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THE CASE AGAINST STATE CONTROL OF HINDU TEMPLES

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Devotees on the eve of New Year at the Vadapalani Murugan temple in Chennai. | Photo Credit: VELANKANNI RAJ B.

State management of temples is often justified as a way of ensuring access to temples for worshippers and archakas (priests). Regulating secular activities associated with religious practice can be traced to Article 25(2)(a) of the Constitution. Temple control legislation is purportedly justified by this Article.

However, the framers of the Constitution, being aware of the temple entry movement, advisedly provided a separate power under Article 25(2)(b) which empowers the state to enact laws “providing for social welfare and reform or the throwing open of Hindu religious institutions” to “all classes and sections of Hindus”. Hence, the issue of regulating secular aspects of religious practice is distinct from providing access to worship. This is why there are separate laws for temple control and temple entry. They co-exist; one does not depend on the other.

Proponents of state management of temples also argue that courts have accorded approval to this practice. Any discussion on this topic will necessarily begin with the *Shirur Mutt* judgment (1954) of the Supreme Court. Speaking for a unanimous bench of seven judges, Justice B.K. Mukherjea substantially obliterated the Madras Hindu Religious and Charitable Endowments (HR&CE) Act, 1951, terming the impugned provisions as “extremely drastic” in character. So violent were the provisions against religious faith that the then Advocate General of Madras stated that he “could not support the legality of these provisions”. It is left to one’s imagination how drastic the provisions of the Act must have been to lead the Advocate General to concede the case before the Supreme Court.

The story does not end here. As a result of the judgment in *Shirur Mutt,* the legislature of the erstwhile Madras State enacted in 1954 an amendment Act with the purpose of removing the defects pointed out by the Supreme Court. Again, the Act was challenged in *Sudhindra Thirtha Swamiar v. Commissioner, H.R.C.E.* (1955) before the Madras High Court. This Act too was struck down as it suffered from the same defects as the original enactment. The Orissa Hindu Religious Endowments Act, 1939 also has the distinction of being struck down by the Supreme Court twice — first in *Sri Jagannath v State of Orissa* (1954) and then in *Sadasib Prakash Brahmachari v. The State of Orissa* (1956).

It is now appropriate to deal with the grievance of various sections of Hindu society against such laws. Simply put, in the guise of administering Hindu religious endowments, the state is trenching upon religious affairs. Such a colourable exercise of power is writ large in Tamil Nadu where temples cannot even conduct pujas as the state has depleted their income. The large-scale loot and plunder of temple resources at the hands of state officials would put to shame the colonial government. Such misappropriation of funds has been unearthed by temple activists and is now a matter of public record.

As per the HR&CE policy note of 2012-13, Hindu temples own 4,78,545 acres of prime agricultural land; 22,599 buildings; and 33,627 ‘sites’ covering 29 crore sq. ft in area, whose estimated value would be almost 10 lakh crore. But the income realised by the Tamil Nadu HR&CE Department is a meagre 120 crore per year. This is less than the amount collected from temples as ‘administrative fee’. In addition, the HR&CE Department collects hundreds of crores as ‘Common Good Fund’, though the courts have frowned upon such forcible collection. As per the Department’s own admission, almost 47,000 acres of Hindu temple land have been usurped since 1986 under its “watch”.

In a scathing indictment of the HR&CE Department, the Madras High Court in a 2021 judgment gave 75 directions covering heritage conservation, safeguarding and realising due income from temple properties, audit, safety of vigrahams, appointment of trustees and formation of tribunals for speedy dispute resolution. Not one of them has been complied with. Meanwhile, the state is silencing temple activists by initiating arbitrary criminal action against them. For instance, an FIR was registered on September 14, 2022 against T.R. Ramesh on false and fictitious grounds. It is no coincidence that he has been spearheading the campaign for accountability from the Tamil Nadu HR&CE for decades by unearthing volumes of data.

The Tamil Nadu HR&CE Department does not even have records of its own executive notifications justifying its management of certain temples. The Madras High Court has lamented on this deplorable state of affairs brought to its notice by temple activists. On May 12, 2022, in a Public Interest Litigation seeking removal of executive officers functioning in 47 temples without any orders of appointment, a Division Bench ordered production of records. The Department has still not produced a single record to the court. Meanwhile, no external audit, as required by law, is being conducted for temples under HR&CE, and there are 1.5 million audit objections pending resolution since 1986.

A long line of judicial precedents, post the 42nd Amendment, emphasise that secularism means the state cannot mix with religion. Whatever brand of secularism you subscribe to, nothing justifies a state official dictating to a religious functionary how worship is to be conducted.

It is fashionable for supporters of temple control laws to question how temples will be handed to the communities. This begs the question of whether something illegal in its original form can become legal over time. The purpose is to involve the community, which has been excluded by the state. The objective is not to replace one bureaucracy with another. The participation of different stakeholders and the building of consensus among them will determine who will take over temples. However, the evils of the state perpetuated in the name of ‘secular management’ must be remedied first.

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