muhshina Anjum Borah, *Status of Women in the Deuries of Lakhimpur District of Assam and Gender Inequality* INTERNATIONAL JOURNAL OF HUMANITIES AND SOCIAL

After the acquisition of its land the institution will be managed, including in its religious functions, out of the annuity given by the Government on acquisition of the land and from voluntary contributions made by devotees.

5.10 Uttar Pradesh

The Hindu Religious and Charitable Endowments Act, which allows the Government to take over the management of religious and charitable institutions including private temples, is not in force in Uttar Pradesh. The Endowments Act was never adopted in Uttar Pradesh. This has led to lack of State control over the management of temples or religious endowments.[127]

In order to conduct all work related to religious institutions and temples in Uttar Pradesh, a separate department called as *Dharmarth Karya Vibhag*, was established in the year 1985. The Department of Religious Affairs of Uttar Pradesh controls all temples and religious places in the State. It provides the basic facilities like route management, accommodation, light management, drinking water, food facility, etc., at various religious places in Uttar Pradesh.

SCIENCE INVENTION (IJHSSI) 52-55, (Vol. 8 Issue 06, June 2019), (Sep. 25, 2019), www.ijhssi.org.

[126] The Assam State Acquisition of Lands Belonging to Religious or Charitable Institution of Public Nature Act, 1959, § 25 (A).

[127] A Bench of Supreme Court, headed by Justice N.V. Ramana, in October 2019, asked whether anybody could build a temple and collect money from public in UP and asked the State to apprise the court whether it would bring a proper law to manage temples and religious endowments. The Supreme Court asked the State as to why they have not enacted any law for management of temples and religious endowments. The State was also asked reasons for not adopting the central legislation in this regard. The case in hand related to management of 'Shree Sarvmangala Debji Bela Bhawani Mandir', Bulandshah, UP. The temple, claimed to be over 200 years old, was under the hereditary management of three families of '*Pandas*' (priests). The Supreme Court reminded the State that taking over of religious institutions on the basis of an executive order alone, but without backing of proper legislation, would lead to anarchy in that field). *See* TIMES OF INDIA, https://timesofindia.indiatimes.com/india/in-absence-of-a-law-anyone-can-set-up-temple-take-donations-sc/Articleshow/71713940.cms., (Oct. 25, 2019).

There is a separate section under this department is headed by the Principal Secretary to the State.[128]

5.11 Control over Temples through Special Legislations

Various State Governments have enacted separate legislation and have adopted separate mechanism to manage certain temples having national or other importance. Most of such temples have large volume of assets and incomes. Separate shrine boards or Devaswom Boards are in existence to control, manage, and supervise temple administration. The Shri Mata Vaishno Devi Shrine Board (Jammu and Kashmir), Kashi Viswanath Temple (Uttar Pradesh), the Shree Somnath Temple Trust (Gujarat), the Badrinath-Kedarnath Temple Committee (Uttarakhand), Shree Mahakaleshwar Temple (Madhya Pradesh), Shri Jagannath Temple (Odisha), Nathdwara Temple (Rajasthan), Sri Venkatshwar Temple of Tirupathi (Andhra Pradesh), Guruvayur Temple Devaswom (Kerala) etc., are good examples in this regard.

These special legislations are intended for controlling and regulating the management of such Hindu religious institutions situate in various parts of the country. These special laws tries to preserve and enforce the religious and spiritual traditions of those particular shrines; are confined to administrative aspects, and have kept in mind the special religious practices and sensitivities of the related holy places.

[128] DHARMARTH KARYA VIBHAG, DEPARTMENT OF RELIGIOUS AFFAIRS, THE GOVERNMENT OF UTTAR PRADESH, http://updharmarthkarya.in/booking/Home/AboutDepartment, (Sep 25, 2019).

5.12 Puri Jagannath Temple, Odisha: The Shri Jagannath Temple Act, 1955

A special statute known as 'Shri Jagannath Temple Act, 1955' was enacted to reorganise the scheme of management of the affairs of the temple and its properties. The Act was brought in to force in the year 1960. In terms of the provision of this statute, the management, administration and governance of the temple vests in a Committee known as 'Shri Jagannath Temple Managing Committee' constituted as such by the State Government.[129] The Committee shall consist of prescribed members. Though the Raja of Puri holds certain privileges, the majority of the Committee are State officials and members nominated by the State Government.[130] All *sevaks*, office-holders and servants attached to the temple or in receipt of any emoluments or perquisites there from shall, whether such service is hereditary or not, be subjected to the control of the Administrator who functions, subject to the provisions of the statute and the regulation, made by the Committee in that behalf.[131]

The constitutional validity of Sri Jagannath Temple Act, 1954 was challenged before the Supreme Court through several cases. The main contention of the challengers was regarding the rationality of enacting a special law for this temple while there was a general law for Hindu religious

[129] Shri Jagannath Temple Act, 1955, § 5.
[130] *Id.* § 6.
[131] *Id.* § 21-A. *See also* Ram Chandra Deb v. The State of Orissa, MANU/OR/0003/1959 (In this case, it was held that, the rights and duties of the Raja of Puri as Adya Sevak should be carefully distinguished from his rights and duties as the hereditary Superintendent of the Jagannath Temple).

endowments in the State. The court upheld the Act observing that 'Jagannath Temple' occupies a unique position and is a temple of national importance.[132]

5.13 Sri Kashi Viswanath Temple, Varanasi, Uttar Pradesh: The Sri Kashi Viswanath Temple Act, 1983

Kashi Vishwanath Temple is one of the most famous temples in India, situated in Varanasi, constructed in the year 1780. Since 1983, the temple has been managed by the Government of Uttar Pradesh under the provisions of the Sri Kashi Viswanath Temple Act, 1983.

The main objective of the Act is to provide proper and better administration of Sri Kashi Vishwanath Temple and its endowments and for matters connected therewith.[133] The ownership of the Temple and its endowments shall vest in the deity of Sri Kashi Vishwanath.[134] However, the management is entrusted to the Board of Trustees constituted under the provisions of the Act.[135] The Board consists of both officials representing the Government, other non-officials nominated by the Government, members from judicial service etc.[136]

The statute tries to ensure that all the officials and non-officials become well versed and experienced in Hindu theology, management and administration of the Temple, its endowments and the Temple Fund.[137]

---

[132] Raja Birakishore v. State of Orissa, AIR 1964 SC 1501.
[133] Sri Kashi Viswanath Temple Act 1983, Preamble.
[134] *Id*. § 5.
[135] *Id*. § 6.
[136] *Id*. § 6(2).
[137] Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi v. State of U.P., (1997) 4 SCC 606.

The Board shall be entitled to take over the possession of all movable and immovable properties, cash, valuables, jewelleries, records, documents, material objects and other assets belonging to or forming part of the Temple and its endowments.[138] The Board is also empowered to do all the necessary activities for or incidental to the performance of its duties and functions under this Act.

A special fund known as 'Sri Kashi Vishwanath Temple Fund' shall be vested in and administered by the Board.[139]

The State is empowered to appoint a Chief Executive Officer for the Temple. His office and functions are subject to the control of the Board; he shall be responsible for management of the secular affairs of the Temple and its endowments.[140]

There will be an Executive Committee for the superintendence, direction and control of the affairs of the Temple. This Committee works under the directions of the Board or the State Government. The Executive Committee includes the Commissioner, Varanasi Division; the District Magistrate; the Senior Superintendent of Police, Varanasi, etc., as members.[141]

The validity of the Act of 1983 was upheld by the Supreme Court.[142]

---

[138] Sri Kashi Viswanath Temple Act 1983, § 13.
[139] *Id*. § 23(1).
[140] *Id*. § 16.
[141] *Id*. § 19 (The Executive Committee shall consist of the following members, namely: (a) Commissioner, Varanasi Division-Chairman; (b) District Magistrate, Varanasi-Member; (c) Senior Superintendent of Police, Varanasi-Member; (d) Administrator/Mukhya Nagar Adhikari, Nagar Mahapalika, Varanasi-Member; (e) Members of the Board specified in Section 6(2)(j) - Member ex officio; (f) Chief Executive Officer - Member-Secretary).
[142] Sri Kashi PAS Committee v. Commissioner, Hindu Religious Endowments, AIR 1997 SC 232.

5.14 Nathdwara Temple, Rajasthan: The Nathdwara Temple Act, 1959

Shrinathji Temple is considered an important pilgrimage centre of Vaishnavs. The Nathdwara Temple Act, 1959 was passed to provide better administration of the temple of Shri Shrinathji, at Nathdwara.

The ownership of the temple and all its endowments is vested in the deity of Shri Shrinathji. The Board constituted under the Act is entitled to the possession of the temple and all its endowments and the administration of the temple and all its endowments are vested with it.[143]

The Board consists of a President, i.e., the Collector of Udaipur District and nine other members appointed by the State Government so as to secure representation of all stake holders.[144] The Act makes every member of the Board liable to compensate for any loss, waste or misapplication of any money or property belonging to the temple, if such waste or misapplication is a direct consequence of his wilful act or omission.[145]

Previous sanction of the State Government is necessary for alienating temple properties.[146] The Act deals with the provisions of budget, accounts related to the Board and endowments thereto in detail. The State Government has the power to call for any report or accounts, if any, if it is found reasonably that the temple is not being properly maintained, and its administration carried

[143] Nathdwara Temple Act, 1959, §§ 3 &4.
[144] *Id*. § 5 (The Collector shall be an ex-officio member of the Board. Section 5(5) provides that all the other members specified in sub-clause (1) shall be appointed by the State Government so as to secure representation of the *Pushti Margiya Vaishnavas* from all over India).
[145] *Id*. § 12.
[146] *Id*. § 17.

on according to the provisions of the statute. The Board is under an obligation to furnish such information and accounts as may be called for by the State Government.[147].

Though the validity of the Act was challenged, it was upheld in the case of *Tilkayat Govindlalji v. State of Rajasthan*.[148]

5.15 Tirumala Tirupati Devasthanam (TTD): The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987

Venkateswara Temple is a famous Vaishnavite temple situated in the hill town of Tirumala at Tirupati in Chittoor district of Andhra Pradesh, India. The Temple is dedicated to Lord Sri Venkateswara, who is believed to be an incarnation of Vishnu.[149]

The present management set up of TTD is established under the Act of 1987.[150] Though TTD is a conglomeration of temples, it is well known as the official custodian of the hill temple of Lord Venkateswara.[151]

---

[147] Nathdwara Temple Act, 1959, § 26.
[148] Tilkayat Govindlalji v. State of Rajasthan, AIR 1963 SC 1638.
[149] The temple is also known by other names like *Tirumala Temple*, *Tirupati Temple*, *and Tirupati Balaji Temple*.
[150] The Hindu Religious and Charitable Endowments Act of 1951, was replaced by a comprehensive enactment called 'The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966. The Chapter XIV of 1966 Act had dealt with administration of the TTD. The Government brought a separate Act for the governance of the TTD in the year 1979. On the basis of the recommendations of the Justice Challa Kondaiah Commission of enquiry, the State enacted another legislation governing the finances of the Hindu Religious and Charitable Endowment institutions, including the TTD. The Act 17 of 1966 and TTD Act, 1979 were repealed by enacting the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987). It is a comprehensive legislation which came into force with effect from 23.05.1987.
[151] TIRUMALA TIRUPATI DEVASTHANAMS, (Sep. 28, 2019), https://www.tirumala.org/TTDBoard.aspx. (TTD maintains 12 temples and their sub-shrines, and employs about 14,000 persons).

There is a Board for the TTD called "The Tirumala Tirupati Devasthanam Board" constituted by the Government, which consists of members including a Chairman appointed by the State Government. The Board of Trustees is constituted by members appointed by the Government.[152]

The Executive Officer is the chief executive of the TTD. He is assisted by two Joint Executive Officers, Chief Vigilance and Security Officer, Conservator of Forests, Financial Advisor & Chief Accounts Officer, and Chief Engineer. Besides, there are officials to look after the different branches of administration.[153]

The Board is empowered with the administration of the TTD. The Board shall manage the properties, funds and affairs of the TTD.[154] It is also entrusted with the duty to arrange for the conduct of daily worship and ceremonies and of the festivals in every temple. The TTD is empowered to fix the fees for the

[152] The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Chapter XIV of the Act deals with the TTD. Under Section 95 of the Act, the provisions of Chapter XIV shall apply only to TTD and the other provisions of the Act shall also apply subject to the provisions of Chapter XIV. Under Section 96 of the Act of 1987, the Commissioner of Endowments is the Ex-officio Member of TTD and the Executive Officer is the member of the committee. Under Section 97 of the Act, the administration of TTD shall vest in the Board of Trustees and the Board of Trustees shall manage the properties, funds and the affairs of TTD. Rules have been framed in exercise of powers conferred under Section 97 read with Section 153 of Act 30 of 1987 from Chapter I to Chapter XVIII. Chapter XIX deals with leases of lands from Rules 138 to 151. Rules 138 to 149 deal with the manner and method of the leases by way of public auction). *See also*, Tirumala Educational Trust v. Tirumala Tirupati Devasthanams, INDIAN KANOON, http://indiankanoon.org/doc/110796116/, (Sep. 26, 2019).

[153] TIRUMALA TIRUPATI DEVASTHANAMS, (Sep. 28, 2019), https://www.tirumala.org/TTDBoard.aspx.

[154] The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, § 97 (The management set up of TTD under the TTD Act of 1979 was quite different from the present Act of 1987. By virtue of the Act of 1979, there was a Committee constituted by the Government for TTD called 'The Tirumala Tirupati Devasthanams Management Committee'. This Committee was a body corporate having perpetual succession and a common seal with the power to acquire, hold and dispose of property and to sue and be sued by the said corporate name. The Committee consisted of the Chairman of the TTD Board who is ex-officio Chairman of the Committee and other officials nominated by the State Government as members. This system was abolished by the new Act of 1987).

performance daily *poojas* and rituals of *archana*, *utsavam* or any service connected with the TTD. The Board is empowered to call for information and accounts of or related to the TTD to ensure the proper maintenance and administration of the Temple and the endowments.[155]

The management, administration and organization of TTD are subject to the guidelines issued by the Government through the Ministry of Endowments from time to time. The administration of all Charitable and Hindu Religious Institutions and Endowments including TTD shall be under the general superintendence and control of the Commissioner.

The daily operation and management of TTD is the responsibility of an Executive Officer who is appointed by the government of Andhra Pradesh. The Executive Officer (EO) is assisted by two Joint Executive Officers (JEO), one at Tirupati in overall charge of Tirupati based institutions and the other at Tirumala in overall charge of Sri Tirumala Tirupati and Tirumala institutions. The JEO is virtually the second most important person in the hierarchy of the organization after the EO. The Act of 1987 instituted the system of annual budget preparation and sanction.

Thus, the Government of Andhra Pradesh exercises the direct apex control over the TTD, and appoints the Board of Trustees, which exercises an overall control of the TTD administration.[156]

[155] The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, § 97 (4).
[156] *Id*. §§ 99-105.

CHAPTER 6

HISTORY OF STATE CONTROL OVER TEMPLE ADMINISTRATION IN KERALA

6.1 Origin of Religions in Kerala

Religion has been occupying an important role since the early periods of Kerala society. Ancient Kerala could be said to be the meeting place of almost all the important religions of the world. Many religious faiths have existed over a very long period of time. Religious toleration has always been the established principle of Kerala culture.

It is believed that the ancient culture and religion of Kerala were Dravidian in nature.[1] According to the historical sources, it is assumed that the people of ancient Kerala observed several primitive religious practices. They used to worship animals, trees,[2] their ancestors and local deities.[3] There was no particular religion which was common to all.[4] In the Sangam age (3rd century BC to 4th century AD), both Chera kings and their followers were believed to be worshippers of the war goddess *Kottavai*.[5] There was no evidence of any kind of temples during the early period.[6]

[1] S. GAJRANI, HISTORY, 2 RELIGION AND CULTURE OF INDIA 131 (Gyan Publishing House 2004).
[2] A. SREEDHARA MENON, LEGACY OF KERALA 13 (D C Books 2010) (It is assumed that the Dravidians had practiced animism and totemism).
[3] K. Rama Pisharoti, *Notes on Ancestor-Worship Current in Kerala*, 23 MAN 99-102 (1923), (Nov. 1, 2019), www.jstor.org/stable/2788370.
[4] PHILIP K. MATHAI, SONGS AS LOCUS FOR A LAY THEOLOGY: MOSHE WALSALAM SASTRIYAR AND SADHU KOCHUKUNJU UPADESHI 13 (Wipf and Stock Publishers 2019).
[5] R. LEELA DEVI, HISTORY OF KERALA 107 (Vidyarthi Mithram Press 1986).
[6] A. SREEDHARA MENON, *supra* note 2.

Historians unanimously assert the fact that Jainism, Buddhism and Judaism entered Kerala in the centuries prior to the Christian era and started flourishing during the 3rd century BC.

It is believed that Jainism got introduced to South India through Chandragupta Maurya. Several Jain temples in Kerala were built at that time with the patronage of the Chera Kings.[7] Jainism started to decline by 8th century AD when *Shaivism* and *Vaishnavism* got prominence. By the 16th century, Jainism almost disappeared from Kerala.

It is assumed that Buddhism came to the land of Cheras during the reign of Asoka, in BC 300. The policy of religious toleration followed by the early Chera rulers helped in the construction of many Buddhist temples.[8] The Buddhist religion in Kerala started declining from the 9th century AD.

After the demolition of Jerusalem synagogue by the Romans, the Jews fled from Israel and some of them reached Kerala by 573 BC. This paved the way for spreading Judaism in Kerala. With the patronage of then rulers, Jews constructed synagogues at various places in Kerala.[9] It is believed that the first group of Aryans penetrated to Kerala from north India by 300 BC.[10]

---

[7] A. SREEDHARA MENON, LEGACY OF KERALA 14 (D C Books 2010) (Temples at Mathilakam, Perumbavoor and Kudalmanikkam are believed to have been Jain temples which were converted to Hindu temples in later periods).

[8] G. KRISHNAN NADAR, HISTORY OF KERALA 60-63 & 75 (Learners Book House 2001) (According to historical evidences, a Chera King called Palli Bana Perumal and Varaguna Vikramadithya of the Ay kingdom, embraced Buddhism as their religion. According to some authors, some of the famous Hindu temples of the present day, such as the Vadakkunnathan temple, Trichur and the Kurumba Bhagavati temple, Cranganore, were Buddhist temples once).

[9] David G. Mandelbaum, *The Jewish Way of Life in Cochin*, 1 JEWISH SOCIAL STUDIES 423–460 (1939), (Nov. 3, 2019), www.jstor.org/stable/4464305.

[10] S.N. SADASIVAN, A SOCIAL HISTORY OF INDIA 300-306 (APH Publishing 2000) (It is believed that the advent of Aryans paved way for introduction of caste division in Kerala).

It is commonly believed that Christianity was introduced to Kerala in the 1st century AD. According to popular belief among Christian community, the Apostle St. Thomas landed in AD 52 and Christianity began to flourish.[11] In the course of centuries, Christian religion achieved rapid progress in Kerala. With the patronage of native rulers of princely States as well as Britishers, many churches were established in due course of time.

From 5th century onwards, Brahmanical religion started growing. The growth of Brahmanism came to its zenith by 7th century AD, when a group of Brahmin families called *Namboodiri Brahmins* arrived in Kerala and settled in 64 villages. It was the Brahminical immigrants who shaped modern Hinduism in Kerala. In the 8th century AD, a large batch of Brahmins arrived in Kerala. Hindu revivalism movement initiated by Sankaracharya and his doctrine of Advaita Vedanta helped the popularization of modern Hindu religion.[12]

Islam was also introduced to Kerala by the Arabs in the early half of the 7th century AD. It is believed that the renowned Islamic Scholar, Malikben Dinar reached Kerala and constructed Mosques by 7th century AD. With the patronage of second Chera dynasty, they propagated Islam and as a religion Islam started growing from the 9th or 10th century AD.

But see N.S. Rajaram, *Aryan Invasion - History or Politics?* ARCHAEOLOGY ONLINE, (May 7, 2018), (May 10, 2019), http://archaeologyonline.net/artifacts/aryan-invasion-history. (N.S. Rajaram opines that, theory of the 'Aryans as foreigners' who invaded India and destroyed the existing Harappan Civilization is a modern European invention; and no evidence from Indian records-literary or archaeological-supports this theory of Aryan Invasion. He also finds that there is no evidence in Indian literature or tradition to prove the notion of the Aryans as a race and the word '*Arya*' in Sanskrit language means noble and not a race).

[11] SURESH K. SHARMA & USHA SHARMA, CULTURAL AND RELIGIOUS HERITAGE OF INDIA: CHRISTIANITY 18 (Mittal Publications 2004).

[12] S.N. SADASIVAN, A SOCIAL HISTORY OF INDIA 300-306 (APH Publishing 2000).

Kerala society was holding pragmatic social fabric and remained fundamentally static for around 700 years until the advent of English missionaries started spreading ideas of equality and fraternity. The missionaries tried to educate the people and to disintegrate the caste system in Kerala. It helped them for religious conversion.[13]

Thus it can be clearly asserted that all the major religions and faiths like Hinduism, Christianity, Islam, Jainism, Buddhism and Judaism have their roots in the land of Kerala.[14] The State has been following a liberal policy of religious toleration even from the early periods. The places of worship and religious institutions of all the religions and faiths were respected by all rulers and allowed to function freely.[15]

6.2. Origin and Development of Temple Culture in Kerala

Present Kerala culture is a conglomeration of various cultures. To be more specific, it can be called as a synthesis of both Dravidian and Aryan cultures. The present Hindu religion of Kerala is also a synthesis of pre-Dravidian, Dravidian and Aryan cultures.[16] Modern Hindu faith in Kerala consists of numerous gods and goddesses, vedas, upanishads, tribal faith, ancestral worship, animism, etc.[17] History of temple culture shall be looked as the development of modern Hindu religion in Kerala. Present Hindu religion in

[13] R.K. PRUTHI, INDIAN CASTE SYSTEM 152 (Discovery Publishing House 2004).
[14] PRESLER, RELIGION UNDER BUREAUCRACY: POLICY AND ADMINISTRATION FOR HINDU TEMPLES IN SOUTH INDIA 341 (Cambridge University Press 1987).
[15] A. SREEDHARA MENON, A SURVEY OF KERALA HISTORY 163 (DC Books 2007).
[16] A. SREEDHARA MENON, CULTURAL HERITAGE OF KERALA: AN INTRODUCTION 258 (East-West Publications 1978); K.K.N. KURUP, ASPECTS OF KERALA HISTORY AND CULTURE 13, 32-36 (College Book House 1977).
[17] V.R. PARAMESWARAN PILLAI, TEMPLE CULTURE OF SOUTH INDIA 1 (Inter-India Publications 1985).

Kerala is more or less temple oriented, though Hindu religion is cosmic in its spirit.[18]

Temples occupied a pre-eminent position in the history of Kerala culture. Temples in Kerala extends south from Thiruvananthapuram district to north Kasaragod with varying gods and goddesses. Each temple in Kerala possess uniqueness in structure, tradition, rituals, offerings, festivals, customs, etc. Some of these temples claim to have connection with our great epics, like the Ramayana and the Mahabharatha.[19]

Many theories are advanced with regard to the origin of temples. Most of such theories are based upon a large number of epigraphical and archaeological records. Such historical evidences show that the origin and evolution of temples is part of the evolution of civilization.[20]

Studies and excavations reveal that the origin of temples in Kerala may be traced back to the tombstones in the Megalithic Age.[21] Ancient Kerala possess a Dravidian culture in its most primitive state. Worshiping the spirit cult or worship of semi-divine spirits was prevalent then. Animal worship and ancestral worships were prevalent in Dravidian culture. The tribal practice of holding the tribal totem can be considered as an early form of idolatry among ancient Kerala aborigines. There were no definite rituals or practices, as we see

[18] Kesavan Veluthat, *Sectional President's Address: Into the 'Medieval' - and out of it: Early South India in Transition*, 58 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 168-205 (1997), www.jstor.org/stable/44143907, (Oct. 20, 2019); RAJAN GURUKKAL, THE KERALA TEMPLE AND THE EARLY MEDIEVAL AGRARIAN (Vallathol Vidyapeetham 1992).
[19] V.R. PARAMESWARAN PILLAI, TEMPLE CULTURE OF SOUTH INDIA 1 (Inter-India Publications 1985).
[20] V.V. SUBBA REDDY, TEMPLES OF SOUTH INDIA 201 (Gyan Publishing House, 2009).
[21] K. Rajan, *Appropriation of the Megalithic Burials as Cult Spots and Temples: A Study on the Megaliths in the Tamil Nadu - Kerala Border Regions*, 74 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 815-825 (2013), www.jstor.org/stable/44158883.

now, associated with the idol worship of the tribal people. The idea of temple, as a building we see now, was relatively absent among aborigines in Kerala. However, there were specific place of worship, usually a small portion in a forest land, where some stone pieces or figures were kept.[22]

In Vedic period also, there were no Temples as we see now. The Vedic religion based upon ritualism was sacrificial in nature and had *yajnas* (invocation of fire) at its focus. Places of such Vedic *yajnas* were temporary shelters that were consigned to the flames at the end, and had nothing to do with the structural complex of present Hindu temples.[23]

It is a fact that the emergence of sculptural images is of later origin. H. Sarkar, known Indian Historian, in his great work, the *Architectural Survey of Temples of Kerala* demarked three distinct phases of intensive temple building viz., (i) Early phase from 800 - 1000 AD, (ii) Middle phase 1001-1300 AD and (iii) Late phase 1301-1800 AD. For each phase he has identified certain characteristics features on the structures of temples.[24]

---

[22] *See* V.R. PARAMESWARAN PILLAI, TEMPLE CULTURE OF SOUTH INDIA 1-4 (Inter-India Publications 1985); K. Rajan, *Appropriation of the Megalithic Burials as Cult Spots and Temples: A Study on the Megaliths in the Tamil Nadu - Kerala Border Regions*, 74 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 815-825 (2013), www.jstor.org/stable/44158883.

[23] C.J. FULLER, SERVANTS OF THE GODDESS: THE PRIESTS OF A SOUTH INDIAN TEMPLE 5 (Cambridge University Press 1984).

[24] H. SARKAR, ARCHITECTURAL SURVEY OF TEMPLES OF KERALA 97-101 (1978) (According to Sarkar, the temple building during 800-1000 AD, patronized by the three major ruling dynasties like the Cheras, Mushikas and Ays. The phase during 1001-1300 AD, reveals that the temple architecture in this period is a fusion of typical Dravida tradition, with indigenous Kerala style and thus formed a unique Dravida-Kerala style. During the period from 1301 AD to 1800 AD, the temple-architecture of Kerala had reached its final stage of evolution. A vast majority of the extant temples belong undeniably to this phase in spite of the fact that many of them owed their inception to an earlier period. Temples got patronage from the rulers in their construction and renovation).

V.R. Parameswaran Pillai, in his book '*Temple Culture of South India*',[25] depicts the evolution of 'Image worship' or 'Idol worship' in Kerala in detail. Though it does not specifically classify the stages of Temple culture in Kerala, it describes about various forms of Image worship prevailed in Kerala from immemorial antiquity. He elaborately discusses about ancestral worship, early forms of Image worship, Bhakti cult, and later forms of Idol worship or Temple culture developed in Kerala.[26]

6.2.1 Ancestral Worship in Kerala

The form of ancestral worship has been prevailing in Kerala from immemorial antiquity. It has been found in aborigines as well as some other sects or sub-castes within modern Hindu religion. It takes various forms in various communities within the Hindu religion. The simplest form of such ancestral worship consists of *Sraddha.*[27]

Another form of ancestral worship is the setting apart of separate rooms, usually called *Thekkini,* as the abode of the spirit of deceased ancestors.[28]

---

[25] V.R. PARAMESWARAN PILLAI, TEMPLE CULTURE OF SOUTH INDIA (Inter-India Publications 1985).

[26] *Id*. at 14-23.

[27] *Id*. (*Shraddha* is the offering of oblations by the nearest and direct descendant of a deceased, on the anniversary of his or death. It has been a common practise among various casts or sub-casts in Hindu religion. *Shraddha* is considered as a pious duty and non-observance of such a duty is considered as sin. It is usually done for the satisfaction of the ancestors, whose lives have become extinct. A general shraddha also is performed by the senior most member of the family to all the deceased ancestors in the family, on special occasions).

[28] *Id*. (It has been commonly believed that such spirits of the deceased would protect the interests of the family. Usually a lighted lamp is kept in this particular room. This practice is very common among Nair/Nayar community in Hindu religion. There is no daily worship in such practices).

Another form of ancestral worship is setting apart separate rooms for keeping certain articles used by distinguished ancestors so as to keep the symbols to commemorate them.[29]

6.2.2 Early form of Idol Worship in Kerala

It is a fact that from the early period onwards temples in its rudimentary form were present in Kerala. Every home and village in early Kerala had its own temples. Certain sects or castes among Hindu religion, had worshipped their family Gods (*kudumba para devatha*), in their homes, usually known as *tarwads.* Some had their serpent shrine and small grove of trees called *Sarppakkavu*.[30] Some sects or castes had worshiped their own family gods in the upper floor of their homes. Such shrines were very common in the Malabar region. Even now such shrines have prominence. These shrines were known as *Machil Bhagavathy* or *Sembry Bhagavathy*.[31]

The evolution of present form of temples in Kerala is closely related to the evolution of idol worship in Kerala. The popular belief is that Brahmins started idolatry in Kerala. According to historical evidences, it is wrong to attribute the credit of idolarity to Brahmins who had a strong hold only at the end of 8th century AD. It is asserted that even before the early Aryan settlements in Kerala, idol worship was in existence in Kerala in one form or

[29] V.R. PARAMESWARAN PILLAI, TEMPLE CULTURE OF SOUTH INDIA 14 (Inter-India Publications 1985). (Such symbols include sword, bead, slippers (*methiyadi*). Such places are usually situated outside the house but near to it. Such places are considered as sacred and treated as family shrine. One of the senior members of the family acts as the priest for serving such shrines. Such shrines are usually not open for public. But by the course of time such places became public temples in a later stage.

[30] *Id*. at 16 (Inter-India Publications 1985).

[31] K. Rama Pisharoti, *Notes on Ancestor-Worship Current in Kerala*, 23 MAN 99-102 (Jul., 1923), JSTOR, (Nov. 1, 2019), https://www.jstor.org/stable/2788370.

other. Serpent shrine and small grove of trees called *Sarppakkavu* are the examples of early idol worship or later form of idolatry.[32]

Many historians assert that idol worship was predominant among the indigenous tribal people in early Kerala. Some historians attribute the inception and growth of idolatry with the Buddhist region in Kerala. In support of this Buddhist influences, they highlight the resemblance of present Hindu Temples with old Buddhist Temples.[33] Some Historians like Mallayya says that there were no temples before the Buddhist period and that the Buddhist *stupas* became the models for temples.[34]

It is assumed that the Hindus might have copied many rituals and practices from the followers of Buddhism, in later years. After the Mimamsic and Agamaic movements strengthened, the Buddhist *viharas* and Jain temples in Kerala might have been subsequently transformed into present Hindu temples.[35]

Patirruppattu in Sangam Age had described the Chera Rulers as devotees of *Kottavai*, the war goddess and *Murukan*. The poems equate Chera rulers with the Vedic gods such as *Surya*, *Agni*, *Marut*, *the Panchabhutas* and

[32] J.R. Freeman, *Gods, Groves and the Culture of Nature in Ker*ala, 33 MODERN ASIAN STUDIES 257-302 (No. 2, 1999), JSTOR, (Nov. 1, 2019), www.jstor.org/stable/313169.
[33] V. Narayana Pillai, *Sasta Cult in Travancore. Is it a Relic of Buddhism*? 3 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 230-240 (1939), JSTOR, (Nov. 5, 2019), https://www.jstor.org/stable/44252378.
[34] V.R. PARAMESWARAN PILLAI, TEMPLE CULTURE OF SOUTH INDIA 3 (Inter-India Publications 1985) (Trikkanamatilakam which was the residence of Ilanko Atikal, a Jain devotee and the famous author of Cilappatikaram, was converted later into one of the greatest temples of Kerala. Padmavati Devi of Citral Jain temple has now become a Bhagavathi and Tirthanakare of Nagarkovil Jain temple is now known as Anantalvar. It is also believed that many of the Sasta temples of today were originally Buddhist shrines. It is also assumed that followers of other religions have copied from the Buddhist monks the system of imparting education and providing help to the disabled).
[35] V. Narayana Pillai, *supra* note 33.

Navagrahas.[36] These facts show that idol worship has its antiquity even before Aryan settlements in Kerala.

6.2.3 Bhakti Cult in Kerala

Historians have asserted that many of the great temples in Kerala and other parts of South India, as we see now, had their origin after the '*Bhakti*' cult attained importance in Hindu religion.

It is very important to note that a unique Bhakti cult was prevalent in pre-Aryan and in all likelihood Dravidian culture. But the orthodox Brahminical worship was quite different from the Dravidian practice .[37] Hence, it has to be adduced that *Agama* sastras, the core of modern Hindu temples, also a pre-Aryan product and present *Agamic sastras* is only a modification of the early one. Till the sixth century AD, then Brahmins and Rulers followed both *Agama* and *Nigama* way of life.[38]

---

[36] Rajan Gurukkal, *Did State Exist in The Pre-Pallavan Tamil Region*, 63 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS, 138-150 (2002), JSTOR, (Oct. 3, 2019), https://www.jstor.org/stable/44158082.

[37] P.P. Narayanan Nambudiri, *Bhakti Cult in Kerala*, 42 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 157-162 (157) (1981), JSTOR, (Oct. 15 2019), https://www.jstor.org/stable/44141128. (It is very important to note that a very essential of *Bhakti* cult was '*Puja*', the physical expression of *Bhakti*. It was prevalent in pre-Aryan and in all likelihood Dravidian culture. But the orthodox Brahminical *Puja* is *saguna* worship or *Deva Puja* which is quite different from the Dravidian *Puja*). *See also* K. Balakrishnan Adiyodi, *The Nature of Aryan Control over Dravidian Religious Institutions: A Case Study of Rayaramangalam Temple*, 37 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 133-139 (1976), JSTOR, (Oct. 15 2019), www.jstor.org/stable/44138925.

[38] *Id*. (The Hindu religious tradition, philosophy, practices and ritual fall under two categories - the *Nigama* and the *Agama*. *Nigama* stands for the Vedic, the *karmamarga*, the *homa* or the fire sacrifice which is Aryan. The first origin of the *Agamic* cult was non-Aryan and pre-Aryan. It is said that Chera ruler Senguttuvan had performed Vedic Sacrifices and worshipped Vishnu and Siva. People in that time worshiped Aryan gods as well as followed Dravidian practices at the same time. There were Jain temples and Buddhist Viharas where Hindus also worshipped. It is believed that Bhagavathy temple at Kodungallur was built during this period by Chera ruler Senguttuvan).

By the beginning of 7th century AD, Brahminical Hinduism started to establish their hegemony over the Jains and the Buddhists.[39] During this time, Kerala began to develop a separate culture of its own, that differ from the Tamil. However, the Dravidian practices were respected and synthesised.

By this time a Brahminical Hindu religion of Kerala had emerged. Many new temples were established for the various Brahminical deities. Many old temples were reconstructed. Most of the Dravidian deities were Brahminised.[40] *Agamic* ritualism of Brahminic tradition was introduced in all such temples.[41] During the time of Kulasekhara Rulers, Siva and Vishnu were adored. At the same time *Kottavai* was adored as Bhagavathy.[42] Temple practice of *Dakshinachara* was popularized but *Vamachara* was discouraged.[43]

Temples became the centres of the Bhakti cult. A new priestly class called Nambudiri Brahmins of Kerala emerged. They raised the status of

[39] Kesavan Veluthat, *The Temple-Base of the Bhakti Movement in South India*, 40 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 185-194 (1979), JSTOR, (Oct. 20, 2019), https://www.jstor.org/stable/44141959. (In Tamil Nadu, it was the age of Nayinars and Alwars who led *Bhakthi* cult. Saivism and Vaishnaivism grew side by side competing with each other. The saints and seers of the period evolved a new type of *Bhakti*, i.e., an emotional surrender to God).

[40] K.R. Hanumanthan, *The Mariamman Cult of Tamil Nadu-A Case Study in Cultural Synthesis*, 41 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 97-103 (1980), JSTOR, (Nov. 15, 2019), https://www.jstor.org/stable/44141830.

[41] Kesavan Veluthat, *supra* note 39. (Instead of the songs of Alwars in Vishnu temples and of Thevaram songs in Siva temples, Jaya Deva's Ashtapadi was sung as part of the daily rituals in both. Separate system for reading Mahabharata in temples was made).

[42] R. LEELA DEVI, HISTORY OF KERALA 107 (Vidyarthi Mithram Press 1986).

[43] *See* N.N. BHATTACHARYA, HISTORY OF THE TANTRIC RELIGION (Second Revised ed., Manohar Publications 1999) (N.N. Bhattacharyya in his book *History of the Tantric Religion* explains the Sanskrit technical term *achara*. It is meant for spiritual attainment which varies from person to person according to competence. *Acharas* are generally of seven kinds, viz., *veda*, *vaishnava*, *saiva*, *dakshnia*, *vama*, *siddhanta*, and *kaula*, falling into two broad categories, viz., *Dakṣiṇa* and *Vama*. Interpretations vary regarding the nature and grouping of the acharas).

temples to a high pedestal. Temples played a role in politics and society. Temple arts encouraged Bhakti cult. Temples became centres of learning.[44]

The revival of Hinduism under Prabhakara and Sankara, and the rise of temples under the Bhakthi cult developed by Nayinar and Alwars, kept Buddhism and Jainism away from Kerala pantheon.[45]

Instead of a so called *Bhakthi* cult, a kind of *Bhagavata* cult with modifications that suited Kerala culture was formed by this time. This led to the emergence of *Vaishnava* or more popularly called Krishna worship and subsequently Sri Krishna Temples were established, in Kerala during the period between 13th century and 17th century.[46]

It is very noteworthy that Kerala had a very popular indigenous *Bhakti* cult, the cult of *Aiyyappa* or *Hariharaputra*.[47]

---

[44] Kesavan Veluthat, *Religious Symbols in Political Legitimation: The Case of Early Medieval South India*, 21 SOCIAL SCIENTIST 23-33 (Jan.-Feb., 1993), JSTOR, (Oct. 20, 2019), https://www.jstor.org/stable/3517836. (A class of Sanskrit works devoted to the subject of temple and temple worship was developed by the efforts of Brahmin Priests. Such works known as *Agamas, Pancaratra, Pasupata, Vishnu Samhita, Kamikagma, Vaikhanasagama, Isana Gurudeva Paddhai, Tatvapradipika, and Tantra Prayascitta*, are considered as very important authorities accepted in Kerala).

[45] Kesavan Veluthat, *The Socio-Political Background of Kulasekhara Alvars of 'Bhakti'*, 38 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 137-145 (1977), JSTOR, (Oct. 20, 2019), https://www.jstor.org/stable/44139063.

[46] P.P. Narayanan Nambudiri, *Bhakti Cult in Kerala*, 42 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 157-162 (157) (1981), JSTOR, (Oct. 15, 2019), https://www.jstor.org/stable/44141128. (Most of these saints and seers were devotees of Sri Krishna of Guruvayur. The earliest of them was Bilvamangalam (1251-1350 AD). It is believed that he consecrated many Krishna or Vishnu Temples all over the present Kerala. Guruvayoor and Sri Padmanabha Swamy temples are only some of them. Thunjeth Ramanujan Ezhuthachan (1495-1575) who wrote the Malayalam versions of Adhyatma Ramayanam and Mahabharata, Punthanam Namboodiri (1547-1640), and Melputhur Narayana Bhattathiri (1559-1625) are other known devotees of Srikrishna of Guruvayur, who popularised *Bhagavata* cult in Kerala).

[47] V. Narayana Pillai, *Sasta Cult in Travancore. Is it a Relic of Buddhism*? 3 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 230-240 (1939), JSTOR, (Nov. 5, 2019), https://www.jstor.org/stable/44252378. (There are different and conflicting views regarding its origin. There was no mention regarding *Sasta* or *Aiyyappa* in Sangam literature. But local forest deities like *Aiyanar, Sattan* etc. are found mentioned. Keralolpathi (a work of 17th or

It is also noteworthy that, the Tantra Samuchaya written by Chennass Narayanan Nambuthiri in the 15th century, also contributed a lot towards the development of a well organised Temple culture in Kerala.[48]

6.2.4 Social Reform Movements in the Modern Period

The Brahmin monopoly or ascendency in religion paved way for protest movements against Brahminical hegemony. The so called 'low caste people' or *avarnas* were prohibited from entering Hindu temples. By the end of the 19th century, under the leadership of great saints like Chattampi Swamigal, Sri Narayana Guru and Vagbhadanandathe, social reform movements got momentum. They established temples where non-Brahmin priests officiated. It laid the basis of a non-Brahmanic Bhakti cult in Kerala.[49]

The Devadasi system and animal sacrifices were abolished in the temples under the Travancore region in 1925 AD.[50] The Temple Entry Proclamation in 1936 in Travancore Kingdom abolished the ban on the so called 'low caste people' or *avarnas* from entering Hindu temples in Travancore. [51]

18th century. Historians never accepted this text as it does not have any historical backup) described about *Ayyappa* or *Sasta* of Sabrimala in high ranges, as the tutelary deity of Pandalam Rulers, a branch of Pandya line which migrated to Kerala. However, the cult of *Aiyyappa* has become very popular recently).

[48] This is considered as the major guide to the *Thantris* i.e., the arch-priests of the temples in Kerala.

[49] A. SHAJI, POLITICISATION OF CASTE RELATIONS IN A PRINCELY STATE 84-120 (Zorba Books 2017); Divya Kannan, *Socio-Religious Reform in Twentieth Century Kerala: Vagbhadananda and the Atma Vidya Sangham, 1900-40*, 73 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS, 1006-1011 (2012), JSTOR, (Nov. 7, 2019), https://www.jstor.org/stable/44156300. (Chattambi Swamigal who belonged to the Nair Community fought against the evils that existed in the community. He also fought against the Brahminical supremacy that existed over the Nair community. Narayana Guru's gospel of 'one-caste, one religion and one God' got acceptance among a good number of masses).

[50] R. LEELA DEVI, HISTORY OF KERALA 175 (Vidyarthi Mithram Press 1986).

[51] A. SHAJI, *supra* note 49, at 215.

6.3 Origin and Development of Temple Administration in Kerala

The construction and the proper maintenance of the temples have always been considered as one of the principal functions of the states in India. According to historical evidences, early Kings in Kerala who belonged to Hindu religion also exercised strict supervision and direct control over all the religious institutions and endowments through their officers in ancient times.

The stone and copper inscriptions found from many ancient temples and other places of Kerala reveal the fact that the overall administration of temples was vested with the Kings. In Kerala such stone inscriptions are found in abundance at various places.

6.3.1 Early Period

The early mode of worship among Tribal people of Kerala was not related to idolatry. It was either a form of nature worship or ancestral worship. The nature of worship in early tribal settlements in Kerala had not demanded an administrative arrangement for managing the places of worship.[52]

Neither any historian nor any other scholars has found any evidence regarding any particular temple or kind of temple administration relating to the early period of Kerala.[53] Though, there were no historical evidences regarding the administration of such religious places in those days, it is assumed that the tribal system itself had arrangements for protecting and managing their places

[52] A. SREEDHARA MENON, LEGACY OF KERALA 13 (DC Books, 2010).
[53] *See generally*, M.G.S. Narayanan, *The God-Presidents of Agrarian Corporations in Ancient Kerala*, 48 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 125-134 (1987), JSTOR, (Oct 9, 2019)www.jstor.org/stable/44141659.

of worship. However, such system did not possess any connection with the modern system of temple administration.[54]

When idol worship started, place and land for activities connected with worship, especially the place or property where the idol is situated or consecrated, became a matter of concern. It became inevitable to have custodians to protect the property. Men who were entrusted with the upkeep of the place of worship, by virtue of the honour attached to the administration of the place of worship, acquired power. This can be considered as the beginnings of the administration of temples in Kerala, though early places of worship had no specific structure of temples as we see today.[55]

The available historical records and evidences point out that the so called temple administration might have started during the period of the Chera dynasty. Historians unanimously admit the fact that the early Tamil rulers like Cheras were great patrons of temples. Under the patronage of those rulers many non-tribal temples were built in early Kerala.[56] The systems of worship and rituals were codified during this time. These rituals were of a routine nature. Emergence of a systematic daily worship paved way for permanent functionaries and administrators.

[54] *See generally*, KRISHNA PRAKASH BAHADUR & SUKHDEV SINGH CHIB, CASTE, TRIBES & CULTURE OF INDIA: KARNATAKA, KERALA & TAMIL NADU (Ess Ess Publications 1977).
[55] C.K. MADHUSOODHANAN, A STUDY ON THE NATURE OF RELATIONSHIP BETWEEN THE STATE AND THE MANAGEMENT OF HINDU TEMPLES IN KERALA (Thesis) (School of Social Sciences Tata Institute of Social Sciences, Mumbai, 2010), SHODHGANGA, (Jan. 15, 2018), https://shodhganga.inflibnet.ac.in/bitstream/10603/2708.
[56] P. Narayanan, *Towards Secularization of Temple Management: The Perumanam Temple*, 58 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 253–257 (1997), JSTOR, (Oct. 15, 2019), www.jstor.org/stable/44143913.

Historical evidence and inscriptions reveal that then Tamil Chera rulers had appointed full time employees for the purpose of managing temple affairs. It is to be noted that the administrators appointed by the Tamil rulers were not exclusively from the Brahmin community. Such early temple administrators were non-Brahmins.[57]

6.3.2 Medieval Period

Emergence of a unique *Bhakthi* Cult in Kerala gave birth to the so called temples as seen today. With the patronage of rulers from the second Chera dynasty, new form of worship (worship centred on temples) was developed. New temple architecture was developed in the construction of temple and consecration of idol. A new temple culture developed among the devotees also.[58]

All these factors might have made the temple administration a complicated one. This demanded some administrative reforms in temple administration. In the 9th century AD, King Kulasekhara of the Chera dynasty had bifurcated the administrative authority and religious authority related to temples. The religious authority was given all the powers to control the sacred area of religious places. Brahmins or Brahmin families were given such powers of religious administration.[59]

---

[57] M.G.S. Narayanan, *The God-Presidents of Agrarian Corporations in Ancient Kerala*, 48 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 125-134 (1987), www.jstor.org/stable/44141659. (Oct 9, 2019)

[58] P.P. Narayanan Nambudiri, *Bhakti Cult in Kerala*, 42 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 157-162 (157) (1981), JSTOR, (Oct. 15 2019), https://www.jstor.org/stable/44141128.

[59] KESAVAN VELUTHAT, BRAHMAN SETTLEMENTS IN KERALA: HISTORICAL STUDIES 69 & 70 (Sandhya Publications 1978).

Some Brahmin families have been given absolute control over the rituals connected with temple worship in certain kingdoms. Such hereditary rights still continue in practice. The day to day administration of temples, especially secular matters connected with temples, were managed by other non-Brahmins. A rigid caste system associated with the administration of Temples was established and institutionalized by the 12th century. The people from so called lower castes were not even permitted to enter into the temples and were prevented from worship.[60]

The Bhakthi cult and the Hindu revivalism initiated by Sankaracharya developed a unique system of temple management in Kerala.

The role of administrators of temples continued till 12th century AD when Namboothiris (Kerala Brahmins) took control of the sacred area in the management of temples.[61] From 12th century onwards, the priests were privileged to receive fees called *dakshina* for the religious services offered by them. Thus, the priestly class was very much interested in holding both control over temple administration and the properties of the temples. They declared themselves as the sole custodians of the sacred area of temples. This autonomy led to corruption and nepotism in temple administration.[62]

[60] Rajan Gurukkal, *Some Aspects of Early Medieval Brahman Village Legal Codes of Kerala* 40 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 150-158 (1979), JSTOR, (Oct. 3, 2019), https://www.jstor.org/stable/44141954.
[61] *Id*.
[62] C.J. FULLER, SERVANTS OF THE GODDESS: THE PRIESTS OF A SOUTH INDIAN TEMPLE 21 (Cambridge University Press 1984).

However, the non-sacred area remained under the control of the *Ooralars*.[63] They enjoyed the benefit of controlling the funds, the lands of the temple and the appointment of the temple staff, etc. The division of management into sacred and non-sacred area established dual control in temples. This often led to the conflict between the Namboothiris and the administrators.[64]

The monopoly of priestly class in the sacred area of temples led to the continuation of the system of separating the sacred part from the non-sacred part of temples. The priesthood was an important source of revenue. As part of earning more revenue the priests started attracting devotees. In order to attract devotees the priests placed pressure on the administrators for developing temples' infrastructure.

In the 15th century, the 'Tantra Samucchaya' written by Chennass Narayanan Nambuthiri, unequivocally established Brahmin supremacy over temple affairs, that helped to establish a modern system of temple administration and temple architecture of today.

6.3.3 Colonial Period

During the Portuguese and Dutch periods, Temples were neither protected nor interfered with by these colonial powers. However, the religious

[63] P. Narayanan, *Towards Secularization of Temple Management: The Perumanam Temple*, 58 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 253–257 (1997), JSTOR, (Oct. 15, 2019), www.jstor.org/stable/44143913. (*Ooraalars* belonged to the so called upper caste like, Brahmins, Kshathriyas, Nairs, Pothuvals, Warriars, and Marars. The Brahmin *Ooraalaars* controlling both the rituals and administration of temples were given a titile *Aaddyan*, meaning 'noble' by the rulers. On the other hand, others' (supposed to the lower among the upper castes), control was limited to the non-sacred area of the temple and they did not enjoy the status conferred by any title. *Yogaathirikkar* were usually Brahmins alone. *Ooraalaars* were usually from Nair Community).

[64] *Id*.

affairs of the temples were protected by the rulers and chieftains. During this period, each renowned temple, particularly in central Kerala had a *Sanketham*, which had a well-defined territory managed by a new set of people (owners as well as administrators of temple property), called *Yogaathirikkar* or *Ooralars*.[65]

By the 17th century, the land revenue was collected through Devaswoms. For that purpose, the land was divided into Devaswom land and land belonging to the rulers. Devaswom lands were those under the control of temple administrators. The lands belonging to the rulers belonged to the Monarch. The temple administrators like *Ooralars* used all their means to collect taxes as much as possible. This efficiency in tax collection helped them to became the local feudal chieftains of their area and thereby a part of the State administration. Availability of wealth and power, helped the *Ooralars* to grow into an influential force in all the three princely States.[66]

By the mid-18th century, the conflict between King (Royal families or Chieftain) and temple administrators (*Yogathiris or Ooralars*) started. The conflict between the Ruler of Cochin and Yogaathiris and *Ooralars* in Cochin has a historical relevance. At the climax of that conflict between the Ruler of Cochin and *Yogaathiri* of Sree Vatakkunaathhan temple, Thrissur, the Ruler of

[65] P. Narayanan, *Towards Secularization of Temple Management: The Perumanam Temple*, 58 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 253–257 (1997), JSTOR, (Oct. 15, 2019), www.jstor.org/stable/44143913.

[66] M.G.S. Narayanan, *The God-Presidents of Agrarian Corporations in Ancient Kerala*, 48 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 125-134 (1987), JSTOR, (Oct 9, 2019), www.jstor.org/stable/44141659 (To motivate *Ooraalars* in tax collection, the rulers started sharing a portion of the tax collected with *Ooraalars*. This helped them to be rich landlords in their region. Their ability to provide warriors to the rulers during emergencies also increased their influence. During the 18th century AD, the present region of Kerala comprised of three kingdoms,viz., Venad or Travancore in the South, Cochin at the centre and Kozhikode also known as Malabar in the North. They were ruled by three different princely families).

Cochin took over the temple and assumed full control of this temple besides taking over other important temples in the Cochin State. For the first time in Kerala, temples were brought under the control of the State and a new era of temple administration through direct State control thus began.[67]

Temples were taken over on the ground of mismanagement of properties and funds attached to temples. But historians point out a different reason that the main objective of such taking over was to curtail the powers and threats from the Ooralars. Further, taking over of many other minor temples by the Cochin Government was on the ground of apprehension of future threats and as a precaution to avoid such treats from *Ooralars*.[68] The researcher finds that both mismanagement of properties and funds attached to temples and to curtail the powers and threats from the *Ooralars* were reasons for taking over of temples in that period. Both reasons are complementary and correlating.

The Ruler of Cochin created a separate division in the State administration for the management of the temples known as Devaswom.[69] This laid the foundation stone for the modern State Devaswom Boards in Kerala.

---

[67] S. JAYASANKAR, TEMPLES OF KERALA 15 (Census of India Special Studies, Government of India Press 2000) (The Zamorins were the rulers of the Kingdom of Calicut, a tiny principality on the West coast in modern Kerala. The Zamorin Raja, the ruler of Kozhikode defeated the ruler of Cochin in the early part of the 18th century AD with the help of the *Ooraalaars* of Cochin. The Zamorin's political sovereignty over Cochin continued till 1762 AD when Cochin entered into a treaty with Travancore for protection against the invasions from Kozhikode. The Yogaathiri of Sree Vatakkunaathhan temple, Thrissur was in conflicts with Zamoothiri (Zamorin) and Raja of Kochi (Cochin). This resulted in the discontinuance of administration of Vatakkunaathha Temple in 1755 AD. The ruler of Cochin, immediately after signing the treaty with Travancore, confiscated the properties of those *Ooraalaars* loyal to the Zamorin Raja. The temples owned by them were brought under the (Government) *Sarkar* of Cochin).

[68] *Id*. at 15-17.

[69] *Id*. at 15.

A special system of administration for the famous Sri Padmanabha Swamy Temple is noteworthy here. A group called *Ettarayogakkar* (*Ettarayogam*) consisting of seven Brahmins and one Nair chief were the administrators of the great temple.[70] History says that there were frequent conflicts between the managers of Sri Padmanabha Swamy Temple and the Travancore rulers. When Marthanda Varma came to the throne, he did put an end to the authority of *Ettarayogam* and took the control of the temple.[71] Even after, Marthanda Varma's reign, the temple continued under the direct management and control of the subsequent Rulers of Travancore.[72]

Col. Munroe, the British Resident was the chief catalyst behind the historical move of State control over Hindu religious institutions in both

[70] Uthradam Thirunal Marthanda Varma and Sree Padmanabhaswamy Temple v. Union of India, MANU/KE/0087/2011. ('*Ettarayogam*' (group of eight and a half) consisting of seven Brahmins (*Pottis*), one Nair chieftain had one vote each. But, the King had only half a vote. While the committee of Potties controlled the Temple, the properties of the Temple were managed by Ettuveettil Pillamars, the 8 Nair chieftains belonging to eight big families spread over in different villages of the State. The King had no control over the management of the temple. The lands and properties of the temple were divided into eight parts and each was placed by the *Yogam* under one of the Pillai, as governor. The powers enjoyed by the *Yogam* and the Pillamar were unfettered. Soon, they started opposing the King openly and bringing more and more *Madampis* or *nobles* under their influence).

[71] Rajan Gurukkal, *Political Economy of the Temple Treasure Trove*, 46 ECONOMIC AND POLITICAL WEEKLY 27-28 (No. 47, November 19, 2011); K.G. Kumar, *Temple Treasures, Claimant Pressures: Heritage and the Commons*, 46 ECONOMIC AND POLITICAL WEEKLY 10-11 (No. 29, 2011) (Marthanda Varma ruled Travancore from 1729 to 1758 AD).

[72] GOURI LAKSHMI BAYI, SREE PADMANABHA SWAMY TEMPLE (Bharatiya Vidya Bhavan 2013). *See also*, Uthradam Thirunal Marthanda Varma and Sree Padmanabhaswamy Temple v. Union of India, MANU/KE/0087/2011. (After taking over the full control of the temple, Marthanda Varma reconstructed the temple which was in bad shape after a major fire that took place years back and installed a new idol. After this, the King surrendered his Kingdom to the presiding Deity namely, *Padmanabha Swamy* and declared himself the *Dasa* or servant of the Lord and assumed the name '*Padmanabhadasa*'. While the great Sree Padmanabhaswamy Temple was directly under the control of the Travancore King, all the major temples in Travancore were under private ownerships. It is under the advice of Col. Munroe, that the then Ruler of Travancore Gouri Lakshmi Bayi issued the Proclamation on 17.9.1811 whereby all the major Hindu temples in Travancore were brought under the King. Thereafter, the temple properties were also restored to the State and the temples and the lands were brought under the Land Revenue Department.)

Cochin and Travancore. Col. Munroe, as the Diwan of Cochin in 1812, recommended that all Devaswom properties might be taken over as Government properties and the revenue from Devaswom might be merged with State revenues. Moreover, the Government might provide fund for meeting the various expenses related to the temples.[73] The then rulers of Cochin and Travancore had accepted the recommendations. Thus, a large number of temples were brought under the control of the Government (*Sarkkar)*. A committee was also constituted to study its implications in Cochin State in 1815 AD.[74]

After Munroe's period, the temples were separated from the State Revenue Departments. Thereafter, the temples were brought under separate Devaswom Departments. The chief of Devaswom Department was appointed from among the royal family members and trusted lieutenants of the Rulers.[75]

Due to the invasion of Tippu Sultan, many ancient temples in the Malabar region and the northern part of Kochi were plundered, demolished or desecrated while only few of them escaped from plunder. As the Travancore Kingdom was successful in preventing Tippu Sultan from entering into South of Kerala, the temples in Travancore were free from this onslaught.[76]

---

[73] V.P. MENON, THE STORY OF THE INTEGRATION OF THE INDIAN STATES 283 (Macmillan, 1956).

[74] S. JAYASANKAR, TEMPLES OF KERALA 17 (Census of India Special Studies, Government of India Press 2000) (Munroe recommended that the expenses for daily *pooja* and rituals called *Pathiv*, the expenditure on *Uthsavams*, remuneration to temple staff, maintenance charges, etc., would be paid by the Government).

[75] *Id*. (Devaswom Department enjoyed great importance during the period of Princely State under the British rule. Historians assert that, the Rulers managed temples with great care both to prevent challenge to the authority of the Rulers and for the control over temple revenue).

[76] A. SREEDHARA MENON, A SURVEY OF KERALA HISTORY 301 (DC Books 2007) (The Malabar region was invaded by the Rulers of Mysore, Hyder Ali and his son Tippu Sultan, in

After Tippu Sultan, Malabar came under the British rule by 1792. The British administrators continued the administrative and political system in Malabar introduced by Tippu Sultan. Hence, the British never attempted to make a direct interference in the administration of temples, till the beginning of the 19th century. They respected the native laws and customs. When it was found that incomes from many endowments were mismanaged and the revenue were misutilised by persons vested with the responsibility of administering them, the British started interfering in the administration of temples.[77]

As a result of repeated demands from the parties who are interested in the affairs of native religious endowments, a concrete legislation in this regard was enacted in the Madras Residency in the year 1817.[78] It is to be noted here that, by virtue of this regulation, the temple servants and trustees or managers were treated as public servants as they were attached to the Revenue Department. There was a clear provision for punishing those temple servants who commit fraud or embezzlement of money.[79] Madras Regulation of 1817, was applicable to all religious endowments especially temples. According to

---

1773 and in 1788. Many administrative changes were introduced during this period. *Ooraalaars* as collectors of land tax was replaced by a centralized revenue department. By losing the authority to collect tax, the *Ooraalaars* were confined to administering the temples alone. They became ordinary persons with religious duties and could never grow into militant chieftains like their counterparts in the Travancore and the Cochin States. Hence, the *Ooraalaars* in Malabar could never grow into local chieftains posing threats to the Rulers). *See also* SITA RAM GOEL, TIPU SULTAN: VILLAIN OR HERO? : AN ANTHOLOGY 13 (Voice of India 1993); SANDEEP BALAKRISHNA, TIPUSULTAN - THE TYRANT OF MYSORE (Rare Publications 2015).

[77] S. JAYASANKAR, TEMPLES OF KERALA 17 (Census of India Special Studies, Government of India Press 2000).

[78] NANCY GARDNER CASSELS, SOCIAL LEGISLATION OF THE EAST INDIA COMPANY: PUBLIC JUSTICE VERSUS PUBLIC INSTRUCTION 252 (Sage Publications 2010); Madras Regulation VII, 1817.

[79] Madras Regulation VII, 1817, § XVI. (It is noted here that Bengal Regulation XIX of 1810 had not contained a similar provision that treats temple servants as public servants and punishment for their frauds). *See also* NANCY GARDNER CASSELS, *supra* note 78.

this regulation, there will be a body for supervising religious endowments of temples. This body consisted of (i) the Board of Revenue, (2) Local agents, i.e., District Collectors and (3) Trustees, Managers, Superintendent, etc.

The history of legislations related to administration of temples in Kerala starts from here. This is the first enactment to supervise endowments and prevent abuse of power which had hitherto been enjoyed by local rulers in the Malabar region which was a part of the Madras State.[80] The policy of the Madras State under the British was different from that of Travancore and Cochin. Policy of the Malabar province allowed private temples. At the same time, by virtue of the Madras Regulation, 1817, they started to exercise some control over the management of private temples and their affairs.[81]

Due to vehement opposition from the Christian zealots and religious propagandists in England, the British withdrew from administering the Hindu temples and Muslim mosques in 1839, since their administration would not fall under the function of the Government.[82]

Though many regulations on the management of temples had been introduced from 1792, the autonomy of religious institutions in the Madras State continued throughout the British period. Moreover, the rights of *Ooralars* were protected as the administrators of temples.[83] The researcher notes here

[80] R.P. REMESAN, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS ACT, 1951 & RULES ALONG WITH GURUVAYOOR DEVASWOM ACT, 1978 AND RULES, 30 (Kannur Law House 2004).
[81] *Id*. at 31.
[82] J.D.M. Derrett, *The Administration of Hindu Law by the British*, 4 COMPARATIVE STUDIES IN SOCIETY AND HISTORY 10–52 (No. 1, 1961), JSTOR, (Nov. 20, 2019), www.jstor.org/stable/177940.
[83] C.J. FULLER, THE RENEWAL OF THE PRIESTHOOD 35-37 (Princeton University Press, 2003).

that this historical situation still continues without much modification. The temples in the Malabar region were owned by individuals, caste organizations, and charitable trusts. The Hindu Religious and Charitable Endowment Department did not own and manage any temple. But the Department simply controls and regulates temples under the Madras Hindu Religious and Charitable Endowment Act, 1951.

In 1863, the Religious Endowment Act was passed. It enabled the Government to divest itself of the management of religious endowments. But this Statute was not applied to the Malabar region.[84] Subsequently, many attempts were made to bring out legislations in the Madras Legislative Council.[85] But none of these Bills became a law, though they could bring out some concrete and useful ideas on the designability for a comprehensive legislation.

In this context, it is noteworthy that the Hindu Religious Endowment Regulation of 1904 was passed in Travancore State. It empowered the Government to interfere in the affairs of private institutions and to assume their management as well, whenever it was deemed necessary. By virtue of this Regulation of 1904, many private temples (Devaswoms) in Travancore were taken over by the Government (*Sarkkar).*[86] A land mark in the history of

[84] The Religious Endowment Act, 1863 (This statute applied to all Hindu and Muslim public religious endowment in the Presidencies of Bengal and Madras, excluding Malabar).
[85] *See generally*, CHANDRA Y. MUDALIAR, STATE AND RELIGIOUS ENDOWMENTS IN MADRAS 141 & 160-161 (University of Madras 1976) (Mr. Rama lyengar's Bill of 1886, Mr. Muthuswami Aiyar's Bill of 1894 are examples. At the same time, two Bills were introduced in the Imperial Legislature also viz., Mr. Anantacharalu's Bill and Rash Bihari Ghosh's Bill).
[86] V. NAGAM AIYA, 1 THE TRAVANCORE STATE MANUAL 641 (Travancore Government Press 1906); T.K. VELU PILLAI, TRAVANCORE STATE MANUAL 245 (Chapter XXXVI) (Kerala

Devaswoms in Travancore was the Devaswom proclamation of 1922 that provided the creation of a separate Devaswom fund and a separate Department for the efficient management and control of the Devaswom falling within its purview.[87]

During this time, in the Madras Presidency, the Act of 1863 was repealed in 1925.[88] The validity of the new Act was questioned in the Madras High Court. As a result, the Madras Government passed Madras Hindu Religious and Endowments Act of 1927.[89] The notable feature of this legislation was that it gave the government only supervisory power over the temples in the region and the government had no powers over matters of faith, which was considered as sacred. The machinery of supervision of temples consisted of the Board of commissioners, temple committees, trustees of the temples and servants of institutions. This statute has gone through several amendments.[90]

The religious matters of the temples were also regulated by the Rulers of the times. For example, the Devadasi system and animal sacrifices were abolished in the temples under the Travancore Devaswom in 1925 AD. Temple Entry Proclamation of 1936 in Travancore is also noteworthy in this regard.[91]

Gazetteers Department, Government of Kerala 1996); M.K.K. NAYAR, STORY OF AN ERA TOLD WITHOUT ILL-WILL 179 (DC Books 2014).

[87] M.K.K. NAYAR, STORY OF AN ERA TOLD WITHOUT ILL-WILL 183 (DC Books 2014).

[88] Act I of 1925.

[89] Madras Act II, 1927 (This statute applied to the whole Presidency with certain limitations. Public Endowments alone came within the ambit of this Act).

[90] CHANDRA Y. MUDALIAR, STATE AND RELIGIOUS ENDOWMENTS IN MADRAS 141 & 160-161 (University of Madras 1976).

[91] T.K. VELU PILLAI, TRAVANCORE STATE MANUAL 249-251 (Chapter XXXVI) (Kerala Gazetteers Department, Government of Kerala 1996).

6.3.4 After Independence and State Reorganisation

After Independence, Travancore and Cochin States were integrated, and the new State was known as Thiru-Kochi State (Travancore-Cochin State).[92] The then *Rajapramukh* of Thiru-Kochi took all private temples outside the ambit of the State.[93] This may be considered as decontrol over private temples. Many views are prevalent with regard to the State's intention to abandon the temple administration. Historians find that the main reason for such a move was that subsequent governments would also keep the private temples outside the control of the State.[94]

In pursuance of the Articles of the Covenant made as part of the formation of Thiru-Kochi State, two separate Devaswom Boards viz., Travancore Devaswom Board and Cochin Devaswom Board were established under the Travancore-Cochin Hindu Religious Institutions Act, 1950.[95] As per this legislation, Travancore Devaswom Board will administer the Devaswoms under old Travancore State and Cochin Devaswom Board will administer the Devaswoms in the old Cochin State. Rulers of Travancore and Cochin were

---

[92] S.N. SADASIVAN, POLITICAL AND ADMINISTRATIVE INTEGRATION OF PRINCELY STATES 78-81 (Mittal Publications 2005) (After independence, Travancore and Cochin States were integrated on 1st July 1949. From 1949 to 1956, the State was known as Thiru-Kochi State (Travancore-Cochin State). The ruler of the Trirukochi was known as *Rajapramukh*. He was the formal head of Thiru-Kochi State and was a part of the law making body at that time. After the States reorganization this post was replaced with that of Governor in 1956).

[93] M.R. BARNETT, THE POLITICS OF CULTURAL NATIONALISM IN SOUTH INDIA 94 (Princeton University Press 1976).

[94] *Id*. *But see* P. PARAMESWARAN, SREE NARAYANA GURU: THE PROPHET OF REFORMATION 40 (Kurukshethra Publications 1980) (Parameshwaran shared a different view that the growth of the social movement and private temples under Sree Narayana Guru was also one of the reasons for keeping the private temples outside the ambit of State control).

[95] S. JAYASANKAR, TEMPLES OF KERALA 18 (Census of India Special Studies, Government of India Press 2000) (In pursuance of the Articles of the Covenant, Ordinances IV of 1949, IX of 1949 and I of 1950 were promulgated. Subsequently, the Hindu Religious Institutions Act XV of 1950 was passed. It replaced the Act of 1927).

allowed to retain their family temples under their ownership and management at the time of transferring private temples to the Devaswom Boards.[96]

After the State reorganisation, the statutes and regulations which were in force in the respective regions were decided to be continued in the newly constituted State of Kerala. The Travancore-Cochin Hindu Religious Institutions Act, 1950 was made applicable in the old Travancore and Cochin regions. The Hindu Religious and Charitable Endowment Act, 1951 as amended in 1954 was made applicable to the temples situated in the Malabar district.[97] This Act had been amended many times and was replaced by the Hindu Religious and Charitable Endowments Act, 1959.[98]

In addition, a separate enactment was made for the administration of the Guruvayur Sree Krishna Temple, in 1971.[99] This was amended and replaced by an amended Act in 1973.[100] In 1971, yet another special Devaswom called Koodalmanickyam Devaswom Board for the administration of Koodalmanickyam Temple was created under the Koodalmanickyam Devaswom Act, 1971.[101] By amending the Hindu Religious and Charitable Endowment Act, 1951, the Malabar Devaswom Board was constituted in 2008

[96] S.N. SADASIVAN, POLITICAL AND ADMINISTRATIVE INTEGRATION OF PRINCELY STATES 89 & 90 (Mittal Publications 2005) (The Ruler of Travancore retained Sri Padmanabha Swami Temple at Thiruvananthapuram. The Ruler of Cochin retained his family temple of Sree Poornathrayeesha at Tripunithura, Ernakulam).

[97] The Hindu Religious and Charitable Endowment Act 1951, was amended by Act XXI of 1954 that made it applicable to the temples situated in the Malabar district (including Kasaragod taluk).

[98] Act 23 of 1959 (Madras Act of XXI of 1954 and IX of 1956 are major amendments on the Hindu Religious and Charitable Endowments Act of 1951).

[99] Act 25 of 1971.

[100] This Act was modified by an order of the High Court of Kerala. Therefore, subsequently an ordinance was issued in 1977 (25 lot 1977), which was replaced by an amended Act in 1973.

[101] Act 7 of 1971 (In 1971, the Government of Kerala, through a special order, took over the administration of the temple. And subsequently the Act concerned was passed).

for the smooth administration of the temples situated in the old Malabar region.[102]

The old concepts of Travancore, Cochin and Malabar still persist in the concerned legislations. So far, no uniform law has been made though the demand has a long standing history. Many Commissions were also appointed to study various aspects of the Devaswom Boards in Kerala. Though all these reports have not been implemented in their true spirit, some have helped to bring a process of purification in the administration of Devaswom Boards.[103]

6.4 Origin and Development of the Concept of Devaswom

Devaswom means properties of God (*Deva* means God and *Swom* mean ownership in Sanskrit). The concept of Devaswoms represents a system, by which all properties of each temple are declared as personal property of presiding deity of each temple and managed through a body of trustees who

[102] The Malabar Devaswom Board was first constituted in 2008 through an ordinance the H.R. & C.E. (Amendment) Ordinance of 2008, (Ordinance No. 2 of 2008). The same was re-issued and further the legislation, Madras H.R. & C.E. (Amendment) Act, 2008 (Act No. 31 of 2008) was enacted.

[103] The first Commission was appointed in 1961 under the Chairmanship of K. Kuttikrishna Menon (former Advocate General, Madras). The Commission submitted its report in 1963. But no action was taken on it. The Government appointed K.P. Sankaran Nair as one-man Commission to look into the matters concerning non-politicizing of Devaswoms, enhancement of annuity, barring diversion of Devaswom funds for non-religious purposes; renovation of temples, banning of agitations by temple employees, exemption of temple properties, etc. He submitted his report in 1984. Even as this report was kept in cold storage, the Government appointed three other Commissions to look into various aspects including financial position and salary of employees of Travancore and Cochin Devaswom Boards and various reports were submitted. In 1990, a Division Bench of the Honourable High Court of Kerala (consisting of Hon. Mr. Justice K.S. Paripoornan and Hon. Mr. Justice D. J. Jagannadha Raju) appointed a three member High Power Commission headed by V. Ramachandran (former Chief Secretary to the Govt. of Kerala). The Commission made a study on the matters like administration in the two Devaswom Boards, financial discipline, and mismanagement of temples. The Commission submitted its report in the same year itself with 32 recommendations. Very few of the recommendations alone have been implemented so far).

bear allegiance to the presiding deity.[104] The present system of Devaswom Board is a socio-religious trust constituted to manage the property of God and comprises of Members nominated by the Government.[105]

The system of forming Devaswoms can be said to be a system which was started in the late 17th century. Before the establishment of such statutory Devaswoms, most temples were managed by either *Brahmaswoms* or *Rajaswoms*. In the *Brahmaswoms* system, each temple and all of its assets are considered to be the private property of its chief priest, normally from Brahmin Namboothiri families. Rajaswom is the system where the properties belong to King or ruling feudal lords or royal families, usually of the Kshathriya class.[106]

In this system of Devaswoms, there will be members entrusted as trustees to manage temples and its assets and ensure smooth functioning of temple as per traditional rituals and customs. Such members are usually nominated by the Government or any other body or society/community. By the introduction of statutory Devaswoms, a socio-religious trust was established for the administration of temples and their properties. Under statutory Devaswoms, temples are managed as a cluster of temples which falls under its direct administration.

---

[104] S. JAYASANKAR, TEMPLES OF KERALA 257 (Census of India Special Studies, Government of India Press 2000).
[105] Prayar Gopalakrishnan v. State of Kerala, 2018 (1) KLT 478.
[106] II THE TRAVANCORE DEVASWOM MANUAL, 581-586; KESAVAN VELUTHAT, BRAHMAN SETTLEMENTS IN KERALA: HISTORICAL STUDIES 72 & 91 (Sandhya Publications, Calicut University 1978); D.N. Krishnan Nair, HISTORY OF TEMPLE ADMINISTRATION IN TRAVANCORE WITH SPECIAL REFERENCE TO KANYAKUMARI DISTRICT 1922-1960 (Thesis) (Manonmaniam Sundaranar University, 1999), SHODHGANGA, (NOV. 25, 2019), http://shodhganga.inflibnet.ac.in//handle/10603/61441.

This system of Devaswom Board, where almost all temples are either managed by Government controlled Devaswoms or by private bodies / families is found in Kerala, than in other States.

The Hindu temples in early Kerala (comprising of old princely States of Travancore, Cochin and Malabar States) were mostly under the management of private peoples known as *Yogaathirikkar* or *Ooralars* or *Kariakkars*. We have already discussed that the year 1762 is very important in the evolution of the administration of temples in Kerala as it marked the beginning of direct State control over temples. The Ruler of Cochin is the one who laid the foundation stone for the modern State Devaswom Boards in Kerala. He created the first Devaswom Department as a separate division in the State administration for the management of the temples.[107]

[107] S. JAYASANKAR, TEMPLES OF KERALA 9 (Census of India Special Studies, Government of India Press 2000).

CHAPTER 7

STATE CONTROL OVER TEMPLE ADMINISTRATION IN KERALA: PART I - MALABAR DEVASWOM, GURUVAYUR DEVASWOM & KOODALMANICKAM DEVASWOM

7.1 Temple Administration in the Present Day

All the temples of Kerala are managed by either private or public Devaswoms. Devaswom laws intended to regulate public Devaswoms, continue in the same form as was prevalent at the time of the reorganization of the States. However, many changes were brought in Devaswom laws by the subsequent Governments.

The temples in Travancore Cochin areas can be classified into two categories namely, the temples owned and managed by the public bodies or statutory bodies like Devaswom Boards viz., Travancore Devaswom Board and Cochin Devaswom Boards respectively and the temples owned by private individuals or private Devaswoms of private trusts.

In the Malabar region, all the temples are owned by private individuals but are regulated by the State through statutory body of Malabar Devaswom Board. The State Hindu Religious and Charitable Endowment Department supervises and controls the temples and its endowments in the Malabar region of Kerala through Malabar Devaswom Board.

Apart from three regional Devaswom Boards in some temples like the Guruvayur and Koodalmanickyam, there are separate statutory bodies like the

Guruvayur Devaswom Board and Koodalmanikyam Devaswom Board respectively. These Devaswoms represents a system, by which all properties of each temple are declared as personal property of presiding deity of each temple and managed through a body of trustees who bear allegiance to the presiding deity. These Devaswom Boards or Managing Committees are the socio-religious trusts which are constituted to manage the property of God and comprises of Members nominated by the Government.[1]

Thus the present system of Temple administration in Kerala can be classified into:-

1. Private temples owned and managed by private individuals or families.
2. Private temples owned and managed by private trusts created under Trust Acts and or any other body corporate created under similar laws.
3. Temples owned and managed by private Devaswoms like *Ooranma* Devaswoms.
4. Public Temples owned and managed by statutory Devaswom Boards.
5. Temples owned by private individuals or trusts but supervised by statutory Devaswom Boards.

In the present study, the researcher studies about the administration of public temples through various Devaswom Boards in Kerala.

[1] Prayar Gopalakrishnan v. State of Kerala, 2018 (1) KLT 478 (A Devaswom Board will fall under the ambit of definition of 'other authorities' mentioned under Article 12 of the Indian Constitution).

7.2 Administrative Mechanism of Devaswom Boards in Kerala

The Travancore and Cochin Devaswom Boards are being regulated by the same Legislation, i.e., Travancore-Cochin Hindu Religious Institutions Act, 1950. The Malabar Devaswom Board is regulated by separate legislation, i.e., the Madras Hindu Religious and Charitable Endowments Act, 1951.[2] Guruvayur Devaswom Board is being regulated by the Guruvayur Devaswom Act, 1978.[3] Special Devaswom called Koodalmanickyam Devaswom Board is regulated by Koodalmanickyam Devaswom Act, 2005.[4]

After the reorganization of Southern States in 1956, each State legislature enacted their own legislation to control Hindu temples and their properties.[5] However, in Kerala, the old concepts of Travancore, Cochin and Malabar still persist in the concerned legislations.[6]

---

[2] After State Reorganization, the Hindu Religious and Charitable Endowment Act, 1951, was amended by Act XXI of 1954 that made it applicable to the temples situated in the Malabar district (including Kasaragod taluk). This Act had been amended many times and, the Hindu Religious and Charitable Endowments Act, 1959 (Act 23 of 1959) was passed finally. Madras Act of XXI of 1954 and IX of 1956 are major amendments on the Hindu Religious and Charitable Endowments Act of 1951. The Malabar Devaswom Board was first constituted in 2008 through H.R. & C.E. (Amendment) Ordinance, 2008 (Ordinance No. 2 of 2008). The same was re-issued and further the legislation, Madras H.R. & C.E. (Amendment) Act, 2008 (Act No. 31 of 2008) was enacted.

[3] Act 14 of 1978 (The first legislation to regulate Guruvayur Temple was enacted in 1971, i.e., Act 25 of 1971. This Act was modified by an order of the High Court of Kerala. Thereafter an ordinance was issued in 1977 (25 of 1977), which was replaced by an amended Act in 1973. In 1978, the present legislation Guruvayur Devaswom Act, 1978 was enacted).

[4] In 1971, the Government of Kerala, through a special order, took over the administration of the temple, even before the Koodalmanickyam Devaswom Act, 1971 (Act 7 of 1971) was passed. In 2005, Koodalmanickyam Devaswom Act 2005 was enacted and this legislation is in force now.)

[5] The State of Tamil Nadu enacted the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, and the State of Karnataka enacted the Karnataka Religious Institutions and Charitable Institutions Act, 1997. Later, the Act of 1997 was amended in 2011 and the Karnataka Hindu Religious Institutions and Charitable Endowments (Amendment) Act, 2011 (Karnataka Act No. 27 of 2011) was passed.

[6] *See* REPORT OF THE HIGH LEVEL COMMITTEE TO HINDU RELIGIOUS INSTITUTIONS AND ENDOWMENTS (Government of Kerala, 1964) (The commission was appointed in 1961 under the Chairmanship of K. Kuttikrishna Menon, (former Advocate General, Madras);

Majority of important temples in the State are governed by statutory Devaswom Boards.

1. Travancore Devaswom Board
2. The Cochin Devaswom Board
3. Malabar Devaswom Board
4. Guruvayur Devaswom Board
5. Koodalmanickyam Devaswom Board

7.3 The Malabar Devaswom Board: The Madras Hindu Religious and Charitable Endowments Act, 1951

7.3.1 The Malabar Devaswom Board: Administrative Mechanism

Malabar Devaswom Board was first constituted by amending the Madras H.R. & C.E. in 2008.[7] The Board is exercising only supervisory control over the temples under the Board. The main function of the Board is to ensure that the funds are utilized for the beneficial interest of each institution, in a proper, transparent and lawful manner in the same manner as it was done by the H.R. & C.E. (Admn.) Department. It is also entrusted with the duty to ensure that the temple funds are not utilized for any other purpose, alien to each temple.

DEVASWOM ADMINISTRATIVE REFORM COMMISSION REPORT (Government of Kerala, 1984) (K.P. Sankaran Nair was the chairman of the Commission).

[7] MALABAR DEVASWOM BOARD, (Jan.15, 2020), http://www.malabardevaswom. kerala. gov. in., (Malabar Devaswom Board was first constituted by bringing an amendment in Madras H.R. & C.E. by an ordinance viz., H.R. & C.E. (Amendment) Ordinance of 2008 (Ordinance No. 2 of 2008). The same ordinance was re-issued and further the Madras H.R & C.E (Amendment) Act, 2008 (Act No. 31 of 2008) was enacted. The first Malabar Devaswom Board consisted of 9 members).

The 1317 temples under Malabar Devaswom Board are classified according to annual earnings of each temple.[8] For the smooth administration of temples, they are classified under five geographical divisions scattered among 7 districts in Kerala.[9]

7.3.2 Objective of the Act

The main objective of the Madras Hindu Religious and Charitable Endowments Act, 1951, was to amend and consolidate the law relating to the administration and governance of Hindu religious and charitable endowments. The Act intends to provide for better administration, protection, preservation and development of the temples within the supervision and control of the Act.[10]

It extends to the whole of the old State of Madras and applies to all Hindu public religious institutions and endowments there in. All other legislations with regard to the administration of Hindu Religious and Charitable Institutions are not applicable where this Act (hereinafter referred to as the Principal Act) is applied.[11]

---

[8] 'Special Grade' temples are those whose annual earnings are 75 lakhs or more. 'Grade A' temples, are having an earnings range between 25 lakhs to 75 lakhs, 'Grade B' temples include those with Rs. 10 lakhs to 25 lakhs earning under, 'Grade C' temples are those have earnings between Rs. 3 lakhs and 10 lakhs and 'Grade D' consists of those temples having an earning only up to Rs. 3 lakhs. Majority of the temples under Malabar Devaswom Board are 'Grade D' temple (77.22%) whose annual income is only up to Rs. 3 lakhs.

[9] The five divisions are namely Kasaragod, Thalassery, Kozhikode, Malappuram and Palaghatu. The five divisisons are scattered into the seven districts of Kasargod, Kannur, Wayanad, Kozhikode, Malappuram, Palakkad (Excluding portion of Chittur taluk), and Chavakkad taluk of Thrissur district and portion of Cochin taluk of Ernakulam Dist.

[10] The Madras Hindu Religious and Charitable Endowments Act, 1951 § Preamble.

[11] The following enactments ceased to apply to Hindu religious institutions and endowments, namely:-
(a) the Madras Endowments and Escheats Regulation, 1817;
(b) the Religious Endowments Act, 1863;
(c) the Charitable Endowments Act, 1890;
(d) the Charitable and Religious Trusts Act, 1920; and
(e) sections 92 and 93 and Code of Civil Procedure, 1908

In 2008, the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 2008 (hereinafter referred to as the Amendment Act), was enacted.[12]

In its' definition clause the Principal Act attempted to define all most all terms related to the Act, some of them have been substituted by the Amendment Act. The Malabar Devaswom Board is referred as MDB herein after in this thesis.

7.3.3 Constitution and Composition of the Board

By bringing amendment to section 7 of the principal Act, the Malabar Devaswom Board was constituted in the year 2008.[13] The Board is regarded as a body corporate having perpetual succession and a common seal. It has the power to acquire, hold and dispose of both movable and immovable properties. It is empowered to enter into contracts. It may sue and be sued in its own name.[14]

According to clause 3 of section 7 of the Principal Act, the Board shall consist of 9 members. Such members must belong to Hindu religion. Such members include namely:-

(a) One philosopher of Hindu religion;

---

[12] The purpose of the amendment Act was to amend the Madras Hindu Religious and Charitable Endowments Act, 1951 and for certain matters connected therewith. It brought amendments with regard to the many sections in the Principal Act. By virtue of section 5 of the Amendment Act of 2008, after section 7 of the Principal Act, new sections namely, 7A to 7L were inserted).

[13] The amended Section 7(1) of the Principal Act reads as follows:
"*As soon as after the commencement of the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 2008, the Government shall, by notification in the Gazette, constitute a Board by name the Malabar Devaswom Board*."

[14] The Madras Hindu Religious and Charitable Endowments Act, 1951 § 7(2); The Madras Hindu Religious and Charitable Endowments (Amendment) Act, 2008 § 4.

(b) One social reformer of Hindu religion;

(c) One member from any of the Temple Advisory Committees constituted under section 14;

(d) One woman well versed in Hindu devotional songs;

(e) One member from Scheduled Caste Communities;

(f) One member from Scheduled Tribe Communities;[15]

(g) One woman member;

(h) Two other members.

The members mentioned in clauses (a) to (f) are nominated by the electoral body of Hindus among the Council of Ministers of the State. The members mentioned in clauses (g) and (h) are elected by the electoral body of Hindus among the Members of the Legislative Assembly of Kerala.[16]

By virtue of the new amended section 8 of the Principal Act, all powers and duties that have been exercised or performed by H.R. & C.E. Department and their officials in respect of the various religious institutions of the Malabar area shall be vested in the Board, after its constitution.[17]

Section 5 of the Principal Act unequivocally establishes the power of State Government to appoint the President of the Board which is regarded as a

[15] Explanation to section 7 (3) says thus; "*for the purpose of this section, 'Scheduled Castes' and 'Scheduled Tribes' shall have the same meaning as is assigned to them in clauses (24) and (25) respectively, of Article 366 of the Constitution of India*."

[16] The Madras Hindu Religious and Charitable Endowments Act, 1951, § 7(4).

[17] *Id*. § 8 (According to section 6 of the Amendment Act of 2008, the old section 8 of the Principal Act was substituted by new one. The newly inserted section of 8 reads thus:
"*All powers and duties under this Act, in respect of the various religious institutions of the Malabar area, that have been exercised or performed by the Commissioner, Deputy Commissioners, Assistant Commissioners and Area Committees before the commencement of the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 2008, shall vest in the Board, on its constitution.*") (After section 8 of the Principal Act, the new sections 8A to 8D were inserted).

key position in the Board. The concerned section clearly States the President will be nominated by the Hindus among the Council of Ministers of the State. It also clarifies that the President might be a member of the Board or a member of the Board alone can be nominated as the President of the Board.[18]

Section 7B of the Principal Act enumerates the qualification for being elected or nominated as a member.[19] Section 7D of the Act States the disqualification for membership.[20] Section 7I of the Principal Act establishes the procedure for election of the members of the Board. It must be in accordance with the rules and procedures established under the Act.[21]

Section 7E of the Act gives wide powers to the Government even to remove any member who was elected or nominated to the Board. Any member may be removed, on the grounds of disqualifications specified in clause (i) to (viii) of section 7D. A member may be removed from the office if the

[18] The Madras Hindu Religious and Charitable Endowments Act, 1951, § 7(5).
[19] *Id*. § 7 B (Section 7 B reads thus: *A person shall be qualified for nomination or election as a member of the Board only if he, - (i) is a permanent resident of the Malabar area; (ii) professes the Hindu religion; (iii) is a believer of temple worship; and (iv) has completed the age of fifty years in the case of male members and sixty years in the case of female members*).
[20] *Id*. § 7 D (According to the provisions of the Act, unsound mind, insolvency, holding office of profit in the Government or Devaswom Board etc. are disqualifications. Member of the Parliament or of the Legislature of any State or of a Local Self Government Institution is disqualified from being a member in Devaswom Board. A person who is interested in an existing contract for the supply of any material to the Board or for executing any work on behalf of the Board; or one who has been convicted by a criminal court for any offence involving moral turpitude; or one who has been removed from holding any office in pursuance of a court order; or one who involves in the business of production or sale of liquor are also disqualified).
[21] *Id*. § 7 I (According to section 7I, for the purpose of election, a meeting of the Hindus among the Members of the Legislative Assembly of the State shall be summoned under the authority of the Governor of Kerala to meet at such time and place and on such date as may be fixed by him in this behalf. The election shall be held in accordance with the rules specified in the Schedule II, by the person commissioned by the Governor to preside over the meeting).

Government is satisfied that he or she did any act prejudicial to the interest of the Board.[22]

One may be removed on the ground of proved misbehaviour or incapacity.[23] It is also noted that any member of the Board can resign his membership, provided, it must be in writing under his hand, addressed to the Government Secretary in charge of Devaswom Department. The resignation shall take effect only when it is accepted by the Government.[24] The Government is empowered to fill up any vacancy occurred due to death, resignation and removal or otherwise of any member.[25]

Every member of the Board shall be entitled to hold office for a period of two years from the date of his nomination or election, as the case may be.[26] The meeting of the Board is convened by the Secretary of the Board on the direction of the President.[27] The Act also prescribes the honorarium and travelling allowances of President and members of the Board.[28].

[22] The Madras Hindu Religious and Charitable Endowments Act, 1951, § 7 E (1) (The Government is also empowered to remove a member if one has been absent for three consecutive meetings without any sufficient reason. A member who ceases to profess the Hindu religion would also be removed from the office. In all circumstances, one who is removed might be given reasonable opportunity of hearing).
[23] *Id*. § 7 E (2) (If a member does any act, which is intended or is likely to endanger communal harmony or which tends to promote feelings of enmity or hatred among different classes of citizens, he shall, for the purpose of this sub-section, be deemed to be guilty of misbehaviour).
[24] *Id*. § 7 F.
[25] *Id*. § 7 G.
[26] The Madras Hindu Religious and Charitable Endowments Act, 1951, § 7 A (A person who ceases to be a member of the Board by reason of expiration of his term of office, is eligible for re-nomination or re-election).
[27] *Id*. § 7 J.
[28] *Id*. § 7 H.

7.3.4 Powers and Functions of the Board

As we said earlier, all powers and duties that have been exercised or performed by old H.R. & C.E. Department and their officials in respect of the various religious institutions of the Malabar area shall be vested in the Board.[29] The Board shall have the power to assume the direct management of any religious institution only on the request of the trusties to the Board to take over its management unconditionally.[30] A very important thing we have to notice here is that, unlike the other two regional Devaswom Boards viz., Travancore Devaswom and Cochin Devaswom Boards, the Malabar Devaswom Board has only supervisory control over the religious institutions under the Act.

According to the newly inserted Chapter, 'Chapter II A' of the Principal Act, the Hindu Religious and Charitable Endowments (Administration) Department will be abolished. The assets, liabilities and staff of the Department will be transferred to the Board.[31]

The Board has the power to fix, regulate and implement the service conditions and pay structure of the officers and employees of the temples from time to time.[32] For its proper functioning, the Board can constitute, standing committees with 3 members each.[33]

---

[29] The Madras Hindu Religious and Charitable Endowments (Amendment) Act, 2008, § 8.
[30] *Id*. § 8 A(1).
[31] *Id*. § 13.
[32] *Id*. § 8 A(2) (The Board is also empowered to maintain Welfare Fund Scheme for the benefit of the officers and employees of the temples in the manner as may be prescribed).
[33] The Madras Hindu Religious and Charitable Endowments (Amendment) Act, 2008, § 7 L (According to section 7L the Board can constitute the following Standing Committees with 3 members each, namely:- (i) Standing Committee on Finance and Resource Mobilization; (ii) Standing Committee on Works, Development and Environment; (iii) Standing Committee on Establishment, Temple Arts and Devotional service).

7.3.5 Appointment of Commissioners

According to section 8A of the Act, the Commissioner, Deputy Commissioners, Assistant Commissioners and Area Committees appointed or constituted before the commencement of the Amendment Act, shall continue to exercise such powers and perform such duties, as officers of the Board, as if those powers are delegated to them by the Board.[34]

The Government may appoint an officer not below the rank of a Joint Secretary to Government, as the Commissioner of the Board. He will also function as the Secretary of the Board. He must be one who is professing Hindu religion and is a believer of God and temple worship. His appointment will be subject to such terms and conditions fixed by the Government.[35] He will act as the Chief Executive Officer of the Board who is responsible to implement all decisions of the Board.[36] He shall submit reports to the Government, once in three months, with respect to the working of the Board.[37]

The Board is free to appoint any such number of Deputy Commissioners, Assistant Commissioners, and such other officers and staff as are necessary for discharging its functions under this Act.[38]

Section 8A provides for the supervision and control by the Board. There will be a Secretary to the Board who shall keep the minutes of the proceedings of each meeting in a book to be kept for the purpose which shall be signed by

[34] The Madras Hindu Religious and Charitable Endowments Act, 1951, § 8 A.
[35] *Id*. § 8 C (1).
[36] *Id*. § 8 C (2).
[37] *Id*. § 8 C (3).
[38] The Madras Hindu Religious and Charitable Endowments Act, 1951, § 8 C (4).

the President or the person presiding and the members present at such meeting.[39]

7.3.6 Area Committees Appointed by the Government

According to the amended section 13(1), there will be Area Committees at the regional level that are appointed by the Government.[40]

Such Area Committees shall include

(a) One philosopher of Hindu religion;

(b) One social reformer of Hindu religion;

(c) One member from any of the Temple Advisory Committees constituted under section 14;

(d) One member from Scheduled Caste or Scheduled Tribe Communities;

(e) One woman member;

(f) Two other members.

The Government is also empowered to nominate one of the members as its Chairperson.[41]

7.3.7 Temple Advisory Committees

It is very important to note that the Act is very keen to ensure the adequate participation of Hindu devotees in the administration of every temple. For accomplishing this purpose, the amended section 14 of the Act declares that there will be a separate committee called the Temple Advisory Committee for each temple in the name of every particular Temple. Such Temple Advisory

[39] The Madras Hindu Religious and Charitable Endowments Act, 1951, § 7 J (5).
[40] *Id*. § 13 (1).
[41] *Id*. § 13 (1A).

Committee must not be inconsistent with the existing custom and practices of that temple.[42]

Such Temple Advisory Committees shall be approved by the Board. The Board has the power to decide the composition of a Temple Advisory Committee.[43] Sections 15 and 16 of the Act prescribe the functions and working of such Area Committees and Temple Advisory Committees.[44]

7.3.8 Power to Enter Religious Institutions

As part of exercising any power conferred, or discharging any duty imposed by or under this Act, any member of the Board or Area Committee or Temple Advisory Committee or the Commissioner, Deputy Commissioner or Assistant Commissioner or such officers or employees of the Board or of a religious institution has the power to enter the premises of any religious institution or any place of worship. Such entry shall be authorized by the Board.[45]

7.3.9 Government's Control to appoint an Enquiry Commission

According to section 19B of the Act, the Government can appoint a Commission to enquire into the allegations regarding any misappropriation, irregularities, maladministration and corruption of funds by the Board. A sitting

[42] The Madras Hindu Religious and Charitable Endowments Act, 1951, § 14 (1).
[43] *Id*. § 14 (2) & (3).
[44] *Id*. §§ 15 & 16 (Section 10 of the Amendment Act says: "*in section 15 of the Principal Act, after the words 'Area Committees' the words 'and Temple Advisory Committees' shall be inserted"*. Section 11 of the Amendment Act says*: "in section 16 of the Principal Act, for the words 'Area Committee' wherever they occur; the words 'Area Committee or Temple Advisory Committee' shall be substituted"*).
[45] *Id*. § 21 (The persons so enters such religious institution has to observe forms and ceremonies appropriate to that religious institution).

Hindu Judge of the High Court of Kerala shall be appointed as the Commission.[46]

7.3.10 Power of the Government to Dissolve or Supersede the Board

According to section 19 C of the Act, if the Board persistently makes default in the performance of its duties imposed by or under the Act or exceeds or abuses its powers, the Government can dissolve or supersede the functions or powers of the Board, as the case may be.[47] Section 19D of the Act explains about the consequences of such supersession.[48]

7.3.11 Malabar Devaswom Fund

The Board shall constitute a fund called the 'Malabar Devaswom Fund' and the old fund called the Hindu Religious and Charitable Endowments Administration Fund shall be credited in the Fund so constituted by the Board.[49] The Board shall keep regular accounts of all receipts in and disbursements from the Fund. The accounts of the Board must be audited annually.[50]

---

[46] The Madras Hindu Religious and Charitable Endowments Act, 1951, § 19 B(1) & (2).
[47] *Id*. § 19 C.
[48] *Id*. § 19 D (Section 19D of the Act reads thus:
"*Where an order of the supersession has been passed under section (1) of 19C the following consequences shall ensue, namely:-*
(a) all the members of the Board shall from a date to be specified in the order, vacate their offices as such members;
(b) all the powers and duties which under the provisions of this Act are to be exercised and performed by the Board or the President shall, during the period of supersession, be exercised and performed by such person or persons as the Government may direct; and
(c) before the expiration of the period of supersession, election shall be held and appointment made for the purpose of reconstituting the Board."
[49] *Id*. § 81.
[50] The Madras Hindu Religious and Charitable Endowments Act, 1951, § 81 A (Such audit shall be conducted by the Director of Local Fund Audit in accordance with the provisions contained in contained in the Kerala Local Fund Audit Act, 1994 (14 of 1994)).

The Board shall prepare a Budget in each year for the next financial year. It may contain the probable receipts and disbursements of the temples, institutions and endowments under the management of the Board during the financial year. The Board is entrusted with the duty to prepare an annual administration report and thereafter submit to the Government. The Government has to place the Administration Report before the Legislative Assembly within the time prescribed.[51]

7.3.12 Grants by the Government

According to section 80 of the Act, the State Government shall, after due appropriation made by the State Legislative Assembly by law in this behalf, pay to the Board by way of grants, such sums of money as the State Government may think fit, for being utilized for the purposes of this Act.[52]

7.3.13 Control over Trustees of other Temples

According to section 23 of the Act, the Trustee of a religious institution is bound to obey all lawful orders issued, by the Government, the Commissioner, the Deputy Commissioner, the Area Committee or the Assistant Commissioner. Such orders must be in accordance with the provisions of this Act. The law also impose a duty upon the Trustee of every religious institution to administer its affairs and to apply its funds and properties in accordance with the terms of the trust.[53]

[51] The Madras Hindu Religious and Charitable Endowments Act, 1951, § 81 C.
[52] *Id*. § 80.
[53] *Id*. § 24.

7.3.14 Control over other Temples other than under the Board

Section 25 the Act provides for the preparation of a Register for every institution as a record for each and every matter regarding that particular temple.[54] Such register shall be prepared, signed and verified by the trustee of the institution concerned or by his authorized agent and submitted by him to the Board.

According to section 28 of the Act, the all the movable and immovable property belonging to, all records, correspondence, plans, accounts and other documents relating to any religious institution must be periodically inspected by the officials as authorized by the authorities under the Act.

Section 29 of the Act provides for protection of temple property from indiscriminate alienation. For the purpose of sale, mortgage, exchange, and lease of temple properties, prior sanction of the Board or Commissioner, as the case may be, must be obtained. By invoking the doctrine of *Cypres* through section 31 of the Act, the surplus funds of the endowments can be appropriated only for religious, educational or charitable purposes, only with prior sanction.[55]

[54] The Madras Hindu Religious and Charitable Endowments Act, 1951, § 25 (Such a register under section 25 must contain:- (a) the names of past and present trustees and particulars as to the custom, if any, regarding succession to the office of trustee; (b) particulars of the scheme of administration and of the *dittam* or scale of expenditure; (c) the names of all offices to which any salary, emolument or perquisite is attached and the nature, time and conditions of service in each case; (d) the jewels, gold, silver, precious stones, vessels and utensils and other movables belonging to the institution, with their estimated value; (e) particulars of all other endowments of the institution and of all title-deeds and other documents; (f) particulars of the idols and other images in or connected with the institutions, whether intended for worship or for being carried in processions).

[55] *Id*. § 31.

According to section 38 of the Act, the Commissioner shall prepare and publish a list of the religious institutions whose annual income is calculated for the purposes of the levy of contribution under section 76 of the Act. If a religious institution is not included in the list published under section 38 or over which no Area Committee has jurisdiction, or has no hereditary trustee, the Commissioner shall constitute a Board of Trustees consisting of not less than three and not more than five persons appointed by him.[56] The appointment of trustees to the non-listed temples is made by the concerned Area Committees under section 41 of the Act.

The Trustees of the non-listed temples may be suspended, removed and dismissed by the Commissioner or Deputy Commissioner as the case may be, under section 45 of the Act.[57]

According to section 57 of the Act, the disputes and matters regarding whether an institution is a religion institution or not, whether a Trustee holds office hereditarily or not, whether a properly or money is a specific endowment or not and the entitlement of any honour, by custom or otherwise of a person etc., are to be inquired into and decided by the Deputy Commissioner.[58]

According to section 70 of the Act, the Trustee of every religious institution shall, before the end of March in each year, submit a budget

[56] The Madras Hindu Religious and Charitable Endowments Act, 1951, § 39 (According to section 40 of the Act, in the case of a religious institution for which a Board of Trustees is constituted under section 39, such Board shall elect one of its number to be its Chairman).
[57] *Id*. §§ 45-49 (According to section 46 of the Act, the disqualification of the trustees is determined by the Deputy Commissioner. He is also empowered to appoint a fit person under section 47(3) of the Act. According to section 49 of the Act, the Deputy Commissioner is empowered to hear and decide the appeals against any order of punishment of the temple employee by the trustee under section 49 of the Act).
[58] *Id*. § 57.

showing the probable receipts and disbursements of the institution during the following financial year.[59] The Trustee of every religious institution shall keep regular accounts of all receipts and disbursements.[60] The accounts of every religious institution whose annual income for the financial year immediately preceding is not less than sixty thousand rupees shall be subject to concurrent audit.[61]

7.3.15 Power to Frame a Scheme

The Deputy Commissioner is empowered to frame a scheme for the institution if he has reason to believe that such a scheme is essential for the proper administration of a religious institution. A scheme may be settled for the institution, if not less than five persons having interest in a particular religious institution make an application in written form. In such a case, the Deputy Commissioner shall consult in the prescribed manner, the trustee and the persons having interest and the Area Committee, if any, having jurisdiction over the institution. After such consultation, if it is satisfied, necessary scheme can be made of administration for that institution.[62]

The Commissioner is empowered to notify an institution under section 63 of the Act. He is also empowered to appoint an Executive Officer or Trustee of a temple in possession. The Budget of the listed temples must be approved by the Commissioner and in case of other temples by the Area Committee under section 70 of the Act.

[59] The Madras Hindu Religious and Charitable Endowments Act, 1951, § 70.
[60] *Id*. § 71.
[61] *Id*. § 71 (The annual income is calculated as per section 76 of the Act).
[62] *Id*. § 58.

7.4 The Guruvayur Devaswom: The Guruvayoor Devaswom Act, 1978

7.4.1 The Guruvayur Devaswom: Administrative Mechanism

The Guruvayur Devaswom Managing Committee was constituted by the Government of Kerala under the Guruvayur Devaswom Act, 1971.[63] It replaced the private Trusteeship by a Managing Committee, nominated by the Hindu Ministers in the State Cabinet.[64] There are 11 temples including Guruvayur Temple under the Board. Ten other temples are treated as *Keezhedams* of the Guruvayur Temple.[65]

The Managing Committee consists of 9 members include both traditional and non-traditional members. The Zamorin Raja, the Mallisseri Namboothiri and the Tantri of the temple are the traditional members. The six non-traditional members are appointed by the Hindu Ministers of Kerala Government of which one will be the Chairman of the Managing Committee. The non-traditional members consist of a representative of the employees of the Devaswom and five more persons of whom one shall be a Scheduled Caste member. The day-to-day administration is supervised by an Administrator

[63] According to the Kerala High Court's direction, the Act of 1971 was revised and replaced by Act of 1978.

[64] Till 1971, the administration, control and management of the Guruvayur temple and its properties and endowments had been vested in the hereditary trustees, namely the Zamorin Raja of Calicut and the Karanavan, for the time being, of the Mallissery *Illam* of Guruvayur till. After the creation of Devaswom Board in 1971, there is no system of old *yogam* and the ancient families since all except Mallisseri have become extinct.

[65] GURUVAYUR DEVASWOM, (Jan.20, 2020), https://guruvayurdevaswom.nic.in., (Guruvayur temple had about 13000 acres of land until the Kerala Land Reforms Act came into force).

appointed by the Government. The Managing Committee selects an Administrator from the panel of names given by the Government.[66]

7.4.2 Objective of the Guruvayoor Devaswom Act, 1978

This Act envisages provision for the proper administration of the Guruvayoor Devaswom.[67] According to the definition clause, the word '*Devaswom*' means the Guruvayoor Temple, and includes its properties and endowments and the subordinate Temples attached to it.[68]

7.4.3 Structure & Composition of the Devaswom Managing Committee

The administration, control and management of the Devaswom shall be vested in a Committee called 'the Guruvayoor Devaswom Managing Committee'. It is a body corporate and shall have perpetual succession and a common seal. It can sue and be sued in its own name represented through the Administrator.[69]

According to sub-section (1) of section 4 of the Act, this Committee shall consist of 9 members from the following:

(a) the Zamorin Raja;

(b) the Karanavan for the time being of the Mallisseri Illom at Guruvayoor;

(c) the Thanthri of the Temple, ex-officio;

(d) a representative of the employees of the Devaswom nominated by the Hindus among the Council of Ministers;

[66] The Administrator should not be below the rank of Deputy Collector. The Administrator acts as the Secretary of the Managing Committee and the Chief Executive of the Devaswom.
[67] The Guruvayoor Devaswom Act, 1978.
[68] *Id*. § 2.
[69] *Id*. § 3.

(e) not more than five persons, of whom one shall be a member of a Scheduled Caste, nominated by the Hindus among the Council of Ministers from among persons having interest in the Temple.

Sub-section 2 of section 4 of the Act, says about the grounds of disqualifications to a member who is appointed under the provisions of this Act.[70]

There will be a Chairman to the Committee who is elected from among the members of the Committee.[71] Section 5 of the Act specifies the term of office of non-official members, resignation and removal of such members and casual vacancies in their office.[72] The Government is empowered to remove any member who is appointed or nominated under sub-section (1) of section 4 of the Act.[73] A member shall be removed only after he has been given a reasonable opportunity of showing cause against his removal.

[70] The Guruvayoor Devaswom Act, 1978, § 4 (A person shall be disqualified for being nominated under clause (e) of sub-section (1), if: (i) he believes in the practice of untouchability or does not profess the Hindu Religion or believe in temple Worship ; or (ii) he is an employee under the Government or the Devaswom; or (iii) he is below thirty years of age; or (iv) he is engaged in any subsisting contract with the Devaswom; or (v) he is subjected to any of the disqualifications mentioned in clauses (a), (b) and (c) of sub-section (3) of section 5).

[71] *Id*. § 4 (3),

[72] *Id*. § 5 (A member nominated under clause (d) or clause (e) of sub-section (1) of section 4 shall hold office for a period of four years from the date of his nomination. Such a member is eligible for re-nomination). *See also* the Guruvayoor Devaswom (Amendment) Act, 2001, § 2 (By virtue of this provision an amendment was made to section 5 of the Guruvayoor Devaswom Act, 1978. Before amendment, the tenure of a member was for two years).

[73] *Id*. § 5 (3) (According to subsection (3) of section 5 of the Act, any member may be removed from the office on the following grounds:
(a) he is of unsound mind and stands so declared by a competent court; or
(b) he has applied for being adjudged as insolvent, or is an un-discharged insolvent; or
(c) he has been convicted of any offence involving moral turpitude; or
(d) they are satisfied that he has been guilty of corruption or misconduct in the administration of the Devaswom; or

7.4.4 Powers and Functions of the Managing Committee

The Committee is bound to follow the provisions of this Act and the rules made thereunder. It is the duty of the Committee to preserve and perform the rites and ceremonies in the temple and the subordinate temples attached thereto.[74]

It is the duty of the Committee to arrange the *dittam* or scale of expenditure fixed for the temple and the subordinate temples. The Committee is entrusted with the duty to provide facilities for the proper performance of worship by the worshippers.

One of the major functions of the Committee is to ensure the safe custody of the funds, valuable securities and jewelleries and the preservation and management of the properties vested in the temple. In this context, the Board is also bound to ensure that the funds of the endowments of the temple are spent according to the wishes as far as may be known of the donors.[75]

Salary and emoluments to staff of the Devaswom is provided by the Committee. The Committee is bound to do all such things as may be incidental and conducive to the efficient management of the affairs of the Devaswom and the convenience of the worshippers.

(e) he has absented himself from more than three consecutive meetings of the Committee and is unable to explain such absence to the satisfaction of the Committee; or
(f) he, being a legal practitioner, has acted or appeared on behalf of any person against the Devaswom in any legal proceeding after he has been nominated as a member of Committee; or
(g) he ceases to profess the Hindu Religion or to believe in temple worship; or
(h) he has committed or abetted the commission of any act in support or furtherance of the practice of untouchability).

[74] The Guruvayoor Devaswom Act, 1978, § 10.
[75] *Id*. § 10.

Appointment of all officers and other employees of the Devaswom shall be made by the Committee.[76] Selection of the officers and other employees of the Devaswom may be made by the sub-committee constituted by the Committee from among its members.

In the selection of employees to be in charge of the rituals and other ceremonies of the temple, *Thanthri* of the temple must be a member in the sub-committee for selection.[77]

7.4.5 Powers and Functions of Commissioner

It is very important to note that the powers exercised by the Commissioner are the limitations upon the Committee. In certain circumstances, the power of the Committee is limited by the powers of Commissioner.

No movable property of non-perishable nature which is in the possession of the Committee and the value of which is more than five thousand rupees and no jewelleries shall be sold, pledged or otherwise alienated unless it is sanctioned by the Commissioner. Such sanction is usually given for the beneficial interest of the Devaswom.[78] The Committee shall have no power to borrow money from or to lend money to any person unless it is sanctioned by the Commissioner as being necessary or beneficial to the Devaswom.[79]

[76] The Guruvayoor Devaswom Act, 1978, § 19 (It must follow the reservation rules regarding Scheduled Castes and the Scheduled Tribes envisaged by the Act. According to this, ten percentages of the posts in each grade of the officers and other employees of the Devaswom shall be reserved for the Scheduled Castes and the Scheduled Tribes, of which one-fifth shall be reserved for the Scheduled Tribes).
[77] *Id*. § 19 (3).
[78] *Id*. § 11.
[79] *Id*. § 12.

7.4.6 Annual Report

The Committee is cast with the duty to submit an annual report to the Commissioner on the administration of the affairs of the Devaswom. Such report shall be published by the Committee in the prescribed manner. The Commissioner shall submit a copy of the report so prepared and published, to the Government. The Government shall, lay the report before the Legislative Assembly as soon as possible.[80]

7.4.7 Devaswom Administrator

Chapter III of the Act specify the provisions regarding the post of Administrator to the Devaswom. According to sub-section (1) of section 14 of the Act, the Committee can appoint an officer of Government not below the rank of Deputy Collector to be the Administrator for the Devaswom, from among a panel of names furnished by the Government. A person appointed so must be one who professes the Hindu Religion and believes in temple worship.[81] The Government can withdraw the Administrator from his office if a resolution recommending such withdrawal is passed by a majority of not less than two-thirds of the total membership of the Committee.[82]

The salary and allowances to the Administrator shall be paid out of the funds of the Devaswom.[83] The Administrator is the Secretary as well as the

[80] The Guruvayoor Devaswom Act, 1978, § 13.
[81] *Id*. § 14.
[82] *Id*. § 15(4).
[83] *Id*. § 15(2).

Chief Executive Officer to the Committee. He is subject to the control of the Committee. He must act in accordance with the provisions of the Act.[84]

7.4.8 Financial Matters: Accounts & Budget

The Committee has to submit a proposal for fixing the dittam or scale of expenditure in the Devaswom to the Commissioner.[85] The Commissioner after considering any objection or suggestions may approve or alter such proposals.

The Committee has to prepare an annual budget for the Devaswom in each financial year. Such budget must be submitted to the Commissioner. It must contain an estimate of the receipts and expenditure of the Devaswom for the following financial year.[86] The Commissioner shall send a copy of the budget as approved by him to the Government.

The Committee shall keep regular accounts of all receipts and disbursements. The accounts of the Devaswom are subject to concurrent audit.[87] After completing the audit, the auditor shall send a report to the Commissioner. The report must contain all cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property due to the Devaswom or of loss or waste of money or other property thereof, caused

[84] The Guruvayoor Devaswom Act, 1978, § 17 (The other functions of the Administrator are, to arrange for the proper collection of offering made in the temple, to incur expenditure not exceeding five thousand rupees to meet unforeseen contingencies during the interval between two meetings of the Committee).
[85] *Id*. § 20 (The proposal must contain the proposals for fixing the dittam or scale of expenditure in the Devaswom and the amounts which should be allotted to the various objects connected with the Devaswom or proportion in which the income or other property of the Devaswom may be applied to such objects).
[86] *Id*. § 21 (Every such budget shall make adequate provision for: (a) the dittam or scale of expenditure for the time being in force; (b) the due discharge of all liabilities binding on the Devaswom; (c) the construction, repair, maintenance and renovation of buildings connected with the Devaswom; and the maintenance of a working balance).
[87] *Id*. § 23 (The audit shall be taken place as and when expenditure is incurred. The audit shall be made by auditors appointed in the prescribed manner. Such auditors are considered as public servants within the meaning of section 21 of the Indian Penal Code, 1860).

by neglect or misconduct.[88] If, the Commissioner is satisfied that the Committee or any member of the committee or any officer or other employee of the Devaswom was guilty of misappropriation or wilful waste of the funds of the Devaswom or gross neglect resulting in loss to the Devaswom, the Commissioner may, after giving notice, hold such person responsible to compensate within a specified time such amount personally and not from the funds of the Devaswom.[89]

7.4.9 Government's Power for Dissolution and Supersession of Committee

The Government is empowered to dissolve or supersede the Committee if the Government is of the opinion that the Committee is not competent to perform or makes default in performing the duties imposed on it under this Act or abuses or exceeds its powers. Such dissolution or suspension can be made only after a proper inquiry. Such dissolution cannot exceed a period of six months.[90]

The Committee must be given notice regarding the grounds of the dissolution. It shall be given reasonable opportunity and time to show cause against the proposal of dissolution and consider its explanations and objections, if any.[91]

[88] The Guruvayoor Devaswom Act, 1978, §§ 24 & 25.
[89] *Id.* § 23(2) (Sub-section 2 of section 23 provided that if in respect of any expenditure or dealing with the property of the Devaswom, the Committee or such officer or other employee had obtained the directions of the Commissioner or the Government and had acted in accordance with the said directions, the Committee or such person shall not be held responsible).
[90] *Id.* § 6 (1).
[91] *Id.* § 6 (2) & (3).

In the event of suspension of the Committee, the Commissioner shall exercise the powers and perform the functions of the Committee until the expiry of the period of supersession.[92]

7.4.10 Power of Government to Call for Record and Pass Orders

Subsection (1) of section 33 of the Act, empowers the Government to call for and examine the record of the Commissioner or of the Committee in respect of any proceeding, to satisfy themselves that the provisions of this Act have not been violated or the interests of the Devaswom have been safeguarded. In any case, if it appears to the Government that any decision or order passed in such proceeding has violated the provisions of this Act or is not in the interest of the Devaswom, they may modify, annul or reverse such decision or order or remit such decision or order for reconsideration.[93] The Government has the power to stay the execution of any such decision or order pending the exercise of their powers under subsection (1) in respect thereof.

7.4.11 Powers of Thanthri as the Final Authority in Religious Matters

Section 35 of the Act unequivocally declares that the *Thanthri* as the head priest is to be the final authority in all religious matters. The Committee or the Commissioner or the Government has no power to interfere with the religious or spiritual matters pertaining to the Devaswom.[94] The decision of the *Thantri* of the Temple on all religious, spiritual, ritual or ceremonial matters

[92] The Guruvayoor Devaswom Act, 1978, § 6 (4).
[93] *Id*. § 33 (It is provided that the Government shall not pass any order prejudicial to any party unless he has had a reasonable opportunity of making his representations).
[94] *Id*. § 35.

pertaining to the Devaswom shall be final, unless such decision violates any provision contained in any law for the time being in force.[95]

7.4.12 The Government's Rule Making Power

Section 38 of the Act empowers the Government to make appropriate rules to carry out the purposes of this Act. Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly.[96]

According to section 39 of the Act, in order to discharge its functions, the Committee can make regulations not inconsistent with the provisions of this Act and the rules made thereunder. Such regulations must be approved by the Government.

7.5 Sree Koodalmanickam Devaswom Board: The Koodalmanickam Devaswom Act, 2005

Koodalmanickyam Devaswom Board was created in 1971 under the Koodalmanickyam Devaswom Act, 1971.[97] The administration, control and management of the Devaswom are vested in a Committee called Koodalmanickyam Devaswom Managing Committee that is nominated by the

[95] The Guruvayoor Devaswom Act, 1978, § 35 (2).
[96] *Id*. § 38.
[97] Act 7 of 1971 (In 1971, the Government of Kerala, through a special order, took over the administration of the temple, and subsequently the relevant statute was passed. Till the creation of the Statutory Board, the Temple was in the domain of the erstwhile Maharaja of Cochin, but the administration was under a person designated as *Thachudaya Kaimal* appointed by the Maharaja of Travancore). (According to the provisions of the Act of 1971, the Chairman of the Committee is the District Collector, Thrissur. The Chief Executive of the Devaswom is the Administrator not below the rank of a Deputy Collector deputed by the Government as the Secretary of the Committee).

Government.[98] Presently there are 12 other temples called *Keezhedams* are also under the management of Koodalmanickyam Devaswom Board.[99]

This is an Act intended to provide for the proper administration of the Koodalmanickam Devaswom at Irinjalakuda, Kerala.[100]

7.5.1 Structure and Composition of the Committee

The administration, control and management of the Devaswom shall be vested in a Committee called the 'Koodalmanickam Devaswom Managing Committee'. It is a body corporate having perpetual succession and a common seal. It can sue and be sued, through the Administrator.[101]

The Committee shall consist of 9 members.[102] Such members include:

(a) a person nominated by the Government from among *Thantris* of the Temple (ex-officio member);

(b) a representative from among the employees of the Devaswom nominated by the Hindus in the Council of Ministers;

[98] '*Koodalmanickyam*' is often referred as '*Koodalmanickam*' or '*Koodalmanikyam*'.
[99] KOODALMANIKYAM DEVASAWOM BOARD, (Jan. 15, 2020), http://www. koodalmanikyam. com.
[100] Koodalmanickam Devaswom Act, 2005 (Before enacting this legislation in 2005, there was another legislation called the Koodalmanickam Devaswom Act, 1971 in existence. The provisions of the said Act are substantially same as that of the Guruvayoor Devaswom Act, 1971. The said Koodalmanickam Devaswom Act, 1971 was challenged under Original Petition No. 2182 of 1986 which was filed before the High Court of Kerala praying to declare the Koodalmanickam Devaswom Act, 1971, and the rules made thereunder as ultravires, void and illegal and to strike down the said Act and the rules in its entirety for the reason that the provisions of the said Act are substantially same as that of the Guruvayoor Devaswom Act, 1971. The operative portions of the Guruvayoor Devaswom Act, 1971 had earlier been struck down by the High Court of Kerala in its judgment in Original Petition No. 314 of 1973 on the ground that those provisions are violative of Article 25 and 26 of the Constitution of India. In order to avoid the same destiny of Guruvayoor Devaswom Act, 1971, the Koodalmanickam Devaswom Act, 1971 was repealed and a new statute was enacted in 2005. Koodalmanickam Devaswom Act, 2005 came into force at once. It is also noted that, the name 'Koodalmanickam' is often referred as 'Koodalmanikyam' or 'Koodalmanickyam').
[101] *Id*. § 3.
[102] *Id*. § 4.

(c) not more than five persons, nominated by the Hindus in the Council of Ministers from among persons having interest in the Temple, of whom one shall be a member of Scheduled Caste or Scheduled Tribe;

The Act also prescribes the disqualifications for being nominated under clause (c) of sub-section (1).[103]

A Chairman is elected from among the members of the Committee.[104] A nominated member can hold office for a period of three years from the date of his nomination and he shall be eligible for re-nomination.[105] A member so nominated may resign his office by giving notice in writing thereof to the Government and shall cease to be a member on his resignation being accepted by the Government.[106] The Government may remove a member from office referred to in sub-section (1) of section 4 by an order under the conditions prescribed by the Act.[107]

[103] Koodalmanickam Devaswom Act, 2005, § 4 (2) (Such disqualifications are applicable; (i) if he believes in untouchability, or does not profess the Hindu Religion or believe in temple worship; or (ii) if he is an employee under the Government or Devaswom; or (iii) if he is below thirty years of age; or (iv) if he is engaged in any subsisting contract with the Devaswom; or (v) if he is subjected to any of the disqualification mentioned in clauses (a), (b) and (c) of sub-section (3) of section 5).
[104] *Id*. § 4 (3).
[105] *Id*. § 5 (1).
[106] *Id*. § 5 (2).
[107] Koodalmanickam Devaswom Act, 2005, § 5(2) & (4) (Such conditions are; (a) if he is of unsound mind; or (b) if he has applied for being adjudged as an insolvent, or is an un discharged insolvent: or (c) if he has been convicted for any offence involving moral turpitude; or (d) if they are satisfied that he has been guilty of corruption or misconduct in the administration of the Devaswom; or (e) if he has absented himself from more than three consecutive meetings of the Committee and is unable to explain such absence to the satisfaction of the Committee; or (f) if he, being a legal practitioner, has acted or appeared on behalf of any person against the interest of the Devaswom in any legal proceeding after he has been nominated as a member of the Committee; or (g) he cease to profess the Hindu Religion or to believe in temple worship; or (h) he has committed any act in support of the practice of untouchability or has committed or abetted the Commission of any act in connection with the said act. According to clause 4 of section 5 of the Act, a member so removed from the office shall be given a reasonable opportunity of showing cause against his removal).

7.5.2 Powers and Functions of the Managing Committee

The main function of the Committee is to arrange for the proper performance of the rites and ceremonies in the temple and the subordinate temples attached thereto in accordance with the provisions of the Act. All the functions must be subject to the custom and usage related to the temple.[108] The Committee is entrusted with the duty to safe guard all movable and immovable properties including jewellery, records, documents and other assets belonging to the Devaswom.[109] The Committee may incur expenditure out of the funds of the Devaswom for all or any of the purposes, mentioned in section 27 of the Act.[110]

7.5.3 Devaswom Commissioner

There will be a Commissioner for the Koodalmanickam Devaswom who is appointed by the Government. He is usually an officer not below the rank of the Secretary to Government, who professes the Hindu Religion and believes in temple worship. Such commissioner is, by notification in the Gazette.[111]

Section 13 of the Act states that the Committee shall annually submit to the Commissioner a report on the administration of the affairs of the

[108] Koodalmanickam Devaswom Act, 2005, § 10.
[109] *Id*. § 28.
[110] *Id*. § 27 (Section 27 of the Act enumerates the list of thing for which committee can incur expenses. They are (a) maintenance (including repairs and reconstruction), management and administration of the temple, its properties and the temples subordinate to it; (b) training of archakas to perform the religious worship and ceremonies in the temple and the temples subordinate to it; (c) medical aid, water supply and other sanitary arrangements for the worshippers and the pilgrims and construction of buildings for their accommodation; (d) promote and propagate the tenets and philosophy associated with the temple; (e) to give any grant or contribution to any poor home or other institutions established and maintained for the benefit of the persons mainly belonging to the Hindu religion; (f) the construction of buildings connected with the affairs of the Devaswom; and (g) the making of any kind of donation to any religious institution).
[111] *Id*. § 2 (b).

Devaswom at such time as may be prescribed. Such report shall be published by the Committee in the prescribed manner. The Commissioner shall submit a copy of such report to the Government and the Government may lay the report before the Legislative Assembly as soon as possible.[112]

Section 14 of the Act enables the Committee to appoint an officer of Government not below the rank of Under Secretary or Deputy Collector to be the Administrator for the Devaswom.[113] The Act also mandates that such Administrator must be from among a panel of names furnished by the Government.[114]

7.5.4 Government's Power to Supersede the Committee

If the Government, is of the opinion that the Committee is not competent to perform or makes default in performing the duties imposed on it or abuses or exceeds its powers under this Act, the Government may, after such inquiry as may be necessary, by notification in the gazette, supersede the Committee.[115] Before issuing such a notification, the Government shall communicate to the Committee, the grounds on which they propose to do so, fix a reasonable time for the Committee to show cause against the proposal and shall consider the explanations and objections, if any.[116]

---

[112] Koodalmanickam Devaswom Act, 2005, § 13.
[113] *Id.* § 17 (Section 17 of the Act describes the powers and duties of Administrator. According to this, the Administrator shall be the Secretary to the Committee and its Chief Executive Officer. Subject to the control of the Committee, he has powers to carry out its decisions in accordance with the provisions of this Act. The Administrator shall arrange for the proper collection and credit of the offerings made in the temple. The Administrator shall have power to incur expenditure not exceeding five thousand rupees to meet unforeseen contingencies during the interval between two meetings of the Committee).
[114] *Id.* § 14.
[115] *Id.* § 6.
[116] Koodalmanickam Devaswom Act, 2005, § 6.

7.5.5 Financial Matters: Accounts & Budget

Section 11 of the Act clearly prescribes the conditions and circumstances under which the properties of the Devaswom can be alienated. According to this, no movable property of non-perishable nature which is in the possession of the Committee and the value of which is more than five thousand rupees and no jewellery shall be sold, pledged or otherwise alienated unless it is sanctioned by the Commissioner as being necessary or beneficial to the Devaswom.[117] The Committee can borrow money from, or lend money to, any person only if it is sanctioned by the Commissioner as being necessary or beneficial to the Devaswom.[118]

The Devaswom Committee shall submit a budget estimate of the receipts and expenditure of the Devaswom for the following financial year to the Commissioner.[119] The Commissioner shall send a copy of the budget as approved by him to the Government.[120]

According to section 23 of the Act, the Committee shall keep regular accounts of all receipts and disbursement. The accounts of the Devaswom shall be subject to concurrent audit.[121] The auditor shall send a report to the Commissioner.[122] Section 26 makes it clear that, after considering the report of the auditor, if the Commissioner is satisfied that the Committee or any officer

[117] Koodalmanickam Devaswom Act, 2005, § 12 (1).
[118] *Id*. § 12 (2).
[119] *Id*. § 21.
[120] *Id*. § 21 (4).
[121] Koodalmanickam Devaswom Act, 2005, § 23 (3) & (4) (The concurrent audit means, the audit takes place as and when expenditure is incurred. The audit shall be made by auditors appointed in the prescribed manner. Such auditors shall be treated as public servants).
[122] *Id*. § 24 (The auditor shall also report on such other matters relating to the accounts as may be prescribed or on matters on which the Commissioner is entitled to require the report).

or other employee of the Devaswom was guilty of misappropriation or deliberate fritter of fund of Devaswom or of gross neglect resulting in loss to the Devaswom, the Commissioner may, after giving notice to the Committee or such officer or other employee to show cause why an order of surcharge should not be passed against it or him and consider its or his explanation.[123]

7.5.6 Government's Power to Call for Records and Pass Orders

Section 33 of the Act empowers the Government to call for and examine the records of the Commissioner or of the Committee in respect of any proceeding, to satisfy themselves that any of the provisions of the Act has not been violated or the interest of the Devaswom has been safeguarded. If, in any case, it appears to the Government that any decision or order passed in such proceeding has violated the provisions of the Act or is not in the interest of the Devaswom, they may modify, annul or set aside such decision or order or remit such decision or order for reconsideration after giving reasonable opportunity for making representations.[124]

7.5.7 Government's Power to Make Rules

Section 36 empowers the Government to make rules to carry out the purposes of the Act. Every rule made under the Act shall be laid, as soon as may be after it is made, before the Legislative Assembly. The Committee can make regulations subject to the approval of the Government. Such regulations

[123] Koodalmanickam Devaswom Act, 2005, § 26.
[124] *Id.*

must not be inconsistent with the provisions of the Act and the rules made thereunder.[125]

[125] Koodalmanickam Devaswom Act, 2005, § 37.

CHAPTER 8

STATE CONTROL OVER TEMPLE ADMINISTRATION IN KERALA: PART II: TRAVANCORE AND COCHIN DEVASWOMS

8.1 Travancore Devaswom Board: The Travancore-Cochin Hindu Religious Institutions Act, 1950

8.1.1 Scheme and Objective of the Act

This Act was enacted in the year 1950, and is intended to make provision for the administration, supervision and control of incorporated and unincorporated Devaswoms and of other Hindu Religious Endowments and Funds that falls under the jurisdiction of the old Travancore region and the old Cochin region.

The highlight of this legislation is that it is applicable to every Hindu temple or shrine or other religious endowment dedicated to, or used by, the Hindu community or any section thereof.[1] The Act further clarifies that it applies to every other Hindu endowment or foundation, by whatever local designation known, and property, endowments and offerings connected therewith, whether applied wholly to religious purposes or partly to charitable or other purposes, and every express or constructive trust by which property or money is vested in the hands of any person or persons by virtue of hereditary succession or otherwise for such purposes. However it excludes any Hindu

[1] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 2 (b).

religious institution belonging to and under the sole management of a single family.[2]

Thus, this statute practically deals with the provisions related to the administration of two Devaswom Boards viz., Travancore Devaswom Board and Cochin Devaswom Board. Part I of this Act shall extend to Travancore and Part II of this Act shall extend to Cochin and Part III of this Act shall extend to the whole of the State Kerala, excluding Malabar region.[3] For the convenience of study, the researcher analyses the statute into three parts.

Part I mainly deals with the provisions for the administration of Travancore Devaswom Board and the temples under the Board and within the territorial jurisdiction of the old Travancore region. This part contains five chapters. According to section 2 of the Act, board means the Travancore Devaswom Board constituted under chapter II of this Act, in accordance with the covenant.[4]

[2] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 2 (b) (ii) (According to this provision, where the management of a religious institution has passed into the hands of several branches by division among the members of the original family, the institution may nevertheless be considered as being in the management of a single family for the purpose of this Part).

[3] In Brahmadathan Namboothiripad v. Cochin Devaswom Board, AIR 1956 TC 19 (In this case, the constitutional validity of the Act was challenged as it violated Article 14 of Indian Constitution by making arbitrary or unreasonable classification of religious institutions. But, it was held by the honourable Supreme Court that it was neither arbitrary nor unreasonable and does not violate Article 14).

[4] The Covenant here denotes the 'Covenant entered into by the Rulers of Travancore and Cochin for the formation of the United States of Travancore and Cochin' on the first day of July 1949). *See also*, JOY B., FORMATION OF THE STATE OF KERALA AND THE PROBLEMS AND STRUGGLES OF LINGUISTIC MINORITIES, Appendix (Thesis, Department of History, Sree Sankaracharya University of Sanskrit, 2011), (Jan. 10, 2020), http://hdl.handle.net/10603/137649.

The provision itself exempts the Sree Padrnanabhaswamy Temple, *Sree Pandaravaga properties*[5] and all other properties and funds of the said temple.

It is also the duty of the Government to maintain the Devaswoms mentioned in the schedule in a good condition. The Government is also bound to administer such Devaswoms in accordance with usage and custom.[6] In *Narayanan v. Naduvil Madom*,[7] it was held that as a statutory body, the Devaswom Board has only a regulatory role in supervising the activities of the religious institution and such regulation should not whittle down the authority or powers of a religious institution.

8.1.2 Travancore Devaswom Board: Administrative Mechanism

Travancore Devaswom Board is an autonomous body constituted under the Travancore Cochin Hindu Religious Institutions Act, 1950.[8] Presently, the Board administers 1248 temples in the old Travancore region comprised in the State of Kerala.[9] The Board is entrusted with the functions of administration, supervision and control of incorporated and unincorporated Devaswoms and of other Hindu Religious Endowments and funds under the old Travancore region.

The Board comprises of President and two members. One member shall be nominated by the Hindu members among the Council of Ministers and the other member shall be elected by the Hindu members of the Legislative

[5] '*Sree Pandaravaka Land*' means any land owned by the Sree Padmanabhaswamy Temple and registered in the revenue records as 'Sree Pandaravaka'. *See* The Sree Pandaravaka Lands (Vesting and Enfranchisement) Act, 1971, § 2 (i).
[6] Travancore Devaswom Board Staff Association v. State of Kerala, 1993 (3) KLT 721.
[7] Narayanan v. Naduvil Madom, 2011 KHC 2389.
[8] Act XV of 1950.
[9] The said 1248 temples had been administrated by the Ruler of Travancore prior to the integration of the Princely States of Travancore and Cochin in 1949. The constitution of the Board was based on the Covenant entered in to by the Maharaja of Travancore in May, 1949 and concurred and guaranteed by the Government of India.

Assembly of the State of Kerala. The term of the President and Members is for a period of three years.[10] The Board is assisted by the Devaswom Commissioner, Assistant Commissioners and various departments under the Board. Temples under the Board are categorised into four mainly on the basis of finance.[11]

Travancore Devaswom Board is created under section 3 of the Act. The Board is created for the administration of 'incorporated' and 'unincorporated'[12] Devaswoms and of Hindu Religious Endowments and all their properties and funds there of under the Statute. It is also for keeping the fund and the surplus fund which were under the management of the Ruler of Travancore prior to the first day of July 1949 and the management of all institutions which were under the old Devaswom Department shall vest in the Travancore Devaswom Board.[13] From the very provisions of the Act, it is clear that every Hindu Temple or shrine or religious institution should be under the administration, supervision, and control of the Board.[14]

Travancore Devaswom Board will be referred as TDB here in after.

[10] TRAVANCORE DEVASWOM BOARD, (Nov. 20, 2019), http://travancoredevaswomboard.org.
[11] S. JAYASANKAR, TEMPLES OF KERALA 21 (Census of India Special Studies, Government of India Press 2000) (Namely Major Class I, Major Class II, Major Class III and Petty. Besides these, there are Personal Deposit Devaswoms).
[12] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 2 (c) (Section 2(c) defines 'incorporated Devaswoms' as the Devaswoms mentioned in Schedule I; and 'unincorporated Devaswoms' as those Devaswoms including Hindu Religious Endowments whether in or outside Travancore which were under the management of the Ruler of Travancore and which have separate accounts of income and expenditure and are separately dealt with).
[13] *Id*. § 3.
[14] Muraleedharan Nair v. State, 1990 (1) KLT 874.

8.1.3 Structure and Composition of the TDB

According to section 4 of the Act, the Board shall consist of three Hindu members.[15] Among the three members, two are nominated by the Hindus among the Council of Ministers. One member belonging to Scheduled Caste or Scheduled Tribe is elected by the Hindus among the members of the Legislative Assembly of the State of Kerala.[16]

The procedure for the election of members to the Board is prescribed under section 5 of the Act.[17]

It is a common allegation that the nomination of members to the Board by the Council of Ministers leads to the politicisation of the Devaswom Board. Moreover, it may lead to surrendering of Devaswom administration to the ruling party. This aspect of politicisation was noticed and reported by many commissions and judicial pronouncements.[18] In *Travancore Devaswom Board Staff Association v. State of Kerala*,[19] the court reminded that a great responsibility is cast upon the members of the electoral college or nomination body to see that only persons of integrity and efficiency and having absolute

[15] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 4 (1). In Muraleedharan Nair v. State, 1990 (1) KLT 874, it was held that person who has faith in God or in temple worship alone can be considered as Hindu defined under the Act. Section 2 (aa) of the Act, says thus: "*a Hindu means, a person who is Hindu by birth or by conversion and who profess the Hindu religion"*.

[16] *Id*. § 4 (1).

[17] *Id*. § 5 (According to this provision, a meeting of the Hindus among the members of the Legislative Assembly of the State of Kerala shall be summoned under the authority of Governor of Kerala or any person authorised by him. The election shall be held in accordance with the rules specified in Schedule II by the person commissioned by the Governor of Kerala who shall preside over the meeting).

[18] *See* REPORT OF THE HIGH LEVEL COMMITTEE TO HINDU RELIGIOUS INSTITUTIONS AND ENDOWMENTS (Government of Kerala, 1964); DEVASWOM ADMINISTRATIVE REFORM COMMISSION REPORT (Government of Kerala, 1984); REPORT OF THE HIGH-POWER COMMISSION JUSTICE K S PARIPOORNAN COMMISSION (High Court of Kerala, 2007); Gopalakrishnan Nair v. State of Kerala, 1999 (3) KLT 575.

[19] Travancore Devaswom Board Staff Association v. State of Kerala, 1999 (3) KLT 721.

faith in temple worship and belief in God alone be nominated. In order to make the managing committee free from politics, the concerned bodies will be vigilant not to nominate or elect a politician to the Board and must ensure that merit should alone be a consideration.

According to section 10 of the Act, every member of the Board shall be entitled to hold office for a period of two years. A member of the Board can resign from the position by written submission under his hand, addressed to the Governor of Kerala.[20]

There will be a President to the Board. Such President will be from one of the members of the Board. The President to the board is nominated by the Hindus among Council of Ministers of the State of Kerala.[21]

Section 7 deals with the disqualifications for not being appointed or nominated as a member to the Devaswom Board.[22] If a person elected or nominated as a member of the Board is or subsequently becomes subject to any of the disabilities stated in section 7, any person interested may apply to the District Court, Trivandrum, for an order that such member has any of the said

[20] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 10 (The period of two years was inserted by an amendment in section 10 of the Act, in the year 2017. This amendment by way of ordinance was challenged in the case of Prayar Gopalakrishnan v. State of Kerala, 2018 KLT 478, on the ground of mala fide. But the Court upheld the validity of the ordinance promulgated to amend section 10 of the Act as legal and rejected the ground of mala fide raised by the petitioner).

[21] *Id*. § 11.

[22] *Id*. § 7 (According to section 7 of the Act, no person shall be eligible for election or nomination as a member of the Board if such person; (i) is of unsound mind, a deaf mute or suffering from leprosy; or (ii) is an undischarged insolvent; or is an office-holder or a servant of Government, a local authority, the Devaswom Board, an incorporated or un-incorporated Devaswom or the trustee of a Hindu Religious Endowment; or (iv) is interested in a subsisting contract for making any supplies to or executing any work on behalf of the incorporated or unincorporated Devaswoms; or (v) has been convicted by a criminal court of any offence involving moral turpitude; or (vi) is a member of Parliament or of the Legislature of any State).

disabilities, and the court, after making such enquiry as it deems fit, may declare whether or not such member is disqualified.[23]

Every member of the Board shall be entitled to hold office for a period of two years from the date of his nomination or election as the case may be. A member of the Board can resign his membership by writing under his hand, addressing to the Governor of Kerala.[24]

A member of the Board may be removed from his office by the High Court on the ground of proved misbehaviour or incapacity on an application made to the High Court as provided in sub-section (2) of section 9. Such an application made to the High Court will be initiated either by the Advocate General or any person belonging to the Hindu Community.[25]

8.1.4 Powers and functions of the TDB

The Board is a body corporate having perpetual succession and a common seal. It has the power to hold and acquire properties for and on behalf of the incorporated and unincorporated Devaswoms and Hindu Religious institutions and Endowments under its management.[26] It can sue and be sued in its name through the Secretary to the Board. The Board is empowered to

[23] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 8 (An appeal shall lie to the High Court against an order under sub-section (2) of section 8, and such appeal shall be heard and disposed of by a Division Bench).
[24] *Id*. § 10.
[25] *Id*. § 9 (According to subsection (3) of section 9 of the Act, such application made to the High Court shall be heard by a single Judge of the High Court in the first instance. If it appears to him after such preliminary enquiry as he deems necessary, that there is no prima facie case, he shall reject the application and may make such order as to costs as he deems proper. If it is found that there is a prima facie case, he shall, after recording his reasons therefore, refer the application to a Division Bench. The Division Bench shall, after such enquiry as it deems fit, pass final orders thereon and make such orders as to costs as it deems proper).
[26] *Id*. § 4 (2).

exercise all power of direction, control and supervision over the incorporated and unincorporated Devaswoms and Hindu Religious Endowments under its jurisdiction.[27] The Board can supervise and control all the acts and proceedings of all officers and servants of the Board.[28] The Board is empowered to make bye-laws not inconsistent with Part I of the Act or the rules made thereunder.[29]

8.1.5 Appointment of Commissioner and Secretary to the TDB

There will be a Commissioner to the Board. The Board shall appoint an officer not below the rank of a Deputy Commissioner who is eligible to be promoted as Devaswom Commissioner, and in the absence of such officer, an officer not below the rank of an Additional Secretary to Government on deputation, as Devaswom Commissioner.[30]

The Board shall have a Secretary. He shall be the convener of the meetings of the Board.[31]

8.1.6 Temple Advisory Committees under TDB

Section 31A, that deals with 'Temple Advisory Committees' was introduced into the Act, 1950 by an amendment in 2007.[32] According to this provision, there will be a committee named 'Temple Advisory Committee' (name of the temple) for each temple. Such Committees are formed to ensure the participation of Hindu devotees in the temple administartion. Such Temple

[27] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 15 (According to section 15(1) of the Act, all rights, authority and jurisdiction belonging to or exercised by the Ruler of Travancore prior to the first day of July 1949 in respect of Devaswoms and Hindu Religious Endowments shall vest in and be exercised by the Board in accordance with the provisions of the Act, and subject to the provisions of Chapter III of Part I).
[28] *Id*. § 16.
[29] *Id*. § 17.
[30] *Id*. § 13 B.
[31] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 14.
[32] The Travancore-Cochin Hindu Religious Institutions (Amendment) Act, 2007.

Advisory Committees should be approved by the Board. The Board has the power to decide the composition such Advisory Committees. However, it must be in accordance with the rules made by the Board, and must not be inconsistent with prevailing practice, if any.[33]

8.1.7 Devaswom Fund

According to section 25 of the Act, there will be a Devaswom Fund for the incorporated Devaswoms under Schedule I of the Act.[34] According to section 24 of the Act, the Board shall maintain such incorporated Devaswoms by keeping them in a state of good, repair out of the Devaswom Fund constituted under Section 25.[35] The unspent balance of each year out of the Devaswom Fund constituted under Section 25 or such portion of it as may be

[33] Jayan v. Chief Commissioner, Travancore Devaswom Board 2010 (4) KLT 757 (In this case the bye-laws for the constitution of the Temple Advisory Committees for various temples issued by Travancore Devaswom Board were challenged. It was held that the general practices regarding the constitution and functioning of Advisory Committees in different temples under the Travancore Devaswom Board would be the general yardstick. However, to modulate the constitution, composition and working of the Advisory Committee of any particular temple, depending upon any particular practice that may be exceptional and prevailing in relation to such temple and its Advisory Committee, is to be considered. The Board should necessarily preserve with it the power to grant exemption or relaxation or modification, as the case maybe. It was clearly held that the composition of an Advisory Committee shall not be inconsistent with any prevailing practice).

[34] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 25 (It says that the Devaswom Fund constituted for the Devaswoms mentioned in Schedule I shall consist of; (1) the sum of fifty one lakhs of rupees mentioned in Article 238 (10) (ii) of the Constitution of India as payable to the Devaswom Fund; (2) the moneys realised from time to time by the sale of movable properties belonging to the said Devaswoms; (3) all voluntary contributions and offerings made by devotees; (4) profits and interest received from investments of funds belonging to the said Devaswoms; and (5) all other moneys belonging to or other income received by the said Devaswoms. Clause (b) makes it clear that out of the sum of fifty one lakhs of rupees mentioned in clause (1) of the preceding sub-section, an annual contribution of six lakhs of rupees shall be made by the Board towards the expenditure in the Sree Padmanabhaswamy Temple).

[35] *Id*. § 24 (The Board is entrusted with the duty to repair the temples buildings, and other appurtenances thereto and administer the said Devaswoms in accordance with recognised usages. The law also requires the Board to make contributions to other Devaswoms in or outside the State and meet the expenditure for the customary religious ceremonies and may provide for the educational uplift, social and cultural advancement and economic betterment of the Hindu community).

determined by the Devaswom Board, shall be added on to the Devaswom Surplus Fund. The Devaswom Surplus Fund shall be administered, subject to the direction and control of the Board, by the Devaswom Commissioner appointed by the Board.[36] The prior permission of the Board is necessary for the Devaswom Commissioner to purchase property, movable or immovable, with moneys from the Devaswom Surplus Fund. The Board can also make rules prescribing the restrictions, limitations and conditions subject to which assignments of property on lease could be made.[37]

In *Re Audit Report of Travancore Devaswom Board for the Year 1967-68*,[38] 1990 (1) KLT 347, it was held that the Board has a duty to oversee and take appropriate steps to see that all the funds and all the collections, that are made for the purpose of any institution under the management of the Board, are properly utilised and accounted for.

The Board is also empowered with the supervision of the properties and funds of the unincorporated Devaswoms. Details of such funds shall be kept distinct and separate and shall not be utilised except for the purposes of those Devaswoms.[39] Section 31 of the Act unequivocally declares that the Board shall manage the properties and affairs of the Devaswoms, both incorporated and unincorporated, and arrange for the conduct of the daily worship and ceremonies and of the festivals in every temple according to its usage, subject

[36] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 26 (1).
[37] *Id*. § 26 (2) & (3).
[38] Re Audit Report of Travancore Devaswom Board for the Year 1967-68, 1990 (1) KLT 347.
[39] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 30.

to the provisions of Part I and the rules made thereunder.[40] Section 34 of the Act envisages clear cut provisions dealing with the Board's power to invest or deposit the funds of the incorporated and unincorporated Devaswoms.[41]

8.1.8 Audit & Budget in TDB

Section 32 of the Act deals with the matters connected with auditing of the accounts of the Board in detail. Section 32 of the Act requires the Board to keep regular accounts of all receipts and disbursements in respect of the institutions under its administration. Such accounts of the Board shall be audited annually. The audit shall be made by auditors appointed by the High Court. After completing the audit, the auditor has to send a report to the High Court. The auditor shall specify in his report all cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property due to the Board or to the institutions under their management or of loss or waste of money or other property thereof caused by neglect or misconduct.[42]

The auditor shall also report on any other matter relating to the accounts as may be prescribed or on which the High Court may require him to report. The High Court shall send a copy of every audit report to the Board. The Board has to remedy any defects or irregularities pointed out by the auditor and report the same to the High Court. If the High Court finds that the Board or any member thereof was guilty of misappropriation or wilful waste of the funds of the institutions or of gross neglect resulting in a loss to the institutions under

[40] The Travancore-Cochin Hindu Religious Institutions Act, § 31.
[41] *Id*. § 34.
[42] *Id*. § 32 (The auditor appointed so shall be treated as a public servant within the meaning of the Indian Penal Code).

the management of the Board, the High Court can seek explanation from the Board or the member regarding the matter concerned. After considering the explanation, the Court can pass an order of surcharge against the Board or the member which may be executed against the member or members concerned of the Board as if it were a personal decree passed against them by the High Court.[43]

It is important to note that a copy of the audit report is to be made available to anyone who duly applies for the same.

The Board has to prepare a budget for the next financial year showing the probable receipts and disbursements of the Devaswoms and institutions under the management of the Board during that financial year. The Board has to submit the copies of the budget so prepared to the Government. The Board is entrusted with the function of preparing an annual administration report of the working of the Board during that year. Such report shall be submitted to the Government.[44]

8.1.9 Rule Making Power of the TDB

Section 35 (1) of the Act empowers the Board to make rules to carry out the purposes of this Act. Such rules must not be inconsistent with the Statute.[45]

[43] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 32.
[44] *Id*. § 33.
[45] *Id*. § 35 (In particular and without prejudice to the generality of the foregoing power, the Board has the power to make rules with reference to the matters like: (a) all matters expressly required by this Act to be prescribed; (b) regulating the scale of expenditure of incorporated and incorporated Devaswoms and of Hindu Religious Endowments under the management of the Devaswom Board; (c) the maintenance and auditing of the accounts of incorporated and unincorporated Devaswoms and Hindu Religious Endowments; (d) submission of budgets, reports, accounts, returns or other information by the Devaswom Department to the Board; (e) the method of recruitment and qualifications, the grant of salaries and allowances, the

8.1.10 Power to Assume the Control of Hindu Religious Endowments

By virtue of section 36 of the Act, the Devaswom Commissioner is competent to call upon the trustees or managers of any other Hindu religious endowment under the Act to submit periodical accounts of income and expenditure or lists of properties, jewels, vessels, furniture or other things belonging to such endowments. If it is found that any movables are likely to be removed or misappropriated, the Devaswom Commissioner can pass appropriate orders for their temporary safe custody as may be necessary.[46]

Any trustee or manager, who wilfully or contumaciously disobeys any order so passed by the Devaswom Commissioner, deemed to have committed an offence and shall be liable to be prosecuted therefor.[47]

Section 37 of the Act elaborately deals with the provisions that permit the Travancore Devaswom Board to assume the management of Hindu Religious Endowments.[48] An order involving assumption of the management of any such institution under this section cannot be made without the previous

---

discipline and conduct of officers and servants of the Board and of the Devaswom Department and generally the conditions of their service, etc.).

[46] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 36.

[47] *Id*. (Trustee means the person or persons in whom the administration of the affairs of a religious endowment is vested in trust for holding any property in trust therefor, by whatever designation such person or persons may be known. By virtue of section 48 of the Act, it is to be noted that all the endowments falling under Chapter V of the Act shall be treated as corporation sole and shall have power to sue and be sued in the name of the actual manager thereof known as *Samudayam*, *Manushyam*, *Adhikari* or by any other name whether or not such manager has the power of entering into contracts binding the endowment).

[48] *Id*. § 37 (By virtue of section 37 of the Act, the Board may assume the management of Hindu Religious Endowments: (1) where at least two third majority of the trustees or the donors have reserved to themselves the power of appointing and dismissing trustees; (2) Where the trustees refused to continue in the trusteeship or on their own admission of incapacity to continue in the trust management; (3) If the trustees have failed to carry on their duties properly and it is in the best interests of the institution; (4) in cases of proved mismanagement).

sanction of the Board.[49] According to section 38 of the Act, before assuming or exercising superintendence in the management of any Hindu Religious Endowment under the provisions of this Chapter, the Devaswom Commissioner shall require an officer of the Devaswom Department not inferior in rank to a Devaswom Assistant Commissioner to enquire into the affairs of such endowment and to submit a full report. If on such report and after hearing the parties interested or affected, the Devaswom Commissioner is satisfied that a condition precedent as set-fourth in section 37 exists, he may pass such order for assumption or superintendence as enabled by section 37.

The Devaswom Commissioner is empowered to pass such order for the search or seizure of the keys, jewels, vessels, furniture, records and other properties, movable or immovable, belonging to the said institution, or for the transfer of their possession.

It is very important to note that if the Board assumes the management, the institution shall be managed in the same manner as institutions of the same class, subject to the provisions of any scheme, canons or usages, if any, established by the founder or founders.[50] Section 41 of the Act gives wide powers to the Board with regard to the exercise of the power of

[49] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 38 (Any person aggrieved by an order of assumption passed on any of the grounds mentioned in section 37, such person can institute a suit in the District Court, within whose jurisdiction the subject matter is situate, to set aside such order. The Act clearly emphasise that before assuming or exercising superintendence in the management of any Hindu Religious Endowment under the provisions of this Chapter, the Devaswom Commissioner shall require an officer of the Devaswom Department not inferior in rank to a Devaswom Assistant Commissioner to enquire into the affairs of such endowment and to submit a full report. If on such report and after hearing the parties interested or affected, the Devaswom Commissioner is satisfied that a condition precedent as set forth in section 37 exists, he may pass such order for assumption or superintendence as enabled by section 37).

[50] *Id*. § 40.

superintendence over institutions referred to in section 37. By virtue of section 41 of the Act, the Board can remove or dismiss any trustee or trustees, including hereditary trusteeship, for upholding the best interest of the institution.

For the effective superintendence of such assumed endowments, the Devaswom Commissioner can, with the sanction of the Board, either appoint officers of the Devaswom Department or a Committee consisting of such officials and non-officials.[51]

When proceedings are taken under section 37 and an order of assumption passed on any grounds mentioned under section 37(1), any person aggrieved by it can approach competent District Court in terms of section 37 (4) of the Act. The right to file a suit before a court under section 37 (4) is a statutory right. This means that the legislative provision is one for adjudication by the competent court. The exercise of that statutory power by the court would result in a judicial decision.[52]

Section 43 of the Act allows that the Devaswom Commissioner, with the previous sanction of the Board, can withdraw from the management or superintendence of any endowment assumed under the provisions of this Chapter or any other law and restore the same to the original donors or trustees or their representatives if he is satisfied that such a measure is desirable in the

[51] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 42 (1).
[52] Ambattukavu Bhagavathy Kshethra Samithi v. State of Kerala, 2010 (4) KLT 422.

interests of the institution, subject to such conditions as he may deem fit to prescribe at the time of restoration.[53]

8.1.12 Government's power to Appoint Commission

In the event of any irregularities, corruption, maladministration, or misappropriation of funds by the Board, the Government is empowered to appoint a Commission to enquire into such matters.[54]

8.2 Sree Padmanabhaswamy Temple: Chapter III of the Act

The Travancore-Cochin Hindu Religious Institutions Act, 1950 provides for a separate provision for the administration of Sree Padmanabhaswamy Temple, though the temple had been controlled for a long time by a trust, headed by the Travancore Royal Family.[55]

Sree Padmanabha Swamy Temple has been the most important temple in the State for a long time. It is richly endowed and possessed very extensive landed properties. These were originally managed by a group of people called '*Ettatra Yogam*' (eight hereditary trustees and the Ruler). But, by the beginning of the eighteenth century, the *Yogam* was ousted and the administration of the temple together with its properties was taken over entirely by the Ruler and the temple properties became inter mixed with the property of the State. The State continued however, to contribute to the maintenance of the temple and the religious ceremonies. This State of affairs continued until the time of the

[53] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 43 **(**It is pertinent to mention about an Amendment Bill that was brought in Kerala Legislative Assembly in 2009 that introduced a provision i.e., section 34B (1). However, this Bill was not passed into an Act).

[54] *Id*. § 34A **(**The Commission appointed shall be a sitting Judge of the High Court of Kerala, who is a Hindu, in consultation with the Chief Justice).

[55] *Id*. Part I, Chapter III.

integration of the two States. Even though all the temples under the control of the Princely States were brought under the control of the two Devaswom Boards of Travancore and Cochin, and State funds were also provided to the Devaswom Boards to supplement the resources of the temples, at the time of Integrating Kerala State, the Travancore King wanted to retain control of the Sree Padmanabhaswamy Temple. A special Covenant was made in this regard vesting the management of the temple with the Ruler of Travancore.[56]

After the commencement of the Constitution, the Travancore-Cochin Hindu Religious Institutions Act, 1950, was enacted. This Act specifically incorporated the above provision in the Covenant under Chapter III of the Act.[57] Chapter III (sections 18-21) of the Act exclusively deals with such provisions.

---

[56] Article VIII (b) of the Covenant is as follows:

> "*The administration of Sri Padmanabhaswamy Temple, the Sree Pandaravaga properties and all other properties and funds of the said temple now vested in trust in the Ruler of the covenanting State of Travancore and the sum of Rs. 1 lakh transferred from year to year under the provisions of Clause (a) of this Article and the sum of five lakhs of Rupees contributed from year to year towards the expenditure in the Sree Padmanabhaswamy Temple under Sub-clause (c) of this Article, shall, with effect from the first day of August 1949, be conducted, subject to the control and supervision of the Ruler of Travancore, by an Executive Officer appointed by him. There shall be a Committee known by the name of the Sree Padmanabhaswamy Temple Committee composed of three Hindu Members, to be nominated by the Ruler of Travancore to advise him in the discharge of his functions. Suits by or against the Sree Padmanabhaswamy Temple or in respect of its properties shall be instituted in the name of the said Executive Officer*."

See Uthradam Thirunal Marthanda Varma and Sree Padmanabhaswamy Temple v. Union of India (UOI), MANU/KE/0087/2011.

[57] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 18 (Section 18 of the Act reads thus: "*Administration by Executive Officer: (1) Out of the amount of forty-six lakhs and fifty thousand rupees provided for payment of the Devaswom Fund in Article 290-A of the Constitution of India, a contribution of six lakhs of rupees shall be made annually towards the expenditure in the Sree Padmanabhaswamy Temple.*

(2) The administration of the Sree Padmanabhaswamy Temple, the Sree Pandaravaga properties and all other properties and funds of the said temple vested in trust in the Ruler of Travancore and the sum of six lakhs of rupees mentioned in Sub-section (1) shall be

According to section 20 of the Act, there shall be a Committee known by the name of the Sree Padmanabhaswamy Temple Committee to advise the authorised representative from the Royal Family of old Travancore State in the discharge of his functions. The Committee shall be composed of three Hindu members who shall be nominated by the Royal Family of old Travancore and shall hold office for such term as the Ruler of old Travancore may determine.[58]

According to section 18 of the Act, out of the amount of fifty one lakhs of rupees provided for payment to the Devaswom Fund in Article 238 (10) (ii) of the Constitution of India, a contribution of six lakhs of rupees shall be made annually towards the expenditure in the Sree Padmanabhaswamy Temple.

Subsection (2) of section 18 says that the administration of the Sree Padmanabhaswamy temple, the *Sree Pandaravaga* properties and all other properties and funds of the said temple is vested in trust in the authorised representative of the Royal Family of old Travancore. The control and supervision of the temple properties and other funds related to it are vested with the authorised representative of Royal Family of old Travancore, by an Executive Officer appointed by him.

By virtue of section 21 of the Act, the authorised representative of Royal Family of old Travancore will nominate one of the members to be the Chairman of the Committee. According to section 22(1) of the Act, the Executive Officer of the Temple shall be the Secretary to the Committee.

---

conducted, subject to the control and supervision of the Ruler of Travancore, by an Executive Officer appointed by him.").

[58] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 20.

8.2.1 Sree Padmanabhaswamy Temple Administration and Supreme Court's Decision

By operation of section 18(2) of the Act, the management of the Sree Padmanabha Swamy Temple continued to be vested in trust in the last Ruler of Travancore. The last Ruler of Travancore died on 20.7.1991. Until the death of the last Ruler of Travancore he continued to manage the Sree Padmanabhaswamy Temple by virtue of powers conferred on him under Section 18(2) of Act. After the death of the last Ruler, the brother of the last Ruler after took over the control of the temple. Public resentment started when the last Ruler's brother arranged to take photographs of the treasures of the temple and claimed that the treasures of the Padmanabha Swamy Temple are the family properties of the erstwhile Royal Family of Travancore. It led to series of litigations regarding the management and mismanagement of the temple.

Several devotees and the Temple Employees Union approached Civil Courts in Thiruvananthapuram filing suits for declaration and for injunction against those who are in control and management of the temple. In one of the cases, the Sub-Court after hearing all the parties including the Temple Employees' Union which also opposes the present management, granted injunction against opening of treasure rooms (*Kallaras*) of the Temple. This order was appealed before the Kerala High Court by the Royal Family.

In 2011, the Kerala High Court ruled in case, *Uthradam Thirunal Marthanda Varma and Sree Padmanabhaswamy Temple v. Union of India*,[59] that the State Government should take over the control of the temple and its assets. The honourable High Court of Kerala has held that 'Ruler of Travancore' used in Section 18(2) of Travancore-Cochin Hindu Religious Institutions Act, 1950 and Article 366(22) of the Constitution of India, do not include the successors of last Ruler of Travancore after death of last Ruler in respect of ownership, control and management of the ancient temple.[60]

It was held that the temple was a public temple, which was one of *Mahakshetras* of Hindus. By an interim order in this appeal, an alternative mechanism to the administration of the Temple was ordered for.[61] But the Travancore Royal Family challenged this interim order by which the administration of the temple had been divested from the Travancore Royal Family. Recently, this appeal has been disposed by the Supreme Court of India, regarding the administration of Sree Padmanabha Swamy Temple (popularly known as *Sree Padmanabha Swamy Temple Case*).[62]

In its final verdict in July 2020, the Supreme Court set aside the verdict of the Kerala High Court in 2011, which had directed the State Government to set up a trust to take control of management and assets.[63] The Supreme Court

[59] Uthradam Thirunal Marthanda Varma and Sree Padmanabhaswamy Temple v. Union of India, MANU/KE/0087/2011.
[60] *Id*.
[61] Marthanda Varma (dead) v. State of Kerala, MANU/SCOR/17023/2014.
[62] Marthanda Varma (D) L.Rs. v. State of Kerala, MANU/SC/0519/2020.
[63] *Id.* (Justices U.U. Lalit. and Indu Malhotra held that the royal family's Shebaitship i.e., the right to maintain and manage the temple and the deity, does not come to an end with the death of the ruler, who signed the instrument of accession with the Indian Government in 1949 by which the erstwhile princely state of Travancore merged with the Indian Union).

upheld the rights of the Travancore Royal Family in the administration of the historic Sree Padmanabhaswamy Temple.[64] The court also accepted the suggestion made by the Travancore Royal Family on the constitution of a five-member Administrative Committee. The administrative committee will consist of the District Judge of Thiruvananthapuram, one member nominated by the Ruler of the Travancore Royal Family, one member nominated by the Government of Kerala, one member nominated by the Ministry of Culture (Government of India), and the *Thantri* of the temple (Chief Priest). All the members of the Committee must be Hindus.[65] The Court also sanctioned a three-member Advisory Committee to advise the Administrative Committee on all policy matters related to the Temple. The Advisory Committee will be headed by a retired Judge of the Kerala High Court. This committee will have two other members, one will be an eminent person nominated by the Ruler and another one is a reputed Chartered Accountant nominated by the Chairperson in consultation with the Trustee.[66]

Both the Administrative Committee and the Advisory Committee should ensure that all treasures and properties endowed to Padmanabhaswamy and those belonging to the temple must be preserved properly. They should also ensure that all rituals and religious practices are performed in accordance with the instructions and guidance of the chief Thantri of the temple and according to custom and traditions.[67]

---

[64] Marthanda Varma (D) L.Rs. v. State of Kerala, MANU/SC/0519/2020.
[65] *Id.* ¶¶ 47(3) & 114.
[66] *Id.* ¶ 47(9).
[67] *Id.* ¶ 116.

8.3 Cochin Devaswom Board: Travancore-Cochin Hindu Religious Institutions Act, 1950.

8.3.1 The Cochin Devaswom Board: Administrative Mechanism

The Cochin Devaswom Board was formed under the Act of XV of Travancore-Cochin Hindu Religious Institutions Act, 1950. The Board is entrusted with the functions of administration, supervision and control of incorporated and unincorporated Devaswoms and of other Hindu religious endowments and funds under the former Cochin State.[68]

This Part II contains six chapters (Chapter VII to XII). According to section 61 of the Act, Board means the Cochin Devaswom Board constituted under Chapter VII of the Act, in accordance with the Covenant. It is noted that all the provisions related to the administration of Cochin Devaswom Board under Part I are exactly similar in words to that of the provisions for the administration of Travancore Devaswom Board under Part I of the Act.

The Board supervises all the activities including day to day activities directly relating to 403 temples. Temples are categorised into four grades.[69] Further such temples are divided into 5 geographical divisions.[70]

For the smooth administration of the Board, it is divided into two sections, namely Establishment Section and Temple Section. The

[68] COCHIN DEVASWOM BOARD, (Jan.10, 2020), http://www.cochindevaswomboard.org.

[69] The classification of temples in the Cochin Devaswom Board is not based on any strict criteria. Income, importance and convenience are taken for classification of temples in to various groups. As per the directions of Supreme Court, in WP.Nos.14117-18 of 1984 dated 9.9.1986, for the appointment of priests (*Santhikkars*), temples were grouped into 'Grade A', 'Grade B', 'Grade C' and 'Grade D' or others. Majority of the temples under Cochin Devaswom Board belong to Grade C.

[70] There are five divisions namely one Special Devaswom - Chottanikkara and four Groups namely Thrissur, Thiruvillamamla, Thiruvanchikulam and Trippunithura.

Establishment section is in charge of the secular part of temple administration. The Temple Section handles routine rituals and functions of the temples especially the sacred part of administration consisting of the priests and other temple functionaries.[71] Cochin Devaswom Board will be referred as CSB here in after.

8.3.2 Objective of CSB

According to section 62 of the Act, there will be a statutory Devaswom Board called the Cochin Devaswom Board for the administration of 'incorporated' and 'unincorporated'[72] Devaswoms and of Hindu Religious Endowments and all their properties and funds as well as the fund and the Surplus Fund constituted under the management of the Ruler of Cochin prior to the first day of July, 1949 and the management of all institutions which were under the old Devaswom Department of Cochin shall vest in the Cochin Devaswom Board.[73] The provision itself exempts the rituals and ceremonies in the Sree Poornathrayeesha Temple at Tripunithura and Pazayannur Bhagavathy Temple from the control of the Cochin Devaswom Board. However, the administration of all the other Properties and funds of the said temples will be under the control of the Cochin Devaswom Board.[74]

[71] The Establishment section is further divided into four sections - Department of Administration, Department of Finance, Department of maintenance and the stores Department

[72] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 61(5) (Section 61(5) defines 'incorporated Devaswoms' and 'unincorporated Devaswoms' as the Devaswoms mentioned under Schedule I and II respectively of the Cochin Devaswom Verumpattom Settlement Proclamation, XXIII of 1118.)

[73] *Id*. § 62 (1).

[74] *Id*. § 62 (2).

8.3.3 Composition and Structure of the CSB

By virtue of section 63 of the Act, the Cochin Devaswom Board shall consist of three Hindu members.[75] Among the three members, two are nominated by the Hindus among the Council of Ministers and one member belonging to Scheduled Caste or Scheduled Tribe is elected by the Hindus among the members of the Legislative Assembly of the State of Kerala.[76]

The procedures for the election of members to the Board are prescribed under section 64 of the Act.[77]

Section 70 of the Act says that, every member of the Board shall be entitled to hold office for a period of two years. A member of the Board can resign from the position written communication, addressed to the Governor of Kerala.[78]

The Board is a body corporate having perpetual succession and common seal. It has the power to hold and acquire properties for and on behalf of the incorporated and unincorporated Devaswoms and Hindu religious institutions

[75] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 63(1) (The Board comprises of a President and two Members. One member shall be nominated by the Hindus among the Council of Ministers and the other member shall be elected by the Hindus among the Members of the Legislative Assembly of the State of Kerala. The term of the President and Members is for a period of three years).

[76] *Id*. § 63(2).

[77] *Id*. § 64 (According to this provision, a meeting of the Hindus among the members of the Legislative Assembly of the State of Kerala shall be summoned under the authority of Governor of Kerala or any person authorised by him. The election shall be held in accordance with the rules specified in Schedule II by the person commissioned by the Governor of Kerala to preside over the meeting).

[78] *Id*. § 70 (The period of two years was inserted by an amendment in section 70 of the Act, in the year 2018 by the Act 26/2018).

and estates under the management of the Board. It has the power to sue and be sued in its name through the Secretary to the Board.[79]

There will be a President to the Board. Such President will be from one of the members of the Board. The President to the Board is nominated by the Hindus among Council of Ministers of the State of Kerala.[80]

The qualifications for a person being appointed or nominated as a member to the Devaswom Board are prescribed under section 65 the Act.[81] The disqualifications for not being appointed or nominated as a member to the Devaswom Board are prescribed under section 66 of the Act. [82] If a person elected or nominated as a member of the Board is or subsequently becomes subject to any of the disabilities stated under section 66, any person interested may apply to the District Court, Trivandrum, for an order that such member has become subject to any of the said disabilities and the court, after making such enquiry as it deems fit, may declare whether or not such member is disqualified.[83]

Every member of the Board shall be entitled to hold office for a period of two years from the date of his nomination or election as the case may be. A

[79] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 72.
[80] *Id*. § 71.
[81] *Id*. § 65.
[82] *Id*. § 66 (According to section 66 of the Act, no person shall be eligible for election or nomination as a member of the Board if such person; (i) is of unsound mind, a deaf-mute or suffering from leprosy; or (ii) is an undischarged insolvent; or is an office-holder or a servant of Government, a local authority, the Devaswom Board, an incorporated or un-incorporated Devaswom or the trustee of a Hindu Religious Endowment; or (iv) is interested in a subsisting contract for making any supplies to or executing any work on behalf of the incorporated or unincorporated Devaswoms; or (v) has been convicted by a criminal court of any offence involving moral turpitude; or (vi) is a member of Parliament or of the Legislature of any State).
[83] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 67 (An appeal shall lie to the High Court against an order under sub-section (2) of section 67, and such appeal shall be heard and disposed of by a Division Bench).

member of the Board can resign his membership by a written communication to that effect addressed to the Governor of Kerala.[84]

8.3.4 Removal of Members of the CSB

Sub-section (2) of section 69 says that a member of the Board may be removed from his office by the High Court on the ground of proved misbehaviour or incapacity on an application made to the High Court as provided in. Such an application made to the High Court will be initiated either by the Advocate General or any person belonging to the Hindu Community.[85]

8.3.5 Powers and Functions of the CSB

The Board is empowered to exercise all power of supervision and control over the Devaswoms and Hindu Religious institutions under its jurisdiction.[86] The Board can supervise and control all the acts and proceedings of all officers and servants of the Board and of the Devaswom Department.[87] The Board is empowered to make bye-laws not inconsistent with Part II of the Act or the rules made thereunder.[88]

[84] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 70.
[85] *Id*. § 69 (According to subsection (3) of section 69 of the Act, such application made to the High Court shall be heard by a single Judge of the High Court in the first instance. If it appears to him after such preliminary enquiry as he deems necessary, that there is no prima facie case, he shall reject the application and may make such order as to costs as he deems proper. If it is found that there is a prima facie case, he shall, after recording his reasons therefore, refer the application to a Division Bench. The Division Bench shall, after such enquiry as it deems fit, pass final orders thereon and make such orders as to costs as it deems proper).
[86] *Id*. § 68.
[87] *Id*. §§ 74 & 75 (According to section 74 of the Act, all rights, authority and jurisdiction belonging to or exercised by the Ruler of Cochin prior to the first day of July, 1949 in respect of incorporated and unincorporated Devaswoms and institutions shall vest in and be exercised by the Board in accordance with the provisions of the Act, and subject to the provisions of subsection (2) of section 62).
[88] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 78.

8.3.6 Appointment of Devaswom Commissioner and Secretary to CSB

By virtue of section 74A of the Act, there will be a Devaswom Commissioner to the Board. The Board shall appoint an officer not below the rank of a Deputy Commissioner who is eligible to be promoted as Devaswom Commissioner, and in the absence of such officer, an officer not below the rank of an Additional Secretary to Government on deputation, as Devaswom Commissioner.[89] Section 73 (2) of the Act deals with the Secretary to the Board.[90]

8.3.7 Temple Advisory Committees under CSB

Provisions deal with 'Temple Advisory Committees' was introduced in 2007.[91] According to section 76A of the Act, there will be a committee named 'Temple Advisory Committee' (name of the temple) for each temple.[92]

8.3.8 Management of Devaswom Funds and Properties

Chapter IX deals with 'institution in general'. Section 79 requires that the trustees of every religious institution under the Board shall maintain registers for recording particulars of all the movable and immovable properties, scale of income and expenditures, all the liabilities of the institution, etc. By virtue of section 81 of the Act, trustee of every institution under the Board shall

[89] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 74 A.
[90] *Id*. § 73 (2) (The secretary shall be the convener of the meetings of the Board).
[91] The Travancore-Cochin Hindu Religious Institutions (Amendment) Act, 2007.
[92] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 76A (Such committees help to ensure participation of Hindu devotees in the administration of temples. Such Temple Advisory Committees should be approved by the Board. The composition of an Advisory Committee shall be prescribed by the Board. The board can frame rules with regard to such committees. Such rules should not be inconsistent with any prevailing practice).

keep regular and proper books of accounts regarding all the income and expenditure related to that particular institution.

According to section 83 of the Act, the trustee of every institution shall furnish such accounts, returns, reports or other information relating to the administration or management of the institution in his charge to the Board within the prescribed time.[93] The trustee shall prepare an annual balance sheet giving such particulars as will disclose the nature and extent of the income, expenditure, outstandings, and savings of the institution and send a signed copy of the same to the Board not later than the last day of the first month of the succeeding financial year. The trustee shall promptly furnish the Board with such information as may be required by him to explain correctly doubts, if any, arising on an examination of the balance sheet.[94]

By virtue of section 86 of the Act, any exchange, sale, mortgage, pledge, lease or other alienation of the property of an institution executed or made or any debt contracted on its behalf shall be void unless it is executed or made or contracted with the previous sanction of the Board or with the previous sanction of the civil court when in any suit.[95]

In *P.M. Brahmadathan Nambooripad v. The Cochin Devaswom Board*, it was held that sections 79, 81, 83, 84 and 86 are intra vires of the Indian Constitution.[96]

---

[93] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 83.
[94] *Id*. § 84.
[95] *Id*. § 86.
[96] In P.M. Bramadathan Nambooripad v. The Cochin Devaswom Board, AIR 1956 TC 19 (In this case, it was also held that the exercise of supervision by the Board before an enquiry and a finding of 'proved mismanagement' as provided in section 99 of the Act does not offend

Section 87 of the Act, empowers the Board to appoint an officer not below Deputy Commissioner to Devaswom Board, to inspect or enquire into any matters or affairs of an institution under the Board and to examine the properties, accounts, registers and other records as part of such enquiry or inspection.[97] Section 87 says that on the report of the officer deputed to conduct the enquiry, the Board shall pass such orders as it may think proper. According to subsection 3 of section 87 the Board can suspend the Trustee office-holder or servant. Section 88 of the Act empowers the Board to impose fine on any trustee, office-holder or servant for disobeying any order passed by it under sections 83 or 87 of the Act.[98]

By virtue of section 89 of the Act, the Board can remove any trustee, office-holder or servant of the institution who fails to conform to the provisions of Part II of this Act. Section 90 deals with disqualifications for being a trustee.

Section 91 of the Act unequivocally declares that if a trustee is suspended under Sub-section (3) of Section 87 or is removed under Section 88 or Section 89, or where a trustee has ceased to hold office under Section 90, the Board shall appoint a competent person as trustee in accordance with the scheme of administration, if any, existing in such institution or the usage of

---

Article 14 of the Indian Constitution. The Court further observed that the provisions regarding supervision and assumption in Parts I and II of the Act are not different and do not violate the right to equality guaranteed by Article 14 of the Constitution. It further clarified thus:
"*In Part I the provisions are: (1) for a general supervision under section 36; and (2) for an assumption of management or the exercise of superintendence in lieu thereof under section 37 after an enquiry under section 38. In Part II the provisions are for a general supervision under Chapter IX and for assumption of management under Chapter X after an enquiry as contemplated in section 99 of the Act. There is no provision for the imposition of superintendence in Part II while there is a provision in that behalf in Part I of the Act. This is the only real difference between the two Parts...*"

[97] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 87.

[98] *Id*. § 88.

such institution. In such conditions, if the trusteeship is a hereditary one, the Board can appoint a competent adult male member of the family as trustee.[99]

8.3.9 Auditing and Budget

Chapter XI of the Act deals with the matters connected with auditing of the accounts of the Board in detail. Section 102 of the Act requires the Board and trustee of every institution to keep regular accounts of all receipts and disbursements in respect of the institutions under its administration. Such accounts of the Board and of the incorporated and unincorporated Devaswoms shall be audited annually by the auditors appointed by the High Court. Accounts of other institutions will be audited by the Board.[100]

By virtue of section 103 of the Act, in the case of auditing of the accounts of the Board and of the incorporated and unincorporated Devaswoms, after completing the audit, the auditor has to send a report to the High Court.[101] The auditor's report must contain the details regarding all cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property due to the Board or to the institutions under their management or of loss or waste of money or other property thereof caused by neglect or misconduct. By virtue of section 104 of the Act, the auditor may report on any

[99] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 89 (This provision further provided that if no competent adult male member of the family is available or where the Board is satisfied that in the interests of the institution some other person has to be appointed, the Board may appoint any other person to be a trustee).
[100] *Id*. § 102 (Every auditor appointed so shall be treated as a public servant within the meaning of the Indian Penal Code).
[101] *Id*. § 103.

other matter relating to the accounts as may be prescribed or on which the High Court may require him to report.[102]

Section 105 of the Act makes it clear that the High Court shall send a copy of every audit report to the Board. The Board has to remedy any defects or irregularities pointed out by the auditor and report the same to the High Court. If the High Court finds that the Board or any member thereof was guilty of misappropriation or wilful waste of the funds of the institutions or of gross neglect resulting in a loss to the institutions under the management of the Board, the High Court can seek explanation from the Board or the member regarding the matter concerned. After considering the explanation, the Court can pass an order of surcharge against the Board or the member which may be executed against the member or members concerned of the Board as if it were a personal decree passed against them by the High Court. The copy of such audit report is to be made available to anyone who duly applies for the same.[103]

Section 107 of the Act directs the Board to prepare a budget for the next financial year showing the probable receipts and disbursements of the Devaswoms and institutions under the management of the Board during that financial year. The Act requires the Board to submit the copies of the budget so prepared to the Government. The Board is entrusted with the function of preparing an annual administration report of the working of the Board during that year. Such report shall also be submitted to the Government.[104]

[102] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 104.
[103] *Id.* § 105.
[104] *Id.* § 107.

8.3.10 Rulemaking Power of CSB

The Board has the power to make rules to carry out the purposes of this Act. Such rules must not be inconsistent with the Act.[105]

8.3.11 Power to Assume the Control of Hindu Religious Institutions

According to section 98 of the Act, the Board can assume management of an institution only on certain circumstances. It also provides for such conditions where, the Board can assume the management of an institution.[106]

According to section 99 of the Act, before assuming or exercising superintendence of the management of any institution under Part II of the Act, the Board shall require a Devaswom Assistant Commissioner to enquire into the affairs of such institution and to submit a full report. If on such report and after hearing the parties interested or affected, the Board be satisfied that a condition precedent as set-fourth in section 98 exists it can pass such order for assumption or superintendence.[107]

---

[105] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 122 (In particular and without prejudice to the generality of the foregoing power, the Board has the power to make rules with reference to the matters like: (a) all matters expressly required by this Act to be prescribed; (b) regulating the scale of expenditure of incorporated and incorporated Devaswoms and of Hindu Religious Endowments under the management of the Devaswom Board; (c) the maintenance and auditing of the accounts of incorporated and unincorporated Devaswoms and Hindu Religious Endowments; (d) submission of budgets, reports, accounts, returns or other information by the Devaswom Department to the Board; (e) the method of recruitment and qualifications, the grant of salaries and allowances, the discipline and conduct of officers and servants of the Board and of the Devaswom Department and generally the conditions of their service, etc.).

[106] *Id*. § 98 (According to section 98 of the Act, if there are only two trustees, the Board can assume power on the application of any one of them and in the case where the founders have reserved to themselves the power of appointing and dismissing trustees, the Board can assume power on the application of the majority of such founders or where there are only two founders on an application by any one of them. The section further makes it clear that if any person is aggrieved by an order of assumption passed on any of the grounds mentioned in section 98, such person can institute a suit in the District Court within whose jurisdiction the subject matter is situating, to set aside such order).

[107] *Id*. § 99.

The Board is empowered to pass such order for the search or seizure of the keys, jewels, vessels, furniture, records and other properties, movable or immovable, belonging to the said institution, or for the transfer of their possession in the event of taking over of administration of institutions by the Board.[108]

Any trustee or office holder or servant of an institution who wilfully or contumaciously disobeys any order so passed by the Devaswom Commissioner is deemed to have committed an offence and shall be liable to be prosecuted therefor.[109]

In *Cochin Devaswom Board v. Ramachandra Kurup*,[110] it was held that the Board's power to assume management or remove a hereditary trustee under sections 86 and 98 is subject to the satisfaction of conditions specified in section 98 of the Act.

Where the management of an institution is assumed under clause (a) of sub-section 98, the Board can restore the management of an institution, if the majority of the trustees make an application in this behalf to it.[111]

8.3.12 Power to Frame Schemes

Section 93 of the Act grants the Board the power to frame schemes for the administration of institutions, for protecting the best interest of the institution. After making the draft scheme, it must be published in the official gazette. The Board can finalize or implement a scheme after considering

[108] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 100.
[109] *Id.* § 101.
[110] Cochin Devaswom Board v. Ramachandra Kurup, MANU/KE/0632/2004
[111] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 101 (2) (c).

objections from those who are likely to be affected by the new scheme. An order settling a scheme of administration for the institution can be questioned by the trustee or any person having interest, by instituting a suit before the court within six months. Subject to the result of such suit, the order of the Board settling a scheme shall be final and binding on the trustee and all persons having interest.[112]

8.3.13 Government's Power to appoint a Commission

According to section 76B of the Act, the Government is empowered to appoint a Commission to enquire into matters like corruption, maladministration, or misappropriation of funds by the Board.[113]

In close analysis, it is clear that the system of administration of temples, i.e., the secular matters connected to temples, followed by all the public Devaswom Boards or Managing Committees, is more or less similar. However, the essential religious matters connected to each temples, under all the public Devaswom Boards or Managing Committees, are different. The present legislations with regard to administration of Devaswom Boards in Kerala have been drafted in the line of preserving the uniqueness in the religious matters associated with each temple or Devaswom.

[112] The Travancore-Cochin Hindu Religious Institutions Act, 1950, § 93.

[113] *Id*. § 76 B (The Commission shall be a sitting Judge of the High Court of Kerala, who is a Hindu, in consultation with the Chief Justice. If the service of a sitting Judge of the High Court of Kerala is not available, a retired Judge of the High Court of Kerala, who is a Hindu, shall be appointed as such Commission, in consultation with the Chief Justice).

CHAPTER 9

STATE CONTROL OVER OTHER RELIGIOUS INSTITUTIONS IN KERALA

9.1 State control over Churches and Church properties in Kerala

9.1.1 History of Churches in Kerala

It is commonly believed that Christianity was introduced to Kerala in the 1st century AD. The first Christian community established by Apostle St. Thomas is called as 'Saint Thomas Christians'.[1] It is believed that an influx of Syrian immigrants under the leadership of the merchant Thomas of Cana in the year 345 AD reinforced the Christians in Kerala.[2] Christianity as a new faith was welcomed by the early Tamil rulers in Kerala. The then rulers gave patronage to the Christians. They were given facility to construct their own churches.[3]

In the year 1498, the Portuguese arrived in Kerala. Their political influence helped the emergence of Latin Christians as a prominent Christian

[1] MOLLY VARGHESE, THE NASRANIS - ST THOMAS SYRIAN CHRISTIANS OF KERALA, INDIA (Create Space Publishing 2016) (Historians such as M.G.S. Narayanan had earlier questioned the claim of arrival of St. Thomas in AD 52. It is to be noted that certain historians and other authors have difference of opinion regarding the place where St. Thomas landed first. Some believe that it was in a place called Malankara in central Kerala. Some others believe that it was in Kodungalloor, near North Paravoor). *See* LEONARD FERNANDO & GISPERT SAUCH, CHRISTIANITY IN INDIA: TWO THOUSAND YEARS OF FAITH 54 (Penguin Books India 2004).

[2] LEONARD FERNANDO, *supra* note 1, at 61. *See also* DAMODARAN, KERALA CHARITRAM 181-184 (Malayalam Book) (Department of Cultural Publications, Government of Kerala 1996) (The early Christians known as St. Thomas Christians were called Syrian Christians because they followed the Syrian liturgy).

[3] A. SREEDHARA MENON, KERALA HISTORY AND ITS MAKERS 67 (DC Books 2011) (During the period of the Tamil rulers, the Christians were treated on equal footing with the Hindus and assigned important place in the economic and social life of the land. In 844 A.D. Chera emperor Sthanuravi conferred several important rights and privileges on Christians of Quilon and gave money for the construction of Tazhakad church in 885 AD). *See also* DAMODARAN, *supra* note 2, at 109.

community in Kerala.[4] During this period, many Latin churches were built in Kerala. A section of the Christians thus came under the jurisdiction of the Roman pontiff. Kerala churches severed the relation with Babylon and the supremacy of the Roman pontiff over the Kerala churches was established.[5] The then rulers in Kerala followed a policy of neutrality in the religious affairs of non-Hindus. The rulers gave freedom to the Portuguese to control the churches during the period.[6]

The Portuguese had not followed a policy of toleration towards other Christian churches and their followers in Kerala. The Intolerance of Portuguese led to their conflict with Syrians. That conflict ended in the famous revolt of 'Coonan Cross', in the year 1653, which led to the emergence of two distinct sections among the Christians namely Roman Syrians and Jacobite Syrians.[7] Both the sections constructed their own churches for worship. In order to avoid conflicts, the rulers of the princely States in Kerala supported the construction of the churches by both the sects generously in 1654.[8]

[4] STEPHEN NEILL, A HISTORY OF CHRISTIANITY IN INDIA: THE BEGINNINGS TO AD 1707, 34-36 (Cambridge University Press 2004) (The Latin Christians missionaries who visited Quilon in the medieval period introduced Latin rites for the first time in Kerala. The Latin Christians grew in Kerala in the coastal areas and many of them became fishermen).

[5] CORINNE G. DEMPSEY, KERALA CHRISTIAN SAINTHOOD: COLLISIONS OF CULTURE AND WORLD VIEW IN SOUTH INDIA 6 (Oxford University Press 2001).

[6] ABRAHAM VAZHAYIL THOMAS, CHRISTIANS IN SECULAR INDIA 91 (Fairleigh Dickinson University Press 1974)

[7] PAULOS MAR GREGORIOUS, THE INDIAN ORTHODOX CHURCH - AN OVERVIEW 53 (Sophia Publications 1982). *See also* JACOB CHACKO TONY, THE NINETY NINTH STEP TO MY FATHER'S HILL (Xulon Press 2009).

[8] WARD AND CORNER: A MEMOIR OF THE SURVEY OF THE TRAVANCORE AND COCHIN STATES 121 (Department of Cultural Publications, Government of Kerala 1993).

After the decline of the Portuguese rule, Kerala was under the rule of the Dutch from 1663 to 1814.[9] The Dutch made many Christian churches free from the supremacy of the Roman Pontiff. The Dutch appointed independent local bishops.[10] It is very important to note that a Church Committee was formed during this time in Cochin. This Church Committee consisted of a preacher, two elders, and four deacons. They attended the spiritual needs of the people of Cochin.[11]

During this time, the various sections of Christians namely, Roman Catholics, Jacobites and the St. Thomas Christians got opportunity and aid to construct their own churches. On the influence of Dutch, the rulers of the Princely States granted freedom to all the sects to own and manage their churches in accordance with their own systems.[12]

After the decline of the Dutch, the British established their power in Kerala in the beginning of the 19th century. With the advent of the British, the Church Mission Society (CMS) in London started working with the Syrian churches in Kerala. The CMS broke their connection with the Syrian bishops by the mid-19th century. Thereafter the CMS churches began to work independently. On their initiative, the Anglican Church came into existence in Kerala.[13] Later, Malayalam came to be used as the language of worship in the Syrian church. Some group of believers, who opposed this, formed a separate

[9] M.O. KOSHY, THE DUTCH POWER IN KERALA, 1729-1758, 213 & 214 (Mittal Publications 1989).
[10] *Id.*
[11] *Id.*
[12] A. SREEDHARA MENON, A SURVEY OF KERALA HISTORY 308 (DC Books 2007).
[13] ROBERT ERIC FRYKENBERG, CHRISTIANS AND MISSIONARIES IN INDIA: CROSS-CULTURAL COMMUNICATION SINCE 1500, 142-144 (Routledge 2013).

group and a new Church known as the Marthoma Syrian Church was established in the year 1898.[14]

The first Pentecostal congregation was held in Kerala in 1911 by the efforts of George Berg, an American missionary. Another Pentecost missionary called Pastor Robert F. Cook established 36 churches in Kerala, known collectively as the South India Church of God (Full Gospel) in India. Another Pastor K. E. Abraham, who was associated with Pastor Cook until 1930, established another communion called the India Pentecostal Church of God.[15]

Under diverse influences, foreign and native, there have been more and more such splits in subsequent periods.[16] The Malankara Church first split in 1912, into the Jacobite and Orthodox groups.[17]

---

[14] Marthoma Syrian Church was distinct from the Jacobite Syrian church, the Anglican Church and the Roman Catholic Church.

[15] A.C. George, *Pentecostal Beginnings in Travancore*, 4 ASIAN JOURNAL OF PENTECOSTAL STUDIES 43 & 223- 224 (Issue 2, Jul. 2001). *See also* P. PAUL EBENEZAR, SOUTH INDIAN PENTECOSTALISM: - A SOCIO ANALYTICAL STUDY (Thesis) (University of Madras 2013), (Nov. 15, 2019), https://shodhganga.inflibnet.ac.in/handle/10603/199965. (Innumerable Pentecostal ministries are now working in Kerala. They have no hierarchy and organizational structure to these groups. They simply work under individual pastors. Anyone can start a ministry and preach. They don't believe in adding assets for the ministry, and permanent church is not essential for such congregations. Therefore it may end with the pastor's death or abandoning of it).

[16] A. SREEDHARA MENON, A SURVEY OF KERALA HISTORY 122 (DC Books 2007).

[17] The two Churches reunited in 1959. But it lasted only until 1972-73. Since then, the two factions have been engaged in conflict over ownership of churches and their wealth. Attempts to settle ownership disputes out-of-court have often failed. In a dispute running for decades, the Supreme Court had heard many petitions. The Orthodox Church, demands that all churches under the Malankara Church be governed as per the Church Constitution of 1934. Under this, they claimed their right over the management of St Mary's Church, Piravom. In 2017, the Supreme Court upheld the demand of the Orthodox Church and the decision was in favour of Orthodox Church. The State Government failed to implement the court order. The Orthodox Church then approached the Supreme Court seeking a direction to the state to implement its order of 2017. At last, very recently, on this petition the Supreme Court has pulled up the State Government and directed to implement its order. As per that order, the ownership of St. Mary's Church at Piravom in Ernakulam district, which is currently held by the Jacobite Church, should be handed over to Orthodox Church, and so should the ownership of 1,064 other churches in dispute. *See*, *The Church dispute in Kerala: What Supreme Court ordered, Government Failed to Do*, INDIAN EXPRESS (Thiruvananthapuram, July 4, 2019).

In 1930, a section of the Malankara Church under the leadership of Mar Ivanios and Mar Theophilus left the Church and came into communion with the Catholic Church. They are known as Syro-Malankara Catholic Church. With the difference of opinion on many matters with the Syro-Malankara Catholics, yet another Church known as the Syro Malabar Catholics was formed in the year 1932. By the end of the 19th century, the Churches in Kerala came under the influence of foreign Churches.[18]

In the course of centuries, Christian religion achieved rapid progress in Kerala and their churches became well established institutions in the country. The rulers of the then Princely States as well as the British maintained the policy of non-interference in the affairs of churches and the conflicts between them. The rulers maintained neutrality and extended equal support to all fractions. This non-intervention in the religious affairs of the Christians shows that the rulers of the princely States who were Hindus had not created a feeling of insecurity among the minorities.[19] Churches were treated as autonomous organizations not coming under the authority of the Monarch (State). It indicates the existence of the early forms of secularism (separation of State from religion).[20]

At present, according to the 2011 Census, the Christians were 18.4 percentage of the total population of the State. The Christian population of

[18] NEW CATHOLIC ENCYCLOPEDIA 720 (Catholic University of America 2003), (Nov. 15, 2019), https://cvdvn.files.wordpress.com/2018/05/new-catholic-encyclopedia-vol-1.pdf.
[19] SELVISTER PONNUMUTHAN, THE SPIRITUALITY OF BASIC ECCLESIAL COMMUNITIES IN THE SOCIO-RELIGIOUS CONTEXT OF TRIVANDRUM/KERALA, INDIA 101-103 (Gregorian Biblical Books 1996).
[20] ROBERT ERIC FRYKENBERG, CHRISTIANS AND MISSIONARIES IN INDIA: CROSS-CULTURAL COMMUNICATION SINCE 1500, 142-144 (Routledge 2013).

Kerala comprises of Catholic, Jacobite Syrian, Orthodox Syrian, Mar Thoma, Church of South India, Dalit Christians and Pentecostal Churches/groups, etc. In addition to the above groups, there are also many minor missions and Churches deriving inspiration from some foreign churches and other organizations.[21]

9.1.2 Management of Church Properties in Kerala: Present System

Christian religious, charitable and educational institutions are very common in India. From the very beginning of Christianity in India, Christian churches form the core of the religion as the religious institution or place having religious sanctity. Such Christian churches are mostly created with the help and funding of followers of that community.

According to the Church's Canon Law, bishops alone can administer a church property.[22] In India, the right to manage properties of Church is vested with the Church itself. The entire administration of such institutions is usually divided into temporal and corporeal. The temporal matters are managed by the bishop or head priest in a church and other properties are managed by other group of clergies appointed by the head priest.

All the religious assets of the Christian churches in Kerala have been handled from the ancient times as if they had been trusts. A good number of

[21] K.C. ZACHARIAH, RELIGIOUS DENOMINATIONS OF KERALA (WORKING PAPER 468) (April, 2016) (Oct. 10, 2019), http://cds.edu/wp-content/uploads/2016/05/WP468.pdf (The Christian religion in Kerala today comprises of various denominations or communities like, the Syro-Malabar Catholics, the Latin Catholics, the Jacobite Syrian Christian, the Orthodox Syrian community, The Mar Thoma denomination, Pentecostal communities etc.).

[22] NEW COMMENTARY ON THE CODE OF CANON LAW 1455-57 (James A. Coriden ed. et al., Paulist Press 2000).

Churches are working as registered trusts, and the rest are unregistered trusts. This has given rise to various legal intricacies.

Unlike other religious institutions like Devaswom Boards for Hindu Temples and Muslim Waqf, there is no direct control of the State on Churches or Church properties. There is no separate and legally recognized body to manage the Church properties. Instead of a statutory mechanism, the properties of Christian religious institutions especially churches are managed and controlled by clergy groups. Currently, each denomination independently manages its assets and institutions. Most denominations have diocese-level systems to own and administer their assets. The properties are managed by the bishops or other heads of each denomination and the parishes.

9.1.3 Demand for Church Act

The Indian Constitution provides that every religious denomination or any section can administer their property in accordance with the law.[23] However, presently, there is no such common law relating to administration of the property of any religious denominations, especially of Christians.

For the past two decades, a forum of Christian groups in Kerala has been demanding a State law to administer the properties and institutions of the Christian community, ensuring the participation of all stakeholders. In 2009, Justice V.R. Krishna Iyer as the Chairman of the Law Reforms Committee, proposed a bill, called 'the Kerala Christian Church Properties and Institutions Trust Bill 2009'. But this draft Bill never made it to the Assembly.

[23] INDIA CONST. art. 26 (d).

There has been widespread call for reforms in the administration of the church properties on the ground of mismanagement in the event of recent complaints regarding. Church properties are alienated, mortgaged or leased out without any consultation at proper forums resulting in financial loss to the Churches. Several groups, supported by both laity and the clergy have demanded for a legislation to ensure fair and transparent administration of the properties and funds of the churches.

The Kerala Law Reforms Commission headed by the former Supreme Court judge, Justice K.T. Thomas, proposed a unique legislation called 'the Kerala Christian Church Properties and Institutions Trust Bill 2019' to ensure fair and transparent administration of the properties and funds of Churches in Kerala, and to end maladministration of Churches.[24]

9.1.4 The Kerala Christian Church Properties and Institutions Trust Bill, 2019

The proposed Bill is intended to bring in a democratic framework in the administration of temporal assets of the various Churches at the same time as these temporal properties are brought within the Biblical and thereby truly Christian modality in their administration.[25]

[24] The draft of the Kerala Church (Properties and Institutions) Bill, 2019, was published in March, seeking suggestions from the community. But most Christian denominations dismissed it as a move by the present government to seize and control the church's wealth. The Inter-Church Council, a platform for all Christian Churches in Kerala, warned the State government of dire consequences if the Bill was passed. The Kerala Church Act Action Council, a reformist body, has alleged that this new draft Bill is an attempt to sabotage Justice V.R. Krishna Iyer's draft Bill of 2009. Due to vehement opposition from all sides, the government put the Bill on hold. *See, Suggestions on Church properties Bill sought*, THE HINDU (Kochi, Feb. 15, 2019).

[25] The Kerala Christian Church Properties and Institutions Trust Bill, 2019.

The proposed Bill intends to ensure fair and transparent administration of the properties and funds of different church denominations in the State. It also seeks to provide remedies for maladministration.[26]

The Bill intends to promote the more democratic, efficient and just administration of the temporal affairs and properties of the Churches (sabha) to constitute Christian Charitable Trusts and Committees for controlling the resources and finances and for the management of the properties of the Churches and to provide for election to the Committees at different levels of the administrative units.

Due to vehement opposition from all sides, the Kerala government has strategically decided to hold in abeyance this draft Bill.

9.2 State Control over Muslim Mosque / Wakf in Kerala

9.2.1 History Islam religion and Religious Institutions in Kerala

It is believed that Islam religion was introduced to Kerala by the Arabs who came for trading during the 7th and 8th centuries AD. Arab traders, who were provided a friendly accommodation by the then rulers, introduced Islam as a new faith (religion). The coast of Malabar was considered as the first place to host Islam in India. Zamorins, (*Zamoothiri*) the great kings of Calicut, gave them protection and this recognition earned them social status.[27] Due to

[26] The Kerala Christian Church Properties and Institutions Trust Bill, 2019.

[27] A. SREEDHARA MENON, A SURVEY OF KERALA HISTORY 113 & 117 (DC Books 2007) (The Arabs had established commercial relations with Kerala even before the rise of Islam in Arabia and long before Islam as a religion came to Northern India); ROLAND E. MILLER, MAPPILA MUSLIM CULTURE: HOW A HISTORIC MUSLIM COMMUNITY IN INDIA HAS BLENDED TRADITION AND MODERNITY 25-27 (SUNY Press 2015) (Keralite Muslims, who embraced Islam, living in the Northern Kerala subsequently adopted the title 'Mappila Muslims').

the tolerant policy followed by the then rulers of Kerala, Islam made progress as a religion and got patronage in many ways.[28]

Unlike in North India, where Muslim Rulers from Central Asia invaded and used force in India, the spread of Islam in Kerala was peaceful.[29] The then prevailing caste system with its, inequalities, untouchability and other evil customary practices among Hindus caused inflow to Islam religion from Hindu religion to a certain extent.

It is believed that the first Muslim mosque in Kerala called 'Cheraman Juma Mosque' was built in 629 AD.[30] Many mosques were built in the State with the patronage of the rulers of Malabar. They donated lands and funds for the construction and maintenance of the mosques.[31] The management of the mosques was vested with the Muslim priests, popularly known as *Mullahs*. *Quazis* were also appointed for each mosque to lead the prayer and to teach the Islamic principles to the new followers.

From the very beginning of Islam in Kerala, the mosques have been functioning as centres of religious education. The Islamic social life is mainly

[28] VENKITARAMANAYYA, EARLY MUSLIM EXPANSION OF SOUTH INDIA 270 (Kurukshetra Prakashan 2001) (The Muslims were given special and favoured treatment by the Zamorins. The Zamorin's navy was manned by Muslims and headed by Admirals like Kunjali Marakkars. Their role in the fight against Portuguese is remarkable in the history of Kerala).

[29] A.P. Ibrahim Kunju, '*Islam in Kerala*', JOURNAL OF KERALA STUDIES 60 (Vol. IV, 1977).

[30] RON GEAVES, ISLAM AND BRITAIN: MUSLIM MISSION IN AN AGE OF EMPIRE 6 (Bloomsbury Publishing 2017) (It is believed as the first mosque in India and the oldest mosque in the Indian subcontinent. It was built by Malik Ibn Dinar, the first Muslim Sufi missionary who came to Kerala from Arabia, and the companion of Cheraman Perumal. It was built as a token of hospitality by the then Chera Ruler in AD 1825. Now this mosque is situated in the place, Kodungalloor in Thrissur District, Kerala).

[31] A.P. Ibrahim Kunju, *supra* note 29. (During early days, trade was the key to economic resources in South India. A major portion of the trade was controlled by the Muslims. Hence, every ruler developed amity with the Muslim merchants. This helped the Muslims to get more support from the local ruler). *See also* T.K.VELUPPILLAI, III TRAVANCORE STATE MANUAL 812 (Muslims were not only prominent in Malabar religion, but also got similar friendly treatment from the Maharajas of Travancore towards the Muslims of Travancore area).

centered on mosques, and the mosque culture so developed is also known as *Mahallu or Jamaat.* The *Madrasas* have also been a part of the religion as the centre of basic education in the Islamic faith.[32]

Till the advent of the British, there was no sort of State regulation over mosques or waqfs in Kerala. As a result of the Madras Regulation, 1817 (Regulation VI of 1817) the general superintendence of both Hindu and Muslim endowments in several districts were passed on to the Board of Revenue or Board of Commissioner. Later this policy of interference was recalled and the policy of total non-interference was reinstated and the Religious Endowment Act, 1863 was passed.

According to the Religious Endowment Act, 1863, the administration of religious endowments was left to the judiciary. Consequently, matters related to waqfs were decided by the English Courts. After independence, a statutory body, called Waqf Board was constituted to manage the assets of Muslim charity. However, the day to day management of the mosques were controlled by the priests appointed by the Waqf Board.[33]

9.2.2 Administration of Mosques / Waqfs through Wakf Board

Though the religion of Islam came to Kerala through Arabs, the concept of Wakf Board possesses a Mugal legacy. In India, the management of Wakf is undertaken according to the provisions of The Wakf Act, 1995. The central legislation demands all the State governments to implement the Act for

[32] U. MOHAMMED, EDUCATIONAL EMPOWERMENT OF KERALA MUSLIMS: A SOCIO-HISTORICAL PERSPECTIVE 38 (Other Books 2007).

[33] Necessity of establishing a separate body for the management of the assets of mosques can be considered as a sort of precedent taken into consideration while dealing with management issues of Hindu temples.

administering the wakf institutions like Mosques, *Dargah, Ashurkhanas,* Graveyards, *Takhiyas, Iddgahs, Imambara, Anjumans* and various religious and charitable institutions. The incomes from the properties are managed by the board which is constituted by the Central or State government.

In order to comply with the provisions of the central legislation, the State of Kerala has also constituted a State Wakf Board.

9.2.3 Kerala State Wakf Board

The Kerala State Wakf Board is a statutory body constituted by the Government of Kerala under the Wakf Act, 1995.[34] Many mosques, *dargas*, *kabarsthan*, and orphanages, are registered with the Board in addition to the waqf properties. In exercise of the powers conferred by the Wakf Act, 1995, the Government of Kerala has made The Kerala Wakf Rules, 1996.

The major function of the Kerala State Wakf Board is the general superintendence of all wakfs institutions and their properties registered with the State Board. It is also entrusted with the duty to ensure that the waqfs under its superintendence are properly maintained controlled and administered and the income thereof is duly applied to the objects for which such wakfs are created or intended.[35]

As a general principle, the Waqf Board has jurisdiction only over the properties of the mosques. The sacred area of the mosques is managed by a committee (*Mahallu or Jamaat*) or the *Mullahs* elected by the Muslim

[34] The Wakf Act, 1995 (It came into force on 1-1-1996 by replacing the Wakf Act 1954. It intends to provide better administration of wakfs. The Kerala State Wakf Board came into existence in the year 1960. The Kerala State Wakf Board is a body corporate with perceptual succession and a common seal with powers to acquire and hold property, etc.).
[35] KERALA STATE WAKF BOARD, (Nov. 15, 2019), http://www.keralastatewakfboard.in.

congregations of the mosques. Though the Wakf Board is a statutory body, it has no right to appoint the spiritual leaders viz., the *Mullahs* of the mosques.

The Board consists of both elected and nominated members from various categories which are mentioned in the Waqf Act.[36] The State government appoints a chief executive officer for the Board in consultation with the Board.[37] The Board is also empowered to appoint such number of officers and other employees as may be necessary for performance of its functions in consultation with the State government.[38]

The State government is empowered to remove the chairperson of the Board or any member thereof on the grounds specified in the Act.[39]

The State government is empowered to seek general annual report on the working and administration of the State Waqf Board.[40] If the State government is of opinion that the Board's continuance is likely to be injurious to the interests of the auqaf, the State government can supersede the Board for a period not exceeding six months.[41]

The Board is empowered to frame scheme for administration of waqfs. In event of complaints regarding mismanagement of Waqf, any person

[36] The Wakf Act, 1995, § 14 (The Board consist of a Chairperson, two elected members from among the Members of Parliament, two elected from among the Members of state Legislative Assembly, Muslim Members of the Bar Council of State, Mutawallis of the Auqaf having an annual income of rupees one lakh and above. One or two members nominated by the State Government representing eminent Muslim organizations, one or two members nominated by the State Government among recognised scholars in Islamic Theology, an officer of the State Government not below the rank of Deputy Secretary. The members of the Board shall hold office for a term of five years).
[37] *Id*. § 23.
[38] *Id*. § 24 (All the employees of the Board are deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, 1860).
[39] *Id*. § 20.
[40] The Wakf Act, 1995, § 98.
[41] *Id*. § 99.

interested in a waqf can make an application to the Board demanding an inquiry relating to the administration of the waqf. If the Board is satisfied that there are reasonable grounds for believing that the affairs of the waqf are being mismanaged, the Board can make appropriate enquiry.[42]

As part of the Social Welfare Scheme, the government gives special grant to the Board. The Board provides monthly financial assistance to *Ulamas* under it. Board is also distributing financial assistance for treatment and marriage of poor girls out of this Government grant.[43]

All moneys received or realised by the Board under this Act and all other moneys received as donations, benefactions or grants by the Board shall form a fund to be called the Waqf Fund.[44] The accounts of the Board shall be audited and examined annually by such auditor as may be appointed by the State Government.[45]

9.2.3 Wakf Tribunals

There is a system of Waqf Tribunal in the State to adjudicate complaints related to the functions of the Board or any members there to.[46] Any *Mutawallis* or any person interested in a wakf or any person aggrieved by an order made by the Board under the Wakf Act or Rules can approach the

[42] The Wakf Act, 1995, § 70.
[43] KERALA STATE WAKF BOARD, (Nov. 15, 2019), http://www.keralastatewakfboard.in.
[44] The Wakf Act, 1995, § 77.
[45] *Id*. § 80.
[46] *Id*. Chapter VIII (The Tribunal consists of a judicial officer not below that of a District/Sessions Judge, one person, from the State Civil Services equivalent in rank to that of the Additional District Magistrate, and one person having knowledge of Muslim law and jurisprudence. The judicial officer not below that of a District/Sessions Judge shall be the Chairman) (The government has created 3 Wakf Tribunals in the State as per section 83 of the Wakf Act. The 3 Wakf Tribunals in the State are situated at Kozhikode, Ernakulam and Kollam).

Tribunal within the time frame prescribed by the Act.[47] If a *Mutawalli* wilfully fails to discharge any of the duties imposed on him under the waqf, the Board or any person interested in the waqf can complain before the Tribunal and it can pass appropriate order thereon as it thinks fit.[48]

9.3 Administration of Jewish Synagogues in Kerala

According to the historical evidences, it is clear that the ancient Jews had trade contacts with ancient Kerala from about 1,000 BC.[49] Judaism was considered as the first foreign religion that arrived in India. It is believed that first group of Jews came to Kerala and settled at a place called Cranganore[50] between AD 68-72.[51] With the arrival of the Portuguese, the Jewish settlers were forced to leave Kodungalloor to Kochi.[52] The Jewish settlers got patronage and privileges from the native Rulers.[53] With the aid and support of the Rulers, Jews constructed synagogues at various places in Kerala.[54]

---

[47] The Wakf Act, 1995, Chapter VIII. (It deals with the Judicial Proceedings and the powers and functions of the Wakf Tribunal in detail).
[48] *Id*. § 94.
[49] NATHAN KATZ, WHO ARE THE JEWS OF INDIA? 26 (University of California Press 2000).
[50] Cranganore is presently known as Kodungalloor in Thrissur district. It was also referred as the port of Muziris. *See* JOSE ABRAHAM, ISLAMIC REFORM AND COLONIAL DISCOURSE ON MODERNITY IN INDIA: SOCIO-POLITICAL AND RELIGIOUS THOUGHT OF VAKKOM MOULAVI (Springer 2014).
[51] HERMANN KULKE & DIETMAR ROTHERMUND, A HISTORY OF INDIA 118 (Psychology Press 1998); STEPHEN NEILL, A HISTORY OF CHRISTIANITY IN INDIA: THE BEGINNINGS TO AD 1707, 40 (Cambridge University Press 2004) (It is believed that this group consisting of about ten thousand Jews came to Kerala to take asylum from religious persecution by the Roman Emperor Titus soon after the destruction of their Second Temple in Jerusalem).
[52] A. SREEDHARA MENON, LEGACY OF KERALA 19 (DC Books 2010).
[53] BENJAMIN HARY & SARAH BUNIN BENOR, LANGUAGES IN JEWISH COMMUNITIES, PAST AND PRESENT 360 (Walter de Gruyter GmbH & Co. 2018); A. SREEDHARA MENON, *supra* note 52 (Jewish copper plate dated 1000 AD proves a grant of the royal gift from then emperor Bhaskar Ravi Varman to the Jewish chief, Joseph Rabban. It contained several rights and privileges in perpetuity).
[54] David G. Mandelbaum, *The Jewish Way of Life in Cochin*. 1 JEWISH SOCIAL STUDIES 423–460 (1939), www.jstor.org/stable/4464305., (Nov. 3, 2019)(The first Jewish synagogue in Kerala was built at Mattancherry in Kochi, in 1567, with the grant of the ruler of the Cochin Kingdom. The second Jewish synagogue was constructed by the community in

Under the Dutch rule, the Jews regained prosperity and became an important commercial community in central Kerala. Under the British rule, the prosperity of the Jews started declining.[55] After the birth of Jewish State of Israel in 1948, majority of the Jews in Kerala returned to their home land and only a few Jews still live in Kerala.[56]

According to historical records, there are at least 8 known synagogues in Kerala. But, most of them are not operating anymore.[57] Each synagogue is unique in its construction and architecture. However, they follow more or less similar aesthetics, that is a mixture of both Jewish and Kerala traditions have been existing over centuries.

The Jewish shrines were managed by a body elected by the community until 1947.[58] After independence, the then remaining synagogues were brought under the management of an independent trust founded by the Jews.

The early Kerala rulers and the British prior to independence adopted a policy of non-interference in the management of synagogues. After

---

Chendhamangalam, Ernakulam district in 1859). *See also* THE PARADESI SYNAGOGUE IN COCHIN, INDIA, BEIT HATFUTSOT (Nov. 20, 2019), https://www.bh.org.il/paradesi-synagogue-cochin/.

[55] NATHAN KATZ, WHO ARE THE JEWS OF INDIA? 26 (University of California Press 2000).

[56] *Id*. at 57.

[57] David G. Mandelbaum, *supra* note 54 (One of these belonged to the White Jews of Cochin, while the other 7 belonged to the Malabari Jews (Brown or Black Jews). Only the Synagogue in Mattancherry still functions as a synagogue and is now a popular tourist destination. The Parur Synagogue, Chendamangalam Synagogue, Mala Synagogue and the Kadavumbhagam Synagogue in Ernakulam downtown do not provide any intended religious services but are open to public visit). *See also* JAY A. WARONKER, LOST KERALA SYNAGOGUES, COCHINSYN.COM, (NOV. 25, 2019), http://cochinsyn.com/page-lostsyn.html.

[58] P.K. BALAKRISHNAN, KERALA CHARITRAVUM JATIGALOOM 113 (Malayalam Book), (Kurukshetra Prakashan 2003). *See also* ORPA SLAPAK, THE JEWS OF INDIA: A STORY OF THREE COMMUNITIES (UPNE 1995) (After the destruction of the Second Temple in Jerusalem in 70 CE, there has been no single body leadership to the entire Jewish diaspora. Various branches of Judaism, as well as Jewish religious or secular communities and political movements around the world elect or appoint their governing bodies, often subdivided by country or region).

independence, the subsequent democratic governments continued this policy. Jewish places of worship are considered as autonomous organizations not coming under the authority of the State.

9.4 Administration of Jain Temples in Kerala

It is believed that the Jain religion came to Kerala in the 3rd century BC, during the time of Chandragupta Maurya (321-297 BC). The ancient rulers in Kerala had not promoted Jainism in any way. At the same time Jains were not restricted from constructing their own temples and following their religion.[59]

There were several Jain shrines and temples in ancient Kerala during that period. It is believed that, after the 11th century AD, majority of such temples were transformed into Hindu temples.[60] Modern Hindu temples possess the legacy of Jain architecture in their constructions.[61]

Jainism grew in Kerala until the 4th century AD. By 1589, the Jain population in Kerala became very few and the Jain temple that existed in Wayanad was handed over to the family of Gowdas and they continue to manage it even today.[62]

After the independence, in the beginning of 1980s, businessmen from Gujarat migrated to Kochi. Some followers of Jainism among the Gujaratis

---

[59] K.R. VAIDYANATHAN, TEMPLES AND LEGENDS OF KERALA 3-5 (Bharatiya Vidya Bhavan 1982).

[60] JOHN DAYAL, MATTER OF EQUITY: FREEDOM OF FAITH IN SECULAR INDIA 466 (Anamika Publishers 2007).

[61] K.K.N. KURUP, ASPECTS OF KERALA HISTORY AND CULTURE 2 & 9 (College Book House 1977). *See also*, MEDIUM, *8 Impressive Jain Temples in Kerala*, https://medium.com. (The prominent Jain Temples in Kerala are: - Ananthnath Swami Temple (Wayanad), Sultan Bathery Jain Temple (Wayanad), Jainimedu Jain Temple (Palakkad), Kattil Madom Temple (Palakkad), Dharmanath Jain Temple (Mattanchery, Ernakulam), Kallil Bhagavathy Temple (Kunnathunadu, Ernakulam), Jain Temple (Alappuzha)).

[62] A. SREEDHARA MENON, KERALA HISTORY AND ITS MAKERS 37 (DC Books 2011).

constructed a Jain temple in Fort Cochin in 1982.[63] This temple is owned and managed by the Jain family trust in Kochi. According to the 2011 India Census, Kerala has around 4500 Jains.[64] From the early period, though establishment of Jain temples were facilitated, the State had not interfered in their matters. The subsequent democratic State also never tried to interfere in the management of the assets of Jain temples.

9.5 Administration of Buddhist Temples in Kerala

Like Jainism, Buddhism also has roots in ancient Kerala. It is believed that Buddhism was introduced to Kerala during the reign of Ashoka in the 3rd century BC.[65]

The Hindu rulers of ancient Kerala followed a policy of religious tolerance and they patronized the construction and maintenance of Buddhist temples.[66] Many present day famous temples in Kerala are believed to have been Buddhist temples at an early date.[67] Some religious practices and rituals in present day Hindu Temples have close resemblance with old Buddhist practices.[68] Buddhism started declining about 8th century AD.[69]

---

[63] A. SREEDHARA MENON, A SURVEY OF KERALA HISTORY 97 (Viswanathan Printers 2005).
[64] Majority of Jain population in Kerala is settled mainly concentrated around Kochi, Palakkad and Wayanad areas.
[65] A. SREEDHARA MENON, KERALA HISTORY AND ITS MAKERS 175 (DC Books 2011).
[66] *Id*. at 37.
[67] A. SREEDHARA MENON, LEGACY OF KERALA 14 (DC Books 2010).
[68] *Id*. at 15. *See also* JOHN DAYAL, MATTER OF EQUITY: FREEDOM OF FAITH IN SECULAR INDIA 466 (Anamika Publishers 2007) (Large number of Buddha images in the southern districts of Kerala clearly indicates the prevalence of Buddhist faith in this area).
[69] A. SREEDHARA MENON, KERALA HISTORY AND ITS MAKERS 180 (DC Books 2011) (Historians attribute many reasons like corrupt religious practices with in the religion, doctrinal Hindu revivalism led by Prabhakara and Adi Sankara etc., popularity of *Bhakti cult* etc. for the declining of the Buddhist religion).

According to the census of 1991, there is not a single Buddhist shrine (Temple) existing in the State.[70] Hence it is sure that no Buddhist shrine (Temple) existing in the State. Remnants of a number of Buddha statues have been found from various places of Kerala.[71] Later, such remnants were handed over to the Archaeological Department and protected by the State in Museums. The places from where such remnants were found are under protection of the State or local bodies.[72]

In the close analysis, it is clear that, Religious institutions like Devaswom Boards for Hindu temples and Muslim *waqf* are now under the direct control of the State. But there has been no direct control of the State on Churches or Church properties. It is also clear that, in the case of Jewish synagogues, Jain temples and Buddhist shrines, the early Kerala rulers and the British prior to independence adopted a policy of non-interference in their management. After independence, the subsequent democratic Governments continued this policy. The subsequent democratic State also never tried to interfere in the management of the assets of such religions.

[70] JAYASANKAR.S, TEMPLES OF KERALA, CENSUS OF INDIA SPECIAL STUDIES 151 (Government of India Press 2000).

[71] A. SREEDHARA MENON, LEGACY OF KERALA 14 (DC Books 2010) (A number of the Buddha statues have been found from various places of Kerala, like Ambalapuzha, Karungapalli, Pallickal, Bharanikkavu, Mavelikkara and Neelamperur).

[72] A Buddha statue, found from Pallikkal pond in Maruthoorkulangara in Karunagapalli (Kollam district) was handed over to the Archaeological Department and taken to Krishnapuram palace Museum, Kayamkulam. The Pallikkal pond in Maruthoorkulangara, from where this statue was discovered, is now protected as a heritage park by the city corporation. The Buddha statue found from Pallikkal near Adoor in Pathanamthitta district was protected and reconstructed by the Archaeological Department. It is presently kept in Napier Art Museum, Thiruvananthapuram.

CHAPTER 10

FREEDOM OF RELIGION TO INDIVIDUALS

10.1 Genesis of Fundamental Rights in the Indian Constitution

The demand for the fundamental rights during the freedom struggle can be traced to the formation of the Indian National Congress.[1] First of all the demand for the fundamental rights appeared in the *The Constitution of India Bill 1895*, also referred to as *Swaraj Bill*.[2] Between 1917 and 1919 many resolutions were passed by the Indian National Congress, demanding civil rights and equality of status with British people.[3] The Indian leaders demanded the inclusion of a Bill of Rights in the proposed constitution at the round table congress.[4]

The sub-committee on minorities greatly emphasized the need for the inclusion of fundamental rights.[5] As a result of discussions and memoranda for

[1] SHELAT, THE SPIRIT OF THE CONSTITUTION 16 (Bharatiya Vidya Bhavan 1967).
[2] 1 B. SHIVA RAO, THE FRAMING OF INDIA'S CONSTITUTION SELECT DOCUMENTS 6-7 (Indian Institute of Public Administration 1966) (The Constitution of India Bill 1895, also referred to as Swaraj Bill, was the first non-official attempt at drafting a Constitution for India contained provisions guaranteeing fundamental rights. The author of the document remains a mystery. Annie Besant seems to suggest that the document was influenced was Bal Gangadhar Tilak, who was the force behind calls for '*Swaraj*').
[3] 1 B. SHIVA RAO, THE FRAMING OF INDIA'S CONSTITUTION SELECT DOCUMENTS 44 (Universal Law Publishers 2015). *See e.g.*, Annie Besant's Commonwealth of India Bill, 1925. The assertion was firmly reiterated by the Nehru Committee in 1928.
[4] SHAILJA CHANDER, JUSTICE V.R. KRISHNA IYER ON FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES 53 (Deep and Deep Publications 1992).
[5] *See* GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION 3-25 (Oxford University Press 2000); INDIAN ROUND TABLE CONFERENCE, PROCEEDINGS OF THE SUBCOMMITTEE, Part 2, Subcommittee, No. III, (1930), at 88 (The sub-committee on minorities was formed and discussions on the matter of fundamental rights were taken at the first meeting of the committee held on December 23, 1930. It greatly emphasized the need for inclusion of fundamental rights. After a deliberate discussion on the matter, a concluding report was presented by the then secretary of state for India to the parliament. This report observed that the Government recognized the importance attached by the Indian leaders to the

a declaration of fundamental rights, few provisions on fundamental rights were included in the Government of India Act, 1935.[6]

Sapru Committee[7] report also mentioned about the inclusion of fundamental rights but the issue was left to the constitution making body to decide.[8] Under the terms of the Cabinet Mission Plan, the Constituent Assembly was created and its first meeting was held on 9th December 1946.[9] On January 24, 1947, five subcommittees were set up including subcommittees on fundamental rights and minority rights.[10]

10.2 Origin and Growth of Article 25

K.M. Munshi's Note and Draft on Fundamental Rights to the sub-committee was a significant move which helped a lot to shape the provisions under present constitution, viz., Articles 25-29, regarding freedom of religion.[11] Munshi also gave due consideration to cultural freedom, which

---

idea of making a chapter on fundamental rights, a feature in the Indian constitution. However the idea of fundamental rights could not be embodied in the Constitution Act itself).

[6] 1 A.T. SAROJINI REDDY, JUDICIAL REVIEW OF FUNDAMENTAL RIGHTS 44 (National Publishing House 1976) (National leaders like Raja Narendra Nath, A.T. Paul, B. Siva Rao, and B. R. Ambedkar emphasized the need for the inclusion of Fundamental rights).

[7] Report of Sapru Committee (Tej Bahadur Sapru) was published in 1945. This committee recommended the compulsory inclusion of Fundamental Rights in the Constitution of India. This committee divided fundamental rights into two parts viz. justifiable rights and non-justifiable rights. These enforceable rights were incorporated in the Part III and the non-justifiable rights were incorporated in the part IV of the constitution.

[8] SHAILJA CHANDER, JUSTICE V.R. KRISHNA IYER ON FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES 53 (Deep and Deep Publications 1992). *See also*, 1 B. SHIVA RAO, THE FRAMING OF INDIA'S CONSTITUTION SELECT DOCUMENTS 151 (Universal Law Publishers 2015).

[9] APARAJITA BARUAH, PREAMBLE OF THE CONSTITUTION OF INDIA: AN INSIGHT AND COMPARISON WITH OTHER CONSTITUTIONS 10 (Deep and Deep Publications 2007) (Under the terms of the cabinet mission plan, the members of the constituent assembly were elected in July 1946 and reorganized in November 1946. Its first meeting was held on 9th December 1946. On January 24, 1947, five subcommittees were set up including subcommittees on fundamental rights, minority rights).

[10] 2 CONSTITUENT ASSEMBLY DEBATES 325 (Jan. 21, 1947).

[11] 2 B SHIVA RAO, THE FRAMING OF INDIA'S CONSTITUTION SELECT DOCUMENTS 76. (Universal Law Publishers 2015).

may be a part and parcel of religious freedom.[12] The sub-committee accepted Munshi's draft with some significant modifications.[13]

The Advisory Committee (presided by Sardar Patel), recommended the inclusion of clause 13 in its Interim Report.[14] With minor modifications, clause 13 of the Advisory Committee report was reproduced as clause 20 in the Constitutional Advisor's Draft Constitution[15] and as Article 19 of Draft Constitution.[16]

When the Draft Constitution was circulated for eliciting opinion, several comments were received on draft Article 19.

---

[12] 1 SUBASH C. KASHYAP, CONSTITUTIONAL LAW OF INDIA 734-737 (Universal Law Publishing 2008).

[13] The major modification was that instead of being confined to citizens, the right to freedom of religion was extended to "all persons". The right to wear and carry kirpans was also accepted as part of the practice of Sikh religion. The right "freely to profess and practice religions" was modified to read "to freedom of religious worship and freedom to profess religion". It is also modified that the right to profess and practice ones religion was made subject to other provisions of fundamental rights. The Minorities Sub-committee, however, recommended restoration of the right to free "practice of religion" and also freedom to propagate ones religion.

[14] The Advisory Committee, after considering the different and divergent recommendations in the reports of the two sub-committees and trying to reconcile the conflicting positions taken by members in the Advisory Committee (presided by Sardar Patel), recommended the inclusion of clause 13 in its Interim Report of 23rd April, 1947. Thus right to religion was retained and extended to propagate religion but the right to freedom of religious practice was made subject to the right of the State to make laws for social welfare and reform.

[15] Constitutional Advisor's Draft Constitution of October 1947.

[16] Draft Constitution prepared by the Drafting Committee in February 1948.
Draft Article 19 reads as follows.
19. (1) Subject to public order, morality and health and to the other provision of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.
Explanation: The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.
(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law –
Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice.
For social welfare and reform or for throwing open Hindu religious institutions of a public character to any class or section of Hindus.

10.3 Deliberations in the Constituent Assembly

According to Mr. Tajamul Husain, clause (1) of Article 19, of Draft Constitution, for the words "practise and propagate religion" the words "and practice religion privately", be substituted.[17] According to Tajamul Husain, India is a secular State and a secular State has nothing to do with religion and it is better to practise and profess once own religion privately. Religion is a private affair between oneself and his Creator. It has nothing to do with others.[18]

Prof. K. T. Shah, introduced an important motion that a proviso be added to clause (1) of Article 19, which clearly wanted to develop a secular educational system and to make the public institutions, especially educational institutions, free from the clutches of religion in India.[19]

Shri Lokanath Misra submitted that no constitutional precedents in the world so far mentioned of the word 'propaganda' as a fundamental right,

---

[17] 2 CONSTITUENT ASSEMBLY DEBATES 817 (Dec.3, 1948).

[18] *Id*. (According to Mr. Tajamul Husain, religion is only a means for the attainment of one's salvation. If one honestly believe that he will attain salvation according to his own way of thinking, and religion, it is unnecessary that another one ask the first one to attain salvation according to another's way. According to him instead of demonstrate it for the sake of propagating, it is better to profess and practise religion at home. He was of the opinion that propagating religion in this country would become a nuisance to others; so far it had become a nuisance).

[19] 7 CONSTITUENT ASSEMBLY DEBATES 820 (Dec.3, 1948) (Provision to be added to clause (1) of Article 19 reads as follows:- *"Provided that no propaganda in favour of any one religion, which is calculated to result in change of faith by the individuals affected, shall be allowed in any school or college or other educational institution, in any hospital or asylum, or in any other place or institution where persons of a tender age, or of unsound mind or body are liable to be exposed to undue influence from their teachers, nurses or physicians, keepers or guardians or any other person set in authority above them, and which is maintained wholly or partially from public revenues, or is in any way aided or protected by the Government of the Union, or of any State or public authority therein."* K. T. Shah further clarified his stand that he was not against anybody professing any particular form of belief. In a liberal State, like ours, this freedom to propagate religion should not be abused, as it had been in the past).

relating to religion.[20] As a secular State, propagation of religion as a fundamental right is something dangerous. According to Misra, the ancient faith and culture of the land should be given a fair deal and protected in a way.[21]

Shri H. V. Kamath introduced an amendment which demanded the inclusion of a new sub-clause after clause (1) of Article 19, which prohibits the State from establishing any institution or endowment that patronize any particular religion. The amendment consists of two parts, the first relating to the disestablishment or the separation of what may call in Western parlance the Church from the State and the second relates to the deeper import of religion, namely, the eternal values of the spirit.[22] According to Kamath, a secular State is neither a God-less State nor an irreligious nor an anti-religious State.[23]

Dr. B. R. Ambedkar suggested that, in clause (2) of Article 19, for the word 'preclude' the word 'prevent' be substituted, for the purpose of keeping

[20] 7 CONSTITUENT ASSEMBLY DEBATES 822 (Dec.3, 1948).
[21] *Id*. at 823 (Dec.6, 1948) (Misra vehemently argued against the provision for freedom for propagation of religion. He proposed to drop the word 'propagate' in Article 19 at least. If right to propagate religion is a fundamental right and justiciable, then he wanted to follow Irish model where the Irish Free State Constitution recognises the special position of the faith professed by the great majority of the citizens. Misra also demanded to include such recognition in our Constitution also. According to him U.S.S.R. gave freedom of religious worship and freedom of anti-religious propaganda. But unfortunately, our Constitution gives the right even to propagate religion but does not give the right to any anti-religious propaganda).
[22] *Id*. at 824 (Dec.6, 1948) (In the first part of Kamath's amendment, he said that the State shall not establish or endow or patronise any particular religion, but he did not mean religion in the widest and deepest sense the meaning of religion as the highest value of the spirit. Hence he suggested in the second part that the State shall do all in its power to impart spiritual training and spiritual instruction to the citizens of the Union).
[23] *Id*. at 825 (Dec.6, 1948) (As a strong supporter of yoga, Kamath's words are relevant these days where hot debates are going on with regard to implementing yoga in the academic syllabus. According to him 'yoga' is the system of spiritual discipline, spiritual instruction that India has attained through the ages, which has been known throughout the world).

symmetry in the language that have been used in the other articles.[24] This amendment was accepted by the Constituent Assembly and later incorporated to Article 25 of the present constitution.[25]

Prof. K. T. Shah made a remarkable suggestion that for the words "regulating or restricting any economic, financial, political or other secular activity" in sub-clause (a) of clause (2) of Article 19, the words "regulating, restricting or prohibiting any economic, financial political or other secular activity" be substituted.[26] K. T. Shah found that the inclusion of the word 'prohibition' is necessary, if the State has to exercise its authority over any matter that is of a secular kind or any matter connected with financial, economic or political act or practice of any religion.[27]

K. T. Shah strongly proposed that after the words *"or throwing open Hindu"* in sub-clause (b) of clause (2) of Article 19, the words "Jain, Buddhist, or Christian" be added.[28] He contended that all religious institutions must be thrown open to public and made accessible or made applicable to all the leading religions of this country, whose religious institutions are more or less cognate.[29]

[24] 7 CONSTITUENT ASSEMBLY DEBATES 826 (Dec.6, 1948).
[25] *Id*. at 839 (Dec.6, 1948).
[26] *Id*. at 826 (Dec.6, 1948).
[27] *Id*. at 827 (Dec.6, 1948) (According to Shah, material possessions, worldly wealth and worldly grandeur are things which have been the doom of many an established religion).
[28] 7 CONSTITUENT ASSEMBLY DEBATES 828 (Dec.6, 1948) (According to Shah the said clause 2 would read as; *".....for social welfare and reform or for throwing open Hindu, Jain, Buddhist or Christian religious institutions of a public character to any class or section of Hindus"*).
[29] *Id*. at 828 (Dec.6, 1948).

Shri K. M. Munshi, also opined that the word *'Hindu'* used in this section should be widely defined so as to include the various sub-sections in Hindu community.[30]

Shrimati G. Durgabai also put forward an important amendment that the words *"any class or section"* in sub-clause (b) of clause (2) of Article 19, should be substituted with the words "all classes and sections". This amendment by Durgabai, was accepted in the Constituent Assembly and later incorporated in the old Article 19, i.e., present Article 25.[31]

Mohamed Ismail Sahib made a serious suggestion that clause 2 of this Article 19 shall not prevent people from observing their personal law.[32] Ismail Sahib expressed an apprehension that the practice of personal law may, by a stretch of imagination, be brought under the secular activities associated with religion.[33]

In response to the suggestion made by Mohamed Ismail Sahib, Shri K. Santhanam replied that the particular amendment by Mohamed Ismail Sahib may negatively affect the initiative of bringing a uniform civil code. Ismail Sahib further clarified that his concern is with the practice of the members of

[30] 7 CONSTITUENT ASSEMBLY DEBATES 837 (Dec.6, 1948).
[31] *Id*. at 839 (Dec.6, 1948).
[32] *Id*. at 829 (Dec.6, 1948).
[33] However with the permission of the House, Mr. Mohamed Ismail Sahib moved his amendment that reads as follows;
"That after clause (2) of Article 19, the following new clause be added:
(3) Nothing in clause (2) of this Article shall affect the right of any citizen to follow the personal law of the group or the community to which he belongs or professes to belong."

certain families coming under one community. Therefore, this will not in any way affect the creation of a uniform civil law.[34]

Lakshmi Kant stressed upon the power of the State to intervene in the secular matters of religion on certain occasions.[35] L. Krishnaswami Bharathi Stated that religion is a personal affair and the State should not side with one religion or another and should tolerate all religions.[36]

Shri Rohini Kumar Chaudhari made a noteworthy observation that the Constitution does not mention the word God. He suggested exemplary punishment for the propagandist who throws mud at some other religion.[37]

During the entire debate, 15 amendments, most of which had been moved before the House, gave the views on this particular Article from different perspectives. About 12 speakers gave voice to their views and the present Article 25 (Article 19 in the Draft Constitution) was subjected to vigorous debate.[38]

However, during the time of voting, all the amendments except a few were rejected and draft Article 19 as amended was adopted to be added to the Constitution. At the revision stage, it was renumbered as Article 25 of the Constitution. Thus the present provision of Article 25 came into force.[39]

---

[34] 7 CONSTITUENT ASSEMBLY DEBATES 830 (Dec.6, 1948) (Ismail Sahib took concern with the family practice and in such cases as succession, inheritance and disposal of properties by way of wakf and will, the personal law operates. It is only with such matters that are concerned under personal law. In other matters, such as evidence, transfer of property, contracts and in innumerable other questions of this sort, the civil code will operate and will apply to every citizen of the land, to whatever community he may belong).
[35] *Id*. at 832 (Dec.6, 1948).
[36] *Id*. at 833 (Dec.6, 1948).
[37] *Id*. at 835 (Dec.6, 1948).
[38] 7 CONSTITUENT ASSEMBLY DEBATES 817-837 (Dec.6, 1948).
[39] *Id*. at 817-837 (Dec.6, 1948).

Now right to freedom of religion is mainly embodied under Article 25 of the Constitution of India.[40]

10.4. Freedom of Religion under Article 25(1)

10.4.1 Freedom of Conscience

The word conscience means, a person's moral sense of right and wrong.[41] According to *Halsbury's Laws of England*,[42] freedom of conscience involves freedom of thought, opinion and religion and includes the right to manifest a chosen religion.

Freedom of conscience is a difficult term to define than freedom of religion. It covers a wide range of beliefs, held individually or collectively. Individuals may regard themselves as deists, theists, atheists or agnostics, as 'none of the above', as humanists, free thinkers or followers of one of any number of philosophies etc. etc.[43]

In an American case, *Guy Porter Gillette*, [44] it was observed thus:-

---

[40] INDIA CONST. art. 25 (*Article 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*).

[41] WEBSTERS ENCYCLOPEDIC UNABRIDGED DICTIONARY 432 (Deluxe ed., 2001).

[42] 1 HALSBURY'S LAW OF ENGLAND 835.

[43] PHILIPPE PERCHOC, FREEDOM OF CONSCIENCE AROUND THE WORLD (Report of European Parliament Research Service 2018), (Nov. 5, 2019), http://www.europarl.europa.eu/at-your-service/files/be-heard/religious-and-non-confessional-dialogue/events/en-20180428-freedomconscience.pdf.

[44] Guy Porter Gillette v. United States, 401 U.S. 437 (1971): MANU/USSC/0162/1971.

> "*Conscience and belief are the bedrock of free speech as well as religion. Conscience is often the echo of religious faith. But, as this case illustrates, it may also be the product of travail, meditation, or sudden revelation related to a moral comprehension of the dimensions of a problem, not to a religion in the ordinary sense.*"

Article 18 of the Universal Declaration of Human Rights undoubtedly declares that everyone has the right to freedom of thought, conscience and religion. It includes freedom to change one's religion or belief, and freedom to manifest his religion or belief in teaching, practice, worship and observance.[45] This freedom of religion can be exercised either in public or private.

The freedom of conscience guaranteed under the Indian Constitution, is based on the idea of a secular State.[46] In other words the State as a political association concerned with the social relations between man and man alone and not with the relation between man and god. In a secular State, the relation between man and god is a matter regards to individual conscience.[47]

Article 25 guarantees freedom of conscience and religion to every person, citizen as well as non-citizen, which is not absolute. Article 25 (1) corresponds to the "free exercise clause" of the American Constitution.[48]

---

[45] Universal Declaration of Human Rights, 1948, § 18 (Article 18 of International Covenant on Civil and Political Rights, 1966 also recognizes same right.)

[46] 3 D.D. BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 3457 (Lexis Nexis 2008).

[47] *Id.*

[48] Free Exercise Clause refers to the section of the First Amendment to U.S Constitution. It reads thus:- "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.*" (The Free Exercise Clause reserves the right of American citizens to accept any religious belief and engage in religious rituals. Free-exercise clauses of state constitutions which protected religious "opinion, expression of opinion, and practice were all expressly protected" by the Free Exercise Clause. The Clause protects not just religious beliefs but actions made on behalf of those beliefs. The state constitutions provide certain exemptions from at least some generally applicable laws.) *See* CORNELL LAW SCHOOL, (Jan. 10, 2020)https://www.law.cornell.edu/wex/free_exercise_clause.

Indian constitutional jurisprudence deals with issues concerning 'conscience' under Article 25 with the prism of religion. The direct judicial pronouncement of the Supreme Court on this issue is rare. Hence it prompts us to dwell into the constitutional scheme and philosophy underlying the scheme of Article 25. Even though, under Indian Constitution, 'freedom of religion' includes 'freedom of conscience', both terms are different.[49]

The expression 'freedom of conscience' refers to the mental process of belief or non-belief; it can be called as freedom of thought also.[50] Article 25 under the prism of right to conscience guarantees that an adult person is free to believe or not believe or free to change his religion.[51]

By virtue of freedom of conscience, a person has the freedom not only of belief in any particular religion but also non-belief in any religion also. Thus, it would include atheism, agnosticism, scepticism, pacifism or the like.[52]

The content of the fundamental freedom of religion and conscience is based on what is stated in the Preamble to the Constitution as "liberty of thought, belief, faith and worship."[53]

In the light of protection of religious conscience, it was held that, no religion is specially recognized as such and the personal laws based on religion, govern only followers of the respective faith.

---

[49] Udit Chauhan, *Freedom of conscience and its contours- A look into the legality of it*, TIMESNOWNEWS.COM, (May 16, 2018), (May 11, 2019), https://www.timesnownews.com/mirror-now/in-focus/Article/freedom-of-conscience-and-its-contours-a-look-into-the-legality-of-it/317465.

[50] 3 D.D. BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 3459 (Lexis Nexis 2008).

[51] 2 H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA 1272 (Universal Law Publishing 2014).

[52] 3 D. D. BASU, *supra* note 50, at 3460.

[53] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018.

In the case of *Sanjay Ananda Salve v. The State of Maharashtra*,[54] the High Court of Maharashtra held that a person cannot be compelled to change his belief that prayers are religious in nature and to stand with folded hands when prayers are being sung. Such compulsions are against a person's freedom of conscience. The court also reminded that one cannot show disrespect to the prayers and such disrespect, will be infringing the freedom of conscience of others also.[55]

In a famous Irish case *Marry Mc Gee v. A.G.*, [56] Justice Walsh interpreted freedom of conscience with regard to State control, in the light of Article 44(2) (a) of the Irish Constitution as:-

> "*...no person shall directly or indirectly be coerced or compelled to act contrary to his conscience in so far as the practice of religion is concerned, and subject to public order and morality, is free to profess and practice religion of his choice in accordance with his conscience. Correlatively, he is free to have no religious beliefs or to abstain from the practice or profession of any religion.*"

In India, freedom of conscience is subject to State regulation as soon as it is externalized, i.e., when such belief affects the rights of other people. Indian Constitution guarantees every person a fundamental right not only to entertain the religious belief of his choice but also to exhibit his belief and ideas in a manner not derogatory to the religious right and personal freedom of others.[57] However, the State is prevented from making any law or issuing any order that

[54] Sanjay Ananda Salve v. The State of Maharashtra, MANU/MH/1900/2013.
[55] *Id*.
[56] Marry Mc Gee v. A.G., (1974) IR 284.
[57] Lily Thomas v. Union of India, AIR 2000 SC 1650.

directly or impliedly offends the religious sentiments or freedom of conscience.[58]

Religion cannot be mixed with secular activities of the State. Religious fundamentalism that is detrimental to the larger interest of society cannot be permitted in a secular State.[59]

10.4.2 Freedom to Profess Religion

Freedom of conscience will be meaningful only when it is supplemented by spiritual conviction in word and action or only when they are articulated.[60] The word *'profess'* means that the right of a person to state his creed, belief and thought.[61] In other words, to declare one's belief in a particular religion in such a way that it would be known to those concerned.

According to Webster's dictionary[62] the word 'profess' means to declare openly; avow or acknowledge publicly. In other words the word 'profess' means to affirm faith in or allegiance to a religion or God. For example, if a person declares publically that he has ceased to practise his own religion and has accepted another religion, it can be said that he is professing the other religion.[63]

In Article 25 of the Indian Constitution, the word 'profess' is used as having a different connotation from the word 'practice'.[64] The word 'profess' is

[58] Pogakula Laxmireddy v. The Prinicipal Secretary to Govt. of Andhra Pradesh, AIR 1997 AP 6.
[59] State of Karnataka v. Praveen Thogadia., AIR 2004 SC 2081.
[60] S. P. Mittal v. Union of India, AIR 1983 SC 1.
[61] 6 D. D. BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 5344 (Lexis Nexis 2016).
[62] WEBSTERS ENCYCLOPEDIC UNABRIDGED DICTIONARY 1544 (Deluxe ed. 2001).
[63] *See generally* John Vallamattom v. Union of India, AIR 2003 SC 2902; Punjab Rao v. D.P. Meshram, AIR 1965 SC 1179.
[64] George Sebastian v. Molly Joseph, AIR 1995 Ker 16.

not used in the corresponding provisions of the international conventions.[65] Even though the language used is different, the total ambit of the words to 'profess' and 'practice' is the same and both rights to 'profess' and 'to manifest' are subject to limitations on grounds of 'public order, morality and health', etc.[66]

Explanation I to Article 25 (1) of the Constitution of India says that the wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.

In the case M.P. Gopalakrishnan Nair v. State of Kerala,[67] related to administration of Guruvayur Devaswom, it was held that one who professes Hindu religion need not practise idol worship, rituals and ceremonials as mandatory. In this case, it was also observed that that one who profess a religion need not practice that religion using all in its popular means.

'Professing Christian faith' is not analogous to 'practicing Christian faith'.[68] In the case of *G. Michael v. S. Venkateswaran*,[69] it was held that the expression 'profess' is intended to have the same meaning as the expression

[65] The Universal Declaration of Human Rights, 1948, art. 18; International Covenant on Civil and Political Rights 1966, art. 18; American Convention on Human Rights, 1969, art. 12; African Charter on Human and Peoples' Rights, 1981, art. 8; the European Convention on Human Rights, 1953, art. 9.

[66] Instead of the word 'profess', The Universal Declaration of Human Rights, 1948, declares as:- "*Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance*." International Covenant on Civil and Political Rights, 1966, uses the words "freedom to manifest one's religion".

[67] M. P. Gopalakrishnan Nair v. State of Kerala, AIR 2005 SC 3053 (In this case the validity of the Guruvayoor Devaswom Act, 1971, was challenged before the Kerala High Court by the hereditary trustees, claiming infringement of their fundamental rights under Articles 19, 25 and 26 of Constitution of India. A Full Bench of the Kerala High Court dismissed the said writ petition).

[68] George Sebastian v. Molly Joseph, AIR 1995 Ker 16.

[69] G. Michael v. S. Venkateswaran, MANU/TN/0198/1952.

'belongs to' and a person belongs to a religion either by birth or by conversion. In the same case, Justice T. L. Venkatarama Ayyar observed thus:-

> "*Mere sympathy with or admiration for particular tenets of any religion by a person who was not born in it and who has not been converted to it would not bring him within the meaning of the expression "professing a particular religion. Equally if a person has been born into a particular religion and has not been converted to another religion the mere fact that he is of an unorthodox type or has no belief personally in the tenets of that religion would not take him out of the category of a person professing that religion*."[70]

In the case of *Albert Raj v. District Collector, Kanyakumari*,[71] it was held that freedom of conscience or right freely to profess religion, guaranteed under the constitution cannot be restricted on any frivolous ground.[72]

In *Dilawar Singh v. State of Haryana*,[73] it was held that the wearing and carrying of *Kirpans* is considered as part of professing the Sikh religion.

10.4.3 Freedom to Propagate Religion

In the light of right to freedom of religion under Article 25 of the Constitution, the word 'propagate' means to communicate or spread a person's belief to another or to expose the tenets of that faith.

---

[70] G. Michael v. S. Venkateswaran, MANU/TN/0198/1952, ¶ 19.
[71] Albert Raj v. District Collector, Kanyakumari, AIR 2005 Mad. 444.
[72] *Id*. (The permission for constructing a building of a church in the locality was rejected by the government on the ground that only few Christians live in the said locality. It was held that the refusal on such ground is arbitrary, illegal and unconstitutional).
[73] Dilawar Singh v. State of Haryana, MANU/PH/0330/2016 (In this case, the petitioner is a prosecution witness in the case. The Sessions Judge directed him to remove the *Kirpan* in case he wanted to appear as a witness. When the petitioner refused to do so on the plea of his religious freedom, learned Sessions Judge did not record his statement and directed him to appear in Court without wearing his *Kirpan*. The petitioner filed the writ petition for quashing the aforesaid order on the ground that it violates his fundamental rights to profess and practice his religion).

In *Sri Lakshamana Yatendrulu v. State of Andhra Pradesh*,[74] religious institutions as such cannot practise or propagate religion. It can be done only by or through individual persons. Whether those persons propagate their personal views or the tenets for which the institution was started, is immaterial for the purposes of Article 25. Only propagation of beliefs is protected, it does not matter whether the propagation takes place in any religious institution or meeting. .[75]

During the time of Constituent Assembly debates, there was considerable discussion on the word 'propagate'.[76] If we analyze the issues like religious conversion and re conversion, it is to be said that his fear and words became true in post independent India.[77] Many States in India became forced to bring legislations to prohibit religious conversions.[78]

[74] Sri Lakshamana Yatendrulu v. State of Andhra Pradesh, AIR 1996 SC 1414.
[75] *Id*. (In this case, it was held that, in the case of a *Math*, it is the duty of the Mahant to practise and propagate the religious tenets of which he is an adherent and if any provision of law prevents him from propagating his doctrine that would certainly affect the religious freedom guaranteed under Article 25. Math or a specific endowment as such cannot practise or propagate religion. It can be done only by or through individual persons. Whether those persons propagate their personal views or the tenets for which the institution was started, is immaterial for the purposes of Article 25. Only propagation of beliefs is protected, it does not matter whether the propagation takes place in a temple or any other meeting).
[76] 2 H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA 1287 (Universal Law Publishing 2014).
[77] Post independent India faced a lot of violence and hot debates in the name of religious conversion and re-conversion (named *ghar wapazi*). *See generally* RAM PUNIYANI, GHAR WAPSI, CONVERSIONS AND FREEDOM OF RELIGION (Media House 2015); Padmanabh Samarendra, *Religion, Caste and Conversion Membership of a Scheduled Caste and Judicial Deliberations*, 51(4) ECONOMIC & POLITICAL WEEKLY (Jan. 23, 2016); Neha Chauhan, *Religious Conversion and Freedom of Religion in India: Debates and Dilemmas*, 1 ILI LAW REVIEW (Summer Issue, 2017).
[78] Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968 and Orissa Freedom of Religion Act, 1967 are examples.

In the case of *Rev. Stainislaus v. State of Madhya Pradesh*,[79] it was held that the word 'propagate' used in Article 25(1) does not grant the right to convert another person to one's own religion.[80] A forceful conversion instead of transmitting or spreading the tenets of one's religion, amounts to infringement of the 'freedom of conscience' guaranteed to all the citizens by the same Article 25.[81]

10.4.4 Freedom to Practice Religion

The use of the expression 'practice of religion' under Article 25 makes it clear that the Constitution protects both the freedom of religious opinion and the acts done in pursuance of a religious belief. While the word 'profess' in Article 25 denotes expression, the word practice denotes the overt performance of religious rites, rituals, forms and ceremonies, including participation in religious processions, assemblies and worship.[82]

The rights guaranteed under Articles 25 and 26 of the Constitution of India extend to the rituals and observances, ceremonies and modes of worship which form part and parcel of religion. There are certain forms of practicing the

[79] Rev. Stainislaus v. State of Madhya Pradesh, AIR 1977 SC 908 (States like Madhya Pradesh and Orissa prohibited conversion by force, fraud or inducement through legislations like Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968 and Orissa Freedom of Religion Act, 1967 respectively, and Sections 432 and 439 of Criminal Procedure Code, 1973. The main issue before the Supreme Court was whether such prohibition is violative of Article 25 (1). The court held that the right to propagate one's own religion includes right to transmit or spread one's religion by exposition of its tenets - right to convert another person to one's own religion not included in Article 25 (1) - held, such provisions not unconstitutional).

[80] *Id*.

[81] Satya Ranjan Majhi v. State of Orissa, (2003) 7 SCC 439.

[82] The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.

religion by outward expression or actions that are important part of religion or religious belief.[83]

Practices that are essential and integral part of a religion alone are protected. What would constitute an essential part of religion or religious practice is to be determined with reference to the doctrine of a particular religion which includes practices which are regarded by the community as part and parcel of that religion.[84] An optional religious practice is not covered by Article 25(1).[85]

A legislation to regulate or restrict the economic activity which is associated with religious practice does not violate Article 25 of the Constitution.[86]

The question of what constitutes the essential part of a religion is essentially a question of fact to be considered in the context of the 'material' or 'factual' or the 'legislative or historical'.[87] The courts can apply various tests to find whether a particular religious practice is regarded by the community as an integral part of that religion or not on the basis of evidence.[88]

[83] Commissioner of Police v. Acharya Jagadishwarananda Avadhuta (2004) 12 SCC 770.
[84] *Id.*
[85] State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat, AIR 2006 SC 212 (In this case, it was held that slaughtering of cow on *Bakr Id* is neither essential to nor necessarily required as part of the religious ceremony. *See also* State of West Bengal v. Ashutosh Lahiri, AIR 1995 SC 464).
[86] Haji Usmanbhai Hasanbhai Qureshi v. State of Gujarat, AIR 1981 Guj 40 (In this case, it was held that the legislation which regulates religious practice to slaughter animals on certain occasions and on the occasion of certain religious festivals or regulates these practices by prescribing the age so far as bulls and bullocks are concerned and restricts the slaughter so far as cows and calves are concerned does not violate Article 25 of the Constitution).
[87] N. Adithayan v. The Travancore Devaswom Board, AIR 2002 SC 3538.
[88] Commissioner of Police v. Acharya Jagadishwarananda Avadhuta (2004) 12 SCC 770 (Lakshman, J., Dissenting).

The right to practice religion is subject to State regulation on the grounds public order, public health and morals of the people.[89] Sub-clause (a) of clause (2) empowers the State to make laws regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice. Sub-clause (b) empowers the State to make laws providing for social reform and social welfare even though they might interfere with religious practices.[90]

The right to religion follows the right to take out religious procession.[91] This, however, is subject to the restrictions which may be imposed by the authorities for protecting public order, health and morality.[92] This right is impliedly guaranteed under Article 25(1) of the Indian Constitution by guaranteeing right to religious practice.[93]

[89] Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388.
[90] INDIA CONST. art. 25.
[91] Commissioner of Police v. Acharya Jagadishwarananda Avadhuta (2004) 12 SCC 770 (In this case it was held that right to carry *Trishul*, *Conch* or skull is an integral and essential part of religious practice and same is protected under Article 25. But at same time, the right to religious procession is subject to right of State to interfere if such procession creates law and order problem. Anand Margis held entitled to take a procession in public places after obtaining necessary permission from the concerned authorities. As part of protecting public peace and to avoid damages to public properties, the Anand Margis were permitted to go on procession and perform Tandva dance with symbolic skull, Trishul, knife, damroo, sword subject to terms and conditions).
[92] Odisha Vikash Parishad v. Union of India, Writ Petition (C) No. 571 of 2020 (Supreme Court of India) (In the instant case, first, the Supreme Court banned age old *Rath Yatra* (Procession on Chariot) in Puri Jagannath Temple, this year 2020, in the interest of COVID-19 safety of the pilgrims. The court also empowered the State to take decisions keeping in mind the larger public good and said that the State of Odisha can even stop the procession if they feel it would go out of hand. Later, The Supreme Court heard a bunch of petitions seeking modification in its earlier order stayed Lord Jagannath's *Rath Yatra*. After considering such petitions, The Supreme Court subsequently allowed the Lord Jagannath's *Rath Yatra* with certain restrictions).
[93] Gulam Abbas v. State of Uttar Pradesh, AIR 1981 SC 2198.

While exercising the power of regulation the State must be conscious that the subject of regulation is a fundamental right of religion, and also be careful not to unduly infringe the protection given by the Constitution.[94]

In the case of *Subhankar Chakraborty v. The State of West Bengal*,[95] the Kolkata High Court observed that the State, being a welfare State, does not have any right to curb or to do away with rituals of any community on a certain date or dates on unreasonable grounds. In this case, the Court took a balanced approach for giving opportunities to all religions to perform their rituals without disturbing the rituals of other religious groups and tried to avoid a religious conflict.

In the case of *Adi Saiva Sivachariyargal Nala Sangam v. The Government of Tamil Nadu*,[96] it was held that:-

> "*The requirement of constitutional conformity is inbuilt and if a custom or usage is outside the protective umbrella afforded and envisaged by Articles 25 and 26, the law would certainly take its own course. The constitutional legitimacy, naturally, must supersede all religious beliefs or practices*."

By addressing the reality that sometimes religious practices may become unconstitutional, the Supreme Court in *Sabarimala Women Entry*[97] case observed that:-

> "*It is a universal truth that faith and religion do not countenance discrimination but religious practices are sometimes seen as*

[94] Commissioner of Police v. Acharya Jagadishwarananda Avadhuta, (2004) 12 SCC 770.
[95] Subhankar Chakraborty v. The State of West Bengal, MANU/WB/0773/2017.
[96] Adi Saiva Sivachariyargal Nala Sangam v. The Government of Tamil Nadu, (2016) 2 SCC 725.
[97] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018, ¶ 4.

perpetuating patriarchy thereby negating the basic tenets of faith and of gender equality and rights."

In this case, it was held that the practice of exclusion of women of the age group of 10 to 50 years could not be regarded as an essential part of the Hindu religion.[98]

Any usage which is found to be pernicious and derogatory to the law of the land or public policy or social decency cannot be accepted or upheld by the courts in India.[99]

The freedom of religion enshrined in the Article 25(1) is not guaranteed in respect of one religion only, but covers all religion alike, and it can be properly enjoyed by a person if he exercises his right in a manner commensurate with the like freedom of persons following other religions.[100]

The right guaranteed under Article 25(1) of the Constitution is not an absolute right, but subject to the reasonable restrictions.[101]

As far as religious institutions are concerned, they are considered as the part of concerned freedom of religion. With reference to Hindu Temples, Temple worship is an outward expression of one's belief in a particular God or deity. It is usually followed by a believer in the course of that religion.

As far as Hindu Religion is concerned, as we discussed in earlier chapters, Temple worship is not mandatory one to the Hindu religion, but a part and parcel of modern Hindu religion. Going Temple and worshiping an Idol is a religious act, which is usually common practice attached to the Hindu

[98] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018, ¶ 122.
[99] N. Adithayan v. The Travancore Devaswom Board, AIR 2002 SC 3538.
[100] Rev. Stainislaus v. State of Madhya Pradesh, AIR 1977 SC 908, ¶¶ 20 & 21.
[101] Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388.

religion in modern days. Though temple worship is a religious act, administration of temple is a secular act.

CHAPTER 11

STATE CONTROL OVER FREEDOM OF RELIGION TO INDIVIDUALS

11.1 Control or Restrictions under Article 25

Article 25(1) protects the citizen's fundamental right to freedom of conscience and his right to profess, practise and propagate religion. Any fundamental right in a modern State is not absolute. Like any other fundamental right, the freedom of religion under Article 25 is also subject to regulations and restrictions.[1] This protection is subject to public order, morality and health as Article 25(1) itself denotes. The right to freedom of religion is also subject to the laws, existing or future, which are specified in Article 25(2).[2]

Article 25(2)(a) and (b) would be further limitation on the freedom guaranteed under Article 25 (1).[3]

The freedom of religion under Article 25 of the Indian Constitution is subject to following limitations. They are:-

i) Restrictions by clause (1) of Article 25 on the grounds of public order, morality and health.

[1] 6 D. D. BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 5319 (9th ed., Lexis Nexis 2016). *See also* Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan, AIR 1963 SC 1638.
[2] INDIA CONST. art. 25.
[3] 6 D. D. BASU, *supra* note 1, at 5320.

ii) Regulations or restrictions imposed by the State upon any economic, financial, political or other secular activities associated with religion.

iii) Regulations or restrictions imposed by the State for bringing social welfare or reform without affecting the essentials of a religion.

iv) Regulations or restrictions imposed by the State for throwing open of Hindu public religious institutions to all classes and sections of Hindus.

It is relevant here to note that in *Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj v. The State of Gujarat*,[4] it was observed that:-

> "*No rights in an organised society can be absolute. Enjoyment of one's rights must be consistent with the enjoyment of rights also by others. Where in a free play of social forces it is not possible to bring about a voluntary harmony, the State has to step in to set right the imbalance between competing interests and there the Directive Principles of State Policy, although not enforceable in courts, have a definite and positive role introducing an obligation upon the State under Article 37 in making laws to regulate the conduct of men and their affairs. In doing so, a distinction will have to be made between those laws which directly infringe the freedom of religion and others, although indirectly, affecting some secular activities or religious institutions or bodies.*"[5]

[4] Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj v. The State of Gujarat, AIR 1974 SC 2098.
[5] *Id.* ¶ 25.

11.2. Restrictions on the ground of Public Order

The expression "public order" is of wide connotation. It referes the State of tranquillity which exists among the members of a political society as a result of internal regulations enforced by the Government.[6]

The concept of 'public order' is a permissible restriction under Article 25(1) that is distinguished from the connotation 'law and order'. 'Public order' has a larger connotation than 'law and order.' Contravention of law to affect public order must affect the community or the public at large. A mere disturbance of law and order leading to disorder cannot be considered "public order." Every breach of peace does not lead to public disorder.[7]

The fundamental rights conferred under Articles 25 and 26 of the Constitution are not absolute but subject to public order. In order to protect and maintain law and order, the authorities concerned can take preventive measures in this regard if any religious practice disturbs law and order.[8]

With respect to public order, the two *Ananda Margi cases* (i.e. '*First Ananda Margi case*'[9] of 1983 and '*Second Ananda Margi case*'[10] of 2004) are very relevant. In both the cases, the Supreme Court had upheld the State's power to regulate or restrict a religious practice on the ground of public order.[11]

---

[6] Ramesh Thappar v. The State of Madras, MANU/SC/0006/1950.
[7] Ram Manohar Lohia v. State of Bihar, MANU/SC/0054/1965.
[8] Commissioner of Police v. Acharya Jagadishwarananda Avadhuta, (2004) 12 SCC 770.
[9] Acharya Jagdishwaranand Avadhuta v. Commissioner of Police, Calcutta, AIR 1984 SC 51.
[10] Commissioner of Police, Calcutta v. Acharya Jagadishwarananda Avadhuta, (2004)12 SCC 770.
[11] In both *Ananda Margi* cases, it was held that the right to carry *Trishul*, Conch or Skull is not an integral and essential part of religious practice and the same is subject to the right of the State to interfere. If, the said practice of carrying *Trishul*, Conch or Skull during such procession creates law and order problems, the authorities who are entrusted with the duty of maintaining law and order, can regulate it.

In *Gulam Abbas v. State of Uttar Pradesh*,[12] it was observed that the authorities should not outrightly prohibit religious practice on the ground of public peace and tranquillity, but should adopt a positive approach to protect fundamental rights under Articles 25 and 26 of the Constitution.[13]

In the case of *Deva Asir v. The Superintendent of Police, Kanyakumari District*,[14] the Madras High Court observed that the framers of the Indian Constitution did not rush to declare the equality of the fundamental right to profess, practice, and propagate religion. Instead of introducing the equality of right to religion first, the framers introduced the rider restricting the right to freedom of religion, *inter alia*, to public order and other provisions of Part III of the Constitution first. Article 19(2) also underscores public order as a restrictive factor on the fundamental right to free speech and expression.[15]

In the matter related to immersion of Ganesa Idols, the decision of Madras High Court in the case of *K.R. Ramaswamy v. The Chief Secretary, Govt. of Tamilnadu*,[16] seems relevant. In this case, the court observed thus:

> "*The State shall frame Regulations and/or Rules formulating detailed guidelines of the requisites that have to be complied with by all organizers who temporarily install idols on public land and perform public worship. Such guidelines should include the requisite safety and fire safety measures required to be taken by the organizers, measures to prevent environmental and noise pollution, measures to avoid*

[12] Gulam Abbas v. State of Uttar Pradesh, AIR 1981 SC 2198.
[13] *Id*.
[14] Deva Asir v. The Superintendent of Police, Kanyakumari District, MANU/TN/0449/2019.
[15] *Id*.
[16] K.R. Ramaswamy v. The Chief Secretary, Govt. of Tamilnadu, MANU/TN/2517/2017.

obstruction of traffic to the extent feasible, the requisite civil and medical facilities required to be provided by the organizers, etc."[17]

A different view was taken by the Kolkata High Court on the issue of immersion of *Durga* idol. In *Subhankar Chakraborty v. The State of West Bengal*,[18] it was held that the restriction must be judged on the touchstone of fairness, transparency, reasonability and rationality.[19] In the instant case, the court rejected the reasons for issuing orders abridging and/or curtailing the right to profess religion and performance of rituals.[20]

In *Arun Ghosh v. State of West Bengal*,[21] it has been held that if a thing disturbs the current of the life of the community, and does not merely affect an individual, it would amount to disturbance of the public order. The shifting of the graves for the purpose of maintaining public order was held valid.[22]

---

[17] K.R. Ramaswamy v. The Chief Secretary, Govt. of Tamilnadu, MANU/TN/2517/2017 (In response to the High Court's order, the State Government had framed guidelines for installation and worship of Vinayaka idols and for immersion thereof, and issued G.O. by Public Law & Order Department vide, G.O. Ms.No. 598 dated, 09/08/2018).

[18] Subhankar Chakraborty v. The State of West Bengal, MANU/WB/0773/2017.

[19] *Id*. (In this case the West Bengal government's decision to restrict Durga puja idol immersions, on a particular day and time was challenged. The government restricted Durga puja idol immersion to 10 pm on September 30, 2017- the day of Vijaya Dashami-and banned any immersions the next day, because Muharram is on the same day, and celebration processions might have been on the same routes. The government had argued that the restrictions were a preventive measure to rule out any law and order problems. Three petitions were made in the high court challenging the decision. But the High Court held that the state government could not restrict a citizen's constitutional right to practice religion on the assumption that there could be law and order problems).

[20] *See also* Ramjilal Modi v. State of UP, AIR 1957 SC 620 (In this case it was pointed out that Section 295A has been included in Chapter XV of the Indian Penal Code which deals with offences relating to religion and not in chapter VIII which deals with offences against the public tranquillity and from this circumstance it is faintly sought to be urged, therefore, that offences relating to religion have no bearing on the maintenance of public order or tranquillity and, consequently, a law creating an offence relating to religion and imposing restrictions on the right to freedom of speech and expression cannot claim the protection of clause (2) of Article 19. A reference to Articles 25 and 26 of the Constitution, which guarantee the right to freedom of religion, will show that the argument is utterly untenable).

[21] Arun Ghosh v. State of West Bengal, AIR 1970 SC 1228.

[22] Abdul Jalil v. State of UP, AIR 1984 SC 882.

With regard to the issue of conversion, in *Rev. Stainislaus v. State of Madhya Pradesh*,[23] it was held that any attempt of forcible conversion may give rise to an apprehension of a breach of the public order, and may affect the community at large.[24] The Supreme Court has very clearly held that the legislature is competent to enact any law in the interests of maintaining public order covered by Entry I, List II of the Seventh Schedule to the Constitution of India.[25]

In *State of Karnataka v. Dr. Praveen Bhai Thogadia*,[26] it was held that in order to protect the law and order, the State has the power to restrict or even prohibit those speeches or actions that are likely to trigger communal antagonism and communal riots and affect communal harmony.[27]

Only where the written or spoken words have the tendency or intention of creating public disorder or disturbance of law and order or effect public tranquillity, need the law step into prevent such an activity.[28]

The Court has held that restricting the time of bursting of firecrackers is not a violation the religious rights of any person as enshrined under Article 25

[23] Rev. Stainislaus v. State of Madhya Pradesh, AIR 1977 SC 908. (In this famous case, the Supreme Court considered the constitutional validity of certain legislations (Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968, Orissa Freedom of Religion Act, 1967 and Sections 432 and 439 of the Criminal Procedure Code, 1973) that prohibited religious conversion by force, fraud or inducement. It was held that the impugned legislations therefore fall within the purview of the Entry I of List II of the Seventh Schedule as they are meant to avoid disturbances to the public order by prohibiting forcible conversion).
[24] *Id*.
[25] Rev. Satya Ranjan Majhi v. State of Orissa, AIR 2003 Ori 163.
[26] State of Karnataka v. Praveen Bhai Thogadia, AIR 2004 SC 2081.
[27] *Id*. (In this case, it was held that, while permitting holding of a meeting organised by groups or an individual, that is likely to disturb public peace, tranquillity and orderliness, the administration has a duty to find out who the speakers and participants are and also take into account previous instances and the antecedents involving or concerning those persons. If they feel that the presence or participation of any person in the meeting or congregation would be objectionable, then necessary orders can be passed).
[28] Balwant Singh v. State of Punjab, AIR 1995 SC 1785.

of the Constitution.[29] It was also held that an order of banning or forfeiture of fundamental religious text book would infringe the right under Article 25 as it is the essential part of religion.[30]

The ground of 'public order' takes different modes in different situations. It purely depends upon the very facts and circumstances of each and every case. The justifiability of the ground of 'public order' depends upon each case.

11.3. Restrictions on the Ground of Morality

Morality plays an important role in law making, interpretation of law and exercising judicial discretion. All human conduct and social relation cannot be regulated by law alone and many such aspects are left to be regulated by morals and the law does not interfere with them.[31]

Benjamin Cardozo observed that though law is a result of conscious or purposed growth, it is also an expression of customary morality which develops

[29] Forum, Prevention of Envn. and Sound Pollution v. Union of India (In Re: Noise Pollution), AIR 2005 SC 3136 (In this case, by rejecting the bursting of firecrackers as an essential to the religious practice, it was held that the festival of Diwali is mainly associated with pooja performed on the auspicious day and not with firecrackers. In no religious text book it is written that Diwali has to be celebrated by bursting crackers. Diwali is considered as a festival of lights, not of noises. Such noise is more than just a nuisance. It constitutes a real and present danger to people's health. Shelter in the name of religion cannot be sought for, for bursting firecrackers and that too at odd hours).

[30] Chandanmal Chopra v. State of West Bengal, AIR 1986 Cal 104 (In this case, an order of banning or forfeiture of Koran would infringe that right under Article 25 which provides that all persons shall be equally entitled to freedom of conscience and the right freely to profess, practise and to propagate religion. Koran, which is the basic text book of Mohammedans, occupies a unique position to the believers of that faith as Bible is to the Christians and Gita, Ramayana and Mahabharata to the Hindus). *See also* N. Veerabrahmam v. State of Andhra Pradesh, AIR 1959 AP 572.

[31] V.D. MAHAJAN, JURISPRUDENCE AND LEGAL THEORY 108 (Eastern Book Company 2008).

silently and unconsciously from one age to another.[32] Every society contains certain rules of conduct that constitute a common element in law and conventional morality as distinguished from other forms of social control.[33]

The word 'morality' is mentioned in the Indian Constitution through Articles 19,[34] 25[35] and 26[36]. The concept of morality under the Indian Constitution expresses the notion of popular 'public morality'. The concept of constitutional morality is something different from public morality.[37] However, in the recent *Sabarimala Case*,[38] it was unequivocally declared that the term public morality in Article 25 has to be understood as being synonymous with constitutional morality.[39]

The essence of constitutionalism is the underlying principle of constitutional morality.[40] In its simplest sense, constitutional morality means that the Constitution must prevail over all other factors.[41] It basically means that all are bound by the norms of the Constitution and are never expected to act in a manner which would become violative of the rule of law in an arbitrary manner.[42] Principles of fundamental rights such as the right to life and liberty, the right against discrimination and the right to freedom of speech are just

[32] BENJAMIN CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 104-105 (Tenth Indian Reprint, 2012).
[33] H. L. A. HART, THE CONCEPT OF LAW 193 (Oxford University Press 2012).
[34] INDIA CONST. art. 19 (2).
[35] *Id*. art. 25 (1).
[36] *Id*. art. 26.
[37] Andre Beteille, *Constitutional Morality: Perspectives*, 43 ECONOMIC & POLITICAL WEEKLY (04 Oct., 2008). *See also* Suresh Kumar Koushal v. NAZ Foundation, (2014) 1 SCC 1.
[38] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018.
[39] *Id*. ¶ 114.
[40] Gopal Subramanyam, CONSTITUTIONAL MORALITY- IS IT A DILEMMA FOR THE STATE, COURTS AND CITIZENS? 37 (Centre for Policy Studies Visakhapatnam 2016).
[41] Kalpana Kannabiran, *The scope of constitutional morality*, THE HINDU (Oct. 04, 2018).
[42] Manoj Narula v. Union of India, (2014) 9 SCC 1.

some examples of constitutional morality that had been drafted into the Indian Constitution.[43]

In this sense it can be said that Indian Constitution incorporates both public morality and constitutional morality.[44] However, there may be occasions where a conflict between constitutional morality and public morality arise. In such situations, there is no doubt that constitutional morality shall override public morality.[45]

In the recent decision in *Sabarimala case*,[46] *Triple Talaq case*,[47] *Decriminalization of adultery case*,[48] *Decriminalization of same sex marriage case (LGBT community case)*,[49] etc., the Apex Court has invoked the doctrine of constitutional morality.[50] It is very clear from those decisions that popular morality cannot be used to infringe or curtail the fundamental right of any individual.

---

[43] Gopal Subramanyam, CONSTITUTIONAL MORALITY- IS IT A DILEMMA FOR THE STATE, COURTS AND CITIZENS? 40 (Centre for Policy Studies Visakhapatnam 2016).
[44] *Id*.
[45] *See* Navtej Singh Johar v. Union of India, MANU/SC/0947/2018; S. Khushboo v. Kanniammal, AIR 2010 SC 3196.
[46] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018.
[47] Shayara Bano v. Union of India, (2017) 9 SCC 1.
[48] Joseph Shine v. Union of India, MANU/SC/1074/2018.
[49] Navtej Singh Johar v. Union of India, MANU/SC/0947/2018. *See also* Naz Foundation v. Government of NCT of Delhi, MANU/DE/0869/2009 (In this case the High Court of Delhi observed thus:-
"*Thus popular morality or public disapproval of certain acts is not a valid justification for restriction of the fundamental rights under Article 21. Popular morality, as distinct from a constitutional morality derived from constitutional values, is based on shifting and subjecting notions of right and wrong. If there is any type of morality that can pass the test of compelling State interest, it must be constitutional morality and not public morality.*").
[50] Kalpana Kannabiran, *The Scope of Constitutional Morality*, THE HINDU (Oct. 04, 2018).

Morality takes different shapes beyond the ideals recognised in particular social groups.[51] The concept of morality in the Indian context gets shapes different from its earlier dimensions.

In *Sarla Mudgal v. Union of India*,[52] the Court observed that the secular matters that are related to such religious matters of marriage, succession etc., cannot be brought within the guarantee enshrined under Articles 25, 26 and 27.[53]

In *Javed v. State of Haryana*,[54] it was held that the practice of having more than one marriage sustaining at the same time can be regulated or prohibited by legislation in the interest of public order, morality and health or by any law providing for social welfare and reform.

In *Khursheed Ahmad Khan v. State of U.P.*,[55] it was held that polygamy was not integral part of religion and monogamy was reform within power of State under Article 25 of the Constitution.

[51] H. L. A. HART, THE CONCEPT OF LAW 183 (Oxford University Press 2012).
[52] Sarla Mudgal v. Union of India, AIR 1995 SC 1531.
[53] *Id*. (In this case, it was held that the second marriage of a Hindu husband after converting to Islam religion without having first marriage dissolved may be an offence under Section 494 for bigamy and it does not amount to violation of rights under Article 25(1). The personal law relating to marriage and succession in various communities have a sacramental origin).
[54] Javed v. State of Haryana, AIR 2003 SC 3057.
[55] Khursheed Ahmad Khan v. State of U.P., (2015) 8 SCC 439 (In this case, the appellant was a government servant. Present appeal was filed against the order removing appellant from service for proved misconduct of contracting another marriage during existence of first marriage without permission of Government in violation of Rule 29(1) of Uttar Pradesh Government Servant Conduct Rules, 1956. The appellant argued that the impugned Conduct Rule could be held to be violative of Article 25 of Constitution, as his religion allowed polygamy. The Court held that though the practice of having more wives than one or procreating more children than one is a practice followed by any community or group of people, the same can be regulated or prohibited by legislation in the interest of public order, morality and health or by any law providing for social welfare and reform which the impugned legislation clearly does).

In *Joseph Shine v. Union of India*,[56] the Apex Court of India declared Section 497[57] of the Indian Penal Code as it affected the constitutional guarantees of equality before law, non-discrimination on account of sex, and dignity. It further reiterated the commitment of the State to constitutional morality.[58] It is to be understood that the notions of social morality are inherently subjective in nature.[59]

In *Babulal v. Resmabai Narayanrao Kaurati*,[60] it was held that gender-inequality is an anathema to constitutional philosophy and morality. A custom or usage which prima facie is not gender neutral would have to muster the test of Articles 14, 15 and 21 of the Constitution of India.

In *Shayara Bano v. Union of India*,[61] it was held that '*triple talaq*'[62], forms no part of Article 25(1). The form of '*triple talaq*' is violative of the

[56] Joseph Shine v. Union of India, MANU/SC/1074/2018, ¶ 111.
[57] Section 497 of Indian Penal Code, dealt with the offence of adultery. This provision may be used to punish a married man for having sex with the wife of another man. However, the sexual act was exempted from punishment if it was performed with the consent or connivance of the husband of the other woman. It also exempted the wife from punishment, and never treated the wife as an abettor.
[58] The judgment also struck down Section 198(2) of the Code of Criminal Procedure, as a consequence of striking down of Section 497 IPC. The Court however clarified that adultery will be a ground for divorce. It was also stated that if an act of adultery leads the aggrieved spouse to suicide, the adulterous partner could be prosecuted for abetment of suicide under Section 306 of the IPC.
[59] S. Khushboo v. Kanniammal, AIR 2010 SC 3196.
[60] Babulal v. Resmabai Narayanrao Kaurati, MANU/MH/0004/2019 (In this case, it was observed that, in view of the constitutional philosophy, if a female tribal who is a natural legal heir is denied equal share in the property of her father or mother, it would be impermissible for the Court to start with the assumption that the customary law governing the tribe excludes the females from inheritance and to then insist that the female tribal must plead and prove a custom that she is not so excluded).
[61] Shayara Bano v. Union of India, (2017) 9 SCC 1.
[62] Talaq pronounced by the husband in the presence of witnesses saying that "I give *talak, talak, talak*".

fundamental right contained under Article 14 of the Constitution of India. The Apex Court indirectly invoked constitutional morality in this case.[63]

In *Sabarimala Case*,[64] it was observed that the term 'morality' occurring in Article 25(1) of the Constitution cannot be viewed with a narrow sense so as to confine the sphere of definition of morality to what an individual, a section or religious sect may perceive the term to mean. The term public morality in Article 25 has to be understood as being synonymous with constitutional morality. The notions of public order, morality and health cannot be used as a colourable device to restrict the freedom to freely practise religion and discriminate against women of the age group of 10 to 50 years by denying them their legal right to enter and offer their prayers at the Sabarimala temple.[65]

Justice Indu Malhotra, in her dissenting judgment in *Sabarimala Case*, has made a different opinion that:-

> "*Constitutional morality in a pluralistic society and secular polity would reflect that the followers of various sects have the freedom to practise their faith in accordance with the tenets of their religion.*"[66]

---

[63] Shayara Bano v. Union of India, (2017) 9 SCC 1 (In this case the Petitioner (Wife) had approached present Court, for assailing divorce pronounced triple talaq pronounced by her husband. The petitioner sought declaration that talaq-e-biddat pronounced by her husband be declared as void *abinitio*. In this case, one of the issues was that the constitutional validity of the practice of 'talaq-e-biddat' 'triple talaq' was in breach of constitutional morality. The Muslim Personal Law (Shariat) Application Act, 1937, was challenged as it seeks to recognize and enforce 'triple talaq', is within the meaning of the expression 'laws in force' in Article 13(1) and must be struck down as being void to the extent that it recognizes and enforces 'triple talaq'.

[64] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018.

[65] *Id*. ¶ 114.

[66] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018, ¶ 307.6. *See also* Indian Hotel & Restaurant Association v. The State of Maharashtra, MANU/SC/0045/2019.

Justice Indu Malhotra concluded thus;

"*Constitutional morality must be in harmonisation with or balancing of all such rights that include the right of every individual, religious denomination, or sect, to practise their faith and belief in accordance with the tenets of their religion, irrespective of whether the practise is rational or logical to ensure that the religious beliefs of none are obliterated or undermined*".[67]

If the constitutional morality is undermined in favour of societal or popular morality, it will lead into majoritarianism. Such a situation will not be good for a country like India having a humongous diversity, and may adversely affect the interests of the minorities in the future.[68]

11.4 Restrictions on the Ground of Health

Right to freedom of religion is subject to right to health. The right to practice, profess, and propagate religion is controlled by and is subservient to the powers of the State to regulate such practice on the ground of public health. The right to health included in Article 21 of the Constitution of India does not come in conflict with or overlap with the right to propagate and profess religion. These two are separate and distinct rights.

Faith Healing:- Every form and method of curing and healing must have established procedures, which must be proved by known and accepted methods, and verified and approved by experts in the field of medicines. It is only when a particular form, method or path is accepted by the experts in the

[67] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018, ¶ 307.6.
[68] Patralekha Chatterjee, *Why constitutional morality is vital, and matters to us all*, THE ASIAN AGE (Jun. 26, 2018), http://www.asianage.com/opinion/oped/041018/why-constitutional-morality-is-vital-and-matters-to-us-all.html.

field of medicine that it can be permitted to be practiced in public. Faith healing is a method of treating illness through the exercise of faith rather than medical methods.[69]

The faith in any religion to practice rituals and observance of such religion is not to be confused with right to conscience and to practice and propagate the religion. The claim to cure ailments falls in the domain of right to health. A person has no right to induce others to believe in his faith in religion to cure others from ailments.

In the case of *Rajesh Kumar Srivastava v. A.A.T Verma*,[70] the Allahabad High Court held that no person has a right to make a claim of curing the ailments and to improve health on the basis of his right to freedom of religion.

The Court found that the propagation, practice and profession of 'faith healing' in public on charging consideration is in violation of the constitutional and legislative scheme, and that such 'faith healing' based on a person's faith in the religious practices, in public for consideration is not permitted and is violative of the legislations.[71] Where the right to health is regulated by validly

[69] Vijayaprasad Gopichandran, *Faith Healing and Healing in Faith*, 12 INDIAN JOURNAL OF MEDICAL ETHICS (No. 4, 2015)

[70] Rajesh Kumar Srivastava v. A.A.T Verma, AIR 2005 All 175.

[71] *Id*. (In this case the Lal Mahendra Sewa Shakti Samiti Kotwa Kote, Allahabad is a registered society that engaged in faith healing programs through its members. The key person of the society was Sri Ajay Pratap Singh. They propagated that the chanting of a certain *manthra* is a cure for all ailments. The court held that the society and Sri Ajay Pratap Singh have an individual right to believe, that the chanting of certain *manthra* is a cure to all ailments but they have no right to impose by professing and practicing on others to believe and to propagate the same belief in a public place by charging fees by way of consideration or contribution to any temple or to the society. Such an activity exclusively falls within the domain of the right to health, which is protected and regulated by the legislations. These legislations do not come in conflict with the right of the petitioner to believe that his faith in chanting certain *manthra* cures all ailments. The society and its members and Sri Ajay Pratap Singh do not have any right to hold congregation in public parks, charge consideration and to profess and practice in public that the chanting of certain *manthra* is cure to all ailments. Such

enacted legislation, the right to cure the ailment through religious practices including 'faith healing' cannot be claimed as a fundamental right.

For example, a person may be suffering from serious ailments like cancer, thalassemia or HIV infection, which may ultimately lead to suffering and death. If such a person is made to believe on the faith of a person in his religion that such belief is a cure to all ailments and on such conviction the persons suffering from ailments, does not take any treatment and suffers, or dies, the person professing such faith commits a crime which has no defence in his faith, or any right to his religion.

Noise Pollution:- The noise pollution that may usually happen while practising certain religious practices or ceremonies is not protected by Article 25. In *Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association*,[72] it was clearly held that no religion prescribes or preaches that prayers are required to be performed through voice amplifiers or by beating of drums. If there be any such practice, it should not adversely affect rights of others. Such activities in the name of religion should be restricted on the ground of health of other people prescribed in Article 25(1) itself.[73]

---

a practice is illegal and violative of law as well as the right of citizen (including those innocent persons suffering from various ailments, who participate in such congregation) guaranteed under Article 21 of Constitution of India and which the State and the Court are obliged to protect).

[72] Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association, AIR 2000 SC 2773.

[73] *Id*.

In *Re: Noise Pollution Case*,[74] it was unequivocally held that a ban on use of noise emitting fireworks between 10 p.m. and 6 a.m., even during religions occasions was held valid and not a violation of religions rights.

Some health hazards related to religious products have been reported in some parts of the country. In Karnataka, a dozen people died of poisoning from *prasadham* (offerings made to deities) from a temple.[75] Even though the reports[76] reveal that such incidents were rare and a result of planned crimes, the governments and concerned Devaswom boards have started taking care of the purity and quality of religious products distributed from such religious institutions.[77] Local municipal authorities are also given charge to ensure the quality of such products. In this regard, the authorities started ensuring that all food offering packets must carry manufacture and expiry dates, contents and FSSAI[78] licence number. All vendors of such religious products (*prasadham*) have to obtain an FSSAI licence. Such positive preventive measures can be considered as reasonable regulations or restrictions on religious freedom on ground of public health.

[74] Forum, Prevention of Environment and Sound Pollution v. Union of India (In Re: Noise Pollution), AIR 2005 SC 3136.
[75] *Temple 'Prasada' incident: Death toll goes to 11*, THE HINDU, Dec. 15, 2018.
[76] *Karnataka seer plotted food poisoning to oust temple trustee*, TIMES OF INDIA, indiatimes.com, Dec. 20, 2018.
[77] *Food safety approval must for Kerala temple offerings*, THE HINDUSTAN TIMES (Jan. 29, 2019 (States in India like, Gujarat, Tamil Nadu and Maharashtra have implemented BHOG (Blissful Hygienic Offering to God), a project conceived in 2017 that mandates food safety licence for all offerings, including free food serving (*anna danam*) and *pooja prasada*).
[78] Food Safety and Standards Authority of India is an autonomous body established under government of India.

11.5. Restrictions on the Ground of other Provisions of Part III

Article 25(1) is subject not only to the public order, morality and health, but also to 'the other provisions of Part III'. It is pertinent to note in this context that Article 25 of the constitution is made subject to "public order, morality and health" and also "to the other provisions of this part" while Article 26 is only subject to "public order, morality and health." The founders of the Constitution left no room for doubt in expressly subjecting Article 25(1) to the other provisions of Part III.[79]

It is to be noted that the clause 'subject to the other provisions of this Part III', occurs only in clause (1) of Article 25 and not in clause (2). It can be inferred that the right declared in Article 25(1) is subject to even clause 2 of Article 25. A law, therefore, which falls within Article 25 (2) (b) will control the right conferred by Article 25(1) and the limitation in Article 25(1) does not apply to that law.[80]

In *Raja Suriya Pal Singh v. The State of U.P.*,[81] it was held that acquisition of the properties of a charitable institution for public purposes was held valid. A charity created by a private individual is not immune from the sovereign's power to compulsorily acquire that property for public purposes.[82] It is also be noted that the Land Acquisition Act, 1894 is applicable uniformly

[79] Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj v. The State of Gujarat, AIR 1974 SC 2098.
[80] Sri Venkataramana Devaru v. The State of Mysore, AIR 1958 SC 255.
[81] Raja Suriya Pal Singh v. The State of UP, MANU/SC/0061/1952 (In this case it was held that the vesting of properties in state's power under the provisions of any legislation does not affect the charity adversely because the net income of that institution deriving from the properties has been made the basis of compensation awarded to them).
[82] Chiranjit Lal Chowdhuri v. The Union of India, AIR 1951 SC 41.

to all properties including places of worship. Right of acquisition there under was guided by the express provisions of the Land Acquisition Act, 1894 and executive instructions were issued to regulate acquisition of places of worship.[83]

Certain matters like marriage, succession, and the like of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26 and 27.[84]

In *Moulana Mufti Syed Case*[85] it was observed that the Constitution-makers have made it abundantly clear that one has a freedom of religion and that freedom of religion is subject to others' right as guaranteed under Article 19(1)(a) of the Constitution. In other words, religious freedom cannot abridge or take away or suspend others' right under Article 19(1)(a) regarding their freedom of speech and expression.

The practice of exclusion of women, of the age group of 10 to 50 years, from a temple, is violation of fundamental rights of equality. The right to practise religion under Article 25(1) is equally available to both men and women of all age groups professing the same religion.[86]

---

[83] M. Ismail Faruqui v. Union of India, AIR 1995 SC 605.

[84] Sarla Mudgal v. Union of India, AIR 1995 SC 1531 (In this case the second marriage of a Hindu husband after converting to Islam religion without divorcing first was treated as an offence under section 494 of Indian Penal Code for committing bigamy and is not protected under Article 25(1)).

[85] Moulana Mufti Syed Md. Noorur Rehman Barkati v. State of West Bengal, AIR 1999 Cal 15.

[86] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018, ¶ 114 (In this case it was a crucial question that whether the exclusionary practice which is based upon a biological factor exclusive to the female gender amounts to discrimination and thereby violates the very core of Articles 14, 15 and 17).

A particular fundamental right cannot exist in isolation in a water-tight compartment. A fundamental right of a person may have to co-exist in harmony with other's fundamental rights.[87]

11.6 Restrictions on the Ground of Economic, Financial, Political or other Secular Activity Associated with Religious Practice

Article 25(2) provides that nothing in it 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. From the very letters of this Article it is clear that State can regulate any economic, financial, and political or other secular activity that are related to any religious practice. This leads to the pertinent question of what practices fall under the category of 'secular activity' and what fall under the category of 'religious activity'.

If a particular activity is found religious, then the crucial question which may arise is whether that particular religious practice is essential to that religion or not. All religious practices may not be essential or core to that religion. This ultimately led to the formation and application of the 'doctrine of essential practice' related to a religion or religious practice. This 'doctrine of essential practice' has been applied by the courts in India from *Shirur Mutt Case*[88] to *Sabarimala Case*[89].

[87] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018.
[88] The Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282 (Known as *Shirur Mutt Case*.)
[89] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018.

11.7 State Control over Secular Matters Related to Religion

The word secular has not been defined in the Constitution or elsewhere. However, it can be assumed that secular practices to a religion are the practices which are primarily not religious in nature.[90] Sometimes, religious and secular practices may inextricably be mixed up. It is not so easy to disengage the secular matters from the religious matters. Especially, with regard to Hindu religion, on many occasions the religious and secular practices may inextricably be mixed up.[91] The distinction between purely religious matters and secular matters related to administration of religious properties may be thin and the Court should take a common sense view by considering the practical necessity.[92]

The secular matters related to religion or religious practice alone can be controlled by the State. The essential religious practices will be protected by Article 25(1) and Article 26(b).[93]

Regarding the State control over religious and secular matters, the observation of Latham, C.J. in an Australian case[94] is relevant. The High Court of Australia, while dealing with the provision of section 116[95] of the Australian

[90] The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.
[91] Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan, AIR 1963 SC 1638 (It was observed that, by virtue of ancient *Smritis*, all human actions from birth to death are regarded as religious in character. For example, the *Smritis* regard marriage as a sacrament and not a contract).
[92] Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388
[93] Tilkayat Shri Govind lalji Maharaj v.The State of Rajasthan, AIR 1963 SC 1638.
[94] Adelaide Company v. The Commonwealth, 67 C.L.R. 116, 127 as cited in The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.
[95] AUSTRALIA CONST. § 16 (Section 116 of the Constitution of Australia reads as follows: - "*The Commonwealth shall not make any law for establishing any religion, or for imposing*

Constitution which forbids the State from prohibiting the free exercise of any religion, observed;

> "*It is sometimes suggested in discussions on the subject of freedom of religion that, though the civil Government should not interfere with religious opinions, it nevertheless may deal as it pleases with any acts which are done in pursuance of religious belief without infringing the principle of freedom of religion*."[96]

In *Tilkayat Shri Govindlalji Maharaj Case*, Justice Pathak, rejects Chief Justice Latham's observation and its relevancy under the Indian context.[97] All the activities, in or connected with a religion, are not religious activities.[98]

11.7.1 Instances of Secular Practices Related to Religious Institutions

All the activities, in or connected with a temple, are not religious activities. The management of a temple or maintenance of discipline and order inside the temple can be controlled by the State by proper legislation. A law that is enacted for taking over the management of a temple is not violative of Article 25 or Article 26 of the Constitution. The temple authority may also control the activities of various servants of the temple.[99]

---

any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.").

[96] Adelaide Company v. The Commonwealth, 67 C.L.R. 116, 127 *as cited* in The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282, ¶ 18 (Chief Justice Latham pointed out that the provision for protection of religion was not an absolute protection to be interpreted and applied independently of other provisions of the Constitution. These privileges must be reconciled with the right of the State to exercise its sovereign power to ensure peace, security and orderly living. According to Chief Justice Latham's observation, what is religion to one is superstition to another).

[97] Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan, AIR 1963 SC 1638.

[98] Shri Jagannath Temple Puri Management Committee v. Chintamani Khuntia, AIR 1997 SC 3839.

[99] *Id*.

In *Shri Jagannath Temple Puri Management Committee v. Chintamani Khuntia*,[100] it was held that the right to manage the temple or endowment is not integral to religion or religious practice and is amenable to statutory control.

In *Adi Visheshwara of Kashi Vishwanath Temple, Varanasi v. State of U.P.*,[101] it was held that the secular activities are subject to state regulation but the religious practices which are integral part of religion are protected.[102]

Collection and distribution of money and other offerings to the deity or retention of a portion of the offerings for maintenance and upkeep of the temple fall under the domain of management and administration of the temple's secular activities.[103]

In *Gopalakrishnan Nair v. State of Kerala*,[104] it was held that matters such as appointment of temple servants and payment of remuneration to them are also not religious acts but are purely secular in nature.[105] In *N. Adithayan v.*

[100] Shri Jagannath Temple Puri Management Committee v. Chintamani Khuntia, AIR 1997 SC 3839
[101] Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi v. State of U.P. (1997) 4 SCC 606.
[102] *Id*. (In this case the court upheld the Act which regulated the management of the religious institutions and endowments and abolition of hereditary rights and the right to receive offerings and plate collections made to the deity). *See also*, Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan, AIR 1963 SC 1638 (In this case, the Assistant *Mukhia* are not only concerned with the religious worship in the temple, but are also required to handle jewellery and ornaments of a very valuable order which are put on the Idol and removed from the Idol every day, and have to keep the valuables safely. The safe custody of valuable jewellery is a secular matter within the jurisdiction of the Board).
[103] Shri Jagannath Temple Puri Management Committee v. Chintamani Khuntia, AIR 1997 SC 3839.
[104] Gopalakrishnan Nair v. State of Kerala, AIR 2005 SC 2053.
[105] *Id*.

The Travancore Devaswom Board,[106] it was held that appointment of a priest in a public temple based on caste is not valid and legally justifiable.

In *Sri Lakshamana Yatendrulu v. State of Andhra Pradesh*,[107] it was held that the administration of properties relating to *Math* or specific endowment are not matters of religion and are secular activities though connected with religion enjoined on the *Mahant.* Abolition of the hereditary right in trusteeship is a kind of regulation of a secular activity.

The election to the management of '*Sikh Gurdwara'* is secular part of that religion.[108] The regulation by the State is possible only in respect of the administration of the secular part of the religious institution or endowment, and not of beliefs, tenets, usages and practices, which are integral part of that religious belief or faith.[109]

11.7.2 Instances of Secular Practices Related to Religions

Slaughtering of animals is connected with economic activity and the law can regulate it.[110] In *Mohd. Hanif Quareshi v. The State of Bihar*,[111] it was held that slaughtering of cows is not essential part of or required for religious purpose of a religion. This position was reiterated by the Supreme Court of India in the case *The State of West Bengal v. Ashutosh Lahiri*.[112] Marriage is

[106] N. Adithayan v. The Travancore Devaswom Board, AIR 2002 SC 3538 (In this case it was observed that such act may be considered as a form of untouchability. The State can make appropriate legislation in this regard).
[107] Sri Lakshamana Yatendrulu v. State of Andhra Pradesh, AIR 1996 SC 1414.
[108] Sardar Sarup Singh v. State of Punjab, MANU/SC/0238/1959.
[109] Pannalal Bansilal Patil v. State of Andhra Pradesh, AIR 1996 SC 1023.
[110] State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat, AIR 2006 SC 212.
[111] Mohd. Hanif Quareshi v. The State of Bihar, MANU/SC/0027/1958.
[112] State of West Bengal v. Ashutosh Lahiri, AIR 1995 SC 464 (In that case it was held that slaughtering of healthy cows on Bakr Id is not essential or required for religious purpose of Muslims or in other words it is not a part of religious requirement for a Muslim that a cow

considered as a secular act, though certain religious practices are associated with it and it is regulated by the concerned personal law.[113]

11.7.3 Instances of Religious Practices

Religious practices vary from State to State, region to region, place to place and sect to sect. When the legislature makes legislation, the existing State of affairs should be taken into consideration.

If the tenets of a particular religion lay down that certain rites and ceremonies are to be performed at certain times and in a particular manner, it cannot be treated as secular activities, simply because they involve expenditure of money or employment of priests or the use of marketable commodities.[114]

Appointment of a *Math* idiopathic is not a secular act, moreover, it is purely a religious act.[115]

Explanation I to Article 25 of the Constitution recognizes the rights of the followers of Sikh religion to wear and carry on their persons '*kirpans*'[116] as an emblem of their religion and wearing of '*kirpan'* is an essential practice of Sikh religion. But a Sikh cannot carry any number of '*kirpans'* or swords without licence.[117]

---

must be necessarily sacrificed for earning religious merit on *Bakr Id*. It is a secular or economic activity related to religion and hence the protection of Article 25 is not available for enabling slaughtering of cows on *Bakr Id* day).

[113] Javed v. State of Haryana, AIR 2003 SC 3057. *See also* The State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84; R.A. Pathan v. Director of Technical Education, MANU/GJ/0263/1980; Ram Prasad Seth v. State of Uttar Pradesh, AIR 1961 All 334.

[114] Pannalal Bansilal Patil v. State of Andhra Pradesh, AIR 1996 SC 1023.

[115] Sri Lakshamana Yatendrulu v. State of Andhra Pradesh, AIR 1996 SC 1414.

[116] *Kirpan* means a kind of sword. But its size and shape has not been prescribed by the Sikh religion. It may, therefore, be a sword of any shape or size. *See generally*, HARJINDER SINGH, SIKH CODE OF CONDUCT (Akaal Publishers 2015).

[117] R. v. Dhyan Sigh, AIR 1952 All 53.

In *A. Ramaswamy Dikshitulu v. Government of Andhra Pradesh*,[118] it was observed that the protection under Articles 25 and 26 is extended to rituals and observances, ceremonies and modes of worship which are an integral part of religion.[119]

In several cases,[120] the courts in India explained the scope of Article 25 and held therein that religious practices or performances of acts in pursuance of the religious belief are as much a part of religion as faith or belief in a particular doctrine.

A review of all these judgments shows that the consistent view of the courts have been that although the State cannot interfere with freedom of a person to profess, practise and propagate his religion, the State, however, can control the secular matters connected with religion.

It can be said that Article 25(2)(a) contemplates not regulation of religious practices as such. It tries to regulate the freedom which is guaranteed

[118] A. Ramaswamy Dikshitulu v. Government of Andhra Pradesh, (2004) 4 SCC 661.
[119] *Id.*
[120] *See Generally* A. Ramaswamy Dikshitulu v. Government of Andhra Pradesh, (2004) 4 SCC 661; Bijoe Emmanuel v. State of Kerala, AIR 1987 SC 748; Commissioner of Police v. Acharya Jagadishwarananda Avadhuta (2004) 12 SCC 770; M. Ismail Faruqui v. Union of India, AIR 1995 SC 605; Javed v. State of Haryana, AIR 2003 SC 3057; Mohd. Hanif Quareshi v. The State of Bihar, MANU/SC/0027/1958; N. Adithayan v. The Travancore Devaswom Board, AIR 2002 SC 3538; R.A. Pathan v. Director of Technical Education, MANU/GJ/0263/1980; Ram Prasad Seth v. State of Uttar Pradesh, AIR 1961 All 334; Rana Muneshwar Kumar Singh v. The State of Bihar, MANU/BH/0055/1976; Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388; Sardar Sarup Singh v. State of Punjab, MANU/SC/0238/1959; Shri Jagannath Temple Puri Management Committee v. Chintamani Khuntia, AIR 1997 SC 3839; SP Mittal v. Union of India, AIR 1983 SC 1; Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi v. State of U.P (1997) 4 SCC 606; Sri Gedela Satchidananda Murthy v. Deputy Commissioner, Endowments, A.P., (2007) 5 SCC 677; Sri Lakshamana Yatendrulu v. State of Andhra Pradesh, AIR 1996 SC 1414; Sri Venkataramana Devaru v. The State of Mysore, AIR 1958 SC 255; State of West Bengal v. Ashutosh Lahiri, AIR 1995 SC 464; The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282; The Durgah Committee, Ajmer v. Syed Hussain Ali, AIR 1961 SC 1402; The State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84; Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan, AIR 1963 SC 1638.

by the constitution when they run counter to constitutional values. Such regulation is strictly limited to activities which are economic, commercial or political associated with religious practices.[121]

Article 25 strikes a balance between the rigidity of right to religious belief and faith and their intrinsic restrictions in matters of religion. Sometimes, practices, religious or secular, are inextricably mixed up. The legitimacy of the true categories is required to be adjudged strictly within the parameters of the right of the individual and the legitimacy of the State for social progress, well-being and reforms, social intensification and national unity.[122]

11.8 Doctrine of Essential Religious Practice: Case Laws

A practice may be a religious practice but not an essential and integral part of that religion. The protection under Articles 25 and 26 of the Constitution is confined to religious practices which are essential to religion.[123]

The concept of essential practices to a particular religion was well explained by Lord Halsbury in an English case, *Free Church of Scotland v. Overtoun*.[124] In this case, it was observed that:-

> "*In the absence of conformity to essentials, the denomination would not be an entity cemented into solidity by harmonious uniformity of opinion; it would be a mere incongruous heap of, as it were, grains of sand, thrown together without being united, each of these intellectual and isolated grains differing from every other, and the whole forming a but*

[121] R. v. Dhyan Sigh, AIR 1952 All 53.
[122] A.S. Narayana Deekshitulu v. State of Andhra Pradesh, AIR 1996 SC 1765 (*per* K. Ramaswamy, J.) (This position was reiterated in a case Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi v. State of U.P. (1997) 4 SCC 606).
[123] M. Ismail Faruqui v. Union of India, AIR 1995 SC 605.
[124] Free Church of Scotland v. Overtoun (1904) AC 515 *as cited in* Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay, AIR 1962 SC 853, ¶ 61.

nominally united while really unconnected mass; fraught with nothing but internal dissimilitude, and mutual and reciprocal contradiction and dissension."

Essential part of a religion means the core beliefs upon which a religion is founded. Essential practices are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practice, the superstructure of that religion is built. Without which, a religion cannot exist.[125] The person performing the religious duty is also part of the religion or religious faith.[126]

The doctrine of essential practice with regard to religion was first introduced in India by the Supreme Court in *Shirur Mutt Case*.[127] In this case, it was held that what constitutes an essential part of a religion will be ascertained with reference to the tenets and doctrines of that religion itself. Thus, what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself.[128]

The formula that depends upon the opinion of the community may not be perfect on all occasions. There may be conflicting views or disputes regarding many practices, food, dress code, etc., within the religion or community itself. In cases where conflicting evidence is produced in respect of rival contentions as to competing religious practices, the courts have to rely upon the evidence adduced before it as to the conscience of the community and

[125] Commissioner of Police v. Acharya Jagadishwarananda Avadhuta, (2004) 12 SCC 770.
[126] Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi v. State of UP, (1997) 4 SCC 606.
[127] The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.
[128] *Id.*

the tenets of its religion.[129] Once it is held and found that the certain ceremonies are religious in nature, they are not required to be proved by evidence as they are being performed from time immemorial.[130]

In *Ratilal Pannachand Gandhi v. State of Bombay*,[131] it was held that no outside authority has any right to decide whether a particular practice is essential to that religion or not. A secular authority of the State cannot restrict or prohibit, any particular practice, in any manner they like under the guise of administering the estate of a religious trust.[132]

In *Sardar Syedna Taker Saifuddin Saheb v. The State of Bombay*,[133] Sinha, C.J., in his separate but concurring judgment, observed that the terms 'matters of religion' engrafted in Article 26(b) and 'activities associated with religious practice' under Article 25(1) are different in their applications. It must vary in each individual case according to the tenets of the religious denomination concerned. He made a clear demarcation between application of the expressions 'matters of religion' engrafted in Article 26(b) and 'activities associated with religious practice' and held that both do not cover exactly the same ground.

[129] Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan, AIR 1963 SC 1638.
[130] Rana Muneshwar Kumar Singh v. The State of Bihar, MANU/BH/0055/1976.
[131] Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388.
[132] This Court quoted with approval Jamshedji v. Soonabai, MANU/MH/0216/1907, where the Bombay High Court held, "*if this is the belief of the community, a secular judge is bound to accept that belief -it is not for him to sit in judgment on that belief, he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be the advancement of his religion and the welfare of his community or mankind*."
[133] Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay, AIR 1962 SC 853.

According to Sinha C.J.,

"*What are exactly 'matters of religion' are completely outside State interference, subject, of course, to public order, morality and health. But activities associated with religious practice may have many ramifications and varieties - economic, financial, political and other- as recognised by Article 25(2).*"[134]

An essential part or practice of one's religion cannot be changed from a particular date or by an event. Such alterable parts or practices cannot be treated as essential parts of a religion.[135]

In *Commissioner of Police v. Acharya Jagadishwarananda Avadhuta*,[136] it was held that there cannot be additions or subtractions to such essential part of a religion as alterations will change its fundamental character. Essential parts that are permanent in nature alone are protected by the Constitution.

In *Acharya Jagadishwarananda Avadhuta v. Commissioner of Police, Calcutta* (known as the first *Ananda Marga Case*),[137] the court held that *Thandava dance* in processions or at public places by the *Ananda Margis* carrying lethal weapons and human skulls was not an essential religious rite of the followers of Ananda Marga and such processions can be regulated by the State.

[134] Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay, AIR 1962 SC 853, ¶ 20.
[135] Commissioner of Police v. Acharya Jagadishwarananda Avadhuta, (2004) 12 SCC 770.
[136] *Id.*
[137] Acharya Jagadishwarananda Avadhuta v. Commissioner of Police, Calcutta, (1983) 4 SCC 522 (In this first Ananda Marga case, it was held that Ananda Marga as a religious order is of later origin. Hence Thandava dance could not be taken as an essential religious rite of the Ananda Margis. In this case, the court upheld prohibition on such processions under Section 144 Code of Criminal Procedure).

In *Commissioner of Police v. Acharya Jagadishwarananda Avadhuta* (known as the second *Ananda Marga Case*),[138] the court reversed its earlier stand and held that right to carry *trishul*, conch or skull is an integral and essential part of religious practice and the same is protected under Article 25. However same is subject to right of State to interfere with said practice of carrying *trishul*, conch or skull if such procession creates law and order problem. Anand Margis held entitled to take a procession in public places after obtaining necessary permission from the concerned authorities. The State is empowered to regulate the secular activities associated with religious practices.[139]

If we consider many religious practices, it can be seen that many practices are essential to that religion. Some practices seem to be illogical, irrational and superstitious. But as far as that religion is concerned, they are essential and core to it.

For example, the Sikh Community carries '*kirpans*' as a symbol of their religious practice and the Gurkhas the '*kukris*' or '*dagger*'. On the *Vinayaka Chaturti* day the immersion of idol of 'Lord Ganesa' in the sea is a common practice. Persons professing Islamic faith are allowed to take out procession during 'Moharrum' festival and persons participating in such processions beat their chest with hands and chains and inflict injuries on them and the same has been permitted as a religious practice of that community.[140]

[138] Commissioner of Police v. Acharya Jagadishwarananda Avadhuta, (2004) 12 SCC 770.
[139] *Id*. ¶ 91.
[140] *Id*. ¶ 84.

It is to be noted that polygamy or bigamy is not an integral part of any religion.[141] With reference to the practice of ex-communication, the Supreme Court upheld the right and power of excommunication exercised by the Head Priest of the Dawwodi Bohra Community.[142]

In the *Triple Talaq Case*,[143] the Supreme Court declared that the practice of *talaq-e-bidat (Tripple Talaq)* is not an essential practice to Islam, it was held unconstitutional and not protected by Article 25(1). Before *Shayara Banu Case*, in *Nazeer v. Shemeema*,[144] it was held that '*Triple Talaq*' in single utterance is not approved by Quran and is illegal.[145]

11.9 Doctrine of Essential Religious Practice & Religious Institutions

In *Dr. M. Ismail Faruqui v. Union of India*,[146] it was held that while offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially.

[141] The State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84; Ram Prasad Seth v. State of Uttar Pradesh, AIR 1961 All 334; Javed v. State of Haryana, AIR 2003 SC 3057; Badruddin v. Aisha Begam, 1957 ALJ 300; R.A. Pathan v. Director of Technical Education, MANU/GJ/0263/1980.
[142] Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay, AIR 1962 SC 853.
[143] Shayara Bano v. Union of India, (2017)9SC C 1: AIR 2017 SC 4609.
[144] Nazeer v. Shemeema, 2017 (1) KLT 300.
[145] *See also* Shabnam Hashmi v. Union of India, AIR 2014 SC 1281.
[146] M. Ismail Faruqui v. Union of India, AIR 1995 SC 605.

The election to the management of *Sikh Gurdwara* is not an essential part of the Sikh religion.[147]

In *John Vallamattom v. Union of India*,[148] the court held that making gift for charitable or religious purpose can be designated as a pious act of a person, but it cannot be said to be an integral part of any religion.

In *Durgah Committee, Ajmer v. Syed Hussain Ali*,[149] the court reminded of the need of careful scrutiny of certain religious practices that may have sprung from merely superstitious beliefs, in order to find what constitutes an essential and integral part of a religion. In such situations, the protection must be confined to essential and integral religious practices.

In *N. Adithayan v. Travancore Devaswom Board*,[150] the court found that it is not essential to that temple practice to appoint only a Brahmin as priest (*poojari*) and a non-Brahmin could be appointed as a priest in a particular temple. It is not open for that temple authorities to subsequently decide only Brahmins could be appointed as priests by way of some alterations in the relevant doctrines.

In *Seshammal v. State of Tamil Nadu*,[151] it was held that appointments of *Archakas* (priests in Hindu temple) will have to be made in accordance with the *Agamas* (religious text book governing Hindu temple practices), and at the

[147] Sardar Sarup Singh v. State of Punjab, MANU/SC/0238/1959.
[148] John Vallamattom v. Union of India, AIR 2003 SC 2902.
[149] Durgah Committee, Ajmer v. Syed Hussain Ali, AIR 1961 SC 1402 (In this case, the court has excluded certain practices from protection, as they are the outcome of some superstitious beliefs which may render them unessential and not an integral part of the religion though they may have acquired the characteristic of religious practices).
[150] N. Adithayan v. Travancore Devaswom Board, AIR 2002 SC 3538.
[151] Seshammal v. State of Tamil Nadu, AIR1972 SC 1586.

same time, subject to conformity with the Constitutional mandates and principles.

In *Nikhil Soni v. Union of India*,[152] it was held, *'Santhara'* (a practice followed by monks in Jain religion to attain salvation) cannot be treated as essential religious practice to that religion. It was held that the State can take appropriate measures to abolish such practices of '*Santhara*' and '*Sallekhana*' in the Jain religion in any form.[153]

In *Indian Young Lawyers Association v. The State of Kerala*,[154] the court has determined whether the practice of exclusion of women of the age group of 10 to 50 years could be regarded as an essential part of the Hindu religion. In this case it was held that exclusion of women of any age group could not be regarded as an essential practice of Hindu religion. In the absence of any scriptural or textual evidence, the court held that the exclusionary practice followed at the Sabarimala temple is not an essential practice of Hindu religion.[155]

11.10 Restrictions on the grounds of Social Welfare & Social Reform

Clause (2) (b) of Article 25 in its application to Hindu religious institutions of a public character, contemplates three classes of legislation.

1. Laws relating to social welfare.

---

[152] Nikhil Soni v. Union of India, MANU/RH/1345/2015.
[153] *Id*. (Since there was no material evidence to show that the practice '*Santhara*' was accepted by most of ascetics or persons following Jain religion in attaining nirvana or moksha, it cannot be treated as essential religious practice to that religion. It was also held to be suicide and punishable under section 309 of the Indian Penal Code. Its abetment is punishable under section 306 of the Indian Penal Code).
[154] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018.
[155] *Id*. (In this case, the exclusionary practice, Rule 3(b) of the 1965 Rules, framed under the 1965 Act, is neither an essential nor an integral part of the Hindu religion).

2. Laws relating to social reform.

3. Laws made to throw open Hindu religious institutions to all classes and sections of Hindus.[156]

11.10.1 Social Welfare

The term social welfare is not only a technical term but also a generic expression of wide sweep which would cover the entire public sphere where the collective interests of the society should prevail over individual rights, for the common good. In making schemes for social welfare, overriding religious considerations, the State should be very careful to avoid discriminatory schemes, which is against Article 14 of our Constitution. Clause 2 of Article 25 is an exception to clause 1 of Article 25. But a welfare scheme which is non-discriminatory in its object cannot be challenged if its incidental effect is more or less favourable in the case of individual worshippers.[157]

As Justice Cardozo opined, the social interest served by symmetry or certainty must be balanced against the social interest served by equity and fairness or other elements of social welfare.[158]

11.10.2 Social Reform through Legislation

The 'Social Reform' clause provides that where there is a conflict between religious practice and need of social reform, religion must yield. As Dr. Ambedkar explained, the conception of religion in this country is so vast as

[156] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018.
[157] D.D. BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 3488 (8th ed., 2008).
[158] BENJAMIN CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 113 (Tenth Indian Reprint 2012).

to cover every aspect of life from birth to death.[159] Social reform means eradication of practices or dogmas which stand in the way of country's progress as a whole but do not reform the essence of religion.[160]

The religious freedom guaranteed by Articles 25 and 26 is intended to guide the community life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order.[161] The legislature of the country is the best judge of what is necessary for the welfare or reform of a particular community at any particular stage.[162]

The clause was not intended to permit the State to make laws affecting the religious beliefs and practices of individual Hindus under the pretext of social welfare and reform.[163] Article 25 itself permits legislation in the interest of social welfare and reform.[164]

Laws made by a competent legislature in the interest of public order and the like, restricting religious practices, would come within the regulating power of the State. For the purpose of social reform, much legislation were enacted in India like, that which banned religious practices like human sacrifice, animal sacrifice, *sati, devadasi* system, ex-communication and many of such other superstitious practices.[165] However, the laws providing for social welfare and reform do not enable the legislature to 'reform' a religion's existence or identity.

---

[159] 7 CONSTITUENT ASSEMBLY DEBATES, 781.
[160] The State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84.
[161] N. Adithayan v. The Travancore Devaswom Board, AIR 2002 SC 3538.
[162] Ram Prasad Seth v. State of Uttar Pradesh, AIR 1961 All 334.
[163] *Id.*
[164] Javed v. State of Haryana, AIR 2003 SC 3057.
[165] Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay, AIR 1962 SC 853.

In a democratic State, the legislature is constituted by the chosen representatives of the people and they are responsible for the welfare of the State. Therefore, the legislature can decide what constitutes social reform and to determine what legislation to be enacted in order to advance the welfare of the State.[166]

If these religious beliefs or practices conflict with matters of social reform or welfare on which the State wants to legislate, such religious beliefs or practices must yield to the higher requirements of social welfare and reform and the provisions of Article 23(1) and Article 25(2) must be read together.[167]

In spite of Article 25 of the Constitution of India, it would be open to the legislature to modify the personal law for the purpose of providing for social welfare and reform.[168] If the legislature as the law making authority regards a particular measure as a measure of social reform, the courts usually do not say that it should not be regarded as a measure of social reform.[169] While considering such cases the courts usually respect the legislative determination, and intervene only if there is any issue of violation of fundamental rights.[170]

---

[166] The State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84 (Chagla, C.J.). *See also* Khursheed Ahmad Khan v. State of U.P. (2015) 8 SCC 439.
[167] *Id*.
[168] Khatji v. Abdul Razak Sufi, MANU/JK/0034/1976.
[169] Ram Prasad v. State of U.P., AIR 1957 All 408.
[170] Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay, AIR 1962 SC 853. *See also* Pathumma v. State of Kerala, AIR 1978 SC 771, ¶ 6 (In this case, it was held that the legislature is in the best position to understand and appreciate the needs of the people as enjoined by the Constitution to bring about social reforms for the upliftment of the backward and the weaker sections of the society and for the improvement of the lot of poor people. The court will, therefore, interfere in this process only when the statute is clearly violative of the right conferred on the citizen under Part III of the Constitution or when the Act is beyond the legislative competence of the legislature or such other grounds).

11.11 Throwing open of Hindu Religious Institutions of a Public Character

The second part of Article 25(2)(b) clearly states that the right to freedom of religion would not prevent the State from throwing open all Hindu religious institutions of a public character to all classes and sections of Hindus.

It also empowers the State to override religious injunctions prohibiting certain classes from entering into temples or other Hindu religious institutions. The main object is to remove caste discrimination, untouchability and inequality. It is confined to public institutions which have been dedicated to the Hindu public either by grant or user. It would not extend to family endowments or institutions.[171]

It applies in terms to all religious institutions of a public character without qualification or reserve. Public institutions would mean not merely temples dedicated to the public as a whole but also those founded for the benefit of sections thereof, and denominational temples would be comprised therein. The right protected by Article 25(2) (b) is a right to enter into a temple for purposes of worship, and that further it should be construed liberally in favour of the public. But it does not mean that such a right is absolute and unlimited in character.[172] The right recognized by Article 25(2) (b) is subject to certain limitations or regulations, which arise in the process of harmonizing the right conferred by Article 25(2) (b) with Article 26(b).[173]

---

[171] D.D. BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 3503 (8th ed., 2008).
[172] Sri Venkataramana Devaru v. The State of Mysore, AIR 1958 SC 255.
[173] *Id.* (In this case, it was observed that, as part of the rights protected by Article 25(2)(b) one member of the Hindu public could not claim that a temple must be kept open for worship at

The right of entry into a public temple is a legal right which however can be regulated by temple authorities as to the number of visits and fixing the hours for the visits. Public may be denied access to the inner sanctum.[174]

It also confers a right upon all classes and sections of Hindus to enter into a public temple. This right is available against an individual under Article 25(1) or against denomination under Article 26(b). The provision of Article 25(2) thus controls both Article 25(1) and 26(b). While Article 25 deals with rights of individuals, clause (2)(b) of it is much wider in its contents and has reference to the rights of communities and controls both Article 25(1) and 26(b).[175]

---

all hours of the day and night, or that he should personally perform those services, which the *Archakas* alone could perform. It is again a well-known practice of religious institutions of all denominations to limit some of its services to persons who have been specially initiated, though at other times, the public in general are free to participate in the worship).

[174] The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282 (In this case, it was held that there could be no such thing as an unregulated and unrestricted right of entry in a public temple or other religious institution, for persons who are not connected with the spiritual functions thereof. It is a traditional custom universally observed not to allow access to any outsider to the particularly sacred parts of a temple as for example, the place where the deity is located. There are also fixed hours of worship and rest for the idol when no disturbance by any member of the public is allowed. Section 21 of Madras Hindu Religious and Charitable Endowments Act, 1951, empowers the Commissioner and his subordinate officers and also persons authorised by them to enter the premises of any religious institution or place of worship for the purpose of exercising any power conferred or any duty imposed by or under the Act. It was held that as the section stands, it interfered with the fundamental rights of the *Mathadhipati* and the denomination of which he is head guaranteed under Articles 25 and 26 of the Constitution and section 21 of the Act has been rightly held to be invalid).

[175] Sri Venkataramana Devaru v. The State of Mysore, AIR 1958 SC 255 (In this case, one of the crucial questions was that whether the rights of a religious denomination to manage its own affairs in matters of religion under Article 26(b) can be subjected to, and controlled by, a law protected by Article 25(2)(b) of the Constitution. It was held that the expression 'religious institutions of a public character' occurring in Article 25(2)(b) of the constitution contemplates not merely temples dedicated to the public as a whole but also those founded for the benefit of sections thereof and includes denominational temples as well).

11.11.1 Hindu Religious Institutions of a Public Character

Explanation II to Article 25 declares that the expression 'Hindus' shall include the persons professing the Sikh, Jain, or Buddhist religion. The explanation is only for the purpose of Article 25(2)(b) and for no other.[176]

Whether a temple can be said to be public or private is a question of fact depending upon each case. It is difficult to lay down any test or tests which may be of universal application.[177] It can be inferred with reference to the very factual conditions of each case, e.g., factual situations like, the extent of properties belonging to the temple, the course of conduct of the devotees, the supervision exercised by the founder and his descendants whether the rents and profits are exclusively utilised for the temple for a long period etc., are relevant factors to be taken into consideration for deciding whether a temple is a public one or a private one.[178]

---

[176] Punjab Rao v. D.AT Meshram, AIR 1965 SC 1179; C.W.T v. Champa Kumara Singhi, AIR 1972 SC 2119 (It was observed that though Jains may not be Hindus by religion, they are to be governed by the same laws as Hindus and cannot claim to be a separate religious minority) (As of now, Jains are regarded as minorities in some States, including Chhattisgarh, Delhi, Karnataka, Uttar Pradesh, Madhya Pradesh and Rajasthan). *See also* Balpatil v. Union of India, AIR 2005 SC 3172 (In this case, the Supreme Court had disposed the appeal of minority designation for Jains on the ground that the states would be the unit for considering demands of both linguistic and religious minority status).

[177] Kacha Kanti Seva Samity v. Kach Kant Devi, AIR 2004 SC 608 (In this case, it was observed that religious endowments are of two kinds. viz., public, and private. In a public endowment, the dedication is for the use or benefit of the public at large or a specified class. But when property is set apart for the worship of a family god, in which the public are not interested, the endowment is a private one).

[178] Ramchodass v. MahalaxmiVahuji, 1953 Bom. 153; Laxmanarao Umaji Rao v. Govindrao Madhavarao 1950 Nag 215; Jinnappa Hedge v. Shrinivas Tantri 1962 Mys LJ (Supp) 109; Pandit Shivam Sunder Nath Suthoo v. Laxmi Narayana Thakur ILR 1960 Cut 92. *See generally* MAYNE'S TREATISE ON HINDU LAW AND USAGE, (Renganathmisra, ed., 16th ed., 2009).

CHAPTER 12

STATE CONTROL OVER FREEDOM OF RELIGION TO DENOMINATIONS

12.1 Collective Freedom of Religion under Article 26

Article 26 provides special protection to religious denominations. It lays down that every religious denomination or section thereof has 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.

This right is subject to public order, morality and health. It is also noteworthy here that the State Legislature is competent to enact laws on the subject of religious and charitable endowments, which is covered by Entry 28 of List III in Schedule VII of the Indian Constitution.

12.2 Scope and Applicability of Article 26

By virtue of its provisions, Article 26 guarantees the nature and extent of collective freedom of religion by specifically identifying the areas of action to every religious denominations and groups thereof. By virtue of granting rights under the heading 'freedom to manage religious affairs', it provides a kind of autonomy in the matters of religion to such denominations.[1]

[1] KRISHNA PRASAD, RELIGIOUS FREEDOM UNDER INDIAN CONSTITUTION 62 (Minerva Publications 1976).

However, both Articles 25 and 26 are subject to 'public order, morality and health'. While Article 25 is also subject to other provisions of Part III of the Constitution, Article 26 is not.[2] Article 26 is a corollary to Article 25, for, without the basic freedom of religion the denominations also cannot work.[3] Article 26 represents the plurality of Article 25. While Article 25 mentions all rights and restraints on individuals, Article 26 confers and imposes such restrictions on a collective basis.[4]

12.3 Genesis and Growth of Article 26

The Fundamental Rights Sub-committee[5] of the Advisory Committee to the Constituent Assembly added a separate provision for granting special rights to religious denominations.[6] As suggested by C. Rajagopalachari, the Advisory Committee modified the draft provision. It made the rights of religious denominations to own, acquire and administer property, subject to law.[7] The recommendations of the Advisory Committee were subjected to serious discussions in the Constituent Assembly.

[2] D.D. BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 3523 (8th ed., 2008).
[3] MAMTA RAO, CONSTITUTIONAL LAW 275 (Eastern Book Company Publishers 2013).
[4] KRISHNA PRASAD, RELIGIOUS FREEDOM UNDER INDIAN CONSTITUTION 62 (Minerva Publications 1976).
[5] GRANVILLE AUSTIN, THE INDIAN CONSTITUTION, CORNERSTONE OF A NATION (Oxford University Press 1999) (The Constituent Assembly appointed a total of 23 committees to deal with different tasks of constitution-making. Out of these, eight were major committees and the others were minor committees. Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas were headed by Sardar Patel. This committee had four sub-committees; among the four committees, Fundamental Rights Sub-committee was headed by J.B. Kripalani).
[6] SUBASH C. KASHYAP, CONSTITUTIONAL LAW OF INDIA 746 (2008).
[7] Annexure to THE INTERIM REPORT OF THE ADVISORY COMMITTEE, Cl. 14 (23rd April, 1947).

By bringing an amendment, Mr. Munshi suggested that the freedom to manage religious affairs should be made available to both religious denominations and sections thereof. His amendment was accepted.[8]

Dr. Ambedkar suggested the insertion of words, *"subject to public order, morality or health"* to the concerned provision.[9] His suggestion was adopted and made part of the Constitution as it is in the present form.[10]

Article 26 of the Indian Constitution strikingly resembles that of Article 44 of the Irish Constitution.[11] The Universal Declaration of Human Rights also provides that the right to religious freedom is collective in nature.[12]

12.4 Meaning of the word 'Denominations'

Article 26 of the Indian Constitution does not define the word '*denomination*'. However it provides special protection to religious denominations.

Law Lexicon,[13] defines the word denomination thus:-

> "*'Denomination' means a class or collection of individuals called by the same name; a sect; a class of units; a distinctively named church or sect as clearly of all denominations.*"

---

[8] When the Draft Constitution was prepared Article 20 was incorporated with only some drafting changes. Article 20, Draft Constitution, reads as follows:
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 religions.

[9] 7 CONSTITUENT ASSEMBLY DEBATES 875 (Dec. 7, 1948).

[10] INDIA CONST. art. 26.

[11] Article 44(2)(5) of Irish constitution 1937, reads thus: *"Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes."*

[12] UDHR, 1948, art. 18.

[13] P. RAMANATHA IYER, LAW LEXICON 315 (1987).

12.5 Religious Denomination: Elements and Criteria

Article 26 of the Indian Constitution contemplates not merely a religious denomination but also a section thereof, the Math or the spiritual fraternity represented by it can legitimately come within the purview of Article 26.[14]

In *Sri Venkataramana Devaru case*,[15] considering the ratio laid in *Shirur Mutt case*, it was held that in order to succeed on a claim under Article 26 of the Constitution, the following conditions are to be satisfied;

(i) a collection of individuals who have a system of beliefs with regard to their conducive spiritual well-being;

(ii) a common organisation; and

(iii) a definite name.[16]

'Religious denomination' under Article 26 of the Constitution must take their colour from the word religion and if this be so the expression religious denomination must also specify the above three conditions.[17] The religious

[14] The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282, ¶ 15 (In this case, the word '*denomination*' was explained in connection with a particular sect within the Hindu religion and a Math established by that sect. It was explained that each sect or sub-sect designated by a distinctive name (in many cases it is the name of the founder), and has a common faith and common spiritual organization, can be considered as a religious denomination).

[15] Sri Venkataramana Devaru v. State of Mysore, AIR 1958 SC 255.

[16] Bramchari Sidheswar Shai v. State of West Bengal, AIR 1995 SC 2089 (In this case, it was held that the persons belonging to or owing their allegiance to '*Ramakrishna Mission'* or '*Ramakrishna Math'* belong to religious denomination within Hindu religion or a Section thereof. The followers of Shri Ramakrishna have a common faith. They have common organisation and they are designated by a distinct name and that persons belonging to or owing their allegiance to Ramakrishna Mission or Ramakrishna Math belong to religious denomination within Hindu religion or a section thereof as would entitle them to claim the fundamental rights conferred on either of them under Article 26 of the Constitution of India).

[17] The Durgah Committee, Ajmer v. Syed Hussain Ali, AIR 1961 SC 1402 (In this case, the endowment to the tomb of Hazrat Khwaja Moin-ud-din Chishti of Ajmer, under the Khadims Durgah Khwaja Saheb Act, 1955 was challenged by the respondents as violative of their fundamental rights under Articles 25, 26, 19(1)(f) and (g) of the Constitution. The Supreme Court held that Hazrat Khwaja Moin-ud-din Chishti tomb was not confined to Muslims alone

groups that are the part of a larger religion are also entitled to such rights of religious denominations.[18]

In *Nallor Marthandam Vellalar v. The Commissioner, Hindu Religions and Charitable Endowments,*[19] for the purpose of being classified as a distinct religious denomination, it was observed that the common faith of the community should be based on religion and in that they should have common religious tenets and the basic cord which connects them, should be religion and not merely considerations of caste or community or societal status.[20]

In the landmark case of *Sri Adi Visheshwara of Kashi Vishwanath Temple*,[21] it was held that Hindus as such are not a denomination/section/sect.[22]

---

but belonged to all communities, i.e., Hindus, Khwajas and Parsis, who visit the tomb out of devotion for the memory of the departed soul and it is a large circle of pilgrims who must be held to be the beneficiary of the endowment made to the tomb).

[18] UDAI RAJ RAI, FUNDAMENTAL RIGHTS AND THEIR ENFORCEMENT 424 (PHI Publishers 2011).

[19] Nallor Marthandam Vellalar v. The Commissioner, Hindu Religions and Charitable Endowments, AIR 2003 SC 4225.

[20] *Id.* (On the basis of the evidence placed on record, it was held that '*Vellala Community*' is not shown to be a distinct religious denomination, group or sect so as to be covered by Article 26 of the Constitution). *See also* Nalam Ramalingayya v. Commr. of Hindu Religious Endowments, MANU/AP/0263/1969, ¶ 67 (In this case, Andhra Pradesh High Court observed that, it is the distinct common faith and common spiritual organisation and the belief in a particular religious teacher of philosophy on which the religious denomination is founded or based, that is the essence of the matter, but not any caste or sub-caste or particular deity worship by a particular caste or community).

[21] Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi v. State of U.P., (1997) 4 SCC 606 (In this case the claim was that the Hindus who worship God Shiva constitute a denominational section entitled to the benefit of Articles 26(b) and 26(d) of the Constitution. A Bench of three Judges had considered the matter in detail and held that Hindu worshippers of God Shiva are not a denominational section and, therefore, they are not entitled to the benefit of Articles 26(b) and 26(d) of the Constitution for management of their temples).

[22] Sasti Yagnapurushdasji v. Muldas Bhundardas Vaishya, AIR 1966 SC 1119 (Gajendragadkar, C.J.) (In this case, after considering various authoritative Hindu texts and the history of the '*Swaminarayan sect',* it was held that the *Swaminarayan sect* was not a separate religion, distinct and separate from the Hindu religion); SP Mittal v. Union of India, AIR 1983 SC 1 (In this case, it was held that the followers of *Sri Aurobindo* do not constitute a religious denomination); Sri Kanyaka Parameswari Anna Satram Committee v. Commissioner, Hindu Religious Charitable and Endowments, AIR 1997 SC 2332 (In this case, it was held that the Hindu sections of the *Arya Vysya* Community who worship Goddess

In *Syed Faizal v. Union of India*,[23] it was held that the Wakf Board is not a religious denomination, as it is a statutory body and not a representative body of Muslims. It is also not a group of individuals and doesn't constitute a religious group.[24]

In *Sabarimala Temple Case*,[25] it was held that Sabarimala temple is not a denominational temple. Mere observance of certain practices, even though from a long time, does not make it a distinct religion on that account.[26]

The Gowda Saraswath Brahmins were held to constitute a religious denomination and the Sri Venkataramana Temple at Moolky was considered to be a denominational temple.[27]

The followers of '*Vallabha'*,[28] *Madhavacharya*,[29] the *Swetambar sect* of Jains,[30] the followers of the *Zoroastrian* religion,[31] the followers of *Ramanuja*

'*Matha Kanyakaparameswari*' are not denominational section for the purpose of Articles 26(b) and 26(d) of the Constitution).

[23] Syed Faizal v. Union of India, AIR 1993 Ker. 311.

[24] *Id*.

[25] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018.

[26] Id. ¶ 96 (In this case, it was held that there is no evidence to show that the devotees of Lord Ayyappa have any common religious tenets peculiar to themselves, which they regard as conducive to their spiritual well-being, other than those which are common to the Hindu religion. Therefore, the devotees of Lord Ayyappa are just Hindus and do not constitute a separate religious denomination. It was further observed that in order to constitute a religious denomination, there must be new methodology provided for a religion).

[27] Sri Venkataramana Devaru v. State of Mysore, AIR 1958 SC 255 (In this case, it is to be noted that the Supreme Court has identified the rights of a group of devotees as constituting a religious denomination in the context of a single temple). *See also* Subramaniam Swamy v. State of Tamil Nadu, (2014) 5 SCC 75 (In this case, the Podhu Dikshitars were held to constitute a religious denomination in the context of the Sri Sabanayagar Temple at Chidambaram).

[28] Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan, AIR 1963 SC 1638.

[29] The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.

[30] Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388.

[31] *Id*.

known as *Shrivaishnabas*,[32] the *Gowdasaraswat Brahmins*,[33] the *Dawoodi Boharas*,[34] and the *Chishtia Soofies*,[35] *Ananda Marga*,[36] were held to constitute religious denominations.[37]

In *S.P. Mittal v. Union of India*,[38] it was observed that, if the word 'religion' is once explained, it would be easy to define the term 'religious denomination'.

The word 'denomination' includes denomination of all the people and not of Indian citizens alone.[39]

From the analysis of above said decisions it can be said that determination of whether a religious sect or community falls under the definition of 'religious denomination' under Article 26, is a mixed question of fact and law.[40]

---

[32] The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.
[33] Sri Venkataramana Devaru v. The State of Mysore, AIR 1958 SC 255.
[34] Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay, AIR 1962 SC 853.
[35] The Durgah Committee, Ajmer v. Syed Hussain Ali, AIR 1961 SC 1402.
[36] Acharya Jagdishwaranand Avadhuta v. Commissioner of Police, Calcutta, AIR 1984 SC 51. *See also* Commissioner of Police v. Acharya Jagadishwarananda Avadhuta, (2004) 12 SCC 770.
[37] S.P. Mittal v. Union of India, AIR 1983 SC 1.
[38] *Id*.
[39] Shankar Prasad v. Muneshwari, AIR 1969 Pat.304. *See also* CAUDHARI & CHATURVEDI, LAW OF FUNDAMENTAL RIGHTS 802 (4th ed., 2007).
[40] *See eg.,* The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282; Sri Venkataramana Devaru v. State of Mysore, AIR 1958 SC 255; The Durgah Committee, Ajmer v. Syed Hussain Ali, AIR 1961 SC 1402; Arya Vyasa Sabha v. Commissioner of Hindu Charitable and Religious Institutions & Endowments, Hyderabad, (1976) 1 SCC 292; SP Mittal v. Union of India, AIR 1983 SC 1; Sri Kanyaka Parameswari Anna Satram Committee v. Commissioner, Hindu Religious Charitable and Endowments, AIR 1997 SC 2332; Commissioner of Police v. Acharya Jagadishwarananda Avadhuta, (2004) 12 SCC 770; Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018.

12.6 Establish and Maintain Religious and Charitable Institutions under Article 26(a)

The word 'institution' refers to organizations for religious and charitable purposes, such as temples, mosques, math, monasteries and the like.[41] Under Article 26(a), the words establish and maintain go together. It means that where an institution has been established by a religious denomination, then it can claim the right to maintain the same as well. The right to maintain includes the right to administer as well.

According to *Oxford Advanced Learner's Dictionary*,[42] the word 'establish' means 'to start or create an organization, a system, etc.' Here again founding is not the only meaning of the word 'establish' and it includes creation also.

The words, "establish and maintain" must be read conjunctively. The right to maintain institutions for religious and charitable purposes would include the right to administer them. But the right under clause (a) of Article 26 will only arise where the institution is established by a religious denomination and it is in that event only that it can claim to maintain it.[43]

For the purpose of invoking Article 26 of the Constitution of India the parties who claim that a particular temple was established by a religious community, have to prove two facts: (1) that they established the temple, and (2) they maintain the temple. The burden of proof is on the plaintiff in such

[41] D.D. BASU, COMMENTARY ON THE CONSTITUTION OF INDIA (8th ed., 2008).
[42] OXFORD ADVANCED LEARNER'S DICTIONARY OF CURRENT ENGLISH, at 517 (Oxford University Press 2010).
[43] S. Azeez Basha v. Union of India, AIR 1968 SC 662.

situation to prove that the temple in question was established by a religious community.[44]

When the Constitution confers certain rights to these religious denominations to maintain and manage such institutions, the Constitution confers certain managerial autonomy also, which usually shall not be interfered with unless in exceptional cases.[45]

The administration of property by religious denomination must be placed on a different footing from the right to manage its own affairs in matters of religion. The right of administration of property can be regulated by the State. However the State cannot altogether take away the right to administer the properties of religious denominations.[46]

12.6.1 Maths

It is a popular practice in Hindu religion, of setting up Maths as centres of theological teaching.[47] The administrations of properties relating to Math or

[44] Ramasami Mudaliar v. Comnr. H.R. & C.E. Admn. Dept., AIR 1999 Mad 393. (In this case, a religious community called *Senguntha Mudaliars of Tharamangalam* claimed the ownership of a temple in issue, as the founders of the temple. The entire evidence showed that the plaintiffs could only prove that the temple in question was being maintained by the members of Senguntha Mudaliars of Tharamangalam community and could not prove that the temple was established by them).

[45] UDAI RAJ RAI, FUNDAMENTAL RIGHTS AND THEIR ENFORCEMENT 424 & 425 (PHI Publishers 2011)

[46] 1 ARAVIND P. DATAR, COMMENTARY ON THE CONSTITUTION OF INDIA 454 (2nd ed., 2007).

[47] *See generally* A. NATARAJA AIYER & S. LAKSHMINARASIMHA SASTRI, THE TRADITIONAL AGE OF SRI SANKARACHARYA AND THE MATHS (Indian Books Centre 1962) (In this book, the author says thus;
It was started by Shri. Sankaracharya and was followed by various teachers since then. After Sankaracharya, many religious teachers and philosophers founded the different sects and sub-sects of the Hindu religion that we find in India in the present day. Each one of such sects or sub-sects can certainly be called a religious denomination, as it is designated by a distinctive name, - in many cases it is the name of the founder, - and has a common faith and common spiritual organization).

specific endowment are not matters of religion under Article 26(b). They are secular activities though connected with religion enjoined on the *Mahant*.[48]

In *Sri Lakshamana Yatendrulu v. State of Andhra Pradesh*,[49] it was held that, the appointment of a Math idiopathic is not a secular act but purely a religious act. The nomination of the Math idiopathic is based upon usage and custom of the Math that is a part of Hindu religious endowment.[50]

12.6.2 Educational Institutions under Articles 26 and 30

In *Azeez Bhasha Case*,[51] the Supreme Court held that Article 26 will not apply to educational institutions for there is specific provision in Article 30(1) that deals with educational institutions. The institutions for charitable purposes under Article 26 (a) refer to institutions other than educational ones.

Article 30(1) that gives right to minorities to establish and administer educational institutions of their choice applies equally to Article 26 (a) and therefore the words, 'establish and maintain' must be read conjunctively.[52]

In *T.M.A. Pai Foundation v. State of Karnataka*,[53] it was held the right to establish and maintain educational institutions may also be sourced to Article 26(a).

---

[48] Sri LakshamanaYatendrulu v. State of Andhra Pradesh, AIR 1996 SC 1414 (In this case, it was held that it is an obligation on Math idiopathic to maintain accounts of the receipts of personal gifts made to the Math idiopathic and to see that the funds are properly utilised for the purposes of the Math in accordance with its objects).

[49] *Id*.

[50] *Id*.

[51] S. Azeez Basha v. Union of India, AIR 1968 SC 662.

[52] *Id*. (In this case it was held that the Aligarh University was not established by the Muslim minority and therefore no question arises of its right to maintain it within the meaning of cl. (a) of Article 26. The Muslim minority did not own the property which was vested in, the Aligarh University on the date the Constitution came into force, and it could not lay claim to administer that property by virtue of Article 26(d). However, the Supreme Court did not finally decide the question whether in view of Article 30(1) specifically making a provision with respect to educational institutions, colleges will fall within the scope of Article 26(a) or not).

12.7 Right to Manage its Own Affairs in Matters of Religion under Article 26(b)

Article 26(b) guarantees to each religious denomination the right to manage its domestic affairs in matters which are concerned with their religion. The State can interfere in these affairs of denomination in order to protect public order, morality or health.[54] The term 'matters of religion' used in Article 26(b) is synonymous with the term religion in Article 25(1).

Matters of religion include religious ceremonies, practices, rites and rituals that are essential for the practise of religion.[55] Complete autonomy is available in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion. No outside authority can interfere with their decision in such matters.[56] However, financial matters like expenses incurred in connection with such religious observances are secular matters and that may be regulated by the competent legislature.

The State can bring regulations on the matters of such expenditure related to endowed property as otherwise that may affect the stability of the institution. But the State cannot altogether take away the rights of a religious

[53] T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 (In this case, it was observed that, Education is recognized under the head of charity. Therefore, religious denominations or sections thereof, which do not fall within the special categories carved out in Articles 29(1) and 30(1), have the right to establish and maintain religious and educational institutions under Article 26(a). This would allow members belonging to any religious denomination, including the majority religious community, to set up an educational institution).

[54] KAILASH RAI, CONSTITUTIONAL LAW OF INDIA 351 (Central Law Publishers 2015).

[55] MAMTA RAO, CONSTITUTIONAL LAW 277 (Eastern Book Company Publishers 2013).

[56] The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.

denomination like the right to manage its own affairs or to administer its own property.[57] In *Riju Prasad Sarma v. State of Assam*,[58] it was observed thus:-

> "*Religious beliefs, customs and practices based upon religious faith and scriptures cannot be treated to be void. Religious freedoms protected by Articles 25 and 26 of the Constitution can be curtailed only by law, made by a competent legislature to the permissible extent. The Court can examine and strike down a State action or law on the grounds of Articles 14 and 15, but it cannot and should not be equated with other organs of State – the executive and the legislature*."[59]

The right to spend the trust property or its income for religion and religious purposes is included within the ambit of 'right to manage its own affairs'. The State can step in when the trust fails or is found incapable of being carried out wholly or in part. In such event, the State or the Court can appoint a commissioner in this regard to administer such affairs. But a commissioner appointed so cannot divert the funds of a religious endowment to other purposes than the original intention of the founder of the trust or the purposes for which the trust is created.

In *S.P. Mittal v. Union of India*,[60] it was held that the 'right to manage its own affairs' includes the right to determine, according to the ceremonial law relating to temples, the persons who are entitled to enter into them for worship, where they are entitled to stand, the hours when the public are to be admitted. The protection of Article 26(b) does not extend to management of the property

[57] Sri Venkataramana Devaru v. The State of Mysore, AIR 1958 SC 255.
[58] Riju Prasad Sarma v. State of Assam, MANU/SC/0722/2015.
[59] *Id*. ¶ 59.
[60] S.P. Mittal v. Union of India, AIR 1983 SC 1.

for any other secular affairs of the denomination, which may be regulated by ordinary legislation.[61]

There is no contravention of clause (b) of Article 26, if the law seeks to implement the purpose of the trust and to prevent mis-management which is authorized by clause (d) of Article 26.[62] If a fee is levied for meeting the expenses of such regulations, it cannot be treated as violation of Article 26(b).[63] If the law prohibits alienation of the trust property except with the consent of the specified authority, or requires the trustee to keep accounts, these restrictions are not violative of clause (b) of Article 26.[64]

In *Ram Chandra Deb v. The State of Orissa*,[65] it was held that if a statutory authority lawfully enters the premises of the religious denomination, after giving due notice and respect, it is not contravention to Article 26(b). However, law does not permit the entry into the places of worship or sacred parts of a temple that is against the religious order.[66]

The restrictions upon the rights of religious denominations under Article 26 have to be reasonable and should be merely regulatory.[67]

In *Sri Kanyaka Parameswari Anna Satram Committee Case*,[68] it was held that the purpose of such restrictions or regulations has to be to ensure:-

(a) that there is no mal-administration of the institution, or

[61] S.P. Mittal v. Union of India, AIR 1983 SC 1.
[62] Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388.
[63] Ram Chandra Deb v. The State of Orissa, MANU/OR/0003/1959.
[64] Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388.
[65] Ram Chandra Deb v. The State of Orissa, MANU/OR/0003/1959.
[66] *Id*.
[67] Sri Kanyaka Parameswari Anna Satram Committee v. The Commissioner, Hindu Religious & Charitable Endowments Department, AIR 1999 SC 3567.
[68] *Id*.

(b) the regulatory provisions must be to prevent the mismanagement or mal-administration.[69]

Such powers had to be exercised on relevant data and on necessary facts and materials. It could not be exercised just off-hand without there being any necessity for appointing a commissioner or an executive officer in public interest.[70]

In *Shri Jagannath Temple Puri Management Committee v. Chintamani Khuntia*,[71] it was held that the temple *sevaks*[72] are not entitled to get a share in the offerings in the temple as a matter of right.[73] Any direction to maintain the temple accounts, framing of schemes, filling of vacancies, power to suspend *matathipathi* pending an enquiry, etc., do not violate Articles 25 and 26 of the Indian Constitution.[74] Statutory provision directing proper management of the temple on the basis of fact finding committee is valid.[75]

The right to manage, it goes without saying, does not carry with it a right to mismanage. In case of mismanagement of charitable and religious

---

[69] Sri Kanyaka Parameswari Anna Satram Committee v. The Commissioner, Hindu Religious & Charitable Endowments Department, AIR 1999 SC 3567.

[70] Pavani Sridhara Rao v. Govt. of A.P., AIR 1996 SC 1334 (In this case, the Assistant Commissioner, Endowments Department, Ongole, the Executive Officer of Temples, Malakonda, was appointed as Manager in additional charge to Sri Dattatrayamandiram, Mongilicherla (Village), Kandukur Tq., Prakasam District. He was directed to take over complete charge of records, accounts, moveable and immovable properties etc., from the executive authorities of the institution. As the respondents failed to show that at the relevant time the temple was mismanaged or there was any reason for invoking the power under Section 27 of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966, the appeal was allowed).

[71] Shri Jagannath Temple Puri Management Committee v. Chintamani Khuntia, AIR 1997 SC 3839.

[72] *Sevaks* means priests in a temple.

[73] Shri Jagannath Temple Puri Management Committee v. Chintamani Khuntia, AIR 1997 SC 3839.

[74] Sri Lakshamana Yatendrulu v. State of Andhra Pradesh, AIR 1996 SC 1414.

[75] Pannalal Bansilal Patil v. State of A.P., AIR 1996 SC 1023.

organization, although it is run by minorities, court can oversee its functions for keeping in view the interest of the general public. In such matters the courts, indisputably, act as guardian of such societies.[76]

12.8 'Doctrine of Essential Religious Practice' & Religious Denominations

It is well settled that the protection under Articles 25 and 26 of the Constitution is confined to religious practices which are essential to religion.[77] 'Doctrine of essential religious practice' with regard to religious freedom is mentioned under two provisions in our Constitution, viz., Articles 25(2)(a) and 26(b). The core elements of the 'doctrine of essential religious practice' that appear in both Articles 25(2)(a) and 26(b) are more or less similar. The only difference is with the context of application. Article 26 (b) is mainly applicable with regard to religious denomination, sect or class thereof. Under Article 26(b) it appears as 'matters of religion'. We have already discussed this concept of essential religious practise in Chapter 11 of this thesis in the light of Article 25(2)(a) of Indian Constitution.[78]

A religious practice which is essential and integral part of that religion alone is protected by Articles 25 and 26.[79] The protection under Article 26 is confined to such religious practices that are essential and integral parts of a religion or religious denomination.[80]

---

[76] Nelson v. Kallayam Pastorate, (2006) 11 SCC 624. *See also* Guruvayoor Devaswom Managing Committee v. C.K. Rajan, (2003) 7 SCC 546.
[77] M. Ismail Faruqui v. Union of India, AIR 1995 SC 605.
[78] *See supra* Chapter 11.
[79] M. Ismail Faruqui v. Union of India, AIR 1995 SC 605.
[80] The Durgah Committee, Ajmer v. Syed Hussain Ali, AIR 1961 SC 1402.

What constitutes an essential part of a religion has to be decided with reference to the doctrine of a particular religion and includes practices which are regarded by the community as a part of its religion. A religious denomination enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion and no outside authority has any jurisdiction to interfere with their decision in such matters. This protection is permissible only to the practices which are religious in nature and to affairs in matters of religion.[81]

In *Adi Saiva Sivachariyargal Nala Sangam v. The Government of Tamil Nadu*,[82] it was observed thus:-

> "*The Ecclesiastical jurisprudence in India, sans any specific Ecclesiastical jurisdiction, revolves around the exposition of the Constitutional guarantees under Articles 25 and 26 as made from time to time. The development of this branch of jurisprudence primarily arises out of claimed rights of religious groups and denominations to complete autonomy and the prerogative of exclusive determination of essential religious practices and principles on the bedrock of the constitutional guarantees under Articles 25 and 26 of the Constitution and the judicial understanding of the inter-play between Articles 25(2)(b) and 26(b) of the Constitution in the context of such claims*."[83]

[81] A. Ramaswamy Dikshitulu v. Government of Andhra Pradesh, (2004) 4 SCC 661. *See also* The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.

[82] Adi Saiva Sivachariyargal Nala Sangam v. The Government of Tamil Nadu, MANU/SC/1454/2015.

[83] *Id*. ¶ 31.

In *Ratilal Panachand Gandhi v. State of Bombay*,[84] it was held that the secular authority of the State cannot restrict or prohibit the essential religious practices in any manner they like under the guise of administering a trust estate. However, all secular activities which do not relate or constitute an essential part of it may be amenable to State regulations.[85]

In order to get the protection of Article 26 (b) and to consider a practise as essential to a religion, first of all, that religious community itself must treat the impugned practise as essential. Then the essentiality of the impugned practice must be proved on the basis of proper evidence that it is an integral or essential part of the religion or religious denomination.[86]

However, this formula may in some cases be found difficult in its operation. In cases where conflicting evidence is produced in respect of rival contentions as to competing religious practices the formula would, therefore, break down. In such situations, the Court may have to always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its religion.[87]

[84] Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388.
[85] *Id*.
[86] Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi v. State of U.P. (1997) 4 SCC 606; A.S. Narayana Deekshitulu v. State of Andhra Pradesh, AIR 1996 SC 1765 (K. Ramaswamy, J.).
[87] Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan, AIR 1963 SC1638 (This position was reiterated in R.A. Pathan v. Director of Technical Education, MANU/GJ/0263/1980).

If certain class of people believe in its religious efficacy, in the sense that by such worship, they are making themselves the object of the bounty of some superhuman power, it must be regarded as a religious worship.[88]

The duty of courts in this regard, is to try to protect the core religious beliefs by interpreting religious practices in terms of principles of that religion emphasised in tenets of that religion along with restricting non-essential practices in the wider social interest.[89] In order to disengage the secular matters from the religious matters, proper test to be applied by courts.

12.9 'Doctrine of Essential Religious Practice' and Religious Institutions of Denominations

In the case of a religious trust or institution under a trust, it is to be ensured that religious trusts and institutions are properly administered. The State can control the secular administration of the religious institutions and such an object must be enunciated in the legislation that enables state control. In such circumstances the State must ensure that the income of the endowments attached to the religious institutions are properly used and is duly appropriated for the purposes for which they were founded or exist.[90]

[88] Board of Commissioner for the Hindu Religious Endowments v. P. Narasimham, MANU/TN/0029/1938 (This position was re iterated in Ratnavelu Mudaliar v. Commr. for Hindu Religious and Charitable Endowments, MANU/TN/0243/1954). *See also* Sri Gedela Satchidananda Murthy v. Dy. Commnr. Endowments Department, A.P., (2007) 5 SCC 677.

[89] V.P. Bharatiya, *Religious Freedom and Personal Laws* in NATIONAL CONVENTION ON UNIFORM CIVIL CODE FOR ALL INDIANS 64 (N.R. Madhava Menon ed., Vigyan Bhavan 1986).

[90] The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282, ¶ 19.

In *Sri Lakshamana Yatendrulu v. State of Andhra Pradesh*,[91] it was held that the issues relating to administration of properties relating to Math or specific endowment are not matters of religion under Article 26(b). They are secular activities though connected with religion enjoined on the Mahant.[92] However, the appointment of a Math idiopathic is not a secular act, but a religious act.[93]

In *Pannalal Bansilal Patil v. State of A.P.*,[94] it was held that though Article 26 empowers a secular Government to impose restrictions on the exercise of the right to administer and maintain such institutions, the governments cannot, altogether take away and transfer the administration of religious matters of religious institutions to the hands of the officers of a secular government.[95]

---

[91] Sri Lakshamana Yatendrulu v. State of Andhra Pradesh, AIR 1996 SC 1414.

[92] *Id.* (In this case it was further added that the appointment of a Math idiopathic is not a secular act. Math idiopathic, indisputably not being a trustee, his appointment is purely a religious act. The nomination of the Math idiopathic is based upon usage and custom of the Math. It is a concept appertaining to Hindu religious endowment. It is sui generis. One cannot put it in a strait jacket by any jurisprudential concept. The best person to adjudge the requisite qualifications of the religious head himself or the disciples of such particular Math or denomination, and not by any other secular authority, not even the religious head of another Math).

[93] *Id.* (A secular authority cannot exercise any power at any stage of appointment to a religious office. A Math idiopathic cannot be removed by secular authority except for secular reasons which must be just, fair and reasonable, relatable to one or other of the grounds mentioned in Articles 25 and 26 of the Constitution. The question of approval or disapproval of a nomination of a Math idiopathic or removal of him on the ground of not having knowledge of the scriptures etc., would amount to interference with the religion).

[94] Pannalal Bansilal Patil v. State of A.P., AIR 1996 SC 1023.

[95] *Id.* (In this case, it was held that the administration of religious institution or endowment or specific endowment being a secular activity, it is not an essential part of religion and, therefore, the legislature is competent to enact law, as in Part III of the Act, regulating the administration and governance of the religious or charitable institutions or endowment. They are not part of religious practices or customs. The State does not directly undertake their administration and spend any public money for maintenance and governance thereof. Law regulates appropriately for efficient management or administration or governance of charitable and Hindu religious institutions or endowments or specific endowments, through its officers or officers appointed under the Act. It was further observed that the total

In *Sri Venkataramana Devaru v. The State of Mysore*,[96] it was held that the matters like who are entitled to enter into them for worship and where they are entitled to stand for worship and how the worship is to be conducted are all considered as essential matters of religion.[97]

In a different context of a sensitive issue of acquisition of certain disputed area for Babri Masjid/ Ram Janma Bhoomi, the Supreme Court in *Dr. M. Ismail Faruqui v. Union of India*,[98] clearly established that places of religious worship like mosques, churches, temples, etc., can be acquired under the State's sovereign power. Such acquisition does not violate either Articles 25 or 26 of the Constitution.

The judicial trend in this regard shows that a sharp shift is there in this issue in the modern period. In *Sri Venkataramana Devaru Case* the court adopted a harmonious construction, while protecting the rights of religious denominations. But later, this view was changed. Especially while we examine

---

deprivation of its establishment and registration and takeover of such bodies by the State would dry up such sources or acts of pious or charitable disposition and act as disincentive to the common detriment. The matter was relating to validity of Sections 17 and 29 (5) of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987. Section 17 states that one trustee shall be from family of founder and according to Section 29 (5) executive officer appointed shall be under administrative control of the trustee of the institution. The Court upheld validity of these two sections on ground that board of trustees headed either by founder or of his family would go a long way in seeing the fulfilment of wishes and desires of the founder).

[96] Sri Venkataramana Devaru v. The State of Mysore, AIR 1958 SC 255.

[97] *Id*.

[98] M. Ismail Faruqui v. Union of India, AIR 1995 SC 605 (In this case, it was held that the mosque is not immune from acquisition by the State. The court reasoned that the mosque does not have a unique or special status, higher than that of the places of worship of other religions in secular India to make it immune from acquisition by exercise of sovereign and the prerogative power of the state. A mosque is not an essential part of the practice of religion of Islam and the *Namaaz* by the Muslim can be offered anywhere, even in open. Accordingly, the acquisition is not prohibited by the provision of the Constitution of India).

the recent judgements in *Sabarimala Case*[99] and *Haji Ali Dargah Case*, the paradigm shift is evident.

In *Dr. Noorjehan Safia Niaz v. State of Maharashtra (Famously known as Haji Ali Dargah Case)*,[100] it was held that prohibiting women from entering the sanctum sanctorum of the Haji Ali Dargah contravenes Articles 14, 15 and 25 of the Constitution. It was held that, the trust has no right to discriminate entry of women into a public place of worship under the guise of 'managing the affairs of religion' under Article 26.[101]

In *Vidya Bal v. The State of Maharashtra* (famously known as *Shani Signapur Temple Case*),[102] the Bombay High Court decided in favour of protecting the rights of women to enter into the *inner sanctum* of the temple where all men are allowed to enter.

In the case of *Sabarimala Temple Case*,[103] also judiciary has given prominence to Article 14 than religious freedom under Articles 25 and 26 of Indian Constitution, and rejected claim of status of denominational temple. In this case it was held that the temple authorities cannot exclude women of a particular age from entering into the temple.

---

[99] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018.
[100] Noorjehan Safia Niaz v. State of Maharashtra, MANU/MH/0191/2015 (In this case it was held that, a trust has no right to discriminate entry of women into a public place of worship under the guise of 'managing the affairs of religion' under Article 26. The State will have to ensure protection of rights of all its citizens guaranteed under Part III of the Constitution, including Articles 14 and 15, to protect against discrimination based on gender. In fact, the right to manage the Trust cannot override the right to practice religion itself, as Article 26 cannot be seen to abridge or abrogate the right guaranteed under Article 25 of the Constitution).
[101] *Id*.
[102] PIL No.55 of 2016 in Bombay High Court.
[103] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018, ¶ 96.

It is a reality that, unlike American Jurists, Indian Judiciary has travelled a path, seeking to clean the so called religions especially Hinduism of what it reads as superstition, and trying to provide a modern and rational definition of religious truth. In this regard, Indian judiciary has been acting as the vanguard of social reform.[104]

12.10 Right to 'Matters of Religion' vis-a-vis Right to Exclude Certain Class (Interrelation between Articles 25(b) and 26(b))

It is a pertinent question of law as to whether the right of a religious denomination to 'manage its own affairs in matters of religion' incorporates right to exclude any class of persons. Hence, the question being raised as to whether Article 26(b), is subject to, and can be controlled by, a law protected by Art. 25(2)(b), which throws open a Hindu public temple to all classes and sections of Hindus.

This issue was in existence even before independence and the coming into force of the Indian Constitution. The right of upper castes to exclude the people from other lower castes from entering into the temples of religious denominations has been challenged many times.[105]

In *Gopala Muppanar v. Subramania Aiyar*,[106] it was observed as follows:

> "*It is clear from the above that temples were intended for the worship of people belonging to all the four castes without exception. Even outcastes were not wholly left out of the benefits of temple worship, their mode of*

[104] RENOJOY SEN, ARTICLES OF FAITH 40 (Oxford University Press 2012).
[105] Gopala Muppanar v. Dharmakarta Subramania Aiyar, MANU/TN/0114/1914.
[106] *Id.*

worship being however made subject to severe restrictions as they could not pass beyond the Dwajastambam (and sometimes not beyond the temple outer gate) and they could not have a sight of the images other than the procession images brought out at the times of festivals."[107]

By virtue of the provisions under Article 26(b) the religious denominations have the right to exclude persons who are not entitled to participate in the worship according to the tenets of the institution. Hence, the religious denominations are entitled to exclude certain class of persons other than the members belongs to a particular denomination from entering into the temple for worship. However, on the other hand, Article 25(2)(b) clearly establishes that the State can bring appropriate legislation for throwing open the public temples to all classes of Hindus. The word 'public' in its common parlance, here meant 'to any section of the public'.

As per Article 25(2) (b) public institutions would mean not merely temples dedicated to the public as a whole but also those founded for the benefit of sections thereof, and denominational temples would be comprised therein.[108]

In the event of a conflict between the Article 26(b) and Article 25(2)(b), there are two provisions of equal authority, neither of them being subject to the other. This issue was well settled by the Supreme Court in the case of *Sri Venkataramana Devaru v. The State of Mysore*.[109] In this case, the court applied principles of harmonious construction of interpretation for giving effect

[107] Sri Venkataramana Devaru v. The State of Mysore, MANU/SC/0026/1957, ¶ 258 (Sadasiva Aiyar J.).
[108] *Id.*
[109] *Id.*

to both provisions.[110] In this case, the Supreme Court approved a compromise arrangement giving priority to the rights of temple entry while at the same time upholding the right of internal autonomy of religious denominations.[111]

In *Venkataramana Devaru Case*,[112] it is then said that if the expression "religious institutions of a public character" in Article 25(2)(b) is to be interpreted as including denominational institutions, it would clearly be in conflict with Article 26(b), and it is argued that in that situation, Article 26(b) must, on its true construction, be held to override Article 25(2)(b).[113]

However, the State has the ample jurisdiction to oversee the administration of a temple subject to Articles 25 and 26 of the Constitution. The denomination must have been enjoying the right to manage properties endowed in favour of the institutions. The right under Article 26(b) is

[110] Sri Venkataramana Devaru v. The State of Mysore, MANU/SC/0026/1957 (In this case, it was observed that, Article 25 is stated to be "subject to the other provisions of this Part" (Part III), there was no such limitation on the operation of Article 26, and that, therefore, Article 26(b) must be held to prevail over Article 25(2)(b). The limitation "subject to the other provisions of this Part" occurs only in clause (1) of Article 25 and not in clause (2). One of the provisions to which the right declared in Article 25(1) is subject to is Article 25(2). A law, therefore, which falls within Article 25(2)(b) will control the right conferred by Article 25(1), and the limitation in Article 25(1) does not apply to that law. If the rule is not applied, Article 25(2)(b) will become wholly nugatory in its application to denominational temples, though, as stated above, the language of that Article includes them. On the other hand, if the full effect of the contention can be given to Article 26(b) in all matters of religion, subject only to this, entry into a temple should be for worship, the rights declared under Article 25(2)(b) will prevail. While, in the former case, Article 25(2)(b) will be put wholly out of operation, in the latter, effect can be given to both that provision and Article 26(b). Hence, it was held that Article 26(b) must be read subject to Article 25(2)(b).

[111] D.E. Smith, *India as a Secular State* in SECULARISM AND ITS CRITICS 203 (Rajeev Bhargava ed., Oxford University Press 2007).

[112] Sri Venkataramana Devaru v. The State of Mysore, MANU/SC/0026/1957.

[113] *Id*. *See also* Vedavyasa R. Lakshmi Narasimha v. The Commissioner, Hindu Religious and Charitable Endowment, Chennai (2010), Indian Kanoon, http://indiankanoon.org/doc/1594161. (In this case, it was observed that, Article 25(2)(b) ensures the right of the State to make a law providing for social welfare and reform besides throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus).

applicable only if such rights have been enjoyed by the denomination. If such rights are never vested in the denomination, the protection under Article 26(b) will not be available.[114]

12.11 'Matters of Religion' vis-a-vis Administration of Property (Interrelation between clauses (b) and (d) of Article 26)

Article 26(d) provides that every religious denomination or section thereof shall have the right to administer its properties in compliance with law under. This right deals with the secular activities of religious denominations.[115] Questions pertaining to administration of properties belonging to a religious group or institution are not matters of religion under Article 26(b).[116]

In *Sri Sabanayagar Temple v. The State of Tamil Nadu*,[117] the Madras High Court observed thus:-

> "*The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The latter is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly impose*."[118]

In *S.P. Mittal v. Union of India*,[119] it was held that the administration of the property of a religious denomination is different from the right of the

---

[114] SUBASH C. KASHYAP, CONSTITUTIONAL LAW OF INDIA 753 (Universal Law Publishing 2008).
[115] CAUDHARI & CHATURVEDI, LAW OF FUNDAMENTAL RIGHTS 807 (4th ed., 2007).
[116] S.P. Mittal v. Union of India, AIR 1983 SC 1.
[117] Sri Sabanayagar Temple v. The State of Tamil Nadu (2009), Indian Kanoon, http:indiankanoon.org/doc/396397.
[118] *Id*. ¶ 29.
[119] S.P. Mittal v. Union of India, AIR 1983 SC 1 (It was observed that the Auroville Emergency Provisions Act 1980, which provides for the taking over the management of

religious denomination to manage its own affairs in matters of religion and that laws may be made which regulate the right to administer the property of a religious denomination.[120]

What is safeguarded under Article 26 (b) of the Constitution is the right of a religious denomination to manage its own domestic affairs provided those affairs only refer to matters of religion. What is contemplated is that when a religious denomination is dealing with things like dogmas, things like religious ceremonies, things like matters concerning its own day to day affairs, the State should not interfere with those matters. But where the religious denomination is managing its own affairs connected with property, it cannot be said that those are affairs in matters of religion.

12.12 Right to Own Property under Article 26(c)

Clauses (c) and (d) of Article 26 give Constitutional protection to the denominations' right to own and administer properties.[121] Article 26(c) provides that every religious denomination has the right to own and acquire property belonging to a religious body subject to law.[122] The right guaranteed under this provision is subject to reasonable restriction and regulation of State.[123]

Auroville for a limited period does not offend the rights guaranteed by Articles 25 and 26 of the Constitution).

[120] S.P. Mittal v. Union of India, AIR 1983 SC 1 (Y.V. Chandrachud, C.J., P.N. Bhagwati, Misra and V. Balakrishna Eradi, JJ.).

[121] 6 D.D. BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 5473 (9th ed., Lexis Nexis 2016).

[122] CAUDHARI & CHATURVEDI, LAW OF FUNDAMENTAL RIGHTS 806 (4th ed., 2007).

[123] Tamil Nadu v. Ahobila Matam, AIR 1987 SC 245. See also D.D BASU, SHORTER CONSTITUTION OF INDIA 487(14th ed., 2010).

In *Acharya Maharajshri Narendra Prasadji v. State of Gujarat*,[124] it was observed that Article 26 cannot take away the right of the State to compulsorily acquire property of mosque or temple.[125]

In *Gulam Madar Ahmadbhai Memon*,[126] it was held that the State has the right to acquire any property including a place of religious worship, for the public purpose for widening a road.[127]

If the acquisition of property of a religious denomination by the State can be proved to be such as to destroy or completely negative their right to own and acquire movable and immovable property for even its survival, the question may be examined in a different light.[128]

In *Shree Bhanvatacharya Narayanacharya Public Trust Case*,[129] the right to acquire property and own property by the religious denominations under Article 26 (c) of the Constitution was held to be not a basic feature of the Constitution.[130]

---

[124] Acharya Maharajshri Narendra Prasadji v. State of Gujarat, AIR 1974 SC 2098.
[125] *See also* Khajamain Wakf Estates v. State of Madras, AIR 1971 SC 161 (In this case, it was urged that religious denomination shall have right to own and acquire movable and immovable property and administer such property in accordance with the law. These provisions do not take away the right of the State to acquire property belonging to religious denominations. These denomination can own and acquire properties and administer them according to law. That does not mean that the property owned by them cannot be acquired).
[126] Gulam Madar Ahmadbhai Memon, AIR 1998 Guj. 235.
[127] *See also* Daljit Kaur v. Municipal Corporation of Chandigarh, AIR 1989 P & H 159 (In this case the division bench of the High Court supported the Govt. notification for acquisition of land for public purpose and also for preserving peace and law and order.). *See also* Akhara Shri Braham Buta v. State of Punjab, AIR 1989 P & H 198 (In this case, the issue was related to the acquisition of a Mandir Shivji and a building of the Akhara Shri Braham Buta under Land Acquisition Act towards accomplishment of a corridor plan around the Golden Temple area at Amritsar. It was held that the State action was valid and not violative of Article 26(c)).
[128] Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj v. The State of Gujarat, AIR 1974 SC 2098.
[129] *Re* Shree Bhanvatacharya Narayanacharya Public Trust, AIR 2001 Guj. 208.
[130] *Id.* (In this case, the full bench of the Gujarat High Court held that the provisions of the Gujarat Devsthan Inams Abolitions Act, 1969 along with Amendment Act of 1977 having

On the question of whether Article 26(c) is subject to agrarian reforms by the State, judicial interpretations have asserted that like any other right in an organised society, Article 26(c) is also not an absolute and unqualified right.[131] Those State policies that bring social reform as part of directive principles of State policy can sometime override the rights under Article 26(c).[132]

According to H.M. Seervai, when a conflict, of rights under Article 26 and other provisions of the Constitution, arises or when a State enacts law which deprives the fundamental rights of a religious denomination, the enforcement of that particular law against that denomination can be restrained.[133]

The Supreme Court in *Acharya Maharajshri Narendra Prasadji v. State of Gujarat*,[134] held that a religious denomination itself cannot be considered as a citizen, it cannot seek the protection of Article 25 of the Constitution and equally the protection of Articles 14 and 19 of the Constitution. In the event of acquisition of property of religious denominations by the State, the core of the religion is not to be interfered with.[135]

Religion has usually two aspects, i.e., institutional and individual. Prayers and religious practices performed in and through the religious

---

been placed in the Ninth Schedule to the Constitution are immune from the challenge on the ground that any provision thereof is inconsistent with or takes away or abridges any of the fundamental rights conferred by the provisions of Part III of the Constitution in view of the protection given under Art 31(b) of the Constitution. The question about the quantum, method and manner of compensation for the rights extinguished under the Act becomes insignificant).

[131] Acharya Maharajshri Narendra Prasadji v. State of Gujarat, AIR 1974 SC 2098.

[132] SUBASH C. KASHYAP, CONSTITUTIONAL LAW OF INDIA 753 (Universal Law Publishing 2008). *See also* S.B. Narayanchandra Public Trust v. The State of Gujarat, AIR 2001 Guj 208.

[133] 2 H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA 1307 (4th ed., 2008).

[134] Acharya Maharajshri Narendra Prasadji v. State of Gujarat, AIR 1974 SC 2098.

[135] *Id*. *See also* MAHENDRA P. SINGH, V.N. SHUKLA'S CONSTITUTION OF INDIA 252 (Eastern Book 2008).

institutions fall under the institutional aspect of religion. But such religious institutions are established and maintained for the benefit of individual members of a denomination. Hence the individual and denominational rights are not mutually exclusive and in most cases the right of denomination is for the benefit of its individual members.[136]

In *Tamil Nadu v. Ahobila Matam Case*,[137] it was held that the imposition of tax on the properties held by religious denominations is valid.

12.13 Right to Administer Religious Institution under Article 26(d)

According to Article 26(d), every religious denomination or section thereof shall have the right to administer its properties in compliance with the law. This right deals with the secular activities of religious denominations.[138]

However, Article 26(d) does not permit a law to take away the whole administration of an institution of religious denomination and transfer it to any

---

[136] 2 H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA 1308 (4th ed., 2008).

[137] Tamil Nadu v. Ahobila Matam, AIR 1987 SC 245 (In this case, full land assessment was imposed on *Ahobila Matam* a well-known religious institution at Madras under Tamil Nadu Inams (Assessment) Act, 1956. The Supreme Court held that the land attached to religious institution under services tenure is liable to full assessment of land revenue and mere imposition of assessment on lands held by a religious denominational institution cannot possibly attract the right guaranteed by Article 26 of the Constitution It was further observed that the imposition of assessment on land held by a religious denominational institution cannot possibly attract the right guaranteed by Article 26 of the Constitution. The Court further observed that the burden imposed is a burden to be shared in the same manner by all the owners of the lands in the State and no special burden has been imposed on the denominational institution. The burden of this nature is outside the scope of Article 26 of the Constitution.). *See* E. Subramania Oduvar v. Srivaikuntam Kailasanatha Swami Koil, MANU/TN/0328/1933 (The grants of land to the religious institution may take three forms; first, the land was granted to the institution, secondly it was intended to be attached to particular office, and thirdly, that it was granted to a named individual, burdened with service, the person so named, happening to be the office holder at the time of the grant). *See also* The President of the Board of Commissioners for the Hindu Religious Endowments v. Thadikonda Koteswara Rao, MANU/TN/0178/1937 (When the grant was for worship of the idol in the pagoda or for offering of daily *naivaidyam* or *deeparadharan*, the grant was construed in favour of the institution and not as a grant in favour of the office-holder or individual burdened with service).

[138] CAUDHARI & CHATURVEDI, LAW OF FUNDAMENTAL RIGHTS 807 (4th ed., 2007).

other authority. Hence, such a law that totally divest the administration of religious institution or endowment, would amount to the violation of the rights guaranteed under clause (d) of Article 26. But the State has the general right to regulate and administer a religious or charitable institution or endowment; and such a law must be one which provides the most acute remedy there to.[139]

In *Shirur Mutt case*,[140] it was held that if any provision permits a Commissioner, at his liberty at any moment he may choose, to deprive the right of a religious head like Mahant's right to administer the trust property, without any proof of negligence or maladministration on his part, such restriction would be opposed to the provision of Article 26(d) of the Constitution.[141]

In *Khajamian Wakf Estates v. State of Madras*,[142] it was held that as a result of acquisition of a property that belongs to any religious denomination, they cease to own that property. Therefore their right to administer that property ceases because it is no longer their property. Article 26 does not interfere with the right of the State to acquire property.

In *Ratilal Panachand Gandhi v. State of Bombay*,[143] it was held that the right of a religious denomination entitled to own and acquire, must be

[139] The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.
[140] *Id.*
[141] *Id.* ¶ 35 (This famous case debated whether Sections 21, 30(2), 31, 55, 56 and 63 to 69 of the Madras Hindu Religious and Charitable Endowments Act, 1951 were ultra vires Articles 19(1)(f), 25 and 26 of the Constitution of India. By virtue of Section 56 of Madras Hindu Religious and Charitable Endowments Act, 1951, power has been given to the Commissioner to require the trustee to appoint a manager for administration of the secular affairs of the institution and in case of default, the commissioner can make the appointment himself. The manager thus appointed though nominally a servant of the trustee, has practically to do everything according to the directions of the Commissioner and his subordinates).
[142] Khajamian Wakf Estates v. State of Madras, AIR 1971 SC 161.
[143] Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388.

undoubtedly in accordance to law. The regulation is permitted only in respect of the administration of the secular part of the religious institution or endowment, and not of belief, tenets, usages and practices which are integral part of that religious beliefs or faith.

In *Pannalal Bansilal Patil v. State of A.P.*,[144] the Court held that the administration of religious institution or endowment or specific endowment being a secular activity, it is not an essential part of religion and therefore, the legislature is competent to enact law regarding the administration and governance of the religious or charitable institution or endowment.

The word 'law' referred to in Article 26(d) includes enacted or State-made law and not mere principles of natural justice outside the realm of positive law. Mere executive interference is altogether excluded and the law

[144] Pannalal Bansilal Patil v. State of A.P., AIR 1996 SC 1023 (In this case, the constitutional validity of Ss.15 and 16 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 were challenged. The said sections of the Act abolished the hereditary rights in trusteeship of Hindu religious and charitable institutions or endowment and those were challenged as violative of Article 25 of the Constitution. The Court held that Section 16 which with a non obstante clause abolished the hereditary right in trusteeship of a Hindu religious and charitable institution or endowment as constitutional. Article 15(1) of the Constitution prohibits discrimination against any citizen on ground only of religion, race, caste, sex and place of birth or any of them. Hereditary principle being inconsistent with Article 15(1) the legislature thought it fit to abolish it. The Court further observed that the hereditary nature of succession to trusteeship may allow mismanagement or misappropriation of the property of the institution. Such things may defeat the very object of the endowment. Instead of management by a single person, the Act in chapter III introduced a composite scheme prescribing the qualification and disqualification for trusteeship, procedure for appointment of trustees and appointment and constitution of the board of trustees for efficient administration and governance of the institution and endowment. The policy involved was held constitutional as it seeks to achieve public purpose viz., secular management of religious and charitable endowment to effectuate efficient and proper management. Abolition of the hereditary right in trusteeship is, therefore, unexceptionable it being part of due administration, which is a secular activity. Being permissible law under the Constitution, both sections 15 and 16 of the Act were therefore not ultra-virus the Constitution).

must be a valid law not only made by the competent legislature but also being within the Constitutional limits.[145]

In *Panduranganathaswami v. Dy. Commissioner*,[146] it was held that it is the exclusive right of the members of the community to select or elect or nominate a person of the community as trustee to a denominational temple of the said community and the executive authority has no authority to interfere.

In Narayanan Nair v. State of Kerala,[147] Article 26 was interpreted to mean that the religious guarantee under the Article falls in clauses (a) and (b) whereas the secular part is dealt with in clauses (c) and (d).[148]

The validity of many State laws relating to the administration and regulation of religious and charitable institutions of religious denominations has been challenged before the judiciary. Among such legislations certain laws and certain provisions of some laws were struck down by the judiciary as violative of Article 26. But much legislation was held valid under Article 26 of the Constitution of India.[149]

---

[145] Narayanan Nair v. State of Kerala, AIR 1971 Ker. 98. *See also* CAUDHARI & CHATURVEDI, LAW OF FUNDAMENTAL RIGHTS 808 (4th ed., 2007).

[146] Panduranganathaswami v. Deputy Commissioner for Hindu Religious and Charitable Endowments, AIR 1989 Mad. 198.

[147] Narayanan Nair v. State of Kerala, AIR 1971 Ker. 98.

[148] Guruvayoor Devaswam Committee v. Income Tax Officer, Trichur, 1976 KLT 241 (words "In accordance with law" also qualify clause (c) of Article 26).

[149] The following have been held to be valid under Articles 25 and 26:- Rajasthan Nathdwara Temple Act, 1959 (except first part of Sec. 30 (2) (a)); Durgha Khwaja Saheb Act, 1955, (Sections 5, 13 (1) authorizing the Durgah Committee to make interim arrangement for filling up vacancy in the office of the Sajjada Nashin (hereditary administrator)); Bihar Hindu Religious Trusts Act, 1951; U.P. Muslim Waqf Act, 1966, (Section 55); Madras Hindu Religious & Charitable Endowments Act, 1951, (Section 52); Bombay Public Trusts Act, 1950, (Preamble, Sections 18, 31, 32, 35 to 37 part of Sections 44, 47 except clause (3) to (6), 50 (e) and (g), Section 5 except clause (c), part of clause (1) of Section 56, Sections 59, 62); Madras Temple Entry Authorization Act, 1947; Hindu Religious & Charitable Endowments Act, 1951, (Section 5 (2) (1)); Madras Hindu Religious & Charitable Endowments Act, 1951;

The Supreme Court in *Durga Committee v. Hussain Ali*,[150] observed that if the impact of any provision or law as such totally take away the right of administration from the hands of religious denomination and vest such right in other authorities, such law or provision of law can be treated as violative of the right guaranteed under Article 26 of the Constitution. In such situations, the relevant portion of such statute may be struck down in its entirety.

In *Dr. Subramaniam Swamy v. State of Tamil Nadu*,[151] it was held that the right to establish a religious institution or endowment is a part of religious belief or faith, but its administration is a secular part which would be regulated by law appropriately made by the legislature. The regulation is only in respect of the administration of the secular part of the religious institution or endowment, and not of beliefs, tenets, usages and practices, which are an integral part of that religious belief or faith.[152]

Supersession and vesting of right in authority under statute on ground of maladministration must be for a temporary regulatory measure. After the evil gets remedied, the administration must be given back to denominations. Perpetual supersession would be violative of Article 26(d).[153]

Bihar Wakf Act, 1948, (Section 7); Bengal Wakf Act, 1934, as amended by the Bengal Wakf (Amendment) Act, 1973.

[150] The Durgah Committee, Ajmer v. Syed Hussain Ali, AIR 1961 SC 1402.

[151] Subramaniam Swamy v. State of Tamil Nadu, (2014) 5 SCC 75.

[152] *Id*.

[153] *Id*. *See also* Sri Sabanayagar Temple v. The State of Tamil Nadu (2009), Indian Kanoon, http:indiankanoon.org /doc/396397.

CHAPTER 13

STATE CONTROL OVER RELIGIOUS INSTITUTIONS IN SECULAR INDIA

13.1 Religious Plurality in Contemporary Society

Multiculturalism represents an embrace by society of different communities, ethnicities, and religious groups living in a nation state.[1] Contemporary society has been witnessing deformities among various religious groups and intolerance and violence in the name of religion have become the ruling features our society.[2]

Every religious system in a modern society should be capable of responding creatively to every new challenge, progressive and healthy ideas which come from both outside and internally.[3]

The modern scientific world disapproves with incredible dogmas and exclusive revelations. In this age of humanism, religions which are insensitive to human sufferings and social crimes do not appeal to the modern society. Religion which makes for division, discord and disintegration are actually opponents of religion itself and society as whole.[4]

Indian society is a good example multicultural society, where different kinds of religious faiths and cultures co-exist. As far as religious institutions

[1] AMOS N. GUIORA, TOLERATING INTOLERANCE: THE PRICE OF PROTECTING EXTREMISM 35 (Oxford University Press U.S.A. 2014).
[2] T.J.S. George, *The Intolerance Debate and the Game of Pretence. Why is a 5000-year Heritage under Threat*, 53(46) MAINSTREAM 4 (Nov. 7, 2015).
[3] S. RADHAKRISHNAN, RELIGION, SCIENCE AND CULTURE 8 (Orient Paperbacks 2005).
[4] *Id*. at 9.

are concerned, many religious institutions of many religious groups and sects are in existence in India. They are often working without interfering with the affairs of another one.

13.2 Role of State in a Multi Religious Society

The liberal democratic nation-states are founded on a social contract between the individual and the State.[5] In such a system, the individual willingly joins the state primarily for protection and safety.[6] By resolving inter-religious conflicts, by ensuring communal harmony and by facilitating religious acts, the State plays a crucial paternal role in the society.

A principled distancing from all religions and an approach of impartiality in treatment can give legitimacy for State action. In a multicultural society, this approach of impartiality sets ways and limits to law's regulative task, and paves the way for co-existence among different religious groups.[7]

Secularism as a tool of liberation from prejudices and communal frenzies has inherent competence to enhance the ideals of human rights and welfare. Search for viable parameters for the appropriate triangular relations among State, religion, and individual become an imperative in shaping the legal policies in the task of social transformation.[8]

[5] AMOS N. GUIORA, TOLERATING INTOLERANCE: THE PRICE OF PROTECTING EXTREMISM 35 (Oxford University Press 2014).
[6] *See generally* WILL KYMLICKA, MULTICULTURAL ODYSSEYS: NAVIGATING THE NEW INTERNATIONAL POLITICS OF DIVERSITY (OXFORD UNIVERSITY PRESS 2007).
[7] M.S. Pande, *Minority Rights and Personal Laws in India: An Analysis*, 2 BHARATI LAW REVIEW 86, 97 (Jan.-Mar. 2014).
[8] P. ISHWARA BHAT, LAW & SOCIAL TRANSFORMATION 225-226 (Eastern Book Company 2009).

Man has always treated freedom of religion as his precious possession and has tried to preserve it from intrusion by the authority of State. Every tendency to curb this freedom through the instrument of law has always been irresistible. The long history of mankind depicts his struggle to maintain his religion free from the clutches of the State and from this battle, the concept of secular State has emerged.[9]

The UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, urges States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief, and to eliminate all forms of hatred, intolerance and discrimination based on religion or belief,[10]

In liberal Western democracies, religion holds a considerable position in social life but it is not superior to State law. Religion must not be granted unlimited powers of special rights.[11] In essence, the core of a modern nation State should be the supremacy of State law against religious law.[12]

Theories of multiculturalism emphasise the need of State neutrality and equality among all different religious and cultural groups.[13] Tolerance requires us to accept people and permit their practices even when we strongly

[9] V.M. BACHAL, FREEDOM OF RELIGION AND THE INDIAN JUDICIARY [A CRITICAL STUDY OF JUDICIAL DECISIONS] 1 (Shubhada Saraswat Publishing Co. 1975).
[10] G.A. Res. 63/181, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (Mar.16, 2019), http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/63/181.
[11] AMOS N. GUIORA, TOLERATING INTOLERANCE: THE PRICE OF PROTECTING EXTREMISM 55 (Oxford University Press 2014) (A religious authority without control may be misused and power is in fact non-legitimate or illegitimate. For example, an individual accused of cannot be allowed to take the protection of religious law to cover-up the illegal conduct).
[12] *Id*.
[13] *See generally* MICHAEL MURPHY, MULTICULTURALISM: A CRITICAL INTRODUCTION (Routledge Publications 2012).

disapprove of them. Tolerance thus involves an attitude that is intermediate between whole hearted acceptance and unrestrained opposition.[14]

In a multicultural society, the role of State in religious matters should be meticulous in nature. Otherwise people would misconceive and misconstrue any excessive action from the part of the State.[15]

13.3 Religious Plurality and Role of State in India

Indian society is comprised of diverse religions, cultures, customs, beliefs, languages and cultural ethnicity. So, it is very difficult for reconciling the differing identities of a highly diverse and complex society and to make them live and progress in peace.[16] But the Constitution of India has recognised this ground reality that exist in our society, and has adopted a democratic polity and made various provisions for reconciling the differing interests and aspirations of the people.[17]

The Indian experience has shown that a sense of tolerance and rational application of essential social morals bereft of fear psychosis is imperative to keep religion from becoming a source of trouble.

Even though the society is tolerant in its nature, a majority is held up with religious orthodoxy and superstitious beliefs. It is not easy to transform India from a semi-feudal superstition-ridden society into a modern enlightened

---

[14] JOHN HORTON, "TOLERATION AS A VIRTUE" TOLERATION: AN ELUSIVE VIRTUE 28-34 (David Heyd ed., Princeton University Press 1998).
[15] Prathap Thevarathottam S.S., *Interference of Politics and Religion-The Trajectory of Politicisation in Devaswom Board*, 6 JOURNAL OF PARLIAMENTARY STUDIES 53, 53 (Jul.-Dec. 2014).
[16] M.A. Rane, *Wages of Alienating Minorities*, *in* M.A. RANE , GOOD TIMES, BAD TIMES, SAD TIMES, SELECTED WRITINGS OF M.A. RANE 404 (M.A. Rane 75th Birthday Felicitation Committee 2001).
[17] *Id*. at 405.

society. Such a process of transformation may take years and the hold of the past on our people has to be reduced by developing in them a futuristic orientation.[18]

Zoya Hasan explains the role of the State in a multicultural society in the Indian context as follows;

> *"The defining feature of State policy would be neutrality in areas that are related to religions and religious freedom. Secularism demands that everybody should not be tarred with same brush. The constitution set up a secular democracy not in the same way of the uniformity of the grave. If we start on a plain mosaic and try to draw one single pattern all over the country then we shall be playing absolutely against the very foundation of our philosophy."*[19]

State neutrality in religious affairs and equality among all different religious and cultural groups are the pioneer features of Indian Constitution. In the case of religious institutions also, State has been neutral in its policy and practice. Administration of Public religious Institutions like public temples and public waqfs by the sanction of Law are held constitutionally valid.

13.4 Secularism in its General Parlance

Secularism is the result of religious reaction to historically instigated socio-political situations. The socio-political situations vary from country to country and from one era to another. The concept of secularism takes different

[18] Gagandeep Sobti & Aadya Dubey, *Role of State and Police in the Wake of Communal Rights*, 2 BHARATI LAW REVIEW 339, 354 (Jan.-Mar., 2014).
[19] Zoya Hasan, *Religion and Politics in a Secular State: Law, Community, and Gender*, *in* POLITICS AND STATE IN INDIA 276 (Zoya Hasan ed., Sage Publications 2000).

colours at different times.[20] Many conflicts, historical and contemporary, are fought between believers of antagonistic religious groups.[21]

The concept of secularism in its present form was the intellectual child of the Western political thought. From a broad historical perspective, the modern secular idea and concept originated in the West and crystallised as a world-view under the impetus provided by three major forces of the modern age viz., religious reformation, industrialisation and the democratic revolution.[22]

The word secularization was first used in 1648, at the end of the thirty years of war in Europe, to refer to the transfer of church properties to the exclusive control of the princes.[23] When George Jacob Holyoake coined the term secularism in 1851, secularization was already built into the ideology of progress.[24]

'Secularism' and 'secularisation' are two different terms. 'Secularism' is the socio-political ideology and 'secularisation' is the social process by which such an ideology of secularism can be achieved.[25]

The concept of secularism as interpreted in the West owes its origin from the beginning of Christianity. According to Pylee, there was no concept of

[20] K.P. Krishna Shetty, *Secularism in the Indian Constitution: A Concept of Sui Generis*, 20 COCHIN UNIVERSITY LAW REVIEW 235, 235 (Sept. & Dec. 1996).
[21] Kinhide Mushakoji, *Are Religions For or Against Human Security? from Closed to Open Religiosity*, *in* RELIGION AND CULTURE IN ASIA PACIFIC: VIOLENCE OR HEALING? 17 (Joseph A. Camilleri ed., Vista Publications 2001).
[22] P.C. Joshi, *Gandhi-Nehru Tradition and Indian Secularism*, 45(48) MAINSTREAM (Nov. 17, 2007), (Jun. 20, 2016), http://www.mainstreamweekly.net/article432.html.
[23] T.N. Madan, *Secularism in its Place*, *in* SECULARISM IN INDIA 297 (Rajeev Bhargava ed., Oxford University Press 2007).
[24] *Id*.
[25] Rudolf C. Heredia, *Secularism in a Pluri-Religious Society- The Constitutional Vision*, 50(14) ECONOMIC & POLITICAL WEEKLY 51, 52 (Apr. 4, 2015).

secularism in the Greek or Roman or ancient India. Both Greek and Roman ruling classes believed in their respective religion.[26]

Though the concept of secularism has Christian roots, it was in existence even in pre-Christian societies.[27] The spirit of secularism was very much in ancient India. The best historical example of religious tolerance can be seen in the Edict of Ashoka.[28] Kautulya's *Arthashastra* attempted to separate the State from the influence of theology by be holding the religious sub-ordinate and secondary to State power.[29]

13.5 Secularity, Secularization and Secularism: - A Theoretical Analysis

Charles Taylor explained various facets of secularity. He describes about 3 various types of secularism. 'Secularity 1' is the retreat of religion from various public spaces like, politics, science, art, etc. The second model 'Secularity 2' is the notion of declining religious belief and practice that is a consequence of modernity. 'Secularity 3' involves among others, things arising out of a humanist alternative.[30]

Indian form of secularity is a combination of all the above said facets of secularity. However, it cannot be fixed to a particular form, but possesses all the qualities of three facets.

---

[26] M.V. PYLEE, OUR CONSTITUTION, GOVERNMENT AND POLITICS 39 (Universal Law Publishing 2000).
[27] Charles Taylor, *Modes of Secularism*, *in* SECULARISM AND ITS CRITICS 31 (Rajeev Bhargava ed., Oxford University Press 2007).
[28] A.K. SINHA, SOME ASPECTS OF ANCIENT INDIAN SOCIETY AND POLITY 83 & 84 (Anamika Publishers 2005).
[29] ROGER BOESCHE, THE FIRST GREAT POLITICAL REALIST: KAUTILYA AND HIS ARTHASHASTRA 54-57 (Lexington Books 2003).
[30] CHARLES TAYLOR, A SECULAR AGE 423 (Harvard University Press 2009).

Taylor's notions on 'secularity', especially first two conceptions viz., Secularity 1 & 2, considered as central to the standard story of secularization and the standard public usage of the word secular.[31]

D.E. Smith put forward a working definition for the term secularism. According to him, the secular state is a state that guarantees freedom of religion, irrespective of religion, to individuals and corporates. It seeks neither to promote nor interfere with religion.[32] He further states that a secular state involves three distinct but interrelated sets of relationships concerning the state, religion, and the individual.[33] The three sets of relations are:

1. Religion and individual (freedom of religion);

2. The State and the individual (citizenship);

3. The State and religion (separation of state and religion).

If we analyse the provisions of Indian Constitution, it can be seen that it clearly establishes the above said three sets of relations in a clear cut manner. Thus secularism, justice, liberty, equality and fraternity are all inseparable from one another and all are inter-related under Indian context.[34]

V.R. Krishna Iyer quoted V. Sudhish Pai, that

"*Secularism is not a mere protest or discontent with excesses of religious zeal. It would be generally correct to say that modern civilized man considers his religion as a private and personal affair governing*

[31] MICHAEL WARNER, JONATHAN VAN ANTWERPEN, CRAIG J. CALHOUN, VARIETIES OF SECULARISM IN A SECULAR AGE 8 (Michael Warner et al. eds., Harvard University Press 2010).
[32] D.E. Smith, *India as a Secular State, in* SECULARISM AND ITS CRITICS 178 (Rajeev Bhargava ed., Oxford University Press 2007).
[33] *Id.*
[34] Vasudha Dhagamwar, *Towards Uniform Civil Code: Concepts, Constraints, Policies, Principles, Perspectives, Methods and Prospects*, *in* NATIONAL CONVENTION ON UNIFORM CIVIL CODE FOR ALL INDIANS 40 (N. R. Madhava Menon ed., Vigyan Bhavan 1986).

his relationship with unseen power God, or whatever one may call it. This relationship should help and not hinder the efficient performance of duties of the individual in other spheres of life. The process of secularization of life and thought consists in the withdrawal and separation of religion properly so called, from other spheres of life and thought.[35]

13.6 Wall of Separation: An American model of Secularism

The phrase "wall of separation" is a metaphor used to describe Western model of secularism, especially the American model. This metaphorical term means that the Church stays away from the State's business and the State stays away from the Church's business.[36] The phrase 'wall of separation' was first used to express an understanding of the intention and function of the 'Establishment Clause and Free Exercise Clause' of the First Amendment to the United States' Constitution.[37]

Thomas Jefferson[38] was the one who used or coined this term.[39] The essence of Jefferson's views on religion and the State were contained in his 1777 Bill for Establishing Religious Freedom.[40]

---

[35] V.R. Krishna Iyer, *Manifestato of Man, in* SECULARISM IN INDIA 18 (Iqbal Narain ed., Classic Publishing House 1995).

[36] James Kennedy, *Separation of Church and State, in* THE ROLE OF RELIGION IN PUBLIC POLICY 11 (Eamon Doyle ed., Greenhaven Publishing 2018).

[37] 'Establishment Clause and Free Exercise Clause' of the First Amendment to the United States' Constitution reads thus: "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...*"

[38] Former President of U.S.A.

[39] THOMAS JEFFERSON, JEFFERSON: POLITICAL WRITINGS 389 & 397 (Joyce Appleby et al. eds., Cambridge University Press 1999) (In his famous Letter to the Danbury Baptist Association (1802) Thomas Jefferson wrote thus:- "*...Religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions [and should] "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between Church and State*").

This phrase of "wall of separation" has subsequently occupied a prime position in American Constitutional jurisprudence by the U.S. Supreme Court ruling in *Raynold v. United States,*[41] in 1879.[42]

The term 'Church and State' is currently used to address the relation between of 'religion and politics' and 'religion and state.'[43]

Robert Audi uses the expression 'church' to refer to any kind of religious institutions. He elaborately explains about the theoretical analysis of "wall of separation" from many angles of a liberal democracy.[44] The phrase "wall of separation" includes the idea of a separation between religion and the State. Jefferson's preoccupation was in ensuring that religion remained free and uncoerced.[45]

In *Zorach v. Clauson,*[46] the Supreme Court of America introduced the principle of 'Accommodationism', which means that the government may support or endorse religious establishments as long as it treats all religions equally without any preferential treatment to any particular group or religious

---

[40] Stephen Chavura, *The Separation of Religion and State: Context and Meaning*, RESEARCH GATE 37 (Dec., 2010), (Mar. 20, 2019), https://www.researchgate.net/publication/49599146. (The Jefferson's original Bill 'for establishing religious freedom' drafted in 1777, says thus:- "*No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods; or shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no way diminish, enlarge, or affect their civil capacities*").

[41] Reynolds v. United States, 98 U.S. 145 (1878).

[42] Daniel L. Dreisbach, *How Thomas Jefferson's 'Wall of Separation' Redefined Church - State Law and Policy*, (Mar. 20, 2019), *https://www.jamesmadison.gov/lessons/01_WallSeparation.pdf*.

[43] Stephen Chavura, *The Separation of Religion and State: Context and Meaning*, RESEARCH GATE 37 (Dec, 2010), (Mar. 20, 2019), https://www.researchgate.net/publication/49599146.

[44] ROBERT AUDI, RELIGIOUS COMMITMENT AND SECULAR REASON 32 (Cambridge University Press 2000).

[45] Stephen Chavura, *supra* note 43.

[46] Zorach v. Clauson, 343 U.S. 306 (1952).

institution. Accommodationists emphasise that religious individuals, and/or religious entities may be accommodated by government in regard to such things as free exercise of rights, access to government programs and facilities, and religious expression.[47]

13.7 Secularism in India: General Context

Among the developing countries, India is distinguished by its proclaimed commitment to secularism as the guiding principle of State policy and action. The concept of Indian secularism is not just an intellectual abstraction; it is not a product only of logical constructions and academic debates.[48]

The pattern of secularism developed under the Indian Constitution is no imitator of secular concept adopted elsewhere and it is a unique system, a concept *sui generis*.[49] Rajeev Bhargava rightly observes that the Indian model of secularism exists. Although it is theoretically less developed, it is not generated exclusively from the West. It is in consonance with the needs of societies with deep religious diversity. Moreover, it also complies with the principles of freedom and equality.[50]

From the ancient period onwards, the concept of secularism by way of religious tolerance was in existence in Ancient India. Such religious tolerance

[47] FRANK S. RAVITCH, MASTERS OF ILLUSION: THE SUPREME COURT AND THE RELIGION CLAUSES (New York University Press 2007)
[48] JYOTI SHARMA, SECULARISM AND AYODHYA POLITICS IN INDIA 1 (Deep & Deep Publications 2007).
[49] K.P. Krishna Shetty, *Secularism in the Indian Constitution: A concept of Sui Generis*, 20 COCHIN UNIVERSITY LAW REVIEW 235, 235 (Sept. & Dec., 1996).
[50] Rajeev Bhargava, *Reimagining Secularism: Respect, Domination and Principled Distance*, 48 ECONOMIC AND POLITICAL WEEKLY 79-92 (Dec. 14, 2013).

can be inferred from the ancient concept of '*Sanatana Dharma'*,[51] which represented the unity of life and tolerance for all religions.[52] Despite the differences of language, sect and region, it was dharma and the teachings of the vedas that was the thread that tied people across ancient India, together.[53]

However, M.A. Rane points out that patronage and encouragement of all religious practices by the State under a wrong concept of secularism as '*Sarvadharma Samabhava'*[54] is a factor that has contributed to the growth of religious fanaticism in India.[55]

M.A. Rane further clarifies that the practice of genuine secularism by the State and citizens in the real sense of term is that of separation of religion from the State and public life. According to Rane, secularism is not *Sarvadharma Samabhava*, but is the equal treatment of all religions. Therefore encouragement and patronization of all religions by the State and or the encouragement to practices of religious rites of all religions in the affairs of the State is not what is secularism.[56]

---

[51] Term *Sanatana Dharma* is used to denote the 'eternal' or absolute set of duties or religiously ordained practices incumbent upon all Hindus, regardless of class, caste, or sect.

[52] SHABNUM TEJANI, INDIAN SECULARISM: A SOCIAL AND INTELLECTUAL HISTORY 1890-1950, at 93 & 94 (Indiana University Press 2008).

[53] *Id*.

[54] '*Sarvadharma Samabhava*' literally means that all Dharmas (truths) are equal to or harmonious to each other? All religions are spiritually same.

[55] M.A. Rane, *State and Religion in India, in* M.A. RANE, GOOD TIMES, BAD TIMES, SAD TIMES, SELECTED WRITINGS OF M.A. RANE 338 (M. A. Rane 75th Birthday Felicitation Committee 2001).

[56] *Id*. (M.A. Rane further explains that "*For the well-being of all and peaceful progress, the state and the citizens should practice secularism in its real sense that is needed more by a mixed and multi-religious society like India. If majority become more tolerant and the minority become more reasonable and citizens regard themselves as humans, irrespective of the accident of their birth in any religion, we may be able to prevent the catastrophe and cease to live like wild beasts."*).

The history of India presents a tradition of tolerance and free practice of religion. Throughout the ages, this ancient civilization of India has conserved the trend of a unity in diversity among many radically different people.[57]

The concept of Indian secularism acquired flesh and blood, a moral depth and intensity through India's freedom struggle. The sacrifice of countless unknown Indians who stood up for secular nationhood has qualitatively transformed the Indian Secularism from an intellectual abstraction into a powerful moral force.[58]

The term secularism which is commonly used in present day India is based upon the relationship that exists, or which ought to exist, between the State and religion. Many aspects of the concept of secular State in India are common to all the countries within the liberal democratic tradition. Certain aspects of Indian secularism show the particular contribution of America. However, the Anglo-American usage of the term 'wall of separation'[59] of Church and State would be inappropriate and misleading in India. The conception of Indian secularism is derived from the Indian constitution itself.[60]

The Western ideology of secularism based on the notion 'State versus Church' never had rigidified or petrified the unique concept of Indian

[57] D.E. KRISHNA PRASAD, RELIGIOUS FREEDOM UNDER INDIAN CONSTITUTION, at vii (Minerva Associates Publications 1976).
[58] JYOTI SHARMA, SECULARISM AND AYODHYA POLITICS IN INDIA 1 (Deep and Deep Publications 2007).
[59] Thomas Jefferson, the former president of USA, first coined the term 'wall of separation'. Later this was widely accepted as a principle in American Jurisprudence.
[60] D.E. Smith, *India as a Secular State*, *in* SECULARISM AND ITS CRITICS 177 (Rajeev Bhargava ed., Oxford University Press 2007).

secularism as it applies to Indian conditions. Flexibility along with stress on fundamental ideals is the unique feature of Indian concept of secularism.[61]

The idea of secularism in India is quite different from that in the West. This difference is not in degree but also in kind.[62] In the West, secularism has been used as a nationalist ideology to motivate citizens towards building a modern State with the aid of rationalistic ideas.[63]

In India, secularism envisages a harmonious living situation where believers of various faiths and followers of different traditions strive to make a collective alternative to modernity and secularisation and the concept of secularism was accepted by a broad social consensus between various religious groups.[64]

P. K. Tripathi recognizes three important features of secularism envisaged in the Indian Constitution:[65] (i) Giving primacy to the individual freedom by placing him before and above religion; (ii) Recognizing freedom of religion and religious denomination as incidental only to his well-being and to a general scheme of his liberty; and (iii) Constitutional philosophy regarding religion in India embodies the enunciation and incorporation of the principle of tolerance and equality side by side.

---

[61] V.R. Krishna Iyer, *Manifestato of Man, in* SECULARISM IN INDIA 17 (Iqbal Narain ed., Classic Publishing House 1995).
[62] Rudolf C. Heredia, *Secularism in a Pluri-Religious Society- The Constitutional Vision*, 50(14) ECONOMIC & POLITICAL WEEKLY 51, 52 (Apr. 4, 2015).
[63] *Id*. at 55.
[64] *Id*. at 51.
[65] P.K. Tripathi, *Secularism: Constitutional Provisions and Judicial Review, in* G.S. SHARMA, SECULARISM: ITS IMPLICATIONS FOR LAW AND LIFE IN INDIA 170 (N.M. Tripathi Publisher 1966).

The Fifth Minorities Commission clarified that secularism in India is:-

"*Our broad type of secularism looks upon traditional religion, of every label, with benevolent neutrality. It would like to see the end of exploitation or of use of religion for political and economic purposes and to purge its superstition and harmful predatory practice. But beyond that, it encourages religion as a part of beneficial human activity in so far as it can satisfy and serve the criteria of utilitarian ethics, which are secular. Hence, we tend to employ the term secularism for a healing, freedom supporting, harmonizing factor in our thoughts and feelings, which enable religious cultures, not only to survive and live but to do so with all the force and vigour. They can do this without harming the general social welfare…The impact of our secularism operating as a new social, economic, ethical and moral force resulting from modern knowledge, science and enlightenment can elevate traditional religion by purging it of noxious elements*."[66]

The speciality of Indian secularism lies in a combination of historical and contemporary circumstances.[67] The interpretation of Indian model of secularism does not seem akin to any of the definitions that are given by any encyclopaedia or dictionary.[68]

[66] P. ISHWARA BHAT, LAW & SOCIAL TRANSFORMATION 233 (Eastern Book Company 2009). *See also* M. S. Pande, *Minority Rights and Personal Laws in India: An Analysis*, 2 BHARATI LAW REVIEW 86, 94-95 (Jan.-Mar. 2014).

[67] T.N. MADAN, SOCIOLOGICAL TRADITIONS: METHODS AND PERSPECTIVES IN THE SOCIOLOGY OF INDIA 4 (Sage Publications 2011).

[68] WEBSTER'S ENCYCLOPEDIC UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE 1731 (Deluxe ed., Random House Value Publishing 2008) (The word secular is defined as "of or pertaining to worldly things or to things that are not regarded as religious, spiritual, or sacred; temporal." The word secularism is defined as "secular spirit or tendency, esp., a system of political or social philosophy that rejects all forms of religious faith and worship"). *See also* OXFORD DICTIONARY AND THESAURUS 686 (2007) (It defines secular as "not connected with religion, not sacred, non-religious"); OXFORD ADVANCED LEARNERS DICTIONARY 1155 (2010) (It also defines secularism as the belief that religion should not be involved in the organization of society).

Indian concept of secularism is mainly based on equal status for all religions rather than on irreligious neutrality.[69]

In order to understand the various dimensions of secularism in India and its role in social transformation, it is essential to briefly explain the historical, constitutional and sociological discourse on the subject.

13.8 Secularism in India: A Historical Perspective

The spirit of secularism was very much in ancient India though the concept as such was certainly not known, in those days. Secularism as a philosophy negating religious influences over the State seems to be a foreign idea in the traditional set-up of India where in *Dharma*[70] occupies the highest position. The ancient idea of secularism was conceptualised in the idea of '*sarva sama bhava*'.[71]

The best historical example of such ideals may be seen in Asoka's reign.[72] The Rock Edicts[73] of Ashoka, wherein he says that one must have

[69] Vasudha Dhagamwar, *Towards Uniform Civil Code: Concepts, Constraints, Policies, Principles, Perspectives, Methods and Prospects*, *in* NATIONAL CONVENTION ON UNIFORM CIVIL CODE FOR ALL INDIANS 30 (N. R. Madhava Menon ed., Vigyan Bhavan 1986).

[70] Tolerance, benevolence, broad-mindness, generosity, wisdom, truthfulness, non-violence, and many other moral virtues were in totality, termed as *Dharma*.

[71] A.K. SINHA, SOME ASPECTS OF ANCIENT INDIAN SOCIETY AND POLITY 83 & 84 (Anamika Publishers 2005) (On account of the spirit of *'sarva sama bhava',* the anti-vedic traditions like Buddhism, Jainism, etc., and many other schools of religion and philosophy were developed in an age when vedic religion was at its peak). *But see* ROGER BOESCHE, THE FIRST GREAT POLITICAL REALIST: KAUTILYA AND HIS ARTHASHASTRA 54-57 (Lexington Books 2003) (It was a truism that no anti-vedic traditions were persecuted for their anti-vedic view as was the case in the ancient and medieval Europe. No difference or distinction was made in ancient India on the basis of religious affiliation. Kautulya's *Arthashastra* overrode religious considerations to serve the cause of the State and attempted to emancipate the State from the influence of theology by holding that religious norms should be subordinate and secondary to State power).

[72] HERMANN KULKE & DIETMAR ROTHERMUND, A HISTORY OF INDIA 62 (Psychology Press 1998) (Ashoka, was an Indian emperor of the Maurya Dynasty, who ruled almost the entire Indian subcontinent from c. 268 to c. 233 BC. His reign over a realm was stretching from present-day Afghanistan in the west to Bangladesh in the east. It covered the entire Indian

equal feeling of respect for all religions and only in this way he can well respect his religion.[74] Asoka's religious concept of '*Dhamma* or *Dharma*'[75] based on Buddhism was tolerant in nature. Pylee discard the existence of rudiments of modern counterpart of secularism in ancient Asoka's reign.[76][77]

The feeling of religious tolerance as well as respect for all religious seats may be seen as a prevalent tradition throughout in ancient India.[78] Certain

---

subcontinent except for parts of present-day Tamil Nadu, Karnataka and Kerala. Pataliputra (in Magadha, present-day Patna) was the main capital with provincial capitals at Taxila and Ujjain).

[73] *See generally* SUBHADRA SEN GUPTA, ASHOKA (Penguin Publishers 2009) (The Edicts of Ashoka are a collection of inscriptions on pillars as well as boulders and cave walls, made by Emperor Ashoka of the Mauryan Empire during his reign, from c. 268 to c. 233 BC); NAYANJOT LAHIRI, ASHOKA IN ANCIENT INDIA (Harvard University Press 2015).

[74] JACOB NEUSNER & BRUCE CHILTON, RELIGIOUS TOLERANCE IN WORLD RELIGIONS 322 (Templeton Foundation Press 2008) (Grandfather of Ashoka, Chandragupta Maurya was a Jain. Father of Ashoka was Bindusar who followed *Ajivik*, another stream of Shramanic tradition. So it can be concluded that the original religion in which Ashoka was born into was Jainism. After the bloodsheded war of Kalinga in 261 BC, Ashoka embraced Buddhism. In this war about 1 lakh common men were killed and about 1.5 lakhs became homeless); HERMANN KULKE & DIETMAR ROTHERMUND, A HISTORY OF INDIA 63 (Psychology Press 1998). *See also* A.K. SINHA, SOME ASPECTS OF ANCIENT INDIAN SOCIETY AND POLITY 83 & 84 (Anamika Publishers 2005).

[75] *Dhamma* is a Pali word (the Sanskrit equivalent being *Dharma*) with meanings as diverse as 'nature', 'teachings', 'justice', 'normal', 'truth' and 'good manners'. The word is commonly used in Buddhism to mean the teachings and doctrines of Buddha.

[76] M.V. PYLEE, OUR CONSTITUTION, GOVERNMENT AND POLITICS 39 (Universal Law Publishing 2000). *See also* JACOB NEUSNER & BRUCE CHILTON, RELIGIOUS TOLERANCE IN WORLD RELIGIONS 326 (Templeton Foundation Press 2008) (He further argues that during the period of Asoka's rule, there was only some kind of tolerance towards faiths which were different from Buddhism, the State religion. Some writers like Jacob Neusner & Bruce Chilton even point certain attributes of internal intolerance against a faith poorly executed or practiced during Asoka's rule, though they were very minute in nature. The example of intolerance is directed internally at the community of monks is particular to practical rather than theological concerns and includes the request for assistance by the laity in enforcement).

[77] JACOB NEUSNER & BRUCE CHILTON, RELIGIOUS TOLERANCE IN WORLD RELIGIONS 326 (Templeton Foundation Press 2008) (He further argues that during the period of Asoka's rule, there was only some kind of tolerance towards faiths which were different from Buddhism, the State religion. Some writers like Jacob Neusner & Bruce Chilton even point certain attributes of internal intolerance against a faith poorly executed or practiced during Asoka's rule, though they were very minute in nature. The example of intolerance is directed internally at the community of monks is particular to practical rather than theological concerns and includes the request for assistance by the laity in enforcement).

[78] A.K. SINHA, SOME ASPECTS OF ANCIENT INDIAN SOCIETY AND POLITY 85 (Anamika Publishers 2005) (Asoka put his own example before his subjects by mentioning always the *Brahmans* first and then the other castes in his inscriptions although he was a staunch

exceptions like Pushyamitra Sunga reign can be noted as some anti-Buddhist atrocities were reported during that time.[79]

During the 16th and 17th centuries, most of present India was ruled by Mughal emperors, especially in northern India.[80] Many early Mughal emperors in the medieval India were painted by many western historians as sheer religious fanatics as the destroyer and looters of Hindu temples and temple properties. But it can't be generalised that all Mughal rulers were religious fanatics. Moreover many Mughal rulers followed religious tolerance during their respective reigns. Many of the Mughal rulers granted lands for the erection and maintenance of temples some of which stand even today.[81]

The pioneer among Mughal rulers was Akbar, who followed the policy of religious toleration even further by breaking with conventional Islam.[82]

Buddhist. Many non-Brahman kings had Brahman ministers. Jain Mahapadmananda had a Brahman named Raksasa as his minister. Chandra Gupta Maurya had a strong patronage and guardianship of a worthy prime minister like Kautilya. Kanishka a Buddhist depicted the images of Hindu gods in his coins. Many more examples can be found to support the view that religion in ancient India was tolerant and never made religion as a basis for political favour). *See also* JACOB NEUSNER & BRUCE CHILTON, RELIGIOUS TOLERANCE IN WORLD RELIGIONS 326 (Templeton Foundation Press 2008).

[79] STEVEN L. DANVER, POPULAR CONTROVERSIES IN WORLD HISTORY: INVESTIGATING HISTORY'S INTRIGUING QUESTIONS 100 (ABC-CLIO, 2010). *But see* A.K. SINHA, SOME ASPECTS OF ANCIENT INDIAN SOCIETY AND POLITY 85 (Anamika Publishers 2005) (But such anti-Buddhist atrocities too are explained on political and not on religious ground).

[80] ANNEMARIE SCHIMMEL, THE EMPIRE OF THE GREAT MUGHALS: HISTORY, ART AND CULTURE 106 (Burzine K. Waghmar ed., Reaktion Books 2004). *See also* JOHN F. RICHARDS, THE MUGHAL EMPIRE (Cambridge University Press 1993).

[81] CHINNAPPA REDDY, THE COURT AND THE CONSTITUTION OF INDIA: SUMMITS AND SHALLOWS 150 (Oxford University Press 2008).

[82] DOMENIC MARBANIANG, SECULARISM IN INDIA: A HISTORICAL ANALYSIS 39-42 (Lulu Press 2011). Md. Mahtab Alam Rizvi, *Secularism in India: Retrospect and Prospects*, 66 THE INDIAN JOURNAL OF POLITICAL SCIENCE 901-914 (Oct.-Dec., 2005) (Akbar proclaimed an entirely new State religion of (*Din-i-ilahi*). His propagation of '*Din-e-Illahi*' (Divine faith) and *Sulh-I-Kul* (peace with all) proclaimed the spirit of secularism. '*Din-e-Illahi*' was a mixture of Islamic, Hindu, Christian and Buddhist teachings. It never spread beyond Akbar's court and ended with his death). *See also* M.V. PYLEE, OUR CONSTITUTION, GOVERNMENT AND POLITICS 39 (Universal Law Publishing 2000) (According to Pylee, the only ruler who practised religious tolerance later was Akbar. In the reign of Akbar, as there was a State

Akbar's son, Emperor Jahangir, re-adopted Islam as the State religion but continued the policy of religious toleration.[83] Jahangir's son Aurangzeb ended the policy of religious tolerance followed by earlier emperors.[84]

The attitude of the Muslim conquerors had been one of toleration. Even though some of the Mughal rulers were religious fanatics, it can be firmly asserted that there was a continuous attempt from the earliest days to deal with Hindus fairly.[85]

After the fall of the Mughal Empire, India was ruled by hundreds of rulers either Hindu or Muslim and they all had their own State religion which was the religion of the ruler. When the British established their rule in India, they had their own official religion and even an ecclesiastical department directly under the control of the Governor-General.[86]

---

religion, though tolerant in nature, it can be observed that then States were not under strict secular rule).

[83] ANNEMARIE SCHIMMEL, THE EMPIRE OF THE GREAT MUGHALS: HISTORY, ART AND CULTURE 106 (Burzine K. Waghmar ed., Reaktion Books 2004) (His court included large numbers of Indian Hindus, Persian Shia and Sufis and members of local heterodox Islamic sects).

[84] *Id.* at 109 (Aurangzeb stopped the Hindu community to live under their own laws and customs and imposed *Sharia law* (Islamic law) over the whole empire. Thousands of Hindu temples and shrines were torn down and a punitive tax on Hindu subjects was re-imposed. In the last decades of the 17th Century Aurangzeb invaded the Hindu kingdoms in central and southern India, conquering much territory and taking many slaves).

[85] RAJENDRA PRASAD, INDIA DIVIDED 105 (Penguin Books 1946). *See also* Md. Mahtab Alam Rizvi, *Secularism in India: Retrospect and Prospects*, 66 THE INDIAN JOURNAL OF POLITICAL SCIENCE 901-914 (Oct.- Dec., 2005) (The leading movements were Khawaja Moinuddin Chishti, Baba Farid, Kabir, Guru Nanak, Dadu, Tukaram and Mira Bai who contributed to the development of composite. Among these movements, remark of Guru Nanak; "There is no Hindu and No Mussalman" was a prominentReligious tolerance has been one of the greatest traditions of the people of India, even if some rulers in the past were intolerant and religious fanatics. The Sufi and Bhakti movements in medieval India made the people of various communities closer).

[86] M.V. PYLEE, OUR CONSTITUTION, GOVERNMENT AND POLITICS 39 (Universal Law Publishing 2000).

The first document which spoke about equal treatment of all religions was the proclamation by Queen Victoria. [87] It was issued in 1858 just after the first war of Independence in 1857.[88]

When the national movement for independence gathered momentum, the national leaders strongly believed that without unity between religions, especially Hindu Muslim unity and understanding, the British would never transfer the power to Indians. Hence the then national leaders strived hard to develop a kind of Indian secularism in the form of toleration.[89]

---

[87] Namit Saxena, *Supreme Cour's Tryst with Secularism and Hindutva*, 50(18) ECONOMIC & POLITICAL WEEKLY 12, 12 (May 2, 2015) (The document was called "Magnacarta of the People of India" and was declared in eloquent words the principles of justice and religious toleration as the guiding policy of the queen's rule. Queen's proclamation in 1858 assured, "*We declaim alike the right and desire to impose our convictions (religious) on any of our subjects. We declare it to be our royal will and pleasure that none be in anywise favoured, none molested or disquieted by reason of their religious faith or observance, but that all shall alike enjoy the equal and impartial protection of the law; and we do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure*").

[88] *See* Biswamoy Pati, *Introduction: The Great Rebellion of 1857*, in THE GREAT REBELLION OF 1857 IN INDIA: EXPLORING TRANSGRESSIONS, CONTESTS AND DIVERSITIES 1-16 (Routledge 2010) (The Indian Rebellion of 1857 had diverse political, economic, military, religious and social causes. An uprising in several sepoy companies of the Bengal army was sparked by the issue of new gunpowder cartridges for the Enfield rifle February, 1857. The cartridges were rumoured to have been made from cow and sow fat. As cows were considered holy by Hindus, and pigs were considered unclean by Muslims, loading the Enfield rifle required tearing open the greased cartridge with one's teeth. This had insulted both Hindu and Muslim religious practices. Moreover, grievances over British taxation and then land annexations by the British East Indian Company were ignited by the sepoy mutineers. As a result, dozens of units of the Indian army joined peasant armies in widespread rebellion. Both Hindus and Muslims jointly rebelled against British policies. Another important source of discontent among the Indian rulers was the inclusion of 'doctrine of lapse' (of Indian leadership succession), and the adoption of policy of 'subsidiary alliance'. Both policies deprived sovereignty of the then Indian rulers. Another main reason for the revolt was that the British East India Company's meddling with India's political and financial system. Following the 1857 Rebellion, the East India Company's rule in India came to an end. Queen Victoria's Proclamation of 1st November 1858 declared that thereafter India would be governed by and in the name of the British Monarch through a Secretary of State). *See generally* CHARLES RIVER, THE SEPOY REBELLION OF 1857: THE HISTORY AND LEGACY OF THE INDIAN REBELLION AGAINST THE BRITISH EAST INDIA COMPANY (Create Space 2017).

[89] M.V. PYLEE, OUR CONSTITUTION, GOVERNMENT AND POLITICS 40 (Universal Law Publishing 2000).

The national movement for freedom from colonial rule split early in the nineteenth century and followed two tracks; viz., pluralists or multi religious nationalists and mono-religious nationalists or communalists.[90]

The idea of secular India has evolved as a response to the aftermath of the partition of India, where two-religion theory was propounded by British and supported by fundamentalists in both religions.[91]

Following the Human Rights Declaration of the United Nations in 1948, the makers of the Indian constitution codified the concept of secularism and implicitly incorporated it.[92] The makers of the Indian constitution conceived of India as a secular State, although as a result of the considerable ambivalence of the constitution makers, the document promulgated in 1950 was explicitly silent on the term 'secular'. However, the discussions in the Constituent Assembly reveal that constitution makers accepted the principles of secularism

[90] T.N. MADAN, SOCIOLOGICAL TRADITIONS: METHODS AND PERSPECTIVES IN THE SOCIOLOGY OF INDIA 6 (Sage Publications 2011) (On the one side were the pluralists or multi religious nationalists led by Mahatma Gandhi and Jawaharlal Nehru, and included Muslim nationalists who constructed their political agenda in terms of common interests. On the other side were mono-religious nationalists, called communalists by their opponents, who regarded religious communities as nations).

[91] *See generally* A.M. Matta, *Secularism Overviewed- A Critical Appraisal of the Legislative, Executive, and Judicial Approach*, 1 KASHMIR UNIVERSITY LAW REVIEW 34 (1994) (A. M. Matta explains this particular situation thus: "*The political scenario thus prevailing at the time of independence in 1947, generated apprehension in the mind of minority community, especially Muslim community, about the intentions of the majority community and the survival of the separate identity in terms of their religion, language and culture. These apprehensions gave birth to two nations India and Pakistan. Majority of Muslim community moved to Pakistan but a considerable percentage remained in India. India at that time witnessed a holocaust of communalism. The minority who remained in India felt the shivers of communal frenzy down their spines. The nation was at the cross roads of communalism and secularism. After prolonged debates and discussions, the constitution of India emerged and received the concurrence of the people of all religions, races, cultures, and faiths. Thus various factors were reconciled in the process of constitution making for free India*").

[92] S.M. Diaz, *Rule of Law to Uphold Secularism*, 1 KASHMIR UNIVERSITY LAW REVIEW 82, 82 (1994).

as the cardinal value of constitutional democracy.[93] The emphasis in Constituent Assembly speeches ranged from having rigid 'wall of separation' to 'equal treatment of all religions'.[94]

Professor K.T. Shah's proposal to enact that State shall have no concern with any religion, creed or faith and that it shall observe an attitude of absolute neutrality was not accepted by the Constituent Assembly.[95] The dominant view prevalent in the Constituent assembly was that State is not anti-religious or irreligious but that it should not identify itself with any particular religion, or prefer one religion or exclude another.

Pointing out non-discrimination by State in the matter of religion as the essential feature of secularism, it was observed by Lakshmi Kant Maitra in the Constituent Assembly that:-

> *"By secular State, as I understand it, is meant that the State is not going to make any discrimination whatsoever on the ground of religion or community against any person professing any particular from of religious faith…The State is not going to establish, patronize or endow any particular religion to the exclusion of or in preference to others and that no citizen in the State shall have any preferential treatment or will be discriminated against simply on the ground that he professed a particular form of religion".*[96]

The visionary political scientists of India then preferred secularism and tolerance over theocracy and parochialism. Thus the constitution of free India

[93] 7 CONSTITUENT ASSEMBLY DEBATES 815-16 (Dec. 12, 1948). *See also* DOMENIC MARBANIANG, SECULARISM IN INDIA: A HISTORICAL ANALYSIS 103 (Lulu Press 2011).
[94] 7 CONSTITUENT ASSEMBLY DEBATES 815-16, 831,881-82 (Dec. 12, 1948).
[95] *Id*. at 815-16 (Dec. 12, 1948).
[96] *Id*. at 831 (Dec. 6, 1948).

adopted the principle of secularism and equality wherein interests of linguistic, religious, cultural and other minorities would be protected through constitutional guarantees.[97]

But the Indian constitution declared India to be explicitly 'secular' only following the Forty Second Amendment to the Preamble in the year 1976.

13.9 Secularism in India: A Constitutional Perspective

The Constitution of India envisages a democratic polity where a government and rule of the people of majority. To sustain democracy, an open society, freedom, the rights of all people, including both majority and minority required to be protected.[98]

It is very important to note that the constitution does not define the words 'secular' or 'secularism'. However, the term 'secular' is used in the constitution at two places; in the preamble and in Article 25(2).[99]

When our constitution was originally made, the term secular was not included in it. But the makers of the Constitution of India had a clear understanding about the philosophy of secularism on freedom, equality, and tolerance in the field of religion.[100]

Those who drafted the constitution looked upon secularism not as irreverence towards faith or turning away from religion, but freedom to profess

[97] A.M. Matta, *Secularism Overviewed- A Critical Appraisal of the Legislative, Executive, and Judicial Approach*, 1 KASHMIR UNIVERSITY LAW REVIEW 34, 37 (1994).
[98] M.A. Rane, *Religion, Politics and Election*, GOOD TIMES, BAD TIMES, SAD TIMES., SELECTED WRITINGS OF M.A. RANE 365 (M.A. Rane 75th Birthday Felicitation Committee 2001).
[99] M.V. PYLEE, OUR CONSTITUTION, GOVERNMENT AND POLITICS 55 (Universal Law Publishing 2000).
[100] *Id.* at 52.

practice and propagate all religions.[101] But all the real principles of secularism had been worked out and incorporated in various articles at the very inception of the constitution itself.[102]

In *The Ahmedabad St. Xavier's College Society v. State of Gujarat* case,[103] the honourable Supreme Court pointed out that the constitution-makers were conscious of the deep attachment the vast masses of our country had towards religion. That is the reason behind the inclusion of Articles 25 to 30 by which religious freedom was made a part of the fundamental rights.[104]

In the landmark *S. R. Bommai case*, [105] Justice K. Ramaswamy, observed that the secularism is a part of the basic structure of the constitution.[106] In the same case, Justice P.B. Sawant held that the state cannot carry on any act that is calculated to subvert or sabotage secularism as enshrined in our constitution.[107]

In *S. R. Bommai Case*, Justice K. Ramaswamy rightfully concluded that the Constitution of India has chosen secularism as its vehicle to establish an egalitarian social order.[108] He further said that in a secular democracy, like India, it is not an easy task to separate religion from politics.[109]

---

[101] Irfan Engineer, *Preamble, Secularism and Constitution*, 53(8) MAINSTREAM 9, 10 (Feb.14, 2015).
[102] CHINNAPPA REDDY, THE COURT AND THE CONSTITUTION OF INDIA: SUMMITS AND SHALLOWS 153 (Oxford University Press 2008).
[103] The Ahmedabad St. Xavier's College Society v. State of Gujarat, AIR 1974 SC 1389.
[104] *Id*.
[105] S.R. Bommai v. Union of India, AIR 1994 SC 1918.
[106] *Id*. ¶ 124.
[107] *Id*. ¶ 57 (2).
[108] *Id*. ¶ 124.
[109] S.R. Bommai v. Union of India, AIR 1994 SC 1918, ¶131.

The philosophy of right to equality has given constitutional reasoning in interpreting religious freedom in a multi religious society like India, and helped to establish a justice oriented approach to secularism.[110]

According to Article 25(1), all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. The freedom is subject to the other provisions of Part III, and hence, prohibition of untouchability and of traffic in human beings disallows such practices in the name of religion. The State's power of providing for social welfare and reform and the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus under Article 25(2)(b) extends the scope of religious worship in temples to the deprived classes also.

Article 26 confers upon every religious denomination or any section thereof, the right to establish and maintain institutions for religious and charitable purposes, to manage religious affairs and to own, acquire and administer property. In order to ensure transparency, good governance, temple reforms and avoidance of pilferage of assets, and misuse of funds the State has the power of interference. It is a well-settled law that State is empowered to regulate the secular activities and can regulate the administration, management and governance of the religious institutions or endowments and can bring appropriate legislation in that regard.[111]

[110] S. RADHAKRISHNAN, RECOVERY OF FAITH 202 (1955).
[111] A.S. Narayana Deekshitulu v. State of A.P., (1996) 9 SCC 548; A. Ramaswamy Dikshitulu v. Govt. of A.P. (2004) 4 SCC 66; Pannalal Bansilal Pattil v. State of A.P. (1996) 2 SCC 498; Sri Sahasra Lingeshwara Temple, Uppinangady v. State of Karnataka, (2007) 1 Kar LJ 1.

Article 27 prohibits use of public revenues to promote or maintain any particular religion. Prohibition upon imparting of religious instruction in public schools (Article 28) aims at maintaining equanimity in the learning process. Various equality clauses have prohibited discrimination on ground of religion.

However, Article, 290-A which provides for annual payment of certain amount to both Travancore Devaswom Board in Kerala and Tamil Nadu Devaswom Board in Tamil Nadu, out of the Consolidated Funds of respective States for the maintenance of Hindu temples and shrines in their territories transferred.[112]

The Directive Principle of State Policy in Article 49 casts a constitutional duty upon the State to protect every monument or place or object of artistic or historic interest from spoliation, disfigurement, destruction, removal, disposal and export. Since many of the historic sites and monuments have religious significance, State's responsibility in this regard tends to promote equal treatment of all religions. Article 44 that sanctions the State for bringing a Uniform Civil Code is based upon equality and social justice towards all religions.

Indian Constitution provides a unique scheme under Articles 51-A (e) and (f) that remind the fundamental duty of every citizen of India, to promote harmony and the spirit of common brotherhood among all the people of India

[112] *But see* Upendra Baxi, *The 'Struggle' for the Redefinition of Secularism in India: Some Preliminary Reflections*, in RUDOLF C. HEREDIA AND EDWARD MATHIAS, SECULARISM AND LIBERATION: PERSPECTIVES AND STRATEGIES FOR INDIA TODAY 65 (Indian Social Institute 1995) (It is doubted by Upendra Baxi that, whether insertion of Article 290-A Conforms to Basic Structure of the Constitution).

transcending religious, linguistic and regional or sectional diversities; and to value and preserve, the rich heritage of our composite culture.

Indian constitutional goal on secularism is not a negative secularism. But ours is a kind of secularism which does not support any particular religion but supports all religions.[113]

Justice K. Ramaswamy in *S. R. Bommai case*,[114] opined that Indian Constitution envisages a concept of 'positive secularism'[115] and that bears positive and affirmative emphasis.[116] According to him, the Indian Constitution strikes a balance between temporal parts confining it to the person professing a particular religious faith or belief and allows him to practice, profess and propagate his religion, subject to public order, morality and health.[117]

---

[113] CHINNAPPA REDDY, THE COURT AND THE CONSTITUTION OF INDIA: SUMMITS AND SHALLOWS 156 (Oxford University Press 2008) (Development of scientific temper, humanism, and spirit of equality and promotion of harmony and spirit of brotherhood amongst all people transcending religions or sectional diversities emphasize the positive and dynamic nature of the Indian constitutional secularism as distinguished from the negative, static secularism or the limited 'wall of separation' secularism).

[114] S.R. Bommai v. Union of India, AIR 1994 SC 1918 (K. Ramaswamy, J.).

[115] Positive secularism means equal respect for all religions. Positive secularism separates the religious faith personal to man and limited to material, temporal aspects of human life. Positive secularism believes in the basic values of freedom, equality and fellowship. It moves mainly around the state and its institution and, therefore, is political in nature. By virtue of positive secularism, religion does not include other socio-economic or cultural social structure. The State is empowered to counteract the evils of social force, maintaining internal peace and to defend the nation from external aggression. Morality under positive secularism is a pervasive force in favour of human freedom or secular living. *See* HUGH HECLO & WILFRED M. MC CLAY, RELIGION RETURNS TO THE PUBLIC SQUARE: FAITH AND POLICY IN AMERICA 51 (Woodrow Wilson Center Press 2003); AHMET T. KURU, SECULARISM AND STATE POLICIES TOWARD RELIGION: THE UNITED STATES, FRANCE, AND TURKEY 11 (Cambridge University Press 2009).

[116] S.R. Bommai v. Union of India, AIR 1994 SC 1918, ¶ 125.

[117] *Id*. ¶¶ 120 & 124 (According to Justice K. Ramaswamy, secularism has both positive and negative contents. The Constitution strikes a balance between temporal parts confining it to the person professing a particular religious faith or belief and allows him to practice, profess and propagate his religion, subject to public order, morality and health. The positive part of secularism has been entrusted to the State to regulate by law or by an executive order. The State is prohibited to patronise any particular religion as State religion and is enjoined to observe neutrality. The State strikes a balance between the individuals or groups of people

In *I. R. Coelho case*, [118] the court observed that the secular character of our Constitution is a matter of conclusion to be drawn from various Articles conferring fundamental rights. The court said that if the secular character is not to be found in Part III, it cannot be found anywhere else in the Constitution because every fundamental right in Part III stands either for a principle or a matter of detail.

While discussing about various kinds of secularity, Ahmet T. Kuru says that in India 'passive secularism' is dominant.[119]

According to Justice Beg, Indian secularism is a midway between individual freedom to profess, practise and propagate any religion and State's power to regulate the activities that are not essential to religion and derogatory to public good.[120]

13.10 Secularism in India: Judicial Interpretations

After independence, traditions and practices were primarily located in the adjudicatory realm of State power. The struggles against State power of

professing a particular religion, antagonistic to another religion or groups of persons professing different religion, brings inevitable social or religious frictions).

[118] I.R. Coelho v. State of Tamil Nadu, AIR 2007 SC 861.

[119] Ahmet T. Kuru, *Passive and Assertive Secularism: Historical Conditions, Ideological Struggles, and State Policies towards Religion*, 59 WORLD POLITICS 568, 571 (2007) (Passive secularism, means, where in State plays a passive role and avoids the establishment of any religions, allows for the public visibility of religion. On the other hand assertive secularism means where in State plays an assertive role as the agent of social engineering and excludes religion from public sphere. In assertive secularism religion is confined to private domain). *See also* AHMET T. KURU, SECULARISM AND STATE POLICIES TOWARD RELIGION: THE UNITED STATES, FRANCE, AND TURKEY 12 (Cambridge University Press 2009).

[120] Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra, 1975 SCC (2) 260. *See also* M.G. CHITKARA, KASHMIR IMBROGLIO: DIAGNOSIS AND REMEDY 45 (APH Publishing 1996).

regulation and control over religious communities were common in those days i.e., first three decades after independence.[121]

In the absence of a readymade definition to the term secularism, the burden to give a clear definition fell on the Supreme Court.[122] This gave birth to many judge centric interpretations ranging from 'tolerance'[123] to a 'way of life'[124] to 'Indianisation'[125] to 'equality'[126].

However, the Indian courts, especially the Supreme Court of India, was a success in fulfilling the theme of secularism with social justice as the guiding spirit to keep the tune of constitutional development compatible for social transformation.[127] The following analysis of important case laws will make the above said point clearer.

Even though the word 'secularism' was inserted in the Indian constitution by an amendment in 1976, the concept of secularism had been accepted as the basic element of the Indian constitution prior to 1976. It was in *Kesavananda Bharati case*, the Supreme Court held that secularism is one of the basic elements of the Constitutional structure.[128]

---

[121] Upendra Baxi, *Redefinition of Secularism in India*, *in* SECULARISM IN INDIA 57 (Iqbal Narain ed., Classic Publishing House 1995).
[122] Namit Saxena, *Supreme Court's Tryst with Secularism and Hindutva*, 50(18) ECONOMIC & POLITICAL WEEKLY 12, 12 (May 2, 2015).
[123] State of Karnataka v. Praveen Bhai Thogadia, AIR 2004 SC 2081.
[124] M. Ismail Faruqui v. Union of India, AIR1995 SC 605.
[125] Santosh Kumar v. The Secretary, Ministry of Human Resources Development, AIR 1995 SC 293.
[126] T.M.A. Pai Foundation v. State of Karnataka, AIR 2003 SC 355.
[127] Upendra Baxi, *supra* note 121.
[128] His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala, AIR 1973 SC 1461, ¶ 599 (In this case it reads thus: "*The basic structure of the Constitution is not a vague concept and the apprehensions expressed on behalf of the respondents that neither the citizen nor the Parliament would be able to understand it are unfounded. If the historical background, the Preamble, the entire scheme of the Constitution, the relevant provisions thereof including Article 368 are kept in mind there can be no difficulty in discerning that the*

After *Kesavananda Bharati,* this view was expressed in *St. Xavier's College Society Case,*[129] where it was held that although the word secular State is not expressly mentioned in the Constitution, our Constitution-makers wanted to establish a secular State and the provisions of the Constitution were designed accordingly. Secularism is not anti-religious. It treats the devout, the agnostic and the atheist alike. It excludes religion from the matters of the State and prevents discrimination on the ground of religion.

In the same case, the court also tried to differentiate Indian secularism from the Western concept. It was held that our constitution has not erected a rigid wall of separation between the Church and the State. The expression 'Secular State' as it denotes a definite pattern of church and state relationship cannot be applied to India. India can be said to be a secular State only in a qualified sense.[130]

In *S. R. Bommai Case,* [131] after a deliberate discussion on the concept of secularism, Justice P.B. Sawant came to the conclusion that religion cannot be mixed with any secular activity of the State.[132]

---

following can be regarded as the basic elements of the Constitutional structure. (These cannot be catalogued but can only be illustrated).
1. The supremacy of the Constitution.
2. Republican and Democratic form of Government and sovereignty of the country.
3. Secular and federal character of the Constitution.
4. Demarcation of power between the legislature, the executive and the judiciary.
5. The dignity of the individual (secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV.
6. The unity and the integrity of the nation."

[129] The Ahmedabad St. Xavier's College Society v. State of Gujarat, AIR 1974 SC 1389.

[130] *Id.*

[131] S.R. Bommai v. Union of India, AIR 1994 SC 1918.

[132] *Id.* ¶ 88 (P.B. Sawant, J.) (It was also observed that the intrusion of religion into secular activities is to be strictly prohibited. When the State allows citizens to practice and profess their religions, it does not either explicitly or implicitly allow them to introduce religion into

In the same case, Justice K. Ramaswamy elaborately explained about secularism and concluded that the matters which are purely religious are left personal to the individual and the secular part is taken charge of by the State on grounds of public interest, order and general welfare.[133]

According to Justice B.P. Jeevan Reddy in *S. R. Bommai Case*, secularism is more than a passive attitude of religious tolerance, it is a positive concept of equal treatment of all religions.[134]

In *Santosh Kumar Case*,[135] the Supreme Court of India while considering the matter of whether teaching of *'Sanskrit'* is against secularism or not, held that when the official education policy has highlighted the need of study of Sanskrit, making of Sanskrit alone as an elective subject, while not conceding this status to Arabic or Persian, would not in any way militate against the basic tenet of secularism.

In *Dr. M. Ismail Faruqui Case*,[136] the court held that the State has no religion. The State is bound to honour and to hold the scales even between all religions. It was further held that the object of secularism is to preserve and protect all religions, to place all religious communities on a par.[137]

---

non-religious and secular activities of the State. The freedom and tolerance of religion is only to the extent of the secular life that exclusively falls under the domain of the State).

[133] S.R. Bommai v. Union of India, AIR 1994 SC 1918, ¶ 116.

[134] *Id*. ¶ 237(2).

[135] Santosh Kumar v. The Secretary, Ministry of Human Resources Development, AIR 1995 SC 293.

[136] M. Ismail Faruqui v. Union of India, AIR1995 SC 605 (In this case, the court allowed writ petitions impugning the validity of the Acquisition of Certain Area at Ayodhya Act, 1993, held that section 4(3) of the Act, which provided for the abatement of all pending suits as unconstitutional. The rest of the Act of 1993 was held to be valid).

[137] *Id*. (In this case the Supreme Court further observed that, adherents of the religion of the majority of Indian citizens make a claim upon and assail the place of worship of another religion and by dint of numbers create conditions that are conducive to public disorder, it is

In *A. S. Narayana Deekshitulu case,*[138] while affirming the concept of secularism as held in *S. R. Bommai Case,* the Supreme Court tried to differentiate between 'secularism' and 'secularisation'.[139]

Although the idea of secularism may have been borrowed to the Indian Constitution from the West, India has adopted its own unique brand of secularism based on its particular history and exigencies which are far removed in many ways from secularism as it is defined and followed in European countries, the United States of America and Australia.[140]

In *T. M. A. Pai Foundation Case*, it was observed thus:-

"*Under the Indian Constitution there is no such "wall of separation" between the State and religious institutions.*"[141]

In *Praveen Thogadia Case*,[142] the court reminded that secularism is not to be confused with communal or religious concepts of an individual or a group

---

the constitutional obligation of the State to protect that place of worship and to preserve public order using for the purpose such means and forces of law and order as are required. It is impermissible under the provisions of the Constitution for the State to acquire that place of worship to preserve public order. To condone the acquisition of a place of worship in such circumstances is to efface the principle of secularism from the Constitution. By explaining the duty of a state in protection of secularism, the court opined that if the title to the place of worship is in dispute in a court of law and public order is jeopardised, Central Government would bind itself to hand over the place of worship to the party in whose favour its title is found).

[138] A.S. Narayana Deekshitulu v. State of Andhra Pradesh, AIR 1996 SC 1765.

[139] S.R. Bommai v. Union of India, AIR 1994 SC 1918.

[140] *Id.* (According to Thomas Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State'). *See also* U.S. CONST. amend. I (The First Amendment to the American Constitution reads thus: "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof*"); AUSTRALIA CONST. § 116 (Section 116 of the Australian Constitution reads thus: "*The Commonwealth shall not make any laws for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth*").

[141] T.M.A. Pai Foundation v. State of Karnataka, AIR 2003 SC 355.

[142] State of Karnataka v. Praveen Bhai Thogadia, AIR 2004 SC 2081.

of persons. It means that State should have no religion of its own and no one could proclaim to make the State to have one such or endeavour to create a theocratic State.

While considering the ambit of secularism, in *P. M. Bhargava Case*,[143] the court observed the inclusion of *Jyotir Vigyan* as a course of study in Universities by the University Grants Commission (UGC) will not violate or impinge upon the concept of secularism enshrined in the Constitution.

In *Pramati Educational and Cultural Trust Case*,[144] the court affirmed the view in *Ashoka Kumar Thakur Case* and made a considered opinion that by excluding the minority institutions referred to in Clause (1) of Article 30 of the Constitution, the secular character of India is maintained and not destroyed.

In *Rabindra Kumar Pal Case*,[145] the court reminded that the concept of Indian secularism is based on the principle that the State will have no religion and the State shall treat all religions and religious groups equally and with equal respect without in any manner interfering with their individual right of religion, faith and worship.

[143] P.M. Bhargava v. University Grants Commission, AIR 2004 SC 3478.
[144] Pramati Educational and Cultural Trust v. Union of India, AIR 2014 SC 2114 (In this case the RTE Act was challenged by private schools. The grounds for challenge were that Article 15(5) and 21A of the constitution and the RTE Act violated the basic structure of the constitution and the right to equality by making an unreasonable distinction between aided and unaided minority schools. In this case it was held that that the Constitution (Ninety-Third Amendment) Act, 2005 that inserted clause (5) to Article 15 of the constitution and the Constitution (Eighty-Sixth Amendment) Act, 2002 that inserted Article 21A of the constitution do not alter the basic structure or framework of the Constitution and are constitutionally valid. The Supreme Court held that the RTE is inapplicable for aided or unaided minority schools).
[145] Rabindra Kumar Pal v. Union of India, MANU/SC/0062/2011 (It is an appeal related to a sensational case of triple murder of an Australian Christian Missionary - Graham Stuart Staines and his two minor sons, which was filed by one accused Rabindra Kumar Pal. This appeal was dismissed).

In the case of *Sarika v. Administrator, Shri Mahakaleshwar Mandir Committee, Ujjain (M.P.),*[146] it was observed that the essence of secularism is non-discrimination of people by the State on the basis of religious differences.

In the case of *State of Gujarat v. The I.R.C.G.,*[147] the Supreme Court of India held that the protection of property and places of worship was an essential part of secularism. The court affirmed the liability of the State to repair the places of worship which were damaged by the mob during the riot.[148]

Justice D.Y. Chandrachud, in *Sabarimala Women Entry Case,*[149] by reading secularism along with concepts like, religion, dignity and morality, observed that secularism was not a new idea but a formal reiteration of what the Constitution always respected and accepted: the equality of all faiths.[150]

13.11Administration of Religious Institutions and Secular India

Indian state has been actively involved in the administration of religious institutions, especially those of Hindu and Muslim religion. Among the two religious institutions, Hindu religious institutions like temples are more or less controlled and regulated by the statutory Devaswom Boards created under

[146] Sarika v. Administrator, Shri Mahakaleshwar Mandir Committee, Ujjain (M.P.) MANU/SC/0503/2018.
[147] State of Gujarat v. The I.R.C.G, MANU/SC/1052/2017.
[148] *Id*. (In this case the High Court of Gujarat directed the State and its functionaries to make detailed survey of the mosques, Dargah, graveyards and other religious places and institutions desecrated, damaged or destroyed during the period of communal riots in the State and to immediately repair and restore the same and further commanded the State to suitably and adequately compensate the trusts and institutions owning the said religious places. High Court had appointed all the Principal District Judges of the various districts in the State as the Special Officers for deciding the amount of compensation for the restoration of those religious places of worship situated within the territorial limit of their respective Court. Hence present appeal by Appellant. On a close scrutiny of the scheme, the Supreme Court held the scheme and conditions precedent for claiming the compensation to be quite reasonable).
[149] Indian Young Lawyers Association v. The State of Kerala, MANU/SC/1094/2018.
[150] *Id*. ¶178.

respective statutes. In the case of waqfs, the Central Wakf Council, a statutory body that oversees State Wakf Boards and through them administer waqf properties designated for Muslim religious purposes. However, the governments have no day-to-day control over the wakfs. But it is a fact that, Christian religious institutions like churches are totally free from State administration. Role of Central Government in the administration of Hindu temples is very minimal since there is no uniform central legislation regarding temple administration. However, there is a central legislation called Waqf Act, 1995 that enables central government to interfere in the administration of waqfs in India. The States are also given role in the administration of waqfs.

In the case of temples, especially in Southern States like Kerala, Tamil Nadu, Karnataka, Telangana and Andra Pradesh, States have direct involvement in the administration of temples in the respective States. Specific Devaswom Boards or Managing Committees are in charge of administration of temples and their properties. States have pivotal role in nominating or selecting the members as the administrators of such bodies.[151]

In State of Kerala, four Devaswom Boards and two special Devaswom Managing Committees hold the charge of administration of public temples in Kerala. Each body is created by separate statutory provisions. Many a times judiciary also had intervened in the administration of such bodies for enquiring allegations regarding administration, providing guidelines or for making schemes for better administration.[152]

[151] *Supra* Chapter 7.
[152] *Supra* chapter 8.

Such administration is in true spirit not patronages but historically evolved system, practical necessity, and implied duty of States (*Parens Patriae*) etc. rulers in ancient India were the protectors and controllers of temples in India. Such duty of the then States transferred to subsequent democratic States. It is also noted that administration of temples through Devaswom Boards and Ministries, along with judicial overlook, does not constitute the establishment of religion, and policy of non-establishment remains untouched.

Constitution itself with Article, 290-A provides for annual payment of certain amount to both Travancore Devaswom Board in Kerala and Tamil Nadu Devaswom Board in Tamil Nadu, out of the Consolidated Funds of respective States for the maintenance of Hindu temples and shrines in their territories transferred.[153] It is result of the pre constitutional agreement between the then rulers of concerned Princely States and subsequent Democratic State.

Discussions in the previous chapters have made this idea clear that administration of religious institutions, especially Hindu temples, by the State instrumentality, does not violate secular feature of Indian polity or Constitution. In all these respects it can be rightly said that administration of religious institutions are also a part of Indian secularism.

[153] *But see* Upendra Baxi, *The 'Struggle' for the Redefinition of Secularism in India: Some Preliminary Reflections, in* RUDOLF C. HEREDIA AND EDWARD MATHIAS, SECULARISM AND LIBERATION: PERSPECTIVES AND STRATEGIES FOR INDIA TODAY 65 (Indian Social Institute 1995) (It is doubted by Upendra Baxi that, whether insertion of Article 290-A Conforms to Basic Structure of the Constitution).

CHAPTER 14

CONCLUSION AND SUGGESTIONS

14.1 Conclusion

Religion in some form or the other has been in existence since time immemorial. Since an accurate definition and identification is hard, the process of defining the concept 'religion' is very difficult. The concept of 'religion' is beyond mere doctrinal conformity. Modern theories of religion come from modern disciplines of the social sciences: anthropology, sociology, psychology, and economics.[1]

A religious belief system possess some of the relevant features like, belief in a supreme being, belief in a transcendent reality, a moral code, a universal view point for everything; especially people's role in the universe, sacred rituals, worship and prayer, a sacred text and membership in a social organization.[2]

Hindu legal system is considered the most ancient religious system of jurisprudence. The Hindu law is based on 'Hindu philosophy' and Hindu religion. Modern Hindu law has its sources from legislation, precedent, and principles of equity, justice and good conscience. The initiatives of British transformed old Hindu law into a Anglo-Hindu law. After independence, it was reformed and codified.[3]

[1] *Supra* Chapter 2, at 19- 20.
[2] *Id*. at 48 & 51.
[3] *Id*. at 33 & 38.

India can be called as the land of religions where Hindus, Muslims, Christian, Parsees, Buddhists, Jains, and Sikhs live. Each community has its own laws, called personal laws, governing their personal matters like marriage, adoption and inheritance, based on their religion, faith, and culture.[4]

After independence such religious laws, especially that of both Hindu and Muslim communities, have become statutory laws. Most of such legislations largely incorporate religious and customary law. Though, in numerous cases, such personal laws have been held valid and justiciable, the decisions in recent cases show that a personal law, whether pre-constitutional or post constitutional, will have to pass the test of constitutionality.[5]

Religious and charitable endowments or institutions are also a part of each religion. Though there are specific statutory provisions for the administration of such religious or charitable institutions, matters like the object of such endowments are still considered as something religious or spiritual in nature. The object of endowment of one religion may not be valid for another religion.[6]

Although the Indian Constitution uses the term religion, it has not defined the expression 'religion'. Since freedom of religion occupies a prime position under the Indian Constitution, the courts in India have been entrusted with the function of explaining the meaning of the word 'religion'.[7]

[4] *Supra* Chapter 2, at 37-40.
[5] *Id*. at 41-44.
[6] *Id*. at 30-32 & 41.
[7] *Id*. at 57-66.

An institution which primarily carries a religious act or function or is the part of a religion is usually called a 'religious institution'. In other words, an institution which is owned, established, run, administered, maintained, by a religion or religious group, denomination, or section thereof for the sole purpose of religious activities or religious matters can be said to be a religious institution.[8]

The following are the examples of religious institutions that are part of major religions.

1. Hindu- Temple, *Math*
2. Muslim- Mosque, *Dargah*, *Madrassa*, Graveyard and *Wakf*
3. Christian- Church, Seminaries, Sunday school

A religious or charitable endowment is wealth set apart permanently for religious or charitable purposes. A pure religious endowment is neither a gift nor a trust.[9]

Among the religious institutions in India, Hindu religious institutions occupy primary position. Since Hindu religion is dynamic, broad, and comprehensive in nature, it is very complex and difficult to define the term Hindu precisely. The fundamental characteristic of modern Hinduism includes polytheism, ancestral worship, belief in reincarnation, belief in caste system as the basis of society, etc.[10]

Explanation II to Article 25 declares that the expression 'Hindus' shall include the persons professing the Sikh, Jain, or Buddhist religion.

[8] *Supra* Chapter 2, at 30-32 & 41.
[9] *Supra* Chapter 3, at 67-69.
[10] *Id*. at 69-74.

The practice of endowing religious institutions like temples and *maths* as places for religious instruction was common from ancient period onwards. In the case of Hindu religious endowments, the word endowment or institution are used interchangeably. A Hindu religious endowment means, properties set apart or given as a gift to a particular Hindu deity or to some Hindu religious institutions like temples, or for some charitable purposes.[11]

Temples and *Maths* are popular forms of Hindu religious institutions. Temples (*mandirs, dewasoms, kovil, koil*), *Maths* (monasteries), *Gaushalas* (cow shelters), *Dharmashalas* (guesthouses), etc., are various kinds of religious institutions related to the Hindu religion.

The basic concept of religious endowments under Hindu law is quite different from the concept of trust under English law. Religious endowments can be classified into public and private religious endowments. This classification is of modern origin.[12]

These endowments are gifts for the installation, consecration, worship, and service of idols, gifts for the building of temples, procession of idols, religious festivals, etc. In a temple the idol is the principal being and the property of the temple is vested in the idol. Temples are primarily made for prayer and worship of the supreme deity or various deities. According to classical law, idol is a juristic person.[13]

In many respects there are similarities between a Hindu temple and a Muslim *waqf*, where in both the properties are dedicated to the God. In India,

[11] *Supra* Chapter 3, at 75-79.
[12] *Id*. at 94-96.
[13] *Id*. at 86-90.

creation and control over religious and charitable institutions are dealt with under separate legislations.[14]

State control over Hindu religious endowments was very common even from ancient period. The major sources of Hindu law like *sastras*, *sutras*, *vedas*, etc., clearly depict the system of State authority over such institutions by specifically mentioning King's duty to protect and administer Hindu religious institutions.[15]

During the early period of the East India Company, they followed a policy of non-interference in the affairs of religion or religious endowments. But by the beginning of 1800s, due to the mismanagement and misappropriation of temple funds, they started interfering in the administration of religious endowments. In order to bring proper administration of the funds and properties of religious institutions of both Hindu and Muslim religions, many regulations were introduced by the East India Company.[16]

Due to the vehement criticism and opposition by Christian missionaries, the British Crown brought an end to such regulations and control over religious endowments, by 1840. As a result, by 1843, the East India Company started withdrawing from controlling religious endowments. As a result, all religious institutions were left to the control of local Kings, local bodies, newly formed committees, existing temple priests, existing trustees or group of trustees.[17]

[14] *Supra* Chapter 3, at 96-98.
[15] *Supra* Chapter 4, at 106-107.
[16] *Id*. at 108-109.
[17] *Id*.

This withdrawal of the East India Company from the administration over religious endowments resulted in anarchy. Lack of proper authority gave way to maladministration and mismanagement of endowed assets. At last, for curing all the irregular and fraudulent practices with regard to religious endowments, the Government of India, under the British Crown, passed Religious Endowments Act in the year 1863, i.e., the first legislation in this regard. Many such legislations and regulations were brought till independence of India.[18]

Modern sources of State control over Hindu religious institutions mainly lie with the legislations of the secular State, ordinances and orders of the Executive branch, commission reports, Judicial decisions, etc.

There is no central legislation comprehensively covering the religious and charitable endowments except the Religious Endowments Act, 1863, Charitable Endowments Act, 1890 and Charitable and Religious Trusts Act of 1920. All these legislations do not cover all the issues that may arise in connection with religious and charitable trusts.[19]

However, many States after independence have passed their own legislations with regard to religious and charitable trusts or endowments. Most of such legislations are regulatory in nature. In States where separate legislation is there, the central legislations in that regard are not applicable. Certain States

[18] *Supra* Chapter 4, at 109-112.
[19] *Id*. at 112-118.

still do not have their own legislations. In such States, central laws are in application.[20]

Most of the above legislations have provisions for compulsory registration of trusts, requiring the trustees to keep regular accounts, compulsory auditing, and provisions for the appointment of commissioners of endowments, provisions for taking over the administration of trusts, making settlement schemes for *maths*, provisions for the contribution from institutions for a common fund, etc.[21]

Several State legislations have been examined by the courts for their validity under Articles 25 and 26 of the Constitution of India relating to religious freedom of individuals and communities. Such laws enacted to streamline the management of religious and charitable endowments have led to a proper judicial scrutiny of the permissible limits for legal regulation of religion in India.[22]

Such laws do not oust the general jurisdiction of the ordinary civil courts on the administration of trusts in this regard under Section 92 CPC, unless otherwise specifically and expressly bars its applicability is barred.

Under English law, the Crown as *'parens patriae'* is considered as the constitutional protector of all properties of charitable trusts. Section 92 providing efficacious remedy on matters related to public charities is a good example of application of this rule in India, in matters of religious endowments. By virtue of section 92 CPC, the courts have a general power to make schemes

[20] *Supra* Chapter 4, at 112-118.
[21] *Id*.
[22] *Id*. at 131.

for the administration of religious endowments or trusts, under '*parens patriae*' jurisdiction over trusts for charitable and religious purposes where the question of public interest is involved.[23]

The Government's control over religious institutions in the States in India has been established by respective statutes. In all the legislations, the State Government is empowered to constitute a separate body usually called Board or Committee to manage the religious endowments in the State. Such bodies have a common nature and system.[24]

In almost all States, there are separate Government Departments for the Administration of temples. In certain States, there are separate advisory bodies apart from administrative bodies for the proper management of temples. The State Governments are empowered to make rules to carry out the objects of these statutes.[25]

By virtue of the provisions of such legislations, the accounts of each religious institution are audited annually in the manner prescribed. All such legislations give power to the State Governments to take over the control or management of any Hindu religious institution, whether or not governed by a settled scheme, if it is being mismanaged, subject to the procedure established under the statute.[26]

Various State Governments have enacted separate legislations and have adopted separate mechanisms to manage certain temples having national or

[23] *Supra* Chapter 4, at 103-105 & 118-119.
[24] *Supra* Chapter 5, at 132-157.
[25] *Id*.
[26] *Id*.

other importance and large volume of assets and incomes. Separate shrine boards or Devaswom Boards or managing committees are in existence to control, manage, and supervise temple administration. These special laws try to preserve and enforce the religious and spiritual traditions of those particular shrines also.[27]

Religion has been occupying an important role since the early periods of Kerala society. All the major religions and faiths like Hinduism, Christianity, Islam, Jainism, Buddhism and Judaism have established their roots in the land of Kerala. The places of worship and religious institutions of all the religions and faiths were allowed to function freely, and were respected and protected by all the early rulers. This practise continues in the modern period also.[28]

The present Hindu religion of Kerala is also a synthesis of pre-Dravidian, Dravidian and Aryan cultures. Modern Hindu faith in Kerala consists of worship of numerous gods and goddesses, vedas, upanishads, tribal faith, ancestral worship, animism, idol worship or temple culture etc.[29]

The research has not traced any evidence of temple administration in the early periods of Kerala history. In medieval period, Kings who belonged to Hindu religion exercised strict supervision and direct control over all the religious institutions and endowments through their officers. With the patronage of rulers from the second Chera dynasty, new form of worship (worship centred on temples) as well as a temple culture was developed. In the 9th century AD, King Kulasekhara of the Chera dynasty had bifurcated the

[27] *Supra* Chapter 5, at 158-165.
[28] *Supra* Chapter 6, at 166-168.
[29] *Id.* at 169-178.

administrative authority and religious authority related to temples. The religious authority gave all powers to control the sacred area of religious places. Brahmins (Namboothiris) or Brahmin families were given absolute control over the rituals connected with temple worship in certain kingdoms. Such hereditary rights still continue in practice.[30]

The day to day administration of temples, especially secular matters connected with temples, were managed by other non-Brahmins called *Ooralars*.[31] The autonomy exercised by both Brahmins and *Ooralars* in their respective sphere led to corruption and nepotism in temple administration. The division of management into sacred and non-sacred area established dual control and often led to the conflict between the Namboothiris and the administrators in temples.[32]

By the 17th century, the land revenue was collected through Devaswoms and the land was divided into Devaswom land and land belonging to the rulers. Devaswom lands were those under the control of temple administrators. The lands belonging to the rulers belonged to the Monarch. The temple administrators like *Ooralars*, as tax collectors, emerged as the local feudal chieftains and influential force in all the three princely States like Travancore, Cochin, and Malabar.[33]

By the mid of 18th century, the conflict between King (Royal families or Chieftain) and temple administrators (*Yogathiris or Ooralars*) started in the

[30] *Supra* Chapter 6, at 179-180.
[31] *Id*. at 181-183.
[32] *Id*.
[33] *Id*. at181-185.

three Provinces. At the climax of the conflict between the Ruler of Cochin and *Yogaathiri* of Sree Vatakkunaathhan temple, Thrissur, the Ruler of Cochin took over many temples and assumed full control over such temples in the Cochin State. It was the beginning of a new era of temple administration through direct State control. The Ruler of Cochin created a separate division in the State administration for the management of the temples known as Devaswom.[34]

Mismanagement of properties and funds attached to temples and to curtail the powers and threats to the King from the *Ooralars* were reasons for taking over of temples in that period.[35]

A special system of administration for the famous Sri Padmanabha Swamy Temple was also in existence even before Marthanda Varma came to the throne in Travancore. A group called *Ettarayogakkar* (*Ettarayogam*) consisting of seven Brahmins and one Nair chief were the administrators of this great temple. When Marthanda Varma came to the throne, he did put an end to the authority of *Ettarayogam* and took the control of the temple and the temple continued under the direct management and control of the subsequent Rulers of Travancore.[36]

During the British period, under the supervision of Col. Munroe, Devaswom properties were taken over as Government properties and the revenue from Devaswom was merged with State revenues. The Government provided fund for meeting the various expenses related to the temples. Thus, a large number of temples were brought under the control of the Government

[34] *Supra* Chapter 6, at 184-185.
[35] *Id*. at 183-186.
[36] *Id*. at 187-188.

(*Sarkkar*). After Munroe's period, the temples were brought under separate Devaswom Departments. The chief of Devaswom Department was appointed from among the royal family members and trusted lieutenants of the Rulers.[37]

Policy followed in the Malabar province of the Madras State under the British was different from that followed in Travancore and Cochin. Private temples were allowed in Malabar province. Hence, the British never attempted to make a direct interference in the administration of temples, till the beginning of the 19th century.[38]

When it was found that many endowments were mismanaged and the revenue were misutilised by persons vested with the responsibility of administering them, the British started interfering in the administration of temples by introducing the Madras Regulation, 1817. This is the first enactment to supervise endowments and prevent abuse of power which had hitherto been enjoyed by local rulers in the Malabar region.[39]

In Malabar region, the rights of Ooralars are protected as the administrators of temples. The Hindu Religious and Charitable Endowment Department did not own and manage any temple. But the Department simply controls and regulates temples under the Madras Hindu Religious and Charitable Endowment Act, 1951. The temples in the Malabar region were owned by individuals, ca ste organizations, and charitable trusts. This historical

[37] *Supra* Chapter 6, at 186-187.
[38] *Id*. at 188-189.
[39] *Id*. at 188-190.

situation still continues through Malabar Devaswom Board without much modification.[40]

After independence, when Thiru-Kochi State was formed, the then Rajapramukh of Thiru-Kochi made all private temples free from the ambit of the State control. In pursuance of the Articles of the Covenant made as part of the formation of Thiru-Kochi State, two separate Devaswom Boards viz., Travancore Devaswom Board and Cochin Devaswom Board were established.[41]

As per the provisions of the Covenant, Travancore Devaswom Board will administer the Devaswoms under old Travancore State and Cochin Devaswom Board will administer the Devaswoms in the old Cochin State. Rulers of Travancore and Cochin were allowed to retain their family temples under their ownership and management at the time of transferring private temples to the Devaswom Boards.[42]

After the State reorganisation, the statutes and regulations which were in force in the respective regions were decided to be continued in the newly constituted State of Kerala. The old concepts of Travancore, Cochin and Malabar still persist in the legislations concerned. So far, no uniform law has been made though the demand has a long standing history.[43]

[40] *Supra* Chapter 6, at 191-193.
[41] *Id*. at 193-194.
[42] *Id*. at 195-196.
[43] *Id*.

Majority of important temples in the State are governed by statutory Devaswom Boards.[44]

1. Travancore Devaswom Board
2. The Cochin Devaswom Board
3. Malabar Devaswom Board
4. Guruvayur Devaswom Managing Committee
5. Koodalmanickyam Devaswom Managing Committee

The temples owned by private individuals and trustees fall outside the ambit of the administrative control of statutory bodies of the Government.

The Travancore and Cochin Devaswom Boards are being regulated by a single legislation, i.e., Travancore-Cochin Hindu Religious Institutions Act, 1950. The Malabar Devaswom Board is regulated by the Madras Hindu Religious and Charitable Endowments Act, 1951. Guruvayur Devaswom Board is being regulated by the Guruvayur Devaswom Act, 1978. Special Devaswom called Koodalmanickyam Devaswom is regulated by Koodalmanickyam Devaswom Act, 2005.[45]

Each Devaswom Board or Committee is a socio-religious trust constituted to manage the property of God represented as the idol. Such trust comprises of members nominated by the Government. A Devaswom Board will fall under the ambit of definition of 'other authorities' mentioned under Article 12 of the Indian Constitution.[46]

[44] *Supra* Chapter 7, at 197-199.
[45] *Id*.
[46] *Id*.

The State, especially the State Government, exercises all kinds of control viz., administrative, financial, and supervisory over these Boards.

Each Devaswom Board or Committee is regarded as an autonomous body corporate having perpetual succession and a common seal. The administration, control and management of the Devaswom shall be vested in such Board or Committee. Members to such Bodies must belong to Hindu religion. They are usually nominated by the State.[47]

The Government is empowered to remove any member who is appointed or nominated under respective statutes. The Government can dissolve or supersede the functions or powers of the Boards, if any Board persistently makes default in the performance of its duties imposed by or under the Act or exceeds or abuses its powers. Usually there will be a Commissioner as well as a Secretary to each the Board or Committee.[48]

Each Devaswom Board has its own fund. There are clear cut provisions for auditing of the accounts of each Board. There are ample provisions in the respective legislations to the State Government to pay grants, such sums of money as the State Government may think fit, to the Boards. Legislative provisions provide protection of temple property from indiscriminate alienation by the Board or trustees.[49]

Each statute empowers the Government to call for and examine the records of the Board or of the Committee in respect of any proceeding, to ensure that the provisions of concerned statutes have not been violated or for

[47] *Supra* Chapter 7, at 200-207, 215-219, 225-228; Chapter 8, at 232-239 & 253-258.
[48] *Id*.
[49] *Supra* Chapter 7, at 210, 220, 229, Chapter 8, at 240 & 258.

safeguarding the interests of the concerned Devaswom. The State Government is empowered to make appropriate rules to carry out the purposes of the statutes concerned. Every rule made under concerned statute shall be laid before the State Legislative Assembly. The Government is empowered to appoint a Commission to enquire into and report on the allegations, if any, of any irregularities, corruption, maladministration, or misappropriation of funds by the respective Board or Committee.[50]

The Travancore-Cochin Hindu Religious Institutions Act, 1950 provides for separate provision for the administration of Sree Padmanabhaswamy Temple, though the temple had been controlled for a long time by a trust, headed by the Travancore Royal Family. By deciding a dispute related to the administration of the temple, in 2020, the Supreme Court upheld the rights of the Travancore Royal Family in the administration of Sree Padmanabhaswamy Temple. The Court also directed to form an administrative committee and an Advisory Committees for the smooth administration of the Temple. Both the Administrative Committee and the Advisory Committee should ensure that all treasures and properties endowed to Sree Padmanabhaswamy and those belonging to the temple must be preserved properly.[51]

In close analysis, it is clear that the statutory provisions relating to both Travancore Devaswom and Cochin Devaswom Boards are exactly similar, since they are established under the same statute. However, unlike Travancore Devaswom and Cochin Devaswom Boards, the Malabar Devaswom Board has

[50] *Supra* Chapter 7, at 209-214, 220-224, 227-231; Chapter 8, at 242-247 & 258-265.
[51] *Supra* Chapter 8, at 247-253.

only supervisory control over the religious institutions. The statutory provisions related to both Guruvayoor Devaswom Committee and Koodalmanickam Devaswom Committees are more or less similar though created under two separate legislations. [52]

In close analysis, it is clear that the system of administration of temples, i.e., the secular matters connected to temples, followed by all the public Devaswom Boards or Managing Committees, is more or less similar. However, the essential religious matters connected to each temples, under all the public Devaswom Boards or Managing Committees, are different. The present legislations have been drafted in the line of preserving the uniqueness in the religious matters associated with each temple or Devaswom.[53]

All the religious assets of the Christian churches in Kerala have been handled from the ancient times as if they had been trusts. Still churches are working as both registered and unregistered trusts. Recently, there has been widespread call for reforms in the administration of the church properties in Kerala, on the ground of alleged mismanagement.[54]

In the case of Muslim mosques, there was no sort of State regulation over mosques or *waqfs* in Kerala till the advent of the British. By the introduction of Madras Regulation, 1817 as in the case of Hindu religious institutions, Muslim endowments also brought under the State control. After independence, Central Waqf Act of 1954 was enacted. The Act constituted Boards with authority and powers. It clearly delineated the obligations of the

[52] *Supra* Chapter 7 & Chapter 8.
[53] *Id.*
[54] *Supra* Chapter 9, at 266-273.

trustees, *mutawallis*, etc. This statute granted supervisory power to the State Government. Through this statute, all religious and charitable endowments, irrespective of denomination, came under State control. Many amendments have been brought to this legislation during the past years.[55]

In 1995, Wakf Act, 1995, was enacted. This Act has also undergone with many amendments. By virtue of this legislation, a statutory body, called Waqf Board was constituted to manage the assets of Muslim religious and charitable institutions. The day to day management of the mosques were controlled by the priests appointed by the Waqf Board. In order to comply with the provisions of the central legislation, the State of Kerala has also constituted a State Wakf Board and The Kerala Wakf Rules, 1996.[56]

The major function of the Kerala State Wakf Board is the general superintendence of all wakfs institutions and their properties registered with the State Board. There is a system of Waqf Tribunal in the State to adjudicate complaints related to the functions of the Board or any members there to.[57]

Presently, Jewish synagogues and Jain temples are considered as autonomous organizations not coming under the authority of the State.[58] Though, no Buddhist shrine (Temple) is existing in the State of Kerala, the remnants of a number of statues related to Buddhism, have been protected by the Archaeological Department of the State or by the local bodies.[59]

[55] *Supra* Chapter 9, at 274-279.
[56] *Id*.
[57] *Id*. at 277-279.
[58] *Id*. at 283-286.
[59] *Id*. at 280-284.

Religious institutions like Devaswom Boards for Hindu temples and Muslim *waqf* are now under the direct control of the State. But there has been no direct control of the State on Churches or Church properties. In the case of Jewish synagogues, Jain temples and Buddhist shrines, the early Kerala rulers and the British prior to independence adopted a policy of non-interference in their management. After independence, the subsequent democratic Governments continued this policy. The subsequent democratic State also never tried to interfere in the management of the assets of such religions.[60]

Article 25(1) protects the citizen's fundamental right to freedom of conscience and his right to profess, practise and propagate religion. In India, freedom of religion guaranteed under Article 25 provides that a person has a fundamental right not only to entertain the religious belief of his choice but also to exhibit his belief and ideas in a manner which does not infringe the religious right and personal freedom of others.[61]

Since, the rights guaranteed under Article 25 of the Constitution are not absolute, but subject to reasonable restrictions, these rights are subject to State regulation on the grounds of public order, public health and morals of the people as soon as it affects the rights of other people. Article 25(1) is subject not only to the public order, morality and health, but also to 'the other provisions of Part III'. Every such restriction must be judged on the touchstone of fairness, transparency, reasonability and rationality.[62]

[60] *Supra* Chapter 9, at 284.
[61] *Supra* Chapter 10, at 285-306.
[62] *Supra* Chapter 11, at 307-324.

State can regulate any economic, financial, and political or other secular activity that are related to any religious practice. Article 25 empowers the State to make laws for regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice and providing for social reform and social welfare even though they might interfere with religious practices. Hence, secular matters related to religion or religious practice can be controlled by the State. However, the essential religious practices will be protected by Article 25(1) and Article 26(b).[63]

Practices that are essential and integral part of a religion alone are protected. An optional religious practice is not covered by Article 25(1). The question of what constitutes the essential part of a religion is essentially a question of fact to be considered in the context of the 'material' or 'factual' or the 'legislative' or 'historical'. The courts in India have been applying various tests to find whether a particular religious practice is regarded by the community as an integral part of that religion or not on the basis of evidence.[64]

With regard to temple administration, it is clear that all the activities, in or connected with a temple, are not religious activities. The State can enact legislation for the proper management and administration of a temple. The temple administrators formed so legally, are empowered with the maintenance of discipline and order inside the temple. The temple authorities established so, may also control the activities of various servants of the temple. Such a law or

[63] *Supra* Chapter 11, at 325-326.
[64] *Id*. at 327-338.

special scheme that is enacted or introduced for taking over the management of a temple is hence not violative of Article 25 or Article 26 of the Constitution.[65]

Collection and distribution of money and other offerings to the deity or retention of a portion of the offerings for maintenance and upkeep of the temple fall under the domain of management and administration of the temple's secular activities. The appointment of temple servants (other than core religious posts like *Thantri, Shebait*), and payment of remuneration to them are matters purely secular in nature. All the activities which involve expenditure of money or employment of priests or the use of marketable commodities cannot be said to be secular activities. If the tenets of a particular religion lay down certain rites and ceremonies at certain times in a particular manner as essential religious activity, then such matters are purely religious matters.[66]

The doctrine of essential practice with regard to religion has been invoked by the constitutional courts in India from *Shirur Mutt Case to Sabarimala Case*.[67] The makers of the Constitution had a vision to liberate the society from blind and ritualistic adherence to mere traditional superstitious beliefs. Any custom or usage in pre-constitutional days, which is found to violate human rights, dignity, social equality and the specific mandate of the Constitution and law made by Parliament, hence cannot be treated as a source of law to claim any rights therein.[68]

[65] *Supra* Chapter 11, at 327-338.
[66] *Id*. at 337-339.
[67] *Id*. at 332-338.
[68] *Id*.

Article 26 of the Indian Constitution provides special protection to religious denominations. Article 26 lays down that every religious denomination or section thereof has the right to establish and maintain institutions for religious and charitable purposes; to manage its own affairs in matters of religion; to own and acquire movable and immovable property; and to administer such property in accordance with law.[69]

The rights guaranteed under Article 26 are subject to public order, morality and health but is not subject to other provisions of Part III of the Constitution. The State Legislature is competent to enact laws on the subject of religious and charitable endowments, which is covered by Entry 28 of List III in Schedule VII of the Indian Constitution.[70]

The 'freedom to manage religious affairs', provides an autonomy in the matters of religion to such denominations. The right to maintain institutions for religious and charitable purposes would include the right to administer them in compliance with law.[71]

But the right under clause (a) of Article 26 will only arise where the institution is established by a religious denomination and it is in that event only that it can claim to maintain it. Under Article 26(a), the words 'establish and maintain' must be read conjunctively and goes together. [72]

The administration of property by religious denomination is quite different from the right to manage its own affairs in matters of religion. The

[69] *Supra* Chapter 12, at 346-378.
[70] *Id*.
[71] *Id*. at 356-359 & 367-370.
[72] *Id*. at 353-356.

right of administration of property can be regulated by the State. However, the State cannot altogether take away the right to administer the properties of religious denominations. Such restrictions or regulations upon the rights of religious denominations under Article 26 must be reasonable and should be merely regulatory. The purpose of such restrictions or regulations must be to ensure: (a) that there is no mal-administration of the institution; (b) the regulatory provisions must be to prevent the mismanagement or mal-administration.[73]

The core elements of the 'doctrine of essential religious practice' that appear in both Articles 25(2)(a) and 26(b) are more or less similar. The State can control the secular administration of the religious institutions or endowments, so as to ensure proper administration of the same. The State has the power as well as the duty to ensure that the income of the endowments attached to the religious institutions are properly used and is duly appropriated for the purposes for which they were founded or exist. The State has the ample jurisdiction to oversee the administration of a temple subject to Articles 25 and 26 of the Constitution.[74]

In a multicultural state, State neutrality and equality among all different religious and cultural groups are must. Indian society is a known multicultural society that comprised of diverse religions, cultures, customs, beliefs, languages and cultural ethnicity. The concept of secularism in its present form was the product of Western thought. However, the essence of secularism was in

[73] *Supra* Chapter 12, at 353-378.
[74] *Id*.

existence even in ancient India. The Western concept of 'wall of separation' would be inappropriate and misleading in the Indian context. Secularism is a guiding principle of State policy and action in modern India. The pattern of secularism under the Indian Constitution is a unique system, a concept *sui generis*.[75]

The term secularism which is commonly used in present day India is based upon the relationship that exists, or which ought to exist, between the State and religion. The word 'secularism' was inserted in the Indian Constitution by an amendment in 1976. However, the concept of secularism had been accepted as a basic feature of the Indian Constitution even prior to it.[76]

Since there is no concrete definition to the term secularism, it has become the burden of the courts in India to give a clear definition. The Indian courts, especially the Supreme Court of India, has been successfully fulfilling the theme of secularism with social justice as the guiding spirit to keep the tune of constitutional development compatible for social transformation.[77]

Indian state has been actively involved in the administration of religious institutions, especially those of Hindu and Muslim religion. Among the two religious institutions, Hindu religious institutions like temples are more or less controlled and regulated by the statutory Devaswom Boards created under respective statutes. The administration of religious institutions, especially Hindu temples, by the State instrumentality, does not violate secular feature of

[75] *Supra* Chapter 13, at 379-388.
[76] *Id*. at 389-405.
[77] *Id*. at 406-411.

Indian polity or Constitution. In all these respects it can be rightly said that administration of religious institutions are also a part of Indian secularism.[78]

14.2 Major Research Findings

- The secular State or Governments are not directly interfering or conducting the administration of any religious institution or endowment of any religion in India.
- Administration of religious endowments and institutions by the secular Governments are through social trusts like Devaswom Boards, Endowment Boards or Wakf Boards.
- Administration of Hindu religious endowments and institutions by the secular Governments through various statutory bodies like Devaswom Boards and endowment boards is not against the secular feature of the Indian Constitution.
- Administration of Hindu religious endowments and institutions by the secular State or Governments is not violative of Article 25 and 26 of Indian Constitution if it is for better and proper administration of the institution.
- Such takeover of institutions or settling schemes for the administration of religious endowments and institutions must be reasonable, fair, rationale, transparent and under a procedure established by law.

[78] *Supra* Chapter 13, at 412-414.

- The provisions relating to secular administration of endowments of all communities, especially the institutions of both Hindus and Muslims are more or less similar.
- The approach adopted by the judiciary in interpreting legislation regarding these endowments in both Hindu and Muslim community is also more or less similar.
- There is no uniform law governing all temples (Devaswoms) in India.
- There is no uniform law governing all temples (Devaswoms) in Kerala.
- The five Devaswom Boards described in this study have historically evolved as inter-mediaries between the State and the temple managements.
- Since there is no special law in the State to supervise and regulate private temples, they are outside the ambit of State control.
- Instead of bringing a new single law for the regulation of temples at the time of the formation of Kerala, the then Government, decided to adapt the laws and regulations which were in force at that time.
- Devaswom laws continue in the same form as was prevalent at the time of the reorganization of the States. The later Governments opted to maintain the statues-quo in the domain of temple administration.
- Malabar Devaswom Board supervises and conducts audits of accounts of all the temples under the Board, in the Malabar region.
- The Travancore and the Cochin Devaswom Boards, Guruvayoor Devaswom Managing Committee and Koodalmanickam Devaswom

Managing Committee supervise, regulate and control the temples they own.

- In the Malabar region, the Madras Hindu Religious and Charitable Endowments Act continues to operate where as in Travancore and Cochin area, the Travancore-Cochin Hindu Religious Institutions Act, governing only temples under the respective statutory bodies, operates.
- In the case of Devaswom Boards in Kerala, Government or the Board has no authority to take away or transfer the temple money or channelize the fund for Government activities.
- The system of administration of temples, i.e., the secular matters connected to temples, followed by all the public Devaswom Boards or Managing Committees, is more or less similar.
- However, the essential religious matters connected to each temple, under all the public Devaswom Boards or Managing Committees, are different.
- The present legislations have been drafted in the line of preserving the uniqueness in the religious matters associated with each temple or Devaswom.
- Hence, it is desirable to have a uniform legislation for the secular administration and supervision of all the public Devaswoms in the State of Kerala by keeping intact the uniqueness in essential religious matters peculiar to each Devaswom.

- There is no constitutional or legal taboo on enacting a uniform legislation for governing all the public Temples (public Devaswoms) in Kerala.

14.3 Important Suggestions

- Since the subject matter is the same, it is desirable to have a uniform legislation, for the administration and supervision of all the public Devaswom Boards in the State, which preserves the uniqueness in the essential religious matters of each Devaswom.
- It is also desirable to have a uniform central legislation for the administration and supervision of all the public temples in India.

****

BIBLIOGRAPHY

BOOKS

1. A.A.A FYZEE'S OUTLINES OF MUHAMMADAN LAW (Thahir Mahmood ed., 5th ed., 2008)
2. A.K. SINHA, SOME ASPECTS OF ANCIENT INDIAN SOCIETY AND POLITY (Anamika Publishers 2005)
3. A.L. BHASHAM, THE ORIGINS AND DEVELOPMENT OF CLASSICAL HINDUISM (Kenneth G. Zysk ed., Oxford University Press 1990)
4. A.P. THAKUR, WEBER'S RELIGIOUS SOCIOLOGY (Global Vision Publishing House 2007)
5. A.R. DESAI, RURAL SOCIOLOGY IN INDIA (5th ed., Popular Prakashan Publishers 1994)
6. A.T. SAROJINI REDDY, JUDICIAL REVIEW OF FUNDAMENTAL RIGHTS (National Publishing House 1976)
7. ABRAHAM VAZHAYIL THOMAS, CHRISTIANS IN SECULAR INDIA 91 (Fairleigh Dickinson University Press 1974)
8. AHMET T. KURU, SECULARISM AND STATE POLICIES TOWARD RELIGION: THE UNITED STATES, FRANCE, AND TURKEY (Cambridge University Press 2009)
9. ALEX VARY, MY UNIVERSE-A TRANSCENDENT REALITY (Xlibris Corporation 2011)

10. AMANDA PERREAU SAUSSINE & JAMES B. MURPHY, THE NATURE OF CUSTOMARY LAW: LEGAL, HISTORICAL AND PHILOSOPHICAL PERSPECTIVES (Cambridge University Press 2007)
11. AMOS N. GUIORA, TOLERATING INTOLERANCE: THE PRICE OF PROTECTING EXTREMISM (Oxford University Press U.S.A. 2014)
12. ANDREW WERNICK, AUGUSTE COMTE AND THE RELIGION OF HUMANITY: THE POST-THEISTIC PROGRAM OF FRENCH SOCIAL THEORY (Cambridge University Press 2001)
13. ANNEMARIE SCHIMMEL, THE EMPIRE OF THE GREAT MUGHALS: HISTORY, ART AND CULTURE (Burzine K. Waghmar ed., Reaktion Books 2004)
14. APARAJITA BARUAH, PREAMBLE OF THE CONSTITUTION OF INDIA: AN INSIGHT AND COMPARISON WITH OTHER CONSTITUTIONS (Deep and Deep Publications 2007)
15. ARAVIND P. DATAR, COMMENTARY ON THE CONSTITUTION OF INDIA (2nd ed., 2007)
16. ARJUN APPADURAI, WORSHIP AND CONFLICT UNDER COLONIAL RULE: A SOUTH INDIAN CASE (Cambridge University Press 1981)
17. ASHIM BHATTACHARYYA, HINDU DHARMA: INTRODUCTION TO SCRIPTURES AND THEOLOGY (iUniverse 2006)
18. ASOK KUMAR MAJUMDAR, CONCISE HISTORY OF ANCIENT INDIA: POLITICAL THEORY, ADMINISTRATION AND ECONOMIC LIFE (Munshiram Manoharlal Publishers 1977)

19. AVTAR SINGH & HARPREET KAUR, INTRODUCTION TO JURISPRUDENCE (4th ed., Lexis Nexis 2013)
20. Axel Michaels, *The Practice of Hindu Law, in* HINDUISM AND LAW (Timothy Lubin et al. eds., Cambridge University Press 2010)
21. B.S. SHIVA RAO, THE FRAMING OF INDIA'S CONSTITUTION SELECT DOCUMENTS (Universal Law Publishers 2015)
22. B.K. MUKHERJEA, THE HINDU LAW OF RELIGIOUS & CHARITABLE TRUSTS (A.C. Sen ed., 5th ed., Tagore Law Lectures, Reprint 2016)
23. B.M. GANDHI, HINDU LAW (4th ed., Eastern Book Co. 2016)
24. BALAGANGADHARA MENON, REINTEGRATION OF INDIAN CULTURE (1988)
25. BASIL POHLONG, CULTURE AND RELIGION: A CONCEPTUAL STUDY (Mittal Publications 2004)
26. BENJAMIN CARDOZO, THE NATURE OF THE JUDICIAL PROCESS (Tenth Indian Reprint, 2012)
27. BENJAMIN HARY & SARAH BUNIN BENOR, LANGUAGES IN JEWISH COMMUNITIES, PAST AND PRESENT (Walter de Gruyter GmbH & Co. 2018)
28. C.J. FULLER, SERVANTS OF THE GODDESS: THE PRIESTS OF A SOUTH INDIAN TEMPLE (Cambridge University Press 1984)
29. C.J. FULLER, THE RENEWAL OF THE PRIESTHOOD (Princeton University Press, 2003)

30. C.K. THAKKER, CODE OF CIVIL PROCEDURE, 1908 (Eastern Book Co. 2016)

31. CAUDHARI & CHATURVEDI, LAW OF FUNDAMENTAL RIGHTS (4th ed., 2007)

32. CHAKRAVARTHI RAM-PRASAD, ADVAITA EPISTEMOLOGY AND METAPHYSICS: AN OUTLINE OF INDIAN NON-REALISM (Routledge Curzon Publishers 2002)

33. CHANDRA Y. MUDALIAR, STATE AND RELIGIOUS ENDOWMENTS IN MADRAS (University of Madras 1976)

34. CHARLES ALLEN, ASHOKA: THE SEARCH FOR INDIA'S LOST EMPEROR (Hachette UK 2012)

35. CHARLES RIVER, THE SEPOY REBELLION OF 1857: THE HISTORY AND LEGACY OF THE INDIAN REBELLION AGAINST THE BRITISH EAST INDIA COMPANY (Create Space 2017)

36. CHARLES TAYLOR, A SECULAR AGE (Harvard University Press 2009)

37. Charles Taylor, *Modes of Secularism*, *in* SECULARISM AND ITS CRITICS (Rajeev Bhargava ed., Oxford University Press 2007)

38. CHINNAPPA REDDY, THE COURT AND THE CONSTITUTION OF INDIA: SUMMITS AND SHALLOWS (Oxford University Press 2008)

39. CORINNE G. DEMPSEY, KERALA CHRISTIAN SAINTHOOD: COLLISIONS OF CULTURE AND WORLD VIEW IN SOUTH INDIA (Oxford University Press 2001)

40. D.D. BASU, COMMENTARY ON THE CONSTITUTION OF INDIA (9th ed., Lexis Nexis 2016)
41. D.D. BASU, COMMENTARY ON INDIAN CONSTITUTION (Y.V. Chandrachud C.J. et al eds., 8th ed., Lexis Nexis Butterworths 2008)
42. D.D. BASU, COMMENTARY ON THE CONSTITUTION OF INDIA: BEING A COMPARATIVE TREATISE ON THE UNIVERSAL PRINCIPLES OF JUSTICE AND CONSTITUTIONAL GOVERNMENT WITH SPECIAL REFERENCE TO THE ORGANIC INSTRUMENT OF INDIA (4th ed., S.C. Sarkar Publishers 1961)
43. D.E. KRISHNA PRASAD, RELIGIOUS FREEDOM UNDER INDIAN CONSTITUTION, (Minerva Associates Publications 1976)
44. D.E. Smith, *India as a Secular State* in SECULARISM AND ITS CRITICS (Rajeev Bhargava ed., Oxford University Press 2007)
45. DAMODARAN, KERALA CHARITRAM (Malayalam Book) (Department of Cultural Publications, Government of Kerala 1996)
46. DAVID SMITH, HINDUISM AND MODERNITY (Blackwell Publishing 2008)
47. DIAS, JURISPRUDENCE (5th ed., Lexis Nexis 2014)
48. DOMENIC MARBANIANG, SECULARISM IN INDIA: A HISTORICAL ANALYSIS (Lulu Press 2011)
49. Donald R Davis, *A Historical over view of Hindu Law*, *in* HINDUISM AND LAW (Timothy Lubin et al. eds., Cambridge University Press 2010)
50. DWIJENDRA NARAYAN JHA, RETHINKING HINDU IDENTITY (Routledge 2014)

51. EBERHARD HERRMANN, RELIGION, REALITY, AND A GOOD LIFE: A PHILOSOPHICAL APPROACH TO RELIGION (Mohr Siebeck 2004)

52. Eric J. Sharpe, *The Study of Religion in Historical Perspective*, *in* THE ROUTLEDGE COMPANION TO THE STUDY OF RELIGION (John R. Hinnells ed., Psychology Press 2005)

53. ESSAYS ON RELIGION, LITERATURE, AND LAW (Heidrun Bruckner ed. et al, Manohar Publishers 2004)

54. FRANK S. RAVITCH, MASTERS OF ILLUSION: THE SUPREME COURT AND THE RELIGION CLAUSES (New York University Press 2007)

55. FREEMAN, LLOYD'S INTRODUCTION TO JURISPRUDENCE (9th ed., Sweet & Maxwell 2016)

56. G. KRISHNAN NADAR, HISTORY OF KERALA (Learners Book House 2001)

57. G. STANLEY JAYA KUMAR, RELIGION AND SOCIETY (M.D. Publications 1996)

58. GAVIN FLOOD, AN INTRODUCTION TO HINDUISM (Cambridge University Press 1996)

59. GOPAL SUBRAMANYAM, CONSTITUTIONAL MORALITY- IS IT A DILEMMA FOR THE STATE, COURTS AND CITIZENS? (Centre for Policy Studies Visakhapatnam 2016)

60. GOURI LAKSHMI BAYI, SREE PADMANABHA SWAMY TEMPLE (Bharatiya Vidya Bhavan 2013)

61. GOURI LAXMI BAYI, SREE PADMANABHA SWAMY TEMPLE, (Bharatiya Vidya Bhavan 2000)

62. Granville Austin, *Religion and Personal Law and Identity in India*, *in* RELIGION AND PERSONAL LAW IN SECULAR INDIA: A CALL TO JUDGMENT (Gerald James Larson ed., Indiana University Press 2001)

63. GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION (Oxford University Press 2000)

64. GUNTHER DIETZ SONTHEIMER, ESSAYS ON RELIGION, LITERATURE, AND LAW 38-40 (GUNTHER DIETZ SONTHEIMER, HEIDRUN BRÜCKNER & ANNE FELDHAUS ed., et al., Manohar Books 2004)

65. H. L. A. HART, THE CONCEPT OF LAW (Oxford University Press 2012)

66. H. M. SEERVAI, CONSTITUTIONAL LAW OF INDIA (Universal Law Publishing 2014)

67. H. SARKAR, ARCHITECTURAL SURVEY OF TEMPLES OF KERALA (1978)

68. H.L.A. HART, ESSAYS IN JURISPRUDENCE AND PHILOSOPHY (Oxford University Press 2001)

69. H.R. GOUR, 1 THE HINDU CODE (Allahabad Law Publishers, 1980)

70. HALSBURY'S LAW OF ENGLAND

71. HARJINDER SINGH, SIKH CODE OF CONDUCT (Akaal Publishers 2015)

72. HERMANN KULKE & DIETMAR ROTHERMUND, A HISTORY OF INDIA (Psychology Press 1998)

73. HERMANN KULKE & DIETMAR ROTHERMUND, A HISTORY OF INDIA (4th ed., Psychology Press 2004)

74. Hodder M. Westropp & C. Staniland Wake, *Influence of the Phallic Idea in the Religions of Antiquity*, *in* ANCIENT SYMBOL WORSHIP: INFLUENCE OF THE PHALLIC IDEA IN THE RELIGIONS OF ANTIQUITY (Alexander Wilder ed., Harvard University 1948) (J. W. Bouton 1874)

75. HOLLAND, THE ELEMENTS OF JURISPRUDENCE (13th ed., Universal Law Publishing Co. 2011)

76. HUGH HECLO & WILFRED M. MC CLAY, RELIGION RETURNS TO THE PUBLIC SQUARE: FAITH AND POLICY IN AMERICA (Woodrow Wilson Center Press 2003)

77. J. D. M. DERRETT, RELIGION, LAW AND THE STATE IN INDIA (Faber & Febar London, 1968)

78. JACOB CHACKO TONY, THE NINETY NINTH STEP TO MY FATHER'S HILL (Xulon Press 2009)

79. JACOB NEUSNER & BRUCE CHILTON, RELIGIOUS TOLERANCE IN WORLD RELIGIONS (Templeton Foundation Press 2008)

80. JAMAL MALIK, ISLAM IN SOUTH ASIA: A SHORT HISTORY (Brill publishers, 2008)

81. JAMES A. CORIDEN, AN INTRODUCTION TO CANON LAW (Paulist Press 2004)

82. JAMES BERNARD MURPHY, THE PHILOSOPHY OF CUSTOMARY LAW (Oxford University Press 2014)

83. James Kennedy, *Separation of Church and State*, *in* THE ROLE OF RELIGION IN PUBLIC POLICY (Eamon Doyle ed., Greenhaven Publishing 2018)

84. JAYANT GADKARI, SOCIETY AND RELIGION: FROM RIGVEDA TO PURANAS (Popular Prakashan, 1996)

85. JOHN DAYAL, MATTER OF EQUITY: FREEDOM OF FAITH IN SECULAR INDIA (Anamika Publishers 2007)

86. JOHN F. RICHARDS, THE MUGHAL EMPIRE (Cambridge University Press 1993)

87. John H Mansfield, *Religious and Charitable Endowments and A Uniform Civil Code*, *in* RELIGION AND PERSONAL LAW IN SECULAR INDIA: A CALL TO JUDGMENT (Gerald James Larson ed., Indiana University Press 2001)

88. JOHN HORTON, "TOLERATION AS A VIRTUE" TOLERATION: AN ELUSIVE VIRTUE (David Heyd ed., Princeton University Press 1998)

89. JOSE ABRAHAM, ISLAMIC REFORM AND COLONIAL DISCOURSE ON MODERNITY IN INDIA: SOCIO-POLITICAL AND RELIGIOUS THOUGHT OF VAKKOM MOULAVI (Springer 2014)

90. JYOTI SHARMA, SECULARISM AND AYODHYA POLITICS IN INDIA (Deep & Deep Publications 2007)

91. K.D. GANGRADE, SOCIAL LEGISLATION IN INDIA 160-62 (Concept Publishing Company, Reprint 2011)

92. K. L. BHATIA, CONCEPT OF DHARMA, CORPUS JURIS OF LAW AND MORALITY (Deep & Deep Publications 2010)

93. K.K.N. KURUP, ASPECTS OF KERALA HISTORY AND CULTURE (College Book House 1977)

94. K.L.BHATIA, CONCEPT OF DHARMA, CORPUS JURIS OF LAW AND MORALITY (Deep & Deep Publications 2010)

95. K.R. VAIDYANATHAN, TEMPLES AND LEGENDS OF KERALA (Bharatiya Vidya Bhavan 1982)

96. KAILASH RAI, CONSTITUTIONAL LAW OF INDIA (Central Law Publishers 2015)

97. KANDE PRASAD RAO, 1 LAW APPLICABLE TO CHRISTIANS IN INDIA, MARRIAGE AND MATRIMONIAL CAUSES (Universal Law Publishing Co. 2003)

98. KARL MARX & FRIEDRICH ENGELS, ON RELIGION (Courier Corporation 2012)

99. KARL MARX, CRITIQUE OF HEGEL'S 'PHILOSOPHY OF RIGHT' (J. O. Malley ed., Cambridge University Press 1977)

100. KEN MORRISON, MARX, DURKHEIM, WEBER: FORMATIONS OF MODERN SOCIAL THOUGHT (Pine Forge Press 2006)

101. KESAVAN VELUTHAT, BRAHMAN SETTLEMENTS IN KERALA: HISTORICAL STUDIES (Sandhya Publications, Calicut University 1978)

102. Kinhide Mushakoji, *Are Religions For or Against Human Security? from Closed to Open Religiosity*, *in* RELIGION AND CULTURE

IN ASIA PACIFIC: VIOLENCE OR HEALING? (Joseph A. Camilleri ed., Vista Publications 2001)

103. KRISHNA PRAKASH BAHADUR & SUKHDEV SINGH CHIB, CASTE, TRIBES & CULTURE OF INDIA: KARNATAKA, KERALA & TAMIL NADU (Ess Ess Publications 1977)

104. KRISHNA PRASAD, RELIGIOUS FREEDOM UNDER INDIAN CONSTITUTION (Minerva Publications 1976)

105. LEONARD FERNANDO & GISPERT SAUCH, CHRISTIANITY IN INDIA: TWO THOUSAND YEARS OF FAITH (Penguin Books India 2004)

106. LIAM MURPHY, WHAT MAKES LAW, AN INTRODUCTION TO THE PHILOSOPHY OF LAW (Cambridge University Press 2014)

107. M. A. QURESHI, MUSLIM LAW (3rd ed., Central Law Publishing 2007)

108. M.A. Rane, *Atheism and Rational Belief, in* M.A. RANE, GOOD TIMES, BAD TIMES, SAD TIMES: SELECTED WRITINGS OF M.A. RANE (M.A. Rane 75th Birthday Felicitation Committee 2001)

109. M.G. CHITKARA, HINDUTVA (APH Publishing 1997)

110. M.G. CHITKARA, KASHMIR IMBROGLIO: DIAGNOSIS AND REMEDY (APH Publishing 1996)

111. M.K.K. NAYAR, STORY OF AN ERA TOLD WITHOUT ILL-WILL (DC Books 2014)

112. M.M. ALIYAR, SUNNI CODE OF MUSLIM PERSONAL LAW APPLIED BY COURTS OF JUSTICE IN INDIA (1st ed., 2015)

113. M.O. KOSHY, THE DUTCH POWER IN KERALA, (Mittal Publications 1989)

114. M.P. TANDON, PRINCIPLES OF EQUITY WITH TRUSTS & SPECIFIC RELIEF (14th ed., Allahabad Law Agency 2016)

115. M.R. BARNETT, THE POLITICS OF CULTURAL NATIONALISM IN SOUTH INDIA (Princeton University Press 1976)

116. M.V. PYLEE, OUR CONSTITUTION, GOVERNMENT AND POLITICS (Universal Law Publishing 2000)

117. MAHENDRA P. SINGH, V.N. SHUKLA'S CONSTITUTION OF INDIA (Eastern Book 2008)

118. MAMTA ANAND, S. RADHAKRISHNAN - HIS LIFE AND WORKS (Atlantic Publishers 2006)

119. MAMTA RAO, CONSTITUTIONAL LAW (Eastern Book Company Publishers 2013

120. MANU V. DEVADEVAN, A PREHISTORY OF HINDUISM (Walter De Gruyter GmbH & Co. 2016)

121. MARK HILL, ECCLESIASTICAL LAW (3rd ed., Oxford University Press 2007)

122. MARKO GESLANI, RITES OF THE GOD-KING: SANTI AND RITUAL CHANGE IN EARLY HINDUISM (Oxford University Press 2018)

123. MATTHEW ARNOLD, CULTURE AND ANARCHY (Oxford University Press 2006)

124. MAX MULLER, NATURAL RELIGION (Asian Educational Service 1988)

125. MAX MULLER, THEOSOPHY OR PSYCHOLOGICAL RELIGION (Asian Educational Service 1988)

126. Max Weber, *The Social Psychology of the World Religions*, *in* FROM MAX WEBER: ESSAYS IN SOCIOLOGY (H.H. Gerth & C. Wright eds., Psychology Press 1991)

127. MAYNE'S TREATISE ON HINDU LAW & USAGE (Vijender Kumar ed., 16th ed., Bharat Law House 2009)

128. MAYNE'S TREATISE ON HINDU LAW AND USAGE (17th ed., Bharat Law House 2017)

129. Mc Kim Marriott, *Cultural Transmission in Indian Culture*, *in* SOCIOLOGY OF RELIGION IN INDIA (V. G. Nayar & M. G. Nayar eds., Genesis Publishing 2001)

130. Melford E. Spiro, *Religion: Problems of Definition and Explanation*, *in* ANTHROPOLOGICAL APPROACHES TO THE STUDY OF RELIGION (Micheael Banton ed., Tavistock Publications 2004)

131. Michael C. Baltutis, *Recognition and Legislation of Private Religious Endowments in Indian Law*, in RELIGION AND LAW IN INDEPENDENT INDIA (Robert D. Baird ed., Manohar Publishers 2005)

132. MICHAEL MURPHY, MULTICULTURALISM: A CRITICAL INTRODUCTION (Routledge Publications 2012)

133. MICHAEL WARNER, JONATHAN VAN ANTWERPEN, CRAIG J. CALHOUN, VARIETIES OF SECULARISM IN A SECULAR AGE (Michael Warner et al. eds., Harvard University Press 2010)

134. MLJ'S CODE OF CIVIL PROCEDURE, 1908, (13th ed., Lexis Nexis, Reprint 2009)

135. MOLLY VARGHESE, THE NASRANIS - ST THOMAS SYRIAN CHRISTIANS OF KERALA, INDIA (Create Space Publishing 2016)

136. MONIER WILLIAMS, BRAHMANISM AND HINDUISM, OR, RELIGIOUS THOUGHT AND LIFE IN INDIA: AS BASED ON THE VEDA AND OTHER SACRED BOOKS OF THE HINDUS (4th ed., Macmillan, 1891, Oxford University, Digitized 2008)

137. MONIER WILLIAMS, RELIGIOUS THOUGHT & LIFE IN INDIA (J. Murray, 1883, University of Minnesota, Digitized 2010)

138. MULLA, HINDU LAW (22nd ed., Lexis Nexis 2016)

139. MULLA, PRINCIPLES OF MAHOMEDAN LAW (20th ed., Lexis Nexis 2013)

140. MUNIS D. FARUQUI, THE PRINCES OF THE MUGHAL EMPIRE 1504–1719, (Cambridge University Press 2012)

141. N.K. JAYAKUMAR, LECTURES IN JURISPRUDENCE (2nd ed., Lexis Nexis 2010)

142. N.N. BHATTACHARYA, HISTORY OF THE TANTRIC RELIGION (Second Revised ed., Manohar Publications 1999)

143. NANCY GARDNER CASSELS, SOCIAL LEGISLATION OF THE EAST INDIA COMPANY: PUBLIC JUSTICE VERSUS PUBLIC INSTRUCTION (Sage Publications 2010)

144. NATARAJA AIYER & S. LAKSHMINARASIMHA SASTRI, THE TRADITIONAL AGE OF SRI SANKARACHARYA AND THE MATHS (Indian Books Centre 1962)

145. NATHAN KATZ, WHO ARE THE JEWS OF INDIA? (University of California Press 2000)

146. NAYANJOT LAHIRI, ASHOKA IN ANCIENT INDIA (Harvard University Press 2015)

147. NEW COMMENTARY ON THE CODE OF CANON LAW (James A. Coriden ed. et al., Paulist Press 2000)

148. OM PRAKASH, RELIGION AND SOCIETY IN ANCIENT INDIA (Bharatiya Vidya Prakashan 1985).

149. ORPA SLAPAK, THE JEWS OF INDIA: A STORY OF THREE COMMUNITIES (UPNE 1995)

150. P. ISHWARA BHAT, LAW & SOCIAL TRANSFORMATION (Eastern Book Company 2009)

151. P. PARAMESWARAN, SREE NARAYANA GURU: THE PROPHET OF REFORMATION (Kurukshethra Publications 1980)

152. P.K. BALAKRISHNAN, KERALA CHARITRAVUM JATIGALOOM (Malayalam Book), (Kurukshetra Prakashan 2003)

153. P.K. Tripathi, *Secularism: Constitutional Provisions and Judicial Review*, *in* G.S. SHARMA, SECULARISM: ITS IMPLICATIONS FOR LAW AND LIFE IN INDIA (N. M. Tripathi Publisher 1966)

154. P.S. ACHUTHEN PILLAI, JURISPRUDENCE AND LEGAL THEORY (3rd ed., Eastern Book Co. 2016)

155. PAITOON PATYAIYING, S. RADHAKRISHNAN'S PHILOSOPHY OF RELIGION (Gyan Publishing House 2008)

156. PANDIT PRANNATH SARASWATI, THE HINDU LAW OF ENDOWMENTS (FB&C Limited, Classic Reprint 2016)

157. PARAS DIWAN, MODERN HINDU LAW (23rd ed., Allahabad Law Agency 2017)

158. Patrick Olivelle, *Dharmasastra: A Textual History*, *in* HINDUISM AND LAW (Timothy Lubin at al. eds., Cambridge University Press 2010)

159. PAUL HEDGES, CONTROVERSIES IN CONTEMPORARY RELIGION: EDUCATION, LAW, POLITICS, SOCIETY, AND SPIRITUALITY (ABC-CLIO, 2014)

160. PAULOS MAR GREGORIOUS, THE INDIAN ORTHODOX CHURCH - AN OVERVIEW (Sophia Publications 1982)

161. PENELOPE CARSON, THE EAST INDIA COMPANY AND RELIGION, 1698-1858 (Boydell Press 2012)

162. PHILIP K. MATHAI, SONGS AS LOCUS FOR A LAY THEOLOGY: MOSHE WALSALAM SASTRIYAR AND SADHU KOCHUKUNJU UPADESHI (Wipf and Stock Publishers 2019)

163. PRABHAVATI C. REDDY, HINDU PILGRIMAGE: SHIFTING PATTERNS OF WORLDVIEW OF SRISAILAM IN SOUTH INDIA, Chapter (Routledge 2014)

164. PRESLER, RELIGION UNDER BUREAUCRACY: POLICY AND ADMINISTRATION FOR HINDU TEMPLES IN SOUTH INDIA (Cambridge University Press 1987)

165. R. LEELA DEVI, HISTORY OF KERALA (Vidyarthi Mithram Press 1986)

166. R.K. PRUTHI, INDIAN CASTE SYSTEM (Discovery Publishing House 2004)

167. R.P. REMESAN, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS ACT, 1951 & RULES ALONG WITH GURUVAYOOR DEVASWOM ACT, 1978 AND RULES (Kannur Law House 2004)

168. RADHAKRISHNAN, THE HINDU VIEW OF LIFE (Reprint, Harper Collins Publishers India 2009)

169. RAFAT MASHOOD BILGRAMI, RELIGIOUS AND QUASI-RELIGIOUS DEPARTMENTS OF THE MUGHAL PERIOD, 1556-1707 (Aligarh Muslim University 1984)

170. RAJ BHALA, UNDERSTANDING ISLAMIC LAW (SHARI'A) (Lexis Nexis 2011)

171. RAJ KUMAR, ESSAYS ON INDIAN RELIGION (Discovery Publishing House 2003)

172. RAJAN GURUKKAL, THE KERALA TEMPLE AND THE EARLY MEDIEVAL AGRARIAN (Vallathol Vidyapeetham 1992)

173. RAJENDRA PRASAD, INDIA DIVIDED (Penguin Books 1946)

174. RAM PUNIYANI, GHAR WAPSI, CONVERSIONS AND FREEDOM OF RELIGION (Media House 2015)

175. RAMA JOIS, SEEDS OF MODERN PUBLIC LAW IN ANCIENT INDIAN JURISPRUDENCE AND HUMAN RIGHTS – BHARATIYA VALUES (2nd ed., Eastern Book Co. 2000)

176. RAN HIRSCHL, COMPARATIVE MATTERS: THE RENAISSANCE OF COMPARATIVE CONSTITUTIONAL LAW (Oxford University Press 2014)

177. RENOJOY SEN, ARTICLES OF FAITH (Oxford University Press 2012)

178. Rina Verma Williams, *Hindu Code as a Personal Law: State and Identity in the Hindu Code Bills Debates 1952-1956*, *in* HINDUISM AND LAW (Timothy Lubin et al. eds., Cambridge University Press 2010)

179. Robert A. Segal, *Theories of Religion*, in THE ROUTLEDGE COMPANION TO THE STUDY OF RELIGION (John R. Hinnells ed., Psychology Press 2005)

180. ROBERT AUDI, RELIGIOUS COMMITMENT AND SECULAR REASON (Cambridge University Press 2000)

181. ROBERT ERIC FRYKENBERG, CHRISTIANS AND MISSIONARIES IN INDIA: CROSS-CULTURAL COMMUNICATION SINCE 1500 (Routledge 2013)

182. ROBERT H. WINTHROP, DICTIONARY OF CONCEPTS IN CULTURAL ANTHROPOLOGY (ABC-CLIO Publishers 1991)

183. ROBERT N. MINOR, THE RELIGIOUS, THE SPIRITUAL, AND THE SECULAR: AUROVILLE AND SECULAR INDIA (SUNY Press 1999)

184. ROGER BOESCHE, THE FIRST GREAT POLITICAL REALIST: KAUTILYA AND HIS ARTHASHASTRA (Lexington Books 2003)

185. ROGER COTTERRELL, LAW, CULTURE AND SOCIETY: LEGAL IDEAS IN THE MIRROR OF SOCIAL THEORY (Ashgate Publishing 2006)

186. ROGER S. GOTTLIEB, THE OXFORD HANDBOOK OF RELIGION AND ECOLOGY (Oxford University Press 2006)

187. ROLAND E. MILLER, MAPPILA MUSLIM CULTURE: HOW A HISTORIC MUSLIM COMMUNITY IN INDIA HAS BLENDED TRADITION AND MODERNITY (SUNY Press 2015)

188. ROMILA THAPAR, ANCIENT INDIAN SOCIAL HISTORY: SOME INTERPRETATIONS (Orient Blackswan 1978)

189. RON GEAVES, ISLAM AND BRITAIN: MUSLIM MISSION IN AN AGE OF EMPIRE (Bloomsbury Publishing 2017)

190. Ruma Pal, *Religious Minorities and the Law*, *in* RELIGION AND PERSONAL LAW IN SECULAR INDIA: A CALL TO JUDGMENT (Gerald James Larson ed., Indiana University Press 2001)

191. RUSSELL SANDBERG, LAW AND RELIGION (Cambridge University Press 2012)

192. S. GAJRANI, HISTORY, 2 RELIGION AND CULTURE OF INDIA (Gyan Publishing House 2004)

193. S. JAYASANKAR, TEMPLES OF KERALA (Census of India Special Studies, Government of India Press 2000)

194. S. R. RAMANUJAN THE LORD OF VENGADAM (Partridge India 2014)

195. S. RADHAKRISHNAN, INDIAN RELIGIOUS THOUGHT (Orient Paperbacks Publishers 2006)

196. S. RADHAKRISHNAN, RECOVERY OF FAITH (1955)

197. S. RADHAKRISHNAN, RELIGION, SCIENCE AND CULTURE (Orient Paperbacks 2005)

198. S.A. KADER, THE LAW OF WAKFS-AN ANALYTICAL AND CRITICAL STUDY (Eastern Law House 1999)

199. S.D. CHAMOLA, KAUTILYA ARTHSHASTRA AND THE SCIENCE OF MANAGEMENT: RELEVANCE FOR THE CONTEMPORARY SOCIETY (Hope India Publications 2007)

200. S.N. SADASIVAN, A SOCIAL HISTORY OF INDIA (APH Publishing 2000)

201. S.N. SADASIVAN, POLITICAL AND ADMINISTRATIVE INTEGRATION OF PRINCELY STATES (Mittal Publications 2005)

202. SANDEEP BALAKRISHNA, TIPUSULTAN - THE TYRANT OF MYSORE (Rare Publications 2015)

203. SEBASTIAN CHAMPAPPILLY, CHRISTIAN LAW OF SUCCESSION IN INDIA (Southern Law Publishers 1997)

204. SELVISTER PONNUMUTHAN, THE SPIRITUALITY OF BASIC ECCLESIAL COMMUNITIES IN THE SOCIO-RELIGIOUS CONTEXT OF TRIVANDRUM/KERALA, INDIA (Gregorian Biblical Books 1996)

205. SETH DANIEL KUNIN, JONATHAN MILES-WATSON, THEORIES OF RELIGION: A READER (Seth Daniel Kunin & Jonathan Miles-Watson eds., Rutgers University Press 2006)

206. SHABNUM TEJANI, INDIAN SECULARISM: A SOCIAL AND INTELLECTUAL HISTORY 1890-1950 (Indiana University Press 2008)

207. SHAILJA CHANDER, JUSTICE V.R. KRISHNA IYER ON FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES (Deep and Deep Publications 1992)

208. SHAJI, POLITICISATION OF CASTE RELATIONS IN A PRINCELY STATE (Zorba Books 2017)

209. SHELAT, THE SPIRIT OF THE CONSTITUTION 16 (Bharatiya Vidya Bhavan 1967)

210. B.S. SHIVA RAO, THE FRAMING OF INDIA'S CONSTITUTION SELECT DOCUMENTS (Indian Institute of Public Administration 1966)

211. SITA RAM GOEL, TIPU SULTAN: VILLAIN OR HERO? : AN ANTHOLOGY (Voice of India 1993)

212. A. SREEDHARA MENON, A SURVEY OF KERALA HISTORY (DC Books 2007)

213. A. SREEDHARA MENON, A SURVEY OF KERALA HISTORY (Viswanathan Printers 2005)

214. A. SREEDHARA MENON, CULTURAL HERITAGE OF KERALA: AN INTRODUCTION (East-West Publications 1978)

215. A. SREEDHARA MENON, KERALA HISTORY AND ITS MAKERS (DC Books 2011)

216. A. SREEDHARA MENON, LEGACY OF KERALA (D C Books 2010)

217. STEPHAN KORNER, METAPHYSICS: ITS STRUCTURE AND FUNCTION (Cambridge University Press Archive 1986)

218. STEPHEN NEILL, A HISTORY OF CHRISTIANITY IN INDIA: THE BEGINNINGS TO AD 1707 (Cambridge University Press 2004)

219. STEVEN L. DANVER, POPULAR CONTROVERSIES IN WORLD HISTORY: INVESTIGATING HISTORY'S INTRIGUING QUESTIONS (ABC-CLIO, 2010)

220. SUBASH C. KASHYAP, CONSTITUTIONAL LAW OF INDIA (Universal Law Publishing 2008)

221. SUBHADRA SEN GUPTA, ASHOKA (Penguin Publishers 2009)

222. SURESH K. SHARMA & USHA SHARMA, CULTURAL AND RELIGIOUS HERITAGE OF INDIA: CHRISTIANITY (Mittal Publications 2004)

223. SURI RATNAPALA, JURISPRUDENCE (2nd ed., Cambridge University Press 2017)

224. SWAMI ACHUTHANANDA, MANY MANY MANY GODS OF HINDUISM: TURNING BELIEVERS INTO NON-BELIEVERS AND NON-BELIEVERS INTO BELIEVERS (Create Space Independent Publishing Platform 2013)

225. SWAMI BHASKARANANDA, THE ESSENTIALS OF HINDUISM: A COMPREHENSIVE OVERVIEW OF THE WORLD'S OLDEST RELIGION (2nd ed., Viveka Press 2002)

226. SWAMI RAMA, WISDOM OF THE ANCIENT SAGES: MUNDAKA UPANISHAD (Himalayan Institute Press 1990)

227. T.K. VELU PILLAI, TRAVANCORE STATE MANUAL (Kerala Gazetteers Department, Government of Kerala 1996)

228. T.N. MADAN, RELIGION IN INDIA (Oxford University Press 1992).

229. T.N. Madan, *Secularism in its Place*, *in* SECULARISM IN INDIA (Rajeev Bhargava ed., Oxford University Press 2007)

230. T.N. MADAN, SOCIOLOGICAL TRADITIONS: METHODS AND PERSPECTIVES IN THE SOCIOLOGY OF INDIA (Sage Publications 2011)

231. T.N. Madan, *Religions of India*, *in* VEENA DAS, HAND BOOK OF INDIAN SOCIOLOGY (Oxford University Publishers 2006)

232. TARKTEERTH LAXMANSHASTRI JOSHI, CRITIQUE OF HINDUISM AND OTHER RELIGIONS (Popular Prakashan Publishers 1996)

233. THOMAS A. IDINOPULOS, REAPPRAISING DURKHEIM FOR THE STUDY AND TEACHING OF RELIGION TODAY (Thomas A. Idinopulos & Brian C. Wilson eds., Brill Publishers 2002)

234. U. MOHAMMED, EDUCATIONAL EMPOWERMENT OF KERALA MUSLIMS: A SOCIO-HISTORICAL PERSPECTIVE (Other Books 2007)

235. UDAI RAJ RAI, FUNDAMENTAL RIGHTS AND THEIR ENFORCEMENT (PHI Publishers 2011)

236. Upendra Baxi, *Redefinition of Secularism in India*, *in* SECULARISM IN INDIA (Iqbal Narain ed., Classic Publishing House 1995)

237. Upendra Baxi, *The 'Struggle' for the Redefinition of Secularism in India: Some Preliminary Reflections*, *in* RUDOLF C. HEREDIA AND EDWARD MATHIAS, SECULARISM AND LIBERATION: PERSPECTIVES AND STRATEGIES FOR INDIA TODAY (Indian Social Institute 1995)

238. UPINDER SINGH, A HISTORY OF ANCIENT AND EARLY MEDIEVAL INDIA: FROM THE STONE AGE TO THE 12TH CENTURY (Pearson Education India 2008)

239. V. M. BACHAL, FREEDOM OF RELIGION AND INDIAN JUDICIARY (Shubhada Saraswat Publishers 1975)

240. V. NAGAM AIYA, 1 THE TRAVANCORE STATE MANUAL (Travancore Government Press 1906)

241. V.D. MAHAJAN, JURISPRUDENCE AND LEGAL THEORY (Eastern Book Company 2008)

242. V.D. MAHAJAN, JURISPRUDENCE AND LEGAL THEORY (5th ed., Eastern Book Co. 2017)

243. V.K. VARADACHARI, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS (R. Prakash ed., 4th ed., Eastern Book Publishers 2006)

244. V.P. Bharatiya, *Religious Freedom and Personal Laws* in NATIONAL CONVENTION ON UNIFORM CIVIL CODE FOR ALL INDIANS (N.R. Madhava Menon ed., Vigyan Bhavan 1986)

245. V.P. MENON, THE STORY OF THE INTEGRATION OF THE INDIAN STATES (Macmillan, 1956)

246. V.R. Krishna Iyer, *Manifestato of Man, in* SECULARISM IN INDIA (Iqbal Narain ed., Classic Publishing House 1995)

247. V.R. PARAMESWARAN PILLAI, TEMPLE CULTURE OF SOUTH INDIA (Inter-India Publications 1985)

248. V.V. SUBBA REDDY, TEMPLES OF SOUTH INDIA (Gyan Publishing House, 2009)

249. Vasudha Dhagamwar, *Towards Uniform Civil Code: Concepts, Constraints, Policies, Principles, Perspectives, Methods and Prospects, in* NATIONAL CONVENTION ON UNIFORM CIVIL CODE FOR ALL INDIANS (N. R. Madhava Menon ed., Vigyan Bhavan 1986)

250. VENKITARAMANAYYA, EARLY MUSLIM EXPANSION OF SOUTH INDIA (Kurukshetra Prakashan 2001)

251. VERINDER GROVER, POLITICAL THINKERS OF MODERN INDIA: S. RADHAKRISHNAN (Deep and Deep Publications 1993)

252. VIJAY NATH, DANA: GIFT SYSTEM IN ANCIENT INDIA-A SOCIO-ECONOMIC PERSPECTIVE (Munshiram Manoharlal Publishers 1987)

253. Wan Azizah Wan Ismail, *Building Effective Ethical - Moral Co-Operation in a Pluralist Universe, in* RELIGION AND CULTURE IN ASIA PACIFIC: VIOLENCE OR HEALING? (Joseph A. Camilleri ed., Vista Publications 2001)

254. WARD AND CORNER: A MEMOIR OF THE SURVEY OF THE TRAVANCORE AND COCHIN STATES (Department of Cultural Publications, Government of Kerala 1993)

255. WAYNE MORRISON, JURISPRUDENCE FROM GREEKS TO POST-MODERNISM (Routledge 2015)

256. WENDY DONIGER, THE HINDUS: AN ALTERNATIVE HISTORY (Oxford University Press 2010)

257. WERNER F. MENSKI, HINDU LAW BEYOND TRADITION AND MODERNITY (Oxford University Press 2008)

258. WILL KYMLICKA, MULTICULTURAL ODYSSEYS: NAVIGATING THE NEW INTERNATIONAL POLITICS OF DIVERSITY (OXFORD UNIVERSITY PRESS 2007)

259. WILLIAM JAMES, THE WILL TO BELIEVE: AND OTHER ESSAYS IN POPULAR PHILOSOPHY, AND HUMAN IMMORTALITY (Courier Corporation 1956)

260. WILLIAM JONES, INSTITUTES OF HINDU LAW, OR, THE ORDINANCES OF MANU, ACCORDING TO THE GLOSS OF CULLUCA, COMPRISING THE INDIAN SYSTEM OF DUTIES, RELIGIOUS, AND CIVIL (The Law Book Exchange Ltd. 2007)

261. Y. MASIH, INTRODUCTION TO RELIGIOUS PHILOSOPHY (Motilal Banarsidass Publishers 1991)

262. Zoya Hasan, *Religion and Politics in a Secular State: Law, Community, and Gender*, *in* POLITICS AND STATE IN INDIA (Zoya Hasan ed., Sage Publications 2000)

ARTICLES

1. A.C. George, *Pentecostal Beginnings in Travancore*, 4 ASIAN JOURNAL OF PENTECOSTAL STUDIES (Issue 2, Jul. 2001)
2. M. Matta, *Secularism Overviewed- A Critical Appraisal of the Legislative, Executive, and Judicial Approach*, 1 KASHMIR UNIVERSITY LAW REVIEW (1994)
3. A.P. Ibrahim Kunju, '*Islam in Kerala*', JOURNAL OF KERALA STUDIES (Vol. IV, 1977)
4. Ahmet T. Kuru, *Passive and Assertive Secularism: Historical Conditions, Ideological Struggles, and State Policies towards Religion*, 59 WORLD POLITICS (2007)
5. Andre Beteille, *Constitutional Morality: Perspectives*, 43 ECONOMIC & POLITICAL WEEKLY (04 Oct., 2008)
6. Anna Drwal, *The Formation of Christian Personal Law in British India from 1865 to 1872*, (Jan. 21, 2020). https://ruj.uj.edu.pl/xmlui/bitstream/handle/item/47451/drwal_the_formation_of_christian_personal_law_2016.pdf?sequence=1&isAllowed=y
7. Biswamoy Pati, *Introduction: The Great Rebellion of 1857*, in THE GREAT REBELLION OF 1857 IN INDIA: EXPLORING TRANSGRESSIONS, CONTESTS AND DIVERSITIES (Routledge 2010)
8. Daniel L. Dreisbach, *How Thomas Jefferson's 'Wall of Separation' Redefined Church -State Law and Policy*, (Mar. 20, 2019), https://www.jamesmadison.gov/lessons/01_WallSeparation.pdf

9. David G. Mandelbaum, *The Jewish Way of Life in Cochin*, 1 JEWISH SOCIAL STUDIES (1939), (Nov. 3, 2019), www.jstor.org/stable/4464305
10. Divya Kannan, *Socio-Religious Reform in Twentieth Century Kerala: Vagbhadananda and the Atma Vidya Sangham, 1900-40*, 73 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS, (2012), JSTOR, (Nov. 7, 2019), https://www.jstor.org/stable/44156300
11. Gabrielle J. Hanna, *The Helicopter State: Misuse of Parens Patriae Unconstitutionally Precludes Individual and Class Claims*, 92 WASHINGTON LAW REVIEW (2017)
12. Gagandeep Sobti & Aadya Dubey, *Role of State and Police in the Wake of Communal Rights*, 2 BHARATI LAW REVIEW (Jan.-Mar., 2014)
13. Irfan Engineer, *Preamble, Secularism and Constitution*, 53(8) MAINSTREAM (Feb.14, 2015)
14. Irshad Abdal Haqq, *Islamic Law: An overview of its Origin and Elements*, 7 J. ISLAMIC LAW & CULTURE (2002), (Jan. 12 2019), https://heinonline.org/HOL/Landing Page? handle=hein.journals/jilc7& div=8&id=&page
15. Ishwara Bhat, *The 'Parens Patriae' Role of The Courts in the Matter of Public Trusts under §92 of the Civil Procedure Code: Expectations, Contributions, and Limitations*, 7 NUJS LAW REVIEW (2014)
16. J. M. Derrett, *The Administration of Hindu Law by the British*, 4 COMPARATIVE STUDIES IN SOCIETY AND HISTORY (No. 1, 1961), JSTOR, (Nov. 20, 2019), www.jstor.org/stable/177940

17. J.R. Freeman, *Gods, Groves and the Culture of Nature in Ker*ala, 33 MODERN ASIAN STUDIES (No. 2, 1999), JSTOR, (Nov. 1, 2019), www.jstor.org/stable/313169

18. K. Balakrishnan Adiyodi, *The Nature of Aryan Control over Dravidian Religious Institutions: A Case Study of Rayaramangalam Temple*, 37 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS (1976), JSTOR, (Oct. 15 2019), www.jstor.org/stable/44138925

19. K. Rajan, *Appropriation of the Megalithic Burials as Cult Spots and Temples: A Study on the Megaliths in the Tamil Nadu - Kerala Border Regions*, 74 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS (2013), www.jstor.org/stable/44158883

20. K. Rama Pisharoti, *Notes on Ancestor-Worship Current in Kerala*, 23 MAN (1923), (Nov. 1, 2019), www.jstor.org/stable/2788370

21. K.G. Kumar, *Temple Treasures, Claimant Pressures: Heritage and the Commons*, 46 ECONOMIC AND POLITICAL WEEKLY (No. 29, 2011)

22. K.P. Krishna Shetty, *Secularism in the Indian Constitution: A concept of Sui Generis*, 20 COCHIN UNIVERSITY LAW REVIEW (Sept. & Dec., 1996)

23. K.R. Hanumanthan, *The Mariamman Cult of Tamil Nadu-A Case Study in Cultural Synthesis*, 41 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS (1980), JSTOR, (Nov. 15, 2019), https://www.jstor.org/stable/44141830

24. Kesavan Veluthat, *Religious Symbols in Political Legitimation: The Case of Early Medieval South India*, 21 SOCIAL SCIENTIST (Jan.-Feb., 1993), JSTOR, (Oct. 20, 2019), https://www.jstor.org/stable/3517836
25. Kesavan Veluthat, *Sectional President's Address: Into the 'Medieval' - and out of it: Early South India in Transition*, 58 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 168-205 (1997), www.jstor.org/stable/44143907, (Oct. 20, 2019)
26. Kesavan Veluthat, *The Socio-Political Background of Kulasekhara Alvars of 'Bhakti'*, 38 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS (1977), JSTOR, (Oct. 20, 2019), https://www.jstor.org/stable/44139063
27. Kesavan Veluthat, *The Temple-Base of the Bhakti Movement in South India*, 40 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS (1979), JSTOR, (Oct. 20, 2019), https://www.jstor.org/stable/44141959
28. M. S. Pande, *Minority Rights and Personal Laws in India: An Analysis*, 2 BHARATI LAW REVIEW (Jan.-Mar. 2014)
29. M.G.S. Narayanan, *The God-Presidents of Agrarian Corporations in Ancient Kerala*, 48 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS (1987), www.jstor.org/stable/44141659. (Oct 9, 2019)
30. Md. Mahtab Alam Rizvi, *Secularism in India: Retrospect and Prospects*, 66 THE INDIAN JOURNAL OF POLITICAL SCIENCE (Oct.-Dec., 2005)
31. Muhshina Anjum Borah, *Status of Women in the Deuries of Lakhimpur District of Assam and Gender Inequality* INTERNATIONAL JOURNAL OF

HUMANITIES AND SOCIAL SCIENCE INVENTION (IJHSSI) (Vol. 8 Issue 06, June 2019), (Sep. 25, 2019), www.ijhssi.org

32. Namit Saxena, *Supreme Cour's Tryst with Secularism and Hindutva*, 50(18) ECONOMIC & POLITICAL WEEKLY (May 2, 2015)
33. Neha Chauhan, *Religious Conversion and Freedom of Religion in India: Debates and Dilemmas*, 1 ILI LAW REVIEW (Summer Issue, 2017)
34. P. Narayanan, *Towards Secularization of Temple Management: The Perumanam Temple*, 58 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS (1997), JSTOR, (Oct. 15, 2019), www.jstor.org/stable/44143913
35. P.C. Goswami, *Land Reform in Assam*. ECONOMIC AND POLITICAL WEEKLY (vol. 4, no. 42, 1969), JSTOR, (Sep. 24, 2019), www.jstor.org/stable/ 40740544
36. P.C. Joshi, *Gandhi-Nehru Tradition and Indian Secularism*, 45(48) MAINSTREAM (Nov. 17, 2007), (Jun. 20, 2016), http://www.mainstreamweekly.net/article432.html
37. P.P. Narayanan Nambudiri, *Bhakti Cult in Kerala*, 42 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS (1981), JSTOR, (Oct. 15 2019), https://www.jstor.org/stable/44141128
38. Padmanabh Samarendra, *Religion, Caste and Conversion Membership of a Scheduled Caste and Judicial Deliberations*, 51(4) ECONOMIC & POLITICAL WEEKLY (Jan. 23, 2016)

39. Prathap Thevarathottam S.S., *Interference of Politics and Religion-The Trajectory of Politicisation in Devaswom Board*, 6 JOURNAL OF PARLIAMENTARY STUDIES (Jul.-Dec. 2014)
40. Rajan Gurukkal, *Did State Exist in The Pre-Pallavan Tamil Region*, 63 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS (2002), JSTOR, (Oct. 3, 2019), https://www.jstor.org/stable/44158082
41. Rajan Gurukkal, *Political Economy of the Temple Treasure Trove*, 46 ECONOMIC AND POLITICAL WEEKLY (No. 47, November 19, 2011)
42. Rajan Gurukkal, *Some Aspects of Early Medieval Brahman Village Legal Codes of Kerala* 40 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS (1979), JSTOR, (Oct. 3, 2019), https://www.jstor.org/stable/44141954
43. Rajeev Bhargava, *Reimagining Secularism: Respect, Domination and Principled Distance*, 48 ECONOMIC AND POLITICAL WEEKLY (Dec. 14, 2013)
44. Rudolf C. Heredia, *Secularism in a Pluri-Religious Society- The Constitutional Vision*, 50(14) ECONOMIC & POLITICAL WEEKLY (Apr. 4, 2015)
45. S.M. Diaz, *Rule of Law to Uphold Secularism*, 1 KASHMIR UNIVERSITY LAW REVIEW (1994)
46. T. Mahmood, *Personal Laws and The Constitution In India*, (Jan 25, 2019),*http://14.139.60.114:8080/jspui/bitstream/123456789/736/15/Personal%20Laws%20and%20the%20Constitution%20in%20India20.pdf*

47. T.J.S. George, *The Intolerance Debate and the Game of Pretence. Why is a 5000-year Heritage under Threat*, 53(46) MAINSTREAM (Nov. 7, 2015)

48. V. Narayana Pillai, *Sasta Cult in Travancore. Is it a Relic of Buddhism*? 3 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS (1939), JSTOR, (Nov. 5, 2019), https://www.jstor.org/stable/44252378

49. Vijayaprasad Gopichandran, *Faith Healing and Healing in Faith*, 12 INDIAN JOURNAL OF MEDICAL ETHICS (No. 4, 2015)

50. Robert E. Rodes, *The Canon Law as a Legal System - Function, Obligation, and Sanction*, NATURAL LAW FORUM (Jan 1, 1964)

THESES

1. C.K. MADHUSOODHANAN, A STUDY ON THE NATURE OF RELATIONSHIP BETWEEN THE STATE AND THE MANAGEMENT OF HINDU TEMPLES IN KERALA (Thesis) (School of Social Sciences Tata Institute of Social Sciences, Mumbai, 2010), SHODHGANGA, https://shodhganga.inflibnet.ac.in/bitstream/ 10603/2708

2. D.N. Krishnan Nair, HISTORY OF TEMPLE ADMINISTRATION IN TRAVANCORE WITH SPECIAL REFERENCE TO KANYAKUMARI DISTRICT 1922-1960 (Thesis) (Manonmaniam Sundaranar University, 1999), SHODHGANGA, http://shodhganga.inflibnet.ac.in//handle/10603/61441

3. JOY B., FORMATION OF THE STATE OF KERALA AND THE PROBLEMS AND STRUGGLES OF LINGUISTIC MINORITIES, Appendix (Thesis, Department

of History, Sree Sankaracharya University of Sanskrit, 2011), http://hdl.handle.net/10603/137649

4. K.C. ZACHARIAH, RELIGIOUS DENOMINATIONS OF KERALA (WORKING PAPER 468) (April, 2016) http://cds.edu/wp-content/uploads/2016/05/WP468.pdf
5. KALITA & TAPAN, MANAGEMENT SYSTEM OF THE TEMPLES OF ASSAM AND ORISSA A COMPARATIVE STUDY (Thesis, Gauhati University 2011), https://shodhganga.inflibnet.ac.in, (Sep. 24, 2019)
6. P. PAUL EBENEZAR, SOUTH INDIAN PENTECOSTALISM: - A SOCIO ANALYTICAL STUDY (Thesis, University of Madras, 2013),,https://shodhganga.inflibnet.ac.in/handle/10603/199965

COMMISSION REPORTS

1. REPORT OF HINDU RELIGIOUS ENDOWMENT COMMISSION (HREC), 1960
2. REPORT OF THE HIGH LEVEL COMMITTEE TO HINDU RELIGIOUS INSTITUTIONS AND ENDOWMENTS (Government of Kerala, 1964)
3. REPORT OF THE HIGH-POWER COMMISSION JUSTICE K.S. PARIPOORNAN COMMISSION (High Court of Kerala, 2007)
4. DEVASWOM ADMINISTRATIVE REFORM COMMISSION REPORT (Government of Kerala, 1984) (K.P. Sankaran Nair was the chairman of the Commission)
5. DEVASWOM ADMINISTRATIVE REFORM COMMISSION REPORT (Government of Kerala, 1984)

CONSTITUENT ASSEMBLY DEBATES

1. CONSTITUENT ASSEMBLY DEBATES (Jan. 21, 1947)
2. CONSTITUENT ASSEMBLY DEBATES (Dec.3, 1948)
3. CONSTITUENT ASSEMBLY DEBATES (Dec.6, 1948)
4. CONSTITUENT ASSEMBLY DEBATES (Dec. 7, 1948)
5. CONSTITUENT ASSEMBLY DEBATES (Dec. 12, 1948)
6. INDIAN ROUND TABLE CONFERENCE, PROCEEDINGS OF THE SUBCOMMITTEE PART 2, SUBCOMMITTEE, NO. III, (1930)

DICTIONARIES

1. WEBSTERS ENCYCLOPEDIC UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE, DELUXE EDITION (Random House Value Publishing 2001)
2. OXFORD ADVANCED LEARNERS DICTIONARY OF CURRENT ENGLISH (2010)
3. OXFORD DICTIONARY & THESAURUS (2008)
4. OXFORD DICTIONARY AND THESAURUS (2007)
5. P. RAMANATHA IYER, LAW LEXICON (1987)

NEWS PAPER ARTICLES

1. *Food safety approval must for Kerala temple offerings*, THE HINDUSTAN TIMES (Jan. 29, 2019)
2. Kalpana Kannabiran, *The scope of constitutional morality*, THE HINDU (Oct. 04, 2018)
3. *Karnataka seer plotted food poisoning to oust temple trustee*, TIMES OF INDIA, indiatimes.com, Dec. 20, 2018

4. Krishnadas Rajagopal, *With Sabarimala verdict, 'Ghost of Narasu' is finally exorcised*, THE HINDU (New Delhi, Sept. 28, 2018)
5. *Maharashtra cites corruption, wants to take over temples*, TIMES OF INDIA, http://timesofindia.indiatimes.com/Articleshow/5942622.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst., (Sep. 21, 2019)
6. *Maharashtra govt to take control of Shani Shingnapur temple* TIMES OF INDIA, https://timesofindia.indiatimes.com/city/ mumbai/maharashtra-govt-to-take-control-of-shani-shingnapur-temple/Articleshow/ 64673350.cms., (Sep. 21, 2019)
7. *Make Maharashtra Anti-Superstition law national: Ansari*, ZEE NEWS CHANNEL (February 27, 2015), (Oct. 10, 2019), http://zeenews.india.com/news/india/make-maharashtra-anti-superstition-law-national-ansari_1553852.html
8. *National anti-black magic bill required: Dabholkar's daughter*, THE HINDU (New Delhi ed., September 16, 2013), (Oct. 10, 2019), http://www.thehindu.com/news/national/other-states/national-antiblack-magic-bill-required-dabholkars-daughter/article5134507.ece
9. *Suggestions on Church properties Bill sought*, THE HINDU (Kochi, Feb. 15, 2019)

10. *The Church dispute in Kerala: What Supreme Court ordered, Government Failed to Do*, INDIAN EXPRESS (Thiruvananthapuram, July 4, 2019)

11. TIMES OF INDIA, https://timesofindia. indiatimes.com/india/in-absence-of-a-law-anyone-can-set-up-temple-take-donations-sc/ Articleshow/71713940.cms., (Oct. 25, 2019)

12. Udit Chauhan, *Freedom of conscience and its contours- A look into the legality of it*, TIMESNOWNEWS.COM, (May 16, 2018), (May 11, 2019), https://www.timesnownews.com/

WEBSITES / OTHER ONLINE SOURCES

1. DEVASTHAN DEPARTMENT, GOVERNMENT OF RAJASTHAN, http://devasthan.rajasthan. gov.in

2. DHARMARTH KARYA VIBHAG, DEPARTMENT OF RELIGIOUS AFFAIRS, THE GOVERNMENT OF UTTAR PRADESH, http://updharmarthkarya.in /booking/Home/About/Department

3. ENDOWMENT DEPARTMENT, GOVERNMENT OF ANDHRA PRADESH, https://tms.ap.gov.in/ portal/info/endowment

4. HINDU RELIGIOUS & CHARITABLE ENDOWMENTS DEPARTMENT, GOVERNMENT OF TAMIL NADU, https://tnhrce.gov.in /hrcehome/hrce_about

5. http://www.nyulawglobal.org

6. http://www.un.org/en/ga/search/view

7. *https://ruj.uj.edu.pl/xmlui/bitstream/handle/item/47451/*

8. M.D. Srinivas, *Temples and the State in the Indian Tradition*, http://indiafacts.org/temples-and-the-state-in-the-indian-tradition-part-5/
9. Marylin Johnson Raisch, *Religious Legal Systems in Comparative Law: A Guide to Introductory Research*, NYULAWGLOBAL
10. MEDIUM, *8 Impressive Jain Temples in Kerala*, https://medium.com.
11. N.S. Rajaram, *Aryan Invasion - History or Politics?* ARCHAEOLOGY ONLINE, (May 7, 2018), http://archaeologyonline.net/artifacts/aryan-invasion-history
12. NEW CATHOLIC ENCYCLOPEDIA 720 (Catholic University of America 2003),https://cvdvn.files.wordpress.com/2018/05/new-catholic encyclopedia-vol-1.pdf
13. Patralekha Chatterjee, *Why constitutional morality is vital, and matters to us all*, THE ASIAN AGE, http://www.asianage.com/opinion/ oped/041018/why-constitutional-morality-is-vital-and-matters-to-us-all.html
14. Peter Heehs, *Not a Question of Theology: Religions, Religious Institutions, and the Courts in India*, COMPARATIVE LEGAL HISTORY 243-261(1:2) (2013), https://www.tandfonline.com/doi/abs/10.5235/ 2049677X. 1.2.243
15. PHILIPPE PERCHOC, FREEDOM OF CONSCIENCE AROUND THE WORLD (Report of European Parliament Research Service 2018), http://www.europarl.europa.eu/at-your-service/files/be-heard/religious-

and-non-confessional-dialogue/events/en-20180428-freedomconscience.pdf

16. RELIGIOUS TRUST & ENDOWMENTS DEPARTMENT, GOVERNMENT OF MADHYA PRADESH, http://www.religioustrust.mp.gov.in/activities
17. Shanjendu Nath, *Religion and Its Role in Society*, IOSR JOURNAL OF HUMANITIES AND SOCIAL SCIENCE (IOSR-JHSS) 82-85 (Vol. 20, Issue 11, Nov. 2015), http://www.iosrjournals.org/iosr-jhss/papers/Vol20-issue11/Version-4/L0201148285.pdf
18. Stephen Chavura, *The Separation of Religion and State: Context and Meaning*, RESEARCH GATE 37 (Dec., 2010), https://www.researchgate.net/publication/49599146
19. Zoe Robinson, *What Is a Religious Institution*, 55 BOSTON COLLEGE LAW REVIEW 181, 234 (2014), https://lawdigitalcommons.bc.edu/bclr/vol55/iss1/6
20. TIRUMALA TIRUPATI DEVASTHANAMS, https://www.tirumala.org/TTDBoard.aspx
21. KERALA STATE WAKF BOARD, http://www.keralastatewakfboard.in
22. TRAVANCORE DEVASWOM BOARD, http://travancoredevaswomboard.org
23. COCHIN DEVASWOM BOARD, http://www.cochindevaswomboard.org
24. CORNELL LAW SCHOOL, https://www.law.cornell.edu/wex/free_exercise_clause
25. KOODALMANIKYAM DEVASAWOM BOARD, http://www.koodalmanikyam. com

26. MALABAR DEVASWOM BOARD, http://www.malabardevaswom. kerala. gov. in

27. GURUVAYUR DEVASWOM, https://guruvayurdevaswom.nic.in

28. THE PARADESI SYNAGOGUE IN COCHIN, INDIA, BEIT HATFUTSOT (Nov. 20, 2019), https://www.bh.org.il/paradesi-synagogue-cochin/

29. JAY A. WARONKER, LOST KERALA SYNAGOGUES, COCHINSYN.COM, (NOV. 25, 2019), http://cochinsyn.com/page-lostsyn.html

APPENDIX

1. The Other Side of Religious Freedom in India - Belief v. Blind Belief, ELENCHUS LAW REVIEW 69-91(Centre for Economy Development and Law, Government Law College, Thrissur, Kerala), 2015(2) Elen.L.R. (ISSN-2395-034X)