Introduction

The Constitution of India confers on religious denominations the right to establish and maintain institutions for religious and charitable purposes and to manage their own affairs in matters of religion as well as to own, acquire and administer property in accordance with law. The Supreme Court of India had to decide whether Maths are religious denominations entitled to enjoy these freedoms and also whether the Mathadhipathi, the spiritual head of a Math, is entitled to enjoy similar freedom in individual as well as institutional capacities.

Math: Its Genesis and Growth

The institution of Math occupies an important position in the religious system of the Hindus. Sankaracharya, the founder of the Advaita or non-dualistic school of philosophy is considered as the founder of this institution. When orthodox Hindu religion was assailed by the Buddhists, Sankaracharya established in various parts of India,¹ maths in order to maintain and strengthen the

¹ Sringeri in Mysore, Kamakoti Peeth in Kanchi in Madras State, Badrinath in Himalayan region, Jagannath and Dwarka etc. were the principal Maths established by Sankaracharya.
doctrine and the system of philosophy he taught. These were the Saivite maths. Following Sankaracharya the founders of various schools of philosophy vis. Ramanuja of Visisht-Dwaita, Ramananda of Nimbarka, Vallabhacharya and Sri Chaitanya of Vaishnava, and Sri Madhavacharya of Dwaita sects founded maths in various parts of the country to promote the teachings of the school to which they belonged. Similarly, dissenting religious sects vis. Jains, Kabir Panthis, Nanak Panthis, etc. also established their maths even if they did not believe in some tenets of the orthodox Hindu religion.

All these maths were the centres of theological learning especially for the study, practice and propagation of the cult of each system of philosophy; to train and equip a line of competent teachers whose duty has been to go forth into the land bearing the torch of learning and spreading its light. These maths throughout these years have functioned as part and parcel of the Hindu system of religion.

These maths differ in the nature of their internal organisation, nature of entry of members into the math, rules governing the heads of the organisation, etc., but they have certain common features also. The ascetics who preside over these maths are highly respected by the

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fraternity of disciples as well as the citizens. Hindu princes and noblemen, formerly, made large presents to them both in cash and kind as well as in terms of lands. The property thus endowed to the math, does not descend to the disciples or elders in common; the preceptor, the head of the institution, selects from among the affiliated disciples, the most competent as his successor. This person, after the death of the preceptor is installed on the Sadi and takes, by succession, the property held by the predecessor. It is in this manner that a class of endowed maths has been functioning in the country for hundreds of years.

The Character of a Math: Public or Private

Like temples, one of the important questions in relation to the endowments regarding maths has been whether these endowments are private or public. The courts have differed very widely on this issue. Madras and Patna High Courts before independence held that there could be private maths. According to these courts, the question whether a particular math forms a public religious endowment or is a private institution must be judged in the light of the evidence of each case. The origin of the math if it is known, its antiquity, the nature of the gifts of property made to it, the long established usage

and custom of the institution, all these, throw valuable light on the question whether the math is a public religious endowment or a private institution. 4

Mr. Mukerjee, an authority on the law of religious endowments, however, admits the possibility of private maths. 5 He defines private maths as 'those institutions where the head or superior holds the property not on behalf of an indeterminate class of persons or a section of the public, but for a determinate body of individuals viz., the family or descendants of the grantor'. The interpretation of the Supreme Court in this connection, however, seems to be different. In deciding this question, the Supreme Court applies the same test as is applied for the determination of a trust, whether public or private, viz. whether the beneficiaries of a trust are known persons or an indeterminate body of persons. 6 According to the Court the historical origin of the institution suggests that the spiritual family of the preceptor including his disciples and their successors cannot be considered as a private family for whose benefit a math is understood to be founded. It is on the basis of this logic that the Court maintains:


6 For details see supra Chapter VI on 'Hindu Religious and Charitable Endowments / Temples' at pp. 228-29.
The beneficiaries of a mutt are the members of the fraternity to which the mutt belongs, and the persons of the faith to which the spiritual head of the mutt belongs, and constitute therefore, at least, a section of the public. Mutts, in general, consequently are public mutts. 7

In Swami case, a question was raised whether the word 'parson' used in Article 25, stating that all persons are equally entitled to freedom of religion, means individuals only or corporate bodies as well. The Court considers Hathadhipathi not a corporate body but the head of a spiritual fraternity, by virtue of which, he performs the duties of a religious teacher. It is his duty to practise and propagate the religious tenets of which he is an adherent and if any provision of law prohibits him from propagating his doctrine, it would certainly affect the religious freedom which is guaranteed to every person under Article 25. The Court maintains:

"Institutions as such cannot practise and propagate religion, it can be done only by individual persons and whether these persons propagate their personal views or the tenets for which the institution stands is immaterial for purposes of Article 25. It is the propagation of belief that is protected, no matter whether the propagation takes

7 Srinivasa Das V. Surjanarayan 1967 S.C. 256.
place in a Church or monastery or in a temple or parlour meeting.8

Another question in relation to Article 26 was whether a math could come within the expression 'religious denomination'. The Court accepts the definition of denomination as given in Oxford Dictionary: 'a collection of individuals, closed together under the same name: a religious sect or body having a common faith and organization and designated by a distinctive name'.9

On the basis of this definition, the Supreme Court considers the institution of Math and the spiritual fraternity represented by it as one which can legitimately come within the purview of Article 26 and be considered a religious denomination entitled to specified freedoms in that Article.

The Legal Position of Math

The legal position of a math as a religious institution was decided by the Indian judiciary in many cases settled by it before independence. It may be observed in this connection that there has been a steady enlargement of the powers of the mahant as they have been interpreted by the judiciary. The Privy Council considered him as

only the manager and custodian of the idol or the institution. In Vidya Varuthi V. Balusami, the Privy Council held that a Mathadhipathi holds the Math properties as a life tenant or that his position is similar to that of a Hindu widow in respect of her husband's estate or of an English Bishop holding a benefice.

The Supreme Court, however, modifies this position and considers the Mahant or Mathadhipathi as having certain proprietary rights over the property of the institution. His duty is not only to manage the temporal affairs of the Math but as a head of a spiritual fraternity it is his duty to foster and encourage spiritual teachings. The Court maintains:

"... but he is not mere manager and it would not be right to describe Mahantship as a mere office. ... has not only duties to discharge in connection with the endowment but has a personal interest of a beneficial character which is sanctioned by custom ... he has besides large powers of management and disposal, certain proprietary rights over the property of the Math." 11

One of the recent judgments of the Court in Sarangadева Periya Matam V. Ramaswami Gounder 12 has

10 (1921) 41 M.I.J. 346
11 Supra n. 8, pp. 345-46.
reaffirmed the position adopted in the Swamiar case. The Court says:

"Like an idol, the Math is a juristic person having the power of acquiring, owning and possessing properties and having the capacity of suing and being sued. Being an ideal person, it must of necessity act in relation to its temporal affairs through human agencies... The office of the Mathadhipathi carries with it the right to manage and possess the endowed property on behalf of the Math and the right to sue on its behalf for the protection of those properties. But by virtue of his office, he can possess and enjoy only such properties as belong to the Math."

Mahant and Shebait

The position and powers of a Mahant of a Math are different from those of a Mahant of a temple or a Shebait of an idol. There can be only one Mahant for a Math while there can be more than one Shebait for a temple. There cannot be personal heirs for the mahant ordinarily because succession is governed by custom of the particular institution, the right to manage the properties of an idol ordinarily descends to the natural heirs of a shebait.

As regards the distinction between Mahantship and Shebaitship regarding property rights, the Supreme Court, in Swamiar case, maintains that both the elements of office and property, of duties and personal interest, are blended.
together and neither can be detached from the other.\textsuperscript{13}

\textbf{The Property Rights of the Mahant}

In the Swamier case, the Supreme Court expresses an authoritative opinion on the issue of the property rights of the Mahant, in the context of Article 19(1)(f)\textsuperscript{14} of the Constitution. The Court feels that the word property used in this Article should be given liberal and wide connotation. In this connection, the Court explains clearly its conception of the office of the Mahant and since this forms the basis of its approach towards the rights and powers of this important office-bearer of an important Hindu religious institution, the text, though lengthy, is quoted extensively. The Court observes:

"The ingredients of both office and property, of duties and personal interest are blended together in the right of Mahant and the Mahant has the right to enjoy this property or beneficial interest so long as he is entitled to hold office. To take away this beneficial interest and leave him merely to discharge of his duties would be to destroy the character as a Mahant altogether. It is true that the beneficial interest which he enjoys is appurtenant to his duties and as he is in charge of a public institution,

\textsuperscript{13} For details see supra Chapter VII, Hindu Religious Endowments (Shebait, Pujari etc.) at pp. 275-77.

\textsuperscript{14} Article 19(1)(f) reads: 'All citizens shall have the right to acquire, hold and dispose of property'. 
reasonable restrictions can always be placed upon his rights in the interest of the public. But the restrictions would cease to be reasonable if they are calculated to make him unfit to discharge the duties which he is called upon to discharge. A Mahant's duty is not simply to manage the temporalities of a Math. He is the head and superior of a spiritual fraternity and the purpose of Math is to encourage and foster spiritual training by the maintenance of a competent line of teachers who could impart religious instruction to the disciples and followers of the Math and try to strengthen the doctrines of the particular school or order, of which they profess to be adherents. This purpose cannot be served if the restrictions are such as would bring the Mathadhvaths down to the level of a servant under a state department. It is from this standpoint that the reasonableness of the restrictions should be judged.\(^{16}\)

When the Supreme Court admitted that Article 19(i)(f)\(^ {17}\)

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15 See infra clause 5 of Article 19. Footnote 18 below. Italics mine.

16 Supra n. 8, p. 346.

17 Attorney General, in Swamiar case, wanted the Supreme Court to express its final opinion on the interpretation of Article 19(i)(f). He refers to the controversy centered round this Article as it became explicit in State of Bengal V. Subodh Gopal Das. In that case Justice Patanjali Shastri contended that Article 19(i)(f) concerned only with abstract rights of property and not the concrete ones. Justice Jagannath Das, on the other hand, felt that while this Article related to natural rights of citizens, it comprehended within its scope concrete property rights also. For details see, (1954) 3 S.C.J. 127-133.
can be applied equally to concrete as well as abstract rights of property, the same can be made applicable to the property rights of the Mahant. The Court considers it natural that the reasonable restrictions implied in clause (5) of Article 19\(^{18}\) could be placed on the rights of the Mahant in the interests of the public. It states that any restriction that reduces the dignity of the office of the Mahant could be considered as invalid. It is on the basis of this stand that the Supreme Court tested the validity of many provisions of the Hindu Religious and Charitable Endowments Acts passed by various states in India.

**Reasonable Restrictions on the Power of the Mahant**

The Hindu Religious and Charitable Endowments Acts enacted by the State governments after independence, and especially, after the inauguration of the Constitution in 1950, imposed various restrictions on the powers of the Mahant, and the Courts were called upon to decide the reasonableness or otherwise of these restrictions. The inclusion of the word 'reasonable' made it a justiciable issue and the courts differed in their interpretations as to what restrictions were reasonable and what were not.

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\(^{18}\) This clause refers to the power of the state to impose reasonable restrictions on the exercise of rights in the interest of the general public.
The position adopted by the Supreme Court, by and large, has been that a Math is a public religious institution and as such is subject to restrictions in the interests of the general public. At the same time the Court has conceived the office of the Mahant as one of a religious head with some dignity and status and any restrictions which contravene this conception have been considered as invalid and unconstitutional. It would be advisable to see how the judiciary in India has approached this controversial issue.

The Madras Hindu Religious and Charitable Endowments Act, 1951

Section 20 of this Act, empowered the Commissioner to pass any order that may be deemed necessary to ensure that such endowments are properly administered, and that their income is duly appropriated for the purposes for which they were founded. This section was declared by the Madras High Court as ultra vires on the ground that it resulted in lowering the position of the Mahant to a mere recipient of an order of state. The Supreme Court, however, rejects this interpretation and says: 19

"Having regard to the fact that the Mathadhipathi occupies the position of a trustee with regard to the Math, which is a public institution, some control or supervision..."

19 Supra n. 8, p. 352.
over due administration of the endowments and due appropriation of their funds is certainly necessary in the interests of the public. We do not agree with the High Court that the result of this provision would be to reduce the Mahant to the position of a servant. No doubt the Commissioner is invested with powers to pass orders but orders can be passed only for the purpose specified in the section and not for interference with the rights of the Mahant as are sanctioned by usage or for lowering his position as the spiritual head of the institution."20

It was contended on behalf of the appellant that such a provision is likely to be abused. The Supreme Court rejects this argument observing:

"An apprehension that the powers conferred by this section may be abused in individual cases does not make the provision itself bad or invalid in law."21

Thus section 20 of the Madras Act was considered by the Court as intra vires maintaining that the provision of this section by itself does not affect any fundamental right of the Mahant. The Court applies the same logic in dealing with other sections of the Madras Act, in judging their validity. These sections provided that the trustee of a religious institution should obey all lawful orders

20 Ibid. Italics mine.
21 Ibid. Italics mine.
issued by the government, 22 that in the administration of the affairs of the institution the trustee should use as much care as a man of ordinary prudence would use in the administration of affairs of his own, 23 that all religious institutions and endowments should be properly registered, 24 etc. All these sections which were considered by the Madras High Court as invalid, in full or part, were declared valid by the Supreme Court on the ground that they imposed reasonable restrictions on the rights of the Mahant.

Section 28 of the Madras Act empowers the Commissioner or any other officer authorised by him to inspect all movable and immovable properties appertaining to a religious institution. The High Court considered this section as innocuous. According to the Supreme Court, the mere possibility of its being abused is no ground for holding it to be invalid. Section 29 prohibits alienation of all immovable properties belonging to the trust, except leases for a term not exceeding five years, without the sanction of the Commissioner. The Supreme Court maintains that all endowed properties are inalienable and therefore the

22 Section 23 of the Madras Religious and Charitable Endowments Act, 1951.

23 Section 24 of the Madras Religious and Charitable Endowments Act, 1951.

restrictions placed by section 29 upon alienation of endowed properties cannot be considered as bad. Similarly, the provision of clause (2) of Section 29, which enables the Commissioner to impose conditions when he grants sanctions to alienation of endowed properties is perfectly reasonable and no exception can be taken to the same.

Section 30 of the Madras Act lays down that although a trustee may incur expenditure for making arrangements for securing the health and comfort of pilgrims, worshippers and other people and clause 2 of this section provides that when there is a surplus left after making adequate provision for purposes specified in section 79(2), he shall be guided in such matters by all general or special instructions which he may receive from the Commissioner or the Area Committee. The Supreme Court contends that clause 2 of section 30 appears to be obscure. If the trustee is to be guided by special or general instructions issued by the Commissioner or the Area Committee, but not fettered by such directions, no objections could possibly be taken to this clause. The Mahant has large powers of disposal of surplus income and the only restriction is that he cannot spend anything out of it for his personal use unconnected with the dignity of his office. It is further pointed out that the purposes specified in the Section 39(i) clauses (a) and (b) are beneficial to the institution and therefore... There seems to be no reason why the authority vested
in the Mahant to spend the surplus income for such (beneficial) purposes should be taken away from him and he should be compelled to act in such matters under the instructions of the Government officers". The Court considers this an unreasonable restriction on the Mahant's right of property which is blended with his office and declares Section 30(2) as ultra vires.

Section 31 is a continuation of the provision of Section 30 and deals with surplus funds which the trustees may apply wholly or in parts with the permission, in writing, of the Deputy Commissioner for any of the purposes specified in Section 39(1). The Supreme Court applies the same logic as it does in the case of Section 30(2) and points out that 'one of the purposes mentioned in Section 39(1) is the propagation of religious tenets of the institution and it is not understood why sanction of the Deputy Commissioner should be necessary for spending the surplus income for the propagation of the religious tenets of the order which is one of the primary duties of a Mahant. It undoubtedly places a burdensome restriction upon the property rights of the Mahant which are sanctioned by usage.

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25 Section 59 of the Madras Hindu Religious and Charitable Endowments Act provides for the application of the 'Cy pres doctrine' when the specific objects of the trust fail. Sub-clause (c) of Clause 1 of this section refers to profession of Hindu Religion or the tenets of the Math as one of the purposes. For detailed discussion on the application of Cy pres doctrine see infra Chapter II 'Hindu Religious Endowments: Administration of Trusts'.
and which would have the effect of impairing his dignity and efficiency as the head of the institution. It is on this ground that the Supreme Court agrees with the High Court and declares Sections 30(2) and 31 as invalid.

Application of Surplus Funds of a Math

The Mahant is a trustee and as such has ample discretion in the use and application of the funds of the institution but this discretion is itself subject to certain obligatory duties governed by custom and convention. In various cases decided before the inauguration of the Constitution in 1950, this discretion of the Mahant was duly recognised by the Courts. In Kaslo Das v. Amar Dasji,26 the Patna High Court had maintained that 'the existence of a very wide discretion in the Mahants as to the application of the income of Asthal is not inconsistent with a fiduciary obligation so to manage the property that the objects for which the institution exists shall be effectively served. The Madras High Court held in Sampantha Pandara V. Selleppa Chetty,27 that though the Mahant is, in a certain sense, a trustee, he has large control over the income of the properties of the Mutt and is not accountable to the management or for the expenditure of the income, if he does not apply it to purposes other than what may fairly be regarded as in furtherance of the objects of the

26 A.I.R. 1935 Pat. III at 112.
27 2 Mad. 175.
The same High Court also held that the income derived from the endowments of the Mutt as well as various offerings made by the disciples and followers are at the disposal of the Mathadhipathi. He, as the head of the religious institution is expected to spend, at his will and pleasure, on the objects for religious charity and in the encouragement and promotion of religious learnings. The Court also contended that this obligation to devote the surplus income for religious and charitable purposes is in the nature of a moral obligation subject to moral conscience of the Mathadhipathi and is not subject to law. The Privy Council contends in this connection that the duty of the trustee is to refrain from personal enjoyment of the income (surplus) and add the same to the capital of the institution. In Swami case the Supreme Court of India clarifies its position on this issue. It maintains that under the law as it stands, the Mahant has large powers of disposal over the surplus income and the only restriction is that the Mathadhipathi cannot spend anything out of it for his personal use unconnected with the dignity of the office. In Appa Rao V. Vignesam Subudhi, the

29 Arunchalam Chetty V. Venkateshapathi 46 I.A. 204.
30 Supra n. 8, p. 354.
31 A.I.R. 1937 Mad. 118.
Madras High Court had held that there is no distinction between the Mahant's power of disposal over the income of the property and the Corpus itself. All moneys arising out of the Mutt property become Mutt property the moment these are received on behalf of the Mutt and no special act of appropriation is necessary to convert it into Mutt property. On the contrary, such receipts remain Mutt property unless and until the Mahant chooses to spend them in accordance with the large powers entrusted to him. In Sudhindra Tirth Swamiar V. Commissioner H.R. and G.E. the Supreme Court points out:

"The Mahant has to discharge the duties of a trustee qua the institution and is answerable as such. We deem it necessary to state that having regard to the large powers which the Mahant has over the application of funds not only for the maintenance of the dignity of his office and expenses for the maintenance of the Mutt, but also for such purposes, religious or charitable, as are not inconsistent with the usage and the custom of the endowment, the application of the funds for personal enjoyment and luxury by the Madhipathi or for purposes wholly unconnected with the institution would alone be
covered by the second part of the section 52(1)(f).

**Bombay Public Trusts Act, 1950**

In Ratilal Gandhi V. The State of Bombay and others,\(^3\) the validity of some provisions of the Bombay Public Trusts Act was challenged by the appellants. Under Section 18 of the Act it is incumbent on the trustees of every public, religious and charitable trust to get the same registered and Section 65 of the same Act makes it an offence if a trustee does not comply with this provision of compulsory registration. Section 31 provides that no suit shall lie on behalf of a public trust to enforce its right in any court of law unless the trust is registered. The Act also provides for compulsory payment of Rs. 25 as a registration fee. It was contended on behalf of the appellants that these provisions interfere with the rights of religious institutions to manage their affairs. The Supreme Court does not accept this contention and maintains that these provisions are intended to ensure the supervision of the trust properties and the exercise of proper control over them. These are

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\(^3\) This section of the Madras Act of 1959 mentions that a Mahant can be removed from his office for waste of funds or properties of the institution or the wrongful application of such funds or properties for purposes unconnected with the institution.

\(^3\) *S.C.J. (1954)* 480.
matters relating to the administration of trust properties and do not constitute an interference with the rights of religious institutions to manage their religious affairs.

Section 32 of the Bombay Act makes it compulsory for a trustee of a public trust to keep accounts in the manner and form prescribed by the Charity Commissioner. Section 33 provides for the auditing of these accounts and Section 34 expects the auditor to prepare balance-sheets and to report irregularities, if any, found in the accounts. According to the Court these are not the matters of religion and consequently the objections raised are not accepted. Section 35 related to investing money belonging to the trust in approved securities. Such a regulation is laid down in every legislation on the trust and is intended for the better utilisation of trust funds and therefore is not objectionable. As regards alienation provided for in section 36 of the Bombay Act, the Supreme Court maintains that: 'Immovable trust properties are inalienable by their very nature and a provision that they could be alienated only with the previous sanction of the Charity Commissioner as mentioned in the section 36 is a perfectly salutory provision.'

Section 44 of the Act lays down that the Charity Commissioner can be appointed to act as a trustee of a public trust by a court of competent jurisdiction or by
the author of the trust. Here the Court applies the analogy of a Math and maintains: "The Mathadhipathi is a trustee and if the court is competent to appoint the Charity Commissioner as a superior of a Math, the result would be disastrous and it would amount to flagrant violation of the constitutional guarantee which religious institutions have under the constitution in regard to the management of its religious affairs."\(^{35}\) The Court has no objection if the author of the trust himself chooses to appoint the Charity Commissioner as a trustee. But, the substitution of the Charity Commissioner for the superior would mean a destruction of the institution altogether. To allow the Charity Commissioner to function as the Shebat of a temple or the superior of a Math would certainly amount to interference with the religious affairs of the institution, the section is therefore invalid.

**Orissa Hindu Religious Endowments Act, 1952.**

In Mahant Sri Jagannath Ramanuj Das and another v. The State of Orissa and another,\(^{36}\) the constitutional validity of some provisions of the Orissa Hindu Religious Endowments Act was decided by the Supreme Court. This Act was originally enacted in 1939 and was suitably amended in 1952 in order to incorporate the changes necessitated by

\(^{35}\) Ibid., at p. 436. Italics mine.

the enactment of the constitution. This Act follows closely
the pattern of the Madras Hindu Religious and Charitable
Endowments Act and the grounds upon which the validity of
the Orissa Act had been attacked, in this case, were substan-
tially the same as were urged in assailing the constitu-
tional validity of the Madras Act in the Swamiar case. The
Supreme Court, therefore, reiterates its position adopted
in the Swamiar case in relation to fundamental issues
involved in this case. Section 11 of the Orissa Act was
objected to by the petitioners on the ground that it vests
almost uncontrolled and arbitrary power upon the Commis-
sioner. This section was intended to ensure that Maths
and temples are properly maintained and the endowments are
properly administered. The explanation attached to this
section makes it clear that the general powers conferred on
the Commissioner extend to passing the interim orders as
the Commissioner might think fit. The Supreme Court points
out that the object and purpose for which these powers
could be exercised were indicated precisely in the Section
and, therefore, the authority vested in the Commissioner
could, in no way, be considered as arbitrary and unrestricted
as contended by the petitioners.

37 The Commissioner was required to be a member of the
judicial or Executive Service of the province and his
actions were subject to the general control of provincial
government. The Commissioner was empowered to exercise
effective control over the trustees of the maths and
temples.
Section 14 of the Orissa Act refers to the duties of the trustee and the care which he should exercise in the management of the affairs of the religious institutions. According to the Act, the care which the Commissioner is expected to take in the management of these affairs is what is demanded normally of every trustee in charge of trust estate, and the standard is that of a man of ordinary prudence dealing with his own funds or properties. The Court considers this a matter relating to the administration of the estate and does not interfere with any fundamental rights of the trustee. Section 28 lays down that the trustee of a temple shall be bound to obey all orders issued under the provisions of the Act by the Commissioner. It is contended by the Court that if the orders are lawful and made in pursuance of authority properly vested in the officer, no legitimate ground could be urged for not complying with the orders, and hence, the section is not invalid.

The main objections in this case were addressed to sections 38 and 39 of the Act which relate to the framing of a scheme by the Commissioner for the better administration of the endowment property. The objection to the section was that the Act provides for the framing of the scheme not by a civil court or under its supervision but by the Commissioner who is a mere administrative or executive officer. The section also did not provide for
appeal against the order of the Commissioner to the Court. The Supreme Court maintains:

"We think that the settling of a scheme in regard to a religious institution by an executive officer without the intervention of any judicial tribunal amounts to an unreasonable restriction upon the right of property of the superior of the religious institution which is blende with his office." 38

The Court thus declares sections 38 and 39 as invalid. According to section 46 of the Orissa Act, Mahant or a superior of a Math has wide powers of disposal over the surplus income, the only restriction being that the surplus income cannot be spent for his personal use unconnected with the dignity of his office.

The Orissa Hindu Religious Endowments Act was amended in 1954 in view of the judgment of the Supreme Court in Mahant Sri Jagannath Ramanuj Das V. State of Orissa. 39 The constitutional validity of sections 42(1)(b), 42(7), 44(2) and 79-A of this amended Act was tested in Sri Sadasib Prakash Bramhachari, Trustee of Mahiparskash Mutt V. State of Orissa. 40 The contention of the petitioners

was that these amendments were not satisfactory and the specified provisions violated the constitution to the extent to which they imposed unreasonable restrictions on the rights of the Mahant as a head of the religious denomination. It was pointed out that the amended Act provided for a preliminary enquiry by a judicial officer of the rank of a munsif and the same is followed by a regular and full enquiry before the commissioner who is of the rank of a subordinate judge. Sections 42 and 44 provided that a scheme be framed by the commissioner alone from the report of the assistant commissioner on the basis of an enquiry which he thinks fit and not by the commissioner in association with one or more government officers appointed for the purpose by the government itself. The petitioners contended that there was no right of suit for challenging the validity or the correctness of the scheme framed by the commissioner but that there was provided, only, direct appeal to the High Court. The petitioners urged that these provisions still imposed unreasonable restrictions on the rights of the Mahadhipathi.

The Supreme Court adopted the stand taken in Swamiar case. It was, however, held that the provisions for framing a scheme which by its terms imposes unreasonable restrictions, should be considered unconstitutional and ultra vires. It was on the basis of this stand that the Supreme Court had declared sections 38 and 39
of the Orissa Act as invalid, and, as a consequence of which, the Act was amended to remedy the defect and it provided for a direct appeal to the High Court. The petitioners were not satisfied with the new provision and they contended that in any case a direct appeal to the High Court against the commissioner's order cannot be as adequate a safeguard as a suit and a right of appeal, therefrom, in the ordinary course to higher courts would be. This arrangement does not provide for an adequate safeguard for the rights of the Mahant. The Supreme Court does not accept the contention of the petitioners and maintains:

"A scheme framed with reference to such procedure (i.e. preliminary enquiry by the munsif, followed by a right of regular appeal to the High Court) cannot, ipso facto, be pronounced to be in the nature of unreasonable restriction on the right of the Mahant. It is much more in the interest of the public, to impress the enquiry before the commissioner himself with the stamp of great seriousness and effectiveness and to assimilate the same to a regular enquiry by the judicial officer according to judicial procedure and then to provide a right of direct appeal to the High Court."41

Attention is also invited by the Supreme Court to the fact that the right of appeal is given in very wide

41 Ibid., at 402.
and general terms. The appeal was permitted both on fact and on law and would relate not merely to the merits of the scheme, but also to all basic matters which are to be determined in the framing of the scheme. The Court, therefore, holds these amended sections 42 and 44 as valid because they do not impose unreasonable restrictions on the rights of the Mahant.

Objection was also raised to section 74(3) of the amended Orissa Act, stating that this provision brings about an unreasonable restriction on the right of the Mahant. The Court rules out this objection stating that the provision in the said section, which refers to the stay for the operation of the order of the commissioner pending the disposal of the appeal does not impose unreasonable restriction on the right of the Mahant.

Section 79 of the Orissa Act provides that all schemes settled under sections 38 and 39 of the Orissa Act of 1939 as amended in 1953 would be settled under section 44(2) and the party aggrieved by any such scheme may prefer an appeal to the High Court within a period of sixty days and that these appeals shall be disposed off in the same manner as those under section 44(2). The petitioners were of the view that such a provision was not

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42 The section reads - "... provided that the operation of the order of the commissioner shall not be stayed pending the disposal of the appeal."


within the competence of the legislature, and that it interfered with the jurisdiction of the Supreme Court under Article 32. The Supreme Court rejects this view and maintains that "the right of any person to seek remedy under Article 32 of the Constitution of India," is in no way curtailed or affected by the fact that an actual decision of the Supreme Court itself on an application under Article 32 is in fact nullified by appropriate and competent legislative measures. The Court brings out to the notice of the petitioners that the right has been successfully invoked in Jagannath Das case as well as the instant case. The Supreme Court concludes that Section 79-A is not open to constitutional objection because it does not bring about any substantial disadvantage to the detriment of the Mahant. Thus the Supreme Court sustains sections 42(1)(b), 42(7) and 44(2) of the Orissa Act as constitutional.

Bihar Hindu Religious Trusts Act, 1950

The constitutional validity of some sections of the Bihar Hindu Religious Trusts Act was questioned in Mahant Moti Das and others v. S. P. Sahi, special officer in charge of Hindu Religious Trusts. The Appellants in this

43 For details see supra Chapter III on 'Fundamental Rights and Judicial Review', pp. 106-07.
case urged that the sections 2845 and 3246 of the Bihar Act violated the fundamental rights guaranteed to them under Article 19(1)(f) of the constitution viz. their right to acquire, hold and dispose of the trust properties, especially to the extent to which they imposed unreasonable restrictions on their rights as Mahant. The High Court had considered these restrictions as valid and the appellants had preferred an appeal against this decision of the High Court. The Supreme Court agrees with the High Court when it says that the restrictions imposed by the Bihar Act on the power of the trustees are really intended, as the preamble47 states, for the better administration of Hindu

45 Section 28, important provisions are:

28(1) provides that the general superintendence of all religious trusts in the state shall be vested in the Board and the Board shall do all things reasonable and necessary to ensure that such trusts shall be properly supervised and administered and that the income thereof is duly appropriated and applied to the objects of such trusts and in accordance with the purposes for which such trusts are founded.

28(2)(e) states that the Board shall inspect the property and office of any religious trust including accounts and to authorise the superintendence of any of its members, officers or servants.

28(2)(g) empowers the Board to give directions for the proper administration of the trust in accordance with the law and the wishes of the founder.

46 Section 32 empowers the Board to settle scheme for the proper administration of religious trusts.

47 The Preamble reads: The Act to provide for the better administration of Hindu Religious Trusts and for the protection and preservation of properties appertaining to such trusts.
Religious Trusts in the State of Bihar and for the protection and preservation of properties appertaining to such trusts. The Court admits that the Bihar Act provides for a better and more speedy remedy for the enforcement of the obligations and duties imposed on the trustee than a lengthy one prescribed by the civil procedure code. The Board created under Section 26 is vested with summary powers in various matters, but as the section itself indicates, this power of control is to be exercised for the better administration of the trust and for the protection and preservation of the trust properties. The Supreme Court points out that the safeguards contained in the Act clearly indicate the true nature of the restrictions imposed in the Act and that these restrictions are intended for the purpose of carrying out the objects of the trust and for better administration, protection and preservation of the trust properties and, therefore, are reasonable restrictions in the interests of the general public within the meaning of Article 19 clause 5, and, therefore, are valid.

Section 60 of the Bihar Act relates to the budget and the submission of the same to the Board, and to the power of the Board to alter and modify it. The appellants submitted that the power to alter or modify the budget relating to a religious trust implied in the section or the power to give directions to the trustee may be exercised by the trustee in such a manner as to affect
adversely the due observance of religious practices in a temple or a Math so as to constitute an encroachment on the freedom of religion implied in Article 25 of the constitution. The Court answers this submission by inviting attention to clause 6 of section 60 where it is provided that the Board cannot alter the budget in such a manner that it becomes inconsistent with the wishes of the founder or with the provisions of the Act. The Court asserts its position by stating:

"... An apprehension that the powers conferred ... may be abused in individual cases does not make the provision itself bad or invalid." Therefore the said section is not invalid.

On the contrary the Supreme Court points out that, "the provisions of the act seek to implement the purposes for which the trust was created and prevent mismanagement and waste by the trustees. In other words, by its several provisions, it seeks to fulfill rather than defeat the trust. In our opinion ... there is no substance in the argument that the provisions of the Act contravene Articles 25 and 26 of the Constitution."
The Temple Entry of Officer

Section 21 of the Madras Hindu Religious and Charitable Endowments Act, authorises the Commissioner of the Endowments and such other officers as may be authorised in this behalf, to enter the premises of any religious institution or any place of worship for the purposes of exercising any power conferred, or discharging any duty imposed, by or under the Act, the only restriction being that the officer must be a Hindu. This section was held invalid by the High Court of Madras. The Supreme Court agrees with the position of the High Court and maintains:

"It is well known that there could be no such thing as an unregulated and unrestricted right of entry in a public temple or other religious institutions for persons who are not connected with the spiritual functions thereof. It is traditional custom universally observed not to allow access to any outsider to the particular sacred parts of a temple, as for example, the place where the deity is located."

The Court refers to the generally accepted custom whereby hours are fixed for worship and also rest for the idol when no disturbance by any member of the public is allowed. Section 21 of the Madras Act does not even exclude

51 Supra n. 8, p. 353.
the inner sanctuary, 'The Holy of the Holies', the sanctity of which is very zealously guarded by every religion. The Section also does not say that the entry must be made after due notice to the head of the institution and at such hours which would not interfere with the observance of the rites and ceremonies in the institution. The appellants had invited the attention of the Court to section 91 of the Act, which according to them, provided sufficient safeguard against any abuse of power under Section 21. The Supreme Court rejects this contention and declares this section, viz. section 21 as invalid because it interferes with the fundamental rights of the Mahadhipathi and the denomination of which he is a head.

In Madras Hindu Religious and Charitable Endowments Act of 1959 takes due note of the verdict of the Supreme Court regarding section 21 of the Madras Act of 1951 and provides for adequate safeguards in this connection. The amended section 24 provides that before entering the Sanctum Sanctorum or Pooja Gruha or any other portion held specially sacred within the premises of a religious institution or place of worship, the person authorised to do so shall give reasonable notice to the trustee or head of the institution and shall have due regard to the religious practise or usage of the institution. The section also makes it clear that any person who is not a Hindu shall not be authorised to enter the premises of the religious
institution. It further states that if any question arises whether the religious practice or usage of the institution prohibits entry into the Sanctum Sanctorum or Pooja Gruha, or any other place held sacred within the premises of the religious institution or place of worship, the question shall be referred for the decision of the Commissioner. Before giving any decision on any such question, the Commissioner may make such enquiry as he thinks fit. Any person aggrieved by the decision of the Commissioner may, within one month from the date of the decision, appeal to the Government and that the Government shall not pass any order prejudicial to any party unless he has had a reasonable opportunity of making his representations.

**Dittam or Scale of Expenditure**

Section 54 of the Madras Act of 1951 related to Dittam or scale of expenditure in the institution and the amounts which should be allotted to the various objects connected with the institution or proportions in which the income or other property of the institution might be applied to the subject. The trustee was expected to submit to the Commissioner proposals for fixing the Dittam and the proposals were to be published and after receiving

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52 This corresponds to section 67 of the Madras Act of 1959 (amended).
suggestions, if any, from persons interested in the institution, they would be scrutinised by the Commissioner. If the Commissioner thought that modification was necessary, he should submit the case to the Government and the orders of the Government would be final. This Section was invalidated by the High Court on the ground that it imposed unreasonable restrictions on the rights of the Mahant or Mathadhipathi. The Supreme Court, however, maintains that there are enough safeguards provided in the section itself vis. scrutiny, publicity and reporting to the government. This is quite a reasonable and salutory provision and therefore not ultra vires.53

Pathakonikas

Section 55 empowers the trustee to spend at his discretion and for the purposes connected with the Math 'Pathakonikas' or gifts made to him personally, but he is required to keep regular accounts of the receipts and expenditure of such personal gifts. It may be remembered here that when the offerings are made to the head of a Mutt, not personally to him but for purposes connected with the institution itself, they are regarded as the property of the Mutt and these are expected to be utilised for the purposes of the Mutt alone. On the contrary, when these offerings are made to the Mahant personally, as a

53 Supra n. 8, p. 355.
mark of respect for him, they belong to him and not to the Math. These offerings are known as Padakenikes or Pranamie or PATHAKANIKAS and are considered the personal properties of the Mahant or Mathadhipathi. Ordinarily, he has absolute power of disposal over such gifts, though if he dies without making any disposition, it is reckoned the property of the Math and goes to the succeeding Mahant.

The first clause of section 55 of the Madras Act of 1951 lays down that such Pathakanikas should be spent only for the purpose of the Math. The Supreme Court points out that Pathakanikas being the personal property, this clause imposes an unwarranted restriction on the property rights of the Mahant. It states:

"Pathakanikas are personal gifts and that there may be cases where the custom regards such personal gifts as gifts to the institution itself and the Mahant receives them only as a representative of the institution; but the general rule is otherwise. As section 55(1) does not say that this rule will apply only when there is a custom of that nature in a particular institution, we must say that the provision in this unrestricted form is an unreasonable encroachment upon the fundamental right of the Mahant."

As regards section 55(2) which compels the Mahant to keep accounts of the Pathakanikas, the Supreme Court

54 Ibid.
applying the same logic and says that the Pathaskanikas constitute the personal property of the Mahant and hence there is no justification for compelling him to keep accounts of the receipts and expenditure of such personal gifts. If the Mahant dies without disposing of these personal gifts, they may form part of the assets of the Math but that is no reason for restricting the powers of the Mahant over these gifts so long as he is alive.

The Madras Hindu Religious and Charitable Endowments Act was amended in 1959 and the section 62 of the amended Act provides that the trustee of the Math shall keep regular accounts of receipts of PATHAKANIKAS, that is to say, any gift of property made to him as the head of the Mutt and shall be entitled to spend the said Pathaskanikas in accordance with the customs and usages of the institution. This amended provision was challenged in Sudhindra Tirth Swamiar v. Commissioner H. R. and C. K. Madras. In this case the Supreme Court seems to have changed the stand adopted in Swamiar case. The amended provision of the Madras Act expressly makes the Pathaskanikas a gift of property made to the Mahant as the head of the Mutt, and this provision is upheld by the Supreme Court in the Sudhindra Tirth Swamiar case, stating that this provision

55 (1963) 3 C. 966.
56 Supra n. 8, p. 335.
57 Supra n. 55.
imposes a reasonable restriction on the power of the Mahant. Section 45 of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act of 1966 expressly provides that the Pathakaniyas are intended for the benefit of the Mutt unless the donor categorically makes them personal offerings to the Mahant.

Appointment of a Manager

Section 56 of the Madras Hindu Religious and Charitable Endowments Act of 1951 empowers the Commissioner to call upon the trustee to appoint a manager for the administration of the secular affairs of the institution and in default of such appointment, the Commissioner himself may make the appointment. This section was held invalid by the High Court of Madras. The Supreme Court agrees with the High Court in considering this provision an extremely drastic one in character. Under the section, the manager is appointed by the trustee and is nominally the servant of the trustee but is expected to act according to the directions of the Commissioner and his subordinate officers.

The Supreme Court contends:

58 The Section reads:

"The Mathadhipathi shall be entitled to spend at his discretion for any purpose which is not immoral or illegal any Padakaniya or other personal gift of property made to him. any Padekenuka or other personal gift which remains undisposed of during the life time of the Mathadhipathi shall devolve on the Mutt as its asset."
This power can be exercised at the mere option of the Commissioner without any justifying necessity, whatsoever, and no prerequisites like mismanagement of property or maladministration of trust funds are necessary to enable the trustee to exercise such drastic powers. It is true that the section contemplates the appointment of a manager for the administration of the secular affairs of the institution. But no rigid demarcation could be made between the spiritual duties of the Mahant and his personal interest in the trust property. The effect of the section really is that the Commissioner is at liberty at any moment he chooses to deprive the Mahant of his right to administer the trust property even if there is no negligence or maladministration on his part.

The Supreme Court declares this provision invalid maintaining that it would cripple the authority of the Mahant and reduce his position to that of an ordinary priest or paid servant and, therefore, contradict the provision of Article 26(d) of the Constitution.

Section 58 of the Madras Act 1951 which related

59 Italics mine.
60 Supra n. 8, pp. 355-56.
61 The scheme is to be prepared by the Deputy Commissioner if he has reason to believe that such a scheme is necessary in the interest of the proper administration of the institution. He can also do so if not less than five persons having interest in the institution make an application demanding such a scheme. While preparing a scheme the Deputy Commissioner has to consult the trustee and the parties interested as well as the Area Committee.
to the framing of the scheme by the Deputy Commissioner was declared by the High Court as ultra vires but the Supreme Court does not find anything wrong in this section because the act as a whole provides for ample safeguards to rectify any error or unjust decision made by the Deputy Commissioner. The main objection was to sub-section 3 of Section 56 which provided that a scheme settled for a Math may contain, inter alia, a provision for appointment of a paid executive officer professing the Hindu religion, whose salary shall be paid out of the funds of the institution. According to the Supreme Court, the objection urged against this sub-section does not appear to be of much substance. The Court points out that the executive officer mentioned in the said sub-section could be simply a manager of the properties of the Math and that he could not possibly be empowered to exercise the functions of the Mathadhipathi himself. The Court invites attention to the fact that in the event of any misuse of powers by the executive officer, the trustee would have his remedy against such order of the Deputy Commissioner by way of appeal to the Commissioner and also by way of suit as laid in section 6162 and 6263 of the Act.

preparing such a scheme, due regard shall be had for the claims of persons belonging to the religious denomination for whose benefit the same is founded.

62 Sections 61 and 62 provide that any party aggrieved by the order of the Commissioner can institute a suit and can appeal to the High Court for seeking redress.

63 Ibid.
Almost all legislative enactments of the states regarding the regulation of Religious and Charitable endowments refer to the provision for the preparation of a budget and the submission of the same by the Endowment authorities to the Commissioner. Chapter VII of the Madras Hindu Religious and Charitable Endowments Act deals with the Budget, Account and Audit of the Endowment. Objection was taken to Clause 3 of Section 70 of this chapter, which empowers the Commissioner or Area Committee to make addition or alterations in the budget as they deem fit. The Supreme Court rules out this objection on the ground that a Budget is indispensable in all public institutions and the Court does not think that it is per se unreasonable to provide for the budget of a religious institution being prepared under the supervision of the Commissioner or Area Committee. The Court specially invites attention to clause (4) of the section which provides adequate

This section which corresponds to section 86 of the amended act expects the trustee of every religious institution to submit a budget showing the probable receipts and disbursements of the institution during the following fiscal year. The budget should make provision for due maintenance of the objects of the institution and the proper performance of the services therein; the due discharge of liabilities of loans binding on the institution, repair and renovation of the buildings, contribution to reserve fund and working balance, etc.

This clause provides that any trustee may, within one month, appeal against that order

(a) where the order has been made by the Area
opportunities for appeal to higher authorities for seeking justice. Thus this section which was declared invalid by the Madras High Court was considered by the Supreme Court reasonable and constitutional.

The same question came before the Supreme Court for consideration in Mahant Moti Das v. B. P. Sehi. Here the appellants challenged the validity of Section 60 of the Bihar Hindu Religious Trusts Act 1950 which provides that the trustee of every religious trust shall prepare a budget of its estimated income and expenditure of the trust for the next financial year and send a copy of the same to the Board; and that the Board may alter or modify the budget in such manner and to such extent as it thinks fit. It was contended on behalf of the appellants that the power to alter or modify the budget relating to a religious trust or the power to give directions to a trustee may be exercised by the Board in such a manner as to affect the due observance of religious practices in a Math or Temple so as to constitute an encroachment on the right guaranteed under Article 25 of the constitution.

Committee, to the Deputy Commissioner;
(b) where the order has been made by the Deputy Commissioner to the Commissioner,
(c) where the order has been made by the Commissioner, to the Government.

66 Supra n. 44, at pp. 1152-53.
which confers freedom of religious practices also.

The Supreme Court answers this contention stating that (1) the power to alter the budget is subject to clause 67 of Section 60 of the Act and the Board is not authorised to alter or modify the budget in a manner or an extent inconsistent with the wishes of the founder or with the provisions of the Act. (2) The power to give directions to the trustee is also subject to similar restrictions, namely the directions must be for the proper administration of the trust in accordance with the law governing such a trust and the wishes of the founder in so far as these wishes can be ascertained and are not repugnant to law; the keynote of all the relevant provisions is due observance of the objects of the trust and not its breach or violation.

Alienation of the Endowment Properties

In a recent case, S. Govind Menon v. Union of India, the Supreme Court deals with an important matter connected with the alienation of the Endowment properties. S. Govind Menon in the capacity of a Commissioner of Hindu Religious and Charitable Endowments, Madras had sanctioned 30 leases

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67 Section 60(6) reads: "Nothing contained in this section shall be deemed to authorise the board to modify or alter the budget in a manner or to an extent inconsistent with the wishes of the founder so far as such wishes can be ascertained."

regarding the private forest lands of Devaswoms in utter disregard of the provisions of the Madras Hindu Religious and Charitable Endowments Act of 1951. Section 20 of the Act provides that the administration of all religious endowments shall be subject to the general superintendence and control of the Commissioner and that such control shall include the power to pass any orders which may be deemed necessary for the proper administration of the endowments. Section 29 of the Act provides that any sale, exchange or mortgage and any lease for a term exceeding five years of any immovable property belonging to any religious endowment shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution, and the Commissioner shall, before according sanction, publish particulars of the proposed transaction, invite objections and consider them.

It was alleged that Sri G.S. Menon, had initiated proposals without the knowledge of the trustee, acted in his individual judgment in sanctioning the leases, had fixed the premium of the leases, etc. arbitrarily disregarding whether they were beneficial to the institution and, thereby caused wrongful gain to the lessees and wrongful losses to the Devaswoms; sanctioned the leases of extensive forest lands of Devaswoms to his relatives, neighbours and friends, etc. While doing all these things the Commissioner had acted in contravention of the provision of section 29 of the Madras Act mentioned above.
The Supreme Court points out that according to Section 29 of the Madras Act, a legislature has put a restriction on the power of an alienation and the power of granting leases, but the statutory restriction on the power of the trustee should not be interpreted in such a way as to abrogate all his power in respect of alienation or lease.

As regards the various charges levelled against the Commissioner, the Court maintains that the appellant Commissioner acted in utter disregard of the provisions of Section 29 of the Act and the rules. Without being satisfied that the leases were beneficial to the Devaswom, the appellant sanctioned them and the action of the appellant, according to the Court discloses misconduct, irregularities and gross recklessness in the discharge of his official duties. The appellant was proceeded against because in the discharge of his functions he acted in utter disregard of the provisions of the Act and the rules, and the issue before the Court was to consider the manner in which the Commissioner discharged his functions. The Supreme Court points out that the charge against the Commissioner was abuse of power and misconduct and the government was justified in taking disciplinary action if

69 Section 29 of the Madras Act of 1951 refers to any exchange, sale or mortgage for conditions under which this power of alienation is to be exercised.
there was proof that the Commissioner had acted in gross recklessness in the discharge of his duties or that he failed to act honestly or in good faith or that he omitted to observe the prescribed conditions which are essential for the exercise of the statutory power. The Supreme Court thus dismissed the appeal of the appellant claiming a writ of prohibition under Article 226 of the Constitution, and confirmed the judgment of the Kerala High Court supporting the government decision to suspend the Commissioner pending the proceedings against him.

Mahant's Power to Borrow

It has been observed that the Mahant as a spiritual head of a religious institution, has to perform many difficult tasks. One such task is to exercise control over the pilgrims who visit the institution and participate in the festivals and make offerings of food on various occasions. It becomes difficult for the Mahant to manage all the affairs within limited resources at his disposal and, therefore, is compelled to borrow. The Courts in India and the Privy Council have justified this power of the Mahant to borrow. The Mahant can either borrow in terms of money debt or it may be in the shape of a mortgage. In case of simple debts, the creditor may lend after making bonafide enquiries and if the debt is incurred for necessary purposes, the debt becomes binding on the Mutt and can be recovered even after the death of the Mahant who borrows. The legal necessity of a debt cannot be precisely defined.
and the courts have decided the issues in accordance with the circumstances of each case. Normally, the debt incurred for some capital expenditure like construction of buildings or current expenses for the feeding of pilgrims are considered necessary debts. The Endowment Acts passed after the enactment of the Constitution, contain provisions for borrowings by the Mahant. The only condition is that this power to borrow is subject to sanction by the specified authority and under prescribed conditions and limitations.70

The Courts have contended that 'to a religious institution, like a Mutt, its prestige and influence are of vital importance. Preservation of its prestige and influence is no less necessary than preservation of its property. The Patna High Court71 applied this logic when it justified the loan obtained by a Mahant for the purchase of an elephant. The Court pointed out that the purchase of an elephant was a necessary act for the Mahant because it was used on festive occasions. The only caution which the court expects from the Mahant is that he should exercise prudence in such action. In 1957, the Allahabad High Court72

70 Section 103 of the Madras Hindu Religious and Charitable Endowments Act 1959.
72 Rukundji Maharaj V. Purshotam Lalji Maharaj A.I.R. 1957 All. 77.
pointed out that when the debt is considered binding on the Mutt, the court may order an appointment of a receiver who has to realise the income of the Mutt properties. In this connection, the receiver should provide for the necessary expenses of the Mutt such as performance of ceremonies and the maintenance of the Mahant and should direct the balance of the income for the discharge of the debt.

In a recent case, decided by the Supreme Court in 1966, the authority of the Mahant was justified in incurring the necessary expenditure for the recovery of the Mutt properties. It also justified a mortgage executed by the Mahant to meet the expenses of the litigation and also a subsequent sale to satisfy the mortgage. The Court maintains:

"... It is competent for a shebait to incur debts and borrow money for the service of the idol and preservation of property to the extent to which there is an existing necessity for doing so, his power in this respect being analogous to that possessed by the manager of an infant heir."\(^73\)

Removal of a Mahant

Section 52 of the Madras Hindu Religious and Charitable Endowments Act of 1951 enumerates the grounds on

\(^73\) Dhiram V. Narendra (1966) S.C. 1011.
which a trustee could be removed by suit. This section is incorporated in the amended acts of 1954 and 1959. Section 59 of the Act of 1959,\(^74\) which refers to these reasons, was challenged in the Supreme Court in Sudhindra Tirth Swamiar v. Commissioner of H.R. and C.B.;\(^75\) the contention being that these provisions imposed unreasonable restrictions on the powers of the Mahant in the general interest.

74 Section 59 of the Act of 1959 is a comprehensive provision. It mentions the following grounds for the removal of a trustee:

1) The trustee being of unsound mind,

2) His suffering from any physical or mental defect or infirmity which renders him unfit to be trustee,

3) His having ceased to profess the Hindu Religion or the Mutt,

4) His convictions for an offence involving moral turpitude,

5) Breach by him of any trust created in respect of any of the properties of the religious institution,

6) Waste of the funds or properties of the institution or wrongful application of such funds or properties for purposes unconnected with the institution,

7) Adoption of device to convert the income of the institution or of properties thereof into āśāśrāivasas,

8) Leading an immoral life or otherwise leading a life which is likely to bring the office of the head of the Mutt into contempt and

9) Persistent and wilful default by him in discharging his duties or performing his functions under the Act.

75 1963 S.C. 966.
of the public. The Court does not accept this contention. In this connection the Supreme Court seems to be guided by the earlier decisions of the High Courts in India as well as those of the Privy Council. It was generally accepted by the Courts that the head of the Mutt is a trustee and is answerable as such for maladministration because he has to administer the trust properties for general, pious and religious purposes and obligations attached to his office.

Various Courts prior to independence justified the removal of the Mahant on specific grounds. The Courts have held that the Mahant is a high dignitary and as such mere mismanagement or incapacity is not ordinarily sufficient for his removal. It may happen that the lapse may be due to misconception of the office, position or obligations. In that case the Courts have considered removal as a drastic step and have recommended the association of a committee of management with him and the courts would exercise wide degree of discretion in deciding whether a particular case requires total exclusion of the Mahant from his religious office. In Setish Chandra v. Dharanidhar, the Court held that the functionary, in the exercise of his duties, has put himself in a position in which the court thinks that the obligations of his office in connection

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76 1940 P.C. 24.
with the endowment can no longer be discharged without danger to the endowment, that is sufficient ground for removal. It has also been pointed out by the courts that there is a fit case for the removal of the spiritual head of the religious institution if he behaves in such a manner that his very connection with the institution may be repulsive to the general public and may amount to desecrating of sacred places. The normal justification for the removal is the proof of misconduct, but in some cases removal may be justifiable if it is found that the continuation of the trustee prevents the execution of the trust.

In some cases the Courts have held removal of the Mahant as valid if the Mahant has tried to set up an adverse title to the properties of the Mutt. But the most authoritative guideline is given by the Madras High Court. The Court considers a high degree of moral life as an absolute essential in determining the status of a spiritual head like the Mahant. The Court says:

"If the head of the Mutt or the junior is proved to be living an immoral life, he is liable to be removed.

77 Sarabjit Bharati V. Gowri Nath Kakaji (1924) A.I.R. Oudh 261 at 264. The Court was very critical about the immoral life of the Mahant who kept three mistresses and was convicted for gambling.

78 Perumal Nayak V. Swaminath Pillai I.L.R. 19 Mad. 498.

79 Chintamani Bajaj V. Dhondo Ganesh 15 Bom. 612."
There is no condonation of such an offence. ... Celibacy and scrupulous avoidance of sexual indulgences are of the essence of the position held by these persons. Devotees of both sexes resort for initiation to them and it would cut at the root of the system if the heads of the Mutts are permitted to live profligate lives. The power possessed by the king is delegated to Courts: when a clear case is made out that a religious ascetic who ought to set an example of sexual purity is leading an immoral life, the courts will find no difficulty in dismissing him from office, but it does not follow that suspected immorality entails forfeiture."\(^\text{80}\)

These cases show that the Civil Courts have jurisdiction to remove a Mahant from his office. The Mahant acts in two capacities, one as a spiritual head and the other as the administrator of the properties of the Mutt and both the offices are interrelated. The Courts have contended that when the Mahant does not perform his functions without danger to the endowment, he can be removed from both these offices. In Sudhindra Tirth Swamiar V. Commissioner H.R. and C.R. the Supreme Court has held that even if the Mahantship on its spiritual side is regarded as purely an office of dignity, notwithstanding

\(^{80}\) Thiruvembala Desikar V. Hanickya Desiker I.L.R. 40 Mad. 177 at 199.
that the functions of such office are associated with religious rites and ceremonies, the Civil Court will have jurisdiction to entertain such suits, as being of a civil nature under Section 92 of the Civil Procedure Code.

To Conclude

The Judiciary in India has recognised the Math as a traditional Hindu religious institution and as such it is entitled to enjoy those freedoms which are conferred on religious institutions by Articles 25 and 26 of the Constitution of India. The office of the Mahant or Mathadhipathi occupies a pivotal position in the organisation and the working of this important institution. The Mahant is considered not merely manager, trustee or custodian of the property of an institution, but has certain proprietary rights of a beneficial character over the institution.

Secondly, the judiciary has conceived the Mahant not merely as a corporate body but as the head of a spiritual fraternity and by virtue of this position, the Mahant has to perform duties as a religious teacher. Any restriction, executive or legislative, which prohibits him from performing this function would certainly affect the religious freedom which he is entitled to enjoy under Article 25 of the Constitution.

81 1963 3 S.C. 960. Administrative aspects relating to this section are discussed in the next chapter.
Thirdly, as a head of the institution and possessor of beneficial interest, he enjoys certain rights and responsibilities. He has to exercise his powers in such a way as to further the beneficial interest of the institution.

Lastly, the Math is a public institution and is, as such, subject to reasonable restrictions in the interest of the general public who are the beneficiaries of the institution. The office of the Mahant is conceived by the Judiciary as one of dignity and status because he is the religious head of a religious institution. The Judiciary has tried to strike a reasonable balance between the claims of the office of Mahant and the power of the State to impose reasonable restrictions with a view to ensuring better administration of this important Hindu religious institution.