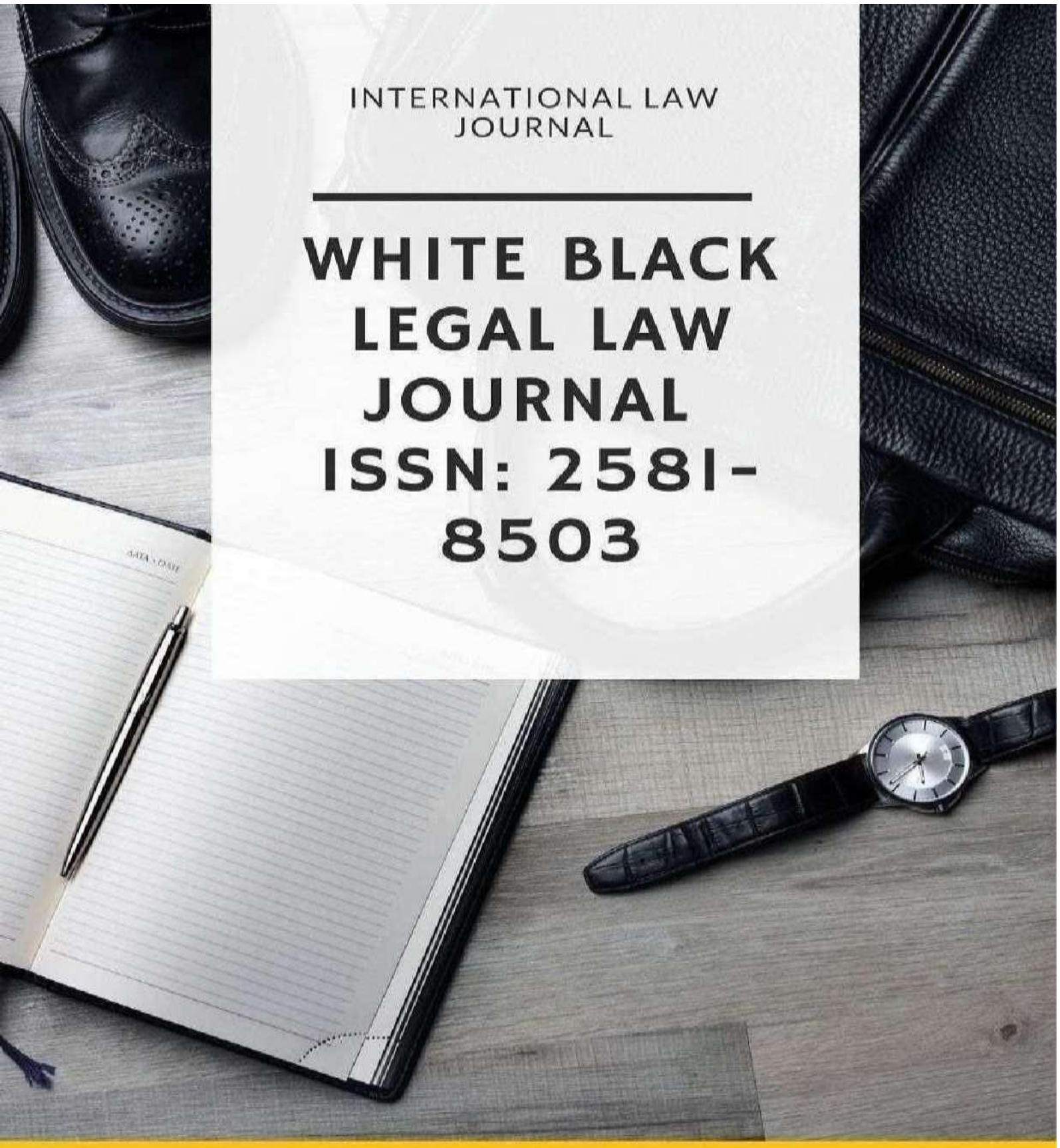

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

GOVERNANCE AND MANAGEMENT OF TEMPLES IN THE SECULAR STATE OF INDIA

AUTHORED BY - PRIYA KUMARI

ABSTRACT

India is secular country and does not have any State religion. It treats all religions equally and does not give preference to any one particular religion.

This article tries to understand the function of the state in management of temples and the laws governing them. This article further examines the historical progression of governments assuming control over temples, focusing on the example of the Hindu Religious and Charitable Endowments Department (HR & CE) in Tamil Nadu.

The written works discussing the management of temples in India before and after independence highlight the prominent role of trustees and the influence of government involvement. In contrast, the management of other religious sites like churches, mosques, and gurudwaras lacks similar government intervention. This article aims to explore the state's role in overseeing temple management. In the first part meaning of secularism is explained. In the second section the historical background and how temples have been managed over the years is discussed.

Third, this article clarifies whether India being a secular country is treating all religions at par in management of different religion's places of worship? Fundamental right to freedom of religion is guaranteed by the Constitution of India as a group right under article 26, 29 and 30. This piece of writing reveals that the act of government interference in the management of temples, isn't based on secular principles. What are the possibilities for changing the process of managing temples and bringing about transformation in this regard?

Keywords: freedom of religion, secularism, state and religion, state intervention, temple management, temple management.

Introduction

The opening statement of the Indian Constitution characterizes India as a "Democratic Republic founded on the principles of secularism.

An essential condition of a secular country is to keep an arm's length distance between religion and State. One of the fundamental tenets of secularism is respect for and understanding of all religions. The word “secularism” first appeared in late medieval Europe. In a Constituent Assembly deliberation, KT Shah emphasized the inclusion of the term "Secular" in the Preamble of the Constitution.[1] The Preamble omitted any reference to the constitution's secular orientation, despite the assembly members' agreement. Later on, the Preamble was amended to include the word “Secular” when “the 42nd Amendment Act was approved in 1976 by the Indira Gandhi Government.”[2] In the realm of law, secularism pertains to the dynamics between the state, legal systems, and religion. In essence, it constitutes a political ideology advocating for the division between religion and governmental affairs. This ideology is built upon the principles of granting individuals the liberty to practice any faith they choose and the principle that a person's religious beliefs should neither confer benefits nor impose disadvantages.[3]

“Perhaps the most renowned and universally embraced form of secularism is likely the U.S. model, which promotes a robust barrier between governmental functions and religious affairs.”[4] However, the secularism practiced in India differs from this distinction in that it rejects the idea of a physical wall and instead emphasizes preserving a “principled distance” between the government and religion.[5]

The Constitution of India assures the freedom of religion through collective entitlements outlined in Article 26, 29, and 30. However, this freedom is not without limitations and cannot be exercised in an entirely unrestricted and absolute manner.

It provides that the state will not discriminate, interfere, meddle or patronize in the management

[1] E. R. Sand, “State and Religion in India: The Indian Secular Model” 19 Nordic Journal of Religion and Society, (2006).
[2] R. Dhavan and G. Larson, “The Road to Xanadu: India’s Quest for Secularism” 301-329 (2001).
[3] G. Phillips, “Introduction to Secularism” National Secular Society, London, (2011).
[4] J. J. Hemmer Jr. and XLIV Jefferson, Wall of Separation: How Jurisprudential Interpretation Shaped a Secular Polity 27-39 (Free Speech Yearbook, London, 1st edn., 2009).
[5] R. Bhargava, “Inclusion and Exclusion in South Asia: The Role of Religion. Human Development Report Office” UNDP (2004).

of the affairs of the religious places unless there exists case of violence while offering the religious prayers. Especially Article 26 under its clause (b) and (d) grants fundamental right to manage and administer its own functions in matters of religion and such property.[6] Any religious group has the legal authority to control its internal activities, provided that they do not jeopardize the general welfare, morality, or health. So, a religious group's ability to handle its religious affairs is on a separate plane from the group's ability to administer its property. In contrast to the latter, which is a constitutional guarantee that cannot be infringed by law, the former can be subject to legislation.

However, over the period of time various State Governments have taken over management and management of many religious institutions and places of worship in their hands. In many cases, government representatives and nominees sit on the controlling bodies of religious institutions and places of worship. However, this practice of managing religious institutions by the state through taking over the management in their hands has not been uniform. In the absence of any uniform law in this regard, the principles of secularism are often violated.

Temple Management in India:

India is known for its temples as much as it is known for the cultural diversity. The available written materials regarding the management of Hindu temples in colonial India confirm that the laws and rules established during that period concerning religious and charitable assets led to the placement of Hindu temple management under the supervision of trustees designated by the colonial management. The intention behind enacting these laws was to advance the principles of reason, societal benefit, and philanthropy for the greater good of the public.[7] India, a multicultural and inclusive nation, is well renowned for its constitutionally guaranteed secular beliefs. Indian people have the right to freely conduct their "religion affairs under Articles 25 and 26 of the Indian Constitution." However, new disputes regarding the government's participation in the management of Hindu temples have emerged, giving rise to claims of discrimination. Studying the subtleties of this matter and the reasons the government's actions have sparked doubts about the genuine application of secularism in India, is required to do this. In modern-day India, the government has been involving itself in the operational matters of religious establishments, infringing upon their self-governance rights that are safeguarded by the provisions in Part III of

[6] S. Parthasarathy, "How Hinduism was nationalized" Live Mint, April 3, 2016.
[7] G. Ramesh, Governance and Administration of Temples: A Framework (2020). (Research Paper No. 621, IIM Bangalore).

the Constitution. This interference occurs under the pretext of a 'secular' framework, officially positioning religion in the public sphere instead of the private one.[8] As religion falls within the realm of the public sphere, it is unavoidably impacted by the state's authority and regulation over its administrative matters.[9]

Detractors frequently raise concerns about the state's involvement in the management of Hindu religious places. India's state governments have assumed control of the management of some well-known temples, claiming the existence of misconduct and need for "better governance and regulation." However, these measures have raised questions about whether they had good intentions. The participation of the government, according to critics, frequently results in poor management, the misuse of temple finances, and interference with religious rites. Furthermore, the government's oversight of temples raises concerns about how temple funds are used. Detractors assert that the government is misusing temple revenues by not reinvesting them in the welfare of the Hindu population or the preservation of cultural heritage, as opposed to using them for religious purposes.[10]

Mosques and Churches Exemption

When we take into account the lack of comparable government oversight over mosques and churches, the stark discrepancy becomes apparent. This disparity makes it unclear how real Indian secularism is in practice. According to critics, if the government truly adheres to secular values, it ought to treat all religious institutions equally. It is frequently said that the government avoids interfering with religion by refusing to supervise mosques and churches. When we take into account the overt involvement in Hindu temples, this reasoning, however, appears to be incorrect. The government is criticized for engaging in a selective type of secularism that favors some religious communities while exerting restrictions on others. Approximately about 1840, the then-British government started ceding ownership of temples. Some of the most important temples and endowments were given up to several well-known mutts from Tamil Nadu.[11]

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[8] A. A. Choudhary, "Temples should be managed by devotees, not government: SC, The Times of India, April 8, 2019.
[9] JusCorpus, "Hindu Temples Under Government Control"(2022).
[10] P. Gupta and S. Kumar, "The growing business of religion in India", Live Mint. May 20, 2017.
[11] Available at: https://www.legalservicesindia.com/article/1687/Constitutional-Validity-of-the-Hindu-Religious-and-Charitable-Endowment-Act.html#google_vignette (Last visited on 18 July 2023)

The historical background of the implementation of the Hindu Religious and Charitable Endowment Act

Upon the British colonization of India, authority over Hindu temples was assumed by the British government. Over time, the management of Hindu religious establishments came under the oversight of the East India Company. In due course, the British authorities assumed command over temples and their financial assets, commencing with the Madras Presidency. Consequently, the British introduced the Madras Regulation VII of 1817, aiming to place temples under governmental jurisdiction, particularly in the southern regions of India. Even before the implementation of the Madras Regulation VII of 1817, a remarkably similar measure had been enacted in Bombay in 1827 and in Bengal, known as the Bengal Regulation XIX of 1810. This action on the part of Britishers came under heavy attack from the ruling establishment in England on the ground that such involvement contradicts the precepts and practices of Christianity.[12] Around 1833, the British authorities at the period started ceding the authority of temples. They entrusted the care of a few significant temples and endowments to some of Tamil Nadu's well-known mutts. The British Government provided the Heads of Mutts with legal agreements, recognized as "Muchalikas, which assured them that they would not take the temples away from the Mutts." The Mutts were happy to take over the management of these temples so that they are run as they should be.[13]

As a result, these Mutts acquired full ownership and authority of several extremely significant temples, which they managed skillfully and effectively. The leaders of religious institutions and officials consistently prioritized the primary objectives of worship and the appropriate utilization of funds designated for the maintenance, management, and ceremonial practices of temples. They remained steadfast in upholding the core essence of temple worship. Numerous additional temples within the former Madras Presidency were entrusted to independent trustees, while the British Government of that time scarcely involved itself in monitoring or interfering with their affairs. Subsequently, in 1863, the enactment of the Religious Endowments Act resulted in the full transfer of temple management from the British government to trustees. During this time, trustees managed the temples in accordance with the principles governing these institutions. However, this era came to an end in 1927 with the introduction of the "Madras Religious and Endowments Act

[12] Deborah Sutton, "Antiquity, and Colonial Custody of the Hindu Temple in British India" 47 Cambridge University Press, Modern Asian Studies, 135- 166, (2013).
[13] Hemmer Jr. and J. Jefferson, "Wall of Separation: How Jurisprudential Interpretation Shaped a Secular Polity" 44(1) Free Speech Yearbook, 27-39, (2009).

1927" by the British authorities. The rationale behind passing the Act of 1927 was provided by the department established in the 1920s. It was argued on behalf of the department that temples during 1920s were in desperate need of sovereign protection. In 1942, a non-official committee recommended that the board should come under government management. On January 26, 1950, India formally declared its independence from "British rule." Its Constitution guarantees that its citizens enjoy several fundamental rights. Particularly administrative and religious powers were granted to "religious denominations" or subgroups of them.

Paradoxically, even subsequent to gaining Independence, the government at that time persisted in assuming control over temples by enacting the "Hindu Religious and Charitable Endowments Act, 1951." The Act's legitimacy was contested right away because it hadn't been passed legally which is the new Hindu religious law." To date, a large bureaucracy manages temple management–which is the Hindu Religious and Charitable Endowments Department which is created under HR&CE Act.[14]

In order to enhance operational efficiency and facilitate the state's regulatory and reform-oriented goals concerning religion and the management of religious sites, the Indian judicial system assumes a crucial role. It serves as an intermediary between the secular dimension of the government and religious establishments. The judiciary acts as a bridge connecting the state with diverse places of worship.[15]

In numerous instances where the government has interfered with the principles governing temple management, the esteemed Supreme Court has taken on the role of safeguarding these religious traditions. It has assessed these practices within the temples using a judicially established examination known as the 'essential practices test,' commonly referred to as the ERP Test. This ERP test decides which part(s) can be considered to be an essential and integral part of the religion and which practices cannot be considered as integral part of the religion. The Jagannath Temple issue is a classic example of how the state has assumed the role of religious functionaries. The Jagannath Temple Act, 1954 entrusted the committee appointed by the state for the seva pooja of Lord Jagannath. It was held that the seva pooja has both religious and secular aspects. The Raja of Puri challenged the Jagannath Temple Act, 1954 before the Supreme Court in *Raja Birakishore*

[14] Franklin A. Presler, "The Structure and Consequences of Temple Policy in Tamil Nadu", 56 Pacific Affairs, 232-246, (1983).
[15] F.A. Presler, "Religion Under Bureaucracy: Policy and Administration for Hindu Temples in South India" Cambridge: Cambridge University Press (1987).

v. The State Of Orissa. The Court observed that the performance of puja is a secular act and, therefore, the state is justified in regulating the secular aspect. Even though the performance of pooja which are an intrinsic part of religious practice and is considered to be an essential religious practice, the Courts of this country have held the appointment of a priest to be a secular function.[16]The HR & CE Act of 1951 was contended to be unconstitutional and thus challenged in both the Madras High Court and the Supreme Court subsequently in landmark case titled "The Commr, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt."[17] The Act interfered with the management of the Math and its affairs. The Act conflicted with the fundamental rights guaranteed under the Constitution. As a result of which, various provisions of the Act of 1951 were struck down by the Hon'ble Apex Court. However, this freedom of managing religious affairs in temples of Tamil Nadu did not last long. Thereafter, with some changes here and there, the Tamil Nadu Hindu Religious and Charitable Endowments Act was again enacted in the year 1959. The irony of the newly enacted legislation was that it again reproduced many draconian provisions which were part of the Act of 1951. Subsequently, the amended Act of 1959 was struck down by the Madras High Court. Furthermore, it made it quite clear that, despite the government's best efforts to exert control over management; it must always leave the management in the hands of the respective religious denomination.

In the matter of K. Mukundaraya Shenoy v. The State of Mysore, the Supreme Court examined the issue of authority over the governance of a temple belonging to a specific religious group. In this case, the Court determined that whenever there is a complete transfer of administrative control of a religious denomination's affairs through legislation to another entity, it would amount to a clear infringement of the rights protected under Article 26 of the Indian Constitution. The phrase 'religious denomination' lacks a specific definition within the Constitution, thus the Supreme Court construed it according to their perceived necessity. The fact remains that the Court's interpretation has resulted in an unconventional legal outcome.

In "*Srirur Mutt Case*"[18]it was further ruled that "Article 26 (d) of the Constitution" protects religious freedom to the fullest extent possible and that any law that restricts this freedom by vesting any part of "the management of religious endowments" in a secular authority is therefore unconstitutional.

[16] 1964 AIR 1501
[17] AIR 1954 SC 282
[18]1954 SCR 1005

The newly enacted law eliminated the "Hindu Religious Endowments Board" and transferred its power to the "Hindu Religious and Charitable Endowments Department" of the government, overseen by a Commissioner. The Commissioner's responsibility was to investigate instances where the government suspected mismanagement of any "Hindu public charitable endowment." If such mismanagement was established, the Government could instruct the Commissioner, as appointed under the Act, to examine the matter and, if necessary, place the endowment under government control. The Act of 1959 served as a guiding light for other neighbouring states such as, Andhra Pradesh, Karnataka, Puducherry and Telangana. Thus, Tamil Nadu Government, be it, DMK or AIADMK, has pioneered the questionable practice of controlling 43,000 temples in the State. Over 19,000 important temples are directly "managed" by Government officials, in the absence of temple trustees.[19]

On many occasions the Supreme Court has gone to the extent of holding that the management and management of a temple is, in fact, a secular function. However, there has been multiple instances where state has taken over control of temples on the premise that the affairs were being mismanaged. Tough after taking over the control it is seen that in guise of rectifying the management efficiently the state officials have themselves indulged in malpractices.

Take for example in May 2020, in Kerala the Chief Minister's Covid-19 Relief Fund of Left Democratic Front (LDF) government received money from the Guruvayur Devaswom Board. Guruvayur Devaswom's chairman, KB Mohandas, transferred funds designated for Covid-19 relief to District Collector S Shanavas. This contribution was characterized as fulfilling the "Devaswom Board's" societal obligation. The board's chairman, a government representative, distributed funds in a discretionary manner. Conversely, other religious institutions did not make any analogous contributions toward fulfilling their social responsibilities.

This case where money was transferred from temple reserves to the chief minister's Covid-19 relief funds in Tamil Nadu had sparked enormous controversy. Primarily the allegations against the Dewaswom board which comprised of government officials was that they misappropriated temple reserves with malafide intent.[20]

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[19] Amit Anand Choudhary, "Temples should be managed by devotees, not government" Times of India, Aug.08, 2022.

[20] I. Roy, "Disjunctions of Democracy and Liberalism: Agonistic Imaginations of Dignity in Bihar" 42 *Journal of South Asian Studies* 344-358 (2019).

There are currently more 10,000 temples in the state of Kerala alone.[21] The experts suggest that the money received by big temples in form of offerings must be distributed amongst temples of the state that have been struggling to light the daily lamps and give basic remuneration to its Pandits.[22] The controversy does not end here the main allegation against the Kerala government in this case was that why Chief Minister's Fund was accepting money from Hindu religious institutions only? Why other religious institutions were not contributing to it. There can be seen a clear case of biasness on part of the state.[23]

A strikingly similar situation occurred when the government of the "Hindu Religious & Charitable Endowments (HR&CE) Department of Tamil Nadu" misused temple funds for its own purposes. On April 22, the government issued a notification specifically requesting Hindu temples, excluding other religious sites in the state, to transfer Rs.10 crores to the "Chief Minister's Coronavirus Relief Fund." Because other religious places such as mosques or churches were not ordered to contribute any amount in Chief Minister's Coronavirus Relief Fund. Once again, the Tamil Nadu state government's actions were perceived as displaying favouritism. In a similar vein, the directive from the Tamil Nadu government elicited strong public condemnation and opposition leaders vehemently criticized the decision. Eventually, the government rescinded its directive following a ruling from the Madras High Court that declared it as 'legally unsustainable.'[24]

Conclusion:

Since independence, the temple management has been entrusted to monarchs who have had deep ties to the rites and rituals performed in the temples. Whenever the state has sought to establish authority over any religious group, there have been expressions of concern.[25] After Tamil Nadu gained independence, the government seized control of the temples and their funds. Notwithstanding the "Hindu Religious and Charitable Endowments Act of 1951." The provisions of the Act were confronted in court, beginning with the "Shirur Math case before the Madras High Court and ending with the Supreme Court." Both courts have invalidated various parts of the 1951 statute. A few changes have been made to the "Tamil Nadu Hindu Religious and Charitable

[21] Statistics are taken from an expert committee report which was set up in taking repair work at about 43,000 temples which are under HR&CE department.
[22] Sanjeev Nayyar, "Indian govt won't be any different from British if Hindus can't manage their own temples?" The Print, June 25,2021.
[23] Suhirth Parthasarthy , "How Hinduism was Nationalised?" Live Mint, May 05,2023
[24] Hindu Religious Endowments Commission, "Report of the Hindu Religious Endowments Commission" New Delhi (1962).
[25] Sandeep Vellaram, "A draft bill to regulate churches and the controversies around it" The News Minute, July 30, 2022 .

Endowments Act 1959." There was a period when Congress ran the U.S. government. According to the act's preamble, its purpose was to prevent the misuse of funds by religious trusts and organizations. Governmental departments now oversee "Hindu religious and charitable endowments; the former Hindu Religious Endowments Board" has been disbanded, and its duties transferred to the commissioner-led "Department of Hindu Religious and Charitable Endowments."

If there are concerns that a "Hindu public charity endowment" is being mishandled by the government, the commissioner may be given the authority to investigate and take over the management of the endowment. The prohibition against poor management does not apply to Muslims or Christians. When the Indian Constitution was initially put into operation in 1950, the preamble referred to India as a "sovereign democratic republic." Now, the Indian government is violating constitutional rules and treating Hindus unfairly. Later, while the country was in a state of emergency, the ruling party changed the prologue by inserting the words "socialist and secular." The preamble of the constitution is not the only one to support the secular ideal; the other sections of the constitution, especially "articles 25 and 26," do as well.

To maintain the secular fabric of the country, the government must treat all religious institutions equally. The role of the state should be to facilitate and protect "everyone's right to practice their religion freely," not to subjugate any specific organization. The secularism ideal shall be strengthened and promoted through respecting and developing religious autonomy.

To ensure that money is used for the welfare of individual communities, the government must provide an open framework for religious institutions. The management of religious institutions may be supervised by independent committees made up of delegates from diverse faith denominations. Greater responsibility will be ensured and unwarranted intervention will be avoided with this strategy.

The government must stop its selective control of Hindu temples only and eliminate its current discriminatory policies. All religious groups should have the autonomy to do their business without interference from or bias from the government. It will represent India's actual secular identity to emphasize consistency in treatment, which will also help its varied population to come together.

In many cases, Government representatives and nominees sit on the controlling bodies of these shrines and religious places of worship. In the absence of any norm or law in this regard, the principles of secularism are often violated. The Supreme Court has set the Constitutional parameters on the scope of the Government intervention in the day to day management of Hindu religious places of worship and opined that takeover of a Hindu shrines and religious places must be for a fixed period as it allows misappropriation of temple wealth, lands, and diversion for funds for non-religious purposes. Therefore, the management of the temple must be handed back after the evil has been remedied. It is, therefore, felt that a Central law is needed to make sure that the Hindu shrines and religious places of worship are independent and the funds collected by any Hindu shrines and religious places of worship are used in line with the tenets of Hindu religion or sect or community. Prominent persons and religious persons of a religion or sect or community have a say in managing affairs of their religious institutions and places of worship, and persons misusing religious institutions and places of worship for their personal ends should be punished.
The above discussed overview of religious freedom in India portrays India's secularism policy clearly does not maintain any distance between the government and fundamental right to religion of the religious institutions, in our case temples.

It is therefore; felt that a uniform central law is needed to make sure that

(a) Religious institutions are independent,

(b) The funds collected by any Temple or place of worship are used in line with the tenets of the Hindu religion or community or deity,

(c) There is transparency in use of funds,

(d) Prominent persons and religious persons of a religion or sect or community have a say in managing affairs of their religious institutions and places of worship, and

(e) Persons misusing religious institutions and places of worship for their personal ends are duly punished.

At a time when the country is making the right move with its mega privatisation in coming years, it is imperative to state that the State Governments and Courts should not act as spokespersons of Dharmic practices.