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## *ABOUT US*

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

# EXAMINING THE COMPLEX RELATIONSHIP BETWEEN STATE GOVERNANCE AND HINDU TEMPLES IN INDIA: A CALL FOR CONSTITUTIONAL CLARITY

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## ABSTRACT

This Article delves into the intricate relationship between state governance and Hindu temples in India, shedding light on the complex landscape of temple administration. It explores how various state laws have led to the creation of bureaucratic departments responsible for managing these sacred institutions, resulting in a significant variation in their composition and administrative scope across different states. Taking Tamil Nadu as a prominent example, where the Hindu Religious and Charitable Endowments Department oversees thousands of temples, this article unveils the pervasive influence of the state in temple affairs. The government's involvement extends from approving temple finances to regulating daily worship practices, raising questions about the boundaries of secularism in a country that upholds the principle of non-interference in religious matters. It further examines the constitutional foundations of this state control, focusing on Article 25(2)(a) of the Indian Constitution, which empowers the state to regulate secular activities connected to religious practices. It traces the evolution of the "fundamental religious practices" doctrine in Indian jurisprudence, which has been both a tool for interpretation and a source of controversy, as the judiciary has sought to define what constitutes a fundamental religious practice. Considering recent conflicts and judicial overreach, the article argues for a constitutional amendment to clarify Article 25(2)(a) and define its scope of protection. It calls upon India's parliamentarians to engage in a thoughtful discussion on the role of the state in managing Hindu Religious Endowments, particularly in an era of privatization, and reevaluate the principles of secularism and religious autonomy. This article serves as a comprehensive exploration of a critical issue at the intersection of governance and religion in India, advocating for constitutional clarity and a more balanced approach to temple administration.

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.[1] Administered by a Government department called the Hindu Religious and Charitable Endowments[2] Department[3] 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 himself the ex-officio Chairman[4]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.[5]. 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.[6] Temple, which earns an annual income of 5 lakhs, must pay up to 16% of its yearly revenue.

Similarly, the southern States of Karnataka[7] and Andhra Pradesh[8] have Ministers for Hindu Religious Endowments, In Kerala[9] such Minister is called the Devaswom Minister. Proceeding northwards, Maharashtra has a Charity Commissioner[10] Madhya Pradesh has the[11] District Collectors acting as the Registrars of public trust, Odisha has the Orissa Hindu Religious Endowments Board[12], Rajasthan has a Devasthan Commissioner[13] and Bihar Government has constituted the Bihar State Board of Religious Trusts[14]. These individuals oversee maintaining the temples; only a handful of States have hiring committees for employees of the temple, such as the

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[1] Hindu Religious and Charitable Endowments Department, Policy Note 2022-23, www.tn.gov.in, 2022, https://www.tn.gov.in/documents/dept/32.

[2] Hindu Temples and Mutts form part of Hindu Religious Endowments.

[3] 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)

[4] Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, § 7(1)(a), No.22 Act of Tamil Nadu, 1959 (India).

[5] Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, § 92 (1), No.22 Act of Tamil Nadu, 1959 (India).

[6] Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, § 92 (2), No.22 Act of Tamil Nadu, 1959 (India).

[7] The Karnataka Hindu Religious Institution and Charitable Endowments Act, 1997

[8] Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987

[9] 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

[10] Appointed under the Maharashtra Public Trusts Act, 1950

[11] The Madhya Pradesh Public Trusts Act, 1951

[12] The Orissa Hindu Religious Endowments Act, 1969

[13] Constituted under the Rajasthan Public Trust Act, 1959

[14] Under the Bihar Hindu Religious Trusts Act of 1950

Pujari, Archaka, or Temple Priest; all of these individuals are servants of the government. So, from approving Temple finances to the daily puja (worship of the god), the government is involved in everything.

According to Section 116 of the Andhra Pradesh Act, the Temples in India may contribute up to 5% of the annual income (or Rs. 1,25,00,000, whichever is higher) for the services provided by their respective State Governments; Section 65(2) of the Andhra Pradesh Act establishes that the Temple of Tirupathi may contribute 7% of its annual income (or Rs. 50 Lakhs, whichever is higher); and Section 116 of the Andhra Pradesh Act. According to Section 17 of the Karnataka Act, temples in that state must pay 5% of their annual income; in Bihar, they must pay 5% of their net income from the previous fiscal year; and in Maharashtra, they must pay 10% of their annual gross income in accordance with Section 56 QQ (2) (b) of the Maharashtra Act.

These facts can at first seem to be in complete contradiction to the idea of secularism that the Indian Constitution's forefathers implicitly incorporated. The 42nd Constitutional Amendment of 1976, which included the word "secularism" to the Constitution's Preamble, made this principle explicitly clear. The idea of secularism refers to the State's non-interference in matters of religion. India, however, accepted the idea of secularism without importing the original meaning that the phrase was meant to express. The Indian Constituent Assembly did not envision a line dividing the State's jurisdiction over religion from other concerns. Instead, the State was given duties including making Hindu Temples accessible to all classes of Hindus, ensuring social welfare, and reforming Hindu religious practices [Article 25 (2)(b)] and the limitation or control of any secular economic, financial, political religious practices-related activities [Article 25 (2)(a)].

Article 25 (2) (a) of the Indian Constitution is frequently invoked to support the administration of Hindu Religious Endowments by State Governments. In The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954[15] (the Shirur Mutt case), the Hon'ble Supreme Court of India reviewed the problem of State administration of Hindu Religious Endowments for the very first time. In this lawsuit, it was argued that the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, which replaced the Madras Hindu Religious and Charitable Endowments Act, 1951, was unconstitutional. Although the Hon. Supreme Court maintained the legality of the challenged legislation, it ruled that certain Act

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

provisions were *ultraviruses.* This established the legal standard for enforcing comparable laws governing the management of Hindu religious endowments.

As the subject "charities and charitable institutions, charitable and religious endowments and religious institutions" comes in the concurrent list, India has both Central and State enactments on Hindu Religious Endowments. The State laws governing Hindu religious endowments include both laws that apply to the entire state and laws created specifically to oversee a single temple. A single statute for each Temple is the Shree Karveer Niwasini Mahalaxmi (Ambabai) Mandir (Kolhapur) Act, which was passed in 2018.

As mentioned above, even if a secular activity is connected to a religious practice, the state may regulate it under Article 25 (2) (a) of the Constitution. The interpretation of this clause has sparked a wave of strongly argued legal disputes in the Indian judicial system. The Court developed a concept to distinguish religious aspects from secular aspects connected to religious practices in order to settle these conflicts. This was the fundamental religious practices doctrine.

One of the legal standards that receives the most criticism is the idea of basic religious practises. It was developed at Shirur Mutt as an interpretive method to pinpoint religious practises. The Ratilal Panachand Gandhi v. The State of Bombay and Others, 1954[16] case approved this method with the same meaning. Therefore, under Article 25 (2) (a), practises that were deemed to be religious were shielded from State interference and limitations.

The idea of fundamental religious practises started to evolve through time as the judiciary gained more interpretive authority. When Sri Venkataramana Devaru and Others v. The State of Mysore and Others was decided in 1957[17], the Court started to grant regulatory authority to practises that had been determined to be fundamental to a religious character. The Court accorded Article 25 (2) (b) preference over Article 25 (2) (a) in the Devaru case. The protection provided by Article 25 (2) (a) was significantly curtailed by the Court in the case of the Dargah Committee, Ajmer and Others v. Syed Hussain Ali and Others, 1961, which excluded from its protection practises that originated from merely superstitious beliefs, referring to them *as "extraneous and unessential accretions to religion."*

[16] Ratilal Panachand Gandhi v. The State of Bombay and Others, 1954 SCR 1035.
[17] A.I.R. 1958 SC 255

In Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan and Others, 1963[18], the judiciary went a step further to warn that religious communities' statements should not be taken at face value and asserted its own right to decide whether rituals were fundamental to religion. Additionally, the courts rejected the necessity of religious practise in Sastri Yagnapurushadji and Others v. Muldas Brudardas Vaishya and Others, 1966[19] on the grounds 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." The essentiality of the practise was rejected in Acharya Jagdishwaranand Avadhuta, Etc. v. Commissioner of Police, Calcutta & Anr., 1983[20] because it was relatively recent.

The Judiciary continued to use the idea of fundamental religious practises not just as a tool for interpretation but also as a means of transforming religion into what the Courts desired. The Supreme Court applied this standard in the case of Indian Young Lawyers Association v. The State of Kerala, 2018[21] (Shabarimala Case), despite Justice Chandrachud's admission in the same case that the judges are "now assuming a theological mantle which we are not expected to do." Thus, Article 25 (2) (a) has unfortunately led to many confrontations between the State and religion in a country that deems itself "secular." The Judicial overreach in attempting to interpret this Article has been acknowledged by the present Chief Justice of India himself[22]. In October 2022, the Supreme Court issued a divided decision in the Karnataka hijab case due to its inability to distinguish between religious practices and secular practices.

With a Constitutional Amendment to clarify Article 25 (2) (a), explicitly defining its scope of protection, this issue of all three branches of government—the legislative, executive branch, and judiciary—interfering in religious matters can be rectified. The Indian Parliamentarians ought to get together and discuss this important matter of religion after 76 years of independence and countless precedents of judicial interpretation of Article 25 (2) (a) using the essentiality test. This is because it was Parliament that decided to expressly identify itself as "Secular" in the 42nd Constitutional Amendment of 1976. In addition, the Parliament must evaluate whether it is the role of a Secular State to manage Hindu Religious Endowments in the age of privatization.

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[18] A.I.R. 1963 SC 1638
[19] A.I.R. 1966 SC 1119
[20] A.I.R. 1984 SC 51
[21] 2018 (8) SCJ 609
[22] During the 2018 Shabarimala Case, Justice Chandrachud was not the Chief Justice of India