Introduction

The previous chapters dealt with the position of the office-bearers of religious institutions and the power of the State to regulate their rights and duties with a view to ensuring better administration of public endowments. The law regarding religious endowments in India refers to the power of the State, through appropriate authorities, to settle schemes for efficient management of such trusts. This chapter is being devoted to the study of some important aspects relating to the administration of public religious and charitable endowments.

Historical Retrospect

The regulation of religious institutions at the hands of the State was not an uncommon practice in ancient India. The benevolent Hindu kings appointed ministers or superintendents to supervise and regulate the working of religious and charitable institutions and also prescribed penalties for those who violated the commonly accepted religious practices. Asoka's Edicts specifically point out that the Hindu kings had extensive authority over the temples and they did interfere in temple administration...
in the event of mismanagement. The British East India Company continued this practice and enacted legislation to prevent mismanagement and misappropriation of temple funds by the authorities of the endowments. This was done through the Collector or any other corresponding authority who had the right to visit endowments and had the power of enforcing honest and proper administration.

Religious Endowments Act (1863), was perhaps the first most comprehensive legislation enacted by the Government of India under the Crown. The main purpose of this Act was to transfer the function of superintendence and control of religious institutions to managers and managing committees. The Act dealt comprehensively with the constitution and duties of the committee, qualifications of the members of the committee, their tenure of office, the procedure for their removal and the transfer to the committee by the Board of Revenue of the properties of the endowment. The Act provided that 'the properties of the endowment do not vest in the committee. They remain with the idol or the institution and the trustees or managers are competent to institute suits or proceedings in relation to them.' The trustee was not considered the servant

1 Seetharama V. Subramanya Ayyar 39 Mad. 700.
2 e.g. Regulation XIX of 1810 for Bengal
Regulation VII of 1817 for Madras
Regulation XVII of 1827 for Bombay.
3 Section 12 of the Religious Endowments Act, 1863.
of the committee, he could be removed only on sufficient grounds and also after an enquiry into the facts.

The temple committee had the power to appoint additional trustees by virtue of the general power of superintendence over temples and it also could function as trustee of a temple but it had no power to claim possession of the temple and its properties from the hereditary trustees. Any person interested in a religious establishment, could institute a suit against the trustees, managers, superintendents or members of the temple committee for any breach of trust or neglect of duty and the courts were empowered to direct the specific performance of an act, award damages and remove a trustee, manager or superintendent.

It was not necessary that a person to institute a suit had to have a pecuniary or direct interest; any person attending the worship in the religious establishment could take advantage of this provision.

Charitable Endowment Act 1890: Under this Act, the central or provincial Government was empowered to appoint a Government Officer as a treasurer and the property of the charitable trust was to be vested in the treasurer on terms and conditions decided by the Government and the parties concerned. The Government was also empowered to

5 Section 3. Charitable Endowments Act, 1890.
6 Section 4. Charitable Endowments Act, 1890.
settle a scheme for the administration of the property of the charitable endowments. 7

Charitable and Religious Trusts Act 1920: Under this Act any person interested in a trust created for a public purpose could apply to the Court for an order directing the trustee to furnish particulars about the nature and objects of the trust, conditions, management and application of the subject matter of the trust and of the income as well as audit of the accounts of the trust. 8

After such an application, the court could issue directions to the trustees concerned to furnish the necessary information and failure to do so was deemed a breach of trust and the person concerned could file a suit against the trustee under Section 92 of the Civil Procedure Code of 1908.

The Act also provided that a trustee could apply to the court for its opinion, advice, or direction on any question affecting the management and administration of the trust property. 9 An advice or opinion rendered under this provision of the Act was considered a case decided by the court in a judicial manner and the High Court had the

7 Section 5. Charitable Endowments Act, 1890.
power to entertain a revision of the order of the District Court under Section 115, of the Civil Procedure Code.

Section 92, Civil Procedure Code

This section of the Civil Procedure Code is a complete code by itself covering suits regarding public trusts of a religious and charitable nature. This Section was intended to prevent an indefinite number of reckless and harassing suits being brought against the trustees by those interested in the trust, but at the same time it must be noted that the purpose of this Section was to protect the rights of the public in trusts and to enable the parties concerned to prevent the misuse of the funds of the trusts. Some salient features of the Section 92 of the Civil Procedure Code could be noted as under:

1) This Section will have an application to charitable trusts also.

2) A suit for a declaration of the invalidity of an alienation by a trustee falls under this Section.

3) The Section refers to the power of appointing a new trustee and also of making a scheme for the administration of the trust.

4) The Section can be applied only when,
   a) there is a public trust of a charitable or religious nature,

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b) there is an alleged breach of an express or constructive trust or that a direction of the court is necessary for the administration of the trust,
c) the relief claimed in the suit must be one of the reliefs mentioned in the Section.

5) A relief praying for a declaration that the properties in suit are trust properties, does not fail under this section.

6) Where a trust is partly for private charities and partly for public purposes, a scheme for its administration can be framed under this Section.

Section 92, Civil Procedure Code and Public Trusts

Section 92, Civil Procedure Code is applied in case of public trusts and not purely private trusts. A Public Trust involves the interests of the public and these interests, therefore, are to be protected by giving the

11 Following Acts have repealed Section 92, Civil Procedure Code:

Section 52 of the Bombay Public Trusts Act of 1950.
Section 27(k) and 30 of the Madhya Pradesh Public Trusts Act 1951.
parties concerned the right to sue. The Supreme Court, in Vikram Das Mahant v. Daulat Ram Asthana,\(^\text{12}\) points out that the ordinary rule is that persons without title and who are mere intermediaries cannot sue as of right. But where public interests are concerned, courts have a duty to see that their interests and the interests of those for whose benefit they exist are safeguarded. Therefore, courts must possess the power to sustain proper proceedings by them in appropriate cases and grant relief in the interests of and for the express benefit of the trust, imposing such conditions as may be called for. It is also contended that where a person has been in long management and possession as Mahant of an Asthan and was purporting to act on its behalf and for its interests, it is proper that he should be allowed to continue to act on behalf of the trust until his title is investigated in appropriate proceedings and the court can grant decree in his favour for the benefit of the trust.

Section 32 of the Bihar Hindu Religious Trusts Act (1951) confers powers on the Board to settle schemes for the better and proper administration of religious trusts. It is further stated that the Board may exercise the power of its own motion or an application made to it in this behalf by two or more persons interested in any trust.

Section 92, Civil Procedure Code also provides a similar procedure. The Supreme Court points out that this procedure is not necessary for private trusts.

Section 43 of the Bihar Hindu Religious Trusts Act (1950) which refers to the power of the District Judge to make an order for the removal of trustees, as well as appointing a new one, etc., is also analogous to Section 92 of the Civil Procedure Code. The Supreme Court points out that this section is also more appropriate to public trusts than to private ones.  

In Mahant Ram Saroop Dasji, the Supreme Court had to consider the applicability of the Bihar Hindu Religious and Charitable Trusts Act (1951) to private trusts. In this case, the issue was to decide whether the Salouna Asthal was a private or a public trust. In a previous reference to the Patna High Court, it was held that the properties of the Salouna Asthal did not constitute a public trust within the meaning of the provisions of the Charitable and Religious Trusts Act 1920. In 1950 was passed the Bihar Hindu Religious Trusts Act under which was constituted the Bihar State Board of Religious Trusts which asked the appellant to furnish to the Board a return of the income and expenditure of the Asthal. The appellant

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claimed that he was not bound to submit the same contending that the Salouna Asthal was not a religious trust within the meaning of the Act, that the properties did not constitute a religious trust and the appellant was not a trustee within the meaning of the Act and that the demand by the Board to submit the return amounted to an interference with the fundamental rights of the appellant.

The High Court of Patna dismissed the petition on the ground that the Definition Clause\(^\text{14}\) of the Bihar Act was wide enough to cover within its ambit both private as well as public trusts recognised by Hindu Law. It also held that though the Act referred to the private trusts as well, there was no harm if the state imposed restrictions on these trusts with a view to exercising superintendence and control over the administration of private as well as public trusts. The main question in the appeal before the Supreme Court was to decide whether the provisions of the Bihar Act applied to private religious trusts.

The High Court had taken the view that in as much as

\(^{14}\) The definition clause of the Bihar Act refers to religious trusts as:

"Religious trust means any express or constructive trust created or existing for the purpose recognised by Hindu Law to be religious, pious or charitable, but shall not include a trust created according to the Sikh Religion or purely for the benefit of the Sikh community and a private endowment created for the worship of a family idol in which the public are not interested."
the definition clause mentions, by way of exception, only one instance of private endowment, all private endowments created otherwise than for the worship of a family idol must be included within the definition on the maxim of *expressio unius exclusio alterius*. This view is not accepted by the Supreme Court as correct. In this connection the Supreme Court examines some other provisions of the act with a view to knowing the intention of the legislature in defining the religious trusts. It states that by subsection 5 of section 4, the legislature itself has spoken and indicated the true scope and effect of the definition clause. 'If private trusts created otherwise than for the worship of a family idol were included in the definition clause, then subsection 5 was entirely redundant so far as those private trusts were concerned, for the earlier enactments never applied to them.'

The Supreme Court also points out that the definition clause merely quotes the typical example of private endowment. It is also significant that the exclusion of an endowment created for the worship of a family idol is based on the adjectival clause which follows *viz. "in which the public are not interested."* In other words, the exclusion is based on the essential distinction between a public and

15 Section 4(5) states: The Religious Endowments Act, 1863 and Section 92 of the Civil Procedure Code, 1908, shall not apply to any Hindu Religious Trust in the State of Bihar.
e private trust in Hindu Law. If the test is that the public are not interested in the trust, such a test is characteristic of all private trusts in Hindu Law. It also shows that there may be a trust created for the worship of a family idol in which the public may be interested. There are cases of trust which began as private trusts but which eventually came to be thrown open to the public. This also indicates that the definition clause was intended to cover only public trusts. Thus the Supreme Court concludes that the Bihar Act is not applicable to private trusts.

Raja Anandrao V. Shamrao

In Raja Anandrao V. Shamrao and others, the Supreme Court had to decide an important matter in connection with Section 92 of the Civil Procedure Code. The case pertained to a very old temple of Balaji at Deolgaon Raja in the Buldhana District. Before 1866, the management of the temple was with the family of Lad. In 1866 a suit was filed on behalf of Raje Mansingrao for a declaration that the temple was his private property. The Court held that the temple was not the private property of the Raja but was an endowment for the public founded by the Raja, and that the Raja was entitled to the possession and control of the institution. In 1878, there was a suit dispute

between the Raja and the Pujaris whose offices were hereditary and an agreement was arrived at which provided that any offerings up to rupees five would go to the Pujaris who were to defray the expenses of Dhoop, Deep and Naivedya from this amount keeping the balance to themselves. There was some dissatisfaction felt about the management of the temple by Raje Anand Rao and consequently a suit was filed after obtaining permission of the Advocate-General in 1904, for framing a scheme for the management of the temple. This suit was finally decided in 1916 by the Additional Judicial Commissioners, who set aside the order of the court for the removal of Raje Anand Rao from the management declaring that the right to manage the affairs of the shrine was hereditary in the family of the Raja.

The Additional Judicial Commissioners further held that a scheme should be framed providing 'for the management of the trust pending the dispute as to who is the present trustee and manager ... and also for the modification of the scheme from time to time as circumstances may demand.'

Subsequently, schemes were framed in 1918, 1926 and 1935. Pujaris were not a party to the suit but were bound by the same as were the members of the worshipping public.

17 Ibid., p. 535.
Under the decree the trustee controlled the Pujaris in the exercise of their rights, they were entitled to retain their office during good behaviour, the Raja had the right to dismiss the pujaris but this was subject to the control of the District Judge. The Raja had no right to dispose any part of the income of the Pujaris and he had no right to interfere in the right of succession of the Pujaris.

In 1953, as a result of some trouble in the temple, the District Judge visited the temple; a Commissioner was appointed to investigate into the working of the temple, on whose suggestions the District Judge prepared a scheme. The Pujaris appealed to the High Court for revision, which was allowed and the High Court ordered that the scheme prepared by the District Judge was to be read subject to the order of the High Court which concluded that '... as the pujaris were not a party to the suit of 1904, or to the scheme that was framed, it was not possible to modify the scheme so as to affect their rights without recourse to Section 92 of the Civil Procedure Code'.

This view of the High Court was challenged by the appellant Raje Anand Rao in an appeal under special leave to the Supreme Court. The main question according to the Supreme Court in this appeal was to see how far it was open to High Court to amend a scheme under Section 92 of the Civil Procedure Code, where a power to amend the scheme is

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18 Ibid., p. 536.
reserved in the scheme itself. The Supreme Court refers to the various cases dealt with by the various High Courts and also the Privy Council and tries to see if there is anything in Section 92 which militates against providing a clause in a scheme framed thereunder for its modification by an application to the court framing the scheme. The Supreme Court points out that Section 92 permits a suit in the case of an alleged breach of an express or constructive trust created for public purposes of a charitable or religious nature. The Supreme Court admits the right of the District Judge to modify the scheme and strikes out the judgment of the High Court.

19 Following reliefs can be obtained under Section 92 of the Code of Civil Procedure:

\[ \begin{align*} 
\text{a)} & \text{ removing any trustee;} \\
\text{b)} & \text{ appointing a new trustee;} \\
\text{c)} & \text{ vesting any property in a trustee;} \\
\text{d)} & \text{ directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of this property;} \\
\text{e)} & \text{ directing accounts and enquiries;} \\
\text{f)} & \text{ declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;} \\
\text{g)} & \text{ authorising the whole or any part of the trust property to be let, to be sold, mortgaged or exchanged;} \\
\text{h)} & \text{ settling a scheme; or} \\
\text{i)} & \text{ granting such further or other relief as the nature of the case may require.} 
\end{align*} \]
The Supreme Court then addressed itself to the main question — whether the modification in the instant case was for the purpose of administration alone because then alone it would be justified. It says:

"... It is true that the pujaris were not parties to the suit under Section 92, but the decision in that suit binds the pujaris as worshippers so far as administration of the temple is concerned, for suit under Sec. 92 is a representative suit and binds not only the parties thereto but also those who are interested in the trust. Therefore the mere fact that the pujaris were not parties to the suit will not take away the jurisdiction of the District Judge to modify the scheme, if the modification is with respect to the administration of the trust and if it does not affect the private rights of the pujaris."

The Supreme Court then refers to paragraphs 3 and 12 of the modified scheme, and points out that these clauses deal with the administration of the trust or the temple and therefore they do not affect the private rights of the pujaris. The Court, however, suggests the following amendment to clause 12(b) and thus affording an additional protection to the pujaris by allowing them to appeal to the District Judge.

20 Supra n. 16, p. 539. Italics mine.

21 These provisions refer to the qualifications of Pujaris and the powers of Haje Anand Rao.
"In case Raje Anandrao or his manager or agent fines or punishes the pujaries for misconduct, the pujaries will have the right to appeal to the District Judge against such orders and the order of the District Judge will be final."

The main attack of the respondents in this case was on clause (c) of Para 12, which according to the respondents affected their right to offerings which they were entitled to, under the agreement of 1872. The instructions given by the District Judge under the modified scheme provided that 'the offerings upto Rs. 5, to which the pujaries were entitled, subject to the expenses of Dhoop, Deep and Naivedya according the agreement of 1872, should be kept in a separate box which was to be opened at a specified period. The contention of the respondents was that these directions under the scheme would mean that the management would take away the money found in the box, whenever it is opened and the pujaries thus would be at the mercy of the management for meeting the expenses of the Dhoop, Deep and Naivedya and also for the balance to which they were entitled for their upkeep.

The Supreme Court accepted the contention of the

22 Clause (c) Para 12 reads: 'The pujaries will be entitled to their shares in the offerings as per the agreement of 1872 after deduction of the expenses for the pooja etc., as per my (District Judge) detailed remarks in my separate order passed today. The management will work out those instructions for day to day working in accordance with rules to be included in the puja rules.
respondents and maintains that the interests of the pujaries should be protected and that they should not be kept at the mercy of the appellants. The Supreme Court itself directs the District Judge to amend the scheme as follows:

1) The box in which these offerings up to Rs. 5 are put should be double-locked; one lock to be put by the appellant and the other on behalf of the pujaries,

2) It should be opened in the presence of a representative of the management and the representative of the pujaries and two respectable persons of the town,

3) The box may be opened in a month or more oftener as desired by the pujaries but not more than once a week,

4) The amount found in the box may be noted by the management ... the whole of it should be handed over to the chosen representative of the pujaries on behalf of the pujaries in case the expenditure for dhoop, deep and naivedya for the period prior to the opening of the box has not been met by the pujaries."^{23}

According to the Supreme Court this amendment would satisfy the provisions of the public trust namely that the management would be in a position to know how much had gone to the pujaries including the amount spent on dhoop, deep and naivedya. The Supreme Court sets aside the order of

^{23} Supra n. 16, pp. 541-42.
the High Court, restores the scheme of the District Judge subject to the modifications proposed by the Supreme Court itself and directs the District Judge to see that these modifications are embodied in the revised scheme.

This decision of the Supreme Court in Haje Anand Rao V. Shaarao and others is important in many respects.

1) It lays down an important principle of law about Section 92 of the Code of Civil Procedure, namely that a suit under this Section is a representative suit and binds not only those parties thereto but also those who are interested in the trust.

2) That the modification proposed should refer to the administration of the trust and should not affect the private rights of the pujaries.

3) It admits the right of the District Judge to amend the scheme provided it satisfies the above conditions.

4) The Supreme Court itself proposes amendments to the scheme prepared by the District Judge to protect the rights of the pujaries and gives them an opportunity to appeal to the District Court in the case of an arbitrary dismissal by the management of the trust.

5) The Supreme Court also proposes an important amendment to the scheme whereby it protects the right of the pujaries to know what they are entitled to from among the offerings to the temple and it enables the management
to know how much has gone to the pujaria thus establishing a compromise formula protecting the rights both of the management and of the pujarias.

**Orissa Jagannath Temple Act, 1955.**

The Government of Orissa enacted in 1955 an Act entitled The Orissa Jagannath Temple Act applicable to the administration of the famous temple of Lord Jagannath at Puri in Orissa. This ancient temple has ever since its inception been an institution of unique and national importance, in which millions of Hindu devotees from regions far and wide have reposed their faith and belief and have regarded it as the epitome of their tradition and culture.\(^2\) The purpose of the Act was to reorganise the scheme of management of the affairs of the temple and its properties and provide better administration and governance therefore in supersession of all previous laws, regulations and arrangements; having regard to the ancient customs and usages and the unique and traditional nitis and rituals contained in the record of rights.\(^2\)

The Preamble of the Act refers briefly to the history of the temple and points out how the passing of this Act was made imperative by prevailing conditions. Before the advent of the British, the superintendence, control and

\(^{24}\) Preamble of the Act.

\(^{25}\) Ibid.
The management of the affairs of the temple were directly vested in the successive rulers of the area who administered the temple through their officers. In 1809 an arrangement was entered into whereby the Raja of Puri was empowered to manage the affairs and properties of the temple subject to the control and supervision of the ruling power. Under the new arrangement the Raja of Puri was to act as a superintendent of the temple and the right of superintendence was transferred on the basis of the principle of heredity. In view of grave and serious irregularities, the government had to interfere in the management of the temple on numerous occasions. The appointment of a Special Officer under the Act of 1952 further reflected the gravity of the situation and hence the Government of Orissa enacted a special legislation to mend the matters.

In Raja Bira Kishore Deb, hereditary Superintendent, Jagannath Temple, V. State of Orissa, the appellant Raja challenged the validity of the Orissa Jagannath Temple Act of 1955 mainly on two grounds:


26 The history of the temple showed that the Muslim rulers had removed the Raja and were carrying on the management of the temple directly through Hindu officers appointed by them and it was during the British rule in 1809 that the management was restored to the Raja.

which had a general application and by the special Act of 1955, this general Act had no application to the temple of Puri. The contention of the appellants was that this resulted in discrimination in as much as the Jagannath Temple of Puri was singled out for special treatment as compared to other temples in the State of Orissa, and this violated Article 14 of the constitution which granted equal protection of laws and therefore the Jagannath Temple Act was unconstitutional.

2) The management of the Temple was taken away from the sole control of the Raja who was hereditarily in management, but vested in a committee appointed under the new Act. The appellant contended that this provision violated Articles 19(1)(f) and 31(2) of the Constitution of India in as much as it deprived the appellant of his personal rights and privileges in the management of the temple.

The Supreme Court in its exhaustive judgment repelled both these contentions and as this judgment speaks of an important point of law on the subject, the same shall be considered fairly in detail.

Important cases under this act have already been considered, e.g. Jagannath Ramanuj Das v. State of Orissa S.C.J. 1954 p. 329. See supra Chapter VIII 'Hindu Religious Endowments : Maths and Mahant', pp. 348-55.

The constitutional implications and the judicial interpretation of this Article are analysed in detail in a separate chapter entitled 'Religious Non-discrimination'. See infra Chapter XII.
As regards the constitutional validity of the Act with reference to Article 14 of the constitution the Supreme Court argues -

The Orissa Jagannath Temple Act 1955 would involve prima facie discrimination because it accords special treatment to the Jagannath Temple of Puri unless it can be shown that the temple stands in a class by itself and required special treatment. The Respondent in the case, the State of Orissa, in its averment through affidavit states that the Temple of Lord Jagannath at Puri has been treated as a special object throughout the centuries because of its unique importance and that there is no other temple which occupies the unique place which this temple occupies in the whole of India. No temple in Orissa attracts such a large number of pilgrims from all parts of India and no temple in Orissa has such vast assets as this temple does. It is also averred that this temple enjoys a unique position also from the standpoint of complicated nature of nitis and sevapuja affecting the lives, religious susceptibilities and sentiments of millions of people spread all over India. The appellant did not deny the special importance of the temple as averred on behalf of the State of Orissa. The Supreme Court, therefore, admits that this temple of Lord Jagannath stands in a class by itself and therefore requires special treatment.

In this connection the Court refers to the position
of Nathdwara temple in Rajasthan which holds an equally unique position among Hindu Shrines in the State of Rajasthan and therefore the special treatment accorded to it by the Nathdwara Temple Act (Rajasthan Act XIII of 1959) was considered constitutional by the Court itself in Tilkayat Govindlalji Maharaj v. The State of Rajasthan. 30 In that case the Court had established an important law on the point when it stated:

"A law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself."

The Court thus concludes that the Orissa Jagannath Temple Act of 1955 does not violate Article 14 of the constitution in as much as it accords special treatment to the Jagannath temple.

After deciding the constitutional validity of the Jagannath Temple Act, under Article 14 of the constitution the Supreme Court proceeds to analyse specific provisions of the Act and to see to what extent they violate the freedom of religion of the appellant. The contention of

30 A.I.R. 1963 S.C. 1638; S.C.J. 1964(II) p. 715. [This case is a very significant one but the issues involved therein have been already referred to elsewhere and therefore separate treatment is not given. See supra Chapter IV, pp. 166-71, Chapter VI, pp. 257-61.]

31 Ibid.
appellant was that this Act interfered with the religious affairs of the temple of which he was the sole manager before the passing of the Act.

Under the Orissa Jagannath Temple Act (1955), the administration and the governance of the temple and its endowments are vested in a committee called 'The Shri Jagannath Temple Managing Committee', which is a body corporate, having perpetual succession and a common seal and may by the said name sue and be sued. The Raja of Puri is to be chairman of this committee. No person who does not profess the Hindu religion shall be eligible for membership. Besides providing for some ex-officio members, the other members of the committee are all nominated by the State Government, one from among the persons entitled to sit on the Mukti-Mandap, three from among the sevaks of the temple recorded as such in the record of rights and seven from among those who do not belong to the above two classes. The Collector of the District of Puri is an Ex-officio member and is designated as the vice-chairman of the committee. The State Government is empowered to remove any member of the committee other than ex-officio member and no member can be removed unless he has been given reasonable opportunity of showing cause against his removal.

32 Section 5.
33 Section 6.
34 Section 10.
The committee can be dissolved in certain contingencies as incompetence to perform the duties imposed upon it by the Act. The Committee is given an opportunity to show cause against any such action before it is taken, and provision is made for continuing the management of the temple during the period of dissolution or supersession.  

The appellant Raja of Puri contended that these provisions of the Jagannath Temple Act violated Article 31(2) and 19(1)(f) of the constitution to the extent to which they deprived the appellant of his right to manage the private property. This contention of the appellant is rejected by the Supreme Court maintaining that, what the Act has done is to replace the sole right of the appellant of managing the temple by appointing a Committee of which the Raja is the chairman. The Court, here, points out how the mismanagement of the temple by the Raja as the sole superintendent necessitated the passing of the Act by the Government of Orissa and says:

"... There can be in the circumstances no question of the application of Article 31(2) in the present case. In the first place the right of superintendence is not property in this case for it carried no beneficial enjoyment of any property with it, and in the second place, that right has

35 Section 11.

36 For very exhaustive and lucid analysis regarding issues involved in these two Articles see Tilkayat Govindlalji v. State of Rajasthan S.C.J. 1964(II) at pp. 735-39.

37 Ibid.
not been acquired by the state which Article 31(2) requires. ...
all that has happened in the present case is that the sole right of the appellant to manage the property has been extinguished and in its place another body for the purpose of the administration of the property of the temple has been created. In other words, the office of one functionary is brought to an end and another functionary has come into existence in its place. Such a process cannot be said to constitute the acquisition of the extinguished office or the vesting of the rights in the person holding that office."

In this case the appellant had further contended that the Orissa Jagannath Temple Act violated Article 19(5), because it took away the rights of the appellant as Adya Sevak and it placed unreasonable restrictions on his rights. The Court rejects this contention by saying that nothing in the Act takes away the rights of the appellant Haja as the Adya Sevak (Chief Servant). The Court points out that the appellant and his predecessors were holding a dual position of superintendent and Adya Sevak and that there was a mix-up of his rights flowing from being an Adya Sevak with his rights as superintendent. What the Act has done is that it has taken away his rights as the sole manager of

38 Supra n. 27, at p. 689. The same logic was applied in Tilkayat Maharaj v. State of Rajasthan S.C.J. 1964 II p. 715.
39 See supra pp. 336-37 of this thesis.
the temple by substituting in its place a collective body like a committee, but it has not taken away his rights as Adya Sevak in the matter of Seva-puja and nitis, etc. Section 8 of the Act clearly lays down that the rights of the Raja in respect of Gajapati Maharaj Seva (i.e. the daily Seva-puja of Lord Jagannath) would not at all be affected either because of his minority or any other disqualifications.

It was also argued on behalf of the appellant that according to Section 14 of the Act, the state government could from time to time give directions about the payment of allowances to the chairman of the Committee and this deprived the appellant of his rights and privileges as Adya Sevak. The Supreme Court does not agree with this view and maintains that the position of the superintendent and of Adya Sevak were two different positions which the appellant and his predecessors held in the temple. His position as the superintendent had gone and in its place he had become a chairman of the committee. When Section 14 speaks of the allowances to him, it refers to his position as the chairman and it has nothing to do with his position as the Adya Sevak which is protected by Section 8 of the Act as noted above.

40 Section 7 of the Orissa Jagannath Temple Act.
41 Section 10 of the Orissa Jagannath Temple Act.
The result of this provision is that he remains Adya Sevak even though he may not, for certain reasons, remain a chairman. It is also to be noted that there are other provisions which seem to indicate that the rights and privileges of the Adya Sevak have not been affected by the Jagannath Temple Act. For example, according to Section 19 of the Act, the State Government is empowered to appoint an administrator for the temple. This administrator shall be the secretary of the Committee and its Chief Executive Officer, and shall be subject to the control of the Committee and shall carry out its decisions in accordance with the provisions of the Act. Among the powers of the administrator, are the powers of deciding disputes relating to the rights, privileges, duties and obligations of sevaks, officers, etc. in respect of Seva-puja and nitis; similarly, the administrator shall have the power to decide disputes relating to collection, distribution of offerings, fees, etc. The Court points out that these provisions postulate that the rights and privileges of the sevaks remain intact and if there is any dispute regarding the same, the administrator has to decide the same in accordance with the record of rights or the order of the committee. Thus the Court rejects the contention of the appellant that

42 Section 21(2)(g) of the Orissa Jagannath Temple Act.
43 Section 21(2)(f) of the Orissa Jagannath Temple Act.
the Act is ultra vires in as much as it takes away the rights, privileges and perquisites of the appellant as Adya Sank, some of which may be property.

The appellant had further challenged the constitutional validity of clause 1 of Section 15 of the Act on the ground that it interfered with the religious affairs of the temple. This clause states that it shall be the duty of the Committee to arrange for the proper performance of Seva-puja and of the daily and periodical Nitis of the temple in accordance with the record of rights. The Court rejects the contention of the appellant stating that Seva-puja has always two aspects. One is to provide for materials for the purpose of Seva-puja and the second is the actual performance of the Seva-puja and other rites according to the dictates of religion. The first is the secular aspect and the second is the religious aspect of the Seva-puja. Section 15(1), according to the Court, has a reference to the secular aspect and not the religious aspect. The Court says:

"... It (Section 15, Clause 1) deals with the secular part or aspect of the Seva-puja and enjoins upon the Committee the duty to provide for the proper performance of Seva-puja, and that is also in accordance with the record of rights. So that the Committee cannot deny materials for Seva-puja if the record of rights says that certain materials are necessary. We are clearly of the
opinion that clause 1 imposes a duty on the Committee to look after the secular part of the Seva-puja and leave the religious part thereof entirely untouched. Further under this clause it will be the duty of the Committee to see that those who are to carry out the religious part of the duty, do their duties properly. But this again is a secular function to see that sevaks and other servants carry out their duties properly; it does not interfere with the performance of religious duties themselves. The attack on this provision that it interferes with religious affairs of the temple must, therefore, fail.44

Other provisions which were challenged by the appellant were Section 21, 21-A, 30, and 30-A of the Act. Section 21 delimits the powers of the administrator. The Court considers this Section as valid contending that all powers and duties specified therein are with respect to the secular affairs of the temple and have nothing to do with the religious affairs.45 Section 21-A confers on the

44 Supra n. 27, p. 691. Italics mine.

45 Section 21 confers on the administrator the powers -

- to appoint all officers and employees of the temple,
- to lease out lands and buildings of the temple,
- to call for tenders for works and supplies,
- to order for emergency repairs,
- to specify conditions subject to which office-holder of the temple can possess jewels and other valuables of the temple,
- to decide disputes relating to the collection,
administrator, the disciplinary powers which are necessary in order to carry on the administration of the secular affairs of the temple. Section 30 confers on the State Government power to supervise and regulate the endowments in the interests of the general worshipping public of the temple. Section 30-A makes it a criminal offence if any office bearer of the temple indulges in an act of wilful disobedience, or fails to comply with the orders of the administrator directing him to perform his duties. The Court maintains that once the provisions under Sections 5 and 6 investing in the Committee the right of management of the temple of Lord Jagannath are held to be good, the consequent provisions regarding the appointment of an administrator to carry on day to day secular administration on behalf of the Committee, the provisions defining the powers of the administrator as well as the provisions relating to supervision and regulation of the secular affairs of the temple by the State Government, etc. are to be held as valid.

distribution or apportionment of offerings, fees and other receipts,

to decide disputes relating to the rights, privileges, duties, and obligations of sevaks, office holders and servants in respect of Seva-puja and nitis,

to require various sevaks and other persons to do their legitimate duties in time in accordance with the record of rights,

to get the Niti or Seva performed in accordance with the record of rights, by any other person if sevak is absent or fails to perform the duty, etc.
In Sri La Sri Subramanya Desiga Gnanasambanda Pandrasannadhi V. The State of Madras, the Supreme Court was dealing with a scheme framed by the High Court in respect of the temple of Vidyanatha Swami in Tanjore District, Madras. This temple is a famous and ancient temple of Shiv, it owns large immovable property and has an annual income exceeding Rs. 2 lakhs. In year 1919 the High Court of Madras framed a scheme for the administration of this temple. In 1927 the Madras legislature passed an act providing for good administration of temples and their endowments. In view of good administration, the scheme framed in 1919 was not modified. In 1951, the Commissioner, Hindu Religious and Charitable Endowments, Madras charged the trustee and his subordinates with various acts of commission and omission in the management of the temple, pointed out the defects in the earlier scheme, averred that the full income of Devastan was not properly secured and safeguarded and suggested that all this was due to the defective machinery set up under the scheme for the administration of the temple. In his modified scheme, the Commissioner had suggested the appointment of an executive officer in place of the treasurer, conferring on him the large powers of day-to-day administration of the temple. The subordinate judge dismissed

the petition pointing out that the allegations made were not proved and there was no need for any modification in the scheme made in 1917. Against this judgment an appeal was taken to High Court of Madras. The court modified the scheme introducing the appointment of an executive officer. It was against this decision of the High Court that the Appellant Pandarassannadhi made an appeal to the Supreme Court.

The contention of the appellant was that the High Court was wrong in modifying the scheme framed by the High Court in the year 1919, introducing drastic changes therein, such as placing the management of temple under an Executive Officer who could be appointed and removed only by the Hindu Religious and Charitable Endowments Board and also making a provision for the appointment of additional trustees in the future. This action of the High Court was wrong in view of the fact that the Commissioner had failed to establish the charges levelled by him against the trustee.

The State on the other hand argued that under the Act, a scheme for the administration of a temple may be framed or an earlier scheme may be amended not only when there is mismanagement by the Trustee but also for providing a better administration of the temple. Though in the present case there is no mismanagement by the Trustee, the fact that the temple owns extensive immovable properties, that there are large arrears of rents, that the disputes
between the tenants and the trustee under the New Tenancy Laws are to be settled, the appointment of a trained Executive Officer by the Commissioner becomes necessary in the best interests of a temple. The State further points out that apart from this argument the Commissioner is empowered to form a scheme if he has reason to believe that such a scheme is necessary in the interests of proper administration, his opinion must be given decisive weight by a Court in the matter of amending a scheme.

The Court here refers to the scheme of the Madras Act of 1951, which was passed to provide for the proper administration and governance of Hindu Religious and Charitable Endowments and Institutions in the State of Madras. Under the Act the administration of all religious endowments shall be subject to the general superintendence and control of the Commissioner and for the purpose of such control he can pass any orders which he may deem necessary to ensure that such endowments are properly administered and that their incomes are duly appropriated for the purposes for which they were founded or exist. Specific duties have been allotted to the other authorities subject to the overall control of the Commissioner. There are many effective provisions in the Act to ensure proper administration of temples. Trustees have to keep registers

47 Ibid., p. 83.
of all institutions for the scrutiny of the appropriate authority. They have to furnish accounts and the accounts have to be audited in the manner prescribed in the Act. The Trustees cannot alienate immovable properties or lease the same beyond 5 years without the sanction of the appropriate authority. They have to obey all lawful orders of the appropriate authorities. The service conditions have been standardised and a provision is made for fixing the fees for archana and the apportionment of the same. The Trustees have to prepare budgets and get their accounts audited. All the temples, whether governed by the schemes or not, are subject to the said provisions of the Act. Thus, there is a fair amount of financial and administrative control over the Trustees.

The Court points out that the general provisions of the Act may be sufficient in case of temples which are properly administered; but there may be a temple without any scheme of administration or even if it has one, it may require to be improved for better results. Sections 58, 62, and 103, 48 provide for appropriate steps to be taken for appealing to the higher authorities in relation to such a scheme. The main protection implied in these provisions is that if any party is aggrieved, it can appeal to the High Court within 90 days. Thus, the effect of the

48 The provisions under these sections are noted elsewhere. See supra Chapter VIII - 'Hindu Religious Endowments: Math and Mehta'.
provision is that though the Deputy Commissioner settles a scheme at the first instance, the party can seek redress through the Court. Similarly, a scheme framed by a Court under Section 92 of the Code of Civil Procedure can be modified on an application made to a Court by any interested party. The act has resolved the conflict which existed before the passing of the act, by a clear provision that the scheme framed under Section 92 of the Code of Civil Procedure can be modified.

The Act provides that when a temple is so badly managed that the administration cannot be improved by exercising ordinary powers or by framing a scheme, the Commissioner can notify such a temple and place it under the direct control of an Executive Officer directly responsible to him. This implies that the supersession of the existing administration can only take place when the administration of the temple is proved to be too bad. The Deputy Commissioner, the Commissioner or the Court is not bound to appoint an Executive Officer in every case but a case will have to be made out for appointing him and that depends upon the facts established in each case. It is in this background that the Supreme Court has considered the scheme prepared by the High Court in its Judgment.

Under the provisions of the scheme suggested by the High Court, an Executive Officer is to be appointed by the Commissioner and is removable by him, his powers and duties
are regulated by the Act and the rules framed accordingly. The Executive Officer is a servant of the Commissioner and is under his control. He is in-charge of the entire administration of the temple and nothing can be done in the temple without his permission. The Supreme Court admits that the Executive Officer functions under the supervision of the Trustee but it also notes that, "that there is an essential distinction between supervision and management. If the Executive Officer disobeys him, the Pandarasannadhi cannot do anything, except perhaps to complain to the Commissioner. Such a drastic provision may be necessary where the temple is mismanaged or if there are other circumstances which compel such an appointment."

The Supreme Court notes that in this case the Commissioner has failed to establish charges levelled by him against the Trustee and therefore the Court rules out the necessity of appointing an Executive Officer who practically displaces the Trustee.

The Supreme Court itself modifies the scheme by deleting the provisions regarding the Executive Officer as implied in the scheme framed by the High Court of Madras.

Suspension of Trustee and Settlement of Scheme

In Secretary, Home (Endowments) Department, Government

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49 Supra n. 46, p. 86.
of Andhra Pradesh V. D. Rajendra Ram Dasjee, the Supreme Court justifies the right of the appropriate authority to remove the trustee of a religious institution if he fails to discharge the duties and perform functions prescribed in the Act. The Court points out that if the right of the trustee to function as a manager of the institution is based on Government order exclusively, the State government has jurisdiction to take disciplinary action against such a trustee. If, on the other hand, it is proved that a trustee has succeeded to the office as a matter of his own right, the State has no jurisdiction to pass an order suspending such a trustee because such suspension amounts to an unauthorized removal.

Removal of Trustee and Settlement of Scheme

In Thenappa Chettiar V. Karuppen Chettiar, the Supreme Court notes that the contributors to the trust, who are interested in the proper administration of the trust, have the right to bring a suit in a civil court in case of mismanagement or breach of trust on the part of managing trustee and for framing a scheme. The Court states that the question whether the trustees are guilty of breach of trust or of acts of mismanagement is a

51 Section 53 of the Madras Hindu Religious and Charitable Endowments Act, 1951.
question of fact. In the instant case, the concurrent findings of the lower courts pointed out the failure of the appellants to make out a case for framing a scheme or for the removal of the defendant trustee and therefore the appeal was dismissed.

Administration of Durga

The case Gopal Krishnaji Ketkar vs. Mahomed Jaffar, Mohamed Hussein\(^5\) refers to an interesting dispute about a Darga known as Hajimalang situated near Kalyan (Maharashtra). The plaintiff filed a suit for a declaration that he was the guardian and the Vahiwatdar of the said Darga and that he was alone entitled to look after the Darga and manage it and control, direct and perform its rites and rituals. He also asked for a declaration that he be entitled to take the offerings placed before the tomb of Hajimalang throughout the year. The interesting fact to be noted was that the plaintiff was a Brahmin while the Darga which he claimed to manage was a Muslim shrine and that beside the tomb of the Muslim Saint is the tomb of a Hindu Princess. Offerings are made at both the tombs of the Muslim Saint and the Hindu Princess by persons belonging to all religions including Hindus and Muslims.

The Bombay Gazetteer records that the tomb is that

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of a Muslim Saint who came to India as an Arab Missionary in the 13th century. During the rule of the Pashawas Kashinathpant Katkar was sent by them with offerings. Katkar seeing that the tomb was in disrepair, repaired it and also wanted to manage it. This was resented by the Muslims belonging to the area who did not tolerate Brahmin Management of a Muslim Shrine. Friction developed because there was already a Muslim in charge as the Hereditary Manager of the tomb known as Hydud. In 1870, the clash became more acute, both claiming the management of the Darga. The dispute was decided by the Collector in accordance with the accepted practice of the times namely by taking lots. The lots were in favour of the Brahmin Manager for all the three times, and therefore he was declared guardian of the tomb. The plaintiffs in the above case claimed that the guardianship and the management were vested in the family from the time of their ancestors. In 1945-46, the defendant Muslim interfered and tried to prevent the Brahmin Managers from collecting the offerings. Under the circumstances the District Magistrate of the area stepped in and ordered the offerings collected before the tomb to be kept in the Kalyan treasury, to be handed over to the rightful claimant when decided by the Civil Court in due course.

54 Under the proceedings instituted under Section 145, of the Criminal Code.
The trial Judge considered the plaintiff guardian and Vahivatdar and ruled that he was entitled to the offerings. The claim of the defendant for the Mujawarship was negatived. In the High Court these findings were upheld and the Court specifically pointed out that the plaintiffs had not claimed the right to hereditary management but only to de facto managership.55

It was also held that the defendant was permitted to go to the Darga only with the consent of the plaintiff.

The important findings of the Court were -

1) that the plaintiffs were entitled to keep with them, for the purposes of the institution, the offerings which were made during the course of the Urus.

2) The offerings other than those made at the time of the Urus ... were taken away by the defendant. The Court did not wish to say anything in this appeal with regard to the offerings which were made at other times.

3) The Court did not express any opinion about the right to serve the institution.

When the case was taken to the Supreme Court in appeal, the Court referred to the Cosmopolitan character

55 Supra n. 53, p. 624. Italics mine.
of the Darga where offerings are made by the people of all faiths. It was noted that round about the Darga many people die every year, any one who dies there either Hindu, Muslim or a Parsi, if he has no heirs, is buried there. 56

The evidence on both sides showed that 'the Darga is not a private property. It was in existence about 700 years before the plaintiff's ancestors came on the scene and the Muslims managed the Darga in 1870. After a Hindu Princess was buried besides the Muslim Saint, the Court says, it might be legitimate to infer that there was some lawful origin, of which the traces are now lost, for management by a Hindu and it might be fair and proper that whoever managed the Darga should be permitted to retain a portion of the offerings for himself. The Court was of the view that evidently the property was not handed over to the plaintiff's ancestors as a personal gift, nor would the Collector have the power to do so. What the Collector did was to settle the dispute and to decide whether Kashinathpant had the right to manage the Darga as claimed by him. Since then, no adverse claim had been made till 1946.

The Supreme Court contends that 'the case cannot be governed by the Hindu or the Muslim Law. It must be

56 Ibid., p. 625.
governed by its own special customs or by the General Law of public religious and charitable Trusts. The Court was unable to pronounce on the question of the custom because, no custom had been pleaded, and whatever had been pleaded was vague and indefinite and the same could not form the foundation for a finding.

About the offerings, the Court notes, that 'even if it is accepted that the plaintiffs had the right to collect them, it was not clear for whose benefit or purpose these offerings were claimed. The Court was thus not satisfied about the claim of the plaintiff that he had a claim to the property of the Darga as private property as a hereditary right nor had he the right to any balance which remained after meeting the expenses.'

In this connection the Supreme Court expresses its opinion on an important point of law. It maintains:

"... a de facto Manager or a Trustee de son tort has certain rights. He can sue on behalf of the trust and for its benefit to recover properties and moneys in the ordinary course of management. It is, however, one thing to say that because a person is a de facto Manager he is entitled to recover a particular property or particular sum of money which would otherwise be lost to the trust, for and on its

57 Ibid., p. 625. Italics mine.
58 Ibid., p. 626.
behalf and for its benefit, in the ordinary course of management; it is quite another to say that he has the right to continue in de facto management indefinitely without any vestige of titles, which is what a declaration of this kind would import. We hesitate to make any such sweeping declaration. 59

The Court expresses its dissatisfaction about the uncertain manner in which the Darga was being managed. It notes that people had taken keen interest in the place, that many structures like a Dharmashala were built by members of the public of different religions, that the place was very largely visited particularly during the time of the Urus, and therefore, the Court thinks it undesirable that things should be allowed to drift in this uncertain way, no one knowing how the rights were to devolve or how the large charitable offerings collected at the Darga were to be distributed and used. The Court thus directs ...

i) that the present arrangement regarding collection and disposal of the offerings should continue for a period of 6 months from the date of the judgment.

ii) that in the interval, the offerings so collected, and those in deposit, should not be handed over to the plaintiff except to the extent necessary for meeting the expenses.

59 Ibid., p. 626. Italics mine.
iii) if a suit is instituted within the said period then the said offerings and collections should be disposed off in accordance with the scheme framed, and such directions given in that suit.

iv) if no such suit is instituted within the said period of 6 months the plaintiff, as the person in de facto management of the Darga from 13th November, 1938, the date of his adoption, till the date of the suit, 7th October 1946, will be entitled to receive the offerings now lying in deposit in the treasury for and on behalf of the Darga and for its benefit, and in future to collect all the offerings all the year round for and on behalf of the Darga and for its benefit until he is displaced by a person with better title or authority derived from the Courts.

This Darga property was again involved in Gopal Krishnajee Ketkar Vs. Muhammad Hajji Latif and others, the case decided by the Supreme Court in April 1968. The main question for determination in this appeal was whether the land comprised in survey plot No. 134 near the Darga was the property of the Darga or whether it belonged to the appellant G. K. Ketkar. It was in August 1953, that the

60 Suit under Section 92 of Code of Civil Procedure.
62 Appeal from the Judgment and Decree dated 8th March, 1963 of the Bombay High Court.
Deputy Charity Commissioner made an order declaring that the Darga was a public Trust and directed its registration as such. The Commissioner also held the land in question as a Trust property and directed that the appropriate Court might be moved for framing a scheme and appointing trustees. The appellant appealed to the Charity Commissioner against the order of the Deputy Charity Commissioner. The appeal was also made to the District Judge, Thana, to set aside the order of the Deputy Charity Commissioner contending that the Darga was not a public trust, the land in question was not the property of the Trust and that the appellant was a hereditary trustee. The respondents on the other hand contended the Darga was a public trust, the land belonged to the trust and the appellant was not a trustee of the Darga.

The District Judge held that the Darga was a Public Trust but did not decide whether the appellant was a trustee or only a de facto manager of the Darga. Against this order, the Charity Commissioner filed an appeal in the High Court of Bombay which confirmed the finding of the District Judge about the public nature of the trust and remanded the case back to the District Judge for deciding the position of the appellant. After rehearing the matter, the District Judge held that the land in question, was not the property of the public trust, (Peer Hajimalang Saheb Darga) and that the appellant was the hereditary trustee of the
trust, his family being its hereditary trustees. Against this judgment the respondent again appealed to the High Court in 1960 which was decided by the Court in 1963 confirming that the management of the Darga had been in the family of the appellant, and about the land in question the Court held that the appellant was not the owner of the plot but that it was the property of the Darga.

It was against this judgment that an appeal was made to the Supreme Court asking it to determine whether the land in question was the property of the Darga or whether it belonged to the appellant. The Court here refers to the history of the Darga as has already been noted before. The Court also examines the various exhibits presented on behalf of the parties concerned pointing out the position of the land from 1858 onwards. The Court specifically pointed out to the fact that the appellant had not produced either his own accounts or the accounts of the Darga to show as to how the income from the land in question was dealt with. The Court states that it may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It further states that: 'it is not a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issue in controversy and to rely upon the abstract doctrine of onus of proof.' The Court
in this connection refers to the law on the subject decided by Lord Shaw in 1917. The Supreme Court was of the opinion that the High Court was right in reaching the conclusion that the land belonged to the Darga and must be shown as the property belonging to the public trust.

These two disputes regarding the Hajimalang Darga where people belonging to two different religions presented their claims of ownership and management were settled by the Supreme Court by taking into account the historical evidence and the legitimate claims of the disputing parties. The Court was in favour of a scheme, to be settled by appropriate authorities in such a manner as to take due note of the claims of disputing parties. The judgment of the Court reflects its keenness in arriving at a permanent arrangement whereby the huge properties of such a controversial institution be managed in the best possible manner.

The Cy pres Doctrine and Religious and Charitable Endowments

The Cy pres doctrine is one of the distinct contributions of the English system of 'Equity Jurisprudence'.


64 It may be pointed out in this connection that in spite of the judicial settlement the property of the Darga has been a centre of communal tensions especially during the period of Urus.
Cy pres in Norman-French means "as near as possible". The origin of this doctrine can be traced to the decision of Lord Eldon in Moggridge v. Thackwell, where the learned judge observed:

"If the substantial intention is charity, the law will substitute another mode of devoting the property to charitable purposes, though the formal intention as to the mode cannot be accomplished."

This decision of the English system was followed by the Privy Council and other courts in India and this led to the successive application of this doctrine in India. It has come to mean:

"Where there is an intention exhibited to devote the gift to charity and no object is mentioned, or the particular object fails, the court will execute the trust Cy pres, and will apply the fund to some charitable purposes similar to those (if any) mentioned by the donor."  

Recent legislative enactments regarding religious and charitable endowments passed by the state governments in India have incorporated the doctrine of Cy pres application.

66 (1803) 7 Ves. 36, quoted Ibid.
to the funds of public trusts. In these acts, the principles for Cy pres application are broadly indicated. The main principle to be observed in this connection is that the intention of the donor must be respected as far as possible. The court can apply the doctrine when the deed expresses a general charitable intention of the donor.

**General Charitable Intention**

In the application of the Cy pres doctrine, the Courts in India, guided by the English law in so far as they emphasised the need for the presence of general charitable intention.

The authorities on the law of charitable endowments have always found it very difficult to define the notion of general charitable intention.

The High Court of Madras gave a very liberal interpretation when it had to decide the Cy pres application of the surplus funds of Sri Venkateswara Temple at Tirupati. It pointed out that the objects for which the surplus funds are applied Cy pres should be, in general, charitable and meritorious objects but it also suggested that these objects should not be wholly unconnected with the original object.

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68 For example, Section 43 of the Orissa Hindu Religious and Charitable Endowments Act, 1951.

69 For example, Audesh Singh v. Commissioner of Lucknow A.I.R. 1934 Oudh 329.

of the deed. On the basis of this liberal construction, the Madras High Court permitted the direction of the surplus funds of the Venkateswar Temple for the establishment of educational institutions; for the promotion, among Hindus, of the knowledge of the Hindu Religion and the Shastras; for the distribution of prizes to persons possessing proficiency in one or other of the various Hindu Shastras; for the foundation and maintenance of a hospital for pilgrims; for the construction of a Choultry for accommodating the pilgrims; and for the provision of welfare facilities such as the improvement of water-supply and road communications to the temple.

It was in Hatilal Panschand Gandhi v. State of Bombay,71 that the Supreme Court of India gave its authoritative opinion on the subject of the Cy pres Doctrine. Here the Court reiterates the view that the general charitable intention of the deed must be taken into account but at the same time the Court refers to the limitations on the application of this doctrine. In this case, the appellant challenged the provisions of Sections 5572

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72 Section 55 of the Bombay Public Trusts Act as amended in 1954 reads:

"If upon an application made to him or otherwise, the Charity Commissioner is of the opinion that —

a) the original object for which the public trust was created has failed;"
and 56 of the Bombay Public Trusts Act (1950). These sections laid down how the doctrine of Cy pres is to be applied to religious and charitable trusts.

The Supreme Court maintains that the provisions of these Sections 55 and 56 have extended the doctrine of Cy pres application much beyond its recognised limits and have further introduced certain principles which run counter to well established rules of law regarding the administration of charitable trusts. The Court says:

"When the particular purpose for which the charitable trust is created fails or by reason of certain circumstances the trust cannot be carried into effect either in whole or

b) the income or any surplus balance of any public trust has not been utilised or is not likely to be used;

c) In the case of a public trust other than a trust for a religious purpose, it is not in public interest expedient, practicable, desirable, necessary or proper to carry out wholly or partially the original intention of the author of the public trust or the object for which the public trust was created and that the property or the income of the trust or any portion thereof should be applied to any other charitable or religious objects:

(Here it must be remembered that this provision has been inserted as an amendment made in 1954 when the Supreme Court declared the original provision of the Act of 1950 as invalid.)

73 Section 56 of the Act deals with the powers of the Courts in relation to the application of the Cy pres doctrine. This section was drastically amended in 1960.

74 Supra n. 71, p. 489.
in part, or where there is a surplus left after exhausting the purposes specified by the settlor, the court would not, when there is a general charitable intention expressed by the settlor, allow the trust to fail but would execute it 'Cy pres', that is to say, in some way as nearly as possible to that which the author of the trust intended. In such cases, it cannot be disputed that the court can frame a scheme and give suitable directions regarding the objects upon which the trust money can be spent. It is well established, however, that where the donor's intention can be given effect to, the court has no authority to sanction any deviation from the intentions expressed by the settlor on the grounds of expediency and the court cannot exercise the power of applying the trust property or its income to other purposes simply because it considers them to be more expedient or more beneficial than what the settlor has directed. 75

The Supreme Court points out that Sections 55 and 56 of the Act allow a diversion of property belonging to a public trust or income thereof to objects other than those intended by the donors if the Charity Commissioner is of the opinion, (and the court confirms its opinion and decides), that carrying out wholly or partially the original intentions of the author of the trust or the object for

75 Ibid., p. 429.
which the trust was created is not wholly or partially expedient, practicable, desirable or necessary and that the property or income of the public trust or any portion thereof should be applied to any other charitable or religious object. The Supreme Court states that whether a provision like this is reasonable or not is not a pertinent question for judicial enquiry and it assumed that the legislature, which is competent to legislate on the subject of charitable and religious trusts would be at liberty to make any provision which may not be in conformity with the existing law. The main question according to the Court was to decide whether such a provision invaded any fundamental rights guaranteed by the constitution. The Court categorically states that these provisions invade the fundamental rights. It says:

"A religious sect or denomination has the undoubted right guaranteed by the Constitution to manage its own affairs in matters of religion, and this includes the right to spend the trust property or income for the religious purposes and objects as indicated by the founder of the trust or established by usage obtaining in a particular institution. To divert the trust property or funds for purposes which the Charity Commissioner or the Court considers expedient or proper, although the original objects of the founder can still be carried out, is to our minds an unwarrantable encroachment on the freedom of religious
institutions in regard to the management of their religious affairs. ... We consider it to be a violation of the freedom of religion and of the rights which a religious denomination has under our constitution to manage its own affairs in matters of religion, to allow any secular authority to divert the trust money for purposes other than those for which the trust was created. The State can step in only when the trust fails or is incapable of being carried out either in whole or in part.”

Thus, the Supreme Court declares Section 55 clause 3 and corresponding provision of Section 56 of the Bombay Public Trusts Act 1950 as void.

Shah Chhotelal Lallubhai and Others V. The Charity Commissioner Bombay and others,77 is a case of cy pres application of funds to religious and charitable institutions. One Jhaverchand Dahyabhai Shah who died in 1916 and belonged to the Jain Religion directed the executors of his wealth to spend his earnings for religious purposes such as feeding of cattle, offering worship, providing food for pilgrims, Sadhus and Shrawakas, for the education and food of Hindu orphans, and for imparting knowledge. The successors of Jhaverchand Shah made arrangements for the spending of sums accordingly. In 1947, Bsi Chanchal, the

76 Ibid., p. 490.
successor executed a trust-deed under Bombay Public Trust Act 1950. This deed provided that some unspent accumulation should be applied for establishing homes for the poor at low and cheap rents. The trustees had no authority to divert any part of the trust fund for the purpose of the scheme because it was not originally mentioned in the objects of the Trust, and the Charity Commissioner, Bombay, challenged the validity of the scheme and the Courts below also considered the scheme invalid. In the following years the feasts were not given under the conditions of rationing restrictions. The trust's incomes, in the meanwhile, were accumulating and therefore in 1955 the Charity Commissioner filed an application before the District Judge for suitable directions to be given to the Trust authorities for utilising the accumulated incomes for educational purposes. This was done by him under Sections 55(1)(b) and 5678 of the Bombay Public Trusts Act. The trustees contended that the trust was for religious purposes and its funds could not be directed for other purposes under the above sections. The District Judge held that the provisions of Section 56 did not apply to the funds of a public religious trust and if the accumulated incomes were held for a religious purpose, the Court could not give directions for its utilisation under the Section. He also directed that the accumulation

78 Supra n. 72.
should be spent on educational and medical purposes and specifically directed the trustees to hand over a certain sum to an educational institution for being spent for providing educational facilities to the students and the remaining amount for help to a Hospital for providing maintenance, food, and medicines to poor and deserving patients.

In an appeal to the High Court of Bombay the appellants challenged the directions of the District Judge. The High Court held that the Court could divert the trust funds if it was not a trust for religious purpose. It held that the original will mostly referred to charitable purposes and the object of providing funds for annual feasts was charitable and not religious and the District Court was competent to entertain the application. It held that providing a feast to the members of the caste even on the occasion of the religious festival or on days which may be regarded as holy, is not expedient, desirable, necessary or proper in the public interest and the directions of the District Judge about the distribution of the Trust Fund should not be interfered with and thus the High Court dismissed the appeal. The Trust authorities appealed to the Supreme Court under Special Leave.

The Supreme Court points out that Sections 55(I)(a) and 55(I)(b) and Section 56(2) are to be interpreted together. If they are interpreted so, the Court is bound
to give directions in respect of all public trusts. The use of the conjunction 'or' in the provision of Sec. 56(1) introduces different alternatives. "The Court must give effect to the original intention or object if and so far as it may be either expedient or practicable or desirable or proper or necessary to do so. ... If the Court finds that it is not possible to do so ... the Court may direct the property or income of the trust or any portion thereof to be applied or preserved to any other charitable or religious object. The latter part of the section 56(1) thus permits the diversion of trust funds for other objects, though the original objects of the founder can still be carried out." 79

As regards the Swamivatsal Feast on the occasion of Poojasan, the Court says that it is certainly expedient, practicable, desirable, and proper to give the feast because it is a meritorious act prescribed by the scriptures of Svetambar Murti Pujak Jains. This is a special charity and as such should not be subverted, and therefore the Supreme Court does not find any reason for giving directions under the latter part of Section 56(1).

The Court, however, deems it proper to give directions under the first part of Section 56(1). In this connection, the nature of religious purposes must be decided according to the tenets and religious beliefs of

79 Supra n. 77, p. 816. Italics mine.
the Marti Pujak Swetambar Sect of Jains. In view of the defective pleading, the question whether the several objects of the trust including the Swamivatsal feast are religious in character is left by the Supreme Court for future consideration. The Court then proceeds to give effect to the original intention of the founder as far as that intention can be carried out and it is in this connection that the Supreme Court refers to the doctrine of cy pres application of funds.

The Court directs that the surplus should be applied as nearly as possible to the original purposes of the trust in accordance with the intention of the founder of that trust. The trustees should be allowed to give the Swamivatsal feast after meeting the expenses of the other charities, though the feast need not be given on the same scale as was given in the past and instead of spending the accumulations, the same should be invested and its income should be applied towards the original objects. The Supreme Court has very strongly objected to the scheme framed by the High Court of Bombay because it disregards the basic principle that the trust funds should be applied for realising the intention of the founder.

The Supreme Court directs that -

1) A reasonable sum should be kept as working fund to meet the current expenses.

2) The balance amount should be invested by the
trustees in such a manner as they think fit in accordance with Section 35 of Bombay Public Trusts Act 1956 and half of the annual income from these investments should be spent for charities mentioned in the will.

3) The remaining half should be spent by the trustees for Swamivatsal feast as mentioned in the will.*

Cy pres Principle Under Orissa Hindu Religious Endowments Act, 1950

Section 47(1) of the Orissa Hindu Religious Endowments Act of 1950, refers to the application of the rule of Cy pres not merely when the original purpose of the trust fails or becomes incapable of being carried out either in whole or in part by subsequent events, but also where there is a surplus left after meeting the legitimate expenses of the institution. This Section was challenged in Mahant Sri Jagannath Kananuj Das and another v. The State of Orissa and another, 81 contending that it violated the freedom of religion of the temple authorities as granted by the constitution. The section conferred on the Assistant Commissioner the power of directing the endowment authorities regarding the Cy pres application of the funds of the institution. The appellants contended that this power offended the freedom of the institution. The Supreme Court

80 Ibid., p. 618.
does not think that there is any reasonable ground for complaint because sub-section 4 of the section 47 provides for adequate protection to the temple authorities who are aggrieved by an order of the Commissioner, in this respect, to file a suit in a Civil Court and the Court is empowered to modify or set aside such order of the Commissioner. Thus according to the Court this section is not invalid.

It has already been noted that in Ratilal Gandhi case, the Supreme Court considered the provisions of the Bombay Public Trusts Act which empowered the Charity Commissioner to apply the Cy presa doctrine as invalid and an unwarranted extension of the doctrine, while in this case a similar provision was declared as valid, the reason for this difference in the decisions is that while in the Ratilal case, the discretion of the application of the Cy presa was left, ultimately, to the executive without providing for appeal to the Courts, on the other hand in the Orissa Act there was a clear provision for judicial review. In a recent case, M.S.Rajabard Madalier V. M.S. Vadivelu Madalier a trust deed provided that the trustees after excluding the tax and maramath expenses as well as other Utzava expenses, could expend such sums as they might deem proper to maintain and educate the male descendants of

82 Supra n. 71.
the settlor's son. The deed also provided that the trustees could stop such maintenance and education if they were not willing to do so. This power of the trustee to stop the maintenance and education suggested that these expenses were considered by the settlor as secondary to charities. The appellants in this case invited the application of Cy pres doctrine. The Supreme Court rejected this contention maintaining that 'the Cy pres doctrine applies where a charitable trust is initially impossible or impracticable and the Court applies the property Cy pres to some other charities as nearly as possible, resembling the original trust'. The Court rejects the appeal by stating that in the case under consideration, the maintenance and education expenses are neither charitable nor similar objects of charity and therefore it does not involve a case of Cy pres application.

Authority to Apply Cy pres Doctrine

It may be noted that prior to independence, there were no specific laws which could embody provisions for the specific application of Cy pres doctrine in case of religious and charitable endowments in India. By and large, the Courts in India followed the practice of English Courts and in this connection, the Courts were specially guided by the Section 92 of the Civil Procedure Code of India. After 1950, many states enacted laws for the regulation of religious and charitable endowments. In view of the acceptance
of the spirit of secularism by the Constitution, most of
these enactments have incorporated provisions for the
secular regulation of religious trust properties. These
enactments have embodied the provisions which lay down the
procedure for the application of the Cy pres doctrine. Most
of these enactments have conferred on the trustees or the
Charity Commissioners the powers of directing the applica­
tion of Cy pres. In the event of the failure of the
trustees or the Charity Commissioner to apply the doctrine
correctly, the parties concerned can appeal to the courts
for protection.

The major weakness of most of these enactments is
that they do not provide enough guidelines to determine
the general charitable intention which is a governing
condition of the Cy pres principle. It can also be pointed
out that the Cy pres doctrine calls for reform and re­
valuation. In India much work remains to be done by the
statute and voluntary organisations to relieve the condi­
tions of the underprivileged sections of the community and
voluntary action finds vast scope. It is, therefore,
essential that factors which hinder the utility of charitable
trusts and the efficient functioning of charitable organisa­

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84 Report of the Committee on the Law and Practice
relating to Charitable Trusts (1922) noted by B. Sivaramayya
supra n. 65, p. 95.
tions should be investigated and the constructive possibilities of the law of charities should be fully explored.

It can be pointed out that though the Courts in India have insisted on the presence of a general charitable intention, they have not attempted to formulate clearly the principles as to when a general charitable intention exists. In this connection, a reference can be made to the recent Charities Act, enacted in England in 1960, which has tried to overcome the difficulties usually faced in the application of the cy pres doctrine in case of surplus funds of religious and charitable trusts. In India also there is need for the relaxation of the criteria of general charitable intention in cases of initial impossibility, either by judicial interpretation or by statutory provisions.

Conclusion

It has been a common practice in India, in the past, for the state to supervise the working of religious institutions. The state exercised extensive authority over public religious endowments and enacted legislation to prevent mismanagement and misappropriation of endowment properties. The government was also empowered to settle

85 Ibid.

86 Such provisions have been enacted by Charities Act of 1960 in England. For details see V. K. Varadachari, supra n. 67, pp. 211-12.
schemes for the administration of the property of these endowments.

Section 92 of the Civil Procedure Code of 1908 applied to public trusts of a religious and charitable nature, and it was intended to prevent the misuse of funds of public trusts. After independence, various state governments enacted legislation to regulate religious endowments and these enactments incorporated provisions analogous to those implied in Section 92 of the Civil Procedure Code. One of the more important provisions in this connection has been to settle schemes with a view to ensuring better administration of religious trusts. Legislative provisions have made this aspect a justiciable one and these schemes have been a matter of dispute in numerous cases referred to the courts. As has been pointed out before in this chapter, the courts have protected the legitimate claims of various disputing parties and have justified state interference in the event of gross mismanagement.

It may be pointed out that recent legislative enactments regarding religious and charitable endowments have incorporated the principle of cy pres application to charitable funds. The courts in India have played a positive role in diverting funds of charitable trusts in a better manner by adopting liberal interpretation of 'General charitable intention' implied in the application of this principle.