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CONTROVERSY ON GOVERNMENT'S CONTROL OVER HINDU RELIGIOUS IDENTITIES IN INDIA-A STUDY

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Abstract

This paper has focused on the controversial issue of government control over religious entities of the Hindu community and charging taxes on the revenue earned by them mainly from donations offered by the devotees, which has attracted nation-wise agitation and debate on understanding articles 25 and 26 of the Indian Constitution. In India, the affairs of around 25 Lakh temples and maths (monasteries) belonging to the majority Hindu community are regulated by various state authorities through Hindu Religion & Charitable Endowment (HRCE) Act which has been enacted for the first time in 1951 after independence in Tamil Nadu and gradually adopted by other states. Whereas the places of worship of other faiths in India enjoy absolute freedom as they are owned by their respective communities and the governments have almost no say in their administration, rituals, and financial matters. As a result, various leaders and advocators of the Hindu community complain that it has not only hurt the very secular fabric of the country but also created a sense in the mind of the majority community that they are being persecuted in their own land even after independence. Hindu leaders argue that Hindu Religion & Charitable Endowment (HRCE) Act is discriminatory in nature as it applies to the Hindu community only and hence it should be abolished as being unconstitutional. On the other hand, various state governments argue that its intervention in temple administration is necessary in order to prevent corruption made by the trustees and to ensure social welfare and reforms as well as to correct historical social inequities which have been seen in Sabarimala temple in recent times. This paper has made a concerted effort to examine the question of the justification of government control over Hindu temples and the imposition of taxes on temple revenues and attempted to find an amicable solution to the issue.

Keywords: HRCE Act, Religious Entities, Articles 25 & 26 Of Indian Constitution, Hindu Community

INTRODUCTION

Indian constitution has upheld every citizen's right to be treated by the state on the principles of equality, freedom, impartiality, and benevolence. According to Article 15 of the constitution,[1] "the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex place of birth, or any of them". Article 25 of the Indian Constitution[2] (Freedom of Conscience and Free Profession, Practice and Propagation of Religion) in clause 1 it is categorically stated that- "Subject to public order, morality, and health and the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

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” If these principles of the Indian constitution are being applied to the existing taxation, economic and financial system in the country then the following propositions may be highlighted:

- No discrimination in tax laws between all Indian citizens
- For providing financial, social, political, or other benefits; Religion, caste, or tribe should not be the basis
- No Discrimination of any kind on account of religion, caste, or tribe

The pertinent question is whether in the last seven decades after framing the constitution these guiding principles have been implemented in true practices. Do all communities feel that the existing tax laws are impartial to protect their interest? Is there any discrimination made by the State in terms of providing financial, social, political, or other benefits to various sects of society? It is the right time to revisit these questions on the eve of India’s seventy-fifth year of independence.

Scope of the Study

India, being a welfare state and is expected to extend equal and ample financial, social, economic, and political opportunities to all corners of the society has not been able to do so due to the complex nature of its socio-economic-political scenario. The guiding principles of the Indian constitution spread in various articles are undoubtedly written to secure justice, liberty, and equality for all citizens and promote fraternity to maintain unity and integrity of the nation but unfortunately, the on-ground reality is something different. There are implementation failures of these principles causing unrest, dissatisfaction, and discrimination among various segments of society. The issue can be discussed at length but being a student of taxation and finance, the researchers restricted the study by initiating to highlight the number of anomalies found in existing tax laws of the country that contradict the principles of equality focused on by the Indian constitution and affect the interest of religious sects due to discriminatory nature of specific provisions of the act. In order to elaborate, some controversial issues of Indian taxation may be cited:

Section 192(1) of the Income Tax Act 1961[3] reads “Any person responsible for paying any income chargeable under the head ‘Salaries’ shall, at the time of payment, deduct income tax on the amount payable at the average rate of income tax computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year.” Note that Section 192 has no reference to the religion of the assessee. The provision of the section states that it is the legitimate duty of the employer of any organisation to deduct tax at source at the time of payment of the salary of the employee if he/she earns taxable income. This has to be done in the case of any employee irrespective of his/her religious identity. In the case of Catholic institutions where priests/nuns teach and receive a salary, it is not subject to Tax Deducted at Source (TDS) since 1944.[4] Catholic institutions argue that since priests/nuns had taken a vow of poverty and according to that they have to surrender their personal income to the church, no income effectively accrues

to them and they are not subject to TDS. The same benefits are not been enjoyed by other religious groups. Though this discretionary treatment has been challenged in a court of law to date the decision is pending in the Supreme Court of India.[5]

Another controversial issue in the Indian Income Tax Act is related to Hindu Undivided Family. Hindu Undivided Family ('HUF') is treated as a 'person' under section 2(31)[6] of the Income-tax Act, 1961 (hereinafter referred to as 'Act'). HUF is a separate entity for the purpose of assessment under the Act. Under Hindu Law, a HUF is a family which consists of all persons lineally descended from a common ancestor and includes their wives and daughters. A HUF cannot be created under a contract, it is created automatically in a Hindu Family. HUF is recognised by the income tax authority only when there is an income-generating asset. Once recognised, it gets a separate PAN and is taxed separately as an entity apart from the members of the family. If structured wisely, HUF can become an effective tax planning tool. Jain and Sikh families even though are not governed by the Hindu Law and are considered minorities,[7] are eligible for HUF under the Act. The dichotomy is the status under the Tax Law given to the Hindu community has been eventually given to selected minorities but not to all minorities. This is a glaring example of breaching the principles of equality in the Indian Constitution while implementing our laws due to fulfilling some vested interests.

There are many such cases that can be addressed but this paper has focused on the controversial issue of government control over religious entities of the Hindu community and charging taxes on the revenue earned by them mainly from donations offered by the devotees, which has attracted the nation wise agitation and debate on understanding article 25 and 26 of Indian Constitution. Around 25 Lakh temples and maths (monasteries) belonging to the majority Hindu community in India are regulated by various state authorities through Hindu Religion & Charitable Endowment (HRCE) Act which has been enacted for the first time in 1951 after independence in Tamil Nadu and gradually adopted by other states. Whereas governments have almost no say in their administration, rituals, and financial matters of the places of worship of other faiths in India and they enjoy absolute freedom as they are owned by their respective communities. As a result, various leaders and advocators of the Hindu community complain that HRCE Act has not only hurt the very secular fabric of the country but also created a sense in the mind of the majority community that they are being persecuted in their own land even after independence. Hindu leaders argue that Hindu Religion & Charitable Endowment (HRCE) Act is discriminatory in nature as it applies to the Hindu community only and hence it should be abolished as being unconstitutional. They also oppose the policy and practice of imposition of taxes by various state governments on the earnings of the Hindu temples which are not done in the case of revenue earnings of other religious establishments. On the other hand, various state governments argue that its intervention in temple administration is necessary in order to prevent corruption made by the trustees and to ensure social welfare and reforms as well as to correct historical social inequities which have been seen in Sabarimala temple in recent times. This paper has made a concerted effort to examine the question of the justification of government control over Hindu temples and the imposition of taxes on temple revenues and attempted to find an amicable solution to the issue.

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Research Objectives

- To understand the genesis of the problem by following historical events.
- To understand the constitutional validity of the Hindu Religion & Charitable Endowment (HRCE) Act and the justification for imposing taxes on temple revenues.
- To study the real-life mechanism of temple administration by the government.
- To find avenues to resolve the issue.

Historical Background of the Issue

Since ancient times Hindu temples were the centre of art, culture, education, and treasury of valuables. Temples were managed by local communities. Every temple had charitable endowments, including properties given to temples for the benefit of the community. The benefits included pathsalas, gaushalas, and institutions for the advancement of education and feeding of the poor. Even the temples were used as power-centers[8] (Saktikendras) where young people used to practice martial art for the protection of the temples. The Muslim invaders knowing this used to attack the Hindu temples in order to conquer the kingdom. The British rulers delicately handled the issue. In order to fulfill the agenda of colonisation and conversion and to apply the divide-and-rule policy amongst the communities, temple organisations needed to be weakened. As a result, temples were brought under government control as the British imposed Madras Regulation VII of 1817.[9] In 1840, there was a directive from the East India Company to return the temples to their trustees, as Christian missionaries did not like the idea that Christians managed Hindu temples. Thus, temple management was slowly, handed over to the trustees. According to the Religious Endowment Act 1863, temple administration was transferred by the British government.[10] it is worth mentioning that most of the temples of South India were under British control in comparison to North Indian temples because not too many temples in the north possessed massive wealth.

In 1925, the British government introduced The Madras Religious & Charitable Endowments Act whose intention was to exercise control over all religious entities of all communities but faced strong resistance from Muslim and Christian communities. As a result, the act was redrafted and applicable to Hindu temples only and renamed The Madras Hindu Religious & Charitable Endowments Act 1927. This act was amended from time to time but a radical change was made in 1935 by Act XII through which temples could be notified by the Government and temple administration may be taken over. This way The Hindu Religious Endowment Board assumed powers to take over and administer temples. So, it can be stated that the genesis of the present problem has its roots in the pre-independence period.

Scenario Post Independence

After independence, interestingly situations have not changed. Control of the temples and their funds was taken by the Tamil Nadu government after independence by an act passed in 1951 called The Hindu Religious & Endowment Act 1951. This exercise was challenged in the court and the act has been modified and renamed as The Tamil Nadu Hindu Religious & Endowment

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Act 1959 subject to certain amendments.[11] The state governments have framed their policies on the basis of the recommendation of the Hindu Religious Endowments Commission CP Ramaswamy Ayer in 1960[12] that Hindu temples and maths should be considered as belonging to the public. It is stated that the focus of the act is to ensure that the religious trusts and institutions are properly administered and the income of the temples is not misused. According to the provisions of the act, if the government presumes that any Hindu charitable endowment has been mismanaged, it may order the commissioner to inquire and bring the endowment under government control. This provision of taking over due to mismanagement does not apply to Muslim and Christian communities.

Along the same line, other state governments also started taking control over temple management and trust funds across the country from north to south and east to west. The Bodh Gaya Temple Act of 1949 was passed by the Bihar government to administer the management of the Buddha temple of international recognition. Orissa Hindu Religious Endowments Act was passed in 1951 to administer the Hindu temples of Orissa. A separate act was framed for the famous and ancient Jagannath temple at Puri named 'Sri Jagannath Puri Act 1955'. Sri Venkateswara Temple, Tirumala coffers of gold amounting to $ 11 billion were controlled directly by the state government by an act of 1966. As per the power given to the government (Manipur Act 12 of 1972), the Manipur government framed The 'Sri Govindaji Temple Act of 1972'. The Shrine Board of Vaisnodevi Mata in Jammu was set up in 1986 with 1.2 tonnes of gold and was taken over by National Conference chief minister Farookh Abdulla from a private trust. Siddhivinayak Temple Mumbai coffers of gold of more than 160 kgs are directly controlled by the state government by an act of 1980. Saibaba temple Shirdi and Somnath temple of Gujrat are also been controlled by respective state governments through distinct acts. In recent developments, the Uttarakhand government placed Chardham Devasthanam Management Bill 2019 in order to control over 51 temples of Char Dham (Kedarnath, Badrinath, Yamunotri, and Gangotri) with an annual collection of more than Rs. 12000 crores. Andhra Pradesh introduces the Temple management system in March 2021 by the Jagan Mohan government. E-Hundi began on 16th March 2021 when the chief minister's office will monitor online donations. All these instances establish the fact that state governments are interested to control the income and funds of renowned Hindu temples and interfering with the temple administration as argued for better management and preventing corruption.

A Case Study on Government Control Over Temple Administration in the State Of Andhra Pradesh

For the purpose of administration and governance of Charitable and Hindu Religious Institutions and Endowments in the State of Andhra Pradesh, "The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act 1987 (APCHRIE/ Endowment Act)" was enacted to consolidate/amend[13]. This Act was amended for better management of properties and utilisation of its funds. Statistical data of temples and charitable institutions in the State categorized under Section 6[14] of the Act are as follows:

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Number of temples and charitable institutions in the State covered under this Act	24,722
The total area of agricultural land including forest, hills, etc owned by the temples	4,53,459.61 acres
The total area of non-agricultural land spread over the State is owned by the temples	9,05,374 square yards

As per Section 15 of the APCHRIE Act, every religious institution/ charitable institution or endowment shall have aTrustee board. The Endowments Department consists of the following:

Administrator	The Principal Secretary, Revenue (Endowments) Department at the Government level by the Commissioner of Endowments
Supported at the State level	2 Additional Commissioners, 1 Joint Commissioner, and 1 Vigilance Officer.
Assisted at a regional level	2 Regional Joint Commissioners
Assisted at the zonal level	4 Deputy Commissioners
Assisted at the district level	13 Assistant Commissioners
Engineering Wing	Led by the Chief Engineer with supporting staff and also a Silpi wing headed by the Sthapathi[15]

The officers at various grades of the Endowment Department also known as Executive Officers (EO) considered the annual income to the temple or trust controlled the temples. Details are as follows:

The rank of Executive Officers	The annual income of temples
Regional Joint Commissioners (RJCs)	Above Rs.1 crore
Deputy Commissioners (DCs)	Between Rs 50 lakh and Rs 1 crore
Assistant Commissioners (ACs)	Between Rs 15 lakh and Rs 50 lakh
Executive Officers Grade-I, II, III	Between Rs 2 lakh and Rs 15 lakh

The main source of revenue for the temples is through the sale of tickets for darshan, prasadams, accommodation to pilgrims, kesakhandana[16] besides daily hundial[17] collections and donations given for Annadanam[18], Saswathapujalu[19], etc., Although every item of expenditure is met from the funds of the temples, the administrative sanction is to be obtained from the CoE. Every religious establishment shall place a budget showing the probable receipts and disbursement of the fund to CoE as a mandate by section 57 of the Act, and the budget must include a sufficient provision for the maintenance[20] of the religious institution. The Commissioner, Deputy Commissioner, or Assistant Commissioner, (as the case may be) has the power to alterations, omissions, or additions to the budget if required and pass an order after making the same.

"APCHRIE (Amendment) Act 2007", made provisions that each Hindu religious institution/Temple in the State shall pay specific sums every year to the Endowments Department towards "Endowment Administration Fund(EAF), Audit Fee, Common Good Fund (CGF), and Archaka Welfare Fund (AWF)". Details in the following table:

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Sl No.	Name of the Fund	Section under which the fund is deducted	Annual Contribution	Purpose of the Fund
1	Common Good Fund (CGF)	Section70 (1)	9% of the assessable income of temples under 6(a) and 6(b) category.	Common Good Fund is meant for the renovation, preservation, and maintenance of smaller temples with insufficient income.
2	Archaka Welfare Fund (AWF)	Section161 (1)	3% of assessable income if annual income exceeds Rs. 20 lacks.	These funds shall be spent for the welfare of the Archakas (Priests) including other employees working in the temples namely loans forHousing, Marriage, etc.
3	Endowment Administration Fund (EAF)	Section65 (1)	Templesunder 6(a) and 6(b)category- 8% of assessable income of	Endowment Administrative Fund is remitted to the Government account towards services rendered by Government and their employees to temples. Fundsshall be utilised for payment of salaries to Eos and other administrative staff.
4	Audit Fee (AF)	Section65 (4)	1.5 percent of assessable income of temples under 6(a) and 6(b) category.	The Audit Fund shall be transferred to the Government account for meeting the cost ofauditing of accounts of the temples.

Source: Audit Report (Revenue Sector) for the year ended 31st March 2018

The accounts receipts of these contributions are maintained at the Commissioner ate level. The salaries and other allowances of the staff of the Department are met by the Endowment Administrative Fund for the services rendered by them to the temples. The expenditure of the Endowments Department is initially met out of the Consolidated Fund of the state (through MH 2250-102-01) and later recouped from the EAF held as a public deposit (8235-103-01: General and other ReserveFund-Hindu Religious and Charitable Endowment Account Fund Main) with the state. The contributions made by the endowment institutions toward Endowment Administrative Funds are to be remitted to the public deposit head.

This case reveals that not only do the state governments hold direct control over temple administration but also, they grab a share of temple revenues in the name of administration

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funds and audit fees.

Constitutional Validity of Government Intervention in Temple Administration and Hindu Religion & Charitable Endowment (Hrce) Act

India Is A Secular Country. Two Basic Propositions Involve secularism as a modern political and constitutional principle. In the first one, there is a complete separation of religion and state affairs, no state can intervene in religious matters, and vice-versa under this model.

In the second model, all religions are to be treated equally by the state. This model is also referred to as non-discriminatory and is particularly relevant for multi-religious societies found in India. In the second model, which is also referred to as non-discriminatory, all religions are to be treated equally by the state. This model is and is particularly relevant for multi-religious societies found in India. This model allows the state intervention in religious affairs on the ground of public order and social justice. The Sanskrit phrase 'Sarva Dharma Samabhava' is the most appropriate vision of the secular state and society. India has adopted this model of secularism and it is to be noted that the term 'Secular' has not been defined or explained in the constitution. In 1950, the term secular was not there in the preamble of the Indian constitution. It has been subsequently incorporated by the 42nd amendment in 1976.[21] According to this concept of secularism, which is supposed to have equal respect for all religions, how could the state have control of only Hindu temples and no other religious worshipping places? How come HRCE Act is enacted in some states and not so in some other states? Therefore, it is pertinent to examine the constitutional validity of the HRCE Act and the practice of government control over temple administration.

Articles 15, 25, and 26 of the Indian constitution would be considered to examine the question raised as these are related to the issue. Article 15 commands the state that it shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them. The enactment of HRCE itself violets this article as the state has not framed a similar act for other religious denominations. The government's argument to control only the Hindu Religious Trust administration on the ground of preventing corruption and malpractices is a case of over-simplification of facts and pointing out a particular religious community for mismanagement is not only objectionable but also not true. Moreover, it also violets the provision article 14 of the Indian constitution which states equality and availability of equal protection to all citizens of the country. There can never be discrimination created by the state.

The Indian Constitution guaranteed freedom of religious belief and practice under Article 25 and autonomy of religious institutions under Article 26. At the same time, Article 25 (2) (a) states that "Nothing in this article shall affect the operation of any existing law or prevent the state from making any law- regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice." This clause is the source of all confusion and contradiction. On the basis of this clause, various state governments framed various acts in the respective states in the line with Hindu Religion & Charitable Endowment Act and have taken control over the treasures, administration, and daily functioning of famous Hindu temples- using the donations and earnings for non-religious purposes and even imposing

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taxes on the temple income. These activities of the state have been challenged by various religious trusts, social reformers and devotees' number of higher courts including the Supreme Court have ruled the intervention of the government as unconstitutional. A full bench of the Kerala High Court[22] in 'T. Krishnan vs. G.D.M Committee' has ruled in paras 35 and 36 as under: "A religious sect or denomination has the undoubted right guaranteed by the constitution to manage its own affairs in matters of religion and this includes the right to spend the trust property or its income for the religious purposes and objects indicated by the founder of the trust established by the usage obtaining in a particular institution. To divert the trust properties or funds for purposes that a statutory authority or official or even a court considers expedient or proper although the original objects of the founder can still be carried out is an unwarrantable encroachment on the freedom of religious institutions in regard to the management of their religious affairs. A statute cannot, therefore, empower any secular authority to divert the trust money for purposes other than those for which the trust was created as that would constitute a violation of the right that a religious denomination has under Articles 25 and 26 of the Constitution to practice its religion and to manage its own affairs in matters of religion."

The verdict of the Constitution Bench of the Supreme Court in the appeal related to the 'Shirur Mutt' case and the decision by another Constitution Bench in the 'Venkataramana Devaru vs. the State of Mysore' may be considered landmark judgments that Courts in India are expected to follow regarding Article 26 of the Indian Constitution and religious rights. In this case, the Supreme Court agreed with Madras High Court that many of the sections of the HRCE Act 1951 were ultra-vires to the Constitution. It also clearly adjudicated that while the legislature could seek to regulate the administration, it must always leave the administration to religious Denominations.

Thus, from these case decisions, it is obvious that government intervention in the Hindu Religious temple trusts in the name of better administration grossly violet the relevant articles of the Indian Constitution and shrunk the legitimate rights of identified religious groups.

Road towards Amicable Solutions

From the discussion, it has been found that the crux of the controversy lies in the enactment of the Hindu Religion & Charitable Endowment (HRCE) Act in 1951, this act targeting only Hindu Religious institutions in the name of secularism has given rise to widespread resentment among the majority community. No doubt, anger is simmering among the Hindus across the country against the injustice done to them in their own country. The 'Free Hindu temples' movement already has taken its pace with a group of activists which may end in another communal conflict. In order to clip the wings of the problem and to address the question of the injustice made to the Hindu religious trusts, it is the need of the hour to abolish the HRCE Act and hand over the administration to the communities representing the religious establishments. There may be a representation of the government nominees in the board of administrators or trusts responsible to run the daily functions or taking financial decisions in order to prevent corruption or mismanagement. The government may extend administrative, logistic, or financial support if needed to the religious establishment as of now, but should stay away from directly controlling the policy formation or financial operations of the temple. Moreover, it is

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suggested to appoint a nominee from the same religious community or sect having respect and knowledge about the significance and importance of the religious identity.[23] this constructive effort will enable the country to uphold communal harmony and pacify the grudge of the Hindu religious community. The allegations of violation of various Articles of the Constitution will also be mitigated.

Reference

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2. www.incometaxindia.gov.in>Tax Laws & Rules>Acts>Income tax Act 1961, page 55.
3. Circular issued by CBDT in circular no.1 of 1944 dated 24.01.1944.
4. Institute of Franciscan Missionaries Vs Union of India, case no.SPC No. 10/2019.
5. https://incometaxindia.gov.in/Pages/i-am/huf.aspx?k=Introduction last updated 31.03.2021.
6. As per the National Commission for Minorities Act, 1992 the first statutory National Commission was set up on 17th May 1993. Vide a Gazette notification issued on 23rd October 1993 by Ministry of Welfare Govt. of India, five religious communities viz; Muslims, Christians, Sikhs, Buddhists and Parsis are notified as minority community. Further vide notification dated 27th Jan 2014, Jains have also been notified as minority community.
7. Free Hindu Temples from Government control- M Nageswara Rao, IPS, https://www.youtube.com
8. Sanjeev Nayyar, 8th April 2019 on www.esamaskriti.com
9. Nayyar Sanjeev (2019 8th April) www.esamaskriti.com
10. Repealed and replaced the earlier APCHRIE Amendment Act, 1966.
11. 6(a) institutions whose annual income is more than Rs. 25.00 lakh – 129, 6(b)institutions whose annual income between Rs.2.00 lakh and Rs. 25.00 lakh – 780, 6(c) institutions whose annual income is less than Rs.2.00 lakh -23,676, 6(d) maths-135 and 6(e) Dharmadayams – 2.
12. Sthapathi is a religious representative for construction and maintenance of the temples and related buildings in terms of the Hindu scriptures
13. Offering of hair to the deity as a custom by the pilgrims.
14. Money and ornaments offered by the devotees in a box called Hundial
15. Providing free food to the Pilgrim
16. Amount offered by the pilgrims to perform rituals on permanent basis, periodically.
17. Salaries of the staff, arrangements to be made for securing the health, safety or convenience of the pilgrims, construction, repair, renovation and improvement of the institution etc.
18. The Constitution of India [As on Ist April 2019] Government of India, Ministry of Law & Justice, Legislative Department.
19. AIR 1978 Kerala 68
20. At present fresh controversies started in Kerala and other states by the regulatory bodies controlling Hindu endowments having non-Hindus as members. CPM leader A Padmakumar- a proclaimed atheist being appointed as the chief of the Travancore-Cochin Devaswom Board in Kerala creating resentment amongst the devotees.