CHAPTER III
FREEDOM TO MANAGE RELIGIOUS AFFAIRS
UNDER ARTICLE 26

The term 'Institution' may include organizations for religious purposes, such as temples, Churches, synagogues, mosques, monasteries and the like. It may also include various types of charitable organizations like hospitals, orphanages, asylums, and homes for the aged and invalids run by religious institutions. In a large sense an educational institution may also be regarded as charitable. However, this matter is not settled. Controversy exists as to whether Article 26 would take in its sweep educational institutions run by the Sikhs or Hindu sections.

Article 26 is the main constitutional provisions governing the relationship of the state and religious institutions in India. The Constitution of Eire of 1937 recognizes this right in the following words:

"Every religious denomination shall have the rights to manage its own affairs, own, acquire and administer property, movable, immovable and maintain institutions for religious or charitable purposes.

The property of any religious denomination or any educational institution shall not be divested save for necessary works of public utility.
and on payment of compensation."¹

In the U.S. it has been held that the freedom of religion guaranteed by the first Amendment includes the right to organize voluntary religious associations for the purpose of dissemination of religious doctrines, resolution of controversial questions of faith within the association, ecclesiastical government of all individual members etc. It has been held that as regards matters relating to the discipline and practice of a Church, the courts are bound by the judgment of the Church body and will not interfere in any strictly ecclesiastical matter except when conflicting claims arise respecting the use of property.²

The idea of Article 26 was very clear. The only minor point of dispute at the formative stage was whether the denominations should be given fundamental right to hold property. K.M. Panikkar was not in favour of this right. While Frank Anthony considered i.e. vital so far as the Christians were concerned, K.M. Munshi thought it necessary to make religious freedom in general meaningful. The

¹. Article 44(2). Section 29(2)(d), of the former Ceylon Constitution order in Council, 1946, provided - 'No such law shall alter the constitution of any religious body except with the consent of the governing authority of that body.'

². e.g. See Watson v. Jones (1871) 13 Wall 679.
compromise between no right to property and the right in qualified terms in Clause 17 of the draft before the Advisory Committee suggested by C. Rajagopalachari was to subject the right to the general law of the land, in which from ultimately it was incorporated in the Constitution.  

1. FREEDOM TO ESTABLISH AND MAINTAIN INSTITUTION FOR RELIGIOUS AND CHARITABLE PURPOSES.  

(i) The difference between Article 25 and 26.

The main difference between Article 25 and 26 is former refers to person while later speaks of every religious denomination or any Section thereof. The word every here achieves the same purpose as the words all and equally in Article 25, namely, creating equality of all religions. Article 25 approaches religious freedom from individual point of view; Article 26 approaches it from institutional. No doubt the individual is the cherished beneficiary in the second stage also wherein his desire to express his religious aspirations through community activities in communication with his brethren is fructified.

There is one more distinct and important aspect of the institutional right. Article 26 accords recognition to the

distinct legal entity of the religious house and invests with it with the constitutional entitlement to religious freedom. If it were merely an intention of the individual right Article 19(i)(c) would have served the purpose. Similarly the individual has enough power to hold and dispose of property. But by separately according to three temporal rights to religious denomination, 'vede licet', to establish institutions, to own and acquire property and to administer it, all coverable under Article 19, and one monastic, viz., to manage affairs of religious, coverable under Article 25, the Constitution has recognized expressly the distinct entity of an ecclesiastical government. It may be noted that the form of pleading in this respect requires that the petitioner invoking this Article should claim the property in question on behalf of a denomination specified in the pleading; when a religious property is claimed as his private property, he cannot be allowed to impugn the Act on the basis of Article 26 (d), as was held in Bira Kishore Deb's Case.

4. Right to form Association and Unions.

In investing the religious denominations with the right
to manage religious affairs in juxtaposition to individual's
right to practise religion according to his conscience,
one important social objective is aimed at. Looked at from
individualistic angle, Article 26 extends protection to the
individual's corporate form of worship. From social angle,
it empowers the ecclesiastical order to govern him in
religious activities with a view to coordinate his religious
practices with the ethos of his community. The framers of
the constitution were spiritedly inspired with the desire to
set the religious houses order without imposing external
discipline. While Article 25(2) aim at social reform in
religious habits, Article 26 contains the potential of
religious reforms through religious houses themselves.

(ii) Religious Denomination: Meaning and Character:

'Denomination' means a religious sect or a body having
a common faith and organization and designated by a distinct
name. The Supreme Court quoted the definition of
'denomination' given in the Oxford dictionary, namely a
collection of individuals classed together under the same
name; a religious sect or body having a common faith and
organization and designated by a distinct name. 6

It will be noticed that Article 26 contemplates not only a denomination but also a section thereof. Hence, the different sects and sub-sects of Hindu, Muslim or Christian religion having a common spiritual organization, would come within the purview of Article 26.7

Thus, the Arya Samaj sect of Hinduism is not a separate religion; it is nonetheless a religious denomination and as such has right to establish and maintain institution for religious and charitable purposes.

But the question whether a particular religious denomination or charitable institution or a section thereof is or is not a religious denomination or any section thereof is generally a question of fact and in some cases a mixed question of fact and law which has to be decided by competent court. The burden of proof of establishing that particular institution is a religious institution is on the person who claims it to be so.

In the first denominational right case under Article 26 before the Supreme Court, The Commissioner, Hindus Religious Endowments, Madras v. Sri Laksmindra Tirth Swamiar of Sri

Shirus Muth. Justice Mukherjee defined a religious denomination as an organization consisting of the followers of a religious teacher, the father of the sect; a collection of individuals classed together under the same name. Generally in Sanskrit and its derivatives languages, math is a common name used to refer to a religious denomination. A math is a centre of religious learning. The dictionary meaning a religious sect for body having a common faith and organization and designated by a distinctive name is wide enough to cover such math and other sects.

The question in this case was whether a smaller group was included in the contents of the bigger one, whether the followers of Madhavacharya, and other religious teachers constituted a religious denomination. Not only each such sect but also a sub-sect can certainly be called a religious denomination as it is designated by a distinctive name, has common faith and common spiritual organization- the distinct characteristic of a denomination as defined above. He said:

"As Article 26 contemplates not merely a religious denomination but also a section thereof, the math or the spiritual fraternity represented by it can legitimately come with in the

purview of this Article."  

Earlier the Madras High court had accorded on Gowd SarasWath Brahmin community the status of religious denomination or at least of a section thereof in Devaraja v. State of Madras.\(^9\) In Ratilal and Others v. State of Bombay\(^1\) the Swetambar Murtipujak Jain sect and the trustees registered as the Parsi Panchayat Funds and properties, Bombay representing the entire Parsi Community were given the status of religious denomination to plead Article 26 (b). In Shri Jagannath v. State of Orissa\(^1\) the court allowed the petitioner Mahants of two ancient and well known religious institutions of Orissa to represent the religious interests of maths and temples in Orissa and contest the validity of the Orissa Hindu Religious endowments Act, 1939 applicable to every math and temple with annual income above Rs. 250.

\(^9\) Ibid. p. 289.

\(^1\) AIR 1953 Mad. 149, p. 151. This part of the decision got approval from the Supreme Court in Venkataramana v. Stateof Mysore, AIR 1958 S.C. 255 when it accorded the Status of a denominational institution on the Temple of God Brahmin. See also Mukundarava v. State of Mysore AIR 1960 Mys. 18, and Arya Samaj Education Trust, Delhi v. Director of Edcuation, AIR 1976, Delhi 207.

\(^1\) AIR 1954 SC 388.

\(^1\) AIR 1954 SC 400.
In Eranna v. Commissioner, Hindu Religious and Charitable Endowments, Bangalore also it was argued by the Commissioner that since the Malanpanagudi temples were public Hindu temples not limited to any particular denomination the devotees (the Petitioners) could not seek protection under Article 26. This lead the court to consider whether Hindus in the larger sense, including all section of Hindus constitute a religious denomination. The Mysore High Court held:

"While appreciating the significance of the words "religious denomination" the court should take a common sense view and be guided by considerations of practical necessity. It is not necessary to consider the exact connotation of the term "religion".

Hinduism in ordinary parlance is understood as representing a religion. It is a religious denomination of a large magnitude. It is, because, certain religious denominations like Hinduism, Christianity or Islam are large and consist of sub divisions that Article 26 refers to a Section of such denomination.

Durgah Committee v. Husain Ali is a case dealing with

15. AIR 1961 SC 1402.
Soofi denomination. The respondents claimed they were members of a religious denomination known as Chistia Soofis and were from generations to the Khadims at the Tomb receiving the Nazars or the offerings. They feared the Durgah Committee under the Durgah Khawaja Saheb Act, 1955 could include Hanifi Muslims who were not members of the Chistia order, which made the provisions of the Act inconsistent with Article 26, they claimed. The appellants averred that the circle of devotees of and the visitors to the Shrine was not confined to the chistia order but included devotees of people following different religions. The largest number of pilgrims were Hindus, Khoja Memons and Parsis. Justice Gajendragadkar referred to Murray J. Titus Indian Islam, to examine the tenets and belief of soofism to ascertain the status of chistia sect as a religious denomination or section thereof. According to Murray T. Titus Soofism is not the religion of a sect, it is rather a natural revolt of the human heart against the cold formalism of a ritualistic religion, and so while Sufis have never been regarded as a separate sect of Muslims they have nevertheless tended to gather themselves into religious order. There are 14 such orders for families, Khandans, silsilas or spiritual lines) curiously all from Sunnis, Chistitia being one. According to British Government Report
on the Ajmer Durgah referred at in the case, soofi silsilas are not sects. Their characteristic feature is confined to a few spiritual practices and to devotion of shrines of the saints of the order, like the Khawaja Durgah at Ajmer. With some reservations the learned Judge accepted the assumption of the Rajasthan High Court that the Chishtia sects whom the respondents purports to represent is a section or a religious denomination.  

Math being an ideal person cannot function with a human agency. A question was raised in the Shirur math case whether a math was person entitled to the rights in Article 25. The court said "institutions as such cannot practise or propagate religion, it can be done only by individual persons." The Mathadhipati is certainly not a corporate body; he is the head of a spiritual fraternity and by virtue his office has to perform the duties of a religious character. It is his duty to practise and propagate the religious tenet of which he is an adherent and if any provision of law prevents him from propagating his doctrines

16. Ibid., p. 1411.
that would certainly affect the religious freedom which is guaranteed to every person under Article 25.  

A Sajjadanashin under Mohammedan Law "is the head of Khankah" - Mohammandan institution analogous in many respects to a math where Hindu religious instruction is given. As such a Sajjadanahin also has certain spiritual functions to perform. He is not only a mutawalli but also a spiritual preceptor. He is a curator of the Durgah, he continues the spiritual lines (silsila) when the pir, that is the preceptor dies his successor assumes the privileges of initiating the disciples into the mysteries of Dervishism or soofism. This privilege is a function of the Sajjadanashin.

2. RIGHT TO MANAGE ITS OWN AFFAIRS IN MATTERS OF RELIGION:

The right to manage its own affairs in matters of religion is the most pivotal constitutional right of the religious denominations. This clause confers on every religious denomination and also a section thereof the right to administer their domestic affairs which are concerned

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with religion. The language and the scheme of the Article make it quite clear that (i) denominations have a status of their own, their own personality; they are not submerged into the individual; (ii) the repetition of the limitation clause at the outset of Article 26 in terms similar to those used in Clause (i) of Article 25 confirms the legislative intention to treat the denominations as distinct entity, as well as subject to them to the requirements of social obligations; (iii) they have right to establish new institutions of religious and charitable character; (iv) to manage their own affairs in matters of religion; and (v) to enjoy property rights.

The absence from Article 26 of the word 'subject to the other provisions of this part', as found in Clause (i) of Article 25, should be carefully construed without impatience. Such a proviso in Article 26 would have introduced difficulties of its own making; for instance an individual could have disregarded denominational discipline by insisting in a temple on worshiping in his own fashion unmindful of the traditions, custom, and ritualistic prescription of that institutions. By virtue of this very proviso in Clause (i) of Article 25 such individual instances would be subject to Article 26 (b). The denominational right under Clause (b) of Article 26 is in
one sense of wider connotation than the individual right to practise religion under Clause (i) of Article 25. This extent lies in the denominations capacity to outline the contents of cultus for guidance of the judiciary in determining the ambit of religious freedom.

The denominations have an important supra constitutional role in guiding the individuals through the labyrinth of rituals as guiding the rituals and steering the cultus through the crossing demands of orthodox standards on the one hand and social reforms on the other. It is reiterated here, to avoid the impression being formed that we mean that the constitution submits the individuals to denomination, that this is a supra constitutional. Socio religious role of the denomination nevertheless very valuable in quicker achievement of the constitutional goals as enshrined in Article 17, 25 (2) etc. A Mathadhipati may achieve untouchability abolition more smoothly and lastingly than policeman.

Joginder Singh v. State\(^21\) raised the question of the extent to which the state government could interfere with the administration of a charitable educational institution established by Sikhs. It was held that Government, which

provided aid to the Khalsa College Amritsar, was competent to impose conditions regarding the manner in which revised grades were to be given to lectures. Perhaps, the decision turned of the fact that the government's orders laying down criteria for the implementation of revised grades for lectures of Khalsa college was not concerned with any religious matter.

Again, cultural activity of the state concerning any religion shall not be considered as interfering with the promotion and maintenance of that religion. *Suresh Chandra v. Union of India* 22 raised the question whether the programme for the celebration of the 2500th anniversary of Jain God Mahavir's Nirvanas approved by the government violated Article 26 (b). The programme included such activities as development of a national tower and erection of stone pillars therein, establishment of a museum of Jain art and painting, a library of Jain literature, organizing lectures seminars, and instituting scholarships. It was observed by the court that such activities were cultural activities and not a religious activity and therefore they did not violate Article 26.

22. AIR 1975 Delhi 168.
On the other hand, the offerings of food or pannyarams made at the time of various 'poojas' (worship) are matters concerned with religion and any interference with them would infringe Article 26 (b).

(i) The Essential Ritual:

The quantitative definition of religion enunciated by the Supreme Court in the Shirur Muth Case 23 was a first step in unfolding the contents of the expression matters of religion and the demarcation of the periphery of the latter was the court's rider over the state's claim to regulate all secular activities associated with religion but not really constituting an essential part of it. Religion, that court defined, was not merely opinion but also acts done in pursuance of a religion—practise of religion, for religion may not only lay down ethical rules but also prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion.

Justice Mukherjee 24 ruled:

"In the first place what constitute the essential part of a religion is primarily to be ascertained with reference to the doctrines of that


24. Ibid.
religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, all these would be regarded as parts of religion and the more fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would to make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Article 26 (b). 25

In this case Shirur case the foundation of the judicial philosophy of religious freedom regarding matters of religion was laid down. The fundamentals formulated are:

(i) religion means ideal and ritual both;
(ii) a religion prescribes rituals as integral parts, and these are protected;
(iii) a religion contains certain essential parts
(iv) the essential parts of a religion are to be located in

25. Ibid., p. 290.
the doctrines of that religion itself.

This unequivocal reference to 'integral and essential' laid the foundation here itself to the pivotal rule of (a) stricter protection to the essential aspects of religion; and (b) wider latitude to the constitutional regulations on the freedom in other aspects. In the Gurudwara Case\textsuperscript{26} the court decided that henceforth only the essential practices would be protected. The same emphasis was laid in the decision of Devarau Case\textsuperscript{27} where it was said that matters of religion in Article 26 (b) include practices which are regarded by the community as part of its religion.\textsuperscript{28} With the preface that the constitutional right to freedom of religion extended to religious practices and was not confined to beliefs only, Mukherjee, J. concluded in Shirur Math case.

"Under Article 26(b) therefore a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and

\textsuperscript{26} Sarup Singh v. State of Punjab AIR 1959 SC 860.

\textsuperscript{27} Venkataramana Devaru v. State of Mysore, AIR 1958 255 p. 290.

\textsuperscript{28} Ibid.
no outside authority has any jurisdiction to interfere with their decision in this matter.  

It is quite an established practice in most of the Hindu temples to bar entry of outsiders to particular sacred parts of the temple where the deity is located. The public are also not allowed during hours of rest of the idol. A law which attempts to interfere with these practices would be unconstitutional. In deed the Supreme Court has specifically held that a statutory provision which empowers the commissioner of the religious endowment Board to enter through any part of the temple at any hour of the day violates Article 26 (b). Further, a religious denomination, which has some trust property can spend its income on religious purposes and objects indicated by the founder or established by usage obtained in a particular institution. Thus, the use of the Devadraya (God's money) for purposes regarded as sacred in the scripture, here the Jain scriptures, is part of the autonomy secured by Article 26 (b) and diversion of the funds by state was held intolerable.  

30. Ibid.
31. Ibid., p. 294.
A very elucidative account found in Srinivasa Murthy v. Commissioner, Charitable and Hindu Religious Institutions and Endowments, Andhra Pradesh of the various details of the ceremonial part of worship (karma kanda) including the dittam which was mainly the point of contention. Dittam means the schedule of articles and other requirement of worship or offering in connection with the ceremonies in the temple at Tirupati. The petitioner, a hereditary Archakam Mirasidar of the Tirumalai Tirupati Devasthanams of Lord Venkateshwara had challenged the Commissioner’s orders issued under authority of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 and rules thereunder altering and rescheduling the Dittam. There were two questions Whether the contents of dittam were a matter of religion and secondly, whether their quantity also. The petitioner the head Pujari submitted referring to various Sastric authorities, that the food offerings made to several duties as well as their quantity; quality, variety, nature and occasion, manner of preparation and offerings are all well ordained in great and minute detail in the Vikhanasa Agama Sastras and the same constitutes an integral and inseparable part of the religious rituals, practices and

32. AIR 1973 AP 325.
rites and these are bound to be followed to the letter and spirit to the said Sastras. Section 23 of the Act empowering the secular authorities to fix at alter the dittam seriously eroded the freedom guaranteed by Article 25 and 26. These was no difficulty with the guidance of judicial directions from Shrirur case available, in deciding that matters of food when prescribed as essential for rituals constituted matters of religion. Clearly therefore, in the opinion of the High court (Vaidya J.) the offerings of food or Pannyarams made at the time of various Poojas; Arjitha Sevas and Utsavams are matters concerning religion not to be interfered with unless dictated by requirements of public order, morality and health. The Andhra Pradesh High court therefore, held that the ingredients of the Havis (food offerings) were not secular matters but matters connected with religion. The Hindu theology consists of not only the Ghana but the Bhakti and Karma Kanda as well. The court therefore, interpreted section 23 to mean empowering the authorities only to pass orders with due regards to the established usage etc., of the denomination and saved it from extinction, leaving it to the facts of each order to scrutinise its conformity or otherwise with the common in

33. Ibid., 337.
Article 25 and 26.

A description of the ceremonies and rites of daily worship at the Khawaja Saheb Durgah at Ajmer is to be found in Durgah Committee v. Hussain Ali. These commence with the opening of the gates of the dome with Azan in the morning and terminate with the three ceremonial sweeps and closure at night. In between are performed the sej or offer of flowers, 'Ioban' or the burning incense; the regular worship by all of the Nagar through the day, the daman or the cloth covering the Mazar, the changing of Kabar Posh, the application of sandal paste, lighting the lamp, the beat of the Nakksra, saying Madha, Dua and Amin. Besides these daily duties the Khadims performs a special ceremony during urs, called Gusl. Looting of Deg. i.e. distribution of cooked food to the pilgrims is one of the important ceremonies during Urs. Performance of all these ceremonies is the duty of Khadims.

One of the grounds of change to the vires of the Durgah Khawaja Saheb Act (1955) has that the Dargah Committee constituted under it was empowered by section ii (f) and (h) to determine the privileges of the Khadims as well as functions of the Sajjadanashin in relation to the Durgah and

34. AIR 1961 SC 1402.
that resulted in infringement of the freedom of the Khadims to practice their religion according to the customs and their own concepts, thus violating the fundamental right of the respondents under Article 25 (1). Rejecting this contention justice Gajendragadkar invited attention to section 15 of the Act which made it obligatory on the committee in the exercise of its powers to follow rules of the Muslims law applicable to Hanifi Muslims in India. "And so all the ceremonies in the Durgah have necessarily to be conducted and regulated in accordance with the tenets of the chisti saint." Section 11 was to be read in the light of the mandatory provisions of section 15. "Thus, read the apprehension that the fundamental right to freedom of religion is infringed by the said provisions will clearly appear to be wholly justified.\(^35\)

There was no dispute about the religious character of the ceremonies performed in Durgah, detailed above. The observation of the learned Judge on matters of religion were in the course of his stream of thoughts on the right to freedom of religion included in the arguments of the respondents but not infringed. He agreed with the Shirur Math and Devaru cases that essential practices forming

\(^35\) Ibid., p. 1418.
integral part of religion were covered by matters of religion in Article 26 (b) and "incidentally" struck a note of caution that other practices, just clothed with a religious form were not to the protected.\(^{36}\)

It was in this context that the warning of Durgah case was relevant. In Hindu religion all human actions from day to day and birth to death were ringed with a religious character. Though the task of disengaging the secular form the religious with the claims for protection under Articles 25(1) and 26(b). If the practice which is protected under the former is a religious practice, and if the right which is protected under the latter is the right to manage affairs in matters of religion it is necessary that in judging about the merits of the claim made in that behalf the court must be satisfied that the practice to religious and the affairs is in regard to a matter of religion.\(^{37}\)

(ii) The Res in the Temple

On the controversy over whether a temple is public temple or not? The court will decide the character of a temple on the substance of the right under Clause (b) of

\(^{36}\) Ibid., p. 1415.

Article 26. Once a temple is established to be a public denominational temple, the court has to safeguard the wider denominational rights against individual claims of autonomy. Private worship being perfectly in keeping with Hindu religion unlike the institutional preponderance in Christianity or Islam, many private temple flourish in the country. This makes the task of convincing the public character of other temples somewhat difficult. In view of the enormous income from worshipers, the temptation of the head priests to claim personal proprietary rights over the ditty and the temple is an irresistible phenomenon. All priests are not fired by spiritual considerations alone in warding off external intervention in their affairs. Many temple heads have come to represent a blend of the traditional notion of ascetic with the contemporary concept of proprietor. The Panda institution is one such examples. Prudent rulers who had not suspected the asceticism while making grants to the deity had also not flinched in safeguarding the spiritual interests of the institutions and the devotees, as is evident from the fact mentioned in the Govindalji Tilkayat v. State of Rajasthan38 case that the present Tilkayat's predecessor Damodarlalji was deposed from

38. AIR 1963 SC 1638.
Gaddi (seat) for his impure character. However, with the promulgation of the constitution empowering the state to make laws concerning the administration of the public religious institutions controlling secular activities associated with the religion, and introducing certain social reforms like Temple entry to Harizans\(^{39}\) the contemporary tendency to cordon off temples with proprietary status acquired a new dimension. The Raja of Puri, for instance, had made the extravagant claims to the effect that the temple of lord Jagannath of Puri was the private temple of his family, that all its movable and immovable properties were also his private properties, in Ramchandra Dev v. State of Orissa.\(^{40}\) Though this claim was abandoned by his successor, son, a party to the proceedings, the High Court examined in detail the status of the various temple dignitaries. The Adya Sebak is the foremost Sebak (the person rendering services to Diety) respected as Chalanthi Bishnu and given special honours in the temple. He performs certain religious functions known as Gajpati Mahaseva. His rights and duties are base on ancient customs and usages as recorded in madula panji and Niladri Mahoday, the

\(^{39}\) See Infra Chap. VI.

\(^{40}\) AIR 1959, Orissa, 5 p. 6.
authoritative texts on religious rites and ceremonies in the Jagannath temple, and further as permitted by tradition. He is also entitled to certain quantity of Mahaprasada and other offerings made inside the temple.

The Raja had a distinct hereditary rights as a superintendent of the temple derived solely from the grant made by a Regulation. This right was not tantamount to a 'property'. The Raja, said the court, had no beneficial or personal interest in the endowments of the temple in his capacity as Superintendent. He is merely a hereditary manager or trustee, an office to which no emoluments were attached. The prerequisites, Khai, and other income that he used to derive from the temple were based on his position as Adya Sebak - distinct right.

The temple was thus saved from the monopolistic grip of one person and placed under a committee for management with the Raja as its Chairman. Section 8 of the Orrisa law - Shri Jagannath Temple Act, 1954, ensured the performance of all rites and ceremonies according to the text.41

(iii) Ex-communication:

Is ex communication a matter of religion. In Sardar

41. An appeal to Supreme Court was also lost by the son; Bira Kishore v. State of Orissa AIR 1964 SC 1501.
Saiyadana Saifuddin Sahib v. State of Bombay the claim was that ex communication of a member of the Dawoodi Bohra community was the right of the DAI protected by Article 26(b), being a part of the management of the religious matters of the denomination. Earlier the Privy Council had recognized the existence of this power of ex-communication in the office of DAI in these terms:

"Their Lordships cannot doubt his having this power. It was undoubtedly exercised by Mohammed and the Imams. There was instances of its exercise and though rare, sufficient to establish the right. In fact, not the existence of the power of the Dai, but the limits confining its exercise were in issues in that case; so the case renders little material about the tenenary source of the Dai's right, the procedure of its exercise only is explained from certain old documents of the community.

Nor did the Bombay High Court from where this appeal came, examine any source material, Chief Justice Chagla not being ready to accept excommunication as a matter of religious faith. The pages of the Supreme Court judgement

42. AIR 1962 SC 853.
44. Ibid.
45. Saifuddin v. Tyebhai, AIR 1953 Bombay 183, p. 188.
also do not yield any scriptural, doctrinal or tenetary material describing excommunication as an integral part of religion. That part, if must be accepted, as done by Das Gupta and Ayyangar, JJ. That it was a long standing religious practices, in sense a power used by the Dai for enforcing religious discipline. Das Gupta, J. tracing the use of the system as a religious whip in different European societies, comes to the Muslims and observes: Among the Muslims also the right of excommunication appears to have been practised from the earliest times. The Prophet and the Imam, had this right; and it is not disputed that the Dai's have also in the past exercised it to enforce a compliance with the tenets and traditions.46 Ayyangar, J. taking the Dai's right granted as held by the Privy Council, observed: "A denomination with in Article 26 and persons who are members of that denominations are under Article 25 entitled to ensure the continuity of the denomination and such continuity is possible only by maintaining the bond of religious discipline which would secure the continued adherence of its members to certain essentials like faith, doctrine, tenets and practices. The right to such continued existence

involves the right to maintain discipline by taking suitable action inter-alia of excommunicating those who deny the fundamental basis of the religion."

The State cannot, in keeping with Article 26 (b), compel a religious head to be governed by non believers in his authority, or by the skeptics.

The vital questions in Sardar Saivadana Saifuddin's Case are (i) what are the purely religious consequences of religious expulsion; (ii) what are its civil consequences (iii) what is effective scope of the Bombay Act. Just as Chief Justice Sinha's appreciable concern for the civil rights of the Bohra members swayed him too far to pause to consider the purely religious aspect of communication, the

47. Ibid., p. 872.

48. Compare Tripathi: does Article 26(b) require the State to establish the religion of the Dai against the conscience and wishes of those in the Dawoodi Bohra Community who have no faith in him? Secularism: Constitutional Provisions and Judicial Review, in Sharma, ed. Secularism, pp. 182-83. It is not that the State would be establishing Civil sides, the Dai's religion; the Bohra sect. remains the sole authority on the question of the position of the Dai vis-a-vis his detractors. Now can the State, it is overlooked, establish the non conformist religion. The State can neither compel the Dai to bless those whom he considers to be sinners. By way of analogy to Gobitis, ceremony sans belief has no meaning in such an area.

majority also confines the scope of judicial consideration too narrowly to the religious aspect alone, belittling the spill over on the civil sides. The right given under Article 26 (b) has not, however, been made subject to preservation of civil rights." However, in place of this single track approach we favour the just balance approach.51

Such a careful distinction between religious and civil effects of expulsion can be persuaded in Chinnamma v. Regional Deputy Director of Public Instruction, Guntur.52 The petitioner was working as a teacher in a Roman Catholic School. She was expelled by the Bishop of the Siocese from sisterhood for her conduct unbecoming of a nun. In defiance of the Canon law she persisted in wearing the religious habit of a nun after her expulsion. The school management removed her from service. She was reinstated on intervention of the civil authorities.

Subject to the condition that the catholic mission managing the school could prohibit her from wearing the nun's dress. She pleaded her right to freedom in this regard. The mission on the other hand claimed its right to

50. Ibid., p. 869.
51. For details see, Infra Chapter Vi - Devaru's Case.
52. AIR 1964 AP 277.
manage its own religious affairs, also the right to manage the school under Article 30 (1). The high Court upheld both the claims. The mission could legally expel the petitioner from the community of sisters. The direction to an expelled nun not to wear the religious habit of a nun could not be questioned. When indisputably nuns have a distinctive dress known as the religious habit which only nuns could wear.

3. **THE RIGHT TO OWN AND ACQUIRE MOVABLE AND IMMOVABLE PROPERTY**

Clauses (c) and (d) of Article 26 confers temporal rights on the denominations but it does not prevent such property from being acquired by authority of law,\(^{53}\) or to land revenue.\(^{54}\) It is the credit of the framers of the constitution to have kept in view both the facts while investing religious denominations with property rights: one, the Personal property right created under old Article 19(1)(f)\(^{55}\) could not always be conducive to the growth of the denomination as an institution independent of individual

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54. *Govt. of Tamil Nadu v. Ahobila,* (1976) SC 446.

55. The 44th Amendment (1979) has now repealed his provision, reducing it to a more legal right under new Article 300 A.
caprices and avarices. A religious denomination is the institution of that social segment which bound by a common sectarian tie; not a private estate of one person or a group of persons belonging to the particular tenant. Secondly, since matters of religion pertain to not only spiritual field but seek heaven in temporalities also, pecuniary considerations are also involved. The very first Clause of Article 26 - 'right to establish and maintain institutions for religious and charitable purposes' - posits the need for finances. A situation may arise for instance when the state power to acquire property may result in eclipsing the very existence of a religious institution and/or orbits survival for the proposes it was founded to promote; in that case the question of the scope of old. Article 31 could be examined in a different light.56 In this sense there is a vital difference between the kind of property right that was imbibed in Article 19(i)(f) and right under Article 26(c) and (d). At the same time the rights under Clause(c) and (d) are for managing religious affairs and fulfilling the religious and charitable purposes alone.

Clauses(c) of Article 26 does not appear to create any

56. See Narendra Prasadji v. State of Gujarat, AIR 1974 SC 2098 at p. 2103. The 44th Amendment has repealed the relevant provision in Article 31 also.
new right in any denomination which it did not have. The clause gives to every denomination the right to own and acquire property. It should be noted that Article (1)(f) guarantees to every citizen the right to acquire, hold and dispose of property. But while a denomination's right is subject to public order, morality and health, the right of a citizen is, under Article 19(5), subject to reasonable restrictions in the interests of the public. The term 'public interest' certainly encompasses more than public order, morality and health. A question arises whether the right of a denomination could be subjected to the same restrictions as that of a citizen. Can a law be constitutionally passed to empower the state to stabilize currency or restrict acquisition of gold by Hindu temples?

The judicial response in this regard has been to subject Article 26(b) to Article 19(5). In Laxminarayan v. A.L.M. Chandore Mr. Justice Tarkunde speaking for the Bombay High Court, held:

"It could not have been intention to the makers of the constitution that the right of a religious denomination to own and acquire property should not be subjected to such reasonable restrictions in the interest of the

The leading opinions of Justice Mukherjee in the pioneer cases on denominational rights maintain a judicious balance between the spiritual and temporal rights of the denominations by, on the one hand, pointing out the need for finances in conducting religious affairs and, on the other, distinguishing between their qualitative values. While the right to manage denominational affairs in matters of religion is a fundamental right which no legislature can take away, the right to administer property can be regulated by laws. Nevertheless, that right cannot be altogether snatched away from the hands of the denomination and vested in another secular authority in violation of Clause (d); for it is the religious denomination itself that has been given the right. More involvement of expenses does not render rites and ceremonies in temples secular affairs, but wasteful expenditure may be controlled. Even the Mahant or Mathadipati is not a ascetic. The ingredients of both office and property of duties and personal interest are blended together in the rights of a Mahant. The Mahant has the right to enjoy this property or beneficial interest so

58. Ibid.

59. Clause (d) of Article 26.
long as he is entitled to hold is office. To take away this beneficial interest and leave him merely to the discharge of his duties will be to destroy his character as a Mahant altogether. 60

Entry 28 in List III, Schedule VII of the constitutional confers power on the union as well as the State Legislatures to make laws with respect to charities and charitable institutions, charitable and religious endowments and religious institutions. There is no constitutional requirement to exempt private religious institution from state legislation but in view of the involvement of proprietary rights under Article 19, only public religious and charitable endowments have been brought under regulations by the State. 61 Whether an endowment is of private or public character is a mixed question of law and fact; the mode of its determination is not directly germane to our discussion, as the post constitution legislation has sought to control public institutions; the legislative and judicial inclination is also towards an interpretation

60. Shiru Muth Case, pp. 288-89.

investing a vague dedication or endowment with public character. Moreover certain benefits like exemptions from taxes, land ceiling laws food control regulations, etc., are now available to such institutions of substantial proportion to opt for public status.

The idol is a juristic person capable of holding property dedicated to it by the founder of the religious institutions, and so is a math (or Muth or Mutt); but since the idol or the math need some human ministrant for the expression of their will the Shebait (Seovakarta) or Dharmakarta, or Mathadhipati or Mahant holds and administers the property on behalf of the deity or the institutions as a debuttor (Devater, i.e. for the God) property with the duty to carry out the seva (worship) of the deity and fructify the pious and charitable purposes of the foundation according to the wishes of the founder as well as the tenents of the foundation, known by the denominational name.

The trusteeship concept is ancient, and is modernized by the contemporary religious and charitable endowment laws by

merging the proprietary rights in the Boards and committees constituted under the legal provisions and subjecting the Shebait or Mahant to the decision of these constituted to manage the temple with his cooperation according to law.

The various property acquisition laws and agrarian reform laws have gradually divested the religious denominations and temples of vast estates they once owned. The Zamindari abolition laws in the U.P. M.P. and Bihar States were already made applicable to the lands belonging to religious and charitable institutions and the Supreme Court in the *State of Bihar v. Kameshwar Singh* had refused to create the bar of Article 26(C) against these laws. In 1963 the Madras State also took another step in agrarian reform abolishing Inam estates and converting into Ryotwari tenancy. The erstwhile rulers and granted lands Inam (gift) to religious denominations. An unsuccessful attempt was made

63. AIR 1952 SC 252.

in *Khajaminan Wakf Estates v. The State of Madras*\(^65\) to challenge the laws against Article 26(c) and (d) in so far as they divested the denominations of their Inam lands: Hegde, J. holding that the right under Article 26(c) does not mean that the property owned by them cannot be acquired. The Gujarat State also allowed earlier exemption on the pattern of the Bombay State, but in 1969 passed the Gujarat Dershan Inams Abolition Act under the shelter of Article 31A, thereby withdrawing the exemptions enjoyed by the religious properties and providing for their vesting in the tillers as under the general tenancy laws, with provision empowering the state to distribute the surplus land according to its land laws, subject to compensation to the institution. The Supreme Court rejected the challenges to these laws also in *Narendra Prasadji v. State of Gujarat*.*66* The contention that total acquisition would extinguish the right to own promised in Clause (c) of Article 26 was met by Justice Goswami with the counter point that after such occasion the right to own vanishes and stands transferred to the state and no questions of any right to own arises then.

Justice Goswami was the first Judge in the line of

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these decision validating acquisition laws pitted against Clause (c) to throw a note of caution that if:

"Acquisition of property of a religious denomination by the state can be proved to be such as to destroy or completely negative its right to own and acquire movable and immovable property for even the survival of a religious institution the question may have to be examined in different light."

No doubt a balance between the competing claims of different interest a fundamental right may have to coexist in harmony with the state measure promoting a Directive Principle and therefore, Article 26(c) cannot be taken to be absolute, however, it may be noticed that Article 26(c) stands in a different position as compared with Article 19(i)(f). The former deals with an institution with a membership of often millions of individuals. The right involved in Article 26(c) is not an isolated single right to property for its own sake. It is the source for sustaining the existence of the institution, running its functions, fulfilling its objects. Even the principle of giving precedence to the interest of the larger group of society over an individual is satisfied in allowing public religious and charitable institutions to own and acquire property. For

67. Ibid., 2103.
as already observed above, it can be subjected to reasonable regulation aimed at pegging the religious and charitable institution to purely religious and charitable character as opposed to commercial designs. Further, most of the prominent religious denominations are by now registered as public trusts. Their proprietary, financial and administrative management is already lightly controlled by the State. Within this framework they must be allowed to own and acquire their property so as to expand their religious and charitable services to the people.

The right guaranteed by this clause, not being absolute, is subject to reasonable regulation by the state provided the substance of the right is not affected. The power of the state to regulate the interests of social welfare as a whole, comes from the Directive Principles in Part IV (Article 37); the court's duties to strike a balance between competing claims of different interests. Hence, it is liable to be acquired or affected under Article 31A(i)(a) for effecting agrarian reforms, e.g. where its possession of land exceeds the ceiling prescribed by relevant laws, or

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for implementing any of the Directives in Part IV, so long as the core of the religion is not interfered with.

4. **THE FREEDOM TO ADMINISTER THEIR PROPERTY IN ACCORDANCE WITH LAW**

Religious denominations have a right under Clause (d) of Article 6 to administer their property in accordance with law. This right to administer property was evidently considered by the framers as a secular aspect of the denominational rights and, therefore, made less inviolate and more burdened with state jurisdiction as compared to the first two rights in Article 26. Being explicitly under law there is ever increasing prescription in various enactments on how to administer. Steadily another question seems to be emerging into focus who to administer. Apparently every religious denomination shall have the right to administer. It is not, however, that straight. The various state laws dealing with public religious and charitable institutions and trusts have provisions for the composition and appointment of boards, committees of trustees, commissioners of endowments besides pressing into service their deputies, assistants, District Collectors Inspectors, Auditors Accountants etc.

In Sirur Muth Case J. Mukherjee struck down Section 56 of the Madras Hindu Religious and Charitable Endowments Act,
1951 as a drastic measure. It had empowered the Commissioner of Hindu Religious Endowments onwards to appoint a Manager. Such a power, without any justifying necessity or prerequisites like mismanagement of property or mal-administration of trust funds was deemed in fructuous of Article 26(d) by the learned judge. He said though the Section contemplated secular administration of this institution, no rigid demarcation was possible between spiritual duties of Mahant and his personal interest in the trust property. The provision "would cripple his authority as Mahant altogether and reduce his position to that of an ordinary priest of paid servant." Justice Mkherjee propounded three principles:

(1) Right to administer property belongs to the denomination itself as a fundamental right; it is subject to regulations, but not extinction.

(2) Traditionally the Mathadhipati administers the Math property; therefore, he combines in himself spiritual and temporal rights and duties; these are parts of his office and cannot be divested in keeping with the traditional concept.

70. Shirur Muth Case.
(3) The Mathadhipati is under obligation to administer the math property cleanly and diligently; failure would justify its removal.\textsuperscript{71}

It is true that in saying that unwarranted divesting the Mathadhipati of his right to administer trust property transgressed the denominational right under Clause (d), the Judge would appear to have identified the right of the denomination with the right of the Mathadhipati, but this should not be taken out of its context; traditionally the Mathadhipati managed all the affairs of the Maths or temples and the Rulers kept only Supervisory control including removal of unbecoming Mahants, as the Udaipur Darbar removed Mohanlalji from the Shri Nathji Temple.\textsuperscript{72}

In 1954 the Madras Act was amended. This amended Act (as in force in the post reorganization on State of Mysore) had provided for the grounds on which the Commissioner could institute a suit for the removal of the Mahant Swami Sudhindra Thirtha of the Madharacharya math at Udipi in the Kanara district challenged this provision unsuccessfully, the Supreme Court holding in Sudhindra Thirtha Swaminar v.

\footnotesize{\textsuperscript{71} Ibid.}

\footnotesize{\textsuperscript{72} Govindlalji Tilkavat v. State of Rajasthan AIR 1963 SC 1638.}
Commissioner for Hindu Religious and Charitable Endowments, Mysore 73 this provisions interviewers Article 19(1)(f) imposing reasonable restrictions on Mahant's proprietary rights in the Math administration. Yet, this was an academic exercise in so far, as the Swamiji was not facing any eviction.

The State of Andhra Pradesh also had empowered its Commissioner to institute a suit for removal. In 1966 a new law was passed by the legislature of the state in place of the old, and this law—the Andhra Pradesh charitable and Hindu Religious Institutions and endowments Act, 1966 now vested in Commissioner himself with the authority to remove the trustee—the Mathadhipati—on specified grounds, after himself conducting an inquiry. The trustee could challenge the order of removal in a court of law (Section 46).

The Commissioner could also suspended the Mathadhipati during inquiry (Section 47). In Digvadarsan Rajendra Ramdasji Vasu v. State of Andhra Pradesh. 74 The petitioner Mathadhipati was under suspension pending inquiry into serious charges of misappropriation and defalcation of trust funds and also leading in immoral life. The Swami challenged

73. AIR 1963 SC 966.
the removal Section of the Act as contravening the guarantees in Article (19)(f) 26 and 25. As to the first, the court held that the grounds of removal imposed reasonable restrictions in the interest of the general public. As to the first, the arbitrary character of the Commissioner's power being removed, the infirmity found in the Sirur Math Case was cured and Article 26(d) not jeopardized. The temporary assumption of administrative power over the Math by the Commissioner (Section 47) with the injunction to have due regard to the claims of the disciples of the Math, was also not violative of Article 26(b). And as to Article 25, the petitioner was not prohibited from entering the Math and preaching and practicing religion.

Right since 1954 when Mukherjee, J. drew a distinction between matter of religion and matters of property administration, being allowed to denominations in accordance with law; the constitution of various Boards and Committees and vesting of final authority in the statutory body in which the Mathadhipati (etc). along with some other followers of the denominations are members are now normal methods of property administration in all public temples, Mosques, Durgahs, Gurdwaras and Maths. Whenever such a

75. Ibid.
legislation challenged by the affected denomination, the analytical approach of the court is on the following lines; does the impugned provision directly touch a matter of religion; if not, does the particular rule of administration indirectly affect of religion; if not, does it totally extinguish the right of administration if none, the law emerges valid. To with the question posed by S.K. Das, J. in Sarup Singh v. State of Punjab\textsuperscript{76} was: does Section 148B of the Gurudwaras Act (Amended, 1959) introducing a new interim method of election to the Sikh Gurudwara Prabandhak Committee (Board) violate the right to manage matters of religion? To establish this, direction election to the Board must be proved as a Sikh matter of religion. But historically such Boards/Committees, etc. were never a part of ancient methods of religion. What was customary, that Sikh would look after Sikh religious property, just as Hindus or Muslims of Jains would look after their respective religious properties. The contemporary Committees, etc. draw their existence from modern laws, which in turn are protected by Clause (d). However, these civil authorities can not out place the religious trustees or religious agencies traditionally managing the denominational

\textsuperscript{76. AIR 1959 SC 860.}
properties. Thus, the Sikhs alone most administer their denominational property through their Prabhandhak Committee, as observed by the Jammu and Kashmir High Court in Avtar Singh v. State of J. & K.77 Though the High court saved the clumsily drafted and lacunous piece of legislation known as the Kanny and Kashmir Sikh Gurudwara and Religious Endowments Act, 1973 on technical grounds of the rules of interpretation, it affirmed that conferring the power of administration of property on a governmental body of non Sikhs would be open to serious constitutional objection.

A religious endowment is in the nature of a trust and is generally subject to the same amount of control and supervision as any other trust. Thus, a law can validly require registration of a public, religious or charitable trust, and impose a duty or trustee to keep regular accounts and have them audited.78 In Commr. H.R.E. v. L.T. Swamiar79 the Supreme Court observed that a budget is indispensable in all public institutions and we do not think that it is _per se_ unreasonable to provide for the budget of a religious denomination being prepared under the supervision of the

Area Committee (i.e., Government Officer appointed to secure proper administration of religious endowments). In L.T. Swamiar's case the court also pointed out that as all endowed properties are ordinarily inalienable a law can impose restrictions on such properties.\textsuperscript{80}

It should be noted that not only has the state a right to regulate the administration of denomination property. It also has a right to acquire denominational property. The constitution does not confer anymore right on a denomination in matters of property that it does on Person. In Khajamian Wakf Estates v. State of Madras\textsuperscript{81} it was urged by the petitioner that the state could not acquire properties belonging to religious denominations. The Supreme Court, however, repelled this contention holding that Article 26 did not take away the right of the state to acquire property belonging to religious denominations. This view was affirmed by the Supreme Court in Narendra Prasadji v. State of Gujarat\textsuperscript{82} Goswami J. held that the State is empowered to acquire property belonging to a religious denomination under

\begin{enumerate}
\item \textsuperscript{80} Ibid., p. 292.
\item \textsuperscript{81} AIR 1971 SC 161, 165.
\item \textsuperscript{82} AIR 1974 SC 2098, 2103, 2104.
\end{enumerate}
Article 31(2).  

In the case of M. Ismil Farugui (Dr.) v. Union of India on the issue of compulsory acquisition of place of worship viz. Mosque, held constitutionally valid. A Mosque can be compulsorily acquired by Government in exercise of its sovereign or propagative power, which is independent of Article 300 or Article 31 (as it stood before its omission). It was held, per Ahmadi and Bharucha, JJ where members of majority community make claim upon place of worship of minority community and create public disorder, state acquisition of the place of worship to preserve public order, in the circumstances would be against the principle of secularism - General Clause Act, 1897, Section 3(26).

Subject to the protection under 25 and 26 places of religious worship like mosques, Churches, temples etc. can be acquired under the State's sovereign power of

83. Article 31(i) provides no person shall be deprived his property save by the authority of law section 31(2) prescribes certain conditions subject only to which property can be acquired or requisitioned.

84.  (1994) 6 SCC 360.

85. Ibid. Hidayatullah, M. Mulla's Principles of Mohammedan Law, 19th Ed. p. 217
acquisition\textsuperscript{86} Section 3(26) of the General Clauses Act comprehend the categories of properties known to Indian Law. Article 367 adopts this secular concept of property for purposes of our constitution. A temple, Church or Mosque etc. are essentially immovable properties and subject to protection under Article 25 and 26. Every immovable property is liable to be acquired. Viewed in the proper perspective, a Mosque does not enjoy any additional protection, unique or special status, higher that of the places of worship of other religions in secular India to make it immune from acquisition by exercise of the sovereign or prerogative power of the State. A mosque is an essential part of Namaz (prayer) by Muslims can be offered any where, even in the open. Accordingly, its acquisition is not prohibited by the provisions in the Constitution of India. Irrespective of the state of Mosque in an Islamic country for the purpose of immunity from acquisition in the Secular ethos of India under the constitution is the same and equal to that of the place of worship of the other religious, namely, Church,

\textsuperscript{86} See also, Nutnialu Chetti v. Bapan Sahib, I.L.R. (1880) 2 Mad 140; 5 Ind. Jur 23; 2 Weir 68; Sundaram Chetti v. Queen I.L.R. (1883) 6 Mad 203; 2 Weir 77 Mosque known as Masjid Shaid Ganj v. Shrimoni Gurdwara Parbandhak Committee Amritsar, AIR 1940 P.C. 116.
Temples, etc.\textsuperscript{87}

In the field of religious trusts, an area in which the courts in both the United States and Great Britain explore the beliefs of individuals, there is also exhibited less unwillingness in Great Britain than in America for the courts to decide issues of religious belief. However, the difference of approach seems - to more on varying views as to the law of trusts than on the law of religious freedom.\textsuperscript{88}

The courts in both countries will examine religious tenets to determine who has the beneficial use of Church property held in trust inform example, suits involving a Schism in the Church. But under the American rule the trust must be a specific one, for the law does not otherwise impose a trust on property held by a Church, either by way of purchase or donation. In the absence of a trust, and if there are no Church laws or Church constitutional provisions applicable, the law which governs Church property is that of voluntary associations, questions being determined by majority vote.\textsuperscript{89}

\textsuperscript{87} Acharya Maharaj Shri Narendra Prasadji Anand - Prasadji Maharaj v. State of Gujarat (1975) 1 SSC 11; Raja Suryapal Singh v. U.P. Govt. AIR 1951 All. 674; 1951 All L.J. 365; 1951 AWR (HC) 317.


\textsuperscript{89} Watson v. Jones 13 Wallace 679, 20 Ed. 666, (1871).
Courts of Great Britain treat the Church property, however acquired, as trust property to be appropriated to the use of persons who adhere to the same religious principles as those who originally attended the Church. The American rules of trust law manifestly reduce the incidence of the courts concern with belief, contrary to what case of the English law were applied.

Since the constitution is not retrospective, and since Article 26 is not intended to confer upon a denomination any right which it never had, but intended to safeguard such right it possesses or continues to possess as a denomination, a denomination which lost its right to manage a temple or to administer its property by surrender or divestment by a valid pre-constitution or order of a Ruler which had the force of a law. It can not claim such rights after the coming into force of the constitution by

91. Craiodallie v. Aikman (1883) 1 Dow. 1; Graia Dallie v. Aikman (1820) 2 Bligh 529; Free Church of Scotland v. Overtoun (1904) A.C. 515.
92. Matchell v. Church of christ at Mr. Olive 221 All. 315 128 SO. 781; 70 A.L.R. 71 (1930). The United States Supreme Court hasnot yet had occasion to consider this exception to the Watson rule.
93. Durgah Committee v. Hussain AIR 1961 SC 1492 (1416)
virtue of any of the Clause of Article 26. The constitution would not operate to reinvest the rights in such a denomination.\textsuperscript{95} For the same reason, no right under Article 26 can be claimed by a denomination whose property had been validly acquired by the state.\textsuperscript{96}

5. REVIEW

Indian constitution confers a distinct legal personality on the religious denominations and invests them with four fundamental rights to exercise religious freedom. A religious denomination is a religious institution of the particular faith, run by its followers for their spiritual benefit. Math Durgan, Kankakh, Church, Synagogue, etc., are the examples of religious denominations. Their religious rights are guaranteed and protected by Article 26.

The most important of these is the right to autonomy in matters of religion. In this respect the first crucial fact to be noted is that Article 26 is not made subject to Article 25, while the latter is subject to the former. The purpose of this scheme is to make religion the final arbiter

\textsuperscript{95} Ibid., See also Azeez v. Union of India AIR 1968 SC 662 (674).

\textsuperscript{96} Khajamain Estates v. State of Madras AIR 1971 SC 161 (Para 12.).
of the contents of that religion. This concept is founded on the traditional notion of the ancient religions like Hinduism, Jainism, Islam, Christianity, etc.

Article 26(b) of the constitution envisages the denominations autonomy and the denomination symbolizes the religion itself. We perceive the denominations have an important role in demarcating the contents of cultus for guidance of the judiciary in determining the ambit of religious freedom guiding the individuals through the rituals and steering the cultus through the crossing demands of orthodox standards on the one hand and social reforms on the other. This is function of order performing a supra legal socio religious role.

The exposition of the ambit of the matters of religion contributed to the contouring of the horizons of religious freedom of the individual also. Justice Mukherjee said religion included rituals, ceremonies, etc. also and the denomination had autonomy in deciding what ceremonies were essential according to the tenets of the religion. We approve of this fusion of the two identical interests. An individual may complain of construction of individual's liberty to interpret the contents of religion according to
his notion in this process, however, in the intricate social life we do not consider it advisable to substitute religion as system by religion as whim. We know of no legal system in which an individual's interpretation of religion prevails in case of discrepancy between theology and his own ideology.  

Denomination right over matters of religion includes were to ex-communcate a non conformist as a tenetary disciplining. Ex communication is an instrumentality by which a denomination can enforce religious discipline, enforce compliance with the sectarian tenets and traditions. Observance of the sectarian rites is the price of the sectarian benefits and excommunication is one of the 'punitive' methods of deprivation that an ecclesiastical order can impose. A person may practise religion in the manner he likes, but he can not force a denomination or its head to comply with his notions of the religion.  

The religious institutions have also fortified themselves with proprietary rights claimed as part of


sectarian prescriptions to keep at by state regulations. The regulatory laws dealing with denominational properties hold jurisdiction over the public temples and denominational public institutions but not private ones. Since the promulgation of the constitution, the nature and expanse of the regulatory powers prompted many a denomination to cordon of temples with proprietary status, making the task of distinguishing between public and private temples difficult. However, the judiciary has painstakingly examined the true character of the institutions involved in litigation and struck balance between legitimate proprietary rights on the hand and the devotee public's interest reasonable relations and reforms on the other, as we saw in the cases studied in the chapter.

Property right of the public religious denominations under Clause (c) and (d) of Article 26 are subject to the public trust laws regulating religious and charitable endowments. The motive of these laws is to see that the property is utilized for the objects determined by the founder donor, as well as for the spiritual benefit of the devotee public. The courts have held the right under Clause (c) (to hold property) amenable to state power of acquisition and control, of and various religious institution have been divested of their vast lands and
Clause (d) of Article 26 confers a separate fundamental right on denominations to administer their property according to law. The head of the institution (like Mathadhipati, Dai etc.) is the human repository of this denominational right. He has, however, absolutely no monopoly over the trust management. He must manage it in coordination with the state appointed authorities called Boards, Committees etc. Case of defalcation of trust funds he is liable to eviction. The state body is under obligation to respect the traditions of the Temple, Durgah, etc. and the Mahant (or other religious head) can dictate, on basis

99. The Constitutional validity of some Acts was examined by the courts with reference to Articles 25-26 in these cases, see for example:
Held invalid - Sections 44, 47(3) - (6) 55(c) 56(i)
Gujarat Devasthan Inam Abolition Act, 1969;
   Held invalid - Sections 21, 30(2), 63-69 76(i).
Orissa Hindu Religious Endowment Act, 1971;
   Held invalid - Sections 38, 39 Prov. 46 in
   Held valid - in whole in
of the tenets which rites, ceremonies and functions involving expenditure must be performed.

In the conception of the Mahant (etc.) both the elements of office and property, duties and personal interest are blended. Hence, his office constituted his property under the old provision Article 19(1)(f). Even spiritual duties like propagation of religion involve expenditure. The right to manage the finances of the institutions, to spend its funds, to receive offerings from devotees all were regarded his property right under that constitutional guarantee. These were subject to reasonable restrictions under Clause (5) of Article 19. With the increasing exposures of bishopric avarice, the courts allowed wider ambit to state regulations in the interest of the devotee public.