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Almighty as Litigant : Ram Janmabhoomi Case and the Concept of juristic personhood of temple deities in India

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Abstract— *Faith and political machination surrounding Ram Janmabhoomi / Babri Masjid issue triggered probably the biggest mass movement in Post-Colonial India, leading to a massive upheaval in the contemporary society and politics, that had been analysed in detail. But the jurisprudence involved in the case, which was finally settled by the Apex Court attracted little scholarly attention so far. In this essay I would analyse how the doctrine of 'juristic personhood' came to be imposed on temple deities, as well as philosophical foundation and contestations about this interesting, but little understood, seldom analysed phenomena.*

Keywords— ***Pathur Nataraja, Juristic Person, next friend, Purva-Mimamsa, Shebait, Dayabhaga, Phala, Temple Hinduism, Vaidikas, Sankalpa, Utsarga.***

I. INTRODUCTION

In 1988, London High Court in a landmark judgement ordered the repatriation of a fabled Nataraj (Dancing Shiva) statue to India; bringing the curtains down on a court battle which began in August 1982 after Scotland Yard seized the statue following a tip-off from the British Museum (Chandra: 1988). The Indian government professed that, the Nataraj had been stolen in 1976 from the Ariol Thiru Viswanatha Swamy temple in a village named Pathur, Thanjavur district, Tamilnadu. Investigations by Tamilnadu CID revealed that the idol-buried along with others close to the temple, to protect them from Muslim invaders - had been dug out by thieves. Adrian Hamilton and Bhaskar Ghorpade, Counsel(s) for Government of India reasoned that 'an idol remained a juristic person however long buried on damaged, since the deity and its juristic entity survive the total destructions of its earthly form'.

Having 'juristic personhood' assigned to a non-human entity cannot be considered a right, but a privilege. It is legal fiction. Depending upon their social usefulness, states and courts choose to treat some non-human entities as if they were endowed with the rights of a person. These entities are obviously not flesh-and-blood persons. Yet juristic persons have the right to own property, to enter into contracts and to sue. Idols of Hindu gods are deemed persons in this sense. Idols are to modern Hinduism what corporations are to the world of business. In a hyper-capitalist country like the United States, business corporations have been granted the rights of free speech and freedom of religion, which used to be reserved only for citizens. In a hyper-religious country such as India, temple idols have been granted the right to own and litigate property, a right normally reserved for citizens.

II. RAMJANMABHOOMI ISSUE

On 22 December 1949, militant Hindu activists broke into the Babri mosque and placed the idols of the Hindu deities i.e. Ram and Sita there. The installation of the idols would trigger a conflict that would change the political contours of the country in profound ways over the next fifty years. By the 1980s, the Ram Janmabhoomi movement had acquired considerable steam. In September 1990, BJP leader LK Advani launched a rath yatra that was to traverse 10,000 kilometres through the country in a jeep designed like a chariot, with the rallying cry of 'Mandir wahin banayenge' – the temple will only be built there.

The yatra left a trail of communal clashes wherever it went. It came to a head with the demolition of the Babri Masjid by a 300,000 - strong mob. The incident led to one of the worst outbreaks of communal violence in modern India,

Meanwhile, the legal case surrounding the idols drags on. The retired judge of Allahabad High Court, Deoki Nandan Agarwal collected revenue records and other documents to claim the land belonged to Lord Ram before filing a writ petition before the abovementioned High Court in 1989. In his suit (Bhagwan Sri Ram Virajman Vs. Rajendra Singh), he appointed Bhagwan Sri Ram Virajman – Lord Ram himself – as the lead plaintiff. He pronounced himself Ram Lalla's 'next friend'[1] – a provision that would allow him to conduct legal battle on Ram's behalf. In 2010, Special Bench of Allahabad High Court comprising Justice Sibghatullah Khan, Justice Sudhir Agarwal and Justice Dharam Veer Sharma ruled that (Special Bench: 2010), one-third of the land would go to Ram Lalla (Lord Ram as child), while the remaining would be split between the other two plaintiffs[2]. The next year, the Supreme Court stayed the order on grounds that no party had wanted a three-way split. In the judgment, Justice Sharma ruled that once consecrated, or worshipped long enough, 'there is no difference' left 'between idols and deities'. The stone statue, in other words, becomes the deity and acquires perpetual ownership rights, with no time limit, to all the properties vested in the deity by its devotees. As legal owners of property, idols – through their human 'next friends' - have the right to move courts to secure their interests, regardless of whether the original idol is in existence or not.

III. PHILOSOPHICAL AND JUDICIAL CONTESTATIONS

Although many commentators take the juristic personhood of Hindu idols in the Ayodhya case as an undisputed legal principle, it has a contested legal history. There are influential Court judgments that emphasise human, rather than divine, intentions as grounds for juristic personhood. This is not the result of imposing some 'Western' secularist ideology, but of the sceptical strains present within Hindu philosophy itself. The legal history of idols' personhood cannot be understood in isolation from the philosophical debates about the divine.

In 1925, the question before the Special Bench (comprising Justice Shaw, Justice Blanesburgh, Justice Edge, Justice Ali) of Bombay High Court in *Pramatha Nath Mullick Vs. Pradyumna Kumar Mullick*[3] (Pramatha Nath Mullick 1925) was whether the custodian of an idol was entitled to move it from the family shrine to his own private residence. Writing for the Bench, Justice Shaw rejected the request on the grounds that 'the will of the idol in regard to location must be respected' and came up with this famous ruling:

> Hindu idol, according to long established authority founded upon the religious customs of the Hindus and recognition thereof by Courts or Law is a 'juristic entity'. It has the juridical status, with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would... on analogy, be given to the manager of the estate of an infant heir. It is unnecessary to quote the authorities, for this doctrine, thus simply stated, is firmly established.

This has become one of the most cited passages in Indian case law on matters related to temples and deities. The Ayodhya judgment practically stands on this conception of legal personhood for the idol. Justice D.V. Sharma explicitly acknowledges the privy council judgment as the basis for his finding that the entire site belongs to Lord Ram.

It is because of this precedent-setting judgment that the law can treat idols not as judicial fiction meant for purposes of taxation and other administrative purposes, but as real persons endowed with 'will' and 'interests'. Thus the judgment insisted that the *shebait*, or temple custodian-priest, must consult the idol in matters regarding the location and mode of worship because 'it is open to an idol, acting through his guardian, to conduct its worship in its own way at its own place'. The idol, in other words, has preferences and predilections regarding how it 'wants' to be worshipped. In case there is a conflict between the *shebait* and the idol, the court makes room for a 'disinterested next friend' to step in. This provision of next friend, incidentally, has opened the door to political machinations in the Ayodhya dispute. Following the footsteps of Deoki Nandan Agarwal, the first 'Ram sakha', all subsequent 'next friends' of Ram Lalla have been affiliated to the RSS or the Vishwa Hindu Parishad[4].

How did British jurists, with hardly any contact with India and its religious traditions, arrive at this momentous ruling and with such confidence that they found it 'unnecessary to quote the authorities'? In fact, the Indian defendants in this case had argued that the idol was their private property and they could do with it what they pleased, 'even throw it into the Ganges, if they wished to'. The privy council chided them for treating the idol as

'mere movable chattel', and invoked custom and unnamed religious authorities to decree the idol as an autonomous person. The learned judges clearly superimposed Anglo-American company law, developed in the nineteenth century, on their pre-conceived ideas about Hindu religious traditions. England was the birthplace of the joint-stock company-the East Indian Company, chartered in 1600, being the prime example. By the early-twentieth century, such corporations were fully recognised by the Anglo-Saxon legal systems as 'persons' vested with rights to own property, enter into contracts and litigate. The privy council judgment simply extrapolated the laws meant to regulate commerce to matters of faith.

The British jurists, moreover, were heirs to nearly two centuries of Orientalist policy, where India was ruled in accordance with the religious sentiments and customs of its natives. Until it was reversed in 1841 due to a hue and cry over 'idolatry' among Christian missionaries, functionaries of the East India Company had actively involved themselves in temple affairs. As Richard Davis, puts it they 'collected and redistributed temple revenues, arbitrated disputes over ritual prerogatives, administered religious endowments, renovated decrepit structures, gave presents to the deity and participated publicly in major temple festivals. In short, they vigorously adopted the role of Indian sovereigns' (Davis: 1997). But there are crucial ways in which the personhood of Hindu idols is not analogous to corporations. Although both are non-human entities endowed with a quasi-human 'personality' by law, there is a difference. Corporate agenda, unlike that of an idol, is not incomprehensible to humans. Corporations, unlike idols, are ultimately accountable to real, flesh-and-blood shareholders.

The tension between popular and philosophical Hinduism when it comes to divine landlordship has not been reconciled. It harks back to the very beginning of idol worship in recorded history and the bitter opposition it faced from the orthodox defenders of the Vedas. As the German philologist Max Muller put it, 'Religion of the Vedas knows of no idols'. In Vedic times, the gods were worshipped through *yagnas* or sacrificial offerings, and *mantras* or sacred utterances. This meant that ritual ceremonies could be conducted anywhere and the gods were expected to come down from their celestial abode, participate in the *yagnas* and enjoy the sacrificial food and drink. Around the beginning of the Common Era, open-air Vedic altars began to give way to permanent structures with images and idols of gods that seemed more and more human-like. The devotees would now have to visit the gods living permanently in their new earthly homes. The first recognisably Hindu idols date back to the second century. Slowly but surely, 'temple Hinduism' – to use a phrase coined by Richard Davis – began to dominate over Vedic Hinduism. Scholars have offered many reasons for this, chief among them being the imitation of Buddhists and Jains who began to produce images of their founders. The reassertion of Dravidian and shudra gods and the doctrine of *ahimsa* are all cited as possible reasons for this remarkable shift.

Temple Hinduism, however, met with stiff resistance from those who had kept the sacrificial fires burning in the Vedic altars for centuries. Part of their opposition came from the threat the temples posed to their livelihood and prestige: if worshippers now had a direct line to the divine through idols, why would they bother to sponsor expensive Vedic rituals, or continue to invest in the *ashrams* and *gurukuls* where Vedic learning was kept alive? The very handsome *dakshina* given to those who used to conduct Vedic rituals was now going to the images installed in temples and the priests who looked after them. But much more was at stake than a mere competition for patronage. The orthodox Vaidikas, especially those trained in Purva-Mimamsa, saw the words of the Veda as self-sufficient. They believed that Vedic sacrifices, if accompanied by correctly enunciated *mantras* was bound to bring about the desired earthly result. It was the ancient scholars of the Purva Mimamsa school – such as Jaimini, Sabara, Medhatithi, who launched a radical attack on gods who could supposedly take bodily forms. It is these iconoclastic texts of Purva Mimamsa, that Indian jurists would rediscover in order to question and qualify the juristic personhood of idols.

Purva Mimamsa denied that gods have bodies, free will or the capacity to own property. The hymns of the Vedas refer to gods as if they are humans. Mimamsa, which specialised in the interpretation of texts, described these verses as purely metaphorical.

Indra, according to Sabara, is a not a physical entity but only the sound (*shabda*) of his name. And if divinity is only formless sound, it cannot eat, drink or incarnate itself in an idol. Second, the will: if gods are mere allegories, they by definition they lack will. They are incapable of saying of anything that 'it is mine'. Finally, ownership: according to Medhatithi (Jha: 1999), ownership is a relationship between the owner and an object. What is essential to this relationship is that 'one could do as one likes' with the object in question. But, he argues, gods 'do not use wealth according to pleasure, nor can they be seen as exerting themselves for the protection of the wealth'. Devotees may want to gift property to the gods in order to please them, but gods are simply not the kind of entities who can have a position as a proprietor with the property earmarked for them. Who does this unclaimed property

belong to then, if not to the gods? Not surprisingly, being an orthodox Brahmin, Medhatithi ends up concluding that 'things of the gods' are actually things that belong to the 'highest class', which included people like himself.

The mimamsa scepticism experienced a revival in Indian jurisprudence in the twentieth century, thanks to the erudite scholar Ashutosh Mookerjee, who served as a judge of the Calcutta high court from 1904 to 1923. In the precedent-setting 1909 case *Bhupati Nath Smrititirtha vs Ram Lal Maitra* (Decided by a five-judge bench), Mookerjee called for caution in rushing headlong into declaring deities as juristic persons in any real sense of the word. He went back to the *Dayabhaga* system of Hindu laws of inheritance and revisited the old Mimamsa texts, to zero in on why gifts to gods do not have the same legal standing as a gift to a person. According to the *Dayabhaga* legal school of thought, gift giving is a two-step process. The person who gives the gift has to renounce their ownership over it. The receiver has to take the next step and accept it. Unless and until the beneficiary of the gift accepts it as their own, the gift remains an ownerless object. This is the nub of the problem for gifts intended for the deities. After ritually resolving (*sankalpa*) to dedicate his property to god, the donor renounces his rights in it (*utsarga*). But the other party –the deity or idol – cannot complete the process by coming forth and saying 'Yes, I accept your gift and henceforth it is mine'. The deity cannot do this for the same reasons that troubled Sabara, Medhatithi: the deity is not a sentient being. This puts the gift intended for gods, as Ashutosh Mookerjee put it, in a rather 'peculiar position', for the simple reason that while 'the owner is divested of his right', it is a fact that 'the deity cannot accept' (Bhupati Nath Smrititirtha 1909). This opens a whole new can of worms, insofar as the law is concerned. The question may be asked of who should own the assets set aside for the gods, since the gods are unable to claim them. The answer is clear: such ownerless property belongs to the state. In the Hindu legal tradition, as Mookerjee argues in *Bhupati*, protection of the *devagriha* or the temple, is one of the primary duties of kings. In the modern-day democratic polity, the state becomes the custodian and protector of places of worship and runs them as public trusts. And yet, if the courts accept the old Mimamsa scepticism, how do they respect the piety of the devotees, who earnestly believe that gods graciously accept and enjoy the gifts they bring to them?

The answer provided by Justice T. Venkatrama Aiyyar in *Deokinandan Vs. Murlidhar* in 1956 (Decided by a four-judge bench of the Supreme Court), is as follows: The *phala* — spiritual benefit — of a donation lies in the act of relinquishing something of value for god; the *daan* itself is what is spiritually meritorious. The idol need not be the owner of the gifts that the devotees bring, but rather a symbol of their pious purposes. As Aiyyar ruled in *Deoki Nandan*:

> Thus, according to texts such as Sabara's *Bhasya* and Medhatithi's commentary on Manu, the Gods have no beneficial enjoyment of the properties and they can only be described as their owners only in a figurative sense. The true purpose of a gift of properties to the idol is not to confer any benefit to God, but to acquire spiritual benefit by providing opportunities and facilities for those who desire to worship (Deoki Nandan 1956).

This echoes the earlier *Bhupati* ruling that even though idols cannot be considered the owners, the pious purpose that motivated the devotees – obtaining spiritual merit – can accrue to them through the act of dedication itself. Chief Justice As Lawrence Jenkins put it: 'the pious purpose is still the legatee, the establishment of the image is merely the mode in which the pious purpose is to be effected' (Bhupati Nath Smrititirtha 1909).

Vast numbers of inscriptions from medieval temples indicate what presenting land, gold and jewels to idols meant to the devotee. The donors, based on these texts, clearly hoped that the deity would gracefully accept their gifts in earnest. To them, the deity was the intended lord and owner of their gifts. The gifts could be substantial. The temple in Tirupati, for example, was endowed with over a hundred villages and large sums of money by the Vijayanagar rulers between 1456 and 1570. Apart from kings, wealthy merchants, temple functionaries, pilgrims and ordinary devotees made generous donations. The primary purpose of the gifts was to earn spiritual merit, a wish or even to expiate sins. Hindus believe that what they lay at idols feet belonged to the gods. It is this popular sentiment that legal enactments such as the privy council judgment choose to protect when they declare idols to be juristic persons. The problem with this legal largesse toward idols has two implications, one practical and the other theological. Making idols the legal owners of land opens the floodgates for all kinds of misappropriation and fraud, to say nothing of communal strife. The theological problem is that popular Hindu sentiment is contradicted by Hindu legal principles. The contradiction was evident to Indian jurists familiar with both Western and Hindu principles of jurisprudence. As SC Bagchi put it 'the deity, despite his spiritual potency is juridically impotent…. the idol is there, for religion demands its presence. But law courts will have none of it'

(Bagchi: 1931). Bijan Kumar Mukherjea — a former chief justice of India and the author of the influential book, *The Hindu Law of Religious and Charitable Trusts* – argues, this notion that the 'image itself develops into a legal person as soon as it is consecrated and vivified by *prana pratishtha* ceremony' is an 'exploded theory'. According to Mukherjea, it is not the case that 'the Supreme Being of which the idol is a symbol or image is the recipient or owner of the dedicated property'. Rather, when the law recognises the idol as a juristic person, it only recognises it as 'representing and embodying the spiritual purpose of the donor'. He further argues, 'The deity as owner represents nothing else but the *intentions* of the founder'.

IV. CONCLUSION

In the light of above discussion, we may contemplate changing the lens through which we look at a god's personhood, from that of a property owner to a symbol of the worshippers' spiritual strivings. Because the deity's 'will' and 'interests' are in principle not accessible to human beings, it makes sense to return focus to the intentions of devotees. Such a change in perspective would not only liberate the gods from their entanglement in material stuff, it would also allow us to make a distination between faith and political motives in the guise of faith.

V. NOTES

1. According to Merriam Webstar Online Dictionary, next friend is 'a person admitted to or appointed by a competent court, to act for the benefit of a person such as an infant lacking full legal capacity'.
2. Other plaintiffs were Sunni Waqaf Board and Nirmohi Akhra.
3. The High Courts verdict has been subsequently upheld and confirmed by the Judicial Committee of the Privy Council, the highest Court of Appeal in the British Empire.
4. After Deokinandan Agarwal, other 'Ramsakha'(s) were T.P. Verma and Trilokinath Paudey. See, Swati Mathur, 'The Man who was Ramlallas next friend' dated 02.10.2010, available at www.timesofindia.com, accessed on 17.03.2022.

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Abreviation(s) Used:

BOMLR-	Bombay Law Reporter.	
ILR	-	Indian Law Reports
AIR	-	All India Reporter