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**HINDU IDOLS AS JURISTIC INDIVIDUALS AND THE DISCOURSE
ON THEIR CONSTITUTIONAL RIGHTS**

Abstract

In recent times, the Indian judiciary has come around to fully accept the 'juristic' character of Hindu idols i.e., them being given the status of Legal Persons who can enjoy some rights under the law. With the discourse around the 'juristic' characters of idols having achieved mainstream popularity due to numerous indictments, debates raging in the socio-legal sphere have heated up and unfortunately a farrago of false claims and uninformed opinions has flooded the space about Hindu traditions on idols and by extension temple practices. Unbeknownst to many, Indian Jurisprudence's acceptance of the doctrine of Persona Ficta and subsequent rulings delineating the rights of a deity are in tow with native beliefs to ensure that they simply don't disregard esoteric beliefs which perhaps transcend rational logic as Indic concepts cannot be viewed from a Western prism. The Ayodhya and Sabarimala judgements are highlights of this discourse having achieved intellectual prominence of sorts as well as raising the bar for discussions on the scope of rights which are granted to deities. It is still debatable whether constitutional rights enjoyed by the deities can include the fundamental rights however a space which has room for holistic dialogue should exist for the purpose of fostering honest discussions on topics which teem with intricacies such as this one.

Introduction

On the 15th of September, the Madras High Court while addressing the Hindu Religious and Charitable Endowments Department (HR & CE) in a case¹ concerning property encroachment of the Sri Audikesava Perumal Peyalwar Devasthanam Temple made certain observations re Hindu deities and their properties. One peculiar statement made by the Court was:

“The Courts should be astute to protect the interests of an idol in any litigation.”

The acknowledgement of a deity in a temple extolled by devotees as a ‘juristic’ individual has been a part of Indian Jurisprudence anent matters pertaining to temple properties and land endowments since the British era and this dicta has gained considerable traction in recent years. This distinction proffered to deities by the Courts in cases where they are litigants is an inalienable part of the discourse surrounding the applicability of the law with regards to temple property and looks set to evolve further.

Endorsement of this character in recent years has shifted the narrative around temple traditions and idols from being construed as ‘parochial’, ‘regressive’, ‘conformist’ and other pejoratives to curiosity about how a particular deity’s temple practices intertwine with constitutional morality and whether the scope of rights conferred upon a juristic individual can possibly expand enough to guarantee them fundamental rights enshrined under part III of the Indian Constitution. This tilt in the mindset of the social fraternity has been an efficacious beacon for well-wishers who wish to maintain the sanctity of temple proceedings. Indeed, the sequence of events from the inception of this term to the Sabarimala and Ayodhya judgements which have collectively led to what is considered a watershed moment in India’s so-called ‘Dharmic Renaissance’ (the term christened by its clamorers meaning reliance on Indic tenets instead of the Western outlook on religion) is one which deserves a special look.

Jurisprudence and the Deities: A recap of historical facts

When the British Jurists arrived on the shores of India to establish a uniform rule of law in the spirit of Pax Britannica, they found themselves in an outlandish situation. Sifting through the proceedings of cases pertaining to temple properties, endowments, and land acquisition the British found out that Indian parties, with their complexities of caste and community practices presented a challenge to their very way of interpreting culture along with the law. The personhood of a deity residing in a temple was the primary sore point due to English law not having any methods in its arsenal to deal with Indic spiritual concepts. Hindu traditions have

¹ N.C. Sridhar v. The Secretary to Government, Tourism, Culture, Religious Endowments Department, W.P. No. 17570 of 2021.

decreed since time immemorial that a deity who resides in a temple is considered to be a living and breathing person following due process of prana-pratishtha (usage of hymns to infuse “life” within it). The associated concepts of Prasada (consecrated food offered to the deity) and Abhisheka (bathing the worshipped deity) give further credence to the ubiquitousness of Indic Traditions. This emerging situation engendered the Courts to grapple with this particular belief which eluded the normative concepts of English law.

In order to ease this headache, the Bombay High Court introduced the juridical persona of a Hindu deity in the landmark Dakor Temple case of 1887² by declaring that the pious idea that a deity embodies is given the status of a legal person.

Stemming from this judgement, the concept of a ‘juristic’ person was introduced in Indian law. This concept was first kindled in Ancient Rome³ as Persona Ficta (non- human person) and is later attributed to Pope Innocent IV as a method of allowing monasteries to have legal existence. Law recognizes two kinds of persons: A Natural Person i.e., a human being and a Legal Person (or Legal Entity). Black’s Law Dictionary defines a legal entity as⁴:

“A lawful or legally standing association, corporation, partnership, proprietorship, trust or individual.”

The Courts conferred the status of juristic persons on idols, individuals vested with the capacity of receiving gifts and holding property⁵ as a way of providing some semblance to the beliefs of India’s Hindu population. It has been stated by the Supreme Court of India that the very words ‘Juristic Person’ connotes recognition of an entity to be in law a person which otherwise it isn’t⁶. Only an idol which has been consecrated and installed at a public place according to the shastras can be considered a legal person⁷. This is in line with the Hindu theological belief of prana-pratishtha.

It is important to note what the rights of a deity are. As a juristic person, a deity of any temple can:

- Own Property

² Manohar Ganesh Tambekar v. Lakhmiram Govindram, (1888) ILR 12 Bom 247.

³ Kelly D. Alley, *River Goddesses, Personhood and Rights of Nature: Implications for Spiritual Ecology*, 10 RELIGIONS 1, 4 (2019), file:///C:/Users/91982/Downloads/religions-10-00502.pdf.

⁴ HENRY CAMPBELL BLACK, BLACK’S LAW DICTIONARY 1035 (4th ed. 1968).

⁵ Vidya Varuthi Tirtha v. Balusami Ayyar, (1922) 24 BOMLR 629.

⁶ Shiromani Gurudwara Prabandhak v. Shri Som Nath Dass, (2000) 4 SC 146.

⁷ Yogendra Nath Naskar v. Commissioner of Income Tax, 1969 SCR (3) 742.

- Pay Taxes
- Sue somebody via a trustee
- Get sued

The possession of a property in the hands of a deity can prohibit potential misuse of such at the hands of priests or other trustees. The Supreme Court has ruled that temple priests cannot claim that they have the sole right to manage the temple on behalf of the deity⁸. The ability of a deity to sue and get sued is perhaps its most famous right as evidenced by a plethora of cases which have popped up in the last century from the stolen Pathur Nataraja idol case where one of the plaintiffs was Lord Shiva to the case of a woman in 1937 who sued Lord Maruti and his devotees in Dahanu near Bombay in a matter concerning property encroachment⁹ and finally the Ayodhya case which shall be dealt with later.

Since a deity is an effigy of wood, stone, brass, or any metal it is ipso facto an inanimate object (barring legends) and hence requires the aid of a Natural Person to represent itself in Court proceedings. As a result, the Courts have declared that deities can be represented by managers or trustees with regards to all their affairs called Shebait. The Shebait is responsible for managing all temple properties vested with the deity and speaks on behalf of it. The Supreme Court once¹⁰ made an observation about the rights and interests of a Shebait:

“The Shebait not only has duties to perform for the deity but has interests and rights in the debutter property.”

Debutter property is one of the two kinds of religious trusts in Hindu society. It is any property dedicated to a Hindu charitable and religious purpose. Charity and religion are often intermixed, and the Supreme Court has upheld this syncretism¹¹ by stating that there is no demarcation between the two in a Hindu system. Essentially, the Shebait and the deity are two sides of the same coin. The Shebait's sole purpose is to represent his god and the deity's need for a legal guardian of sorts invites the concept of Shebaitship.

⁸ Sri Adi Visheshwara of Kashi v. State of U.P., (1997) 4 SCC 606.

⁹ Vikram Doctor, *Hoping for divine justice: When gods become litigants*, THE ECONOMIC TIMES (Aug. 11, 2018, 04:24 PM), <https://economictimes.indiatimes.com/blogs/onmyplate/hoping-for-divine-justice-when-gods-become-litigants/>.

¹⁰ Chintamani Khuntia v. The State of Orissa, AIR 1994 Ori 46.

¹¹ Ramachandra Shukla v. Shree Mahadeoji, 1970 AIR 458.

This is a basic brief of the history and rights of a juristic deity. Now let's take a look at the two cardinal judgements which have shone the light of mainstream relevance upon this special concept and its discourse in the socio-legal lacuna of 21st Century India.

Sabarimala and Ayodhya: Into the eye of the storm

Anyone who has caught a whiff of the newsroom debates from 2018 onwards is aware of the relevance held by the Sabarimala and Ayodhya judgements. These judgements have decisively changed the discourse around the juristic characters of deities in the eyes of the social sphere which was previously met with thumbs at its nose.

The Indian Young Lawyers Association case of 2018 is considered to be a landmark one for permitting women of all age groups to enter Sabarimala temple¹² to have a vision of Lord Ayyappa as guaranteed under Article 25 and Article 26 of the Constitution. The merits of the judgement itself are of no concern but the arguments presented by one of the counsels appearing on behalf of the respondents are. Adv. J. Sai Deepak, appearing for intervener organization People For Dharma directly referenced the rights of a deity with a simple but poignant statement¹³:

“The temple has asserted its rights, women have asserted their rights, but no one has asserted the rights of the deity inside Sabarimala.”

Sai Deepak professed that Lord Ayyappa is a juristic person who enjoys fundamental rights under the Constitution. He based this new premise on two arguments: first, that under Hindu religion, an idol requires life after installation and secondly, as the deity pays taxes it has guaranteed rights under the Constitution. Sai Deepak would later go on to briefly profess his supposition on the deity having fundamental rights as¹⁴:

1. A 'person' within the meaning of Article 25(1) of the Constitution; and
2. The very fount of the religious practices observed by and in the Sabarimala temple, which lent the temple a denominational/'sampradayic' character within the Dharmic fold under Article 26.

¹² Indian Young Lawyers Association v. The State of Kerala, (2019) 11 SCC 1.

¹³ Shishir Tripathi, *A Lawyer for Lord Ayyappa: Advocate Sai Deepak turns heads in SC arguing for Sabarimala deity's right to celibacy*, FIRSTPOST (Jul. 31, 2018, 06:02 PM), <https://www.firstpost.com/india/a-lawyer-for-lord-ayyappa-advocate-sai-deepak-turns-heads-in-supreme-court-arguing-for-sabarimala-deitys-right-to-celibacy-4859291.html>.

¹⁴ J. SAI DEEPAK, *INDIA THAT IS BHARAT: COLONIALITY, CIVILISATION, CONSTITUTION 24* (Bloomsbury 2021).

Sai Deepak noted that the rights of women under Article 25 (1) were subject to the right of religious denomination to manage internal affairs under Article 26 (b). He asseverated that the fundamental traditions of a temple are what determines its right as a denomination. This along with the fact that before entering Sabarimala temple, devotees first have to visit a mosque made the case for it being a religious denomination. Clubbing this with Article 21, Sai Deepak argued that the deity has a right to privacy under Article 21 due to its 'form' as a Naishtika Brahmacharya (one who takes a vow to remain a celibate until his death). As a result, the deity's celibate status deserved constitutional protection.

The main takeaway from Sai Deepak's arguments in the interest of the deity itself brings about the question: Can a deity have constitutional rights? Justice D.Y. Chandrachud wrote in a separate opinion¹⁵ that fundamental rights guaranteed under Part III are geared towards the individual as a basic unit. He argued that the deity may be a juristic person for the purposes of religious law but could not be granted the rights due to the fact that it is an artificially created person.

A perspective supporting the idea of a deity being granted more constitutional rights was proposed¹⁶ by C.S Rangarajan, a trustee of Telangana's Sri Chilkur Balaji Venkateswara Swamy Temple. He took the example of the Travancore Covenant of 1949, which was signed between Sree Chithira Thirunal Balarama Varma, the erstwhile Maharaja of Travancore Princely State and Sardar Patel in which the Maharajah made clear to Patel that he was only a servant of Lord Ananta Padmanabhaswamy, the ruling deity. Rangarajan writes that the rights of such rulers being protected in the Constitution as advised by Patel in the Constituent Assembly coupled with the 26th amendment declaring the end of privy purses belonging to the rulers and its subsequent endorsement by the Supreme Court in 1993¹⁷ under Article 14 declaring that the distinction between erstwhile rulers and the citizenry of India had to be put to an end fundamentally means that Lord Padmanabhaswamy and by extension all deities can be Indian citizens. Furthermore, Rangarajan makes note of Section 2 (f) of the Citizenship Act of 1955 which says¹⁸:

¹⁵ Legal Correspondent, *A deity does not have Constitutional Rights: Justice Chandrachud*, THE HINDU (Sep. 28, 2018, 10:23 PM), <https://www.thehindu.com/news/national/a-deity-does-not-have-constitutional-rights-justice-chandrachud/article25074235.ece>.

¹⁶ C.S Rangarajan, *Temple Deities are citizens, have Constitutional rights*, THE SUNDAY GUARDIAN LIVE (Jan. 19, 2019, 04:50 PM), <https://www.sundayguardianlive.com/opinion/temple-deities-citizens-constitutional-rights>.

¹⁷ *Shri Raghunathrao Ganpatrao v. Union of India*, AIR 1993 SC 1267.

¹⁸ The Citizenship Act, 1955, § 2(f), No. 57, Acts of Parliament, 1955 (India).

“person” does not include any company or association or body of individuals, whether incorporated or not.’

He writes that when this is read with Section 2 (31) of the Income Tax Act of 1961 which includes “artificially juridical persons” under its ambit and the Supreme Court’s ruling that deities can be taxed under the Act means that Hindu deities cannot be barred from being declared citizens by the Central Government under Section 5 (a) of the Citizenship Act and hereby possess fundamental rights.

The topic of juristic individuals being granted further constitutional rights might rear up in future debates but the very status of a Hindu deity as a juristic person will not as this point was taken into consideration in paragraphs 86-205 of the Ayodhya judgement. In paragraph 123 of the 1000-page verdict which allowed construction of a temple on 2.77 acres of land¹⁹, the Supreme Court highlights the underlying reason behind conferral of juristic personality on idols as a way of protecting properties dedicated to pious purpose from external threats as well as internal administration. In paragraph 129, the Court recognizes the legal personality of the first plaintiff, that is Ram Lalla Virajman, the minor deity. This endorsement of a deity’s juristic character emphatically denotes that deracinated presumptions scoffing at the very thought of deities having any legal presence cannot be entertained anymore despite the fact that it was common knowledge since the 19th Century.

The importance of these two episodes in their respective contributions to the discourse are why particular emphasis must be placed on them in all forums discussing this subject and its scope in the Indian socio-legal sphere.

Conclusion

One might wonder that despite the fact that Hindu deities being characterized as ‘juristic’ persons is a century-old fact, a certain section of people share a tendency to be rather squeamish when proceedings pertaining to religion unfold before the Courts . Perhaps the reason behind the reluctance of this lot when such events come to pass lies in the fact that there is an ongoing tussle in India between modernity and adherence to indigenous tradition. In this regard, it is worth taking into consideration that in high-profile cases centered around religious beliefs the Courts have always taken into account the sentiments of every party involved and a reading of several judgements proves the thin line across which the judges often tread to not offend any

¹⁹ M. Sidiq v. Mahant Suresh Das, (2019) 4 SCC 641.

party as any perceived mistake on their part would have consequences. This occurrence is a small part of what people consider to be a larger problem- India's lack of completely espousing Western or "modern" norms and institutionalizing them in all sectors of the republic. While the larger debate itself can wait, there does exist an argument proposed by well-wishers of Indic traditions that by denying the deities constitutional rights, its detractors might be viewing them from an incorrect epistemic lens as suggested by Sai Deepak²⁰. It is difficult to predict where the trajectory of the discourse on juristic characters will go. One should hope that intellectual honesty and openness in the field of discourse along with a proper understanding of legal and spiritual concepts is enough to mitigate any baseless commentary in a sector which is crucial to law and by direct effect, Indian society itself.



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²⁰ J. Sai Deepak, *The Eternity of the Deity*, OPEN (Nov.15, 2019), <https://openthemagazine.com/cover-stories/the-eternity-of-the-deity/>.