

## The Act of Selective Distortion: Why Only the Hindu Temples?

It is Ironic to state that the Indian majority is discriminated against, in their own country through an enactment of the legislation called Hindu Religious and Charitable Endowment Act, 1959. Hindu temples have been expropriated by the very institution that is duty bound to protect freedom of religion, which is none other than the so-called Secular State. Government control of the Hindu Temple has caused multifaceted damages to India's ancient heritage. The only religion which embodies a concept of "*Sarva Dharma Sama Bhava*" meaning 'All Religions are same' is itself facing a sensation of discrimination. The magnitude of vandalization is in its supreme peak that there is an urgent need to free the temples from the clutches of the Secular State.

### **HISTORICAL PERSPECTIVE**

The cradle to this legislation started when the East India Company introduced the Madras Regulation of 1817 where the Temple were brought under their administration to successfully achieve the idea of Colonisation. In 1840, there was an order issued to East India Company to return the temples to their trustees. Everything was in place until British Government passed a legislation called Madras Religious and Charitable Endowment of 1925. As there was a revolt against this legislation by the Christians and Muslims, they were excluded from the purview of this Act thereby making the Hindus solely liable for Government control. An extreme change introduced by the way of Act of 1935, where the temples would be notified and taken over for administration.

Post-Independence, Tamil Nadu Government enacted Hindu Religious and Charitable Endowment Act, 1951 which was subsequently challenged in the Shirur Mutt case. With some changes to the previous legislation, Tamil Nadu Government enacted another legislation in the year of 1959 which unfortunately subsists even now.

### **AN ACT CONFLICTING WITH THE PRINCIPLE OF SECULARISM**

To understand the nexus between Secularism and Hindu Religious and Charitable Endowment Act, one has to know what Secularism really is. The word 'Secularism' was added into the

Preamble of the Indian Constitution by the Forty-second amendment in 1976. Secularism explains that the State doesn't declare any religion as the State religion and doesn't promote nor practice any religion. There are two perspectives of looking into the concept of Secularism. In the First one, there is absolute separation between the State and religion, where the State doesn't interfere with its practice. On the other side, there can be a State which treats all the religion equally without any discrimination.

The said Act permits the State to utilize Temple donations for various government programs even if it is not related with the affairs of the temple. State has contended that its interference is very much necessary to curb the mismanagement in Hindu religious institutions. However, this concept of Selective inference decimated the Secular spirit of our constitution.

In the case of *M.P Gopalakrishnan Nair and Anr. V State of Kerala*, Supreme court held that the Constitution clearly prohibits the State to be a Theocratic one. Secularism does not mean the constitution of Atheist society but means equal status of all religions without any favouritism.

In the case of *St. Xavier's College v. State of Gujarat*, it was held that "*Secularism eliminates God from the matters of the state and ensures that no one shall be discriminated against on the grounds of religion. That, every person is free to mold or regulate his relations with his God in any manner.*" It can be inferred from above judgment that the Judicial System is of opinion that the State shall not discriminate against any person on basis of religion and individuals are free to regulate its religion in their own way. If the State interferes with the administration of Temples, there can never be a freedom to build a relationship with the god in manner which one fore chooses.

### **Uniform Civil Code**

Article 44 of the Constitution promotes the concept of Uniform Civil Code. The State shall try hard to achieve Uniform Civil Code for its citizens of India. The word Secularism will actually standby its name only when Uniform Civil Code is adopted in India. The Pseudo-Secularism concept has already divided the nation into Majority and Minority thereby responsible for implementation of discriminatory legislations. The Hindu Religious and Charitable Endowment Act is a clear-cut example of the dire consequence of the Pseudo-secularism.

In the case of *John Vallamattan V Union of India*, the Supreme Court is of opinion that “Parliament is still to step in and frame Common Civil Code in the country. Common Civil Code will help the cause of national integration by removing contradictions based on ideologies”

### **CONSTITUTIONAL TAKE ON– STRANGLEHOLD OF THE GOVERNMENT OF HINDU TEMPLES**

The Constitution of India being the Supreme Law of the Land, sets out certain laws protecting the citizen from unlawful interference of government and other individuals in the private issues of one’s contention [Article 19, 21, 25 – 28,]. The Constitution also promises equality [Article 14]; safeguarding the citizens from discrimination on the basis of religion [Article 15]. The Part III of the Constitution [Article 12-35] which safeguards the Fundamental Rights of citizens and strikes down any law made violating any such Rights of the Citizens [Article 13].

The Hindu Religious and Charitable Endowment Act by its functioning, violates the Articles 14, 15, 25, 26 of the Constitution as its biased interference in the governance of the Hindu Temples.

During the **Constitution Assembly Debates**, the Chairman of the Drafting Committee proposed to make the right subject to ‘public order, morality and health’; The power must vest with the state, if the situation deems it necessary, to administer all religious institution;

#### **Article 14**

Article 14 of the Indian constitution promises equality in two folds;

1. equality before law (adopted from British Constitution), considered as the positive interpretation of this Article and
2. equal protection of law (adopted from American Constitution) considered as the negative interpretation of this Article

The deduction of the following is that the equals are treated equally and the unequals are treated unequally. This Article prohibits unreasonable and arbitrary act of the State towards its

subjects. Article 14 is subject to reasonable classification but such classification should undergo the twin tests. Firstly, classification must be based on intelligible differentia and such differentia must have rational nexus to object of the Statute. These principles are strongly acknowledged in various judicial pronouncements. In *D.S Nakara v Union of India*, Supreme Court ruled that if any classification did not pass the twin test, then there is arbitrariness in every sense and thereby violates Article 14.

Enacting the legislations only in relation with the Hindus is clearly a violation of Article 14 of the clause Equality before the law. Here the State is violating the fundamental rights of the Hindus in common by their intervention in the temple management and allowing other religions to manage their own affairs. Secular State administering Hindu Temples alone would discriminate against the Hindus as a whole and thus the next Article, which is Article 15 will come into the picture to uphold the same.

### **Article 15**

Article 15 states that the State shall not discriminate any citizen on basis of religion, race, caste, sex and place of birth. So, if a Hindu is discriminated against on basis of his religion by the State, then does it not violate his fundamental right as a citizen? The Act which has long history and numerous amendments in its timeline has failed to show an indiscriminate skewness by allowing all but Hindu Religious denomination to manage its own religious affairs.

### **Article 25**

Though subjected to restrictions of public order, morality and health, and other provisions of Part III, all persons have the freedom of choosing their beliefs, and the right to practice, profess and propagate their religion. Religion being given importance in the Secular state is preserving the basic structure of the Constitution; and every person has freedom and rights with regard to their religion.

### **Article 26**

Subject to the same restriction of the supra stated section, every religious denomination has been conferred with rights to establish and manage the affairs of such religious institutions. All

the affairs Ipso facto must abide by the law; in its administration and acquisition of properties. The law though has restrictions is the same for all religions. However, Hindus do not get the real benefit under this Article because their management is persistently impinged by State Control.

Temples which are not regulated by the Hindu Religious and Charitable Endowment board have contended that their administrations have proven positively and the non-temple authority for the management is unnecessary and is an imposition which can certainly and rightly be argued in violation of Article 26(b) of the constitution of India. Even if there is any mismanagement in the temple, the main question which arises is that can the State take over the temples durably?

In the case of **K. Mukundaraya Shenoy v. The State of Mysore**, the Court ruled in this case that if the administrative rights are not in the hands of the religious domination, and the same is done by some other authority be it the state or any third party, it amounts to violation of the rights guaranteed under Article 26 of the Indian Constitution.

### **CONCLUSION**

Enacting a legislation regulating the administration of only one particular religious institution contravenes Article 14 and 15 of the Indian Constitution. When a denomination which is a part of a religion is protected under Article 26, then the religion themselves are equally entitled for protection under the same Article.

In the landmark case of Shiroor Math case, the Supreme Court stated that the State should not interfere in the religious practices enclosed under Article 25 and struck down the major provisions of The Madras Hindu Religious and Charitable Endowments Act, 1951. However, the State should provide for regulations when the religious institutions perform their affairs prejudicial to morality, health and public order. Subsequently, this said legislation was modified in 1959 which is still in force, rehashed the similar provisions which the Apex Court held it as unconstitutional. This legislation of 1959 was challenged for the very first time by the late Shri Swami Dayanand Saraswathi in 2012.

It's a sad reality that the case is still pending before the Court even though it is ready for the final arguments.

There is an urgent need for the Supreme Court to take up the case with more alacrity for various reasons. Firstly, the State control would amount to encouragement of monumental corruption. In the case of *R Venkataraman v The Director General of Police*, Madras High Court delivered a judgement against Tamil Nadu Endowment Department and State Police who facilitated the thieves to rob Temple Idols and Jewels. Secondly, Hindu-centric legislation would contravene the very idea of Secular country and by exclusive interference with only the Hindu Temples, the State would be featured as an Anti-Hindu authority in its true sense. Thirdly, State control of the Hindu Temples weakens the Hindu culture. When a Non-Hindu official presides over the Temple affairs, there is an absolute bewilderment in the minds of devotees as to how successfully can the culture be upheld in the manner in which it is supposed to. The infiltration of management of the temple's affairs by the Non-Hindu Officials would increase the possibilities of Conversions. Privatisation of Temple is the need of the hour because it is the Temples which plays a vital role in expressing the beliefs and culture of Hinduism. One should not forget that the Temples are also known for their aesthetics in architecture which too is in threat in the hands of Government control.

