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THE MADRAS HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS BILL, 1949.

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This Bill sought to be introduced in the Legislative Assembly is, at best, a very controversial measure. It proposes for the first time to provincialise the administration of Hindu Religious Endowments. It enables the Government to take control of the administration of all Hindu Religious Endowments in the Province of Madras. The Government would have been well-advised in not introducing a measure like this especially, when the Constitution of the Indian Union is in the stage of being enacted by the Constituent Assembly.

So far, the provisions relating to Fundamental Rights have been adopted by the Constituent Assembly. Article 20 of the Fundamental Rights, Part III of the Constitution clearly recognises the right of every religious denomination or any section thereof:

(*a*) to establish and maintain institutions for religious and charitable purposes;

(*b*) to manage its own affairs in matters of religion;

(*c*) to acquire moveable and immoveable property; and

(*d*) to administer such property in accordance with the law.

This Fundamental Right proceeds on the basis of the Indian Union being purely a Secular State. The Prime Minister and other leaders have repeatedly declared that the main object of the Constitution is to establish a Secular State. Many of the provisions of this Bill, especially those relating to Mutts clearly infringe this fundamental right guaranteed to religious denominations or sections thereof to manage their own affairs in matters of religion. I need not elaborate the points as it has been clearly explained by the distinguished lawyer, Mr. T. R. Venkatarama Sastri in his statement published in the "Hindu" of the 7th February, 1949. While Article 19 ensures the fundamental right of the individual to freely profess, practise, and propagate religion, with certain exceptions mentioned in Article 19 (2), Article 20 of the Constitution ensures the right of religious denominations to manage their own affairs in matters relating religion.

When a Bill relating to Muslim Wakfs was sought to be introduced in the Legislative Council a few days ago, the Leader of the House distinctly stated that the Assembly would hesitate to interfere in the management of the affairs of the Muslim community in matters of religion and stressed the ideal of a Secular State

established under the Constitution. The same principle ought also to hold good in the case of institutions established by the various religious denominations of the Hindu community. For, it cannot be said that the Bill merely seeks to enact provisions purely in regard to the secular administration of religious trusts.

The scope of the Bill is very wide. Under section 86 Government take power to make rules as regards the methods by which religious institutions should promote the interests of the Hindu religion. It seeks to establish absolute control over all religious institutions. A measure of this kind is not called for. There has been no public demand for such a legislation. The fact that there may be cases of abuse or misappropriation of trust funds or mal-administration is no justification for a Bill of this kind. There are provisions of the general law of the land like section 92 of the Civil Procedure Code which enable the Courts to give redress in such cases and to frame schemes for the better administration of the trusts. But it is quite another thing for the Government to assume control over religious institutions.

The Bill obliterates all distinctions hitherto recognised by the previous Hindu Religious Endowments Acts between Mutts, excepted temples and other temples. This is a matter calling for serious consideration, and there is no necessity for such a step. There are essential differences between temples and Mutts calling for different treatment. "In the temple sanctity attaches to the duly installed deity which cannot manage its affairs except through the human agency of a trustee; but no sanctity attaches to the position of a trustee. The Mathadhipati, on the other hand, holds a position of exceptional sanctity. He is looked upon by his disciples much as the Pope is by the Roman Catholic community. He is looked upon as the intermediary between God and man. In this sense, he is much more than a venerable Acharya entitled to the respect and reverence of his followers and disciples. They receive his spiritual ministrations and blessings. They receive orders from him and will never think of giving directions to him."

No control was ever sought to be exercised over Mutts even under Regulation VII of 1817.

Further, under section 5, sub-section (12) of the Bill, the definition of "Religious Endowments" does not exclude gifts of property made as personal gifts to the Head of the Mutt as it has done, of gifts to archakas of temples. This seems to us to be a serious omission. The main portion of the income of the heads of Mutts is from this source. The gifts of property made as personal gifts to the Mathadhipati are not impressed with any trust. Whether his position is one of trust has been discussed and variously viewed. Even the view that his position will not be dissimilar to that of a trustee, has conceded to him a large measure of discretion in the administration of the income or funds in his hands. He is not accountable to any one so long as he expends the funds neither for immoral nor for personal purposes, but only in advancement of purposes within the ambit of his functions. This law in regard to the powers of heads of mutts has been well-established. In the decision of the High Court Report of *Vidyapurna Tirtha Swami* v. *Vidyanidhi Tirtha Swami*[1] two very eminent Judges, Sir S. Subrahmanya Aiyar and Sir V. Bashyam Ayyangar who were fully conversant with the religious observances and sentiments of the Hindu community clearly held that the large part of the income derived from the endowments of the Mutt as well as from the money offerings from disciples and followers was at the disposal of the Head of the Mutt for the time being which he was expected to spend at his will and pleasure on objects of religious charity and in the encouragement and promotion of religious learning. His obligation to devote the surplus income to such

1. (1904) 14 M.L.J. 105: I.L.R. 27 Mad. 435.

religious and charitable objects was one in the nature only of an imperfect or moral obligation resting in his conscience and regulated by the force of public opinion and that he was in no way, whether as a trustee or otherwise, accountable for it in law. This has also been endorsed by the decision of the Privy Council in *Srinivasa Chariar* v. *Evalappa Mudaliar.*[1]

While this has been the established law as regards the powers of the heads of the Mutts, the clauses of the present Bill brush aside, at one sweep, all the powers of the Mathadhipati and makes him a subordinate of the Government officials, in all matters, religious and administrative. The provision as regards the submission of Budgets and expenditure, *i.e.,* section 41, and the power given to the Commissioner and his subordinates to modify scales of expenditure according to their discretion and the power given to the disciples to make suggestions and appeal to the Commissioner in case of non-compliance with them, seriously fetter the discretion given to the heads of mutts and affect the spiritual relationship that exists between the Guru and his Sishyas. Section 42 empowering the Commissioner to appoint Executive Officers to manage properties of Mutts when he desires so to appoint, seriously affects the dignity and status of the heads of Mutts. The power to settle schemes at the instance of the Deputy Commissioner under section 44, and the power to notify under section 49, are calculated to make the Mathadhipatis mere subordinates and servants of the Government and to vest the mutts and their properties completely in the hands of the Government. This is quite opposed to the nature and the spirit of these foundations and their working for all these centuries and contrary to the religious sentiments of the numerous disciples of these Mutts and the Hindu community in general.

Section 16 enables the officers of Government even to enter the sacred precincts of the Mutt and to interfere directly with the Acharyas' personal freedom.

Section 15 (2) gives power to the Commissioner even to control rituals, ceremonies and other religious observances in all religious institutions. These are entirely within the jurisdiction of the head of the Mutt as the sole spiritual authority.

Under sections 6 and 7 the Government are made the dominant controlling authority over the head of the Mutt.

Section 18 makes all the heads of religious institutions including Mutts, obey all orders issued by the Government and its hierarchy of officials. Even the word 'lawful' does not occur before 'orders'. The distinction between excepted temples and other temples has been also entirely done away with. This is sure to hamper the progress and beneficial administration of temples founded by many important rich families in our Province. It is because these families contributed to the support and maintenance of these temples that their hereditary rights as trustees were recognised under the law. The Bill places these trustees on the same footing as other temple trustees and makes them subordinates of Government—a step which may have the effect of making these families cease to take any interest in these institutions. Even in regard to the temples the power of notification is found in some instances to have been abused by those to whom this power was entrusted—*vide* the instances which came to the notice of the High Court reported in *Zamorin of Calicut* v. *Madras Hindu Religious Endowments Board*[2] and in *Ponnuman Dikshitar* v. *Board of Commissioners for Hindu Religious Endowments Madras*[3].

In *Ponnuman Dikshitar* v. *Board of Commissioners for Hindu Religious Endowments, Madras*[3] the following observations of Justice Venkataramana Rao are relevant:

1. (1922) 43 M.L.J. 536 : L.R. 49 I.A. 237 : I.L.R. 45 Mad. 565 (P.C.).
2. (1929) M.W.N. 1098.
3. (1939) 2 M.L.J. 11 at 14.

"It seems very undesirable that the Board should have taken any step in regard to the notification of this temple. The procedure in regard to notification ought not to be lightly resorted to, unless and until there is such serious mismanagement of the temple as would justify of an ouster of the trustees in charge of temple from their office. We hope and trust that the Board would drop as proceedings in the matter". It will be even more dangerous to entrust such power of notification to the discretion of a single individual like the Commissioner or Deputy Commissioner especially, when no qualifications for appointment as Commissioner are prescribed in the Bill.

Another very serious objectionable feature of the Bill is the almost complete ouster of the jurisdiction of the Civil Courts. The several provisions of the Bill which seek to take away the jurisdiction of the Civil Courts or restrict the scope of their enquiry are retrograde.

The existence of unlimited jurisdiction of the Courts of our land is the best guarantee of the rights of the public as well as of institutions and is in fact the bed-rock of true liberty and democracy.

Section 83 (1) enacts an entire bar of suits in respect of the administration of religious institutions in any Court of law except under and in conformity with the provisions of this Act. Under section 48 (1) orders settling a dispute relating to mere ritual or religious observances or honours cannot be appealed against to the High Court. Orders under section 45 which enables the Deputy Commissioner to direct the surplus to be appropriated to any religious or charitable purposes cannot also be appealed against to the High Court. Government is made the final authority in all questions of even ritual and religious observances and the utilisation of surplus funds. The provisions as regards personal surcharge under section 60, sub-section (3) in respect of trustees of all religious institutions and the power to impose a fine under section 80 are so drastic that they are sure to have the effect of deterring any decent person from being a trustee of a temple and, in the case of the head of a mutt, seriously affect his status and dignity.

The provisions as regards concurrent audit and of audit by officials appointed by Government seriously interfere with the dignity and discretion of the trustees of temples and in the case of heads of mutts unduly fetter their lawful discretion and are wholly opposed to the sentiments of the Hindu community. It is hoped that the Legislative Assembly will not accede to the introduction of the Bill of this kind which offends Article 20 of the Fundamental Rights Part of the Constitution and the provisions of which are likely to defeat even the best intentions of the Government. If even for any reason the Bill is allowed to be introduced, we hope that many of the objectionable features of the Bill pointed out above will be removed before it is passed into law.