

EB. No. 327.45

PART - I

DIGITIZED



P
T2:6.211 No. 1
No
32745

32743

Vol I

REPORT OF THE HINDU RELIGIOUS ENDOWMENTS COMMISSION

CHAPTER	CONTENTS	PAGE
I	Introduction	1
II	Historical background of temples, mutas and other religious institutions	6
III	Legislation	22
IV	Private and Public Religious Endowments	31
V	Archakas, pujaris, pandas and other per- sons connected with temple service	42
VI	Trustees	63
VII	Utilisation of surplus funds and applica- tion of cy-pres doctrine	69
VIII	Succession	89
IX	Jain and Buddhist endowments	102
X	Irregularities and Malpractices	115
XI	Management and Administration	119
XII	Religious Trust Bill, 1960	130
XIII	Land reform legislation in so far as it affects the income of endowments	132
XIV	Amendment of the Constitution	143
XV	General—	
	A.—Sadhus and Sanyasis	147
	B.—Special observations on certain Temples of all-India importance	153
	C.—Sanskrit Commission Report	167
	D.—Temples under the Archaeological Department	168
	E.—Repair and Renovation of Temples of Historical and Architectural importance	169
	F.—Miscellaneous recommendations	170

Q2:6.211 N60
N60 (ii)

CHAPTER

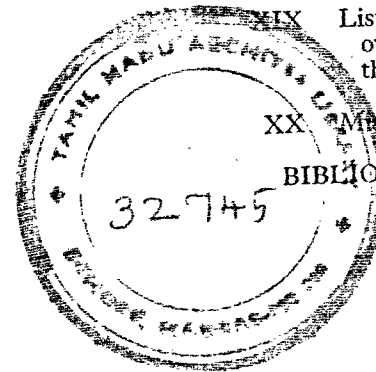
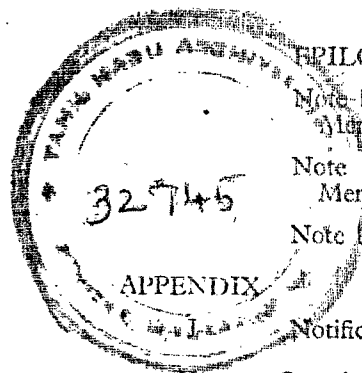
	G.—Important Data and other Information pertaining to temples	172
XVI	Summary of recommendations and a general summing up	172
	PILOGUE	195
	Note by Shri P. Kameswara Rau, Member	196
	Note by Swami Harinarayanand, Member	214
	Note by Shri Sankar Saran, Member	248
	Notification appointing the Commission	251
II	Questionnaire (English)	253
III	Questionnaire (Hindi)	264
IV	No. of Memoranda and Replies to Questionnaire received from individuals, public bodies, etc. State-wise	281
V	Statement showing the Tour programmes of the Commission	282
VI-A	No. of temples, mutts and other Hindu religious institutions visited by the Commission	283
VI-B	List of temples, mutts and other Hindu religious institutions visited by the Commission	284
VII	Statement giving details of the meetings held by the Commission for collecting evidence and discussion amongst members	295
VIII	List of witnesses	300
IX	State enactments governing Hindu religious endowments	359
X	Suggestions for improvement of State laws governing religious institutions	361
XI	Important provisions in certain State enactments with regard to Trustees of religious institutions	374

Q2:6.211 N60 L
(iii) N60 ✓

PAGE

APPENDIX

XII	List of Jain trusts against which proceedings were taken under the Bombay Public Trust Act, 1950	378
XIII	Cases of irregularities and malpractices which have come to the notice of the Commission	382
XIV	(A) Statement showing the annual income, from the endowed villages known as 'gunth' villages of Sri Badrinath	390
	(B) Statement showing the movable property belonging to Sri Badrinath temple	391
	(C) Statement showing estimated annual income of Sri Badrinath temple	391
	(D) Statement showing the staff employed in Sri Badrinath temple	392
XV	A note indicating the activities of Sri Badrinath temple	393
XVI	(A) Statement of income and expenditure of Nathdwara Temple for Samvat year 2015	394
	(B) Statement of income and expenditure of Nathdwara Temple for Samvat year 2016	396
XVII	List of temples requiring urgent repairs	399
XVIII	List of religious, educational, cultural art and other institutions run by temples, mutts and other religious institutions	407
XIX	List of temples with annual income of over Rs. 10,000 in certain States, their expenditure and surplus	410
XX	Miscellaneous documents	499
	BIBLIOGRAPHY	524



9.2.16 3

REPORT OF THE HINDU RELIGIOUS ENDOWMENTS COMMISSION

CHAPTER I

INTRODUCTION

By notification G.S.R. No. 233, dated the 1st March, 1960 in the Ministry of Law (Legislative Department) (see Appendix I) the Government of India constituted Commission and its on the 1st March, 1960, under section 3 of the terms of reference. Commissions of Inquiry Act, 1952 (60 of 1952), a Commission of Inquiry called the Hindu Religious Endowments Commission for the purpose of making an inquiry into certain matters connected with Hindu public religious endowments. The terms of reference to the Commission are as follows:—

(a) to examine generally the institution of Hindu religious endowments and to recommend the classes of such endowments which should be treated as public religious endowments;

(b) to inquire into the manner in which Hindu public religious endowments are being managed and the resources thereof are being utilised, and to recommend ways and means for the proper management of such endowments and the proper utilisation of their resources;

(c) in particular, to inquire into the manner in which holders of offices in relation to Hindu public religious endowments are being chosen, whether by way of succession, nomination or otherwise;

(d) to examine whether the existing arrangements in regard to the manner in which holders of such offices are being chosen are satisfactory and if not, to suggest ways and means for improving the same; and

(e) to inquire into and report on any other matter relevant to any of the matters specified above, which, in the opinion of the Commission, requires to be inquired into.

2. The Commission as first constituted consisted of the following persons:—

Chairman

(1) Dr. C. P. Ramaswami Aiyar.

Members

(2) Shri Sankar Saran, Retired Judge, Allahabad High Court.

(3) Shri Mahabir Prasad, Advocate General, Bihar.

(4) Swami Harinarayanand, General Secretary, Bharat Sadhu Samaj.

- (5) Shri P. Kameswara Rau, Retired Commissioner, Hindu Religious Endowments Board, Madras.

Later on by notification GSR No. 512, dated the 2nd May, 1960 in the Ministry of Law, Legislative Department, the following two persons were appointed as additional members:—

- (1) Shri K. Venkataswami Naidu, Advocate, Madras.
(2) Shri K. C. Sen, Retired Judge, Bombay High Court.

3. We were required to submit our report to the Central Government as early as possible.

4. We held our inaugural meeting at New Delhi on the 5th March, 1960 and considered the scope of our inquiry and the procedure we should adopt in proceeding with the inquiry.

5. Several communities and followers of religions which are not termed 'Hindu' in common parlance have during many centuries been governed by the doctrines of Hindu law. In particular, the followers of Buddhism and Jainism in India, although their doctrines differ in some respects from those of Hinduism popularly so called, are nevertheless considered as Hindus for several purposes and the Hindu law relating to secular matters, such as succession and inheritance as well as the constitution, maintenance and management of religious endowments or foundations appurtenant to those religions is generally speaking, applicable to them. We have accordingly included within the purview of our inquiry the religious endowments connected with those religions as well. Similarly, religious endowments connected with offshoots of Hinduism, like certain forms of Saktism, the Veerasaiva or Lingayat cult, the Kabirpanth, the Brahmo Samaj, the Prarthana Samaj, the Aryasamaj, Nirmals and other denominations falling within the Hindu fold have also been included within the scope of the inquiry, although their followers or representatives do not accept some aspects of the Hindu creed. We also felt that in view of the fact that endowments of the Sikh community had already formed the subject of separate legislation it would be better to leave those endowments out of our consideration, although it is well known that the Granth Sahib, the holy book of the Sikhs, contains teachings and doctrines derived from several Hindu sources in addition to the doctrines and precepts specially inculcated by the successive Sikh Gurus.

6. In pursuance of the decisions taken by us at the inaugural meeting, we issued on the 10th March, 1960 a public notification inviting all public bodies, institutions and individuals interested in the management and maintenance—present and future—of Hindu temples, mutts and other religious centres and also interested in the proper utilisation of their resources and other matters appertaining to the management, maintenance and future of such temples, mutts, etc. to offer their views in the form of memoranda, within two months from the date of the issue of the notification, namely, the 10th March, 1960. Besides a copy of this notification was sent to all the State Governments and

Administrations of Union territories with a request that steps should be taken by them to give it the widest publicity in all regional languages in the State/Administration through the official gazette and/or other official and non-official agencies. In a letter sent on the 10th March, 1960 State Governments were also requested to furnish us with a list of State enactments relating to religious endowments, institutions, etc. together with copies thereof and a complete list of temples, mutts and other Hindu religious centres (excluding those pertaining to Sikhs, but including those pertaining to Veerasaivas, Lingayats, Kabirpanthis, Buddhists, Jains, Nirmals and followers of the Brahmo, Prarthana and Arya Samaj) falling within the jurisdiction of the State together with such particulars in respect of these institutions as would be helpful to us for the purposes of our inquiry.

7. A comprehensive Questionnaire was settled by us and circulated on the 10th May, 1960 through State Governments or directly by the Secretariat of the Commission, to temples, mutts, public bodies and organisations and individuals interested in the management and maintenance of Hindu temples and mutts and the proper utilization of their resources. A supplementary Questionnaire was also sent to them on the 9th June, 1960. A copy of the Questionnaire as finally adopted is appended (Appendix II). A Hindi version (Appendix III) of the Questionnaire was also issued on the 4th July, 1960. That the Questionnaire got the widest publicity possible through the press and official and non-official agencies will be evident from the fact that about 12,000 copies thereof both in English and Hindi were issued. Replies to the Questionnaire were required to be furnished to us by the 15th July, 1960 but in view of the public demand and also of the fact that the Hindi version of the Questionnaire was issued some time after the English version, the last date for the submission of replies was extended by us to the 31st July, 1960. Although we did not formally extend the date for the receipt of replies beyond the 31st July, 1960, we nevertheless have taken into consideration all replies received by us after that date. Similarly all memoranda received by us even after the last date prescribed for their submission, namely, the 10th May, 1960 were also taken into consideration by us. Altogether we received about 1,400 replies to the Questionnaire and about 400 memoranda a good portion of which was in Hindi and other regional languages. A Statement giving the number of memoranda and replies to the Questionnaire received from individuals, public bodies, etc. from each State (including a Union territory) will be found in Appendix IV.

8. We next met at Ootacamund towards the end of May, 1960. In the several meetings which were held there the programme of our work was chalked out and a few important witnesses were also examined. Information regarding the precise number of temples, mutts and other Hindu shrines in existence in the country is not available, but it can be said without fear of contradiction that their total number even on a rough calculation may be counted in thousands. That these institutions are spread all over the country and are governed by customs territorial, local or otherwise, needs no emphasis. In the nature of things it would of course have been

impossible for us to visit each and every institution; and so the Commission decided to study the working of representative or important institutions by making on-the-spot visits, besides examining witnesses, wherever practicable. Our task has thus been wide-ranging, variegated and complex.

9. In the light of the suggestions received from State Governments and other official and non-official agencies, we drew up our programmes for tours in the various States for the purpose of collecting first hand information about matters concerning our enquiry. Our regular tours commenced in the month of September, 1960 and practically continued right up to the end of March, 1962 except for occasional and brief intervals. Appendix V contains information relating to the States visited by us, the periods during which we visited them and the total number of days spent by us during each tour. In Appendix VI a list of the temples, mutts and other religious institutions visited by us in each State is given. Appendix VII sets out in detail the number and dates of the meetings held in each State and place. It will thus be noticed that we were on tour in all for 265 days outside Delhi and that altogether 130 meetings were held (both in public and in camera) in New Delhi and the capitals of States, important cities and other places in the States for the purpose of obtaining evidence and of discussion among members themselves. That altogether 150 institutions in North India and 82 institutions in South India were visited by us indicates in a fair measure that we have striven to ensure that as far as possible no important institutions escaped our attention.

10. Before visiting a State, we selected the witnesses to be examined therein. In selecting them, our idea was to include as many representatives as possible of the various shades of opinion as were reflected in the memoranda and replies to the Questionnaire received by us. We have had also the guidance of State Governments in this regard and the suggestions made to us by important and well-known persons who in our opinion were men of standing in public life. We have thus endeavoured to ensure that all cross-sections of the public were given the fullest opportunity for expressing their views before us so that the real state of affairs prevailing in regard to Hindu religious institutions in the various States could be ascertained. Every care was also taken to see that persons directly connected with representative and important institutions were examined. Apart from this, we invariably made it a point to meet, as far as practicable, in every State, the Governor, the Chief Minister, the Minister in charge of endowments, Judges of the High Courts and representatives of Bar Associations, important public bodies, etc. Important witnesses were also given full freedom for tendering their evidence *in camera*, if they so desired. Appendix VIII contains a list of the witnesses examined by us. A *verbatim* record of the evidence of these witnesses runs to about three thousand foolscap pages.

11. In the course of our tours to various places in the States we had the honour and privilege of receiving a number of public receptions and participating in public meetings and gatherings. Full opportunity was taken on these occasions to inform public opinion

and stimulate their interest in religious institutions and their present and future working. We have also had the advantage and benefit of meeting representatives of the Press in the State capitals. The public were thus duly informed of the trend of the opinions expressed by individuals, public bodies, etc., in the course of the evidence tendered before us. Altogether there were 18 Press Conferences.

12. Before the evidence of witnesses was taken, the Commission studied the views of such of them as had submitted written memoranda and replies to the Questionnaire which were carefully summarised by the Secretariat of the Commission. Besides the recorded evidence, a large mass of material pertaining to the institutions was collected in the course of its inquiry and the entire matter was carefully studied, suitably analysed and collated and results recorded were circulated to members as and when necessary.

13. The views, ideas and proposals with regard to the proper management and administration of endowments and several other matters connected with the numerous categories of Hindu religious institutions were naturally divergent and variegated as well as enormous in the aggregate not always reconcilable with one another. We have had therefore to hold several sittings for discussion among ourselves in order to arrive at agreed conclusions and recommendations. The discussions amongst the members started as early as in May, 1961 at Ootacamund where the Commission held about 8 sittings exclusively for this purpose. The discussions on the question of formulation of recommendations were held in New Delhi during February-March, 1962 and despite occasional differences of opinion, were held in an atmosphere of purposeful harmony.

14. Towards the close of our tours it was felt by us that it would be very useful and advantageous to convene a conference of the Commissioners of Endowments and other heads of Departments dealing with the subject of Hindu religious endowments in the various States, mainly in order to find out the special problems and difficulties—both administrative and legal—encountered by them or by other agencies in the management and administration of endowments in their States.

During our visits we had already obtained their views regarding the solutions they had in view for remedying the difficulties or supplying lacunae in the existing laws. The conference was held in New Delhi on the 13th and the 14th March, 1962. These discussions were very useful and we were greatly benefited by the many valuable suggestions made to us by the representatives of the States.

15. A draft of our Report embodying our conclusions and recommendations was discussed at meetings held at Ootacamund commencing from the 30th April, 1962 and ending with the 10th May, 1962. All the members of the Commission participated in the discussion of the draft Report. The Report as finally settled and approved by all of us was signed at the meeting at New Delhi on the 31st May, 1962.

Finalisation of report.

CHAPTER II

HISTORICAL BACKGROUND

Before a historical survey of Hindu religious institutions is undertaken, it would be useful and indeed essential to consider firstly what the terms "Hindu" and "Hindu religion" connote. It has been rightly observed that Indian civilization displays a manifest and inherent tendency towards a religious outlook. The characteristics of Hinduism are its receptivity and all-comprehensive and basically tolerant and assimilative character. Thus it has had no difficulty in including within its fold many varieties of beliefs and observances. It has, therefore, been aptly remarked that Hinduism has something to offer which is suited to all minds. The excavations in the valley of the Indus and latterly in Saurashtra have disclosed the existence of a highly evolved civil and religious culture anterior to the period usually ascribed to the Vedas. Among the remains discovered at Mohenjodaro are the three-faced prototype of Mahadev sitting in the yogic posture, and the representations of the Linga and of a goddess associated with the sacred peepal tree. During the time of the Vedas, underlying the various personifications of elemental forces, there were two basic ideas, namely, *Satya* (truth) and *Rita* (eternal cosmic order). The *Rig Veda* states that the earth is upheld not by the will of God but by *Satya* of which God is the supreme exponent. After examining the Vedas as a whole, one realises that they embody a doctrine of one divine substance pervading everything.

2. It has been rightly noted that Hinduism is not a special cult or form of worship but is intrinsically a way of life and is all-comprehensive. This way of life is founded upon the inseparable unity of the material and spiritual world and upon the continuous striving to comprehend the significance of the phenomena of growth, existence and dissolution and an after-life or lives. The phenomena of the universe are symbolised in forces and personages associated with such phenomena. Hinduism and Indian thought and philosophy developed in several stages. In the Vedic period there is no specific mention of temples or mutts but only of the Supreme Being in its various manifestations, namely, Agni (Fire), Surya (Sun), Ushas (Dawn), Vayu (Wind), Varuna (the God of eternal order and of the seas), and the Ashvins. These and various other divinities were propitiated by hymns and sacrifices, but as far as one can see, no representation of them nor any abode for them existed. The Aranyakas, the Brahmanas and Upanishads came next. At that period there was a perceptible reaction against mere rituals and sacrificial observances. The outlook then was that the knowledge and perception of the Supreme Being should be gained not by reasoning or argument but by personal experience and realisation preferably gained through a Guru and by people performing actions without any attachment to their fruits. In the later Upanishads the idea of a personal God is developed and devotion to such Godhead is inculcated. Such ideas were fully developed, expanded and sublimated in the Ramayana and the Mahabharata and in the various

Puranas and Upapuranas. The ideas so evolved have survived till now. As is well known, the Bhagavat Gita is embodied in one of the parvas of the Mahabharata and along with the Vedas and the Brahmacutras constitutes the acknowledged substratum of all the varieties of Hindu belief and philosophical thought. Rationalistic and even materialistic tendencies existed even before the age of Gautama Buddha and opposition to Vedic sacrifices and worship was in evidence even at the time of the Rig Veda. In fact a passage from the Rig Veda uses the word 'Yati' in the sense of one who condemns sacrifices, though the word came to denote, later on, an ascetic or holy man. Moreover, it is significant that even Buddha, though he rebelled against the sanctity of the Vedas, was largely moulded by the habits and thoughts which prevailed in his time. Indeed Buddha himself says, "There are four truths of the Brahmanas which have been realised by me by my own higher knowledge and are now made known." Thus it will be noticed that Hinduism is more than a special cult or particular type of worship.

3. Temples and mutts are the two principal institutions of the Hindu religious system. They supplement each other in regard to the spiritual welfare of the persons belonging to that system; while temples afford opportunities for prayer to and adoration of the Supreme Being in His various manifestations, mutts exist chiefly for the imparting of spiritual instruction by preceptors who reside there along with their "antevasis" or disciples for the purpose of the acquisition and spread of religious knowledge.

A.—TEMPLES

4. Temples, as we now know them, are not mentioned in the Samhita, (the Vedic collection of hymns and prayers); which originated in the first period of Vedic literature. What however is found is the word *Agnyagara*, a place where fire was lit and oblations made. Whichever deity was invoked, it was the sacred fire (*Hutavaha*) which was to carry the oblation to Him. There was no other visible symbol of worship and no place for performing the sacrifice except the altar which existed in the householder's own residence. *Agnyagara* may perhaps be said to be the origin of a temple. Although there is no mention of temples in the Samhita, it seems fairly clear that temples in some form or other were known during the Sutra period. In one of the Brahmanas, which were earlier than the Sutras, the word '*Devathavathanam*' (house of god) and '*Devapratima*' (image of god) are used. In the later Brahmana period mention is made of images of gods and temples raised for their accommodation and the Dharma Sastras of Gautama and Apasthamba make definite mention of temples. There is clear evidence to prove that by the time Gautama wrote his Dharma Sastra, charitable endowments like wells, gardens, dharmasalas, etc. were in existence and the idea of grants of land for charitable and pious purposes was already well established. It was from the days of the Puranas, however, that the construction of temples assumed great importance. The consecration of images is elaborately dealt with in the Padma

Purana and other *Puranas* and a distinction is drawn between *Swayambhu* or naturally created or self-revealed images and images wrought by human agency, the latter being made of clay, wood, stones, metals, etc., in respect of which *prana pratishtha* or a vivifying ceremony had to be performed. About the time of Panini, the great grammarian and the author of the *Ashtadhyayi*, we find no mention of any temples dedicated to the main deities referred to in the *Vedas*, but there are references to the Goddess Parvathi and her consort Siva under various names. It was during the time of Kautilya, the famous Minister of Chandragupta Maurya, that we find definite mention of the building of temples. At page 54 of Dr. Shyama Sastri's edition of Kautilya's 'Artha Sastra', it is stated: "In the centre of a city the apartments of houses of Gods such as Aparajita, Apratihata, Jayanta, Vaijayanta, Siva, Vaisravana, Asvina and Goddess Madira shall be situated." There were images installed in temples or open shrines which were not of individual ownership at all; on the other hand a special name is given to the owner of an image. Such images were sources of livelihood (*jivika*) apart from worship (*pujārtha*). At the same time Panini describes images in the possession of *Devalakas* or custodians of shrines which were either fixed in one place or were carried from place to place. On page 362 of Dr. Agarwal's 'India as known to Panini', the King's officer called *Devatadhyaksha* is referred to as organising the worship of divine images and arranging for fairs and festivals. As pointed out in 'The History of Philosophy Eastern and Western', published by George Allen and Unwin in 1952, page 33, the association with the Vedic practice of worship in the homes, led to communal worship in the villages and in the cities and the development of temples in villages and in cities as well as shrines in houses.

5. Buddhism originated about the fifth century B.C. mainly as a protest against some of the rituals and sacrifices of the *Vedas*. Though it was a non-theistic religion without any belief in any Intelligent First Cause of the Universe, the respect which

the Buddhists paid to relics and sacred scriptures and later on to the image of Buddha himself as objects of worship may be said to have ultimately paved the way for widespread image worship in India. It is difficult to say at what period of time image worship was introduced among the Hindus. There is no mention of idols in the early Buddhist literature. Though there is a reference to an image in the *Gautama Dharma Sastra* it does not specify any particular idol or idols. The gods that are generally worshipped by the Hindus at the present day are for the most part deities celebrated in the *Itihasas* and *Puranas*. In some parts of India, e.g., Bengal there is an admixture of Tantric rites in the form of worship. The worship of these gods became popular in the country after the *Itihasas* and among Buddhists after the rise of the Mahayana School of Buddhism, i.e., from the beginning of the 4th to the middle of the 6th Century A.D. From about the 2nd Century B.C. to the 7th Century A.D., when Buddhist influence was paramount in the country, certain remarkable cave temples came to be constructed at places like Ellora, Ajanta, Karla and Halebid. The Buddhist temple can perhaps be said to be the first architectural example for the Hindu temples.

6. The Gupta emperors contributed much towards the propagation of the Puranic faith and the construction of temples where the Puranic deities were worshipped. The images worshipped were generally those of Shiva and Vishnu in their several forms and manifestations. The worship of Shakti or the female principle described as a consort of Shiva in the different forms of Uma, Parvati, Durga, Kali, etc. also became popular. Various aspects of Lakshmi as the consort or Sakti of Vishnu, of Saraswati as the consort of Brahma and other female divinities also received prominence. The Gupta emperors were great patrons of religion and the arts and different religions like Hinduism, Jainism and Buddhism thrived during their time. The later Hindu rulers also followed a policy of tolerance in matters of religion. A number of Jain temples also sprung up all over the country (e.g. the Dilwara and Ranakpur temples in and near Mount Abu). These temples contain not only the images of Jain saints but also the representations of gods and goddesses of the Hindu Pantheon.

7. The gradual development of temples in the Southern part of India can be traced during the last 13 or 14 centuries. About the end of the 6th Century A.D. an urge for rock-cut temples had spread everywhere over the Pallava kingdom of Kanchi.

This idea was perhaps derived from the rock-cut caves on the banks of the Krishna, which were the work of the Vishnukundins who ruled over the region of the deltas of the Godavari and the Krishna. The earlier Pallava cave temples were excavated during the reign of Mahendravarman Pallava (600—630 A.D.) who is considered to be one of the greatest figures in the history of Tamil civilisation. Several cave temples are attributed to this period and during the reign of his successor, the great Narasimhavarmam Mahamalla (630—668 A.D.) more elaborate cave temples were built. In the next stage of temple development during the days of the Pallavas, structural temples built of stones and with lofty towers rising in tiers over the main shrine (e.g. the Kailasanathaswami temple at Conjeevaram) became popular. During the Chalukya period were erected a large number of Jain and Hindu sculptures and temples. The period of Pallava temples ended with the final conquest of the Pallava kingdom by the rising dynasty of the Cholas of Tanjore about 900 A.D. The Chola period from 1019 A.D. onwards was notable for the large number of new types of temples like those at Tiruvarur and Tanjore as well as the Vaikunta Perumal temple at Uttaranallur, the climax being reached by the Rameswaram and Madurai temples. The tradition set up by the Cholas was continued and greatly embellished by Vijayanagar Kings.

8. Successive Muslim invasions starting from about the 10th Century A.D. led to the destruction of many of the famous temples in Northern India. All students of Indian history are aware of the

seventeen expeditions of Mahmud of Ghazni which resulted in the sacking and destruction of many of the ancient temples in the western part of India. The Somnath Temple in Gujarat, the fabulous wealth of which had specially aroused the cupidity of Mahmud of Ghazni, was practically razed to the ground.

and its treasures removed on several successive occasions. The Muslim dynasties which followed like the Ghoris, the Khiljis, etc. also adopted a similar policy. Malik Kafur, the General of Ala-ud-din Khilji carried on the depredations even down to the far South. In the Deccan, the Vijayanagar emperors, the greatest of whom was Krishnadeva Raya, were great builders of temples and patrons of religion, arts and literature; but the defeat of the Vijayanagar King at the battle of Talikota in 1565 A.D. by the Bahmani Sultans brought about an eclipse of the Hindu religious institutions in the Deccan, from which they never really recovered. Nevertheless a great deal of temple construction took place at the instance of tribal chieftains like the Nayaks of Madura and Tanjore and the titular kings of the South. Thus, owing to the policy followed by many though not all Muslim rulers in India, many ancient temples are now either in utter ruin or are even used as mosques. For instance, the Martand temple in Kashmir which is supposed to have been the biggest Sun temple of the ancient times is now in ruins. In Ayodhya, the birth place of Rama, the sculptural and architectural remains of Hindu origin have been made part of a mosque. The Aurangzeb mosque in Benares is supposed to have been built on the foundations of the pristine Hindu temple. In Ajmer, the great mosque is supposed to have been built in two and a half days after the destruction and on the very site of a famous Hindu temple. South India was comparatively free from invasions of the sort mentioned above and the temples there have been preserved in more or less the same state in which they were originally constructed, e.g., the Nataraja Temple in Chidambaram, the Brahadeeswara Temple in Tanjore, the Meenakshi Temple in Madurai and the great Temple of Rameswaram as well as the temples at Srirangam and Kanchipuram. It must be noted that a few Muslim rulers in the South like Hyder Ali and Tipu Sultan were comparatively free from religious fanaticism which characterised their counterparts in North India and in fact there is recorded evidence that these Kings even made munificent gifts to Hindu temples and mutts.

9. It is worthy of remark that more materials about temples are available with reference to the South of India than to the North; and, in fact, there are many more temples in a good state of preservation in the South than in the North.

10. In dealing with this matter, it should be remembered that originally, temples in India began to be built with brick or stone foundations and wooden superstructures, especially in the North of India. The climate there, with its sudden changes of temperature and heavy rainfall and humidity during certain seasons, made for rapid disintegration. The Muslim invaders were also active and not only were idols or paintings of portraits repugnant to their religious feelings but they believed that wealth was concealed in the temples and treasure buried under the idols.

11. In the case of Buddhist shrines, they began with rock caves and before the Gupta period, the Buddhists were the prime originators of imposing religious architecture. So far as Hindu architecture of a substantial character is concerned, the temple of Martand in Kashmir was constructed as early as the eighth Century A.D. and

Khajuraho was built by the Chandel dynasty in Bundelkhand about the tenth Century. The Kailasa temple at Ellora is also an early specimen but the greatest efforts were initiated by the Pallavas who ruled in Kanchipuram and other places and the Cholas who built great temples in Tanjore and other localities.

12. Before the Muslim invasion, there were not many cases of destruction of temples. There is one, however, recorded in history. On account of the lasting feud between the Pallavas of Kancheepuram and the Chalukya dynasty, on one occasion, the Pallava King, Narasimhavarma, sacked the town and temple at Vatapi. In this connection it may be remarked that Manu declares as follows: "When a Raja has conquered a country, he should respect the deities which are worshipped there, distribute largesse and re-assure the people by proclamation." After the Hun invasion under Mihirakula was repulsed by the Guptas and after the troubles that followed the death of Harsha such reconstruction took place on a large scale. The early Muslim invaders were, however, bound by no such rules. Muhammad Ghori's General sacked Banaras in 1194 and under the orders of Bhaktiyar Khilji the Buddhist Monks were exterminated and the University of Nalanda with its celebrated library was completely destroyed and all the shrines and images were broken into small pieces as was also the case of Martand. Malik Kafur between 1310 and 1311 sacked Rameswaram where he built a mosque, the Madura temple was despoiled and his plunder included according to the Muslim historian 2750 pounds of gold and 300 elephants. Shah Jahan was less tolerant than his father and grandfather; and, influenced by his wife, Mumtaz Mahal, 72 temples were destroyed in Banaras. Aurangzeb completely reversed the policy of toleration inaugurated by Akbar and Jahangir. Shah Jahan had issued an order stopping the building of new temples. In 1669 Aurangzeb issued an order to demolish all the schools and temples of the 'infidels' and to put down all their religious teachings and practices. The Viswanath Temple at Banaras was again wholly destroyed and a mosque was erected in its place. The great temple of Kesava at Mathura was razed to the ground, and the historian says that all the richly-jewelled idols were taken to Agra where they were placed on the threshold of a mosque so that they may be trodden under foot by the true believers. The images at Mathura included five idols of pure gold each five yards high with eyes formed of precious stones. The order was given that the temple should be burnt down. The very name associated with the worship of Krishna was changed to Islamabad. In the wake of Banaras and Mathura, hundreds of other shrines all over the country were destroyed and the idols broken to bits. Among the temples so destroyed wholly or partly were the shrines at Deogiri, Gangai Kandancholapuram, Mahabalipuram and Kancheepuram.

13. In the case of Somnath, Mahmud of Ghazni in 1024 took possession of 45 temples, killed over 50,000 people and completely destroyed the temples which was constructed mainly of timber, the principal hall having 56 columns of wood covered with metal (lead and brass). One would have thought that Kancheepuram, on account of its remote position, would have been free from Muslim attacks; but Muhammad Shah III, in his campaign against Vijayanagar in

1481, destroyed most of the temples at Kancheepuram and took away the rich booty therein. Ferishta, the historian refers to the moderation of the invaders "who took away nothing but gold, jewels and silver".

14. The foregoing account, though not complete, is enough to demonstrate the reason why there are so few ancient temples now in existence, north of the Vindhyas. These temples must have contained numerous inscriptions, fresco paintings, sculptures, schools and audience halls, if one can judge from the remains that have been preserved in the South of India.

15. We may conclude this account by referring to the University of Nalanda which was one of the foremost temples of learning of ancient India along with Taxila, Valabhi Vikramsila and Kancheepuram. Nalanda was originally the site of a monastery or Vihara where Bikshus lived and where Aramas or garden houses were constructed. Later on, this was converted into a residential University elaborately furnished. At one time there were 10,000 students from many countries who, after a severe Matriculation examination, were admitted as pupils of the University. It is stated that the number of unsuccessful applicants for entrance into the University were seven or eight in every ten. It should be remembered that Nalanda was a place where religion occupied an important part in the daily life of the students and Sankalia's "History of the University of Nalanda" gives a full account of the rituals and worship obligatory on every student of the Institution. The subjects taught in the University included Sanskrit Grammar, Logic and Rhetoric; Silpa-vidya (art); Chikitsavidya (medicine); Abhidharmakosa (metaphysics) and Nyaya (Logic). The Hindu scriptures, the Vedas and the Vedangas were taught even to Buddhist students. The tutorial method and discussion were the chief aspects of teaching. In fact, Buddha himself stated: "let the preceptor afford help and furtherance to the pupil by teaching, by putting questions and by exhortation." It is a matter of satisfaction that attempts are now being made to renovate and reconstruct the old structures and to start not only an archæological but an educational and religious Centre on the site of this ancient University campus.

16. According to Hindu tenets charity in the humanitarian sense is regarded as part of religion and both are integrated parts of *dharma*. From very early times, religious and charitable institutions in the country came under the special protection of the ruling authority and Hindu Kings regarded themselves as specially charged with the duty of properly administering the funds of temples within their jurisdiction and the application of such funds towards the objects for which the temples were founded. It is also on record that the Peshwas even prescribed the actual quantities of articles to be used for specific worship. The Hindu rulers also accepted and asserted the right to visit endowments of this kind to prevent and redress abuses in their management. Mr. P. R. Ganapati Aiyar in his learned treatise on Hindu and Mahomedan endowments has referred to several historical inscriptions which bear testimony to the fact that Hindu Kings exercised active supervision over temples

and endowments. These inscriptions prove that temples were conceived of not only as places of worship but also as centres of comprehensive religio-cultural activities where instruction even in such subjects as music, architecture, sculpture, painting, dancing, etc., was given. Temples and temple festivals were closely connected with the development of the arts and both classic and post-classic dramas were enacted in temples in connection with their festivals.

17. Not only was the religious service elaborated and assiduously performed but grants were also made to temples for the maintenance of alms houses, the renovation and repairs of temple buildings and the support of all forms of temple service and to Brahmins learned in the Vedas. In the temple *mantapas* Vedas were chanted and expounded and the great *Ithihasas* and *Puranas*, the *Dharmasastras*, grammar, logic, astrology and astronomy, and even medicine and other special sciences were taught to those that came to study these branches of learning. In the temple at Tiruvottiyur near Madras, *Vyakarna*, *Somasiddhanta* and Panini's *Mahabhashya* were taught, as attested by records ranging over a long period of time down to the reign of Kulottunga III, a Chola monarch of a recent age. A Vaisya, Madhava by name, constructed the *Jananathamantapa* where by a royal grant were established (1) a school for the study of the Vedas, the *Sastras*, grammar, etc., (2) a hostel for students, and (3) a hospital. One inscription of Rajendra Chola I records a temple endowment intended for the maintenance of a college for Vedic studies and also of an attached hostel for 340 students.

18. Colonies and *agraraharas* of genuine and pious Brahmins were usually attached to temples. Record No. 277 of 1913 (Madras Epigraphist's Office) refers to the establishment of a culture-colony of 108 Brahman families equipped with all the necessities of life. Mutts, both Brahmanical, Saiva and Jaina, also served as centres of higher learning where advanced scholars gathered together and received generous patronage.

19. In the *ranga-mantapa* of a temple, dancing was usually practised; and dramas were also staged on special occasions. Bhavabhuti's dramas chronicle the staging of plays in the temple of Mahakala in Ujjain. All strangers, ascetics and men of learning were usually fed at the temples.

20. Dr. A. S. Altekar in one of his articles entitled 'Ancient Colleges of South India—Temples as Cultural Centres' and Shri Radhakumud Mukerjee in Chapter IX of his book "Local Government in Ancient India" have given detailed accounts of the various schools of learning appurtenant to temples and mutts in the days of Pallavas, Cholas, Rashtrakutas and the Pandyas and also various secular charities associated with temples. A study of the inscriptions in the Brahadeeswara Temple in Tanjore reveals that it was a great centre of wideranging culture. Similar observations can be made with reference to temples at Belur, Badami, Sanchi, Ellora, Ujjain and Mathura. Kanchipuram which was celebrated as early as Patanjali (2nd Century B.C.) was a famous seat of learning and the great poets Bharavi and Dandi were closely associated with this city (*vide* S. Krishnaswami Aiyangar's Ancient India and South Indian History

and Culture, published by the Poona Oriental Book Agency, 1941). We find in that book a description of the famous Buddhist centre of learning in Kanchi (referred to by the Chinese traveller, Hiuen-Tsang). In Kanchi also a great disputation was held between the Jains and the Buddhists. Din-Naga referred to in Kalidasa's Meghasandesha, and Dharmapala, a great Buddhist teacher, are claimed to belong to Kanchi. At the time of the composition of the Tamil classic 'Manimekalai', Kanchi was the residence of the great Buddhist divine and teacher, Aravana Adigal, the highest authority in the Tamil land for the orthodox teachings of the Buddha. It may be said that the intermixture of the Chola, Gupta and Pallava cultures led to the construction of temples in Kanchi and other places in South India as well as in far off Borneo, Sumatra and Java.

21. To sum up, it may briefly be stated that the temple in the days of Hindu independent rule which in the Pandya country lasted down to the extinction of the Nayak Raj in 1736 A.D., served also as an inspiring centre of the social and cultural life of the community. It was the meeting ground of all sections of the Hindu community. It embodied the achievements of generations of architectural and sculptural skill and its sculptures, vessels, jewels and ornaments represented the accumulated results of the benefactions of the rulers and the nobles. Not only was the temple a centre and instrument for the patronage of music and the fine arts and a place of learning, both religious and scientific; but it also served as a centre for the encouragement of piety and learning and as an effective instrument of poor-relief. The temple even served as a place where disputes were settled, arbitration resorted to and justice dispensed (e.g. the temple at Dharmastala, in South Kanara the Sakshi Gopal temple near Puri, etc.).

B.—MUTTS

As stated earlier, the mutt has been one of the two important institutions in the Hindu religious system. The word 'mutt' appears to have been used in various senses. It will be seen from Macdonell's Sanskrit Dictionary that 'mata' is defined as the hut of an ascetic or student, a monastic school or college and a matadhipati is defined as the head of such monastery or school. Likewise, according to Aple's Dictionary, the word 'mata' means the hut of an ascetic or a small cell or room, also a monastery and convent, a seminary, college or place of learning. In Raja Radhakanta Deb's monumental 'Sadbakalpadruma' a mutt is defined as a place where students live. The word 'mutt' was also often used to signify a temple, but, later on, the word 'mathayatanam' began to assume the meaning of a monastery or college. According to Muthuswami Aiyar J. in Gyana Sambandha Pandaram v. Kandaswami (ILR 10 Mad 375 at page 386) the term 'mutt' in its original and narrow sense signifies the residence of an ascetic who is called a *yati* or *sanyasi* if he is a Brahmin or a *paradesi* if he is a non-Brahmin. 'Mutt' in ordinary language is now understood to mean the abode of an ascetic and in legal parlance it connotes a monastic institution established for the use and benefit of ascetics who generally are the disciples of the head of the institution (generally an acknowledged scholar and religious preceptor).

2. The origin of mutts has been dealt with elaborately by Muthuswami Aiyar J. in the Madras case referred to above. Briefly speaking, Buddhist doctrines encouraged asceticism and voluntary celibacy and Buddhist monks wandering from place to place established monastic institutions called sanghas and *sangharamas*. They gathered disciples around them, imparted instruction in the religious tenets of the order to which they belonged and such of the disciples as thought fit to renounce their connections with the family and the family wealth went voluntarily to a spiritual teacher and confined themselves to theological studies and the imparting of religious instructions to other disciples. Gradually, pious laymen constructed buildings for the residence of these ascetics. It is well known that Buddha himself accepted Jetavana and Rajvihara as endowments made for Buddhistic monks. From the days of the Buddhist monasteries, their properties were declared to be non-transferable and indivisible and this idea has persisted ever since with regard to the mutts which were founded on the pattern of such monasteries. As is well known, Buddhism flourished in India up to the 7th Century A.D. under the patronage of Kings like Asoka and Harshavardhana. Many Jain Viharas also sprang up during this period. With the advent of the Gupta dynasty, there was a revival of Hinduism and this led to keen rivalry between Buddhism and Hinduism and by the end of the 7th Century A.D. the influence of Buddhism in the country had definitely waned.

3. It was Adi Sankaracharya (8th Century A.D.) who first began to establish Hindu mutts as we know them today. Sankaracharya and He propounded the theory of absolute monism, establishment of i.e., the Advaita non-dualistic school of philosophy, combated the doctrines of Buddhism and Jainism and re-established the religion of the Vedas and the Upanishads. According to tradition, he inaugurated several mutts or seats of learning in four corners of India, namely, Sringeri (Sharda Peeth) in Mysore and the Kamakoti Peetha in Kanchi in the South, Badrinath in the Himalayan region in the North, Jagannath or modern Puri in the East and Dwarka in western Gujarat. According to a treatise entitled *Sanyasagrahana Paddhati* by Sankaracharya, he had four principal disciples and they were placed in charge of four principal mutts. It is also reported that he assumed the headship of '*Sarvagna Peetha*' or the Central seat of knowledge in Kancheepuram. This Central Peetham is reported to have been later shifted to Tanjore and thereafter to Kumbakonam where it continues to function as the Kamakoti Peetham. The mutts or monasteries which were founded by Sankara were perhaps modelled on the Buddhist *Viharas* or *Sangharamas* and many of the rules of his monastic order were taken from the *Vinaya Pitaka*. In Northern India, the followers of Sankara are called *Dasnamis* and there are numerous Dasnami mutts.

4. Following the lead of Sankaracharya, there were others who founded schools of philosophy and established mutts for propagating the same. Sri Ramanujacharya established the *Visishtadwaita* system of philosophy which is devoted to the worship of Vishnu. While Sankara's philosophy is purely

non-dualistic, the Visishtadwaita system is one of qualified non-dualism. Out of the seven hundred mutts reported to have been established by Sri Ramanujacharya, only a few remain at present and one of them, namely, Melkote in Mysore is called the Badrika Ashram of the South. Among the followers of Sri Ramanujacharya, five belonged to the sanyasi class and about 84 are supposed to have belonged to the secular order. The five important mutts of the sanyasi class are Ahobilam in Kurnool District in Andhra Pradesh, Totadri (Vanamamalai), near Tirunelveli, Tirupati, Srirangam and Kancheepuram, all of them in the South of India. Besides these there are several Ramanujiya centres in North India.

5. Shri Madhwacharya founded the Dwaita system or the dualistic school of philosophy which recognises an eternal distinction between man and his Creator. He established eight mutts at Kaniyoor, Pejawar, Admar, Krishnapur, Palimar, Sirur, Sode and Puthige in the South Kanara district. All of them have now their headquarters at Udipi in that district.

6. There were other Vaishnava sects founded by Ramananda, Nimbarka, Vallabhacharya and Shri Chaitanya Mahaprabhu. They are briefly dealt with below.

The Vishishtadwaita sect founded by Shri Ramananda is well known in Northern India. The special object of worship of Ramananda's followers is Vishnu as Ram Chandra. There are several well-known mutts belonging to this Order in U.P., Bihar, Rajasthan and elsewhere. The Ramanandi mutts admit Sudras and others belonging to lower castes in their brotherhood.

Nimbarka or Nimbadiya who is regarded as an incarnation of the Sun God founded certain mutts. His followers belong to what is called the *Sanakadi* Sampradaya. The essence of the Nimbarka system of philosophy consists in the worship of Krishna and Radha jointly and also the worship of the Sun in a modified form. There are two classes among the followers of the Nimbarka system, namely, the *viraktas* or ascetics and the *grihastas* or the married people.

The Vallabha cult was founded by Sri Vallabhacharya who was originally an Andhra Brahmin. His doctrine does not attach primary importance to celibacy or the rigours of ascetic life. It concentrates on fervid devotion and personalised worship and offerings of flowers and food. Vallabhacharya termed his philosophy as Shuddhadwaita which does not involve ideas like 'Maya' or 'Prakriti'. The chief seats of the Vallabhacharyas are in Western India and Gokul near Mathura. According to the tenets of this sect, it is the duty of the teacher and his disciples to worship the deity by clothing the image in costly apparel and offering choice food. It equates worship also with the offering to the deity and his devotees of rich dishes and perfumes and flowers. The images are richly decorated and there are eight periods of worship in a day. This sect has established large temples, the richest being the one situated at Nathdwara of which the head (the Tilakayat) claims to be one of the descendants of Vallabhacharya.

The principal Vaishnava sect in Bengal is the Chaitanya sect founded by Chaitanya or Gouranga Mahaprabhu whose tenets are known by the name of Achintya bheda bheda. Apart from the universally revered temples in Dwarka, Brindavan and Jagannath Puri, the chief temples of these Vaishnavas are the temples at Nadia dedicated to Chaitanya and another at Agardwipa dedicated to Gopinath.

7. The Goswamis who are found largely in Western India and also in some parts of Northern India and the Madras State have also their mutts. Some of them marry while others are celibates. There are also mendicants known as Bairagis. The characteristics of the Bairagi mutts have been described at length by Lord Shaw in the judgment of the Judicial Committee in *Ram Prakash Das v. Anand Das* (I.L.R. 43 Cal. 707). Another sub-sect among the Vaishnavas is the Swaminarayan *sampradaya* which is more or less on the lines of the Ramanuja *sampradaya*. The two main centres of the followers of this *sampradaya* are at Vadtal and Ahmedabad. According to the followers of this sect, Swaminarayan, the founder, is the incarnation of Lord Krishna. He is worshipped side by side with the idol of Shri Lakshminarayan Ranchodji and Dharmabhakti.

8. Another religious sect among the Hindus is the Gorakhnath sect. The founder of this sect was Shri Gorakhnath who was an exceptionally gifted Saiva Yogi. The *sampradaya* which he organised is known as the Nath Yogi or Siddha Yogi *sampradaya*. Gorakhnath gave a new life to Hinduism on the basis of the practical spiritual teachings of the long line of Siddha yogis of the Saiva cult. Shri Gorakhnath also recognised the authority of the Upanishads, Gita and Vedanta. This sect has its cultural centres like monasteries, temples and mutts all over India. Gorakhpur is one of the principal centres of this *sampradaya*.

9. In Assam there is a type of religious institution among Hindus commonly known as 'Satras'. They are Vaishnavite institutions and are for all practical purposes like the mutts. The origin of the Satras can be traced to the great Sankar Deva who is supposed to have established the Mahapurusha religion which believes only in Krishna and no other God. The followers of Sankar Deva do not believe in caste nor does the cult encourage belief in images and temples. This is mainly a bhakti cult which believes in simple *namsankirtan* (i.e., recital of the Lord's names) as the chief way of knowing the Infinite. The heads of the Satras are called *Satradhikaris*. They are considered to be spiritual heads and have many disciples. In fact in ancient days it was considered to be a great privilege for a Hindu in Assam to be the disciple of some Satradhikari. The main object of the Satras is imparting of spiritual instructions as enjoined by the founder of this type of institutions. The evidence before us was to the effect that most Hindus in Assam owed allegiance to one or another Satra and that the heads of these institutions enjoyed a high reputation.

10. There are also Jain mutts which are resorted to by Yatis or Jatis, religious devotees and Shravaks (lay-brethren). They have mutts in all parts of India and many are found in South Kanara.

11. The practice of establishing mutts which began as stated above gradually spread to communities other than Brahmin and in course of time this practice was adopted by many other religious sects like the Jains, Jangamas and others who do not believe in

the authority of the Vedas. The non-Brahmin ascetics of South India with a desire to disseminate religious knowledge and promote religious charity established mutts in Tanjore, Trichinopoly, Madurai and Tirunelveli (vide the well known decision of Muthuswami Aiyar J. in ILR 10 Mad. 375). Most of these mutts like the Dharmapuram mutt, the Thiruvavaduthurai mutt, the Tirupanandal mutt and the Tiruvannamalai-Kunrakundi-Adhinam were devoted to the inculcation and spread of the Saiva Siddhanta system of philosophy, an indigenous and celebrated religious development in the South of India.

12. Meykandar was the first formal expounder of the Saiva Siddhanta philosophy. He flourished in the 13th Century and was a contemporary of Madhwacharya. According to the Saiva Siddhanta system developed by his successors including Arulnandi, the supreme reality of the universe is Siva who, acting through Sakti, displays himself in the divine acts of creation, preservation and destruction of the Universe in cycles, as well as in the obscuration and liberation of individual souls. The world of matter and of souls forms the body of the Lord. To get rid of the bond (pasa), our past karma and our false notions the devotee should undergo a prescribed sadhana and obtain the grace of a Guru. Saiva Siddhanta may be described to be midway between Advaita and Visishtadvaita. Its doctrines comprise three principles, i.e., those of Pati (or Lord), Pasu (the human soul) and Pasa (bondage).

13. Vedanta Desika followed Ramanuja and was the founder of the Vadagalai school. The Tengalai school which accepted the Sanskrit and Tamil Scriptures (Divya Prabhandha) was also led by eminent scholars and devotees (like Pillai Lokacharya and Manavala Mahamuni) (both Brahmans and non-Brahman). The Satanis formed a sub-group of Ramanuja's followers mainly non-Brahman. In the South, as already stated, a large number of philosophical systems started and continued to be developed from the time of Sankara. On the other hand, in the North, at about the same time, a great Bhakti movement began which was spread especially by means of local languages and this movement was typified by Ramananda, Kabir, Nanak, Mirabai, Vallabhacharya, Chaitanya, Tulsidas and Tukaram. Ramananda belonged to the school of Ramanuja but he founded a new sect recognising no caste distinctions and his first disciples included an outcaste and a Mohammedan, the latter according to one account being Kabir. Kabir lived in the 15th Century and was a weaver settled down in Banaras. Though a disciple of Ramananda, he was influenced also by Sufi mystics. He accepted the Hindu doctrines of Karma, Samsara, and Brahman, Maya, Vairagya and Sanyasa but rejected image worship and ritual and deprecated ascetic practices.

14. In the 12th Century A. D. Veerasaivism took an organised shape under the guidance of Shri Basaveswara, a socio-religious reformer. He preached the spirit of service and renunciation. More than a hundred mutts of this type exist in Mysore, the important

among them being the Navakalyana Mutt of Dharwar and Siddhaganga Mutt in Tumkur. Some of these mutts are well known for their spiritual and philanthropic activities. They do not acknowledge some of the tenets of Puranic Hinduism.

15. Nanak, the founder of the religion of the Sikhs, was a younger contemporary of Kabir. He also believed in Karma, Samsara, Maya and Moksha, reverence to the Guru and the importance of the Holy name. But, unlike Kabir, Nanak accepted both the Gods of the Hindu pantheon and rituals also. Srichand, his son, following the Hindu aspects of his teachings started the Udasin cult and wrote hymns in the regional language. Nanak's later followers after the Sikh faith was developed with specific doctrines and observances collected several hymns which became known as the Granth Sahib.

16. In Maharashtra, there arose Gnaneshwar, Namdev, Eknath and Tulsiram who were worshippers especially of Krishna and Rukmini. The saints Nimbarka, Vallabha and Chaitanya worshipped Krishna and Radha. The former were known as the followers of the Kanthabhava, symbolised by the love of the husband to the wife. The latter preferred devotion known as Mathurabhava, representing the love of two lovers. Gnaneshwar wrote his Abhangs in honour of Vitobha of Pandharpur. The Radha-Krishna cult spread quickly in Bengal, Bihar and U.P. It may be noticed that Radha is not mentioned in the Bhagavata, the Vishnu Purana or the Harivamsa though a favourite Gopi is referred to. Prominence is given to Radha as the beloved of Sri Krishna in the Padma Purana and the Radhakrishna cult is specially described in the Brahma Vaivaita Purana. Both the above are comparatively recent Puranas. Nimbarka who was even prior to Madhvacharya and who was a Telugu Bhagavathar settled in Brindaban and started the Radha-Krishna cult in his Dasaslaki. Jayadeva's Gita Govinda was the climax of the literary performances of the Radhakrishna cult. It was during the fifteenth and the sixteenth centuries that Vallabhacharya's Suddhadwaita and Chaitanya's doctrines became widespread. Though Chaitanya did not write any books of his own, his followers many of whom were called Goswamis, produced his biography called Chaitanya Charitamritam. All these above exponents were agreed on the following doctrines and principles:

- Belief in a supreme God
- Belief in the soul's individuality.
- Salvation through Bhakti which is placed above Gnana and Karma.
- Importance of the Guru and of the recitation of the Holy name.
- Initiation through a Mantra.
- Foundation of Orders of various types of Sanyasins.
- Relaxation of the rules of caste and teaching through the vernaculars and the production of scriptures and philosophical works in regional languages.

17. In addition to the mutts commonly known as such, there are various *ashrams* scattered throughout the country and *akharas* in some localities where the residents submit themselves to certain religious principles and are under the jurisdiction of a Mandaleswar or other suitably denominated Guru or spiritual head. Some of these akharas, specially the Naga akharas, came into existence as a kind of Church militant founded on the pattern of the Sikh Panth with a view to enforcing discipline and protecting the community against physical violence and moral degradation.

18. A close study of the origin and development of mutts in the country would show that they were started mainly for the purpose of imparting instructions in various forms of Hindu religion and philosophy and conducting religious propaganda. They also encouraged religious charities. Sir S. Subrahmanya Ayyar Offg. C.J. in *Vidyapurna Tirtha Swami* [I.L.R. (1904) 27 Madras 435] has observed as follows with regard to the great influence exercised by these monastic institutions over the people:—

"The influence exercised by mutts as centres of learning on the religious and other literature of the country cannot be denied. The varied and well-known contributions made thereto by the famous Vidyaranya Swami of the Sringeri or Sarada Mutt, or under his auspices, are among the most conspicuous examples of this kind. There is scarcely a branch of learning considered by Hindus as important, to which Vidyaranya or the scholars whom he gathered round him, did not make valuable contributions, and it is to his commentaries that the modern world owes its knowledge of the traditional meaning of the oldest of the sacred books—the Rig Veda. Nor has the influence of the mutts at Dharma-puram, Tiruvavaduthurai, etc., on the Dravidian Literature been inconsiderable. Though in recent times the men who have succeeded to the headship of the mutts have often been inferior, their predecessors, as a whole, were men of learning and piety, who adequately ministered to the spiritual wants of the community, and even now the heads of some of these mutts enjoy the esteem of the community and continue to serve more or less the purpose intended."

19. It will be interesting to state the views of a few important witnesses who appeared before the Commission to give evidence, regarding the origin, scope and functions of mutts.

Dr. T. M. P. Mahadevan, Professor of Philosophy in the Madras University, has stated as follows regarding the functions of mutts:—

"My own view is that the main function of mutts should be to spread the knowledge of the *sampradayas* (or tenets) of which they are the custodians and the usual methods of spreading are well known. Such methods are by means of publications, lectures, conferences and so on. I think most of the mutts in the South are arranging for these conferences and they are publishing a number of books. As I have said, the main function should be

to spread the knowledge of the various aspects of Hinduism. I would also say that in so spreading they should avoid unnecessary controversies and criticism of other *sampradayas*. That is very important because we have come to a stage when the various cults of Hinduism should come together and not go apart."

Shri T. L. Venkatarama Aiyar, a former Judge of the Madras High Court and of the Supreme Court and till recently the Chairman of the Law Commission in the course of his evidence before the Commission stated:—

"Mutts are primarily intended to be educational institutions in the sense that they are intended for the propagation of the tenets of a particular philosophy. The head of the mutt is a very learned man who gathers round him *shishyas* and brings them up in the traditions of the mutt. They are primarily educational institutions, the scope of their education being the scope of their particular philosophy."

Shri P. Satyanarayana Rao, former Judge of the Madras High Court and former Member of the Law Commission at present Chairman of the Law Commission in Andhra Pradesh while dealing with the functions of the heads of mutts drew the attention of the Commission to the judgment in the Sirur Mutt case [A.I.R. 1952, Mad. 613 (622)] in which he *inter alia* pointed out that "the mutts are centres of theological learning especially devoted to the study, practice and propagation of the cult of each system or philosophy and to train and equip a line of competent teachers whose duty is to go forth into the land bearing the torch of learning and spreading its light. They must have functioned and indeed in future must continue to function to fulfil the objects for which they were founded with foresight by the great teachers of religion."

20. As already stated, the ascetics who presided over these mutts occupied a high status and position in society as religious preceptors and persons of erudition and eminence. They were held in great reverence by Hindu princes and noblemen who made presents to them and endowed the mutts under their control with landed property because they received either religious or personal benefits on account of the grace or spiritual powers of the heads of these mutts. Thus a class of endowed mutts came into existence, in the nature of monastic institutions presided over by ascetics or sanyasis who had renounced the world, and it came to pass that the ascetic, who originally owned little or no property came to own the mutt under his charge and its endowments in trust for the maintenance of the mutt, for his own support, for that of his disciples, and for the performance of religious and other charities in connection with it.

21. In former times these monastic institutions exercised great influence over the people and the preceptors were also men who combined in themselves a high standard of spiritual knowledge and moral purity. moted religious knowledge and encouraged reli-

gious and other charities. With the passage of time and with the changing ideas of modern times a majority of these mutts have failed to maintain the standard of the olden days. It is of course true that there are certain exceptions like the four mutts established by Adi Sankaracharya which are doing their best to carry on the objectives with which they were founded. The Saivasiddhanta mutts of South India, the Madhva mutts in Udipi and some of the Vaishnava mutts headed by the followers of Ramanujacharya and the Tungalai saints are equally trying to maintain the old traditions. There are also some institutions like the Gorakhnath Mutt and the Bodh Gaya Mutt which are endeavouring to carry on the tradition. As a result of the Muslim invasions in Northern India and also due to revolutions and rapid change of dynasties, most of the mutts in Northern India have fallen on evil days. An instance of such a big mutt is the Chanderkona Mutt in Midnapur in Bengal. It was the biggest mutt in Bengal in the Mohammedan period and it traces its history to the period of the Mahabharata. There has been a lot of litigation in regard to this mutt in the District Court and in the High Court. Most of the properties of the mutt have vanished because of either mortgages or sales or long leases and the like. Another instance of this kind is that of the Tarakeswar Mutt. A Court Scheme was prepared as a result of certain complaints regarding the working of the institution and within a few months thereafter litigation commenced with regard to the actual working of the Scheme. The litigation between the Committee which was established under the Scheme and the head of the mutt has practically ruined the mutt. Most of the mutts in the North as well as in the South were maintaining pathsalas and tols attached to them for the propagation of Sanskrit studies. They were also running religious charities like gosalas, dispensaries, etc. Most of these pathsalas have now either closed down for want of students or are not at all maintained properly. To some extent this result may be due to the change of ideas from generation to generation but it is also due to the fact that there is a tendency among many matadhipatis to treat the institutions as their private property and utilise most of the resources thereof for personal purposes and not for the purposes for which these institutions came into being. In many cases the heads of the mutts have become essentially worldly and in some cases have been found by courts to be corrupt and immoral. Many are not even versed in the first principles of Hindu religion, not to speak of the fact that they really make little attempt to propagate or promote religious knowledge. The need for remedying this state of affairs is a matter of real urgency and the steps which we consider necessary in this regard will be discussed in subsequent chapters dealing with particular aspects of the religious institutions.

CHAPTER III

LEGISLATION

The available texts dealing with the duties of kings in relation to temples and their properties are not many. In fact, as indicated by Seshagiri Aiyar J. in *Sitaram v. Sir S. Subramania Aiyar* [I.L.R. (1915), 39 Madras 700], there is not much written authority regarding the exact jurisdiction of Hindu kings over temples and

endowments. Apart from a text of Narada which says that a king can reduce to slavery a sanyasin guilty of incontinence, there are references to a minister of charitable works who was an officer of the Hindu kings in Viramitrodaya (Chapter 7, section 2), and also to the superintendent of religious institutions in Kautilya's Artha Sastra. In 256 B. C., Asoka appointed censors of the law of piety (Dharmamahamatra) and in 242 B.C. he published a complete series of seven pillar edicts. These definitely suggest that from very early times religious and charitable institutions in this country came under the special protection of the ruling authority. Not only was general supervision exercised by the Hindu kings over temples, but they also interfered in the management of temples when they found mismanagement prevailing in them. References to certain historical inscriptions evidencing the treaty made between the Raja of Cochin and the Dutch East India Co. and inscription No. IX styled as the Srivilliputhur plates of Abirama Pandya, bear testimony to this fact. (See in this connection pages 22-23 of P. R. Ganapati Aiyar's book, on the Law relating to Hindu and Mohammedan Endowments). Again, Mr. Nelson in his Madras Manual has underlined the fact that the king was compelled occasionally to interfere in the management of some of the churches. The Judicial Committee in *Raja Muthuramalinga Setupati v. Perianayagam Pillai* (1867 5 M.H.C. 53) also observed that there could be little doubt that the superintending authority was exercised by the old rulers and West J. has expressed a similar view in *Manohar Ganesh v. Lakhmiram* [I.L.R. (1887) 12 Bombay 247]. Even under the Mohammedan rule, the tradition of royal control was not forgotten and although some of the Mohammedan rulers were fanatical and intolerant, some of them intervened to provide against the deterioration and decay of Hindu temples by neglect or mismanagement. We do not think it necessary to inquire whether the nature of the right exercised by the kings was in technical phraseology visitatorial or not, but that the right existed seems to admit of no doubt whatsoever. It may be that the right was based on some sort of customary law which the king thought it his duty to enforce, as observed by Bijan Kumar Mukerjee in his book 'The Hindu Law of Religious and Charitable Trusts'.

2. After the advent of British rule, it was found that the income of many endowments had been misspent and misappropriated by the persons in charge of them and professedly following the traditions of the former rulers. The British Government asserted by virtue of its sovereign authority the right of supervision over endowed properties by enacting Regulation 19 of 1810 for the old Presidency of Bengal, Regulation 7 of 1817 for the old Presidency of Madras and Regulation 17 of 1827 for the old Presidency of Bombay. The control exercised by the East India Company over temples and other endowments was thus statutorily asserted and the supervision of charitable and religious trusts was vested in the Government as the sovereign power. This position has been made quite clear in *Raja Mutta Ramalinga v. Perianayagam* (1874) I.A. sp. 209 where the Judicial Committee observed as follows:—

"It is evident that before the Regulation (VII of 1817), the British Government, by virtue of its sovereign power, asserted as the former rulers of the country had done, the right to visit

and supervise endowments of this kind and to prevent and redress abuses in their management. There can be little doubt that this superintending authority was exercised by the old rulers."

3. By the time the Charter Act of the East India Company was renewed in 1833, the British had so firmly entrenched themselves as the rulers of the land that certain Christian zealots and religious propagandists in the United Kingdom in or about 1839 started an agitation urging that it was not one of the functions of a Christian Government to administer Hindu endowments and provide for the maintenance of Hindu temples and Mohammedan mosques. In 1842 arising out of Lord Ellenborough's action in restoring the doors of the famous temples at Somnath which had been removed to Ghazni, there was a debate in the House of Commons demanding the Government of India to observe a strict policy of non-intervention in religious matters. This policy was accordingly adopted in practice in India from that year. The Board of Revenue was advised to withdraw, as far as possible, from the active management of religious institutions, although the Regulations themselves continued to be in force. This relinquishment of the control which till then was by and large, beneficial to the religious institutions, led in its turn to the absence of any active supervising agency over the working of these institutions and consequent on this, mismanagement and misappropriation of temple funds became rampant and this state of things came to serious notice by about the year 1860 or 1861. Ultimately the Religious Endowments Act, 1863 (20 of 1863), was enacted and Government divested itself of all powers of direct control over religious endowments and transferring to committees appointed under that Act the powers that were hitherto exercised by the Board of Revenue and its local agents. Provision was also made by the Act for suits being filed for breaches of trust against the trustees by any person interested. This Act was made applicable only to Bengal and Madras in the first instance but by Act 7 of 1865 it was extended to North Kanara in the old Bombay Presidency, as this district had originally formed part of the old Madras Presidency. Although Act of 1863 did not refer to Regulation 17 of 1827 and left it untouched, it was held by courts that having regard to the policy of the Act the powers exercised by Collectors under this Regulation in the whole of the Bombay Presidency had come to an end. Whether this view was correct or not, it was in fact acted upon.

4. The general principle that was laid down as to withdrawing—gradually to begin with—the interference of Government and its officers in the administration of the affairs and funds of religious institutions and the endowments belonging thereto was that the administration of the affairs and funds of religious institutions should be vested in individuals professing the faith to which the institution belonged who may be best qualified to conduct such administration with fidelity and regularity, being responsible together with their subordinate officers to the courts of justice for any breach of the duties assumed by them which can be made the grounds of a civil action. Act 20 of 1863 was found to be defective inasmuch as while it carried out the policy of severing the connection of Government with the management of Hindu temples, it made

no provision for the exercise of any supervision over an important and large class of temples of which the trustees, though not originally hereditary, became hereditary between the years 1842 to 1863. Such trustees were treated as if all temples had been under the management of the hereditary trustees from the very commencement. There were also other defects which impaired the working of the Act. It may be mentioned that this Act did not affect the functioning of religious institutions in the Indian States which were not then subject to the jurisdiction of Indian legislative authorities. Rulers of those States in most cases encouraged and patronised these religious institutions and actively exercised authority over the succession to the Headship and over the utilization of the funds and performance of worship.

5. Regulation 19 of 1810 and Regulation 7 of 1817 were originally enacted for the purpose of implementing the duty of a Government to provide that endowments for pious and beneficial purposes were applied according to the real intent and will of the grantor. Their repeal by Act 20 of 1863, however, produced disastrous results which have not been neutralised by subsequent legislation. The Official Trustees Act, 1864 (17 of 1864) (repealed by Act 2 of 1913), next provided for the creation of the office of Official Trustee, in whom property could be vested in trust for charitable purposes other than religious.

6. It was soon found by experience that the provisions of the Act of 1863 did not give adequate protection against dishonest and inefficient administration with the result that public opinion expressed itself continuously from about the year 1870 in regard to the need for the legislature and the Government adopting a more helpful and dynamic attitude in respect of religious endowments. Section 539 was accordingly inserted in the Civil Procedure Code by Act 20 of 1877 and this enabled suits being filed in respect of various matters specified therein relating to public religious and charitable trusts with the previous consent of the Advocate-General. This provision later on was embodied in the present section 92 of the Code of Civil Procedure 1908 and section 93 of that Code made provision for the exercise of the powers of the Advocate-General, by Collectors or officers authorised by State Governments, outside the Presidency-towns.

7. To rectify the defects of the Act of 1863, the following Bills were introduced in the Madras Legislative Council and the then Imperial Legislature:—

- | | |
|--------------------------------------|-------------------------------------|
| 1. Mr. Rama Iyengar's Bill (1872) | } Madras
Legislative
Council. |
| 2. Sir W. Robinson's Bill (1877) | |
| 3. Mr. Carmichael's Bill (1883) | |
| 4. Mr. Sullivan's Bill (1886) | |
| 5. Mr. Muthuswami Ayer's Bill (1894) | |
| 6. Mr. Anantacharlu's Bill (1904) | } Imperial
Legislature. |
| 7. Dr. Rash Behari Ghosh's Bill | |

8. For one reason or another no law was enacted and it was not till 1920 that the next piece of legislation, namely, the Charitable and Religious Trusts Act, 1920 (14 of 1920), was passed by the Imperial Legislature. Under this Act any person interested in a

public, religious or charitable trust could apply to a competent court to direct the trustees to supply him with particulars relating to the trust and to direct that accounts of any such trust may be examined and audited. It also enabled the trustees to obtain the directions of the court on certain matters relating to the management and administration of trust property.

9. Public opinion, however, continued to press for legislation for ensuring the proper management and administration of religious endowments. In the meanwhile the Government of India Act, 1919, vested some legislative powers in the local Legislatures so as to make it possible for them to make adequate provisions for the efficient administration of religious endowments. The Madras Local Legislatures thereafter enacted the Madras Hindu Religious Endowments Act, 1925 (Madras Act I of 1925) which had to be re-enacted in 1926 so as to cure certain legal defects and emerged finally as the Madras Hindu Religious Endowments Act, 1926 (Madras Act II of 1927). This Act had to be amended several times [see Madras Acts 1 of 1928, 5 of 1929, 4 of 1930, 11 of 1931, 11 of 1934, 12 of 1935, 20 of 1938, 22 of 1939, 5 of 1944, 11 of 1946 and 5 of 1947 and was ultimately replaced by the Madras Hindu Religious and Charitable Endowments Act, 1951 (19 of 1951)]. The 1951 Act itself was amended by Madras Acts 21 of 1954, 9 of 1956 and later replaced by the Madras Hindu Religious and Charitable Endowments Act, 1959 (22 of 1959). Some of the salient provisions of Act 22 of 1959 are briefly set out below:—

The 1959 Act has been amended by Madras Act 40 of 1951. So far as the transferred territory (Kanyakumari district and Shencottah taluk of the Tirunelveli district) which were transferred from the Kerala State to the Madras State is concerned, the administration and management of temples is governed by the Madras Incorporated and Un-incorporated Devaswoms Act, 1959 (Madras Act 30 of 1959).

Under this Act the following ideas were codified:—

(1) Provision for the appointment of one member at least of the Judicial Service either as Commissioner or as Deputy Commissioner has been made compulsory under section 9(2) of the Act.

(2) Appointment of Executive Officers by the Commissioner for religious institutions other than mutts or specific endowments attached to mutts.

(3) Constitution of Area Committees by Government with a Chairman and two to four members for each and *ex officio* appointment of the Assistant Commissioner concerned as the Secretary of each such Committee but with no right to vote.

(4) Constitution of an Advisory Committee consisting of twelve non-official members besides the Minister in charge of the portfolio, the Secretary to the administrative Department of Government and the Commissioner to advise Government in respect of the administration of religious institutions and matters referred to it.

(5) Provision for the removal of encroachments from lands belonging to religious institutions and the constitution of special

tribunals for dealing with claims for compensation from persons dispossessed of such lands.

(6) The creation of a Fund called the Madras Hindu Religious and Charitable Endowments Common Good Fund out of the contributions voluntarily made by the religious institutions from their surplus funds or by any person for the renovation and preservation of needy temples and their buildings and paintings and the promotion or propagation of tenets common to any class of such institutions.

(7) Conferment of greater rights on Matadhipatis and hereditary trustees having regard to the provisions of the Indian Constitution and the trend of decisions of the High Court and the Supreme Court.

(8) Provision for safeguarding the interests of religious institutions by way of surcharging trustees found to have misappropriated institution funds or expended them improperly or illegally even during inspecting the institutions without waiting for completion of audit.

(9) Special provisions for the settlement of schemes for mutts by the Commissioner.

(10) Provision for enabling the Deputy Commissioner, on being satisfied that the purpose of a religious institution has from the beginning been or has subsequently become impossible of realisation, to direct by order that the endowments of the institution be appropriated to all or any of the purposes enumerated in section 66.

10. In the following States legislation of a regulatory or directory character dealing with Hindu Religious Endowments exclusively exists:—

1. Andhra Pradesh (excluding Telengana Area).
2. Bihar.
3. Kerala.
4. Madhya Pradesh.
5. Madras.
6. Mysore (excluding the area added from the old Hyderabad State).
7. Orissa.
8. Rajasthan.
9. Uttar Pradesh.

A list of the enactments in force in these States on the subject is appended to this report (Appendix IX, Part I).

11. In Assam, the Assam State Acquisition of Land Belonging to Religious and Charitable Institutions of Public Nature Act, 1959, enables the acquisition of the lands belonging to endowments and provides for the payment of annuities in the manner prescribed therein. In 1957 a Bill to regulate the proper management and administration of temples, satras and other religious endowments was drafted but could not be proceeded with owing to certain difficulties. In Kerala there are two enactments in force—the Travancore-Cochin Hindu Religious Institutions Act, 1950 and the Madras Hindu Religious and Charitable Endowments Act, 1951. The

former applies to institutions in the erstwhile Travancore-Cochin State and the latter to the erstwhile Malabar area. The question of having a common law for the whole State is engaging the attention of the State Government.

12. The Rajasthan Public Trust Act, 1959 received the assent of the President on the 22nd October, 1959. While Chapters I to IV have come into force, the other Chapters have apparently not been brought into operation. The reason for this as given before the Commission was that the Rajasthan Government has been awaiting the results of the deliberations of this Commission and also of certain pending litigation relating to the Nathdwara Temple.

13. In Uttar Pradesh the Uttar Pradesh Temples and Religious Endowments (Administration) Bill which was introduced in 1955 has not yet been passed into law apparently because of opposition by some vested interests as well as by very conservatively minded people who object to any legislation or exercise of authority by a secular Government. The Bill lapsed.

14. The Uttar Pradesh Hindu Public Religious Institutions (Prevention of Dissipation of Properties) (Temporary Powers) Bill which was introduced in 1960 provides for a survey of religious institutions and the appointment of Commissioners for the purpose of taking steps for the protection of property belonging to the institutions including arrangements for their safe custody. The Statement of Objects and Reasons appended to this Bill indicated that it was introduced because with the lapse of the Uttar Pradesh Temples and Religious Endowments (Administration) Bill, 1955, unscrupulous parties had transferred and replaced movable and immovable properties of the institutions. Steps had therefore to be taken to prevent the dissipation of the properties of these institutions. This Bill is pending with the U.P. Vidhan Sabha. A special Act called the United Provinces Shri Badrinath Temple Act, 1939 is in force in respect of the Shri Badrinath Temple and that Act has been amended so as to include within its scope the Kedarnath Temple and some other associated temples.

15. Punjab and West Bengal have now no existing legislation nor has any been proposed by them for the present.

16. In the following States legislation has been enacted for dealing not only with Hindu but also with Christian, Muslim, Jain and other endowments connected with non-Hindu religions followed in India:—

1. Andhra Pradesh (Telengana Area).
2. Gujarat.
3. Maharashtra.
4. Mysore (the area added from the old Hyderabad State).

A list of such enactments is given in Part II of Appendix IX.

17. In the former State of Hyderabad a large extent of which is now merged with the Andhra Pradesh State all religious endowments (whether Hindu, Muslim or otherwise) came under the control of a body which without interfering with the internal religious affairs of any institution provides for the proper management and utilisation of the funds of temples, mutts, wakfs, etc.

These institutions are not managed directly by Government but it has appointed committees of each particular sect and religion to manage them. A regular procedure has been laid down in the Rules. The institutions are not merely compulsorily registered but a notification is issued in the Gazette, giving two months time within which complaints, if any, against their registration can be made. Objection petitions, if any, are heard in the Tehsil where the institution is situate. Rai Trimbak Lal, Director of Endowments, Hyderabad, in his evidence before the Commission has asserted that the working of the Hyderabad Regulations and Rules has been very satisfactory and successful in practice. The former Minister in charge of endowments (Shri Chandramauli) in his evidence before the Commission not only supported this view but added that a consolidated Bill in which all the good features of the Andhra legislation and the Hyderabad Regulations (which are applicable to all communities) are taken into account would be brought before the legislature shortly.

18. The Bombay Public Trusts Act, 1950 (Bombay Act 29 of 1950) which is applicable to certain areas in the States of Maharashtra and Gujarat seeks to bring under one law the religious and charitable trusts relating to all communities (Hindus, Parsis, Muslims and others). Under the Act, the trustees are bound to respect the wishes and objectives of the authors of the Trust and interference with the carrying out of the objects of the Trust is sought to be avoided, except when they failed. Thus, the purpose of the legislation is not to affect or modify the observances, rituals and ceremonials associated with worship but only to ensure the proper management and utilisation of the funds of the religious institutions in accordance with the avowed and legitimately inferable purposes of the endowments. The main features of the Act comprise the following ideas:—

- (1) Provision for the compulsory registration of public trusts to which the Act applies.
- (2) Duty of trustee of public trust to keep regular accounts as laid down in the rules under the Act.
- (3) Compulsory annual audit of the accounts.
- (4) Duty of auditor to file statements of accounts before the Assistant or Deputy Charity Commissioner or the Charity Commissioner.
- (5) Restrictions against alienation.
- (6) Proper investments of trust funds.

It has been urged before us that the Commissioner appointed under the above Acts should be armed with more powers—at least with all the powers at present vested in the District Court in the States of Maharashtra and Gujarat—in order to enable him to exercise more effective control than what he is able to do at present.

19. We have received various suggestions for improvement of the laws in force in the various States. The more important of them are appended to this Report (Appendix X). We trust that State Governments will give due consideration to these suggestions.

20. Speaking generally, as a result of the Commission's own observation as well as of the emphatic assertions on the part of various witnesses from all parts of the country, it may be noted that where some type of legislation, regulative and directory in character, on the lines of the Madras or Bombay Act, has been attempted in respect of religious endowments, it has been found possible to maintain a minimum degree of efficiency and a legitimate disposition and

utilization of the funds of the institutions concerned. Where, however, there has been no legislation at all and the only possible recourse is to the ill-defined executive authority of the Government with a residual and ultimate resort to Courts for proceeding or suits under section 92 of the Code of Civil Procedure, 1908 the position has been most unsatisfactory. West Bengal, for instance, is a prominent example of an enlightened State with a highly developed social consciousness where important temples are regarded and treated as private property and no check or scrutiny of the resources is exercised or contemplated. It is in our view a matter of imperative necessity that suitable legislation should be undertaken by States having no legislation governing Hindu religious endowments, namely, Assam, Punjab, West Bengal and U.P.

21. Certain important witnesses from Bombay, Hyderabad and other places including representatives of the State Governments concerned have in their testimony before the Commission been emphatic in declaring that no difficulty has been or will be experienced in implementing comprehensive legislation which deals alike with Hindu, Muslim, Christian and other endowments and contains certain basic regulations in respect of them. These witnesses have stated that many advantages have accrued from uniform legislation dealing with all communities and not confined solely to Hindus and that those in charge of administering these laws have found no difficulty in carrying out the provisions of these laws which, it may be observed, preclude the officers enforcing them from interfering in purely internal matters of religious doctrines, ceremonial or ritual. In fact, it may be added that several persons who have submitted memoranda as well as those who have tendered oral evidence have taken strong exception to an inquiry like ours which is conducted solely with advertence to Hindu institutions. The gravamen of such complaints is that the inquiry seeks to discriminate between the Hindu community and other communities and to penalise it in contradistinction to other communities whose endowments are being left untouched by provisions which attempt in their view to circumscribe or regulate the rights, duties and obligations of those in charge of such endowments. While we are aware that this aspect of the matter is strictly speaking, outside the terms of reference, we are at the same time of the opinion that we would be failing in our duty if this point of view and the strength of the feelings entertained in this regard were not brought to the notice of the Government of India. In this connexion we would like to invite attention to the provisions of article 44 in Part IV (Directive Principles of State Policy) of the Constitution. That

Need for States having no legislations relating to Hindu Religious endowments to undertake legislation.

Need for uniform legislation applicable to religious endowments of all communities.

article requires the State to endeavour to secure for the citizens a uniform Civil Code throughout the territory of India. In the light of the opinions expressed by the Governments and the persons in charge of the practical administration of the laws in force in Hyderabad, Gujarat and Maharashtra, we take the view that there is no insuperable difficulty or complication in enacting a uniform type of legislation dealing with the religious endowments of all communities in India. Such legislation should, of course incorporate such special provisions as may be considered necessary for the religious endowments of individual religions or communities. We therefore recommend that the Government may consider the proposition of such uniform legislation after ascertaining the views of other communities, if necessary. This uniform legislation can incorporate with advantage many of the provisions of the Religious Trusts Bill, 1960 which was in the Lok Sabha (for example, the provisions seeking to ensure that all religious trusts within the jurisdiction of the Commissioner are properly administered and the income thereof duly appropriated and applied to the objects of such trusts (cl. 5), clause 11 which deals with the preparation and the modification of budgets, clause 12 which ensures the maintenance of proper accounts, clause 13 which relates to the investment of trust monies as well as the provisions relating to the audit of accounts (cl. 14) inspection and returns, (cl. 15).

22. The legislation recommended by us relates to topics which appertain to the Concurrent List. Where State legislation has already been undertaken and carried out, the suggestions that we make will supersede the provisions of the local legislation where they are inconsistent with our recommendations. Where States have not passed legislation regarding religious endowments the provisions that we have recommended will be embodied in a statute which will apply *suo motu* to those States in question unless and until they pass legislation carrying out the objectives of our recommendations.

CHAPTER IV

PRIVATE AND PUBLIC RELIGIOUS ENDOWMENTS

The term 'endowment' in its primary sense involves the creation of a perpetual provision out of lands or money for any institution or person. In a secondary and more general meaning, it is also used to denote wealth applied to any one person or use. In one English case, an endowment has been stated to be a dedication of property for purposes of religion or charity having both the subject and objects certain and capable of ascertainment. In Regulations 19 of 1810 (Bengal) and 7 of 1817 (Madras), the Religious Endowments Act, 1863 (20 of 1863) and the Charitable Endowments Act, 1890 (6 of 1890), the word has apparently been used in the sense of wealth (whether in the form of money, produce of land, movable property or immovable property) set apart permanently as a provision for any object or purpose. Thus, a religious endowment was construed as wealth or property set apart permanently for religious purpose, for example, a religious establishment, foundation or institution.

2. Of the various types of Hindu religious endowments in vogue at present, temples and mutts are the two principal types of religious institutions and there are many texts which praise very highly the merits of founding such institutions. In addition to temples and mutts, there are various other types of religious and charitable endowments like the digging of tanks and wells, planting of shady trees and avenues for the benefit of travellers, the establishment of dharamshalas, sarais, choultries, satras, alms houses or rest houses for the feeding or benefit of mendicants, religious or otherwise. Of the two conspicuous examples of Hindu religious endowments, namely, temples and mutts, mutts are less numerous than temples. Elaborate rituals have been prescribed in sacred texts for the dedication of endowments and every dedication consists of two parts, namely, Sankalpa or the formula of resolve, and Utsarga, or renunciation (namely handing over or dedication). Prescribed rituals have to be passed through before a temple is established and the image consecrated. In the case of mutts, different authors have laid down different forms of dedication.

3. Images or idols are usually installed in temples for worship and property is also endowed in favour of those idols. Such property is known in Northern India as debutter and the institution may be private or public. There is a distinction between a private endowment on the one hand and a public endowment on the other. In a public endowment, the dedication is for the use or benefit of the public at large or of some considerable portion of it, answering a particular description, but a private endowment concerns only individuals or families and the public are not interested in it and it is often confined to the members of a particular family or the immediate disciples of a particular religious preceptor. The essential test to distinguish a private from a public place of worship depends on whether the right of worshipping the idol is limited to the members of a particular family or extends to all persons professing the Hindu religion or a sect thereof. Although this distinction between a private and public endowment is fairly well understood, nevertheless the question whether an endowment in a particular case is a private or public one is one of legal inference to be drawn from the facts proved in each case. Where there is an express dedication to the public by a document, there will obviously be no difficulty in regarding the endowment as a public one, but where there is no documentary evidence, the matter has necessarily to be judged solely on oral evidence and this often gives rise to difficulty. Judicial decisions have given certain criteria in this connection and some of the tests adopted are set out below:—

(1) (i) The nature of the objects and purposes of the funds;

(ii) the nature of the dedication, namely, whether it is open to the public or class of the community generally;

(iii) the authority, if any, of the donors to divert the funds and to condone maladministration;

(iv) the existence or otherwise of any present or reversionary right of the donor individually or any body of donors collectively in the endowed funds. [Tests indicated by Scott J. in *Thackersey v. Hurbhum Nursey* T.L.R. (1884) 8 Bombay 432].

(2) (i) Long established practice of treating the entire income of the endowments as constituting one fund for the support of several shrines;

(ii) the use which the public generally made of the shrine for worship and devotion;

(iii) the active part taken by individuals outside the founder's family in the festivals of the deity;

(iv) the votive offerings from the same class or persons. [*Chintaman v. Dhondo*, familiarly known as the *Chinchavad Devasthan* case I.L.R. (1888) 15 Bombay 612].

(3) The character of the worship in a temple has also been taken as indicative of the character of the temple itself, e.g. purpose of the worship in accordance with the rites of the sect for whose benefit it was held.

(4) Appointments of archakas or priests and all other servants.

(5) User by the public and nature of the user. Repairs and additions to the property of the endowment by means of public subscriptions and performance of festivals with the aid of public funds, attachment of a dharamshala to the endowment which is open to the Hindu public.

(6) The circumstance whether the Government assumed control of the endowment after the passing of Bengal Regulation 19 of 1810 and Madras Regulation 7 of 1817.

(7) Remission of land revenue in respect of lands on which the endowment stands.

(8) The size and nature of the temple, the mode of its construction, the long user by the public as of right, grant of land and cash by the rulers along with other relevant factors.

(9) The circumstance whether people of all classes make offerings to the God in a temple and such offerings are accepted.

4. In *Peesapati v. Kanduri* (1915 Madras Weekly Notes 842), Srinivasa Aiyangar J. observed that it was very unusual for a Hindu in Southern India to construct a temple outside his dwelling house for private worship and the circumstance that the temple is outside the dwelling house may be regarded as favouring its being treated as a public temple. In *Mundancheri v. Achutan Nair* (16 Indian Appeals, 405), the Judicial Committee held that in the Presidency of Madras the presumption was that temples and their endowments formed public religious trust but that in Malabar there was no presumption one way or the other. But in West Bengal there appear to be several temples built outside as well as in the premises of residential houses of donors and the question whether these temples are private or public temples has to be examined in the light of the facts relating to each case.

5. In this connection it is well to remember that in the case of user of a temple by the public the point may arise whether such user was unconcealed or was in such a manner that the owner must
40 M of L—4

have been aware that the public was using the temple. The period for which the public has been using the temple may also be an important circumstance in determining its character, although there is no prescribed minimum period for drawing an inference of dedication. The circumstances that the exercise of right by the public was challenged or obstructed and that the public was excluded on any particular days or was expressly permitted, may also be material in throwing light on the question.

6. In regard to endowments relating to mutts the question whether there are private mutts is highly debatable. There is no doubt judicial authority for the proposition that a person founding a mutt can make it a private one so as to exclude objects which make a mutt a public one. For instance the Madras High Court held in *Sathappayyar v. Periaswami* [I.L.R. (1890) 14 Madras 1], that there could be private mutts, i.e., mutts which did not come under section 539 of the old Civil Procedure Code (corresponding to section 92 of the existing 1908 Code). Again, in *Matam Nadipudi v. Board of Commissioners, Hindu Religious Endowments, Madras* [A.I.R. (1938) Madras 810], the Madras High Court referred to the existence of a class of private mutts in which property is given to the head of a mutt for his personal benefit only. When considering such decisions with a view to future procedure and legislation it is essential to realise the origin and evolution of mutts so that the basic objects for which they were founded may be deduced therefrom. Ashrams originally were the abodes of rishis, either married or unmarried, in the days beginning from the Upanishads. They were also the abodes of the shishyas or disciples who gathered round the rishis. The shishyas went round the villages and obtained contributions or donations from various people, gathered *samidha* and other requisites for sacrifices and worship and fruits from the forests and brought them all to the head of the ashram and all these properties were used by the ashram for the purpose of the maintenance of the Hindu preceptors or gurus concerned and their families. Disciples or Antevasis are people who 'live together' or 'by the side of' their gurus. Later on, when the Hindu religion was in jeopardy, various mutts were started on the lines of Buddhist viharas and monasteries. The underlying idea in the case of Buddhist viharas and also in the case of these mutts was that a particular sampradaya or tenet or creed should be taught and propagated not only to the shishyas but to the world at large so that that particular creed may attain ascendancy or obtain acceptance. Originally, these mutts were endowed by the rulers of the country and later on for various reasons, these mutts were also the objects of the bounty of particular people who were interested in certain tenets or sampradayas. It seems, therefore, that in the case of these mutts there can be no question of 'private trust' in the sense in which the expression 'private trust' is ordinarily used, because they are intended for the instruction of the public and for disseminating the particular tenets or sampradaya or religion. It would be inappropriate to treat these mutts as 'private trusts' in the sense of their belonging to particular persons. That portion of the public following the tenets or the creed for which the mutts stand should be regarded as being interested in them and so they should be regarded as public religious trusts. Once a trust is declared to be a public religious trust, any member

of the public, whether belonging to that particular sampradaya or not, can go to the Court or any other appropriate tribunal for the purpose of improving the condition of that mutt.

7. The position of the head of a mutt who is usually called the matadhipati as decided by the Courts may be considered in this connection. According to Muthuswami Aiyar J., in *Sammantha Pandara v. Selappa Chetti* [I.L.R. (1879) 2 Madras 175] the property of the mutt was attached to the office of the head thereof and was in a certain sense trust property to be devoted to the maintenance of the establishment, but the head has a large dominion over it and is not accountable for its management or for the expenditure or income, provided he does not apply it to any purpose other than the furtherance of the objects of the institution. The same learned Judge in a later case [*Gyana Sambanda Pandara v. Kandaswami* I.L.R. 10 (1887) Madras 325] referred to the ascetic owning a matham under his charge and its endowment *in trust* for the maintenance of the mutt, for his own support, for that of his disciples and for the purpose of religious and other charities in connection with it according to usage. In the later case of *Vidya Purna Tirthaswami v. Vidya Nidhi Tirthaswami* [I.L.R. (1904) 27 Madras 435], Subramania Iyer O.C.J. and Bhashyam Ayyangar J. held that the matadhipati had a life estate in the corpus, i.e. mutt properties but that over the income he had full power of disposal limited only to the objects of the institution. In a later full Bench case [*Kailasam Pillai v. Nataraja Thambiran* I.L.R. (1909) 33 Mad. 265] consisting of Benson O.C.J., Waltis and Sankaran Nair J.J., it was held that it could not be said of the head of a mutt that he held the mutt property either as a life tenant or as a trustee. They recognized the right of the matadhipati over the surplus income and his power to utilize it for the spiritual advancement of the mutt and his disciples or for the public. In *Vidya Varuthi Tirtha v. Baluswami Aiyar* (I.L.R. 44 Madras 831) Ameer Ali J. held that the head of a mutt was not a trustee within the meaning of article 134 of the Indian Limitation Act, 1908. The position came up for full consideration before the Supreme Court in the well known case of the Commissioner, Hindu Religious Endowments, Madras v. *Lakshmindra Tirtha Swami of Sirur Mutt* (A.I.R. 1954 S.C. 282, 613). Mukherjea J. who delivered the judgment stated as follows:—

"Under the law as it stands, the Mahant has large power of disposal over the surplus income and the only restriction is that he cannot spend anything out of it for his personal use unconnected with the dignity of his office."

Although the position of the head of a mutt may not be technically that of a trustee, nevertheless it would seem that the fact that he has large powers of disposal of the income from the property should not be allowed to militate against the intrinsic character of the property, namely, that the property is to be held *in trust* or under obligation. This position has been clearly stated by Lord Shaw, while delivering the judgment of the Judicial Committee in *Ram Parkash Das v. Anand Das* (I.L.R. 43 Calcutta 707), wherein he has stated that assets are vested in a mahant as the owner thereof 'in trust' for the institution. This statement was explained by the Judicial Committee in the later case of *Vidya Varuthi Tirtha v.*

Baluswami Iyer [I.L.R. (1921) 44 Mad. 831] and Ameer Ali J. said that the term "trustee" was used in a general sense by way of a compendious expression to convey a general conception of the obligations attached to the office of superior. We feel, that all mutts should be treated as *public* religious endowments in the sense that the public or a substantial portion of the public is interested in their upkeep, conduct or management.

8. We now turn to the question of offerings made in public religious institutions. Offerings are made by members of the public to temples as well as mutts. In the case of temples, they are made for the benefit of the deity out of devotion by the worshippers of the deity to the temple which is the property of a juristic person namely, the deity. Such property has to be utilized for the spiritual benefit of the body of worshippers. This benefit may take the form of *sevas*, *pujas*, festivals, religious discourses, cultural activities including music, drama and dance conducive to the spiritual solace and enlightenment and activities designed to make the temple and its *dharma*kartas useful, beneficial or elevating to the worshipping public. This property is obviously impressed with a public character inasmuch as the worshipping public is interested in it and should obviously be treated as part of the set up. No absolute ownership in the strict sense in respect of offerings to the temple on behalf of *archakas*, *pujaris*, etc. should in our opinion be recognised.

In temples there may be another set of offerings made to the officiating priest or the *archaka* or *pujari* or *dharma*karta or *mahant* or *shebait* or *tilkayat* or by whatever name he may be called. If these offerings are made to him *personally* on account of the veneration and respect due to that person, then they may inhere in the person in question but in such a case they should be paid in and kept separately and distinctly and should not be mixed with the offerings made to the deity as a juristic entity. Where, offerings are made to a temple without specially designating whether they are to the officiating priest, *mahant*, *archaka*, etc. or to the deity, then they should be presumed to belong to the deity as a juristic entity.

9. In the case of mutts also as in the case of temples, offerings may be made to the *matadhipati* for the purposes of the mutt or personally or individually. Where they are made to the head of a mutt not personally to him but for the purposes, appurtenant to it, they should obviously be regarded as the property of the mutt and should be utilized for the purposes of the mutt. Where, however, they are made to the head of a mutt personally or individually by devotees purely out of veneration for his spiritual attainments and position and the traditions connected with the mutt, a question may arise as to whether they should be treated as the property of the mutt or as the personal property of the head of the mutt. The latter type of offerings is commonly known as "*padakanikas*" or *pranamis*. In regard to "*padakanikas*" Dr. T. M. P. Mahadevan, Professor of Philosophy, Madras University, has stated that he is of the decided view that these moneys should go to the institution as such for carrying out its objects. Shri K. S. Ramaswami Sastry, retired District and Sessions Judge, Madras, has also urged that there is no

difference whatsoever between the income of the original endowment and presents made to the head and that all income should be pooled together and the *matadhipatis* should not be given freedom to deal with "*padakanikas*" in their discretion, but that sufficient margin should be given to them to make presents to *pandits* to encourage learning and so on. Another witness, Shri T. M. Krishnaswami Aiyar, ex-Chief Justice, Travancore High Court, has also maintained that every amount received by a mutt is primarily for the propagation and dissemination of the system of philosophy for which it stands.

10. On the question of "*padakanikas*" there has been a divergence of opinion amongst us. One view has been that a *sanyasi* head of a mutt who renounces his family ties *ipso facto* relinquishes his right to any private property or individual right to any property and that therefore there can be no distinction between these personal offerings or *pranamis* or *padakanikas* and other offerings made to the mutt as such. The other view has also been taken, namely, that it is possible in the case of mutts to have two types of offerings and donations, that is, offerings to the mutt as such on the one hand and offerings made personally to the head of a mutt by way of *padakanikas*, *pranamis* or by whatever name they may be called, on the other. Even in regard to the latter category one view is that all *padakanikas* should be absolutely at the disposal of the *matadhipati* or the head of a mutt, i.e. in the sense that it should be open to him to disburse that income at his own discretion but that whatever is not disbursed at the time of his death should go to the mutt. The argument against this view is that if it be granted that the head of a mutt can disburse these sums as he likes, it would really mean that he is given complete rights in the property of the mutt. We have given this matter our most anxious consideration and while we are as keen as many others that the tendency of heads of mutts to earn and accumulate personal properties for themselves should be discouraged, we are at the same time constrained to take into account the existing usages and customs and would accordingly recommend that having regard to the long continued practice and traditions of many mutts, the property rights of the head of the mutt in offerings known as *padakanikas* and *pranamis* may be recognized to the extent that while the head of a mutt has a right to disburse them at his discretion during his life time for the furtherance of the objects and purposes of the mutt and other religious and charitable objects, any of those offerings or their proceeds remaining undisbursed at the end of his life, should automatically vest in the mutt.

It is to be understood that the head of a mutt being a religious preceptor and not a bare trustee enjoys a special position and is entitled to spend the income of the mutt whatever be the source, of such income for the maintenance, accommodation and legitimate travels of himself and his *shishyas* and disciples suitably to the status and dignity and traditions of the mutt and also so as to carry out the essential objectives of mutts—namely the propagation of the tenets and *sampradaya* of the mutt in question and also for the propagation of Hindu religion and culture.

There are provisions in the Civil Procedure Code exempting certain persons from personal appearance in courts. It is for

consideration whether this privilege should not be extended to the accredited and recognised heads of mutts of accepted sanctity and authority.

11. The question under what circumstances a religious endowment should be treated as a public or private one, was considered by the Supreme Court (consisting of Jagannathadas, Venkatarama Iyer, B. P. Sinha and S. K. Das JJ.) in *Deoki Nandan v. Murlidhar* (1956 S.C.R. 756). Venkatarama Iyer J. who delivered the judgment made the following observations in that case at pp. 759, 760, 762 and 763:—

“The question that arises for decision in this appeal whether the Thakurdwara of Sri Radhakrishnaji at Bhadesia is a public endowment or a private one is one of mixed law and fact. In *Lakshmindhar Misra v. Rangalal* (1949 L.R. 76 I.A. 271), in which the question whether certain lands had been dedicated as cremation ground, it was observed by the Privy Council that it was ‘essentially a mixed question of law and fact’, and that while the findings of fact of the lower appellate court must be accepted as binding, its ‘actual conclusion that there has been a dedication or lost grant is more properly regarded as a proposition of law derived from those facts than as a finding of fact itself’. In the present case, it was admitted that there was a formal dedication and the controversy is only as to the scope of the dedication, and that is also a mixed question of law and fact, the decision of which must depend on the application of legal concepts of a public and a private endowment to the fact found, and that is open to consideration in this appeal.

It will be convenient first to consider the principles of law applicable to a determination of the question whether an endowment is public or private, and then to examine, in the light of those principles the facts found or established. The distinction between a private and a public trust is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. While in the former the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of ascertainment. The position is thus stated in *Lewin on Trusts*, Fifteenth Edition, pp. 15-16—

“By public trust must be understood such as are constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description. To this class belong all trusts for charitable purposes, and indeed public trusts and charitable trusts may be considered in general as synonymous expressions. In private trusts the beneficial interest is vested absolutely in one or more individuals who are, or within a certain time may be, definitely ascertained.....”

Vide also the observations of Mitter J. in *Nabi Shirazi v. Province of Bengal* [I.L.R. (1942) 1 Cal. 211]. Applying these principles, a religious endowment must be held to be private or public, according as the beneficiaries thereunder are specific persons or the general public or sections thereof.”

“The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof. In accordance with this theory it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family, and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public intended to benefit the general body of worshippers.” (pp. 762-63).

The distinction between private religious endowments and public religious endowments was again stressed by the Supreme Court (consisting of S. R. Das, C.J., S. K. Das, Gajendragadkar, Wanchoo and Hidayatullah JJ.) in *Mahant Ram Sarup Dasji v. S. P. Sahi* (1959 S.C.J. 1173 at page 1178):—

“In order to appreciate this argument it is necessary to state first the distinction in Hindu law between religious endowments which are public and those which are private. To put it briefly, the essential distinction is that in a public trust the beneficial interest is vested in an uncertain and fluctuating body of persons, either the public at large or some considerable portion of it answering a particular description; in a private trust the beneficiaries are definite and ascertained individuals or who within a definite time can be definitely ascertained. The fact that the uncertain and fluctuating body of persons is a section of the public following a particular religious faith or is only a sect of persons of a certain religious persuasion would not make any difference in the matter and would not make the trust a private trust (see the observations in *Nabi Shirazi v. Province of Bengal* (1942 I.L.R. 1 Cal. 211)). The distinction in this respect between English law and Hindu law has been thus stated by Dr. Mukherjee in his *Tagore Law Lectures on the Hindu Law of Religious and Charitable Trusts* (1952 edition, pp. 392—396):—

“In English Law charitable trusts are synonymous with public trusts and what is called religious trust is only a form of charitable trust. The beneficiaries in a charitable trust being the general public or a section of the same and not a determinate body of individuals, the remedies for enforcement of charitable trust are somewhat different from those which can be availed of by beneficiaries in a private trust. In English Law the Crown as *parens patriae* is the constitutional protector of all property subject to charitable trusts, such trusts being essentially matters of public concern..... One fundamental distinction between English and Indian Law lies in the fact that there can be religious trust of a private character under Hindu law which is not possible in English law.” (page 1178).

The essential distinction in Hindu law between private and public trust again came up for consideration before the Supreme Court in another case, namely, *State of Bihar v. Charusila Dasi* (1959 S.C.J. 1183), the Court consisting of S. R. Das, C.J.,

S. K. Das, Gajendragadkar, Wanchoo, Hidayatullah, JJ. again cited with approval at page 1191 the statement of the law made in *Deoki Nandan v. Murlidhar* (1956 S.C.R. 756).

12. Having regard to the importance of the issue, we invited in our questionnaire the opinions of the public as to what endowments should be treated as public endowments and what should be the distinction between a private and a public religious endowment. We observe that the general consensus of opinion is to admit as private endowment only those cases where they are strictly proved as such. Shri P. Satyanarayana Rao, a former Judge of the Madras High Court and a former member of the Central Law Commission and now the Chairman of the Andhra Pradesh Law Commission has stated that all religious endowments in which the public are interested should be treated as public religious endowments and that the criterion laid down by the Supreme Court in *Ram Sarup Dasji v. S. P. Sahi* (1959 S.C.J. 1173) may be followed to distinguish public trusts from private ones. Shri Mauli Chandra Sharma, a former member of the Lok Sabha, has stated that endowments created by public subscriptions or by Government or individuals for the benefit of the general Hindu public or for specific denomination or caste or section should be treated as public endowments and that only private places of puja kept in residential houses and meant for personal and family use and not open to the public and not deriving benefit from public endowments, should be treated as private endowments. Shri G. D. Somani, a former member of the Lok Sabha, has urged that a public religious endowment is one which is founded by public donation and is meant for the entire Hindu community without reservations and receives offerings from the public and that where an endowment is founded for his own family and the public has no right of entry or worship, it should be treated as a private one. Shri T. V. Viswanatha Iyer, Advocate, Madras, has suggested that all endowments should generally be presumed to be public endowments. Shri A. G. Kher, ex-Speaker, U.P. Legislative Assembly, has indicated that private institutions to which the public is allowed should be treated as public institutions. Shri C. B. Gupta, Chief Minister, U.P. and many other important witnesses have also taken the same line.

13. It is relevant to observe in this connection that courts and tribunals have refrained in most cases from investigating and taking into account the basic idea underlying the dedication of temples and mutts. They have too often taken for granted that there can be private temples to which the public contribute by way of offerings and donations. In the course of our extensive tours we came across many cases of assertion of private rights by certain religious dignitaries. The trustees of the Tarakeswar Temple in West Bengal claim that institution as entirely their private property and though the trustees receive donations and gifts from the public and the public resort to the worship of the image, they claim that the image is their private property and that they can withhold admission to the public into the institution. Again, in the Dakshineswar Temple near Calcutta, we have found that, though the temple receives offerings and donations from the worshipping public, the trustees have affirmed that the institution is a private religious endowment and that the devotees offer pujas in the temple with the

leave and licence of the shebait. An even more conspicuous example of the assertion of personal rights is that of the Tilkayat in respect of the temple at Nathdwara. The Tilkayat claims that his position is as significant as that of the deity itself, that he can remove the image to any place he likes and that the offerings are made in reality to himself as the mahant and not to the deity. He, however, had to admit in the course of his evidence that a symbolic difference was made between the offerings made to the deity and to himself personally and that while making offerings to the deity, a piece of cloth is kept symbolically in the palms of his hands and the offerings are put on the cloth, thereby indicating that the offerings belong to the image and not to the mahant. When confronted with this point, the Tilkayat has been unable to give any satisfactory explanation. Similar claims have been made in the case of some other endowments and in fact it has been argued by them that the Commission had no jurisdiction to investigate the position of institutions claimed to be either private temples or personal or private mutts.

14. As in the case of temples, we came across cases of assertion of private ownership of mutts also in the course of our itinerary. The history of mutts, however, discloses that they were started with a view to propagate the doctrines of a particular system of philosophy and way of life and that the matadhipati for the time being was only a person who by virtue of his learning and high character, piety, etc. was accorded a position of honour and respect. In the case of the Hathiramji Mutt at Tirupati, a claim for private ownership over the temple as well as the Mutt was energetically put forward before the Madras Hindu Religious Endowments Act was passed into law in 1927; but it was only after this Act was passed depriving the mahant of the powers claimed by him that matters became stabilised. In most States where there is no legislation regarding religious endowments, the trustees of temples and matadhipatis of mutts have begun to assert absolute ownership over the properties of the endowments. The only remedy to contest such claims is a suit filed by two or more worshippers with the sanction of the Advocate-General or of the officer authorised by the State Government under section 93 of the Code of Civil Procedure, 1908 unless indeed the Advocate-General himself files the suit. It is only in very rare cases that the worshippers of the temple or the mutt are so vitally interested in it that they come forward to spend monies out of their own pockets to file and conduct suits up to the end braving all the chances of long delays and heavy costs and appeals and even if the worshippers succeed in the suit or appeal the amount awarded to them by courts by way of cost is in most cases wholly incommensurate with the money spent by them. In the States in which legislation has not been passed to define and delimit the powers of trustees, the result has been that in pursuance of the above claims of ownership in respect of temple and mutt properties, large alienations have been made and misappropriation and misuse have become rampant in many localities and in many institutions.

15. Having regard to the trend of the evidence received and the alarming tendency on the part of persons in charge of endowments

to prevent their being treated as public endowments, we recommend that it is essential to lay down that where the public or a section of the public have general access to a temple, it should be treated as a public one and that even in cases where a temple is maintained within a residential place, if offerings are received from the public or a section thereof at the time of worship or devotion, it should be treated as a public one and should cease to be treated as a private one.

16. We are further of the opinion that in the case of temples, the trustee or shebait should not be allowed to claim any personal or proprietary interest in the management or the offerings and donations made by worshippers to the deity and should be strictly accountable to the public for them. We accordingly recommend that the Constitution should, if necessary be amended so as to make the position absolutely clear, thereby preventing the possibility of any trustee or shebait attempting to prefer any such claim to ownership in future. Of course, if in any institution, a shebait, archaka or pujari engages in any religious service he may be adequately remunerated for such service.

The right to the office of shebait and emoluments thereof should also not be regarded as private property.

CHAPTER V

ARCHAKAS, PUJARIS, PANDAS AND OTHER PERSONS CONNECTED WITH TEMPLE SERVICE

Religion in general may be said to have three aspects: theology, mysticism and rituals. Theology is the speculative science dealing with the nature and function of God-head and it pertains to the thinking nature in man. Rituals, on the other hand, deal with certain acts and processes in the physical plane which are regarded as establishing links between the visible and the invisible. In mysticism we find the yearning of the human soul to realise the Supreme to obtain union with or absorption in the Brahman either by introspection or by unifying vision either by contemplation or self-surrender. Temples have been closely related to rituals. In order to comprehend the real nature and purpose of temples it would perhaps be helpful to deal at the outset with the way in which they function.

2. In the first place a temple is a place of worship where people congregate to approach an embodiment of the Supreme, to worship Him and offer prayers and gifts. Theoretically speaking, this can be done at any place and at any time, but temples provide and should provide a special environment and traditional facilities for arousing a feeling of devotion. It is generally held in India that several minds and hearts consentaneously attuned to a particular attitude of aspiration and devotion are bound to produce both spiritual and practical results. Thus, temples may be described as occult laboratories where certain physical acts of adoration coupled with certain systematized prayers, psalms, mantras and musical invocations, can yield certain physical and psychological results as a matter of course, and if these physical processes are properly conducted, the results will accrue provided the persons who perform them are adequately equipped. One of the essentials for the proper conduct of rituals is the proper ordaining of the priest. Also the efficacy of the prayers, poojas, archanas,

abhishekas, festivals, etc., very much depends on the expertness of the priestly agent employed in the physical process and ritualistic details. It is therefore essential that the correct approach and proper conditions should be rigidly followed to enable temples to fulfil their purpose. But temples and ceremonies and all the actions which go with them would be futile if the ritualistic and ceremonial parts in effect become obstacles in the way of the extension of the human heart and consciousness instead of being a help towards the creation of the wider and deeper view of things and an attitude of concentrated piety. These ideas lead us to the irresistible conclusion that the pujas, the rituals, the ceremonies and festivals in a temple must necessarily be conducted by persons fully qualified.

3. Archakas who are also known as Gurukkals, Pujaris or Purohits, are persons who observe the rituals and conduct the worship in temples in accordance with customs, usages and tradition. Hindu texts and usages prescribe a code of rituals and several Agama Shastras (so called) provide for these in detail. The special usages and practices in each institution have also been taken into account. Considerable importance is thus attached to Agama Shastras, especially in South India. According to Professor Apte "Agama is a work inculcating the mystical worship of Siva and Sakti". Saiva Agama Shastras deal with the mode of worship in Saivite temples and Pancharatra and other Agama Shastras deal with the mode of worship in Vaishnavite temples and in shrines dedicated to other manifestations of Divinity.

4. A pujari or archaka is appointed by the founder or the manager (called a shebait in the North or a dharmakarta in the South) to conduct the worship and he is the servant of the manager. His duties relate mainly to the performance of the rites of consecration, worship, festivals, etc. In Vishnu temples it is also the right of the worshippers to take from his hands the sacred water (tirtha) and other symbolic gifts and to have the God's Shadagopam or crown placed on their heads. In many cases he has also the custody of the jewels of the deities of the temple. The archaka or pujari cannot change the ritual or the form of worship in a temple; nor can the manager of a temple interfere in respect of the rituals of a temple and change them. The manager is of course entitled to see that the archaka observes the usual rituals and to set the archaka right when the latter departs from the established rituals.

5. Very often an archaka is a hereditary office holder. In many cases endowments are attached to his office, the income of which will represent the remuneration for his services. The legal position in relation to the hereditary rights of these purohits, pujaris or archakas as emerging from the expositions given by the late P. R. Ganapathi Iyer in his treatise on the law relating to Hindu and Mohamedan Endowments and by the late B. K. Mukherjee in "The Hindu Law relating to Religious and Charitable Trusts" may be briefly summarised as follows:—

When a Purohit has been appointed at the will of the founder, the mere circumstance that the appointees have performed the worship

for several generations will not confer an independent right upon the members of the family so appointed and will not entitle them as of right to be continued in office as priests. [Kali Krishna vs. Makhan Lal—50 Cal. 233; Nanbhai vs. Trimbak (1878) Bom. P.J. 195, Maharanee Indrajit vs. Chundeman—16 W.R. 99].

When there are two or more archakas jointly entitled to the office, each may perform the services pertaining to the performance of the rites of consecration, worship, festival, etc., by turns and if one is prevented wrongfully from performing the duties and enjoying the emoluments during his turn he may sue the wrong doer for a declaration of right and for damages. The recitation of Divya Prabhandha is an office which may appertain to a class such as the Vadagalais who, if exclusively entitled thereto, will be entitled to prevent others (such as Tengalais) (or *vice versa*) from interfering with their rights and perquisites in the shape of offerings contributed.

There are innumerable offices subordinate to dharmakarta, like manager, panchayatdar, uralan or mooktessar. If there is a power of appointment and the office-holder is a servant, a person having the right to appoint has also the right to suspend or dismiss the holder. Transfers by way of sale or mortgage of the religious office have often been declared to be invalid just as the transfer of a right to management has been held to be invalid.

In *Kanni v. Achuda* (1863) 3 M.H.C. 380(381) the sale of a Karaima right in a Malabar temple was held to be invalid. In *Narasimma Thathacharya v. Anantha Bhatta* (1881) I.L.R. 4 M. 391 the sale of an Archaka office and of a Paricharaka office was equally held invalid. In *Kuppa v. Dorasami* (1882) I.L.R. 6 M. 76 the sale of the office of pujari to a stranger who was not in the line of heirs was held to be invalid. In *Narayana v. Ranga* (1891) I.L.R. 15 M. 183 a transfer of the hereditary office of pujari to a person who was only one of several heirs and not the sole heir was held to be equally invalid. In *Sundarambal Ammal v. Yogavana Gurukkal* (1914) I.L.R. 38 M. 250, Sadasiva Ayyar J. observed that on principle a servant (and the position of a hereditary archaka is only that of a servant) could not be permitted to transfer the office and emoluments without the consent of the master (the trustee).

The dharmakarta or trustee or manager has the right to see that the archaka or any subordinate office-holder performs his duty properly. If the office-holder does not do his duty properly, he may be fined or dismissed by the manager. The manager can get the mamool or normal duties performed through the mirasi office-holder. It is the right and duty of such mirasi holder to discharge his customary duties. If, however, the trustee or manager introduces a new worship, he is not bound to have the same done through the mirasi archaka who is also not entitled to insist that the manager should conduct such new worship only through him. The dharmakarta has the right to dismiss the office-holder subordinate to him for sufficient cause without recourse to any suit. Misconduct, disobedience to the dharmakarta (or trustee or manager) or contempt of his authority will be a sufficient cause for dismissal but it is open to a Civil Court to determine if the dismissal is justified or not. The archaka or other subordinate office-holder of the temple is only a servant. The right to fine cannot be presumed to attach to the superior office and must

be strictly made out. The archaka or other subordinate servant is subject to the disciplinary authority of the manager. Pending enquiry into his conduct the manager may suspend him without notice.

No general rules can be laid down defining the degree and kind of misconduct which will justify the dismissal of such servants by the dharmakarta. Each case must depend upon its own merits and the particular circumstances established in it. On dismissal and until a new person is appointed the dharmakarta may be entitled to the custody of the jewels. But in the case of hereditary offices, upon a vacancy, the office will vest in the next heir or, if the dharmakarta has the right to appoint, he must appoint the next heir provided the latter is competent. If the next heir is a minor, the dharmakarta may appoint a person temporarily to do the duties until the next heir attains the age. The manager is also bound to see that the emoluments attached to the office of archaka or pujari are not improperly severed from the office.

If the founder vests the shebaitship or dharmakartaship in a family of priests who perform the religious rites of the deity as well, the office of the archaka and the shebait or dharmakarta will become united in one and the same person or persons. In the famous Chidambaram Temple the archakas (dikshitars) themselves are the managers.

6. The following inferences may reasonably be drawn from what has been stated above:—

(1) Archakas or pujaris, if they are not competent, can be required to get themselves fully trained and qualified for the duties of the office they hold.

(2) If the office is hereditary, they can be required to appoint a qualified deputy till at least such time as they themselves become competent to hold the office.

(3) For any proved misconduct or negligence of their duty or disobedience, they are liable to be removed.

7. Section 42 of the Madras Hindu Religious and Charitable Endowments Act 1 of 1959 (Madras Act 22 of 1959) provides that notwithstanding anything contained in any scheme, or in any decree or order of a Court or any custom or usage to the contrary, no office-holder or servant of a religious institution or other person shall have the right to be in possession of the jewels or other valuables belonging to the religious institution except under such conditions, and safeguards as the Commissioner may, by general or special order, direct. Section 55 of the same Act provides for the appointment of office-holders and servants by the trustee in cases where the office or service is not hereditary. In cases where the office or service is hereditary, the person next in the line of succession is entitled to succeed. It also provides that where the hereditary office-holder or servant is on account of incapacity, illness or otherwise unable to perform the functions of the office or perform the service, the trustee may appoint a fit person to perform the functions of the office or the service until the disability of the office-holder or the servant ceases or another person succeeds to the office or service, as the case may be. Section 56 of

the Act vests the trustee with powers to fine, suspend, remove or dismiss any office-holder or servant, whether hereditary or not, for breach of trust, incapacity, disobedience or orders, neglect of duty, misconduct or other sufficient cause after following the prescribed procedure. An aggrieved office-holder or servant has also been given a right of appeal to the Deputy Commissioner against the order of the trustee and a further right of appeal to the Commissioner against the appellate order of the Deputy Commissioner. Section 57 of the Madras Act further empowers the trustee, subject to such conditions as the Commissioner may direct, to fix fees for the performance of any service, ritual or ceremony and to determine what portion, if any, of such fees shall be paid to the archaka or other office-holders or servants notwithstanding anything contained in any scheme or decree or usage to the contrary.

8. The corresponding provisions in force in that area in Andhra Pradesh which formerly formed part of the Madras State are contained in sections 36, 48, 49 and 50 of the Madras Hindu Religious and Charitable Endowments Act, 1951 (Madras Act 19 of 1951), as amended by the Andhra Pradesh State Legislature.

9. Similarly, in the Orissa Hindu Religious Endowments Act, 1951 (Orissa Act 2 of 1952), section 31 deals with the appointment of office-holders and servants in religious institutions; section 32 with the punishment of office-holders and servants in religious institutions and section 33 with the prohibition of these office-holders and servants to have custody of jewels and other valuable articles, except under conditions and safeguards specified by the Commissioner. These provisions correspond with some variations to those in sections 42, 55 and 56 of Madras Act 22 of 1959.

10. Section 35 of the Mysore Religious and Charitable Institutions Act, 1927 (Mysore Act 7 of 1927), provides that where there is no claimant entitled to succeed to the office of a pujari or other office in a Muzrai institution, i.e., a temple or mutt under Government control or management or to which Government gives support by way of grant or inam the Muzrai Officer may appoint any other person competent for such office. Any dispute relating to the office of a pujari or other servant of a Muzrai institution which by law or usage descends by hereditary right is required under section 32 to be inquired into by the Amildar or the Revenue Sub-Divisional Officer in the presence of the parties interested and the relevant statements and evidence have also to be recorded by him. On receipt of the records of enquiry, the Muzrai Officer is required to make such further inquiry as he thinks necessary and then to decide the case—see section 33. Under section 36 where a majority of not less than three-fourths of the devotees of a Muzrai Temple resident in the village or town in which the temple is situated, object to the employment as pujari claiming by hereditary right, such person shall be removed from office, provided that the objectors pay to the claimant such amount by way of compensation as may be fixed by the Muzrai Officer.

11. Shri Jagannath Temple Act, 1954 (Orissa Act 11 of 1955), empowers the Administrator of the Puri Shri Jagannath Temple to appoint and control all officers and employees of the Temple and to specify by general or special orders such conditions and safeguards

as he deems fit subject to which any sevak, office-holder or servant shall have the right to be in possession of jewels or other valuable belongings of the temple (section 21). The Administrator has also the right to decide disputes relating to the rights, privileges, duties and obligations of sevaks, office-holders and servants in respect of seva puja and to require them all to do their legitimate duties in time in accordance with the record of rights and also to get the *niti* or seva done according to rights in the absence of any sevak or his substitute. Section 21-A of the Act was added to vest the Administrator with power to control all sevaks, office-holders and servants, whether hereditary or not, and to suspend, dismiss, or fine any of them or withhold the receipt of emoluments by any of them for breach of trust, incapacity, disobedience of lawful orders, neglect or wilful absence from duty, disorderly behaviour or conduct derogatory to the discipline or dignity of the temple or for any other sufficient cause. Any person aggrieved by the decision of the Administrator in respect of disputes relating to the collection, distribution or apportionment of offerings, fees, etc. or the rights and privileges, etc. of sevaks, office-holders and servants regarding seva puja or *niti* or under section 21-A, has a right of appeal to the Shri Jagannath Temple Managing Committee, constituted under sections 5 and 6 of the Act.

12. The United Provinces Shri Badrinath Temple Act, 1939 (U.P. Act 16 of 1939), empowers the Badrinath Temple Committee to appoint a Rawal and a Naib-Rawal, [sections 14 and 15 (2)]. That Committee may, with the approval of the State Government, from time to time determine the number, designation and grade of its officers and servants and their scale of salary and other remuneration for them and for the Rawal, the Naib-Rawal and the Secretary, [section 15 (4)]. The Rawal or the Naib-Rawal punished or removed by the Committee can appeal to the State Government against the resolution of the Committee removing him; and the order of the Government on such appeal is final [section 15 (6)].

13. It may be mentioned in this connection that section 35 of the Madras Act and section 30 of the Andhra Act specifically empower the trustee of a religious institution to incur expenditure from the temple funds in his charge for the training of archakas, adhyapakas, vedaparayanikas and othuvras.

14. In the course of our tours to various localities in the country, we have had ample opportunity of making personal visits to numerous temples and hearing evidence tendered before us. It appears that apart from some notable exceptions found (more in the South of India than in the North), archakas and pujaris are either illiterate or semi-literate and also usually extortionate. Their pronunciation and accentuation of the mantras they recite is unimpressive and faulty and the deplorable fact is that they do not know the meaning or the significance of what they utter. Obviously they are hardly in a position to infuse a spirit of devotion and reverence in the devotees and worshippers who come to temples to seek Divine grace. It was, however, somewhat encouraging to find that in certain States the authorities concerned are fully alive to

the need for imparting adequate training and instruction to archakas and pujaris. The Commissioner of Endowments for the Madras State stated that in that State refresher courses in Saiva and Visnava Agamas were being arranged and held in places like Pettavaithalai, Tiruvengadu, Nachiarkoil and Madras for the benefit of gurukkals and archakas and that certificates were being issued to the successful candidates. Agama Patasalas or schools exist in Palani and Tiruchendur. Similarly, in Andhra Pradesh such Agama Patasalas have been organized in Tirupati, Simhachalam and Bapatla and training is given mostly to archakas including hereditary archakas. Sri N. Ramesan, Transport Commissioner, Government of Andhra Pradesh, in the course of his evidence and also in his written memorandum, has stated that from his experience of the institutions in Andhra Pradesh he is emphatically of the view that there is a pressing need for a complete overhaul in the present system and that very urgent action is required if the temples are not to close down in the next decade or so for want of qualified priests. In Andhra Pradesh there is a temple practically in every village and the worship that is now being performed is stated to be very inadequate. Many of the priests do not even seem to know the Agama to be followed in the temples in which they are serving and what is worse they do not even know at what hours the abhishekam for the Deity has to be performed and the mantras with which the archana has to be performed. At Mahanandi, where there is a famous shrine and where the Government of India propose to start a tourist centre at a cost of Rs. 50,000, it was stated by Sri Ramesan that when he visited the temple some time ago, he found that the priest there was a young boy of fifteen years of age that he did not know even the name of the Deity, the type of worship to be performed or the mantras to be uttered. He had got by heart four lines of Sanskrit verse and with that equipment he carried with him a match box with which he set fire to a piece of camphor, when any one visited the temple. His main interest was mainly to check whether a ticket had been purchased before a devotee went to the temple.

15. Allied to the institution of archakas is the institution of pauranikas which had in the past helped so much to inculcate the ideals of Dharma, in our country. In fact the Puranas themselves are essentially a literary vehicle for interesting the common man in metaphysics and philosophy through stories and parables and engendering in him a quest for the higher values of life. According to Sri Ramesan, the system of Pauranikas appears to have gone completely into desuetude in Andhra Pradesh. However some prominent persons like Mayavaram Sivaramakrishna Sastrigal and Sengalipuram Anantarama Dikshithar in Madras are keeping up a tradition which has had illustrious exponents in the past in Maharashtra and the Tamil, Andhra, Kanarese and Malayalam regions. Sri Ramesan has further stated that in the course of his official tours he found that villagers even in places where there are important and big temples are not only lacking in the elementary knowledge of the Pauranik stories but are ignorant even about the elementary forms of the images of the Deities. In one place he found that a Jain image, with its five headed serpent was being worshipped as Lord Siva and the villagers were applying vibhuti or ashes to it.

Shri K. Ranganatha Rao of Andhra Pradesh has stated that some archakas in Andhra Pradesh have properties of the temples in their possession. The properties are divided amongst various archakas as belonging to them absolutely. Similarly the period of service is also divided among many branches, and this is done without consultation with the trustee or the Department. Many archakas render service by proxies and a very nominal amount is paid to the person who actually renders service. Many archaka families perform other avocations also with the result that the services rendered are most unsatisfactory.

16. The Assistant Commissioner, Hindu Religious and Charitable Endowments, Mangalore in his note submitted on Coorg Temples has stated that in the case of the scheduled temples under the management of the Temple Fund Committee performance of service in temples at Mercara and Bagamandala and the sacred temples at Thala Cauvery is far from satisfactory. Archakas at Thala Cauvery have asserted their claims to hereditary rights, while those at other scheduled temples including Mercara and Bagamandala appear to be appointed from time to time and according to him even such appointees are in service for long periods and virtually appear to be hereditary. They seem to have had no sort of training for their profession or for the posts they are holding. The Temple Fund Committee members are of one accord in the view that the archakas do not know the elementary principles of Hindu religious tenets, Agamas, shastras, Vedas, etc. or the meanings of the few mantras they chant within the temple. The Committee is also of the view that there is no devotion or sanctity in them and that the archakas invariably do not co-operate with the Committee. Similar institutions exist practically in every village in Coorg and are in the management of local influential families. The position in respect of these is much worse. Most of them have no independent income. Archakas who offer worship dominate the show. They are little better than total illiterates. What shastric mantras they know they have learnt from their parents by word of mouth without knowing their meaning.

17. The Secretary, Cochin Devaswom Board, Trichur, told the Commission that there had been a persistent demand by the temple employees irrespective of their qualifications for an increase in their emoluments; that a large amount would be needed to meet their demands; and that they were threatening to go on strike.

18. In most of the celebrated religious centres like Hardwar, Varanasi, Vindhyachal, Gaya, Deogarh, Puri, Bhubneswar (Lingaraj Temple) the pandas have controlling rights to offerings and either themselves officiate as priests or engage servants to perform the pujas. They are by and large ill-instructed if not illiterate and do not know anything of the agamas or puja/paddhatis or rituals. Their sole occupation is to obtain as much money as possible from pilgrims. We shall deal with pandas in some detail later.

19. The offerings to the ancient and renowned Vishwanath Temple, Varanasi, are claimed to be the hereditary property of certain mahant pandas. They have now formed a committee of members of their families. Litigation has been going during the last

sixty years amongst them in regard to the ownership of the offerings to the temple. A number of witnesses affirmed before the Commission that the income of the temple from both endowed property and offerings made to the shrine is not properly accounted for. After meeting the necessary expenses of puja the offerings are divided by four families on the alleged authority of custom and usage outlined in a book 'Vishwanath Darshan' by Shri Krishna Das in 1937. They claim to have an absolute right in respect of the offerings. The mahants have engaged 50 pujaris who are the servants of the temple. The mukhya pujari alone, it was stated, knows the agama. The two main mahant pandas also claim to understand the mantras and the rituals. The four families have adopted the pala (turn) system for sharing the offerings.

In Durga Temple, Varanasi, there are 16 pandas, each getting one day's turn when he officiates as a priest at the time of darshan and puja.

In Vindhyachal Temple, the income from offerings is divided amongst 300 pandas for the days they work. Some respectable people in high position have told us that some of the shebaitis have alienated their rights even to Muslims who employ their own Hindu agents to perform the pujas. Similarly, rights in certain River ghats like Dubar Ghat and Rama Mahal Ghat in Varanasi have been sold by Hindus to Muslims. Obviously, the worship in such places cannot but be unsatisfactory and adequate remedies should be initiated.

The pujari of the Jagdish Temple, Udaipur, who appeared before us confessed that he had studied up to the sixth standard and did not know Sanskrit. There is no mantra puja or Shastric paddhati or usage. He only offers 'Jal', 'Chandan' and 'Tulsi' and does seva or shringar to Thakurji in the manner it was done by Mirabai in her time. Maharaja Jai Singh had given away the temple to the pujari who lives on its income. There are three families consisting of 40 persons who take turn for a month from Amavasya to Amavasya for doing puja and utilising the offerings.

20. The conditions in important centres in Bihar like Gaya and Vishnupad Temples are distressing. The pandas are predominant and all the offerings are claimed by them. Little is being spent by them towards the worship or the maintenance of the temple and even this little is spent by them according to their will and pleasure. The pujas done in all these temples do not follow any puja vidhi and are far from satisfactory. There are absolutely no facilities or even elementary conveniences for the worshippers.

21. In Nathdwara there are seva and darshan eight times in a day. Apart from seva, i.e., shringar (decoration) and bhog (food offerings) no real puja or archana is done. It is difficult for the large number of devotees going for darshan to have even a clear glimpse of the deity. The temple has about 45 departments employing 600 clerks and other functionaries (Bhantias) who collect Bhaints and do some sort of seva. They are all paid in cash and about 20 per cent. of the total income which comes to Rs. 15 lakhs is spent for this purpose. The Mukhya pujari is not a learned person or one

of recognised sanctity. He is getting Rs. 175 apart from other privileges, according to the deposition of the Chief Executive Officer, Nathdwara. The prasad or food offering costing about Rs. 2,000 per day is distributed among 200 people and is auctioned by them to pilgrims who have no other means to get prasad.

22. The approach to the Sri Jagannath Temple at Puri is dirty and the place where the sweetmeats are prepared is full of flies. There is no system of queues or of tickets for entry into the temple and darshan and the pilgrims, as we ourselves observed, find it physically most taxing to make their way into the shrine. When they do so the pandas by their demands and threats make it difficult for the devotees to obtain a glimpse of the image or perform any devotions. If this was the state of affairs in respect of male pilgrims, the position of women pilgrims needs no description. Worship in the midst of such confusion can be anything but satisfactory.

23. We, however, had a very exhilarating experience of the manner in which worship is being conducted in the Badrinath Temple. The worship in that temple is conducted by a Namboodiri Brahmin selected by the Maharaja of Tehri and appointed by the Temple Committee. We found that the Vedpath, the Sukla Yajus and the prayers and actual archanas in the temple are conducted with great devotion and that the uchcharan or pronunciation of the mantras is remarkably accurate and impressive. It was also gratifying to observe that arrangements had been made on the occasion of the abhishekam and archana for giving of a full account in Hindi of the history of the temple and its environment and traditions for the benefit of the pilgrims. This discourse in Hindi is interspersed with quotations from Vedas, the Upanishads and various Puranas. The system is designed very wisely to keep the lay public informed of the details regarding the temple and it can be emulated elsewhere with profit and advantage so that pilgrims might know what ceremonies are performed and what the prayers actually signify. Badrinath Temple is one of the most important temples in India. The Pristine Temple was re-established by the greatly venerated Adi Sankaracharya in the 8th Century A.D. and can with justice be said to be a symbol of unity between the Northern and Southern parts of our country.

24. In Kedarnath too the Rawal is assisted in arti by four pujaris recruited from North India. The appointment is actually made by the Temple Committee on the recommendation of the Rawal. In this case too we noted with pleasure that the pujas were conducted satisfactorily.

25. We were also happy to find that in a few temples in Northern India like the Vaikuntanath Temple in Calcutta and the Rangji Temples in Mathura and Pushkar the pujas were being conducted by qualified pujaris and that they were able to infuse a spirit of reverence into the worshippers. It was also observed that in one or two modern temples in Ayodhya and elsewhere attempts were made to maintain cleanliness and an atmosphere of sanctity.

26. The general consensus of the opinions of witnesses who gave oral evidence before us or presented memoranda or documents to us is to the effect that, if images are installed in temples or places of worship situated in mutts, the persons performing the worship whether they are called archakas or by any other name should be acquainted with the fundamentals of the Hindu faith and culture and the Agamas and Shastras describing the mode of worship and should be able to understand and explain the meaning and significance of the prayers or invocations contained in the archanas or sevas that take place in temples or places of worship situated in mutts. Some of the important suggestions made to us with regard to their training, qualifications, emoluments, etc., are briefly set out below.

27. Dr. Suniti Kumar Chatterjee, Chairman, West Bengal Legislative Council, has suggested that pujaris and archakas should be given certificates which alone should enable them to take up the work of priests whether in public or private temples, after they attend a course of studies in Sanskrit, know the basic elements of Hindu rituals and religion and pass an examination. Their training in Sanskrit, rituals and basic religious and philosophical ideas and concepts of Hinduism as a part of an educational scheme would from his point of view be very desirable.

28. Dr. B. C. Roy, the Chief Minister of West Bengal has stated that training of archakas and pujaris is a matter which should be governed by the provisions of the trust deed. He, however, has agreed that it should be possible to legislate on the subject.

29. Shri Sumant C. Bhatt, Charity Commissioner, Gujarat, has proposed that Statewise institutions should be started to train the pujaris, whether hereditary or non-hereditary, and that only those who are qualified should be allowed to perform the puja. According to his experience of the state of affairs prevailing in Gujarat most of these persons live practically on income derived by selling bhog or food offerings and have no other source of livelihood.

30. Shri Kasturbhai Lalbhai also from Gujarat has stated that it was the crying need of the day to open certain centres for the training of pujaris.

31. Shri A. N. Shelat, Assistant Charity Commissioner, Gujarat, has suggested that necessary qualifications for pujaris and archakas should be prescribed in consultation with the heads of mutts and temples and that in the case of hereditary pujaris, if he himself is not trained, he may nominate a qualified deputy preferably either his son or *shishya* who could at some future date succeed as mahant or archaka. He has also suggested that there should be some provision in the law whereby pujaris may be prevented from appropriating to themselves more than a certain percentage of the temple income.

32. The Chairman and members of the Devaswom Board, Travancore have informed us that there was an institution known as Shanti School established at Tiruvalla about 1937 which conducted a course

in agamas for archakas and pujaris. It was wound up in 1949-50 by the first Board because there was some difficulty in the matter of admission as all people regardless of caste, tradition or education sought admission. The present Board has drawn up a proposal for training archakas by giving scholarships to about a dozen students who will be drawn from a special class called Tantries who are not Brahmins. The emoluments given to archakas are very poor and hardly suitable to attract proper trained persons.

33. The Maharaja of Cochin, while he agreed that archakas should know the meanings of the various tantras and agamas, feels that there might be difficulty in imposing certain qualifications upon the archakas as many qualified persons may not be available. In his opinion it would be good to start colleges or schools from the funds of the religious institutions for the teaching of agamas and tantras side by side with secular education in order to attract an adequate number of students. He has further suggested that stipends awarded to willing students would encourage a large number of students to volunteer for training as archakas.

34. Shri Mannath Padmanabha Pillai of Kerala has asserted that security of tenure, adequate emoluments and some sort of status should be assured to priests so that they may not resort to beggary or extortion. He has also stated that it is necessary that proper instructions should be imparted to purohits and priests by perfecting as far as possible the old practices.

35. According to Shri Pattom Thanu Pillai, Chief Minister, Kerala, pujaris should be trained not only in Hinduism but also in matters relating to the modern world through lectures and discourses by religious persons. At present pujaris are functioning in Kerala without any learning or knowledge regarding religion.

36. Shri Thaikad Subramania Aiyar, Ex-Advocate General, Kerala, pleaded not only for the proper training of the archakas but also for some proper supervisory or controlling authority to find out whether the people concerned with the pujas, etc., are also really devoted to the temple.

37. Shri S. Vaidyanathan, Private Secretary to the Maharaja of Travancore, has stated that it is necessary to have an institution which would in addition to the normal Sanskrit education impart to pujaris a knowledge of agamas and tantras.

38. The Assistant Commissioner, Hindu Religious and Charitable Endowments, Mangalore, in his note said that the Coorg Temple Fund Committee in charge of the scheduled temples in Coorg felt strongly that qualifications for each kind of service in the temples should be prescribed and that the hereditary right of persons for appointment as archakas should be abolished and also appointment of unqualified persons prohibited.

39. Shri N. Ramesan, Transport Commissioner, Andhra Pradesh, has made the following suggestions. There should be at least one school for each agama like the Vaikanasa or the Pancharatra. Certain

minimum standards for the selection of the archakas should be laid down and it should be ensured in any scheme for the administration of each temple that there should be provision for qualified archakas for the temple and that worship is conducted in accordance with the injunctions of the sampradaya concerned. In order to bring about religious revival and also to supervise the work of the archakas he has also suggested that there should be at least one Pauranika or religious teacher whose jurisdiction may be fixed to cover 25 to 30 villages. He may be given a certain basic salary that should be enough to make him lead a contented life and if his expositions in his villages become popular and if the people give him some money by way of offerings or free food, etc. he may be allowed to accept them. His duty should be to collect people in the temple compound and expound to them in the layman's language the main puranic stories. In addition he should supervise the work of the archakas attached to the temple. There may be 40 to 50 such Pauranikas in the district and to supervise them about 4 to 5 better qualified scholars in higher scales and probably a very eminent scholar at the top. The scales of pay, etc., to be offered need not be very attractive or competing with those in Government service. It would be enough if a certain minimum standard of living is guaranteed and if necessary facilities of free accommodation in some out houses available with the temples or of a share in the produce of the temples are provided to enable them to maintain their family. There may be periodical meetings among these Pauranikas to exchange ideas. Each Pauranika will have to spend his life time within his charge of the 25 villages since much will depend upon the popularity which he is able to build up in his own charge.

Shri Ramesan felt that if a scheme on the above lines was prepared and implemented there would be any number of persons willing to take up the work.

40. Shri R. R. Rajamani Ayyangar from Madras suggested that archakas should be given some place in the administration of temples.

41. The District Judge, Rajahmundry, Andhra Pradesh, points out that some archakas in Andhra Pradesh are holding the lands of some temples with hereditary rights. These lands, if taken over by the Government *in toto* will not only cause hardship to the archakas but also give rise to endless litigation. Instead of taking over all the lands with the archakas, in his opinion, one-fourth or one-half should be given to them with absolute rights *without powers of alienation*. In his opinion this would encourage pujaris to do their duty willingly and remove possibilities of litigation.

42. The Committee constituted by the Government of Andhra Pradesh in 1960 to investigate the manner in which lands belonging to religious, educational and charitable institutions are being cultivated has observed in its report that even in a small temple there should be an archaka who should be paid at least Rs. 60 per mensem which it may be mentioned is less than the pay of a municipal sweeper. The Committee has recommended that in the case of small inams (up to 20 acres dry and 5 acres wet) the archaka of the temple

may be allowed to cultivate the temple lands provided that he discharges his duty satisfactorily and renders service to the institutions according to custom and usage. Besides being beneficial to the archaka such a procedure will also be beneficial to the institution, as the rents that will be realised by leasing out such holdings would not be sufficient to pay for the services of the institutions if the services are to be remunerated by payment of salary.

43. The members of the Tirunelveli Swami Nellaiappar and Sri Kanthinathi Ambal, etc. Devasthanams Trust Board, Tirunelveli, in a memorandum stated that in order to attract the right type of men the salary and emoluments of archakas should be increased and the hereditary system in vogue in some places should be given up. The Oriental College of Hindu Culture at Palni can have an annexe to train the archakas on right lines.

44. Shri Ananthasayanam Ayyangar, lately Speaker, Lok Sabha, and now Governor of Bihar, in his testimony before the Commission has suggested that archakas should be required to possess a minimum working knowledge of Sanskrit, the agamas of the particular institution, the meanings and significance of the mantras and archanas and the sthalapurana of the institution. He has expressed himself as being in favour of continuing the hereditary archaka system and has urged that they should be paid a minimum wage in addition to the offerings made voluntarily to them. They should also according to him have the benefit of provident fund and pension.

45. The Sankaracharya of Kamakotipeetam and the Sankaracharya of Sringeri have both emphasized that archakas and pujaris should be trained in the traditions and rituals of the particular denominations and that no person not qualified in the sense of knowledge of Vedas, Agamas, pujapaddhati and their significance should be allowed to officiate in temples. The Sringeri Swami is also of the view that institutions for their training should be established all over the country and that in the matter of appointment a hereditary archaka who has been duly trained should have a preference over a qualified outsider.

46. The view that archakas and pujaris should be properly trained and that only such of them as are holders of some certificate from a recognized institution should be appointed is shared by Shri Sri Prakasa, Ex-Governor, Maharashtra, Dr. P. Subbarayan, present Governor of Maharashtra, Shri Morarji Desai, Minister, Central Government, Shri C. B. Gupta, Chief Minister, U.P., Shri A. G. Kher, lately Speaker, U.P., Dr. K. M. Munshi, Shri T. L. Venkatarama Iyer, lately Chairman, Central Law Commission, Shri P. Satyanarayana Rao, and by many others.

47. Dr. P. V. Kane, Bombay, has suggested that the archakas should be trained in an academy for five or six years in agamas, Sanskrit, etc. and given religious *plus* secular education. In the case of hereditary archakas not properly qualified, qualified deputies should be appointed by them till they themselves get qualified.

48. Swami Kuvalayananda of Bombay is also of the view that archakas should pass regular examinations in agamas, puja paddhati and paid adequately and allowed the benefit of provident fund. He feels that they should retire at the age of 55.

49. Shri Shantilal Shah, Minister, Government of Maharashtra, has stated that nobody should hold the post of archaka unless he has some minimum education in religion and training in Karmakand and performance of archana, puja, etc. He has also suggested that the number of trainees should be restricted to the number of jobs that may be available.

50. Shri S. K. Patil, Minister, Central Government, has also urged that a part of the surplus funds of the temples should be spent towards imparting instructions for archakas and pujaris for religious education and that only those with some minimum qualifications should be appointed.

51. According to Shri Lakshmiah, Commissioner of Endowments, Andhra Pradesh, archakas conducting *Pratishtas* should have passed *Pravesa*, *Vara* and *Pravara* courses and be well versed in Sanskrit and Agama Shastras. Examinations in such courses are being conducted by the Tirumalai-Tirupati Devasthanams and archakas who qualify in such examinations are granted certificates. Shri C. Anna Rao, Executive Officer, Tirumalai-Tirupati Devasthanams also confirmed this position. Even in a small temple, according to Shri Lakshmiah, there should be an archaka who should be paid at least Rs. 60 per mensem.

52. Shri R. D. Nigudkar, Solicitor, Bombay, has stated that as apart from *niti* and *naimittik* pujas of the institutions, the worshippers or pilgrims require performance of puja, *abhisheks*, etc., it is necessary that the pujaris concerned should be able to perform their puja, *abhisheks* with all rituals prescribed therefor by the shastras. They should undoubtedly be fully conversant with the agamas and know the rituals of the institutions they serve. He further suggested that a tariff containing scales of fees payable by the worshippers to the pujari at the temple concerned should be prescribed and exhibited.

53. Shri T. V. Viswanatha Iyer, Advocate, Madras, is of opinion that patasalas for the training of archakas in rituals and agamas should be maintained under the auspices of the Endowments Department.

54. Prof. P. Sambamurti, Professor of Music, University of Madras, would like an experiment to be tried for installing an archaka hundi and supported the idea of setting up institutions for their training.

55. Shri K. S. Ramaswami Sastry, Retired District and Sessions Judge, Madras, and Shri Krishnaswami Iyer, Ex-Chief Justice, Travancore, have suggested that there may be a Central institution (not many institutions) for the training of archakas, propagandists, religious tutors, othuvans, etc. The college should provide various diplomas and degrees and each must be a diploma-holder before he assumes office. They should also be paid adequately.

56. Shri C. Subramaniam, formerly Minister of Finance, Madras, and now a Minister in the Central Government, emphasized that archakas should be trained even if there are no surplus funds (as part of the temples upkeep and maintenance charges).

57. Shri Uthandaraman Pillai, ex-Commissioner of Endowments, Madras, has stated that archakas in temples in the State of Madras are paid a minimum of Rs. 50 and a maximum of Rs. 250 per mensem and that they also get a portion of the archana fees. He has vehemently opposed the practice of archakas being allowed to take money because he felt that this would make them discriminate between a person who gives and another who does not give. He thinks that a minimum of five years' training in Sanskrit, and recitation of Dhyanaslokas, Thirumurai, etc., are essential.

58. Shri Mukat Behari Lal Bhargava, M.P., and Shri Gulabchand Kasliwal, both from Rajasthan, are also of the view that minimum qualifications should be prescribed and that only persons who hold a certificate should be eligible for appointment as pujaris or archakas. In the case of hereditary archakas, they can appoint qualified deputies till they themselves get qualified. Shri Kasliwal has added that in the erstwhile Jaipur State such a certificate was insisted upon and that this practice still continues so far as the temples under the State management in Rajasthan are concerned.

59. It is thus seen that practically all the witnesses agree that subject to the extent of the resources available, one of the first charges on the income of the institution should be the training of the archakas or pujaris so that they may discharge their duties satisfactorily and enlighten the public on the meaning and import of the ceremonies or pujas performed by them. We have carefully weighed the several suggestions and criticisms made by the witnesses and other persons and come to the following conclusions:—

(1) Every State should set up in one or more important Hindu religious centres, schools or institutions where archakas and pujaris and pandas should be given instructions in agamas, archana, puja paddhati, rituals, etc., according to a prescribed syllabus with provision for both elementary and advanced training. The elementary training should provide for (a) a working knowledge in Sanskrit, (b) a knowledge of agamas, rituals and mode of worship of the respective sampradayas to which the archakas belong and the *sthalapuranas* of the institutions to which they may be, or are attached and (c) a good working knowledge of the regional language or languages so as to enable them to explain to worshippers with facility the meaning and significance of the mantras and archanas.

The advanced training should in addition provide for the study of Shastras and the philosophy of Hinduism in general with particular emphasis on the tenets, etc., of the sampradaya to which the archakas belong. The institution should provide for refresher courses for the archakas already serving in the temples and part-time courses for such Hindu students from secular educational institutions who may volunteer for such training after their school hours. There may be a system of awarding stipends

to students who are willing to take up such training, preference being given as far as possible to the students from the families of the hereditary archakas and pujaris. The training should be organized in such a manner as would cater to the needs of the main sampradayas in the State. The institution should be financed from the surplus funds of the religious institutions of the main sampradayas pooled together on a Central basis or in different centres or regions from the pooled funds of a group of temples pertaining to a particular sampradaya, whichever course may be found appropriate.

(2) Provision should be made for prescribing minimum qualifications for the archakas to perform archana or puja in the temples. We recommend that such qualifications may, subject to suitable modifications in view of the local conditions, be (a) a working knowledge of Sanskrit (b) a good knowledge of the mantras, agamas, rituals and mode of worship, of the sampradaya concerned and (c) a knowledge of the sthalapurana of the institution to which they are attached or may be attached.

They should in addition be proficient in the regional languages so as to enable them to explain with facility the meaning and significance of mantras and archanas to pilgrims devotees and worshippers. Further they should possess a good moral character and basic learning, so as to inspire reverence in the worshippers.

(3) We are not in favour of abolishing hereditary rights wherever archakas and pujaris enjoy such rights, as such a course is bound to entangle institutions in litigation and would otherwise cause great hardship to a large number of archakas and their families enjoying the rights apart from the fact that they will also swell the ranks of the unemployed in the country. We are, however, emphatically of the view that every archaka, whether hereditary or non-hereditary, should be required to undergo some minimum tests of fitness and should qualify himself to perform his duties efficiently and properly. If the hereditary archakas are not so qualified, they may be required to appoint qualified deputies in their places until they or their descendants qualify themselves. In the matter of appointments first preference should be given to qualified persons who have a hereditary right.

(4) The archakas, pujaris, etc., should not be allowed to have a proprietary right to any part of the offerings made before the deity. They should also not enjoy any proprietary right of custody of the jewels and other valuable articles belonging to the temple.

(5) It is absolutely essential that archakas and pujaris should be ensured a minimum living wage and their emoluments fixed in suitable grades for various categories in order that they may not resort to beggary or extortion. They should also be allowed the benefit of a provident fund and pension at least in the case of big temples which can afford the same. The facility of free residence, near about the temple, should also be provided as far as practicable.

We would recommend that the minimum emoluments even in the case of archakas in small temples should be at least Rs. 60 per mensem in addition to dearness allowance and other allowances admissible to persons in Government service in the corresponding grades in the State service. In cases where temples are out of their own resources unable to afford such payment the pooling system already adverted to in respect of the income of the temples of the same sampradaya should be resorted to.

(6) The conditions of service of archakas and pujaris should be prescribed by rules and should among others provide for fines and suspension or removal from their office for misconduct or negligence of duty, disobedience of the directions of the trustees or other authorities concerned with the affairs of the temples. Adequate provision should be made for a right of appeal to a superior authority against the decision of a subordinate authority awarding punishment particularly in the matter of suspension or removal from office or reduction in emoluments.

(7) A code of conduct should be prescribed by rules for the archakas.

(8) A tariff containing a regulated scale of fees payable by the worshippers at the temple concerned for services like utsavas, pujas, *abhishek*, etc., should be prescribed and prominently exhibited in the temples. Persons should in all cases be issued receipts for the amounts paid by them.

(9) The State laws wherever they exist or are under contemplation should make suitable provision to implement the foregoing recommendations.

(10) As one of the primary objects of the endowments, there should be a reading of the scriptures, Puranas, etc., at least of those relating to the institution and the presiding deity and discourses thereon according to usage and custom and in a manner relevant to or in conformity with, the sampradaya of the temple or mutt concerned and provision should be made for this purpose within the premises of the temple or the mutt or in some other suitable place. Provision should also be made for inculcating religious ideas in the worshippers and the visiting public by the exposition of scriptures and episodes and extracts from the Puranas, Itihasas, etc.

(11) Arrangements should be made on the occasion of each utsava, *abhishekam* and archana for the giving of a full account for the benefit of the pilgrims in the regional language, of the history of the temple and its traditions and significance. These discourses should be based on Hindu scriptures, Puranas and traditions designed to inform the lay public of the details regarding the temple and the import of the various ceremonies performed and the prayers actually offered. We commend in this connexion the system in vogue in the Badrinath Temple and some other temples in the country.

(12) Trained religious teachers may whenever practicable be employed on a whole-time basis to go round a manageable group

of institutions belonging to a particular sampradaya placed under their charge in order:—

(a) to guide and supervise the work of archakas and ensure that worship in a temple is conducted properly in accordance with the tenets and usages of the Sampradaya concerned; and

(b) to give discourses, lectures, etc., to the members of the Hindu public so as to bring about a religious revival and enlightenment.

PANDAS

60. As already stated earlier, pandas are the dominant factors in most of the important religious centres in the North and particularly at Varanasi, Haridwar, Prayag, Vindhyachal in U.P., Puri in Orissa and Gaya and Deogarh in Bihar. The pandas travel extensively, arrange to meet pilgrims at railway stations and other places of resort, establish a clientele and offer accommodation and other assistance to them in their own houses or dharamsalas. They threaten the pilgrims and declare that divine displeasure will visit those who do not accede to their demands and unless they are paid whatever they ask for, no religious merit will accrue to them from a visit to the shrines concerned. In the result in many cases the pilgrims are deprived of all their cash and belongings and left adrift. One group of pandas claims that they are 'Manasputras' created by Brahma for the special purpose of being pandas and that unless these are fully propitiated the pilgrimage will be fruitless.

61. A gentleman in Gaya who comes from Mysore and whose ancestors were living there for three generations appeared before the Commission along with his son. He made very scathing comments on the methods of these pandas and said that they practically put their hands into the pockets of the pilgrims and threaten them that, if the amounts demanded by them are not paid, their pitrs (ancestral manes) would not be satisfied. They more or less denude the pilgrims of their belongings, since the maximum fee to be paid to them has not been laid down anywhere. Instances are known of demands for the payment even of all that the pilgrims possess or have brought with them including the ornaments of their womenfolk.

The Chief Minister, Bihar, in his testimony before us has stated that formerly the pandas at Baidyanath Dham had no right to take money from the pilgrims. Anybody going to the temple had to throw money at the foot of the deity. There was a case in the High Court as to whether the pilgrims had the right to pay to the deity only or to the pandas. The High Court ruled that the pilgrims could only pay to the pandas and since then the pandas are taking the major share of the offerings to the temples.

62. At Deogarh one person is called the high priest or the Sardar panda. His son and family are called musrif or retinue. Now this high priest is at loggerheads with the pandas. The high priest is interested in getting large money offered to the deity but the pandas are interested in getting as much money as possible for themselves.

The Chief Minister apprehends that with more and more restrictions the pandas would gain a position to gather more money. He quoted the example of the fees fixed for the mundan (or tonsure) ceremony at Deogarh which is Rs. 1/4/-. What happens is that 90 per cent of the mundan takes place outside the temple. There is bargaining among the pandas, the barber and the pilgrims. The pilgrim pays twelve annas instead of Rs. 1/4/- which he would have paid in the temple.

The pandas have got about 150 houses in Deogarh which are licensed under the Pilgrims Act. They have their own houses also where they accommodate the pilgrims. They render some service to the pilgrims. They would even go to Madhupur, Jaisidih and even to Kiul and induce them to stay at their places. At the eleventh hour they would take pilgrims to the temple and force them to part with all that they demand. Having enjoyed their hospitality the pilgrims are not in a position to say 'no' to them. At times these pandas even loan money and realise this money by visiting the homes of the pilgrims and establishing personal contacts.

63. Shri Sohoni, Commissioner, Patna Division, Patna, has told us that in 1937 there was a very important criminal litigation concerning Rajgir which was bitterly contested between Hindus and Muslims. As a result thereof it was established that the pandas have a legal and personal right to anything by way of financial benefit that a pilgrim might give them.

64. This harassment by pandas was tackled at Tirupati temple (better known as Balaji Temple in the North). In 1933 the management of the temple which prior to that year was under a Mahant was replaced by a Board of Trustees. The temple is now controlled by the Endowments Commissioner and managed by a Board of Trustees acting through an Executive Officer. For a considerable time after the changeover, the management had to face a lot of trouble from several quarters like archakas, the mahant, pandas or middlemen, the barbers and the purohits. The management negotiated with the pandas and succeeded in persuading them to be appointed as pilgrims guides by taking a licence from the Devasthanam and also by fixing a limit on the money they could take from each pilgrim as a reward, not exceeding Rs. 2 from a pilgrim per day in any case. The management spares no pains for ensuring the conveniences of the pilgrims and take charge of them right from the time they come to Tirupati station until they leave the place. Facilities for accommodation, food, transport, calm and quiet darshan in a queue, receipt of free prasad and safe journey back by even arranging the sale of a return ticket to them at the Devasthanam Office are all provided. Information centres and inquiry offices, give all necessary information regarding timings for the worship, rates of fees payable by the worshippers for various pujas, etc. These facilities have resulted practically in the total elimination of the middlemen, whose help the pilgrim no longer needs.

65. Under the Bihar Act the panda has not been specifically brought within the purview of the Act. The Hindu Religious

Endowments Board, Bihar, has therefore no jurisdiction over them. The President and members of the Board in their evidence have therefore expressed their helplessness in dealing with pandas.

66. We have received many valuable suggestions from a number of witnesses who appeared before us in Bihar and U.P. particularly the Chief Minister, Bihar, Shri Sohoni, Justice V. Ramaswami, the Chief Justice of the Patna High Court, and Sri Sri Prakasa former Governor of Maharashtra. The consensus of the opinions expressed before us is that effective steps should be taken urgently to curb the extortionate activities of pandas and to make the necessary provisions relating to them in the law relating to Hindu Religious Endowments. We have, therefore, the following recommendations to make in this behalf:—

(1) The State laws particularly in the Northern India (wherever such exist or are under contemplation) should specifically provide for controlling and regulating the activities of the pandas. Their compulsory registry and their scale of fees and disciplinary jurisdiction in the case of misconduct or extortion should be specifically laid down.

(2) Pandas in important Hindu religious Centres should be encouraged to organise themselves to act as qualified pilgrim guides. Adequate arrangements should be made to help them by providing a short course of training.

(3) A system of licensing pandas should be brought into vogue and none other than those registered should be allowed to act as priests and guides. A code of conduct should be prescribed by rules.

(4) There should be provision in the State laws enabling Government to lay down the maximum and minimum charges for particular services rendered by pandas and the scale of charges should be prominently displayed on notice boards in the temples; and pandas who take more than the prescribed maximum charges from pilgrims or harass them in any other manner should be dealt with by way of suspension and cancellation of their licences.

(5) Some type of queue system should be introduced in all important temples where pilgrims in large numbers congregate. The system followed in Tirupati can with advantage be adopted.

(6) Wherever pandas officiate as priests or perform other services in the temples, it should be insisted that they should be duly qualified for the duties which they are expected to perform. In the case of persons having hereditary rights, they should be required to nominate qualified deputies for the jobs and to hold themselves responsible for all the acts done by their deputies.

(7) As already recommended earlier, pandas also should have no proprietary right to any part of the offerings made by worshippers to the deity in the temples. Wholly voluntary gifts made to them personally stand on a separate footing.

CHAPTER VI

TRUSTEES

The origin of present day temples, has been dealt with by us in Chapter II of this Report. As already stated therein, most of these temples were built by great chiefs or Kings and endowed by them. According to the Puranas, when a temple is built and an idol is installed, the following officers should be appointed, namely, the acharyas, the pujakas, japakars or utterers of prayers, dancers, image bearers and door-keepers. Lands were set apart for the maintenance of all these officers who were treated as hereditary tenure holders so long as they performed the duties enjoined upon them. As long as the power of the chiefs or Kings who inaugurated the temples lasted, they exercised control over them but when on account of change of dynasties, revolutions, the poverty of the family of the founders or other causes, the Kings or the founders' family ceased to exercise any control over them, such control passed into the hands of pujakas, pandas, paricharaks, etc. In a very large number of temples, e.g., Kalighat in Calcutta, the pujaris assumed and asserted ownership of the temples and in respect of the offerings. They are called by different names in different parts of the country, e.g., Shebait in W. Bengal and Northern India, Dharmakartas or Panchayatdars in Andhra Pradesh and Madras and Urallens in Malabar. They generally engage other persons to perform the worship of the deity. In a few cases, e.g., the Dikshitars in Chidambaram, they combined in themselves the duties of pujaris as well as those of the Dharmakarta or Shebait. One thing seems clear namely that whoever might have been the person in whom the duty of administering the temples was vested, whether it was a shebait or archaka of the temple, he cannot but have occupied the initial position of a trustee with regard to the endowed property, although he may not be a trustee in the strict sense in which that term has been understood in English Law. As observed by the Judicial Committee in *Vidyavaruthi v. Baluswami* (48 I. A. P. 302) in no case is the property as such conveyed to or vested in him and he is not thus strictly a trustee under the English Law, but in view of the obligations resting on him, the person in management is answerable as a trustee for his conduct of affairs and in case of mal-administration.

2. In many cases the shebait or the dharmakartas are related by blood to the founder of the temple and the office has been hereditary in the family of the founder. In other cases the office is hereditary but does not inhere in the family of the founder but in that of some other person appointed by the founder as the manager. Both these cases are governed by the ordinary Hindu law of inheritance. In another category, the shebaitship has devolved by appointment by the founder or the holder of office for the time being. There is still another category where the shebaitship goes by election by a particular class of persons. For instance, the Dolois or managers of certain temples in Assam are elected by a class of persons called Barduries. Disputes regarding succession to the office of the shebait or manager very often arise. It is not possible to enumerate exhaustively the various usages that obtain in religious institutions

in this matter; nor can it be said that the usages are always in conformity with the presumed intentions of the founder. Complications also arise when additional gifts are made to an endowment by a donor and a new line of shebait is appointed by him so far as the additional gifts are concerned. The right to shebaitship or hereditary trusteeship is one of the most difficult points to settle, as it depends upon various factors e.g., the provisions made in the grant or the usage that has been in existence in the endowments. There are temples erected by persons by way of solace to their souls and they have sometimes executed trust deeds laying down the aims and objects of the creation of the trust. There is another type of contribution where the donor gets a temple erected and donates landed property towards the recurring expenses and appoints a member of his family as hereditary shebait. All such properties are generally dedicated in the name of the deity.

3. The duties of shebait, both spiritual and temporal, are as follows: It is their duty to take the image in their charge or custody. They must see that the idol or image is served in the traditional manner (including bathing, anointing, adorning with flowers and jewels, offering food and incense and prayers and invocations all of which processes involve appropriate mantras or recitations in most cases). Periodical festivals and daily and special worship have also to be conducted in the prescribed manner. (Mr. Justice Page in *Nagendra vs. Rabindra*—30 CWN 389 at page 396). When the shebait himself is the archaka, the pujas have also to be performed by him. In the language of Mr. Justice Sadasiva Aiyar, the rights of a shebait really appertain to his duties and it is not the duties that are subject to or appertaining to his rights (*Sundarambal vs. Yogavana Gurukkal* 38 Madras 850). The shebait has to observe scrupulously the usages of the temple and is bound to use such diligence and care in the management of the endowment as a man of ordinary prudence and vigilance would use in the management of his own affairs.

4. The legal position regarding the rights and obligations of those who have been charged by the founders of temples with the duty of carrying out the objects of such endowments has presented numerous difficulties, even after a large number of decisions by courts for more than a century. Though it has generally been accepted by courts that so far as the hereditary trustees are concerned both the elements of office and property and of duties and personal interests are blended together and neither can be detached from the other, it has also been held that they are bound to apply the funds at their disposal in carrying out the objects of the trust. According to ancient Hindu ideas whatever is offered to God is enjoyed by all beings and in this sense the offerings made by devotees in the temples can only be construed as meant for the use of the idol and consequently for the use of the body of worshippers and the shebait or whosoever is in charge of the temple can have no personal interest in the offerings, as he is a mere manager.

5. In certain States like Bihar and Bengal it had been the custom of Zamindars and other rich persons to construct private temples, instal idols in them for the worship of the members of the family.

Duties of a shebait or trustee.

Nature of office of trustee.

Temples claimed as private property by trustees.

endow properties for the worship of the deities and appoint members of their own families as shebait or trustees for the proper maintenance of the temples. But in course of time in most cases the general public came to worship in such temples and made offerings, as it is considered to be a sin according to the Sastras for a person to go to worship in a temple and make no offerings to the deity. Whatever doubts might have been entertained in earlier times, it appears reasonable to hold that any religious endowments where the public have resorted to them as a matter of right and as a matter of usage for a considerable period of time and where it is not affirmatively proved that the temple is situate either within the limits of a private house or premises or has been regarded and treated as the absolute and exclusive property of the owner of the image installed in the temple and also in cases where the shebait or manager receives donations and offerings from the public, the endowment in question is *prima facie* a public endowment. Viewed from this point of view a majority, if not all, of the temples which are now claimed to be private would fall in the category of public institutions and those who are in charge of them should be made accountable to the public in regard to the offerings made to the deity by the worshippers, notwithstanding that the general body of worshippers have been passive or neglectful in the matter of asserting the rights of the public concerned. We have already made a recommendation in this behalf in Chapter IV of the Report.

6. The history of legislation relating to endowments in the States will show that such legislation became necessary as a result of the almost invariable mismanagement of the endowed properties of temples by the trustees, misappropriation of the funds of the endowments for purposes unconnected with the original aims and objects of such endowments, utilisation of funds of the endowments by the trustees or managers for their personal purposes, etc. It will be proper in this context to mention the salient features in the enactments or proposed measures of some of the important States with regard to trustees (*vide* Appendix XI). Broadly speaking, it may be stated that these States have taken power to assert and exercise control over the properties of the endowments by making provision for submission by the trustees of a budget, of income and expenditure returns and for accounting and auditing, etc. The trustees of temples, whether hereditary or non-hereditary, have been made liable to penal action for wilful disobedience of orders, for malfeasance and misfeasance, breach of trust or neglect of duty or alienation of trust property misappropriation or improper dealing with such properties. The Commissioners of Endowments in some States have indeed felt that they should be vested with wider jurisdiction. For instance, they feel that the penalties prescribed under various sections are not adequate and should be enhanced. It has also been urged by some Commissioners that the duties of the trustees should be defined more clearly. It has been the experience in certain States like Madras Orissa and Andhra Pradesh that legislation has not been very effective so far as control over hereditary trustees is concerned. In Madras hereditary trustees are entitled to be the Chairmen of the Board of Trustees. The Managing Trustees are not very effective. Again, alienations of land by the trustees of various institutions are not always brought to the notice of the Commissioners and by the time

action is contemplated, alienation has already taken place. It has also been the experience of most of the Commissioners of Endowments that disinterested persons are difficult to secure to work as trustees of religious endowments. In spite of these limitations, we are of the view that where there is legislation defining the powers and duties of trustees, misapplications and defalcations of funds have been checked to a very large extent.

7. In States where there is no legislation with regard to religious endowments, e.g., in West Bengal, Assam and U.P. we have found that most of the institutions are in a deplorable state. The trustees of religious institutions in these areas have begun to assert absolute ownership over the properties of the endowments and the only remedy to contest such claims is a suit to be filed by two or more worshippers with the sanction of the Advocate General or of the officer authorised by the State Government under section 93 of the Code of Civil Procedure, 1908 (unless the Advocate General himself files the suit). It is only in very rare cases that the worshippers of the temple are so deeply interested in it that they come forward to spend money from their own pockets, to file and conduct suits up to the end braving all the chances of long delays and heavy costs; and even when they succeed in the suit, the amount awarded to them by courts by way of costs is in most cases incommensurate with the money, expended by them. In the States in which legislation has not been passed to define and delimit the powers of the trustees, the result has been that in pursuance of the claim of ownership in respect of temples and mutts properties, large alienations have been made and misappropriation and misuse have become rampant in many institutions.

8. It may be interesting at this stage to state the views of certain important witnesses who appeared before the Commission from States where there is no legislation at present with regard to religious endowments.

(1) Dr. B. C. Roy, Chief Minister of West Bengal, in the course of his evidence before the Commission has expressed the opinion that the trustees of temples which were claimed as private had no right to collect donations from the worshippers at those temples as they were doing at present, because the founders of such temples would have already endowed properties in the deeds of dedication for the maintenance and upkeep of the temples. He is also of the view that, if it was proved conclusively that particular temples which were claimed as private were accepting offerings from the public, they should be treated as public endowments.

(2) Shri Rama Prasad Mukerjee, Retired Judge of the Calcutta High Court, who also gave evidence, referred to the affairs of the Kalighat temple. According to him, the temple owned a large area from near about Kalighat Road to beyond the temple premises and the entire area had been gifted by one of the then Nawabs of Bengal. Now excepting a few bighas of land, all the rest have been sold away by the shebait.

Most of the debutter property is being treated as private by those in charge of the institutions. He has further stated that after the abolition of zamindaris, the position of smaller temples especially, will be very difficult because in most of these cases, the records of rights are in the name of particular persons as manager or shebait, and when they are sold, limitation comes in and the compensation is paid over to such persons and the endowment loses to that extent, and unless immediate steps are taken so far as Bengal is concerned, most of the smaller debutter estates would lose all the property. He has also given instances of temples which were working under schemes framed by courts, for instance, Deogarh temple and the Tarakeswar temple. His experience regarding such schemes has been that they are sources of litigation between the committees on the one hand and the trustees on the other and that matters are taken even to the Supreme Court. The trustees of the Kalighat temple who were examined by the Commission were not satisfied with the Scheme under which the temple was working and stated that a suit had been filed in 1949 against the Scheme and that it was still pending in the Supreme Court.

(3) Another instance of a grossly mismanaged temple is the Sri Krishna Mahaprabhu temple in Nabadwip. There are a number of shebaites attached to the temple. They themselves have formed a Committee for managing the temple. It was found during the course of our inquiry that there were about 100 shebaites connected with the temple and that there was a sort of rotation observed among them for the right of *seva* in the temple. During special festive occasions, collections of the particular day are leased out among the shebaites. There is no trust deed for the temple and no proper accounts are kept. In the Purana Temple in Nadia which is a public temple, the Maharaja who is the shebait has leased out all the portions of the lands of the temple which for generations had been used by the public at the time of festivals and for holding meetings for religious purposes. Shri Niranjan Modak in the course of his evidence has gone a step further and had stated "The shebaites only offer a few drops of Ganges water to the deity and whatever offerings and donations they get they utilize as their private property."

(4) Shri Suniti Kumar Chatterjee, Chairman of the West Bengal Legislative Council, an erudite and important witness, has stated before the Commission that he knew of instances where persons had installed deities in their houses and advertised to the people to come there and make offerings. They distribute such offerings among themselves. He quoted an instance of an old Kali temple in South Calcutta which originally belonged to certain members of the Tagore family. The Hindus of that locality used to go there for worship and make offerings. The surviving heirs of the Tagore family have now claimed the whole property as private property but at the same time they claimed concessions with regard to municipal taxes, etc., on the ground that the temple was a public one and got the concessions.

(5) In Assam we have found that the chiefs of temples are mostly hereditary and management was in the hands of those nominated by their predecessors. Accounts are not properly kept for the offerings received and the shebaites or the managers take away the entire

property. The trusteeship of the temples is practically divided among a number of families called *barduries* which form an electorate of 108. They elect the managers called *dolois*. These *barduries* were really Brahmins to whom lands had been assigned by the old rulers for the maintenance of temples founded by them. The *dolois* manage the puja by turns and the entire offerings coming to the temple are distributed among the office holders of the temple themselves and very little is set apart for the purposes of the temple. A lot of money is spent on suits and litigation arising out of the election of *dolois*.

(6) So far, as Uttar Pradesh is concerned, there is no legislation governing Hindu religious endowments except in the case of the Badrinath temple. In most cases, the trustees in charge of religious institutions have been treating the property of these institutions as their private property and alienating them at will. In fact, the evil has become so wide-spread that a Bill entitled the Uttar Pradesh Hindu Public Religious Institutions (Prevention of Dissipation of Properties) (Temporary Powers) Bill, was introduced in the State Legislative Assembly in 1960 providing for a survey of religious institutions and the appointment of Commissioners for the purpose of taking steps for the protection of property belonging to the institutions including arrangements for their safe custody. This Bill does not appear to have become law so far. The Viswanath temple at Varanasi is typical of the state of things which prevails in a large number of temples in this State. Here four families which have claimed hereditary rights over gifts and offerings made in the temple, have been litigating over their rights for more than 40 years, and although interim arrangements for sharing the income in rotation have been made either by order of the Court or otherwise no final solution of the problem is still in sight.

9. Having regard to the unsatisfactory state of affairs regarding the management of religious institutions in all States having at present no enactment with regard to religious endowments, as illustrated by the evidence of witnesses and as realised by us by first-hand enquiries in a number of cases, we are emphatically of the view that there should be a definitely prescribed control over the trustees of these religious institutions and that this result can be secured only by enacting legislation as most of the States have done, with of course such local variations as may be found necessary. It is far from our intention to suggest that there should be any interference in the rituals or even in day-to-day administration or management of the institutions by the trustees. What is essential is to set up by statute an effective machinery which will bring to light breaches of trust and provide for the prompt redress of grievances in respect of breaches of trust. There would be adequate provision in such legislation for the maintenance of proper accounts, audit of such accounts framing of budgets etc. by the trustees or other persons in charge. The appointment of trustees, their selection or election, and administration in regard to religious matters and the discretion to use the funds of the trust with a view to furthering the objects of the trust may be carried out in accordance with general and local custom and usage and in consultation wherever practicable.

Legislation regarding trustees considered essential.

with accredited and reputable representatives of the sampradaya concerned and others qualified to advise on Hindu religion and religious practices, so that there may be active co-operation between the Government authorities on the one hand and the trustees and religious denominations on the other. There may, however, be suitable and adequate provisions so as to enable the authorities to interfere effectively, whenever it is found that the above objectives and purposes are not carried out or are frustrated.

10. In dealing with questions relating to Hindu mutts and temples, their organisation and management, the succession to the office of matadhipati or trustee or dharmakarta, and the conduct of worship and ritual and cognate questions, it is essential to remember that endowments have been defined or decided to be public although a particular section of the public may have founded or endowed them.

The entire Hindu Public is entitled to participate in the benefit of the religious observances and worship therein subject to special customs and usages as to the persons entitled to perform special ceremonies with reference to items like recitation of particular texts and the performance of special acts of worship. The distinction between essential matters of religion and religious practices outlined in the Ajmer Durgah case (A.I.R. 1961 S.C. 1402) by the Supreme Court will be borne in mind whenever there is no special and recognised custom or usage and where there is a dispute as to whether a particular matter is a matter of essential religion or is an ancillary practice, the decision will be in the hands of the Tribunal contemplated in the Report which Tribunal will, in our opinion when necessary, act in consultation with the interests concerned.

CHAPTER VII

UTILIZATION OF SURPLUS FUNDS AND APPLICATION OF CY-PRES DOCTRINE

Before dealing with the utilization of surplus funds, it will be advantageous to envisage the historical background of the ideas which were inculcated by our ancient sages and seers is regard to the making of gifts by individuals. From very ancient times, according to the sacred writings of the Hindus, works productive of religious merit were classified into two divisions, namely, *Ishta* and *Purta* and this classification has been observed right down to our own times. The term '*ishta purta*' has all along been used in the writings of sages and commentators. In the Rig Veda, '*ishtapurtam*' is said to be the means of going to heaven and according to the celebrated commentator Sayana, this word denotes the gifts bestowed in *Srauta* and *Smarta* rites. It is also used in the same sense in *Taittiriya Aranyaka*. According to Sayana '*ishta*' denotes *Srauta* (Vedic) rites like *Darsa*, '*Purna-masa*' etc. and '*purta*' denotes *Smarta* pious or charitable acts unconnected with any *Srauta* or Vedic rites like construction of tanks and wells. It is relevant to observe in this connection that the term '*Yogakshema*' has also been used in various texts, for example in those of Manu and Gautama. Although various meanings are attributed to this term, generally Yoga is taken as an *Ishta* act and *Kshema* as a *Purta* act and these

latter terms (*Ishta* and *Purta*) are fully explained by Atri Likhita and Laugakshi.

2. Collating all the texts of Manu as quoted by Hemadri and Maheswara and of Sanka as quoted by Hemadri, the late Pandit Pran Nath Saraswati enumerates *ishta* works as follows:—

1. Vedic Sacrifices, etc.
2. Gifts offered to priests at the same.
3. Preserving the Vedas.
4. Religious austerity.
5. Rectitude.
6. *Vaisvadeva*, sacrifices.
7. *Atithya*, hospitality.

The form of *ishta* which is of most practical application under present conditions seems to be the last, *viz.*, hospitality. The exercise of hospitality or *Atithya* has been extolled in the Dharma Sastra of Apastamba and the Dharma Sastra of Baudhayana, the texts of Manu, the Satapatha Brahmana and Parasara. These texts dealt with the virtue of hospitality in its individual and domestic character. Along with domestic hospitality public institutions also existed, according to Wilson's commentary on the Rig Veda, for the reception and refreshment of travellers.

3. As regards the other class of meritorious acts namely, *Purta* it has already been stated that *Purta* means the gift bestowed as part of Smarta rites, that is work like the digging of tanks, wells, etc. After citing the texts of Narada, Yama, Varaha Purana, Vyasa, Jatu Karna and Sankha, the late Pandit Pran Nath Saraswati has compiled a list of the following *Purta* works:—

1. Gifts offered outside the sacrificial ground.
2. Gifts on the occasion of an eclipse, solstice and other special occasions.
3. The construction of works for the storage of water, as wells, tanks, etc.
4. The construction of temples for the Gods.
5. The establishment of processions for the honour of the Gods.
6. The gift of food.
7. The relief of the sick.

It appears from the various texts from Puranas cited by Hemadri in Chapter XIII of his Danakandam that the establishment of charitable dispensaries and hospitals (*Arogyashalas*) for the benefit of all communities under the superintendence of skilful doctors was a well-recognised form of religious charity. It may also be noticed that the bestowal of facilities for learning with the bestowal of land and cows, forms a group of three surpassingly meritorious classes of gifts, *atidanas* as mentioned in an Upanishad of the Sama Veda.

4. According to Hemadri who quotes from Nandipurana, Garuda Purana, Brihaspati and Vishnudharmottara, these authorities extol

the merits of educational gifts. Devipurana and Nandipurana mention different rewards for the gift of different *vidyas* or sciences. Religious merits of varying degrees of efficacy are also stated to be earned by the gift of Vedas, of Smritis and Puranas and by the hearing of Puranas. Besides, gifts to students in the shape of books, writing materials, food, clothing and instruments, land, house, furniture, or fields in fact all offerings contributing to the maintenance and well-being of students or necessary for the acquisition of the special branch of learning which they study, is considered to be conducive to the great religious merit of the donor. It is important in this context to remember that according to the Hindu doctrine of karma, the good or bad deeds of an individual produce corresponding results in the life after death and so the belief of Hindu donors when making such gifts was, undoubtedly that they will reap the heavenly fruits of their charities in the next world.

5. The list of *purta* works given in the previous paragraph is by no means exhaustive. Dharmashalas, rest houses, mutts for the residence of ascetics, the planting of trees and dedication of groves are also *purta* works mentioned by the commentators. It is significant that while the construction of a temple for the worship of an idol is enumerated as a *purta* work, the worship of guests on the other hand is brought under the strictly religious category of *ishta* work. One reason for this may well be that temple worship had no connection with a vedic sacrifice and was of a later origin and probably for this reason the construction of a temple was regarded as a *smarta* act of piety, and worship of guests, *i.e.*, hospitality being a sacrifice enjoined by the Vedas on every householder is treated as a *Srauta* or Vedic rite and is categorised as an *ishta* work.

6. This distinction between *ishta* and *purta* acts is due to the fact that, while the former relates to Vedic sacrifices, the latter does not. With the inevitable march of time, Vedic sacrifices fell into comparative desuetude and were performed in course of time only by a few. The result was that *purta* works became more significant, particularly as they were open not only to one but to all communities. Probably because of this reason later Smriti writers eulogised the merits of *purta* works and regarded them as the special means for securing salvation. Hence our ancient law-givers emphasised the merit of the planting of shady trees along avenues and the digging of ponds and lakes for the benefit not only of the agriculturists but also of the pilgrims or travellers on the roads. They did not distinguish, in essence between the purely religious life strictly so called and that wider form of religious life which takes care of the sick and the feeble, feeds and clothes the needy, ministers to their health and helps them during their stay in various tirthas and sacred places. It will be observed that in the Hindu system no strict line of demarcation between religion and charity is drawn and that religion and charity overlap each other. This seems to be understandable, for according to the Hindu sages and seers, Dharma or Rita or rule of righteousness is the upholder of the universe both in its moral and physical aspects and religion and charity are fused together in the conception of Dharma.

7. With this introduction we now turn to the question of the utilisation of the surplus funds of temples and mutts. At this stage, it

seems important to understand the meaning of the term 'surplus funds' for that term is construed by different persons in different ways. For instance, Shri K. Balasubramania Iyer, Member, Legislative Council, Madras, and Shri N. Raghunatha Iyer a distinguished journalist in Madras who was connected with the "Hindu" newspaper of Madras for a very long time, have both stated that there is no question of a legal surplus, if the funds of a temple are applied really to religious purposes and purposes germane to the institution. In fact they have gone even to the extent of maintaining that the surplus incomes in terms of lakhs shown in their accounts by certain temples are more or less the result of iniquitous imposts levied on worshippers at different times and stages. Some have also strongly urged that there are many purposes or objects connected with the temple on which it is quite necessary to incur expenditure and that if this were done, the income may not be sufficient even to meet such requisite expenditure connected with the religious institution and that the question of surplus will not really arise. In particular this view was put forward in connection with the diversion of surplus funds, or what is called, the application of the doctrine of cy-pres. Another interesting line has been taken by Shri T. M. Krishnaswami Iyer, ex-Chief Justice, Travancore High Court. He has questioned the necessity of religious institutions being burdened with a lot of property and accumulated surpluses, as according to him, there is absolutely no meaning in their acquiring property after the fulfilment of the original objects of the institution. It thus looks as if he is against the very idea of religious institutions having a surplus at all. Shri P. Satyanarayana Rao, retired High Court Judge and a former Member of the Central Law Commission and at present the Chairman of the Andhra Pradesh State Law Commission, has stated that the word 'surplus' in the context of availability of funds for utilisation for general purposes should not include *accumulated surplus* of previous years in the hands of the trustee, as it is only in the nature of reserve which often may be required for emergent purposes of the temple, for example, for renovation and repair, for providing amenities to pilgrims, etc., and that this fund should not be diverted to other uses. According to him, any surplus available for diversion should be the 'current surplus' i.e., the amount that remains after deducting current expenditure from current revenue. According to Shri Godse, Charity Commissioner, Bombay, the day to day expenditure of the particular institution should first have to be met and thereafter, the expenditure on objects nearly akin to the original objects will have to be taken into account and if any amount remains to be spent after all these objects are met, then it may be called surplus. According to the Concise Oxford Dictionary the word 'surplus' means that which remains over, what is not required for the purpose, in hand especially excess of public revenue over expenditure for the financial year as opposed to deficit. It is in this sense that it appears to us that the word is used in common parlance and is also commonly understood. *Prima facie*, this is the sense in which we should also like to use it.

8. The expression "what is not required for their purpose" would require some elucidation in the case of Hindu religious institutions.

Surpluses may be of two kinds: (a) those that have grown out of accumulation of past savings and (b) those arising out of the current revenue. As regards (a), some amounts may have to be put by in a reserve fund, and the balance left thereafter would be the true surplus. As regards (b) there are (i) apparent surplus (ii) hidden surplus and (iii) true surplus. (i) covers cases in which essential requirements, e.g., as to necessary repairs, the needs of sanitation and cleanliness and elementary amenities have not been attended to; the surplus that might at first sight appear to exist has to be reduced by the amounts needed for such requirements to show the true surplus (ii) covers cases in which excessive amounts are shown under particular heads (iii) covers cases where the essential requirements have been fulfilled and the surplus that appears is thus a genuine surplus. In all cases, as regards the current revenues, if the budget is properly drawn up the true surplus can be ascertained. Where the objects of an endowment are clearly specified in a document or are undisputed, there should be no difficulty in finding out what sum would be left after those objects have been duly carried out; such sum would be the surplus. Where no specific objects can be discovered from documents or usage, our suggestions made below as regards obligatory objects and other desirable objects should, in our opinion, apply, subject to such priorities as may be appropriate in each case and to the amounts considered adequate in respect of each of such objects. These two limitations would be matters for consideration when budgets are prepared. The priorities may not be identical in the case of any two institutions and may, again, vary from year to year. Similarly, the amount needed for an institution in a particular year may not be identical with the corresponding amount for another year. In cases where no specified objects can be said to exist, ordinarily there would be no surplus in the strict sense of the term, at least in the majority of cases.

9. Surpluses, if any, accruing to temples are spent at present by the trustees thereof in accordance with their needs, the usages or practices prevailing there, the statutory provisions on the subject, if any, and the instructions, if any, issued from time to time by the authority in charge of these institutions. Various witnesses have testified before the Commission to the manner in which the surplus of temples and mutts has been utilised or the manner in which in their opinion it has to be utilized. We give below briefly their opinions or suggestions and also our own brief comments thereon.

10. Some of the witnesses have urged that the surplus may be utilized to start universities or centres or colleges in which general education is imparted along with religious education on the lines of the divinity schools or theological colleges in the West. Among the more important witnesses who are in favour of this suggestion are Shri M. Anathasayanam Ayyangar, ex-Speaker, Lok Sabha, now Governor of Bihar, Shri Biswanath Das, now Governor of U.P., Shri Morarji Desai, Finance Minister of the Central Government, Shri S. K. Patil, Food and Agriculture Minister of the Central Government, Shri Mohanlal Sukhadia, Chief Minister of Rajasthan, Shri B. Patnaik, Chief Minister of Orissa, Shri B. N. Jha, Chief Minister of Bihar, Shri Pattom Thanu Pillai, Chief Minister of

Kerala; the Maharaja of Cochin and the Sankaracharya of Sringeri. The Sankaracharya of Kamakotipeetam is, however not in favour of adopting this suggestion, as in his opinion these colleges should be established with funds collected from the Hindu Public and not with the funds of temples. In our view if there is a surplus available in any religious institution or mutt, it ought to be their primary objective to arrange for that intensive and liberal education in the ideals and faith which has found expression in these institutions and mutts. Such education should be made available to those interested therein and it seems that the best method would be to utilize the surplus and even to arrange to pool the surpluses of institutions following the same *sampradaya* or creed for inaugurating some centres of instruction in selected places in India on the analogy of the theological universities of the West and of Taxila and Nalanda and Kanchipuram in the past. Every other country like England, U.S.A., New Zealand has colleges of divinity and awards degrees in divinity and spiritual learning. In these colleges the principles of Christian religion are taught along with instruction in comparative Religion and the Humanities. The mode of worship is explained formally and formulated and the main doctrines of the faith are expounded. We therefore think that such central institutions or centres of training in India may be set up in different parts of the country—one in the North, one in the South, one in Western India and one in the North-East of India for the purpose of training people and equipping them in spiritual learning and the background of our philosophy. They should not be centres of dogmatism or disputation, but they would impart general religious education over and above what may be called general liberal education in the arts, sciences and technology. Persons who go to Oxford or Cambridge, take the degree of B.D. or D.D. and this degree is considered quite as good an equipment for life as a Ph.D. or D.Litt. and they are considered as proper avenues for public employment and public careers. We, therefore, recommend that if there be surpluses in temples, it would be very desirable to utilise a portion thereof for the purpose of establishing such colleges. Contributions for the establishment of these colleges may be made from the endowments, wherever possible, voluntarily, but power may be taken by legislation to require the managements of endowments to make such contributions where there is a definite and ascertainable surplus. Such surpluses may also be appropriately used for founding scholarships, fellowships, prizes and lectureships in existing institutions and universities so as to encourage the study of religion or any particular aspect of it or the tenets of a particular doctrine or philosophy or *sampradaya*. We have little doubt that if such schemes are formulated and duly publicised, large benefactions and numerous smaller donations will be forthcoming from the members of the Hindu public who are now becoming specially interested in the inculcation of spiritual values and in the promotion amongst our youth of mental discipline and emotional integration. The appointment of the Sri Prakasa Committee and its Report are symptomatic of the present tendencies.

11. Another suggestion is that there may be central or regional institutions for imparting instructions on Hindu Philosophy, Psychology, Yoga etc. Among those who have supported this suggestion

are the Sankaracharya of Dwarka Peeth, Shri Pattom Thanu Pillai, Chief Minister, Kerala, Dr. Kane, Shri Sumant Bhat, Charity Commissioner, Gujarat, Shri P. Lakshmaiah, Commissioner of Endowments, Andhra Pradesh, Shri R. D. Nigudkur, Solicitor to the Government of Maharashtra and Shri C. Anna Rao, Executive Officer, T. T. Devasthanams. We would strongly recommend the adoption of this suggestion. Our comments at the end of paragraph 10 regarding the making of contributions also apply to the making of contributions for the establishment of these institutions.

12. In Chapter V which deals with *archakas*, etc., we have recommended that they should be trained properly and adequately so that they may infuse in the worshippers and devotees a spirit of belief in and reverence for the presiding deity and the religious philosophy associated with that deity and thereby elevate the spiritual atmosphere of temples and that suitable training schools or colleges should be established for this purpose. We have also recommended that *archakas*, pujaris, etc., should be adequately remunerated so that they need not resort to extortion or fleecing of worshippers or pilgrims or to begging from them. In our opinion this is not only a legitimate charge on the surplus but should also have a high preference. Our comments apply to the remuneration of other temple servants also.

13. Another set of witnesses have stated that the surplus should be utilised in furtherance of the objects of the institution and the proper performance of the services therein and in allied institutions. We do not think that there will be any one who will express his dissent from the imperative necessity for adopting the suggestion. In the course of our inquiry we have found that while there are temples with surpluses, there are also temples admittedly in deficit. For instance in Kanchipuram, there are temples with abundant resources, but the oldest and the most famous from the historical point of view is the Kailasanath temple, whose architectural and archaeological and historical importance is unsurpassed but which has practically no resources. Next to the celebrated Kamakshi temple in the same town is another ancient shrine now completely dilapidated and unused. There are also many other cases and the condition of such temples is so lamentable that after the lapse of some more years these temples may crumble and go to utter ruin. We wish to emphasise very strongly that such temples should not only be prevented from crumbling or falling down but should also be taken care of, preserved and improved and at least the daily worship maintained. It is very necessary that temples with surpluses should come to the succour of temples with poor or scanty resources, especially of the same *sampradaya* or denomination. Various witnesses among whom may be mentioned Shri Biswanath Das, Governor of U.P., Shri B. Patnaik, Chief Minister of Orissa, the Sankaracharya of Sringeri and the Sankaracharya of Dwarka Peeth have supported the suggestion.

Shri M. Ananthasayanam Ayyangar, ex-Speaker, Lok Sabha and now Governor of Bihar, has suggested that a common good fund might be created by the contribution of some portion of the surpluses of temples of the same *sampradaya*. We observe in this connection

that in section 97 of the Madras Hindu Religious and Charitable Endowments Act, 1959 (22 of 1959), the Commissioner has been statutorily empowered to create a fund called the Hindu Religious and Charitable Endowments Common Good Fund, out of the contributions made voluntarily by the religious institutions from their surplus funds or by any person for the renovation and preservation of temples in need of help and for the promotion and propagation of tenets common to all or any class of religious institutions. We are given to understand that in pursuance of this provision, contributions are being made voluntarily by the managements of religious institutions, though not always, to religious institutions of the same *sampradaya*. In our opinion this system of contribution may usefully be extended for the performance of services also in poor temples.

It would be very advantageous if on a voluntary basis the same type of common good fund can be inaugurated in the case of the mutts either generally or of mutts following the same *sampradaya* for the purpose of carrying out either for the whole Hindu community or for the mutts of a particular *sampradaya* the original purposes of such institutions.

14. Another suggestion that has been made is that the surplus should be utilised for the promotion of temple architecture or arts like sculpture, sacred music, etc. Shri Biswanath Das, Governor of U.P., Shri B. Patnaik, Chief Minister of Orissa, Shri Shantilal Shah, Minister, Bombay Government, Shri T. L. Venkatarama Iyer, formerly Supreme Court Judge, Dr. Raghavan, Professor of Sanskrit, Madras University and Professor Sambamurti, Professor of Music, Madras University, have supported this suggestion. We commend very favourably the adoption of this suggestion. As already stated by us in Chapter II, temples were centres of culture from very ancient times, and it is but right that temple architecture and sculpture, music and other arts should be encouraged and patronised.

15. Shri T. L. Venkatarama Iyer has suggested that the surplus may also be utilised for the publication of religious literature and making it available to the public at cheap rates. This suggestion has also been supported by Shri K. S. Ramaswami Sastry, retired District and Sessions Judge, Madras. We agree that surplus may properly and profitably be used for the purpose of publishing religious literature and making it available to the public at cheap prices. This will be one of the best means for the dissemination of the tenets of the *sampradaya* to which the institution belongs. Several mutts like Dharmapuram and Tirupanandal in the South are rendering valuable service in this direction.

16. Shri Bhaktavatsalam, Minister, Madras Government, has urged that the surplus of religious institutions may be used for maintaining gardens also which may be attached to the religious institutions, as flowers are required for the worship of the deity. This suggestion is also supported by Shri Shantilal Shah, Minister, Bombay Government and also by Dr. Raghavan, Professor of Sanskrit, Madras University. Dr. Raghavan has further suggested that the surplus fund may also be utilised for constructing *goshalas*. Shri Bhaktavatsalam has also stated that a dairy may be opened so that the milk produced

therefrom may be used for the Abhishekam of the deity and that the unused quantity of milk may be given free to children. In the Tirupati temple, we saw not only a *goshala* being maintained by the Devasthanams but also a *shala* for buffaloes. The milk from the cows is being utilised for Abhishekam and the milk from buffaloes is used for other purposes, e.g., for curd, for canteens. We feel that the utilisation of the surplus funds for the construction of gardens, *goshalas* or dairies is a step in the right direction.

17. Dr. Suniti Kumar Chatterjee, Chairman, Legislative Council, West Bengal has suggested that the surplus income should be utilised in the first instance for furthering education in Sanskrit studies, Hindu moral and religious institutions, dissemination in various ways of the basic principles of Hindu religion and philosophy, etc. Shri Shantilal Shah, Minister, Bombay Government, would recommend the utilisation of surplus for higher training in comparative religions or research in Hindu, Jain and Buddhist scriptures. Certain others like Shri M. Ananthasayanam Ayyangar, ex-Speaker, Lok Sabha and Governor of Bihar, Shri Biswanath Das, Governor of U.P., Shri S. K. Patil, Food and Agriculture Minister, Central Government, and Shri P. Satyanarayana Rao, ex-Madras High Court Judge, ex-Member Central Law Commission and at present Chairman of the Andhra Pradesh State Law Commission, recommend that the surplus may be used for studying Sanskrit or the opening of Sanskrit patasalas for this purpose. The Sankaracharya of Kamakotipeetam has suggested that the surplus may be utilised for the study of Vedas or the spread of Hindu Dharma and the tenets of the particular denomination. We are of opinion that the surplus may usefully be spent on Sanskrit studies, the study of Vedas, the opening of Sanskrit patasalas. It may also be usefully spent on the provision of libraries with religious books as suggested by Shri R. D. Nigudkar, Solicitor to the Bombay Government. In this connection we would also invite attention to our recommendation that there should be colleges of divinity or centres for imparting liberal or modern education along with religious instruction so that boys coming out of these colleges of divinity or centres may be well-versed not only in religious education (which would obviously involve a study in Sanskrit) but also in modern education, whereas persons studying in purely Sanskrit institutions are finding that they will not have the benefit of modern education and so will have no attractive careers after finishing their courses of study.

One suggestion which is akin to the suggestion referred to above and may be noticed in this connection is that the surplus should be used for arranging for discourses or *kalakshepams* to pilgrims and devotees by erudite scholars. Dr. Subbarayan, Governor of Bombay and Shri P. Satyanarayana Rao, Chairman, Andhra Pradesh State Law Commission, Shri Mauli Chandra Sharma, former member of Parliament and Professor Sambamurti, Professor of Music, Madras University, have all supported this utilisation. The importance of these *kalakshepams* or discourses in fostering the religious spirit of the masses cannot, we think, be too strongly emphasised. Discourses to pilgrims, worshippers and devotees by learned men and persuasive preachers and *katha* reciters can profoundly interest and enlighten

their audiences and rouse their latent or dormant religious enthusiasm. Viewed from another angle these discourses will also give a fillip to persons to study and prepare themselves for this type of avocation.

18. While some witnesses have advocated the utilisation of the surplus on purely educational institutions, others have advocated the utilisation of the surplus in respect of technical institutions also. Some others have pointed out that the purpose in view would be better served by granting scholarships or stipends or prizes to students in ordinary educational institutions, if along with their ordinary education, they undergo religious education outside school or college hours or if they pass some examinations intended to test the depth of their religious education. A few witnesses have questioned the propriety of using the funds of religious institutions for purely secular purposes. In fact Sri Chandramouli, ex-Minister, Andhra Pradesh and Shri K. M. Munshi, ex-Governor of U.P. have expressed their opposition to the diversion of the surplus to purely secular purposes. A few other witnesses have referred to instances where ordinary educational institutions have been founded out of the surpluses or funds of the religious institutions and pointed out that in these institutions, no attempt has been made to give religious or ethical education to the pupils therein, although according to them it stands to reason and justice that religious education should also be given when the funds of the religious institutions are being used for these institutions. We must confess to a feeling of sympathy with the point of view of those who urge that whenever the funds of religious institutions are utilised for starting or maintaining educational institutions, there should be a definite attempt at imparting religious education also and we are inclined to the view that if a choice had to be made between establishing or maintaining an institution imparting secular as well as religious education or an institution giving purely secular education out of the funds of a religious institution the choice should be for the former. Having regard to the evidence tendered before us, we would recommend very strongly the adoption of a system of granting scholarship, stipends or prizes to students and where feasible, also to the members of the public who undertake a systematic study of Hindu scriptures and philosophy. In fact Shri B. Patnaik, Chief Minister of Orissa, and the Sankaracharya of Kamakotipeetam have put forward this suggestion; the latter in particular has suggested the supply of even text books and grant of scholarships to young boys studying in elementary schools.

19. One important suggestion that has been made by many witnesses is that the surplus may or should be utilised for providing amenities to the pilgrims, worshippers or devotees who after all contribute in no small measure to the financial resources of these religious institutions. Prominent among those who have put forward this suggestion are Dr. B. C. Roy, Chief Minister of West Bengal, Shri C. B. Gupta, Chief Minister of U.P., Shri Mohanlal Sukhadia, Chief Minister, Rajasthan, Shri B. Patnaik, Chief Minister, Orissa and the Sankaracharya of Sringeri. Amenities may include the provision of:—

(i) Good drinking water;

(ii) adequate sanitary arrangements (suggested by Dr. B. C. Roy and Dr. V. Raghavan, Professor of Sanskrit, Madras University);

(iii) suitable accommodation in the shape of dharmashalas and rest houses;

(iv) medical relief in the shape of hospitals and dispensaries (suggested by Shri C. B. Gupta, Chief Minister of U.P., Shri V. Ramaswami Iyer, Chief Justice, Patna High Court, the Chairman and Members of the Travancore Devaswom Board, Dr. Raghavan, Professor of Sanskrit, Madras University in favour of Ayurvedic dispensaries);

(v) leper homes (Shri C. B. Gupta, and Dr. Raghavan);

(vi) poor homes, widow's homes, and orphanages;

Shri T. L. Venkatarama Iyer, former Supreme Court Judge and ex-Chairman, Central Law Commission and Shri P. Satyanarayana Rao, Chairman, Andhra Pradesh State Law Commission have expressed their opposition to the utilisation of surplus funds on hospitals and dispensaries. While the suggestion for opening poor houses and orphanages has found favour with some eminent persons like Shri M. Ananthasayanam Ayyangar, Dr. P. Subbarayan, Shri C. B. Gupta, the Sankaracharya of Sringeri and Dr. Raghavan, Shri T. L. Venkatarama Iyer and Shri P. Satyanarayana Rao have opposed the utilisation of the surplus on orphanages. We would invite attention in this connection to our comments on *Ishta* and *Purta* at the commencement of this Chapter and also to the comments of the late Bijan Kumar Mukerjee (former Chief Justice, Supreme Court) at pages 14 and 15 of his book "The Hindu Law of Religious and Charitable Trusts". As he has rightly pointed out, there is no line of demarcation between religion and charity in the Hindu system and they overlap each other. We, therefore, think that instead of adopting a rigid approach to the utilisation of surplus a more flexible approach may be adopted, especially having regard to modern trends and notions; but at the same time we are not unaware of a possible risk in adopting a very wide or sweeping application of the surplus to all and sundry objects based purely on modern notions and divorced from the spirit underlying the foundation of these endowments. Admittedly the task of drawing a dividing line between the two schools of thought is fraught with difficulty and is one on which there is room for honest differences in views.

We are definitely of opinion that it would be very proper to utilise the surplus on the provision of necessary sanitary arrangements for the pilgrims, devotees and worshippers, the provision of good drinking water to them and the construction of choultries, dharmashalas, rest houses, etc. for them. As regards hospitals and dispensaries, leper homes, poor homes, etc., as we have already stated at the commencement of this Chapter, according to Sankha, service of the sick is declared to be a *purta* act and the institution of charitable dispensaries and hospitals (*Arogyashalas*) for the benefit of all castes under the superintendence of skilful doctors was a well-recognized form of the charity according to the various

texts from Puranas cited by Hemadri in Chapter XIII of his *Danakhanadam*. It is also relevant to observe in this connection that in a well known temple known as Vaidiswarankoil in South India, there was a system of studying Ayurveda also and that system was practised in the environs of the temple. We, therefore, feel that it would be proper for the surplus to be utilised on the construction of hospitals and dispensaries. It is sufficient in our opinion if such hospitals and dispensaries cater to the ordinary needs of the pilgrims, worshippers and devotees who happen to resort to religious institutions. At the same time we would also say that they should not be much too ambitious and costly, for huge expenditure on this account will inevitably have the effect of depleting the surplus which should be available for other items also requiring assistance from the endowments. It should not also be forgotten that the provision of medical relief for the inhabitants including pilgrims and visitors is one of the obligations of the governments concerned.

20. One of the important suggestions made to us was that the surplus should be used according to a list of priorities drawn by us. Among those who have sponsored this suggestion are Shri K. S. Ramaswami Sastri, retired District and Sessions Judge, Madras, Dr. V. Raghavan, Professor of Sanskrit, Madras University, Shri C. Anha Rao, Executive Officer, Tirupati Tirumalai Devasthanams and Shri R. D. Nigudkar, Solicitor, Government of Maharashtra. The list of priorities suggested by them is given below:—

SHRI K. S. RAMASWAMI SASTRI

1. Helping poor temples in the district for repairs, renovation and worship.
2. Training of archakas and pujaris in traditional rituals and meaning thereof in Saiva and Vaishnava cults.
3. Establishment of college of divinity to prepare religious lecturers and preachers to propagate Hinduism.
4. Providing suitable amenities to pilgrims.
5. Publication of agamas and history of every temple.

DR. V. RAGHAVAN

1. Improvement of pujas, dittams and festivals.
2. Minimum wages by way of salaries, allowances, fees, etc., to archakas and temples servants with due regard to modern economic conditions.
3. Regular teaching of archakas in Sanskrit, sthala mahatmayam, agama governing the temple puranas and general knowledge of Vedanta and other Sastras.
4. Repair and up-keep of the temple with due consideration to the architecture, sculpture and other archaeological and artistic aspects of the temple.

5. Nandavanam and goshalas which are essential for daily pujas.

6. Sanitation, water supply, rest houses, food and other amenities to pilgrims.

7. Maintenance of expounders of religious texts, instrumental musicians like Nadaswaram, players, singers of religious music like othuvars, arayars.

8. Ayurvedic hospitals, orphanages, regular homes for destitutes and some sort of houses or monasteries for old religious people who may live there in old days.

SHRI C. ANNA RAO

1. The purposes for which the temple or endowment was originally intended by donors or for which the temple stands, namely, to keep the temple clean and in good repair and for the conduct or worship, decoration, etc., of the deities. The premises, the appurtenances, tanks and *tirthams* attached to the temple should be maintained properly and in good condition and free from encroachment and obstruction. The needs of the temple, namely, pujas, naivedyam, festivals and other services should be fully met.

2. Training of the archakas and other office holders of the temple in the tenets of the sampradaya of the temple or the religious institution.

3. Amenities to the pilgrims in the following order:—

- (a) Good and easy darshan of the deity and the performance of religious functions;
- (b) accommodation and shelter (dharmashalas);
- (c) supply of wholesome food by the distribution of prasadam and by running departmental canteens;
- (d) arrangements for good drinking water, sanitation, medical aid, lighting, communications and transport;
- (e) information or service centres at several places for the benefit of the pilgrims in their area to help them with information about their pilgrimages and other facilities available at the temple or the institution;
- (f) propagation of the tenets of the temple and the Hindu dharma.

If there are surpluses left after all the above needs are met, they may be utilised for:—

- (a) establishment of central or regional institutions for training in the fundamental principles of Hindu religion and philosophy and for aiding needy religious institutions;
- (b) promotion of temple arts like temple sculpture, architecture, sacred music and the Sanskrit language;
- (c) starting poor homes for disabled, orphanages for the destitute children and hospitals for the sick;

(d) starting of schools and colleges.

SHRI R. D. NIGUDKAR

The surplus income should be spent on—

- (a) keeping the premises clean and beautiful;
- (b) planting trees and maintaining gardens which may yield fruits and flowers for the pujas of the deity;
- (c) providing a library with religious books;
- (d) providing religious discourses; and
- (e) providing minimum amenities to the pilgrims and worshippers, constructing dharmashalas.

21. Before considering the question of priorities, we would like to advert to the system prevailing in Madras which is analogous to a system of priorities. Under section 86(2) of the Madras Religious and Charitable Endowments Act, 1959 (22 of 1959) the trustee of every religious institution is required to make in every budget adequate provision for:—

(i) the due maintenance of the objects of the institution and the proper performance of the services therein;

(ii) the due discharge of liabilities of loans binding on the institution;

(iii) the repair and renovation of the buildings connected with the institution, the provision made under this clause being not less than 25 per cent of the surplus in the income of the institution for the year;

(iv) the contribution to the reserve fund of the institution at such percentage of the income as the Commissioner may fix;

(v) the maintenance of a working balance. After making adequate provision for the purposes referred to above under section 35 of that Act the trustee of a religious institution may incur expenditure—

(a) on arrangements for securing the health, safety or convenience of disciples, pilgrims or worshippers resorting to the institution; and

(b) for the training of archakas, adhyapakas, vedaparyanikas and othuvras.

While incurring expenditure under section 35 the trustee is required to be guided by the instructions given by the Commissioner or the Area Committee, as the case may be. Section 36 of the Madras Act empowers the trustee, with the previous sanction of the Commissioner to appropriate the surplus for any of the purposes specified in section 66(1), any portion of the accumulated surplus of the institution and if there is a surplus in the income of the institution for any year, after making adequate provision for the purposes referred to in section 86(2) and also for the arrangement of training referred to in section 35(1) any portion of such surplus. The trustee while appropriating a surplus under section 36 is also required to give preference to items (a) to (g) of section 66(1) but the provisions of

section 36 do not preclude the trustee of a mutt or of a specific endowment attached to a mutt from utilising the surplus in such manner as he deems fit. Section 66(1) empowers the Deputy Commissioner to direct the appropriation of the endowments of a religious institution to all or any of the purposes specified in that section after he is satisfied that the purpose of the institution has from the beginning been or has subsequently become, impossible of realization.

Items (a) to (i) which enumerate the various purposes to which the Deputy Commissioner may order the appropriation of the endowment of the institution are as follows:—

(a) the grant of aid to any other religious institution which is poor or in needy circumstances;

(b) the grant of aid to any religious purpose connected with the Hindu religion;

(c) the propagation of the religious tenets of the institution;

(d) the recitation of Divya Prabandham and Thevaram and the like;

(e) the establishment and maintenance of schools for the training of archakas, adhyapakas, vedaparyanikas and othuvras and for the study of Divya Prabandhams, Thevarams and the like including the study of Indian languages for that purpose;

(f) the establishment and maintenance of a university or college or other institution in which the main features shall be the provision for the study of Hindu religion, philosophy or sastras or for imparting instruction in Hindu temple architecture;

(g) the establishment and maintenance of educational institutions where instruction in the Hindu religion is also provided;

(h) promotion of fine arts and architecture;

(i) the establishment and maintenance of orphanages for Hindu children;

(j) the establishment and maintenance of asylums for persons suffering from leprosy;

(k) the establishment and maintenance of poor homes for destitute, helpless and physically disabled persons; and

(l) the establishment and maintenance of hospitals and dispensaries for the benefit of pilgrims.

The proviso to section 66(1), however, enjoins that in the case of a religious institution founded and maintained by a religious denomination or any section thereof, the endowment should, as far as possible, be utilised for the benefit of the denomination or section concerned for the purposes mentioned in that section.

22. We have devoted considerable thought and attention to the question whether a list of priorities should be specified in the Act itself or whether we should leave to the management of each temple the discretion of applying the surplus to the objects which it has in

view. On the one hand there is an undoubted advantage in specifying the objects to which the surplus should be applied for this will minimise, if not altogether eliminate, any tendency on the part of the management to apply the funds to objects or purposes which may not be quite urgent or germane to the institution. At the same time it seems that some amount of discretion should be given to the management, as this will enable it to focus its attention on the needs of the temple. We, therefore, think that it will be desirable to divide the objects and purposes into two categories—one obligatory and the other desirable. In the former category, such objects or purposes as it is essential for the management to carry out may be included and in the other category, the remaining objects or purposes may be included. Even in regard to obligatory objects or purposes, it should never be forgotten that the surplus is likely to be a varying factor and it is just possible that the surplus in any year may not be sufficient to meet even the expenses connected with all the obligatory objects or purposes. We would, therefore, emphasise that, although we propose to draw up a list of these obligatory objects and purposes, our intention is that the entire surplus should not be spent on the first item alone of the list, leaving nothing at all for the succeeding objects or purposes. Our object in drawing up a list is to indicate the order of preference among the objects or purposes *inter se* and so it will be open to the management to determine a percentage of the surplus for application to each and every object. This will enable the management to adopt a flexible and elastic approach having regard to the needs of each temple *vis-a-vis* the objects or purposes. We would suggest that the following may be treated as the obligatory objects or purposes to be provided for in the budget:—

(1) The due maintenance of the objects of the institution and the proper performance of the services therein in conformity with ' *दित्त* ' or Dittam, namely what is ordained or prescribed.

(2) Payment of the salaries or allowances due to the archakas and pujaris and other servants of the institution and the adequate training of these functionaries such as archakas, adhyapakas, vedaparayanikas and othuvans (reciters of holy texts).

(3) The due discharge of liabilities of loans binding on the institution.

(4) The repair, renovation or extension of the buildings connected with the institution. Due care should be taken that adequate provision is made for these purposes.

(5) The contribution to the reserve fund of the institution which may be fixed at 5 per cent of the income.

(6) Maintenance of a working balance.

In this connection we may refer to the institution known as "dittam" in South India which is a prakrit form of *dishta* in Sanskrit, namely ordained or prescribed. "Dittam" would appropriately come under item 1 above. We have dealt with this topic at some length in paragraph 25 of Chapter XI which deals with management and administration.

23. If any surplus is left after making adequate provisions for the purpose mentioned above, then it may be applied to the following desirable or optional objects:—

(1) Arrangements for providing amenities to the pilgrims, e.g. accommodation, good water supply, lighting, sanitation and supply of wholesome food where the custom of Naivedyam or bhog obtains.

(2) Grant of aid to other religious institutions which are poor or in needy circumstances, of the same sampradaya as far as possible.

(3) Flower gardens and goshalas.

(4) Propagation of the tenets of the temple and the fundamentals of Hindu dharma common to all sampradayas.

(5) Publication of agamas and history of every temple, provision of library with religious books and publication of religious literature and making it available to the public free of cost or at a nominal charge.

(6) Provision for religious discourses and kalakshepams.

(7) The grant of scholarships or stipends to Hindu students who study in educational institutions and also undertake to study the Hindu religion.

(8) Promotion of temple architecture, sculpture and fine arts.

(9) Establishment and maintenance of institutions wherein both modern as well as Hindu religious education is imparted.

(10) The establishment and maintenance of colleges or institutions for the study of the Hindu religion, philosophy, Vedas or the agama sastras or contributions thereto.

(11) Establishment and maintenance of orphanages for Hindu children.

(12) Establishment and maintenance of asylums for leper patients and/or persons suffering from other serious ailment.

(13) Establishment and maintenance of poor homes for destitute and physically disabled Hindu widows, aged people and children.

(14) Establishment and maintenance of hospitals and dispensaries for the benefit of pilgrims, worshippers and devotees.

As has already been stated, the primary object of a Mutt, Asram or Akhada is to expound and popularise the tenets of Hinduism or of a particular Sampradaya of Hinduism. This can only be done if arrangements are made for the training and teaching disciples, Sadhus and Sanyasis and also for giving instruction to persons who resort to the Mutt, Asram or Akhada, for the purpose of enlightenment. Such teaching and training may be entrusted to persons belonging to categories of qualified sadhus or qualified lay teachers. A surplus in the case of a Mutt, Asram or Akhada can only arise after

these objects are fulfilled. Any surplus that may exist (as there does exist in quite a number of cases), may be expended on desirable objects as in the case of temples. It must be made clear that before a person is trained, he should be enrolled in a Mutt, Asram or Akhada which should be recognised by the authorities referred to in this Report and which should prescribe a body of rules and regulations therefor.

APPLICATION OF THE CY-PRES DOCTRINE TO SURPLUS

24. Charities were highly favoured by English equity courts and charitable dispositions have always been more liberally construed than in the case of gifts to individuals. It can be said that the introduction of the rule of Cy-pres in regard to the giving effect to the administration of charitable trusts is the result of such liberal construction. Cy-pres means "following as nearly as possible" the intention of the donor. Where a particular mode of charity specified by the donor is not capable of being given effect to and the donor has expressed a general intention of charity, the court would not allow the trust to fail but would execute it Cy-pres, that is to say, in some way as near as possible to that specified by the testator. According to the decisions of English courts on the application of the Cy-pres doctrine in the administration of charitable trusts, the first essential condition to attract the application of that doctrine is that the donor must evidence a general intention to charity. But where there is no general intention of charity, the doctrine has no application. Provided that there is a general charitable intention, to make the doctrine applicable, there must either be a failure of the specific object indicated by the testator or a surplus left after satisfying the particular purpose. It should also be noticed that the court has no authority to sanction any deviation from the donor's directions on grounds of expediency where they can be given effect to and it cannot apply the charity in a manner which it thinks to be more beneficial to the public.

25. Where the charitable trust takes effect in the first instance but subsequently fails, the Cy-pres doctrine is also applied if there is a general charitable intention. So also when the object of a charitable trust does not exhaust the entire fund, the court can always direct the application of the surplus fund in furtherance of the original intention of the donor. In the U.K., recently an enactment known as the Charities Act, 1960, was passed so as to make certain major reforms in the administration of charitable endowments. One of the reforms which this Act seeks to achieve is the extension of the Cy-pres doctrine so as to make it easier for the charity to adjust itself to the rapidly changed needs. Sections 13 and 14 of this Act which are more important deal with this matter and the provisions of those sections are briefly summarised below.

26. Section 13 defines the circumstances in which the original purpose of charitable gifts can be altered to allow the property given or part of it to be applied Cy-pres. These circumstances are:—

(a) Where the original purposes have been as far as possible fulfilled or cannot be carried out, or not according to the directions given or to the spirit of the gift; or

(b) where the original purposes provide a use for part only of the property; or

(c) where the property available under the gift and other property applicable for similar purposes can be more effectively used in conjunction and to that end can suitably be made applicable to common purposes; or

(d) where the original purposes were laid down by reference to an area which then was but has since ceased to be a unit for some other purpose or by reference to a class of persons or to an area which has since ceased to be suitable according to the spirit of the gift or property or to be practicable in administering the gift; or

(e) where the original purposes have been adequately provided for by other means, or have ceased to be in law charitable to provide a suitable and effective method of using the property available under the gift according to the spirit of the gift.

Cy-pres under section 13 can be made only when the founder of the charity has evidenced a general charitable intent.

27. Section 14 effects a substantive change in the law in respect of gifts and charities. Under the previous law where the donor has indicated only a specific purpose and that purpose has failed, his bounty or the unspent part of it was held on a resulting trust for his benefit, but in many cases the identity of the donor was unknown and so the money was held indefinitely in court until its payment to the person concerned on proof of his claim. The present section amends the law by permitting application Cy-pres where the property was given for specific charitable purposes with no general charitable intent and those specific purposes have failed and the donors either cannot be traced or disclaim the property which they had given. It has no application in a case where the original purposes were not charitable.

Section 14(1).—Property given for specific charitable purposes which fail is applicable Cy-pres as if given for charitable purposes generally, where it belongs to a donor who after reasonable inquiries cannot be identified or found or to a donor who has executed a written disclaimer of his right to have the property returned.

Section 14(2).—Raises a conclusive presumption without any advertisement or inquiry that property belongs to a donor who cannot be identified if it consists of certain proceeds, for example, collect box collections, lottery, etc.

Section 14(3).—Property not falling within section 14(2) may be treated by the court as belonging to donors who cannot be identified if it would be unreasonable to incur expenses for the return of the property to the donors or for the donor to expect the property to be returned.

Section 14(4).—Permits a donor who has not been traced by means of inquiries under section 14(1) (a) to come forward within twelve months and to recover a sum equivalent to the amount so applied minus the expenses incurred.

28. Opinions on the application of the doctrine of Cy-pres to the utilisation of the surplus funds of religious institutions are divergent. Some witnesses are not in favour of applying this doctrine at all, as they argue that the maintenance of temples and mutts and the fulfilment of its religious functions should and must exhaust all the funds, while others maintain that the surplus funds should be utilised for imparting religious instructions or for starting pata-salas where such instruction is imparted. The third view is to the effect that under present conditions, institutions designed solely for religious instructions would not be popular and that at least for the time being help should be given for imparting religious plus secular instruction. Others again take the view that humanitarian work like hospitals, leper homes, beggar homes and even ordinary educational institutions are within the scope of this doctrine in as much as service of humanity in general is service of God. It was probably in pursuance of this view that the Guruvayur temple gave a subvention to the Zamorin's College, Calicut and that the Udipi Mutts give assistance even for the construction of anatomical and educational museums and many other temples and mutts maintain wholly or partially educational centres where secular education is imparted. In this connection the views of the great religious dignitaries like the heads of the mutts of Kamakotipeetam, Sringeri, Dwarka and of the various Saiva mutts are worthy of notice. The head of the Sringeri mutt which was founded originally by Adi Sankaracharya himself, in the course of his evidence has stated that it should be laid down as a principle that the funds of temples and mutts should be utilised only for the furtherance of the religious tenets of the sampradaya concerned and that such funds should be spent only with reference to what may be called a religious outlook. The Sankaracharya of Kamakotipeetam has urged that scholarships should be given to candidates even studying in secular institutions and that they should get the benefit of religious instructions. He has also added that so far as students are concerned, irrespective of caste they should get religious instructions in their religious tenets. The head of the Dwarka Sankaracharya mutt has specially referred to the Intermediate college started by him and in fact he has gone to the extent of saying that Dwarka area needs higher education and people are not able to start that education and should be helped in this project. According to the memorandum given by the Secretary to the Dwarka Sankaracharya on behalf of the Sankaracharya, the following are the purposes for which surplus funds may be devoted:--

- (1) Furtherance of the objects of the temple or mutt.
- (2) Starting of central or regional institutions for imparting educational training on the principles of the main system of Hindu religious philosophy, psychology, yoga and other darshanas.
- (3) Starting training centres of religious urchas, discourses to sadhus, pujaries and archakas, etc.
- (4) Organising Hindu missionaries of sadhus and sanyasis to propagate the principles of dharma.

29. We have carefully considered the question regarding the application and extension of the doctrine of Cy-pres to the surplus

funds of Hindu religious institutions. While we are not wholly unsympathetic to the view propounded by certain witnesses, namely, that there should be no diversion of the surplus funds of religious institutions to secular purposes, we cannot at the same time shut our eyes to the situation as it now stands. In particular we note that section 66 of the Madras Hindu Religious and Charitable Endowments Act, 1959 has made statutory provision for the application of the doctrine of Cy-pres to the surplus funds of Hindu religious institutions and that sections 55 and 56 of the Bombay Public Trusts Act, 1950 also provide for such application. Having regard to these provisions which have on the whole been well received and have worked fairly satisfactorily and also to the need for developing a progressive outlook in consonance with modern conditions, we do not think that we shall be justified in saying that the doctrine should not be applied to the utilisation of the surplus funds of religious institutions. Although some witnesses have expressed the opinion that the Cy-pres doctrine has application only to charitable trusts, and not to religious trusts, it has already been pointed out in our comments on Ishta and Purta in paragraphs 1 to 6 that in the Hindu system there is no line of demarcation between religion and charity and that religion and charity overlap each other. The doctrine of Cy-pres in the opinion of the Commission is not in essence different from the basic Hindu definition of 'Ishta' and 'Purta' as comprising both religious and charitable objects. We, therefore, recommend that this doctrine should continue to apply to such surplus funds and that in States where there is no statutory provision for such application, there should be a definite provision to that effect. Further, we would recommend that provisions on the lines of sections 13 and 14 of the Charities Act, 1960, may also be embodied in our laws.

CHAPTER VIII

SUCCESSION

The question of succession to the hereditary offices in religious institutions is a complex one and does not admit of any uniform treatment or ready solution, as custom and usage, and rights and obligations are all so blended together that it is difficult to separate them. Before considering how the system of hereditary succession works or how far it is satisfactory, the modes of succession to the headship generally obtaining in a mutt (which by far is the more important category of Hindu religious institutions so far as succession is concerned) may be briefly examined.

2. Succession to the headship of mutts presents innumerable problems. According to Yagnavalkya, the property of a sanyasi or yati goes to his virtuous disciples. The law governing succession to the office of headship in mutts has been stated as follows by the Judicial Committee in the leading case of Rajgunga Akara in Burdwan [Girdhari Das Vs. Nandokissore Das Mahant (1867) 11 M 1A 405, 428] "The only law as to these mahants and their offices, functions and duties is to be found in custom and practice, which is to be proved by testimony". The law was more

accurately laid down by Peacock CJ of the Calcutta High Court: "If a person endows a college or religious institution, the endower has a right to lay down the rule of succession. When no such rule has been laid down it must be proved by evidence what is the usage, in order to carry out the intention of the original endower. Each case must be governed by the usage of the particular mahantee". There are three important points to be borne in mind in connection with the question of succession to the office of mahant or head of a mutt. Firstly, if the grantor has laid down any particular rule of succession, that has to be given effect to. Secondly, in the absence of any grant, the usage of the particular institution should be followed and thirdly the party who lays claim to the office of mahant on the strength of any usage must establish his claim affirmatively by proper legal evidence.

3: Broadly speaking, there are two categories of mutts, namely,

Classes of mutts and modes of succession.	(1) celibate mutts in which the head is an ascetic, and (2) non-celibate mutts in which the head is a married person. In the first class of mutts, succession may go, (a) by nomination or appointment by the last mahant, or (b) election by other mahants of the same persuasion or by the disciples, or (c) by nomination of the endower or founder. These three classes of mutts are known as <i>Mourasi</i> , <i>Panchayati</i> and <i>Hakimi</i> . In a majority of cases succession is by ordination and appointment by the existing head of the mutt during his own life time and if such an appointment is not made, the nomination may be made by the head of some allied institution or the successor has to be appointed by election or in the last resort by the court. This principle, however, is applicable only to celibate mutts. In cases where the head of the mutt is a married man, e.g., in the case of Gosavi mutts, besides the above modes of succession, another mode of succession is also possible, namely, the mahantship may go by succession to the last mahant's personal heir. In the case of celibate mutts where the head and disciples are expected to be celibates, marriage will act as a forfeiture of office [Ram Prakash Das Vs. Anand Das (1916) ILR 43 C 707 (719) LR 43 1A 73 (80) and Tiruvambala Desikar Vs. Chinna Pandaram (1915) ILR 40 M 177 (172)]. Another principle which has been recognised in regard to succession to the headship of mutts is that the presiding mahant cannot change the course of succession prescribed by the founder. Where the head of mutt is and ought to be an ascetic, he cannot prevent his chelas from succeeding to the <i>gaddi</i> by marrying and having children [Mahant Ramun Das Vs. Mahant Ashbul Das (1864) IWR. CR 160].
---	---

4: In some cases the nomination made by the existing mahant

Modes of succession by nomination.	does not require any confirmation by the disciples or by the neighbouring mahants. In the Ahobilam Mutt the usage is for the Jeer (Head) to nominate his successor. If no such nomination is made, the disciples assembled at the place where the Jeer died, have the right to elect his successor [Rangacharya Vs. Yagnadikshitar (1890) ILR 13 M 524 (530)]. It will be remembered that when a few years ago the Jeer of the Ahobilam Mutt who was on a tour of the country died at Naimisaranya, the disciples who
------------------------------------	---

were in his entourage elected his successor at the place of the Jeer's death. The eight mutts at Udipi founded by Madhvacharya follow a slightly different rule of succession. A youth from the personal or Poorvashrama family of the matadhipati who is a celibate is selected for ordination, but if no suitable youth from that family is available, a celibate Brahmin youth from a different family may be ordained. The existing Swamiji ordains a sishya during his life time, but when no disciple is ordained the allied Dwandwa Mutt ordains the successor to the late Swamiji. In the Vyasara Mutt in Mysore, the son of the Mahant is particularly prohibited from succession. The usual practice in Mysore is that when the Swamiji finds it difficult to carry out his duties, he consults the important disciples and makes a nomination and submits it to the Government for approval. The person to be nominated must be a sanyasi, i.e., a person who though originally married, has renounced the world and ceased to have any connection with his poorvashrama family. In cases where the nomination has to be confirmed by the neighbouring mahants and in default of such nomination by the existing head of a mutt, the neighbouring mahants or the disciples together with the other mahants or the disciples of the sanyasin institutions will have the right to elect a successor according to the usage of a particular institution. In the non-Brahmin Mutts in South India, as for instance the Dharmapuram Mutt, the Tiruvaduthrai Mutt and the Tirupanandal Mutt, the nomination and ordination of a junior Pandara Sannadhi by the presiding Pandara Sannadhi is the customary manner of selection for succession to the *gaddi*. In the case of mutts in Northern India, the general usage is for the incumbent of the *gaddi* to nominate and train a *chela* during his life time to succeed him. In some mutts, there is a restriction that the successor should be selected from among certain classes of persons and the person having right to nominate must select his successor from such a class. Thus, in the case of the Tirupanandal Mutt, the head of the mutt has the right to nominate his junior to succeed him, but the junior must be selected from among the Tambirans of the Dharmapuram Adhinam [Giyana Sambandha Pandara Sannadhi Vs. Kandaswami Tambiran (1877) ILR 10 M 375].

5. If the branch mutt is independent, the head of the parent mutt cannot exercise any control, unless such control has been provided for originally or established by usage. The head of the parent mutt will also not be entitled to nominate a successor to the branch mutt in the absence of any specific rule or in the absence of usage to that effect.

6. A head of a mutt who has a right to nominate forfeits such right if he is removed for misconduct from the headship [Sattappayyar Vs. Periaswami (1890) ILR 14 M 1 (12)]. It was also held in the case quoted above that the charge of immoral conduct subsequent to the appointment would be a valid ground for dismissing the head of a mutt who is required to be an ascetic. Even where the head of a mutt is permitted to marry, the leading of an immoral life by him is a sufficient ground for dismissal. Whatever might be the rules of succession to the headship of mutts, it has generally been accepted that the head of a mutt

has no right to change the succession or to impose restrictions upon the choice of the successor or attach conditions to the appointment or transfer or surrender the right vested in him to another.

7. During the course of its inquiry, we obtained the following evidence regarding the succession obtaining in different mutts in several parts of the country. For instance, in the Akhara Shri Niranjani Panchayati, Daraganj, Allahabad, all offices including that of the Mahant are filled by election triennially by Naga sadhu members of the general Panchayat. The elections are held on the occasion of the Kumbha and the Ardha Kumbha melas. In Sri Dakshinamurthy Mutt, Misra Pokhra, Varanasi, the head of the mutt is a sanyasi of the Paramhansa Order. He is nominated by his predecessor in office from amongst sanyasis of the Order in consultation with other heads of the *sampradaya* when they congregate on important occasions. In the absence of nomination by the predecessor, the nomination is made by the Chief Sanyasis of the mutts as well as the devotees. In the Auniatia Satra in Assam, the Satradhikar (Head) is an ascetic and a celibate. The office of Satradhikar is filled by nomination by the predecessor in office just before his demise. The Satradhikar in consultation with and the advice of the prominent devotees selects a young Goswami of a high family, makes him a Govindapuria who after some time is promoted as Dekhodhikar and finally succeeds the Satradhikar on his death. The young Goswami thus selected for the headship receives sound training in Sanskrit and the religious books pertaining to the sect and is made competent for the post of the head. In the Dakshinpat Satra (Assam) succession to the headship conventionally vests in the direct male line of the descendants of the founder's brother's family. The head of the Satra as a matter of custom nominates a son of his brother to succeed him. The other sons if any, are admitted as celibate disciples. Thus, in a way succession in this institution is partly by nomination and is partly hereditary. In the Bodh Gaya mutt in Bihar the succession is by ordination done by the predecessor, the choice being from amongst celibate sishyas. The succession to the mahantship of the Nikhil Bhartiya Niranjani Sadhu Sabha Teeja Maji ka Mandir, Jodhpur, is hereditary. The present mahant of the institution holds his office by spiritual descent, but his office will continue only in one family, the eldest son succeeding the father. This is an institution where marriage by the head thereof is allowed; he is also allowed to live with his family in the mandir. The family is also maintained out of the income of the institution. There is no bar to the succession by daughters in the absence of sons.

8. The office of the head priest of the Nathdwara Temple (Tilkayat) is hereditary and the choice is deemed to be from amongst the descendants of Sri Vallabhacharya, the eldest son of the head priest succeeding his father on the latter's demise. The office of the Tilkayat does not devolve by appointment by the founder or the holder of the office nor does it go by election. The head of the institution lives with his wife and children as the Vallabhacharya sampradaya allows the head of the sect to marry. The wife and children of the head live with him in a building adjacent to the temple and are supposed to have

been initiated into the cult of Pushtimarga sampradaya. Daughters are not eligible for succession. So far as the branch institutions of the parent institution are concerned, they are managed by lay men who are appointed by the Tilkayat.

9. In Bengal, generally the head of a mutt nominates his successor. In the Tarakeswar Mutt, which is by far the most important mutt in West Bengal, the mode of succession to the office of mahant of the mutt is by spiritual descent either by nomination of his successor or if there is no nomination, by election from amongst the mahants of the Tarakeswar Mandali according to custom, usage and tradition. In the Embar Mutt in Puri, Orissa, the Mahant holds office by virtue of a will executed by the late mahant nominating him as a successor. Succession to the headship in this mutt is hereditary.

10. The question has often been raised whether it is possible to lay down by legislation a uniform mode of succession by election to the offices of heads of religious foundations. It will be seen from the examples regarding the modes of succession prevalent in various parts of the country, as stated above, that it will be difficult, if not altogether impossible, to lay down a uniform policy with regard to the succession to the headship of religious institutions. It will be useful in this connection to state the views of some important witnesses on this question. Pandit Brij Nath Sharga, Advocate, Lucknow, Mahant Dig Vijay Nath, President Akhil Bhartiya Varshya Avadhoot Bhesh, Barapanth Yogi Mahasabha, Gorakhpur, Shri N. P. Asthana, Ex-Advocate General, U.P., Shri A. M. Chattopadhyaya, Retd. Accountant General, West Bengal, the Chairman of the Bombay Branch Advisory Board, Bharat Sadhu Samaj, Bombay, the Charity Commissioner, Bombay, Sri K. Balasubramanya Aiyar, MLC, Madras, Dewan Bahadur, K. S. Ramaswami Sastri, Retd. District Judge, Sri N. Sri Ram, President, Theosophical Society, Adyar, Madras, Shri T. V. Viswanatha Aiyar, Advocate, Madras, Shri Satyanarayana Rao, Chairman, Law Commission, Andhra Pradesh, Shri Mauli Chandra Sharma, M.P., Shri T. L. Venkatarama Aiyar, former Judge of the Supreme Court, Dr. P. V. Kane, H.H. the Sankaracharya of Dwarka Peeth, H.H. the Sankaracharya of Sringeri, Shri Anna Rao, Executive Officer, Tirupati-Tirumalai Devasthanam, Charity Commissioner, Gujarat, and the Commissioner of Endowments, Orissa, are of the view that it is not possible to lay down by legislation any uniform mode of succession to the headship of religious foundations by election. In fact, all of them are opposed to any idea of election to religious offices as this would vitiate the atmosphere by bringing into religious institutions all the abuses connected with election. They are further of the view that succession to the headship of religious offices should be left to the usage, custom and tradition of the respective institutions.

A few persons, however, hold a different view. For instance, Shri Shantilal Shah, Minister in Maharashtra, is of the view that hereditary succession in mutts, wherever it is in existence, should be abolished as far as possible. The heads of mutts or religious sects should be elected. The choice of a successor should not be left to the guru. The selection should be done by a body consisting of (1) a judicial person, (2) a sadhu or sanyasi, and (3) a follower of the sect of which the head is to be selected. These three persons should evolve

a proper system of selection of the head as well as to control and guide the affairs of the mutt in a proper way. Each sampradaya would have its own electorate. Shri K. M. Munshi is of the view that where a disciple is nominated by the head of a mutt to succeed him he should be appointed to the *gaddi* on the death of the *guru* only if he is found duly qualified by a Selection Board. Where there is no nomination, he should be chosen by a Selection Board comprising:—

(1) 3 heads of Sanskrit Mahavidyalayas.

(2) 2 lay worshippers of the mutt or shrine who, during the preceding 3 years, have given the largest donation to the institutions.

(3) 2 heads of institutions of the same *Sampradaya*. The Charity Commissioner assisted by the Selection Board, should be empowered by law, to remove the head of a mutt, on his being found guilty of personal misconduct of gross failure or neglect of his duties. Mr. Justice Bishambar Dayal, Judge, Allahabad High Court, is of the view that succession to the office of the heads of religious institutions should be by election. According to him eligible devotees duly enrolled as members should form the electorate. Voting may be by secret ballot or post to be cast during a period of a year or so. Shri Govind Das Panda, Secretary, Gantantra Parishad, Parlakimidi, is of the opinion that it would be advisable to lay down by legislation one uniform mode of succession to the offices of heads of religious foundations. For that purpose the members of the religious sect to which the succeeding head belongs should propose three names in order of preference from among them who are considered to be strictly observing the religious pursuits and practices and the final decision should rest with the Endowments Commissioner of the respective State. Shri P. Lakshmayya, Commissioner of Endowments, Andhra Pradesh has expressed the view that succession to the office of the head of the mutt may be by election subject to the approval of a Central Commission of religion which will *inter alia* co-ordinate the activities of all the mutts. Pandit Anant Misra, Sahityacharya, Talchar (Orissa), holds the view that succession should be by election and the voters should be those who subscribe to the views of aims and ideals of the institution. They should also have the power of recall of their deputies. Shri K. V. Krishnamacharya, Superintendent, Board of Revenue, Madras (Retd.) has stated that election as a mode of succession to the offices of heads of religious institutions is imperative. The election should not be by the general body of the particular denomination or sect to which the institution belongs but it should be confined to an electoral college of cultural and eminent scholars of the particular denomination or sect. The members to such colleges should be appointed by nomination by the existing head.

11. After considering the various views expressed by those who appeared before the Commission as well as by those who submitted memoranda to the Commission in this behalf, we are of the view that it will not be practicable to lay down by legislation one uniform mode of succession to the offices of heads of religious foundations. Men of

deeply religious temperament do not generally like to participate in electoral contest as a popular election more often than not introduces and generally inflames a party spirit and leads to corrupt ways and means which are obviously undesirable, particularly in religious institutions. As the usages and customs differ from one mutt to another, the adoption of any uniform mode of succession will evoke strong opposition and also lead to confusion, sectarian disputes and endless litigation. We therefore recommend that so far as succession to the headship of religious foundations is concerned, each institution should be allowed to follow its own custom and usage.

12. We have already stated while dealing with the origin of mutts

that the main object of these institutions is the propagation of the tenets of the sampradaya to which they belong and that with a view to achieving this object a regular line of religious preceptors has to be ensured. One point

which requires consideration in this connection is whether it is necessary to prescribe any qualifications for the heads of mutts to enable them to discharge their duties properly. Some witnesses have held the view that the qualifications are prescribed by the usage of the concerned institution and that it is not necessary to impose any qualifications based on modern ideas. But it cannot be denied that the objects with which the great Acharyas started these institutions would not be served if the heads thereof are not properly qualified for their tasks.

We have found in the course of our enquiry that in many cases, the heads of mutts or other religious sects are lamentably ignorant of the tenets of the sampradaya of which they claim to be leaders and guides and are not doing anything appreciable for the propagation of religion, which is their primary duty. The Commissioner of Endowments, Orissa, has stated that the matadhipatis generally select their own close relations to succeed them with the result succession has become practically hereditary. He was emphatically of the view that certain minimum qualifications should be prescribed for the mahants as many of them do not know anything of religion but are only agriculturists or peasants and succeed to office simply because they have been nominated by their gurus as successors. The Secretary, Legal Department, Mysore, stated that the system in Virakta mutts of selecting a disciple during the life time of the guru has not worked well. Some qualifications have to be laid down for the heads of mutts and the followers of the particular sampradaya should select the head. Having regard to the fact that many heads of mutts are not well versed in the tenets of the sampradaya to which they belong and in which they are supposed to have been initiated and also having regard to the fact that it is essential to maintain a high moral and spiritual standard in such institutions, we are of the opinion that it is necessary to ensure that the persons who succeed to the headship of the institutions possess certain essential qualifications and are adequately trained to perform their duties effectively. The opinion of witnesses has been practically unanimous that the heads of mutts should have a sound knowledge of the language, in which the scriptures of the sampradaya are written and also of the main tenets and books of that sampradaya. Though no academic qualifications as such

can be laid down for such offices, a sound general education, together with a good knowledge of the regional language is considered desirable. Moral and spiritual qualifications are of course of special importance. The head of the institution must be a man of unquestionable moral character and religious temperament, with implicit faith in the ideals and modes of discipline and the practices for which the institution stands and should be capable of giving instruction to the people in regard to these matters. They should be strict observers of *Nitaya Karma Anushtana* according to the specified ordinances. In the case of bigger mutts, the heads should be conversant not only with the particular system of philosophy of the mutts of which they are the heads but they should also be conversant with other systems of philosophy. In short, we are of the opinion that the head of the mutt should combine in himself moral and spiritual sanctity with a thorough knowledge of the tenets of the philosophy of the particular institution of which he is the head and with capacity to expound the tenets to his disciples and devotees in a language which would be understood by them. Other qualifications must include the attainment of the age of majority and renunciation of family ties before taking up the office of matadhipatiship, in all cases where sanyas and celibacy are regarded as necessary prerequisites. If a person has not been adequately trained by the head of the mutt for the time being, steps should be taken to ensure that he is so trained before he takes up headship of the institution.

We have recommended in a subsequent Chapter relating to management and administration the creation of a statutory Tribunal to deal with matters like claims to hereditary offices in temples, succession to the headship of mutts, essentials of religious practices in religious endowments, etc. In cases of dispute this body should also decide whether a person has been adequately trained or whether he has fulfilled the other requisite qualifications laid down before he enters upon the office of matadhipatiship. For this purpose, it should be empowered to consult such leaders of the sampradaya as are generally recognised to be fit to give advice on this matter.

13. Though the system of hereditary succession to the offices of trustees and other office holders in public temples may appear to be an anachronism in the present times, the fact remains that this institution has been in existence for generations and so firmly established that one cannot think of altering it without legislation which may have to provide for payment of compensation also. As regards the nature of the evidence required to prove an hereditary right to the office, the mode in which the office has been held will furnish material evidence for this purpose. The devolution of the office for generations from son to grandson is *prima facie* evidence that the office devolves by succession according to the ordinary law of inheritance. Similarly, the facts, that the members of a particular family held the office of the hereditary trustee continuously for more than a century and that there was assertion by them that it was so held will be good evidence that the office is hereditary in such family.

Succession to the offices of hereditary trustees and other hereditary office-holders in temples.

14. In States where the system of hereditary succession to trusteeship and other offices in religious institutions prevails and there is legislation relating to management and administration of the institutions, power has generally been taken by the administrative authorities to exercise control over the hereditary trustees and the holders of other hereditary offices in the same manner in which power to control the non-hereditary trustees has been taken. The salient provisions relating to hereditary trustees and their succession in a few important State enactments are given below:—

Provisions in State enactments relating to succession to the hereditary offices of trustees and other office-holders.

Section 45(1) of the Madras Hindu Religious and Charitable Endowments Act, 1951 (as amended by the Andhra Legislature) as in force in those parts of Andhra Pradesh which formerly formed part of the Madras State, vests power in the Deputy Commissioner and the Commissioner within their respective jurisdictions to suspend, remove or dismiss any hereditary or non-hereditary trustee or trustees for certain acts of omission and commission. Section 47(1) provides that when a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office. Sub-section (2) of the same section lays down that when a temporary vacancy occurs in such an office by reason of the suspension of the hereditary trustee under section 45(1) or by reason of his supersession under section 46(3), the next in the line of succession shall be entitled to succeed and discharge the functions of the trustee until his disability ceases. When a permanent or temporary vacancy occurs in such an office and there is a dispute respecting the right of succession to the office, the Deputy Commissioner may appoint a fit person to discharge the functions of the trustee of the institution until the disability of the hereditary trustee ceases or another hereditary trustee succeeds to the office. In making any such appointment the Deputy Commissioner shall have due regard to the claims of members of the family, if any, entitled to the succession. So far as office-holders are concerned, it is provided in section 48(2) that where the office or service is hereditary the next in the line of succession shall be entitled to succeed. In section 48(3), it has been provided, as in the case of hereditary trustees, that where there is a dispute respecting the right of succession, the trustee may appoint a fit person to discharge the functions of the office or perform the service until the disability of the office-holder or servant ceases or another person succeeds to the office or offices, as the case may be. In making any such appointment the trustee shall have due regard to the claims of members of the family, if any, entitled to the succession. Under section 49(3) any hereditary office-holder or servant who is affected by the order of the Deputy Commissioner under section 48(2) may prefer an appeal to the Commissioner against the order. Under section 53 of the Act, when there is a dispute regarding the right of succession to the office of a trustee of a mutt or specific endowment attached to a mutt, the Commissioner after making necessary inquiries may make such arrangements as he thinks fit till the disability of the trustee ceases or another trustee succeeds to the office. Here again, the Commissioner is required to have due regard to the claims of the disciples of the mutt, if any.

The Madras Hindu Religious and Charitable Endowments Act,
40 M of L—8

1959 (Madras Act 22 of 1959), contains provisions which are practically identical to those in the Madras Hindu Religious and Charitable Endowments Act, 1951 as amended by the Andhra Pradesh Legislature and as in force in that State. Section 53(6) of the 1959 Act provides that a hereditary trustee aggrieved by an order of suspension, removal or dismissal passed by the Commissioner or the Government may institute a suit in the Court against such order within ninety days from the receipt of such order.

Section 30(1) of the Orissa Hindu Religious Endowments Act, 1951 (Orissa Act 2 of 1952), lays down that when a permanent vacancy occurs in the office of the hereditary trustee of a religious institution the next in the line of succession shall be entitled to succeed to the office. Sub-section (2) of this section which provides for the filling up of a temporary vacancy in the office of a hereditary trustee is on the same lines as the provisions of the Madras and Andhra Pradesh Acts in that it provides that the next in the line of succession shall be appointed to discharge the functions of the trustee until his disability ceases. Section 36 of this Act provides that when a vacancy occurs in the office of the trustee of a mutt or specific endowment attached to a mutt and there is a dispute respecting the right of succession to such office the Commissioner may make such appointment and arrangements as he thinks fit until the dispute is settled or another trustee succeeds to the office, as the case may be. Section 39 lays down that, when the hereditary trustee of a mutt nominates his successor, he shall give intimation thereof in writing to the Commissioner. For the purpose of succession the nominee so intimated shall be recognised by the Commissioner. If no appointment is made during the life-time of a hereditary trustee of a mutt, the Commissioner shall have full power to appoint an interim trustee but in making any such appointment he shall pay due regard to the custom, usage and tenets of the mutt. Any person affected by the decision may prefer an appeal before the tribunal constituted under section 40 of the Act.

Under section 34 of the Mysore Religious and Charitable Institutions Regulation, 1927 (7 of 1927), no office or service in a Muzrai institution shall be deemed to descend by hereditary right unless it has been conferred or recognised originally with an express stipulation to that effect in writing by a competent authority or has been held successively by three generations of the same family in succession in due legal course. Section 36 of the Regulation provides that where a majority of not less than three-fourths of the devotees of a Muzrai Temple resident in the village or town in which the temple is situated object to the employment as pujari of a person claiming by hereditary right, such person shall be removed from office provided that the objectors pay to the claimant such amount by way of compensation as may be fixed by the Muzrai Officer.

Section 89 of the Travancore Cochin Hindu Religious Institutions Act, 1950 (15 of 1950), gives right to hereditary trustee who is removed for failure to conform to the provisions of Part II of the Act or the rules framed thereunder to apply to the Court to modify or cancel the order of removal by the Board. An appeal is also provided from such order of the court to the High Court within ninety days from the date of the order appealed against. Section 91 of the Act provides that where a hereditary trustee is suspended or removed or has ceased to hold office, the Board shall appoint as trustee a competent adult

male member of the family in which such trusteeship is hereditarily vested.

It will be observed from the provisions in the enactments cited above that the rights of hereditary office-holders to hold their office, and to pass them on to members of their families have been statutorily recognised. In some cases there is provision for an appeal to the courts against the decisions of the administrative authorities whereas in other cases there is no such specific provision.

15. The Commissioners of Endowments of certain States as well as some witnesses are against the continuance of the system of hereditary succession to trusteeship and other offices in religious institutions. The Commissioner, Hindu Religious and Charitable Endowments (Admn.) Department, Kerala, has stated that most of the temples in Malabar are managed by hereditary trustees many of whom are against the exercise of any sort of control over the institutions by the Department and drag the Department from one court to another against any administrative directions or any penal steps taken by the Department. The decision of the Supreme Court that "trusteeship is property" has emboldened them to defy the Department. Most of the trustees are also tenants of the institutions under them and there is no provision in the Act to remove such trustees. The Commissioner has recommended the abolition of hereditary trusteeship. He is also of the opinion that the hereditary trustees should be divested of all administrative powers, while retaining all emoluments, perquisites and rights, if any, attached to them by custom or usage. The Assistant Commissioner of Endowments, Tellicherry, Kerala, states that the provision for surcharge is ineffective in the case of hereditary trustees since most of them are old, and by the time the audit report is received and liabilities fixed, the trustee dies bequeathing his properties to his children. Such properties cannot be proceeded against for surcharge.

16. The Commissioners of Endowments in Orissa and Madras have also stated before the Commission that the system of hereditary trustees and office-holders is not functioning satisfactorily.

17. The Charity Commissioner, Gujarat is in favour of abolition of hereditary succession to the headship of religious institutions. According to him every religious institution should have a scheme and the scheme should contain provisions for succession. The custom and usage of the mutt should of course be taken into consideration. Some sort of appeal to a Board may be provided for acceptance of succession by a person to the headship of a mutt.

18. Shri R. G. Nigudkar, Solicitor to the Government of Bombay, is equally vehement in his criticism of the hereditary offices in religious institutions. He feels that there are conflicts *inter se* among the various office-holders and their rival claimants. They spend large sums of money on litigation and mulct the endowments in heavy costs. They render little useful service to the endowments. The

hereditary vested interests should be abolished in the same way intermediaries on land were abolished to bring about agrarian reform. The hereditary office-holders, according to him, should be brought down to the level of ordinary servants, if necessary, by payment of compensation.

19. If there is a strong trend of opinion against the retention of the system of hereditary trustees, particularly from the administrative authorities who are charged with the duty of implementing the provisions contained in the various enactments, there is an equally strong volume of public opinion against any interference in the existing scheme of things. Indeed a number of witnesses are vehemently against Government interference in the management and administration of religious foundations. While there is general agreement on the need for supervisory control by Government with a view to seeing that the resources of the institutions are utilised on proper objects appertaining to them and that there is no misappropriation of funds, diversion of funds, breach of trust, alienation of property, etc., they feel that Government should not interfere in their day-to-day administration and management.

20. Shri P. N. Madhava Rao, Advocate, Mangalore, in a memorandum submitted to the Commission has stated that as adjudication upon claims of hereditary trusteeship has been vested under the Madras Act in statutory authorities, who are also executive authorities under the Act, decisions are being given in judicial matters with an executive bias. It would be advisable to separate the judicial powers from the executive powers and vest the former in the civil court or in a separate Tribunal.

21. Shri K. Balasubramania Iyer, M.L.C., Member of the Statutory Advisory Committee of the Government of Madras in relation to Hindu Religious and Charitable Endowments, has taken the view that Hindu religious and charitable endowments are mostly governed by usage and custom and many customary rights have been acquired by people concerned with these institutions and other hereditary rights are enjoyed by them. It is therefore necessary that the final review should be with Courts of law and that the orders of the executive should be subject to the jurisdiction of courts, except of course where they relate to matters of a purely administrative and ministerial nature, as the question relating to honours and privileges have already been recognised as civil rights by a series of decisions of the highest courts in our country.

22. Shri N. Raghunatha Iyer, former Chief Assistant Editor, 'the Hindu', Madras, is strongly of the view that the customary modes of appointment and succession to hereditary offices should be adhered to.

23. The Bharat Sadhu Samaj, Mysore State Branch, has expressed the opinion that the regulation of the conduct of the matadhipatis should be left to be controlled by an autonomous statutory body of the matadhipatis themselves. Just as the Bar Council prescribes the professional conduct of lawyers and exercises disciplinary control over the members of the profession, a mutt council could frame rules of conduct for matadhipatis and have disciplinary control over all

matadhipatis. Such council should prescribe rules of succession to the headship of mutts.

24. We have very carefully examined the the different State enactr points of view presented l Machinery for deciding upon ques- tions relating to succession to hereditary offices. succession to hereditary offices. endowments. We are of opinion that the provisions contained in the various enactments for administrative control over the actions of hereditary trustees are sufficient to prevent any misappropriation or diversion of funds, breach of trust, alienation, etc. The system of hereditary succession to trusteeship and other offices in religious institutions is so firmly established that any sweeping change like abolition of the system is likely to create more problems than it seeks to solve, especially when it has been stated by the highest courts that hereditary trusteeship is a form of property. We do not also consider it necessary that the system should be abolished, as such a course is bound to evoke strong public opposition and sentiment against the administration. On the other hand we feel that questions connected with hereditary succession to trusteeship and other offices in temples as well as to the headship of mutts and other specific endowments attached to the mutts should be decided by an agency other than the executive authority itself. Many important witnesses have expressed resentment over the fact that in many State enactments adjudication upon claims of hereditary trusteeship and hereditary succession to other offices has been vested in statutory authorities who are also executive authorities. They feel that this procedure is likely to lead to decisions being given in judicial matters with an executive or political bias. Vesting of this power in civil courts is also beset with another evil, namely, inordinate delay in the final disposal of these matters and continuance of stalemates. We therefore recommend that matters like the one relating to claims of hereditary succession should be decided by a separate statutory body or Tribunal the composition, powers and functions of which have been dealt with in a subsequent Chapter relating to Management and Administration.

25. The consensus of opinion of the witnesses who gave evidence before the Commission as well as of those who submitted written memoranda for the consideration of the Commission is that the Hindu Succession Act, 1956, should not be made applicable to succession to the headship of mutts, but should be governed by the provisions of the deed creating the endowment or the custom of the institution. The modes of succession to the headship of mutts are governed by various customs, traditions and usages and it will not be practicable to apply the ordinary law of Hindu succession in such cases. According to the Hindu Succession Act, daughters are eligible to inherit property, whereas in a majority of the mutts, if not all, females are not allowed to succeed to the gaddi. The tradition of the Virakt or celibate mutts is that only sanyasins and celibates can succeed to the headship. Even in the case of mutts where a married person is allowed to succeed, he has to sever his ties with his poorvashrama family on his succession.

Should the Hindu Succession Act, 1956 apply to succession to the headship of Hindu religious institutions?

22.6.211 N60t
N60 53

32745

In the case of mutts, where the head is permitted to marry and beget children, succession is generally denied to the daughters. Having regard to all these practices, we are of the opinion that the Hindu Succession Act, 1956 should not be made applicable to succession to the headship of religious endowments.

26. In dealing with hereditary succession to Trusteeship or Headship of Mutts, it should be understood that in accordance with the decisions on the subject, succession by testamentary provision made by the previous incumbent and succession by election by disciples all stand on the same basic footing.

27. Certain witnesses have pointed out to the Commission that it is necessary to amend the Hindu Succession Act so as to make it clear that in the case of sanyasins, the succession should not go to the blood relations of a deceased sanyasi. We feel that a clarification in this behalf is necessary, as the new Act abolishes the old Hindu law in the matter of succession to the property of a sanyasi. It could never have been the idea of the framers of the Act that property acquired and belonging to a sanyasin after he has left his natural family and taken to Holy Orders should be treated as if it was acquired by him as a non-sanyasin and should pass on to his blood relations in the *poorvashrama* family. Conversely also a sanyasin who has severed his connection with his natural family should not be permitted to inherit the property of a non-sanyasin who is related to the former by blood in his *poorvashrama* days.

Amendment of the
Hindu Succession
Act, 1956.

CHAPTER IX

A.—JAIN ENDOWMENTS

We now propose to deal with Jain Endowments.

2. At the outset we may say that on the appointment of the Commission by the Government of India, certain Jain organizations protested that this Commission having no Jain member serving on it is not competent to inquire into the management and administration of Jain institutions and also pleaded that Jains are wholly different from Hindus and that their institutions are unique in character and composition widely differing from Hindu temples, trusts and mutts.

3. The opposite view has also been put forward before us with a good deal of force by some Jain individuals and associations, that in many ways their community is not different from the Hindu community and that they cannot be segregated from the Hindu community. They urged that Jain institutions should be brought within the fold of Hindu religious institutions for the purpose of proper administration.

4. For various purposes Jains are classified among the Hindus and also observe many of the practices and usages of Hindus. It should not be forgotten that the statutory enactments relating to marriage, succession, minority and guardianship, adoption and maintenance, etc., which are applicable to Hindus have been made applicable also

to Jains, Buddhists, etc., primarily for the reason that the personal laws of Jains, Buddhists, etc., are practically identical with those of Hindus. Moreover, Jain institutions in Bombay, Bihar, Madhya Pradesh, Madras, Mysore and Rajasthan are already governed by the same laws as apply to Hindu religious institutions and no special difficulties in the working of these laws *vis-a-vis* the Jains seem to have been experienced or at any rate have been brought to our notice. We do not therefore feel that any adequate justification has been adduced in support of the proposition that Jain endowments should be excluded from the purview of our inquiry.

5. Although none of us belonged to the Jain creed, that circumstance did not prevent us from applying our mind objectively to the problems relating to Jain endowments. It was encouraging to find that after facing some misapprehensions in the initial stages we succeeded in securing the whole-hearted co-operation of a number of Jains, Acharyas and other prominent persons and associations connected with the institutions of both the Svetamber and the Digamber sects of the Jain community, and they were afforded and availed themselves of every opportunity to express their opinions freely and frankly. We had also the benefit of a first hand study of the working of a number of institutions by paying visits to several Jain temples in Rajasthan, Maharashtra, Gujarat and Bihar including the famous shrines of Dilwara and Ranekpur in Rajasthan, Pawapuri and Rajgir in Bihar and the Parasnath temple in Calcutta. In our opinion the problems relating to the secular administration of religious institutions, whether they belong to the Jain community or other communities, are more or less all alike. It may be that there are certain special features relating to Jain endowments which any scheme for the proper management and administration of such institutions may have to take into account. It was never the intention of our inquiry to interfere with the religious practices of the various sampradayas or other faiths, for example, Jains, Buddhists, etc. The principal problem is to ensure that the funds of institutions are properly administered and controlled and utilized in the furtherance of the objects of those institutions. Under the circumstances any suspicion or apprehension on the ground that there will be any interference in the internal working of these religious institutions is, in our opinion, unfounded and wholly misconceived. The provisions enshrined in our Constitution regarding Fundamental Rights are such that it will always be open to persons to challenge any overstepping of the limits of law on the part of the controlling authorities concerned (official or non-official) and to seek redress from our law courts or other appropriate bodies.

6. The peculiar characteristics of the Jain trusts and endowments as stated before us by the witnesses of the Jain community may be briefly mentioned here. We have been told fairly emphatically by Shri Kasturbhai Lalbhai in Ahmedabad, the Acharyas of the Jain community and various other persons who also placed before us books and authorities on the various aspects pertaining to Jain philosophy and religion that the Jains do not have any mahant in charge of religious institutions in order to do anything corresponding to the Shebais of Hindu temples and that as a matter of fact their

Peculiar characteristics of Jain trusts and endowments.

Acharyas do not own any property or accept any offerings, personal or otherwise, and that Jain devotees do not make any cash offerings or rituals to the deity but only make offerings of flowers.

7. Jain scriptures have made meticulous rules and regulations for the utilization of funds and management of the trusts. In respect of religious funds Jain Shastras enunciate seven types of funds called "Sat Kshetras" and also dictate the uses to which each type of fund could be put. These seven types of funds are as under:—

Those concerning—

1. Jeena Bimba i.e. Idol of Jineshwar
2. Jeena Chaitya i.e. Temple of Jineshwar

} These two

together are called Dev Dravya. Funds that are collected by boli (auction), etc., for puja, angi and temple of Jeena are called Dev Dravya. This fund could be used only for the construction, restoration and renovation of temples, for the carving of idols, for vilepan or application of *chandan* and *ungunts* of idols, and for providing ornaments for idol.

3. *Gyan Fund*: This fund is to be used for teaching, writing, publication and distribution of Jain Agamas and other Shastras, the knowledge of which enables one to obtain Moksha. The money is reserved for the spread of knowledge among Sadhus and not among the laity.

4. Sadhu
5. Sadhvi

} These two funds constitute for practical

purposes one Fund called Sadhu/Sadhvi Fund which could be used for constructing Upashraya, i.e. building wherein the monks reside, for providing Upkarans i.e. material and daily necessities required by the monks and to provide medicine and other means of *Vaiyavachha* i.e. instruments of service and devotion required during sickness or travelling.

6. Shravak
7. Shravika

} These are merged together for practical

purposes and are called Shravak and Shravika Fund which could be used for help and for religious, economic and social uplift of Shravaks and Shravikas, i.e., the followers of Jainism. The categories are graded in certain order which is unchangeable and equally important.

8. Besides the above seven Kshetras there is another Fund known as Jiva-Daya Fund. This Fund can be used for the care and maintenance of birds, animals, the maintenance of a *panjarapole* and the construction of sheds and buildings for the purpose, the provision of grass, veterinary aid and water and the maintenance of grass land. There is again another Fund known as *Sadharan Fund*. This fund is of a secular nature and is used for providing dharmashalas for pilgrims and for keeping and maintaining all the paraphernalia required for the convenience of pilgrims and for doing all things necessary for the comfort and convenience of pilgrims. This fund can also be utilized to finance any other activities towards human uplift. Apart from these there are numerous other Funds (for specific purposes),

the corpus or interest of which is to be utilized as per the donor's intentions.

9. It is very relevant to note in this connection that the funds donated to one *kshetra* cannot be utilized for another *kshetra*. Even in the same *kshetra*, funds allocated for a particular purpose can be utilized only for that purpose and for no other. Thus, the donations earmarked for beggars cannot be utilized for giving grass to cattle or grain to pigeons, though both are charitable objects. 'Anukampa' or compassion which is the source of both these charities has its water-tight compartments for 'Jiva Daya' and 'Bhikshya Daya'. However, if the purpose for which the donation was made becomes extinct or if by reason of circumstances the purpose cannot be carried into effect either in whole or in part or where there is a surplus left after exhausting the purposes of the trust, the funds in a *kshetra*, for the lower purposes can be taken to higher ones but not *vice-versa*. Similarly funds of a lower *Kshetra* can be transferred to any higher *Kshetra* but not *vice-versa*. The application of the doctrine of *cy-pres* may thus be allowed to a limited extent.

10. It is also important to note that income not spent in any one year is not necessarily surplus. Such balance may have been kept from year to year to accumulate to a larger amount so as to be utilized later in a more effective manner on objects for which the funds are intended. Generally the purposes in the *Kshetras* are perennial in character. They do not fail nor do they become incapable of fulfilment. There is therefore no question of exhausting the object for which donations in Jainism are made. It is also stated, that Jain tenets do not recognize any cognate purpose in the secular sense of the word. The purposes looking alike are not cognate. They are different with different characteristics.

11. The guiding principle in the utilization of funds of a particular *kshetra* is the special religious merit. The person receiving the benefit of the funds is a secondary consideration. Thus, the fund for one place or for a particular group of persons can be used for another place and for other persons anywhere in the world but for the same identical object.

12. By and large Jain trusts are public trusts, the beneficial interest being vested in an uncertain and fluctuating body of persons, either the public at large or a considerable section of it answering a particular description. Private trusts on their own admission are few and in the nature of Ghar Derasers which are located within the precincts or in the vicinity of residences built by individual Jains for the benefit of their family only in which the general public are not interested. The trusts which come into existence on account of Dravyadan to *Kshetras* belong to the Jain Sangh. There is no individual ownership. The possession is always of the Sangh through the trustees.

13. So far as Digamber Jains are concerned, they do not have Dev Dravya or Gyan Dravya as such. The funds are donated to the Bhandar fund and money from that fund can be used for the purpose of that temple or for any institution that is run by that temple or

for any good object. The money can also be utilized for teaching the principles of Jain philosophy exclusively or along with secular learning. There are many patasalas and other educational institutions which are run within the premises of the temple and a few outside the premises as well, by Digamber Jains from the funds of the Bhandar.

14. The majority of the witnesses including H.H. Vijai Labdi Suriswarji Maharaj, Acharya Deo Vijai Laxman Suriswarji Maharaj of Bombay, Shri Kasturbhai Lalbhai of Sheth Anandji Kalianji. Ahmedabad, Shri H. H. Dalal, Advocate and Secretary, Shri Jain Swetamber Conference, Bombay, and several other representatives of the regional bodies of both Digamber and Swetamber Jains in Rajasthan and Bihar have emphasized in their testimony before us that the management of Jain institutions is on the whole very satisfactory. It cannot of course be said that there have been and are no cases at all of mismanagement or misappropriation. Institutions grow around the *kshetras* to which donations are made. These are governed and managed by the Sangh through various committees the members of which are elected by the Sangh from amongst persons connected with or otherwise interested in the endowments. Any Jain who pays one rupee becomes a member of the Sangh. A person elected by the Sangh on the Committee must be a '*marganusari*', i.e., one who is an aspirant for salvation so that he may run the institution not with a materialistic outlook but for the spiritual uplift of the beneficiaries. In the case of big trusts and endowments there are either trust deeds or schemes framed by the court according to which the trustees are elected and/or removed. In other cases election of trustees and/or their removal are made by the Sangh connected with or otherwise interested in the particular trust. Generally, trustees are elected for a certain fixed period. In any case the Sangh has the right and power to remove the trustee, if he is found guilty of any maladministration and/or misfeasance. Hereditary trusteeship is not prevalent among the Jains. Trustees keep the accounts relating to the endowment and submit them to the Sangh every year. There may be some cases of mismanagement or waste but they are very few. If and when such cases arise, the acharyas and sadhus and Sangh deal with them and set matters right. Public opinion and public pressure are such that the defaulter ordinarily makes good the loss unless his condition is such as to make it impossible for him to do so.

15. Shri H. H. Dalal, representing the Jain Swetamber Conference, has deposed before us that Swetamber Jains are running two main institutions for the propagation of Jain religion. A Jain chair has been instituted about 30 years ago in the Banaras University for education in the tenets of the Jain philosophy. Pandit Sukh Lal, a Jain scholar, looked after this chair for a number of years. Now one Mr. Malvam is in charge. The other institution has been established at Ahmedabad out of the donations of Rs. 15 lakhs made by Shri Kasturbhai Lalbhai. Further donations are coming in support of the institution. The Swetamber Jains have collected a sum of Rs. 40 lakhs for the propagation of the principles of Jain religion and Aradhana. Apart from this, they have funds for running patasalas in several small towns and States for educating their

children. These patasalas are run out of the funds collected separately for the purpose.

16. In several educational institutions in Bombay run by the Jains for which they receive Government grants, arrangements for imparting religious education to students after school hours exist and students are given prizes for religious proficiency.

The President, Jain Swetamber Board, Pawapuri has said that recently an institution has been started at Poona to impart instruction in Jain philosophy that it holds examinations; that the centre is at Poona and that there are branches at different places.

17. Sheth Anandji Kalianji, Ahmedabad, is a very important Jain institution and it came into existence 80 or 90 years ago. Its Constitution was finalized in Ahmedabad by Jains gathered from about 359 different cities and towns of India. The general body consists of 103 all India representatives. The managing body consists of 9 trustees who belong to Ahmedabad and who were elected by Sangh meeting held in 1912. Thereafter, any vacancy arising is filled by the remaining trustees and confirmed by all India representatives. The Managing Committee holds two meetings in a month and the decisions arrived therein are carried out by a sub-committee of two trustees which supervises the day to day activity. Shri Kasturbhai Lalbhai is the present Chairman of the trust. Every year the Trust spends about seventy-five to eighty thousand rupees towards repairs of the old temples. The annual income is rupees ten lakhs. The Fund administers several trusts. The capital of the Trust is about rupees one crore. The Central Fund is not attached to any particular temple. It is a fund separate by itself and administered by the Trust. The funds are utilized for eight or nine purposes. The monumental work undertaken by the Trust is the renovation of the Ranekpur Temple near Falna in Rajasthan. There is a Durga temple in Sirohi also in Rajasthan. It is badly in need of repairs. Though this temple does not belong to the Jain community the trust undertook to provide funds. The repairs carried out have already cost the Trust an amount to the tune of rupees one lakh. Generally the trust cannot spend more than rupees fifty thousand on repairs every year. But if repairs are many and the amount required therefor exceeds rupees fifty thousand the management consults the general body for authorisation. If it is the intention to spend rupees two or three lakhs, a detailed estimate prepared after consulting artisans and architects is submitted to the general body for approval. The trust also manages temples which are having an income of Rs. 20,000 or so. In most of these institutions the expenditure is more than the income and the deficit is met from the funds of the Trust. The largest number of temples under the management of the trust is in Palitana and the total expenditure incurred over them is very high.

18. Several cases of alleged bad management, mismanagement or defalcation and misappropriation of funds brought to our notice by persons belonging to the Jain community were cited in the course of the evidence tendered before us. A few of these are mentioned here.

A few instances of alleged mismanagement, defalcation, malpractices, etc.

Even in respect of an important trust, like Sri Anandji Kalyanji, evidence has been given before us that the proceedings have not always been unanimous or satisfactory with regard to its management and that there have been many differences of opinion among the trustees.

19. A list of Jain trusts in respect of which proceedings were taken against the trustees under the provisions of the Bombay Public Trusts Act, 1950, for causing loss to the trust on account of mismanagement, misconduct or breach of trust, is appended to this Report. (Annexure XII). Some of these cases have been decided and others are pending. The statement indicates the position as on the 16th December 1960.

20. Shri Jain Yuvak Seva Samiti, Bhagalpur, has told us that "one Shri K. S. Badelia and his relatives have during the period of their trusteeship of Jain Swetamber Sukrat Fund, Patna City and Shri Sameth Shikharji (Parasnath Hill) misappropriated thousands of rupees. The trustees of Shri Sameth Shikharji (Bihar), namely, Shri Maharaj Bahadur Singh Dugar and after his demise his four sons have not shown their accounts to anybody. There are many other Jain religious trusts which never show accounts and appropriate the income for their own upkeep. Many movable valuables of the trusts have already gone underground since the date of the appointment of the Commission".

21. The Oswal Association, Machharhatta, Patna City, supported the view that the management of Jain trust properties in Bihar had considerably deteriorated after the enactment of the Bihar Hindu Religious Trusts Act, 1950. Many trust properties according to them have since become personal properties.

22. An important person familiar with the working of the Bihar State Board of Swetamber Jain Religious Trusts, Pawapuri, District Patna in a memorandum pointed out the following malpractices and irregularities:—

"The main functions of the Bihar State Board of Swetamber Jain Religious Trusts and the Bihar State Board of Digamber Jain Religious Trusts are to collect fee and spend the same over salary, T.A., litigation, etc. The members of these Boards are directly or indirectly connected with the trustees of the religious trusts and these Boards never take action against the trustees of the religious trusts who are their own kith and kin. In Swetamber Board seven members out of eleven are from one family and out of these seven, four are the trustees of the religious trusts. Thus the directions of these Boards are observed more in breach than in observance. Trust money is kept by the trustees and never deposited in bank. Properties worth a few hundred rupees are purchased for thousands of rupees by the trustees of the religious trusts without obtaining approval from the Board and the District Judge. There is no stock register of movable articles including gold, silver and other valuable articles of the religious trusts. The trust accounts are neither shown to the public Trust nor audited by Government Auditors. Religious properties worth lakhs of rupees have been converted into private

properties by the trustees with the connivance of the members of the Board. The Presidents are powerless and have no veto powers over the Boards as such; the conditions of the religious trusts have gone from bad to worse. Many trustees have utilized trust money for their own ends and the funds have now become irrecoverable. Loot, dacoity, theft, etc., are the common features of these trusts. Many members of the Boards have misappropriated lakhs and lakhs of rupees of the religious trusts during the period of their trusteeship.

Shri K. S. Badelia, a member of the Board, misappropriated more than Rs. 50,000 of Sukrat Fund, a charity endowment trust of Patna City and the matter was raised in the Bihar Legislative Assembly in March 1961."

23. The President and members of the Swetamber Jain Board, Pawapuri, Patna, have stated that amongst Jains a tendency has of late arisen to claim trusts as private trusts. In Pawapuri there have been two such cases. There are a few cases of that kind in other places too in Bihar.

24. It may be useful to recall that the Tendolkar Committee appointed by the Government of Bombay in 1948 to investigate into the abuses, malpractices and defects in the administration and management of the trusts, both religious and secular, belonging to Hindus including Jains in the course of examination of witnesses elicited information with regard to certain malpractices found in the working of the Jain institutions particularly in the erstwhile State of Bombay. It was conceded by the representatives of Shri Jain Swetamber Conference before that Committee that there are certain funds with the institutions which were not used by them due to the negligence or indifference of the trustees. There have been cases of defalcation but such cases are few and the percentage of loss is very small. There were certain trusts and endowments where no trust deeds or schemes existed. Certain evils have crept into the management and administration of such category of trusts. One common evil or abuse in the management of trusts funds is that the trustees invest the trust funds in private firms, sometimes, in the firms in which one or the other of them is a partner or in the firms of their friends and relatives. The trustees may not have the idea of making use of such funds or misappropriating them, but the investment is often to keep their own control over them. In the case of some trusts the trustees do not spend for the objects of the trust enough or as such as they ought to. They have developed a sort of hoarding habit with the result that the objects are starved and those which ought to get relief go without it. In a good many cases they spend only the income and do not touch the corpus, even though there are no restrictions on the use of the corpus. Special difficulties in the management of Jain trusts are mainly due to the sentiment not to spend any money for anything which does not strictly fall within the object. The representatives also conceded that the practice of large funds lying with private nedhis as found by the Committee from a report received from the Registrar of Public Trusts was no doubt a bad practice. They also agreed that there should be some sort of restraint on the purchase of gold by the Jain trusts, an evil which had rather gone too far.

The information which came to the notice of the Tendolkar Committee has been taken by us from a pamphlet entitled "Jain views regarding Religious and Charitable Trusts" by Mohanlal B. Jhavy, a copy of which was handed over to us by Shri H. H. Dalal in the course of his evidence.

25. In the nature of things it would have been impossible for us even to attempt to probe into the various allegations with regard to the management and administration of Jain institutions outlined above. Nevertheless it seems to us that there is a strong case for the Government as the custodian of public interest to exercise proper control and check over such activities as may prove to be detrimental to Jain institutions in order that the huge funds at their disposal are properly utilized for the purpose of fulfilling and furthering the objects underlying the donations. Some such sort of attempt, though not quite effective, has been made by certain State Governments.

26. The Bombay Public Trusts Act, 1950 (Bombay Act 29 of 1950) provides for various controls and measures which are uniformly applicable to the public trusts of all communities.

27. Shri Kasturbhai Lalbhai, Chairman, Anandji Kalianji Trust has expressed his satisfaction with the working of the Bombay Public Trusts Act and stated that the existing provisions are of such a nature that the Act without causing any interference in the religious or public activities of the trust has brought round the trusts which were not functioning properly and which were misguided. It ensures the management of the trusts in a systematic and methodical manner which is the purpose of the Act. However, he feels that the provision relating to the investment of money only in Government paper and nowhere else is not good and that there must not be any compulsion to make investments in Government paper. There is no objection to any sizeable percentage, say 50 per cent. of the money being invested in Government paper; but in the case of the other 50 per cent. a part thereof should be allowed to be spent on other purposes with the sanction of the Commissioner. This safeguard would prevent trustees from taking any undue advantage. In his opinion such provision is necessary as research in America has proved that trusts have flourished with the assistance of various centres.

28. The Madras Hindu Religious and Charitable Endowments Act, 1959 (Madras Act 22 of 1959) provides for the extension of all or any of the provisions of the Act and any rules made thereunder to Jain public religious institutions.

29. The Orissa Hindu Religious Endowments Act, 1951 (Orissa Act 2 of 1952), also contains a provision similar to that in the Madras Act.

30. The Rajasthan Public Trusts Act, 1959 (42 of 1959), is applicable to such class or classes of public trusts (which include Jain

trusts) as the State Government may by notification in the Official Gazette specify.

31. The Madhya Pradesh Public Trusts Act, 1951 (Madhya Pradesh Act 30 of 1951), similarly applies to all public trusts (which include Jain trusts also).

32. The Mysore Religious and Charitable Institutions Regulation, 1927 (7 of 1927), also applies to all religious trusts including those of Jains.

33. The Bihar Hindu Religious Trusts Act, 1950 (Bihar Act 1 of 1951) provides for the establishment of two Boards which are corporate bodies, one called the Bihar State Board of Svetamber Jain Religious Trusts for Svetamber Jain religious trusts and the other called the Bihar State Board of Digamber Jain Religious Trusts for Digamber Jain religious trusts. The Act defines the powers of these Boards in detail. Judging from the evidence given by many witnesses before us in Bihar, some of which have been indicated above, it seems to us that all is not well with the working of these Boards and that there is much scope for improvement in this respect.

34. A section of the Jain community represented by certain Jain associations and organizations in Bihar, namely, the Oswal Association, Machharhatta, Patna City, Shri Jain Yuvak Seva Samiti, Bhagalpur and certain prominent Jains have urged before us that having regard to the experience of the working of the Jain Boards in Bihar, they are definitely of the view that during the last few years of their existence they have done more harm than good to Jain religious trusts and they should therefore be dissolved immediately. They have suggested that a Commissioner should be appointed in each State to administer and control all religious trusts including those of Jains. The Superintendent of the Bihar State Board of Svetamber Religious Trusts, Pawapuri has suggested that the Charity Commissioner should be assisted by an Advisory Board of 11 to 17 persons of which two should be representatives from the Svetamber Jains and two from the Digamber Jains.

35. At the outset we would like to record our warm appreciation of the standard of cleanliness maintained in Jain temples generally, a few of which we had the privilege of visiting. The Jain community takes a great deal of enlightened interest in the maintenance of their shrines and in the maintenance of a proper and serene religious atmosphere surrounding them. The stupendous activity in the direction of repair, expansion and renovation work connected with these temples some of which are of great architectural beauty undertaken in an organized manner by organizations like Anandji Kalyanji Trust, Ahmedabad, and other smaller trusts is such that it is worthy of healthy emulation by Hindu temples and organizations. In particular we would very strongly recommend that Hindu temples may with advantage pool their resources and undertake the work of repair and renovation on the lines on which this work is being done by the Jain community.

36. It has been conceded by a large number of Jain witnesses that funds particularly in the Dev Dravya and Gyan Dravya have accumulated to huge amounts in the case of certain trusts. According to Shri Pukhraj Singhi who gave evidence before us in Mount Abu, the total amount of accumulations in Gyan Dravya in Rajasthan alone would roughly be Rs. 45 lakhs. It has been pleaded that there is no escape from these situations inasmuch as Jain scriptures prohibit the utilization of the funds on objects outside the respective kshetra. We do not feel disposed to agree that these huge accumulations resulted merely because of these religious injunctions, though it may well be that this is one of the contributory causes. It is in evidence that in many cases the accumulations to a large extent can be ascribed to the negligence or indifference of the trustees or the 'hoarding tendency' on their part. Funds in many cases are known to have been invested by trustees in securities in which they or their brothers or other relations and friends are interested. If there are religious injunctions, surely they did not stand in the way of diverting funds in such wrongful channels. There can be no two opinions on funds being used for religious purposes as prescribed, if such purposes are available, but if all the present needs of the trusts have been met or funds are otherwise not utilized, we do not see any reason why at least a portion of the surpluses cannot be utilized on objects designated by those expressions elsewhere or on objects nearest to the original objects. We entirely agree with the observation of the Tendolkar Committee in their report that it is a crime against society to allow large accumulation of trust funds to lie idle and unused. We would therefore, recommend that under such circumstances funds should be diverted with suitable safeguards to the limited extent indicated by us. In this connection some useful suggestions were offered before us by the representatives of the Jain community themselves.

37. The Oswal Association of Patna has conceded that the surpluses of rich trusts could be pooled at least to help the upkeep of deficit trusts. Shri Kasturbhai Lalbhai has also supported the view of establishing in the country five or six centres for teaching Jain religion and philosophy and utilizing the pooled resources for that purpose. Shri Gulab Chand Kasliwal, Advocate-General, Rajasthan, has also expressed himself in favour of the idea of utilizing the surplus funds of a particular sect of Jains on education and research in the philosophy of Jainism of that particular sect. Shri H. H. Dalal, Advocate, Bombay, has given his personal opinion that under given circumstances it should be possible to spend money from the Gyan Dravya for purposes other than the prescribed ones, say, to meet any urgent necessity for spread of knowledge, religious principles among non-Jains. He has also admitted that, if an object fails, the *cy pres* doctrine could be applied and funds used for the purpose as near as possible to the original object of the fund in a particular kshetra. We are inclined to agree with these views generally and would recommend that the surplus funds in the Gyan Kshetra or a substantial portion of such surplus on a percentage basis may be pooled together at least in States where Jain shrines and institutions are concentrated (for example in Mysore, Maharashtra, Gujarat, Rajasthan and Bihar), and the money may be utilized towards organising

some centres in the country on a zonal basis for the study and spread of Jain philosophy. Similarly, funds from the accumulated surpluses in Dev Dravya may also be pooled together for the purpose of repair and renovation of Jain temples. We also recommend that the Tribunal contemplated by the Commission after consultation with the persons and interests concerned should be empowered to divert the surplus funds of a particular kshetra to finance a deficit trust so as to be utilized for identical purposes. As stated earlier, according to Jain tenets, funds in a particular kshetra for one place can always be utilized for an identical object in another place anywhere in the world. We therefore feel that the pooling of resources for diversion of funds in the manner suggested by us would not only not offend the sentiments and beliefs of the Jain communities, but on the other hand provide ways and means for the more effective and a better utilization of funds in furtherance of the objects for which these are really intended. In the case of Digamber Jains this pooling or diversion of funds should be a comparatively simple affair, as they have a single fund, known as Bhandar which can be used for any good object. We also recommend that the States concerned should scrutinize their laws so that a proper machinery for administering the aforesaid pooled funds may be brought into existence.

38. It has been suggested in the evidence before us that the experiment of having separate Boards for Svetamber Jains and Digamber Jains as tried in Bihar has not proved to be a success. An important section of the Jain public in the State of Bihar represented by some of the members of the Jain Boards and other Jain associations has strongly urged the abolition of these two Boards, as they have brought more harm than good to Jain trusts. We are quite confident that any body or authority entrusted with the overall supervision and control of Hindu religious institutions as indicated in Chapter XI can be equally useful and effective in the proper administration of Jain trusts also, as suitable checks will be prescribed to prevent such authority from acting arbitrarily or in a manner opposed to the religious beliefs and sentiments of the Jain community. In our opinion, in all matters of importance, e.g., diversion of funds in the various kshetras, utilization of funds pooled from various sources, matters of religious practices, the authorities, etc., including the Commissioner and the Tribunal should consult prominent Jains belonging both to the Svetamber and Digamber groups as the case may be either in their individual capacity or as office-holders of important and representative Jain organizations in a State.

39. Further, in our opinion Jain trusts like all other trusts should also be required to frame budgets, keep regular accounts and submit such accounts for audit. It has been urged on behalf of the Anandji Kalianji Trust, Ahmedabad, that any idea of submission of budget in advance is not feasible, as the income of the trust is mostly dependent on donations which it is impossible to assess in advance. In our view this difficulty is nothing very peculiar to Jain institutions only. The main source of income of most of the religious and charitable trusts of all communities is donations and they are generally guided by some rough estimates in order to regulate their expenditure. The circumstance that donations are a fluctuating source of income has not stood in the way of other religious institutions framing budgets

and in fact so far as Jain trusts in Maharashtra and Gujarat are concerned no such difficulty has been brought to our notice.

40. As far as possible, no vested interest should be allowed to be created in the management and administration of Jain trusts.

B.—BUDDHIST ENDOWMENTS

Two thousand five hundred years having elapsed since the demise of the Gautama Buddha, celebrations on a large scale took place in India during 1956 and thereafter and notable improvements were made to the Chief Buddhist shrines in the country. Bodh Gaya situated on the spot where Buddha attained enlightenment and Sarnath where he preached his first sermon and where a magnificent Vihara has been built by donations raised both in India and elsewhere by Anagarika Dharmapala and his successors, have become notable places of pilgrimage and of tourism. Sarnath has become remarkable for the frescoes painted in the Ajanta style by the Japanese artist Kosetsu Nosu. There is also, in Sarnath, a rest house constructed by the Birla family, a library, a college, a charitable dispensary and a hospital.

2. The Maha Bodhi Society of India, an international Buddhist organization, has done splendid work to improve and renovate the places connected with the life and mission of the Lord Buddha and centres of this Society exist not only in Bodh Gaya but in Delhi, Bombay, Madras, Lucknow, Sanchi and other places. Each Centre is directed by a competent Bikshu who organises lecture classes and other religious and cultural activities in order to spread the teachings of Buddha. The Society publishes Buddhist literature and has been, for sixty years, conducting a journal. Through the efforts of this organization, the relics of the first chief disciples of Lord Buddha, Sariputta and Maha Moggallana, were brought from a Museum in London and enshrined in a newly-built Vihara in Sanchi, as also the relics of the preachers sent out by Asoka. The Maha Bodhi Society runs a primary school, a High School and an Intermediate College as also a Teachers' Training College at Sarnath. In Calcutta, it runs an orphanage and a Welfare Home and a Sunday School. The Society accommodates and helps pilgrims arriving in India and has got an ambitious scheme of further expansion and creation of new Centres.

3. The history of Sarnath and its additions has been embodied in a pamphlet published by the Maha Bodhi Society; and a very well-written Guide Book to Bodh Gaya describes not only the Maha Bodhi temple and the Bodhi Tree but also the Buddhist shrines erected by representatives of various nationalities like the Tibetans, the Chinese and the Japanese. In the year 1959, the receipts of the Society amounted to about Rs. 1,50,000. The Society is maintaining duly audited accounts. We have visited the following places dedicated to the Buddhist religion and have been, as in the case of the Jain shrines and institutions, specially struck by the cleanliness and the placid atmosphere of the Buddhist temples and the air of reverence and devotion prevalent therein:—

1. Sarnath.
2. Kushinagar.
3. Bodh Gaya.

4. The history of Bodh Gaya itself has had a chequered career. Hieun Tsang visited it in 409 A.D. and Fa Hien before him. It was renovated and enlarged later on but Fa Hien and Hieun Tsang have described the original temple. According to historical records, it was repaired by Burmese Buddhists in 1070 and it is stated that until the thirteenth century, the place was in the hands of Indian and Singhalese Buddhists. It was raided and largely destroyed by Muslim invaders and many of the monks who were in residence fled to Nepal, Tibet and other countries. About 1590, a Hindu Sanyasi started a Mutt there, installed several Hindu deities and claimed to be entitled to its properties. Conflicting claims between the Hindu Mahant and the Buddhists were made and Burmese Ambassadors and Tibetan Envoys appealed to the Government of India for repairing and renovating the temple and restoring it to the Buddhists. In the meantime, Sir Edwin Arnold, the famous author of "The Light of Asia" took a prominent part in the revival of Buddhism in India and he raised the question of restoring the temple to Buddhist hands. After considerable agitation in which Anagarika Dharmapala took an important part and after years of protracted litigation lasting for over forty years the Government of Bihar enacted the Bodh Gaya Temple Act in 1949 transferring the Temple to a Committee of Management consisting of four Buddhists and four Hindus with the District Magistrate of Gaya as Chairman.

5. In 1956 when the 2500th Buddha Jayanti was celebrated, a number of improvements were made to several Buddhist shrines all over India and, even now, appeals are being issued to renovate and improve the Moola Grandha Kuti Vihara where the relics of the Lord Buddha are enshrined. The Indian Buddhist Fund had collected Rs. 9½ lakhs by December 1959 and spent Rs. 8½ lakhs.

6. The above account indicates the possibilities and potentialities of organised work conducted by a voluntary body of religiously-minded people in the direction of the maintenance and the improvement of the shrines appertaining to their faith and the publishing of literature and conducting of discourses and propaganda designed to disseminate the religion and doctrines cherished by them.

7. We are of the view that the same type of supervision and control is appropriate in respect of Buddhist endowments as in the case of Jain endowments. In all cases of importance, the authorities, before taking important decisions as to management and administration, should consult accredited organisations and representatives of the Buddhist faith.

CHAPTER X

IRREGULARITIES AND MALPRACTICES

A large number of witnesses have testified before us that many mahants and trustees have either alienated the property of the endowments to third parties or favoured dependents or nominees or treated such property as their own private property so that it may pass on to their own children or dependents. In addition it is also complained that these mahants and trustees have neglected the temples in their

charge. We consider that it is quite necessary to ensure that funds belonging to Hindu religious endowments are not misappropriated by trustees or mahants and that the authority who is in charge of the Hindu religious endowments in each State should exercise the utmost vigilance in preventing such alienations or misappropriations and where alienations have already taken place, he should also take immediate action to have such alienations set aside and the alienated properties restored to the endowments concerned. Alienated property and its proceeds should be followed in the hands of the alienees who should be made accountable for the proceeds. The necessary machinery or tribunal for this purpose should also be devised.

2. We have bestowed careful attention on the juxtaposition in the Indian Limitation Act of articles 134B and 134C with section 10 of that Act. We have already stated in another portion of the Report that the underlying doctrines of Hindu Law is that the properties belonging to a temple, mutt or other religious endowments should not be regarded as properties in the hands of the trustee, shebait, manager, matadhipati or other incumbent for the time being but should on the other hand be deemed to be vested in the deity or the mutt as an institution, viewed as a corporation sole to use the technical language of English law. If so viewed, the property would belong to the corporation sole as a perpetual entity and there is no question (as in the case of a Hindu joint family and the karta of the family) of the manager or trustee for the time being, having an indefeasible right to effect any alienation.

We have, in the course of this Report, had to point out that there have been literally hundreds of cases in which the head of a mutt or the dharmakarta, shebait or trustee of a temple or other religious foundation has burdened or alienated the properties of the mutt or endowment to the serious detriment of the trust. In most if not in all cases some valuable consideration is alleged in the deed of alienation. The evidence before us is to the effect that generally such recitals are either false or camouflage, colourable or benami transactions.

Section 10, as it is worded, relates to proceedings against trustees and their representatives for following trust property in their hands and for an account of such property or the proceeds. It does not in turn contemplate the recovery of possession or following of the trust property in the hands of the transferee or the alienee. Such proceedings are presumably dealt with in Articles 134A, B and C.

Articles 134B and C deal with suits to be filed by a successor to set aside alienations by a predecessor. 134A includes suits by anyone to set aside a transfer of immovable property. Most of the commentaries on the articles of the Limitation Act and decisions on those articles proceed on the basis (1) that the head of a mutt is not a trustee (44 Madras 831 P.C.); (2) that the dharmakarta of a temple is not a trustee within the meaning of this article and that in the matter of recovering possession of properties alienated by him, Article 144 applies (62 M.L.J. 493); and (3) that Article 134A does not apply where there is no specific trust. These articles, therefore, presume that a muthavalli, dharmakarta or matadhipati has a substantial proprietary interest in the endowed property and an alienation made by him is *prima facie*

valid at least during his life time and that a suit by a succeeding functionary is governed by Article 144. These articles also proceed on the doctrine that a successor to the headship of a mutt or a dharmakartaship does not claim through his predecessor but in his own right. Therefore, the estate which comes to the successor comes to him minus the part of which the ownership has passed away to the alienee. Thus, it would be open to a person to acquire title by adverse possession for over twelve years (44 B.L.R. 146).

We have endeavoured, in this Report, to elucidate the position of matadhipatis and dharmakartas as we understand it and we have emphasised that if in essence the original objects of the foundation of temples and mutts are kept in mind, there is and can be no ownership as such or estate in fee simple in the matadhipati or dharmakarta who must be regarded as intrinsically a trustee. Moreover, the question of valuable consideration in the case of alienations by these persons is, to a certain extent, irrelevant because as already there will hardly be any case in which the alienation in question either by sale, mortgage or lease, is not expressed to be for some valuable consideration and for some purpose ostensibly binding on the institution, these allegations being in many, if not in most, cases a mere camouflage or covering a benami transaction or an ingenious attempt to convert the properties into ready money available to the incumbent of the office for the time being.

We are, therefore, of the opinion that section 10 and Article 134A, B and C should be again scrutinised with a view to make adequate provision on the basis of the doctrine we have tried to expound. We recommend therefore that the necessary revision should be made of section 10 and Article 134A, B and C of the Limitation Act so as to provide, whether against the trustee or his alienee, for suits to follow the trust property or its proceeds and to implement the accountability for the proceeds in the hands of those who are liable to such account. Such suits should be exempt from the bar of limitation.

We have already expressed our view that if the user in the decisions quoted above of the word property will attract any of the provisions as to fundamental rights of property, the Constitution should be suitably amended so as to clarify and place beyond all doubt the status and obligations of matadhipatis and dharmakartas, shebaites, managers and trustees of temples and other religious endowments.

3. In this connection we invite attention to section 109 of the Madras Hindu Religious and Charitable Endowments Act, 1959 (Madras Act 22 of 1959), which provides that nothing contained in any law of limitation for the time being in force shall be deemed to vest in any person the property or funds of any religious institution which have not vested in such person or his predecessor entitled before the 30th September, 1951. A similar provision also existed in the repealed Act, viz., the Madras Hindu Religious and Charitable Endowments Act, 1951 (Madras Act 19 of 1951)—see section 94. We consider this provision to be a very salutary one and recommend that it should be embodied in all enactments dealing with Hindu religious endowments. The provision should also declare that any alienation made without the requisite sanction of the authority concerned will be *ab initio* null and void.

4. Many witnesses have also complained that mahants or the heads of mutts have married, although according to the custom or usage of the institution, they should not marry. Various individual instances of this kind of irregularity were also brought to our notice. We are aware that in the case of certain sampradayas, for example, the Pushtimarg sampradaya, the head of the institution may be a married person, while in a few sampradayas the custom or usage permits a married person to become the head of the institution but after becoming such head it is compulsory that he should have no connection with his family or family ties of any kind. We are strongly of the opinion that, as emphasised by most witnesses including Sankaracharya Sringeri and Swami Akhandanand Saraswati, where the custom or usage is to the effect that the head of the institution should be a celibate, the head should not be permitted to marry and that where he marries in violation of such custom or usage, steps should be taken immediately so as to dispossess the delinquent and have the proper men installed on the gaddi.

5. Instances have also been brought to the notice of the Commission where trustees do not take sufficient interest in the affairs of the institution or where wasteful expenditure has been incurred. Some witnesses have also pointed out that members of the Board are incurring expenditure on their travelling and other expenses quite out of proportion to their work. A few have even stated that grants are being made from the funds of the religious institutions merely to satisfy certain sections of the community thereby curtailing the amount of available funds for more necessary items. Some have also complained that loans have been given from the funds of religious institutions to private parties. We have recommended in a previous Chapter that the accounts of religious institutions should be properly maintained and audited. It should be laid down as one of the duties of the auditors to bring to light in their audit reports all instances which show the existence of such and other similar defects.

6. A list of the complaints received by us is in Appendix XIII. The list naturally does not include the names of those against whom allegations of an intimately personal character have been made. In the very nature of things it was impossible for us within the time at our disposal to make inquiries into the veracity or authenticity of these complaints which are against individuals or individual bodies and so we did not and indeed could not take the step of investigating these complaints, ascertaining the real facts and coming to conclusions on them. We trust and hope that the State Governments will call upon the Commissioners or other officers in charge of endowments within their States to make careful inquiries into these complaints and find out if they are true or exaggerated or false. We also trust that State Government will take very prompt action on the reports of the Commissioners or other officers concerned and ensure that such irregularities and malpractices are put an end to where they exist and do not recur in future. Where complaints made against individuals are found to be substantially correct, steps should be taken to remove or suspend the delinquents. It is needless to emphasise that action taken at least against some prominent delinquents will not only tone up the administration but also create a wholesome impression on the

public generally and the force of public opinion thus generated will, we are confident, act as a deterrent on incipient or potential delinquents.

CHAPTER XI

MANAGEMENT AND ADMINISTRATION

Before we consider the question of the machinery to be created for managing, supervising or controlling the administration of religious endowments, it will be useful to have an idea of the existing set-up in the more important States.

2. *Madras.*—Under the Madras Hindu Religious and Charitable Endowments Act, 1959 (22 of 1959), the following classes of authorities exist, namely:—

- (a) the Commissioner,
- (b) Deputy Commissioners,
- (c) Assistant Commissioners, and
- (d) Area Committees.

The Government appoints one Commissioner for the entire State and under him there are Deputy Commissioners and Assistant Commissioners. All these officers are required to be Hindus and generally, but not invariably, they also possess legal qualifications, though they may not be members of the State Judicial Service. The territorial jurisdiction of the Deputy and Assistant Commissioners is determined by the Commissioner with the previous approval of the Government and apart from the specific powers conferred by the provisions of the Act, these officers also exercise such powers as are delegated to them by the Commissioner.

3. Area Committees are constituted by Government in respect of temples (other than those included by the Commissioner in the list of institutions having more than Rs. 20,000 as annual income) situated within the whole or part of an Assistant Commissioner's division and each consists of not less than three and not more than five members (including the Chairman) who are appointed by Government generally for three years. Certain grounds for disqualification for appointment for membership of Area Committees have also been specified. The Act also empowers the Commissioner, to exercise the powers of the Area Committee, Assistant Commissioner, and Deputy Commissioner in any specified circumstances, for example, when the Committee has failed to exercise its powers or perform its duties or when there is a vacancy in the office. There is a provision for appeal against certain orders of the Commissioner (other than those for which a suit or an appeal to a court is provided in the Act) to the Government. In section 70 provision for appeals—against certain orders of the Commissioner under Chapter V to the appropriate civil court has been made and in addition a second appeal to the High Court against the order of the appropriate civil court has also been provided for.

Andhra Pradesh.—The Madras Hindu Religious and Charitable Endowments Act, 1951 (Madras Act 19 of 1951), which is in force in

that part of Andhra Pradesh which formerly belonged to the Madras State, has been amended by Acts of the Andhra State Legislature. The machinery for administration is more or less the same as in Madras except for few changes. In the Telengana area of the Andhra Pradesh State, which formerly formed part of the old Hyderabad State, the Collector is the Director of the Endowments Department for the district and the Tahsildar is the Director of the Endowments Department for the Taluk and the Director is responsible to Government for the efficient management of the department.

4. *Bihar*.—Under the Bihar Hindu Religious Trusts Act, 1950 (Bihar Act I of 1951), the administration of all Hindu religious trusts other than Jain religious trusts is entrusted to the Bihar State Board of Religious Trusts. In regard to Digamber Jain religious trusts, their administration is entrusted to the Bihar State Board of Digamber Jain Religious Trusts and with regard to Svetamber Jain Religious Trusts, the administration is entrusted to the Bihar State Board of Svetambar Jain Religious Trusts. Each of the State Boards of Jain Religious Trusts is to consist of eleven members but the Bihar State Board of Hindu Religious Trusts (other than Jain Trusts) is to consist of seventeen members. Section 7 provides for the appointment of all the members of the first Board by the State Government, the term of office of each member being ordinarily five years and section 8 provides for the composition of each of these three Boards. Under this section members are partly appointed by the State Government and partly elected by certain specified authorities. The Board has also been given power to appoint, subject to the approval of the State Government, a Superintendent of Religious Trusts and this officer exercises such powers and performs such duties as are conferred or imposed on him by the Board. The Board also fixes the number of appointments to be made to the subordinate staff. Provision has also been made for the appointment by the Board of regional trust committees for specified areas and these committees inquire into and report to the Board on the administration of religious trusts within their jurisdiction and work under the control of the Board. Chapter IX of the Act empowers the Board to apply to the District Judge, in case of failure of performance by the person concerned of any religious act which is charged on any property, to compel the trustee to discharge his obligation, or to appoint a receiver of the funds in the event of the failure of the trustee to carry out directions or to remove or appoint trustees. An appeal has also been provided for to the High Court against every order passed by the District Judge under the Act.

5. *Bombay*.—Under the Bombay Public Trusts Act, 1950 (Bombay Act 29 of 1950), the State Government appoints an officer called the Charity Commissioner to superintend the administration and carry out the provisions of the Act throughout the State. In addition, Joint Charity Commissioners may also be appointed by the State Government and they work under the control of the Charity Commissioner and exercise all or any of the powers and perform all or any of the duties and functions of the Charity Commissioner subject to the general or special orders of the State Government. The Government may also appoint Deputy and Assistant Commissioners for specified regions or sub-regions or for specified public trusts or specified

class of public trusts. The qualifications for appointment to these offices have also been laid down. The power to remove trustees and appoint new trustees, is, however, vested in the court. Provision has also been made for appeals to the Civil Court from the decisions of the Charity Commissioner in certain matters and a second appeal to a High Court has also been provided against the appellate decisions of the court also.

6. *Kerala*.—The Madras Hindu Religious and Charitable Endowments Act, 1951 (Madras Act 19 of 1951), continues to apply to the Malabar district which originally formed part of the State of Madras and has been added to the State of Kerala on the reorganization of States.

Part I of the Travancore-Cochin Hindu Religious Institutions Act, 1950 (15 of 1950), extends to Travancore and Part II to Cochin and Part III to the whole of the State of Kerala except the Malabar district. The administration of Devaswoms and Hindu religious endowments in Travancore and their properties vests in the Travancore Devaswom Board generally but in the case of the Sree Padmanabhaswamy Temple, the Sree Pandaravaga properties and all other properties and funds of the temple, the administration is conducted by an Executive Officer who is appointed by the Ruler of Travancore and is subject to the latter's control and supervision. The Travancore Devaswom Board consists of three Hindu members, one of them being nominated by the Ruler of Travancore, the other by the Hindus among the Council of Ministers and the third elected by the Hindus among the members of the Kerala Legislative Assembly. The term of office of a member is four years and honoraria are payable at the rates fixed by the Board, subject to a maximum of Rs. 450 in the case of the President and Rs. 400 in the case of each of the other two members. In addition there is also a Secretary to the Board. For the Sree Padmanabhaswamy Temple, a committee known as the Sree Padmanabhaswamy Temple Committee has been constituted to advise the Ruler of Travancore. That Committee consists of three Hindu members nominated by the Ruler of Travancore for such term as he determines. Travelling and sitting fees are also paid to these members as determined by the Ruler of Travancore. The Executive Officer acts as the Secretary to the Committee.

In regard to Cochin, the administration of Devaswoms and Hindu religious institutions and their properties generally vests in the Cochin Devaswom Board but in the case of Sree Poornathraiveesa at Triobunnittura and in the Pazhayannur Bhagawathy temple at Pazhavannur the Ruler of Cochin continues to exercise his control. The Cochin Devaswom Board consists of three Hindus, each of them being nominated in the same manner as in the case of the Travancore Devaswom Board. The term of office of the members of the Board is four years and honoraria are payable to the members at the rate of Rs. 300 a month in the case of the President and of Rs. 250 a month for each of the other two members from out of the Devaswoms funds. The Board has the power to frame schemes for administration for institutions which may be modified or cancelled by the Board or by the court also.

7. *Orissa*.—Under the Orissa Hindu Religious Endowments Act, 1951 (Orissa Act 2 of 1952), the general superintendence of all Hindu religious institutions and endowments is vested in the Commissioner and it is his duty to supervise the proper management of secular affairs of those institutions and the due performance of rituals, ceremonies and other observances in connection thereto. The Commissioner is also assisted by Deputy Commissioners and Assistant Commissioners and these officers exercise jurisdiction in areas specified by the Commissioner with the previous approval of the State Government. An appeal has been provided for against the orders of the Commissioner and the Deputy Commissioner to a Tribunal consisting of the Commissioner of Endowments, a District Judge and a member of the Orissa Administrative Service and this Tribunal exercises the powers of a Civil Court and its decision on appeal is not liable to be questioned in any court of law.

The Shri Jagannath Temple Act, 1955 (Orissa Act 11 of 1955), which provides for the better administration and governance of the Shri Jagannath Temple at Puri and its endowments vests the administration and governance of the temples and its endowments in a committee called the Shri Jagannath Temple Managing Committee. The Act also provides for the appointment of an Administrator for the temple and he acts as the Secretary to the Committee and its Chief Executive Officer. The general opinion expressed before us in Orissa was that the Act has not been operating satisfactorily and that serious differences have manifested themselves amongst the members of the Committee.

8. *Rajasthan*.—The Rajasthan Public Trusts Act, 1959 (42 of 1959), provides for the appointment of an officer called the Devasthan Commissioner for the whole State and of Assistant Devasthan Commissioners also. In addition, provision has been made for the appointment of an Advisory Board called the Rajasthan Public Trusts Board and also for the establishment of Regional Advisory Committees.

The Nathdwara Temple Act, 1959 (13 of 1959), vests the ownership of the Nathdwara temple and all its endowments including all offerings in the deity of Shri Shrinathji and the administration of the temple and all its endowments in the Board constituted under the Act and called the Nathdwara Temple Board. In addition there is a Chief Executive Officer for the temple and he acts as the Secretary to the Board. This Act has virtually been inoperative.

9. *Uttar Pradesh—United Provinces*.—The Shri Badrinath Act, 1939 (U.P. Act 16 of 1939), vests the administration and governance of the Shri Badrinath Temple and the Shri Kedarnath Temple in the Shri Badrinath Temple Committee constituted under the Act. The Committee appoints a Rawal and a Naib Rawal for the temple and a Secretary who is to be its Chief Executive Officer.

10. Numerous and conflicting suggestions have been made to us with regard to the future machinery and administration of Hindu religious endowments and we mention them below and outline our own comments thereon.

11. Some of the witnesses are in favour of having a single administrative officer. Among those who have sponsored this suggestion are Shri Shantilal Shah, Minister, Government of Maharashtra, Shri S. V. Sohoni, Commissioner, Patna Division, Shri K. Balasubramania Aiyar, M.L.C., Madras, Shri N. Raghunatha Aiyar, retired Chief Assistant Editor, "the Hindu", Madras.

12. A large number of witnesses are in favour of constituting statutory autonomous bodies or boards. Prominent among those who have favoured this suggestion are the Maharaja of Mysore, Shri Biswanath Das, Governor of U.P., Dr. P. Subbarayan, Governor of Maharashtra, Shri S. K. Patil, Food and Agriculture Minister, Central Government, Shri B. N. Jha, Chief Minister, Bihar, Shri Mohanlal Sukhadia, Chief Minister, Rajasthan, Shri B. Patnaik, Chief Minister, Orissa, Shri V. Ramaswami Iyer, Chief Justice, Patna High Court, Shri P. Satyanarayana Rao, Chairman, Andhra Pradesh State Law Commission and Shri Kamla Kant Varma, ex-Chief Justice, Allahabad High Court. A few like Shri Uthandaraman, retired Commissioner, Hindu Religious Endowments, Madras and Shri Rai Triambaklal, Director of Endowments, Hyderabad, have opposed the suggestion for autonomous non-official bodies.

13. A number of witnesses like Shri B. N. Jha, Chief Minister of Bihar, Shri Shantilal Shah, Minister, Bombay Government and Shri Suniti Kumar Chatterji, Chairman, Legislative Council, West Bengal, have suggested that there should be an advisory body to assist the Commissioner. Amongst those who have disfavoured the appointment of advisory bodies are Shri K. Balasubramania Aiyar, M.L.C., Madras, Shri N. Raghunatha Aiyar, retired Chief Assistant Editor, "the Hindu", Madras and Shri Gulab Chand Kasliwal, Advocate General, Rajasthan.

14. Some witnesses like Shri B. N. Jha, Chief Minister, Bihar, Shri C. B. Gupta, Chief Minister, U.P., Dr. Kalidas Nag, Shri K. S. Ramaswami Sastri, Shri T. M. Krishnaswami Iyer, Shri K. Balasubramania Aiyar and Shri N. Raghunatha Aiyar, have spoken in favour of the constitution of a central board or body. Shri C. Subramaniam, Minister, Central Government and Shri Y. B. Chavan, Chief Minister, Maharashtra, are not however in favour of constituting a central board or body.

A few witnesses have suggested that the control should be exercised by the institutions themselves and that there should be no outside interference with the internal management.

15. There has been a considerable volume of opinion against the interference of Government in the administration of temples and the introduction of party or political influence or pressure. In fact most of the witnesses have expressed very serious apprehensions about the deleterious effects of importing political influence in the administration of Hindu religious endowments and almost all the witnesses were in favour of ensuring the elimination of political influence in the administration of endowments. We are also strongly of the opinion that there should be no room given for any suspicion of political influence in the administration of endowments.

16. As regards the question of Government interference, we may point out that it has been our experience that the administration of Hindu religious endowments is fairly satisfactory in those States where there are enactments regulating their administration and that in those States where there are no such enactments, conditions are not only not satisfactory but have resulted in general apathy and consequent neglect of the institutions. We have, therefore, recommended in Chapter III that legislation should be undertaken in those States where there are no enactments governing the administration of Hindu religious endowments and from this point of view legislation in so far as it empowers government to prevent and remedy maladministration may be said to be not only desirable but, essential. In fact the Sankaracharya of Dwarka Peeth has stated that Government should interfere where there is maladministration and this opinion was voiced also by many other eminent witnesses before us. It is also noteworthy that the Sankaracharya of Sringeri Mutt is in favour of continuing the existing system by which the Mysore Government administers the Sringeri Mutt. Probably what is at the back of the minds of those witnesses who have spoken against Government interference is that Government should not have power to interfere in the day-to-day or internal administration of the Hindu religious endowments especially in regard to religious practices or usages prevalent in these institutions. We agree that Government should not give room to the public to entertain any such apprehension and would strongly urge that necessary steps should be adopted to eliminate such fears.

17. There is, no doubt, a large body of opinion in favour of the establishment of an autonomous board. Mention should be made in this connexion of the opinion expressed by Shri Uthandaraman, ex-Commissioner of Hindu Religious Endowments, Madras. He has stated that during the last thirty years it has been found from practical experience that elective or nominated boards and committees have not been satisfactory or useful. Shri Rai Triambaklal, Director of Endowments, Hyderabad, has also stated that his experience is that the autonomous body to administer Muslim wakf properties in Hyderabad is not working well and that it will be better to have a departmental or administrative body. It has been found by experience that such bodies tend to the creation of factions and vested interests by reason of which administration is impeded or nullified. It should not in this connection also be forgotten that Madras which was in fact the pioneer in the matter of making statutory arrangements for the administration of Hindu religious endowments switched on from the system of having a Board of Commissioners to the system of having a single officer called the Commissioner of Endowments in 1951 (after having tried the system of having a Board from 1927 to 1951). Shri Gadgil, Governor of Punjab, who gave evidence before us was specifically asked whether there should be a single officer or a department or representative body, and he has emphatically stated that for the executive administration, there should be a single person, if things are to be done efficiently. Complaints have no doubt also been levelled against one man administration, the general criticism being that he is apt to carry out the orders or wishes of the Minister in charge. On the other hand the Commissioners of Madras and Gujarat have asserted emphatically before us that there has been

no case of interference by Government. Opinions on the relative merits of the two systems will no doubt vary. We have considered very carefully the pros and cons of the two systems. We do not wish to minimise the possibility of a single officer being overawed or influenced by a powerful Minister who requires him to act in accordance with his wishes. At the same time we cannot also overlook the same possibility occurring in the case of a President and members of a Board. In our opinion the real safeguard lies in the choice of the individual selected who should and can make his independence and personality felt so that he can prevent any attempt to influence him. It is very important to remember in this connection that the administration of temples should be efficient; and the history and experience of the working of such institutions, by an individual as contrasted with their working by a body of persons, leaves us in no doubt whatsoever as to which alternative is to be preferred. In this connection we have had evidence in Bihar on the working of the Boards in that State which was to the effect that their working was not at all satisfactory. It may further be pointed out that the Madras and Andhra Pradesh Commissioners were emphatic that Area Committees in those States did not function properly. After a careful balancing of the considerations, pros and cons, we have arrived at the conclusion that the executive administration of temples by a single officer will be much more expeditious and efficient than administration by a body of persons or Board of Commissioners. The appointment of Commissioners in the States should be made by the Governor of the State in his individual capacity after such consultation as he deems to be necessary with the religious and secular interests concerned.

18. As regards advisory bodies, it may be noted that provision has been made in the Madras Act, for the constitution of such a committee—see section 7 of the Madras Act 22 of 1959. A similar provision also exists in section 26 of the Orissa Act also. A provision to this effect also finds place in the Religious Trusts Bill, 1960. We feel that the utility of advisory boards or committees has been shown to be very limited and in practice very ineffectual and do not, therefore, favour their continuance wherever they exist at present. We would, however, recommend that whenever there is any disputed question relating to religious usage or custom of a particular institution or sampradaya, the Commissioner should (after consulting qualified persons belonging to the sampradaya or sect concerned from out of a list of assessors to be maintained by him) be entitled in cases of emergency to pass orders subject to the supervisory jurisdiction of the Tribunal referred to hereinafter.

19. One of our colleagues has proposed that a body of advisers should be constituted at the Centre and in the States which should comprise leaders of religious organisations and Sampradayas whose opinions would be available and should be taken in all matters concerning custom, usage and religious rites and practices relating to temples, endowments and other religious institutions that have come under our survey. He has, in fact, suggested that this should be an autonomous body with sole jurisdiction to decide such matters, and that the Tribunal contemplated in this Report should confine itself to justiciable matters.

We have already, in this Report, given our reasons based on the experience gained by several States that Advisory Bodies or Committees functioning side by side with Commissioners in the States have not been successful. We have suggested in this Report the creation of a Tribunal one of whose Members at least should be a person fully conversant with Hindu religious scriptures, tradition, ritual and practices. We have also provided that where question of religion and religious practices arise for decision, it is open to the Tribunal to obtain the advice and guidance of persons belonging to the denominations or religions concerned and specially conversant with the subject matter under controversy. We have done so because the number of sects, sub-sects and denominations run into dozens if not into hundreds and it would be difficult, in practice, even to give a list of all the varying denominations, each possessing specific features of its own. We have no objection to a Central Committee composed of leading members, both lay people and celebrities, Sadhus and Sanyasis, who may be available for consultation so as to enable the Tribunal to obtain authoritative and practical solutions to the questions coming before it. The experiment of forming such a Committee should be tried. It cannot be forgotten that the success of the experiment will be wholly dependent on the eminence and influence of the members of such a committee and their determination to take detached views and arrive at harmonious decisions.

Some of our members however apprehend that, as has happened in Madras and Andhra, the members of the Committee would rarely agree on matters referred to it.

All the members of the Commission except Shri Kameswara Rau have agreed that there should be one Commissioner for discharging the executive functions as well as Deputies or Assistants when needed and not a body of Commissioners. Shri Kameswara Rau will append a note on the subject embodying his opinions. The next point that arises is whether the Commissioner should have the power of the appointment and removal of trustees as he has under certain enactments now in force. The opinion of the majority of the members of the Commission was that he should have no power of appointment and removal, such powers being vested in the Tribunal to be constituted.

Another point that arises for decision is the procedure to be adopted in the case of an emergency where a trustee or a matadhipati dies or is removed or for other reasons is not able to function and there is no one duly selected or elected to succeed him or where on account of any act of clear misconduct, misappropriation or other flagrant breach of trust it becomes necessary to take urgent action. In such cases the Commissioner may be empowered to suspend or remove the person in default and where necessary to make temporary appointments to the offices concerned and take other requisite measures in respect of all matters adverted to in paragraph 20 reporting his action to the Tribunal for final orders as soon as practicable, his actions being operative and valid until such final orders are passed. This power of removal will not vest in the Commissioner in the case of matadhipatis (but only the power to suspend). Such powers of removal should be in the exclusive

jurisdiction of the Tribunal. In the case of temple trustees, Dharmakartas and other functionaries the powers vested in the Commissioner may be on the lines of those laid down in the Madras and Andhra legislation on the subject.

20. At present the decision of the Commissioner may be challenged in Civil Courts, whether by way of suit or by appeal and in some cases there is also a second appeal to the High Court. It is generally known that resort to Civil Courts often involves considerable delay and waste of public funds with the result that disputes are not speedily resolved, a sort of stalemate continues and there is also a clog on administration. Moreover litigation under sections 92 and 93 of the C.P.C. involves an often unpensated expenditure of money and energy on the part of members of the public setting the law in motion. The person in possession is able to utilise the funds of the temple or mutt in question and can prolong the litigation indefinitely. It should be provided that in all legal proceedings the defendant should be made personally liable for costs when he has been in the wrong and unless his contentions are found to be just and are upheld he will not be entitled to spend the funds of the institution. We have come to the decisions that appeals from the Commissioner should be preferred to a duly constituted tribunal such as is outlined below.

Besides appellate jurisdiction and revisional jurisdiction over State Commissioners, the tribunal should have exclusive original jurisdiction in the following matters:—

(1) Succession and appointment to hereditary offices, such as hereditary trustees, heads of mutts, etc.

(2) Determination of what are matters of religion or essential religious practices and what are ancillary or unessential accretions.

(3) Such other matters of basic importance in relation to the conduct of management of temple and mutts as in their opinion demand adjudication or decision having regard at the same time to such custom, usage or tradition as the tribunal may find to be established.

In this connection we should like to advert to a Memorandum and another registered document of incorporation submitted to this Commission by Shri Sankaracharya of Kamakotipoetam outlining a plan to organise several heads of mutts into a compact body whose advice in matters of religious usage and practice would be of great value. The Memorandum also indicates the several directions in which Sri Sankaracharya himself has evolved programmes for religious instruction and organization. Such efforts would facilitate and be of immense assistance to the work of the Tribunals we have suggested. These documents form part of Appendix XX.

21. The Tribunal referred to above may consist of five or more members who are Hindus by conviction and believe in the Hindu scriptures, and in temple worship. Some qualifications may be laid down so that the members should include at least—

(1) A judicial member who has been or is eligible for being appointed as a High Court Judge and who is to be its President.

(2) A member who has held a senior administrative office under the Government and has had adequate administrative and/or financial experience for not less than ten years under Government.

(3) A member who is specially conversant with Hindu scriptures and religion and religious practices and with the working of Hindu religious Endowments.

22. The Tribunal should be empowered to consult as assessors such leaders of the denomination or sampradaya concerned and such others as are generally recognized to be fit to give advice in matters pertaining to the Sampradaya, custom or usage coming up for decision before the Tribunal. Other persons or organisations as may be specially competent in this behalf may also be consulted. The Commissioner may be authorised to refer to the Tribunal for its opinion, advice or adjudication any matter or question as to which he feels the necessity for such guidance.

23. The members will be appointed by the President of India on the advice of a committee of eminent and impartial advisers chosen by him. The members of the Tribunal will enjoy a term of office of five years, renewable for not more than an additional term at the discretion of the President. They will be governed by such conditions of service as may be prescribed by rules.

24. The Tribunal may function in as many benches as it considers expedient having regard to the quantum and nature of work. Every such bench will consist of at least three members with the aforesaid qualifications. The total strength of the Tribunal may be so fixed as to permit the constitution of benches as far as possible, for each State or a group of contiguous States. We may invite attention in this connection to the constitution of the Income-tax Appellate Tribunal. The Tribunal proposed by us may also be given the power to co-opt as full members not more than two members on each occasion who are especially competent to offer opinion and advice on any particular matter or matters coming before them.

Enactments of various States have provided that from the orders passed by a Commissioner, appeals lie to the Government of the State concerned or to courts. According to the scheme envisaged by this Commission, such appeals should exclusively lie to the Tribunal.

25. In most ancient temples and also in many temples constructed recently, there obtains the institution of what is called "dittam" in South India (which is a prakrit form of *dishta* in Sanskrit, namely, ordained or prescribed). In respect of many of the services in a temple and many rituals and offerings, the quantity of grain, milk, ghee, clarified butter, vegetables, oil, incense, and many other articles is to be found laid down in the ancient records of the temples (if not in the document of foundation), or it may be inferred from the accounts and records of the temple. Similarly, the type and number of jewels with which the image is adorned and the kind of ornamentation by flowers and otherwise are also often prescribed.

The question often arises as to whether the exact quantity that was available for a certain sum of money in the old days is still to be regarded as essential even though the prices of commodities have appreciated enormously. Many trustees, archakas and pujaris have insisted that the old quantity must not be deviated from, notwithstanding changed circumstances and enhanced prices of the present day. For instance, in Nathdwara and other temples, it has been insisted that the same quantity of cooked rice must be prepared today as was the case one hundred or two hundred years ago for distribution to the pilgrims (or for auction as has been noted by us). It is with reference to these problems that the observations of their Lordships of the Supreme Court in the Dargah Committee, Ajmer *vs.* Syed Hussain Ali (A.I.R. 1961 Supreme Court 1402) become relevant and pertinent:—

"Whilst we are dealing with this point it may not be out of place incidentally to strike a note of caution and observe that in order that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices within the meaning of Art. 26. Similarly, even practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. Unless such practices are found to constitute an essential and integral part of a religion their claim for the protection under Art. 26 may have to be carefully scrutinised; in other words, the protection must be confined to such religious practices as are an essential and an integral part of it and no other."

The judgment may be rightly construed as indicating that the exact quantity should not be regarded as a matter of fundamental religion but as a religious practice or observance which can be modified to suit altered circumstances. It does not appear that the Articles in the Constitution relating to non-interference with religion can and should be so applied as to stereotype quantities and values which may change from time to time. It is pertinent in this connection to quote the observations of Mukerjee J. in his judgment in Commissioner Hindu Religious Endowments, Madras *vs.* Sri Lakshmin-dra Teertha-Swami of Shri Shroor Mutt (A.I.R. 1954 S.C. 282):

"Of course, the scale of expenses to be incurred in connection with these religious observances would be a matter of administration of property belonging to the religious denomination and can be controlled by secular authorities in accordance with any law laid down by a competent legislature; for it could not be the intention of any religion to destroy the institution and its endowments by incurring wasteful expenditure on rites and ceremonies. It should be noticed, however, that under Art. 26(d) it is the fundamental right of a religious denomination or its representative to administer its properties in accordance with law; and the law; therefore, must leave the right of administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose."

Having regard to what has been stated above, it appears that no amendment of the Constitution is necessary for this purpose, but if the Constitution is sought to be amended, as we have suggested it may be, it is suggested that opportunity may be taken in that connection to place this matter also beyond all doubt whatsoever. As matters relating to religious practices or usages may assume crucial importance, we have suggested in paragraphs 19 to 23 that these matters should be decided by the Tribunal in the very first instance, instead of by the Commissioner.

26. In most of the State enactments, provision has been made for the preparation and submission of the budget of income and expenditure of each religious institution, the maintenance of regular accounts and their audit and the rectification of defects disclosed in them—see for instance sections 86 to 90 of the Madras Hindu Religious and Charitable Endowments Act, 1959 (22 of 1959), Sections 32 to 34 and 38 to 41 of the Bombay Public Trusts Act, 1950 (Bombay Act 29 of 1950), sections 60 to 66 of the Bihar Hindu Religious Trusts Act, 1950 (Bihar Act 1 of 1951), sections 15 to 23 of the Madhya Pradesh Public Trusts Act, 1951 (30 of 1951). We would also invite attention to clauses 11, 12, 14 and 15 of the Religious Trusts Bill, 1960, which was introduced in Parliament and makes similar provisions in regard to these matters. In spite of these provisions, complaints have been made to us by many witnesses that the funds of religious institutions are being misappropriated or are being treated as the personal property of the mahants or trustees. There have been complaints that money is in some cases spent on gold and precious stones for ornaments and thus giving room for manipulating account and it is quite possible that instead of showing the actual cost of jewellery, its inflated value is shown in the accounts. We, therefore, consider it absolutely essential that every religious institution should prepare and submit detailed budget estimates of income and expenditure, and also maintain accounts in prescribed forms and that these accounts should be audited carefully the auditor not necessarily confining himself to a mere formal scrutiny of vouchers placed before him. The inclusion of such provisions is necessary, in any legislation which is sought to be introduced or passed with reference to religious endowments.

CHAPTER XII

THE RELIGIOUS TRUSTS BILL, 1960

We next deal with the Religious Trusts Bill, 1960 and would like to offer the following comments on a few of its provisions:—

2. The Bill was introduced by Government in 1960 in the second Lok Sabha and was referred to a Joint Committee of both Houses. We understand that the Committee desired to proceed with the consideration of the Bill after the receipt of our Report, but that the Bill lapsed on the dissolution of the second Lok Sabha.

3. Although at first sight the Bill makes it appear that its provisions apply to all religious trusts, it will be noticed from clause 34 that they are not intended to apply to—

(a) any Sikh Gurdwara to which the Sikh Gurdwaras Act, 1925, applies; or

(b) the Durgah Khawaja Saheb, Ajmer, to which the Durgah Khawaja Saheb Act, 1955, applies or to any other wakf as defined in the Wakfs Act, 1954, or in any Provincial or State Act relating to wakfs in any State; or

(c) any religious trust existing or created for the benefit of Christians, Jews or Parsis or any section thereof.

The Bill in effect does not apply to Sikh, Muslim, Christian, Jew or Parsi religious trusts. It would, therefore, have application only to other religious trusts. In effect it will comprise mostly Hindu, Buddhist and Jain religious trusts. In Chapter III of this Report we have already drawn the attention of Government to the very strong feelings expressed by several persons before us to the effect that any law relating to the regulation and control of endowments should bring within its purview not only Hindu endowments but also those of other communities like the Muslims and Christians; and we have also recommended that there is no inherent or insuperable difficulty in enacting a law applicable to the endowments of all the communities, after duly ascertaining the views of the communities concerned and after making suitable special provisions to meet the needs of the endowments of particular communities. We have also suggested in Chapter III that this uniform legislation can incorporate with advantage the provisions of clauses 5, 11, 13, 14 and 15 of this Bill.

4. Sub-clause (1) of clause 11 requires the trustee of every religious trust to prepare annually in the prescribed form and within the prescribed time, a budget of the estimated income and expenditure of such trust for the next financial year and to forward forthwith copy thereof to the Commissioner. The proviso to the sub-clause, however, lays down that the provisions of the sub-clause are not to apply to a trust having an annual income of less than five thousand rupees. In our opinion the fixing of a limit of five thousand rupees is likely to allow a large number of important trusts to escape supervision and control. The vast majority of the temples in this country have incomes below 5,000 rupees. We would therefore recommend that the limit may be reduced from five thousand to one thousand rupees.

6. Sub-clause (3) of clause 12 provides that for the purpose of ensuring the proper maintenance of accounts of any religious trust, the Commissioner may appoint a person to keep accounts for the trust after consulting the trustees thereof. The proviso to the sub-clause, however, prohibits such appointment in the case of a trust having an annual income of less than 25 thousand rupees. Two views were expressed in regard to the proviso. One view was that the Commissioner should make the appointment in the case of a trust having an annual income of over ten thousand rupees; that in other cases the Commissioner should decide if an accountant was necessary and that if necessary, the trustees may choose a whole-time or part-time functionary after consulting the Commissioner. The other view was that in the case of any trust having an annual income of less than ten thousand rupees, the trustee may appoint a part-time or full-time accountant after consulting the Commissioner. The majority

of us are in favour of the latter view as there is no reason to deprive the trustee of the right to make initial choice.

7. *Clause 17.*—We are of opinion that the provisions of sections 13 and 14 of the Charities Act, 1960, an enactment which came into force in the U.K. recently, with suitable modifications, should be incorporated. In this connection we invite attention to a similar recommendation made by us at the conclusion of Chapter VII.

8. *Clause 20* of the Religious Trusts Bill will not be necessary because we have dealt with this topic in the Chapter relating to management and administration.

CHAPTER XIII

LAND REFORM LEGISLATION

As already mentioned while dealing with the origin of temples, the former rulers of Indian States, big zamindars, chieftains and other rich and influential people made munificent gifts of land to the temples either constructed by them or already existing. Most of these temples depended for their daily services on the income from these lands. The vicissitudes subsequently undergone in the course of history did not interfere with the peaceful enjoyment and possession of land by the temples. Neither Muslim nor Christian rulers ever sought to deprive them of their properties. Before the integration of the States some of the most important temples were identified with the Maharajas who ruled in that locality, e.g., Eklinjimaharaj Temple in Udaipur, Padmanabha Swami temple in Travancore, Guruvayur temple in Malabar and Chamundi temple in Mysore. All these temples had originally extensive properties. On account of land legislation and various other circumstances the resources of all such temples have been greatly diminished. Even temples like that at Srirangam (near Trichy), most of the temples in Kanchipuram and many of the temples in Andhra Pradesh and Kerala are being maintained on a marginal income. Grants of land had also been made to the mutts whose heads were held in great reverence for their spirituality, piety and learning. They attracted a large number of disciples and devotees and the rulers and rich people vied with one another to make liberal gifts of land to these institutions.

It has been acknowledged that if temples and mutts are to be maintained and the services in these institutions kept up in the way in which the original founders and donors wanted them to be kept up, it is necessary to ensure that the income of these institutions from lands should not be appreciably reduced.

2. In this context it is pertinent to refer to the provisions in the Provisions relating to religious institutions in the land reform enactments in the States in so far as they affect the income of these institutions. These provisions can be divided broadly into three heads, namely:—

- (1) provisions relating to land ceilings;
- (2) provisions relating to tenancy reform, and

(3) provisions relating to the abolition of intermediaries in lands.

Andhra Pradesh.—Section 16(b) of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (Andhra Pradesh Act 10 of 1961), exempts lands held by religious, charitable or educational institutions from the provisions of the Act.

Assam.—Section 8 of the State Acquisition of Lands held by Religious and Charitable Institutions of a Public Nature Act, 1961, provides for the acquisition of all lands held by institutions of a religious and charitable nature on payment of compensation in the form of a perpetual annuity equal to their net income.

Bihar.—Under the Bihar Land Reforms (Fixation of Ceiling on Land) Bill, 1959, as passed by the Legislature, an area not exceeding 240 acres of class III land or its equivalent owned and held under personal cultivation may be exempted for a specified period which may be extended from time to time for the purposes of performing religious rites and maintaining religious institutions. In the case of land in excess of this limit, compensation is payable at the same rate as is payable to other owners.

Gujarat.—Section 3 of the Gujarat Agricultural Lands Ceiling Act, 1960 (Gujarat Act 27 of 1961), exempts *inter alia* from the ceiling provisions lands which are the property of an institution for public religious worship, provided the entire income of such lands is appropriated for the purpose of such institution.

Kerala.—Section 57 of Chapter III of the Kerala Agrarian Relations Act, 1960 (Kerala Act 4 of 1961), which provides for exemptions from the restriction upon ownership and possession of land in excess of the ceiling area and disposal of excess lands includes lands owned or held by a religious, charitable or educational institution of a public nature and also public trusts, provided that the entire income of such lands is appropriated for the institution or trust concerned.

Madhya Pradesh.—Section 3 of the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (Madhya Pradesh Act 20 of 1960), exempts *inter alia* the property of a public trust for an educational or charitable purpose or an institution for public religious worship from the provisions of the Act, provided the entire income of such land is appropriated for the purpose of such trust.

Madras.—Section 2 of the Madras Land Reforms (Fixation of Ceiling on Land) Act, 1962, exempts lands held by religious trusts of a public nature from the ceiling provisions.

Maharashtra.—Section 47 of the Maharashtra Agricultural Lands (Ceilings on Holdings) Act, 1961 (Maharashtra Act 27 of 1961), exempts only lands held by a public trust for educational purpose, hospitals, pinjrapole or goshala from the purview of the ceiling. Lands held by religious institutions are apparently not exempted.

Mysore.—The Mysore Land Reforms Act, 1961 (Mysore Act 10 of 1962), gives exemption from the provisions relating to ceiling on land

holdings or leases of land granted to or for the benefit of any industrial or commercial undertaking; lands held by co-operative societies approved by Government, etc., but not to the lands held by religious institutions.

Orissa.—Section 39(3) of the Orissa Land Reforms Act, 1960 (Orissa Act 16 of 1960), read with item (24) (iii) of section 2 of the Act exempts lands held by religious and charitable institutions engaged *bona fides* in a work of public benefit from the purview of the land ceiling provisions.

Punjab.—There is no exemption from the land ceiling provision in any of the land reform enactments in force in the State.

Rajasthan.—The Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 (Rajasthan Act 6 of 1952), does not give any exemption to the lands held by religious institutions from the land ceiling provisions.

Uttar Pradesh.—Section 6(viii) of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (U.P. Act 1 of 1961), exempts land held by or under a religious or charitable wakf, trust or endowment before the 1st May, 1959 from land ceilings.

West Bengal.—Lands held under khas possession of religious and charitable institutions are exempt from the land ceiling provisions *vide* section 6(1) (i) of the West Bengal Estate Acquisition Act, 1953 (West Bengal Act 1 of 1954), and section 4(3) (b) of the West Bengal Land Reforms Act, 1955 (West Bengal Act 10 of 1956).

Union Territories.—So far as Delhi is concerned, lands held by religious and charitable institutions are not exempted from the provisions of land ceiling. However, where the land in excess of the ceiling limit in respect of a religious or charitable institution is acquired, such institution will get, in lieu of compensation an annuity equal to the net annual income of the excess land—*vide* section 19 of the Delhi Land Reforms Fixation of Ceiling Act, 1960. Similar provisions exist in the Manipur Land Revenue and Land Reforms Act, 1960 and the Tripura Land Revenue and Land Reforms Act, 1960. There is no special provision in the Land Reforms Act in force in Himachal Pradesh in favour of religious and charitable institutions.

3. Andhra Pradesh.—Under the Tenancy Bill which is now before the Select Committee of the Andhra Pradesh Legislature, religious and charitable institutions are entitled to resume lands from tenants like other landlords. There is a special provision that tenants holding land from such institutions shall not be entitled to become owners of the non-resumable areas [clause 27(2)]. In the Hyderabad area (Telangana) inams held by religious and charitable institutions are exempted from the purview of the Tenancy Act. Lands other than inams held by such institutions are not exempted.

Bihar.—There is no special provision for religious and charitable institutions in the Bihar Land Reforms Act, 1950 (Bihar Act 30 of 1950).

Gujarat (former Bombay and Kutch area).—The tenants of institutions for public religious worship have been given security of tenure and their rents are regulated, but they have not been given the right of purchase [section 88-B(1) (b)] of the Bombay Tenancy and Agricultural Lands Act, 1948, and the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1953—section 29(b).

Saurashtra area.—Tenancies are not regulated.

Kerala.—Religious institutions of a public nature are not exempted from the provisions relating to tenancy reform. Their right, title and interest in the case of tenancy lands will vest in the Government and they will get in lieu of compensation a perpetual annuity equal to the fair rent in respect of such land and value of structures, wells and embankments of a permanent nature (The Kerala Agrarian Relations Act, 1960).

Madras.—The tenants of religious and charitable institutions are given security of tenure subject to the right of resumption. The tenants have also no right of purchase [section 4(a) of the Madras Cultivating Tenants Protection Act, 1955].

Maharashtra.—Under Section 88-B(1) (b) of the Bombay Tenancy and Agricultural Lands Act, 1948, tenants of lands which are the property, among other things, of an institution for public religious worship have been given security of tenure and fair rents but have not been granted the right of purchase. The Hyderabad Tenancy and Agricultural Lands Act, 1950 (section 102-A) which is applicable to the Marathwada area of the State exempts the lands held by religious and charitable institutions in that area.

Mysore.—According to clause 106 of the Mysore Land Reforms Bill, 1961, as reported upon by the Select Committee, religious and charitable institutions are not exempt from the provisions relating to tenancy reform. However, such institutions will receive compensation for the surplus lands acquired by the Government or those purchased by tenants in the form of non-redeemable and non-negotiable bonds carrying interest at the rate of five per cent per annum. This will assure the institution in the case of tenancy lands, 75 per cent of fair rent and in the case of surplus land between 80 to 125 per cent of the fair rent.

Orissa.—The religious and charitable institutions in the State have been granted the status of privileged raiyats and as such are entitled to let out their lands and the tenants of such institutions are not given a right of purchase. [Sections 2(24), 6(3) and 29 of the Orissa Land Reforms Act, 1960].

Punjab.—The provisions relating to tenancy reform do not apply to lands held by religious and charitable institutions so far as the former Pepsu area is concerned (section 51 of the Pepsu Tenancy and Agricultural Lands Act, 1955). In the Punjab area the provisions relating to tenancy reform are applicable to such institutions without any exception.

Rajasthan.—Under the Rajasthan Tenancy Act, 1955, there is no exemption in the case of land held by religious and charitable institutions from the provisions relating to tenancy reform.

Uttar Pradesh.—Lands held by the religious and charitable institutions have been acquired under the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950. The institutions will be paid such compensation as is payable to other landlords. The institutions will also be paid rehabilitation grants equal to their net income minus two and a half per cent interest on the compensation amount (sections 69 and 99 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950).

West Bengal.—The provisions relating to tenancy reform are applicable to religious institutions without any exception.

4. *Andhra Pradesh.*—In the Hyderabad area the Hyderabad Abolition of Inams Act, 1954, does not apply to inams held by or for the benefit of religious and charitable institutions, but the Hyderabad (Abolition of Jagirs) Regulation 1358 F provides for the abolition of jagirs held by religious and charitable institutions (section 16). Such jagirdars will receive under the Andhra Pradesh (Telangana Area) Jagirs (Commutation) Legislation (Amendment) Act, 1961, an annuity from the Government which will be (a) in the case of a jagir granted to any person for the purposes of any service or charity of a public nature connected with any religious or charitable institutions an amount equal to 50 per cent. of the gross basic sum (section 10).

Bihar.—The Bihar Land Reforms Act, 1950, applies to lands belonging to religious and charitable institutions. These institutions are entitled to get from the Government in lieu of compensation, a perpetual annuity equal to the net income [section 24(3)], provided the income is dedicated exclusively to charitable and religious purposes.

Gujarat—Saurashtra area.—Religious and charitable institutions should be allowed to retain the gharkhed lands and are paid a perpetual cash annuity based on land revenue for abolishing the Barkhali tenure (sections 15 and 18 of the Saurashtra Barkhali (Abolition) Act, 1951).

Kutch area.—The lands held by such institutions are not exempted from the Kutch Inams Abolition Act, 1953, but on abolition of inams the institutions are paid a perpetual annuity based on land revenue of the lands.

Madhya Pradesh—Mahakoshal area.—Under the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, the rights of religious and charitable institutions in the estates held by them have vested in the State on payment of normal compensation and rehabilitation grant as provided for other persons. It has however been provided that the State Government may, if it considers it expedient in the public interest, grant to such institutions an annuity.

Madhya Bharat area.—The provisions under the Madhya Bharat Zamindari Abolition Act, 1951, are on the lines of the provisions of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950. Under the Madhya Bharat Abolition of Jagirs Act, 1951, the compensation payable shall be the same as payable to other jagirdars (section 41 of the Act read with para. 4, Schedule I).

Vindhya Pradesh area.—Section 41 of the Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952, provides that in the case of a jagir held for the maintenance of any religious or charitable institution, the Government may pay in lieu of compensation a perpetual annuity in such instalments as may be prescribed.

Madras.—Under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, all estates held by religious and charitable institutions have been abolished on payment of an annuity called tasdik allowance equal to the basic annual sum. Under section 38(2) of the Act it has been provided that where the tasdik allowance is less than the average net annual income derived by the institution from all sources in the State during the five years preceding the acquisition, the deficiencies will be made good to the institution by the Government every year.

Maharashtra.—In the Bombay area the lands held by religious and charitable institutions are exempted from the provisions relating to abolition of intermediaries. In the Marathwada and Vidarbha areas the provisions relating to the abolition of intermediaries in lands are the same as in the Telangana area of Andhra Pradesh and the Mahakoshal area of Madhya Pradesh respectively.

Mysore.—Religious and charitable inams have been abolished under the Mysore Religious and Charitable Inams Abolition Act, 1955, on payment of annual tasdik allowance equal to the net income (section 90).

Karnataka area.—The provisions are as in the Telangana area of Andhra Pradesh.

Madras area.—As in Madras.

Coorg area.—No legislation for the abolition of intermediaries has been undertaken so far.

Orissa.—The estates belonging to religious and charitable institutions have been abolished under the Orissa Estates Abolition Act, 1951. Such institutions have been given in lieu of compensation a perpetual annuity equal of the net income [section 28(2)].

Punjab.—The Punjab Abolition of Ala Malikiyat and Talukdari Rights Act, 1953 (Punjab Act 9 of 1953) and the Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 (Punjab Act 8 of 1953) apply to religious and charitable institutions also. The State Government, however, informed the Planning Commission that they do not propose to settle tenants on the surplus land of these institutions for the present.

Rajasthan.—Under the Rajasthan Land Reform and Resumption of Jagirs Act, 1952 (Rajasthan Act 6 of 1952) the provisions relating to abolition of jagir rights are applicable to these institutions. If the institution was receiving from the income of the jagir a grant of money for a period exceeding six years before resumption, the Government may continue to make such grant or a part thereof as it may deem fit.

Zamindari and Biswedari held by religious and charitable institutions have been vested in the State under the Rajasthan Zamindari and Biswedari Abolition Act, 1959 (Rajasthan Act 8 of 1959). There is provision for the payment of annuities to such institutions.

West Bengal.—Under section 17(1) of the West Bengal Estates Acquisition Act, 1953 (West Bengal Act No. 1 of 1954), lands other than those under the khas possession of institutions are vested in Government. They are to be paid in lieu of compensation annuity equal to the income.

5. On a perusal of the provisions of the land reform legislation in the various States, as detailed above, it will be observed that a number of States like Andhra Pradesh, Gujarat, Kerala, Madras, Madhya Pradesh, Orissa and Uttar Pradesh have exempted religious and charitable institutions from the provisions of land ceiling while certain other States like Bihar have fixed a higher acreage as the ceiling area for these institutions. A few States like Mysore, Punjab and Rajasthan have not exempted these institutions from the ceiling provisions at all. But so far as tenancy reform and abolition of intermediaries in lands are concerned, no exemption from the operation of the general provisions in this behalf has been given to the lands of the religious institutions except in the case of certain inam lands in the Hyderabad area of Andhra Pradesh and the Marathwada area of Maharashtra. However in certain States, provision has been made in the relevant enactments for the payment of a perpetual annuity equal to fair rent or net income of the lands of those institutions taken over by the State. In Madhya Pradesh and Uttar Pradesh, there is provision for nominal compensation plus a rehabilitation grant.

6. The views of a few important witnesses on the land reform legislation in the States in general and particularly on the point as to how far such legislation has affected the income of the religious institutions are set out below:—

(1) Shri J. N. Das, Director of Panchayats, Assam, and Shri R. R. Das, Deputy Minister of Revenue, Assam, in the course of their evidence have stated that lands in the State are generally cultivated by the tenants and that there is no direct management by the institutions of the lands belonging to them. There is an enactment in the State providing for the acquisition and management of these institutions called the State Acquisition of Lands Held by Religious and Charitable Institutions of a Public Nature Act, 1961. This Act provides for the acquisition of all lands held by institutions on payment of compensation in the form of a perpetual annuity equal to their net income. The provision for

perpetual annuity will enable the institutions to maintain themselves without much difficulty even after their lands are acquired by the Government.

(2) Shri Phukan, Deputy Commissioner, Gauhati, is rather sceptical of the religious institutions being able to cultivate lands properly. He is of the view that with the trend of modern land legislation, land revenue itself may be abolished in the course of a few years and that it will be impossible for any temple to have any income from the landed property. In fact landed property may prove to be more a source of encumbrance than one of help to the institutions. It may not be possible for the Government also to manage lands on behalf of the institutions because at least in Assam it has been the experience of Shri Phukan that Government officers are not able to manage the lands properly and collect revenues from the tenants.

(3) Dr. M. S. Mehta, Vice-Chancellor, Rajasthan University, is of the opinion that the idea of donating lands must have been that they are really intended for the welfare of the community at large. That idea has completely disappeared now and the *muafi* lands are not cultivated properly by those to whom they are entrusted for the benefit of the community. The yield from these lands is also low compared to the yield of other lands. According to him it would be better if these *muafi* lands are acquired by the Government on payment of suitable compensation.

(4) The Commissioner, Devasthan Department, Rajasthan, is in favour of exempting the religious institutions and the endowments attached thereto from the operation of the rent control and eviction laws. These laws are of course intended to provide maximum facilities to the tenants but with the increase in the rates of rents during the last few years and the present high cost of the commodities required for services in temples, etc., these laws have acted very adversely in the case of religious institutions.

(5) Shri Biswanath Das, Ex-Chief Minister, Orissa, and the present Governor of Uttar Pradesh, is of the view that since the Government of India, the Planning Commission and the State Governments are all keen on land reforms with the idea of giving rights over lands to the tenants, it will not be possible to find the endowments in the form of lands hereafter for these institutions. The old princely States have been abolished; the inams have been abolished and the operation of the Hindu Succession Law will further reduce the extent of land holdings. Shri Das therefore does not expect the possibility of the religious institutions getting endowments in the shape of lands in future.

(6) The Chief Minister of Orissa, Shri Patnaik, is in favour of the grant of annuities as compensation for lands acquired by the Government.

(7) The Commissioner of Endowments, Orissa, holds the view that land reform such as the abolition of zamindaris and inams as well as the Tenants Protection Act and the Tenants

Relief Act, have considerably affected the income of many institutions. Some of them possessing only minor inams are about to be practically closed, as annuity by way of compensation takes a long time to be paid and even if paid, it is not sufficient.

(8) Shri J. M. Barot, Advocate and Managing Trustee of Shri Mahalaxmi Temple Charities, Bombay, is definitely of the view that land reform legislation like the abolition of zamindari and inams has adversely affected the income of temples and mutts. The Charity Commissioner, Bombay, has stated that certain provisions of the Tenancy Law have reduced the income of the religious institutions.

(9) The Commissioner, Hindu Religious and Charitable Endowments Department, Kerala, feels that the tenancy legislations in the State have brought about a difficult situation. Collection of rent has become almost impossible with the result that the financial position of the temples under the control of the Department the very existence of which is solely dependent on the income from landed properties, has deteriorated to such an extent that in certain temples it is found difficult to preserve even pōojas and rituals.

(10) Shri N. Ramesan, Transport Commissioner and Director, Archaeological Department, Andhra Pradesh, has stated that the land reforms in the State have very gravely affected the incomes of temples. He feels that it is essential to safeguard the landed properties of temples since royal patronage, etc., to temples is a thing of the past.

(11) Justice A. Srinivasacharya, Judge, High Court, Andhra Pradesh, is not in favour of the acquisition of endowed property by Government for any purpose. In exceptional cases where it is so acquired, full and adequate compensation should be given.

(12) Shri B. Gopala Menon, Advocate, Ernakulam in the course of his evidence stated that in all cases where lands of the religious institutions are taken away, they should be given compensation at the current market rates.

(13) Commenting upon the land reform legislation in Andhra Pradesh, Shri Anna Rao, Executive Officer, Tirupati-Tirumalai Devasthanams, has stated before the Commission that such legislation has affected the income of the Tirupati Temple very much. The Devasthanams had six hundred villages yielding an income of seven lakhs of rupees every year. About a crore of rupees have been invested to acquire them. The Government took over the villages in 1950 under the Zamindari Abolition Act and a compensation of only twelve lakh rupees is being given. So far as the recent tenancy legislation in Andhra Pradesh is concerned, it would become difficult to evict the tenants in temple lands hereafter and further the tenants can file petitions for the fixing of fair rent. Thus, the temple income is bound to be affected.

(14) Shri P. Lakshmayya, Commissioner of Endowments, and Shri Triambak Lal, Director of Endowments, Andhra Pradesh

in a memorandum submitted to the Commission have dealt with in detail the working of the land reform legislation in the State.

According to them the inams of the religious institutions in the State are generally leased out in public auction or by tender system, if public auction fails. They are cultivated directly by the institution only under exceptional circumstances. An analysis of the reports reveals that only 2 per cent. of the lands are cultivated by the institutions.

Under the Tenancy Act of 1956, whatever may be the agreed rent as between the landlord and the tenant the tenant can get fair rent fixed, not exceeding half of the gross yield in the land. As the ryots now have the privilege of getting the rents reduced, notwithstanding any agreement, the rent that will be fixed will not be sufficient even to maintain the services in the temples, not to speak of keeping the temples in proper repairs. It is a fight between the tenant who is personally interested in getting the rent reduced as much as possible and a non-hereditary trustee of an institution whose term of office is only 3 years under the present Act and who has no personal interest in the matter and who is preoccupied with his own cultivation and other farm work. It has been the experience of the Endowments Department for the last 5 years that where the tenants filed fair rent petitions before the Revenue officials, the case of the temples has not been properly represented.

The present Tenancy Bill seeks to fix the rent at 25 per cent. of the gross yield. If the Bill is passed, the temple would be getting only 1/4th of the previous prevailing rents, which would only be sufficient to pay the land tax and water rate. Under the proposed enactment, not even the most fertile land will get more than 5 bags of paddy per acre as its rent, if the yield is 20 bags. When there was no Tenancy Act in force a temple having 20 acres of very fertile land was getting about 300 bags as its yearly rent at the rate of 15 bags per acre. Under the Tenancy Act, 1956, it is getting only 150 bags per acre. Under the proposed protected Tenancy Act, the temple will be getting only a rent of 75 bags per year. It has been calculated that any substantial reduction in the income of the religious institutions will lead to the closure of almost 95 per cent. of these institutions, i.e., about 10,000 institutions in the whole of Andhra Pradesh.

All lands owned by religious and charitable institutions should be exempted from the operation of the Tenancy Act as envisaged in section 102 of the Hyderabad Tenancy and Agricultural Lands Act of 1950.

Religious and charitable inams, whether in the shape of land or cash, should not be resumed but should be continued in perpetuity. In the case of small inams (up to 20 acres dry and 5 acres in wet), the archaka of the temple may be allowed to cultivate the temple lands provided he discharges his duties satisfactorily and renders service to the institutions according to custom and usage. This will be beneficial not only to the archaka, but also to the institution as the rents that will be realised by

leasing out such holdings would not be sufficient to pay for the services of the institutions.

In order to provide reasonable protection to the ryots, the lease should continue for a minimum period of 5 years. No proprietary or protected tenancy or other rights should accrue to the tenants of the lands of the religious and charitable institutions concerned.

The lands should be leased out on the system of "sealed tenders" so as to prevent reckless bidding.

(15) According to Shri P. Rangaswami Naidu, retired District Judge, Madurai, so far as service inams in the Madras State are concerned, some villages have been taken by Government, but compensation has been given to the service holders and not to the temples. These service holders cannot be forced to perform the services at present. The compensation proposed to be paid for acquired property is also not adequate.

(16) Shri P. Subramaniam, retired District Court Sheristadar, Madurai, has stated before the Commission that land reform legislation like the abolition of zamindari has affected the income of temples as a result of which the proper conduct of services and festivals has been affected. The Madras Tenancy Act in so far as it is applicable to temple lands has further reduced the annual income of the temples. The land ceilings will put a stop to future endowments to the temples and hence ceiling should not be applied to temple lands. The payment of compensation may not solve the problem, as it is generally inadequate and would disappear in a short time having been spent on repairs or renovations.

(17) Shri P. P. Muttanna of the Coorg Temple Fund Committee has stated that so far as the lands in Coorg are concerned they are very valuable and he is in favour of the retention of the lands by the temples rather than accepting compensation or even a perpetual annuity.

7. On an analysis of the evidence before us, we find that there is a large volume of opinion against the imposition of land ceilings on, or the application of the provisions of tenancy reform legislation to religious endowments. On the other hand another school of thought is to the effect that any such exemption will come into conflict with present day ideas relating to the rights of occupancy tenants or tillers of the soil. It has, therefore, been suggested to us by some witnesses that, while Government may take over any land, adequate compensation should be paid and that the compensation should take the form of an adequate perpetual annuity to be paid to the institution. Some others have stated that it is not likely that Government would give adequate compensation by way of annuity. The disparity or disproportion between the old prices and the present prices of materials and commodities necessary service and worship and for the repairs and renovation of the temples is so great that the compensation given may not be sufficient to enable

the temple authorities to discharge their obligations. We are aware that consistently with the proclaimed and accepted objective of a socialistic pattern of society it is necessary to benefit the tenants and the tillers of the soil and for this purpose the available land has to vest increasingly in the cultivating tenants. As the land available for cultivation is limited and there are a large number of people who are called the landless or the unemployed which it is the duty of the Government to provide for, the surplus land in the hands of the zamindars, mutts and temples, etc., have to be taken over and distributed by the Government according to the policies laid down by them. Many witnesses have given evidence before us that it is becoming increasingly difficult to get the lands of the religious institutions cultivated through the tenants on whom many rights have been vested by legislation. For instance, the Sankaracharya of Sringeri Mutt has handed over the lands of the institution to the Government for management on his behalf. Having considered all aspects of the problem we recommend that the lands held by religious and charitable institutions to the extent to which they are under the direct management of such institutions may be kept out of the purview of the land ceiling provisions so that the institutions may be able to utilise the produce from the lands for their daily services. So far as the lands which are under the cultivation of the tenants are concerned, we recognise that it would be difficult and invidious to get them exempted from the normal provisions of tenancy legislation applicable to lands owned by others. Many States which have passed legislation taking over the surplus land including the lands of religious institutions have provided for compensation to be given to these institutions in the form of perpetual annuity equal to their existing net income based on fair rent. This we feel would operate harshly on temples and mutts as the net income based on fair rent is bound to be considerably less than the income which the institutions used to get prior to the resumption of their lands by Government. We recommend that where the lands of the institutions which are under the cultivation of the tenants are settled with the tenants, the institutions concerned should be given a perpetual annuity equal to the average annual income from these lands for say, six years preceding the date of taking over of such lands. The payment of lump sum compensation will not solve the problem, as it is usually inadequate and would disappear in a short time. While fixing the annuity due weight should also be given to the increase in the market prices of the lands. This would ensure a bare minimum income to these institutions thus enabling them just to maintain the daily worship and rituals and to provide for their repairs and renovations.

CHAPTER XIV

AMENDMENT OF THE CONSTITUTION

As there has been considerable controversy regarding the operation of the Constitution *vis-a-vis* temples and mutts, it may be useful to analyse the exact language of the Constitutional provisions and the relevant Schedule especially as some of the implications of the Constitutional provisions do not seem to have been kept prominently in mind by some of the courts which have dealt with these institutions.

Article 25(1) undoubtedly confers freedom of conscience and the right freely to profess, practise and propagate religion but States are specifically empowered under clause (2) to legislate on any matter, economic, financial, political or, generally speaking, secular activities associated with religious practices. In other words it is possible to contemplate temples and mutts operating for the purpose of economic or social betterment provided there is no bar to doing so by reason of specific provisions in any trust deed, document or judgment constituting the relevant trust in question. Clause (b) goes further and enables the Legislature to provide for social welfare and even social reform. Clause (a) of Article 26 enabling religious denominations to establish and maintain institutions for religious and charitable purposes in reality gives implied effect to the identification of *Ishta* and *Purta* which has been dealt with by various witnesses. Not only the juxtaposition of Articles 25 and 26 but the rule of benignant construction of statutes makes it clear that these two articles should be read together and so as to reconcile the intentment of the two Articles and they should not be construed disjunctively. If such a construction be adopted, the provisions of Article 31 will become clear. While no person (the term "person" including the head of a mutt or the authorities of a temple) can be deprived of his property save by authority of law the words "authority of law" can well be applied so as to bring in clause (2) of Article 25. In other words, if the State regulates or restricts secular activity associated with religious practices that would be a law which *protanto* may deprive a person of rights of property but nevertheless will be within statutory possibility. In construing the scope and the meaning of the items provided for in the list appended to the Seventh Schedule the power of legislation in respect of charities, charitable institutions, charitable and religious endowments and religious institutions, the construction suggested above of Articles 25 and 26 should govern the scope of the legislative jurisdiction of the Centre and the States. In this connection, if the three judgments of the Supreme Court, namely, in the *Shirur Mutt Case*, in the *Jain Temple Case* and in the *Ajmer Mosque Case* are read together it is difficult to resist the conclusion that the following passage which is extracted from 1961 A.I.R. 1415 is either an extension of the doctrines contained in the previous judgments or an unavowed departure from the principles enunciated in earlier cases.

EXTRACTS FROM THE JUDGMENT IN THE CASE OF DURGAH COMMITTEE VS. HUSSAIN ALI (A.I.R. 1961 S.C. 1402).

(33) We will first take the argument about the infringement of the Fundamental Right to freedom of religion. Articles 25 and 26 together safeguard the citizen's right to freedom of religion. Under Art. 25(1), subject to public order, morality and health and to the other provisions of Part III, all persons are equally entitled to freedom of conscience and their right freely to profess, practise and propagate religion. This freedom guarantees to every citizen not only the right to entertain such religious beliefs as may appeal to his conscience but also affords him the right to exhibit his belief in his conduct by such outward acts as may appear to him proper in order to spread his ideas for the benefit of others. Article 26 provides that

subject to public order, morality and health every religious denomination or any section thereof shall have the right:—

- (a) to establish and maintain institutions for religious and charitable purposes;—
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property;
- and
- (d) to administer such property in accordance with law.

The four clauses of this article constitute the fundamental freedom guaranteed to every religious denomination or any section thereof to manage its own affairs. It is entitled to establish institutions for religious purposes, it is entitled to manage its own affairs in the matters of religion, it is entitled to own and acquire movable and immovable property and to administer such property in accordance with law. What the expression "religious denomination" means has been considered by this Court in *Commr., Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar*, 1954 SCR 1005; (AIR 1954 SC 282). Mukherjea, J., as he then was, who spoke for the Court, has quoted with approval the dictionary meaning of the word "denomination" which says that a "denomination" is "a collection of individuals classed together under the same name, a religious sect or body having a common faith and organisation and designated by a distinctive name." The learned Judge has added that Art. 26 contemplates not merely a religious denomination but also a section thereof. Dealing with the question as to what are the matters of religion, the learned Judge observed that the word "religion" has not been defined in the Constitution, and it is a term which is hardly susceptible of any rigid definition. Religion, according to him, is a matter of faith with individuals or communities and it is not necessarily theistic. It undoubtedly has its basis in a system of pleas or doctrines which are regarded by those who profess that religion as conducive to their spiritual well-being, but it is not correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress (pp. 1023, 1024) (of SCR): (p. 290 of AIR). Dealing with the same topic, though in another context, in *Venkataramana Devaru v. State of Mysore*, 1958 SCR 895; (AIR 1958 SC 255). Venkatarama Aiyar, J. spoke for the Court in the same vein and observed that it was settled that matters of religion in Art. 26(b) include even practices which are regarded by the community as part of its religion and in support of this statement the learned Judge referred to the observations of Mukherjea, J., which we have already cited. Whilst we are dealing with this point it may not be out of place incidentally to strike a note of caution and observe that in order that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices within the meaning of Art. 26. Similarly

even practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. Unless such practices are found to constitute an essential and integral part of a religion their claim for the protection under Art. 26 may have to be carefully scrutinised; in other words the protection must be confined to such religious practices as are an essential and an integral part of it and no other.

* * * * *

Be this matter as it may, it has been very strongly urged that the matter should be made clear and beyond the range of further controversy and litigation by a proper amendment of the Constitution elucidating the following points:—

(1) That all temples, mutts and other institutions to which the public resort as of right or by tradition or custom for the purpose of worship, religious training or performing or discharging vows and/or institutions that accept gifts, donations and offerings from the members of the public without the right to refuse such offerings should be treated as public trusts in the sense that the public or a section thereof are interested in and have the right to enforce their proper administration and management. The special position of matadhipatis as different from a bare trustee has already been dealt with.

(2) The fact that the management of either the temple or the mutt is in the hands of persons or groups historically connected with the foundation of the institution or in the hands of persons who claim to have acquired proprietary or other vested interests in the image or the temple associated with an image can make no difference with regard to the essential character of the institution.

(3) All mutts whether managed by celibate or non-celibate persons, having been originally founded for the purpose of training and gathering together, a band of persons commonly devoted to the study, understanding or propagation of particular doctrines, dogmas, rituals, practices or ideas and being primarily charged with the duty of instruction and propagation of particular aspects of religious belief can never be regarded as private institutions although the head of the institution or the matadhipati may on account of personal or traditional holiness or learning or possession of extraordinary gifts (e.g. of healing and so forth) attract a number of disciples and followers who are willing to recognize the personal status of the person by gifts or offerings. In these cases also these gifts and offerings are made to the personage concerned by virtue of his office and in many cases owing to his personal attributes. Such gifts and offerings can never be private property in the ordinary sense of the term although a portion of the income or accumulation of the mutt properties may be utilized for the maintenance and proper dignity and traditional status of the head of the mutt and the maintenance not only of the matadhipati but of his followers, sishyas and his establishment and customary travels and the functions and ceremonies associated (viz. custom and usage) with the traditions of the mutt.

CHAPTER XV

General

A.—SADHUS AND SANYASIS

It may be useful to deal with the whole question of Sadhus—Hindu, Buddhist and Jain—as they exist in India at present and with the evolution of Sadhu organisations belonging to these faiths. As is well-known, the Hindu ideal is that every one, after his career as a student, namely, Brahmacharya, and the performance of his duties to his family and for the perpetuation of his lineage as a householder or Grihastha, should gradually retire from worldly activity and live apart from his domicile as a Vanaprastha and finally follow sanyasa by giving up all worldly attachments and property. As early as the Upanishads, the Order of Sanyasis had come into existence but meticulous rules were laid down for their daily life and discipline. Indeed, there is a Sanyasa Upanishad, a Paramahansa Upanishad and a Paramahansa Parivrajaka Upanishad dealing with the Order of Sanyasis and its sub-divisions and varieties. The Sanyasa Upanishad lays down: "Having cut off his hair, casting aside his Upavita or sacred thread, having bid farewell to his son enjoining him to continue the family tradition, the Sanyasi should maintain himself by Bhiksha or begging from the persons belonging to any of the three Orders of Asramas, namely, the Brahmin, the Kshatriya and the Vaisya. His hand should be his sole eating vessel and he should eat food as if it were medicine and merely so as to maintain his bare existence. He should dwell in a village only for one night and not more than five nights in a city excepting during the rainy months during which he is entitled to reside continuously in a village or city. This period was called Chaturmasya. There were four varieties of Sanyasis, Kutichaka, Bahudaka, Hamsa and Paramahansa. There are also Avadhutas who discard all clothing."

2. The Order of Sadhus or Sanyasins in India is, by common repute, composed of the spiritual descendants of the four sons of Brahma, namely, Sanaka, Sananandana, Sanatkumara and Sanat Sujata who refused to enter the householders' life and took the path of renunciation or Sanyasa. Sri Dattatreya was also one of the original Sanyasis.

Sankaracharya established a number of mutts situated in various parts of India. The Dasnamsis who worship the Nirgunabrahma, the Dandi sanyasis, paramahansa sanyasis and the Avadhuta or naked sanyasis may be said to be the followers of Sri Sankaracharya as also Akhadas sanyasis who are sub-divided into Niranjana and Nirmani Akhadas and Juna Akhadas. The Tamil or Siva Siddhanta sanyasis are found in South India. The Nagas are an Order of Saiva sanyasis. Guru Nanak, the founder of the religion of the Sikhs, accepted the Gods of the Hindu pantheon and many rituals. His son, Sri Chand following the Hindu aspects of his teachings started the Udasin cult and wrote hymns in the regional language. Among the Vaishnava sanyasis are Vairagis, Ramanandis and Ram Senhis. There are also Kabir Panthis, the followers of Kabir, to be found in Upper and Central India. There are the Dadu Panthis of the Vaishnava cult and Gorakhnath Panthis, the followers of Gorakhnath, a contemporary of Kabir. There are also sadhus of Nimbarka

sampradaya who are Vaishnavites. There is another group called the Parinami sect. (The above information is culled from a valuable work entitled "All about Hinduism" published by Swami Sivananda of Rishikesh, pp. 193-198). Swami Sivananda himself has founded an Asrama and his disciples are to be found all over India. He is conducting a publishing centre and his Divine Life Society is occupied in a large number of humanitarian activities including orphanages, hospitals, etc.

3. The Gita has a great deal to say about the right type of sanyasi who means to give up possessions from the external point of view but, what is more important, gives up attachments and desires. The Maha Narayana Upanishad also gives directions regarding the discipline and life of a sanyasi. At the same time, however, from very early times, a large number of people called themselves sanyasis or sadhus merely in order to earn a living without doing any work. As early as the days of Sankara, there were several sects of Saivas like the Raudras, the Ugras, the Bhattas, the Jangamas and the Pasupatas some of whom were the objects of attack by Sankara although they practised severe austerities. As already stated, all twice-born men, towards the close of their lives, are expected to become sanyasis as laid down from the days of the Manu Dharma Sastra. But many sanyasis are not of the orthodox type. There are mendicant devotees such as Vairagis, Gosains and Jogis, the latter being a general name for all tapasvins who seek, by their austerities, (or tapas) to achieve union with the Absolute. They are sometimes called sadhus and also fakirs though the latter name ought to be restricted to Muslim mendicants. The term Bhagat, a variant of Bhakta, is sometimes used for a Vaishnava devotee and the word mahant is applied to the leader of a sect or the head of a monastery. These Orders of sanyasis have a history of very ancient origin; and even recently new Orders of sanyasis have come into being. Swami Sahajananda founder of the Swami Narayan sect is a recent example of a founder of a new Order of sanyasis.

4. It must be borne in mind that Sankaracharya, Madhvacharya, Ramanujacharya and other founders of the great Hindu religious sampradayas, while they founded mutts or monasteries, choose a few select disciples whom they educated and trained for prolonged periods and thereafter sent them out to expound and propagate their creed. The same procedure may be said to mark the early history of the Veerasaiva, the Saiva, Saiva Sidhanta, the Vallabhacharya and the Ramanandi cults. It is only during the last two or three centuries that large groups of adherents or sishyas became enrolled especially in North India as Sadhus, Vairagis and so forth. In fact it was stated before us by several witnesses that Naga sanyasis founded Akhadas or centres from where in the past they sent out sadhus to correct (by force when needed) abuses and mismanagement of temples and mutts.

5. The Lord Buddha himself founded the Sangha or the Order of Monks and the fundamental obligation of a Buddhist is to take refuge in the Buddha, the Dharma and the Sangha, the Order of Monks or Sanyasis being an integral part of Buddhist religious organisation. Similarly in the case of the Jains, the Order of the

Sadhus or the Munis is as old as Jainism itself. In fact, the monastic ideal is not confined to India and, as Gibbon remarks in the Fourth Volume of his "Decline and Fall of the Roman Empire", Christians were from the early days divided into vulgar Christians and ascetic Christians. The Order of Monks spread from Egypt and the early Christian churches in Egypt claimed that the number of monks in the country was equal to the number of the remainder of the people.

6. Monasticism may be defined as a system of corporate life adopted by persons who retire from the world into religious seclusion and in Europe where Saint Benedict organised the monastic life, the rule was laid down that the characteristics of the Order should be poverty, chastity and obedience to a superior. In its best days, European monasticism exercised an enormous influence on social life and during many centuries, monks were the main repositories of learning and enlightenment. The same was the case in India and Buddhism gained adherents in far-flung regions owing to the influence of the monks who also were agencies for imparting elementary and religious education among the people, notably in Burma, Siam and adjoining countries.

7. The Hindu Order of Sadhus was not very close-knit nor numerous in the early days and it was during the Mughal times, according to the evidence before us, that specific organisations came into existence for the purpose of safeguarding Hindu religious solidarity. But whatever the past history may be, at the present time there is an enormous number of real and fictitious sadhus, sanyasis and vairagis, especially in North India. They are organised under various names among the Saivite, the Veerasaivite, the Vaishnavite, the Saktas, Buddhists and Jains. Many of them were enrolled under a spiritual preceptor or Guru who has founded a monastery or vihara and laid down rules for the continuance of the Order but in many cases, there are unattached sadhus wandering round the country some of whom have no credentials to learning or holiness. In fact at the present moment there are computed to be nearly six million (or two million according to another computation) so-called sadhus in India some of whom undoubtedly are pious and dedicated persons but many of whom although they call themselves sadhus are pretenders who thrive upon the credulity and the fears of the innocent and the ignorant. Some of these sadhus have practised some forms of Hata yoga and claim to be miracle workers. Some have migrated to Europe and to America and have even attempted to found asramas and monasteries in foreign lands. Some of them are doing good work but many take undue advantage of the general belief in Western countries that Hindus in saffron robes are likely to be adept astrologers, fortune tellers or miracle workers.

8. Theoretically speaking, if true sadhus could be organised into a close-knit, self-regulated and self-disciplined body charged with the duty of popular instruction—religious and ethical—and capable of being dedicated agencies for public, charitable and religious enterprises, they may well bring about a great and beneficial revolution in the religious life of India. But so to do requires far-sighted and well-regulated organisation and an active public opinion which will distinguish between the true and false types of sadhus.

9. The Bharat-Sadhu Samaj may easily become, if properly organised, regulated and disciplined, an instrument for carrying out the task of religious and ethical instruction of the masses and especially of the youth of the country and on normal as well as on special occasions, for the dispensing of relief to the poor, to the aged and to the diseased.

10. During the course of our itinerary we met representatives of local branches of the all-India Bharat Sadhu Samaj which is an incorporated body of heads of various religious institutions and sadhus of the ascetic order. It has its head office at New Delhi and several branches scattered throughout India (particularly in North India). Some members of the Samaj have given evidence before us and many other persons who are not members have also spoken about the Samaj as an appropriate organisation which may be used for organising sadhus and training of sadhu missionaries and for watching and if possible correcting the errors and mistakes in the managements of the religious endowments. The Samaj is making laudable efforts to organize the various religious (ascetic) orders on a common platform for the common cause of propagation of Hindu religion and preservation and proper utilization of religious endowments and for the furtherance of the Hindu spirit among the masses.

There is no doubt that the Sadhu Samaj has made a common platform for various persuasions of ascetic orders and is trying to achieve its objectives. The fact that the General Secretary of the all India Bharat Sadhu Samaj is a member of the Commission makes the Commission feel that the Government of India is aware that there is a Bharat Sadhu Samaj and its working and therefore it is one of the bodies to be recognized.

We feel that for the achievements of the objectives of the Samaj, that organization requires greater consolidation and more comprehensive arrangements about preliminary training of the members of the Samaj and scrutiny of the activities of its units.

11. We have also, in the course of our tours in India, met in the important capital cities and elsewhere, members of the Shri Ramakrishna Mission, an Order of Service, inspired by the teachings of Shri Ramakrishna Paramahansa and founded and systematically organised by his greatest disciple, Swami Vivekananda, a world figure. The Ramakrishna Mission does extremely valuable instructional and propagandist work in the matter of Hindu religion and tradition in various countries of the world, notably in the U.K. and U.S.A. In India, in addition to the above work, it has been instrumental in relieving distress and organising humanitarian activities of many descriptions. The original objectives of the Mission have been lucidly stated by Swami Vivekananda in a letter addressed by him in 1894 to the then Maharaja of Mysore. Relevant extracts are reproduced below:—

"There are thousands of simple-minded, self-sacrificing sanyasins in our own country, going from village to village, teaching religion. If some of them can be organized as teachers of secular things also, they will go from place to

place, from door to door, not only preaching but teaching also. Suppose two of these men go to a village in the evening with a camera, a globe, some maps etc., they can teach a great deal of astronomy and geography to the ignorant. By telling stories about different nations, they can give the poor a hundred times more information through the ear than they can get in a lifetime through books. This requires an organization which, again, means money. Men there are enough in India to work out this plan, but alas, they have no money. It is very difficult to set a wheel in motion, but when once set, it goes on with increasing velocity."

12. There are other religious organisations like the Mahabodhi Society, the Prarthana Samaj, the Arya Samaj, Bharat Sevashram Sangh etc. which have also been doing missionary and propaganda work to further and popularise Hindu ideals or some aspects thereof. Besides these there are in the country, even now as in the past ages, great saints of high spiritual stature—Mahayogies, Mahagyanis, Mahabhaktas—many professing enlightened and catholic views and magnetic personalities.

13. The Ramakrishna Mission have specialized in the organization of this missionary work which is conducted with extraordinary organizational skill and efficiency. Admission to the Order is regulated in the following way. A candidate who proposed to join the Order has to apply in the prescribed form and, if selected, is permitted to join some Centre of the Order where he is put on probation. The candidate must be a sincere aspirant for spirituality and have due regard for the ideals of Sri Ramakrishna and Swami Vivekananda. He should be within age limits of 18—30 years, relaxable in cases of exceptional merit, have passed at least the School Final Examination and must be of good health, good temper, accommodating, active, intelligent and known to the head of a local Mutt for a period of one year before admission as a probationer. After admission the candidate is given a thorough and systematic training to enable him to live up to the ideas and ideals of the Order in the course of a few years. The training is designed to develop the physical, intellectual and spiritual qualities of the aspirant. The minimum period of training is eight years. After undergoing training for a period of first four years of which two years must be spent at the Training Centre at Belur Mutt the probationer, if considered fit, is invested with Brahmacharya. Four years after Brahmacharya, if found fit, he is initiated into Sanyasa. Afterwards he acquires knowledge through experiences in the Centre in which he may be placed. The President and Trustees of the Belur Mutt have powers of disciplinary control over all probationers, Brahmacharis and sanyasins of the Order attached to the Belur Mutt wherever they may reside. A disciplinary code to keep up a congenial atmosphere for the spiritual progress of the members of the Order has been drawn up. The fundamental principles of the Sangha life are, obedience to Sangha discipline, chastity and poverty.

14. While a large number of witnesses like Shri Anantasayanam Ayyangar, formerly speaker of the Lok Sabha and now Governor

of Bihar, Dr. Jivraj Mehta, Chief Minister, Gujarat, Shri K. M. Munshi, Shri D. B. Sastry of Uttar Pradesh and representatives of the Bharat Sadhu Samaj including its President, Swami Akhandanand Saraswati and its branches in some States particularly in Northern India and others have supported the idea of training sadhus for missionary activities, there is conflicting evidence in the matter of the nature and manner of such training and the financing of such training.

15. The Sankaracharya of Sringeri Mutt has stated that instead of increasing the number of organizations to deal with missionary activity it would be better to strengthen the hands of existing organizations like the Ramakrishna Mutt who were doing that kind of work with a high order of proficiency which it would be difficult for anybody else to emulate easily. Dr. T. M. P. Mahadevan, Professor of Philosophy, University of Madras, has also supported this view.

The Sankaracharya of Kamakotipeetam has strongly opposed surplus funds of temples and mutts being used for missionary purposes. Shri K. S. Ramaswami Sastry, retired District and Sessions Judge, Madras feels that if Sadhus and sanyasis do not equip themselves, the public would boycott them and that it is not at all necessary to have a separate organization for Hindu missionaries. Shri Chandramouli, Ex-Minister of Endowments, Andhra Pradesh, is of the view that Sadhus cannot and should not be tied down to any organization. Shri Sumant C. Bhatt, Charity Commissioner, Gujarat entertains doubts whether any organisation of Hindu missionaries of sadhus would at all serve any useful purpose. *Per contra* Dr. V. Raghavan, Professor of Sanskrit, University of Madras, has stated that sadhus may be trained for missionary activities, but acharyas or matadhipatis are as good missionaries as sadhus and even spiritually far superior. The only difficulty they are labouring under is that they neither have the resources nor the modern methods of organization which Christian missionaries possess. Shri R. D. Nigudkar, Solicitor, Bombay Government is of the opinion that it is for the people to judge the sadhus by their conduct and that it is up to the leaders of the various sects to meet and organize missionaries of sadhus with a view to infusing religious spirit and interest into the people. Shri Rai Trimbaklal, Director of Endowments, Hyderabad, has pointed out that funds of temples and mutts should in no case be used impliedly or explicitly for proselytization purposes.

Shri Seetharama Sastry, Mysore, states that in his considered view the question of organizing Hindu missionaries is a very complicated one, as he was apprehensive that sabhas and sadhu samaj would join other bodies and interfere with mutts and temples in order to get power for themselves. He has no objection to proper training being given by the mutts themselves to the right kind of people after proper screening in order to propagate the tenets of the sampradaya concerned.

Shri R. S. Sankarior, retired District and Sessions Judge, Coimbatore, has expressed the view that organising Hindu missionaries of sadhus and sanyasis would not at all be desirable. The development of religious outlook should not according to him be made dependent upon external agencies.

16. We have bestowed our close and careful attention to this matter in the light of the opinions expressed before us and have come to the conclusion that, while there is a case for the training of sadhu and other missionaries in the larger interests of the public in general and Hindus in particular, it is absolutely essential that the persons selected for such training should be thoroughly screened and the training confined only to undeniably qualified persons fit in all respects for the task. In our view such missionary activity, if it is to be effective and usefully supplemental to the official and non-official efforts in welding together the centrifugal elements within the Hindu fold and achieving the wider perspective of emotional integration of the communities with varying creeds, beliefs and religions inhabiting our country, should eschew all activities and utterances tending to create or widen any schism between the various religions followed in India or between the various sects or sub-sects among Hindus or between religions which are in fraternity with the Hindu religion like Jainism, Buddhism and Sikhism.

17. Generally speaking, so far as the propagation of the tenets of the various sampradayas is concerned, mutts and other denominational organisations concerned with the sampradaya would naturally have their own missionaries and propagandists trained by the heads thereof according to their own traditions, customs and usages.

B.—SPECIAL OBSERVATIONS REGARDING CERTAIN IMPORTANT TEMPLES

I. The Badrinath Temple

We visited this temple in the beginning of October 1961 and in view of the all-India importance of the holy shrine endeavoured to make inquiries into its affairs in detail.

2. In the beginning of the 7th century A.D., Shri Shankaracharya reclaimed the temples of Badrinath and Kedarnath for Hinduism with the aid of Maharaja Kanak Pal of Garhwal. The rulers of Garhwal continued to manage the temples. In 1915 the territory in which Badrinath and Kedarnath lie was ceded to the British Government; but financial and religious control of the temples remained in the hands of the rulers of the Tehri Garhwal State. The management of the temples was not considered satisfactory and towards the end of the last century, a scheme was sanctioned by the Commissioner, Kumaon, under which the Rawal was made a trustee of the temples and the Tehri Garhwal Darbar was to supervise the Rawal's work. Conditions did not improve and public agitation increased.

3. In 1939, the U. P. Government passed an Act named The United Provinces Shri Badrinath Temple Act, 1939 (U.P. Act 16 of 1939), under which the management of the temple passed from the hands of the Rawal to a Committee consisting of 12 persons. The Rawal is restricted to his religious duties and the control of the Tehri Darbar

over religious matters was preserved. The Committee consists of the following:—

(i) 4 persons from Tehri-Garhwal elected or nominated in the manner agreed upon between H. H. the Maharaja of Tehri and the State Government of U. P.

(ii) 1 person elected by the Hindu members of the U. P. Legislative Council.

(iii) 2 persons elected by the Hindu members of the U. P. Legislative Assembly.

(iv) 2 persons residing in Garhwal district, of whom at least one should be a resident of Chamoli Tehsil, elected by the Hindu members of the Garhwal District Board.

(v) 3 persons to be nominated by the U. P. Government. One of the nominees of the U. P. Government is to be the President.

The term of office of each member is 3 years.

4. The provisions of the U. P. Shri Badrinath Temple Act, 1939, were extended to Shri Kedarnath Temple and its endowments in 1948 by U. P. Act 30 of 1948.

5. The number of pilgrims who visit Badrinath annually is very large. In the last 3 or 4 years the average number of pilgrims was about one lakh of persons per year. Pilgrims come from all parts of India, the largest number perhaps being from Bengal, Bihar, Rajasthan, Maharashtra and U. P. Buses ply up to Joshimath from where 19 miles have to be covered on foot or dandi or pony. The motor-road between Joshimath to Badrinath is under construction.

6. Formerly, when pilgrims travelled on foot, there were innumerable Chhattis all along the routes, which provided shelter, cooking equipment and raw food-stuff to the pilgrims. In 1913, Government appointed a Committee, which examined the Chatti system and they were all praise for the system. However, pedestrian traffic is slowly and steadily yielding to fast moving motor or bus traffic and now there are huge crowds of pilgrims at places where there are night halts. The difficulty of obtaining shelter as well as food at these places has thus of late increased enormously.

7. The Badrinath Temple Committee has a paid Secretary. An Assistant Secretary has also been appointed recently. The liaison of the Badrinath Committee is with the U. P. Government in the Medical Department. Proposals regarding construction of shelters, facilities of drinking water, etc., are sent up to the Medical Department. A 50% subsidy is granted by the State Medical Board for certain specified works the other 50% being contributed by the Committee. The Committee last year gave a subsidy of Rs. 50,000 for constructing public latrines. Another subsidy for an equivalent sum is also proposed to be given for the purpose. The works are executed by the L.S.G. (E. D.) Department.

8. Grants of lands, etc., to the temple by the Katyuri Kings and later by the rulers of Garhwal, known as 'Gunth' date back from the 11th century. The temple has acquired lands which are mostly in its

possession now, although the management and the right to collect revenues have been transferred to the State Government. The temple also owns buildings and shops donated by private individuals. Some of these are being disposed of with the sanction of the State Government. The annual income from 'Gunth Villages', agricultural land and other immovable property is about Rs. 25,100. Detailed statements showing the annual income from endowed villages, the movable property belonging to the temple and the estimated annual income of the temple along with the statement showing the staff employed by the Committee are appended. See Appendix XIV. A note indicating the activities of the temple is also appended—See Appendix XV.

9. Shri Sampurnanand, ex-Chief Minister U. P. and now Governor of Rajasthan has pointed out in a note sent to us the following difficulties, which some responsible local persons represented to him:—

(a) The chest in which cash, jewellery, etc. are offered is opened once a week in the presence of 3 permanent officials. Perhaps, a fourth member may be nominated by drawing lots out of a panel of a dozen leading citizens of Badrinath and added to this committee.

(b) The procedure of planning projects and getting the sanction for the same is very long and some-times it takes years before a work can be executed. This procedure has to be simplified.

(c) At present nobody follows up the recommendations of the Badrinath Temple Committee which is situated in a place very remote from the State Headquarters. Perhaps there should be somebody at the State headquarters to expedite proposals, schemes, etc.

(d) Some of the proposals of the Badrinath Temple Committee are out of date in view of the rapidly extending roads and some of the proposals are behind time. Somebody who has got greater experience of the requirements of tourists all over India and of coming trends should scrutinize the projects and plans.

10. He has made the following suggestions in his note referred to above:—

"Many pilgrims donate and want to donate huge sums for providing various facilities to pilgrims. As the Badrinath Temple Committee has no executive personnel, they cannot accept the donations as they can never assure the parties that work will be executed in reasonably quick time. Thus, either the charitably minded persons do not spend in these areas or what is even worse, they give their donations to local pandas. There is a rumour that local pandas misuse such donations."

11. The Badrinath Temple Committee owns palatial buildings at Dehra Dun, Lucknow, Calcutta, Bombay and perhaps at other places. Perhaps some of these can be disposed of and money utilized in constructing pilgrim shelters where they are very badly needed.

12. We feel that the suggestions made by him are valuable and would go a long way in bringing about improvements in

the management of the temple and providing adequate amenities for the large number of pilgrims visiting the holy shrine. These suggestions may be carefully considered.

13. According to the present practice the Committee contributes 50 per cent of the expenditure towards construction of dharmshalas, the other 50 per cent being contributed by the donors; and the building when constructed is named after the donors. Shri B. M. Tripathi, acting Secretary, Temple Committee, has stated that the eleven dharmshalas so constructed in Badrinath are after the names of different donors, and that the Committee has not much of an effective control over the allotment of accommodation etc. We think that this state of affairs is really not very satisfactory or desirable, and so we recommend that the Committee should build its own dharmshalas, rest houses, etc. at Badrinath and also at a few other convenient places en route Badrinath and have full control over them. Donations received in this behalf should of course be welcome and given due publicity and prominence in other suitable ways. The Committee should provide for a better equipped hospital with more beds. The present hospital with five beds is very inadequate to meet the requirements of the pilgrims during the season of the pilgrimage.

14. The Committee is at present running a canteen at Joshi Math where meals are provided to pilgrims on moderate charges. We recommend that the canteen at Joshi Math should be expanded and a few more canteens opened there to meet the needs of a large number of pilgrims. The Committee should also run a canteen at Badrinath and at least one on the route from Joshimath to Badrinath.

15. We have ourselves noticed that sanitary arrangements en route and at Badrinath itself are imperfect. We recommend that speedy steps should be taken to improve these amenities.

16. It is to the credit of Kali Kamliwala endowment that they have provided rest houses or chattis at various places on the route to Badrinath and Kedarnath. As we have already stated, the arrangements in those places are not entirely satisfactory especially in the matter of latrine, accommodation and sanitary arrangements. The authorities of the Kali Kamliwala Trust also used to provide vessels, provision for cooking to pilgrims and also distribute blankets for use by the pilgrims during the night and the name Kali Kamliwala came to be well known because of the distribution of such blankets. We have received evidence that in some of those places the arrangements originally designed have not been adequately or properly carried out. We ourselves found that there were blankets available for those places and that rest houses were in existence. We would suggest that the work and programme of the Kali Kamliwala Trust may be scrutinised and if necessary, supplemented so as to make for more adequate convenience of the pilgrims. Quite recently within a decade the Birla Trust has also been providing a certain number of rest houses on the way.

II. Shri Kedarnath Temple

The Commission visited the temple of Kedarnath in October, 1961. On our way we had an opportunity to examine Shri N. D. Bahuguna,

Assistant Secretary, Shri Badrinath Temple Committee, incharge Kedarnath temple, at Ukhi Mutt. In the course of his evidence Shri Bahuguna informed us that the income of Shri Kedarnath temple in the previous year from all sources was Rs. 1,19,425. The expenditure during that period involved among other things, Rs. 11,375 on bhog which is distributed to pilgrims free, Rs. 1,800 for pooja seva; and Rs. 19,000 on establishment. He further pointed out that the Kedar group has 25 temples under it and the Committee has to manage all the temples from the available funds. When there is deficit in any of the temples the funds of the Kedar temple are utilized. The cash balance during the year in question was to the tune of Rs. 25,000. Most of the cash balance, we were told, is invested in Government securities (National Savings Certificates, etc.) and up to the time we visited the place, the total investment amounted to Rs. 50,000. The temple has also undertaken to build a Sankara Samadhi which is estimated to cost Rs. 35,000 in each of the three phases. The money for this Samadhi has been collected from pilgrims and other donors through the good offices of Shri Sampurnanand, ex-Chief Minister and now Governor of Rajasthan. We find that there are practically no facilities at Kedarnath for even a fraction of the pilgrims to lodge themselves in the place. Till the time of our visit during the year, about sixty thousand pilgrims had visited the temple. The temple has got a small rest house with two or three rooms which are not comfortable. Distinguished guests are generally lodged there. There are a few small rest houses built by pandas where pilgrims are accommodated at exorbitant rates. There is also a rest house run by the Baba Kali Kamli Wala Kshetra. The place is practically devoid of any sanitary arrangements and people have to go out to answer calls of nature. In such a cold place at that height it is absolutely essential that the pilgrims should not be exposed to the rigours or ravages of the weather without proper facilities for shelter and other amenities. The Temple Committee should undertake the construction of the rest houses equipped with flush latrines. There are many waterfalls in the place and it should not be difficult to provide proper sanitary arrangements.

2. We would also suggest that the Committee should run at Kedarnath a canteen providing wholesome food to the pilgrims on moderate charges. They should also run a well equipped hospital with at least 50 beds during the season for the pilgrimage. We recommend that the Government of Uttar Pradesh in the interest of the large number of pilgrims visiting the place should arrange for building rest houses and providing other necessary amenities to the pilgrims.

3. The other thing which we would like to point out is that there is no authentic record of the history of this temple. There are 20 'Sankara Digvijays', but it is not known whether Sankara attained moksha in Kedar or Kumbakonam. A proper and authentic guide book should be published by the Committee for the benefit of the public.

4. The rates of dandies and ponies are not prescribed and the pilgrims have to pay varying amounts according to the bargain struck by them with the coolies. It is necessary that the Government should prescribe the rates. The Committee may have its own dandies

and ponies to bring the pilgrims to Kedar. It may engage wholetime-coolies for the purpose and pilgrims can be asked to pay the cooly charges at the scheduled rates to the Committee itself. In the matter of transport the example of Tirupati may be usefully followed.

5. It has been brought to our notice that glaciers are approaching the Kedar temple and that the *detritus* is approaching very close to the temple. It is understood that the Committee has reported the matter to the State Government. We would recommend that the State Government should have a geological survey undertaken and take other timely preventive measures in the matter.

III. Temple of Srinathji, Nathdwara

The temple at Nathdwara which is one of the centres where the *pushtimarga* cult is in vogue is now under the management of a Committee, but previously for a long time, it was administered by the Tilkayat. Serious allegations were made regarding the temple in a report known as the Nathdwara Enquiry Committee Report submitted by Shri Sarjoo Prasad, ex-Chief Justice, Rajasthan. There has been continued litigation about this temple for several decades in the course of which it was even claimed that the temple was a private temple, the income of which solely vested in the Tilkayat. In fact the climax of this claim went so high that even the idol was claimed to be the sole property of the Tilkayat which could be shifted or removed by him at his own discretion. Quite recently there was a reference to arbitration in regard to the proprietary rights in, and the disposal of, very valuable jewels which were sought to be removed by the Tilkayat from the premises of the temple. It appears that jewels worth several lakhs were removed and that under the Arbitration Award these jewels were shared by the temple and the Tilkayat in the manner specified in the Award.

2. The Nathdwara Temple Act, 1959 (13 of 1959), was enacted by the Rajasthan State Legislature so as to provide for the better administration and governance of the temple but its validity was challenged by the Tilkayat, Govindlalji in the High Court of Judicature for Rajasthan on the 31st January 1962 in two writ petitions filed by him. (D. B. Civil Writ No. 90/1959) and Trimbak Lal and others (D. B. Civil Writ Petition No. 310/1959). The High Court has partly allowed the writ petitions.

The Court struck down as *ultra vires*—

Section 2 (viii) to the extent that in the definition of "temple" it included temples of Navnit Priyaji and Madan Mohanji, as it held that these temples with connected endowments are the personal property of the Tilkayatji which should be handed over to him.

Section 16 empowering the Temple Board to manage the affairs of the temple.

Sub-sections (ii) and (iii) of section 28 empowering the Board to utilize the surplus funds of the temple for purposes other than those pertaining to the Temple.

Sub-section 2(A) in section 30 empowering the State to frame rules prescribing the qualifications for holding the office of and the allowances payable to the Goswami.

Section 36 empowering the State Government to remove difficulties.

Section 37 barring suits or proceedings.

3. The practice in this temple is to accept donations, large and small, from devotees and to use them mainly for the cooking and distribution of food on a very large scale, the expenditure on which is said to be about Rs. 2000 a day. The quantity of "bhog" is fixed and cannot be altered. The budget is also framed according to quantity and not according to cost. On the occasion of Diwali and Chhaparag and a few other occasions, there are special preparations of "bhog" according to century old customs or practices. The garments worn by the images are also daily changed. The "bhog" prepared is distributed to two hundred listed persons who claim it as of right. As a matter of fact they sell it at the end of each daily service. Except for doing some light 'seva' they do nothing. There has been strenuous opposition on the part of the Tilkayat and even of some worshippers to any idea of modifying the nature and extent of the "bhog" (food offerings made at the temple).

4. According to the Chief Executive Officer of the temple who gave evidence before us in Udaipur, the assets and income of the temple are roughly as follows:—

Jewellery valued at about one crore twenty lakhs.

Income Approximately	Rs.
Houses and shops	4,00,000
Compensation from Jagir since resumed	1,50,000
Income from lands under Khud Kasht (not resumed)	50,000
Income from Bhaint	8,00,000
TOTAL	14,00,000

Income for the year 1959-60 was about 18 lakhs and expenditure is between 15 to 18 lakhs.

Statements of income and expenditure of the temple for Samvat Years 2015 and 2016 are appended. (Appendix XVI).

According to the Chief Executive Officer, about 20% of the income is paid in cash to about 600 employees (clerks, bhetias and others) in Nathdwara, Surat, Bombay, Calcutta, Lucknow and other places. Then, there are 45 departments (bhandars) which are self-contained so far as income and expenditure are concerned. There are 100 guards who have to be looked after. Besides, feeding of Brajvasis is also done.

5. It has been urged before us that it is not possible to curtail expenditure which is mostly customary and traditional. We, however, feel that a careful assessment of the essential expenditure enjoined by the *pushtimarga* doctrine should be made and ways and means found to effect economies in the expenditure now being incurred which in our considered opinion is certainly capable of reduction. The savings thus effected may be utilized at least for the propagation of the tenets of the *Pushtimarga Sampradaya*, the giving of scholarships to students and others studying those tenets, and the provision of necessary amenities to the very large number of pilgrims visiting the holy shrine of Shrinathji. There is no rest house for pilgrims on the spot and not even a shelter against rain or sunshine.

IV. Tirupati Temple (Andhra Pradesh)

Tirupati temple popularly known as Balaji's temple in the north is one of the richest temples in the country and also fairly well managed. The Devasthanam Department takes a great deal of interest in looking after the convenience of the large number of pilgrims visiting this shrine, in all meticulous details. The amenities provided have increased the income of the temple to a phenomenal sum of over a crore of rupees annually during the course of the past few years. It would be helpful to give in some detail an idea of its resources, and activities in various religious, educational and cultural fields which make it an extremely useful institution which is attempting to carry out the original objects of the temples.

2. The pilgrims have *dharma* (free) seva during all hours except during certain *sevas* to the Lord and worshippers are admitted on payment. The scales of fees to be paid by pilgrims for special worship and archana on their behalf are prescribed. Receipts for all payment made are issued to the worshippers.

The entry into the temple is regulated by the queue system.

Transport

The Devasthanam runs a bus transport from Tirupati to Tirumalai for the convenience of the pilgrims and in the interest of the management. There are 50 buses and 12 lorries. These have been running from Tiruchanur, Ronigunta, Bangalore, etc. There are two water lorries.

Information centres

There are information centres at Madras, Hyderabad, Bangalore, Mangalore, Bombay, etc., to serve the pilgrims in their own area by giving them information about the Tirupati temple, facilities available, vows taken, etc. Such centres are proposed to be opened at Delhi, Benaras and Calcutta.

Dharmasalas.

The temple is constructing dharmasalas for the benefit of the pilgrims in places like Srisailem, Rameswaram, Bhadrachalam etc.

where a large number of pilgrims congregate and where there are not proper and sufficient facilities for the pilgrims. In Tirumalai itself, 300 self-contained tenements and 110 cottages on donation have been constructed. The Devasthanam tries to provide some minimum free accommodation to all pilgrims who go to the temple. The Devasthanam itself is building such accommodation at its cost. Besides, the Devasthanam has in mind better accommodation with sanitary fittings etc. for those who are in a position to pay and who want such conveniences. Instead of the Devasthanam bearing the entire expenditure, if any pilgrim donates half the cost of construction, the other half is met by the Devasthanam. The ownership of the cottage or building constructed with this money will be with the temple, but the pilgrim and his successors for ever will have the right to stay in the building for 60 days in a year. For the rest of the period, it will be available to the other pilgrims on payment. 110 such cottages have been constructed and 100 rooms have been donated. Every month the temple receives 10 to 15 donations for such cottages. The donors feel that with their money they would be providing dharmasalas for the pilgrims in their own name.

Educational institutions

The Devasthanam helps the Venkateswara University to the tune of 2½ lakhs rupees every year. The lease value of the land donated to the university comes to Rs. 50,000 a year. The Devasthanam itself is managing a college for men and a college for women and an oriental Sanskrit college including music and dancing. It has applied for the starting of a college for Oriental Culture for teaching religion and for starting Veda, agama and prabanda patasalas, to educate the archakas. The Devasthanam is following the lead of the Palni Oriental College which has been affiliated to the Madras University.

Encouragement to Sanskrit studies

The all-India Institute of Sanskrit proposed to be set up by the Government of India as a result of the recommendation of the Sanskrit Commission is being located temporarily in the Oriental Institute of the Devasthanam and a sum of 10 lakhs has been contributed towards the capital expenditure of the Institute to be established in Tirupati.

3. A statement giving the details of the various other religious, educational, social and cultural institutions run by the Devasthanam Department will be found in Appendix XVIII.

4. The assets, income and expenditure in respect of the temple for the year 1960 are given below:—

Immovable Properties	Rs. 7,32,13,471.87
Jewellery	Rs. 1,04,55,657.03
Endowed lands	Rs. 1,31,871.10
	Rs. 8,38,00,000.00

Income of the temple during the year 1960		Rs. 1,04,17,006.23nF.
Income from offerings of devotees.		Rs. 70 Lakhs
Total assets of the temple		Rs. 9,49,20,560.70nF.

About 80% of the income is spent on the objects and purposes of the temple. The daily and periodical offerings are remitted into the State Bank. The gold and silver articles are auctioned every year. 5% of the income is carried to the reserve. The reserve fund at present is Rs. 30 lakhs.

5. We have only a few observations to make in regard to the management of the affairs of this temple. In the first place scrupulous care should be exercised that the ever expanding activities of the temple resulting undoubtedly in enhanced income and prestige should not leave any right or wrong impression in the mind of the devotees that the temple is run with a commercial or profit making slant.

6. Secondly, a part of the jewellery accumulated with the temple valuing over a crore of rupees, not very essential to be preserved for decorating the deity according to usage and tradition may be disposed of and money invested in a productive form. We also feel that some check should be exercised on new jewellery being made at huge cost only to replace the old kundalam, kiritam, bracelet, mekhala etc. with a view to finding a scope for utilization of the large surpluses that now result.

7. Thirdly care should be taken that in the educational institutions conducted or subsidized by the temple authorities, a religious and spiritual outlook and bias are maintained in the curriculum and by means of adequate scholarships, fellowships, lectureships, etc., devoted to the furtherance of the Hindu ideals of life and of religion.

V. Other Temples of All-India Importance

(i) Rameswaram

In the Yuddha Kanda of the Valmiki Ramayana, the 12th sarga relates the encounter of Rama with the Lord of the ocean as a result of which the ocean God finally consented to a bridge being built over the sea by Nala, the son of Visvakarma. This episode, however, is elaborated in the Adhyatma Ramayana which is considered to be a part of the Brahmanda Purana and deals with the story of Ramayana from a mainly spiritual and esoteric point of view. In the Lanka Kanda of the Adhyatma Ramayana, the following occurs: "A devotee should, commencing from Setu (Rama's bridge), having worshipped the Siva Linga installed by Sri Rama, proceed to Varanasi or Kasi (Banaras). Bringing the Ganga water

from there, he must perform Abhisheka at Rameswaram. Whatever water is not used for the Abhisheka should be deposited in the ocean."

The temple at Rameswaram established on the reputed site chosen by Sri Rama himself is one of the most venerated of Hindu shrines. For centuries, it has been the object of pilgrimage from all parts of India. The Rajas of Ramnad having had territorial jurisdiction—over the passage from the mainland, were generally called Setupathis (Lords of the causeway). The temple itself stands above a fresh-water lake and it is distinguished by its great towers. The walls are filled with carvings and statuary. There is a tradition that one part of the temple was built by a Kandian Raja but the wonderfully pillared halls are magnificent examples of later Dravidian architecture. The Nagaratars or Nattukottai Chetties who have been responsible for the renovation and reconstruction of several partially-ruined and neglected temples in South India, have taken special interest in the Rameswaram as well as the Madurai temples. Practically the first and second prakarams in the Rameswaram temple have been completely reconstructed. Some of the work of renovation has not been in complete harmony with the older parts of the temple; but, on the whole, it has been very lovingly constructed. As a great art critic and historian of Indian architecture Ferguson says of this temple, "If it were proposed to select one temple which would exhibit all the beauties of the Dravidian style in their greatest perfection and also exemplify Dravidian defects of design, the choice would fall on Rameswaram". In no other temple has the same amount of patient industry been exhibited as here. The Brihadeswarar temple at Tanjore perhaps produces a greater effect than that at Rameswaram because of its artistic perfection. But there is nothing to surpass the glorious corridors in Rameswaram nearly 4000 feet in length, with breadth varying from 17 to 24 feet. Each pillar is about 12 feet high and the temples at Chidambaram and Rameswaram are perhaps the two finest specimens of carvings on stone pillars. The original paintings on the ceiling have to a large extent, faded. Attempts are being made to renovate them but those attempts have not succeeded in creating the same artistic appeal as the old paintings did. The reconstruction of the second prakaram was practically completed a short while ago. The tradition is that 72 villages were granted to the temple mainly owing to the generosity of the Raja of Ramnad and others.

The Sivalinga is daily washed with Ganges water which is then sought after by pilgrims. The temple, even in the course of reconstruction, is, on the whole, satisfactorily maintained and the pujas are performed by persons acquainted with the ritual and the agamas. In this temple as well as in those at Tanjore, Kumbakonam, Chidambaram, Kanchipuram and Vaitheeswaran Koil, the practice has come into vogue of singing Tamil hymns in praise of the deity after the pooja is performed in Sanskrit. This is a recent innovation brought into existence for the purpose of satisfying the spiritual needs of worshippers who may not know the Sanskrit language. Here it may be stated that in most temples from Madras to Rameswaram the pooja and abhishekam are performed by those who understand what they are doing and are therefore able to infuse a spirit of reverence amongst the worshippers.

(ii) *Temples in Kanchipuram*

In Kanchipuram there are several ancient temples like the Kailasanath shrine which are of surpassing archaeological and artistic value. The temple of Kamakshi in Kanchipuram is closely associated with Sri Sankaracharya and the Kamakotipeetam is reported to have been founded by him. The great shrines of Sri Varadaraja (Vaishnavite) Sri Ekamranathan (Saitvite) are amongst the largest in South India. In all these temples the worship is conducted by instructed priests.

(iii) *Jagannath Temple at Puri*

The Jagannath temple at Puri is another temple of all-India importance. The temple at Bhubaneswar, not far from Puri, is generally regarded as one of the finest specimens of purely Hindu architecture. It is at least 12 centuries old and is one of the artistic triumphs of India. The temple of Jagannath at Puri is of very great antiquity. The tradition is that at one time, on the site of the present city of Puri, there was a village or suburb called Dantapuram where Buddha's tooth was preserved and worshipped. Puri is now a city of lodging houses and the streets are very narrow, but there is one wide road used for the celebrated procession of the Jagannath car. The temple which is called Srimandir is built upon a rising ground known as Nilagiri. The temple is nearly one thousand years old and is universally venerated. When Maharaja Ranjit Singh of the Punjab died, he bequeathed, by his will, the famous diamond Kohinoor to Lord Jagannath. His successors did not obey his instructions. It has been computed that there are nearly 6,000 priests, pilgrim-guides and pandas, sadhus and sanyasis who escort pilgrims from all over India and who live upon the money voluntarily given or extorted from pilgrims. The panda system in Jagannath is as extortionate as in Gaya and is a source of great trouble and annoyance to pilgrims.

Sri Krishna, called Jagannath, Subhadra and Balarama are worshipped in the temple. The general idea is that in the presence of Jagannath, all castes are equal. Bhog or prasad is offered several times a day to the deity and then sold to the pilgrims. The most important festival in Puri is the Rathayatra (symbolising the journey of Lord Sri Krishna from Gokula to Mathura).

When we visited Puri, we saw not only the temple but the place where offerings are cooked and the various localities where food-stuffs and sweet-meats are sold. We found that very little attention is paid to sanitation and cleanliness, whether inside or outside the temple, and sweet-meats purchased by pilgrims in large quantities are sold in localities surrounded by flies and resorted to by roaming cattle and dogs. It is also a pity that a large number of lepers who desire to take advantage of a bath in the nearby pool which is supposed to cure leprosy, congregate near the temple and the places where food and other offerings are sold. There is a leper asylum which has very limited accommodation. The others mostly live on the street. To visit the shrine and to pay homage to the deity, a large number of people assemble. There is no queue system and it

is no exaggeration to say that even the members of this Commission would have found it difficult to go to the sanctuary but for the solicitous assistance afforded by the local officers and the police department. We found that women and children were hard put to it to gain entrance into the sanctum sanctorum or to see the deity. In our opinion, it is absolutely essential that well designed amenities for pilgrims and shelters and dharmasalas for them should come into existence and pilgrims should not be dependent upon the pandas whose quarters alone are now mainly available for them. Considering the all-India character of this shrine, the illustrious history of the institution and the fervent piety of the pilgrims who resort to the place, it cannot but be remarked that much more attention should be paid to the convenience and amenities of the vast number of pilgrims who visit the place than is now in evidence. It may also be observed that witnesses who have appeared before us have testified to the internal difficulties arising from the inharmonious working of the Committee constituted for the management of the temple. It is a pity, moreover, that there are very few institutions for the imparting of religious instruction in the town and the remarks that we have made as to the importance of religious discourses, the recitation of the Vedas and the Puranas, are specially appropriate here. Steps should be taken to see that the visitors may know the history and the background of the temple and the traditions connected with it. It is also necessary that in a place like this, the archakas or poojaris should be men of learning and piety and that there should be institutions in and around Puri to train them for their work. They should be paid adequately so that their income does not accrue through a process of importunity or extortion.

(iv) *Dwarka and Bet temples*

Another important temple of wide renown and hoary associations is the one at Dwarka situated at the extreme north-west tip of Kathiawar. There are two temples, one at Dwarka and the other at Bet, the former being on the shore and the other on an island. Dwarka was the capital of Sri Krishna who is reputed to have founded it after he came away from Mathura as a result of Jarasandha's activities. Banaras, Mathura, Hardwar, Ayodhya, Ujjain, Kanchipuram and Dwarka are the seven celebrated cities of ancient and medieval India. The island of Bet is associated with the destruction by Vishnu of a Rakshasa whose wife was Tulsi. The basil plant is named Tulasi, after her.

We visited Dwarka and Bet and found that there was a tree growing on the great tower (an obvious sign of neglect). Notwithstanding the sanctity of the place and its popularity and the large number of pilgrims, there has been no attempt made in Dwarka to bring home to the visitors the story of Lord Krishna and his message and we found no arrangements for the study of the Bhagavata or the other Puranas; and the worship itself was not conducted in an impressive manner so as to infuse reverence in the votaries. We were specially struck by the neglected appearance of the shrine and the sacred spot near Somnath where Sri Krishna was hit by

the arrow of a hunter and where the Lord's soul is supposed to have been liberated. It is a place of unique significance but the environment though scenically beautiful has a forlorn and deserted appearance. The same observations apply also to the spot in Ayodhya connected with the birth and nurture of Sri Rama on which a mosque has been built but near which there are remains of holy spots venerated by the Hindus of which, however, very little care has been taken. There is civil and criminal litigation now going on between the Muslims and the Hindus as to their respective jurisdiction over several spots connected with the birth and youth of Sri Rama.

In Dwarka, Sri Sankaracharya founded one of his four chief Mutts and the present head of the Dwarka Sankaracharya Pecta has been endeavouring to maintain the traditions of the mutt and the evidence that he gave before us with regard to the objectives of mutts in general and the proper utilisation of funds of temples and mutts, was both valuable and enlightening.

(v) Mathura and Brindaban

Mathura spoken of earlier, as well as Brindaban both of which are associated with the early years of Sri Krishna were, as already stated ravaged by Muslim invaders. At present, there are few, if any, ancient temples or religious foundations in this and adjacent localities but certain religious Vaishnavites from South India, with the help of philanthropists from the North, have recently erected temples which are maintained in a fairly satisfactory manner, the poojas and archanas being conducted with proper religious spirit by duly qualified persons.

(vi) Varanasi

In the case of Varanasi, it has already been stated that although it is one of the most ancient cities of the world and has, in particular, been described fully by Chinese travellers as early as the 4th and 6th centuries as having 100 temples sacred to Siva and although Buddha himself has described the city as a great religious centre in the 6th century B.C., has practically no building left intact earlier than the 15th century A.D. We have already described the manner in which the temple is maintained, the number of heterogeneous shops surrounding the sanctum sanctorum and the protracted litigation in which the families claiming vested interest in the temple have been indulging. Banaras is perhaps regarded as the most holy city in India by numberless Hindus and it has been stated that about a million people visit the place every year. The scope for reform of the Viswanath and the Durga temples is immense and in truth, a reform of root and branch character has to be carried out so that proper facilities may be given to the pilgrims by way of accommodation and religious enlightenment and a proper atmosphere preserved and maintained by learned and reverent officiating priests.

The services of the Banaras Hindu University and the Sanskrit University can be made easily available to produce a new atmosphere of piety, reverence and learning in the conduct of the temples secular and religious affairs.

(vii) Hardwar

Hardwar originally called Kapila and later on as Mayapuri is also one of the most ancient cities in India. Here again the temple of Gangaswar and the Harikecharan (now called Har Ki Pauri) containing the foot-print of Lord Vishnu, although resorted to by thousands of people annually deserve greater attention in the matter of sanitation and the catering to the physical and religious needs of visiting pilgrims.

(viii) Gaya

It is our duty to draw special attention to Gaya one of the most venerated places of religious significance in India where every Hindu is enjoined to offer oblations to his ancestors. The temple is not well maintained and there are no shelters provided for the pilgrims who have to perform 'tarpan' in the open air with no protection against sun-shine or rain. The extortions of the pandas most of whom are ignorant and rapacious are proverbial and no fixed rates have been provided for the religious observances and tarpan and pindapradanas.

The state of another holy place Vata Vriksha and Vishnupad is scandalous. We found during our visit an open drain on the way to the ancient Banyan Tree and dirt all around. The priest allegedly in charge did not even know the name and significance of the images at the foot of the temple.

(ix) Ujjain

Ujjain is also one of the ancient and celebrated cities in India. The great temple of Mahakala has been referred to in a number of Sanskrit classics beginning from the earliest days. It was the capital of Vikramaditya and the temple itself was the site in the environs of which were performed dramas of renowned poets like Bhavabhuti. The temple has been described by Kalidasa in his Meghadhuta and it contains one of the Jyotirlingas of Siva. We noticed that the temple itself is kept in a fairly clean condition but no steps have been taken for maintaining the literary and religious background of the place which was once a concourse of learned and pious people who, by their discourses and their piety, attracted the devoted adherence of thousands of pilgrims. Near Ujjain is also the reputed Asram of Sandipani under whom Sri Krishna and Balarama studied. A great deal has to be done to keep alive the old memories clustering round the place and to impart to it the right atmosphere. It may be noted, however, that the Madhya Pradesh Government has helped to start the Vikram University in Ujjain and is endeavouring to improve the management of the temple and Sandipani Asram.

C.—SANSKRIT COMMISSION REPORT

The Sanskrit Commission in their Report submitted to the Government has recommended *inter alia* that the Central Government should pass suitable legislation prohibiting the diversion of funds earmarked for Sanskrit studies to other charitable purposes, even with the concurrence of the trustees and after the orders of the courts. It has also recommended that the legislation should

further prohibit the diversion of the surplus funds of religious institutions like mutts and temples to secular charitable purposes and should insist upon the utilisation of these funds for promoting Sanskrit studies which are broadly speaking regarded as religious objects.

2. While dealing with the question of surplus funds of temples and mutts, we have taken the view that Hindu religion in its pristine form has not made any distinction between ishta and purtha and that charity has been considered as part of religion. We have also recommended that consistent with this conception of Hindu religion, there should be no objection to the application of the funds of the religious institutions to charitable purposes like the construction of dharamsalas, orphanages, etc. We are afraid that we cannot persuade ourselves to agree with the recommendation of the Sanskrit Commission that the diversion of surplus funds of religious institutions to secular charitable purposes should be absolutely prohibited by legislation. So far as the funds of religious institutions are concerned, the first charge should obviously be on the essential items of worship, for the maintenance of the institutions in proper repair, for providing facilities to the pilgrims coming to these institutions etc. We have also recommended the starting of agama pathsalas for the training of archakas and pujaris and also the starting of a few centres in the country for giving instruction in the higher branches of Hindu religion and philosophy from out of the surplus funds of religious institutions. In both these cases we have suggested that religious education should be coupled with ordinary secular education with a view to enabling the students coming out of these institutions to enter secular or religious careers according to their aptitude. The real difficulty with regard to the study of Sanskrit which has been encountered in practice is the dearth of students in institutions exclusively devoted to Sanskrit studies. We have received evidence from a large number of witnesses that even the grant of scholarships and free boarding and lodging has not been able to attract a sufficient number of students for Sanskrit institutions with the result that many of the Sanskrit tols in North India have had to close down not for want of funds but for want of students. The same difficulty has been experienced even in places like Srirangam and Kanchipuram. We agree with the recommendation of the Sanskrit Commission that so long as it is possible to utilise the funds earmarked for Sanskrit studies, such fund should not be diverted to other charitable purposes. The starting of agama patasalas and the theological colleges mentioned above from out of the funds of religious institutions will, we are confident, go a long way to the encouragement of Sanskrit studies. We have also recommended in an earlier part of the Report that scholarships and stipends may be given to students in ordinary secular institutions who are willing and prepared to qualify in certain select subjects associated with Hindu religion and philosophy. This would also promote the study of Sanskrit.

D.—TEMPLES UNDER THE ARCHAEOLOGICAL DEPARTMENT

The Archaeological Department with its branch offices in States is doing useful work in the matter of preservation and renovation

of certain temples of historical and archaeological importance. For instance, in the Brihadeswara temple in Tanjore the Department has undertaken to renovate beautiful fresco painting of the Chola Kings by skilfully removing superficial plaster on the walls covered with mediocre paintings superimposed on the older paintings later during the time of the Naik Kings. Similarly the beautiful temples of Sri Ranganatha (Srirangapatnam) in Mysore and Somnathpur going to ruins are being preserved with great care.

2. We feel, however, that the Department should extend its activity in this field and spend more money. The Department should also undertake excavation work in appropriate important centres. In Kanchipuram, thousands of years ago there was a great Buddhist University and also a Jain University. Later on, it became a site for a Saiva and a Vaishnava University. All these Universities were built on the banks of the river Vaigai, but no regular scheme for excavations has been commenced so far.

3. Similarly, there are seven sites of temples in Banaras one over the other near Rajghat according to tradition. Excavations should be started in this locality. At present buildings of a private as well as public character have been allowed to be constructed on the sites of the old cities.

4. In this connection we have been told by witnesses that the Archaeological Department declines to take charge of temples in which actual daily worship is being conducted on the ground that such worship involving as it does the use of ghee, oil and other materials, is likely to deface or obscure the features of the old structures and interfere with the archaeological monuments and they consider that if they take possession of the temple, then they should have complete control over all the images and statues in that temple. We consider that a via-media is possible. The Archaeological Department may well take charge of the archaeologically significant temples and at the same time allow worship to be conducted with such minimum precautions as they consider necessary to preserve the archaeological and artistic aspects of the temple. Witnesses have also been at pains to point out to us that Hindu temples and shrines may well be treated with the same amount of meticulous attention to their structural and other aspects as is now in a very praiseworthy manner bestowed upon Jumma Masjid, Taj, Sanchi, Bodh Gaya and other places.

E.—REPAIR AND RENOVATION OF TEMPLES OF HISTORICAL AND ARCHITECTURAL IMPORTANCE

The work of timely repair and renovation of a large number of temples some of them of ancient origin and great historical and architectural importance demands urgent attention lest they should be lost by decay and ruin in course of time. We found trees growing in the gopurams of Krishna's temple of Dwarka and Sri Jagannath temple, Puri. This callous neglect on the part of those concerned can result in the whole structure falling to pieces. The three sides of the Puri temple have been plastered and beautiful carvings and statues have practically vanished. On the other hand

we have found that a laudable effort has been made in undertaking on a large scale the work of renovation of temples like Bhadrachalam, Srisailem etc. (Andhra Pradesh) and Rameswaram (Madras). A list of temples in need of urgent repairs as supplied to us by a few States is appended to this Report (Appendix XVII). We recommend that a common good fund should be constituted with compulsory contribution of a certain percentage of incomes of temples with a specified minimum income on the lines provided for in the Madras Hindu Religious and Charitable Endowments Act, 1959 (Madras Act 22 of 1959) and money utilized on a planned basis for repair and renovation work pertaining to poorer temples with small or no income or other resources. This pooling of resources may be either for the whole State or region(s) in the State or for a group of temples within the fold of a particular sampradaya as may be found expedient. We have pointed out elsewhere the highly instructive and efficient manner in which the Anandji Kalianji Trust of Ahmedabad has organized the work of renovation of several Jain temples such as Dilwara and Ranakpur temples.

F.—MISCELLANEOUS RECOMMENDATIONS

(i) We would recommend that Commissioners of Endowments and other heads of Departments in charge of endowments in the States should at periodical intervals meet and exchange their ideas and experiences. The heads of Departments concerned will no doubt keep themselves in contact with their counterparts in other States for the purpose and arrange meetings at convenient centres. Certain States like Madras, Andhra Pradesh and Bombay have been the pioneers in the matter of legislation governing the administration of religious institutions and some of the institutions like Tirupati and Srisailem in Andhra Pradesh and Palni in Madras are examples of fairly well managed institutions. It would be very useful for representatives from other States to visit such institutions and study their working on the spot. We recommend that State Governments should depute the officers dealing with religious endowments to visit such institutions.

(ii) A number of witnesses including Shri S. K. Patil, Minister, Central Government, Shri K. M. Munshi and Shri G. D. Somani, suggested that funds donated to religious institutions should be exempted from income-tax as in the case of charities. Religious purposes according to them include charitable purposes. We have elsewhere pointed out that the income of a large number of Hindu temples has seriously dwindled consequent upon land reform legislation undertaken by the States so much so that in the case of quite a large number of temples there is not enough money even to meet the essential expenditure on worship and emoluments of the temple servants. Exemptions accorded to funds donated for religious purposes are likely to some extent mitigate the hardship particularly in the case of a large number of temples with a small income. We recommend that the Government may consider the question of granting exemptions from income-tax in respect of funds donated to these institutions as many of them are greatly in need of funds to carry out the schemes we have adumbrated.

(iii) The consensus of view expressed before us by a large number of persons in the memoranda and replies to questionnaire submitted by them is that it would be useful to compile and publish a national directory of temples in the country giving monographs devoted to important temples, their history, sthalapuranas, inscriptions, references to literary works related to them like Kavyas, Kuravanchis, Prabandhams, etc. The Endowments Department of the Governments of Andhra Pradesh, Madras and Orissa have made some attempt in that direction. The Governments of Gujarat and Maharashtra maintain a directory of charitable and religious institutions with details of income and expenditure, etc.

Certain temples, particularly in South India, have also published small pamphlets or booklets concerning their history and activities etc. Special mention may also be made of a very useful work "Sarvadevavilasa" on the temples and the dharmakartas in Madras City about 1000 A.D. published by the Adyar Library.

We recommend that each State in the appropriate Department should in the first instance compile and publish a directory of temples and other Hindu Religious institutions in the State on the lines indicated above. A guide book in English, Hindi and the regional language concerned containing information helpful to pilgrims for travel to important temples and religious centres in a State with details as to the amenities for lodging and board available at the places, etc., should also be prepared on the lines of the tourist guide book and be made available for sale at a nominal price in all important places and religious centres in the country. The Tourist Departments have published small pamphlets and booklets but generally they do not reach the hands of a large number of persons going about on pilgrimage. Further, they display a greater slant on the architectural or tourist point of view than with a religious pilgrim's point of view.

(iv) A somewhat significant letter was received by the Commission from the Secretary of the Harijan Seva Sangh, Kakinada. It is pointed out in the letter that Harijans generally live in isolated colonies or localities and that they find it difficult to take part in the religious and cultural activities of villages or those connected with temples and other religious institutions. It is indispensable, that in order to adequately carry out the ideals of the Hindu religion as properly understood, strenuous steps should be taken to carry the message of the Hindu tradition, culture and religion to Harijans so that they may not be left to the exclusive attention of other communities and religions which at present cater to their needs. A new spirit has arisen in India which demands the most concentrated attention to the needs especially of the backward and economically and culturally depressed communities of the country. One of the duties of the Commissioners and administrations as well as of the Tribunal envisaged in our Report should be to see that the benefit and advantage of spiritual and cultural instruction and enlightenment should be at the disposal and be availed of by Harijans and all other backward communities and especially students belonging to those communities. It has come to our notice that the young Harijans who are

studying in schools and colleges are not only ignorant of the principles of the Hindu religion but are being turned against it on account of social stigma and ostracism. It seems to us very necessary that opportunities should be offered to them to obtain a knowledge of basic Hindu religious doctrines. In this connection it may be observed that though statutorily all temples are thrown open to Hindu communities, yet in practice there are undefined but real impediments for their visiting and worshipping in the temple and taking advantage of the religious observances therein.

G.—IMPORTANT DATA AND OTHER INFORMATION PERTAINING TO TEMPLES

1. A number of temples and mutts are running religious, educational, cultural and other institutions. A list of such institutions run by Tirumalai Tirupati Devasthanams and a few other temples/mutts in Gujarat, Madras and U.P. is given in Appendix XVIII.

2. The Governments of Bihar, Gujarat, Kerala, Madras, Maharashtra, Mysore, Orissa and Uttar Pradesh have each supplied to us a list of temples, mutts and other Hindu religious institutions within their respective jurisdictions with an annual income of Rs. 10,000 and above and also with details as to the expenditure and surpluses, etc., wherever available. These are appended to this Report (Appendix XIX).

3. The following memoranda and documents received from certain important individuals and associations are also appended to this Report (Appendix XX):

(i) A note from the Bharat Sadhu Samaj with a copy of the constitution of the Samaj.

(ii) A memorandum from Dr. V. Raghavan, President, Madras Natya Sangh and Sanskrita Ranga, Madras, regarding temple arts.

(iii) A memorandum from Shri Mannathu Padmanabhan, Changanacherry, Kerala.

CHAPTER XVI

Summary of recommendations

(1) This Commission is definitely of the opinion that those States where there are no enactments governing Hindu religious endowments (namely, Assam, Punjab, West Bengal and Uttar Pradesh) should speedily undertake suitable legislation in this behalf. (Ch. III).

(2) This Commission desires to suggest to the Central Government the desirability of bringing into operation a uniform pattern of legislation dealing with the administration and management of religious endowments of all the communities in India whilst making such

special provisions as may be necessary to deal with the special problems of the religious endowments of individual communities. Such legislation has, naturally, to be undertaken only after ascertaining the views of the communities, which have not been included in our survey.

Such uniform legislation may incorporate with advantage the provisions of clauses 5, 11, 12, 13, 14 and 15 of the Religious Trusts Bill, 1960. (Ch. III).

The legislation recommended by us relates to topics which appertain to the concurrent list in the schedule to the Constitution. Where State legislation has already been undertaken and implemented, the suggestions that we make will supersede the provisions of the local legislation to the extent to which they are inconsistent with our recommendations. Where States have not passed any legislation regarding religious endowments the provisions that we have recommended will be embodied in a statute which will apply *suo motu* to those States unless and until they pass legislation carrying out the objectives of our recommendations.

(3) No claim of a proprietary nature on the part of archakas, pujaris or pandas in offerings made by devotees to temples should in our opinion be recognised. (Ch. IV).

(4) Subject to what follows in (5) below, if offerings or gifts for his services are made to an archaka, panda or pujari personally on account of the veneration and respect due to that person, then they will inhere in the person in question and be treated as his own but in such a case they should be received and kept separately and distinctly and should not be mixed with the offerings made to the deity as a juristic entity. Where offerings are made to a temple without specially designating whether they are to the officiating priest, mahant, archaka, etc. or to the deity, then they should be treated as belonging to the deity as a juristic entity.

It is essential to lay down that where the public or a section of the public have traditional, customary and unrestricted access to a temple, it should be treated as a public one and that even in cases where a temple is maintained within residential premises if offerings and gifts are received by the temple authorities from the public or a section thereof at the time of worship or other religious service, it should be treated as a public temple and should cease to be treated as private one.

In the case of temples, the trustee or shebait should not be allowed to claim any personal or proprietary interest in the management of the institution and the offerings and donations and gifts made by worshippers to the deity and should be strictly accountable to the public for them. The Constitution should, if necessary, be amended so as to make the position absolutely clear, thereby preventing the possibility of any trustee or shebait attempting to prefer any such claim to absolute or heritable ownership in future either in his office or in respect of gifts and offerings by devotees. Of course, if in any institution, a shebait, archaka or pujari engages in any religious service, he may be adequately remunerated for such service but the

right to the office of shebait and emoluments thereof should not be regarded as private property. (Ch. IV).

(5) Where offerings are made to the head of a mutt and are not earmarked or specially designated as personal gifts or donations to him they should be regarded as the property of the mutt and should be utilized for the purposes of the mutt. (Ch. IV).

(6) All mutts should be treated as public religious endowments in the sense that the public or a substantial portion of the public is interested in their upkeep, conduct and management.

The original purpose of all mutts should be recognized as comprising religious instruction and propagation of religious tenets of sampradayas and the teaching and training of monastic and lay disciples and followers. (Ch. IV).

(7) Having regard to the long continued practice and traditions of many mutts, the property rights of the head of the mutt in offerings known as padakanikas and pranamis may be recognised to the extent that while the head of a mutt has a right to disburse them at his discretion during his life time for furtherance of the objects and purposes of the mutts and religious and charitable objects consistent with those objects and purposes, any of those offerings or their proceeds remaining undisbursed at the end of his life, should automatically vest in the mutt. It is of course to be understood that the head of a mutt being a religious preceptor and not a bare trustee is entitled to spend the income of the mutt whatever be the source, for the maintenance, accommodation and legitimate travels of himself and his sishyas and disciples suitably to the status and dignity and traditions of the mutt and so as to carry out the essential objectives of mutts—namely the propagation of the tenets and sampradaya of the mutt in question and for the propagation of Hindu religion and culture generally. (Ch. IV).

There are provisions in the Civil Procedure Code exempting certain persons from personal appearance in courts. It is for consideration whether this privilege should not be extended to the accredited and recognised heads of mutts of accepted sanctity and authority. (Ch. IV).

(8) Every State should set up in one or more important Hindu religious centres schools or institutions wherein archakas, pujaris and pandas are given instruction in agamas, archana, puja paddhati, rituals, etc. according to a prescribed syllabus with provision for both elementary and advanced training. The elementary training should provide for (a) a working knowledge of Sanskrit, (b) a knowledge of the agamas, rituals and mode of worship of the respective sampradayas to which the archakas belong and the sthalpuranas of the institutions to which they may be, or are attached, and (c) a good working knowledge of the regional language or languages so as to enable them to explain to worshippers with facility the meaning and significance of the mantras and archanas. (Ch. V).

Advanced training should in addition provide for the study of selected Shastras and the Darsanas or philosophies of Hinduism in general with particular emphasis on the tenets, etc. of the sampradaya

to which the archakas belong. The institution should provide for refresher courses for the archakas already serving in the temples and part-time courses for such Hindu students from secular educational institutions who may volunteer for such training in their leisure hours. There may be a system of awarding stipends to students who are willing to take up such training, preference being given as far as possible to the students from the families of the hereditary archakas and pujaris. The training should be organized in such a manner as would cater to the needs of the main sampradayas in the State. The institution should be financed from the surplus funds of the religious institutions of the main sampradayas pooled together on a Central basis or in different centres or regions from the pooled funds of a group of temples pertaining to a particular sampradaya, whichever course may be found appropriate. (Ch. V).

(9) Provision should be made for prescribing minimum qualifications for the archakas to perform archana or puja in the temples. We recommend that such qualifications may, subject to suitable modifications in view of the local conditions, be (a) a working knowledge of Sanskrit, (b) a good knowledge of the mantras, agamas, rituals and mode of worship, of the sampradaya concerned, and (c) a knowledge of the sthalapurana and traditions of the institution to which they are attached or may be attached.

They should in addition be proficient in the regional languages so as to enable them to explain with facility the meaning and significance of mantras and archanas to pilgrims, devotees and worshippers. Further they should possess a good moral character and basic learning so as to inspire reverence in the worshippers. (Ch. V).

(10) Hereditary rights of succession wherever archakas and pujaris enjoy such rights need not be abolished. However, every archaka, whether hereditary or non-hereditary, should be required to undergo some minimum tests of fitness and should qualify himself to perform his duties efficiently and properly. If the hereditary archakas are not so qualified, they may be required to appoint qualified deputies in their places until they or their descendants qualify themselves. In the matter of appointments first preference should be given to qualified persons who have a hereditary right. (Ch. V).

(11) As already indicated the archakas, pujaris, etc. should not be allowed to have a proprietary right to any part of the offerings made before the deity. They should also not enjoy any proprietary right of custody of the jewels and other valuable articles belonging to the temple. If necessary the Constitution should be amended to make this point clear. (Ch. V).

(12) It is absolutely essential that archakas and pujaris should be ensured a minimum living wage and their emoluments fixed in suitable grades for various categories in order that they may not resort to beggary or extortion. They should also be allowed the benefit of a provident fund and pension at least in the case of big temples which can afford the same. The facility of free residence, near the temple, should also be provided as far as practicable.

The minimum emoluments even in the case of archakas in small temples should be at least at Rs. 60 p.m. in addition to dearness allowance and other allowances admissible to persons in Government service in the corresponding grades in the State service. (Ch. V).

In cases where temples are, out of their own resources, unable to afford such payments, the pooling system already adverted to in respect of the income of temples of the same sampradaya should be resorted to.

(13) The conditions of service of archakas and pujaris should be prescribed by rules and should *inter alia* provide for fines and suspension or removal from their office for misconduct or negligence of duty, disobedience of the directions of the trustees or other authorities concerned with the affairs of the temples. Adequate provision should be made for a right of appeal to a superior authority against the decision of a subordinate authority awarding punishment particularly in the matter of suspension or removal from office or reduction in emoluments. (Ch. V).

(14) A code of conduct should be prescribed by rules for the archakas. (Ch. V).

(15) A tariff containing a regulated scale of fees payable by the worshippers at the temples concerned for services like utsavas, pujas, abhishek, etc. should be prescribed and prominently exhibited in the temples. Persons should in all cases be issued receipts for the amounts paid by them. (Ch. V).

(16) The State laws wherever they exist or are under contemplation should make suitable provision to implement the foregoing recommendations. (Ch. V).

(17) As one of the primary objects of temples there should be a provision for reading and exposition of the scriptures, Puranas, etc. (especially of those relating to the institution and the presiding deity) and discourses thereon in a manner relevant to and in conformity with, the sampradaya of the temple or mutt concerned and provision should be made for this purpose within the premises of the temple or the mutt or in some other suitable place. Provision should also be made for inculcating religious and ethical ideals in the minds of worshippers and the visiting public by the exposition of scriptures and their episodes and extracts from the Puranas, Itihasas, etc. (Ch. V).

(18) Arrangements should be made daily and/or on the occasion of an utsava, abhishekam or archana for the giving of a full account for the benefit of the pilgrims in the regional language, of the history of the temple and its traditions and significance. These discourses should be based on the relevant scriptures, Puranas and traditions and be designed to inform the lay public of the details regarding the temple and the import of the various ceremonies performed and the prayers actually offered. We commend in this connexion the system in vogue in the Badrinath temple and some other temples in the country. (Ch. V).

(19) Trained religious teachers may, wherever practicable, be employed on a whole-time basis to go round a manageable group of

institutions belonging to a particular sampradaya placed under their charge in order:—

(a) to guide and supervise the work of archakas and ensure that worship in a temple is conducted properly in accordance with the tenets and usages of the sampradaya concerned; and

(b) to give discourses, lectures, etc. to the members of the Hindu public so as to bring about religious revival and enlightenment. (Ch. V).

(20) The State laws particularly in Northern India (wherever such exist or are under contemplation) should specifically provide for controlling and regulating the activities of the pandas. Their compulsory registry and a specified scale of fees and disciplinary jurisdiction over them in the case of misconduct or extortion should be invariably laid down. (Ch. V).

(21) Pandas in important Hindu religious centres should be encouraged to organise themselves to act as qualified pilgrim guides. Adequate arrangements should be made to help them by providing a short course of training. (Ch. V).

(22) A system of licensing of pandas should be brought into vogue and none other than those licensed should be allowed to officiate as priests or act as guides. A code of conduct should be prescribed by rules. (Ch. V).

(23) There should be provision in the State laws enabling Government to lay down the maximum and minimum charges for particular services rendered by pandas and the scale of charges should be prominently displayed on notice boards in the temple; and pandas who take more than the prescribed maximum charges from pilgrims or harass them in any other manner should be dealt with by way of suspension or dismissal and cancellation of their licenses. (Ch. V).

(24) Some type of queue system should be introduced in all important temples where pilgrims in large numbers congregate. The system followed in Tirupati can with advantage be adopted. (Ch. V).

(25) Wherever pandas officiate as priests or perform other services in the temples, it should be insisted that they should be duly qualified for the duties which they are expected to perform. In the case of persons having hereditary rights, they should be required unless and until they are personally qualified to nominate qualified deputies for the jobs and to hold themselves responsible for all the acts done by their deputies. (Ch. V).

(26) Pandas also should have no proprietary right to any part of the offerings made by worshippers to the deity in the temples. Wholly voluntary gifts made to them personally stand on a separate footing and if specially meant for them personally and not for the institution they may be treated as their own. (Ch. V).

(27) In all States having at present no enactment with regard to religious endowments, it is necessary *inter alia* to set up by statute a well-defined machinery to exercise effective control over trustees who are responsible for the day to day management and administration of the institutions, following the pattern set up by the States

who possess such enactment. Local variations may of course be found necessary. (Ch. VI).

(28) There should be adequate provision in such legislation for the maintenance of proper accounts, audit of such accounts, framing of budgets, etc. by the trustees or other persons in charge. (Ch. VI).

(29) The appointment of trustees, their selection or election, their administration in regard to religious matters and the power vested in them to use the funds of the trust with a view to furthering the objects of the trust may be regulated in accordance with general and local custom and usage and in consultation, wherever practicable, with accredited and reputable representatives of the sampradaya concerned and others who may be specially qualified to advise on Hindu religion and religious practices. There should be, however, adequate provisions so as to enable the authorities to interfere effectively, whenever it is found that the above objectives and purposes are not duly carried out or are frustrated. (Ch. VI).

(30) In all cases, as regards the current revenues, if the budget is properly drawn up, the true surplus can be ascertained. Where the objects of an endowment are clearly specified in a trust deed, court scheme or other document or are undisputed there will be no difficulty in finding out what sum would be left after those objects have been duly carried out. Such sum would be the surplus. Where no specific objects can be discerned from documents or the custom and usage of the institution the recommendation made below as regards obligatory objects and discretionary or optional objects should in our opinion apply, subject to such priorities as may be appropriate in each case and to the amounts considered adequate in respect of each of such objects. These two limitations would be matters for consideration when budgets are prepared. (Ch. VII).

(31) If there is a surplus available in any religious institutions, we think that it ought to be their primary objective to arrange for intensive and liberal education in the ideals and doctrines that have found expression in these institutions. For this purpose the surpluses of institutions following the same sampradaya may usefully be pooled together to enable the starting of centres of instruction in selected places. The curriculum and course of studies may be framed on the analogy of the theological universities of the West and of Taxila, Nalanda and Kanchipuram in the past. With reference to Nalanda, especially, there are ample materials for such a purpose. (Ch. VII).

(32) Contributions for the establishment of centres of instruction referred to in (31) above may be made from endowments wherever possible voluntarily, but power may be taken by legislation to require the managements of endowments to make such contributions where there is a definite and ascertainable surplus. (Ch. VII).

(33) A common good fund on the lines of that provided for in section 97 of the Madras Hindu Religious and Charitable Endowments, 1959 (22 of 1959) might be created in all States and funds thus available be utilized not merely for renovation and preservation of temples in need of help and for the promotion and propagation of the tenets common to all or any class of religious institutions but also as:

stated above, for the performance of the essential services in temples which have no resources even for such services.

It would be very advantageous if on a voluntary basis the same type of common good fund can be inaugurated in the case of the mutts either generally or mutts following the same sampradaya, for the purpose of carrying out either for the benefit of whole Hindu community or for the mutts of a particular sampradaya the original purposes of such institutions. (Ch. VII).

(34) We consider that it would be desirable to divide the objects and purposes of religious institutions into two categories one obligatory and other desirable or optional for the purposes of utilization of funds. We would suggest that the following may be considered to be the obligatory objects or purposes:—

(1) The due maintenance of the objects of the institution and the proper performance of the services therein in conformity with *ṛiti* or 'dittam' namely what is ordained or prescribed.

(2) Payment of the salaries or allowances due to the archakas and pujaris and other servants of the institution and the adequate training of these functionaries such as archakas, adhyapakas, Vedaparayanikas and othuvans (reciters of holy texts).

(3) The due discharge of liabilities of loans binding on the institution.

(4) The repair, renovation or extension of the buildings connected with the institution. Due care should be taken that adequate provision is made for these purposes.

(5) The contribution to the reserve fund of the institution which may be fixed at 5 per cent of the income.

(6) Maintenance of a working balance.

The desirable or optional objects may be the following:—

(1) Arrangements for providing amenities to the pilgrims, e.g., accommodation, food, water supply, lighting, sanitation and supply of wholesome food, where the custom of *naivedyam* or *bhog* obtains.

(2) Grant of aid to other religious institutions which are poor or in needy circumstances, of the same sampradaya as far as possible.

(3) Flower gardens and goshalas.

(4) Propagation of the tenets of the temple and the fundamentals of Hindu dharma common to all sampradayas.

(5) Publication of agamas and history of the temple, provision of libraries with religious books and publication of religious literature and making them available to the public free of cost or at a nominal charge.

(6) Provision for religious discourses and kalakshepams.

(7) The grant of scholarships or stipends to Hindu students who study in educational institutions and also undertake to study the Hindu religion and be examined as to their progress.

(8) Promotion of temple architecture, sculpture and fine arts.

(9) Establishment and maintenance of institutions wherein both modern as well as Hindu religious education is imparted.

(10) The establishment and maintenance of colleges or institutions for the study of Hindu religion, philosophy, Vedas or the agama sastras or contributions thereto.

(11) Establishment and maintenance of orphanages for Hindu children.

(12) Establishment and maintenance of asylums for leper patients and/or persons suffering from other serious ailment.

(13) Establishment and maintenance of poor homes for destitute and physically disabled Hindu widows, aged people and children.

(14) Establishment and maintenance of hospitals and dispensaries for the benefit of pilgrims, worshippers and devotees. (Ch. VII).

(35) In case of mutts, the funds should primarily be spent on the expounding and popularising of the tenets of Hinduism or of a particular sampradaya and for training and teaching disciples. Such teaching and training may be entrusted to persons belonging to the categories of qualified sadhus or qualified lay teachers. If any surplus is left after fulfilling the primary objects, it may be expended on desirable objects indicated in (34) above. (Ch. VII).

(36) The doctrine of cy-pres should be applied to the surplus funds of religious institutions and where there is no statutory provision for such application definite provision should be made on the lines of those contained in sections 55 and 56 of the Bombay Public Trusts Act, 1950 and section 66 of the Madras Hindu Religious and Charitable Endowments Act, 1959. (Ch. VII).

(37) Provisions on the lines of sections 13 and 14 of the U.K. Charities Act, 1960 may also with advantage be adopted in our laws for the application of the doctrine of cy-pres. The doctrine of cy-pres in the opinion of the Commission is not in essence different from the basic Hindu definition of Ishta and Purtha as comprising both religious and charitable objects. (Ch. VII).

(38) The system of hereditary succession to trusteeships or other offices in temples, wherever it exists, may be allowed to continue. It is, however, necessary for the administrative authorities to have control over the above functionaries in the same manner in which they are having control over the non-hereditary ones. (Ch. VIII).

(39) So far as succession to the headship of mutts and temples is concerned, each institution should be allowed to follow its own prevailing custom, usage or tradition, where it is clearly established.

(40) The persons who succeed to the headship of mutts should possess the following essential qualifications:—

(a) They should be men of unquestionable moral character and religious temperament;

(b) They should be fully conversant with the particular systems of philosophy of the institutions of which they are the heads and also be able to expound the tenets of the concerned sampradaya to the disciples and devotees. (Ch. VIII).

(41) Matters like claims to hereditary trusteeship and other similar offices in temples, succession to headship of mutts and determination of the suitability of persons who succeed to the headship of mutts with reference to their qualifications should in case of dispute be decided by a statutory Tribunal to be set up for the purpose. (Ch. VIII).

(42) The Hindu Succession Act, 1956, should not be made applicable to succession to headship of religious foundations. (Ch. VIII).

(43) The Hindu Succession Act, 1956, may be amended, if necessary, to make it clear that the property acquired by and belonging to a sanyasin would not pass to his blood relations in the *poorvashrama* family. Similarly, a sanyasin who has severed connections with his natural family should have no claims to property of a non-sanyasin who was related to him by blood in his *poorvashrama* days. (Ch. VIII).

(44) Hindu temples may with advantage pool their resources and undertake the work of repair and renovation on the lines on which this work is being done by the Jain Community. (Ch. IX).

(45) Large accumulations of Jain trust funds particularly Devdravya and Gyandravya which are reported to be lying idle and unused should be diverted with suitable safeguards for utilisation on objects designated by those expressions elsewhere or on objects nearest to the original objects in the respective Kshetra. Surplus funds in the Gyan Kshetra or a substantial portion of such surplus on a percentage basis may be pooled together at least in States where Jain shrines and institutions are concentrated (for example, in Mysore, Maharashtra, Gujarat, Rajasthan and Bihar) and the money may be utilised towards organising some centres in the country on a zonal basis for the study and spread of Jain philosophy. Similarly, funds from the accumulated surpluses in Dev Dravya may also be pooled together for the purpose of repair and renovation of Jain temples. (Ch. IX).

(46) The Tribunal contemplated by the Commission after consultation with the persons and interests concerned should be empowered to divert the surplus funds of a particular Kshetra to finance a deficit trust so as to be utilised for identical purposes. In the case of Digambar Jains this pooling or diversion of funds should be a comparatively simpler affair as they have a single fund known as 'Bhandar' which can be used for any good object. (Ch. IX).

(47) The States concerned should scrutinise their laws so that a proper machinery for administering the aforesaid pooled funds may be brought into existence. (Ch. IX).

(48) In all matters of importance, e.g., diversion of funds in the various Kshetras, utilisation of funds pooled from various sources, matters of religious practices, etc., the authorities including the Commissioners and the Tribunal should act in consultation with prominent Jains belonging to the Svetamber and Digambar groups, as the case may be, either in their individual capacity or as office holders of important and representative Jain organisations in a State. (Ch. IX).

(49) Jain trusts, like all other trusts, should also be required to frame budgets, keep regular accounts and submit such accounts for audit. (Ch. IX).

(50) As far as possible, no vested interest should be allowed to be created in the management and administration of Jain trusts. (Ch. IX).

(51) We are of the view that the same type of supervision and control is appropriate in respect of Buddhist endowments as in the case of Jain endowments. In all cases of importance, the authorities before taking important decisions as to management and administration should consult accredited organisations and representatives of the Buddhist faith. (Ch. IX).

(52) The authority in charge of Hindu religious endowments in each State should exercise the utmost vigilance in preventing alienations or misappropriations of their property, and where alienations have already taken place, he should take speedy action wherever practicable, to have such alienations set aside and the alienated properties restored to the endowments concerned. Alienated property and its proceeds should be followed in the hands of the alienees who should be made accountable for the proceeds. (Ch. X).

(53) We are definitely of the opinion that Articles 134B and 134C in the First Schedule to the Indian Limitation Act, 1908 (9 of 1908) should not apply to alienations by the incumbent of a mutt or the manager, trustee or dharmakarta of a temple, which are colourable or for inadequate consideration and that there should be no limitation in respect of proceedings to recover or to follow up and obtain an account of the proceeds of the institution in the hands of alienees. (Ch. X).

(54) Section 10 and Articles 134A, 134B and 134C of the Indian Limitation Act, 1908 (9 of 1908) should, as indicated above, be amended so as to provide, whether against the trustee or his alienee, for suits in such cases to follow the trust property or its proceeds and to implement the accountability for the proceeds in the hands of those who are liable to such accounts. Such suits should be exempt from the bar of limitation. (Ch. X).

(55) If the implementation of the recommendation in (54) above attracts any of the provisions as to fundamental rights of property, the Constitution should be suitably amended so as to clarify and place beyond all doubt the status and obligation of the matadhipatis and

dharmakartas, shebaitas, managers and trustees of temples and other religious endowments. (Ch. X).

(56) Provisions on the lines of those contained in section 109 of the Madras Hindu Religious and Charitable Endowments Act, 1959 should be embodied in other State enactments to prevent wrongful alienations. Provision should also be made to declare that any alienation made in future without the requisite sanction of the authority concerned will be *ab initio* null and void. (Ch. X).

(57) We are strongly of the opinion that where the custom or usage is that the head of a religious institution should be a celibate he should not be permitted to marry and that where he marries in violation of such custom or usage steps should be taken to remove him immediately. (Ch. X).

(58) Six out of the seven members of the Commission are of the view that the executive administration of temples by a single officer will be more expeditious and efficient than administration by a body of persons or Board of Commissioners. (Ch. XI).

(59) The appointment of Commissioners in the States should be made by the Governor of the State in his individual capacity after such consultation as he deems to be necessary with the religious and secular interests concerned. (Ch. XI).

(60) We do not favour the continuance of advisory boards or committees whose utility has been shown to be very limited and which have in practice been very ineffectual. It has been found by experience that such bodies tend to the creation of factions and vested interests by reason of which administration is impeded or nullified. (Ch. XI).

(61) Whenever there is any disputed question relating to religious usage of a particular institution or sampradaya, the Commissioner should after consulting qualified persons belonging to sampradaya or sect concerned from out of a list of assessors to be maintained by him, be entitled in cases of emergency to pass orders subject to the ultimate jurisdiction of the Tribunal referred to hereinafter. (Ch. XI).

(62) There may be a Central Committee composed of leading members (including both lay people and sadhus and sanyasis) who may be available for consultation so as to enable the Tribunal referred to hereinafter to obtain authoritative and practical solutions to the questions coming before it. The experiment of forming such a committee should be tried. It cannot be forgotten that the success of the experiment will be wholly dependent on the eminence and influence of the members of such a committee and their determination to take a detached view and arrive at harmonious conclusions. (Ch. XI).

(63) The Commissioners in the States should have no powers of appointment and removal of trustees as under certain enactments now in force; such powers should be vested in the Tribunal referred to hereinafter. In cases, however, where a matadhipati dies or is removed or for other reasons is not able to function, and there is no one duly selected to succeed him, or where on account of any act of

clear misconduct, misappropriation or other breach of trust, it becomes necessary to take urgent action the Commission may be empowered to suspend the person in default and where necessary, to make temporary appointments to the office concerned and to take all other requisite measures and make a report as soon as practicable to the Tribunal for final orders. His action should be operative and valid until such final orders are passed by the Tribunal. In the case of temple trustees, dharmakartas and other functionaries the powers vested in the Commissioner may be on the lines of those laid down in the Madras and Andhra legislation on the subject. (Ch. XI).

(64) Appeals against the decisions of the Commissioner may be preferred to a duly constituted Tribunal which may, besides appellate jurisdiction and revisional jurisdiction over State Commissioners, have exclusive original jurisdiction in the following matters:—

(a) succession and appointment to hereditary offices such as hereditary trustees, heads of mutts, etc.,

(b) determination of what are matters of religion or essential religious practices and what are ancillary accretions or unessential accretions,

(c) such other matters of basic importance in relation to the conduct and management of temples and mutts as in their opinion demand adjudication or decision having regard at the same time to such proved custom, usage or tradition as the Tribunal may find to be established. (Ch. XI).

(65) The Tribunal may consist of five or more members who are Hindus by faith and conviction believing in Hindu scriptures and temple worship. It should include at least:

(a) a judicial member who has been or is eligible for being appointed as a High Court Judge and who is to be its President,

(b) a member who has held a senior administrative office under the Government and has had adequate administrative and/or financial experience for not less than ten years under Government,

(c) a member who is specially conversant with Hindu scriptures and religion and religious practices and with the working of Hindu religious endowments. (Ch. XI).

(66) The Tribunal should, without prejudice to the provision of (62) above, be empowered to consult as assessors such leaders of the denomination or sampradaya concerned and such others as are generally recognized to be fit to give advice in matters pertaining to the sampradaya, custom or usage coming up for decision before the Tribunal. Such other persons or organizations as may be specially competent in this behalf may also be consulted. (Ch. XI).

(67) The Commissioner may be authorised to refer to the Tribunal for its opinion, advice or adjudication any matter or question as to which he feels the necessity for such guidance. (Ch. XI).

(68) The members of the Tribunal will be appointed by the President of India on the advice of a committee of eminent and impartial advisers chosen by him. The members will enjoy a term of office of five years renewable for not more than an additional term at the discretion of the President. They will be governed by such conditions of service as may be prescribed by rules. (Ch. XI).

(69) The Tribunal may function in as many benches as it considers expedient having regard to the quantum and nature of work. Every such bench will consist of at least three members with the qualifications as already indicated. Benches may be constituted as far as possible for each State or a group of contiguous States. Attention in this connection is invited to the constitution of the Income-tax Appellate Tribunal. The Tribunal proposed by us may also be given the power to co-opt as full members not more than two persons on each occasion who are especially competent to offer opinion and advice on any particular matter or matters coming before them. (Ch. XI).

(70) Appeals against the decisions of the Commissioners at present lying to the State Government or courts concerned should hereafter lie exclusively to the Tribunal.

(70A) Litigation under sections 92 and 93 of the Civil Procedure Code involves an often unrecompensed expenditure of money and energy on the part of the members of the public setting the law in motion. The person in possession is able to utilise the funds of temple or mutt in question and can prolong the litigation indefinitely. It should be provided that in all such legal proceedings the defendant should be made personally liable for costs when he has been in the wrong, and unless his contentions are found to be just and are upheld he will not be entitled to spend the funds of the institution. (Ch. XI).

(71) Many trustees, archakas and pujaris have insisted that the quantity of grain, milk, ghee, oil, incense and many other articles required for worship in the temple must not be deviated from, notwithstanding the changed circumstances and enhanced prices of the present day. The judgement of the Supreme Court in the Dargah Committee, Ajmer *Versus* Syed Hussain Ali (A.I.R. 1961 S.C. 1402) *inter alia* with regard to the question of what would constitute an essential or integral part of religion or as essential religious practices may be construed as indicating that the exact quantity of commodities required for worship should not be regarded as matter of fundamental religion but as a matter of religious practice or observance which can be modified to suit altered circumstances. It does not appear that the articles in the Constitution relating to non-interference with religion can and should be so applied as to stereotype quantities and values which may change from time to time. If, however, for any reason it is considered necessary to amend the Constitution to make the above position clear, this should be done. (Ch. XI).

(71A) It is absolutely essential that every religious institution should prepare and submit detailed budget estimates of income and expenditure and also maintain accounts in prescribed forms and that these accounts should be audited carefully, the auditor not necessarily confining himself to a mere formal scrutiny of vouchers placed before him. The inclusion of such provisions is necessary in any legislation which is sought to be introduced or passed with reference to religious endowments.

(72) It is desirable that provisions of the Religious Trusts Bill, 1960 should be made applicable to all communities like Muslims,

Christians, Parsis, Jews, Sikhs, etc., and clause 34 thereof omitted. (Ch. XII).

(73) In sub-clause (1) of clause 11 of the above Bill, in the proviso, for the words 'five thousand' substitute the words 'one thousand'. (Ch. XII).

(74) In regard to the proviso to sub-clause (3) of clause 12 of the Bill, the majority of the members are of the view that in the case of any trust having an annual income of less than ten thousand rupees, the trustee may appoint a part-time or full-time accountant after consulting the Commission. (Ch. XII).

(75) With regard to clause 17 of the Bill we are of the opinion that the provisions of sections 13 and 14 of the U.K. Charities Act, 1960 with suitable modifications, may be incorporated. (Ch. XII).

(76) Clause 20 in the Bill is not necessary in view of our recommendations contained in the Chapter relating to management and administration. (Ch. XII).

(77) Lands held by religious institutions to the extent they are under the direct management of such institutions may be kept out of the purview of the land ceiling provisions so that the institutions may be able to utilize the income from the lands for their purpose. (Ch. XIII).

(78) So far as lands which are under the cultivation of tenants are concerned, it would be difficult and invidious to get them exempted from the normal provisions of the tenancy legislation applicable to lands owned by others. Where such lands are settled with tenants, institutions concerned should be given a perpetual annuity equal to the average annual income from these lands for, say, six years preceding the date of taking over of such lands. While fixing the annuity, due weight should also be given to the increase in the market prices of the lands. (Ch. XIII).

(79) In addition to our other recommendations for the amendment of the Constitution, the Constitution may also be amended to elucidate the following points:

(a) That temples, mutts and other institutions to which the public resort as of right and/or by tradition or custom for the purpose of worship or religious training or discharging vows and/or institutions that accept gifts, donations and offerings from the members of the public without the right to refuse such offerings should be treated as public trusts in the sense that the public or section thereof are interested in and have the right to enforce their proper administration and management. The special position of the matadhipati as different from a bare trustee has already been dealt with.

(b) The fact that the management of the temple or the mutt is in the hands of persons or groups historically connected with the foundation of the institution or in the hands of persons who claim to have acquired proprietary or other vested interests in

the image or the temple associated with an image can make no difference with regard to the essential character of the institution.

(c) All mutts whether managed by celibate or non-celibate persons, having been originally founded for the purpose of training and gathering together a band of persons commonly devoted to the study, understanding or propagation of particular doctrines, dogmas, rituals, practices or ideas and being primarily charged with the duty of instruction and propagation of particular aspects of religious belief can never be regarded as private institutions although the head of the institution or the matadhipati may on account of personal or traditional holiness or learning or possession of extraordinary gifts (e.g., of healing and so forth) attract a number of disciples and followers who are willing to recognize the personal status of the person by gifts or offerings. In these cases also these gifts and offerings are made to the personage concerned by virtue of his office in addition to his personal attributes. Such gifts and offerings can never be private property in the ordinary sense of the term as stated above although a portion of the income or accumulation of the mutt properties may be utilized for the maintenance and proper dignity and traditional status of the head of the mutt and the maintenance not only of the matadhipati but of his followers, sishyas, and his establishment and customary travels and the functions and ceremonies associated by custom and usage with the traditions of the mutt. (Ch. XIV).

(80) The Bharat Sadhu Samaj may become, if properly organised, regulated and disciplined, an instrument for carrying out the task of religious and ethical instruction of the masses and especially of the youth of the country and for the dispensing of relief to the poor, to the aged and to the diseased. (Ch. XV-A).

(81) We feel that for the achievements of the objectives of the Samaj, that organisation requires more thorough consolidation and carefully designed arrangements about preliminary screening and training of the sadhus engaged in the tasks envisaged by the Samaj and also about the scrutiny of the activities of its units. (Ch. XV-A).

(82) We have come to the conclusion that while there is a case for the training of sadhu missionaries in the larger interests of the public in general and Hindus in particular, it is absolutely essential that the persons selected for such training should be thoroughly screened and the training confined only to undeniably qualified persons fit in all respects for the task. In our view such missionary activity, if at all it is to be effective and supplemental to the official and non-official efforts in welding together the centrifugal elements within the Hindu fold and achieving the wider perspective of emotional integration of communities with varying creeds, beliefs and religions inhabiting our country, should eschew all activities and utterances tending to create or widen any schism between the various religions followed in India or between the various sects or sub-sects among Hindu or between religions which are in fraternity with the Hindu religion like Jainism, Buddhism and Sikhism. (Ch. XV-A).

Shri Badrinath Temple

(83) Dr. Sampurnanand has suggested that some of the palatial buildings owned by the Badrinath Temple Committee at Dehradun, Lucknow, Calcutta, Bombay and at other places may be disposed of and the money utilized in constructing shelters for pilgrims where they are badly needed. We feel that this suggestion is valuable and should be carefully considered by the authorities concerned. (Ch. XV-B)

(84) The Temple Committee should build its own dharamsalas, rest houses, etc. at Badrinath and also at a few other convenient places *en route* Badrinath and have full control over them. Donations received in this behalf should of course be welcome and given due publicity and prominence in other suitable ways. The Committee should provide for a better equipped hospital with more beds. (Ch. XV-B)

(85) The canteen run by the Committee at Joshi Mutt should be expanded and a few more canteens opened there to meet the needs of a large number of pilgrims. The Committee should also run a canteen at Badrinath and at least one on the route from Joshi Mutt to Badrinath. (Ch. XV-B).

(86) The sanitary arrangements *en route* and at Badrinath are imperfect. Speedy steps should be taken to improve these amenities. (Ch. XV-B).

(87) The work and programme of the Kali Kamliwala Trust may be scrutinised and if necessary supplemented so as to make for the more adequate convenience of the pilgrims. (Ch. XV-B).

Shri Kedarnath Temple

(88) The Temple Committee should undertake the construction of rest houses equipped with flush latrines for the benefit of the pilgrims. There are many water-falls in the place and it should not be difficult to provide proper sanitary arrangements. (Ch. XV-B).

(89) The Committee should run a canteen to provide wholesome food to pilgrims on moderate charges. They should also run a well-equipped hospital with at least 50 beds during the pilgrim season. (Ch. XV-B).

(90) The Committee may have its own dandies and ponies to bring the pilgrims to Kedar. It may engage whole-time coolies for the purpose and pilgrims can be asked to pay coolie charges at the scheduled rates to the Committee itself. (Ch. XV-B).

(90A) In the matter of transport the example of Tirupati may be usefully followed.

(91) The Committee should publish a proper and authentic guide book for the benefit of the public. (Ch. XV-B).

(92) Glaciers are approaching the Kedar temple and the *detritus* is approaching very close to the temple. The State Government should have a geological survey undertaken and taken other timely preventive measures. (Ch. XV-B).

Temple of Srinathji, Nathdwara

(93) A careful assessment of the essential expenditure enjoined by the Pushtimarga doctrine should be made and ways and means found to effect economies in the expenditure now being incurred which, in our opinion, is certainly capable of reduction. The savings thus effected may be utilised for the propagation of the tenets of the Pushtimarga sampradaya, the giving of scholarships to students and others studying those tenets and the provision of necessary amenities to the very large number of pilgrims visiting the holy shrine of Srinathji. (Ch. XV-B).

Tirupati Temple

(94) Scrupulous care should be exercised to ensure that the ever expanding activities of the temple which undoubtedly enhance the temple's popularity and income should not leave any right or wrong impression in the mind of the devotees that the temple is being run with a commercial slant or with a view to profit. A part of the jewellery accumulated with the temple valuing over a crore of rupees, which is decided as not very essential to be preserved for decorating the deity according to usage and tradition may be disposed of and money invested in a productive form. Also some check should be exercised on new jewellery being made at huge cost only to replace the old kundalams, giritams, bracelets, mekhalas etc., with a view to finding a scope for utilization of the large surpluses which now result. (Ch. XV-B).

(95) Care should be taken that in the educational institutions conducted and financed wholly or subsidised by the temple authorities, a religious and spiritual outlook and bias are maintained in curriculum and by means of adequate scholarships, fellowships, lectureships, etc., tenable by students in those or outside institutions and devoted to the furtherance of Hindu ideals of life and religion. (Ch. XV-B).

Sri Jagannath Temple, Puri

(96) It is absolutely essential that well designed amenities for pilgrims and shelters and dharamsalas for them should come into existence and that pilgrims should not be dependent upon the pandas whose quarters alone are now mainly available for them. (Ch. XV-B).

(97) There should be a larger number of institutions in this holy place for the imparting of religious instructions to the vast numbers of people congregating here. There should also be provision for regular religious discourses and the recitation of the scriptures and Puranas in and outside the temple. (Ch. XV-B).

(98) The archakas or pujaris in the temple should be men of learning and piety and there should be institutions in and around Puri to train them for their work. They should be paid adequately

so that their income does not accrue through a process of importunity or extortion. (Ch. XV-B).

Shri Viswanath Temple and Other Temples in Varanasi

(99) Reforms on a comprehensive basis have to be carried out so that proper facilities may be given to the pilgrims by way of accommodation and religious enlightenment, the temple and its environment are conducive to peaceful worship and meditation and also proper atmosphere is preserved and maintained by learned and reverent officiating priests. (Ch. XV-B).

(100) The services of the Benaras Hindu University and the Sankrit University and their staff can be made easily available to produce an authentic atmosphere of piety, reverence and learning, in the conduct of the temple's secular and religious affairs. (Ch. XV-B).

Hardwar

(101) The temple of Gangeshwar and the Hari-ke-Charan (now called Hari-ki-Pauri) although resorted to by thousands of people annually have no proper arrangements in the matter of sanitation. Thousands of pilgrims resort to Hardwar. Greater attention should also be paid to their physical and religious needs. (Ch. XV-B).

Gaya

(102) Though this is a place of great religious significance, the temples here are very imperfectly maintained. There are no shelters provided for pilgrims. The extortions of the pandas, most of whom are ignorant and rapacious, are proverbial and no fixed rates have been provided for the religious observances such as 'tarpans' and 'pindapradanas'. The state of another holy place here namely Vat Vriksha and Vishnupad is scandalous. There is an open drain on the way to Vat Vriksha and dirt all round. The priest allegedly in charge during our visit did not even know the name and significance of the images at the foot of the trees. The authorities concerned should undertake immediate steps to remedy the above state of affairs. (Ch. XV-B).

Ujjain

(103) Though the temple of Mahakala in Ujjain is kept in a fairly clean condition, no steps have been taken for maintaining the once celebrated literary and religious background of the place. Near Ujjain is also the reputed Asram of Sandipani under whom Sri Krishna and Balarama are reported to have studied. A great deal has to be done to keep alive the old memories clustering round the place and to impart to it the right atmosphere. (Ch. XV-B).

(104) We cannot persuade ourselves to agree with the recommendation of the Sanskrit Commission that the diversion of surplus funds of religious institutions to secular charitable purposes should be absolutely prohibited by legislation. We have already expressed our views on this matter. (Ch. XV-C).

(105) We agree with the recommendation of the Sanskrit Commission that so long as it is possible to utilize the funds earmarked for Sanskrit studies for the purpose of such studies, such funds should not be diverted to other charitable purposes. (Ch. XV-C).

(106) The Archaeological Department should extend its activity in the field of excavation work in appropriate important religious centres. (Ch. XV-D).

(107) The Archaeological Department may take charge of the archaeologically significant temples and at the same time allow worship to be conducted with such minimum precautions as they consider necessary to preserve the archaeological aspects of the temple. (Ch. XV-D).

(108) Ancient and historic Hindu temples and shrines may be treated with the same amount of meticulous attention to their repairs and structural and other requirements as is now in a very praiseworthy manner bestowed upon Juma Masjid, Taj, Sanchi, Bodhi Gaya and other places. (Ch. XV-D).

(109) A common good fund should be constituted with the aid of the compulsory contribution of a certain percentage of incomes of temples with a specified minimum income on the lines provided for in the Madras Hindu Religious and Charitable Endowments Act, 1959 and money utilized on a planned basis for repair and renovation work pertaining to poorer temples with small or no income or other resources and which are falling into ruin. This pooling of resources may be either for the whole State or region(s) in the State or for a group of temples within the fold of a particular sampradaya as may be found expedient. (Ch. XV-E).

(110) The Commissioners of Endowments and other heads of Departments in charge of endowments in the States should at periodical intervals meet and exchange their ideas and experiences. (Ch. XV-F).

(111) Some of the institutions like Tirupati and Srisailem in Andhra Pradesh and Madurai Palani and Tiruchendur in Madras are examples of fairly well managed institutions. Representatives of the endowment departments from other States may usefully visit such institutions and study their working on the spot. (Ch. XV-F).

(112) Government may consider the question of granting exemptions from income-tax in respect of funds donated to religious institutions as many such institutions are greatly in need of funds to carry out the schemes we have adumbrated. (Ch. XV-F).

(113) Each State in the appropriate department should compile and publish a directory of temples and other Hindu religious institutions in the State. A guide book in English, Hindi and the regional language concerned containing information helpful to pilgrims with details as to amenities for lodging and board available at the temples and religious places concerned, should also be prepared and made available for sale at a nominal price at all important places and religious centres in the country. (Ch. XV-F).

(114) It should be the duty of the Commissioners of Endowments as well as the Tribunal envisaged in the Report to see that the benefit and advantage of spiritual and cultural instruction and enlightenment should be at the disposal and be availed of by Harijans and all other backward communities and especially students belonging to those communities. All opportunities should be afforded to them to

obtain a sound knowledge of Hindu ideals, doctrines, ethics and philosophy. It may be mentioned that, though statutorily all temples are thrown open to all Hindu communities, yet in practice there are undefined but real impediments for their visiting and worshipping in the temple and taking advantage of the religious observances. Attempt should be made to remove such impediments. (Ch. XV-F).

A GENERAL SUMMING UP

Before concluding our Report to which we have appended a summary of our recommendations and certain explanatory Appendices, we deem it essential to make certain observations elucidatory of our approach to the problems that we have been called upon and privileged to examine.

The Members of the Commission are all Hindus belonging to many parts of the country and to several denominations of the Hindu faith. Hinduism has been admirably defined by Dr. Radhakrishnan as "a way of life" and by its many-sidedness, its infinite adaptability during the ages and its marvellous tradition of tolerance, it has demonstrated the truth of this dictum. A reverent and religious attitude and a continuous quest for the realisation of the Supreme have been the feature of the long continued history of Indian thought and experience. According to the extent of spiritual evolution and individual spiritual urge, Hinduism has recognised as equally valid every approach to the Supreme Being or Paramatman as an impersonal, formless and indescribable entity or as Iswara manifested in various forms and incarnations, supplication and prayer to whom and worship of whom, may satisfy the cravings of individual souls and enable them to concentrate on something beyond and above their normal range of consciousness. It is to satisfy these cravings and to cater to the manifold needs of individuals and groups that temples were established, worship and prayers in those temples organised, festivals contemplated and religious and cultural activities associated with temples dedicated to multiform manifestations and embodiments of the Supreme Being in one or other of its several aspects, whether those aspects comprise the idea of a Trinity, of Vishnu and Lakshmi, Siva and Sakti, Ganesa, Karthikeya or Subramania or even local, regional and other deities associated with particular localities or incidents. Various sects and groups have arisen in India dedicated to the worship of the One envisaged as a father, a mother, kinsman, a friend or lover. It may also be remarked that evolved souls like those of Sankaracharya, Ramanuja and Madhwa, not only advocated concentration on the abstract idea of the One Supreme Being but also preached and practised the worship of several incarnations and embodiments of the Supreme. This phenomenon is observable in all countries and in all epochs whether we turn to Egypt, Babylon, Greece, Rome, Arabia, Palestine or the Christian world, or to Jainism, Buddhism, or Zoroastrianism. The glory of Hinduism is that it is not exclusive and gives to each person the liberty and privilege of approaching the divine through any of its

historic or traditional incarnations or manifestations, thus disdaining no other religion and tolerant of all beliefs.

So viewed, a temple is regarded as a place where, by supplication and prayer to and adoration of one form of divinity, the soul gets satisfaction and solace. We have also indicated that temples serve not only as places of dedication and worship but as centres of all those cultural, artistic and beneficent activities that can elevate the human soul and bring it nearer to the divine ideal. We have also indicated that when the purity of the original faith in several denominations of Hinduism faded and abuses and materialistic and subversive ideas arose, mutts were founded beginning from early days and signalised by the activities of Buddha, Sankara, Ramanuja, Madhwa, Vallabha, Basava, Chaitanya and many others, to expound and propagate the ideals and doctrines of particular forms of the all-embracing Hindu creed.

The Members of the Commission, holding these views, have come to the conclusion that whatever may be the encrustations and later interpretations by vested interests or Courts and other authorities, it is essential for the revival and regeneration of the Hindu world and for the inauguration of an era of faith and tolerance, to resuscitate and, by all practical and legislative means, to re-establish the root idea underlying the institution of temples and of mutts. Thus, it follows that the divine entity symbolised by the image in a temple is the primary object of resort and worship and that the propagation of a particular form of faith and ideals and doctrines constitute the meaning and import of a mutt and that offerings laid at the feet of the presiding deity of a temple or of the head of a mutt or Guru of a particular mutt are to be regarded as meant *prima facie* for the purpose of forwarding the original ideas that led to the commencement and evolution of these institutions. It follows again from the above statement that unless specifically given to any particular person in or connected with a temple or mutt, all gifts and offerings are, and should be, the property at the disposal of the institution rather than of any individual. This does not preclude the gift to any particular person connected with a temple or a mutt to whom, out of personal devotion, reverence or love, gifts are made which, of course, will inhere in him.

We are constrained to observe that the above idea has not always been kept in view either by Governments or by courts in dealing with the affairs of temples and mutts and we are, therefore, recommending that even if it be necessary to amend the Constitution for the purpose, steps should be taken to place the matter beyond controversy with reference to the ownership and rights over offering and gifts to mutts and temples and with reference to claims of ownership in respect of the institutions themselves and their properties and offices connected therewith. When saying this, we should like to emphasise that we do not wish in any manner to detract from the status, dignity, perquisites and privileges of functionaries connected with temples and mutts both of which have illustrious histories and certain traditional honours and dignities appurtenant to them; nor do we wish to minimise the importance from the point of view of

the worshipper, of festivals as a means of popular enlightenment and delectation, of poojas, archanas and special services as catering to individual needs or to those forms of gift and seva which may characterise the relations of and initiate, of a disciple and a Guru. But we wish, at the same time, to emphasise that, as observed by the Supreme Court in a recent case relating to the affairs of a Durgah at Ajmer, there is an essential difference between what is fundamentally a matter of religion and what may be regarded as encrustation or merely accidental or incidental practices which are not of the essence of religion.

Finally, we also wish to make it clear that the definition of the term 'property' and the provision in the Constitution in regard to the safeguarding of the property rights should not be extended in favour of heads of mutts, dharmakartas, shebaites, archakas or others so as to enable them to treat their properties as their individual perquisite to be spent on purposes even unconnected with the ideas underlying the foundation of mutts and temples. Any changes in the Constitution that may be necessary to carry out this idea are not only important but, in our opinion, essential for the purposes we have in view.

Lastly, we may point out that Hindu Scriptures and Sastras, when defining the forms of charity and religious offerings, really made very little difference between *Ishta* and *Purtha*, namely, between the spiritual and charitable modes of application of wealth. This explains not only the building of temples and mutts and residences and dharmasalas and flower gardens attached to them but also the digging of wells, the construction of ponds and tanks, the relief and amelioration of human distress and disease which are the characteristics of the foundations of the past.

The doctrine of *cy pres* is essentially an out growth of English ideas and should be understood in relation to English history involving the conflict between the church and the State and the differentiation made between religious and charitable uses. We have, therefore, adopted the wide definition of the recent English statute rather than those ideas as to *cy pres* which seem to have dominated the minds of some of the Judges deciding cases arising in India. We have endeavoured in our recommendations, therefore, to insist that surplus funds of temples and mutts, after carrying out to the full the obligations cast on those institutions by the Deeds of foundations or by custom, usage and tradition and after providing for the implementation of the basic needs and ideals of those institutions, should be devoted to a variety of purposes which are called for at the present moment by the advance of ideas, by the necessities of our times, and, above all, the need to create an atmosphere and background in and around temples and mutts which will make them objects of reverential resort and also centres for spiritual enlightenment and the popularisation of tenets appertaining to particular institutions or groups of institutions and to Hindu thought in general. By such means alone will it be possible to effect that integration of Indian endeavour and that sublimation of ideals which are of special significance to resurgent India.

EPILOGUE

We the members of the Hindu Religious Endowments Commission have very great pleasure in presenting the above report to Government.

2. The appointment of the Commission was announced on the 1st March, 1960 and its first meeting was held in New Delhi on the 5th March 1960.

3. For reasons that will be obvious on a perusal of the Report and the evidence gathered by the Commission, the inquiry has taken a longer time than anticipated originally. It was possible to prepare this Report only after our tours were completed and after we had been able to collect and arrange the relevant materials from the written memoranda and replies to our Questionnaire and from oral evidence. The manner in which we conducted the inquiry has been set out at some length in the introductory Chapter. While an attempt has been made to go into all the matters covered by the terms of reference, we have not found it possible to enter into a detailed investigation of the affairs of all or even many of the important Hindu religious institutions. Such a procedure would naturally have involved an enquiry involving extensive probing into account books and other documents pertaining to several institutions and judging between the allegations and counter allegations made before us as to the conduct of particular functionaries. We have confined ourselves therefore to indicating in broad outline the changes that would be necessary to enable the institutions to fulfil their original objects with due regard to the needs of the present day and make them real and effective centres of culture and education without losing sight of the original purposes and ideals of the institutions concerned.

4. We are generally agreed on the recommendations and conclusions contained in the Report, subject to different points of view on certain issues as outlined in the separate notes appended by Shri P. Kameswara Rau and Swami Harinarayanand, Members. Shri K. C. Sen and Shri K. Venkataswami Naidu who concur in the Report have authorised the Chairman of this Commission to sign the Report on their behalf as they are not in a position to attend the final meeting.

5. We hope that the Government would take early steps to implement our recommendations.

6. We cannot conclude without expressing our very sincere thanks to the representatives of the State Governments and to a large number of individuals, associations and public bodies who, at the expense of much time and labour, helped the Commission by their detailed and elaborate replies to the Questionnaire, the memoranda submitted by them and the views expressed in the oral evidence tendered before the Commission. We also express our deep gratitude to the State Governments and their officers for the valuable co-operation and assistance given to us during our visit to each State and tours to various religious centres and above all for the great hospitality extended by them to make our stay in the various places comfortable

and enjoyable. We also express our grateful thanks to the Railway Board for its good offices readily extended to us in ensuring highly efficient and detailed arrangements in the matter of reservation of rail accommodation—sometimes at a very short notice—on all railways. It would indeed have been very difficult for us to traverse the country and visit so many places—big and small—within the time available without the co-operation and facilities so generously offered by the Railways concerned. Thanks are also due to the press and publicity organisations for the wide publicity given to the activities of the Commission by reason of which public attention was focussed on the vital problems connected with the Hindu religious institutions. Finally, the members of the Commission acknowledge with pleasure the valuable assistance afforded by the Secretariat and staff assigned to us. Without the useful precis made by the Secretariat of the evidence and documents submitted to us it would have been impossible to complete the Report within the assigned time.

C. P. RAMASWAMI AIYAR—Chairman.

(A note is appended).

SANKAR SARAN—Member.

MAHABIR PRASAD—Member.

31-5-62.

NEW DELHI,
the 31st May, 1962.

I agree with all the conclusions and recommendations made in this Report, subject to observations on certain points in the separate note given by me.

P. KAMESWARA RAU—Member.

31-5-62.

I agree with all the conclusions and recommendations made in this Report, subject to observations on certain points in the separate note given by me.

SWAMI HARINARAYANANAND—Member.

31-5-62.

C. P. RAMASWAMI AIYAR
for K. VENKATASWAMI NAIDU.

(according to his letters of authorisation dated 9th and 25th May, 1962).

C. P. RAMASWAMI AIYAR

for K. C. SEN

(according to his letters of authorisation dated 9th and 26th May, 1962).

NOTE BY SHRI P. KAMESWARA RAU

I.—PADAKANIKAS

In the Report it is said that "we are at the same time constrained to take into account the existing usages and customs and would accordingly recommend that having regard to the present practices and traditions of the mutts, the property of the head of the mutt in padakanikas and pranamis may be recognised to the extent that while he has a right to disburse them during his life time for the

maintenance of himself and his disciples suitably to his dignity and status and in conformity with the traditions of the institution and otherwise for furtherance of the objects and purposes of the mutt, any of these properties remaining undisbursed at the end of his life should automatically inhere to the mutt". I may be permitted to state that this is somewhat difficult for me to follow. For the maintenance of the matadhipati and his disciples suitably to his dignity and status and in conformity with the traditions of the institution and otherwise for furtherance of the objects and purposes of the mutt, all the income from whatever source, can be utilized by the matadhipati. Why should we recognize any peculiar property of the matadhipati in these particular gifts alone? I can quite understand a proposition to the effect that the matadhipati can utilize these pranamis and padakanikas as he pleases and for his own purposes whether connected with the mutt or not. I can equally understand a proposition that these padakanikas and pranamis are really part of the assets of the mutt given to the matadhipati only in his official capacity as the head of the mutt and as such all these properties inhere to the mutt from the moment they are made. But the proposition stated above baffles my limited understanding.

2. I am here confining myself to the matadhipati who is a celibate and who alone can be the head of a mutt as contemplated in our Dharmashastras. The celibate matadhipati is a sanyasin, that is, one who has given up "everything worldly". He gives up his wife and children if he had any previously; he gives up his father and mother if they are alive and his brothers and sisters if he has any. He gives up his family and in fact he gives up the very name which his parents had given to him at the time of his birth and by which he had been known till the date of his sanyasa and he takes upon himself a new name which really signifies his merger in the absolute author of the universe in some aspect or the other; at the time of the initiation he repeats the sacred mantras.

"सर्वम् सन्यस्तो मम."

(Everything is given up by me thrice)

When he goes to any place and is interrogated as to his name, he mentions the new name taken after his sanyasa and never mentions his name in his poorvashrama. Again at the time of initiation he repeats the sacred formula—

"कन्या कांचनं वर्जयामि"

(I am giving up women and gold)

Why does such a person require a separate bank account? Why does such a person require separate personal property? If he is not the head of a mutt, such a sanyasin is required not to remain in the same place for more than three days not to take food in the same house more than thrice and he is put to all such similar strict restrictions with regard to the place where he lives, to the person with whom he lives, to the kind of food he takes etc. Because he is the head of a mutt and a Teacher of mankind, he is allowed to remain in one place and without begging from door to door, to take food prepared in the mutt for his use; but he must certainly keep to the spirit of the vows he has taken and on the basis of which he succeeded the previous matadhipati.

3. The succession of one matadhipati by another is a very peculiar institution only found in India. In the Roman Catholic Church, which has similar foundations, the head of a monastery is appointed by the Pope on the advice of the Church Council. The previous holder of the office has nothing to do with the appointment of the successor. This peculiar system has prevailed in this country from time immemorial owing to the fact that both the Teacher, the previous matadhipati and the disciple, the new matadhipati are persons who have given up everything in the world. Otherwise there is no justification for the succession of the new matadhipati to that place. The recognition by the State of the succession is dependent upon both the previous matadhipati and the successor observing strictly the vows of poverty and chastity which they took upon themselves when they entered the new ashram. If these vows are not kept in the spirit but are merely observed in the letter and the spirit is disregarded, then the individual ceases to be a matadhipati and the Teacher of his disciples. Therefore no question of pranamis or padakanikas arises to such an individual who has ceased to be in the eye of the Dharmashastras a Teacher to mankind.

4. It does no good to shut our eyes to the facts which are staring us in the face. On what objects do the matadhipatis who want the proprietary rights to the padakanikas and the pranamis spend these amounts? It is generally well-known that these amounts are spent upon extravagant living, to say the least, in high style like Maharajas and Nawabs with motor-cars and palaces, or in worse cases, the members of their erstwhile family (children or brothers or sisters as the case may be or other relations) or in the worst cases upon women and/or wine. Therefore, for every conceivable legitimate object on which the matadhipati can spend money, all the income of the institution from whatever source it is derived, is available to him at all times and in all seasons. If the income of the mutt is limited to a particular amount including pranamis, why should the matadhipati be anxious to spend a very large amount upon a particular charity out of proportion to the resources of the institution as has been suggested? The sanyasi is supposed to have cut himself off from all worldly attachments including attachment to any particular institution, however laudable it may be. He must give if he desires to contribute to any such charity, only in proportion to his resources.

5. Then again, the analogy of the discretionary grants of Ministers and Governors has been brought in. There is absolutely no similarity between the two positions. The minister is a worldly man immersed in the world, answerable to an electorate, answerable to other members of the Legislature for all his public actions. On the other hand if the matadhipati sticks to the rules of his order and to the vows which he has taken, he is answerable only to himself and to God provided he spends within the limits of the whole resources at his command. It should not be said that he has got an attachment to a particular institution or to a particular charity. As Swami Vivekananda said, even if all the resources of the Government of India are placed at the disposal of the matadhipati, even then he can alleviate human sufferings only of a tiny section of crores of poor and diseased people. If a private proprietary right in these pranamis is recognised then the question arises whether he is

liable to pay tax on the income which so accrues to him, because exemption from payment of income tax is only in respect of charities and not in respect of the private property of any individual, though he may be the head of a mutt.

6. Now I turn to the case of married Gosains who are the heads of mutts. This custom obtains legitimately only in a small number of the mutts. It is one of the anomalies of Hindu religion that each mutt is governed by its own tradition and usage. It is very difficult to lay down a general rule for all of them. At the same time the grave danger to public institutions by having as trustees of such institutions married Gosains has become self evident to the people of this country by the notorious instance of the Tilkayat of Nathdwara who managed to take the keys from the executive officer in charge of the institution, took away the strong boxes in which the treasures of the temple were kept, rifled them of all their contents absolutely and sent away empty boxes to the executive officer. So far as the resources of the mutt itself are concerned, he can be considered to be a trustee to his wife and children since he does not initiate any disciples outside his family to succeed him and therefore the public are not directly interested in the way in which he spends the amount received by him for his personal use; although if he leads an immoral life he may be removed from authority over the mutt as well as other religious institutions still under his control. In conclusion, I do think that it is against the fundamental conception of a sanyasin or Parivrajika or ascetic head of a mutt that he should claim any property of his own, particularly in any gifts placed at his feet by disciples which could have been only as the head of a mutt who has renounced the world and who has no separate individuality and who identifies himself with the institution and indeed with the whole of humanity.

II.—HEREDITARY TRUSTEES

There are various kinds of hereditary trustees functioning in relation to Hindu religious endowments throughout India. They may be divided into two categories with regard to the type of institutions—(a) hereditary trustees of temples, (b) hereditary trustees of mutts or matadhipatis. In regard to the nature of the endowments, hereditary trustees are of two kinds, trustees of the institutions as a whole, that is, trustees of all the properties of an institution who manage the institution and run its administration and trustees of specific endowments given for special purposes to individual institutions. In the State of Madras these specific endowments are called Kattalais.

2. Hereditary trustees again may be ordinary house holders or may be matadhipatis. Some matadhipatis are hereditary trustees not only of their mutts but also of several temples near about. The hereditary trustees of temples have become so by reason of various circumstances and we may divide them into four classes for this purpose, i.e. (1) the hereditary trustees who are descendants of the original founder of the temple. Some ancestors of the trustees built the temple and endowed it some generations back and the

management of the properties endowed has continued to be in the hands of the descendants of the original founder (2) Zamindar hereditary trustees—certain village temples were built centuries back by the ancient rulers of the land and endowed by them. The Zamindars who mostly dated from about the beginning of the 17th century A.D. happened to have these villages included in their zamindari and, therefore, as representatives of the rulers of the country they managed these institutions, got the income from these properties and spent them on the institutions. Thirdly there are village officers, who are hereditary trustees. Particularly in the Guntur district in Andhra Pradesh many village officers, i.e., Karnams or accountants and the Munsifs or the Headmen in villages were recorded in the Inam register as trustees of these institutions. Here again, being representatives of the ruling power in the village, they collected the income from the lands and spent it upon the institutions. They never gave their money to the institutions nor did any of their ancestors. There is a fourth class of hereditary trustees like the matadhipati of Dharmapuram etc. When the East India Company divested themselves of the powers of management of these institutions as successors of the previous rulers of the land in pursuance of a general policy laid down by their Directors, the management was handed over to some pious individual, a house holder in the same or neighbouring village or the head of a mutt nearabout who commanded respect by his piety and learning.

3. The Supreme Court in recent cases has held that this right of management of hereditary trustees is a right to property within the meaning of article 31 of the Constitution and hereditary trustees can be deprived of their powers to any extent only through the courts of law. This has done great harm to several institutions. In fact, the descendants of the original founders are very often the least fitted to manage the institution. They have a feeling of ownership in the properties endowed to these institutions by their ancestors and therefore they feel that the misapplication of the funds of the institution in favour of their close relations or friends or even misappropriation is not a sin at all, because they are dealing with property which might have come to them in absolute right but for what they considered to be the foolishness of their ancestors in giving them free to the public. Now-a-days, they very often do not reside in the place in which the institution is situated. Thus they have become a sort of absentee landlords of the institutions and all the evils of absentee landlordism in respect of landed estates in the case of private individuals are prevalent also in the case of lands endowed to the temples. The village officers have also ceased to consider the management of these properties as a sacred duty and a heavy responsibility and are only interested in enriching themselves at the cost of the institution. Many of them are also not residing in the same village.

4. It is not necessary to go into the details in all these matters at present. I am of opinion that unless the recognition of the right of management as a kind of property is withdrawn and article 31 of the Constitution suitably amended, it would be very difficult to improve many institutions which have been groaning under the hereditary trustees. The right of management is really a burden

and if one fully realizes the responsibilities of the office, he will not really care for it. It is only to enrich themselves at the expense of the institution or to do something for the people in whom they take interest, that these hereditary trustees are managing their institutions in the present day. Very often, the annual income of these trustees is much less than the income of the institution and the temptation to amass money at the expense of the institution is too great to resist and this is really why people are still fighting for this right of management. Having regard to the socialistic trends of the present day, it is essential that this right should cease to be a constitutional right guaranteed under article 31 of the Constitution; otherwise the administration of the temples would be ruined and many more institutions spoiled irreparably. Many instances of such ruin of institutions by hereditary trustees occur to my mind from my experience in the Madras State between the years 1938—52 and I refrain from referring to them in detail lest this note may become too long. I would only cite the cases of the Rajas of Kalahasti and Karvitnagar who had to be deprived of all powers over the institutions which their ancestors exercised for generations, after they had misappropriated the income of the properties for decades as well as the jewellery of the institutions on which they could lay their hands. I would, therefore, suggest amendment of article 31 of the Constitution so that the hereditary right to management of trust property should cease to be recognised by the courts, and it should be possible to get rid of the same by means of legislation in appropriate cases without recourse to courts, by application to special authorities constituted for the purpose who can be trusted to attend to these matters speedily and justly in the public interest.

III.—SURPLUS FUNDS—CENTRAL INSTITUTES

In Chapter VII of the Report, one of the recommendations of the Commission is that surplus funds of religious institutions may be applied for the starting of central institutes where all the various sampradayas or systems of Hindu religion and rituals etc. practised by the various sects may be taught, side by side with secular subjects. Even now it is very difficult for me to know what exactly will be the courses of study at these institutions.

2. It may be said in a general way that one great feature of Hindu religion is that there is very little distinction between the highest of religion and the philosophy of Hinduism. After all there are three main text books which are the corner-stones of all the systems of Hindu religion or Hindu philosophy, the Prasthanatraya—the Bhagawat Gita, the Upanishads and the Brahmasutras. All the three great Acharyas, namely, Sri Sankaracharya, Sri Ramanujacharya and Sri Madhvacharya have written commentaries upon all the three. While the sampradayas no doubt vary and the details of worship or systems of study or attainment of spiritual progress vary with each individual, sub-sect or sampradaya, it may be said broadly speaking that all sampradayas fall under one or other of the three categories. All that is worthy of study at the college or university level in all the sampradayas can be taught and is being taught in the philosophy classes in the various universities or in the well-equipped Sanskrit Colleges that are found in various parts of the country and

in the Sanskrit universities that have sprung up in the last few years as a result of the Sanskrit Commission's report and the great interest evinced by the Government of India in the advancement of Sanskrit learning since then. Indeed the real obstacle to the advancement of these studies is not one of dearth of institutes (in my humble opinion, we have already too many of them) but the paucity of students who, with all the inducements open to them in recent years, have not been attracted to these courses of study. Even in the universities we find that seats in arts courses have remained unfilled in the recent years while in the science courses and in the professional colleges, the number of applications is five or six times the number of seats available.

3. An institution of this kind will easily cost several lakhs of rupees a year. It would require buildings that will mean an enormous outlay and it is very doubtful whether even half a dozen students will be found in each one of the classes, with all the inducements of scholarships etc. which we are going to hold out to them.

4. On the other hand, I am most respectfully of the opinion that the surplus funds of religious institutions should be utilized in less ambitious educational enterprises. I would particularly comment the example of the Nelliappar temple at Tirunelveli which has established an excellent high school for Hindu girls (and indeed girls of all communities) out of its surplus funds. Here some elements of Hindu religion can be taught and this will be a greater service to Hindu religion than the intensive training in a handful of colleges or special institutions solely devoted to religious study. Such special institutions also tend to keep the students away from the current trends of our life and society and make them less fitted to develop an interest in Hindu religion in the younger generation and the generation to come.

5. The Ramakrishna Mission had set an excellent example in Madras with respect to boys' education. It started a hostel for the poor, a high school and a college for boys numbering about a dozen or so in the beginning. It developed from strength to strength and gradually became a residential high school and has now developed into one of the best colleges in the whole of India. In the hostel attached to this college, the boys are required to attend prayers twice a day and are trained to lead a life of self-reliance and self-restraint. Institutions of this kind whereby a few simple germs of the great truths of Hindu religion are implanted in the impressionable minds of young persons numbering hundreds or thousands, in my opinion, do a much greater service to Hinduism than half a dozen institutions of the type recommended in the Report.

IV.—JAIN ENDOWMENTS

With respect to the surplus funds of Jain institutions, the Commission has recommended the establishment of five or six centres of Jain philosophy and teachings. For the reasons stated more in detail in my note on the utilisation of surplus funds of Hindu religious endowments for starting central Institutes, I do not agree with this

suggestion. The real difficulty, as I said previously, is one of students and not one of institutions or teachers. I am assured on high authority that under the professor of Jainism in the Banaras University, only two students were studying and pursuing their studies a few years back. I do not think the number has appreciably increased in recent years nor is likely to increase very much in the years to come. In view of this I should think it is a waste of public funds in this poverty stricken land to establish more and more institutions now. If there are surplus funds of Jain institutions, they can be well utilized in establishing Chairs on Jainism (similar to those in Banaras) in the various Universities of the States where the Jains are found in the present day in sufficient numbers. For example, the Ahmedabad University, the Rajasthan University, the Allahabad University, the Patna University etc. may each have a Chair on Jainism.

2. Better still the Jains may well start institutions like the Jain college at Madras open to all communities and teach in them the elementary principles of Jainism (as they are entitled to under our Constitution) to all adults or youngsters with the consent of their parents. Such institutions will create great respect for Jainism in the minds of thousands of people throughout the length and breadth of the land.

V.—MANAGEMENT AND ADMINISTRATION

This Commission has been appointed, among other things, to inquire into the manner in which Hindu public religious endowments are being managed and the resources thereof are being utilised and recommend ways and means for the proper management of such endowments and the proper utilisation of their resources. This is the most important matter which has been engaging the attention of this Commission for a little over two years and in this note I am confining myself merely to this problem.

2. We may clear the ground by stating that generally Hindu public religious endowments were managed in Hindu-India, i.e., when the whole of India was under Hindu rulers or under the Hindu rulers of Indian States during British times, entirely under the orders of the Executive or the Administrative Department of the Government of the State. The Hindu rulers conceived themselves as the protectors of dharma and as such the dharmadaya or religious endowments were under the direct supervision and control of the King through his own officers. Similarly, in England also the Crown as *Patris Patriae* was in charge of all the religious endowments in the State and any infringement of the duties of the heads of these endowments could be rectified by him. That is why there was an appeal to the Lord Chancellor as the keeper of the King's conscience to help charities which were not properly managed by the trustees. The Lord Chancellor in the beginning was not a judicial officer at all as is well known to all students of the history of English law. He was purely the chief adviser of the King. All petitions to the Lord Chancellor were appeals to his mercy and grace. Later on, a certain procedure was developed in his office which gradually resembled that of the King's courts and finally both the systems have been amalgamated at the present day. As Dr. H. G. Hanbury in his 'English Courts of Law' at

page 127 says, "The defects of the common law could be balanced only by a tribunal whose procedure should be more or less free from technical rules presided over by a judge so exalted as to be unassailable by an unscrupulous defendant however powerful. Such a judge was found in the Chancellor himself whose prestige as the second man in the realm and estimation as a high dignitary of the Church rested beyond cavil or question, for the earlier Chancellors were not lawyers but ecclesiastics. They were known as the keepers of the King's conscience and in this capacity they operated the reserve of justice always inherent in the King as the fountain of all justice. Appeals to the Chancellor were couched in humble and piteous terms. A suppliant for relief would implore the Chancellor to right his wrong for God and in way of charity."

3. The English East India Company also till about the year 1840 assumed the power of supervising and controlling the religious endowments in the country and very often when the ordinary trustees did not manage properly the administrative officers were put in direct charge of these endowments till the defects were rectified. For instance, we have it recorded that the great Adi Kesava Perumal Temple at Sriperumbudur in Chingleput District the birth place of Sri Ramanujacharya, the founder of modern Vaishnavism was for some years managed by the Tehsildar under the orders of the Collector when there were disputes among the office holders and the trustees of the institution. But some time after the Charter Act of 1833 the missionaries became powerful in the counsels of the East India Company and the Directors of the East India Company decided that it was not compatible with a Christian Government to actively supervise the administration of temples and mutts which embody doctrines directly antagonistic to the principles of Christianity. Therefore they were handed over to public men of the place charitably disposed or to individuals who were respected for their piety and deep religious faith. When the Civil Procedure Code was enacted, a section was added giving the ultimate power in respect of the management of these institutions to the District Court after preliminary permission was obtained from the District Collector or the Advocate General by anybody who is interested in the better management of these institutions. This is on the analogy of the powers of the Court of Chancery in England. From the decision of the District Court there was the usual appeal to the High Court and in important cases to the Privy Council. Thus it is that the courts in India have become vested with control over religious endowments. It is not a fundamental principle either of Hindu Law or of English Law that courts should control these religious and charitable endowments and this is the point which must be firmly grasped when we think of legislation to improve the administration of these institutions as they are being managed in the present day.

4. The present system of administration of these Hindu religious endowments in this country varies from State to State. We may define these systems under four categories. There is administration

in a State like Mysore where the income of each institution is kept separate but it is practically administered by the Revenue Department of the State under the directions of the Revenue Commissioner who is ex-officio the Muzrai Commissioner or the Commissioner in-charge of religious endowments. There was some earlier legislation on the subject, but apart from details the legislation practically embodies the immemorial practice in the State. The Government appointed sometimes advisory councils of non-officials living in the place but these are advisory councils and nothing more. The amildar could always overrule their advice and act as he thought best under the directions of the Assistant Commissioner or the Deputy Commissioner as the case may be. There is another system which is prevalent in the States of Travancore and Cochin. They were also Hindu States and the rulers were the protectors of dharma and had a general supervisory power over all temples and mutts in the State but here the individuality of the endowments of each institution has been altogether wiped out. The original lands which were granted perhaps at the time when the village community established itself in a particular place or by ancient rulers centuries back were all taken over by the State as early as 1812 A.D. or thereabout. In place of the original lands of the temples in the States, the Government gave from the revenues of the State the income of those lands as it was found at the time when these lands were taken over. Now after Independence and the abolition of the ruling powers of the ancient Rajas a fixed charge upon the whole income of the State has been created comprising the total amount that was the income of these endowments prior to independence. In Travancore-Cochin a sum of rupees forty lakhs was fixed for all the institutions in the State and the expenditure upon each of them was regulated by *mamul* or custom. A special sum of six lakhs of rupees out of this forty lakhs is allotted for the upkeep of the Sri Padmanabhaswami Temple at Trivandrum under the hereditary trusteeship of the Maharaja even as a private individual. There is now a Devaswom Board of non-officials as the supreme controlling authority consisting of one member nominated by the Maharaja, one member nominated by the Council of Ministers and a third member elected by the Legislature in the State. Under the Devaswom Board there is a Commissioner who supervises the work of the subordinate officers and who is incharge of day-to-day administration of the office of the Board. A third system is prevalent in British Indian States particularly in Madras where legislation has laid down the rules governing these institutions, the method of their management etc. Now this administration by means of laws enacted during the British times and after our independence may be again sub-divided into two categories, i.e., (A) the system in Madras where there was a Board of full-time Commissioners paid out of contributions levied on these institutions in accordance with the Statute, (B) the system prevalent in Bihar and one or two other States where the supreme power is vested in a non-official Board and a superintendent of the Board carrying out the directions of the Board. In fact legislation in all the States may be sub-divided into these two categories. Madras, Bombay and present Gujarat all follow the method of a full-time paid Commissioner who is ultimately responsible for the administration along with his subordinates and special officers appointed for temples where the management may require the

appointment of a paid staff directly by the Commissioner or his subordinates. Under the Bihar system there is a Board of non-officials or of retired officers who have got the supreme power. Under them, there is a superintendent who carries on the day-to-day administration. But a non-official Board has the power to hear appeals from the orders of the superintendent in almost every matter of any importance and thus the real administration is in the non-official Board itself though it is shared on paper with the superintendent and his subordinates.

5. In Chapter XI the Commission has proposed that there should be a Tribunal constituted to attend to most of the matters which are, broadly speaking, now disposed of by the Commissioner under the Madras Act or by the courts at the instance of the Commissioner in other States like Bombay. I think that the burden placed upon the Tribunal and the volume of work that would be devolving upon them under the suggested proposals would be too much to bear unless the Tribunal consists of a very large number of members and thus becomes unwieldy. It is proposed that five members should constitute the minimum strength of the Tribunal and three of the Benches thereof for disposing of all these matters. I should think that in Madras alone, this work would require the full-time attention of a bench throughout the year; similarly in Andhra Pradesh and Kerala. I think a reversion to the system of a Board of Commissioners as it existed in Madras from 1925 to 1951 would be more suitable for the purpose. Then this Board would dispose of all matters relating to institutions in the State in the first instance and the Tribunal to be constituted would discharge purely appellate functions. If the Tribunal is endowed with original functions as is suggested in the proposals, they would have to make local investigations and inquiries and this would absorb a large amount of time which would leave them no opportunity to attend to other equally important matters.

6. No doubt there are defects in administration by a Board, but these defects can be cured by giving as strong a guarantee as to emoluments and prospects, as is given to members of the Public Service Commission under the Constitution, to this Board of Commissioners. Their salaries also should be sufficiently high. They should start on the salary of a District Judge and they should rise the maximum of the highest grade. I would suggest that they should be drawn from the following categories of persons, namely (1) members of the Judicial Service directly recruited from the Bar who have put in not less than seven years of continuous service in the department, (2) members of the Indian Administrative Service directly recruited by the President of India who have put in a similar period of service, (3) members of the Bar of not less than ten years standing and (4) in States where there is a department of religious endowments, persons who have already served as an Assistant Commissioner or as a Deputy Commissioner for a total period of seven years. They should ordinarily be appointed when they are not less than 35 and not more than 45 years of age. They should continue till they are 55. Their salaries should be a charge upon the Consolidated Fund of the State and they should have retirement benefits suitable to their rank and to their position. There should be no appeals from

their orders of any kind except to the appellate Tribunal constituted under the recommendations of this Commission. The other details of their tenure etc. may be on the lines of the provisions relating to the members of the Public Service Commission in the Constitution. This will guarantee both their tenure of office and their emoluments and conditions of service and they will discharge the duties of their office as efficiently and as well as members of the Administrative Tribunal that functioned so well in France for a great length of time. The very fact that the appeals are to a Tribunal presided over by persons of the rank of a High Court Judge will make them discharge their duties in the same way as judicial officers in the State have done all these years.

7. They should have the power to carry out their orders just as civil courts have.

8. Subordinate gazetted officers like Assistant Commissioners should be appointed solely by a committee consisting of the Chief Justice of the State High Court or any other Judge of the High Court nominated by him, the Chairman of the Public Service Commission or any other member of the Public Service Commission nominated by him and the Chairman of the Board of Commissioners.

9. The appeal to the Supreme Court from the appellate Tribunal should only be on points of law; otherwise on matters of fact the decision of the Tribunal from the Board of Commissioners should be final.

10. I should like to examine now more in detail the provisions of the future administrative machinery suggested in Chapter XI of the Report and the grounds on which those suggestions are made. In paragraph 15 it is said that 'there has been a considerable volume of opinion against the interference of Government in the administration of temples and the introduction of party or political influence or pressure. In fact, most of the witnesses expressed very serious apprehensions about the deleterious effects of importing political influence in the administration of Hindu religious endowments and almost all the witnesses were in favour of ensuring the elimination of political influence in the administration of endowments. We are strongly of the opinion that there should be no room given for any suspicion of political influence in the administration of endowments.' At the same time, in paragraph 16 the Commission express their conviction that it is essential that Government should be empowered to prevent the maladministration of Hindu religious endowments, while interference in day-to-day administration by Government should be avoided. In paragraph 17, the Commission has discussed the question of the establishment of an autonomous board which was strongly opposed by Sri Uthandaraman, retired Commissioner of Hindu Religious Endowments, Madras. They quote the opinion of Mr. Gadgil, Governor of the Punjab, against an autonomous Board. The Commission comes to the conclusion, after discussing the pros and cons of the matter, that 'the executive administration of temples by a single officer will be much more quick and efficient than by a body of persons'. I regret that I cannot agree with this view. If it is a single institution, one can quite understand that the executive

administration should be by a single individual and in fact this is being done in quite a few cases in Madras and in other areas like the Andhra Districts of the present Andhra Pradesh which are governed by the Madras Act of 1925 (Act II of 1927) as modified from time to time but the supervision of the administration of thousands of institutions in a single State would, in my opinion, be much better done by a body of Commissioners than by a single individual. The revenue administration of States like Madras which is in the hands of the Board of Revenue has been considered to be more efficient than the administration of States where there is no Board of Revenue and this is being copied now after Independence in States where there was no Board of Revenue and where there was a Divisional Commissioner in charge of three or four districts directly subordinate to Government. Even in the days of the administration of the States comprising our Republic which were called Provinces, by the British Government, the administration vested not in a single individual but in the Governor with an Executive Council even when there was no question of popular representatives in the administration. The administration of justice both in England and in India has always been in the hands of a body of persons and not a single individual as the head. If it is merely carrying out the day-to-day work absolutely confined to orders issued by the superior authorities and with very little initiative on the part of the official concerned, it may be a single individual who is better fitted than a body of persons. To be in charge of a taluk, a single Tehsildar may be better than two Tehsildars with co-ordinate jurisdiction throughout the taluk. Similarly to be in charge of a single district, a single District Collector may be better than a commission of two Collectors. It is entirely a different thing to be in charge of the overall supervision and control of thousands of institutions scattered throughout a State with full powers to rectify the defects therein and making consequential orders and appointments. As I have said earlier, I am entirely against the system of having the Commissioner without any real powers of the kind stated above. In my view the authority in charge of the administration of religious endowments in a State must possess all the powers which are proposed to be conferred upon the Tribunal contemplated in Chapter XI. Unless such powers are vested in the authority supervising the administration of all the endowments in the whole State, it is impossible for defects in the administration of individual institutions being brought to light and rectified effectively and immediately. If such an authority is essential inside the State, I am emphatically of the opinion that that authority should consist of more than one person and not a single individual. It has been stated in English text books that the Charity Commissioners in England are invested with inquisitorial administrative and judicial powers, that is to say, powers which were till then exercised by Courts of Justice in England for some centuries prior to the passing of the first Charity Commissioners Act. But it would be merely a fighting for words if these powers are called administrative or judicial. In an earlier portion of my note I have made it clear and the detailed study made in Chapter III of the Report bears me out that these powers were exercised only by administrative authorities in India even in the British

Provinces till about 1860 and in the Indian States governed by Hindu rulers till the British left the country. Unless the Administrative Authority in a State is clothed with these full powers the misapplication of funds of temples and mutts cannot be checked and will become more and more rampant. It is the universal opinion of people well acquainted with the subject that the marked difference in the administration of institutions in the areas governed by the Madras Act is mainly due to the work of a commission of more than one person who had full powers from 1925 to 1951 and that in quite a few cases the administration has deteriorated after the appointment of a single Commissioner subject to the orders of the executive Government and subject to the extraordinary powers conferred upon the courts after the promulgation of our Constitution which was almost simultaneous with the amendment of the Madras Act in 1951. Therefore, as I have stated in my earlier note, it is idle to look for any real improvement in the administration of institutions in other parts of the country unless and until articles 26 and 31 are suitably amended. The Commission are also of the same view though they have not expressed it exactly in the terms of my note. When such amendments of the Constitution are made, the authority inside the State should possess not only merely administrative powers but also full inquisitorial, administrative and judicial powers simultaneously. In such a case it should be a commission as mentioned by me earlier and not a single individual. In para 17, the Commission say 'It should not be forgotten that Madras which was in fact the pioneer in the matter of making statutory arrangements for the administration of Hindu religious endowments switched on from the system of having a Board of Commissioners to the system of having a single officer called the Commissioner of Endowments in 1951, after having tried the system of having a Board from 1927 to 1951.' This is not the place to discuss why the Madras Government changed their system but it must be remembered that in changing the system the Madras Government did not contemplate the deprivation even to the least extent of the powers of the Commissioner in charge of the administration of the whole State, which is now recommended by this Commission in Chapter XI. They have retained all the powers which were formerly exercised by the Board of Commissioners, some of the most important of which have now been declared to be *ultra vires* by reason of articles 26 and 31 of the Constitution. They provided an appeal from the Commissioner to the Government on certain very important matters. The Commission in Chapter XI have expressly stated that they are dead against continuance of the powers of the Government. When there is no power of interference in appeal by the Government of the State and when all the powers are conferred upon the Authority inside the State as suggested by me earlier, I venture to think that this Authority should be a commission and not a single individual. The very object of a commission of more than one member is that two minds or three minds put together can come to better conclusions than a single individual, by the clash of intellect with intellect and discussion among persons equally clothed with certain powers and responsibilities. Each would also act as a check upon the vagaries or weaknesses of the other, and there are various other reasons by which a collegiate system has

40 M of L—17

been preferred to a single individual where the authority has been vested with enormous powers over individual institutions with large incomes or any matters where very high stakes are involved. By my personal experience I am fully aware of the difficulties that had been experienced by the Madras Board of Commissioners between 1927 and 1951. I am emphatically of the opinion that these difficulties can be fully got rid of by giving the security with respect to emoluments and prospects which I have insisted upon in the earlier part of this note and by having as an appellate authority a tribunal of the kind contemplated in Chapter XI. The members of the State Hindu Religious Endowments Commission may also be declared ineligible for any higher appointment under the Government of the State or the Central Government excepting that of membership (or chairmanship) of Public Service Commission or a Judgeship of a High Court. In fact my view is that all the safeguards which have been mentioned in the Constitution in order to preserve the independence of the Judges of the Supreme Court and Members of the Public Service Commission may also be applied *mutatis mutandis* to the members of the proposed State Hindu Religious Endowments Commission.

11. In this view, there will be a safeguard against the abuse of the enormous powers to be conferred on the State HRE Commission, by an appeal to a Central Tribunal and a further appeal by special leave to the Supreme Court which, in my view, should be confined to questions of law. I am of opinion that the Central Tribunal should have only appellate powers and not any original jurisdiction in any matter whatsoever. The original jurisdiction should be entirely confined to the authority inside the State or if one or two contiguous States combine to have a common HRE Commission (as is contemplated in the Constitution in the case of High Courts or Public Service Commissions) then upon such a Commission. I am of opinion that no original powers should be conferred upon a Tribunal sitting far off in Delhi though it may be that they function in benches who may be authorised to hear cases from time to time inside the State.

So far as the Tribunal is concerned, I am of the opinion that all the members should have equal powers although one of them would be the President and that any person qualified to be a member should also be eligible to be made the President. I also think that there is no need that one of the members in every bench should be a person "specially conversant with Hindu scriptures and religion and religious practices and the working of Hindu religious endowments". It is very doubtful whether we can get a person with good experience of administration or with judicial experience who is also qualified under the third category mentioned in paragraph 31. I am of opinion that a person without experience as a Judge or administrative experience who merely possesses the qualifications of the third category will not be the right kind of person to sit in appeal against the authorities constituted in a State to supervise the administration of these Hindu institutions.

Paragraph 23.—I am of opinion that the members of a tribunal should ordinarily be above 50 years of age. If less than 56 at the

time of appointment, they should continue till they reach the age of 62; otherwise they should be entitled to hold office for a term of six years. There should be no provision for reappointment of the members of the tribunal and they should be declared ineligible for any further appointment under the Government of India excepting as a Judge in the Supreme Court or a Member or Chairman of the Union Public Service Commission.

Paragraph 18.—The Commission in Chapter XI have recommended against the continuance of advisory committees. They contemplate the creation of a Central Committee which in my view would be much more objectionable. Having regard to the experience of the Area Committees, there is absolutely no need to make a further experiment with a larger committee as the Commission contemplate. This Committee is bound to be much more harmful to administration and would be a concentration of evil influences which would render the work of the Commissioner and the appellate tribunal nugatory. Such a committee can, in my view, serve no useful purpose whatsoever and should not be tried even as an experiment.

12. In paragraph 24, the Commission propose also that the tribunal should be empowered to co-opt two members for deciding matters with respect to institutions in a particular State. I am of opinion that this is destructive of the real basis of the appellate tribunal. The tribunal is to consist of persons of high qualifications appointed on the advice of eminent persons by the President of India. For the decisions to be arrived at in regard to matters, they have the power also to co-opt two persons whose qualifications are not laid down and who may possess any or no qualifications. Then I cannot understand what purpose is served by the special procedure which is recommended for their appointment. We must remember that all the matters in respect of which the tribunal is empowered to adjudicate are now being dealt with as a court of first instance by a subordinate judge and on appeal by two Judges of the High Court. Why a tribunal consisting of three members with eminent qualifications should be hedged in on all sides by the advice of a Central Committee consisting of 'laymen', 'celibates', 'sadhus and sanyasis' and then by co-option of two individuals and again by assessors, I cannot understand. I do not think it is necessary to argue very much further the question of vesting in the highest authority inside the State the powers which are now exercised by a District Judge, nor in leaving the appellate tribunal to decide cases just as a bench of the High Court does without additional strength gained by co-option of new members and without any central advisory Committee.

VI.—RELIGIOUS DENOMINATIONS

Article 26 of the Constitution says "Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

- (c) to own and acquire movable and immovable property; and
 (d) to administer such property in accordance with law."

In order to understand this article of the Constitution it is necessary to go briefly into the history of gifts and bequests to institutions of a faith different from the established Church in England. Under the Statutes against Superstitious Uses enacted during the time of Queen Elizabeth, no gifts or bequests to the Roman Catholic Church or to any institution under the direction of the Pope at Rome were recognized as valid in law. Again, dissenters, i.e. those Protestants who did not conform or dissented from the doctrines of the established Church of England were subject to grave disabilities in England from the time of Charles II till about the middle of the nineteenth century. They could not hold offices. They could not build their own churches unless the local authorities connived at their evasion of the law. All these disabilities of the various religious denominations were swept away by legislation from about 1829 when the Catholic Emancipation Bill was passed by Parliament. The churches of the dissenters were called denominational institutions. Let us take, for instance, the concrete case of the Wesleyen Church. These churches were built by the followers of John Wesley, a great religious reformer of England in the latter part of the eighteenth century, out of their own funds and entirely endowed by members of their faith only. Not a penny came to them from the Government of England or from the public funds of the State. Not a cent of public land has ever been endowed for such institutions. The institutions are maintained by subscriptions by the Wesleyens themselves if the Church has not got any fund for its upkeep subscribed at the time of its establishment by the members. The preacher there is a Wesleyen and the congregation is almost entirely composed of Wesleyens.

2. It may be stated without fear of contradiction that there are no such denominational institutions in this country excepting in the very wide sense of 'denomination' meaning a whole religion like that of Hindu or Muslim. Let us take an illustration in this country. The matadhipati of Raghvendaswami Mantralaya in the Bellary district is now staying in Mysore and met us during our tour in that State. Similarly the matadhipati of Vvasaraja mutt is now staying in the Mysore State. Both these matadhipatis have told us that during the time of Muslim incursions into what were known as the ceded districts, the Maharaja of Mysore protected them and gave them lands and a habitation for their mutts and that is why they are staying in the Mysore State. Now the Maharaja of Mysore is a Shaivite or Lingayat by religion but he respects and receives spiritual instructions from gurus of the Vaishnavite faith as well as of the Madhva faith, apart from the Jagatguru or Sringeri and the heads of his Lingayat mutts. The institutions of all these 'denominations' as they may be called have received enormous favours of various kinds from the Maharaja as a ruler of the State. Much of their landed estate is given by the ruler of Mysore. All the Madhva mutts at Udupi also have received at one time or the other great favours of various kinds from the Maharaja of Mysore who visited the matadhipatis and received spiritual instructions from them on various occasions. Indeed it was

Tipu Sultan, the Muslim ruler of Mysore that endowed the Jagi which had been in possession of the Sringeri mutt till the abolition of Zamindari etc. a few years back. One of the most costly jewel of any temple in India is the golden crown of the Tirunarayanawar temple at Melkote, which was presented to the deity of that temple by the Maharaja of Mysore. Why go so far, in the great temple at Tirupati devoted to Lord Venkateswara, the ritual is entirely performed and all the religious services are rendered only by Vaishnavite Brahmins. The landed estates of the temple have been taken away under the Zamindari Abolition Act and its huge income, the biggest in India of over a crore of rupees, is almost entirely derived from the offerings of devotee pilgrims apart from a small fraction derived from the transport services etc. run by the institution. It may be asserted without fear of contradiction that the Vaishnavite Brahmins do not contribute towards even a fraction of one percent of the present income. What justification is there for Vaishnavite Brahmins alone claiming the right to control the administration of this institution as a denominational one. Pilgrims flock to this great shrine of Lord Venkateswara from all parts of the country. We have had the authority of persons closely connected with the administration of the institution for decades that even Jains go to this temple and give offerings to this institution amounting to tens of thousands on a single occasion in some cases. What justification is there for the claim to have the administration of this institution entirely under the control of Vaishnavite Brahmins? The facts need only be stated to see the utter incompatibility of this position with the great trend of modern life. Therefore there must be something more before what is loosely called a denominational institution comes strictly within the purview of article 26 and gives the right to control it to persons coming within the purview of a narrow sectional denomination.

3. Therefore it is not reasonable that the management of Vyas raja mutt or Raghvendaswami mutt or the famous Vaishnavite temple at Melkote or of the Madhva mutts should be entirely left to the denomination alone where public property has been endowed by the State. It stands to reason that the administration of such property should be controlled by the authorities constituted by the State legislature.

4. In connection with various other matters, we have suggested an amendment of the Constitution and indeed any real reform of the institutions devoted to the service of God requires an amendment of the Constitution in some respect or the other having regard to the decisions of the highest court in the land in various important matters that have come up before them in recent years after the promulgation of our Constitution. I would, therefore, suggest that article 26 of the Constitution should be amended to the following effect, namely, a proviso should be added to article 26 that the provisions of that article shall apply to an institution only if it is founded and established and endowed and maintained solely by members of the denomination concerned, the burden of proving which shall lie upon the party asserting the claim to control the institution on the basis of being a denominational one.

Sd/- P. KAMESWARA RAU.

31-5-62.

NOTE BY SWAMI HARINARAYANANAND

भारत सरकार द्वारा गठित हिन्दू धर्मस्व आयोग ने हिन्दू धर्म स्थानों के सम्बन्ध में अपना प्रतिवेदन तैयार कर लिया है और प्रतिवेदन में दिये गये कुछ सुझावों को छोड़ कर अन्य विचारों से प्रायः मैं सहमत हूँ। आयोग ने सारे देश के प्रायः सभी भागों की यात्रा की और अनेकों व्यक्तियों तथा संस्थाओं से बयान लिये गये और स्मृतिपत्र प्राप्त हुए। इन विवरणों को देखने तथा विचार करने के बाद हमने यह आवश्यक समझा कि मैं स्वयं अपनी ओर से एक स्वतन्त्र टिप्पणी आयोग को दूँ जो प्रतिवेदन में सम्मिलित किया जाय। मैं ऐसा मानता हूँ कि आयोग ने अपने महत्वपूर्ण कार्यों का सम्पादन कर हिन्दू धर्म के संरक्षण तथा सम्बर्धन के लिये कुछ महत्वपूर्ण सुझाव दिया है। परन्तु कुछ मूल प्रश्नों के सुझावों से मैं सहमत नहीं हूँ जिनका उल्लेख करना आवश्यक है जिससे धर्मस्थानों की रक्षा, सुव्यवस्था, उपयोगिता एवं उनके अधिकारियों, साधुओं तथा धर्म प्रचारकों के मर्यादा संरक्षण, शिक्षण की व्यवस्था तथा स्वतन्त्रता की रक्षा होती रहे। एतदर्थ मैं निम्नांकित विषयों एवं विचारों को स्पष्ट करना अपना कर्तव्य मानता हूँ।

१. भारतवर्ष में हजारों वर्षों से धर्मस्थान आध्यात्मिक एवं नैतिक प्रेरणा के स्रोत रहे हैं। मठ, मन्दिर प्रभृति संस्थाएँ आज भी जन समाज को धार्मिक एवं उच्च सामाजिक जीवन की प्रेरणा देने में सक्षम हैं। यह सही है कि कुछ वर्षों से इन स्थानों की व्यवस्था में क्रमिक ह्रास हुआ है जिससे समुचित दिशा में इनके साधनों का पूर्ण रूप से उपयोग नहीं हो पा रहा है। जिनका परिष्कार किया जाना चाहिये।

इन संस्थाओं की व्यवस्था के सम्बन्ध में विचार करने से पूर्व यह आवश्यक है कि इनकी स्थापना और उद्देश्य के सम्बन्ध में विचार कर लिया जाय। धर्म का क्या स्वरूप है और किस आचरण को धर्म कहते हैं इसका भी विश्लेषण करना यहां आवश्यक प्रतीत होता है। धर्म कोई संकीर्ण मनुवृत्ति का पोषक तत्व नहीं है बल्कि सदात्त अण्डे विचारों का मार्ग दर्शन देने वाला एक आध्यात्मिक नियम है। हमारे शास्त्रकारों ने धर्म की व्याख्या करते हुए इस बात का स्पष्ट निर्देश किया है कि उस आचरण को धर्म कहते हैं जिसके पालन से लौकिक और पारलौकिक सुखों की प्राप्ति होती हो।

यतोदम्यु निः श्रेयस्सिद्धिः स धर्मः।

(कणाद)

मनु ने धर्म के दस एवं चार लक्षणों पर भी प्रकाश डाला है। महाभारत में राजा शिवि और कपोत सम्वाद में भी धर्म के मूल तत्वों की चर्चा हुई है।

विरोधीषु महीपाल निश्चित्य गुरु लाघवम्
अविरोधानु यो धर्मः स धर्म सत्य विक्रमः।

(महाभारत)

इन बातों से स्पष्ट हो जाता है कि धर्म वह व्यवस्था है जिससे समाज और राष्ट्र का सही दिशा में समुचित विकास होता रहे। इस तात्त्विक विवेचन के साथ व्यवहारिक दृष्टि से भी विचार करना आवश्यक हो जाता है। क्योंकि बहुत से विचार विचारों तक ही सीमित रह जाते हैं और व्यवहार में नहीं आ पाते।

यह मानी हुई बात है कि यह सारा ब्रह्माण्ड ईश्वर से परिपूर्ण है और वेदों के अनुसार भगवान् का रूप समग्र प्राणियों में व्याप्त है। इस तात्त्विक दृष्टि से जगत् के साधनों और सम्पत्तियों पर किसी का कोई व्यक्तिगत अधिकार नहीं है—

ईशावास्य मिदं सर्वं यत्किंचित् जगत्यां जगत्।

(ईशोपनिषद्)

परन्तु व्यवहारिक दृष्टि से सम्यता के प्रभातकाल से ही दो मार्गों का निर्धारण हुआ है जिसकी चर्चा हमारे उपनिषदों एवं अन्य प्राचीन ग्रन्थों में स्पष्ट रूप से की गई है।

श्रेयश्च प्रेयश्च मनुष्यमेव समपरीत्य विवर्तित धीरः।

(कठोपनिषद्)

प्रवृत्ति और निवृत्ति दो मार्ग हैं। प्रवृत्ति मार्ग गृहस्थ हैं जो व्यवहारिक रूप से सृष्टि के सामाजिक कामों का संचालन करते और निवृत्ति मार्ग व्यवहारिक दृष्टि से सामाजिक कामों का नियमन करते आये हैं। ऋषि-मुनियों या निवृत्ति मार्ग (साधुओं) को मार्ग दर्शन देने का काम किसी भी दिशा में प्रवृत्ति मार्गियों द्वारा नहीं हुआ है। यह एक सिद्धान्त का रूप रहा कि ऐसे व्यक्तियों के जिम्मे नियम बनाने का अधिकार सौंपा जाय जो वीतराग त्यागी हों क्योंकि निष्पक्ष न्याय की रचना से ही समाज का सुन्दर संचालन हो सकता है। प्रारम्भ में उनके नाम जो भी रहे हों, बाद में उन्हें यति, सन्यासी नाम से उद्बोधन किया जाता है। समाज के सुसंचालन के लिये नियम व्यवस्था की आवश्यकता होती है और तदनुसार हमारे प्राचीन नियम भी बनाये गये। चार आश्रम एवं चार वर्ण भो बने और स्मृतिकारों ने उनके कर्तव्य का नियम भी निर्धारित किया। सृष्टि के प्रारम्भ काल में वर्ण की व्यवस्था नहीं होगी, परन्तु पुष्प सुक्त में भगवान् के शरीर से चर्णों की रचना की चर्चा आई है। जो हो स्मृतिकार मनु ने विशेष रूप से चारों वर्ण और आश्रमों के नियमों को निर्धारित किया जिस पर सनातनी हिन्दू यथासाध्य चलने का प्रयास करने हैं।

२. मनु यन्मदसरे समकालीन स्मृतियों के अनुसार यह स्पष्ट है कि मनुष्य की जब सारी इन्द्रियां शिथिल हो जाती थीं तो चतुर्थ आश्रम में द्विजाति को सन्यास लेना पड़ता था जो किसी प्रकार अपने प्राण रक्षा के लिये साधन का उपयोग करते थे। वे भिक्षा द्वारा करपात्री के रूप में अपना भरण पोषण चलाते थे। संसार तथा इसके सामाजिक स्थिति से प्रायः उनका कोई सम्बन्ध नहीं होता था। ब्रह्मचारी जो प्रथम आश्रम में रहता था वह भी भिक्षा पर जीवन निर्वाह कर या गुरुकुल में जो भिक्षा के आधार पर ही ऋषियों द्वारा संचालित था निर्वाह कर अपना पठन पाठन चलाते थे। उनका भी राजा के हलचल से कोई सम्बन्ध प्रायः नहीं रहता था, परन्तु यह स्मरण रखना होगा कि उस समय एक गृहस्थ को एक यति या ब्रह्मचारी को अनिवार्य रूप से भिक्षा देना धर्म का एक आवश्यक अंग था। ऐसे भी उदाहरण हैं कि बिना यात या ब्रह्मचारी को भोजन कराये परिवार का प्रधान भोजन नहीं करता था। गृहस्थ अपने कर्तव्य तथा सन्यासी और दूसरे अपने कर्तव्य पालन में दत्तचित्त थे। नियमों का निर्माण ऋषि तथा पालन राजा करता था। यह ईश

सिद्धान्त का प्रमाण है कि सामाजिक व्यवस्था का नियम वह बनावे जो वीतराग त्यागी हो, उसे कोई लोभ या लालच न हो। सच पूछा जाय तो गृहस्थ परिवार पर ही सारे आश्रमीय जीवन अवलम्बित थे चाहे वह ब्रह्मचारी हो या सन्यासी। उस समय वर्णाश्रम का तेजस्वरूप था और गृहस्थाश्रम सब का मूल है जिस प्रकार हवा जीवन का आधार।

यथा वायु समाश्रित्य जीवन्ति सर्व जन्तवः
तथा गृहस्थमाश्रित्य जीवन्ति सर्वाश्रमाः

(मनु अ० ४)

परन्तु आज की वर्तमान सामाजिक स्थिति क्या है। वर्णाश्रम तथा आश्रमीय जीवन का तो हजारों वर्षों से क्रम ही टूट गया है। कहां वह गृहस्थ है जो सन्यासी को भिक्षा दे और कहां वह राजा है जो जिस मार्ग से सन्यासी आता है उसे रास्ता देकर अपने पीछे हट जाय।

३. यह उल्लेख करना अप्रासंगिक नहीं होगा कि ऐसी भी विरवत विभूतियां हैं जिन्होंने चतुर्थ आश्रम के पहले ही ब्रह्मचारी से यति का रूप ले लिया है। सन्कादि तो निवृत्ति मार्ग के प्रवर्तक आदि काल से माने जाते हैं, बाद में भी नारायण, दत्तात्रेय, शुकदेव हुए हैं। जिन्हें अवधूत कहा जाता है। इनका कोई निश्चित स्थान या आश्रम प्रायः नहीं था। आश्रमों में तो मुनि रहते थे। उन दिनों जंगलों एवं कन्दमलों तथा फलों का तो साम्राज्य ही था और मुनि अरण्य में ही निवास कर अपना जीवन सार्थक समझते थे। वास्तव में राजा के पास भी कोई विशेष सम्पत्ति क्या होती थी? तो ब्राह्मण और सन्यासी के पास सम्पत्ति का प्रश्न ही वहां है। जिसके पास अधिक गाय हों वह समृद्धिशाली समझा जाता था। बाद में सम्भवतः स्मृतिकाल के मध्य में सम्पत्ति तथा द्रव्य का कुछ रूप स्पष्ट रूप से आने लगा। परन्तु सन्यासी के धन पर किसी का लालच या उसके उपयोग की इच्छा गृहस्थों को नहीं होती थी। पराशर स्मृति में लिखा है कि यदि सन्यासी के द्रव्य को जानते हुए कोई उपभोग की इच्छा करेगा तो उसका वंशज २१ पीढ़ी तक नरक में जायगा।

यति हस्तगतम् द्रव्यम् गृहीणीयात् ज्ञानतो यदि।
गत्वधो नयते मुढः कुलनामेक विंशति।

इससे स्पष्ट हो जाता है कि स्मृतिकाल में भी यति (सन्यासी) को द्रव्य से सम्बन्ध हो गया था, क्यों नहीं हो, "अर्थस्य पुरुषः दासः" (महाभारत) पुरुष अर्थ का दास है। द्रव्य को यानी भरण पोषण की आवश्यकता तो सभी मनुष्य को होती है। चाहे वह गृहस्थ हो या सन्यासी। यदि मनुष्य को भोजन वसन की आवश्यकता नहीं होती तो संसार में संघर्ष ही क्यों होता। सभी सम्मान पूर्वक जीना चाहते थे और आज भी हम प्रतिष्ठा पूर्वक जीना चाहते हैं। जैसा कि पहले कहा जा चुका है कि उस समय और आज के वातावरण में आकाश और जमीन का अन्तर है। यदि भगवान की मूर्ति पर सोने का मुकुट है और कोई पहरेदार न हो तो एक घंटे में ही चोरी हो जायेगी तो सन्यासी के धन को कौन कहे। मेरा कहने का तात्पर्य यह है कि साधु या सन्यासी परमुखापेक्षी होकर जीवन निर्वाह करना नहीं चाहता। यह ठीक है कि उन दिनों सन्यासियों की संख्या आज के तुलना में नगण्य थी, क्योंकि जनसंख्या का भी अभाव था। दो हजार वर्ष पूर्व और आज की जनसंख्या में क्या कोई तुलना हो सकती है। वैदिक धर्म का प्रभाव सर्वत्र व्याप्त था, पर यह कहा जाता है कि धर्म के नाम पर जब हिंसा का भयानक रूप समाज में दीखने लगा तो महावीर तदन्तर बुद्ध का प्रादुर्भाव हुआ और

उस समय वैदिक धर्म के नाम पर जो हिंसा हो रही थी उसे अहिंसा प्रम तथा दया के रूप में बुद्ध ने परिणत करने का प्रयास किया। अपने आत्म ज्ञान से लोगों को प्लावित किया। संसार में जब ऐसी महान आत्मायें आती हैं तो उसके सिद्धान्त के पीछे चलने वाले घरबार छोड़कर हजारों अनुयायी निकलते हैं। यही बुद्ध के साथ हुआ और उन्होंने न केवल अपने पड़ोसियों को बल्कि परिवार तथा पुत्र को भी "भिक्षा" बना डाला। बाद में धर्म प्रचार के लिये राजा अशोक ने अपने पुत्र को साधु बना डाला। और बुद्ध के विरवत अनुयायियों का एक भिक्षु दल बन गया। बुद्ध के कुछ सौ वर्षों के बाद पुनः समाज में दुराचार-अनाचार तथा हीनयान, वज्रयान (महायान) के संघर्ष एवं योगनद्ध उपासना तथा पंचमकारियों के कारण धार्मिक जीवन अस्त व्यस्त होने लगा तो भगवान शंकराचार्य का ८वीं शताब्दी में प्रादुर्भाव हुआ, और अपने जीवन के थोड़े काल में ही उन्होंने वैदिक धर्म (ब्राह्मण धर्म) का पुनरुद्धार कर देश के चार धामों में चार धर्म पीठों की स्थापना कर अपने चार शिष्यों को पीठासीन किया।

धर्मस्थानों के उद्गार

४. आज से लगभग डेढ़ हजार वर्ष से पूर्व तीर्थंकर महावीर तदन्तर बुद्ध ने जन्म लेकर लोगों को आध्यात्मिक जीवन की प्रेरणा प्रदान की। उन दिनों सामाजिक स्थिति धार्मिक दृष्टि से खराब हो रही थी और हिंसा का व्यापक प्रचार था। यह स्वाभाविक है कि जब जैसी सामाजिक स्थिति हुई है उसके अनुरूप ही महापुरुषों का प्रादुर्भाव हुआ है जिसे हम एक ईश्वरीय अनुभूति की संज्ञा देते हैं।

यदा यदा हि धर्मस्य ग्लानिर्भवति भारत
अभ्युत्थानमधर्मस्य तदात्मानम् सृजाम्यहम्।
परित्राणाय साधूनाम् विनाशाय च दुष्कृताम्
धर्मं संस्थापनार्थाय संभवामि युगे युगे ॥

(गीता)

इसके पूर्व हजारों वर्षों से शिव, रुद्र, वरुण, अग्नि, विष्णु, इन्द्र और गणपति आदि देवताओं की पूजा होती आई है। परन्तु किसी एक स्थान पर सामूहिक रूप से पूजन की व्यवस्था किसी भवन में नहीं थी। यह सम्भव है कि कुछ राजाओं ने अपनी आत्मा की शान्ति तथा देवताओं की अनुभूति की प्राप्ति के लिए मन्दिरों का निर्माण कराकर देवताओं को प्रतिष्ठापित किया। मन्दिर व्यक्तिगत श्रद्धा, ईश्वरोपासना, तथा पारिवारिक एवं ऐहिक सुखों की निरन्तर वृद्धि की आकांक्षा से निर्मित किये गये। इनके इतिहास से यह मालूम होता है कि राजाओं के अतिरिक्त गांवों के लोगों ने भी सामूहिक रूप से मन्दिरों का निर्माण किया और अपने उपास्य देवों की उपासना की जिसमें कुछ तो कुल देवता और अन्य में सामान्य देवताओं को प्रतिष्ठापित किया गया। यह स्पष्ट कर देना उचित होगा कि लगभग दो हजार वर्षों से मन्दिरों का रूप हमारे सामने आने लगा और छोटे छोटे मन्दिर बड़े मन्दिरों के रूप में राजाओं द्वारा दिये गये दान तथा भक्तजनों के चढ़ावे से उनकी आमदनी बढ़ती गई। जगद्गुरु आदि शंकराचार्य ने देश के चार धामों की स्थापना कर लोगों का विशेष ध्यान इन मन्दिरों की ओर आकृष्ट किया। वास्तव में यह मन्दिर तो उनके सैकड़ों वर्ष पूर्व से स्थापित है जैसा कि इतिहास बताता है। मन्दिर के प्रबन्ध का दायित्व राजा के वंशज या वहीं वही वंशीय परम्परा के अनुसार होता आया है।

सामान्यतः मन्दिरों का प्रबन्ध साधारण लोगों के हाथों रहा जो पुजारी या अर्चक द्वारा व्यवस्थित किये जाते थे। जहां तक इनके प्रबन्ध की बात है उसमें प्रारम्भिक काल से ही राजाओं का हाथ रहा। छोटे छोटे मन्दिरों को जमींदारों तथा साहूकारों की मदद मिलती रही हजारों की संख्या में मन्दिर इन दिनों देश के विभिन्न भागों में विस्तृत हैं। जिनका प्रबन्ध सामान्यतः गृहस्थ और कुछ प्रदेशों में साधुओं या महन्तों के हाथों में है।

५. दूसरे प्रकार के धर्म स्थान मठ, आश्रम आदि मंजा से विभूषित हैं। मठों का वर्तमान स्वरूप प्रत्यक्ष रूप से आदि गुरु शंकराचार्य जी के समय से देखने को मिलता है। जैनों ने मठों का कोई रूप नहीं दिया। भगवान् बुद्ध ने स्वयं भी दान ग्रहण किया और बिहार की स्थापना की। तदन्तर गौतम के सैकड़ों वर्षों के बाद कुछ जगह भिक्षुओं के रहने के लिये अनेकों बिहारों की स्थापना की गई। ऐसे बिहार सामान्यतः ग्रामीण जीवन से अलग रखे जाते थे। मठ को शिक्षण संस्था या कालिज नहीं कहा जा सकता। यह सही है कि मठ उसको कहते हैं जहां निवृत्तिमार्गी (साधु) निवास, स्वाध्याय, तथा अपने आत्मिक जीवन के आदर्शों का पालन गुरु के सान्निध्य करते कराते हैं।

ब्रह्मघोषो मन्त्रदे यत्र यत्र ब्रह्मनाश्रमी स्थिति।

देवस्य पूजनं दानं मठं इत्यभिधीयते॥

(अस्वघोष)

सामान्यतः यह देखा जाता है कि मठों की स्थापना के पीछे तात्विक दृष्टि से उस सम्प्रदाय के सिद्धान्त तथा दर्शन प्रचार की जिम्मेवारी निहित है। आदि जगद्गुरु शंकराचार्य ने जिन चार मठों की प्रारम्भ में स्थापना की उसके तुरन्त बाद ही मठों का वर्तमान रूप हमारे सामने नहीं आया। उसके सैकड़ों वर्षों के बाद साधुओं ने अपनी व्यक्तिगत तपस्या, साधना तथा अध्यवसाय से अपना तथा अपने शिष्यों के रहने के लिये आश्रम बनाये और उनके व्यक्तिगत प्रभाव से प्रभावित होकर लोगों ने अपनी आत्मा और परिवार के कल्याण तथा इच्छापूर्ति की आकांक्षा से धन अर्पित किये। भक्तों ने जो कुछ साधु को अर्पित किया उसके पीछे कोई शर्त नहीं थी। जैसे पिता को पुत्री के दान दे देने पर उसका उस पर कोई हक नहीं रह जाता है और वह दूसरे गोत्र में चली जाती है। धीरे धीरे इन मठों में गुरु के प्रभाव या प्रयास से साधनों का विकास होता गया और हजारों की संख्या में विभिन्न सम्प्रदायों के मठ और आश्रम स्थापित हुए। मठों में किस प्रकार की सम्पत्तियां आई इसकी चर्चा भारत साधु समाज द्वारा दिये गये स्मृतिपत्र में की गई है। मठ के प्रधान को महन्त कहा गया जो आश्रम का आध्यात्मिक एवं भौतिक दोनों दृष्टियों से संचालक है। साधुओं में भी सामाजिक व्यवस्था को समुचित रूप से चलाने के लिए चार विभाग किये गये क्योंकि साधु ने भी अपने को एक अलग साधु वर्ग में विभक्त कर लिया। इसका स्पष्ट प्रमाण यह मालूम होता है कि चाहे वह किसी भी वर्ण का साधु हो, सन्यास की दीक्षा के बाद उसकी पूर्वाश्रम की जाति समाप्त हो जाती है और वह एक दूसरे जन्म में प्रवेश करता है। इसलिए इसके चार विभाग किये गये :—(१) हंस (२) परमहंस (३) कुटीचक (४) बहुधक।

उपरोक्त श्रेणी के महात्माओं का काम दर्शन तथा धर्म प्रचार का रहा तथा सिद्धान्तों का अनुशीलन। एक वर्ग आक्रमणकारियों से रक्षा के लिये बनाया गया। क्योंकि बहुत से दूसरे धर्मावलम्बी एक दूसरे पर आक्रमण करते थे। कुटीचक वर्ग के साधु मठों की प्रबन्ध व्यवस्था का संचालन एक मठाधीश के नियंत्रण में रहकर करते हैं। इससे स्पष्ट है कि मठों की स्थापना

के प्रारम्भिक काल से लेकर अब तक इन स्थानों के संचालन और व्यवस्था में किसी भी प्रकार का राज्य का हस्तक्षेप नहीं हुआ। प्राचीन काल में भी ऋषियों द्वारा संचालित आश्रमों की व्यवस्था में राजा का कोई हस्तक्षेप नहीं होता था, बल्कि आश्रमाध्यक्ष को राजा की ओर से सुरक्षा प्रदान की जाती थी। राजा दशरथ ने अपने प्रिय पुत्रों को विश्व मित्र के आश्रम की रक्षा के लिये भेजा था। बाद में भी यही क्रम चलता रहा। मुख्यतः इसी कारण से मठों की सम्पत्तियां बढ़ती गई और लोगों का झुकाव हुआ। देश के विभिन्न वर्गों में फैले हुए साधु सम्प्रदायों में सबसे अधिक मठ वैष्णव, (रामानन्द), तथा दशनामी सन्यासियों के हैं। उसके बाद दक्षिण में लिगायत, शैव, माध्व, रामानुजी मठ और उत्तर में उदासीन, कबीर-पंथी, निर्माक, रामसनेही के पाये जाते हैं। इनमें कुछ तो दार्शनिक विचारों के प्रभू आचार्य हैं और कुछ संतमत के प्रवर्तक आचार्य के रूप में पाये जाते हैं। इसके अतिरिक्त दर्जनों ऐसे छोटे छोटे सम्प्रदाय हैं जिनके सैकड़ों मठ और मन्दिर बने हुए हैं।

मठ एवं साधु-सन्यासी

६. मठों की उत्पत्ति के सम्बन्ध में ऊपर कहा जा चुका है। यह कहना और समझना गलत होगा कि राजाओं ने अपने दान द्वारा मठ स्थापित किये। शंकराचार्य जी ने जो अद्वैत दर्शन के प्रवर्तक आचार्य हैं स्वयं चार मठों की स्थापना कर अपने चार शिष्यों को पीठासीन किया। तदन्तर उनके सन्यासी शिष्य प्रशिष्यों ने अपने अपने प्रभाव तथा प्रयास से मठों की स्थापना कर आचार्य के सिद्धान्तों का प्रचार प्रसार किया। हिन्दू राजाओं ने ही नहीं बल्कि मुसलमान शासकों ने भी साधु की आध्यात्मिक साधना से प्रभावित होकर बिना शर्त उस साधु को सम्पत्तियां अर्पित कीं। शंगेरी मठ (मैसूर) में टीपू सुल्तान तथा बिहार, उत्तरप्रदेश के अनेकों मठों में जमींदारों तथा नवाबों ने अपनी श्रद्धा तथा राज्य के कल्याण के लिये मठों में धन अर्पित किये। इसके अतिरिक्त सैकड़ों ऐसे मठ उत्तर भारत, विशेषकर बिहार में हैं जिनमें मठाधीशों के उत्तराधिकारियों ने दूसरों से खरीद कर भू सम्पत्तियां अर्जित कीं। पटना जिले के गोकुलपुर मठ में आज से दो सौ वर्ष से भी पहले सैकड़ों एकड़ जमीनें मुसलमानी शासकों तथा ईस्ट इंडिया कम्पनी से रुपया देकर खरीद किया गया है जिसका दस्तावेज है।

सामान्यतः शंकराचार्य के बाद रामानुजाचार्य (विशिष्टाद्वैत) निम्बकाचार्य (द्वैताद्वैत) माध्वाचार्य (द्वैत) तथा विष्णु स्वामी शुद्धाद्वैत जिसे बल्लभाचार्य ने प्रशस्त किया, इनके अनुयायियों के धर्मस्थान हैं। दार्शनिक आचार्यों के बाद भक्ति की धारा देश में बहने लगी और विशिष्ट महापुरुषों ने जन्म लेकर अपने प्रतिभा तथा वैराग्य से प्राप्त आत्मिक ज्ञान से जनसाधारण को आलोकित किया। स्वामी रामानन्द, संत कबीर, श्री चन्द्र, स्वामी चरण दास, सन्त दादू ने अपने अपने सम्प्रदायों की स्थापना की जिसे क्रमशः रामानन्दी वैष्णव, कबीरपंथी, उदासीन (नानकशाही) राम सनेही तथा दादुपंथी के रूप में जाना जाता है। इसके पूर्व नाथ सम्प्रदाय के आचार्य महायोगी गोरखनाथ जी ने अपना पंथ चलाया। उत्तर भारत में इनके अतिरिक्त गुजरात में स्वामी सहजानन्द ने स्वामी नारायण सम्प्रदाय की स्थापना की। दक्षिण भारत में शैव, वीर शैव (लिगायत) सम्प्रदाय के साधु पहले से ही पाये जाते हैं। पंजाब में निर्मला साधु सन्त नानक के अनुयायी हैं जो विरक्त हैं। इस प्रकार इन सम्प्रदायों के मठ आश्रम तथा दशनामी सन्यासी, उदासीन, निर्मला एवं रामानन्दीय वैष्णव सम्प्रदाय के अखाड़े तथा खालसे हरिद्वार,

प्रयाग, वाराणसी, उज्जैन, नासिक, अयोध्या, डाकौर आदि तीर्थस्थानों में स्थित हैं। जिनमें लाखों की संख्या में साधु सम्बन्धित हैं। कबीरपंथी मूर्ति की पूजा नहीं करते। कबीर साहब कृत बीजक ही उनके उपास्य का आधार है, जैसे निर्मला ग्रन्थ साहब की पूजा करते हैं। अन्य सम्प्रदायों में अपने अपने भगवान की उपासना तथा पूजा करने की प्रथा चालू है। दशनामी सन्यासी, रामानन्दी, निम्बार्की, माध्वाचार्य के अनुयायी मठ, कबीरपंथी, नाथ ढेगी, उदासीन, निर्मला, रामस्नेही, चरणदासी, तथा अचिल्य भेदाभेद सिद्धान्त के प्रवर्तक चैतन्य महाप्रभु के गौड़ीय मठ के साधु गृहस्थ जीवन से विरक्त होने पर ही सन्यासी के रूप में स्वीकार किये जाते हैं। इन सम्प्रदायों में मठ का कोई मठाधीश गृहस्थ बन जाने या विवाह कर लेने पर अपने स्थान से च्युत समझा जाता है। रामानुजी मठों में भी महन्त के लिये ऐसी परम्परा प्रचलित है। उत्तर भारत में तो रामानुज सम्प्रदाय के भी साधु सन्यासी होते हैं, जिन्हें आचारी और त्रिदंडी स्वामी के नाम से सम्बोधित किया जाता है।

७. अब यहां स्पष्ट कर देना आवश्यक जान पड़ता है कि स्मृतिकार मनु के सन्यास तथा शंकराचार्य के सन्यास में बड़ा अन्तर है। धार्मिक जीवन के निर्माण के लिये चतुर्थ आश्रम का जर्जिरित शरीरवाला सन्यासी सामाजिक एवं धार्मिक क्रान्ति में बहुत उपयोगी प्रमाणित नहीं हो सकता। भगवान बुद्ध ने अपने पुत्र राहुल को किशोरावस्था में ही भिक्षु बनाया। भगवान शंकराचार्य ने स्वयं शैशवावस्था में सन्यास ग्रहण कर यह उद्बोधन किया कि जब किसी को आध्यात्मिक जीवन की प्रेरणा मिले और सन्यास ग्रहण की इच्छा हो तभी वह साधु बन सकता है। इसके लिये तीन आश्रमों में प्रवेश कर समय व्यतीत करने की आवश्यकता नहीं है। यही कारण है कि किशोरावस्था के सन्यासी ने अपने तेज तथा शौर्य से भौतिक जीवन के अल्पकाल में ही भारत के कोने कोने में अपने धर्म का प्रचार कर दिया और वैदिक धर्म को पुनः सामान्य जीवन में प्रतिष्ठापित किया। शंकर के बाद निवृत्ति मार्ग में एक नयी क्रांति हुई और वह आध्यात्मिक क्रान्ति केवल व्यक्ति के रूप में ही सीमित न हो कर सामाजिक जीवन को उन्नत बनाने का पथ-प्रदर्शक सिद्ध हुई। गत ११वीं शताब्दी से लेकर १८वीं शताब्दी तक लाखों की संख्या में लोगों ने धर्माचार्यों के उपदेश तथा जीवन से प्रेरणा लेकर धर्म रक्षा तथा सेवादि के लिये विभिन्न सम्प्रदायों में सन्यास की दीक्षा ली। मठ तथा आश्रम बनाये गये और उनका संचालन साधुओं द्वारा होता आ रहा है। सन्यासोपनिषद, परसहस्रोपनिषद तथा सन्यास ग्रहण पद्धति में सन्यासी के कर्तव्य तथा जीवन यापन पर प्रकाश डाला गया है। उसका वास्तविक लक्ष्य तो यह है कि जगत के साधनों एवं भोग विलास में आसक्ति नहीं होनी चाहिए और बहु-जन हिताय की भावना सन्यासी में आनी चाहिये। क्योंकि यदि व्यक्तिगत स्वार्थ की भावना उनमें जमी रहेगी तो धर्म प्रचार तथा सामूहिक कल्याण का कार्य पूरा नहीं हो सकेगा। इसी प्रकार के गुण राष्ट्र के पथ-प्रदर्शक नेताओं में भी होने चाहिये। सन्यासी समाज का पथ-प्रदर्शक आध्यात्मिक नेता माना जाता था इसलिये उसके लिये ऐसे नियम की आवश्यकता थी। परन्तु साथ ही गृहस्थ जीवन के लिये भी नियम बनाये गये और मनु तथा दूसरे स्मृतिकारों ने कठोर नियम निर्धारित किये। श्रीमद्भागवत् में गृहस्थ के सम्बन्ध में उल्लेख आया है कि केवल पेट भर भोजन का ही हकदार है यदि पेट भर भोजन के अतिरिक्त अन्य साधनों का संग्रह या उपयोग की इच्छा करता है तो वह चोर जैसा दण्ड का भागी होगा।

यावेद्भूयेद् जठरं तावद् स्वत्वम् हि देहीनाम्
अधिकं यो मी मयेत् स स्तेनो दण्ड महेति ॥

इससे स्पष्ट हो जाता है कि सन्यासी की तरह दूसरे आश्रम के लिये भी नियम निर्धारित थे। परन्तु आज गृहस्थी ब्राह्मणों की क्या स्थिति है। हम केवल साधुओं को कड़ी दृष्टि से देखें और अपने पर से सारी पावन्दियां उठा लें तो इसे न्यायसंगत नहीं कहा जा सकता। एक बात सिद्धान्त की होती है और दूसरी बात व्यवहार की। आज के परिवर्तित समय के वातावरण में वैसी ही व्यवस्था सोची और की जानी चाहिये जो व्यवहार तथा सिद्धान्त से समन्वय रखती हो।

८. हमने इसकी चर्चा इसलिये की जिससे यह मालूम हो जाय कि आज के सन्यासी या साधु के अधिकार तथा मनु के साधु में बड़ा अन्तर हो गया है। मठ एवं अपने धर्म स्थान की प्रबन्ध व्यवस्था की देखरेख तथा संचालन का पूर्ण अधिकार इस स्थान से सम्बन्धित आचार्य महन्त या सन्यासी को प्राप्त है। इसमें कानून द्वारा किसी प्रकार का हस्तक्षेप भारतीय संविधान के मौलिक स्वतन्त्रता के प्रतिकूल होगा। मठ के महन्त उस स्थान के आध्यात्मिक एवं धार्मिक गुरु होने के साथ ही साथ उस सम्पत्ति के संचालक तथा संरक्षक हैं और उसके प्रबन्ध व्यवस्था पर उन्हें अक्षुण्ण रूप से अधिकार प्राप्त है। मठों आश्रमों की व्यवस्था संचालन सम्बन्धी जो अधिकार मठाधिपति को प्रारम्भ से लेकर अब तक प्राप्त हैं उनको कम करना या उन पर किसी प्रकार का हस्तक्षेप करने का कोई भी कानूनी उपबन्ध हमारी सम्मति में मठ के स्थापना के मूलनूत सिद्धान्तों के प्रतिकूल होगा। मठों एवं सन्यासियों की मर्यादा, परम्परा तथा अधिकार के संरक्षण के लिये बहुत बड़ी संख्या में आयोग को साक्षियां तथा स्मृतिपत्र प्राप्त कृत हैं। जिनसे इन बातों का समर्थन होता है।

इस सम्बन्ध में वाराणसी स्थित दशनामी सन्यासी सम्प्रदाय के एक आचार्यपीठ दक्षिण मूर्तिमठ का स्मृतिपत्र तथा भारत के प्रमुख शिक्षा शास्त्री एवं हिन्दू धर्म के प्रकाण्ड विद्वान डा० पी० वी० काने बम्बई द्वारा लिखित भारत के धर्मशास्त्रों के इतिहास से उल्लिखित निम्नांकित पिट्ठणियां विचारणीय हैं। दक्षिणमूर्ति मठ ने अपने स्मृतिपत्र में कहा है :—

"Maths and Temples are ageless institutions. It is wrong to hold that Maths were introduced at some point of History by some great personality or other to serve some particular need of the times. Skandapurana states that one gets great spiritual merit if one endeavours to build a math with a roof (of grass), cots and seats, altars for worship, etc. and give it away to a pious (twice-born) man or sannyasin. Thus Maths have been an integral part of Hinduism. They have been serving up to now as schools where the initiated and lay disciples of some great teacher are instructed into the doctrines of a certain philosophy or branch of learning in order to help them lead a healthy pure spiritual life."

If the internal affairs of Bharat deteriorate and some other nation like the U.S.A. suggests, 'we shall intervene and set you right' certainly it will not be allowed. The same thing holds good in case of religious institutions too. A group which has non-Hindu elements in it, will not be tolerated, even if it be the ruling party, to interfere in purely religious matters of Hinduism. The Government is free to help, guide and endour Hindu institutions with power to correct themselves and progress onward."

The abstract from P. V. Kaner's 'History of Dharmasastra', Vol. II, Part II (P. 908—916)—Bhandarkar Oriental Research Institute, Poona:—

"A preceptor of religious doctrine gathers around him a number of disciples whom he initiates into the particular mysteries of the order and instructs in its religious tenets. Such of these disciples as intend to become religious teachers renounce their connection with their family and all claims to the family wealth and as it were affiliate themselves to the spiritual teacher whose school they have entered. Pious persons endow the schools with property which is vested in the preceptor for the time being and a home for the school created and a mattam constituted. The property of the mattam does not descend to the disciples or elders in common; the preceptor, the head of the institution, selects from among the affiliated disciples him whom he deems the most competent and in his own life-time instals the disciple so settled as his successor; not uncommonly with some ceremonies. After the death of the preceptor the disciple so chosen is installed in the Gaddi, and takes by succession the property which has been held by his predecessor. The property is in fact attached to the office and passes by inheritance to no one who does not fill that office. It is in a certain sense trust property; it is devoted to the maintenance of the establishment, but the superior has a large domain over it, and is not accountable for its managements nor for the expenditure of the income provided he does not apply to any purpose other than what may fairly be regarded as in furtherance of the object of the institution."

६. इससे स्पष्ट है कि जहाँ तक मठों एवं आश्रमों के संचालन संबंधी अधिकार का प्रश्न है उसमें किसी प्रकार का सरकारी हस्तक्षेप संस्था के विकास तथा संरक्षण की दृष्टि से उचित नहीं कहा जायेगा, क्योंकि यदि संस्था के प्रधान की व्यक्तिगत दिलचस्पी अपनी स्वतंत्रता के अनुसार नहीं रही तो भविष्य में होने वाली आय रुक जाने की संभावना है। जगद्गुरु शंकराचार्य ने भी अपने मठान्ना में मठाधीश के अधिकार को अक्षुण्ण रखते हुये यहाँ तक उल्लेख किया है कि वह जनता पर टैक्स लगाकर धर्म कार्य के लिये रुपया वसूल कर सकता है। इसके अनुसार दय आध्यात्मिक तथा भौतिक दोनों कार्यों का प्रधान संचालक है। यह सत्य है कि इन अधिकारों का दुरुपयोग देश के विभिन्न भागों में कुछ मठाधिकारियों ने अपने व्यक्तिगत स्वार्थसिद्धि के लिये किया है जिससे अनेकों प्राचीन संस्थाएँ आज नष्ट-भ्रष्ट हो गई हैं। इसके विपरीत इधर ५० वर्षों में दर्जनों आश्रमों की स्थापना देश के विभिन्न भागों में प्रभावशाली सन्यासियों द्वारा लगातार की जाती रही है जिसमें लाखों रुपयों का दान और समर्पण भक्तजनों से प्राप्त होता है। ऋषिकेश में महामण्डलेश्वर श्री स्वामी शुक्लदेवानन्दजी का परमार्थ निकेतन और उसके धार्मिक कार्य, अहमदाबाद में महामण्डलेश्वर श्री स्वामी गंगेश्वरानन्द जी का वेद मन्दिर, हरिद्वार में रामधाम, वृन्दावन में श्रोतमुनि निवास आश्रम, वाराणसी में उदासीन संस्कृत कौलिज की स्थापना एक साधु के व्यक्तिगत प्रतिभा एवं चमत्कार के प्रत्यक्ष प्रमाण हैं। विनाश और निर्माण यह तो सृष्टि का कालक्रम है। फिर भी यह आवश्यक है कि हम संस्थाओं की व्यवस्था की कमजोरियों पर विचार करें और उनके संरक्षण तथा समुचित उपयोग की दिशा में ऐसी व्यवस्था कर जिससे उनका संरक्षण हो सके। इस प्रकारके धर्मस्थानों तथा मठाधीशों के कार्यों की देखरेख के लिये साधुओं की ही समिति होनी चाहिये और स्वयं गठित भारत साधु समाज जैसे साधु संगठनों

को जिम्मेदारी सौंपनी चाहिये। ऐसी संस्थाओं को धर्मस्थानों की दुर्यवस्था को दूर करने के लिये प्राथमिक अधिकार देना वांछनीय एवं उपयोगी होगा। वकीलों के लिये बार-कौंसिल और डाक्टरों के लिये अपना संगठन बना है जिसे कानूनी मान्यता मिली ही है तो कोई कारण नहीं है कि साधुओं-मठाधीशों के अपने संगठन को क्यों नहीं अपने सुधार तथा सुरक्षा का अधिकार प्रदान किया जाये।

लोकतंत्र के विकास के लिये सामाजिक संगठनों तथा जनसहयोग को बढ़ावा दिया जा रहा है। सरकार के अधिकारों का ग्राम पंचायतों में विकेन्द्रीकरण हो रहा है। शिक्षण संस्थाओं के संचालन तथा देख रेख के लिये शिक्षा शास्त्रियों तथा शिक्षकों की संस्थाओं का प्रतिनिधित्व सरकारी समितियों एवं अन्य निकायों में दिया जा रहा है। यह एक युग की मांग हो गई है। तो क्यों केवल साधुओं-सन्यासियों को उनके अधिकारों से वंचित किया जाये। उन्होंने सामूहिक रूप से कोई गुनाह नहीं किया है। इस तथ्य से भी यह प्रमाणित होता है कि साधुओं के संगठन को कानूनी अधिकार देकर स्वयं प्रेरणा देने दिलाने का भार उन्हीं लोगों के जिम्मे सौंप दिया जाये। अपने अपने सम्प्रदाय के सिद्धान्त के अनुसार वह अपने स्थान का संचालन करें और सामान्य रूप से नियंत्रण तथा मार्गदर्शन के लिये साधुओं की सामूहिक संस्था को मान्यता प्रदान करना श्रेयस्कर होगा।

साधुओं की शिक्षा एवं भिक्षा

१०. भारत साधु समाज प्रमुख सम्प्रदाय के मठाधीशों एवं साधुओं की एकमात्र अखिल-भारतीय संगठित संस्था है। उसने अपने स्मृति पत्र में इस बात पर विशेष जोर डाला है कि देश सामाजिक जीवन में आध्यात्मिक एवं नैतिक भावना को जाग्रत बनाने के लिये साधुओं के एक ऐसे भिक्षा को संगठित किया जाय जो लोगों की आध्यात्मिक एवं नैतिक दिशा में मार्गदर्शन दे सके। निर्विवाद रूप से कहा जा सकता है कि जिस तेजी से देश भौतिक विकास की ओर बढ़ता जा रहा है उसी प्रकार समाज का चरित्र गिरता जा रहा है। ईमानदारी, कर्तव्य-परायणता, संस्कृति-प्रेम, राष्ट्रीय निष्ठा तथा धार्मिक जीवन की भावना का ह्रास देखने को मिलता है। आयोग के समक्ष पर्याप्त संख्या में लोगों के विचार आये हैं कि साधुओं की शक्ति का यदि ठीक ठीक से उपयोग किया जा सका तो देश के चारित्रिक उत्थान में बहुत बड़ा कार्य हो सकता है। यह ठीक है कि वाराणसी, हरिद्वार, अयोध्या, अहमदाबाद तथा देश के कुछ ही अन्य भागों में कुछ सम्प्रदाय के साधुओं एवं मण्डलेश्वरों ने साधु संस्कृत विद्यालयों की स्थापना की है, परन्तु समय की मांग को ध्यान में रखते हुए वे आवश्यकताओं की पूर्ति में सर्वथा असमर्थ हैं। जो बड़े बड़े मठ हैं वह कुछ सीमा तक इस प्रकार की व्यवस्था कर सकते हैं, परन्तु जो हजारों की संख्या में छोटे छोटे मठ हैं वह अपने साधुओं को शिक्षित बनाने में सक्षम नहीं हैं। मुख्यतः दशनामी सन्यासी, रामानन्दी वैष्णव, कबीर पन्थी तथा उदासीन, जिनमें साधुओं की संख्या बहुत बड़ी है। राज देश के विभिन्न भागों में लाखों की संख्या में साधु विचरण करते हैं और हजारों की संख्या में मठाधीश हैं, जिनकी शिक्षा एवं प्रशिक्षण की कोई समुचित व्यवस्था नहीं है। मठाधीशों के सम्बन्ध में उनकी अज्ञानता तथा नैतिकता सम्बन्धी जो कुछ शिकायतें यदा-कदा मिलती रती हैं उनका एकमात्र कारण यह है कि उनके उत्तराधिकारियों की शिक्षा दीक्षा के लिये किसी संस्था की व्यवस्था नहीं है, जहाँ सामूहिक रूप में उन्हें शिक्षा प्राप्त हो।

११. प्राचीन समय में मठों की संख्या कम थी और उससे सम्बन्धित साधुओं की संख्या भी आज के अनुपात से बहुत कम थी। गुरु अपने शिष्य को केवल किताबी शिक्षा न देकर

आध्यात्मिक एवं शास्त्रीय शिक्षा मौखिक तथा व्यावहारिक दृष्टि से प्रदान करते थे जो कुछ सदियों से टूटता जा रहा है, फलस्वरूप साधु मर्यादा का भी हनन होने लगा है। देश में हजारों की संख्या में छद्मवेशी व्यक्ति साधु का भेष धारण कर अपने दुराचारों द्वारा साधु समुदाय को कलंकित कर रहे हैं। सच्चे साधुओं को परखने तथा छद्मवेशी लोगों को साधुओं के बीच से छांटने का कोई व्यावहारिक उपाय भी इन दिनों काम में नहीं लाया जा रहा है। गुरु अपने शिष्य को शिक्षित बनाकर धर्म प्रचार का कार्य करने की प्रेरणा प्रदान करते थे। परन्तु कुछ शास्त्रियों से निवृत्ति मार्गी साधुओं की संख्या इतनी अधिक बढ़ गई है कि उन्हें योग्य एवं शिक्षित बनाना व्यक्तिगत रूप से गुरु के लिये दुष्कर हो गया है। यदि साधु बनने बनाने से लोगों को रोका जाय तो यह बड़ा अव्यवहारिक होगा और प्रत्यक्ष रूप से धार्मिक एवं आध्यात्मिक विषयों में हस्तक्षेप समझा जायेगा। हिन्दू धर्म की यह विशेषता है कि नये विचार तथा सम्प्रदाय एवं साधुओं की संख्या का विकास होता जाता है। यही कारण है कि हमारी संस्कृति की बहुलता में एकता की विशेषता है। हिन्दू धार्मिक जीवन के आदर्श ने समष्टी का रूप धारण कर लिया है जिस पर हमें गर्व है। जब साधुओं की सामूहिक शिक्षा एवं उनके द्वारा आध्यात्मिक तथा समाज सेवा के कार्यों को अपनाने का प्रश्न आता है तो कुछ लोग यह आशंका प्रकट कर इस बात को टालने का प्रयास करते हैं कि साधु एक साथ कभी एकत्र नहीं हो सकते और अपने अपने सम्प्रदाय के मतवाद को लेकर संघर्ष करेंगे। परन्तु भारत साधु समाज के संगठन से यह प्रमाणित हो चुका है कि सभी सम्प्रदाय के साधु एक मंच पर एकत्र होकर देश की सामूहिक सेवा तथा धार्मिक भावना को राष्ट्रीय जीवन में जागरूक बनाने के लिये तैयार हैं। पहले और इन समय के व्यवहार में परिवर्तन हुआ है। बड़े बड़े मण्डलेश्वर, मठाधीश तथा सन्यासी एक सम्प्रदाय से दूसरे सम्प्रदाय के साथ बैठते और विचार नहीं करते थे। सामान्य साधु भी एक दूसरे सम्प्रदाय के साधुओं के साथ द्वेष तथा घृणा करते पाये जाते थे। लेकिन यह प्रसन्नता की बात है कि दशनामी सन्यासी, उदासीन, रामानुजी, रामानन्द वैष्णव, निम्बार्क, कबीर, पन्थी, नाययोगी लिंगायत रामस्नेही, निर्मला, दादुगन्धी, माधव (गौड़ीय), बारकरी प्रभृति सम्प्रदायों के विशिष्ट मठाधिपति एवं साधु भारत साधु समाज में सम्मिलित होकर तथा इसके आयोजनों में भाग लेकर संसार को दिखला दिया है कि सभी भारत भूमि से उत्पन्न सम्प्रदायों एवं धर्मों के सन्यासी सामूहिक रूप में अपनी शक्ति का उ योग विश्व में धार्मिक, आध्यात्मिक एवं सामाजिक उन्नति के कार्यों में योगदान देने को तत्पर हैं।

१२. धार्मिक जीवन की महत्ता तथा मूलभूत सिद्धान्तों के प्रचार प्रसार के लिये आयोग के समक्ष बहुत बड़ी संख्या में स्मृतिपत्र तथा साक्षियां प्राप्त हुई हैं। जिनमें सामूहिक रूप से साधु सन्यासियों के संगठन तथा उनके द्वारा मिशन का काम करने और उन्हें प्रशिक्षित करने का सुझाव आया है। इस सम्बन्ध में कुछ प्रमुख लोगों के सुझाव द्रष्टव्य हैं।

द्वारिका पीठाधीश्वर जगद्गुरु श्री शंकराचार्य जी—

"A portion of the income of Religious Endowments can be used for organising Hindu Missionaries of Sadhus and Sanyasis to propagate the principles of Dharma."

लोकसभा के तत्कालीन अध्यक्ष श्री अनन्त शंकर आर्य—

"Sadhus were a potential element in our community and that there must be training schools for Sadhus and Sanyasis in

the four parts of India. The Sadhus could be given a kind of recognition only by an organisation and not by Government."

गुजरात के मुख्य मन्त्री डा० जीवराज मेहता—

"There is a Sadhu Samaj which is patronised by well known persons in the political life of the country and if the services of Sadhu Samaj or Sadhus individually or as a class could be utilised for such purposes it is entirely that some such arrangements be made for the purpose."

उत्तर प्रदेश कांग्रेस के सचिव श्री दरबारी लाल शर्मा—

"I think the work should not be taken up by Government, but this work should be done by Sadhu Organisation like Bharat Sadhu Samaj."

लखनऊ विश्वविद्यालय के उपकुलपति श्री रणधीरसिंह जी—

"I quite agree that Sadhus services can be utilised for giving training to others after they have received proper training."

इलाहाबाद हाईकोर्ट के न्यायाधीश श्री विशम्भर दयाल जी—

"The surplus funds of Religious Endowments should be utilised for organising Hindu Missionary of Sadhus and Sanyasis, who propagate the principles of Dharma."

मिदनापुर (बंगाल) के जिला जज श्री ए० के० सेन—

"A portion of the income, if available, may be spent to organise Hindu missionaries of Sadhus."

उड़ीसा हाईकोर्ट के मुख्य न्यायाधीश श्री आर० एल० नरसिंहा—

"A portion of the funds should be utilised for organising Hindu missionaries of Sadhu and Sanyasis to propagate the principles of Dharma."

इस प्रकार के सुझाव जोशीमठ के शंकराचार्य जी ने भी अपने बयान में देते हुए कहा कि साधु समाज जैसी संस्था को इस कार्य को करना चाहिये। बम्बई के प्रमुख एडवोकेट श्री जे० एम० कामदार, बिहार के प्रमुख शिक्षा शास्त्री तथा भूतपूर्व जन-शिक्षा निदेशक डा० डा० वी० शास्त्री ने साधुओं के शिक्षण प्रशिक्षण पर विशेष रूप से जोर डाला है। राजस्थान के एडवोकेट जनरल, श्री काशलीवाल, उत्तर प्रदेश के मुख्य मन्त्री श्री चन्द्रभानु गुप्त, श्री एन० पी० अस्थाना, भूतपूर्व एडवोकेट जनरल, इलाहाबाद, श्री वसन्तकुमार चट्टोपाध्याय, भूतपूर्व एकाउन्टेन्ट जनरल बंगाल, महाराष्ट्र के चैरिटी कमिशनर, महाराष्ट्र सरकार के सौलीसिटर श्री आर० डी० निगुडकर, प्रसिद्ध शिक्षा शास्त्री श्री पी०, वी० कने, बम्बई, प्रसिद्ध आयुर्वेदिक चिकित्सक डा० शिव शर्मा, बम्बई, पटना हाईकोर्ट के मुख्य न्यायाधीश, राजस्थान संस्कृत विभाग के निदेशक श्री के० ए० के० शर्मा, राजस्थान के भूतपूर्व विधि मन्त्री श्री ब्रजमोहन लाल, बोधगया बिहार के महन्त श्री संतानन्दगिरि, श्री मुकुट बिहारी लाल एम० पी० राजस्थान, श्री राम मनोहर रेड्डी, अध्यक्ष, बार एसोसियेशन, बंगलापल्ली, आन्ध्रप्रदेश, अयोध्या के प्रमुख विद्वान् दार्शनिक श्री स्वामी वासुदेवाचार्य सार्वभौम, 40 M of L—18

वाराणसी के प्रमुख विद्वान् महात्मा तथा बहुसंख्यक व्यक्तियों ने अपने बयान तथा स्मृतिपत्रों में साधु सन्यासियों की उचित शिक्षा दीक्षा एवं प्रशिक्षण के लिये तथा हिन्दू धर्म के प्रचार के कार्यों में लगाने के लिये सुझाव दिया है।

१३. उपरोक्त वर्णित सुझावों तथा समाज की आवश्यकताओं को ध्यान में रखते हुए मेरा यह निश्चित मत है कि साधु सन्यासियों के शिक्षण प्रशिक्षण के लिये 'साधु शिक्षण प्रतिष्ठान' स्थापित किये जायें। इनके खर्च की व्यवस्था धर्म स्थानों की आय के एक भाग से पूरी की जाय। ये संस्थाएँ किसी मतवाद के या सम्प्रदाय के आन्तरिक रीति नीति के आधार पर संचालित न होंगी। इनमें पढ़ने वाले साधुओं के पाठ्यक्रम साधुओं के संगठन द्वारा बनाये जायें, और शिक्षक का कार्य भी विद्वान् साधु अवैतनिक रूप में करें। शिक्षक तथा शिक्षार्थियों के भरण-पोषण की व्यवस्था उस प्रतिष्ठान द्वारा किया जाय और उसका संचालन भारत साधु समाज या इस प्रकार की सक्षम अन्य साधु संगठनों के जिम्मे सौंपा जाये जो किसी एक सम्प्रदाय विशेष की संस्था न हो। इस संस्था में तो दो प्रकार के साधुओं की शिक्षा दीक्षा की व्यवस्था की जाय, एक तो वह जो मठ के उत्तराधिकारी या मठ की प्रबन्ध व्यवस्था से सम्बन्धित शिष्य हों तथा दूसरे वह साधु सन्यासी जो अपने समय व शक्ति को आध्यात्मिक तथा नैतिक उत्थान के कार्यों में, हिन्दू धर्म के प्रचार-प्रसार तथा सेवा के कार्यों में अपने को मिशनरी के रूप में लगाना चाहते हों। इस प्रकार शिक्षित साधुओं के भरण-पोषण तथा उनकी शक्ति को उपयोग करने का काम स्वभावतः साधु संगठन के द्वारा ही किया जाना चाहिये। इन कार्यों के लिये मुख्यतः मठों तथा कुछ सम्पत्तिशाली मन्दिरों के आय से एक "साधु शिक्षण एवं धर्म प्रसार कोष" नामक कोष की व्यवस्था की जाय। मठ के मठाधिपति स्वयं इस कोष में दान दें। आवश्यकतानुसार कानून द्वारा मठों को वचत सम्पत्तियों के एक भाग को इस कार्य में लगाने की व्यवस्था की जाय। इस प्रयोग से हिन्दू जीवन में प्राचीन संस्कृति के अनुरूप एक क्रान्तिकारी प्रयोग होगा जो सारे समाज के लिये मृत संजीवनी का काम करेगा। इससे साधुओं में जो छद्मवशी व्यक्ति प्रवेश कर गये हैं उनका भी परिष्कार होगा और समाज सेवा, धार्मिक सेवा तथा राष्ट्रहित में दिलचस्पी रखने वाले साधुओं को मार्ग दर्शन मिलेगा। धर्म स्थानों विशेषतः मठों की सम्पत्तियों का यह सही उपयोग समझा जायेगा। धर्मस्थानों के सम्पत्तियों का उपयोग धार्मिक कार्यों तथा साधु एवं धर्म प्रचारकों की व्यवस्था के अतिरिक्त सामान्यतः दूसरे कामों में नहीं होना चाहिये। इस सम्बन्ध में केरल के मुख्य मन्त्री श्री थानू पिल्लई का बयान भी द्रष्टव्य है।

Shri Patton Thanu Pillai: Chief Minister of Kerala said in his evidence:—

"The funds should be utilized mainly for spiritual purposes. No part of our funds should be utilized for other purposes and should be utilized for the benefits of Hindus endowments after making provision for what is really meant for the object of the institutions."

धर्म स्थानों की प्रबन्ध व्यवस्था

१४. हमने भिन्न भिन्न राज्यों में चालू हिन्दू धार्मिक ट्रस्ट कानूनों की धाराओं को गम्भीरता से अध्ययन किया है और इन कानूनों के द्वारा नियुक्त धर्मादा कमिश्नरों के सम्बन्ध में भी आयोग के साथ जानकारी प्राप्त की है। मद्रास, आन्ध्र तथा महाराष्ट्र प्रदेश के कानूनों में प्रायः सारे अधिकार कमिश्नरों को धर्मस्थानों के बारे में सौंप दिये गये हैं। बम्बई में तो कमिश्नर को न्यासधारियों को पदच्युत करने या हटाने का अधिकार प्राप्त नहीं है परन्तु मद्रास एक्ट में तो

कमिश्नर किसी भी न्यासधारी को पद से निरस्त कर सकता है। इनमें कार्यपालिका तथा न्याय-पालिका दोनो शक्तियाँ भरपूर रूप से दे दी गई हैं, एक तरह से वह धर्म स्थानों का पूर्ण रूप से शासक बन गया है। यह कमिश्नर राज्य सरकारों द्वारा नियुक्त होते हैं और उनके नियन्त्रण तथा मार्गदर्शन में कार्य करते हैं। कानून की वर्तमान धारा के अनुसार इस विभाग का मन्त्री (निनिस्टर) धर्मस्थानों का सबसे बड़ा धर्माचार्य कहा जा सकता है चाहे उसे कोई धार्मिक ज्ञान, श्रद्धा, भक्ति हो या नहीं।

आयोग के समक्ष अधिकांश संख्या में साक्षियाँ तथा स्मृतिपत्र प्राप्त हुए हैं कि धर्म स्थानों की व्यवस्था की देख रेख तथा समुचित संचालन के लिये मार्गदर्शन देने के निमित्त किसी सरकारी अधिकारी के जिम्मे अधिकार न सौंप कर एक ऐसे बोर्ड के जिम्मे सौंपा जाय जिसमें सम्प्रदाय तथा साधु समाज के प्रतिनिधि एवं श्रद्धालु भक्तजनों का प्रतिनिधित्व रहे। कोई भी कमिश्नर या सरकारी अधिकारी इस बोर्ड के नियन्त्रण में ही कार्य करे। यह बोर्ड सम्पूर्ण रूप से नैतिक गति-विधियों से अलग रहे और सरकार को इसके कार्यों पर हस्तक्षेप करने का कोई अधिकार न हो। इस सम्बन्ध में निम्नांकित प्रमुख लोगों के साक्षियाँ तथा स्मृतिपत्र विचारणीय हैं।

१५. दशनामी सन्यासी सम्प्रदाय के प्रमुख आचार्य महामण्डलेश्वर श्री स्वामी कृष्णानन्द जी महाराज, अहमदाबाद ने अपने स्मृतिपत्र में कहा है कि केन्द्र तथा प्रान्तों में एक हिन्दू धर्मस्व बोर्ड की स्थापना करनी चाहिये, जिसमें अवकाश प्राप्त न्यायाधीश, श्रद्धालु संसद् सदस्य तथा साधु सम्प्रदाय एवं भारत साधु समाज के प्रतिनिधि रखे जायें।

कामकोटी पीठम के जगद्गुरु शंकराचार्य जी ने अपने बयान में कहा है—

"There should be two committees (i) a committee for every religious denomination among the Hindus, which will consist of representatives of the people of the denomination and representatives of Madathipati of the mutt belonging to that denomination, (ii) a general committee which should be in charge of all denominations and also representatives of every mutt of every denomination. For each denomination there should be representatives or nominees of the Madathipatis of that particular denomination or persuasion in that Committee."

भारत साधु समाज के अध्यक्ष स्वामी अखण्डानन्द जी सरस्वती, बम्बई ने सुझाव दिया है कि केन्द्र तथा प्रान्तों में एक बोर्ड का गठन होना चाहिये, जिसमें भारत साधु समाज के प्रतिनिधि तथा श्रद्धालु गृहस्थजनों को रखा जाये।

देश के प्रमुख विधिवेत्ता तथा शिक्षा शास्त्री एवं भूतपूर्व केन्द्रीय मन्त्री श्री के० एम० मुन्शी ने निम्नांकित विचार आयोग के समक्ष व्यक्त किये हैं:—

"Religious institutions are faced with several dangers. The first danger is that the legislatures are trying to trap them into secular legalism. In doing so we ignore that status of men who found and conduct religious institutions. Take the case of two or three learned Sanyasis who came to Bombay a few years ago and have since built up big shrines. They have been propagating religion and bringing solace to people. They are stimulating the healthy process of revitalising religious faith. If the institutions

which they have founded are officially controlled, the revitalising process will come to an end and Hinduism would soon be dead."

"The next danger proceeds from the Charity Commissioners, who, under different Religious Trust Acts have been constituted the supreme head over religious charities, but without having any religious training and outlook. They are mere instruments of a secular government and yet order about the trustees even in matters of religious practices. They are no doubt judicial officers but they are also executive officers under the control of the Ministers. I have known cases in which, with or without the behest of a Minister, the Charity Commissioner has tried to divert religious funds to secular charity sponsored by the Minister. In one case the Charity Commissioner diverted the funds of a Gurukul for the building of a school of Law. In another case he has ordered that the surplus income of a religious temple should be used for secular charities. The temples saves money to provide for repairs to the temple and appropriate amenities for the worshippers; the Charity Commissioner wants them to be utilised for medical and educational relief. The policy of the Government, therefore, prevents the religious institutions from developing their religious activities by depriving them even to their limited funds."

"Official supervision of religious institutions will, I am sure, be harmful to the growth of the religious spirit; perhaps it might kill it in the long run. What is wanted is a voluntary organisation of men who have faith in religion which would stimulate and activate the religious institutions. If a Hinduism has to survive, some kind of council has to come into existence on an All-India basis, which would stimulate the religious vitality of the people."

"There may be a non-official All-India body which might, in matters of religion, solve any doubt or difficulty."

"There are five well recognised groups—(1) Sanyasis; (2) Sadhus other than Sanyasis; (3) Religious teachers like the heads of Patashalas; (4) Lay donors; and (5) Trustees of registered religious institutions. These five groups can have representatives on an autonomous council."

Shri Munshi further suggested in his Memorandum:

"In the meantime, therefore, I would suggest that the Bharat Sadhu Samaj and other similar bodies should sponsor a convention of representatives of religious institutions and trusts, to consider the advisability of setting up such a Central Council."

Shri P. Satyanarayan Rao, former member Central Law Commission said:—

"I would prefer as an autonomous body controlled by court rather than the Government. Something like a Board of unofficals represented by Religious Order of Course."

Shri B. S. C. Mishra, Advocate, Supreme Court, said in his evidence:—

"If any supervision be necessary, it should vest in an institution of the Sadhus and religious persons. I have Bharat Sadhu Samaj in view if that is found to be satisfactory or it might be some other institution like that, but certainly not the Government officials. I have got two reasons in support of my views. Firstly, the State is dedicated to secular policy and in the very nature of things, it will not have that enthusiasm with the religious objects as founders of those institutions had. For example, trusts have been made for feeding the poor. But the modern taste does not relish it and it is often asked why not to spend this money on some other objects like education, free medical facilities. My view is that religious matters are matters between a man and God and they are not subject to any rational supervision; and the founder if he had any object in view, that must be maintained at all costs."

अखिल भारतीय हिन्दू महासभा के अध्यक्ष श्री महन्त दिग्विजयनाथ जी जो अखिल भारतीय नाथ सम्प्रदाय के प्रधान भी हैं अपने स्मृतिपत्र में निम्नांकित बातों का उल्लेख किया है:—

"With regard to the Machinery for the proper administration of Hindu Religious Institutions, I have already made it clear to you that I am strongly against any direct interference on the part of our secular Government or any other political party in power with the management and normal development of our religious Institutions and our varieties of religious customs and practices which are based on long standing traditions and the spiritual wisdom of saints. There may be occasional lapses from lofty moral and spiritual ideals in particular institutions at particular times due to the unworthiness of particular persons in charge of affairs, but the pressure of public opinion and the charge passing to worthier hands set things right in the normal course."

The Government ought to have some efficient instrument for keeping vigilance over the proper management and administration of the Hindu Religious Institutions, for serving as a good link among them, for attempting to elevate the standard of management of those which are at lower levels, for bringing about some degrees of uniformity of standards and ideals among all such institutions and for adding to the moral and spiritual influence of these institutions upon the character and conduct of the people at large and for purging out, wherever necessary, all causes of impurities and immoral and irreligious influence from them. The instrument must of course be such as may command the respect of all sections of Hindus and as may give no cause for any suspicion about the nobility and loftiness of its intentions."

I, therefore, beg to suggest that the Government should appoint a permanent high-powered non-political autonomous

Hindu Religious Trusts Commission. The Commission should consist of—

(a) One Chairman of the status of a Supreme Court Judge, possessing sufficient knowledge of the Hindu Scriptures and religio-philosophical systems and the various aspects of Hindu religion and culture and deep faith in the time-honoured Hindu socio-religious traditions and customs and uninfluenced by any political bias or sectarian prejudices.

(b) Two representatives of the All-India Hindu Religious Organizations with established reputation, engaged in doing missionary and educational and humanitarian works.

(c) Two eminent representatives of the Public Religious Trusts.

(d) One eminent representative of the Private Religious Trusts.

(e) One eminent representative each of Saiva, Sakta, Vaishnava, Sanyasi, Yogi, Udasi and Arva-Samaji Sampradayas.

(f) Two eminent representatives of Bharat Sadhu Samaj.

(g) Two eminent scholars reputed for extensive learning in and deep insight into the various aspects of Hindu religion and culture.

In cases where All-India organisations are absent, the President of India should select duly qualified representatives from the constituencies in consultation with the Chairman and leading members of the constituencies."

Shri Govind Sahai, Minister of Religious Endowments, Uttar Pradesh, said, "I would suggest a composite machinery of Government nominees, certain influential people and certain representatives of the Sadhu Samaj".

Swami Sadanand Saraswati, Editor, Parmarth, suggested that the body should be composed of religious minded grahastas and representatives of the Sadhu Samaj.

Shri R. P. Sinha, Retired District Judge, Patna and Judicial Officer of the Religious Endowments of Bihar said "that the whole Board should be nominated by the Bharat Sadhu Samaj".

Shri Jagat Narain Lal, former Law Minister of Bihar, suggested "that the Board should be autonomous. There may be representatives of mutts and temples in the Board. There should be some representatives of the Bharat Sadhu Samaj which has established its claims sufficiently well to be recognised".

प्रमुख सन्यासी विद्वान् स्वामी अतुलानन्द जी ग्रहगदाबाद ने अपने वक्तव्य में बताया है:—

"It is my view that in the Centre there must be a Board which may contain the representatives from all sects nominated by the Bharat Sadhu Samaj and a few members may come

through Government. The Board will have the Supreme power to look after the religious institutions, maths, temples, akharas, etc. The Commissioner or the Deputy Charity Commissioner would have to work under the guidance and control of that Board. We cannot hand over religious institutions to the hands of the secular Government. Otherwise these religious Institutions may come in danger."

१६. चतुर्थ अखिल भारत साधु सम्मेलन (पटना) द्वारा नवम्बर १९६१ में स्वीकृत हुए प्रस्ताव का सारांश निम्नांकित है जिसमें प्रमुख धर्माचार्यों तथा सम्प्रदायों के साधुओं के अतिरिक्त केन्द्रीय योजना मंत्री श्री नन्दा जी, लोक-सभा के अध्यक्ष श्री आर्यगार जी, गृह-मंत्रालय के मंत्री श्री दातार जी तथा आयोग के अध्यक्ष एवं सदस्यों ने भी भाग लिया।

(क) भारतवर्ष में धर्म स्थानों का सृजन जनजीवन में नैतिक, आध्यात्मिक एवं धार्मिक प्रेरणा प्रदान करने की दृष्टि से तत्तत्सम्प्रदाय के सिद्धान्तों के अनुसार उनके दर्शन के प्रसार, प्रचार के लिये हुआ था। जिनका प्रबन्ध व्यवस्था का उत्तरदायित्व एवं भार उस स्थान के आचार्य, प्रधान या मठाधीश के नियंत्रण में सदा सर्वदा होता आया है। हमारे विभिन्न दार्शनिक विचारों एवं सम्प्रदायों के सिद्धान्तों के प्रसार के लक्ष्य निदिष्ट हैं। कालक्रम से यह सम्भव है कि कहीं कहीं उन स्थानों के अधिकारियों के कारण दुर्व्यवस्था हो गई है जिनके परिष्कार को समाज आवश्यक समझता है। परन्तु यह स्पष्ट है कि इन धर्म स्थानों की व्यवस्था और संचालन में किसी भी प्रकार का राज्य का हस्तक्षेप असहनीय होगा। इन धर्म स्थानों के संचालन का भार पारिवारिक बन्धनों से मुक्त साधुओं के हाथों में इसलिये रहा कि जिन सम्पत्तियों का उद्देश्य धार्मिक एवं आध्यात्मिक है उन पर नियंत्रण का भी अधिकार ऐसे व्यक्तियों के हाथ में रहे जो इनके मर्मज्ञ हों। इसी प्राचीन परम्परा के रूप में इन स्थानों की समृद्धि बढ़ती गई। मठ और आश्रमों का सृजन ऐसे महात्माओं ने इस दृष्टि से किया जहाँ से उस सम्प्रदाय के रहने वाले त्यागी साधुओं के भरण-पोषण एवं शिक्षण की व्यवस्था बनी रहे और उनके द्वारा उस सम्प्रदाय के दर्शनों तथा सिद्धान्तों का प्रचार होता रहे। यह स्वाभाविक ही है कि यदि इन धर्मस्थानों की व्यवस्था और संचालन के निर्देश देने का भार सरकार अधिकारी या सरकार द्वारा नियुक्त कर्मचारी के हाथों में गया तो इससे धर्म स्थानों की मर्यादा की रक्षा के वजाय वरबादी होने की सम्भावना है।

(ख) यह ठीक है कि देश के विभिन्न भागों में धर्म स्थानों के कुछ मठाधीशों ने स्थान एवं सम्प्रदाय की मर्यादा की परम्परा को तोड़कर वैवाहिक जीवन व्यतीत कर रहे हैं और कुछ स्थानों की सम्पत्तियों को निज सम्पत्ति के रूप में परिवर्तित कर रहे हैं। परन्तु इस प्रकार के कार्य ने केवल उन प्रदेशों में हो रहे हैं जहाँ अब तक हिन्दु धार्मिक न्याय कानून नहीं बन पाये हैं बल्कि जिन राज्यों में इस प्रकार के कानून लागू हैं वहाँ की भी सुव्यवस्था समुचित रूप से नहीं हो पाई है। इसका मूल कारण यह है कि कानून के संचालन का भार जिन अधिकारियों एवं व्यक्तियों के जिम्मे सौंपा गया है उन्हें धर्म

आस्था, सम्प्रदाय एवं रीति-नीति के सम्बन्ध में कोई जानकारी नहीं है और उनसे सामान्य लोगों को किसी प्रकार की धार्मिक प्रेरणा या जीवन की शिक्षा नहीं मिल सकती। एतदर्थ यह आवश्यक है कि इन धर्मस्थानों के संचालन की व्यवस्था के मार्गदर्शन एवं देखरेख के लिये यदि कोई कानूनी व्यवस्था की जाय तो उसकी सत्ता को ऐसे व्यक्तियों के हाथों में सौंपा जाय जो इसके पूर्ण जानकार एवं धर्म के प्रति पूर्ण जागरूक हों।

(ग) साधु समाज का यह मत है कि धार्मिक सम्पत्तियों के संरक्षण एवं प्रबन्ध व्यवस्था को ठीक रूप से चलाने के लिये एक केन्द्रीय कानून बने जिसके द्वारा विभिन्न राज्यों के नियमों में एकरूपता आ सके। इस कानून के अन्तर्गत एक सर्वशक्ति सम्पन्न केन्द्रीय रितीजियस बोर्ड का गठन किया जाये जिसकी संख्या अधिक से अधिक २१ तक रखी जाय। यह बोर्ड राज्यों में हिन्दू धर्म स्थानों की व्यवस्था सम्बन्धी कार्यों पर निगरानी रखे। इस बोर्ड का गठन निम्न प्रकार से किया जाये जिसकी अवधि ३ वर्ष की हो।

(१) ५ व्यक्ति धर्मादों के प्रतिनिधि के रूप में निर्वाचित किये जायें।

(२) ३ ऐसे व्यक्ति राष्ट्रपति द्वारा मनोनीत किये जायें जो हिन्दू धर्म के निष्णात विद्वान, शिक्षा शास्त्री एवं विधिवेत्ता हों।

(३) शेष व्यक्ति भारत साधु समाज के द्वारा मनोनीत किये जायें जिनमें साधु सम्प्रदाय का प्रतिनिधित्व रहे।

इस बोर्ड का अध्यक्ष सदस्यों द्वारा कोई गैरसरकारी व्यक्ति निर्वाचित किया जाये जो हिन्दू शास्त्र का विद्वान एवं मर्यादा का पूर्ण जानकार हो। इस प्रकार के बोर्डों का गठन प्रदेशों में भी किया जाये।

(घ) धर्मस्थानों के अधिकारियों के आचरण-दुराचरण, दुर्व्यवस्था एवं उत्तराधिकार सम्बन्धी संघर्ष के निर्णय के निमित्त प्रदेशों में एक "ट्रिब्यूनल" बनाया जाये जिसका गठन उपरोक्त वर्णित कानूनी बोर्ड करे। इस ट्रिब्यूनल में जिला जज के स्तर के एक व्यक्ति, सम्बन्धित झगड़े के सम्प्रदाय का एक प्रधान एवं भारत साधु समाज का एक व्यक्ति सम्मिलित किया जाय। इस ट्रिब्यूनल का निर्णय मान्य हो और केवल उच्च न्यायालय में अपील करने की गुंजायश रखी जाये।

(च) केन्द्रीय बोर्ड बड़े बड़े धर्म स्थानों की व्यवस्था को संचालित करने के निमित्त सम्बन्धित सम्प्रदायों की आवश्यकतानुसार समितियों का गठन करने में सक्षम हो जिससे प्रमुख धर्म स्थानों एवं मन्दिरों की व्यवस्था के निमित्त उसी सम्प्रदाय और सिद्धान्त के मानने वाले व्यक्तियों की समिति बनाई जा सके। इस प्रकार की समितियों में किसी भी प्रकार का राजनैतिक एवं सरकारी प्रतिनिधित्व सदा सर्वदा वर्जित रहे।

(छ) धर्म स्थानों के उद्देश्य एवं प्राचीन काल से प्रचलित परम्परा को तोड़कर उनकी सम्पत्तियों का उपयोग अन्य सिद्धान्तों और आदर्शों के प्रचार के कार्यों में नहीं किया जा सकेगा। जिन स्थानों का उद्देश्य और सम्पत्तियों के उपयोग के सम्बन्ध में स्पष्ट निर्देश नहीं है या कालावधि से उनका लोप हो गया हो तो उनका उपयोग हिन्दु धर्म के प्रचार, धर्म एवं आध्यात्मिक शिक्षा, संस्कृति शिक्षा, गौ सेवा एवं साधुओं के शिक्षण आदि कार्यों में किया जाना चाहिये। सम्मेलन यह उचित समझता है कि हिन्दु धर्म

स्थानों की आमदनी के एक भाग को केन्द्र या प्रदेश स्तर पर एक धार्मिक कोष के रूप में एकत्र कर उनका उपयोग साधुओं की शिक्षा-दीक्षा एवं प्रशिक्षण तथा समाज सेवा के विभिन्न कार्यों में उपयोग के निमित्त लगाया जाय और जो मन्दिर या ऐतिहासिक धर्म स्थान जीर्ण-शीर्ण हो रहे हों उनका जीर्णोद्धार में भी उपयोग किया जाय। परन्तु इस प्रकार की धार्मिक सम्पत्ति के उपयोग का उत्तरदायित्व धार्मिक संस्थाओं से सम्बन्धित एवं साधुओं की समिति द्वारा ही होना वांछनीय होगा।

(ज) जिन मठाधीशों ने स्थान एवं सम्प्रदाय की मर्यादा को परम्परा को तोड़कर गृहस्थ जीवन में प्रवेश कर लिया है उन्हें पद-च्युत के निमित्त तुरन्त कानूनी व्यवस्था की जाय जिससे हम भारतीय दर्शन, संस्कृति एवं आध्यात्मिक जीवन की रक्षा कर सकें।

सम्मेलन को यह जानकर खेद हुआ है कि विभिन्न राज्यों में जो हिन्दू धर्म स्थानों के सम्बन्ध में कानून बने हैं उनके द्वारा प्रत्येक धर्म स्थानों से कर के रूप में राशियां वसूल की जा रही हैं। यहां तक कि जिन मन्दिरों एवं मठों की आमदनी इतनी कम है जिससे उनका संचालन कठिन हो रहा है उन पर भी इस प्रकार के कर लगाये जाते हैं। अधिवेशन का यह निश्चित मत है कि जिन स्थानों एवं मन्दिरों की आमदनी का कोई निश्चित साधन नहीं है उन पर इस प्रकार के कर न लगाये जायें और जिनकी आमदनी पांच हजार रुपये से कम हो उन पर इस प्रकार का कर न लगाया जाय। सम्मेलन धार्मिक स्थानों के सम्बन्ध में अपनी ओर से एक विधेयक बनाने का भी निश्चय करता है।

१७. धर्म-स्थानों के कार्यों की देखरेख के लिये सर्वशक्ति सम्पन्न बोर्ड तथा किसी किसी में सलाहकार बोर्ड बनाने का सुझाव दिया है। निम्नांकित लोगों के बयान तथा स्मृति पत्र के सारांश भी दृष्टव्य हैं।

राजस्थान के राजस्व तथा धर्मस्व मंत्री श्री दामोदर लाल व्यास—

"The executive part of the job should be left to the administrative officer appointed but as a matter of fact my own experience is that different religious institutions will not tolerate official interference every time. Official machinery must be under the control of a supervisory and advisory body so that people must feel that there is an advisory body to look after the religious matters."

इलाहाबाद हाईकोर्ट के ऐडवोकेट श्री जी० पी० भार्गव—

"There is an all-India Organisation of Sadhus—the Bharat Sadhu Samaj which is doing efforts to organise sadhus of the country for the spiritual well being and this organisation has spread in the country. The non-official agency like Bharat Sadhu Samaj should be encouraged by the Government for this purpose and these are laudable efforts. I know eminent Sadhus have joined the Samaj and Swami Sukhdev Nandji of Parmarth Niketan is also one of the members of the Samaj."

उत्तर प्रदेश के प्रसिद्ध महन्त तथा विश्वनाथ गुरुकुल के संस्थापक श्री स्वामी विश्व नाथ यति वाराणसी—

"I would only want the persons following the persuasion and who are Sadhus. They should look after these institutions and
40 M of L—19

there should be a committee of the Sadhu Samaj at the centre and in the States."

कलकत्ता विश्वविद्यालय में संस्कृत के अध्यापक श्री पट्टाभि रमण शास्त्री—

"If by law we are going to lay down certain restrictions which may impinge upon the principles of a particular Sampradaya, then that Sampradaya cannot grow. The jurisdiction of the Government in such matters should be only to see that there is no misappropriation and misuse of the funds. The Government should not regulate the conduct of that particular sampradaya. There should be such a committee consisting of religious people."

बिहार साधु समाज के अध्यक्ष तथा सांस्कृतिक विद्यापीठ के कुलपति श्री ब्रह्मचारी मंगलदेव जी ने अपने स्मृति पत्र में कहा है—

"My suggestion is that each State should have a State Religious Endowment Board consisting of three categories of persons, viz., (a) Representatives of Registered Endowments in a prescribed manner, (b) Representatives of All India Sadhus Organisation like Bharat Sadhu Samaj, (c) Nominees of Governor of the State who have great faith and reverence in Hindu Dharma and are reputed persons in social and Religious Life."

Shri Prakash Vir Shastri, M.P. said in his evidence:—

"I am in favour of the constitution of a Board of Sadhus and Sannyasis to be formed—I am clearly of the opinion that surplus funds of mutts and temples may be used for the purposes of imparting religious instructions and training to archaks and sadhus but I am clearly of the opinion that the Government should not have any hand in the formation of such a Board."

Dr. Ram Subhag Singh, Union Minister of State said in his evidence:—

"Shri Ram Subhag Singh emphasised the need of Sadhus Training Centre and suggested for forming a Board. He further said, I would therefore like that only those persons should be on the Board who are quite familiar with religion and desire some sort of advancement in the cause of religion."

Evidence tendered by His Highness the Maharaja of Banaras:—

"Commissioners should not be given too much powers. There are Commissioners who do not believe in temples even. How to prevent that? Government officers should not be appointed for the management of these institutions but let there be a committee. What I want is a non-official autonomous body."

१८. इस प्रकार के बोर्डों या समितियों के गठन के लिये वाराणसी, अयोध्या, अहमदाबाद, जूनागढ़, हरिद्वार, ऋषिकेश, प्रयाग आदि तीर्थ एवं धर्मस्थानों के प्रमुख साधुओं के अतिरिक्त या गुजरात के मुख्य मंत्री श्री डा० जीवराज मेहता, राजस्थान के मुख्य मंत्री श्री सुखाड़िया, आसाम के मुख्य मंत्री श्री चालिहा, बिहार के मुख्य मंत्री श्री विनोदानन्द झा, उत्तर प्रदेश के विधान सभा के तत्कालीन अध्यक्ष श्री खेर, राजस्थान के वर्तमान राज्यपाल डा० सम्पूर्णानन्द,

ऐडवोकेट जनरल श्री कासलीवाल, भूतपूर्व कानून मंत्री श्री ब्रजमोहन लाल, लोक सभा के सदस्य श्री मुकुट बिहारी लाल भार्गव, जयपुर संस्कृत विभाग के निदेशक श्री के० एम० एस० शर्मा, आयुर्वेद कालेज के प्रिन्सिपल श्री स्वामी जयरामदास, बम्बई के पं० विद्वद शर्मा, सेठ हरिकृष्णदास अग्रवाल, भूतपूर्व राज्यपाल श्रीप्रकाश, उदासीन संस्कृत कालेज वाराणसी के प्रिन्सिपल श्री स्वामी योगेन्द्रा नन्द, सन्यासी संस्कृत कालेज के मंत्री श्री स्वामी धर्मनिन्द, रामानन्द संस्कृत विद्यालय के संस्थापक मंत्री श्री परमहंस रामहृदय दास, मैसूर के राज्यपाल जी, बम्बई के एम० पी० श्री के० के० शाह, ऋषिकेश के श्री स्वामी शिवानन्द सरस्वती, बोधगया (बिहार) के महन्त सत्तानन्द गिरि, बिहार हिन्दू धार्मिक ट्रस्ट बोर्ड के सदस्यगण, निम्बार्क आचार्यपीठ के स्वामी वियोगी विश्वेश्वर, तिरुपति देवस्थानम् के अध्यक्ष श्री अप्पाराव, आन्ध्र हाई कोर्ट के जज श्री निवासाचारी, यातायात कमिश्नर श्री एन० रमेशन, कलकत्ता हाईकोर्ट के अवकाश प्राप्त जज श्री डा० रोमा प्रसाद मुखर्जी प्रभृति अनेकों व्यक्तियों ने अपना विचार प्रकट किया है। इलाहाबाद हाईकोर्ट के अवकाश प्राप्त मुख्य न्यायमूर्ति श्री कमलाकान्त वर्मा ने धर्म स्थानों के देख रेख के लिये समिति बनाने का सुझाव देते हुए कहा है कि इन समितियों या विभागों में ऐसे व्यक्ति को नहीं रखना चाहते जो नौकरी या जीविका की खोज में लगे हों।

इन लोगों के अतिरिक्त बहुत बड़ी संख्या में अन्य लोगों ने दो प्रकार के व्यक्तियों को बोर्ड या समितियों में रखने का उल्लेख किया है। (१) धार्मिक सद्गृहस्थ तथा (२) साधु सन्यासी एवं सम्प्रदायों के प्रतिनिधि। इससे यह स्पष्ट हो जाता है कि लोगों की सामान्यतः इच्छा है कि सम्प्रदाय तथा साधु संगठन के प्रतिनिधियों के ही जिम्मे धर्म स्थानों की व्यवस्था की देख रेख की जवाबदेही सौंपी जाय।

१९. धार्मिक संस्थानों के प्रशासनिक व्यवस्था पर विचार करने के पूर्व यह आवश्यक है कि उनकी वर्तमान स्थिति पर थोड़ा दृष्टिपात कर लिया जाय। आयोग ने दक्षिण भारत तथा उत्तर भारत के प्रमुख मन्दिरों के अतिरिक्त कुछ मठों और आश्रमों का भी निरीक्षण किया है जिनकी निरीक्षण प्रबन्ध व्यवस्था को देख कर सामान्यतः सदस्यों को प्रसन्नता हुई है। दक्षिण के शैव सिद्धान्त मठ धर्मपुरम का प्रबन्ध उत्तम समझा गया और इसके अलावा जिन दो मन्दिरों को हमने देखा वे बड़े सुव्यवस्थित पाये गये। धर्मपुरम स्थान द्वारा शिक्षण संस्थाएं जिनमें धार्मिक शिक्षण की व्यवस्था है संचालित हो रही हैं। उडपी के स्थानों द्वारा भी धर्म प्रचार और शिक्षा सम्बन्धी कार्य किये जा रहे हैं। जहां तक उत्तर भारत के मठों आश्रमों का सम्बन्ध है कमिशन ने गोरखनाथ मठ (गोरखपुर) को देखा और उनकी व्यवस्था से हम प्रभावित हुए। बिहार में बोधगया मठ तथा ऋषिकेश और हरिद्वार में शिवानन्द आश्रम, परमार्थ निवेदन, श्रीकृष्ण निवास आश्रम, श्री गिरीशानन्द आश्रम, अयोध्या में मणिराम की छावनी तथा वेदान्ती जी के आश्रमों को देखा। जिनमें नियमित रूप से साधुओं की शिक्षा एवं अपने सम्प्रदाय के सिद्धान्तों का प्रचार एवं प्रकाशन होता है। रामकृष्ण मिशन के बैलूर मठ को भी देखा गया। अहमदाबाद में महामण्डलेश्वर श्रीस्वामी कृष्णानन्द जी का सन्यास आश्रम वेदान्त प्रचार का एक केन्द्र बन गया है। वाराणसी में मठों एवं आश्रमों द्वारा एक दर्जन से भी अधिक संस्कृत विद्यालय समुचित रूप से संचालित हो रहे हैं। गुजरात, बिहार, उत्तर प्रदेश में सैंकड़ों संस्कृत विद्यालय, हाई स्कूल तथा कालेज मठों द्वारा संचालित हो रहे हैं जिनकी कुछ सूची आयोग के रिपोर्ट के साथ संलग्न है। यह निर्विवाद रूप से कहा जा सकता है कि विभिन्न सम्प्रदायों के

मठों के महन्त अपनी क्षमता तथा योग्यता के अनुसार अपने धार्मिक तथा सामाजिक सेवा के कार्यों में लगे हुए हैं। मैं यहां एक बात को स्पष्ट करना आवश्यक समझता हूं कि मठों एवं आश्रमों की पद्धति में भिन्नता है। मठ प्रायः कुटीया साधुओं द्वारा संचालित हैं जिनमें चल-अचल सम्पत्तियां तथा भूसम्पत्तियां जमीन्दारी की आमदनी के साथ लगी हुई थीं। आश्रमों में भू-सम्पत्तियों का अभाव है। वे उस आश्रम के प्रधान के विद्वता तथा धार्मिक प्रचार से भक्तों द्वारा प्राप्त आर्थिक साधनों से संचालित होते हैं। प्रायः परमहंस वर्ग के विद्वान साधुओं ने इन आश्रमों को अपने प्रतिभा से स्थापित कर धर्म प्रचार के कार्यों में अपने को न्योछावर किया है। उसी प्रकार दशनामी, सन्यासी, उदासी, निर्मला, तथा रामानन्दीय वैष्णवों के अखाड़े हैं। जिनमें महन्तों का मनोनयन नहीं होता बल्कि वहां पंचायती प्रणाली चालू है। अर्ध कुम्भ तथा पूर्ण कुम्भ के अवसरों पर अखाड़ों के महन्तों तथा श्री महन्तों का निर्वाचन होता है। अखाड़ों द्वारा ही मण्डलेश्वरों का निर्वाचन होता है जो अखाड़ों के आचार्य गुरु कहलाते हैं। दशनामी तथा उदासी अखाड़ों के साधुओं में इनका प्रभाव समझा जाता है। ये सभी प्रायः चार कुम्भ पर्वों पर एकत्र होते हैं, जो प्रयाग, हरिद्वार, उज्जैन तथा नासिक में लगते हैं।

आयोग ने रामकृष्ण मिशन के प्रधान कार्यालय बैलूर मठ के प्रधान स्वामी जी का भी बयान लिया और उन्होंने बताया कि मठ की तथा साधुओं की व्यवस्था के लिये सर्वोच्च सत्ता एक ट्रस्ट समिति को है जिसमें केवल रामकृष्ण मिशन के साधु ही सदस्य हो सकते हैं। कोई भी गृहस्थ इसमें ट्रस्टी नहीं है। शिक्षण संस्थाओं तथा सामाजिक कार्यों के लिये जो समितियां हैं उनमें गृहस्थ लोग रखे जाते हैं। इससे यह स्पष्ट हो गया कि जिन संस्थाओं की सत्ता साधुओं के हाथों में है उनका संचालन समुचित रूप से चल रहा है। हां इससे इन्कार नहीं किया जा सकता है कि देश के विभिन्न भागों में सैकड़ों मठों के महन्तों ने मठ के आदर्शों को नष्ट कर डाला है और कुत्सित जीवन व्यतीत कर रहे हैं। ऐसे लोग अच्छे महन्तों तथा साधुओं को भी अपने दुराचरण से बदनाम करते हैं। जिनके परिष्कार के लिये तुरन्त कार्यवाही की जानी चाहिये। यह कार्य साधु संगठनों के द्वारा सफलतापूर्वक कराने का प्रयास होना चाहिये न कि सरकारी अधिकारी के जिम्मे सौंप दिया जाय जो धर्माचार्यों पर श्री महन्त बन जाय।

२०. अब मैं तमाम साक्षियों, स्मृतिपत्रों तथा परिस्थितियों को समझने के बाद निश्चित रूप से इस निष्कर्ष पर पहुंचा हूं कि धार्मिक स्थानों की सुरक्षा, सुव्यवस्था तथा उपयोगिता के लिये एक केन्द्रीय कानून का बनना आवश्यक है, जिससे संस्थाओं में फैली बुराइयों को परिष्कृत किया जा सके और धार्मिक सम्पत्तियों का संरक्षण तथा संवर्द्धन होता रहे। हालांकि समय के वर्तमान अधार्मिक भावना तथा समाजवादी नीति को देख कर लोगों को सन्देह हो रहा है कि कहीं सुरक्षा तथा सुधार के नाम पर जो कानून बने वह संस्थाओं की स्वतंत्रता को ही समाप्त न कर दे। लोक सभा के सदस्य श्री प्रकाशवीर शास्त्री, उत्तर प्रदेश लखनऊ के श्री पीताम्बर दास एम० एल० सी० एवं श्री स्वामी करपात्री जी ने अपने साक्षियों में इस सम्बन्धी कानून बनाने का विरोध किया है और देश के अनेकों लोगों तथा बलकत्ता के एक सिष्टमंडल ने कानून द्वारा सरकारी हस्तक्षेप की आलोचना की है। उत्तर प्रदेश सरकार के वन मंत्री श्री अलगूराय शास्त्री ने आयोग के पास भेजे गये अपने पत्र में धर्म स्थानों की व्यवस्था के सम्बन्ध में सरकार को अलग रखने का सुझाव दिया है। परन्तु बहुसंख्यक साक्षियों एवं लोगों के विचारों से कानून

बनाये जाने का मेरे निष्कर्ष का समर्थन मिलता है। एतदर्थ धर्मस्थानों की व्यवस्था की देख-रेख के लिये निःसंकोच रूप से कानून बनना श्रेयस्कर है। इस कानून के द्वारा मठों के मठाधीशों तथा मन्दिरों के या अन्य धार्मिक न्यासों के न्यासधारियों को उस स्थान का ठीक ठीक हिसाब रखने, जांच कराने तथा बजट बनाने की व्यवस्था की जाय। संस्थाओं का बजट इस स्थान की मर्यादा, परम्परा तथा रीति नीति के अनुसार ही होना चाहिये और प्रबन्ध व्यवस्था का पूर्ण अधिकार तथा उत्तरदायित्व सम्बन्धित मठाधीश या न्यासधारी को ही पहले जैसा अक्षुण्ण रहना चाहिये जब तक कि वह दुराचरण के कारण अपने पद से हटा न दिया जाय। धर्म स्थान की धार्मिक एवं आर्थिक व्यवस्था तथा उससे सम्बन्धित आन्तरिक विषयों में किसी भी प्रकार का कानून द्वारा हस्तक्षेप सर्वथा वर्जित होना चाहिये जब तक कि स्थान की व्यवस्था ठीक से चल रही हो।

२१. देश के विभिन्न राज्यों में धार्मिक ट्रस्ट ऐक्ट लागू है और मद्रास तथा बम्बई के कानून से मिलता जुलता हुया कानून, आन्ध्र, मैसूर, उत्कल, राजस्थान आदि प्रदेशों में बने हैं जिनमें कमिश्नर धार्मिक स्थानों के सर्वोच्च अधिकारी राज्य सरकार के एक विभाग के अन्तर्गत है। केरल में थोड़ा अन्तर है जहां पर एक स्वतंत्र गैर सरकारी सदस्यों का छोटा बोर्ड है। इसी प्रकार बिहार में एक बड़ा बोर्ड है जिसमें बहुमत विधान मण्डलों द्वारा तथा सरकार द्वारा मनोनीत व्यक्तियों का है। बिहार के बोर्ड की संख्या राजनैतिक प्रभाव से दूर कर साधुओं एवं धर्म पिपासु सदगृहस्थों के साथ आवश्यकतानुसार ६ से ११ तक की रखी जाय तो वहां के कानून का लक्ष्य सफलता पूर्वक पूर्ण हो सकता है। दक्षिण के राज्यों में मन्दिरों की प्रधानता है तो बिहार, गुजरात, उत्तर प्रदेश, बंगाल आदि प्रदेशों में मठों एवं आश्रमों की बहुलता है। इनके संचालन का दायित्व पारिवारिक बन्धन से मुक्त साधुओं के हाथों में है। जो अपन सम्प्रदाय तथा सिद्धान्त के धार्मिक गुरु हैं। यह सर्वोच्च न्यायालय से भी प्रमाणित हो चुका है कि मठाधिपति का स्थान और पद एक ट्रस्टी से ऊंचा है और उसका अपने स्थान से स्वतंत्र तथा विशेष दिलचस्पी है। ट्रस्टी विदेशी शब्द है जिसके प्रयोग ने हमारे यहां एक विशेष परिस्थिति पैदा कर दी है। मठ को ट्रस्ट तथा महन्त को ट्रस्ट के रूप में प्रायः सभी कानूनों में प्रयोग किया जाता है जिससे एक मन्दिर का साधारण गृहस्थ ट्रस्टी तथा मठ का महन्त जो धर्म गुरु है वह भी ट्रस्टी ही मान लिया जाता है। मेरी समझ से यह व्यवस्था ठीक नहीं है, मठ को ट्रस्ट तथा मठाधिपति को ट्रस्टी नहीं कहा जाना चाहिये।

मैं यह उचित एवं न्याय संगत समझता हूं कि मठों की मर्यादा तथा धार्मिक महत्ता को कायम रखने के लिये राज्यों के कमिश्नरों के सीधे चगुल से उन्हें अलग रखना चाहिये। थोड़े गृहस्थ अधिकारी धार्मिक विषयों में किसी विरक्त मठाधिपति का नियंत्रण करें और मार्ग दर्शन दें यह भारतीय संस्कृति एवं प्राचीन आदर्शों के सर्वथा प्रतिकूल है। इससे धर्माचार्यों की प्रतिष्ठा में हानी होती है और वे समाज में उपहास के पात्र बनते हैं। इस व्यवस्था को कोई भी स्वाभिमानी सन्यासी या मठाधिपति अपने मर्यादा तथा सम्मान के विपरीत समझेगा। इसलिये मेरा यह निश्चित मत है कि प्रत्येक प्रदेश में आवश्यकतानुसार ५ से लेकर ६ की संख्या तक योग्य साधुओं एवं मठाधिपतियों का एक बोर्ड बनाया जाय जिसे मठों की देखरेख एवं मार्ग दर्शन देने का अधिकार प्राप्त हो। इस बोर्ड में केवल दो सरकारी प्रतिनिधि रखे जायें जो विधि विशेषज्ञ हों। बोर्ड का गठन भारत साधु समाज जैसी साधुओं का संगठन द्वारा राज्य सरकार के माध्यम से किया जा सकता है। धर्मादा कमिश्नर मठों का बजट, कोष का उपयोग, उसकी व्यवस्था तथा

धार्मिक एवं स्थान से सम्बन्धित अन्य विषयों में इस बोर्ड के मार्ग दर्शन में कार्य करें। केवल इन स्थानों के हिसाब आदि की जांच कमिशनर अपने औडीटर द्वारा कराने में समर्थ हो। जिस मठ की व्यवस्था खराब हो रही है या वहां का मठाधिपति चारित्रिक या अन्य कारणों से अयोग्य सा दीखता है तो सामान्यतः बोर्ड के मार्ग दर्शन में कमिशनर उस स्थान की व्यवस्था को सुचारु रूप से संचालन के लिये स्वीकृत बनावे और उसकी स्वीकृति आयोग के रिपोर्ट में वर्णित "जुडीशियल ट्रिब्यूनल" से प्राप्त करे। मठाधिपति को निर्दिष्ट अयोग्यता के कारण अपने पद से हटाने की शक्ति केवल "जुडीशियल ट्रिब्यूनल" को प्राप्त हो जो वादी प्रतिवादी को अपनी साक्षियों एवं प्रमाणों को सुनन तथा दिखाने का पूरा अवसर प्रदान करे। ट्रिब्यूनल की अपील केवल उच्च न्यायालय (हाईकोर्ट) में की जाय। ट्रिब्यूनल में विधिवत् जुडीशियल अधिकारी के अतिरिक्त दो धर्मशास्त्रों तथा सम्प्रदाय के ज्ञाता साधुओं को अनिवार्य रूप से सम्मिलित किया जाय। ट्रिब्यूनल मठ की मर्यादा, परम्परा तथा सम्प्रदाय की रीति नीति के सम्बन्ध में उपरोक्त वर्णित बोर्ड के परामर्श को ध्यान में रखकर अपनी उचित कार्यवाही करने में सक्षम हो। इस प्रकार साधुओं का बोर्ड इसलिये आवश्यक है जिससे मठों के मठाधीशों या प्रधानों को कोर्ट के मुकदमों तथा सरकारी अधिकारियों के दरवाजे को बराबर खटखटाना न पड़े।

२२. मठों की सामान्य दुर्व्यवस्था की जांच पड़ताल करने की शक्ति कमिशनर को प्राप्त हो पर उस पर निर्णय बोर्ड का हो। इसके अतिरिक्त जो दूसरे मन्दिर धार्मिक ट्रस्ट या न्यास हैं उनके न्यासधारियों पर कमिशनर का वर्तमान अधिकार अक्षुण्ण रखा जाय। प्रतिबन्ध केवल यह रहे कि उसे केवल कार्यपालिका की शक्ति प्राप्त हो और न्यायपालिका की शक्ति "जुडीशियल ट्रिब्यूनल" के जिम्मे सौंपी जाय जैसा कि आयोग ने अपनी रिपोर्ट में उल्लेख किया है। मन्दिरों के सामान्य बजट की स्वीकृति उनके प्रशासन की जांच पड़ताल तथा मुख्यवस्था के लिये आवश्यक कार्यवाही करने का अधिकार कमिशनर को प्राप्त हो। लेकिन संस्था के बोधगम्य परम्परा तथा संस्थापक के इच्छा के प्रतिकूल कोई कार्य, कार्यवाही या केष के उपयोग के सम्बन्ध में कमिशनर को सत्ता नहीं दी जानी चाहिये। किसी न्यास के उद्देश्य या परम्परा को तोड़ने निरस्त करने तथा नये कार्य प्रणाली तथा उद्देश्य को प्रभावित प्रचारित करने का अधिकार किसी को नहीं हो सकता है। यह क्रम मठ तथा मन्दिर दोनों में लागू रहना चाहिये। मन्दिर का स्वरूप नष्ट हो सकता है परन्तु वहां के देवता तो मौजूद रहते हैं। उसी प्रकार मठ की सम्पत्ति या साधन नष्ट हो सकते हैं परन्तु उसका सम्प्रदाय या उसका उद्देश्य नष्ट नहीं समझा जाना चाहिये।

भारत का वर्तमान संविधान भी प्रत्येक धार्मिक सम्प्रदाय को अपनी धार्मिक स्वतंत्रता कार्यप्रणाली तथा संस्थाओं के देखरेख एवं संचालन करने का अबाधगति से अधिकार प्रदान करता है। जिसे अक्षुण्ण रखना परमावश्यक है। हमने ऊपर मठों की व्यवस्था के सम्बन्ध में जिस बोर्ड को गठित करने का सुझाव दिया है वह इस दृष्टि से प्राचीन तथा नवीन परम्परा को स्वस्थ बनाने में समर्थ होगा कि निवृत्ति मार्गी साधुओं पर उन्हीं का सामान्य नियंत्रण रहे। प्रवृत्तिमार्गी यानी गृहस्थ न्यासधारियों पर प्रवृत्ति मार्गी गृहस्थ कमिशनर या गृहस्थों की समिति की देखरेख का अधिकार दिया जाय तो यह उचित ही है। इस प्रकार प्रकृति के दो विभागों का कार्य दो विभागों को धार्मिक संस्थाओं के सम्बन्ध में सौंपना न्यायसंगत होगा। जहां तक मानवीय दृष्टिकोण का प्रश्न है उसमें तो सर्वांग संचालन के लिये जो भी देश या विश्व में कानून बने हैं वह साधु तथा गृहस्थ दोनों पर लागू हैं। जमीन या मकानों का टैक्स दोनों को लगता

है और सामान्य सामाजिक कानून के उल्लंघन पर दोनों को दंड दिया जाता है। परन्तु धार्मिक स्थानों तथा आध्यात्मिक परम्पराओं में भी साधुओं पर अपनी व्यवस्था के संचालन के लिये गृहस्थ सरकारी अधिकारी का अधिकार रहे यह सर्वथा आपत्तिजनक तथा प्राचीन धार्मिक एवं सांस्कृतिक सिद्धान्तों के विरुद्ध है। देश में पर्याप्त संस्था में योग्य एवं विद्वान तथा प्रतिभाशाली साधु एवं मठाधीश हैं जो धार्मिक एवं सामाजिक उत्थान के कार्यों में लगे हैं। साधुओं का अखिल भारतीय संगठन भी बन चुका है। इसका उचित सम्मान करना आवश्यक है।

२३. कुछ राज्यों को छोड़कर प्रायः सभी राज्यों ने धार्मिक ट्रस्ट कानूनों का निर्माण किया है। राज्यों की भावनाओं को देखने से यह आभास मिलता है कि वे अपने कानून बनाने तथा उसके पालन करने के सम्बन्ध अधिकार को छोड़ना पसन्द नहीं करेंगे। केन्द्रीय सरकार के लिये भी यह सम्भव नहीं है कि प्रादेशिक स्वतंत्रता को वह कम करे और अपने पास से अधिकारियों को नियुक्त कर देश के विभिन्न भागों में भेजे। प्रश्न केवल यह है कि सारे देश में कानूनों में सामान्यतः एकरूपता कैसे लाई जा सके। मेरी सम्मति में सम्पूर्ण रूप से एकरूपता लाना तो सम्भव एवं अनुकूल नहीं होगा परन्तु सिद्धान्त में स्थानीय समस्याओं को ध्यान में रखते हुए एकरूपता लाई जा सकती है। संसद में विचाराधीन "पब्लिक रिलीजियस ट्रस्ट बिल, १९६०" में आवश्यक संशोधन एवं परिवर्द्धन द्वारा यह काम पूरा हो सकता है। सामान्यतः राज्यों में धर्मस्थानों सम्बन्धी कानूनों का पालन राज्य का बोर्ड या अधिकारी करेगा और राज्य सरकार को नियम उपनियम बनाने का अधिकार होगा यों तो अनेकों लोगों ने केन्द्रीय कानून को बनाने तथा संचालित करने का सुझाव दिया है। प्रश्न यह है कि क्या केन्द्र में कोई धर्मस्थानों के सम्बन्ध में सत्ता सौंपी जाय। साक्षियों से इस बात का पूर्ण रूप से समर्थन मिलता है कि केन्द्रीय हिन्दू धर्मस्व बोर्ड या कमीशन की नियुक्ति की जाय जिसमें साधु, न्यायियों, सम्प्रदाय के प्रतिनिधियों तथा धार्मिक सदगृहस्थों को रखा जाय।

मेरी इस विचार से पूर्णरूप से सहमत हूं और आवश्यक समझता हूं कि अखिल भारतीय स्तर पर एक ऐसा कानून जीवन को उन्नत बनाने वाले धर्मस्थानों के सामूहिक बचत साधनों एवं शक्तियों के सहारे राष्ट्रीय जीवन में धर्म के आदर्शों को जागरूक बनाने का प्रयास करे और इस क्षेत्र में जो स्वेच्छा संस्था में कार्य कर रही हैं उन्हें अपनी सहायता से शक्तिशाली बनाये। इसके साथ ही जो ख्यातिप्राप्त मन्दिर या देवस्थान अर्थाभाव के कारण जीर्णोद्धार हो रहे हैं उन्हें जीर्णोद्धारित करावे। आयोग ने अपनी रिपोर्ट में तथा हमने अपने सुझावों में अनेकों अखिल भारतीय स्तर पर शिक्षण संस्थाओं की स्थापना तथा साधुओं की शिक्षा-दीक्षा के लिये प्रतिष्ठान स्थापित करने का विचार प्रकट किया है जो किसी एक राज्य की सीमा से बाहर है। इसी प्रकार जम्मू या आन्ध्र प्रदेश के किसी बड़े मन्दिर के पास लाखों रुपये की वार्षिक बचत है तो दूसरी ओर उड़ीसा या गुजरात में अखिल भारतीय स्तर का प्राचीन मन्दिर या देवालय अर्थाभाव में नष्ट हो रहा है, जिनकी मरम्मत समृद्धिशाली मन्दिर के बचत साधनों से की जा सकती है। यह प्रश्न भी एक राज्य की सीमा में नहीं आ पाता है। रिपोर्ट में देवालयों के बचत सम्पत्तियों की एक केन्द्रीय कोष बनाने का भी सुझाव आया है। इसके अतिरिक्त बहुसंख्यक लोगों ने यह सुझाव दिया है कि धर्मस्थानों की राष्ट्रीय सूची बनाई जानी चाहिये और हिन्दू धर्म के विभिन्न आध्यात्मिक सिद्धान्तों के मूल कार्यों एवं धार्मिक ग्रंथों का अन्वेषण करना चाहिये। यह सारे प्रश्न अखिल भारतीय स्तर द्वारा सुलझाये जा सकते हैं और राज्यों से उनके हिस्से के अनुसार सहयोग प्राप्त किया जा सकता है। एतदर्थ एक अखिल भारतीय स्तर पर केन्द्रीय हिन्दू धर्मस्व बोर्ड का

ठन किया जाना चाहिये और तदनुसार इसकी व्यवस्था संसद में उपस्थित बिल में भर कर ना उचित एवं न्याय संगत होगा।

आयोग ने जिस 'केन्द्रीय ट्रिब्यूनल' के गठन का उल्लेख किया है उसका कार्य केवल 'हुडीशियल' होना चाहिये। शिक्षण संस्थाओं की स्थापना तथा राज्य के प्रशासनिक व्यवस्था को मार्ग-दर्शन देने या ऊपर वर्णित कार्यों से उसका सम्बन्ध न हो। न्याय तथा कार्य की दोनों शक्ति निकाय को देना उचित नहीं होगा। इन दिनों तो न्याय को कार्य पालिका शक्ति से सारे देश अलग किया जा रहा है।

२४. भारत सरकार के माध्यम से एक केन्द्रीय हिन्दू धर्मस्व आयोग या बोर्ड का गठन दिया जाय, जिसका अध्यक्ष कोई विख्यात विधिवेत्ता, शिक्षा शास्त्री एवं हिन्दू धर्म में पूर्ण निष्ठ खने वाला व्यक्ति हो। इसका कार्यकाल पांच वर्षों का रहे और निम्नांकित श्रेणियों से सदस्य नीची नीति हों, जिनकी संख्या ९ से लेकर ११ तक भी रखी जाय :-

(क) देश के प्रमुख साधु सम्प्रदायों के प्रतिनिधि के रूप में योग्य साधु एवं मठाधिपति भारत साधु समाज जैसे अखिल भारतीय साधु संगठन द्वारा मनोनीत।

(ख) ऐसे प्रमुख व्यक्ति जो धर्मस्वों के संचालन से सम्बन्धित हों या धार्मिक शैक्षणिक एवं सामाजिक उत्थान सम्बन्धी कार्यों में लगे हों।

(ग) ऐसे व्यक्ति जो भारतीय शास्त्र के निष्णात विद्वान्, शिक्षा शास्त्री या विधिवेत्ता धार्मिक जीवन में विश्वास रखते हों।

इस बोर्ड में अधिक संख्या साधुओं एवं धार्मिक कार्यों से सम्बन्धित व्यक्तियों की होनी चाहिये। इसके गठन में यह ध्यान रखा जाय कि देश के विभिन्न क्षेत्रों (जोन) के व्यक्तियों का समावेश हो जाय। बोर्ड का अपना स्टाफ होगा और अपनी सील होगी।

२५. इस बोर्ड को राज्य के धर्मादा प्रशासनों से कुछ आर्थिक भाग प्राप्त होगा और केन्द्र शासित राज्यों के धर्मस्वों तथा अखिल भारतीय स्तर के बड़े धर्मस्वों से फीस लेने का अधिकार प्राप्त होना चाहिये। बोर्ड का कार्य निम्नांकित हो सकता है :-

(क) राज्यों में नियुक्त धर्मादा कमिश्नरों की कार्य प्रणालियों की निगरानी करना तथा सामान्य रूप में धर्म स्थानों के प्रशासन को सुव्यवस्थित बनाने में मार्ग-दर्शन देना।

(ख) धर्म स्थानों के हित एवं सुरक्षा सम्बन्धी राष्ट्रीय प्रश्नों एवं उद्देश्यों की कार्यान्विति के सम्बन्ध में समय समय पर विचार विमर्श के निमित्त राज्यों के कमिश्नरों, तथा बोर्डों या सम्बन्धित सरकारी विभाग के अधिकारियों का सम्मेलन बुलाना तथा सामूहिक प्रश्नों के हल निकालने के लिये समन्वय स्थापित करना।

(ग) हिन्दू धर्मस्वों के वचन कोषों से एक केन्द्रीय कोष का निर्माण करना और उनका उपयोग तथा प्रशासन करना। देश के महत्वपूर्ण देवालयों का जीर्णोद्धार कराने का निर्देश देना या स्वयं करना कराना।

(घ) हिन्दू धर्मस्वों के आय से स्थापित होने वाले निरक्षण संस्थाओं तथा साधु प्रशिक्षण प्रतिष्ठानों का सामान्य नियन्त्रण करना तथा इन कार्यों के लिये साधु संगठनों या अन्य धार्मिक तथा सामाजिक संगठनों को अनुदान देना।

(ङ) राष्ट्रीय जीवन में धार्मिक, आध्यात्मिक एवं नैतिक शिक्षा प्रचार प्रसार के लिये धर्मस्वों के आय से साहित्यों का प्रकाशन करना या इसके लिये स्वेच्छा संगठित संस्था को मान्यता प्रदान कर योगदान देना।

(च) भारत के दार्शनिक ग्रन्थों, पाण्डुलिपियों तथा विभिन्न शास्त्रों के तत्वों का अनुसन्धान (रिसर्च) कराना या करने वाली संस्था को इस कार्य के लिये अनुदान देना और हिन्दू धर्म से सम्बन्धित साहित्यों का समय समय पर प्रकाशन की व्यवस्था कराना।

(छ) आदिम जातियों एवं पिछड़े हुए हिन्दुओं के धार्मिक, सामाजिक एवं सांस्कृतिक दृष्टि से उन्नति के निमित्त धार्मिक शिक्षा की व्यवस्था करना और धर्मस्वों के अतिरिक्त इन कार्यों के लिये सामान्य हिन्दुओं से धन एकत्र करना और उनका उपयोग करना और सामाजिक संगठनों द्वारा कराना।

(ज) हिन्दू धर्मस्वों से सम्बन्धित बने हुए कानूनों, नियमों आदि पर समय समय पर विचार करना और संशोधन तथा परिवर्द्धन के लिये केन्द्रीय सरकार और राज्य सरकारों को परामर्श देना।

(झ) धर्मस्थानों की व्यवस्था धार्मिक कृत्य के सिद्धान्त तथा धर्मस्वों से सम्बन्धित धार्मिक एवं गैर धार्मिक रीति नीति के सम्बन्ध में स्पष्टीकरण के लिये देश के विभिन्न सम्प्रदायों के प्रमुख धर्माचार्यों का स्वयं या उनके संगठन (भारत साधु समाज) द्वारा उनका सम्मेलन आयोजित करना तथा परामर्श प्राप्त करना।

यह स्मरण रखना चाहिये कि विभिन्न कार्यों के सम्पादन के लिये भारत सरकार ने विश्वविद्यालय अनुदान आयोग, विधि आयोग, योजना आयोग, खादी ग्रामोद्योग आयोग आदि निकायों का संगठन किया है और इस विषय के जानकार व्यक्तियों को ही उसमें रखा जाता है। एतदर्थ इस प्रकार के निकाय को बनाने में कोई व्यवहारिक कठिनाई नहीं है। देश की यह राष्ट्रीय नीति बन चुकी है कि हित से सम्बन्धित व्यक्तियों को ही ऐसे संगठनों में सम्मिलित किया जाय। यह उस नीति का रूप है जिससे उनका पूर्ण सहयोग एवं सहकार मिले और स्वयं उद्देश्य प्राप्ति में उत्साह प्राप्त हो। इसलिये धार्मिक विषयों से सम्बन्धित निकायों में न्याय तथा व्यवहार दोनों दृष्टियों से साधु-सन्യാसियों तथा धर्म स्थानों का अधिकांश प्रतिनिधित्व होना न्याय संगत है।

धार्मिक न्यास विधेयक, १९६०

(रिलीजियस ट्रस्ट्स बिल)

२६. संसद् में विचाराधीन धार्मिक न्यास विधेयक की धाराओं को हमने देखा है और आयोग ने भी अपनी रिपोर्ट में उसकी कुछ धाराओं में संशोधन का उल्लेख किया है। परन्तु मेरी सम्मति में यह विधेयक बहुत कारगर प्रमाणित नहीं हो सकता, जब तक कि इसमें पर्याप्त संशोधन न किये जायें। हमने अपनी टिप्पणी में जिन बातों का उल्लेख किया है उनका इसमें समावेश करना उचित होगा। इसकी परिभाषिक व्याख्यात्मक धाराओं में न्यासधारी (ट्रस्टी) तथा न्यास (ट्रस्ट) की परिभाषा से मठ एवं मठाधिपति की परिभाषा को अलग करना चाहिये और उनके साथ सामान्य न्यासधारियों जैसा व्यवहार नहीं होना चाहिये :-

(क) विधेयक की धारा ४ में जिस प्रादेशिक सलाहकार बोर्डों की व्यवस्था है, उसमें राजनैतिक प्रतिनिधित्वों को हटा कर साधु संगठनों तथा धार्मिक एवं सामाजिक संग-

उनों के व्यक्तियों को प्रतिनिधित्व देना चाहिये और मठों के लिये अलग से साधुओं की समिति बनानी चाहिये जिसके निर्देशन में कमिश्नर का कार्य चलेगा इस सम्बन्ध में हमारी ऊपर की टिप्पणी देखी जाय और तदनुसार इसकी व्यवस्था हो।

(ख) विधेयक की धारा १२ की उपधारा (३) में न्यासों के लेखापाल की नियुक्ति का अधिकार कमिश्नर को दिया गया है। यह व्यवस्था तो धर्मस्थानों की प्रभुसत्ता स्वतन्त्रता तथा मठधीशों एवं न्यासधारियों के मौलिक अधिकार एवं दायित्वों पर कुठाराघात है। एक प्रकार से यह प्रत्यक्ष रूप से सरकारी अधिकारी का हस्तक्षेप है जिसे धार्मिक जनता सहन करना पसन्द नहीं करेगी। इसमें दो राय नहीं हो सकती है कि न्यासों का लेखा ठीक रखा जाय और उसकी जांच हो परन्तु इसके नाम पर न्यासधारियों को उनके व्यवस्था सम्बन्धी मौलिक अधिकार से वंचित कर दिया जाय यह उचित नहीं होगा। न्यास या मठ में प्रबन्ध व्यवस्था या अन्य कार्यों के पालन के लिये कर्मचारियों की नियुक्ति में किसी भी प्रकार का सरकारी या उसके अधिकारी का हस्तक्षेप सर्वथा वर्जित रहना चाहिये। यह अधिकार संस्था के प्रधान को ही अक्षुण्ण रूप से रहना चाहिये। यदि धर्मस्थानों के व्यवस्था से सम्बन्धित कर्मचारियों की नियुक्ति कमिश्नर करने लगा तो उस स्थान के धर्माचार्य के प्रति वह कर्मचारी जिम्मेवारी नहीं समझेगा और वह धर्माचार्य या न्यासधारी उपहास तथा उपेक्षा का पात्र बन जायेगा।

(ग) विधेयक की धारा २० में न्यासधारियों को उनके पद से हटाने तथा २१ में नियुक्ति का अधिकार कमिश्नर को दिया गया है। आयोग ने यह अधिकार एक ट्रिब्युनल को देने का प्रस्ताव किया है। इस सम्बन्ध में मेरी निश्चित राय है कि किसी न्यासधारी या मठाधिपति को हटाने या उत्तराधिकार का विवाद तय करने का अधिकार 'जुडीशियल ट्रिब्युनल' को होना चाहिये। साधारण ट्रस्टी को उसकी निर्दिष्ट अयोग्यता के कारण विशेष स्थिति में कमिश्नर मुअत्तल (सस्पेंड) कर सकता है, पर जहां तक किसी मठाधिपति के सम्बन्ध की बात हो उसे मुअत्तल करने का भी अधिकार कमिश्नर को नहीं होना चाहिये। यह कार्य प्रदेशों में गठित साधु बोर्ड तथा जुडीशियल ट्रिब्युनल के जिम्मे सौंपना चाहिये। धारा २० की उपधारा (ए) के अपराध में किसी न्यासधारी को अपने पद से हटा देना बड़ा अन्याय होगा। इससे तो कमिश्नर को पूरी स्वतन्त्रता दे दी गई है कि यदि संयोग से किसी न्यासधारी ने समय पर उनके निर्देश का पालन न किया तो वे पदच्युत होने तक के दोष में आ जायेंगे। मैं इस उपधारा से सहमत नहीं हूँ।

किसी मठ के मठाधिपति को केवल उसके दुराचरण, तथा ऐसे अक्षम्य अपराध के कारण ही पदच्युत या दण्डित किया जा सकता है, जिससे उनके व्यक्तिगत कारण से धर्म स्थान की धार्मिक पर्यादा तथा सम्पत्ति की विशेष हानी होती हो।

२७. विधेयक की धारा (२६) में धर्मस्वों के आय पर ३ प्रतिशत कर लगाने की व्यवस्था है मैं इसके साथ सहमत हूँ परन्तु कर केवल शुद्ध आय पर ही लगना चाहिये। यदि किसी धर्म स्थान में आमदनी का श्रोत नकद रूपया है तो सामान्य रेंट तथा टैक्सों की छूट देकर २५ प्रतिशत प्रबन्ध व्यवस्था खर्च की छूट देनी चाहिये। यदि धर्मस्थान में आय का श्रोत कृषि यानी खेती हो तो खेती की मालगुजारी, कृषि व्यवस्था खर्च (पटावन, बीज, मजदूरी, जानवर खरीद)

तथा २५ प्रतिशत प्रबन्ध व्यवस्था खर्च को बाद देकर तब धर्मस्व की शुद्ध आय समझी जानी चाहिये और उसी आय पर कमिश्नरों द्वारा कर निर्धारण (असैसमेंन्ट) करना चाहिये। जिन न्यासों की आमदनी तीन हज़ार तक वार्षिक हो उन पर कर नहीं लगाना चाहिये।

मद्रास तथा कुछ अन्य राज्यों में ८ प्रतिशत तक कर लिया जा रहा है बहुत आपत्तिजनक है। बिहार में कर निर्धारण प्रणाली से लोगों में सामान्यतः असन्तोष पाया गया है। इस विधेयक में केन्द्रीय हिन्दू धर्मस्व बोर्ड गठन सम्बन्धी व्यवस्था कर ली जाय।

२८. यह निर्विरोध रूप से कहा जा सकता है कि मठ या मन्दिर से सम्बन्धित सम्पत्ति का उपयोग सब से पहले उस स्थान की धार्मिक व्यवस्था, प्रबन्ध, मरम्मत आदि कार्यों में होना चाहिये। तदनन्तर उस सिद्धान्त के दर्शन के प्रचार में मन्दिरों के साधनों से पुजारियों और अर्चकों को पूजापाठ सम्बन्धी कार्यों में प्रशिक्षण दिया जाय और योग्य शिक्षित पुजारी रखे जायें, इसमें कोई आपत्ति नहीं हो सकती। लेकिन शिक्षा का माध्यम धार्मिक एवं आध्यात्मिक प्रवृत्ति होना चाहिए। वर्तमान स्कूलों और कालेजों के रहन-सहन तथा वातावरण में हम अच्छे धार्मिक लोगों को उत्पन्न नहीं कर सकते जब तक कि शिक्षण प्रणाली में आमूल परिवर्तन न हो। इस प्रकार अनेक विचार आयोग के सामने आये हैं। लेकिन इस बात का ध्यान रखना होगा कि सभी सम्प्रदायों के मन्दिरों या धर्म स्थानों में पुजारियों को एक प्रकार की शिक्षा नहीं दी जाती और न ही एक प्रकार की अर्चना की जाती है। कबीरपंथी साधुओं में सब से बड़ा ग्रन्थ कबीर साहब द्वारा कृत बीजक है। वहां कोई स्मृति, पुराण के अनुसार पूजा अर्चना की पद्धति नहीं है। उन स्थानों में भी इस प्रकार की अर्चना पद्धति को नहीं लागू कर सकते।

जहां तक मठों की सम्पत्तियों का प्रश्न है बहुत कम ऐसे स्थान हैं जहां सामान्य कार्यों के संचालन के बाद राशि बच जाती हो। यों तो कोई ऐसा प्रतिष्ठित मठ बिहार, उत्तर प्रदेश, गुजरात तथा उड़ीसा में नहीं है जहां पर संस्कृत पाठशाला और हाई स्कूल मठ द्वारा स्थापित नहीं हुए हों। केवल बिहार में ही ५० संस्कृत विद्यालय, हाई स्कूल तथा कालेज मठों द्वारा चलाये जा रहे हैं। अयोध्या में प्रत्येक प्रमुख मठ और आश्रम के साथ एक संस्कृत विद्यालय चल रहा है। जैसा कि देश के कमिशन के सामने अधिकांश लोगों के विचार आये हैं उससे भी स्पष्ट हो जाता है कि मठों के साधनों का उपयोग धार्मिक शिक्षा के साथ सामान्य शिक्षा की व्यवस्था में भी हो सकता है। इसमें कोई आपत्ति नहीं हो सकती लेकिन यह ध्यान रखना आवश्यक होगा कि सामान्य शिक्षा के साथ धार्मिक शिक्षा गौण न हो जाये।

धर्मस्वों की आय के एक भाग को अनिवार्य रूप से साधुओं के प्रशिक्षण तथा धर्म प्रचार के निमित्त साधु मिशनरी संगठित करने के सम्बन्ध में प्रायः देश के सभी लोगों ने अपने विचार प्रकट किये हैं। जो बड़े समृद्धिशाली मठ हैं उन्हें स्वयं अपने धर्म के प्रचार के लिए साधुओं की शिक्षा-दीक्षा की व्यवस्था करनी चाहिए और अन्य सभी मठ मिलकर साधु शिक्षण विद्यालय स्थापित करें जिससे सामान्य रूप से जो साधु देश में घूमते रहते हैं उन्हें प्रशिक्षित किया जाये। तदनन्तर उन्हें हिन्दू धर्म के प्रचार के कार्य में लगाया जाये। साधुओं की शक्ति का पूरा पूरा उपयोग समाज को नहीं मिल रहा है। इसके दो मुख्य कारण हमारे सामने आये हैं। एक तो उन्हें नियमित रूप से साधु दीक्षा की पूर्वशिक्षा नहीं मिल पाती और दूसरे साधु होने के बाद उनके भरण-पोषण की समुचित व्यवस्था नहीं हो पाती। प्राचीन काल में मठों को साधुओं

के निवास तथा भरण-पोषण के लिये ही स्थापित किया गया था परन्तु आज यह संस्थाएँ इस उद्देश्य की पूर्ति में सभी जगह अपने को उपयोगी प्रमाणित नहीं कर पा रही हैं। समाज के आत्मिक और नैतिक उत्थान के लिये धार्मिक संस्कार की आवश्यकता है। यह काम प्राचीन काल से निवृत्तिमार्गी साधुओं द्वारा होता आया है जिसे हमें पुनः पुनर्जीवित करना है। इस प्रकार के साधुओं के संगठन और उनकी उचित शिक्षा आदि की व्यवस्था के लिए साधुओं की संस्था को ही मान्यता प्रदान करनी चाहिए। इस सम्बन्ध में हमने अपनी टिप्पणी में प्रकाश डाला है।

२६. हमने देश के विभिन्न भागों में देखा और साक्षियों तथा स्मृति पत्रों से भी जानकारी प्राप्त हुई है कि मठों तथा मन्दिरों द्वारा अनेकों कालिज खोले गये हैं। बिहार में मनियारी मठ (मुजफ्फरपुर) के स्वर्गीय महन्त दर्पनदास ने दो डिग्री कालिज तथा स्कूल स्थापित किये हैं, इसी प्रकार आन्ध्र में तिरुपति देवस्थानम् ने लाखों रुपये की वार्षिक सहायता से विश्व विद्यालय तथा डिग्री कालिजों की स्थापना की है। अभी हाल ही में नई दिल्ली में लगभग १० लाख रुपये की लागत से एक दूसरा डिग्री कालिज खोला जा रहा है। देवस्थानम् में ट्रस्टियों ने अपने साक्षियों में बताया है कि मंदिर का आय से संचालित कालिजों में किसी प्रकार की धार्मिक शिक्षा देने की व्यवस्था नहीं है। मुझे आश्चर्य हुआ कि क्यों मन्दिर या अन्य दूसरे मठ के अधिकारी अपने उद्देश्य एवं लक्ष्य को छोड़कर धार्मिक सम्पत्ति को सामान्य शिक्षा आदि कार्यों में लगा रहे हैं। आयोग के समक्ष देश के प्रमुख विचारकों तथा प्रतिष्ठित लोगों ने बहुत बड़ी संख्या में अपना विचार दिया है कि धर्म सम्पत्ति का उपयोग उस स्थान से सम्बन्धित धार्मिक कृत्यों को पूरा करने के बाद ही केवल धार्मिक एवं आध्यात्मिक शिक्षा तथा कुछ लोगों की संस्कृत शिक्षा के प्रचार में व्यय किया जा सकता है।

सामान्य अर्थकारी शिक्षा, चिकित्सा तथा मनुष्य की अन्य सुविधाओं की व्यवस्था करने का काम सरकार का है। यदि, धार्मिक संस्थाओं के पास भी जो कुछ थोड़ा धन है वह भी भौतिक कार्यों में ही लग जाय तो धार्मिक एवं आध्यात्मिक कार्यों के लिये रुपये कहां से आयेंगे। ट्रस्टियों तथा मठाधीशों की इस प्रवृत्ति को अनुत्साहित करना चाहिये। यदि धर्म स्थानों द्वारा ऐसी शिक्षण संस्थाएँ खोली ही जायं तो वहां अनिवार्य रूप से धार्मिक शिक्षा की व्यवस्था की जानी चाहिये।

३०. मुख्यतः धर्म स्थानों के साधनों एवं वचन सम्पत्तियों का उपयोग उस संस्था के उद्देश्य की पूर्ति में ही करना चाहिये तदनन्तर उसका उपयोग देश तथा समाज में धार्मिक भावना जगाने सम्बन्धी कामों में होना चाहिये। संस्कृत शिक्षा, गौसेवा, धर्म प्रचारकों की शिक्षा दीक्षा, साधु सन्यासियों की शिक्षा प्रशिक्षण तथा उनके भरण-पोषण के साथ ही धार्मिक सम्मेलन, सदाचार आन्दोलन आदि कार्यक्रमों में लगाया जा सकता है। डा० के० एम० मुंशी तथा अन्य लोगों के वयान से यह मालूम होता है कि जिस काम के लिये सम्पत्ति संस्थापक ने कहीं दी भी उस सम्पत्ति को चैरिटी कमिश्नर ने दूसरे कामों में लगाने का प्रयास किया। इस प्रकार के हस्तक्षेप को सर्वथा वर्जित करना चाहिये। भारत के वर्तमान संविधान की व्यवस्था के विपरीत धार्मिक सम्पत्तियों का उपयोग गैर धार्मिक शिक्षा तथा दूसरे कामों में किया जाता है। सर्वोच्च न्यायालय (सुप्रीम कोर्ट) ने अपने निर्णय में धार्मिक कोष में व्यापक उपयोग के सम्बन्ध में प्रकाश डाला है जो पर्याप्त है। इस सम्बन्ध का प्रस्ताव करना स्वतन्त्रता के मौलिक अधिकारों

के प्रतिकूल होगा। मैं संविधान में धर्म संस्थाओं की प्रशासन की स्वतन्त्रता, उनके प्रधानों तथा सम्प्रदायों की स्वायत्तता तथा अधिकारों को किसी भी प्रकार से कम करने सम्बन्धी संशोधन के प्रस्ताव से पूर्ण रूप से असहमत हूँ। यदि संविधान में संशोधन किया गया तो धार्मिक स्वतन्त्रता का हास तो होगा ही आगे चल कर इन धर्म संस्थाओं तथा इनके कोष का अस्तित्व ही पूर्ण रूप से खतरेमें पड़ जायेगा।

आयोग ने जिन सुझावों को धर्म स्थानों या उनके प्रधानों के सम्बन्ध में संविधान में संशोधन करने के लिये दिया है उन सभी विचारों से मैं पूर्ण रूप से असहमत हूँ और किसी प्रकार के संशोधन को हिन्दू धर्म पर घोर संकट मानता हूँ।

विविध

३१. कुछ राज्यों में सरकार की यह प्रवृत्ति देखी जा रही है कि वह मठ के मठाधीशों को प्राप्त होने वाले व्यक्तिगत पूजा या चढ़ावा पर भी नियंत्रण करना चाहते हैं। मद्रास में पादकनिका या प्रनामी का भी हिसाब देखा जा सकता है। यह ठीक है कि इस तरह मठाधीश को अपने सम्मान तथा संस्था के उद्देश्य के अनुकूल स्वेच्छा से खर्च करने का अधिकार है। इस अंकुश को मैं उचित नहीं समझता हूँ। आयोग ने अपने रिपोर्ट में इस पर प्रकाश डाला है। मठाधिपति को अपने जीवन काल तक मठ के उद्देश्य तथा धार्मिक कार्यों के लिये इच्छानुसार खर्च करने का उल्लेख किया गया है परन्तु इसका भी हिसाब उन्हें रखना पड़ेगा।

उत्तर भारत में इधर तीस चालीस वर्षों से जो पचासों आश्रम स्थापित हुए हैं वह सन्यासियों के विद्वता तथा व्यक्तित्व से प्रभावित हो कर उनके भक्तों ने धन अर्पित किये हैं और कर रहे हैं। अभी नये नये आश्रम मण्डलेश्वरों तथा विद्वान सन्यासियों के बराबर बनते जा रहे हैं और उनके आश्रमों द्वारा धार्मिक, आध्यात्मिक एवं नैतिक आदर्शों की शिक्षा लोगों को मिल रही है। ऐसे सन्यासियों पर उनके पास दिये गये या उनके चरण पर चढ़ाये रुपये का हिसाब रखना अनुचित अंकुश मालूम होता है। इससे उनके दिल पर चोट लगेगी, भक्तों की यह मांग नहीं है और न कोई शर्त है। तो फिर इस प्रकार का हिसाब रखने का नियंत्रण क्यों लगाया जाय। सरकार के खजाने से राज्य के मंत्रियों को बीस बीस हजार रुपया प्रति वर्ष स्वेच्छा अनुदान (डिस्क्रिशनरी ग्रांट) देने की बजट की व्यवस्था बिहार तथा दूसरे राज्यों में है तो व्यक्तिगत प्रभाव या प्रयास से आये साधन पर उसकी इच्छा पर भी नियंत्रण किया जाय यह न्याय संगत नहीं है। व्यवहार में सन्यासी का यह माने नहीं हो सकता कि वह समाज से अलग जाकर जंगल में निवास करे। यह ठीक है कि उसे संसार के पदार्थों से आसक्ति नहीं होनी चाहिये परन्तु आदर्श एवं व्यवहार में बड़ा अन्तर होता है। स्वयं आज जगद्गुरु शंकराचार्य ने सन्यासी के सामाजिक बन्धन को तोड़ कर अपनी मां का अन्त्येष्टि संस्कार किया था, इसका अर्थ यह है कि व्यवहार में भी सन्यासी को आना पड़ता है। और समाज के बीच में उसे काम करना पड़ता है। किसी मठ या आश्रम के प्रधान को समाज के लौकिक व्यवस्था का भी संचालन करना पड़ता है। सदियों से चारों पीढ़ के शंकराचार्य मोने के सिंहासन पर बैठते आए। छत्र चंवर का उपयोग करते थे और कर रहे हैं। यह एक पद एवं प्रतिष्ठा की वस्तु बन जाती है जिसे मर्यादा के रूप में कहा जाता है। पंजाब के राज्यपाल

श्री गाडगिल ने अपने बयान में यह ठीक ही कहा था कि यदि शंकराचार्य या किसी धर्माचार्य को मोटर की आवश्यकता है तो बेशक उसका उपयोग कर सकते हैं क्योंकि प्राचीन समय के वाहन तथा सवारियों का आज के युग में क्या महत्व है।

इन सभी वस्तु स्थितियों पर विचार करने के बाद मैं निश्चित रूप से इस निष्कर्ष पर पहुंचा हूँ कि मठाधिपति को प्राप्त होने वाले पादकनिका या प्रनामी को वे अपनी इच्छानुसार उपयोग करने या दान देने में स्वतन्त्र हैं। उन्हें किसी भी प्रकार का हिसाब किसी भी सरकारी अधिकारी या समिति को देने की आवश्यकता नहीं होनी चाहिये। यदि किसी मठाधिपति को चरित्र या अयोग्यता की प्रमाणित शिकायतें हों तो उन्हें दण्डित करने के लिये पर्याप्त कानूनी व्यवस्था वर्तमान कानूनों में भी प्रचलित है। उनकी व्यक्तिगत पूजा की आमदनी मठ की आमदनी कदापि नहीं समझी जानी चाहिये।

३२. आयोग ने अपनी रिपोर्ट में धर्म स्थानों की दुर्व्यवस्था तथा परम्परा को तोड़ कर विवाह करने वाले कुछ महन्तों के सम्बन्ध में प्राप्त शिकायतों का उल्लेख किया है और आवश्यक कार्यवाही करने का सुझाव दिया है। मैं पूर्ण रूप से इस बात से सहमत हूँ कि जहाँ के मठाधिपति चरित्रहीन जीवन व्यतीत कर रहे हैं उन पर तुरन्त कार्यवाही की जाय और स्थान की रक्षा की जाय। सब से बड़ी महत्वपूर्ण बात यह है कि बिहार, राजस्थान, गुजरात तथा उत्तर प्रदेश में अनेकों साधुओं के मठों के महन्तों ने इधर तीस चालीस वर्षों से सम्प्रदाय तथा स्थान की मर्यादा की परम्परा को तोड़ कर विवाह कर लिया है और धार्मिक सम्पत्ति को निजी सम्पत्ति का रूप दे रहे हैं। उन पर विशेष रूप से कार्यवाही की जानी चाहिये। यह व्यवहार तथा कानून द्वारा भी प्रमाणित हो चुका है कि पुष्टिमार्ग को छोड़ कर किसी भी दूसरे साधु सम्प्रदाय में एक बार साधु बन कर महन्त बन जाने पर विवाह नहीं कर सकता। यदि वह विवाह करता है तो मठ के महन्त जैसे पवित्र आध्यात्मिक पद पर वह पीठासीन नहीं रह सकता है। आयोग के समक्ष अनेकों रामानन्दीय तथा दूसरे सम्प्रदाय के विशिष्ट साधुओं ने साक्षियां दी हैं कि जयपुर स्थित गलता गढ़ी जो रामानन्द सम्प्रदाय का एक आचार्य पीठ है उसके महन्त ने विवाह कर लिया है और गृहस्थ का जीवन व्यतीत कर रहे हैं। इस प्रश्न को लेकर साधुओं में बड़ा असन्तोष है। आचार्य पीठ के महन्त को सामान्यतः उस सम्प्रदाय के सभी त्यागी साधुओं एवं मठाधीशों को साष्टांग दण्डवत् या नमस्कार करने की प्रणाली चालू है। एक भ्रष्ट गृहस्थ को एक सन्यासी कैसे नमस्कार कर सकता है। इसी प्रकार साक्षियों तथा स्मृतिपत्रों से मालूम होता है कि बिहार में चैरौत रामानन्द सम्प्रदाय, शीतल पट्टी निम्बार्क सम्प्रदाय तथा सौराष्ट्र (गुजरात) में कोईली (दशनामी सन्यासी), गोरखमढ़ी तथा घेंला आदि अनेको मठों के महन्तों ने विवाह कर लिया है। जूनागढ़ में आयोग के समक्ष विवाहित महन्तों की भी साक्षियां हुई थीं। भारत साधु समाज की स्थानीय शाखा तथा दूसरे मठों के महन्तों ने इस बुराई को दूर करने का आयोग से अनुरोध किया था। यह एक गम्भीर तथा महत्वपूर्ण प्रश्न है जिसे पर विशेष रूप से विचार करना चाहिये।

मठों की स्थापना की प्राचीन प्रणालियों तथा बने हुए परम्पराओं के आधार पर मैं निश्चित रूप से कह सकता हूँ कि उक्त वर्णित सम्प्रदायों में मठाधीश बनने के बाद जो विवाह करेगा वह पतित तथा पथभ्रष्ट समझा जायेगा और एक मिनट भी उसे पद पर रहने का अधिकार नहीं और न वह अपना उत्तराधिकारी ही मनोनीत करने

में सक्षम है। विशेष कानून बना कर ऐसे मठों की रक्षा विवाहित महन्तों को पद से हटा कर करनी चाहिये और योग्य साधु को उस स्थान की परम्परा के अनुसार पीठासीन करना चाहिये।

३३. अन्त में मैं भारत सरकार से यह अपेक्षा करता हूँ कि वह इन महत्वपूर्ण मुद्दों पर ध्यान देगी और हिन्दू धर्म के संरक्षण तथा संवर्धन के लिये धर्म स्थानों की स्वतंत्रता की रक्षा करेगी। ऊपर बताये गये मुद्दों को कार्यान्वित करने से हिन्दू धर्म स्थानों तथा साधुओं के द्वारा धार्मिक एवं नैतिक दिशा में जन साधारण को महत्वपूर्ण प्रकाश मिलेगा।

स्वामी हरिनारायणानन्द,

सदस्य,

नई दिल्ली;

दिनांक २६ मई, १९६२।

हिन्दू धर्मसंस्कार आयोग,

भारत।

32745
NOTE BY SHRI SANKAR SARAN

I am in complete agreement with the joint report of the Chairman and four of my colleagues. There are, however, one or two points which, I feel might be emphasised or need to be viewed from a slightly different angle.

2. First of all, I should like to mention that although I had visited before some of the important South Indian temples the detailed study with the Commission of practically all the prominent temples in the South has been very revealing and instructive. For an explanation of some obscure mystical and ritualistic aspects, we looked to the Chairman who solved our difficulties.

3. It was a revelation to find how well the temples and mutts were managed in that part of the country. The archakas and pujaris were well versed in the *agamas* and *mantras*. Then there was an absence of the noisy, pestering and quarrelling pandas. It was such a pleasant contrast with the North where pandas and their agents abound. But I understand things were nearly as bad in that part of the country as they are in the North before the Religious Endowments Acts were passed. It has come in evidence how even the biggest temple, judged from its following and funds, *viz.* Tirupathi Devasthanam, was infested with pandas, the agents of the Hathiramjee Mutt and it was a job to stop their activities even after the Act was passed. In fact the head of the Hathiramjee Mutt made the same claims of proprietorship over the offerings as we have experienced in the North, specially in Bengal, Bihar and Rajasthan. Today, Tirupati is the model of efficiency and a place where men go for solace in a spirit of self dedication. It is really an example of what the zeal for reform and creative effort can achieve. I have no doubt that with adequate enactments and with suitable and devoted men to implement the proposals for reform North Indian temples and mutts would be equally well managed and inspire much greater reverence than is the case today.

4. The question of implementation and the setting up of suitable administrative machinery was one of the toughest jobs of the Commission. The evidence adduced before the Commission on this question was voluminous and the views expressed therein were divergent. It seemed well nigh impossible to reconcile the conflicting, I might almost say the warring, points of view. But, I feel, we have evolved a solution which is likely to meet with the general assent, if not approval, of all concerned.

5. Briefly put, one view was that there should be no interference in matters of religion, religious practices and the properties of the temples and mutts which should be the sole responsibility of the dharmakartas and mathadhipatis. The other view was that sadhus and sanyasis in mutts and those attached to temples were men who had abandoned the world and they should keep clear of mundane affairs. The administration of the funds and