Introduction

It has been noted, in the previous chapter, how the judiciary in India has interpreted the term 'Hindu' as it occurs in the Constitution of India. It has also been noted that Article 25(2)(b) intends to throw open Hindu religious institutions of a public character, to all classes and sections of Hindus. Similarly, Article 26(a) allows every religious denomination or section, thereof, to establish and maintain institutions for religious and charitable purposes. Temples, Maths, Dharmashalas, etc. are characteristic Hindu religious institutions of long historical standing. These institutions have been part and parcel of the Hindu way of life and any attempt by the state to reform the Hindu religious practices would necessarily mean the reform of these institutions. It must be borne in mind that this social reform clause of the Constitution is applicable to institutions of public character only and private institutions do not fall within the scope of this clause.

It has been observed that on numerous occasions the authorities of these institutions have claimed these to be private institutions and have, consequently,
considered them to be outside the scope of the authority of the state. Under such circumstances, the primary concern of the courts has been to find out whether these claims have been true. The purpose of this chapter is to analyse how the courts have performed this task.

**Religious and Charitable Endowments**

In early Hindu society, religion and charity were considered inseparable. The writers of Samiti consider charity the supreme virtue in the Kali-yug. From very ancient times, the sacred writings of the Hindus divided works productive of religious merit into two divisions named Ishta and Purta,¹ which (this distinction) has come down to our own times, so much so that the entire object of Hindu endowments will be found included within the enumeration of Ishta and Purta.

This distinction between Ishta and Purta has been continuously adopted by various learned authors on the law of Hindu Endowments² and the same has been followed by the courts in India, in their judgments. The Ishta works are vedic sacrifices, gifts offered to the priests at the time of sacrifices, preservation of the Vedas, religious austerity, rectitude, Vaiswadeva sacrifices, hospitality,

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etc. Purta acts, on the other hand, implied all religious charities which help man in the realization of emancipation. In course of time, the system of Vedic sacrifices fell into disrepute and Purta acts became popular and significant. Gradually charitable acts performed with faith and lawfully earned money were valued more than the sacrifices offered, and charitable gifts were encouraged by the Hindu princes and rulers. In order to regularise charity, endowments were created in various parts of the country.

What is an Endowment?

An endowment can be defined as a property or money bestowed as a permanent fund, held in trust for any charity.\(^3\) It is a wealth set apart permanently for religious and charitable purposes.\(^4\) It is a gift to Idol or property vested in Idol.\(^5\) A religious endowment is generally considered a public trust because the true purpose of a gift is to acquire spiritual benefit for those who worship in that temple. The property or gift is conferred on idol or God only in a symbolic sense.


\(^4\) Ibid.


The expression idol or idol worship is not a happy one. It has always had a pejorative use in European writings but I shall continue to use the word idol as this has now become, practically, a legal term in Indian Courts of law.
Gods are owners or beneficiaries only in a figurative sense, the true beneficiaries are the worshippers and the endowment is intended to ensure proper and impressive worship. 6

Types of Religious Endowments

According to Hindu law, religious endowments are of two types.

1) Endowments in favour of temples - where the deity or the idol is the principal thing and the property is owned by the deity. These endowments were created from gifts for the installation, consecration, worship and service of idols, gifts for the building of temples, for the procession of idols, religious festivals etc.

2) Endowments in favour of Maths - in which case, the idol or the deity is less important and the primary thing is the math as the religious institution to which the property belongs. These endowments are analysed in detail in a separate chapter.

Here it must be remembered that both temples and maths are fundamental religious institutions of the Hindu system. Temples are, primarily, places of prayer and worship of the Supreme Deity manifesting itself in various forms such as deities or idols. Maths, on the other hand,

are institutions for imparting spiritual instruction by
the head of the math normally known as the mathadhipati
or the mahant. Vedic literature does not refer to temples
but the Sutras and the Brahmanas mention images of gods
and temples for housing these images of gods. By the
time of the Dharmaśāstra of Gautama, charitable endow-
ments were common, and to these endowments various grants
were given. It was during the period of Lord Buddha that
fixed places of worship were established and a system of
preachers was ordained.\footnote{For details see Vardachari, supra n. 3, p. 6.}

Charitable Endowments

Religious and charitable endowments are usually
treated together because of the association of religion
and charity in almost all countries of the world. The
word charity is difficult of precise definition. Commonly,
charity means any act of kindness or benevolence and would
refer to all acts which imply rendering assistance or help
to those in distress. It would also mean whatever is
given for the love of God or for the love of a neighbour
in a catholic and universal sense.

The Bombay Public Trusts Act, 1950, as amended up-
to-date, defines a charitable purpose as one which includes
relief of poverty or distress, education, medical relief,
and the advancement of any other object of general public
utility but does not include a purpose which relates exclusively to sports or exclusively to religious teaching or worship.

A distinction is always made between religious and non-religious charitable purposes. In view of the overlapping of religion and charity in India, especially among the Hindus, it is difficult to distinguish between religious and non-religious charitable purposes. Religious or spiritual purposes are the construction of Dharmashalas, or Choultries, for the housing of pilgrims, Annasatras or Sadabarts for the feeding of pilgrims, planting of trees, construction of tanks and wells for drinking water to men as well as animals, construction of temples and mathas, Gaushalas, reading of sacred books on festive occasions, etc. Non-religious purposes are providing relief for the poor, promotion of education, etc.

Religious Charity and Specific Endowments

In addition to the endowments created and fostered for the general upkeep and maintenance of temples, there

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8 Also see Ramaswami v. Ayyaswami, A.I.R. 1960 Mad. 467.


10 Sometimes, surplus incomes of religious institutions like temples or mathas may be dedicated for the provision of religious education, and this may be considered religious charitable purpose.
have been created specific endowments intended to ensure the performance of some specific religious charities or services to be performed in a math or a temple to which the endowment is attached. The expenses incurred for these charities are usually charged upon the income of the property of the endowment. These endowments are called as Kattalai, and are placed under special trustees and specific items of expenditures are assigned to these as legitimate charges to be paid from the endowment. The trustees who administer these specific endowments are called as Kattaligars.

As Kattalai is considered a specific religious endowment, it is subject to regulation by the Endowment Acts. The Acts provide for steps to be taken when the

11 Justice Seshagiri Ayyar describes these endowments as follows.

a) Puja Endowments - In such endowments, properties are endowed for the conduct of necessary and vital part of worship and ritual in the temple e.g. Chidambaram temple.

b) Ootsavam Endowments - In these endowments the grants are intended for the purpose of Ootsavam or certain festivals in the temple.

c) Archana Endowments - These endowments are intended for the performance of Archana to the deity on behalf of the donor.

In addition to these, the specific endowments may be created for the charities such as feeding Brahmins at the festival or other similar services.

authorities in charge of specific endowments fail to perform the tasks entrusted to them. It has been held by the Madras High Court on various occasions that when a trustee of a specific charity does not perform the services attached to the charity, the general trustee can enforce the performance of the trust. The general trustee holds a special position in regard to the protection of the interests of the trust in general and it is his duty to see that the temple funds in the hands of the special trustees are duly appropriated. It has been observed by the courts that when the special trustee in charge of specific endowment fails to carry out the tasks entrusted to him, the general trustee can perform those tasks and recover the expenditure so incurred from the specific endowment.

In Lakshminarasimhaswami V. Sri Agasteeswaram, the Supreme Court held that the question whether a particular endowment grant is a personal grant or a grant to the deity, is one of construction depending upon the terms of the particular document. In M.R. Goda Rao Sahib

12 Section 32(I) of the Madras Hindu Religious and Charitable Endowments Act, 1951.
13 e.g. Nalliappa Pillai V. Thangamma 21 Mad. 406, S. S. Devarar Badran V. Nagappa 1942 Mad. 39.
14 Vaidyalinga Pandara Sannidhi V. Somasundara Mudaliar 17 Mad. 199.
V. The State of Madras, the Supreme Court held that a 'specific endowment' attached to a math or temple may consist merely of a charge on property, it is not necessary that there must be a transfer of title or divestment of property.

**Distinction between Public and Private Trusts**

Every endowment involves an element of trust. Trusts can broadly be divided into two categories, public and private. Endowments are either public or private, absolute or partial. Religious endowments can be both public as well as private endowments but the charitable endowments are only public endowments in character. Though charitable trusts in India are only public trusts, these trusts are mostly connected with religious purposes and therefore they are commonly referred to as religious charitable trusts.

The distinction between public and private trusts is based on some specific considerations.

1. **The nature of beneficiaries**: In Deoki Nanden V. Kurilidhar, the Supreme Court of India maintains that a religious endowment must be held to be private or public as the beneficiaries, thereunder, are specific persons or

17 Supra n. 6, at p. 78.
the general public or sections thereof. In a public endowment, the beneficial interest is vested in an uncertain and fluctuating body of persons, either the public at large, or some considerable portion of it answering a particular description. In a private endowment, on the other hand, the beneficiaries are definite and ascertained individuals, or who with a definite time can be ascertained definitely. When the property is dedicated for the worship of a family idol, it is a private endowment and when the beneficiaries are not members of a family or specified individuals it is a public endowment. 18

In Mahant Ram Saroop Dasji v. S.P. Sahi, 19 the Supreme Court makes its position clear by asserting the basic distinction mentioned above and states:

"The fact that the uncertain and fluctuating body of persons is a section of the public following a particular religious faith or is only a sect of a certain religious persuasion would not make any difference in the matter and would not make the trust a private trust."

2. Duration of a trust: The second consideration in deciding the nature of a trust is its duration. Private trusts which concern individuals are limited in their duration. As they are meant for individuals, they must be

18 Ibid.

certain and the individual or individuals must be identified within a limited period. Public trusts, on the other hand, exist for the general public and therefore may continue for an indefinite period. In J.K. Trust Co. v. Commissioner of Income Tax, the Supreme Court states that a public trust is of a permanent character and when once a trust is established, it will not be open to the founders or trustees to put an end to it or divert the income of the trust properties either to their own use or to any purpose other than that for which the endowment was created. A private trust, on the other hand, may be for a limited period or a limited purpose.

In Mahant Moti Das v. S. P. Sahi, the Special officer in charge of Hindu Religious Trusts and others, the Supreme Court points out that the question whether the trusts are public or private trusts or the properties are private or trust properties are questions which involve investigation of complicated facts and recording of evidence and such investigation could not be done on writ proceedings.

Various authorities on law of Hindu Endowments as well as the Courts in India have pointed out that the

21 S.C. (1957) at p. 850.
original texts of Hindu Law did not refer to the distinction between public religious endowments and private ones.\(^{23}\) This distinction has crept in from the system of English law and, therefore, is comparatively recent in origin. This view, however, is not accepted by all judges. The High Court of Bombay\(^{24}\) was of the view that Hindu Law recognised endowment to a private as well as to a public temple and it did not invariably follow that whenever property was endowed for the purpose of worship, a public trust was created and the temple created was a public temple. The Supreme Court admits the possibility of a private temple under earlier Hindu Law.\(^{25}\)

In Mahant Ram Saroop Dasji V. S. P. Sahi,\(^{26}\) the appellants had pointed out that there were numerous central and local enactments which aimed at controlling the management and administration of public religious and charitable trusts and that these acts provided for remedies in cases of maladministration. But so far as private religious trusts were concerned, there were no specific statutory enactments and such trusts were

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26 Supra n. 19 at p. 1178.
regulated by the general law of the land. The British Government, when it was first established in India, followed the tradition of former Indian rulers by visiting public religious and charitable endowments, preventing and redressing abuses under their management. Dr. Mukherjee states that the distinction between Hindu Law and English law thus:27 "In English Law charitable trusts are synonymous with public trusts and what is called religious trust is only a form of charitable trust. The beneficiaries in a charitable trust being the general public or a section of the same and not a determinate body of individuals, the remedies for enforcement of charitable trust are somewhat different from those which can be availed of by beneficiaries in a private trust. In English Law the Crown as parent patriae is the constitutional protector of all property subject to charitable trusts, such trusts being essentially, matters of public concern. ... One fundamental distinction between English and Indian Law lies in the fact that there can be religious trust of a private character under Hindu Law which is not possible in English Law."

Charitable trusts are public trusts, both under the English Law as well as Indian Law. In England, a religious

27  Supra n. 1, pp. 392-96.
trust being a form of charitable trust is also public, but in India, according to Hindu Law religious trust may be public or private. But the most usual and the commonest form of a private religious trust is one created for the worship of a family idol in which the public are not interested. Any other private religious trust must be very rare and difficult to think of.28

The Privy Council, in Lakshmindra Misra V. Ranga Lal,29 pointed out that the question whether a particular dedication is of a public or a private character is a mixed question of law as well as fact. In Deoki Nandan case the Supreme Court points out that 'when the property is dedicated for the worship of a family idol, it is a private and not a public endowment, because the persons who are entitled to worship at the shrine of the deity can only be the members of the family and they are ascertainable individuals.'30 If the intention of the founder was that specified individuals or members of the family are to be persons who will be entitled to worship, then the endowment is private. But if the founder had intended that the general public or a specified portion thereof is entitled to worship as a matter of right, then the endowment is public.31

28 Supra n. 19 at p. 1180.
29 A.I.R. 1950 P.C. 56.
30 Supra n. 6, p. 78.
31 Ibid. Also see State of Bihar V. Charusila Basi 1959 S.C. at 1002.
Public and Private Temples

It has already been noted that temples and matha have been fundamental religious institutions of the Hindus. It was but natural that religious and charitable endowments were built around these institutions. It has also been noted that the endowments and the trusts could both be of public or private character depending upon the nature of beneficiaries and the nature of the dedication and duration. The Temple being the central and pivotal institution of the endowments, the courts in India had to decide, in the many cases brought before them, whether the temples in suits were either public or private. In this section an attempt is made to deal with the various factors which have been taken into account by the courts in deciding the character of the temples.

What is a Temple?

The Hindu Religious and Charitable Endowment Acts of various state governments in India defined "Temple" as follows:

The subject 'Trusts' (Entry 10) as well as 'Charities and charitable institutions, charitable and religious endowments and religious institutions' (Entry 28) are included in the Concurrent List of the Seventh Schedule of the Constitution of India, and therefore both Union as well as State governments are authorised to enact legislation to that effect. Before independence, however, provincial governments had enacted legislation regarding religious endowments and hence the State governments took initiative in enacting new legislation or amending the existing one.
"Temple means a place by whatever designation known, used as a place of public religious worship, and dedicated to, or for the benefit of, or used as of right by, the Hindu community or any section thereof, as a place of public religious worship and includes sub-shrines, utsava mantapas, tanks and other necessary appurtenant structures on land."\(^{33}\)

The factors which enter in the determination of a public temple are as follows:

1) The will of the founder
2) Use of the temple by the public
3) The ceremonies relating to the dedication
4) Other factors regarding the character of the suit temple

(1) The Will of the Founder: The will of the founder of the temple is usually contained in the document of the trust. Such a document must make a clear reference to the will of the founder suggesting that the temple so created is intended for use of the general public at large or a specified class who are entitled to the right of worship in it. In Deoki Nandan v. Murlidhar,\(^{34}\) the Supreme Court had to decide this issue. The Thakurdwara Temple was

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\(^{33}\) The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966, Chapter I, Section 26. Similar definitions are accepted by the endowment acts of the States of Madras (Tamilnadu), Bombay (Maharashtra), Orissa, etc.

\(^{34}\) Supra n. 6.
constructed by one Shaco Ghulam in 1914-16 and was managed by him alone during his lifetime. As he had no issue, he executed a will whereby he bequeathed all his lands to the Deity and his wife succeeded him as a Mutawalli in terms of the will. After her death, the endowment was being managed by the nephew of the founder according to the will. The appellant alleged that the temple was being mismanaged and the rights of the people therein were being denied and he moved the District Court of Sitapur for relief under the Religious and Charitable Endowments Act of 1920, but the District Court declined to interfere on the ground that the endowment was a private one. Subsequent appeals to the appropriate authorities failed. The appellant then filed a suit claiming for a declaration that the Thakurdwara Temple is a public temple in which all the Hindus have a right to worship. The first defendant contested the suit and claimed that 'the Thakurdwara and the idols were private and the general public had no right to make any interference'. Though the Chief Court of Oudh, affirmed the earlier decision of the District Court, it granted a certificate on the ground that the question involved was one of great significance. The Supreme Court develops an elaborate argument in deciding the case. It points out:

The question whether the Thakurdwara is a public endowment or a private one is one of mixed law and fact. In the instant case, the lower courts had admitted that there was a formal dedication and the controversy is only
as to the scope of dedication and this also is a question of law and fact, the decision of which must depend upon the application of legal concepts of public and private endowments to the facts noted. The basic legal concept is that a religious endowment must be held to be private or public, according as the beneficiaries thereunder are specific persons or the general public or section thereof. In a public trust, the beneficiaries are the general public while in a private trust, the beneficiaries are specific individuals.

The main question is to know the beneficiaries of a temple. Can an idol be considered as beneficial owner of the endowment? Under the Hindu Law, an idol is a juristic person capable of holding property and the properties endowed for the institution vest in it, but this does not mean that the idol can be regarded as the beneficial owner of the endowment. In this connection various courts have held that the idol is an owner of the endowed properties only in an ideal sense. It cannot make use of the endowed properties, it cannot enjoy them or dispose of

35 Vide Prosunno Kumari Debya V. Golea Chand Baboo (1875) L.A. 2 I.A. 145.


All cases quoted in S.C.J. (1957) at pp. 77-78.
them, or even protect them. The idol, thus, cannot have any beneficial interest in the endowment.

The purpose of making a gift to a temple is not to confer a benefit on God but to confer a benefit on those who worship in that temple, by making it possible for them to have worship conducted in a proper and impressive manner. This is the sense in which a temple and its endowments are regarded as public trust. In order to substantiate its position on this matter, the Supreme Court refers to various authoritative texts in Sanskrit. According to Purva Mimansa of Sabarashwami:

"Words such as 'village of the Gods', 'land of the Gods' are used in the figurative sense. This is property which can be said to belong to a person, which he can make use of as he desires. God however does not make use of the village or lands, according to its desires. Therefore nobody makes gift (to God). Whatever property is abandoned for God, brings prosperity to those who serve Gods."


37 उपपारपृष्ठि देवार्मो देववेदार्मितस्मात्भाषानां गो यद्यर्थम्रतः विनियोक्तस्य स्वाधिकार्यं तत्स्थवस्य रमण न श्रे द्यानम् दैवेन वा ममाधिः प्रति श्रवात् तत्स्थवस्य स्वाधिकार्यं देवगृहविकारात् तत्ततः वै तिमिकृति देवमुद्देशस्य सत्य त्वमात्।

Sabarashwami's Bhasya on 'Purva Mimansa', Adhyaya 9, Pada 1 quoted in S.C.J. 1937 at p. 77.
Similarly, Madhathithi explains the term 'Devaswam' by saying:

"Property of the Gods, Devaswam, means whatever is abandoned for Gods, for purpose of sacrifice and the like, because ownership in the primary sense, as showing the relationship between the owner and the property owned, is impossible of application to Gods. For, the Gods do not make use of the property according to their desires nor are they seen to act for protecting the same."

These texts thus point out that the Gods have no beneficial enjoyment of the properties and they can be described as their owners only in a figurative sense, and the true purpose of a gift to the idol is to acquire spiritual benefit by providing opportunities and facilities for those who desire to worship.

After analysing previous judgments and the contents of the authoritative Sanskrit texts, and having concluded, thereby, that the true beneficiaries of endowments are

38 देवातुद्रिष्टम्, मागात्रि क्रिमांचि धनं मुदर्स्टे, तदेवसनं, मुक्तस्स्त्र रस्यायिम्यसंबन्धयः, देवानां असंभवात्।

'हि' देवता इच्छमां धनं नियुक्ते।

'हि' परिप्रेयण्यायपारस्त्राणां हृद्ये।

Madhathithi commenting on 'Devaswam' in Manu, Chapter XI, Verse 26, quoted Ibid., pp. 77-78.
not idols but the worshippers and also that the purpose of
the endowment is the maintenance of that worship for the
benefit of the worshippers, the Supreme Court then
proceeds to analyse the cardinal point whether the inten­
tion of the founder of the endowment was to grant the
right of worship to specified individuals of the family
or to the general public or a specified portion thereof.
The Court analyses the clauses of the will of the founder
and points out that the founder directed that the
properties should be endowed in the name of the deity,
and that the lands are to be purchased in future in the
name of the deity. This suggests that the Thakurdwara
was dedicated for worship by members of the public and
not merely the members of his family. Therefore, the
endowment was considered to be a public endowment and
not a private one. This view was also reiterated by
the Supreme Court in the State of Bihar and others V.
Charusilla Das. It may happen that the deed made by
the founder does not contain an express provision or a
reference to a dedication to the public. In such a case
the intention of the founder can be gathered from the
instrument interpreted in a proper manner.

39 Supra n. 6, pp. 78-79.

40 S.C.J. 1939 at p. 1183.
(2) User of the temple: The public: The second consideration in determining the character of a temple is the proof of user of the temple by the public. In this connection the Supreme Court refers to two important precedents: Babu Bhagwan Din V. Gir Har Seroop and Mundacheri Koman V. Achutan. In these cases the Privy Council had pointed that the mere fact that the public is allowed to visit the temple cannot necessarily indicate that a trust is public as opposed to private. Facts and circumstances, in order to be accepted as sufficient proof of dedication of a temple as public, must be considered in their historical setting, and the dedication to the public is not to be readily inferred when it is known that the temple property was acquired by grant to an individual or family. Such an inference would be hazardous.

Whenever a plea is made that a particular temple is originally private but is subsequently dedicated to the public, this fact will have to be categorically proved and merely showing that the temple was kept open for the worship of the people would not be sufficient evidence in the matter.

41 A.I.R. 1940 P.C. 7 at 11.
42 A.I.R. 1934 P.C. 230 at 234.
The High Courts in recent cases have held that if the historical origin of the temple and the nature of the dedication, thereof, is not known, long user established by evidence would help in deciding the nature of the temple.

In Deoki Nandan V. Murlidhar, the evidence suggested that the temple of Thakurdwara was constructed by the founder Sheo Ghulam at the instance of the villagers because there was no temple in the village and it was also testified by the witnesses that the villagers were worshipping in the temple freely and without interference and therefore the Supreme Court was of the opinion that the user of the temple as such was more consistent with its being a public endowment.

In two other cases the Privy Council held that the nature of the temple could also be decided by the role played by people in maintaining and modifying the temples. In one case, the temple was being maintained out of the

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44 Supra n. 6, pp. 78-79.

45 Poojari Lakshmanna Gounder V. Subramanya 1924 P.C. 44.
fees collected from the people as a charge for worship and therefore the temple was treated as a public temple. While in the other case, the evidence showed that the temple was used without hindrance or obstruction by the people and that the temple buildings were repaired out of public contributions and even the festivals of the temple were performed by raising public subscriptions.

In one of the recent judgments of the Supreme Court of India, it was held:

"Whether or not a particular temple is a public temple must necessarily be considered in the light of relevant facts relating to it. ... That even in the case of a private temple it is not unlikely that the religious reputation of the founder may be of such a high order that the private temple founded by him may attract devotees in large numbers and the mere fact that a large number of devotees are allowed to worship in the temple would not necessarily make the private temple a public one."

In Sri Venkataramana Devaru and others V. State of Mysore and others the Supreme Court had to decide whether the Sri Venkataramana Temple at Buki was a public temple or a private one. The contention of the trustees of the

46 Hari Kishen V. Raghbir Dayal 1926 Oudh 578.
47 S.C.J. 1964(II) 715.
temple was that the temple was founded for the benefit of the Gowda Saraswath Brahmins in Moolky Pethah, that they were the followers of the Kashi Mutt, that the temple had been at all times under their management, that it was the head of the Mutt who performed various religious ceremonies in the temple and that the other communities had no rights to worship therein. The government on the other hand, denied that the temple was founded for the benefit of the Gowda Saraswath Brahmins exclusively, and contended that the Hindu Public generally had a right to worship therein. It was contended on behalf of the government that the free admission of all communities, and there being no instance of any refusal of permission, led to the conclusion that the Hindu public generally had a right to worship in the temple and therefore it was a public temple according to section 2(2) of Madras Temple Entry Authorisation Act of 1949.

The Supreme Court upholds the position taken by the government and says:

"The law on the subject is well settled. When there is a question as to the nature and extent of a dedication of a temple that has to be determined on the terms of the deed of endowment if that is available, and where it is not, on the other materials legally admissible, and proof of long and uninterrupted user would be cogent evidence of the terms thereof. Where, therefore, the original deed
of endowment is not available and it is found that all persons are freely worshipping in the temple without hindrance, it would be proper inference to make that they do so as a matter of right and that the original foundation was for their benefit as well. But where it is proved by production of the deed of endowment or otherwise that the original dedication was for the benefit of a particular community, the fact that members of the other communities were allowed freely to worship cannot lead to the inference that the dedication was for their benefit as well. For, it would ... not in general be consonant with Hindu sentiments or practice that worshippers should be turned away. 49

In this case one more issue was raised. The trustees had claimed that the temple was a denominational temple and for proving this they produced documentary evidence as well as public witnesses who testified that the foundation was originally for the benefit of the Gowda Saraswath Brahmin community. The Supreme Court admits this contention and holds that the suit temple is a denominational temple founded for the benefit of Gowda Saraswath Brahmins. The Supreme Court thus held the Venkataramana temple as a public temple but also a denominational one.

A similar issue was raised in His Holiness Sri

49 Ibid., pp. 388-89.
Vishwotham Thirtha Swamiar of Sode Mutt and others V. The State of Mysore and others.  

The Government of Madras, in exercise of the powers conferred by Madras Temple Entry Authorisation Act, decided that the Sri Krishna Mutt in Shivalli village in South Kanara District was a temple as defined in the Act. According to the history of the institution, Shri Madhavacharya, a great teacher who founded the Mutt, installed an image of Krishna in the shrine, worshipped it during his lifetime and after him the worship was continued by his disciples who followed the system of rotation (Pariyayam) whereby each disciple had his term of worship of two years. During this period, he is called Pariyayam Swami and he meets the expenses of the worship and other incidentals from the income of the Mutt and other public contributions. The High Court held that the suit property was a public temple within the meaning of Temple Entry Authorisation Act of Madras. The Supreme Court agrees with the High Court in this contention and says that the evidence on record is fully consistent with the finding of the High Court that the temple is dedicated to the Hindu public and is being used by them as a place of public religious worship. A large number of pilgrims from all over the country visit the place, take part in the worship, make offerings to the deity. The

institution also receives monetary aid from the state. The fact that no instance of any pilgrim being refused permission to worship during the course of the centuries since the installation of the deity goes a long way in establishing and supporting the finding of the High Court that the institution has been held out as one for the benefit of the Hindus in general.

The Court states:

"It is true that, the fact that a number of pilgrims visit the temple for worship regularly need not, in all cases, lead to the conclusion that the temple is a public one; but such a conclusion will not be arrived at only when there is good evidence about the temple being a private one. ... It follows, therefore, that in the absence of good evidence that a temple is a private one, the mere fact that it is visited by a large number of persons among the Hindu public without any restraint for a number of years, will be good evidence of the fact that the temple had been dedicated to the Hindu public and was for its benefit." 51

All these decisions regarding the user of the temple point out that the user of the temple by general public is one of the material considerations which help in determining the nature of a temple.

(3) Ceremonies relating to the dedication: The third factor which is usually taken into consideration while

51 Ibid., at p. 135. Italics mine.
determining the nature of the temple is the nature of ceremonies performed at the time of the installation of the deity. The settled law in the subject is that the endowment can be validly created in favour of an idol or a temple without performing any ceremonies at the time of the installation of the deity but the intention of the founder must be clearly known in the matter. If there is a sufficient proof regarding the performance of some ceremonies, that proof itself would be a material factor in determination of the endowment, but absence of any such proof would not be conclusive against it. In Deoki Nandan V. Murlidhar, the appellants had contended that at the time of the installation of the Thakurdwar, the ceremonies KALASPUJA, STHAPANA or PRATISHTHA were duly performed and therefore the dedication was to the public. The defendants on the other hand agreed about the performance of the ceremonies but they disputed the contention of the appellants that the dedication was to the public. The High Court thought that this involved a substantial question of law and therefore granted the certificate for appeal to the Supreme Court and therefore the Supreme Court analyses the issue fairly in detail before giving its authoritative decision in the matter.

Sankalpa means determination and it is really a

52 Supra n. 6, p. 61.
53 Ibid., pp. 61-62.
formal declaration by the settlor of his intention to dedicate the property.

Utsarga is the formal renunciation by the founder of his ownership in the property, the result of which is that the property becomes impressed with the trust for which he dedicates it.

The Supreme Court refers to the authoritative Sanskrit texts such as the History of Dharmsashastras by Mahamahopadhyay P. V. Kane and Mr. Mandlik and points out that while the Sankalpa states the objects for the realisation of which the dedication is made and the Utsarga dedicates the properties to the public. This means that if Utsarga is performed, the dedication can be considered to be public. One of the witnesses on behalf of the appellant testified that, what was recited on the occasion of the dedication was not Utsarga but Prasadotsarga. The Supreme Court, on the basis of Pratistha Mayukha, points out that Prasad is the Mandira wherein the deity is placed before the final installation or Pratistha takes place. Prasadotsarga is the formula to be used on the occasion.


55 Supra n. 6, p. 82.

56 जन्नत:- महाशरीर सुभोम्यति, सत्यसम्पूर्णतिविशेष:। 
संस्मरीति कामाक्षेरतिविभिन्ति:। तत्वस्यत्ततः स्त्रयं। 
कुलसांतराचारमपूर्वकेनसमाधृतेः, श्रुतिप्रज्ञापाविवि। 
कुमार्यकृत्तिशिवः देवदर्शाश्रयति भोज्येति। 
quoted Ibid.
of this ceremony. This formula of Prasadotsarga implies merely the Sankalp without the Utsarga and there are no words therein showing that the dedication is to the public. Utsarga is meant only for charitable endowments, like construction of tanks, rearing of gardens and the like and not for religious foundations. There is no Utsarga of a temple except in the case of repairs of old temples and that in case of the temples the proper word to be used is Pratistha and not Utsarga. The Court maintains:

"... The question of inferring a dedication to the public by reason of the performance of the Utsarga ceremony cannot arise in case of temples. The appellant is correct in his contention that if Utsarga is performed the dedication is to the public but the fallacy in his argument lies in equating Prasadotsarga with Utsarga. But it is clear from the texts that Pratistha takes the place of the Utsarga in dedication of temples, and that there was such a Pratistha of Sri Adhakrishnaji ... is not in dispute. In our opinion, this establishes that the dedication was to the public."  

(4) The character of the temple: The character of the temple implying its location, its structure, its

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58 Supra n. 54, p. 893.
59 Supra n. 6, pp. 82-84.
construction, the arrangement of its various parts and
the nature of the deities installed therein etc. are also
important considerations which are usually taken into
account while deciding the nature of the temple whether
public or private.

As regards the location of the temple, practices
differ in different parts of India. In South India, it is
unusual to construct a temple outside the dwelling house
for private worship and therefore the location of the
temple outside the dwelling house is considered as a
factor in favour of a temple being considered as a public
temple. In some parts of the country, on the other
hand, the temples are built up within the residential
houses as well as outside and the location of a temple
outside the house therefore is not a strong circumstance
in favour of a public temple. Therefore, the question
whether a temple is a public temple or a private one
shall have to be examined on the basis of relevant facts
in each case.

In Deoki Nandan V. Murlidhar, the Court held that
the location of a temple is a factor to be taken into account

61 Peesapati V. Kanduri 1915 M.W.N. 842.
63 Supra n. 6, p. 84; also see Belroos Banu Begum V.
in deciding whether an endowment is public or private.
In the instant case, the idol was installed not within the precincts of residential quarters but in a separate building constructed for that very purpose on a vacant site and hence it was an important factor in favour of the temple being considered as a public temple.

In 1960, the Supreme Court decided an important case Narayan Bhagwant Gosavi v. Gopal Vinayak Gosavi where it had to determine the nature of the trust on the basis of the character of the temple and the nature of the deity. The respondents in this case, by an application to the District Court asked the appellants to further full particulars of the properties. The appellants denied that the temple was a public trust and claimed that the defendants for themselves or as the representatives of the entire Hindu community had no right to interfere in the matter of the deity or the Sansthan. The trial judge decided all issues against the appellant, holding that the deity was the owner of the property and that there was a public trust in respect of them and that the appellant was only entitled as a hereditary shebait to manage them. During the appeal, the High Court held that the properties were a part of religious endowments of a public nature and that the deity was not a party to the proceedings.

64 S.C.J. 1960, p. 263.
The Supreme Court traced the history of the deity and the family relying upon the authoritative documents and tanenmes and pointed out that the predecessors had admitted on numerous occasions that the public had a right to worship the deity and that the properties held as Devasthan inams.

The District Court as well as the High Court had taken into account some other considerations, on the basis of which they reached the conclusion that it was a public temple. These were:

1) The building of the temple is public in character, as the staircase leads straight to the idol. The temple covers several acres of land and has a vast structure with a Sabha Mandap which can accommodate hundreds of people.

2) The public or any member of it is admitted throughout the day between 7 a.m. and 10 p.m., and no one is refused a chance to worship in the temple.

3) The public are invited to worship the deity and no gift is refused. There is a collection box placed at the temple where the public are invited to place their offerings.

4) The extent of the ceremonies performed at the temple indicates the nature of people's participation.

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65 For details see *ibid.*, pp. 267-72.
The deity goes in procession through a marked route and these festivals are celebrated with great solemnity and people from various parts of the country participate in these festivals.

The Supreme Court agrees with the lower courts that these pertinent circumstances point to the fact that the deity is for public worship.

As against these arguments, the appellant contended that there were other circumstances which indicated that the deity was a family deity. Dr. Kurtkoti who was examined on behalf of the appellant gave the following reasons for his opinion:

1) That the idol of Balaji was not firmly installed, and the deity was movable,
2) that it was installed on upper floor and the householder resided in the temple,
3) that the worship was suspended when there was a birth or death in the family.

All these factors, according to Dr. Kurtkoti, implied that the deity was not a public deity, it was a family idol and the temple was not a public temple but a Deoghar. 67

The Supreme Court examined this evidence fairly in

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67 Ibid., p. 275.
detail and maintained:

In the absence of any text prohibiting the installation of the deity on an upper floor, we cannot draw an inference that the temple is private.

The temple of Balaji at Nasik has no dome or Kalas. It seems that there is nothing that really turns upon the existence of a dome or kalas, and no authority has been cited to show that it is a conclusive evidence to show that the temple is private.

The Supreme Court refers to some important case law on the subject of movement of the deity or the idol. In Hari Raghunath V. Anant Bhikaji, the temple was a public one. It was held by the High Court that under Hindu Law, the manager of a Hindu Temple has no right to remove the image from the old temple and install it, especially when the removal is objected to by a majority of the worshippers. In this case Dr. P. V. Kane stated:

"According to the Pratishtha Mayukh of Nilkanth and other ancient works, an image is to be removed permanently only in case of unavoidable necessity, such as where the current of a river carries away the image. ... The manager has, under Hindu law, no power to effect a permanent removal of an image in the teeth of the opposition from a large

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number of the worshippers ... in the instant case
worshippers had consented to the removal ... permanent
removal of an image without unavoidable necessity is against
Hindu sentiment. ..."

Justice Shah observed in the case that "to remove
the image from the temple and to install it in another
building would be practically putting a new temple in place
of the existing one ... it is not shown on behalf of the
defendant that the ruinous condition of the existing build­
ing is a ground for practically removing the image from
its place to a new place permanently. ..."

In Pramath Nath Mullick v. Pradhyumna Kumar Mullick, 69
the Privy Council observed that 'the will of the idol in
regard to location must be respected. If in the course
of a proper and unassailable administration of the worship
of the idol by the Shebait, it be thought that a family
idol should change its location the will of the idol itself,
expressed through his guardian, must be given effect to.'

In Venkatachala v. Sambasiva, 70 Justice Devadoss referred
to authoritative texts such as Prathistha Mayukha by
Nilkanth, Kamika Agama, Sindhanta Sakhara etc. and main­
tained that 'where all the worshippers of the temple, who
are in the management of it, decide to build a new temple,

70 A.I.R. 1927 Mad. 465.
the old one being in ruins and the site of which had become insanitary and inconvenient for the worshippers, then unless there is clear prohibition against their demolishing the old temple and building a new temple, the court is not entitled to prevent the whole body from removing the temple with its image to a new site in the circumstances." The decision implied that the whole body of the worshippers, if they are of one mind can even remove permanently an idol to another habitation.

After analysing the law on the subject of the movement of idol, the Supreme Court comes to the conclusion that in the instant case, the deity which is installed in a removable (Chala) form has been temporarily removed for the purpose of processions only. This appears to be a custom which is being followed for about two hundred years and by the consent of the worshipping public. The deity is brought back to the old site after its temporary sojourn at other places and that further during the absence of the deity, a substitute idol is placed so that the dedicatee is never out of possession of the temple. The Court, thus declares the temple a public temple and dismisses the appeal.

The appearance of a temple: The appearance of a temple can be considered an important factor in determining the nature of a temple. In Tilkayat Govindalji V. State of Rajasthan, the Supreme Court points out that

71 Supra n. 25, p. 714.
the appearance of a temple, of course, cannot be a decisive factor, at best it may be a relevant factor. Where evidence in regard to the foundation of the temple is not clearly available, some times, judicial decisions rely on certain other factors which are treated as relevant. In this case, the Supreme Court had to decide whether the Nathdwara Temple was a public or a private temple. One of the contentions of the appellant was that the Nathdwara temple was a private temple in the form of a Haveli. The Court had to decide whether there was anything in the philosophical doctrines of the Vallabh School which prohibited the existence of public temples or worship in them. The Court agrees that the Vaishnava temples of the Vallabh sect are generally described as havelis, and though they are grand and majestic inside, the outside appearance is always made to resemble that of a private house. The Court rejects the contention of the appellant that the Vallabh School prohibits the construction of a public temple as a general rule; though according to the Court, some temples of this cult may have been private in the past and some of them may be private even today. The explanation given by the Court for a peculiar construction of the temples of Vallabh is:

"The main object underlying the requirement that devotees should assemble in the havelis of the Guru and worship the idol obviously was to encourage collective
end congregational prayers. Presumably, it was realised by Vallabh (the founder of the cult) and his descendants that worship in Hindu public temples is apt to clothe the images worshipped with a formal and rigid character and the element of personality is thereby obliterated; and this school believes that in order that Bhakti should be genuine and passionate, in the mind of the devotee, there must be present the necessary element of the personality of God. 72

There is another explanation for the construction of the temples in the form of Havelis. Vithalnathji was one of the more important followers of the Vallabh sect, and he, with his missionary efforts, spread the doctrine of Vallabh in various parts of the country. By his time, the tolerant rule of the Moghal emperors like Akbar had ended and the Hindu temples were exposed to risk and dangerous persecution at the hands of the intolerant Aurangzeb. 73

The Court here refers to the traditional story about the

72 Ibid., p. 724.

73 In this connection, a reference can be made to the famous temple of Vithal at Pandharpur (Maharashtra). Though the temple is big and majestic from within, its external appearance does not give that impression. This temple also suffered devastation at the hands of Aurangzeb when he was in the Deccan. His order of 1669 A.D. categorically referred to the destruction of Hindu temples in the region and a ban on the religious ceremonies of the Hindus. For the history of this temple, please refer O. H. Khare, Shri Vithal and Pandharpur (Marathi) (Poona: the Author, 1963), pp. 16-48.
foundation of the temple and says that this story, full of history and fiction, brings out the fact that owing to the religious persecution practised during Aurangzeb's times, Shrinathaji himself had to give up his abode near Mathura and to start on a journey in search of a place for residence in more hospitable and congenial surroundings. Faced with this immediate problem Vithalnathji may have started building the temples in the form of Havelis so that from outside nobody should know that there is a temple within. 74

A reference is also made to one more point regarding the historical importance of the temple. Originally the temple built during the life time of Vallabh 75 may have been in the form of a modest house visited by a few devotees and was then called a Haveli. In course of time thousands of visitors were attracted to the temple but the traditional adherence to time-honoured words described all subsequent temples also as Havelis even though they were as big and majestic as public temples.

It is on the basis of these considerations that the Supreme Court was not ready to accept the contention of

74 Supra n. 25, p. 725.

75 1479-1531 A.D. It may also be noted that the image of Vithal in the temple at Pandharpur had to be removed on numerous occasions to save it from destruction at the hands of Muslim iconoclasts.
the appellant that the Nathdwara temple was a private
temple as indicated by its appearance.

**Nature of Worship and Ceremonies Performed in the Temple**

The nature of worship and the ceremonies performed for the deity or idol in the temple are also taken into consideration in deciding whether a particular temple is public or private. In the State of Bihar and others v. Smt. Charusila Dasi, one of the clauses in the deed creating the trust recites 'the pornams' and perquisites to be offered to the deities and the image in the Jugal Mandir shall form part of the Srimati Charusila Trust Estate and neither shebaits nor any one else shall have claim in or over the same. This clause suggested that the right of worship was not confined to the family of the settlor but was given to other members of the Hindu public who could offer 'pornams' and perquisites to the deity and those offerings were to form part of the trust estate.

The trust deed also gave details of the ceremonies to be performed for the deity. These included 'Jal Chattra' (free distribution of water), 'Annakoot' (distribution of food at the time of Diwali), etc. The Supreme Court maintains that though not conclusively by themselves, these have to be considered in the light of the other

more important provisions of the deed. There were other festivals which were performed as a rule for the deity. They were 'Rathayatra', 'Jhulan', 'Ras' and 'Dol' (Holi), etc., in which members of the Hindu community usually take part in large numbers and the scale of expenses laid down showed that the festivals were to be performed on a large scale to enable a large number of persons to take part in them. These factors were taken to be in favour of the temple trust being treated as a public one.

In public temples a Sadawart or a Dharmashala is attached. These are open to the Hindu public and usually travellers and the poor are fed in these Dharmashalas, from the surplus funds of the trust. The existence of such a dharmashala was considered as a circumstance in favour of the public character of the temple.\textsuperscript{77} In \textit{Commissioner Income Tax V. Sri Dwarka Dheesh Temple}, \textsuperscript{78} an instrument of dedication provided that a fund had been collected for the purpose of building and endowing the temple. Although the document of the dedication did not state that it was either a private or public trust, the endowment funds of the temple which increased to several lakhs were spent on the Patshala and the Dharmashala and the benefits of these

\textsuperscript{77} Jagat Kishore V. Lakshaman Das 23 Bom. 659.

\textsuperscript{78} 1946 14 I.T.R. 440.
were made available to the public. This fact of the user of the temple funds for the general purpose of the public was interpreted to suggest that the said trust was a public one.

This shows that the use of temple funds for charities for the poor in the form of feeding is considered an incidental factor to be taken into account while deciding a particular temple to be a public temple but it cannot be treated as a material factor.

**Dedication of Property, Absolute or Partial**

The nature of dedication of property to the idol, absolute or partial dedication, has always been considered an important determinant of the nature of an endowment. The first most authoritative law on this subject was expressed comprehensively by the Supreme Court in *Menakuru Basaratharamei Reddi and other v. Duddakuru Subba Rao and others*,79 in 1957. In this case, the principal issue to be decided was whether the properties in suit were the subject matter of Public charitable trust or are merely burdened or charged with the obligation in favour of the specific charities.

The Supreme Court points out that when the entire beneficial interest in the property is gifted to the idol,

it is a case of absolute dedication. If, on the other hand, some interest in the property or the income thereof is reserved for the family, it is a case of partial dedication. If the dedication is complete, a trust in favour of public religious charity is created. If the dedication is partial, a trust in favour of the charity is not created but a charge in favour of the charity is attached and follows the property which retains its original private and secular character. Whether a dedication is complete or otherwise is a question of fact to be decided in each case in the light of material terms used in the document of dedication. In each case the true intention of the settlor must be gathered from and on the basis of fair and reasonable construction of the document of the dedication as a whole. In some cases, where documents purport to dedicate property in favour of a public charity, provision is made for the maintenance of the worshipper who may be a member of the family of the original owner of the property himself and in such cases the question often arises whether the provision for the maintenance of the manager or the worshipper from the income of the property indicates an intention that the property should retain its original character and should merely be burdened with an obligation in favour of the charity. If the income of the property is substantially intended to be used for the purpose of charity and only an insignificant and minor
portion of it is allowed to be used for the maintenance of the worshipper or the manager, it may be possible to take the view that the dedication is complete. If on the other hand, a minor portion of the income is expected or required to be used for the maintenance of public charity, and a substantial surplus is left in the hands of the manager or the worshipper for his private purposes, it would be difficult to accept the same as complete dedication. The problem is necessarily a complex one and it is difficult to lay down any general rules for the solution of the same. Each case shall have to be judged on its own merits, and in doing so, the intention of the parties concerned must be ascertained on interpreting the document of dedication as a whole. While arriving at this decision, the Supreme Court referred to the various decisions of the Privy Council in the matter. In each of these cases, the decision was based on the interpretation of the settlor expressed through the will or the document of dedication.

The question of absolute or partial dedication of property was further discussed by the Supreme Court in Nirmala Bala Ghose and another v. Balsei Chand Ghose and others. 81


The Supreme Court, here reiterates the position of law on the subject and gives some guidelines which could help in the interpretation of the deed of dedication. It points out that the question is always one of intention of the settlor to be determined from a review of all the dispositions under the deed of settlement. The Court says:

"In construing a deed, the court has to ascertain the intention of the settlor and for that purpose to take into consideration all the terms thereof. If on a review of all the terms it appears that after endowing property in favour of a religious institution or a deity, the surplus is either expressly or by implication retained with the settlor or given to his heirs, a partial dedication may readily be inferred, apparently comprehensive words of the disposition in favour of the religious endowment notwithstanding."\(^{82}\)

It has been noted that the question of determination of the dedication, whether total or partial, depends upon the interpretation of the deed or instrument of dedication taken as a whole. In Lakshminarasimhasahari V. Sri Agasteeswaraswami Varu,\(^{83}\) it was noted that a deed was executed in favour of a person who was designated as

\(^{82}\) Ibid., at p. 435.
\(^{83}\) (1960) 3.C. 622.
the manager of a particular temple and the purpose of the
grant was indicated as the performance of certain rites
or services in the temple. It was realised that the
income from the dedicated land was very small and the
document itself did not permit the expenditure for worship
or contain directions regarding the disposal of the
surplus. The Supreme Court, on the basis of these facts,
inferred that it was a complete dedication in favour of
the temple, and observed that a grant was not a personal
grant but a grant to the deity whose services have to be
performed from out of the income of the properties granted.
In one more case, the Supreme Court had to interpret an
award which embodied a partition among the members of a
joint family. It was pointed out by the Court, that the
intention, as expressed in the award, was not to make the
appellant the absolute owner of the village but to give
him possession and management of the village so as to
enable him to meet expenses of worship and maintenance of
public temple of the deity Sri Ramchandra Swamy.

Public Charitable Endowments

The question whether a charitable endowment or
trust is public or not is to be decided not only with
reference to the intention of thesettlor but also with
reference to the interpretation of the same by the courts.

Normally, a charitable endowment is considered to be public when it is intended to provide for public utility or public benefit. The courts cannot decide this question arbitrarily but they must apply the standard of customary law and common opinion amongst the community to which the parties interested belong.

Religious Charity

In Commissioner, H.R. and C.E. V. Narayan the question was to decide whether 'Samaradhanai Fund' was a religious charity within the meaning of section 6(13) of the Madras Hindu Religious and Charitable Endowments Act of 1951. The trustees of the fund contended that the Samaradhanai fund was a private charity not associated with any Hindu festival or service in the temple and was not a religious charity or a specific endowment or a public charity, and that it could in no manner become subject to control of the Commissioner of the Madras Hindu Religious and Charitable Endowments. The trial court held that the fund was a public charity and also that it was a

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86 Fatima Bibi V. Advocate General, 6 Bom. 42.
88 Section 6(13) defines religious charity as a public charity associated with a Hindu festival or observance of a religious character, whether it be connected with a math or temple or not.
religious charity within the meaning of the section 6(13) of the Act on the ground that the charity was associated with the Hindu festival of Rathothsavam at the Gunaseelam temple. In the appeal, the High Court of Madras held that the Samaradhanai fund was a public charity but not a religious charity and the Commissioner had no jurisdiction to bring it under his control. With special leave, the Commissioner appealed to the Supreme Court.

The Subordinate Court held that the charity was clearly associated with a Hindu Festival and also with the observance of a religious character. The High Court, on the other hand held, that the expression "associated with a Hindu festival or observance of a religious character" in section 6(13) of the Act, imported some unity of purpose or common object or common endeavour between the festival and the charity could not be regarded as a religious charity within the meaning of the section. In the opinion of the High Court, feeding Brahmin pilgrims

89 According to tradition, the charity in question was a feeding charity conducted during the ten days of the Rathothsavam festival. Only Brahmins were fed from this charity and there were different feeding charities of different communities. The charity in question had no connection with the Gunaseelam temple in the sense that the food 'prepared is not offered to the deity and feeding is done not in the temple premises but at a separate place. The temple authorities have no voice in the conduct of the feeding.' This charity was normally conducted at the time of the Hindu festival of Rathothsavam in Sri Prasanna Venkateshchopathi Swami Temple in Gunaseelam. Rathothsavam was an occasion when the deity was taken in procession in a chariot.
during the festival did not constitute an association between the fund and the festival itself because the trustees who conducted the festival had no manner of check, control or supervision over the feeding charity or Samaradhansi fund. The High Court also pointed out that the trustees could not insist upon the feeding being done during the festival and that the cessation or discontinuance of the feeding may constitute a breach of trust on their part but it cannot in the least affect the due performance of the Rathothsavam festival itself. It further observed that the belief of the founders of the charity that feeding Brahmans on the occasion of an important festival was meritorious, would not establish 'any link or connection between the festival and the charity'.

The Supreme Court does not agree with the stand adopted by the High Court. It maintains that the expression 'associated' in the section is used, having regard to the history of the legislation, the scheme and objects of the Act, and the context in which the expression occurs, as meaning 'being connected with' or 'in relation to'. The expression does not import any control by the authorities who manage or administer the festival. It further states that a Hindu religious festival or observance may have local significance to the extent to which it is celebrated or observed in a particular locality in connection with a
shrine, temple or math or it may be a festival or observance generally without any connection with any temple or math. In the case of such general festivals or observances there is no one who can control the celebrations, and the definition of 'Religious charity' includes such general festivals and observances. The test suggested by the High Court that 'there should be between the charity and the festival or observance such a relation that the administration of the charity must be controlled by those who celebrate festival or observance in a temple or math' is considered by the Supreme Court as inept, and as one which cannot be interpreted from the existing definition of religious charity in the section. As regards the contention of the trustees that 'the public charity must be an integral part of the Hindu religious festival or observance' is not accepted by the Supreme Court, arguing that there is nothing in the Act which indicates any such intention on the part of the legislature. The Supreme Court maintains:

'A voluntary celebration of an event of religious significance by feeding Brahmins does not make it a public charity. There must be an institution which may in law be regarded as a public charity, before it may, by its association with a religious festival or observance, be regarded as a religious charity. The association, it is not predicated, that the administration of public charity
must be controlled by the persons responsible for celebrating the religious festival in a temple or math or be an integral part of the festival or observance. ... The primary purpose of the charity has therefore a real connection with the Navratri which is a Hindu festival of a religious character and therefore it is a religious charity within the meaning of section 6(13) of the Madras Act XII of 1951. **90**

**Conclusion**

The problem of determination of the character of trust temple, whether public or private, has always been a controversial one. If the parties concerned are able to prove that the trust temple is a private one, the same falls beyond the scope of the social reform clause implied in Article 25(2)(b) of the Constitution and state interference, consequently, in such a case becomes limited. If proved otherwise, the trust institution is subject to any restrictive law that is made under the social reform clause. In deciding such disputes, the court has to take into consideration the claims of the rival parties, giving due protection to the interests of both and an unwarranted interference on the part of the state is to be prevented.

This is, by no means, an easy task. In performing this task, the courts have taken into account various

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**90** Supra n. 87, pp. 432-33.
factors such as the will of the founder, user of the temple by public, ceremonies relating to the temple, character of the temple, its appearance, nature of worship, nature of dedication, etc. While considering these factors, the courts have relied upon the basic documents, historical facts, practices followed, and, wherever necessary, the courts have also interpreted the basic shastric texts. It can be contended that in performing this delicate task, the courts have given due weightage to the claims of both parties and have, thereby, defined clearly the areas where the interference implied in the social reform clause is invited and justified.