LAW AND RELIGION IN INDIA: INVOLVEMENT OF THE SECULAR STATE IN THE ADMINISTRATION OF HINDU RELIGIOUS ENDOWMENTS

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This Article discusses the State intervention in the administration of Hindu Religious Endowments by the State and mandatory contributions that the Endowments are required to pay to the Government in return for their administrative services to ask whether such involvement of the State identifying itself as 'Secular' is justified. The Researcher finds that the state intervention in the administration of Hindu Religious Endowments has been upheld by the Indian Judiciary based on Article 25 (2) (a) of the Constitution of India. This Article analyses how Article 25 (2) (a) is interpreted with the doctrine of essential religious practices and how the doctrine has undergone a complete change in scope and meaning. In conclusion, the Researcher finds that Judiciary has begun to acknowledge that the essentiality test has entangled itself in a theological mantle. To resolve this difficulty, this Article suggests a Constitutional Amendment explaining Article 25 (2) (a).

Hindu Temples in India are administered by bureaucratic departments created by State laws and greatly vary in their composition and scope of administration. For example, Tamil Nadu has about 36,635 Hindu Temples and 68 Temples attached to Hindu Mutts.[3] Administered by a Government department called the Hindu Religious and Charitable Endowments[4] Department[5] as per the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. This department is supervised by a Minister holding the Hindu Religious and Charitable Endowments portfolio. The Chief Minister of Tamil Nadu is

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[3] Hindu Religious and Charitable Endowments Department, Policy Note 2022-23, www.tn.gov.in, 2022, https://www.tn.gov.in/documents/dept/32.
[4] Hindu Temples and Mutts form part of Hindu Religious Endowments.
[5] The Department is headed by a Commissioner appointed by the Government. The Commissioner is generally a person belonging to the State Judicial Services or other Services (Section 9 of the Tamil Nadu Act) and acts as a servant of the Government (Section 12 of the Tamil Nadu Act)

himself the ex-officio Chairman[6] Of the Advisory Committee for making recommendations in matters of administration of Temples.

In return for the services rendered by the Government, Temples are required to pay an annual contribution to the Government of up to 12% of their yearly income.[7]. In addition, an annual audit fee for meeting the costs of auditing accounts which goes up to 4% of yearly income, must also be paid to the Government.[8] Temple, which earns an annual income of 5 lakhs, must pay up to 16% of its yearly revenue.

Similarly, the southern States of Karnataka[9] and Andhra Pradesh[10] have Ministers for Hindu Religious Endowments, In Kerala[11] such Minister is called the Devaswom Minister. Proceeding northwards, Maharashtra has a Charity Commissioner[12] Madhya Pradesh has the[13] District Collectors acting as the Registrars of public trust, Odisha has the Orissa Hindu Religious Endowments Board[14], Rajasthan has a Devasthan Commissioner[15] and Bihar Government has constituted the Bihar State Board of Religious Trusts[16]. These authorities are in charge of the administration of the Temples; a few States have recruitment Boards for hiring employees of the Temple, including the Pujari, Archaka or Temple Priest; all the authorities are Servants of the Government. Thus, the Government is involved in everything from approving Temple budgets to the daily puja (worship of the deity).

For the services rendered by their respective State Governments, the Temples in India contribute up to 5% of the annual income (or Rs. 1,25,00,000, whichever is higher) in the case of Andhra Pradesh (Section 116 of the Andhra Pradesh Act); the Temple of Tirupathi pays 7% of its annual income (or Rs. 50 Lakhs, whichever is higher) [Section 65(2) of the Andhra

[6] Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, § 7(1)(a), No.22 Act of Tamil Nadu, 1959 (India).
[7] Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, § 92 (1), No.22 Act of Tamil Nadu, 1959 (India).
[8] Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, § 92 (2), No.22 Act of Tamil Nadu, 1959 (India).
[9] The Karnataka Hindu Religious Institution and Charitable Endowments Act, 1997
[10] Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
[11] Kerala has four legislations: the Travancore-Cochin Hindu Religious Institutions Act, 1950; the Koodalmanickam Devaswom Act, 1971; the Guruvayoor Devaswom Act, 1978; Madras Hindu Religious and Charitable Endowments (Amendment) Act, 2008
[12] Appointed under the Maharashtra Public Trusts Act, 1950
[13] The Madhya Pradesh Public Trusts Act, 1951
[14] The Orissa Hindu Religious Endowments Act, 1969
[15] Constituted under the Rajasthan Public Trust Act, 1959
[16] Under the Bihar Hindu Religious Trusts Act of 1950

Pradesh Act]; Temples in Karnataka pays 5% of their annual income (Section 17 of the Karnataka Act); Temples in Bihar pay 5% of their net income in the previous financial year [Section 70 (1) of the Bihar Act]; Temples in Maharashtra pay 10% of its gross annual income [Section 56 QQ (2) (b) of the Maharashtra Act].

These facts might, at once, appear to be in stark contrast to the principle of Secularism implicitly embodied in the Indian Constitution by its founding fathers. This principle was made explicit by the 42nd Constitutional Amendment of 1976 when the term Secularism was inserted into the Preamble of the Constitution. Secularism as a concept signifies the non-involvement of the State in religious affairs. However, India adopted the concept of Secularism without importing the original meaning intended to be conveyed by the idea. The Constituent Assembly of India did not conceive of a wall separating the State from matters of religion. Instead, the State was tasked with the responsibilities such as throwing open Hindu Temples to all classes of Hindus, providing for social welfare and reform of Hindu religious practices [Article 25 (2)(b)], as well as restricting or regulating economic, financial, political or other secular activities associated with religious practices [Article 25 (2)(a)].

The administration of Hindu Religious Endowments by the State Governments is often justified by relying on Article 25 (2) (a) of the Indian Constitution. The Hon'ble Supreme Court of India examined the issue of State administration of Hindu Religious Endowments for the very first time in the case of The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954[17] (the Shirur Mutt case). The constitutionality of the Madras Hindu Religious and Charitable Endowments Act, 1951 (which has been repealed by the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959) was challenged in this case. The Hon'ble Supreme Court held specific provisions of the Act to be *ultravirus* the Constitution but upheld the validity of the impugned legislation. This set the judicial precedent for upholding similar legislations on the administration of Hindu Religious Endowments.

India has both Central and State enactments on Hindu Religious Endowments as the subject "charities and charitable institutions, charitable and religious endowments and religious

[17]Commissioner Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt (A.I.R. 1954 SC 282)

institutions" falls in the concurrent list. The State legislations on Hindu Religious Endowments include enactments covering the entire State and Acts passed to administer a single Temple. Shree Karveer Niwasini Mahalaxmi (Ambabai) Mandir (Kolhapur) Act, 2018, is an example of several legislations for a single Temple.

As discussed above, Article 25 (2) (a) of the Constitution permits State regulation of Secular activities, even if they are associated with religious practices. The interpretation of this provision has opened a floodgate of highly contested litigations in the Indian Judiciary. In resolving these disputes, the Court devised a doctrine to separate religious aspects from secular aspects associated with religious practices. This was the doctrine of essential religious practices.

The doctrine of essential religious practices is perhaps one of the most criticized judicial tests. It was conceived of in Shirur Mutt as an interpretative technique to identify practices of a religious nature. This technique was approved with the same meaning in the case of Ratilal Panachand Gandhi v. The State of Bombay and Others, 1954[18]. Thus, practices found to be essentially religious were protected from State intervention and restriction provided in Article 25 (2) (a).

With time, the doctrine of essential religious practices began to change, with the Judiciary assuming more interpretive powers. Starting with the case of Sri Venkataramana Devaru and Others v. The State of Mysore and Others, 1957[19] the Court began to give away regulatory authority to practices established to be essential to a religious character. In the case of Devaru, the Court gave precedence to Article 25 (2) (b) over Article 25 (2) (a). In the case of the Dargah Committee, Ajmer and Others v. Syed Hussain Ali and Others, 1961, the Court significantly reduced the protection guaranteed by Article 25 (2) (a), rejecting from its ambit those religious practices that have sprung from merely superstitious beliefs calling them '*extraneous and unessential accretions to religion'.*

The Judiciary went a step further in Tilkayat Shri Govindlalji Maharaj v. The State Of Rajasthan and Others, 1963[20] to caution that the claims of a religious community must not be

[18]Ratilal Panachand Gandhi v. The State of Bombay and Others, 1954 SCR 1035.
[19]A.I.R. 1958 SC 255
[20] A.I.R. 1963 SC 1638

taken at face value and claimed for itself the authority to determine which practices were essential to religion. Further, in Sastri Yagnapurushadji and Others v. Muldas Brudardas Vaishya and Others, 1966[21] the Courts rejected the essentiality of religious practice on the ground of 'superstition, ignorance and complete misunderstanding of the true teachings and the real significance of the tenets and philosophy taught by the concerned religious denomination.' In Acharya Jagdishwaranand Avadhuta, Etc. v. Commissioner of Police, Calcutta & Anr., 1983[22] essentiality of practice was refused because it was of recent origin.

The doctrine of essential religious practices continued to be invoked by the Judiciary not just as an interpretative technique but also as a technique to reform religion into what the Courts wanted it to be. In the case of Indian Young Lawyers Association v. The State of Kerala, 2018[23] (Shabarimala Case), the Supreme Court resorted to this test, despite Justice Chandrachud acknowledging in the very same that the Judges are "now assuming a theological mantle which we are not expected to do."

Thus, Article 25 (2) (a) has resulted in many conflicts between the religion and State, ironically, in a State that identifies itself as 'Secular'. The Judicial overreach in attempting to interpret this Article has been acknowledged by the present Chief Justice of India himself[24]. As recently as October 2022, the Supreme Court delivered a split verdict in the Karnataka hijab case, unable to understand what constitutes a religious practice and what can be termed a secular practice.

This difficulty of all the organs of the State – the Judiciary, the executive, and the legislature entangling itself in religious matters can be resolved with a Constitutional Amendment to explain Article 25 (2) (a), clearly laying down its scope of protection. After 75 years of Independence and countless precedents of judicial interpretation of Article 25 (2) (a) using the essentiality test, the Indian Parliamentarians must unite and deliberate on this significant issue of religion as it was the Parliament that chose to expressly identify itself as 'Secular' in the 42nd Constitutional Amendment of 1976. Further, in the age of privatization,

[21] A.I.R. 1966 SC 1119
[22] A.I.R. 1984 SC 51
[23] 2018 (8) SCJ 609
[24] During the 2018 Shabarimala Case, Justice Chandrachud was not the Chief Justice of India

the Parliament must reconsider whether it is the job of a Secular State to administer Hindu Religious Endowments.