



FREEDOM OF RELIGION: A MYTH OR REALITY FOR THE TEMPLES?

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ABSTRACT

Under Mughal and subsequently former British control, Hindu temples bore the burden of oppressive regulations for a variety of reasons, including the creation of income and entrenched colonial interests. These causes varied from generation to generation. Unfortunately, this persisted even after India won its independence from British rule in 1947. People of all faiths are given the opportunity to oversee the operations of religious organisations that are important to them because of Article 26 of the Indian Constitution. However, although being protected by this right in the country's founding constitution, Hindus are not allowed to practice their religion freely. Acts and legislation have been enacted by the governments of the majority of the states in order to assume control of Hindu institutions such as temples, mutts, and endowments. This has provided the government with the opportunity to meddle in the administration, practices, and ceremonies of the temples. In addition to this, the Temples' possessions as well as their revenue have been appropriated by the government. Through the Hindu Religious and Charitable Endowments (HR & CE) Acts that they have passed in their different states, the state governments have seized the financial and managerial responsibility of more than one hundred thousand Hindu temples. This article explains the historical importance of temples in Indian society, what they have contributed, and the current situation with regard to freedom of religion and various acts and laws passed by the different Indian states and whether or not they are constitutionally valid.

Key words: Freedom of Religion, Temples, Constitution, Liberty.

1.Introduction

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India is an ancient cultural civilization that witnessed the rules of various kingdoms and dynasties. The temples in Indian culture have always been the centre of everything and were interconnected with many aspects, viz., spirituality, education, social activities, trade and commerce, health, stores and warehousing, etc. Ever since the invasions were first witnessed, the primary target had been temples, as they formed the epicentre of society and it was the point where liberty was first attacked. It can be argued that the temples were primarily targeted because of the wealth they received as donations and grants. However, it cannot be denied that it impacted the whole society because when temples were plundered, it was not only wealth that was looted but people were deprived of every other aspect that was associated directly or indirectly with the temples. The British, who were recent in the history of this nation that plundered its resources also understood the importance of temples, and that is why they also started taking control over the temples, but this time it was backed by sanctions, i.e., by laws. The colonial masters in their rule of 200 years had not only looted India of its economic wealth but had also left scars on its memory which are carried by generation to this day, although we achieved our independence in the monsoons of 1947. The path to achieve independence was never easy and had gone through various struggles, movements and one such movement was *purna swaraj* which was ardently followed by Mohandas Karamchand Gandhi.² By this, he meant freedom and self-rule which should be practiced at three levels, first, the case of individual *swaraj*, i.e., self-control. Second, the case of the country, i.e., freedom from Britishers. Third, a case at community level, i.e., *Gram Swaraj* or freedom of the village.³

The *swaraj* movement was the first step, the purpose of which was attained by our founding fathers through the Constituent Assembly, which, after the due consideration of 2 years, 11 months and 18 days,⁴ gave to our nation the most sacred document that would determine the faith of our beautiful country, i.e., The Constitution of India. The Indian Constitution is a unique document in itself for various reasons, one being that the framers of our Constitution were blessed with a time period where many countries in the world had already witnessed constitutional developments. That is why the Indian Constitution reflects the features that have been part of the constitutional history of other nations. The Preamble contains the fundamentals of the Constitution,⁵ lays down the grand objective and goals that have to be achieved by

² B.L. Grover, Alka Mehta, *A New Look at Modern Indian History* (S. Chand, New Delhi, 2015) pp-334-335.

³ *Ibid.*

⁴ M Laxmikanth, *Indian Polity* (6th ed., McGraw Hill, Chennai, 2020).

⁵ M.P. Jain, *Indian Constitutional Law* (7th ed., LexisNexis, Gurugram, 2014) p. 12.



the Indian Polity. One such goal or objective is LIBERTY (of thought, expression, belief, faith, and worship). In order to achieve the aforementioned objective, various constitutional provisions were placed in Part III of our Constitution.

Though religious liberty has been promised to every citizen of our country but can we assume the same for each and everyone in the Indian society, does the interference by the state in religious affairs of the one particular community primarily majority community of the country and controlling them on pretext of better management amounts to violation of the freedoms guaranteed by the sacred text that governs this nation.

2. Religious Liberty

Religious liberty is the freedom to profess or not profess any religion; freedom of belief, faith and worship; and more importantly, it demands no interference from the government/state in religious affairs of the people. It is extended to equality of status and treatment of various beliefs of a person.⁶ Ruggiero points out three aspects to religious liberty: (1) individual autonomy to choose; (2) autonomy in collective religious activities; (3) legal equality.⁷

2.1 Liberty

The word ‘Liberty’ has its roots in the Latin word ‘liber’ which means ‘free’. As per the definition given by the Merriam Webster Dictionary, the term ‘Liberty’ connotes “the quality or state of being free; the power to do as one pleases; freedom from physical restraint; freedom from arbitrary or despotic control; the positive enjoyment of various social, political, or economic rights and privileges; the power of choice”.⁸ In common parlance, liberty can be understood as freedom to do whatever one likes and freedom from any restraint whatsoever (absence of restraint).

Nonetheless, can we really say so? Can absolute liberty be part of any civic society? The answer to this question is NO, because there are some restraints on an individual in a civic society. Absolute liberty can only be provided by the jungle, in other words, in anarchy.

⁶ Bates, M. Searle, *Religious Liberty: An Inquiry*, New York, Harper & Bros, <https://heinonline.org.nluudelhi.remotexs.in/HOL/P?h=hein.beal/relib0001&i=314>. Accessed on 24 Nov. 2020.

⁷ *Ibid.*

⁸ “Liberty.” *Merriam-Webster.com Legal Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/liberty>. Accessed 24 Nov. 2020.



To understand liberty, we have to touch upon the ‘Two Concept of Liberty’⁹ by Sir Isaiah Berlin where he talks about the two opposite concepts of liberty i.e., “Positive Liberty and Negative Liberty”, here positive liberty is associated with an enquiry, ‘who governs me?’ and generally discussed as “freedom to”, whereas negative liberty is associated with ‘how far does the state can interfere with me?’ and generally discussed as “freedom from”.

According to Berlin, “negative liberty is all about freedom from interference or intervention from others, while positive liberty is the matter of being free to be in control of one’s own life by being free from irrational desires and internal shackles.”¹⁰ However, at the same time Berlin contends that just for the reason that no one is preventing you from undertaking a certain work, it doesn’t mean you are at liberty.

2.2 Religion

Religion is a word centre to mankind and always been a matter of debate and discussion, the term is derived from the Latin word “re-ligare” where “ligare” means “to connect” or “to bind”, meaning thereby “Reconnect” or “Re-bind”. As per the definition given by the Merriam Webster Dictionary, the term ‘Religion’ connotes “a personal set or institutionalised system of religious attitudes, beliefs, and practices.”¹¹ In simple terms, religion can be understood as a system of beliefs and principles which connects men to spirituality.

Nonetheless, the term is not defined in the Constitution of India as it lacks the capability to be defined precisely. However, one can rely on the Supreme Court's judgement in *P.M.A. Metropolitan v. Moran Mar Marthoma*¹², for reference, where it was observed:

“Religion is the belief which binds the spiritual nature of man to supernatural beings. It includes worship, belief, faith, devotion, etc. and extends to the rituals. Religious right is the right of a person believing in a particular faith to practice it, preach it and profess it.”

3. Freedom of Religion: Constitutional Provisions

In order to cater to the requirements of a pluralistic society like ours, the framers of the Constitution thus desired a plural constitution by conferring upon us the religious freedoms that are mentioned in Articles

⁹ Isaiah Berlin, “Two Concept of Liberty,” *Four Essays on Liberty*, (Oxford University Press, England, 1969) p. 118-172.

¹⁰ *Ibid.*, *supra* note 6

¹¹ “Religion.” *Merriam-Webster.com Legal Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/religion>. Accessed 24 Nov. 2020

¹² AIR 1995 SC 2001.



25 to 28 of the Constitution of India. These articles not only confer these rights on the citizens but also on all persons in India.

Article 25 of the Constitution guarantees every person “freedom of conscience” and “the right freely to profess, practice, and propagate religion”. However, this right is subject to certain conditions, which are “public order, morality, health and other provisions regarding fundamental rights”. Furthermore, the state is not prevented from making any law relating to regulation of the economic, financial, political, and other secular activities associated with religious practice [art. 25(2)(a)]; or providing for social welfare and reform of Hindu religious institutions [art. 25(2)(b)].¹³

Apart from this, “every religious denomination or section has the right to establish and maintain institutions for religious and charitable purposes; manage their own affairs; own or acquire property; and administer such property”, is another right guaranteed by our constitution. However, this is also “subject to public order, health and morality” [art. 26].¹⁴

Article 27 of the constitution provides that “no person shall be compelled to pay taxes, proceeds specifically appropriated in payment for the promotion or maintenance of religion or religious denomination.” While Article 28 provides for restrictions on religious instructions in state funded educational institutions.¹⁵

4. Temples: Nuclei of Indian Society

Hindu temples served as the hearts of important social, economic, artistic, and intellectual functions in ancient and medieval India. Burton Stein, a prominent historian, states that South Indian temples managed regional development functions, such as irrigation projects, property retrieval, post-disaster assistance, and rescue.¹⁶ These deeds were funded by the aid collected from followers, which came from a wide spectrum of the Indian society, ranging from rajas, sovereigns, officials in the kingdom to traders, clerics and shepherds. Temples also manage lands endowed to them by their devotees upon their death. They would provide employment to the poorest. Some temples had a large treasury with gold and silver coins,

¹³ D.D. Basu, *Constitutional Law of India*, (8th ed, LexisNexis Butterworths Wadhwa, Nagpur, 2008) pp.156-166.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Stein, Burton. “The Economic Function of a Medieval South Indian Temple.” *The Journal of Asian Studies*, vol. 19, no. 2, 1960, pp. 163–176. JSTOR, <https://www.jstor.org/stable/2943547>. Accessed 25 Nov. 2020.



and these temples functioned as banks. Hindu temples over time became flush from gifts and aids from royal patrons as well as individuals.¹⁷ Key temples became employers and patrons of economic activity. They sponsored land retrieval and infrastructure developments, including building facilities such as water tanks, irrigation canals, and new roads. A very exhaustive primary record from 1101 A.D. lists over 600 employees (excluding the priests) of the Brihadisvara Temple, Thanjavur, still one of the major temples in Tamil Nadu.¹⁸ Temples also acted as a refuge during times of political turmoil and menace. In existing times, the practice of constructing Hindu temples by settlers and diasporas from South Asia has also helped as a development of building a community, a social venue to link, lessen prejudice and pursue civil rights together.

Hindu temples also functioned as hubs where ancient texts and scripts were usually utilised for education and when texts get old or ages they were restored by copying them. In South India, manuscripts in large numbers were written, proliferated, and conserved inside the temples, as they served as custodians of these sources. Archaeological and epigraphical data point out the presence of libraries called *Sarasvati-Bhandara*, dated possibly too early to 12th-century and engaging librarians, attached to Hindu temples.¹⁹

The Vedas were studied in schools associated with Hindu temples, which were known as *Ghatikas* or *Mathas*, as evident from the 4th century AD inscriptions. *Calai* or *Salai* were Vedic schools attached to Hindu temples in the 9th century AD in South India, where they were known for providing free accommodation to pupils and scholars. Non-Brahmins led the temples related to the Bhakti movement in the early second millennium, where various scholastic roles were allotted. These included the recitation, exposition, and open discussions of Vedic and Sanskrit texts. A number of choices were provided like Buddhist texts, Hindu Scriptures, martial arts, philosophy, painting, music and grammar in some of the temple schools.²⁰

¹⁷ Heitzman, James. "Temple Urbanism in Medieval South India." *The Journal of Asian Studies*, vol. 46, no. 4, 1987, pp. 791–826. JSTOR, <https://www.jstor.org/stable/2057102>. Accessed 26 Nov. 2020.

¹⁸ G. Michell, *The Hindu Temples: An Introduction to Its Meaning and Forms* (University of Chicago Press, Chicago, 1988) p. 59

¹⁹ *Ibid.*

²⁰ Champakalakshmi, R. "GENERAL PRESIDENT'S ADDRESS: THE MAKING OF A RELIGIOUS TRADITION: PERSPECTIVES FROM PRE-COLONIAL SOUTH INDIA." *Proceedings of the Indian History Congress*, vol. 70, 2009, pp. 1–24. JSTOR, <https://www.jstor.org/stable/44147652>. Accessed 25 Nov. 2020.



5. Legislations and their Constitutional Validity

In 1925, the Madras Hindu Religious Endowments Act, 1923 (Act I of 1925) was passed by the local Legislature with the object of providing for better administration and management of certain religious endowments. It divided temples into two categories, i.e., excepted and non-excepted temples. Immediately after the Act came into force, its validity was challenged on the ground that it was not validly passed. For this reason, the legislature enacted the Madras Hindu Religious Endowments Act, 1926, Act II of 1927, repealing Act I of 1925. This Act was amended from time to time by the government to take more and more control. Of the many amendments, a major change was introduced by Act XII of 1935. This amendment introduced a new chapter, Ch. VI-A, by which jurisdiction was given to the Board to notify a temple for reasons to be given by it.²¹

Despite the Madras government's direction to not undertake notification proceedings and the Hon'ble Madras High Court's directives that the Board was not allowed to go through notification proceedings on baseless/malafide grounds, the board took over some major and famous temples under its control. Our country was blessed by the Constitution of India on January 26, 1950, which guaranteed certain fundamental rights to the citizens and some to even every person. In this case, special religious and administrative rights were guaranteed to religious denominations and sections.

In the meantime, the Madras Government passed the Hindu Religious and Charitable Endowment Act, 1951. The object of the act, as mentioned in its preamble, is "to amend and consolidate the law relating to the administration and governance of the Hindu Religious & Charitable Endowment".²² Going by the language stated in the preamble of the act, it has the purpose of better administration and the management of the temple, its funds and properties endowed thereto. Various states in our country have passed similar legislation with the same purpose.²³ But is this really the case? Recently, two Public Interest Litigations have been filed in the Madras High Court alleging the misuse of temple funds, which are heard by the

²¹ Kruthika Dhanapal, *Constitutional Validity of the Hindu Religious and Charitable Endowment Act*, LegalServiceIndia.com, <https://www.legalservicesindia.com/article/1687>. Accessed on 04 Dec. 2020.

²² Madras Hindu Religious & Charitable Endowment Act, 1951 (*Act No. 19 of 1951*), <https://www.bareactslive.com/TN/tn953.htm> Accessed on 13 Dec. 2020

²³ [The A.P. Charitable & Hindu Religious Institution & Endowment Act, 1987](#); [The J&K Shri Mata Vaishno Devi Shrine Act, 1988](#); [The Shri Jagannath Temple Act, 1955](#); [Travancore Cochin Hindu Religious Institutions Act, 1950](#); [The Madhya Pradesh Shri Mahakaleshwar Act, 1982](#); [The Nathdwara Temple Act, 1959](#)



division bench of J. M.M. SUDESH and J. R. HEMALATHA.²⁴ Similar instances of misuse and improper allocation of temple funds have been seen in various parts of the country.²⁵

The Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar*²⁶ has ruled that:

“the uniform law is necessary in the administration of the religious institution belonging to Hindus. It is seen that besides the right to manage its own affairs in matters of religion, which is given by Clause (b), the next two clauses of Article 26 promise the right to acquire and own property and to manage such property in accordance with law. The management of its property has been placed, on a different basis from the right to manage its own affairs. 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. It is clear, therefore, that questions merely relating to administrators or institutions are not matters of religion to which Clause (b) of the Article applies.”

In *Ratilal Panchand Gandhi v. State of Bombay*²⁷, the Supreme Court laid down:

“It may be said that both Articles 25 and 26 deal with religious freedom, but as I shall presently point out, religious freedom as contemplated by our Constitution is not an unrestricted freedom. The religious freedom which has been safeguarded by the Constitution is religious freedom which must be envisaged in the context of a secular State. It is not every aspect of religion that has been safeguarded, nor has the Constitution provided that every religious activity cannot be interfered with. "Religion" as used in Articles 25 and 26 must be construed in its strict and etymological sense. The power to take over the administration in the event of mal administration certainly cannot be termed as violation of Article 26(b) of the constitution of India. It has undoubtedly the right to administer such property but only in accordance with law. This means that the State can

²⁴ Meera Emmanuel, Bar and Bench <https://www.barandbench.com/news/litigation/pils-madras-hc-allege-misuse-of-temple-funds-malicious-move-to-transfer-surplus-funds> Accessed on 13 Dec. 2020

²⁵ Shantanu Bhagwat, Times of India <https://timesofindia.indiatimes.com/blogs/reclaiming-india/on-temple-some-little-known-facts-a-story-of-secular-loot/> Accessed on 13 Dec. 2020

²⁶ AIR1954 SC 282 ([MANU/SC/0136/1954](https://www.manuonline.com/SC/0136/1954)).

²⁷ AIR 1953 Bom 242 ([MANU/MH/0138/1954](https://www.manuonline.com/MH/0138/1954)).



regulate the administration of trust properties by means of laws validly enacted; but here again it should be remembered that under Article 26(d), it is the religious denomination itself which has been given the right to administer its property in accordance with any law which the state may validly impose.”

The Karnataka High Court has ruled *K. Mukundaraya Shenoy v. The State of Mysore*²⁸ that

“a law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under Article 26 of the Constitution of India.”

The Kerala High Court’s Full Bench in *Tharamel Krishnan v. Guruvayoor Devaswom Managing Committee*²⁹ has ruled as under:

“A religious sect or denomination has the undoubted right guaranteed by the Constitution to manage its own affairs in matters of religion and this Includes the right to spend the trust property or its income for the religious purposes and objects indicated by the founder of the trust or established by the usage obtained in a particular institution. To divert the trust properties or funds for purposes which a statutory authority or official or even a court considers expedient or proper, although the original objects of the founder can still be carried out, is an unwarrantable encroachment on the freedom of religious institutions with regard to the management of their religious affairs. A statute cannot therefore empower any secular authority to divert the trust money for purposes other than those for which the trust was created, as that would constitute a violation of the right which a religious denomination has under Articles 25 and 26 of the Constitution to practice its religion and to manage its own affairs in matters of religion.”

6.Recent Developments

²⁸ AIR 1959 Kant 18 ([MANU/KA/0087/1960](#)).

²⁹ AIR 1978 Ker 68 ([MANU/KE/0019/1978](#)).



In recent developments, the State of Uttarakhand passed a temple management legislation named ‘The Uttarakhand Char Dham Devasthanam Management Act, 2019’.³⁰ As stated by the government, the object behind bringing this legislation is to provide better administration and management of the temples, which will in turn provide a better experience to the devotees. The act has enabled the state government to take over 53 temple shrines in the state, including the *Char Dham – Gangotri, Yamunotri, Kedarnath, and Badrinath*, as the name of the act suggests. The act provides for dismantling the existing system regarding the management, i.e., the committee system, and establishes a new management board where an Indian Administrative Service (IAS) officer will hold the post of Chief Executive Officer (CEO), the Chief Minister of the state will be the President of the board, and it will also consist of other such Members of the Legislative Assembly (MLAs) and members of the Royal Family of Tehri. Soon after the act was notified by the government, 2 writ petitions were filed in the Hon’ble High Court of Uttarakhand challenging the constitutionality of the impugned act. The High Court, while upholding the validity of the impugned act, stated that “as long as the law does not totally divest the administration of a religious institution or endowment by a religious denomination, the State has the general right to regulate the right of administration of a religious or charitable institution or endowment; and such a law may choose to impose such restrictions the need for which is felt the most, and to provide a remedy therefor.”³¹ The above matter was appealed to the Hon’ble Supreme Court of India by the petitioner where the matter is sub judice.

7. Conclusion

As rightly put by Sadhguru Jaggi Vasudev “India is the land of Seekers”.³² India has been a land of multi culture, faith, beliefs and in the present sense ‘the religion’. India never had any religion per se and this land has accepted and nurtured any and every belief system that has found her, meaning thereby she never had been singular but plural in her core. Thus, our founding father laid a pluralistic constitution to further solidify the character of India that has always been there.

³⁰ The Uttarakhand Char Dham Devasthanam Management Act, 2019 https://uk.gov.in/files/Act_Devsthanm.PDF Accessed on 15 Dec. 2020

³¹ *Subramanian Swamy and Ors. vs. State of Uttarakhand and Ors.* (MANU/UC/0139/2020)

³² Sadhguru Jaggi Vasudev, *Indian Culture – A Magnet for Seekers*, <https://isha.sadhguru.org/in/en/wisdom/article/indian-culture-magnet-for-seekers> Accessed on 15 Dec. 2020



The Constitution of India provided every freedom that one could have thought of in a newly independent country after a 200-year long period of oppression and exploitation. The control over the temples through various boards started from the time of the British rule and various legislations were passed to control the temples. With the independence of the country, in order to cater to the needs of every section of society, PART III was incorporated into the constitution where one such right was freedom of religion, i.e., Articles 25-28.

The rights under these articles are not limited to citizens but extend to every person. The intention or real purpose behind insertion of Article 25 and 26 is to guarantee freedom to profess, practice and propagate religion (Art. 25), especially to the religious minorities in this country and; subject to the limitations and restrictions indicated in article (26) to establish and maintain institutions for religious and charitable purposes; to manage its own affairs in matters of religion; to own and acquire properties (movable or immovable); and to administer such properties in accordance with law (Art. 26). It may be noted that, freedom ensured under these two articles are not merely available to religious minorities in this country but every person and all religious sections or religious denominations thereof.

Article 25 has itself paved the way for government interference by allowing the state government to legislate in matters of regulating any economic, financial, political, and other secular activity associated with religious practice [art. 25(2)(a)]; or providing for social welfare and reform of Hindu religious institutions [art. 25(2)(b)].³³

Various judgments of the different High Courts have shown us there has been some or other form of interference in temple affairs, and at the same time, observations can also be seen where it is pointed out how far it is just for a secular state to meddle in religious affairs. Therefore, it can be said that a line has to be drawn either by the judiciary or it shall be understood by the state that discriminatory behaviour cannot be employed for one section of the society and religious affairs are not part of the state's domain or a balance needs to be drawn while administering the temples in consonance with the terms of the Constitution of India.

³³ D.D. Basu, *Constitutional Law of India*, (8th ed, LexisNexis Butterworths Wadhwa, Nagpur, 2008) pp.156-166.