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Hindu Idols as a Juristic Person

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ABSTRACT

The recognition of the Hindu Idol as a separate legal identity in Indian jurisprudence is examined. First, we explore the nature of a “Juristic Person” and the inherent conflict present between its Indian and Common law variants. After delving into the evolution of jurisprudence regarding the concept, we examine the idea of a shebait, that has remained absolutely central to the legal fiction of an idol as a fictitious person in the eyes of the law. We make the claim that the shebait serves the Sheba or the idol. The shebait owns a piece of the property outright. The property is owned by the idol, although certain natural persons have an interest over the property. While examining the nuances relating to taxing this idol, we take two questions as our central theme—whether a Hindu idol which is by virtue a representation of god can be taxed and how does the distinction between the two types of religious trusts i.e. private and public influence the process. That courts had to choose between fairness and rationality and because of the current state of the law, there may not be a way to harmonize the two we claim as our conclusion. However, in order to reconcile the future, Hindu practices or common law may have to give way.

Keywords: *Juristic Personality, Common Law, Hindu Law, Shebait, Shiromani.*

I. INTRODUCTION

In the ordinary sense a person refers to a Human Being. But in Law, especially civil law, this is not necessarily case. Corporations, Companies, Firms, Government Agencies and even Idols can be considered to be juridical persons or fictitious persons in the eye of the law. Being a Juridical person, a separate legal entity will be created to help in legally distinguishing between the entity and the humans that constitute it. For example, a corporation is legally not the same as the board of directors in a company or its shareholders. In this way the board of directors is a separate legally entity as compared to the corporation. Consider the very well-known company law of principle “Ultra Vires” established by *Lakshmiswamy Mudhaliar vs LIC*³ for instance. In this case it was laid down that when a company does an act beyond the scope of its objects clause, the corporate entity will not be liable but the individual person who acted beyond the scope of his duty will be held liable. This distinction would not be possible if certain

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³ *Lakshmiswamy Mudhaliar vs LIC* 1963 AIR 1185

entities were given a separate legal entity in common law.

The main focus of this paper will be recognition of the Hindu Idol as a separate legal identity in Indian jurisprudence. We will first start by substantively defining the term juridical personality. Then we shall delve into of the problems arising when applying the principles of modern contemporary law theory to the ancient Hindu Law understanding of legal status to an idol. Further we will delve into the practical problems arising when applying the law in real life.

II. JURISTIC PERSONALITY

A Juridical person is a non-human legal entity, in other words any organization that is not a single natural person but is authorized by law with duties and rights and is recognized as a legal person and as having a distinct identity⁴. In law, a Juridical person has the right to sue, to be sued, to own property and so on. In *Shriomani Gurudwara Parbandhak Committee vs Som Nath and Ors.*⁵(hereafter referred to as Shiromani), Justice Mishra in his Judgement explains the concept of juristic person satisfactorily:

The very words Juristic Person connote recognition of an entity to be in law a person which is otherwise not. In other words, it is not an individual natural person but an artificially created person which is to be recognized in law as such.

In the course of this paper we will explore jurisprudence in Indian law has evolved with respect to a deity and the complications arising out of this. Examples of a deity being a litigant in a civil suit in Indian law is plenty. Take the very famous *RamJanbhoomi*⁶ case for instance. The case was essentially a civil suit for the title and possession of the land measuring 2.77 acres on top of Ram-Kot in the city of Ayodhya. Among the parties to this case was the Deity “Ram Lalla” represented by his next friend, Deoki Nandan Agarwal. In much more recent times, a civil suit was filed in a court in Mathura on behalf of the Hindu Deity Shri Krishna Virajman, asking for the removal of a structure illegally raised by trust members of Idgah Masjid on the alleged Krishna Janma Bhoomi. The suit seeks to reverse the judgement passed in 1977 by a civil judge that prohibited any alterations to the structures.

III. CONFLICT BETWEEN COMMON LAW AND HINDU LAW

There is a lot of conflict when applying common law to ancient Hindu law understanding of

⁴ A., Garner, Bryan; 1860-1927., Black, Henry Campbell. *Black's law Dictionary*. ISBN 9780314642721. OCLC 908072409

⁵ *Shriomani Gurudwara Parbandhak Committee vs Som Nath and Ors.* AIR 2000 SC 1421

⁶ *M. Siddiq v. Mahant Suresh Das and Ors* (2018) 4 SCC 655

the juridical personality attributed to an idol. As a result, Hindu Law with unusual modification due to its intersection with common law seems to be in place. In ancient Roman law for instance juridical personality was attributed only in two instances. In the first case a corporation could be formed as a result of state sanction. In the second instance a donor could create a charitable institution (similar to a trust) which would operate on the will of the founder. This recognition of juristic personality by Roman law can be historically regarded as the first of its kind. Compared to ancient Roman law English Law only recognizes only one entity of artificial personality – corporations. This is further divided into corporation aggregate and corporation sole. Therefore, there is evidently a great deal of conflict between common law and Hindu that our colonial courts had to grapple with while setting clear judicial precedent.

IV. EVOLUTION OF JURISPRUDENCE

Under Indian Jurisprudence all property belonging to temples are in the name of a deity. In that sense deity's fundamental function as person is so that it may own property. In the famous Sabarimala case, it was argued that the deity Ayyappa is celibate, hence allowing women on top of the hill would violate his "Right to privacy". Justice D.Y Chandrachud denied this contention by stating that:

"Merely because a deity has been granted limited rights as juristic persons under statutory law does not mean that the deity necessarily has constitutional rights"

The Dakor Temple⁷ case was one the earliest cases to accept that a deity has a separate juridical identity as to allow it to own property. In *Vidya varuthi vs Balasami Ayyar*⁸, this was again upheld. Subsequently, Jurisprudence as evolved such that the deity in Indian law is treated as a Perpetual Minor with a Guardian or a Shebait needed to represent its interests. The Shebait is necessarily supposed to act in the best interest of the Minor as decreed in *Bishwanath and Ors vs Shri Radhballabji*⁹. If the shebait alienates the idol from its property, then a devotee will be allowed to move as friend of the deity. The deity being a minor, suits arising with respect to it will be governed by rule XXXII of the CPC, 1908.

Practical Implications

The practical implications of the legal personality of an idol can be traced back to two contradictory strands of thinking on the idol. The Idol is a juristic person who is capable of owning property in their own capacity. The properties which are owned by the idols will be

⁷ Shankarlal Purshottam Gor and Ors vs Dakor Temple Committee And Ors AIR 1926 Bom 179

⁸ Vidya varuthi vs Balasami Ayyar (1922) 24 BOMLR 629

⁹ Bishwanath and Ors vs Shri Radhballabji 1967 AIR 1044

managed by the manager or the *Shebait*. *Shebait* is a person who belongs to the deity and serves or *Sheba* to the idol. The *Shebait* has a proprietary interest in the property. The idol owns the property but also some natural persons have an interest over the property. In the *Shiromani case*, the court explained the concept of *Shebait*:

*As in the case of minor a guardian is appointed, so in the case of idol, a Shebait or manager is appointed to act on its behalf. In that sense, relation between an idol and Shebait is akin to that of a minor and a guardian. As a minor cannot express himself, so the idol, but like a guardian, the Shebait and manager have limitations under which they have to act. Similarly, where there is any endowment for charitable purpose it can create institutions like a church, hospital, gurudwara etc.*¹⁰

In the case of *Vidya Varuthi Thirtha vs Balusami Ayyar*, the court said that, in no case was the property conveyed to or vested in him, nor is he a "trustee," in the English sense of the term, although in view of the obligations and duties resting on him, he is answerable as a trustee in the general sense for mal-administration.¹¹ The legal status of *Shebaiti* tells us not only about the legal personality of the idol but also the practical implications for the properties of the idol.

Tax and Idols

The consequence of this is that it allows the endowments to an idol an ideal tax-free card. The avoidance of tax through an idol has not been a recent phenomenon but has been there for many centuries. The old Kings used to give concessions in tax for lands which belong to the local temples in the same way as the Income Tax Act, 1922. Lands given to the temple as offering were exempted from taxes or sometimes taxed at a very low rate.

The Income Tax Act of 1922 gave concessions to the property held by the deities, but it was not applicable to income which were received from a trust or a business or contributions which were voluntary to the religious and charitable activities. Later, the Income Tax act 1961 came into existence and it provided tax exemptions of maximum 25 percent of the properties of the trust.¹² The exemption was also not applicable if the income received from the property was used for private religious purpose which does not benefit the public or if the income from these properties benefit the founders of the respective trust or the relatives of such members, directly or indirectly.¹³

There have been two questions related to Idols in regard to Income Tax Law. Whether a Hindu

¹⁰ *Shriomani Gurudwara Parbandhak Committee vs Som Nath and Ors.* AIR 2000 SC 1421

¹¹ *Vidya varuthi vs Balasami Ayyar* (1922) 24 BOMLR 629

¹² Section 11 and Section 12 of Income Tax Act, 1961

¹³ Section 13 of Income Tax Act, 1961

idol which is by virtue a representation of god can be taxed? And the distinction between two types of religious trusts i.e. private and public. It was cleared in the case of *Commissioner of Income Tax vs Jogendra Nath Naskar And Anr.* The judge said that:

It was a tax on the total income of the previous year on ever individual. It was not intended to exclude the Hindu deity as such. The exemptions intended to be given by the Act as such in sections 14 to 16, do not exempt the Hindu deity. There is no principle why a Hindu deity should not be taxed if he, in law, is allowed to own property even though in the ideal way, to sue for it, to realise rent and to carry on business, to apply the income for specific purposes, no doubt in ideal sense and no doubt must be through human agents. Exemption, if any, is granted in the case of public religious purposes as already mentioned above and therefore impliedly it must mean that all other endowments or de-dictations over which the deities are in charge should be liable to pay tax.¹⁴

This was upheld by the supreme court when the case went for appeal to the Supreme Court and also in the case of *Official Trustee of West Bengal v C.I.T.*, the court upheld the decision of the Jogendra Nath case and said “We are of opinion that as a Hindu deity can hold property and be in receipt of income and can also sue and be sued in a court of law there is no reason why its income should be held to be outside the ambit of taxation if it can be brought within it without straining the language of the statutory provision. It would naturally be taxed through its shebait who are in possession and management of its property.”¹⁵

V. CONCLUSION

The question with which the paper began seems to be settled in law. Even though it was recognised in the modern law, Hindus always considered the Idol as a person. Classical Hindu law attributed real mind and real will to the idol which would be directed towards certain people known as the shebait. They need to closely watch all the legal personality they have been presented with. There are a number of practical difficulties that come to light relating to this context like the dilemma around the relationship between the idol and natural persons who are predominantly called the shebait. these dilemmas arised from the concept of naturals persons having material interest in the property of Hindu idols. And then there was the question whether the properties of the Hindu idols can be taxed. The courts made a choice between logic and fairness. There may not be a wat to reconcile the two now because of how the law stands. But

¹⁴ Commissioner of Income Tax vs Jogendra Nath Naskar And Anr. AIR 1965 Cal 570

¹⁵ Official Trustee of West Bengal v C.I.T 1974 AIR 1355

the Hindu customs or the common law may have to give way to reconcile the future.
